

AGREEMENT FOR PROFESSIONAL SERVICES

Project Name: Thurston Road Enhancement Project
Project Scope: Enhancements
Consultant Name:
Agreement #:
Authorizing Ordinance:

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AGREEMENT

THIS AGREEMENT, entered into on the ____ day of _____, 2013, 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, New York 146 ____, hereinafter referred to as the "Consultant".

WITNESSETH:

WHEREAS, the City, through the Department of Environmental Services, desires to engage the Consultant for the purposes of providing professional design services required in connection with the Thurston Road Enhancements, hereinafter referred to as the Project and

WHEREAS, the Consultant covenants that it has the personnel, skills and expertise required and wishes to undertake the Project.

NOW THEREFORE, the City and the Consultant do mutually agree, in consideration of the covenants, terms and conditions contained herein, as follows:

ART. I Part I Description of the Project

Section 1.101 General Description

This project includes but not limited to improvements generally identified below.

A. CURB BUMP-OUTS

It is proposed that curb bump-outs be installed at key intersections of Thurston Road within the project limits.

The Consultant will make recommendations in conformance with the county's bump-out guidelines as to the suitability of these locations based upon evaluations of parking, traffic and utility impacts at each location. Once deemed feasible, each location shall be carefully designed to insure that proper street drainage is maintained once the bump-out is added. The consultant shall pay particular attention to insure that crosswalks and the bottoms of handicap ramps drain properly.

B. SIDEWALKS

It is proposed to replace broken and misaligned sidewalks as needed within the project limits. Special sidewalk treatments such as utilizing exposed aggregate concrete and/or decorative scoring may be considered.

C. LIGHTING

It is proposed to install a new city owned street lighting system within the project limits. It is further proposed that new or supplemental pedestrian level lighting may be installed within the project limits. Street lighting improvements are to be determined during the planning and preliminary engineering phase. Lighting design will be required of the Consultant. The Consultant shall address temporary street lighting during final design and include provisions for the contractor to provide necessary temporary lighting as part of the project.

D. TRAFFIC IMPROVEMENTS

It is proposed to upgrade and/or replace all the traffic signals within the project limits. Traffic improvements are to be determined during the planning and preliminary engineering phase.

E. TURNING LANES

It has been suggested, as part of the revitalization plan, to add left turn lanes at the intersection of Brooks Avenue and Thurston Road. The consultant shall analyze this intersection to determine if the suggested turning lane is warranted.

F. SIGNAGE & STRIPING

It is proposed to incorporate edge striping and bicycle lanes as part of the design in accordance with the City of Rochester's Complete Streets policy. It is also proposed to update existing regulatory signs as part of the project. The existing pavement markings shall be evaluated for the appropriate striping treatments and signage improvements and prepare signage and striping plans.

G. HIGH VISIBLE CROSSWALKS

It is proposed that high visible pedestrian crosswalks be installed on all legs of signalized intersections, along with prominent non-signalized intersections meeting all Local, State and Federal guidelines within the project limits.

The Consultant shall perform gap studies (assume 3 locations) within the project limits to justify the installation of crosswalks at non-signalized intersections within the project limits. The locations shall be mutually agreed upon between the City, County and the chosen consultant.

H. AREAWAYS

A site visit to potential areaway containing properties will be conducted. If an areaway is discovered during the inspection, the Consultant will perform a detailed areaway report and areaway design as an additional service.

I. STREETSCAPE

It is proposed to install banners on street light poles along with bicycle racks, benches and planters placed at strategic locations along the street. Kiosks listing local businesses and landmarks are also being considered.

The Consultant shall work with the neighborhood in developing and designing a palette of gateway features at key intersections within the project limits based upon the Ingalls Planning & Design Report.

It has also been requested to investigate the potential of expanding outdoor seating at selected locations to promote the "Village" feel to the neighborhood.

J. LANDSCAPING

The revitalization plan offers the suggestion of installing new tree plantings as part of the project. The consultant shall evaluate available tree planting locations and make species recommendations in conjunction with the City Forester.

K. BUS SHELTERS

The consultant shall coordinate with RTS to review and consolidate bus stops and determine the ideal locations of potential bus shelters.

Section 1.102 Project Area Definition

That portion of Thurston Road from Ravenwood Avenue to Brooks Avenue.

ART I. Part 2 Description of Professional Services

Section 1.201 General

- A. The Consultant shall provide all basic services required for the Project including but not limited to surveys, preliminary design and report, contract documents, assistance during bidding and construction phase design services.
- B. The Consultant shall provide "additional services" if required at the request of the City, including resident project representation services.
- C. The Consultant is to have on its staff and is to retain during the performance of its services all appropriate professional personnel necessary to completely and accurately perform the services required. Where the design of structural, mechanical, electrical, civil or other engineering features of the work is included in the Project, such must be performed by an engineer registered to practice in the State of New York.
- D. The Consultant agrees that, where the project will involve the design or substantial renovation, relocation, or reconstruction of, or will involve the new construction of a building, facility, street, sidewalk, park, mall or other public area, then it will incorporate into its design, study and other work those facilities or improvements reasonably required to give handicapped persons access to and enjoyment of those facilities. Such facilities or improvements shall conform to the latest Americans with Disabilities Act - Accessibility Guidelines as developed by the U.S. Architectural and Transportation Barriers Compliance Board (Access Board).
- E. The Consultant shall develop and submit to the City a detailed plan and schedule for the orderly and timely completion of requirements of this Agreement. The Consultant shall utilize appropriate graphics and illustrate the plan, i.e. bar charts, etc. All pertinent dates of meetings and submittals shall be identified subsequent to execution of this agreement.
- F. The Consultant shall be available to meet with the City periodically and as necessary to review the progress on the requirements of this Agreement and to provide engineering consultation.
- G. The Consultant shall maintain an up-to-date orderly assembled file of design notes providing a history of the design of the Project. Design notes shall include correspondence, calculations, documentation, references and other material necessary to establish the basis for design. The Consultant shall furnish a copy of such notes to the City as requested.
- H. The Consultant shall prepare and furnish to the City within one week minutes of all meetings held and monthly written progress reports in a format mutually agreed upon.
- I. The Consultant shall supply two digital record drawings products, upon completion of the work required herein. The first is a complete compilation of all digital files created for the

project. The second, an abbreviated digital record of the project, shall be used to update the City's GIS Map. All digital record files shall conform to the City Digital Record File Standards listed in Appendix B of this agreement

