

REQUEST FOR PROPOSALS FOR:

Blue Cross Arena Lobby Floor Replacement

**City Bldg. ID No. 9.39
City Project No. 23014**

Issued: February 14, 2023



**City of Rochester
Department of Environmental Services
Bureau of Architecture and Engineering**

**Holly Barrett, P.E.
City Engineer**

**Architectural Services Division
414 Andrews Street
Rochester, New York 14604**

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1.0 GENERAL INFORMATION

PROJECT TITLE: Blue Cross Arena Lobby Floor Replacement

LOCATION: Blue Cross Arena, 100 Exchange Boulevard, Rochester, NY 14614

OWNER: City of Rochester, NY

For an electronic version of this proposal, please go to the following web site:

<http://www.cityofrochester.gov/bidandrfp/>

PROJECT TIMETABLE:

It is anticipated that the design will commence in July 2023; based on this projection, schedule as follows:

- | | |
|--|-------------------|
| • RFP Release | February 14, 2023 |
| • Pre-proposal walk-thru | February 23, 2023 |
| • Deadline for questions | February 28, 2023 |
| • Response to questions submitted | March 3, 2023 |
| • Proposals due | March 10, 2023 |
| • Consultant Selection & Award Notification | March 24, 2023 |
| • City Council Approval of Agreement with Consultant | May 30, 2023 |
| • Agreement Start Date | July 7, 2023 |

Design and construction timetable:

- | | |
|--|--------------------------|
| • Site Reconnaissance & Programming | July 2023 |
| • Schematic Design | August 2023 |
| • Design Development | September 2023 |
| • Contract Documents/Permits | October 2023 |
| • Bid Phase & Selection of Construction Contractor | October – December 2023 |
| • Construction Phase Services: CA and/or RPR | January – December 2024* |

*Construction Schedule must avoid the Hockey Season/Home Games

A Professional Services Agreement resulting from this RFP shall commence at the agreement start. The term of the agreement shall extend until three (3) months after the completion of a two (2) year guarantee inspection of the project.

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.

SUBMISSION DELIVERY INFORMATION:

One (1) electronic proposal and five (5) proposal hard-copies are to be submitted no later than **Friday, March 10, 2023 at 4:00 p.m.** to:

Matthew Groth, RA, AIA
City of Rochester
Department of Environmental Services
Bureau of Architecture and Engineering,
Architectural Services
414 Andrews Street
Rochester, New York 14604

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(s):

Matthew Groth, RA, AIA
matthew.groth@cityofrochester.gov
585-428-6953

Martin Pettibone, RA
martin.pettibone@cityofrochester.gov
(585) 428-7352

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 questions submitted via e-mail to the City contact by the deadline for questions stated above. Questions and responses, notifications about timeline date changes, amendments to the RFP and other information about the RFP 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 will make every reasonable effort to keep Respondents informed about the RFP process. The City’s failure to respond in a timely fashion 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.

PRE-PROPOSAL SITE WALK-THRU:

In order to provide the City with an opportunity to discuss the RFP and Respondents with an opportunity to ask questions and clarify the RFP, a pre-proposal site visit will be held as follows:

Date: Thursday, February 23, 2023

Time: 10:00 a.m.

Location: Blue Cross Arena, 100 Exchange Boulevard, Rochester, NY 14614 (Southwest Riverside entrance)

There is no requirement to attend the pre-proposal conference and no obligation by the City to provide information from the conference to parties who fail to attend.

PROJECT BUDGET:

The project budget is \$715,000, inclusive of design, construction, fees, testing and contingency.

GENERAL

- 1) 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.
- 2) The City may request additional information from any Respondent to assist the City in making its evaluation.
- 3) 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.
- 4) 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.

2.0 PROJECT OVERVIEW

The City of Rochester, through its Architectural Services department, is soliciting proposals for architecture services for the following:

The Blue Cross Arena was constructed in 1953 with a major renovation and expansion completed in 1998. The 270,000 square foot arena is home to several professional athletic teams, including, the Rochester Americans (Amerks) of the American Hockey League and the Rochester Knighthawks of the National Lacrosse League. The arena also hosts a variety of other events including athletic events, concerts, and graduations. In 2018, Pegula Sports & Entertainment LLC (PSE) became the operator for events at the arena.

The project scope will include investigations, design, bid and construction administration services for replacement of existing floor tile in the main entrance lobby (Arena Level - Northwest), Stairs to the concourse level and the North and South ends of the concourse level. The replacement of the recessed floor mats in the main entry vestibule will also be included as part of the project.

There are restrictions to the schedule during the design and construction phase to avoid the facility during games (Amerks & Knighthawks seasons), as well as other events scheduled at the facility. Coordination with facility operator (PSE) and DES Architectural Services Division will be needed during this project.

The city is expecting creative design solutions that will address the needed improvements within budget and are implementable with the draft project schedule.

The City will provide any information pertinent to the building as available, including limited original record drawings, previous hazardous materials reports, and any available operational building system service records and warranty information. Limited AutoCad drawings of the building are available.

Photos:





3.0 DRAFT SCOPE OF SERVICES

The Consultant will enter into an agreement with the City of Rochester for the following professional services tasks that may include, at a minimum, the following:

- **General Administration**
- **Site Reconnaissance and Programming**
- **Schematic Design**
- **Design Development**
- **Contract Documents**
- **Permits**
- **Bidding Phase and Selection of Construction Contractor**
- **Construction Phase Services: Construction Admin. (CA) and/or RPR**

General Administration

The Consultant shall hold a kick-off meeting and regular review and progress meetings with the City and all other parties designated by the City for the duration of the project design and construction.

The Consultant shall notify and meet with all businesses, schools, utilities, and City agencies impacted by this project as well as various stakeholders associated with this facility, including but not limited to: The City of Rochester DES Bureau of Architecture and Engineering, Architectural Services Division, and Pegula Sports and Entertainment LLC (PSE) on an as-needed basis to assure full coordination with all aspects of design and throughout construction. Close coordination with these stakeholders is especially important for creation of the detailed construction schedule and maintenance and protection of traffic plans.

Public meetings are not anticipated for this project.

Site Reconnaissance and Programming

Perform site reconnaissance of the site to collect all physical and anecdotal information required to solidify design parameters for the project. Reconnaissance should include collection of data on existing conditions, review of previous reports, studies, record drawings, operational issues and needs, code requirements, utility capacity, etc. Consultant shall work with City and all stakeholders to identify special needs of the project that may include, but is not limited to, granting agency requirements, scheduling and utility coordination, phased construction, temporary facilities, environmental remediation, etc.

This phase shall culminate in a Program Report. *Program report to include multiple options of flooring types for the many different problem areas...in matrix form...breaking down cost, repair, maintenance, aesthetic, etc.* The report will include a summary of findings, a proposed design approach and any other appropriate information identified during reconnaissance. The report should include a list of all basic design parameters of the project. If multiple design options are identified, the consultant shall outline in detail and/or in table format the options, pros and cons and any other pertinent information. The report shall include a pre-design cost estimate based on findings of the Programming and Site Reconnaissance. Multiple options will be vetted during this and the schematic design phase.

Schematic Design

Upon receipt of written approval from the City for the Program Verification Report, the consultant shall prepare three (3) schematic design options with estimates of probable cost for review and selection by the City. Each option shall meet the design parameters identified during the programming phase. Options shall be listed in a presentable format (Matrix) to review with various stakeholders. Consultant shall work with the City and stakeholders to select preferred option, and to develop the selected schematic design to progress to the next phase.

