

City of Rochester
Request for Proposals
Workers' Compensation (WC) Administration

Proposals to be received by 5:00 PM

02/28/2018

Submit Proposals to:

Jeffery E. Moore, Employee Safety Coordinator

City of Rochester-DHRM-Office of Training & Safety

107 Bridge View Drive

Rochester, NY 14615-3057

REQUEST FOR PROPOSAL

The City of Rochester is seeking proposals from qualified Third Party Administrators (TPA) to provide administrative/case management services in support of the city's self-insured workers' compensation program and disability management services under Rochester City Charter §8A-6. Also to provide claims administration services for the City of Rochester's self-insured general liability program. Respondents should have expertise in the adjustment and establishment of reserves for governmental self-insurance programs.

1. The Third Party Administrator (TPA) or provider must be able to:
 - A. Review all existing and future claims for loss reports of personal injury, illnesses or disease incurred by an employee in the course of his/her employment with the City, or the death resulting at any time from any of the foregoing, and process each claim or loss report with respect to minimizing the City's losses, in accordance with applicable statutory and administrative notification requirements.
 - B. Review all existing and future medical and other billings submitted by health care providers to whom personnel with approved §8A-6 disability claims are referred by the Police Department's designated physicians for treatment of injuries and/or illnesses sustained in the performance of duty. Review shall be to ensure the completeness and accuracy, including repricing, of said billings and/or to acquire whatever additional information is necessary to ensure the timely payments of said medical billings.
 - C. Review all existing and future medical billings submitted by in-state and out-of-state medical and other health care providers regarding management and treatment of performance of duty-related injuries or illnesses sustained by retired Rochester Police Department personnel whose disability claims under §8A-6 were approved, to ensure the completeness and accuracy, including re-pricing, of said medical billings or to acquire whatever additional information is necessary for timely payments of said billings.
 - D. Conduct an investigation of each reported claim or loss under subparagraph "A" above to the extent deemed necessary to substantiate the validity of the claim and to facilitate returning the employee to work at the earliest possible date.
 - E. Calculate and disburse medical and death benefits and temporary or permanent disability compensation, if in the judgment of the provider, such payment is legally appropriate.

- F. Perform administrative and clerical functions required in connection with qualified claims or losses, including the preparation of checks or drafts bearing the name of the City and drawn on accounts established for payments of claims. The TPA shall establish, manage and maintain a separate bank account on behalf of the City, provide monthly bank statements and reconciliations to the City, and request periodic funding draws from the City as necessary to meet current check runs.
- G. Maintain a case for each qualified claim or loss with all information required to substantiate the claim and ensure that all case files are available for review. Meet with City management staff when requested to discuss all cases involving time lost from work, awards, lump sum settlements, etc.
- H. Notify excess carriers of all qualified claims or losses with respect to which potential losses may exceed the City retention and if requested, provide such carriers with necessary information of the current status of those claims or losses.
- I. With the concurrence of the City, select counsel to defend qualified claims or losses.
- J. At the City's direction, prepare the defense of controverted cases, negotiate settlements and prepare for subrogation or contribution actions.
- K. With the concurrence of the City, have a licensed adjuster conduct outside field investigations, including witness statements.
- L. In all cases that appear to involve more than two weeks of time lost from work, evaluate the potential for rehabilitation and, where appropriate and with the City's concurrence, arrange for rehabilitation for injured employees.
- M. Maintain a current estimate of the cost of all anticipated losses on each qualified claim and/or loss.
- N. Utilize computer programs in formats approved by the City to furnish separate monthly claim and expense reports for the City of Rochester and the Rochester Police Department containing no less than the following information:
 - 1. For each qualified claim or loss from the current contract period and from prior contract periods, the date and condensed description of the incident, whether or not lost time or medical treatment (per OSHA definition) is associated with a claim, the total of payments during the month and to date, the estimated future cost, and the total expected cost of the claim and/or loss.
 - 2. For all qualified claims or losses from the current contract period, and each of several successive prior contract periods, the total number of such claims or

losses, and summary data listing payments made during the month, and to date the estimated future cost, and total expected cost of such claims or losses.

Timeline

| Activity | Time | Date |
|--|-----------|------------|
| RFP Release | 5:00 P.M. | 01/22/2018 |
| Deadline for questions | 5:00 P.M. | 02/09/2018 |
| Response for questions submitted | 5:00 P.M. | 02/23/2018 |
| Proposals due | 5:00 P.M. | 02/28/2018 |
| Consultant Selection and Award Notification | 5:00 P.M. | 04/06/2018 |
| City Council Approval of agreement with Consultant | 5:00 P.M. | 05/15/2018 |
| Agreement Start Date | 5:00 A.M. | 07/01/2018 |

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

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"):

Jeffery E. Moore, Employee Safety Coordinator
City of Rochester-DHRM-Office of Training & Safety
107 Bridge View Dr.
Rochester, NY 14615-3057
Email: Jeffery.moore@cityofrochester.gov
Fax: (585) 428-7369

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.