Section 1.202 Basic Services

A. Preliminary Investigation Phase

1. Existing Data

The Consultant shall make maximum utilization of existing planimetric, topographic and utility maps and surveys, as available from the City, County or private utilities.

2. Surveys, Mapping and Exhibits

The Consultant shall survey the project area producing an accurate graphic representation of all existing facilities. The said survey shall be tied to the New York state Plane Coordinate System, western zone, NAD'83. The information shall be plotted at a 1" = 20' scale, and show the NAD '83 coordinate grid, planimetric, topographic and utility details in the project area. Swing ties are required for all monuments within the project area. Mapping shall be prepared on 22" X 34" mylar and digital form in accordance with the City Digital Record File Standards attached hereto as Appendix B of this Agreement.

3. Existing Sewer, Water and Other Facilities

The Consultant shall locate and identify all storm, sanitary or combined sewer mains and laterals, catch basins and manholes, water mains, valves and services, and other similar structures within the Project Area.

The Consultant shall locate all existing overhead and underground utilities utilizing available system maps and cross-checking by site inspection.

The condition and capacity of utilities shall be reviewed with their respective owners by the Consultant. All planned improvements will be noted so that construction efforts can be coordinated between the City and third parties.

The Consultant shall locate and inventory all existing elements of the streetscape, to include overhead and underground utilities, curbing, walk pavement surfaces and materials, lights, trees/tree pits and tree lawn, signage and other features. The Consultant shall particularly note those elements of the view, including architecture, patterns of use and other factors which contribute to the visual or spatial character of the street. The Consultant shall utilize available maps, cross-check by site inspection, update as needed and annotate. Documentation shall also be by photographs.

The condition, capacity and significance of these elements shall be noted.

4. Areaways

A site visit to potential areaway, window well and vault containing properties will be conducted. If an areaway is discovered during the inspection, the Consultant will perform a detailed areaway report and areaway design as an additional service.

5. Subsurface Investigations

The Consultant shall use all available existing data regarding subsurface conditions for the evaluation and the design of the project. The Consultant shall, with the City's approval, perform test borings as necessary to determine subsurface conditions.

6. Traffic

Current and projected traffic flow, based upon traffic data available from the Monroe County Department of Transportation, shall be analyzed. Intersection Level of Service and conflicts, channelization, orientation and traffic control shall be identified and improvements recommended. Provisions for bicyclists and pedestrians shall be evaluated and appropriate improvement recommended. The Consultant shall review all parking and regulatory signing and make recommendations for their improvement.

7. Streetscape

The Consultant shall prepare landscape recommendations, including tree plantings and other appropriate features.

8. Roadway and Sidewalk Lighting

The Consultant shall review information supplied by the City Street Lighting Division regarding the condition and lighting levels of the street lighting system. The Consultant shall make independent recommendations for improvements.

9. Patterns of Use- Walking, Parking, Bus Stop and Access Drive Facilities

The Consultant shall review walks, parking, regulatory signing, bus stop locations and facilities, and access drive facilities in relation to their existing functionality, and in relation to the planned development in the area, and make recommendations for their improvement.

10. Streetscape

The Consultant shall prepare recommendations for alternative streetscape design treatments, including special lighting, paving materials and patterns and other appropriate features. The Consultant shall note existing treatments or streetscape elements to remain or to be enhanced, in relation to proposed new elements.

11. Coordination

The Consultant shall meet with utilities/agencies identified by the City to review their involvement with the Project.

10. Review Meeting

The Consultant shall present its findings of Preliminary Investigation at a review meeting with the City and others designated by the City and prepare minutes of this meeting. The

Consultant shall incorporate into the design of the Project any comments or directions resulting from this meeting with the City.

B. Preliminary Plans & Report

1. The preliminary design and the preparation of preliminary plans for the elements of the project shall be accomplished by the Consultant. The Consultant shall provide an in-depth design review at 35% complete including the following information:
 - a. Preliminary plans, including a cover sheet, legend, typical sections, plan and profile (as necessary), cross-sections every 50 feet (if necessary), pavement markings, intersection layout and miscellaneous intersection and landscape sketches showing the layout, basic design details, materials and construction methods. These plans shall be at the scale of 1" = 20'. The cross sections (if needed) shall be at a vertical scale of 1" = 2', and a horizontal scale of not less than 1" = 5'.
 - b. A concise report memorandum shall supplement the preliminary drawings. The memorandum shall include but not be limited to:
 - 1) A summary of all information gathered for the Project for all portions of the project work.
 - 2) Evaluations, recommendations and design criteria pertinent to the design of the project elements.
 - 3) A discussion of maintenance and protection of traffic and services required during construction of the project.
 - 4) A report on the extent of utility/agency involvement with the Project including a preliminary construction schedule which shall identify project and utility work, duration, impacts and potential conflict.
 - 5) Preliminary cost estimates with share breakdown.
 - 6) An Environmental Assessment Form (EAF1c) of the effects of the project, particularly during the construction phase. This shall not constitute a requirement to prepare an environmental impact statement.
 - c. Consultant shall provide up to 20 copies of the plan and 5 copies of the report to various agencies and utilities as indicated by the City.