Design Development

After the selection and City approval of the schematic design option to be progressed, the City shall issue a written order to proceed with the Design Development Phase. This phase shall include a Design Development report including drawings showing the general design and appearance of all multi-disciplinary drawings for architectural, mechanical, electrical, plumbing, etc. Outline specifications, detailed cost estimates, fixture cuts, material selections, detailed plans and details for all disciplines shall be included.

Vetting detailed layouts options, designs, technical, detailed work items and materials choices shall be considered part of the design development phase.

Contract Documents

After City approval of completeness for design development, the City shall issue a written order to proceed with finalizing the design documents and preparation of detailed contract documents in accordance with applicable City, County, State, and Federal regulations as applicable, for all elements of work including architectural and engineering plans, details, specifications and estimates.

Contract Documents shall include bidding forms, the Contract Agreement, General Conditions, using standard City Contract boilerplates, project specifications and working drawings for the project. The bid documents are to conform with City Standards wherever applicable.

The Consultant shall prepare the specifications Division One's "front end" sections along with the City's other non-technical pages standard "front end". Information on the City of Rochester's construction documents and initiatives such as incentive programs, MWBE, living wage, etc. can also be found at the following website: <http://www.cityofrochester.gov/bidandrfp/>

Permits / Environmental Quality Review

The Consultant shall prepare all necessary permit or other approval applications and obtain the required permits or approvals as applicable. Potential permitting and approval agencies include but are not limited to agencies of the City of Rochester such as the planning commission and City permits. **The Consultant shall meet the City permitting department to review the design drawings and specifications and address all department comments prior to advertising for bids.**

Bidding Phase and Selection of Construction Contractor

Prior to contract letting and subsequent to final submission, the Consultant shall make necessary revisions and last minute changes to plans, specifications, and estimates that result from the City and other agency reviews.

The City will prepare the advertisement for bids to be placed in BidNet Direct, NYS Contract Reporter and other related publications. The Consultant shall prepare addenda as needed during the bidding phase. Such addenda shall conform to the requirements of the City's Purchasing Agent.

The Consultant is to attend and assist the City in pre-bid meetings and pre-award meetings. Minutes of these meetings will be prepared by the Consultant.

The City will hold the public bid opening (letting).

The Consultant shall analyze the bid results and prepare a letter of recommendation for award. The analysis will include:

1. Verification of the low bidder.
2. Bid tabulation showing bid amounts by each bidder for each item.
3. Ensuring receipt of all required bid documents (non-collusive bid certification, debarment history certification, etc.)
4. Breaking the low bid into fiscal shares (as applicable).
5. Determining whether the low bid is unbalanced.
6. For pay items or overall bid 15% less than the Engineer's Estimate or more than 25% over the Engineer's Estimate:
 - a. Checking accuracy of quantity calculations.
 - b. Determining appropriateness of price bid for work in the item.
7. Determining whether the low bidder is qualified to perform the work.
8. This information shall be returned to the City within five (5) working days. Submit electronic and paper copies of the bid tabulations, share breakdown, bid analysis, and letter of award recommendation.

Product Deliverables Electronic Submission Requirements

For all phases noted above, in addition to hard copies of requested materials, at each phase of the project, the Consultant shall provide a PDF file of all deliverables for that phase. At bidding phase, the Consultant shall provide one (1) PDF file of all bid drawings, one (1) PDF file of all specifications, one (1) PDF file of the final estimate, and one (1) PDF file of the Contract Book front end (as applicable). Drawings and specifications shall be consistent in format and headings, and shall include a table of contents, with all pages numbered.

Construction Administration (CA) Phase Services

The Consultant shall provide **Engineering and Architectural services** for the following:

1. Provide, during the construction contract to be entered into by the City for the construction of this Project, to the satisfaction of the City, periodic engineering consultation services to verify adherence to the design and to assist in the administration of the construction until final completion and acceptance by City.

2. The Consultant shall attend and assist the City in a City held pre-construction conference. The City will hold the pre-construction meeting in conjunction with the Contractor's notice-to-proceed notice for the project. Minutes of these meetings will be prepared by the Consultant.
3. Check and approve shop drawings for conformance with Project design and compliance with the information given by the Contract Documents. There shall be no change in the scope of the work or in materials specified by the Contract Documents until approval for such change has been given in writing by City.
4. Visit the job whenever requested by the City for the purpose of clarifying or interpreting any phase of the work.
5. Conduct, in company with the City and others designated by the City, a final inspection of the Project for conformance with the design of the Project and compliance with the information given in the Contract Documents.

Construction Resident Project Representation (RPR)

If requested, the Consultant shall furnish during the construction period, a Resident Project Representative. All Resident Project Representation work shall be performed under the supervision of a New York State licensed professional engineer of the Consultant **and the Architect/Engineer of Record**. The qualifications of all Consultant personnel doing work under this Agreement shall be subject to the review and approval of the City.

The Consultant shall report regularly to the City **and the Architect/Engineer of Record** on the progress and quality of the work. The Consultant shall conduct on-site observations of the general progress of the work and shall consult with the City and the contractor giving opinions, suggestions, and recommendations, based on the Consultant's observations, as to any defects or deficiencies in the contractor's work.

The Consultant shall perform technical inspection as directed by the **Engineer of Record** in general furtherance of the duties set forth below.

The specific duties of the Resident Project Representative shall include, but not be limited to, the following:

1. Quality Control
 - a. Execute quality control and inspection measures in accordance with project specifications, and coordinate special inspection and testing agencies activities.
 - b. Coordinate quality control with Architect/Engineer of Record.
2. Record Assembly
 - a. A list of the Contractor's suppliers and subcontractors.
 - b. A record of field samples and field samples
 - c. A complete set of contract documents with all revisions and agenda.
 - d. Shop drawing and submittal logs and a complete set of approved shop drawings.
 - e. A complete set of all correspondence and written records regarding the project.
 - f. Copies of all guarantees, certifications and operation manuals for the project.
 - g. A copy of all project schedules of all contractors as amended.
 - h. A filed and labeled set of preconstruction and construction photographs.
3. Observation
 - a. On-site observations of the work in progress.

- b. Attend and chair pre-construction conferences and job meetings.
 - c. Consult with the City prior to and observe all on-site tests.
 - d. Observe such off-site operations as directed by the City.
 - e. Observe that all permits and licenses which are necessary have been obtained.
 - f. Conduct a final inspection of the project
- 4. Liaison
 - a. Transmit to the contractor the Designer's interpretation of the contract.
 - b. Transmit all modifications to drawings for creation of a set of as-built drawings.
 - c. Coordinate and monitor all material testing
 - d. Coordinate work with construction that is occurring on other adjacent projects
 - e. Receive from the Contractor weekly certified payroll records.
- 5. Construction Review
 - a. Construction schedules from each contractor.
 - b. Payment requisitions from each contractor for each fiscal share of the project.
 - c. Requests of the Contractor for interpretation of the Contract Documents.
 - d. Claims by each contractor.
 - e. Contractor requests regarding proposed changes to the contract documents.
 - f. Change orders including recommendations
 - g. Construction schedules and proposed work locations of any contractor.
- 6. Record Creation: The Consultant shall create and maintain the project records. Upon completion of the project the Consultant shall deliver a bound, categorized set of these records which shall include the following:
 - a. A list of all required permits, licenses, reviews and approvals
 - b. A daily diary or log book
 - c. Weekly and monthly reports
 - d. Monthly progress payments (and final payment)
 - e. Change Orders as required on forms approved by the City
 - f. All modifications to construction schedules for the project
 - g. Minutes of all meetings
 - h. A final punch list of all items which remain incomplete
 - i. A guarantee punch list
 - j. Marked up prints, drawings and other data indicating all modifications
 - k. Labeled pre-construction and construction photographs
 - l. Project unit quantities apportioned by final share
 - m. Water service and sewer lateral tap cards
 - n. All permits of any contractor doing work within the Project limits
 - o. Unless otherwise specified during project scoping, the Consultant shall submit one set of **mylar** As-Built Plans, certified by a licensed professional engineer and/or architect licensed in the State of New York, as applicable. Submission shall include three CDs with electronic versions of the As-Built Plans in both **CAD** and **PDF** formats.

