

City of Rochester
Request for Proposals
for
Conflict Counsel
Rochester Police Department Disciplinary Hearings

Proposals to be received by 4:00 PM EST, January 5, 2018

Submit Proposals to:

Brendon Fleming, Municipal Attorney
City of Rochester Department of Law
City Hall, 30 Church St., Room 400A
Rochester, NY 14614
brendon.fleming@cityofrochester.gov

REQUEST FOR PROPOSALS

The City of Rochester is seeking proposals from qualified attorneys or law firms (collectively, "Conflict Counsel") to represent the Rochester Police Department in employee disciplinary hearings conducted pursuant to New York Civil Service Law Section 75 and the City's collective bargaining agreement with the police union, where the Chief of Police has sustained allegations of misconduct against a police officer or other Rochester Police Department employee, and where the City Law Department has a conflict of interest. The representation and responsibilities described in this Request for Proposals are described herein as the "Representation". Where the Law Department has a conflict, the Conflict Counsel will be assigned to handle Rochester Police Department disciplinary proceedings, to include reviewing and analyzing case files, presenting arguments and evidence at Section 75 hearings on behalf of RPD, preparing and submitting any required post-hearing documents, and appeals of disciplinary penalties.

I. BACKGROUND

1. The City of Rochester ("City") is a full-service municipality of approximately 210,000 people located in the Finger Lakes region of upstate New York. The Rochester Police Department ("RPD") is responsible for police services with the City's borders. RPD has approximately 730 sworn officers.
2. RPD conducts disciplinary proceedings pursuant to Section 75 of the New York Civil Service Law ("Section 75") and its collective bargaining agreement with the Rochester Police Locust Club, Inc. ("Locust Club"), the RPD union.
3. The Professional Standards Section ("PSS") is RPD's internal affairs unit and is responsible for receiving, processing, and investigating complaints made against RPD officers and employees. If the Chief of Police ("Chief") sustains an allegation of misconduct at the conclusion of the PSS investigative process, the Chief can take several actions, including charging the officer with violating RPD Rules and Regulations.
4. A Section 75 hearing is the administrative mechanism for adjudicating departmental charges, after an officer pleads not guilty. The hearings are conducted before a hearing officer appointed from a panel established pursuant to the RPD-Locust Club collective bargaining agreement and are similar to an arbitration. The City's Department of Law (the "Law Department") typically represents RPD in these hearings.
5. From time to time, conflicts of interest arise that prevent the Law Department from conducting Section 75 proceedings on behalf of RPD. The goal of this Representation is for the Conflict Counsel to represent RPD in Section 75 proceedings where the Law Department has a conflict of interest and to conduct disciplinary hearings and any appeals in those cases. RPD employees who face disciplinary penalties imposed by the Chief after a Section 75 hearing have appeal rights subject to New York Civil Service Law Section 76, including judicial review pursuant to Article 78 of the New York Civil Practice Law and Rules. At this time, the number of cases the Conflict Counsel will be assigned during the term

of the Representation is unknown. Many, but not all, hearings are anticipated to take one day or less of hearing time. The Conflict Counsel will report to the Office of the Chief.

II. TIMELINE

Activity	Time (all times Eastern)	Date
RFP Release	5:00 PM	December 13, 2017
Deadline for Questions	5:00 PM	December 22, 2017
Response for Questions Submitted	5:00 PM	December 29, 2017
Proposals Due	4:00 PM	January 5, 2018
Possible Interviews of Respondents (at City's discretion)	TBD	January 9–30, 2018
Conflict Counsel Selection and Award Notification	5:00 PM	January 31, 2018
City Council Approval of Agreement with Conflict Counsel	Council Meeting	February 20, 2018
Agreement Start Date	12:00 AM	Date of Execution of Agreement

The dates shown above may be subject to change within the City's sole discretion and upon written notification as set forth herein.