2. Meetings

a. Review Meetings

The Consultant shall present for review the Preliminary Plans and Report at a review meeting with the City and others designated by the City and prepare minutes of this meeting. The Consultant shall incorporate any comments and direction resulting from this review meeting with the City.

b. Advisory Committee Meetings

The Consultant shall meet with a committee composed of property owners and community leaders in the District during the development of the Schematic Improvement Plan, as necessary and shall also convene and lead bi-monthly Advisory Committee meetings reporting progress to the Committee. The Consultant shall also convene and lead a final presentation meeting with the Advisory Committee.

c. Utility/Agency Review Meeting

The Consultant shall present the Preliminary Report and Plans for review at a review meeting with the City, Utilities/Agencies, and others designated by the City and prepare minutes of this meeting.

d. Neighborhood Meeting(s)

At the request of the City and in cooperation with the City the Consultant shall conduct up to two (2) meetings with neighborhood groups and merchant's associations neighboring the Project Area. At the meeting(s) the Consultant shall attempt to determine the problems, needs, and priorities of such associations and their members and shall solicit suggested methods of remedying their problems with current road, sidewalk and other related facilities. The Consultant shall also utilize such meeting(s) to keep residents and merchants informed of the progress of the project, in order to stimulate their involvement and cooperation. In order to facilitate the dissemination of information at such meetings, the Consultant shall prepare necessary display and information material. The Consultant shall provide a memorandum summarizing these meetings.

e. The Consultant shall present the project to the Traffic Control board for approval of any traffic or geometric changes.

C. Final Design Phase

1. The Final Design and the preparation of detailed Contract Documents shall be accomplished by the Consultant in accordance with applicable City, County, State and Federal procedures for all elements of work as defined in the Preliminary Plans and Report Phase, including:
 - a. Street geometrics, including widenings or narrowings, alignment and intersection layout.
 - b. Street section including pavement, shoulders, curbing, sidewalks, requirements for right-of-way etc.
 - c. Traffic features including pavement markings, parking zones, signing, street signs and signalization.
 - d. Utility disposition: abandonment, relocation and/or new installation, but not including plans for the actual design of the utilities. The Consultant shall prepare a detailed utility construction schedule. Such schedule shall identify work, duration, impacts and conflicts.

- e. Areaways - structural analysis and design of the disposition option agreed to by the areaway owner and the City. Also design of utility service relocation if an applicable City share. Attend meetings with the City and owners to discuss designs.
 - f. Parking, bus stop and access drive facilities.
 - g. Gateway Structures for the project.
 - h. Maintenance of traffic and services for the Project.
 - i. Design of street and sidewalk lighting including pole type and size, luminaire type and wattage, foot-candle level, uniformity ratio, spacing, conduit layout, pullbox location and power point locations.
 - j. Design of grading and drainage for positive runoff to existing storm structures, and for universal accessibility.
 - k. Design details
 - l. Layout of planting, identifying proposed by common and botanical name, size, root, and special notes. Identify trees and elements to be protected.
2. The Consultant shall make the following submissions and meeting presentations:
- a. Up to 20 copies of the final design plans, as needed, plus 2 sets each of specifications, quantities and estimates shall be submitted at the 90% advance final completion stage of the Contract Documents.
 - b. The Consultant shall present the advance final design documents at a review meeting with the City and others designated by the City, if so requested.
 - c. The Consultant shall prepare necessary display and informational material and shall conduct a (1) meeting with neighborhood groups and merchant's associations neighboring the Project Area. The meeting will be arranged by the City.
 - d. The Consultant is to provide an in depth utility/agency design review at 90% complete, with the city and other appropriate authorities.
3. The Consultant is to provide the City with a revised cost estimate including the basis for quantities in the estimate and the funding share breakdown for the project based on complete drawings and specifications. In addition, a quantity work-up book (bound hard copy & pdf on CD) is to be prepared and submitted.
4. The Consultant is to prepare for the City's Contract Documents including but not limited to the Project Summary, Special Instructions to Bidders, Bidding Forms, Special Terms and Conditions, Special Laws and Regulations, Project Specifications and working drawings for the Project. The bid documents are to be based upon standard City forms wherever applicable using the Standard construction documents. The Consultant is to furnish thirty-five (35) complete sets of the Contract Documents

under this Agreement, some of which are to be delivered by the consultant to utilities or other agencies as indicated by the City at the beginning Notice to Proceed of the Project.

D. Bidding Phase

1. The Consultant shall prepare addenda as required. Such addenda shall be prepared as required by the City's Purchasing agent. Thirty-five copies of the addenda shall be submitted to the City and designated utilities and agencies.
2. The Consultant is to assist the City in pre-bid meetings and pre-award meetings, obtaining bids, and reviewing and recommending awards, evaluating alternate bids, and preparing a construction contract.
3. The Consultant shall prepare the conformed copies of the contract documents, prepare bid tabulations in a format agreed upon by the City, prepare a share breakdown based on the low bidders bid, prepare analysis of the bid tabulations and letter of recommendation for award. This information shall be returned to the City within 10 working days, or sooner if required.

E. Construction Phase

The Consultant shall provide the following services:

1. Provide, during the construction contract to be entered into by the City for the construction of this Project, to the satisfaction of the City, periodic engineering consultation services to verify adherence to the design and to assist in the administration of the construction until final completion and acceptance by the City.
2. Convene a pre-construction conference after receipt of a written request to do so from the City. Such pre-construction conference shall include at least the Consultant, or its authorized representative, the contractor, authorized representatives of the City, as well as representatives of any other public or private Agencies which the City determines should be in attendance. At the pre-construction conference, the Consultant shall raise for discussion and decision, the manner in which the construction will be administered by itself and the City, the scheduling of construction, and any and all other problems or questions which in the opinion of the Consultant or the City must be settled before the start of construction. Before convening the pre-construction conference, the Consultant shall confer with an authorized representative of the City concerning the agenda and who is to attend.
3. Check and approve samples, catalog data, schedules, shop drawings, laboratory, shop and mill tests of materials and equipment, progress data and time charts and other data which the contractor as required to submit, only for conformance with the design concept of the Project and compliance with the information given by the Contract Documents; and assemble written guarantees which are required by the Contract Documents. It shall obtain all guarantees from the Contractor and deliver the same to the City of Rochester. There shall be no change in the scope of the work or in materials specified by the Consultant until approval for such change has been given in writing by the City.