The CA or RPR representative is hereby authorized to stop work on all or part of the Project for up to twenty-four hours, without prior consultation with the City and for any reason which the professional judgment of the Consultant requires such stoppage. Upon issuing such stop work order, the Consultant shall immediately consult with the City to resolve the problem(s) which lead to the stop work order.

4.0 PROPOSAL REQUIREMENTS

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

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

The Respondent selected by the City will be required to enter into a Professional Services Agreement (PSA) with the City. The establishment of a PSA is contingent upon approval by City Council for all Agreements in excess of \$10,000 or for a period of more than one year and upon the availability of funds for such an agreement. Unless otherwise stated in the proposal, the Respondent's response to this RFP shall be deemed its acceptance of the terms of this PSA. (Note: Attention is directed to the City's Living Wage requirements, MWBE goals and minority workforce goal).

Respondents shall provide sufficient information in their written proposals to enable the City review team to make a recommendation to the Mayor. The City reserves the right to invite any or all Respondents to an interview to discuss their proposal. Any expenses resulting from such an interview will be the sole responsibility of the Respondent. The City is under no obligation to select any of the responding 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.

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.

Consultant Information Form: Complete the form provided in Exhibit D. Verify consultant information listed on New York State Department of State database is correct. Also provide local contact information.

Proposal Evaluation Criteria

Proposals must be succinct and all pages must be numbered. **In no case shall specified page maximums in any section be exceeded.** Boilerplate and glossy promotional materials are discouraged; any such materials deemed necessary should be included as a separate appendix and may or may not be considered as part of the evaluation. Consultant selection will be based on a rating of consultant proposals. **The criteria will be as follows: Firm Qualifications (10% Score), Technical Proposal (40% score), and Project Team Qualifications (50% score). In addition to this,**

Respondents can also qualify for an additional 10% as a City Firm, an additional 10% as a MWBE firm, an additional 5-10% for MWBE sub-consultant utilization, and an additional 10% for meeting minority workforce goals. Proposers should understand that the City's MWBE and Workforce Goals apply to and will be incorporated into any agreement resulting from proposals submitted for this RFP. Please note that all consultants shall submit as part of the proposal a workforce utilization plan regardless of percentage or whether goals are met. Refer to Section 5.0 City Provisions for details.

The Technical Proposal (with Transmittal letter) shall address the following at a minimum:

Firm Qualifications (10% Score)

- 1) Firm and Sub-Consultant Identification & Qualifications (6 pg. max): A description of the firm and sub-consultants, including the number of employees and their disciplines, their philosophy on serving clients, location, and the number of years the firm has been in business of conducting the described services.
- 2) Rochester presence: Information about Respondent's presence in the City of Rochester and/or any collaborative relationships with local firms that are to be formed for this Project.
- 3) MWBE: Statement as to whether respondent and/or specified sub-consultants are on the New York State Certified MWBE list.
- 4) Relevant Firm and Sub-Consultant Experience, Recent Clients, & Relevant Projects for this type of work (10 pg. max): Include three (3) recent clients for whom the consultant has provided services *relevant* to those required herein. The list should include name, address, and contact information of the client contact person. Include a list of *relevant* projects including client name and contact information, ***specific dates*** when work was performed and the type of work services performed. The proposal should showcase relevant firm experience for each area of expertise the City is requesting within RFP.

Technical Proposal (40% score)

- 1) Project Understanding and Approach (8 pages max): A demonstration that the Consultant understands the proposed project and its various tasks shall be included. Provide a detailed description of the consultant's proposed unique approach. This portion of the proposal should communicate a complete in-depth understanding and approach for all services to be provided, including all multi-disciplinary architectural, engineering, landscape architectural, site planning services, etc. as applicable. This portion should communicate the team's knowledge and experience with the City's general project policies and procedures as applicable.
- 2) Technical Approach, Scope of Work, and Schedule (6 pages max): Provide a summary of scope of services for the completion of the tasks identified in this RFP. Provide a proposed MWBE Utilization Plan. The consultant may propose alternate tasks that will meet the project objectives. A detailed Gantt chart schedule for completing the tasks outlined in the RFP along with key study tasks should be included.

Project Team Qualifications (50% score)

- 1) Team Organization: Makeup of the project team, including sub-consultants, with a detailed organizational chart. Include a description of how the project will be organized, identification of the **key** project team members by name, field of expertise, specific responsibilities on the

project and the ***estimated number of hours each specific individual will work on the project.*** This section and the resumes below should showcase, as applicable, team member's relevant experience in **floor systems** and familiarity with the City's general project policies and procedures.

- 2) Team Resumes (1 page per team member): Include for all **key** project team members that are shown on organizational chart, including a list of *relevant* projects only, with summaries of the work they specifically performed and approximate **dates** when work was performed. Team resumes should showcase relevant experience as it relates to this project and with the City's general project policies and procedures.
- 3) Any other factors that would be helpful to the Selection Committee in evaluating the consultant for this project.

Basic Services Fee/hours

No fees or wages shall be submitted with this proposal. **An itemized breakdown of projected FTE (full time equivalent) estimated staff hours for the prime consultant and all sub-consultants must be clearly defined. All sub-consultants that are on the New York State Certified MWBE list should be clearly showcased. This will be used in evaluating additional weightings as outlined in Section 5.0 City Provisions.**

Provide direct technical and professional personnel hour subtotals for each of the following tasks as identified in the draft scope of services for this project:

- A. Site Evaluation and Programming
- B. Schematic Design
- C. Design Development
- D. Contract Documents
- E. Bidding Phase Services
- F. Construction Phase Services: Construction Administration and/or RPR
- G. Commissioning
- H. Environmental Quality Review
- I. Asbestos Survey
- J. Permits

The proposal SHALL NOT include any proposed design fees, however the City does require that the proposal include the proposed staff, specific staff assignments and MWBE utilization plan. **The table/summary should be detailed such that a reviewer can get a good feel for the tasks involved and the individuals who will be performing each specific work item.** The firm deemed to be the best qualified overall for this project by evaluation committee will be asked, at a later date, to submit salary schedules, staffing tables, non-direct costs, subcontractor costs, total project cost summaries and technical assumptions.

Direct Reimbursable Expenses

The draft list of expenses (with no costs or fees) shall be identified for the following expenses:

1. Sub-consultants
2. Environmental/Laboratory testing

3. Supplies
4. Travel
5. Rental equipment (if required)
6. Printing/Duplication
7. Destructive Testing

The Consultant shall provide duplication services for bid documents and any addenda as a reimbursable expense. Estimated 8 hard copies of the drawings and project manual is needed.