PROPOSAL CONTENT

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

- A. Provide a description of Best Practices for Claims handling, which should include at a minimum the following categories:
 - 1. initial 3 point and ongoing case investigation
 - 2. assignment of independent investigators, medical professionals, and legal counsel
 - 3. monitoring of claimants' medical status and treatment programs prescribed by claimants' attending physicians and identifying appropriate alternative work assignments or rehabilitation programs
 - 4. claim reserving
 - 5. supervision
 - 6. medical management
 - 7. subrogation/Second Injury Fund
 - 8. action plans

- B. Provide a description of educational program for City staff on Workers' Compensation administration, a sample claimant case management file and computerized status reports.
- C. Confirm ability and willingness to draft Special Account Instructions to meet the specific goals and needs of the City of Rochester.
- D. Perform the services in accordance with all rules and regulations of local, state or federal laws, ordinances, controlling or limiting the performance of these services.
- F. Provide details on an Implementation Plan, including the following:
 - 1. Dedicated implementation team to develop and execute a detailed implementation and transition schedule. This will include the RMIS and/or Claim Management system.
 - 2. Clearly defined roles and responsibilities of all involved parties.
 - 3. Time frame for all aspects of implementation.
 - 4. Description of the implementation team and process. Include a sample implementation plan as an addendum.
- G. Provide in your proposal details regarding Medical Management and Medical Cost Containment programs. This will include but not be limited to:
 - 1. Indicate and list as applicable any outside vendors used for Telephonic Case Manager (TCM), Field Case Manager (FCM), and/or Vocational Rehabilitation Services (VRS)
 - 2. Confirm if these services are provided by your own employees or an outside vendor.
 - 3. Provide Best Practices for Nurse Case Management
- H. Be prepared to provide a demonstration of the Registry Monitoring Insurance Services (RMIS) system at the City of Rochester's offices.
- I. Provide a sample of an Annual Stewardship Report.
- J. Claim Takeover Fees
- K. TPA will be willing to handle claims incurred prior to the effective date of the program on a fee for service basis.
- L. Takeover fees will only be paid on those cases where the vendor will manage the case after takeover and will not include those cases that are discovered to be closed.
- M. Utilize web-based computer program that will allow designated City employees access to online injury reporting.

- N. Ability for designated City employees to access the TPA database to review claims including adjuster's notes.
- O. A web-based application that can be accessed by multiple users is needed. The data should be accessible within 24 hours. For example, October data should be available on November 1st for download and analysis by the City. Data must include full detail including Location code (reference to department and bureau), claimant name, accident date, payee name, cost amount, expense type, and other data. The web-based application should also allow for the City to pull up detail on an individual, to show the history of all claims, status of claims, dollar amount paid and dollar amount held in reserve, all legal and medical action on each claim and other data.
- P. Allow designated City employees the ability to retrieve customized reports from the TPA database.
- Q. Utilize computer programs to furnish the City with a monthly loss analysis report containing summary data for each of the City's principal locations with the number of claims, the total of compensation and medical payments made to date during the current contract period, the reserve cost, and the total expected cost of such claims, all categorized by the type and nature of the incidents and part of body involved.
- R. Provide narrative or analytical reports to the City of major controverted cases. Participate in at least 2 in person claim reviews per year to be held at a location decided on by the City. The designated Claims Adjusters and Supervisor are required to participate.
- S. Provide claim forms and other forms considered by the City and the provider to be appropriate for the efficient operations of the self-insurance program.
- T. Provide special narrative or analytical reports to the City as requested.
- U. INSERT SECTION 111 LANGUAGE
- V. Prepare and submit Health Care Reporting Act (hereinafter "HCRA") requirements on behalf of the Rochester Police Department to comply with all obligations and requirements specified in the HCRA for Third Party Administrators, including obtaining any required USER I.D.s and passwords, preparing and submitting by electronic filing, all required USER I.D. applications, timely submission of all required reports and payments at specified intervals, and timely submission of payments by electronic funds transfer (EFTs).

- W. Experience in managing self-insured Workers' Compensation claims. Biographies of proposed dedicated staff are requested for Supervisors and Adjusters. Please describe, in detail, how you would propose to structure your operation to manage the City's claims, including office staffing model and Home Office involvement/oversight, as applicable. Will this structure require you to add space and/or staff? For the office(s) that will be servicing The City's claims, please provide each supervisor's number of direct reports and average pending claim count per adjuster, as well as the maximum pending claim count allowed.