III. COMMUNICATIONS

All communications by parties who have indicated an intent to submit or have submitted a proposal in response to this RFP ("Respondents"), including any questions or requests for clarifications, submission of the proposal, requests for status updates about the proposal selection process and any other inquiries whatsoever concerning this RFP shall be sent, **in writing**, to the following City staff person ("City Contact"):

Brendon Fleming, Municipal Attorney
City of Rochester Department of Law
City Hall, 30 Church St., Room 400A
Rochester, NY 14614
brendon.fleming@cityofrochester.gov

Telephone calls are not permitted, and no contact is permitted with any other City staff member with regard to this RFP during the RFP process unless specifically authorized in writing. Prohibited contact may be grounds

for disqualification.

To ensure that all Respondents have a clear understanding of the scope and requirements of this RFP, the City will respond to all timely questions submitted via e-mail to the City Contact by the question deadline stated above. Questions and the responding answers will be sent via e-mail to all Respondents who have provided an e-mail address to the City Contact and will be posted on the City's web page for this RFP. The City's failure to timely respond or provide responses to any questions shall not delay or invalidate the City's right to make a decision to award an agreement pursuant to this RFP.

The City will make every reasonable effort to keep Respondents informed about the RFP process. Notifications about Timeline date changes, amendments to the RFP and other information about the RFP will be sent by e-mail to Respondents who have provided an e-mail address to the City Contact and will be posted on the City's website for this RFP. The City's failure to provide such information shall not delay or invalidate the City's right to make a decision to award an agreement pursuant to this RFP.

IV. PRE-PROPOSAL CONFERENCE

In order to provide the City with an opportunity to discuss the RFP and Respondents with an opportunity to ask questions and clarify the RFP, the City may elect to hold a pre-proposal conference at a date and time to be determined at the City's sole discretion and upon written notification as set forth herein. If the City elects to hold a pre-proposal conference, there is no requirement to attend the pre-proposal conference and no obligation by the City to provide information from the conference to potential respondents who fail to attend.

V. SCOPE OF SERVICES

The City is seeking the services of Conflict Counsel to perform the following services in the Representation. Respondent's proposal shall address each of the following services. The proposal shall address each of the requested services, using the same identifying language, including any paragraph or section numbers or letters as used in the RFP.

1. The Conflict Counsel will provide legal representation for the RPD in employee discipline hearings conducted pursuant to Section 75 and the collective bargaining agreement between RPD and the Locust Club, where the Chief has made a finding of misconduct by a police officer or other RPD employee, and the officer or employee has pleaded not guilty. The cases to be handled are limited to those where the Law Department has a conflict of interest.
2. **Disciplinary Proceedings.** It is anticipated that the Conflict Counsel will conduct multiple disciplinary proceedings during the term of the Representation. The number is currently unknown. The typical services to be performed in connection with each Section 75 disciplinary proceeding include:
 - a. Consultation with the Chief and command staff of RPD, and with the commanding officer and investigators from RPD PSS.
 - b. Review and revision of written charges pursuant to Section 75 of the Civil Service Law for legal and factual accuracy and sufficiency.

- c. Appointment of hearing officer from a panel established pursuant to the RPD-Locust Club collective bargaining agreement.
 - d. Scheduling of disciplinary hearing, in coordination with hearing officer, counsel for charged officer(s)/employee(s), and RPD PSS.
 - e. Preparation of cases for Section 75 hearings, including review and analysis of investigation reports and witness statements, video and audio recordings and other evidence; and witness preparation.
 - f. Presentation of evidence at Section 75 hearings before the appointed hearing officer, including examination of witnesses.
 - g. Preparation and submission any post-hearing documents called for by the hearing officer or agreed upon with opposing counsel, including proposed findings of fact.
 - h. Negotiation of settlements with the approval of the Chief.
 - i. Provision of monthly updates to the Office of the Chief, and other written work product as requested by the Office of the Chief.
3. **Appeals of Disciplinary Proceedings.** Where the Law Department has a conflict of interest, the Conflict Counsel will represent the City in appeals challenging a disciplinary penalty imposed by the Chief after a Section 75 hearing, as assigned by the Chief, including:
- a. Administrative appeals under Section 76 of the Civil Service law; and
 - b. Judicial proceedings under Article 78 of the New York Civil Practice Law and Rules.
4. **Deliverables.** The Conflict Counsel will prepare all written work product required for Section 75 proceedings, as directed by the Office of the Chief, other than departmental charges, which the Conflict Counsel will review and revise upon request of the Office of the Chief or PSS. Written work product may include, but is not limited to, case outlines, witness preparation materials, hearing outlines, and post-hearing briefs. The Conflict Counsel will also provide the Office of the Chief and PSS with written monthly status reports for each case assigned.
5. **Avoiding Conflicts.** The Conflict Counsel retained for this Representation shall be free of conflicts of interest with the City and RPD, and the officers or employees involved in the Section 75 proceedings, and shall notify the Chief immediately if any such conflict is identified; and shall recuse herself or himself, and her or his firm, from any litigation against the City during the term of the Representation.
6. **Preferred Fee Arrangement.** The City's preferred fee arrangement is a flat fee per assigned case, or per specific part of each case. The City will consider other fee arrangements, including hourly fees with a fixed annual maximum amount. Whether the fee arrangement is flat fee, hourly fee, or otherwise, the Conflict Counsel shall provide the City with a monthly itemized bill consistent with the Professional