Eligibility Qualifications and Requirements

The City of Rochester requires that all bidders and sub-contractors present evidence of experience, ability, and financial standing. Designated firm(s) must be able to submit proof of authority to practice engineering/surveying in New York State immediately upon designation. The City requires that all bidders and sub-consultants, at the time of entrance into agreements with the City, present information that includes insurance certificate(s) that prove both professional and general liability, and Worker's Compensation coverage. The certificates must list the City of Rochester as an additional insured.

5.0 City Provisions

Living Wage Requirements with Respect to Applications or Proposals for Service Contracts

If the amount of the proposal and/or subsequent contract totals \$50,000 or more during the period of one (1) year, the contractor and any approved subcontractors are required to pay covered employees a living wage, as defined in City Code § 8A-18. Proposers must include with their proposal a written statement that they are committed to pay all covered employees the living wage at a minimum, and to follow all requirements of City Code § 8A-18. A full copy may be found on the city website at <https://www.ecode360.com/8673324>.

Local Preference

Pursuant to City Council Resolution No. 91-25, the City shall, when awarding professional services agreements, give preference to organizations located within the City of Rochester or Monroe County. The use of local individuals or companies as sub-contractors is also encouraged. Non-local firms may wish to consider partnerships or other collaborative arrangements with local firms as a strategy to address this criterion.

City Funded Projects

Firms who respond directly to this proposal and are located within the City of Rochester limits will be awarded an additional 10% weighting as part of the evaluation process.

MWBE Goals

City Council Ordinance No. 2018-54 establishes Minority and Women Business Enterprises (MWBE) utilization goals for City professional service agreements. The MWBE utilization goal for this contract is 30% in aggregate, with sub goals of 15% M (Minority) and 15% W (Woman owned), based on the total dollar amount of the Professional Services fees paid for this agreement. During the course of completing work under this agreement, the consultant is expected to attempt to achieve these goals through use of state certified MWBE subcontractors, if the consultant itself is not a state certified MWBE.

Companies who submit proposals to this RFP shall receive additional evaluation weighting points as follows:

Responding Company	Weight Awarded
MWBE firms who respond directly to this proposal and are on the New York State Certified MWBE list	10%
Firms who utilize 10-20% MWBE sub-consultants that are on the New York State Certified MWBE list	5%
Firms who utilize more than 20% MWBE sub-consultants that are on the New York State Certified MWBE list	10%

If your firm is not a state certified MWBE, you are encouraged to employ sub-consultants who are New York State-certified MWBE's to the greatest extent possible. New York State-certified MWBE firms included in the City's MWBE Directory, found on the City's web site located here: <http://www.cityofrochester.gov/mwbe/> will receive preference. Only the use of New York State-

certified MWBEs will count towards meeting the MWBE goals for this project. The NYS MWBE Directory is located here: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

In your proposal, be sure to indicate if your firm is an MWBE, and if your firm will be utilizing any MWBE sub-consultants. List the name and category (M) or (W) or your firm and each proposed sub-consultant, and the amount or percent the total proposal fee that will be subcontracted to each sub-consultant

MWBE forms for Public Works and Professional Services Consulting Contracts shown on the City's web site referenced above shall be required and incorporated into the agreement by reference. For informational purposes, Exhibit A provides the MWBE Form A, MWBE Utilization Plan – Professional Services. This form shall be required to be completed by the selected consultant as part of the contract review and approval process and shall be incorporated into the Agreement.

Minority Workforce Goals

City Council Ordinance No. 2018-54 establishes minority workforce utilization goals for City professional service agreements. The aggregate workforce goals shall be 20% minorities and 6.9% women. For professional services consulting contracts, responding companies who demonstrate that they meet or exceed both of these aggregate goals shall receive additional evaluation weighting points of 10%. The goals apply to consultant and/or sub-consultant staff who work on this contract.

In your proposal, be sure to indicate the total number of hours that your proposal is based on, and the number of hours that are projected to be worked by minority (M) and female (W) employees, as well as the percentage of total hours to be worked by M and W employees. If sub-consultants will be used, similar workforce participation information should be provided for each sub-consultant. The aggregate workforce goals for this contract may be met by any combination of prime and sub-consultant employees.

Workforce forms for Public Works and Professional Services Consulting Contracts shown on the City's web site referenced above shall be required and incorporated into the agreement by reference. For informational purposes, Exhibit B provides the Professional Consultant Services Workforce Staffing Plan form. This form shall be required to be completed by the selected consultant as part of the contract review and approval process and shall be incorporated into the Agreement.

MWBE and Workforce Reporting

The selected consultant will be required to submit a workforce utilization staffing plan for meeting the workforce goals, and an MWBE utilization plan, on forms designated by the City. The plan documents will be incorporated into the agreement. The consultant shall also file City provided reporting forms quarterly, or as otherwise required by the City, to verify that MWBE goals and minority workforce goals incorporated into the agreement are achieved during the term of the agreement. Examples of all required forms are on the City's web site at: <http://www.cityofrochester.gov/mwbe/>

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.

APPENDIX A

FLOOR PLANS

1 FLOOR PLAN - ARENA LEVEL - NORTHEAST
SCALE: 1/8" = 1'-0"



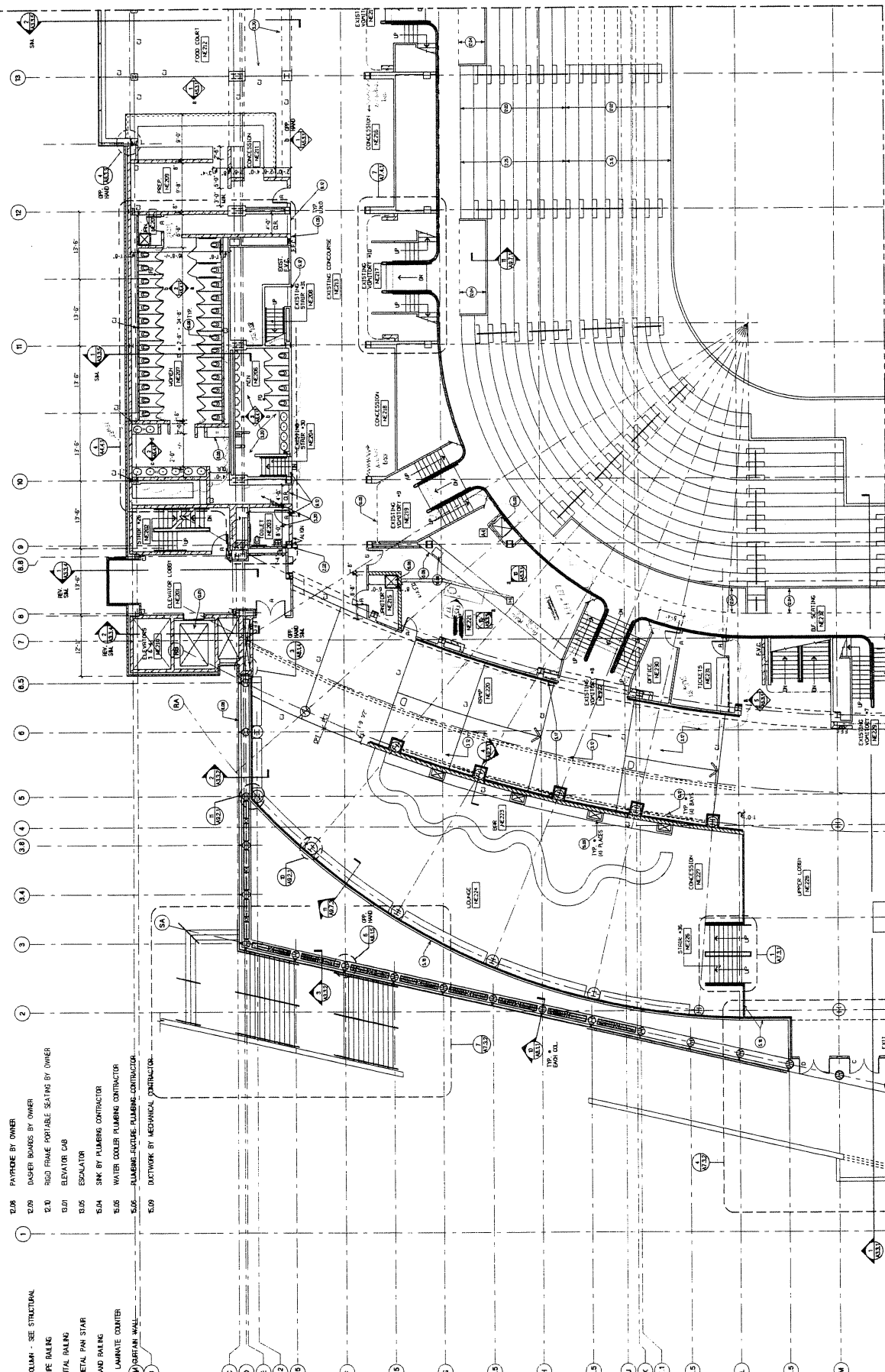
10. Provide 1/2" O.D. casto walls around three sides of new 48 x 18 mechanical deck floor to support 12" O.D. casto walls around four sides of existing 48 x 18 mechanical deck floor to provide fourth wall of casto walls.

