

City of Rochester
Request for Proposals
Zoning Update

May 11, 2020

Proposals to be received by 5:00 PM on June 30, 2020

Submit Proposals Electronically to:

Dorraine Kirkmire, Manager of Planning

Dorraine.Kirkmire@cityofrochester.gov

and

Kevin Kelley, Associate City Planner

Kevin.Kelley@cityofrochester.gov

REQUEST FOR PROPOSALS

The City of Rochester is seeking proposals from qualified Consultants (“Consultant”) to assist City staff with updating the City’s Zoning Code, Zoning Map, and Subdivision Code (the “Project”) to reflect the Vision, Guiding Principles, and The Placemaking Plan of *Rochester 2034*, the City’s recently adopted Comprehensive Plan (“Plan”). The City seeks to retain a Consultant or Consultant team with experience in developing zoning codes for cities of similar size or larger than Rochester and within a similar market.

BACKGROUND

The city of Rochester, located on the southern shore of Lake Ontario in western New York, is the seat of Monroe County. With a population of approximately 210,000 people, Rochester is the third most populous city in New York State. From a peak in the late 1950s of about 332,000 people, the city’s population steadily declined for more than five decades. This decline in population followed a national trend in urban depopulation and, like many mid-size post-industrial cities, Rochester lost more than a third of its population. City government has been in the position of managing decline that has impacted the City in every way, including land use.

Now, similarly to what is happening across the nation, Rochester is starting to see a resurgence of popularity and new residents. People, especially seniors and millennials, are drawn to the benefits of city living. In response to the emerging revitalization, Mayor Lovely A. Warren initiated the preparation of *Rochester 2034*, a 15-year comprehensive plan to promote and guide the City’s revival as it approaches its 200th birthday in 2034. The Plan is the result of intense community and stakeholder engagement, best practice research, and technical practitioner engagement. The Plan is broadly endorsed and was unanimously adopted and celebrated by City Council in November 2019. The full Plan can be accessed at [Rochester2034.com](https://www.rochester2034.com).

Growing the population is an overarching goal of *Rochester 2034*, recognizing the need to build the critical mass of residents and consumers to support small businesses, stabilize the tax base, and revitalize the city. The City aims to prepare a land use planning and regulatory approach that positions the community to welcome and foster new residents and businesses, while preserving and improving quality of life.

In addition to “growing the population,” the other overarching goals illustrated throughout *Rochester 2034* include: connecting land use & transportation, placemaking & beautiful public spaces, and social & economic equity. Communities that integrate transportation and land-use, through policies, programs, projects and regulations, are in a better position to create efficient and equitable access to a variety of modes of transportation. Astute land use regulations enable more people to easily walk, bike, and use transit and help create desired livable communities.

Rochester 2034 stresses the importance of placemaking as an important overarching goal to cultivate a strong and unique sense of place for the city of Rochester, and to make it a place where people want to live, work, and play. The design of the community is intimately related to how it is interacted with and experienced. Thoughtful design is important to creating beautiful and vital places where people want to be.

Conventional land use regulations have long contributed to socioeconomic separations in cities. Historically, cities used zoning as a way to separate not only uses—like residential, commercial, and industrial properties—but also people according to wealth, class, and race. As set forth in *Rochester 2034*, the overarching goal of social and economic equity aims to right the past wrongs and create opportunity and fairness for all people, not just some people. In particular, the City seeks to promote diverse and affordable housing and neighborhood choices.

Rochester 2034 includes a Vision and eleven Guiding Principles to provide broad guidance on the direction for land use policy in Rochester, while The Placemaking Plan (Initiative Area 2 of *Rochester 2034*) provides specific guidance and direction. This Initiative Area includes numerous strategies intended to create vibrancy through an innovative and holistic approach to community investment. It addresses multiple categories of investment that, when coordinated and leveraged, contribute to healthy neighborhoods and a strong sense of place. These include parks, transportation systems, community facilities, neighborhood planning, and infrastructure with progressive land use policy as the foundation. The Placemaking Plan attempts to strike a balance among orderly growth, regulatory flexibility, and preservation of neighborhood and natural assets.

The future land use component of The Placemaking Plan contains a land use map composed of “Character Areas” that are similar in nature to zoning districts. This map displays categories of various Character Areas as they are recommended to evolve over the next 10 to 15 years. Character Area boundaries are depicted on The Placemaking Plan map with gently curving edges and consistent buffers between adjacent categories. This is meant to graphically reinforce the conceptual and visionary nature of this land use plan. While the Character Areas will direct new zoning district boundaries for the City of Rochester, the final zoning district boundaries will be ultimately defined by the Project. An interactive webmap of all the Character Areas and place-based recommendations included in The Placemaking Plan can be found at Rochester2034.com/home-2/interactive-map.

