



**City of Rochester, NY**  
***Lovely A. Warren, Mayor***  
***Rochester City Council***

City of *Rochester*  
Request for Proposals (RFP) for  
**Analysis of Impediments to Fair Housing Choice Update and New  
5-Year Consolidated Community Development Plan  
(for July 1, 2020 through June 30, 2025)**

Proposals to be received by 2:00 PM on Friday, August 30, 2019

Submit Proposals to:  
Doraine Kirkmire, Manager of Planning  
30 Church St, Rm 223B Rochester, NY 14614  
Email: [Doraine.Kirkmire@CityofRochester.Gov](mailto:Doraine.Kirkmire@CityofRochester.Gov)

# REQUEST FOR PROPOSALS

The City of Rochester is seeking proposals from experienced and qualified Consultants (“Consultant”) to prepare an updated Analysis of Impediments to Fair Housing Choice (last completed in December 2015) and new 5-Year Consolidated Community Development Plan for 2020-21 through 2024-25 (“Project”), pursuant to all applicable Consolidated Plan regulations and requirements articulated in the Code of Federal Regulations ([24 CFR Part 91](#)). The anticipated timeframe for an agreement is November 1, 2019 through June 30, 2020, with an expectation that draft documents will be ready by May 1, 2020 to be released for 30-day public review, after which they will be finalized and submitted to the U.S. Department of Housing and Urban Development (HUD).

## BACKGROUND

The U.S. Department of Housing and Urban Development (HUD) requires local jurisdictions to prepare a Consolidated Plan in order to receive federal housing and community development funding under the entitlement formula grant programs administered by HUD’s Office of Community Planning and Development, such as the Community Development Block Grant (CDBG), HOME Investment Partnerships Program (HOME), Emergency Solutions Grants (ESG), and Housing Opportunities for Persons with AIDS (HOPWA).

The Consolidated Plan is intended to inform a jurisdiction’s housing and community development goals, strategies, and priorities, and serves as the following:

1. A planning document, which builds on a participatory process among citizens, organizations, businesses, and other stakeholders;
2. A submission for federal funds under HUD's formula grant programs;
3. A strategy to be followed in carrying out HUD programs; and
4. A management tool for assessing performance and tracking results.

A copy of the City of Rochester’s current [2015-16 through 2019-20 Consolidated Plan](#) can be downloaded from the City’s website, as can copies of the City’s [Annual Action Plans](#).

As part of the Consolidated Planning process, jurisdictions are required to certify that they will “affirmatively further fair housing.” This entails developing or updating an Analysis of Impediments to Fair Housing Choice (AI) and using it to identify appropriate actions for how to overcome the effects of any impediments identified by the AI in the jurisdiction’s Consolidated Plan. The City of Rochester developed a full Analysis of Impediments to Fair Housing Choice in December 2015, so intends to complete an update its existing AI as

part of this Project. The City's full 2015 [Analysis of Impediments to Fair Housing Choice](#) can be found on the City's website.

The City of Rochester has also recently completed, or is close to completing, several other plans and planning studies that are particularly relevant to, and that should substantially inform development of a new 5-Year Consolidated Plan:

- In May 2019, the City released the draft of [Rochester 2034](#), Rochester's first Comprehensive Plan to be developed in more than 20 years. The draft Plan is in public review until August 16, 2019 and it is anticipated that *Rochester 2034* will be adopted by City Council in the Fall of 2019.
- In Fall 2018, the City completed a [Citywide Housing Market Study](#) to assess conditions, trends, opportunities, and challenges in Rochester's housing market. The completed Study includes significant data analysis as well as a strategy framework to inform housing and community development initiatives, moving forward.
- The City is close to completing a [Commercial Corridor Study](#) that assesses commercial development trends, conditions, and opportunities and makes recommendations for neighborhood revitalization and business development strategies for CDBG-eligible corridors within the city. The Final Report should be available on the study webpage by the end of July 2019.

Respondents should familiarize themselves with these plans and studies to better understand Rochester's context and inform their recommended approach to the Project. The selected Consultant should utilize and incorporate data and information from these plans and planning studies into the new 5-Year Consolidated Plan.