At Star No. 33 NW102, revise "38" to read "35" at 6.27' and the next landing elevation to read "52.1 - 2' 9 5/16". Revise stairs and railings accordingly.

Label Elevation NW106 as Alternates No. 7. Refer to Section 01100 for description of the scope of work.

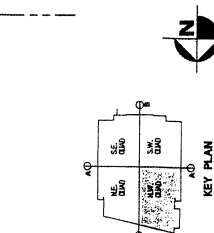
KEYNOTES:

- 2.02 EXISTING COLUMN COVER TO REMAIN
- 2.06 EXISTING STEEL TO REMAIN
- 2.25 EXISTING SEATING DECKS
- 3.12 CONCRETE FILL
- 3.15 PRECAST CONCRETE STAIRS
- 4.05 8" OAU
- 5.03 STEEL COLUMN - SEE STRUCTURAL
- 5.17 STEEL PIPE RAILING
- 5.18 ORNAMENTAL RAILING
- 5.19 STEEL METAL PIN STAIR
- 5.23 STAIR HAND RAILING
- 6.06 PLASTIC LAMINATE CENTER
- 8.08 ALUMINUM CURTAIN WALL
- 9.12 MARBLE THRESHOLD
- 10.12 FUTURE ADVERTISING SIGNAGE BY OWNER
- 12.02 NEW SEATING BY SEATING CONTRACTOR
- 12.03 REFURBISHED SEATING BY SEATING CONTRACTOR
- 12.04 PORTABLE ISSUES BY OWNER
- 12.06 PAYPHONE BY OWNER
- 12.08 CASSETT BOARDS BY OWNER
- 12.10 RIGID FRAME PORTABLE SEATING BY OWNER
- 12.11 ELEVATOR CAB
- 12.15 ESCALATOR
- 15.04 SINK BY PLUMBING CONTRACTOR
- 15.05 WATER COOLER PLUMBING CONTRACTOR
- 15.06 PLUMBING-SEE PLUMBING CONTRACTOR
- 15.08 DUCTWORK BY MECHANICAL CONTRACTOR



- 1. Drawing A2.3.1 is a plan view of the floor to be built in Room 1000. It shows the location of the 12 existing columns and the 12 new columns to be added. The drawing is not to scale.
- 2. Drawing A2.3.1 is a plan view of the floor to be built in Room 1000. It shows the location of the 12 existing columns and the 12 new columns to be added. The drawing is not to scale.

1 FLOOR PLAN - CONCOURSE LEVEL - NORTHEAST
SCALE: 1/8" = 1'-0"



1 FLOOR PLAN - CONCOURSE LEVEL - NORTHWEST
SCALE: 1/8" = 1'-0"

1 FLOOR PLAN - CONCOURSE LEVEL - NORTHWEST
SCALE: 1/8" = 1'-0"

EXHIBIT A

MWBE PARTICIPATION PLAN FORMS

CITY OF ROCHESTER
MWBE FORM A
MWBE UTILIZATION PLAN – PROFESSIONAL CONSULTANT SERVICES

MWBE GOALS: MBE 15%, WBE 15%

Project Name _____ **Agreement #** _____

Consultant _____ **Total Contract Amount* \$** _____ **Original Plan** ☐ **Revised Plan** ☐

MWBE Business Name	M B E	W B E	Scope of Work to be Performed	Projected Start Date	Projected End Date	Total Amount of MWBE Subcontract	Percentage of Total Contract*
TOTAL:							

*Total Contract equals contract award plus all change orders

Authorized Person _____ **Title** _____ **Phone** _____

Signature _____ **Date** _____ **Email** _____

Approved by MWBE Officer _____ **Date** _____

EXHIBIT B

WORKFORCE STAFFING PLAN FORM

City of Rochester
Professional Consultant Services Workforce Staffing Plan

WORKFORCE STAFFING PLAN FOR PROFESSIONAL CONSULTANT SERVICES											
PROJECT NAME:						DATE:				MINORITY GOAL	FEMALE GOAL
CONSULTANT:						AGREEMENT NUMBER:				20.00%	6.90%
CLASSIFICATION	NUMBER OF EMPLOYEES WORKING ON PROJECT									MINORITY %	FEMALE %
	TOTAL			MINORITY			NON-MINORITY				
	M	F	Non-Binary	M	F	Non-Binary	M	F	Non-Binary		
Officials, Administrators											
Professionals											
Technicians											
Sales Workers											
Office, Clerical											
Craft Workers											
Laborers											
Temporary, Apprentices											
Other (Specify)											
TOTAL WORKFORCE											

Prepared by (Signature):	Title:	Phone:
Printed Name:	Date:	Email:

Reviewed by MWBE Officer:	Date:
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EXHIBIT C

DRAFT AGREEMENT

AGREEMENT FOR PROFESSIONAL SERVICES

Project Name: Blue Cross Arena Lobby Floor Replacement
Project No.: 23014
Project Scope: Design Phase and Construction Administration Services
Consultant Name:
Agreement #: _____
Authorizing Ordinance:

I N D E X

ARTICLE I

Part 1. DESCRIPTION OF PROJECT

Part 2. DESCRIPTION OF PROFESSIONAL SERVICES

Section 1.201 General
Section 1.202 Basic Services
Section 1.203 Additional Services
Section 1.204 Reimbursable Services

Part 3. SUBCONTRACTS

Part 4. CITY RESPONSIBILITIES

Part 5. FEES

Section 1.501 General
Section 1.502 Fee for Basic Services and Reimbursable Expenses
Section 1.503 Fee for Additional Services
Section 1.504 Fee Administration