4. Visit the job whenever requested by the City for the purpose of clarifying or interpreting any phase of the work.
5. Attend on-the-job field meetings, as needed, and provide minutes of these meetings to the City and to parties designated by the City.
6. Conduct, in company with the City and others designated by the City, a final inspection of the Project for conformance with the design of the Project and compliance with the information given in the Contract Documents, and acknowledge the completion of the Project in writing prior to final payment to the Contractor. The City's approval and other proper Agency approvals shall be required as a condition for the acceptance of the work by the City.
7. Based on marked up prints, drawings and other data furnished by the resident Project Representative and the Contractor, furnish the city a set of reproducible drawings showing the Construction, certified as actually built. In addition, a set of drawings showing sewer construction shall be submitted to the Division of Pure Waters, and a set of drawings showing traffic items to the Monroe County Department of Transportation.
8. The Consultant shall provide a digital as-built drawing based on actual field measurements taken during construction and based on the survey completed under Article 1, Part 2, Section 1.202, Subsection A, Paragraph 2. (Surveys Mapping and Exhibits). The digital format must conform to the City digital standards and at a minimum contain separate layers for those features outlined under Article 1, Part 8, Paragraph B.

Section 1.203 Additional Services

The following shall constitute Additional Services:

- A. Performing work not described under Basic Services when requested and authorized in writing by the City's Authorized Agent including, but not limited to the following:
 - o Special travel.
 - o Property surveys, and preparation of plots and legal descriptions.
 - o Serving as an Expert Witness on behalf of the City
 - o Materials testing other than that performed by a testing laboratory on contract with the City unless specifically included as a Basic Service Reimbursable Expense.
 - o Televised inspection of sewers, unless specifically included as a Basic Service Reimbursable Expense.
 - o. Preparation of an environmental impact statement (EIS) and all services related to the preparation and approval of the EIS for the Project.
 - o. Resident Project Representation services for the Project.

- B. Building areaways, window wells and vaults shall be identified, located, sized, and utilities noted. An analysis of the structural condition and recommended disposition, accompanied with a share breakdown of alternatives available to an areaway owner as required by legislation, will be prepared. Photographs and diagrams indicating dimensions of each areaway will also be provided as part of the investigation and report.
- C. If the Consultant is caused expense due to substantial revisions of previously approved studies, design documents, drawings or specifications, or if the scope of the project is significantly enlarged either by expansion of the project's physical limits or by increase of the Consultant's responsibilities such revisions having been ordered in writing by the City's Authorized Agent.
- D. If the Construction Work extends more than six months beyond the completion date specified in the construction contract, not including seasonal layoffs or strikes.

ART. I Part 3 City Responsibilities

The City Shall:

- A. Provide as complete information as is reasonably possible regarding its requirements for the Project to the Consultant.
- B. Assist the Consultant by making available any information pertinent to the Project, including previous reports and any other data relevant to the design of the Project.
- C. Examine all studies, reports, sketches, estimates, drawings, specifications, proposals and other documents presented to the City by the Consultant for review and render decisions pertaining thereto within a reasonable period of time, so as not to delay the work of the Consultant.
- D. Advertise for proposals from bidders, open the proposals at the appointed time and place and pay all costs incident thereto.
- E. Designate a representative (Authorized Agent) to act as liaison between the City and the Consultant. The Authorized Agent will have the authority and responsibility to transmit instructions and to receive information with respect to the city policies and pertinent to the work covered by this Agreement, except as otherwise limited by Code or Charter of the City.
- F. Give written notice to the Consultant where the City observes or otherwise becomes aware of any default in the Consultant's performance hereunder or where the City does not concur with the design or other recommendations of the Consultant.
- G. Obtain approval of the State Department of Environmental Conservation and other governmental authorities having jurisdiction over the Project, with the assistance of the Consultant, for the actual Project construction work.
- H. Obtain required easements with the assistance of the Consultant.

ART I. Part 4 Fee

Section 1.401 General

- A. In no event whatsoever shall the total fee payable to the Consultant pursuant to this agreement, including all costs and disbursements whatsoever, exceed (maximum amount of contract; (\$)).
- B. The consultant shall have the right to bill the City for services performed and not already billed on a monthly basis.
- C. The Consultant shall submit duly executed invoices in order to receive payment.

Section 1.402 Fee for Basic Services and Reimbursable Expenses

- A. The fee payable to the Consultant for Basic Services for each project component pursuant to this Agreement shall be initially set forth in Schedule A.
- B. Payments to the Consultant for basic services for each project component pursuant to this agreement shall be initially set forth as part of Schedule A.
- C. The fees payable to the Consultant for Reimbursable Expenses for each project component pursuant to this agreement shall be initially set forth in Schedule A.
- D. The City agrees to pay and the consultant agrees to accept as full payment for the work and service performed pursuant to this agreement the following fees, payable in the following manner:

choose (circle 1 or 1A)

1. Fee Computation

- a. The Consultant's fee shall be computed at the rate of (multiplier) times actual payroll expenses, for the Consultant's technical and professional personnel except for surveyors within the phase limits shown in Schedule A.
- b. Surveyor's wages are subject to the New York State Department of Labor, Bureau of Public Works Prevailing Rate schedules. The City will pay the incremental cost due to the prevailing wage rate schedules established by the New York State Department of Labor. The consultant shall compute the fee for surveyor's labor as follows:

Actual surveyor's salary times (multiplier), plus incremental salary and benefits (due to prevailing wage rate schedules) and additional cost of F.I.C.A., N.Y.S. unemployment, and Federal unemployment tax (10% of the additional incremental salary and benefits. (The multiplier shall not be applied to the incremental salary and benefits imposed by the prevailing wage rate schedule. The City will not pay prevailing salary plus benefits times a multiplier). This fee is included in Basic Services shown on Schedule A.