### Timeline

Activity	Time (EST)	Date
RFP Release		July 22, 2019
Deadline for questions	12:00 p.m.	July 29, 2019
Responses to questions provided	5:00 p.m.	August 2, 2019
<b>Proposals due</b>	<b>2:00 p.m.</b>	<b>August 30, 2019</b>

Consultant Finalist Interviews, if necessary	8:00 a.m. – 5:00 p.m.	September 10, 2019
Consultant Selection Notification		September 29, 2019
City Council Action on Agreement with Consultant		October 15, 2019
Agreement Start Date		November 1, 2019
Agreement End Date		June 30, 2020

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

### Communications

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

Doraine Kirkmire, Manager of Planning  
30 Church St, Rm 223B Rochester, NY 14614  
Email: [Doraine.Kirkmire@CityofRochester.Gov](mailto:Doraine.Kirkmire@CityofRochester.Gov)

No contact is permitted with any other City staff member with regard to this RFP during the RFP process unless specifically authorized in writing. Prohibited contact may be grounds for disqualification.

To ensure that all Respondents have a clear understanding of the scope and requirements of this RFP, the City will respond to all timely questions submitted via e-mail to the City Contact by the question deadline stated above (5:00 p.m. on August 2, 2019). Questions and the responding answers will be sent via e-mail to all Respondents who have provided an e-mail address to the City Contact and will be posted on the City's web page for this RFP. The City's failure to provide timely response or provide responses to any questions shall not delay or invalidate the City's right to make a decision to award an agreement pursuant to this RFP.

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

to make a decision to award an agreement pursuant to this RFP.

## SCOPE OF SERVICES

Respondents shall develop their approach and propose a draft scope of services based on the information below, as well as their review of the documents referenced in the Background section above, their experience and qualifications conducting Consolidated Planning and Analyses of Impediments to Fair Housing, and their familiarity with all HUD regulations and requirements (per Code of Federal Regulations [24 CFR Part 91](#)) that are applicable to this Project.

Respondent's proposed scope of services shall include a list of all the recommended activities or tasks and deliverables sufficient to meet HUD requirements, with an explanation of the data and methods used to produce them, and their accompanying costs and timelines. Respondents shall note where activities or tasks for preparation of the AI update and the new 5-Year Consolidated Plan and AI update may or should be integrated (i.e., done in conjunction with one another) versus separated or phased in their proposed scope.

The Respondent's total proposed fee amount shall identify and include all professional services, expenses (including travel), overhead, and profit. Costs shall be organized to correspond to specific activities or tasks and deliverables within the proposed scope.

The City anticipates a contract and Project timeframe that goes from November 1, 2019 through June 30, 2020, with an expectation that draft documents will be ready by May 1, 2020 to be released for 30-day public review, after which they will be finalized and submitted to the U.S. Department of Housing and Urban Development (HUD).

The selected Consultant will lead the Consolidated Planning and AI update effort. The City will provide support and may be available for limited assistance on certain Project elements, but the Consultant will have overall responsibility for the Project. The City will rely on the personnel, experience, and expertise of the selected Consultant to ensure that all necessary components of the process and plans are completed thoroughly and in a timely manner. Accordingly the Consultant must be knowledgeable of the HUD Consolidated Plan requirements and regulations (per Code of Federal Regulations [24 CFR Part 91](#)) and eCon Planning Suite, as well as HUD Fair Housing Planning Guide, and must have demonstrated capacity to perform the activities and tasks necessary to complete this Project.

Anticipated activities or tasks for this Project include:

- Project management
- Community and stakeholder engagement sufficient to meet HUD requirements

- Data gathering, review and analysis sufficient to meet HUD requirements, but also integrating recent City of Rochester plans and planning studies (see Background section above), and potential limited additional supplementary data analysis (to be determined with selected Consultant in final agreed-upon Scope of Services)
- Plan Preparation, including draft and final versions of both the AI update and new 5-Year Consolidated Plan in accordance with HUD's eCon Planning Suite guidance and all other relevant regulations; all HUD required elements, assessments, narrative, tables, maps, etc.; and integration and alignment of *Rochester 2034*, 2018 Citywide Housing Market Study, and Rochester Commercial Corridor Study analysis and recommendations wherever possible.
- Potential presentations to the Mayor and City Council.