Part 6. TERM

Part 7. TIME OF PERFORMANCE

Part 8. REMOVAL OF PERSONNEL

Part 9. AUTHORIZED AGENT

Part 10. OWNERSHIP OF DOCUMENTS

Part 11. CONFIDENTIALITY

Section 1.1101 General
Section 1.1102 Freedom of Information Law

Part 12. ORGANIZATIONAL CONFLICT OF INTEREST

ARTICLE II

- Part 1. QUALIFICATIONS, INDEMNITY AND INSURANCE**
Section 2.101 Consultant's Qualifications for Duties, Compliance and Permits
Section 2.102 Consultant's Liability
Section 2.103 Professional Liability Insurance
Section 2.104 General Liability Insurance
Section 2.105 Worker's Compensation and Disability Benefits Insurance
Section 2.106 Copyright or Patent Infringement
Section 2.107 No Individual Liability
- Part 2. SPECIFIC DESIGN RESTRICTIONS**
Section 2.201 Environmental Policy
- Part 3. EMPLOYMENT PRACTICES**
Section 2.301 Equal Employment Opportunity and MWBE and Workforce Utilization Goals
Section 2.302 Title VI of the Civil Rights Act of 1964
Section 2.303 The MacBride Principles
Section 2.304 Compliance with Labor Laws
Section 2.305 Living Wage Requirements
- Part 4. OPERATIONS**
Section 2.401 Compliance with Air and Water Acts
Section 2.402 Political Activity Prohibited
Section 2.403 Lobbying Prohibited
Section 2.404 Anti-Kickback Rules
Section 2.405 Withholding of Salaries
Section 2.406 Discrimination Because of Certain Labor Matters
Section 2.407 Status as Independent Contractor
- Part 5. DOCUMENTS**
Section 2.501 Patents and Copyrights
Section 2.502 Audit
Section 2.503 Content of Sub-Agreements
- Part 6. TERMINATION**
Section 2.601 Termination for Convenience of the City
Section 2.602 Termination for Default
- Part 7. GENERAL**
Section 2.701 Prohibition Against Assignment
Section 2.702 Compliance with All Laws
Section 2.703 Successors
Section 2.704 Interest of City and Consultant in Contract
Section 2.705 Permits, Laws and Taxes
Section 2.706 Obligations Limited to Funds Available
Section 2.707 Extent of Agreement
Section 2.708 Law and Forum
Section 2.709 No Waiver
Section 2.710 Severability

ATTACHMENTS

Schedule A	Fee Schedule
Appendix I	Hourly Rate Schedule
Exhibit A	MWBE Form A - MWBE Utilization Plan
Exhibit B	Workforce Staffing Plan
Exhibit C	Staffing Assignment, Estimated Hours & Technical Assumptions (if applicable)

DRAFT

AGREEMENT

THIS AGREEMENT, entered into on the ____ 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 _____ **Consultant name** _____ with offices at _____ **address, ZIP** _____, hereinafter referred to as the "Consultant".

WITNESSETH:

WHEREAS, the City through the Department of Environmental Services, Bureau of Architecture and Engineering desires to secure the professional services of the Consultant for the purpose of providing design phase and construction administration services, hereinafter referred to as the "Project", and

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

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

ARTICLE I

ARTICLE I, Part 1. DESCRIPTION OF PROJECT

Section 1.101 Description of Included Facilities

The facilities that are to be included in the Project are:

City Building No. 9.39 Blue Cross Arena, 1 War Memorial Square, Rochester, NY 14614

Section 1.102 General Description

The Consultant is to provide: Architectural & Engineering Services

Work tasks under this agreement shall be divided as noted below:

- A. Programming
- B. Schematic Design
- C. Design Development
- D. Contract Documents
- E. Bidding Phase Services
- F. Commissioning (If Requested)
- G. Construction Phase Services
 - a) Construction Administration
 - b) Resident Project Representation
- H. Reimbursable Services

The scope of work includes all tasks identified in Schedule A.

ARTICLE I, Part 2. DESCRIPTION OF PROFESSIONAL SERVICES

Section 1.201 General

The Consultant shall provide the following services:

- A. Provide all Basic Services required for this Project including, but not limited to Existing Site Reconnaissance Survey, Schematic Design, Design Development, Contract Documents, Bid/Award Phase services, Construction Administration Services including Resident Project Representative RPR services, as applicable.
- B. The Consultant is to have on its staff and is to retain during the performance of its services all appropriate professional personnel necessary to completely and accurately perform the work and services required. Where the design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work are included in the Project, such must be performed by an Architect or Engineer registered to practice in the State of New York. The Consultant shall provide a list of its employees assigned to the project which provides the employee's name and title prior to the start of work. The Consultant shall notify the City prior to changing project personnel. No changes in project managers will be made without approval of the City.
- C. The Consultant is responsible for the professional quality, technical accuracy, timely completion and appropriate coordination of all designs, drawings, specifications, testing, reports and other services furnished under this Agreement. The Consultant bears all responsibility for any errors, omissions or other deficiencies in the Consultant's designs, drawings, specifications, reports and other services and shall correct or revise any such errors, omissions or other deficiencies without additional compensation.
- D. The Consultant agrees that, where the Project will involve the design or substantial renovation, relocation, or reconstruction of, or will involve the new construction of, a building, facility, street, sidewalk, park, mall or other public area, then it will incorporate into its design, study and other work those facilities or improvements reasonably required to give handicapped persons access to and enjoyment of those facilities. Such facilities or improvements shall conform to ANSI/ICC A117.1 – 2009 "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped". Such facilities and improvements for the handicapped shall include, but shall not be limited to, access ramps to buildings, sufficiently large elevators, support rails, rest room improvements, sidewalk curb cuts at corners, and additional lighting that are reasonably a part of and necessitated by the Project.
- E. Develop and submit to the City a detailed plan and schedule for the orderly and timely completion of the requirements of this Agreement. The Consultant shall utilize appropriate graphics and illustrate the plan, i.e. bar charts, etc. All pertinent dates of meetings and submittals shall be subsequent to execution of this Agreement.
- F. The Consultant shall maintain an up-to-date, orderly assembled file of Project notes and records, including a history of design of the Project. Notes shall include correspondence, calculations, documentation, references and other material necessary for the completion of the Project.
- G. Report regularly to the City upon the progress and quality of the work. The Consultant shall conduct regular (as specified) on-site observations of the general progress of the work and shall consult with the City designated representative and the contractor giving its opinions and suggestions based on its observations, as to any defects or deficiencies in the contractors' work.
- H. Prepare and furnish to the City within one week, minutes of any meetings held. Weekly, bi-weekly, or monthly progress reports may be requested.

- I. If requested, furnish during the construction period, a full-time Resident Project Representative (RPR), who shall be under the supervision of a licensed professional engineer or architect. The qualifications and selection of the resident inspector shall be subject to the approval of the City.
- J. The Consultant's obligations under this Section are in addition to the Consultant's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that the City may have against the Consultant for faulty materials, equipment or work.
- K. The Consultant shall furnish promptly all equipment, labor and materials needed to perform in a safe and convenient manner, such inspections as the City requires.
- L. The Consultant shall keep the City informed of the progress of the work so that the City may inspect the Consultant's work as determined necessary by the City. In particular, the Consultant shall provide the City with at least forty-eight (48) hours notice prior to performing work which would prevent proper inspection of previously completed work.
- M. Provide Reimbursable Services enumerated herein if approved in writing by the City.
- N. Provide Additional Services, if required, at the written request of the City.