Services Agreement resulting from this RFP, for fees, and reasonable disbursements and expenses, including copies of documents, long distance telephone calls, and transcription fees, and if necessary, other expenses with the City's prior written approval. The City will not reimburse the Conflict Counsel for travel, food, or lodging.

7. **Location.** The City prefers that the Conflict Counsel retained for this Representation is based in and has an office in the City itself, or in the Rochester metropolitan area.
8. **Term.** A Professional Services Agreement resulting from this RFP shall commence on the date of execution of the agreement for a term of one (1) year, with an option to renew for up to one (1) additional year upon agreement of the parties, and the option to extend the agreement for the Conflict Counsel to conclude a pending case. During the term of the Representation, the Conflict Counsel is expected to prepare, conduct, and bring to resolution disciplinary proceedings and any resulting appeals, as directed by the Chief during the Representation.
9. **City Responsibilities.** The City will provide the Conflict Counsel with the assigned case files, including PSS investigative files for the case, and other materials requested by the Conflict Counsel, subject to written approval of the Office of the Chief. PSS will provide draft departmental charges to the Conflict Counsel for review and revision in assigned cases, at the direction of the Office of the Chief. The Office of the Chief and PSS will work collaboratively with the Conflict Counsel to facilitate the Representation.

VI. PROPOSAL PREPARATION AND SUBMISSION PROCESS

Proposals must be received by the City no later than 4:00 PM on January 5, 2018. Respondent must submit the proposal electronically, in PDF format, to the City Contact at the e-mail address provided below, and must also submit six (6) paper copies, printed double-sided, with each copy stapled or clipped together, to the City Contact at the address below. The contact information for the City Contact is:

Brendon Fleming, Municipal Attorney
City of Rochester Department of Law
City Hall, 30 Church St., Room 400A
Rochester, NY 14614
brendon.fleming@cityofrochester.gov

This RFP is designed to facilitate the evaluation and selection of Conflict Counsel that is best able to achieve the City's objectives. The proposal shall contain a table of contents. All pages shall be numbered and major sections and all attachments shall be referenced in the table of contents. In order to enable the City to effectively review the information contained in the proposals, proposals shall reference the numbered and lettered sections of the RFP. The response to each section shall be clearly indicated and addressed or an explanation provided for why the Respondent is not submitting a proposal for a specific section or requirement of the RFP. If desired, the proposal may include an executive summary of no more than two pages.

Each proposal shall be signed by an individual authorized to enter into and execute contracts on the Respondent's behalf. Unless otherwise specified in its proposal, Respondent represents that it is capable of meeting or exceeding all requirements specified in this RFP.

Submission of a proposal shall be deemed authorization for the City to contact Respondent's references. Evaluation of proposals will be conducted by the City based on information provided in the Respondent's proposals and on such other available information that the City determines to be relevant. The evaluation of proposals may include an on-site assessment, meetings with authorized personnel, and may involve the use of a third-party consultant.

The Respondent selected by the City will be required to enter into a Professional Services Agreement (PSA) with the City (see Attachment A, the City's standard PSA form). The establishment of a PSA is contingent upon approval by City Council for all Agreements in excess of \$10,000 or for a period of more than one year and upon the availability of funds for such an agreement. Unless otherwise stated in the proposal, the Respondent's response to this RFP shall be deemed its acceptance of the terms of this PSA. (Note: Attention is directed to the City's Living Wage requirements.)