*Respondents are welcome to propose other (or alternatively phrased) activities and tasks in their proposed approach/scope if they think they are best suited to meet HUD requirements and the City's goals with this Project.*

At a minimum, deliverables for this Project should include:

- Draft and Final versions of the Analysis of Impediments Updated and new 5-Year Consolidated Plan
- All quantitative data gathered and analyzed for the Project, including spreadsheets, tables, maps, GIS files, etc.
- All qualitative data gathered and analyzed for the Project (public and stakeholder engagement input, interview/focus group notes)
- Forms used for any primary data collection (e.g., interview/focus group templates)

*Respondents are welcome to propose additional deliverables that they think should be mentioned to best meet HUD requirements and the City's goals with this Project.*

The City will be responsible for discussing/finalizing the Project scope and contract agreement, providing relevant City-maintained or other local data and GIS files, identifying relevant stakeholders and contacts for input and additional data to inform the Project, helping to coordinate public meeting times and locations, attending all public meetings and other stakeholder input sessions (as possible), reviewing and providing input to and approving draft and final documents and other deliverables, and other responsibilities as outlined in final Project scope and contract agreement.

A Professional Services Agreement (PSA) resulting from this RFP will commence on or around November 1, 2019 for an anticipated term of eight (8) months (see Attachment A, the City's standard PSA form).

## PROPOSAL PREPARATION AND SUBMISSION PROCESS

Proposals must be received by the City no later than 2:00pm on August 30, 2019. Submit ten (10) paper copies and one digital copy (CD or thumb drive) to:

Doraine Kirkmire, Manager of Planning  
30 Church St, Rm 223B Rochester, NY 14614  
Email: [Doraine.Kirkmire@CityofRochester.Gov](mailto:Doraine.Kirkmire@CityofRochester.Gov)

This RFP is designed to facilitate the evaluation and selection of a Consultant that is best able to achieve the City's objectives. The proposal shall contain a cover page, table of contents, and narrative that describes the proposed approach and associated activities or tasks, data, methods, deliverables, timeframes, and costs. All pages shall be numbered and major sections and all attachments shall be referenced in the table of contents.

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

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

The Respondent selected by the City will be required to enter into a Professional Services Agreement (PSA) with the City (see Attachment A, the City's standard PSA form). The establishment of a PSA is contingent upon approval by City Council for all Agreements in excess of \$10,000 or for a period of more than one year and upon the availability of funds for such an agreement. The City does not discriminate in any aspect of contracting on the basis of age, race, color, national origin, creed, disability, marital status, sex, or sexual orientation. Unless otherwise stated in the proposal, the Respondent's response to this RFP shall be deemed its acceptance of the terms of this PSA. (*Note:* Attention is directed to the City's Living Wage requirements and MWBE and Workforce Utilization Goals, which are summarized in the Evaluation Criteria section below, as well as Attachment A, the City's standard PSA form. Additional information on the City's MWBE requirements and resources is available on the City's website: <https://www.cityofrochester.gov/mwbe/>)

Respondents shall provide sufficient information in their written proposals to enable the City review team to make a recommendation to the Mayor. The City reserves the right to invite any or all Respondents to an interview to discuss their proposal. If interviews are conducted, they will be conducted on September 10, 2019. Respondents are asked to indicate times that their team is available for an interview on those days

between 8:00 a.m. and 5:00 p.m. EST. For out of town Respondents, telephone interviews will be arranged. Respondents will be notified if they are selected for an interview by Friday, September 6, 2019. Any expenses resulting from such an interview would be the sole responsibility of the Respondent. The City is under no obligation to select any of the Respondents or to conduct the Project described herein. The City may amend or withdraw the RFP at any time, within its sole discretion. The City shall have no liability for any costs incurred in preparing a proposal or responding to the City's requests with respect to the proposal.

## PROPOSAL CONTENT

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

- A. **Project Statement:** A Project narrative that describes the Respondent's understanding of the City's needs and the unique value the Respondent will bring to the process and Project.
- B. **Description of Services:** Proposed approach the Respondent will use to conduct this Project, including description of the data and methods that will be used for analysis, as well as the major proposed activities or tasks and deliverables, their costs, and how they correspond to HUD requirements for Consolidated Plans and AI updates.
- C. **Respondent's Qualifications:** Information about the Respondent and its qualifications for this Project. Include information about the best examples of your prior work that is similar to the Project being solicited herein by the City. Documented evidence of the Respondent's capacity to perform the work, including references, contact names, and phone numbers. Specific examples of past work developing 5-Year Consolidated Plans and updates to AIs, particularly examples where Respondent has done both for the same jurisdiction as part of an integrated approach to Consolidated Planning.
- D. **Project Budget:** An itemized budget including staff hours, billing rates, and travel costs (including for any subcontractors) corresponding to each of the tasks and deliverables identified in the proposed approach/scope of services.
- E. **Project Personnel:** The name and resume of the Respondent's lead person for the Project. Names, resumes, and roles of all staff who will be involved in the Project, including who will work on which tasks and deliverables identified in the proposed approach. Provide data on the diversity of Respondent's overall workforce, including total number of employees, and percentages of minorities and females employed.
- F. **Subcontractors:** Names, resumes, roles of sub-contractors, associates, or any non-employees who will be involved in the Project, including who will work on which tasks and deliverables identified in the proposed approach.