1A. Fee Computation

- a. The Consultant's fee shall be computed on a lump sum basis. The lump sum fee shall be based upon the percentage of work completed within a monthly billing period, within the phase limits shown in Schedule A.
 - b. Surveyor's wages are subject to the New York State Department of Labor, Bureau of Public Works Prevailing Rate schedules. The Consultant's Lump Sum Fee includes the surveyor's wages as required by the Department of Labor. The Consultant must submit documentation demonstrating compliance with the NYS Dept. of Labor.
2. The City will not pay overtime costs arising from work on any part of this Agreement.
 3. The Consultant shall be reimbursed the actual expenses for Reimbursable Expenses incurred in performing services under this Agreement. All reimbursement claims must be supported by adequate documentation and show appropriate share breakdown. Reimbursable Expenses are as outlined in Schedule A.
 4. All hourly rates for professional and technical personnel, and the identity and resumes of professional and technical staff, of project managers and principals shall be approved by the City's Authorized Agent prior to the Notice to Proceed. No changes will be made without the approval of the City's Authorized Agent.
 5. Principals shall be reimbursed at a flat hourly rate, approved by the City's Authorized Agent.
 6. All travel is to be made at the expense of the Consultant and is part of the Fee for Basic Services.

Section 1.403 Fee for Additional Services

- A. The City agrees to pay the Consultant for additional services performed by the Consultant on the following basis: Adjustments to the fee for unanticipated change of scope of the project shall be made at the rate of (multiplier) times actual payroll expenses for the Consultant's technical and professional personnel.
- B. The City shall pay the Consultant as an expert witness at the rate of \$400.00 per day for any day or portion thereof for which the Consultant is required to appear as a witness.
- C. The City shall pay the Consultant to provide property survey and preparation of plots and legal descriptions at \$350 per plot.
- D. Should the City utilize the Consultant to provide Resident Project Representation services, the Construction Phase Services portion of this Agreement shall be terminated and shall be negotiated in the subsequent agreement for resident project representation services.

Section 1.404 Fee Administration

- A. The Authorized Agents can mutually agree to amend Schedule A in writing for phase changes, allocation modifications or for Additional Services within the maximum authorized amount set forth in Section 1.401A.

- B. The City's Authorized Agent is authorized to request in writing such Additional Services as the Agent deems necessary, within the maximum authorized amount set forth in Section 1.401 A.

ART. I Part 5 Term

This Agreement shall commence upon execution by the parties and shall terminate six (6) months after completion and acceptance of the construction of the Project designated herein. In the event that the Project construction is not undertaken, the Agreement shall terminate one year after the completion of the contract documents by the Consultant and the acceptance by the City of such contract documents. However, no such termination shall relieve the Consultant of any outstanding duties imposed by the Agreement, including the requirement to hold the City harmless and to maintain insurance coverage insuring against loss arising out of the Project.

ART. I Part 6 Time of Performance

- A. For each phase of the work, the Consultant shall not commence work until receipt of a written Notice to Proceed from the City's Authorized Agent and shall prepare documents for that phase of the work for review by the City within the periods as set forth in Schedule B.
- B. The Consultant shall not be held responsible for delays caused by the City of Rochester or by other parties not directly under its control.
- C. The time limits set forth in Schedule B may be amended only by mutual written agreement of the Authorized Agents. It is understood that it is the intention of the City to have the services performed under this Agreement carried out as expeditiously as possible.

ART. I Part 7 Authorized Agent

- A. The City hereby designates the:

James R. McIntosh, P.E., City Engineer
Third Floor - City Hall - 300B
30 Church Street
Rochester, New York 14614

- B. The Consultant hereby designates:

Name
Title
Address

or an authorized representative in case of absence, as Authorized Agents for the receipt of all notices, demands, invoices, orders, permissions, directions, and other communications pursuant to this Agreement, 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 Authorized Agents upon written notice to the other.

ART. I Part 8 Ownership of Documents

- A. All original design notes, drawings specifications two (2) copies of the CADD files on Compact Disks, and survey maps prepared by the Consultant under this Agreement, upon completion of the work required herein, will become the property of the City and shall be delivered to the City's Authorized Agent. The Consultant may provide a complete reproducible set of drawings, specifications, survey maps and all other documents in lieu of the originals.
- B. Project Drawings shall be submitted in Digital format in accordance with the City Digital Record File Standards attached hereto as Appendix B of this Agreement.