Respondents shall provide sufficient information in their written proposals to enable the City review team to make a recommendation to the Mayor. The City reserves the right to invite any or all Respondents to an interview to discuss their proposal. Any expenses resulting from such an interview will be the sole responsibility of the Respondent. The City is under no obligation to select any of the responding Respondents or to conduct the Representation described herein. The City may amend or withdraw the RFP at any time, within its sole discretion. The City shall have no liability for any costs incurred in preparing a proposal or responding to the City's requests with respect to the proposal.

VII. PROPOSAL CONTENT

The proposal should include the following information in the order specified:

1. **Representation Statement.** A narrative that describes the Respondent's understanding of the City's needs and the unique value the Respondent will bring to the Representation.
2. **Description of Services.** Methodology the Respondent will use to perform the services required in this RFP. The proposal should address, in detail, each of the tasks or requirements as described in the Scope of Services, identified by numbered or lettered sections.
3. **Respondent's Qualifications.** Information about the Respondent and its qualifications for this Representation. The proposal should include information about:
 - a. Experience conducting, knowledge of, and familiarity with Civil Service Law Section 75 proceedings, including prior representations of municipalities in Section 75 hearings, and appeals from those proceedings;

- b. Other prior representations similar to that being solicited herein by the City, including adversarial administrative proceedings, arbitrations of employee discipline, and appeals in those proceedings;
 - c. Other relevant litigation and trial experience, including but not limited to experience involving disciplinary issues, labor and employment issues, and criminal matters involving individual defendants;
 - d. Experience dealing with and knowledge of laws governing police conduct, including but not limited to laws governing arrests, use of force by police officers, search and seizure, and New York Criminal Procedure Law;
 - e. Prior engagements representing government or institutional clients, including municipalities, other government entities, and other large institutions; and
 - f. Documented evidence of the Respondent's capacity to perform the work, including references, contact names, and phone numbers.
4. **Representation Budget.** An itemized budget including flat fee structure and/or staff hours and billing rates that addresses each of the tasks identified in the Scope of Services.
 5. **Representation Personnel.** The name and resume of the Respondent's lead attorney for the Representation. Names, resumes, and roles of all attorneys, partners, associates, counsel, and/or staff who will be involved in the Representation. Provide data on the diversity of Respondent's overall workforce, including total number of employees, and percentages of minorities and females employed.
 6. **Subcontractors.** Names, resumes, and roles of sub-contractors, associates, or any non-employees who will be involved in the Representation.
 7. **Rochester Presence.** Information about whether the Respondent has an office in the City of Rochester and/or any collaborative relationships with local firms that are to be formed for this Representation.
 8. **M/WBE.** Statement as to whether respondent is a certified Minority- or Woman-Owned Business Enterprise.

VIII. EVALUATION CRITERIA

The following is a summary of the proposal evaluation criteria. It is within the City's sole discretion to determine the value assigned to each of these criteria.

Proposal (20%). The Respondent's comprehension of the needs of the City as demonstrated by its description of its approach to the elements listed in the Scope of Services section of this RFP.

Experience (20%). The Respondent's relevant experience in providing the same or similar services.

Cost (30%). The total cost of the Respondent's proposal is important to the City; however, based on the evaluation of the other criteria, the City will not necessarily select the lowest bidder.

References (10%). Evaluation of the Respondent's work for previous clients receiving similar services to those proposed in this RFP.

Commitment of Key Principals to the Representation (20%). Demonstration of availability of qualified attorneys, partners, counsel, associates, and/or staff to be assigned to this Representation to ensure depth, accountability, and diversity of perspective.

Additional Weighting

M/WBE Businesses (10%). The City of Rochester desires to encourage minority- and women-owned (M/WBE) businesses to participate in opportunities to enter into PSAs with the City. Additional weighting of 10% will be given to all Respondents on the list of City approved M/WBE firms.

