

AGREEMENT FOR PROFESSIONAL SERVICES

Project Name:
Project Code:
Consultant Name:
Agreement #:
Authorizing Ordinance:

I N D E X

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AGREEMENT

THIS AGREEMENT, entered into on the ___ day of _____, 200_, 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 at _____, hereinafter referred to as the "Consultant".

WITNESSETH:

WHEREAS, the City desires to secure the professional services of the Consultant to _____, 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:

ARTICLE I, Part 1. Description of Project

Section 1.101 General Description

Projects included under this agreement shall include property investigations and the satisfactory completion of reports that describe the potential environmental risks and liabilities associated with properties of concern to the City. Additional services may also be performed as requested by the City including Phase II investigations, environmental planning, environmental engineering, and remedial services.

ARTICLE I, Part 2. Description of Professional Services

Section 1.201 General

The Consultant shall provide the following services:

- A. The Consultant shall provide all engineering and scientific services necessary to perform Assessments requested by the City to afford the City protection as an innocent purchaser and to determine the potential environmental liabilities associated with a site. Supplemental investigative services may also be required to more accurately evaluate site conditions and potential liabilities upon recommendation by the Consultant or upon the request of the City.
- B. 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 work and services required. The Consultant shall provide a list of its employees assigned to the project which provides the employee's name and title prior to the start of work. The Consultant shall notify the City prior to changing project personnel. No changes in project managers will be made without approval of the City.

- C. The Consultant shall maintain an up-to-date, orderly, assembled file of Project notes and records. Notes shall include correspondence, calculations, documentation, references and other material necessary for the completion of the Project.
- D. The Consultant is responsible for the professional quality, technical accuracy, timely completion and appropriate coordination of all designs, drawings, specifications, testing, reports and other services furnished under this Agreement. The Consultant bears all responsibility for any errors, omissions or other deficiencies in the Consultant's designs, drawings, specifications, reports and other services and shall correct or revise any such errors, omissions or other deficiencies without additional compensation.
- E. The Consultant's obligations under this Section are in addition to the Consultant's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that the City may have against the Consultant for faulty materials, equipment or work.
- F. The Consultant shall furnish promptly all equipment, labor and materials needed to perform in a safe and convenient manner, such inspections as the City requires.
- H. The Consultant shall keep the City informed of the progress of the work so that the City may inspect the Consultant's work as determined necessary by the City. In particular, the Consultant shall provide the City with at least forty-eight (48) hours notice prior to performing work which would prevent proper inspection of previously completed work.
- I. The Consultant shall meet with the City at the City's request to discuss the Assessment results and recommendations as may be deemed necessary by the City.
- J. The Consultant shall provide "additional services" at the request of the City as specified in Section 1.203 of this Agreement.

Section 1.202 Basic Services

The Consultant shall perform Phase I Environmental Site Assessments in general conformance with common local practices, ASTM Practice E1527-13, and the current USEPA standard for "All Appropriate Inquiries cited under 40 CFR Part 312. Prior to the commencement of any Phase I environmental site assessment, a meeting with the City and Consultant will be held and the Consultant shall request copies of the Abstract of Title; deed history; property tax map; property surveys and site plans; building plans and specs; pertinent reports (Appraisal, geotechnical reports, prior Phase I/II/III reports) and all environmental records (permits, Material Safety Data Sheets, hazardous waste manifests, tank documents, asbestos abatement reports) to the extent they may be available.

A. The Consultant shall provide the following basic Phase I Site Assessment services:

1. Historical File Review.

- i. The Consultant shall determine prior ownership and any apparent use of the site through examination of an abstract of title or deed histories furnished by the City. When an abstract is not available, local title companies can furnish, for an additional fee, title notes that are sufficient for examination. The Consultant can

utilize its own representatives to examine public title records to satisfy this requirement.

- ii. In addition to title review, historical review may include information from the examination of historic aerial photographs, business directories, land use maps, and any available prior environmental studies.