- G. **Rochester Presence:** Information about Respondent's presence in Rochester and Monroe County (N.Y.) and/or collaborative relationships with local firms that are to be formed for this Project.
- H. **MWBE:** Statement as to whether or not the Respondent is a bona fide MWBE firm, will use bona fide MWBE subcontractors and the percentage of the workforce utilized to perform the work of this contract who will be either Minority (M) or Women (W), including both the Consultant's workforce and that of any subcontractors who will be utilized.
- I. **Interview Availability:** Times that the Respondent is available for an interview, if invited, on September 10, 2019. (Respondents will be notified if they are invited for an interview by Friday September 6, 2019.)

## EVALUATION CRITERIA

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

**Proposal Quality (30):** The Respondent's comprehension of the needs of the City as demonstrated by the description and quality of its proposed approach, tasks, deliverables, and demonstrated understanding of Consolidated Plan and AI requirements and regulations.

**Experience (30):** The Respondent's relevant experience in providing the same or similar services,

**Cost (10):** The total cost of the Respondent's proposal is important to the City, however, based on the evaluation of the other criteria, the City will not necessarily select the lowest bidder.

**References (15):** Evaluation of the Respondent's work for previous clients receiving similar services to those proposed in this RFP.

**Commitment of Key Principals to the Project (15):** Demonstration of availability of senior-level staff or associates to be assigned to this Project to ensure depth, accountability, and diversity of perspective.

**MWBE and Workforce Goals (up to 30, bonus weighting):** The City of Rochester desires to encourage minority and women owned (MWBE) businesses to participate in opportunities to enter into PSAs with the City and to encourage minorities and women in the workforce. Pursuant to Ordinance No. 2018-54, the City has a goal that 30% of the aggregate annual contract awards for professional service contracts over \$10,000 be awarded to minorities (M) (15%) and women (W) (15%). The City has also established minority workforce goals of 20%

M and 6.9% W for professional services consulting contracts. For more information please see <http://www.cityofrochester.gov/mwbe>.

Respondents shall be awarded MWBE bonus weighting as follows:

1. The City will give preference to Consultants who are New York State certified MWBEs. Consultants who meet this requirement shall receive **an additional weighting of 10%**.
2. The City will give preference to Consultants who utilize state certified MWBE subcontractors with bona fide offices and operations in the Empire State Development Finger Lakes Region, which includes the following counties: Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming and Yates. State-certified MWBEs from outside the Region may be counted if there are insufficient businesses in the Region to perform the specialized work or consulting services required. If one or more MWBE subcontractors will perform 10% to 20% of the work of the contract – measured as either a percent of the total contract amount or as a percent of the total full-time-equivalent labor hours budgeted for this project, the consultant shall receive **an additional weighting of 5%**. If MWBE subcontractors will perform more than 20% of the work of the contract, the Consultant shall receive an **additional weighting of 10%**.
3. Respondents shall provide sufficient documentation with their proposal to support the additional preference weighting as an MWBE Consultant or for use of MWBE subcontractors. If one or more MWBE subcontractors are proposed, they must be named and the size of the subcontract identified. If selected, the Respondent shall submit an **MWBE Utilization Plan** on the City's form for approval by the MWBE Officer (see Attachment B, the City's MWBE Utilization Form). Once approved, the Utilization Plan shall be incorporated into the PSA.
  - a. If the total amount of a PSA is increased by 5% or more at any time during the term of the PSA, the Consultant shall submit a revised MWBE Utilization Plan for approval by the MWBE Officer. The MWBE Officer may also issue a revised MWBE Utilization Plan for unforeseen changes in the availability of MWBE subcontractors during the term of the PSA.
4. The City will give preference to Consultants who meet or exceed the City's workforce goals, which are: 20% M and 6.9% W. Consultants who demonstrate that their and/or their subcontractors' workforce on this Project meets or exceeds these goals shall receive an **additional weighting of 10%**. If selected, the Respondent shall submit a Workforce Staffing Plan on the City's Form for review by the MWBE Officer (see Attachment C, the City's Workforce Staffing Plan). Once reviewed, the Workforce Staffing Plan shall be incorporated into the PSA. The calculated percentages of workforce utilization shall be based on actual hours worked and billed over the term of the project. The final determination of a workforce goals accomplished during the contract shall be based on hours reported in the workforce utilization reports (see Attachment D, the City's Workforce Utilization Report).