Chapter 120 of the City Code is the Zoning Code (“Code”). The last comprehensive Code update was in 2003, followed by many incremental modifications over the last seventeen years. Approximately fifteen different zoning districts exist in the Code, each with their own unique set of regulations for uses and development. The Code is a combination of traditional zoning and form-based code, the latter of which is in use for the Center City District, Marina District, and Collegetown Village District. While the form-based approach may not be appropriate for residential districts, The Placemaking Plan recommends consideration of expanding this approach into other mixed-use areas throughout the city.

In addition to potentially expanding the use of form-based code, other directives from *Rochester 2034* include, but are not limited to:

- Promoting greater density along Regional Transit Service (RTS) corridors.
- Repositioning/rezoning declining commercial corridors.
- Revising building height minimums and maximums to reflect recommended patterns of development.
- Allowing built-as commercial buildings to house commercial uses as of right in residential districts and by legalizing existing small commercial areas.

- Reducing barriers for “pipeline” business development.
- Advancing diverse housing options, such as creating more opportunity for 2-4-unit residential buildings.
- Moving toward lot size maximums, based on context, rather than strictly-applied minimums.
- Moving away from strict parking minimums and allowing flexibility and discretion in the development approval process.
- Streamlining/incentivizing compliant development proposals.
- Combining or aligning all city codes that impact land use with the Zoning Code, potentially through the exploration of a Unified Development Code.

Relevant background codes, documents, and references:

[Rochester 2034 and all of the appendices](#)

[Chapter 120 City Zoning Code](#)

[Chapter 128 Land Subdivision Code](#)

[Chapter 130 Comprehensive Plan](#)

[Chapter 39 Building Code](#)

[Chapter 104 Streets and Street Encroachments](#)

<https://www.cityofrochester.gov/ProjectsAndPlans.aspx>

TIMELINE

Activity	Time	Date
RFP Release		May 11, 2020
Deadline for questions	5:00p.m. EST	May 26, 2020
Response to questions		June 2, 2020
Proposals due	5:00p.m. EST	June 30, 2020
Agreement Start Date		Fall 2020

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

COMMUNICATIONS

All communications by parties who have indicated an intent to submit or have submitted a proposal in response to this RFP, 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"):

Kevin Kelley, Associate City Planner
City Hall Room 223B
30 Church Street
Rochester, NY 14614
Kevin.Kelley@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. Questions and the responding answers will be sent via e-mail to all respondents who have provided an e-mail address to the City Contact and will be posted on the City's web page for this RFP. The City's failure to timely respond or provide responses to any questions shall not delay or invalidate the City's right to make a decision to award an agreement pursuant to this RFP.

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

SCOPE OF SERVICES

The City of Rochester has committed a strong professional team of City staff to update the Code and Zoning Map. The City is seeking the services of a Consultant to work with this City team to perform the following services to assist them in implementing the Project. The Consultant is encouraged to offer alternative approaches or methods for achieving the desired outcome as expressed in the General Scope and Specific Scope below.

General Scope:

Ensure clarity in the Code to avoid, whenever possible, disputed interpretations. Provide commonly used terminology in clear, simple language or in illustrated language.

Identify opportunities for process simplification and flexibility consistent with Guiding Principles and stated goals described in *Rochester 2034*.

Reduce and/or streamline processes by helping to craft regulations that require fewer requests for variances, special use permits and rezoning cases.

Prepare State Environmental Quality Review (SEQR) documents that package and disclose the work done and alternatives assessed to support proposed code changes.

Support City staff in effective public engagement activities and meetings with the community, land use boards, City Council, and senior management.

Specific Scope:

Respondent's proposal shall address each of the following tasks, with a separate cost and timeline for each identified task, using the same identifying language, including any paragraph or section numbers or letters as used in the RFP.

1. Analysis of City of Rochester codes, as well as codes and best practice research in cities with a similar market

During the Consultant's work on this task, a team of City staff will simultaneously be reviewing each section of the Zoning Code and compiling desired changes to language, policies, etc. Consultant will be required to:

- a. Review City codes referenced in the Background section above, *Rochester 2034*, the section by section analysis provided by the City, along with other analysis provided by the City, which will include:

- numbers and types of variances and other approvals issued in the past several years;
 - mapping of nonconforming built-as buildings in the city;
 - zoning districts overlaid with character areas;
 - Character Areas and residential density;
 - a list of known issues and desired changes to be made to the current code;
 - a list of *Rochester 2034* recommendations relevant to the Code; and
 - permitted and specially permitted use lists that align with the NYS Building Code.
- b. Conduct best practice and emerging trend research and development to identify options for addressing issues and improving the Code.
 - c. Assess the need for continuing Planned Development Districts, Urban Renewal Districts, or Overlay Districts.
 - d. Assess the advantages of a Unified Development Code and, if it is determined to be advantageous, recommend a means to coordinate or consolidate with the Subdivision Code (Chapter 128) and any relevant sections of the Streets and Street Encroachments Code (Chapter 104).
 - e. Present to City staff ideas for reorganizing the Code into alternative formats that are more user friendly and/or address deficiencies.