Section 1.202 Basic Services

A. Programming

1. Consult with the City and other necessary and appropriate government units, utilities, organizations, and persons in order to ascertain the requirements of the Project, review the program prepared by the City and make necessary revisions herein.
2. Evaluate program data to include, but not be limited to, meetings with City staff and users to review, evaluate and establish their divisional space and functional needs (layouts, furnishings, equipment storage, etc.).
3. Develop relationship diagrams, highlighting priority interactions between various facility users. Review program areas for ingress and egress conditions and patterns. Learn the responsibilities and concentrated use patterns of particular programs, recommending appropriate staging of the construction phases while keeping programs operational.
4. Establish any building operational issues that may affect cost; i.e., security, operating hours, communication needs, etc.
5. Investigate, analyze and measure the existing facilities to the extent necessary to determine the information necessary for the work of the Project.
6. Measure and verify roof plans and equipment locations, prepare base plans which plot planimetric, topographic, and utility details of the site.
7. Prepare a Program Report for review and approval by the City. The report should include a list of all basic design parameters of the project, revised program tabulations, diagrams, site analysis and conclusions derived from data analysis. Provide schedule evaluation, preliminary project budget and opinion of probable construction cost for the project.

B. Schematic Design

1. Upon receipt of written approval from the City, prepare up to three schematic designs for review and approval by the City. The schematic drawings shall show the proposed design character and the location of major facilities and design features of the Project.
 - a. A detailed cost estimate separating labor and materials shall accompany the schematic drawings for each of the design options developed.
 - b. Include concept elevations and drawings, adjacency drawings and code review drawings, and environmental remediation plans, if required.
2. Provide design progress reviews at 50% and 95% to the City and other authorities as required.
3. Submit the final schematic design, satisfying the City's requirements.
4. Prepare presentations as necessary to representatives of the City, to satisfy the City and all other required agencies.

C. Design Development

1. Submit detailed design reports including drawings showing the general design and appearance of all structures, facilities, and utilities to be provided, including a site plan showing the proposed location and arrangement of elements on the site and the materials to be used. The rationale for selection should be outlined; if alternate layouts, designs and materials exist, the alternatives are to be a recommendation of the best alternative.

The reasons for this selection should be outlined. Revise designs incorporating any modifications and submit to the City within a mutually agreed period of time
2. Provide an outline of specifications (titles, section numbers) for the project.
3. At the completion of the design development phase, the Consultant shall provide an itemized construction cost estimate based on information available, separating labor and materials.
4. Provide architectural and engineering design drawings which shall include all Project components and accessories, including system elevations, plans, sections, notes, as applicable.
5. Provide a preliminary construction schedule showing, at minimum, target bid date and construction duration.
6. Present the City with a Design Development Report. Such report shall include approved alternatives and recommended selection of alternatives.
 - a. Submit detailed design drawings showing the general design, outline specifications, revised cost estimates, material cut sheets and material selection.
7. Prepare the necessary documentation for the local and State environmental reviews and assist in the environmental review process, in accordance with 6NYCRR, Part 617 - the State Environmental Quality Review Act (SEQR).

D. Contract Documents

1. Perform the final design and the preparation of detailed contract documents in accordance with applicable City, County, State, and Federal regulations ("codes") for all elements of work including:
 - a. Architectural Designs, roof plan & building elevations with mylar cover sheet
 - b. Structural Designs (if required)
 - c. Other Designs: Abatement, environmental, interior design (if required)
2. Provide design progress reviews with the City and other authorities as required. Provide progress prints, specifications, and revised cost estimates at 50% and 95% intervals for the City's review and approval.
3. Provide the City with a revised cost estimate for the Project based upon completed Contract Documents.
4. Prepare for approval by the City, the Contract Documents including bidding forms, the Contract Agreement, and General Conditions, using standard City Contract Documents, project specifications and working drawings for the Project. The Bid Documents are to conform with City standards wherever applicable.
 - a. Prepare a list of all permits, licenses, reviews, and approvals required by Contract Documents.
 - b. Provide the City contract documents and specifications in both paper and electronic (pdf and AutoCAD) format.
5. The final design and construction plans, shall be certified by an engineer, architect and/or landscape architect registered in the State of New York, as applicable. The Consultant shall incorporate into the final Contract Documents for the Project any comments or changes resulting from all design progress reviews.

E. Bidding Phase Services

Prior to contract letting and subsequent to bid document submission, the Consultant shall make necessary revisions and last minute changes to plans, specifications, and estimates that result from the City and other agency reviews.

The City shall prepare and distribute a bid invitation to select a construction contractor and draft advertisements to bid to be placed in BidNet Direct, NYS Contract Reporter and other related publications.

The Consultant shall prepare addenda as needed during the bidding phase. Such addenda shall conform to the requirements of the City's Purchasing Agent. The Consultant shall submit up to 10 copies of the addenda to the City and designated utilities and agencies.

The Consultant is to attend and assist the City in pre-bid meetings and pre-award meetings. Agenda and minutes of these meetings will be prepared by the Consultant.

The City will hold the public bid opening (letting).

The Consultant shall analyze the bid results and prepare a letter of recommendation for award. The analysis will include, as applicable, the following:

- Verification of the low bidder.

- Bid tabulation showing bid amounts by each bidder for each item.
- Ensuring receipt of all required bid documents (non-collusive bid certification, debarment history certification, MWBE, apprenticeship, bonding, etc., as applicable)
- Breaking the low bid into fiscal shares.
- Determining whether the low bid is unbalanced.
- For pay items bid 15% less than the Engineer's Estimate or more that 25% over the Engineer's Estimate:
 - Checking accuracy of quantity calculations.
 - Determining appropriateness of price bid for work in the item.
- Determining whether the low bidder is qualified to perform the work.
- This information shall be returned to the City within five (5) working days. Submit up to 10 copies of the bid tabulations, share breakdown, bid analysis, and recommendation.

F. Commissioning (If Requested)

The commissioning agent will develop and coordinate the execution of the testing plan, observe and document performance of the Project improvements in accordance with the Contract Documents.

1. Develop and coordinate the execution of the testing plan, observe and document performance of the Project improvements, system integration and functionality in accordance with the documented design intent of the Contract Documents.
2. Set up and conduct scoping meeting(s) with commissioning team members.
3. Review submittals and startup procedures.
4. Develop and implement specific equipment and system functional performance testing to ensure new work is properly integrated.
5. Witness testing of selected pieces and/or systems in the presences of City personnel, and coordinate re-testing, if required.
6. Pre-approve and oversee staff training and system documentation.
7. Work with contractor to compile, organize and index the commissioning data by equipment into three (3) sets of labeled, indexed, and tabbed three ring binders and deliver to the City.
8. Prepare Final Commissioning Report to be submitted in writing to the City.
9. Review and approve Operation and Maintenance Manuals from the contractor for completeness.

G. Construction Phase Services

a) Construction Administration

The Consultant shall provide the following services:

1. Provide, during the construction contract to be entered into by the City for the construction of this Project, to the satisfaction of the City, periodic architectural/engineering consultation services to verify adherence to the design and to assist in the administration of the construction until final completion and acceptance by City.
2. Check and approve shop drawings for conformance with Project design and compliance with the information given by the Contract Documents. There shall be no change in the scope of the work or in materials specified by the Contract Documents until approval for such change has been given in writing by City.
3. Visit the job whenever requested by the City for the purpose of clarifying or interpreting any phase of the work.