5. If selected, the Respondent shall provide MWBE utilization and subcontractor/supplier payment certification and/or workforce utilization reports on the City's forms. These reports shall be submitted with each invoice or as otherwise requested by the MWBE Officer.
6. A failure to submit the required subcontractor/supplier payment certification and/or workforce utilization reports shall constitute a default in the performance of the Agreement subject to potential termination for default by the City. In addition, if the selected Respondent fails to meet the most recent MWBE Utilization Plan and/or Workforce Staffing Plan, for which additional weight was awarded by the end of the PSA, such failure may result in disqualification from award of future contracts with the City.
7. Summary of additional evaluation weighting points for MWBE and Workforce Goals:

<b>Category of Additional Evaluation Points</b>	<b>Additional Weight Awarded</b>
Respondent is New York State Certified MWBE	10%
Utilize MWBE Subcontractors for 10-20% of work	5%
Utilize MWBE Subcontractors for more than 20% of work	10%
Meet or exceed workforce goals of 20% M and 6.9% W	10%

Respondents may use the [City's MWBE Directory](#) or [NYS' Certified MWBE Directory](#) to identify certified MWBE firms to partner with on their proposals for this Project (*Note: using search terms like "Planning," "Community Development," "Policy," etc. may be helpful*).

The selection of a Consultant is within the City's sole discretion and no reasons for rejection or acceptance of a proposal are required to be given. Although costs are an important consideration, the decision will be based on qualifications and compliance with the requirements of this RFP and not solely on cost. The City reserves the right to reject any or all proposals or to accept a proposal that does not conform to the terms set forth herein. The City further reserves the right to waive or modify minor irregularities in the proposals and negotiate with Consultants to serve the City's best interest. The City reserves the right to re-allocate up to 20 points among evaluation criteria for Proposal Quality, Experience, Cost, References, and Commitment of Key Principals if deemed necessary or appropriate, but the 30 points of bonus weighting for MWBE and Workforce Goals is fixed.

## MISCELLANEOUS

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

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

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

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

Attachment A: Professional Services Agreement (PSA) Template

## **AGREEMENT FOR PROFESSIONAL SERVICES**

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

**WITNESSETH:**

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

**WHEREAS**, the City has applied for and received Community Development Block Grant (CDBG) funds from the United States Government under Title I of the Housing and Community Development Act of 1974, Public Law 93-383, as amended (HCD Act); and

**WHEREAS**, the City wishes to engage the Consultant to assist the City to complete the Project utilizing CDBG funds; and

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

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

**SECTION 1.     DESCRIPTION OF SERVICES**

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

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

**C.** The City shall (IF APPLICABLE)

## **SECTION 2. TERM**

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

## **SECTION 3. FEE**

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

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

The Consultant shall submit an invoice and any other supporting documentation in the manner prescribed by the City at a minimum of once every ninety (90) days during the term of this agreement, unless a different schedule is approved by the City.

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

## **SECTION 4. AUTHORIZED AGENT FOR THE CITY AND THE CONSULTANT**

**A.** The City hereby designates:

**B.** The Consultant hereby designates:

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

#### **SECTION 5. TERMINATION FOR DEFAULT**

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

#### **SECTION 6. INDEMNIFICATION**

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

#### **SECTION 7. INSURANCE**

##### **A. Workers' Compensation and Disability Benefits Insurance**

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

## **SECTION 8. EQUAL OPPORTUNITY AND MWBE AND WORKFORCE UTILIZATION GOALS**

### **A. General Policy**

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

### **B. Definitions**

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

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

### **C. Compliance**

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

- 1.** The Consultant agrees that he will not discriminate against any employee for employment because of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability, or marital status in the performance of services or programs pursuant to this Agreement, or in employment for the performance of such services or programs, against any person who is qualified and available to perform the work in which the employment relates. The Consultant agrees to make a good faith effort to employ minority group persons and females and that in hiring employees and treating employees performing work under this Agreement or any subcontract hereunder, the Consultant, and its subcontractors, if any, shall not, by reason of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability or marital status discriminate against any person who is qualified and available to perform the work to which the employment relates. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that applicants are hired and that employees are treated during their employment, without regard to their of