City of Rochester Location Preference (10%). The City favors contracting with firms located in the City of Rochester and a preference will be given to Respondents located in the City, through an additional weighting of 10%. Non-local firms may wish to consider partnerships or other collaborative arrangements with local firms as a strategy to address this criterion.

The selection of Conflict Counsel is within the City's sole discretion and no reasons for rejection or acceptance of a proposal are required to be given. Although costs are an important consideration, the decision will be based on qualifications and compliance with the requirements of this RFP and not solely on cost. The City reserves the right to reject any or all proposals or to accept a proposal that does not conform to the terms set forth herein. The City further reserves the right to waive or modify minor irregularities in the proposals and negotiate with Respondents to serve the City's best interest.

IX. MISCELLANEOUS

The City reserves the right to amend or withdraw this RFP in the City's sole discretion, including any timeframes herein, upon notification of all Respondents as set forth above, and in such case, the City shall have no liability for any costs incurred by any Respondent.

The City may request additional information from any Respondent to assist the City in making its evaluation.

The proposal and all materials submitted with the proposal shall become property of the City and will be subject to NYS Freedom of Information Law. If any proprietary information is submitted with the proposal, it must be clearly identified and a request to keep such information confidential must be submitted.

Submission of a proposal shall constitute a binding offer by Respondent to provide the services at the prices described therein until such time as the parties enter into a PSA.

Attachment A

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, is made this __, day of _____, 20__, by and between the **CITY OF ROCHESTER**, a municipal corporation having its principal office located at City Hall, 30 Church Street, Rochester, New York 14614, hereinafter referred to as the "City" and _____, with offices located at _____, Rochester, N.Y. 14____, hereinafter referred to as the "Consultant".

WITNESSETH:

WHEREAS, the City desires to secure the professional services of a Consultant to provide services required for _____, hereinafter referred to as the "Project", and,

WHEREAS, the Consultant has the necessary equipment, personnel and expertise to perform the Project.

NOW THEREFORE, in consideration of the terms and conditions contained herein, the parties do covenant and agree as follows:

SECTION 1. DESCRIPTION OF SERVICES

A. The Consultant shall, upon the commencement date specified in Section 2 hereof, perform in a professional and workmanlike manner to the reasonable satisfaction of the City, the following services:

B. Except as otherwise specified in this Agreement, all equipment, materials and supplies required to carry out the provisions of this Agreement and to perform the services described above shall be furnished by the Consultant and shall be fit for their purpose to the reasonable satisfaction of the City.

C. The City shall **(IF APPLICABLE, describe any City responsibilities)**

SECTION 2. TERM

The services required of the Consultant pursuant to this Agreement shall commence on _____ and shall terminate on _____.

SECTION 3. FEE

A. The City agrees to pay and the Consultant agrees to accept as full payment for the work and services performed pursuant to this Agreement, the following payable in the following manner:

1. **(describe method of payment as being either a lump sum payment or a phased payment, e.g., monthly, quarterly, upon completion of tasks etc.)**

B. The total fee payable by the City pursuant to this Agreement, including all costs and disbursements whatsoever shall not exceed the sum of _____ Dollars (\$_____).

SECTION 4. AUTHORIZED AGENT FOR THE CITY AND THE CONSULTANT

A. The City hereby designates:

B. The Consultant hereby designates:

or their authorized representatives, as Authorized Agents of the City and of the Consultant for receipt of all notices, demands, vouchers and other communications pursuant to this Agreement,. The parties reserve the right to designate other or additional agents upon written notice to the other party. In no event shall the City's Authorized Agent be authorized to amend or extend this Agreement or to accept service for the commencement of any legal actions or proceedings related to the Agreement.

SECTION 5. TERMINATION FOR DEFAULT

The performance of work under this Agreement may be terminated by the City in accordance with this clause in whole, or in part, whenever the Consultant shall default in the performance of this Agreement in accordance with its terms. Upon termination, the City may take over the work to be performed and complete the same by contract or otherwise, in the City's discretion and the Consultant shall be liable to the City for any excess cost occasioned thereby. The total fee payable to the Consultant under this Agreement upon such termination shall be such proportionate part of the total fee as the value of the work satisfactorily completed and delivered to the City bears to the value of the work contemplated by this Agreement.