2. Draft Code updates for City staff review

- a. Drawing from Task 1 above, text suggestions provided by City staff, stakeholder meetings (organized and run by City staff), and City Planning Commission meetings, prepare draft updates to the Code.
- b. Insert the updates and review the updated Code for overall consistency and potential for unintended consequences.
- c. Audit the proposed Code through the lens of the *Rochester 2034* Guiding Principles and prepare brief report on how the Code addresses each principle.
- d. Reformat the Code into an efficient, easy-to-use document (hard copy and online). Mechanisms such as cross-referencing, illustrations and tables should be used to enhance understanding of the Code and reduce misinterpretations.
- e. Present the draft Code to City staff and revise as directed.

3. Public Engagement Process

- a. As directed by the City's Public Participation Plan, assist City staff with the meeting format, materials (e.g. educational materials, handouts, etc.), and facilitation for the following:
 - Minimum of 12 mapping workshops, held in different areas of the city, to discuss changes to zoning districts and associated dimensional and use regulations.
 - Minimum of 2 public meetings facilitated by the City Planning Commission (CPC) to discuss proposed Code changes.
 - One public meeting jointly hosted by the CPC and the Rochester Environmental Commission (REC) that will serve as the public informational meeting for the code/map change approval process and the SEQR DEIS public hearing.

Note: The Consultant must identify procedures it recommends in the event that social distancing requirements are still being observed in response to COVID-19.

4. Remapping Process

- a. City staff will develop the first draft of the zoning district map and associated dimensional and use regulations based on the Character Areas of The Placemaking Plan. The Consultant shall review that draft and provide recommendations based on their understanding of the community's goals expressed in *Rochester 2034*, the Consultant's expertise, and best practices / emerging trends from other communities.
- b. Collect and organize public comments from the mapping workshops and assist City staff by recommending modifications to the map.

5. SEQ

- a. Prepare draft scope for the Draft Environmental Impact Statement (DEIS).
- b. Pull together the work already done in Tasks 1-4 above and package into DEIS format.
- c. Prepare Final Environmental Impact Statement (FEIS), based on City staff responses to comments.

Fees:

The total fee amount shall not exceed \$150,000, including all professional services, expenses, overhead, and profit. Consultant's fees should reflect the substantial amount of work that City staff has done and will be doing alongside the Consultant throughout the process and identify any work tasks identified in this Scope of Services that the Consultant recommends be performed solely by the Consultant, solely by City staff or divided in a different way than described herein, in order to reduce costs to the City and/or to provide additional services.

Term:

It is anticipated that the consultant work will begin in early October 2020, with a contract term of two years.

PROPOSAL PREPARATION AND SUBMISSION PROCESS

Proposals must be received by the City through email no later than 5:00pm on June 30, 2020. Email should be directed to:

Doraine Kirkmire, Manager of Planning

Doraine.Kirkmire@cityofrochester.gov

and

Kevin Kelley, Associate City Planner

Kevin.Kelley@cityofrochester.gov

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

Each proposal shall be signed by an individual authorized to enter into and execute contracts on the Consultant's behalf. Unless otherwise specified in its proposal, the Consultant 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 the Consultant's references. Evaluation of proposals will be conducted by the City based on information provided in the Consultant's proposals and on such other available information that the City determines to be relevant. The evaluation of proposals may include an interview, meetings with authorized personnel, and may involve the use of a third-party consultant.

The Consultant selected by the City will be required to enter into a Professional Services Agreement (PSA) with the City (see Attachment A, the City's standard PSA form). The establishment of a PSA is contingent upon approval by City Council for all Agreements in excess of \$10,000 or for a period of more than one year and upon the availability of funds for such an agreement. Unless otherwise stated in the proposal, the Consultant'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)