age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability, or marital status. Such actions shall include, but not be limited to the following: employment, upgrading, demotions or transfers, recruitment and recruitment advertising, layoffs, terminations, rates of pay and other forms of compensation, and selection for training, including apprenticeship. The Consultant agrees to post notices in conspicuous places available to employees and applicants for employment, and to include language in all solicitations or advertisements for employment placed by or on behalf of the Consultant, reflecting this nondiscrimination policy.

2. The Consultant agrees that its employment practices shall comply with the provisions of Chapter 63 of the Rochester Municipal Code, which restricts inquiries regarding or pertaining to an applicant's prior criminal conviction in any initial employment application.
3. If the Consultant is found guilty of discrimination in employment on the grounds of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability, or marital status by any court or administrative agency that has jurisdiction pursuant to any State or Federal Equal Opportunity Laws or regulations, such determination will be deemed to be a breach of contract, and this Agreement will be terminated in whole or part without any penalty or damages to the City on account of such cancellation or termination, and the Consultant shall be disqualified from thereafter selling to, submitting bids to, or receiving awards of contract with the City of Rochester for goods, work, or services until such time as the Consultant can demonstrate its compliance with this policy and all applicable Federal and State Equal Opportunity laws and regulations.
4. The Consultant shall cause the foregoing provisions to be inserted in all subcontracts, if any, for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

#### **D. MWBE AND WORKFORCE UTILIZATION GOALS**

The City of Rochester has established a policy to promote the growth and development of Minority and Women Business Enterprises (MWBE) and to improve employment opportunities for minorities and women and has adopted MWBE goals and minority workforce participation goals that apply to professional services consulting agreements with a maximum compensation exceeding \$10,000 pursuant to Ordinance No. 2018-54.



Ordinance No. 2018-54 established the goal that MWBE's receive 30% of the total annual contract awards with aggregate minority and women award goals of 15% each. Ordinance No. 2018-54 further established annual aggregate workforce goals of 20% minority and 6.9% women.

The Consultant shall submit a workforce staffing plan, which, when reviewed by the City's MWBE Officer, shall be incorporated into this Agreement as Exhibit A, detailing the percentage of the workforce utilized to perform the work of this agreement who will be either minority or women, including both the Consultant's workforce and that of any subcontractors who will be utilized. Consultant shall submit workforce utilization reports on the City's forms with each invoice or as otherwise requested by the MWBE Officer. The Consultant understands and accepts that the calculated percentages of workforce utilization shall be based on actual hours worked and billed over the term of the project. The final determination of a workforce goals accomplished during the contract shall be based on hours reported in the workforce utilization reports.

The Consultant shall submit an MWBE utilization plan with respect to any subcontractors or suppliers used to perform the services under this Agreement, which, when approved by the City's MWBE Officer, shall be incorporated into this Agreement as Exhibit B. Consultant shall submit MWBE utilization and subcontractor/supplier payment certification on the City's forms with each invoice or as otherwise requested by the MWBE Officer.

During the term of the Agreement, the Consultant shall notify the City if a change occurs that will result in a significant (5% or more) increase or decrease in the workforce staffing plan and/or MWBE utilization plan goals incorporated as Exhibit A and/or Exhibit B of this Agreement. A revised workforce staffing plan and/or MWBE utilization plan must be approved by the MWBE Officer. Once signed by the Consultant and the MWBE Officer, such revised plan(s) shall be incorporated into this Agreement as an amendment pursuant to Section 17.

Consultant's failure to submit MWBE and subcontractor/supplier payment certification forms, if required, and the workforce utilization reports shall constitute a default in the performance of this Agreement. Failure to meet the goals stated in the most recent workforce staffing plan and/or the MWBE utilization plan incorporated into the Agreement may result in disqualification from award of future contracts with the City.

#### **E. Non-discrimination in CDBG Funded Activities**

The Consultant's services shall be subject to HCD Section 109, under which no person shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with CDBG funds. The Consultant's services shall also be subject to the prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 *et seq.*] as implemented by 24 CFR Part 146, as well as against discrimination respecting an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 [29 U.S.C.794] and title II of the Americans with Disabilities Act [42 U.S.C. 12101 *et seq.*] as implemented by 24 CFR Part 8.