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ARTICLE II

ARTICLE II, Part 1. Qualifications, Indemnity and Insurance

Section 2.101 Consultant's Qualifications for Duties, Compliance and Permits

- A. The Consultant hereby agrees that it has, or will have, on its staff and will retain during the performance of this service under this Agreement, all appropriate professional personnel necessary to completely and accurately perform the work and services under this Agreement.
- B. The Consultant further agrees that the design of architectural or engineering features of the work shall be accomplished by professionals licensed to practice in New York State.
- C. The Consultant further agrees to insure that its subcontractors, agents or employees shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

Section 2.102 Consultant's Liability

The Consultant hereby agrees to defend, indemnify and save harmless the City of Rochester against any and all liability, loss, damage, detriment, suit, claim, demand, cost, charge, attorney's fees and expenses of whatever kind or nature which the City may directly or indirectly incur, suffer or be required to pay by reason or in consequence of the carrying out of any of the provisions or requirements of this Agreement, where such loss or expense is incurred directly or indirectly by the City, its employees, subcontractors or agents, as a result of the negligent act or omission, breach or fault of the Consultant, its employees, agents or subcontractors. Such indemnification shall specifically exclude any claims or actions brought against the City for losses, damages or injuries caused by or related to pollution or contamination (as those terms are defined by statute or federal or state regulation) at the subject property, to the extent that such losses, damages or injuries are not a result of the Consultant's negligence or intentional wrongdoing, or that of its employees agents or subcontractors. 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 be required to handle or participate in the handling of the portion of the claim for which it may be responsible as a result of this section.

Section 2.103 Professional Liability Insurance

The Consultant shall procure at its own expense professional liability insurance for services to be performed pursuant to this Agreement, insuring the Consultant against malpractice or errors and omission of the Consultant. The amount of said insurance coverage shall be in the amount of 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. 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. The certificate shall contain a thirty (30) day cancellation clause which shall provide that the City shall be notified not less than thirty (30) days prior to the cancellation, assignment or change of the insurance policy. The Consultant shall also give at least thirty (30) days notice to the City of such cancellation, amendment or change, and of any lapse of insurance coverage under this Agreement.

Section 2.104 General Liability Insurance

The Consultant shall obtain at its own expense general liability insurance in the amount of at least One Million Dollars, for protection against claims of personal injury, including death, or damage to property, arising out of the Project. 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. 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 2.105 Workers' Compensation and Disability Benefits Insurance

This Agreement shall be void and of no effect unless the Consultant shall require all the Consultant's subcontractors to keep insured, during the life of this Agreement, all employees of said subcontractors as are required to be insured under the provisions of the Workers' Compensation Law of the State of New York. In the event the Consultant hires its own employees to do any work called for by this Agreement, then the Consultant agrees to so insure its own employees. The Consultant shall provide proof to the City, duly subscribed by an insurance carrier, that such Workers' Compensation and Disability Benefits coverage has been secured. In the alternative, Consultant shall provide proof of self-insurance or shall establish that Workers= Compensation and/or Disability Benefits coverage is not required by submitting the then current and required New York State Workers Compensation Boards form.

Section 2.106 Copyright or Patent Infringement

The Consultant shall defend actions or claims charging infringement of any copyright or patent by reason of the use of adoption of any designs, drawings or specifications supplied by it, and it shall hold harmless the City from loss or damage resulting therefrom, providing however, that the City within ten days after receipt of any notice of infringement or of summons in any action therefor shall have forwarded the same to the Consultant in writing.

Section 2.107 No Individual Liability

Nothing contained in the Agreement shall be construed as creating any personal liability on the part of any officer or agent of the City.

ARTICLE II, Part 2. Specific Design Restrictions

Section 2.201 Environmental Policy

The City has an obligation to assess the environmental impact of the Project and to prepare any necessary state, federal, and/or local environmental impact statements under the State Environmental Quality Review Act and the national Environmental Protection Act. The City wishes to enhance the environment by minimizing environmental degradation and by maximizing the Project benefits.

The Consultant, therefore, shall assist the City in determining whether environmental impact statements ("EIS") should be prepared and shall assist the City or the City's Environmental Specialist in preparing any necessary EIS. The Consultant shall not be required to prepare an EIS, unless specifically required by Article I of this Agreement.

ARTICLE II, Part 3. Employment Practices

Section 2.301 Equal Employment 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 Employment Opportunity, in accordance with the requirements set forth herein. This policy is adopted pursuant to the City's Affirmative Action Plan, Article XV - Contract Compliance. The City further does not discriminate on the basis of handicap status 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 agree to comply with 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, 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 agrees that he will not discriminate against any employee for employment because 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, 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 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 age, race, creed, color, national origin, sex, sexual orientation, disability, or marital status.
2. If the Consultant is found guilty of discrimination in employment on the grounds of age, race, creed, 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 2.302 The 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 2.303 Compliance with Labor Laws

The Consultant specifically agrees to comply with the labor law requirements of Articles 8 and 9 of the Labor Law of the State of New York, and, more specifically, with the requirements of Sections 220, 220-a, 220-d and 220-e of the Labor Law. These provisions require the payment of prevailing wages and supplements to, the verification of payment of wages of, and require preference in the employment of New York residents, and prohibit discrimination based on race, creed, color, sex, national origin, or age, and prohibit the permitting or requiring of more than eight hours per day and forty hours per week from laborers, mechanics, or workers on a public works construction project. The foregoing requirements do not generally apply to professional staff, draftsmen, or clerical help or most other employees of an engineer or architect who is performing design, research, or inspection work only. The Consultant shall, however, comply with all state, federal and local non-discrimination and equal employment opportunity laws and rules and will be subject under this Agreement to fines, penalties and contract termination when the City reasonably determines that the Consultant has unlawfully discriminated because of the race, color, creed, national origin, sex or age of any applicant for employment or any employees.

Section 2.304 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 shall exceed fifty thousand dollars (\$50,000) during a period of one year. If this Agreement is amended to increase the amount payable hereunder to more 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. The 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.