Consultants 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 Consultants to an interview to discuss their proposal. Any expenses resulting from such an interview will be the sole responsibility of the Consultant. The City is under no obligation to select any of the responding Consultants 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 Consultant's understanding of the City's needs and the unique value the Consultant will bring to the process. The Consultant must demonstrate a clear understanding of how *Rochester 2034* will inform this process.
- B. Description of Services: Methodology the Consultant will use to perform the services required in this RFP. The proposal should address, in detail, the tasks as described in the Scope of Services, identified by numbered or lettered sections.
- C. Consultant's Qualifications: Information about the Consultant and its qualifications for this Project. Include information about prior engagements similar to that being solicited herein, in particular, highlighting experience in cities of similar size and market as Rochester. The Consultant should have experience implementing creative and effective public engagement, education, and framing around zoning and should demonstrate knowledge of progressive codes in other cities and how those codes are working. Provide documented evidence of the Consultant's capacity to perform the work, including references, contact names, and phone numbers.
- D. Project Budget: An itemized budget including staff hours and billing rates which addresses each of the tasks identified in the Scope of Services.
- E. Project personnel: The name and resume of the Consultant's lead person for the Project. Names, resumes, and roles of all staff who will be involved in the Project. Provide data on the diversity of Consultant's overall workforce, including total number of employees, and percentages of minorities and females employed.
- F. Subcontractors: Names, resumes, and roles of sub-contractors, associates, or any non-employees who will be involved in the Project.
- G. Rochester presence: Information about Consultant's presence in the City of Rochester and/or any collaborative relationships with local firms that are to be formed for this Project.
- H. MWBE: Statement as to whether or not the Consultant 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.

EVALUATION CRITERIA

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

Proposal Quality (35): The Consultant'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 the local context and scope of services.

Experience (35): The Consultant's relevant experience in providing the same or similar services, as demonstrated by the experience of individual staff assigned to this project.

References (30): Evaluation of the Consultant's work for previous clients receiving similar services to those proposed in this RFP.

MWBE and Workforce Goals (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>.

Consultants 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. Consultants 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 Consultant shall submit an MWBE Utilization Plan on the City's form for approval by the MWBE Officer. 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 Consultant shall submit a Workforce Staffing Plan on the City's Form for review by the MWBE Officer. 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.
5. If selected, the Consultant 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 Consultant 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:

Category of Additional Evaluation Points	Additional Weight Awarded
Consultant 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%

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

Other Criteria: Other criteria may be considered and evaluated by the City if it is determined to be in the best interest of the City and the success of the Project to do so.

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.

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 Consultants as set forth above, and in such case, the City shall have no liability for any costs incurred by any Consultant.

The City may request additional information from any Consultant 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 Consultant to provide the services at the prices described therein until such time as the parties enter into a PSA.

Attachment A
The City's standard Professional Services Agreement

**AGREEMENT FOR
PROFESSIONAL SERVICES**

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

WITNESSETH:

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

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

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

SECTION 1. DESCRIPTION OF SERVICES

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

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

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:

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

SECTION 4. AUTHORIZED AGENT FOR THE CITY AND THE CONSULTANT

A. The City hereby designates:

B. The Consultant hereby designates:

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

SECTION 5. TERMINATION FOR DEFAULT

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

SECTION 6. INDEMNIFICATION

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

SECTION 7. INSURANCE

A. Workers' Compensation and Disability Benefits Insurance

This Agreement shall be void and of no effect unless the Consultant shall secure compensation for the benefit of, and keep insured during the life of this Agreement, any and all employees as are required to be insured

under the provisions of the Workers' Compensation Law of the State of New York or the state of the Consultant's residence, whichever may apply. The Consultant shall provide proof to the City, duly subscribed by an insurance carrier, that such Workers' Compensation and Disability Benefits coverage have been secured. In the alternative, Consultant shall provide proof of self-insurance or shall establish that Worker' Compensation and/or Disability Benefits coverage is not required by submitting the current and required New York State Workers' Compensation Board's form.

B. General Liability Insurance (IF APPLICABLE)

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

SECTION 8. EQUAL OPPORTUNITY 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

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 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.

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.

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

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

SECTION 10. FREEDOM OF INFORMATION LAW

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

SECTION 11. LIVING WAGE REQUIREMENTS

A. Applicability of Living Wage Requirements

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

B. Compliance

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

C. Exemption

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

SECTION 12. COMPLIANCE WITH MACBRIDE PRINCIPLES

The Consultant agrees that it will observe Ordinance No. 88-19 of the City of Rochester, which condemns religious discrimination in Northern Ireland and requires persons contracting to provide goods and

services to the City to comply with the MacBride Principles. A copy of the MacBride Principles is on file in the Office of the Director of Finance.

SECTION 13. COMPLIANCE WITH ALL LAWS

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

SECTION 14. AUDIT

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

SECTION 15. PROHIBITION AGAINST ASSIGNMENT

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

SECTION 16. OBLIGATIONS LIMITED TO FUNDS AVAILABLE

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

SECTION 17. EXTENT OF AGREEMENT

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

SECTION 18. STATUS AS INDEPENDENT CONTRACTOR

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

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

SECTION 19. LAW

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

SECTION 20. NO-WAIVER

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

SECTION 21. SEVERABILITY

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

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

CITY OF ROCHESTER

BY: _____
Lovely A. Warren, Mayor

CONSULTANT

BY: _____
Name:

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

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

Notary Public

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

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

Notary Public