2. With regards to MEDICAL CONTROL, the TPA shall:

- A. With concurrence of the City, select medical providers for independent medical examination services and other appropriate medical consultant services.
- B. Direct medical provider, where appropriate, to review treatment programs prescribed by employees' attending physicians or specialists.
- C. Where appropriate, schedule independent medical evaluation of Workers' Compensation claimants who are losing time from work.
- D. Confer with medical providers on appropriate action for returning employees to work at the earliest date possible.
- E. Interpret medical reports, recommend appropriate action of partially disabled employee and consult with the City for possible return to work in a limited duty assignment.

3. With regard to COUNSELING/CONSULTING SERVICES, the TPA shall:

- A. Provide information to claimants on the Workers' Compensation program regulations.
- B. Counsel Employees who wish to obtain the assistance of third parties in dealing with problems arising out of work related illnesses or injuries.
- C. Assist the City in developing policies and procedures to return employees to work at the earliest possible date, and to ensure that the employees' return to work is consistent with the findings of the State Workers' Compensation Board.

4. With regard to PROGRAM DEVELOPMENT, the TPA shall:
- A. In cooperation with key City personnel, establish and coordinate procedures and practices to meet the City's claims management needs as well as applicable state regulations.
 - B. Present training seminars to City staff who are involved in processing Workers' Compensation claims or losses on the essential elements of effective and efficient claims management and loss prevention techniques.
 - C. Provide information on changes or proposed changes in legislation, rules and regulations affecting the responsibility of the City.
 - D. Review with City staff, at regular intervals, the development of the self-insurance program in order to identify problems and recommend corrective action.

EVALUATION CRITERIA

In addition to the details listed above, proposals shall be evaluated against the following:

- A. Price – A quotation is to be provided under the section below on pages 10 & 11 entitled "Financial Responses" to service claims on the basis of either:
 - 1. A per claim medical only cost
 - 2. A per claim lost time cost
 - 3. An information only claim
 - 4. The average cost per claim (combined medical and lost time)
 - 5. A fixed fee annual cost basis
 - 6. A fixed fee annual cost for medical billing only
- B. Accounting procedures – Ability to issue checks to compensation claimants in a timely manner or the ability to work with City Bureau of Accounting and Human Resources System.

- C. Willingness and ability to work with City management staff.
- D. Willingness to use all investigative/monitoring means reasonable and appropriate in case management to minimize both the number and duration of valid Workers' Compensation claims.
- E. Access to administrator's data on the City of Rochester's Workers' Compensation database system, for purposes of tracking and developing training needs and accident injury analysis.

References – Please provide at least 2 client references for which you have provided similar services, preferably Public Entities or Municipalities:

| Client | Length of Relationship | Industry Type | Contact Name/Title/Phone# |
|--------|------------------------|---------------|---------------------------|
| ▪ | | | |
| ▪ | | | |
| ▪ | | | |

Financial Responses

| Item | Fee | Per |
|---|-----|-----|
| ▪ Workers' Compensation Indemnity Claims | | |
| ▪ Workers' Compensation Medical Only Claims | | |
| ▪ Workers' Compensation Take-over files | | |
| ▪ Incident only reports | | |
| ▪ Other costs? (Please define) | | |
| Additional clarification, if any: | | |
| Financial Response: Ancillary/Additional Program Costs | | |
| Identify as "included" or provide additional fees, and explain unit of service, i.e. per year, per case, etc. | | |
| Item | Fee | Per |
| ▪ Workers' Compensation Administrative Cost | | |
| ▪ Legal Representation fees for Workers' Compensation | | |
| ▪ 800 service | | |

| | | |
|--|--|--|
| ▪ Claim/case set up | | |
| ▪ Index Bureau | | |
| ▪ Outside investigation and surveillance | | |
| ▪ Subrogation/Second Injury Fund (as applicable) | | |
| ▪ Independent Medical Examination exams | | |
| ▪ Independent Medical Examination exam setup | | |
| ▪ Doctor/Hospital record fees | | |
| ▪ Records retention | | |
| ▪ Medical Bill Review | | |
| ▪ Medical case management fee per liability case | | |
| Additional clarification, if any: | | |
| | | |
| | | |

- F. 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: The City favors contracting with firms located in the City of Rochester and a preference will be given to Consultants 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. Other Criteria: Other criteria may be considered and evaluated by the City if it is determined to be in the best interest of the City and the success of the Project to do so. It is within the City's sole discretion to determine the value assigned to each of these criteria.