SECTION 6. INDEMNIFICATION

The Consultant hereby agrees to defend, indemnify and save harmless the City of Rochester against any and all liability, loss, damage, suit, charge, attorney's fees and expenses of whatever kind or nature which the City may directly or indirectly incur, or be required to pay by reason or in consequence of the intentionally wrongful or negligent act or omission of the Consultant, its agents, employees or contractors. If a claim or action is made or brought against the City and for which the Consultant may be responsible hereunder in whole or in part, then the Consultant shall be notified and shall handle or participate in the handling of the defense of such matter.

SECTION 7. INSURANCE

A. Workers' Compensation and Disability Benefits Insurance

This Agreement shall be void and of no effect unless the Consultant shall secure compensation for the benefit of, and keep insured during the life of this Agreement, any and all employees as are required to be insured under the provisions of the Workers' Compensation Law of the State of New York or the state of the Consultant's residence, whichever may apply. The Consultant shall provide proof to the City, duly subscribed by an insurance carrier, that such Workers' Compensation and Disability Benefits coverage have been secured. In the alternative, Consultant shall provide proof of self-insurance or shall establish that Worker' Compensation and/or Disability Benefits coverage is not required by submitting the current and required New York State Workers' Compensation Board's form.

B. General Liability Insurance (IF APPLICABLE)

The Consultant shall obtain at its own expense general liability insurance for protection against claims of personal injury, including death, or damage to property, arising out of the Project. The amount of said insurance coverage shall in the amount Two Million Dollars if said insurance is a "Defense within Limits" policy under which all claim expenses are included within both the applicable limit of liability and self-insured retention. Otherwise, the insurance coverage shall be in the amount of One Million Dollars. Said insurance shall be issued by a reputable insurance company, authorized to do business in the State of New York. Said insurance shall also name the City of Rochester as an insured and copies of the policy endorsements reflecting the same shall be provided. The Consultant shall provide the City with a certificate of insurance from an authorized representative of a financially responsible insurance company evidencing that such an insurance policy is in force. Furthermore, the Consultant shall provide a listing of any and all exclusions under said policy. The insurance shall stipulate that, in the event of cancellation or modification the insurer shall provide the City with at least thirty (30) days written notice of such cancellation or modification. In no event shall such liability insurance exclude from coverage any municipal operations or municipal property related to this Agreement.

SECTION 8. EQUAL OPPORTUNITY

A. General Policy

The City of Rochester, New York reaffirms its policy of Equal Opportunity and its commitment to require all contractors, lessors, vendors and suppliers doing business with the City to follow a policy of Equal Opportunity, in accordance with the requirements set forth herein. The City further does not discriminate on the basis of disability, in admission or access to, or treatment or employment in its programs and activities. The City is including these policy statements in all bid documents, contracts, and leases. Contractors, lessors, vendors and suppliers shall comply with all State and Federal Equal Opportunity laws and regulations and shall submit documentation regarding Equal Opportunity upon the City's request.

B. Definitions

GOOD FAITH EFFORT - shall mean every reasonable attempt to comply with the provisions of this policy by making every reasonable effort to achieve a level of employment of minority groups and female workers that is consistent with their presence in the local work force.

MINORITY GROUP PERSONS - shall mean a person of Black, Hispanic, Asian, Pacific Islander, American Indian, or Alaskan Native ethnic or racial origin and identity.

C. Compliance

The Consultant shall comply with all of the following provisions of this Equal Opportunity Requirement:

1. The Consultant agrees that he will not discriminate against any employee for employment because of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability, or marital status in the performance of services or programs pursuant to this Agreement, or in employment for the performance of such services or programs, against any person who is qualified and available to perform the work in which the employment relates. The Consultant agrees to make a good faith effort to employ minority group persons and females and that in hiring employees and treating employees performing work under this Agreement or any subcontract hereunder, the Consultant, and its subcontractors, if any, shall not, by reason of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability or marital status discriminate against any person who is qualified and available to perform the work to which the employment relates. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that applicants are hired and that employees are treated during their employment, without regard to their of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability, or marital status. Such actions shall include, but not be limited to the following: employment, upgrading, demotions or transfers, recruitment and recruitment advertising, layoffs, terminations, rates of pay and other forms of compensation, and selection for training, including apprenticeship. The Consultant agrees to post notices in conspicuous places available to employees and applicants for employment, and to include language in all solicitations or advertisements for employment placed by or on behalf of the Consultant, reflecting this nondiscrimination policy.
2. The Consultant agrees that its employment practices shall comply with the provisions of Chapter 63 of the Rochester Municipal Code, which restricts inquiries regarding or pertaining to an applicant's prior criminal conviction in any initial employment application.
3. If the Consultant is found guilty of discrimination in employment on the grounds of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability, or marital status by any court or administrative agency that has jurisdiction pursuant to any State or Federal Equal Opportunity Laws or regulations, such determination will be deemed to be a breach of contract, and this Agreement will be terminated in whole or part without any penalty or

damages to the City on account of such cancellation or termination, and the Consultant shall be disqualified from thereafter selling to, submitting bids to, or receiving awards of contract with the City of Rochester for goods, work, or services until such time as the Consultant can demonstrate its compliance with this policy and all applicable Federal and State Equal Opportunity laws and regulations.

4. The Consultant shall cause the foregoing provisions to be inserted in all subcontracts, if any, for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

SECTION 9. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

The City of Rochester hereby gives public notice that it is the City's policy to assure full compliance with Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987, and related statutes and regulations in all programs and activities. Title VI requires that no person in the United States of America shall, on the grounds of race, color, gender, or national origin be excluded from the participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the City receives federal financial assistance. Any person who believes they have been aggrieved by an unlawful discriminatory practice under Title VI has a right to file a formal complaint with the City. Any such complaint shall be in writing and filed with the City Title VI Coordinator within one hundred eighty (180) days following the date of the alleged discriminatory occurrence. Title VI Discrimination Complaint Forms may be obtained from the City at no cost to the complainant, or on the City's website at www.cityofrochester.gov, or by calling (585) 428-6185.

SECTION 10. FREEDOM OF INFORMATION LAW

Disclosures required by New York's Freedom of Information Law ("FOIL") shall not be considered a breach of any confidentiality provisions in this Agreement. Should Consultant provide the City with any records it deems confidential and exempt from FOIL, Consultant shall clearly mark such portions of those records as confidential and exempt from FOIL disclosure. Upon any request for disclosure of information so marked, the City will inform Consultant of the request and give Consultant ten (10) business days to submit a written statement of necessity for exempting the records from disclosure pursuant to New York Public Officers Law 89(5). As required by the Public Officers Law, the City will issue a determination as to disclosure within seven (7) business days. If the City determines that the records shall be disclosed, Consultant may appeal the City's determination within seven (7) business days. Thereafter, the City shall respond to Consultant's appeal within ten (10) business days. If the City issues an adverse determination, Consultant may appeal the decision within fifteen (15) days of service by commencing an Article Seventy-Eight (78) proceeding under New York's Civil Practice Law and Rules.

SECTION 11. LIVING WAGE REQUIREMENTS

A. Applicability of Living Wage Requirements

This section shall apply and the Consultant shall comply with the requirements of

Section 8A-18 of the Municipal Code of the City of Rochester, known as the Rochester Living Wage Ordinance, whenever payments by the City to the Consultant under this Agreement shall equal or be greater than fifty thousand dollars (\$50,000) during a period of one year. If this Agreement is amended to increase the amount payable hereunder to fifty thousand dollars (\$50,000) or more during a period of one year, then any such amendment shall be subject to Section 8A-18.

B. Compliance

The Consultant shall pay no less than a Living Wage to any part-time or full-time Covered Employee, as that term is defined in Section 8A-18B, who directly expends his or her time on this Agreement, for the time said person actually spends on this Agreement. Living Wage, as set forth in this Agreement, shall be the hourly amount set forth in Section 8A-18(C)(2), and any adjustments thereto, which shall be made on July 1 of each year and shall be made available in the Office of the City Clerk and on the City's website, at www.cityofrochester.gov. Consultant shall also comply with all other provisions of Section 8A-18, including but not limited to all reporting, posting and notification requirements and shall be subject to any compliance, sanction and enforcement provisions set forth therein.