2. Governmental Agency Review.

The following agencies shall be contacted by the Consultant for information about the property of interest:

- i. The Consultant shall submit a Freedom of Information Law (FOIL) request for current and prior owners to the New York State Department of Environmental Conservation (NYSDEC).
- ii. The Consultant shall submit a FOIL request to the City of Rochester (Records Access Officer). If the City's FOIL response indicates the presence of further information, then telephone and/or personal interviews shall be conducted by the Consultant with the staff of the appropriate department(s).
- iii. The Consultant shall contact the City of Rochester Assessor's Office to provide historical records reflecting property ownership, use and development.
- iv. The Consultant shall contact the Monroe County Environmental Management Council (MCEMC) to review aerial photographs to identify confirmed and suspected waste sites.
- v. The Consultant shall review environmental lists and registries, including federal, state and local agencies lists of certain sites having actual or potential environmental risks. Each site assessment shall include inquiry to determine whether the site is listed, or (where appropriate) near a site listed, on any of the following lists or registries:

NYSDEC Listing of Spills/Leaking Underground Storage Tanks
NYSDEC Hazardous Substance Disposal Site Registry
NYSDEC Inactive Hazardous Waste Disposal Site Registry
NYSDEC Petroleum Bulk Storage (PBS) Registry
NYSDEC Facility Register
NYSDEC List of Solid Waste Disposal Sites
MCEMC Local Waste Site Database
USEPA NPL (National Priorities List)
USEPA CERCLIS Potential Hazardous Waste Site
USEPA RCRA Hazardous Waste Generators
USEPA RCRA Treatment, Storage, and Disposal Facilities
USEPA Underground Storage Tank Records
Federal Emergency Response Notification System (ERNS) List

- vi. The Consultant shall contact the Monroe County Department of Health (MCDOH) to determine whether it has any relevant information concerning the property.

3. Physical Site Inspection.

The Consultant's experienced and qualified assessors shall visit the site to inspect for a wide range of potential environmental concerns and to assess the visual indications of any matters which may have been uncovered in either the historical or agency review discussed above. The number and scope of matters considered during the site inspection depends upon the extent and nature of the prior development of the property as follows:

vii. All Assessed Properties

Regardless of the nature of the property, the physical site inspection shall include:

- a. observations for general topography;
- b. grade and direction of surface water flow;
- c. availability and use of utilities;
- d. visual signs and evidence of surface water, groundwater and soil contamination (e.g. staining);
- e. the presence of any distressed vegetation, ground surface irregularities such as trenches, pits and mounds or piles which may indicate burial of material or subsidence from prior burials;
- f. the presence of suspect fill materials;
- g. possible use of pesticides and/or herbicides;
- h. any unusual odors;
- i. electrical equipment which may contain PCBs; and
- j. apparent uses and conditions of adjoining properties.

viii. Undeveloped Property

Site inspection of vacant and apparently undeveloped land shall include all of the elements discussed in Section 1.202(A)(1), 1.202(A)(2), and 1.202(A)(3), for all assessed properties, as well as observation for visual signs of the presence and location of abandoned and/or underground tanks and pipelines.

ix. Developed Property

Site inspection of developed property and related interviews shall include all of the elements discussed in Section 1.202(A)(1), 1.202(A)(2), and 1.202(A)(3), for all assessed properties and undeveloped property, as well as:

- a. observations for visual signs of suspect asbestos-containing material;
- b. drains, dry wells, and pumps and their points of discharge, if warranted;

- c. visual evidence of spilled materials;
- d. utilities and connections;
- e. heating fuels delivery and storage capabilities and practices;
- f. sanitary sewer and/or septic connection and operation;
- g. availability and source of drinking water; and
- h. type of building insulation and roofing materials.

x. Industrial Property

Site inspection of industrial property and related interviews shall include all of the elements discussed in Sections Section 1.202(A)(1), 1.202(A)(2), and 1.202(A)(3), for all assessed properties, undeveloped property and developed property (discussed above), as well as:

- a. an investigation into the operations of the present and former occupants;
- b. the materials used in those operations and their disposal methods;
- c. observations for visual signs of storage and handling of any hazardous materials;
- d. procedures for disposal of hazardous wastes and non-hazardous petroleum waste;
- e. connections to and between tanks, drum storage and delivery facilities;
- f. the presence of any petroleum, chemical or other unusual odors;
- g. any on-site wastewater generation, treatment or disposal;
- h. observation of manufacturing processes; and
- i. industrial air/gas emissions.

4. Assessment Reports

The Consultant shall prepare a report documenting the findings of the Assessment. Upon completion of the Assessment, a draft report shall be submitted to the City before the final report. The draft and/or final report shall identify any confirmed or suspected environmental liabilities (Recognized Environmental Concerns), define the scope of any recommended further investigation, and be signed by the individuals performing the Assessment and the professional engineer responsible for the Assessment. The report shall include a site map or drawing that reflects property boundaries, significant structures, buildings, and the location of environmental concerns such as underground storage tanks. If requested by the City, additional back-up documentation shall be appended to the report. Color photographs of any confirmed or suspect environmental liabilities must be included as part of the draft and final report. The Consultant shall attend a project closure meeting with City staff if requested by the City.