The selection of a Consultant 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 Consultants to serve the City's best interest.

PROPOSAL PREPARATION AND SUBMISSION PROCESS

Proposals must be postmarked or received by the City no later than 02/28/2018. Provide five written copies of the proposal to:

Jeffery E. Moore, Employee Safety Coordinator
City of Rochester-DHRM-Office of Training & Safety
107 Bridge View Dr.
Rochester, NY 14615-3057
Email: Jeffery.moore@cityofrochester.gov
Fax: (585) 428-7369

This RFP is designed to facilitate the evaluation and selection of a TPA 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)

A Professional Services Agreement resulting from this RFP shall commence on July 1, 2018 for a term of three years, with an option to renew for up to two (2) additional years in one year increments upon agreement of the parties.

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 Respondents or to conduct the Project described herein.

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.

**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, herein after referred to as the "City" and _____ with offices located at _____, hereinafter to as the "Consultant".

WITNESSETH:

WHEREAS, the City desires to secure the professional services of a Consultant to provide _____, 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 CONSULTANT'S SERVICES

A.

SECTION 2. CITY RESPONSIBILITIES

SECTION 3. TERM

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

SECTION 4. 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:

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

SECTION 5. AUTHORIZED AGENT FOR THE CITY AND THE CONSULTANT

A. The City hereby designates

B. The Consultant hereby designates:

or their authorized representatives in case of absence, as Authorized Agents of the City and of the Consultant for receipt of all notices, demands, vouchers and other communications and all orders, permissions, and directions pursuant to this Agreement, which shall be sufficiently communicated, given and/or delivered if dispatched by registered or certified mail, postage prepaid, or delivered personally to the authorized agents designated herein. The parties reserve the right to designate other or additional agents upon written notice to the other party which shall be signed by the Authorized Agent of the requesting party.

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. 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 coverage has been secured. In the alternative, Consultant shall provide proof of self-insurance or shall establish that Workers' Compensation coverage is not required by submitting the then current and required New York State Workers' Compensation Board's form.

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.

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, Spanish surname American, Asian American or American Indian 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 shall not discriminate on the basis of age, race, creed, color, national origin, sex, sexual orientation, disability or marital status in the performance of services or programs pursuant to this agreement. 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, 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 employees are treated during their employment, without regard to their race, color, religion, sex, age or national origin. 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. If the Consultant is found guilty of discrimination in employment on the grounds of age, race, creed, color, national origin, sex, sexual orientation, 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.

3. 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. COMPLIANCE WITH ALL LAWS

The Consultant shall familiarize itself and comply with all applicable laws, ordinances and regulations of all federal, state and municipal governments or the legally constituted agencies thereof.

SECTION 10. AUDIT

The Consultant agrees that to the extent provisions of the Federal Acquisition Regulations apply to services provided by Consultant under this Agreement, the City shall, until the expiration of three (3) years after final payment, have access to and the right to examine 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. In all other instances, the City shall have the right during the term of this Agreement, and up to one (1) year thereafter, to inspect all relevant records related to invoices submitted by Consultant or Fee modifications requested by Consultant.

SECTION 11. PROHIBITION AGAINST ASSIGNMENT

The parties are 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 consent, in writing, of both parties. However, Contractor may assign its rights to receive payment upon prior written approval of the City unless otherwise prohibited by law.

SECTION 12. 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 13. 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 14. 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 15. 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 16. 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 17. 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.

SECTION 18. DEBARMENT AND SUSPENSION

The Consultant certifies, by the signing of this Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any Federal department or agency. Assistance under this part shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any contractor or sub recipient during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.

SECTION 19. TERMINATION FOR DEFAULT

The performance of work under this Agreement may be terminated by the parties in accordance with this clause in whole, or from time to time in part, whenever either party shall default in the performance of this Agreement in accordance with its terms. Upon termination due to City's default, Consultant shall be paid that part of the fee proportionate to the amount of services provided by Consultant under this Agreement as of the date of default. Upon termination due to Consultant's default, the City may take over the work to be performed and complete the same by contract or otherwise, and the Consultant shall be liable to the City for any excess cost occasioned thereby.

SECTION 20. 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", in the event that payments by the City to the Consultant under this Agreement are equal to or greater than \$50,000, or involves retention by the Consultant of fees equal to or greater than \$50,000 during a period of one year. If this Agreement is amended to increase the amount payable hereunder to a value equal to or greater than fifty thousand dollars (\$50,000) 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 21. 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.

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:

Federal Tax Payer Id. No.

STATE OF NEW YORK)

COUNTY OF MONROE) SS:

On this _____ day of _____, 20____, before me the subscriber, personally came Lovely A. Warren, known to me, 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