ARTICLE II, Part 4. Operations

Section 2.401 Compliance with Air and Water Acts

The Consultant and any and all subcontractors agree as follows:

- A. The Consultant, and its subcontractors warrant that any facility to be utilized in the performance of any non-exempt contract or subcontract is not listed on the list of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.
- B. The Consultant promises to comply with all of the requirements of Sections 144 of the Clean Air Act, as amended (47 USC 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended (33 USC 1318) relating to the inspection, monitoring, entry, reports and information as well as all other requirements specified in Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- C. A condition for the award of the Agreement is that prompt notice will be given to the City of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the Agreement is under consideration to be listed on the EPA list of Violating Facilities.
- D. The Consultant warrants to the City that it has not been convicted under Section 113(c)(1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

Section 2.402 Political Activity Prohibited

None of the funds, materials, property, or services provided directly or indirectly under this Agreement shall be used during the performance of the Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

Section 2.403 Lobbying Prohibited

None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before the United States Congress, the Legislature of the State of New York or the Council of the City of Rochester.

Section 2.404 Anti-Kickback Rules

Salaries of employees performing work under this Agreement shall be paid unconditionally and not less often than once a month without deduction or rebate on any account except only such payroll deductions that are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 108; title 18 U.S.C., section 874; and title 40 U.S.C., section 276c). The Consultant shall comply with applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this Agreement to insure compliance by subcontractors with such regulations and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

Section 2.405 Withholding of Salaries

If, in the performance of this Agreement, there is notice to the City of any underpayment of salaries by the Consultant or by any subcontractor thereunder, the City shall withhold from the Consultant out of payments due to it an amount sufficient to pay the employees underpaid the difference between the salaries required hereby to be paid and the salaries actually paid such employees for the total number of hours worked. The amounts withheld may be disbursed by the City for and on account of the Consultant or subcontractor to the respective employees to whom they are due.

Section 2.406 Discrimination Because of Certain Labor Matters

No person employed on the work covered by this Agreement shall be discharged or in any way discriminated against because the person has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify at any proceeding relating to the labor standards applicable hereunder to that person's employer.

Section 2.407 Status as Independent Contractor

The Consultant, in accordance with its status as an independent contractor, covenants and agrees that it shall conduct itself in a manner consistent with such status, that it will neither hold itself nor its employees out as, nor claim to be an officer or employee of the City by reason hereof, and that it and its employees will not by reason hereof, make any claim, demand or application 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, and retirement membership or credit.

ARTICLE II, Part 5. Documents

Section 2.501 Patents and Copyrights

The Consultant agrees that, in the event it, or any of its employees' develop any material for which a copyright can be obtained which material was developed as a result of or in connection with the work required pursuant to this Agreement, the City shall be granted a royalty-free, non-exclusive license to use, reproduce and distribute such copyrightable material. The Consultant further agrees that in the event it, or any of its employees, develops any process, machinery or product for which a patent would be obtainable, the Consultant shall provide the necessary information to the City, so that the City can apply for such patent at its own expense. Such patent shall become the property of the City; provided, however, that the Consultant shall acquire a royalty-free, non-exclusive license to produce or reproduce such patented product. The benefits of either a patent or a copyright shall also inure to any public agency which finances, in whole or in part, this project and such agency shall receive a royalty-free, non-exclusive license to use, reproduce, manufacture and distribute the product or mater which has been patented or copyrighted.

Section 2.502 Audit

The Consultant agrees to maintain sufficient on-site records and information necessary for the documentation of any and all facets of program operation specified by this Agreement. The Consultant shall maintain all books, documents, papers and other evidence pertinent to the performance of work under this Agreement in accordance with generally acceptable accounting principles, and 40 CFR Part 30 in effect during the term of this Agreement. The Consultant agrees to permit on-site inspection and auditing of all records, books, papers and documents associated with this Agreement by authorized

representatives of the City, and authorized representatives of the State of New York or the United States Government if State or Federal funding is involved in this agreement, and further agrees to provide necessary staff support to the performance of such audit. The Consultant agrees to maintain for a period of six (6) consecutive years following termination of this Agreement any and all records, reports and other documentation arising from the performance of this Agreement; however, this period shall be extended beyond six years for any and all records and information pertaining to unresolved questions, which have been brought to the Consultant's attention by written notice by the City. The Consultant agrees to furnish to the City data to include but not be limited to, intake records, status change notices, termination notices, and follow-up records. Said reports will be submitted periodically as required by the City.

Section 2.503 Content of Sub-Agreements

The Consultant agrees that all sub-agreements authorized by this Agreement shall be in written form. The Consultant shall require all subcontractors to comply with any of the following sections which may be in this Agreement: "Equal Employment Opportunity; Affirmative Action and Employment of Local Labor; Compliance with Labor Laws; Certifications Regarding Conflicts of Interest; Anti-Kickback Rules; Interest of City and Contractor in Contract." It is the purpose of this section to insure that all Agreements obligate all parties performing work under this Agreement to comply with necessary governmental programs and policies. The City may require the Consultant to submit copies of such sub-agreements to the City. If such copies are not submitted upon request, the City may have the right to withhold any and all payments to the Consultant to those items of work which have not complied with this section.

ARTICLE II, Part 6. Termination

Section 2.601 Termination for Convenience of the City

- A. This Agreement may be terminated by the City in accordance with this section in whole, or from time to time, in part, whenever for any reason, the City shall determine that such termination is in the best interest of the City. Any such termination shall be effective upon written notice to the Consultant. However, no such termination shall relieve the Consultant of any outstanding duties imposed by the Agreement, including the requirement to hold the City harmless and to maintain insurance coverage insuring against loss arising out of the Project.
- B. If the Agreement is so terminated the City may take over the work and services and prosecute the same to completion by contract or otherwise. The Consultant, upon such termination, shall transfer title, and in the manner directed by the City, shall deliver to the City the completed or partially completed, plans, drawings information, other property and records of work being performed, which, if this Agreement had been completed, would be required to be furnished to the City.
- C. After receipt of written notice of termination, the Consultant shall promptly submit to the City its termination claim in a form acceptable to the City. Such claim shall in no event be submitted later than one year from the effective date of termination.
- D. In the event that the parties cannot agree, in whole or in part, as to the amount due by reason of the termination of the Agreement pursuant to this clause, the City shall pay the Consultant the amount determined as the total of the following:
 1. The cost of all work performed prior to the effective date of termination.