**1. Compliance with the Fair Housing Act and Executive Order No. 11063**

In accordance with the Fair Housing Act (42 U.S.C. 3601-19) and its implementing regulations at 24 CFR parts 100 and 103 and Executive Order 11063, as amended, and implementing regulations at 24 CFR part 107, the Contractor shall not subject any person to discrimination because of race, color, religion, sex, handicap, familial status, or national origin in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in the availability of residential real estate-related transactions provided hereunder.

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

The City of Rochester hereby gives public notice that it is the City's policy to assure full compliance with Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987, and related statutes and regulations in all programs and activities. Title VI requires that no person in the United States of America shall, on the grounds of race, color, gender, or national origin be excluded from the participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the City receives federal financial assistance. Any person who believes they have been aggrieved by an unlawful discriminatory practice under Title VI has a right to file a formal complaint with the City. Any such complaint must 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](http://www.cityofrochester.gov), or by calling (585) 428-6185.

**SECTION 10. FREEDOM OF INFORMATION LAW**

Disclosures required by New York's Freedom of Information Law ("FOIL") shall not be considered a breach of any confidentiality provisions in this Agreement. Should consultant provide the City with any records it deems confidential and exempt from FOIL, the 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 the consultant of the request and give the 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, the consultant may appeal the City's determination within seven (7) business days. Thereafter, the City shall respond to the consultant's appeal within ten (10) business days. If the City issues an adverse determination, the consultant may appeal the decision within fifteen (15) days of service by commencing an Article Seventy-Eight (78) proceeding under New York's Civil Practice Law and Rules.

**SECTION 11. LIVING WAGE REQUIREMENTS**

**A. Applicability of Living Wage Requirements**

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

**B. Compliance**

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

**C. Exemption**

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

**SECTION 12. COMPLIANCE WITH MACBRIDE PRINCIPLES**

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

**SECTION 13. COMPLIANCE WITH ALL LAWS**

The Consultant agrees that during the performance of the work required pursuant to this Agreement, the Consultant, and all employees working under the Consultant's direction shall strictly comply with all local, state, or federal laws, ordinances, rules or regulations controlling or limiting in any way the performance of

the work required by this Agreement. Furthermore, each and every provision of law and clause required by law to be inserted in this agreement shall be deemed to be inserted herein. If, through mistake or otherwise, any such provision is not inserted, or is not properly inserted, then upon the application of either party this Agreement shall be forthwith physically amended to make such insertion or correction.

#### **SECTION 14. AUDIT**

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

#### **SECTION 15. PROHIBITION AGAINST ASSIGNMENT**

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

#### **SECTION 16. OBLIGATIONS LIMITED TO FUNDS AVAILABLE**

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

#### **SECTION 17. EXTENT OF AGREEMENT**

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

#### **SECTION 18. STATUS AS INDEPENDENT CONTRACTOR**

The Consultant, as an independent contractor, covenants and agrees to conduct the work under this Agreement consistent with such status. The Consultant shall neither pretend nor claim to be an officer or employee of the City by reason hereof, nor make any claim, demand or application to or for any right or

privilege applicable to an officer or employee of the City, including but not limited to Workers' Compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.

**SECTION 19. LAW**

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

**SECTION 20. NO-WAIVER**

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

**SECTION 21. SEVERABILITY**

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

**SECTION 22. 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 2 CFR Part 2424 and 2 CFR Part 180.

**SECTION 23. CONFLICT OF INTEREST**

In accordance with 2 CFR §200.318 and 24 CFR §570.611, the Consultant shall preclude any person who is an employee, agent, consultant, officer, elected official, or appointed official of the City, and who exercises or exercised any functions or responsibilities with respect to the contract, from obtaining a financial interest or benefit from the contract, including interests and benefits in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. Any financial interest or benefit of any person covered by this section must be documented and disclosed by the Consultant to the City.

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

**CITY OF ROCHESTER**

BY: \_\_\_\_\_  
Lovely A. Warren, Mayor

**CONSULTANT**

BY: \_\_\_\_\_  
Name:

STATE OF NEW YORK)  
COUNTY OF MONROE ) SS:

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

\_\_\_\_\_  
Notary Public

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

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

\_\_\_\_\_  
Notary Public