Section 1.203 Additional Services

The Consultant may be requested to perform Phase II investigation, environmental planning, environmental engineering, and remedial services including environmental sampling and the completion of laboratory analyses in accordance with the terms of this Agreement. The consultant shall, at the City's request and without cost to the City, prepare a scope of services and budget estimate for additional services on a project specific basis. The preparation of a scope of services and budget estimate by the Consultant does not, in any way, obligate the City to pay the Consultant for such services without expressed written authorization by the City.

Section 1.204 Annual Reporting Requirements

The Consultant may be required to furnish to the City annual reports, to address City of Rochester M/WBE and Living Wage requirements.

- A. The Consultant shall provide a description of the Consultant's utilization of M/WBE firms by listing the firm's name, cost of work performed to date and the percent of total annual amount billed to the City that was paid to the M/WBE firms.
- B. Covered employers must provide reports of job titles, wage rates and benefits of covered employees, at the beginning and end of the agreement for single year agreements, and at the beginning, annually and at the end of multi-year agreements. The report required at the commencement of the agreement should be attached to the Professional Services Agreement. These reports should be sent to the contract administrators.

ARTICLE I, Part 3. Subcontracts

All services to be performed under this Agreement shall be performed with the Consultant's own employees, unless the City agrees that the Consultant may subcontract such services. Copies of all proposed Agreements between the Consultant and subcontractors shall be submitted to the City along with a statement of the subcontractor's qualifications. Such Agreements shall be approved by the City in writing prior to initiation of work. All subcontracts under this Agreement are subject to all applicable provisions of this Agreement unless otherwise directed in writing by the City. The Consultant is responsible for the completion of all services under this Agreement in an

acceptable and timely manner, including any services performed by a subcontractor, supplier or other party with whom the Consultant has a contract.

ARTICLE I, Part 4. City Responsibilities

The City shall:

- A. Provide as complete information as is reasonably possible as to its requirements for the Project to the Consultant.
- B. Assist the Consultant by making available to the Consultant any information pertinent to the Project, including previous reports and any other relevant data.
- 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. 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.
- E. 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.
- F. Obtain any required easements with the assistance of the Consultant.
- G. Obtain or provide in a timely manner permission for the Consultant to enter upon any sites, buildings, and facilities as deemed necessary by the Consultant to perform the services required pursuant to this Agreement.

ARTICLE I, Part 5. Fees

Section 1.601 General

- A. The Consultant shall have the right to bill the City for services performed and not already billed on a monthly basis.
- C. Payment Request

The Consultant shall submit duly executed vouchers upon forms which shall be supplied and in the manner prescribed by the City to receive payment. Invoices shall be attached to the vouchers.

ARTICLE I, Part 6. Term

The term of the Agreement is from the date of Agreement execution with a two (2) year term. Two-one (1) year renewal extensions will be executed if mutually agreed upon in writing. The conditions and rates stipulated in the Agreement will remain in effect for the initial two (2) year term. Modifications to the rate schedule can be made after the completion of the initial contract term by mutual agreement.

ARTICLE I, Part 7. Removal of Personnel

All personnel assigned by the Consultant shall be subject to the approval of the City and be required to cooperate with the City project personnel. In the event that the Consultant's personnel fail to cooperate or perform their assigned tasks in a reasonable manner as determined by the City, the City may require the Consultant to replace such personnel.

ARTICLE I, Part 8. Authorized Agent

A. The City hereby designates the:

Manager of
Division of Environmental Quality
30 Church Street
Rochester, New York 14614-1278

B. The Consultant hereby designates:

or an authorized representative in case of absence, as Authorized Agents for the receipt of all notices, demands, vouchers, 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.

ARTICLE I, Part 9. Ownership of Documents

All original notes, drawings, specifications and survey maps prepared by the Consultant under this Agreement, upon completion of the work required herein, or upon acceptance by the City of each individual Assessment report 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.

ARTICLE I, Part 10. Confidentiality

Section 1.1201 General

The Consultant agrees that any and all data, analyses, materials or other information, oral or written, made available to the Consultant with respect to this Agreement, and any and all data, analyses, materials, reports or other information, oral or written, prepared by the Consultant with respect to this Agreement shall, except for information which has been or is publicly available, be

treated as confidential; and shall not be utilized, released, published or disclosed by the Consultant at any time for any purpose whatsoever other than to provide consultation or other services to the City.