C. Exemption

This section shall not apply to any of Consultant's employees who are compensated in accordance with the terms of a collective bargaining agreement.

SECTION 12. COMPLIANCE WITH MACBRIDE PRINCIPLES

The Consultant agrees that it will observe Ordinance No. 88-19 of the City of Rochester, which condemns religious discrimination in Northern Ireland and requires persons contracting to provide goods and services to the City to comply with the MacBride Principles. A copy of the MacBride Principles is on file in the Office of the Director of Finance.

SECTION 13. COMPLIANCE WITH ALL LAWS

The Consultant agrees that during the performance of the work required pursuant to this Agreement, the Consultant, and all employees working under the Consultant's direction shall strictly comply with all local, state, or federal laws, ordinances, rules or regulations controlling or limiting in any way the performance of the work required by this Agreement. Furthermore, each and every provision of law and clause required by law to be inserted in this agreement shall be deemed to be inserted herein. If, through mistake or otherwise, any such provision is not inserted, or is not properly inserted, then upon the application of either party this Agreement shall be forthwith physically amended to make such insertion or correction.

SECTION 14. AUDIT

The Consultant agrees that the City shall, until the expiration of three (3) years after final payment, have access to and the right to examine, at no cost to the City, any directly pertinent books, documents, papers and records of the Consultant and of any of the subcontractors engaged in the performance of and involving transactions related to this Agreement or any subcontracts.

SECTION 15. PROHIBITION AGAINST ASSIGNMENT

The Consultant is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement or any of its contents, or of any right, title or interest therein, or of the power to execute this Agreement, to any other person or corporation without the previous written consent of the City.

SECTION 16. OBLIGATIONS LIMITED TO FUNDS AVAILABLE

The parties specifically agree that the Consultant's duty to perform work under this Agreement and the City's obligation to pay for that work, including any out-of-pocket and subcontracting expenses of the Consultant, shall be limited to the amount of money actually appropriated by the City Council and encumbered (i.e., certified as being available) for this Project by the City Director of Finance (or his authorized deputy). This provision shall limit the parties' obligation to perform even though this Agreement may provide for the payment of a fee greater than the appropriated and encumbered amount.

SECTION 17. EXTENT OF AGREEMENT

This Agreement constitutes the entire and integrated Agreement between and among the parties hereto and supersedes any and all prior negotiations, agreements and conditions, whether written or oral. Any modification or amendment to this Agreement shall be void unless it is in writing and subscribed by the party to be charged or by the party's Authorized Agent.

SECTION 18. STATUS AS INDEPENDENT CONTRACTOR

The Consultant, as an independent contractor, covenants and agrees to conduct the work under this Agreement consistent with such status. The Consultant shall neither pretend nor claim to be an officer or employee of the City by reason hereof, nor make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the City, including but not limited to Workers' Compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.

SECTION 19. LAW

This Agreement shall be governed by and under the laws of the State of New York. In the event that a dispute arises between the parties, venue for the resolution of such dispute shall be the County of Monroe, New York.

SECTION 20. NO-WAIVER

In the event that the terms and conditions of this Agreement are not strictly enforced by the City, such non-enforcement shall not act as or be deemed to act as a waiver or modification of this Agreement, nor shall such non-enforcement prevent the City from enforcing each and every term of this Agreement thereafter.

SECTION 21. SEVERABILITY

If any provision of this Agreement is held invalid by a court of law, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the laws of the State of New York.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first written above.

CITY OF ROCHESTER

BY: _____
Lovely A. Warren, Mayor

CONSULTANT

BY: _____
Name:

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

On this _____ day of _____, 20____, before me the subscriber, personally came **LOVELY A. WARREN** known, who being by me duly sworn, did depose and say that she resides in the City of Rochester; that she is the Mayor of the City of Rochester, the municipal corporation described in and which executed the above instrument; and that she signed her name to the foregoing instrument by virtue of the authority vested in her by the laws of the State of New York and the local laws and ordinances of the City of Rochester.

Notary Public

STATE OF NEW YORK)
COUNTY OF MONROE) ss.:

On the _____ day of _____, 20____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public