2. The cost of settling and paying claims arising out of and as a direct result of the termination;
3. A sum as profit on subdivision 1. above, determined to be fair and reasonable, provided however, that if the Consultant would have sustained a loss on the entire Agreement had it been completed, no profit shall be included or allowed under this subdivision 3., and an appropriate adjustment shall be made reducing the amount of settlement to reflect the indicated rate of loss. The total sum to be paid under this section shall not exceed the total price of this Agreement specified hereinabove, reduced by the amount of payments otherwise made, and further secured by the value of work remaining incomplete at the time of the termination of this Agreement.

Section 2.602 Termination for Default

- A. The performance of work under this Agreement may be terminated by the City in accordance with this clause in whole, or, from time to time, in part, whenever the Consultant shall default in performance of this Agreement in accordance with its terms (including in the term "default" any failure by the Consultant to make progress in the prosecution of the work hereunder which endangers such performance) and shall fail to cure diligently such default within a period of ten days or (or such longer period as the City may allow) after delivery by the City of a notice specifying the default.
- B. If this Agreement is to be terminated, the City may take over the work and services and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the City for any excess cost occasioned thereby.
- C. The total fee payable shall be such proportionate part of the fee as the value of the actual work completed and delivered bears to the value of the work required or contemplated by this Agreement.
- D. This Agreement may not be so terminated if the failure to perform arises from unforeseeable causes beyond the control and without the fault or negligence of the Consultant.
- E. If, after notice of termination of this Agreement under the provisions of this section, it is determined for any reason that the Consultant was not in default or that the default was excusable the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the clause of this Agreement entitled "Termination for the Convenience of the City."
- F. The rights and remedies of the City provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

ARTICLE II, Part 7. General

Section 2.701 Prohibition Against Assignment

- A. The Consultant agrees that it is prohibited from assigning or otherwise disposing of this Agreement or any of its contents, or of its right, title or interest therein, or of its power to

execute such contract to any other person or corporation without the previous consent in writing of the City.

- B. The Consultant shall be permitted to contract with other professions (particularly in the fields of forestry, horticulture or landscape architecture) for portions of the Project provided, however,
 - 1. The City approves, in writing, the selection of the individual, firm or firms contracted with.
 - 2. The Consultant shall remain responsible to the City for all provisions of this Agreement pertaining to services by other professionals.

Section 2.702 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 its direction, shall strictly comply with all local, state or federal laws, ordinances, rules or regulations controlling or limiting in any way their actions during their said performance of the work required by this Agreement. Furthermore, each and every provision of law, and contractual 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 correctly inserted, then upon the application of either party this Agreement shall be forthwith physically amended to make such insertion or correction.

Section 2.703 Successors

The City and the Consultant each bind their successors, executors, administrators and assigns in respect of all covenants of this Agreement.

Section 2.704 Interest of City and Consultant in Contract

The City and the Consultant agree that no member, officer, or employee of the City or of the Consultant or assignees agents shall have any interest, direct or indirect, in any contract or subcontract or the proceeds thereof, for work to be performed in connection with the program assisted under the Agreement.

Section 2.705 Permits, Laws and Taxes

- A. In the event that services performed by the Consultant for the City are subject to taxation under Article 28 of the Tax Law (sales and compensating use tax) the Consultant shall receive from the City the material necessary to obtain a tax exempt certificate upon written request.
- B. The Consultant shall pay all taxes, applicable to the work and materials supplied under this Agreement, it being understood that in no case shall any such tax be borne by the City, except as provided in subparagraph A. above.

Section 2.706 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 2.707 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 its authorized agent.

Section 2.708 Law and Forum

This Agreement shall be governed by and under the laws of the State of New York and the Charter of the City of Rochester. The parties further agree that Supreme Court of the State of New York, held in and for the County of Monroe shall be the forum to resolve disputes arising out of either this Agreement or work performed according thereto. The parties waive all other venue or forum selections. The parties may agree between themselves on alternative forums.

Section 2.709 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 2.710 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 2.711 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.

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

THE CITY OF ROCHESTER

(CONSULTANT)

By: _____
Thomas S. Richards – Mayor

By: _____
Federal Tax Payer Id. No

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

On this _____ day of _____, 2013, before me the subscriber, personally came THOMAS S. RICHARDS, known, who being by me duly sworn, did depose and say that he is the Mayor of the City of Rochester, the municipal corporation described in and which executed the above instrument; and that he signed his name to the foregoing instrument by virtue of the authority vested in him 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

On this _____ day of _____, 2013, 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

Thurston Road Enhancements:
AGREEMENT NO:
SCHEDULE A - FEE SCHEDULE

I.	<u>BASIC SERVICES</u>	<u>STREET</u>	<u>TOTAL</u>
	Preliminary Investigations	20%	
	Preliminary Plans & Report	30%	
	Final Design	35%	
	Bidding Phase	5%	
	Construction Phase	<u>10%</u>	
	TOTAL I	100%	
II.	<u>REIMBURSABLE EXPENSE</u>		
	Aerial Photography		
	Subsurface Investigations		
	Sewer TV Inspection		
	TOTAL II		
	TOTAL I & II		
III.	<u>ADDITIONAL SERVICES ALLOWANCE</u>		
	Balance		
	TOTAL III		
	<u>TOTAL I, II & III</u>		

Thurston Road Enhancements:
AGREEMENT NO:
SCHEDULE B - TIME SCHEDULE

<u>PHASE</u>	<u>Days From Notice to Proceed</u>
Preliminary Investigations Phase	days
Design Phase	days
Preliminary Design	days
Final Design and Contract Documents	days
Bidding Phase	days
Total	days