Section 1.1202 Freedom of Information Law

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

ARTICLE I, Part 11. Organizational Conflict of Interest

- A. The Consultant warrants that to the best of the Consultant's knowledge and belief, there are not relevant facts or circumstances which could give rise to an organizational conflict of interest, as herein defined, or that the Consultant has disclosed all such relevant information.
- B. An organizational conflict of interest exists when the Consultant performs or agrees to perform services for another party that could foreseeable implicate the City as a potentially responsible party in an environmental enforcement action or claim against the City or otherwise increase the potential liability of the City.
- C. The Consultant agrees that if an actual or potential organizational conflict of interest is discovered, the Consultant will make a full disclosure as soon as possible in writing to the City. This disclosure shall include a description of actions which the Consultant has taken or proposed to take, after consultation with the City, to avoid, mitigate, or neutralize the actual or potential conflict.
- D. The City may terminate this Agreement in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Consultant was aware of a potential organizational conflict of interest prior to award, or discovered an actual or potential conflict after award and did not disclose it, or misrepresented relevant information to the City, the City may terminate the Agreement, debar the Consultant from contracting with the City, or pursue such other remedies as may be permitted by law or this Agreement. In such event, termination of this Agreement shall be deemed a termination for default pursuant to Section 2.602.
- E. The Consultant further agrees to insert in any subcontract hereunder, provisions which shall conform to the language of this Article.

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. 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 omissions of the Consultant, 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 for protection against claims of personal injury, including death, or damage to property, arising out of the Project. The amount of said insurance coverage shall in the amount Two Million Dollars if said insurance is a "Defense within Limits" policy under which all claim expenses are included within both the applicable limit of liability and self-insured retention. Otherwise, the insurance coverage shall be

in the amount of One Million Dollars. Said insurance shall be issued by a reputable insurance company, authorized to do business in the State of New York. Said insurance shall also name the City of Rochester as an insured and copies of the policy endorsements reflecting the same shall be provided. The Consultant shall provide the City with a certificate of insurance from an authorized representative of a financially responsible insurance company evidencing that such an insurance policy is in force. Furthermore, the Consultant shall provide a listing of any and all exclusions under said policy. The insurance shall stipulate that, in the event of cancellation or modification the insurer shall provide the City with at least thirty (30) days written notice of such cancellation or modification. In no event shall such liability insurance exclude from coverage any municipal operations or municipal property related to this Agreement.

Section 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 a completed New York State Workers' Compensation Board's form WC/DB-100.

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, Hispanic, Asian, Pacific Islander, American Indian, or Alaskan Native ethnic or racial origin and identity.

C. Compliance

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

1. The Consultant agrees that he will not discriminate against any employee for employment because of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability, or marital status in the performance of services or programs pursuant to this Agreement, or in employment for the performance of such services or programs, against any person who is qualified and available to perform the work in which the employment relates. The Consultant agrees to 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, gender identity or expression, disability, or marital status
2. The Consultant agrees that its employment practices shall comply with the provisions of Chapter 63 of the Rochester Municipal Code, which restricts inquiries regarding or pertaining to an applicant's prior criminal conviction in any initial employment application.

3. If the Consultant is found guilty of discrimination in employment on the grounds of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability, or marital status by any court or administrative agency that has jurisdiction pursuant to any State or Federal Equal Opportunity laws or regulations, such determination will be deemed to be a breach of contract, and this Agreement will be terminated in whole or part without any penalty or damages to the City on account of such cancellation or termination and the Consultant shall be disqualified from thereafter selling to, submitting bids to, or receiving awards of contract with the City of Rochester for goods, work, or services until such time as the Consultant can demonstrate its compliance with this policy and all applicable Federal and State Equal Opportunity laws and regulations.
4. The Consultant shall cause the foregoing provisions to be inserted in all subcontracts, if any, for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

Section 2.302 Title VI OF THE CIVIL RIGHTS ACT OF 1964

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

Section 2.303 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 2.304 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 2.305 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. 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 own the copyright to any copyrightable material and may, in its discretion, grant 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 City may, in its discretion, may grant to Consultant 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 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

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.

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.

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

THE CITY OF ROCHESTER

BY: _____
Lovely A. Warren, Mayor

CONSULTANT

BY: _____
Name:

STATE OF NEW YORK
COUNTY OF MONROE

On this ____ day of _____, 200__, before me, the subscriber, personally came LOVELY A. WARREN to me known, who being by me duly sworn, did depose and say that she resides in the City of Rochester, that she is the Mayor of the City of Rochester, the municipal corporation described in the above Agreement; that she signed her name thereto by authority of Ordinance No. ____.

Notary Public

STATE OF NEW YORK
COUNTY OF MONROE

On this _____ day of _____, 200_ 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