4. Participate in a preconstruction conference after receipt of a written request to do so from the City. Such preconstruction conference shall include at least the Consultant, or its authorized representative, the contractor(s), authorized representatives of the City, as well as representatives of any other public or private agencies which the City determines should be in attendance. At the preconstruction conference, the Consultant shall:
 - a. Observe that all necessary permits and licenses have been obtained prior to work commencement.
 - b. Raise for discussion and decision, the manner in which the construction will be administered by itself and the City, the scheduling of construction, and any and all other problems or questions which in the opinion of the Consultant or the City must be settled before the start of construction.
5. Cost Control
 - a. Recommend necessary or desirable changes (adds and credits) to the City, review requests for changes, assist in negotiating Contractor's proposals, submit recommendations to the City if they are accepted, prepare change order for the City's authorization.
 - b. Determine, based on the Consultant's qualified review and the contractor's applications for payment, the amount owing to the contractor for engineering related work. Review the certificates for payment in such amounts. By reviewing a certificate for payment, the Consultant will also represent to the City that, to the best of its knowledge, information, and belief, based on what its observations have revealed, the quality of the work is in accordance with the Contract Documents.
 - c. Prepare a weekly field report of the progress of the work and the contractor's compliance with both the construction schedule and the Contract Documents.
 - d. Review and make recommendations to the City on any claims received from contractors.
6. Consult and advise the City of Rochester, act as the City's representative at the Project site. All instructions to the Contractor will be through the City.
7. Coordinate the required activities of utility companies, the City of Rochester, the County of Monroe and all other related entities with the City and its Contractors.
8. Make visits to the job site for the purpose of clarifying or interpreting any phase of the work and monitoring job progress, where necessary and/or requested. (Minimum two time per week in addition to the bi-weekly meeting.)
9. Attend bi-weekly on-the-job field meetings to review procedures, progress, scheduling and issues.
10. Conduct, in company with the City and others designated by the City, a final inspection of the Project for conformance with the design concept of the Project and compliance with the Contract Documents, and acknowledge the completion of the Project in writing prior to final payment to the Contractors. The approval of the City, or other Agency approvals, shall be required as a condition for the acceptance of the work by the City.
11. Project Closeout

- a. Following the Prime Contractor's completion of the punch list, determine that the work is ready for final inspection and shall conduct final inspections in conjunction with the City. The Consultant shall create a "closeout" checklist for each Prime Contract and shall monitor the closeout process.
- b. Furnish to the City of Rochester, based on marked up prints, drawings and other data furnished by the contractor, a set of reproducible drawings showing all construction (elements/systems) as actually built. Provide the City with Auto Cad and PDF files for each drawing sheet, decentralized REVIT files (as applicable), in a format acceptable to the City.

b) Construction RPR (Resident Project Representation)

If requested, the Consultant shall furnish during the construction period, a Resident Project Representative. All Resident Project Representation work shall be performed under the supervision of a New York State licensed professional engineer of the Consultant. The qualifications of all Consultant personnel doing work under this Agreement shall be subject to the review and approval of the City.

The Consultant shall report regularly to the City on the progress and quality of the work. The Consultant shall conduct on-site observations of the general progress of the work and shall consult with the City and the contractor giving opinions, suggestions, and recommendations, based on the Consultant's observations, as to any defects or deficiencies in the contractor's work.

The Consultant shall perform technical inspection as directed by the supervising engineer in general furtherance of the duties set forth below.

The specific duties of the Resident Project Representative shall include, but not be limited to, the following:

1. Record Assembly
 - a. A list of the Contractor's suppliers and subcontractors.
 - b. A record of field samples and field samples
 - c. A complete set of contract documents with all revisions and agenda.
 - d. Shop drawing and submittal logs and a complete set of approved shop drawings.
 - e. A complete set of all correspondence and written records regarding the project.
 - f. Copies of all guarantees, certifications and operation manuals for the project.
 - g. A copy of all project schedules of all contractors as amended.
 - h. A filed and labeled set of preconstruction and construction photographs.
2. Observation
 - a. On-site observations of the work in progress.
 - b. Attend and chair pre-construction conferences and job meetings
 - c. Consult with the City prior to and observe all on-site tests.
 - d. Observe such off-site operations as directed by the City.
 - e. Observe that all permits and licenses which are necessary have been obtained.
 - f. Conduct a final inspection of the project
3. Liaison
 - a. Transmit to the contractor the Designer's interpretation of the contract.
 - b. Transmit all modifications to drawings for creation of a set of as-built drawings.
 - c. Coordinate and monitor all material testing
 - d. Coordinate work with construction that is occurring on other adjacent projects
 - e. Receive from the Contractor weekly certified payroll records.
4. Construction Review

- a. Construction schedules from each contractor.
 - b. Payment requisitions from each contractor for each fiscal share of the project.
 - c. Requests of the Contractor for interpretation of the Contract Documents.
 - d. Claims by each contractor.
 - e. Contractor requests regarding proposed changes to the contract documents.
 - f. Change orders including recommendations
 - g. Construction schedules and proposed work locations of any contractor.
5. Record Creation
- The Consultant shall create and maintain the project records. Upon completion of the project the Consultant shall deliver a bound, categorized set of these records which shall include the following:
- a. A list of all required permits, licenses, reviews and approvals
 - b. A daily diary or log book
 - c. Weekly and monthly reports
 - d. Monthly progress payments (and final payment)
 - e. Change Orders as required on forms approved by the City.
 - f. All modifications to construction schedules for the project.
 - g. Minutes of all meetings.
 - h. A final punch list of all items which remain incomplete
 - i. A guarantee punch list
 - j. Marked up prints, drawings and other data indicating all modifications
 - k. Labeled pre-construction and construction photographs.
 - l. Project unit quantities apportioned by final share
 - m. Water service and sewer lateral tap cards
 - n. All permits of any contractor doing work within the Project limits
 - o. The Consultant shall submit three sets of As-Built Plans, certified by a licensed professional engineer and/or architect as applicable. Submission shall include three CDs with electronic versions of the As-Built Plans in both CAD and PDF formats.

The CA or RPR representative is hereby authorized to stop work on all or part of the Project for up to twenty-four hours, without prior consultation with the City and for any reason which the professional judgment of the Consultant requires such stoppage. Upon issuing such stop work order, the Consultant shall immediately consult with the City to resolve the problem(s) which lead to the stop work order.

Section 1.203 Additional Services

The following shall constitute Additional Services:

- A. Performing work not described under Basic Services when requested and authorized in writing by the City's Authorized Agent including, but not limited to the following:
 - Out-of-town travel that is requested and authorized in writing by the City.
 - Preparation of property, boundary or right-of-way surveys, and preparation of plots.
 - Serving as an expert witness on behalf of the City.
 - Providing Resident Project Representative Services for the project.

- B. Expense to the Consultant caused by substantial revisions of previously approved studies, design documents, drawings or specifications, such revisions having been ordered in writing by the City.

Section 1.204 Reimbursable Services:

The following shall constitute reimbursable services if approved in writing by the City:

- 1. Out-of-town Travel Expenses
- 2. Printing Expenses (Bid sets only)
- 3. Surveys
- 4. Borings and Subsurface Investigation
- 5. Special Presentation Materials (Models, Renderings, etc.)
- 6. Testing

ARTICLE I, Part 3. SUBCONTRACTS

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

ARTICLE I, Part 4. CITY RESPONSIBILITIES

The City shall:

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

- G. Obtain or provide in a timely manner permission for the Consultant to enter upon any sites, buildings, and facilities as deemed necessary by the Consultant to perform the services required pursuant to this Agreement.
- H. Advertise for proposals from bidders, open proposals at the appointed time and place, and pay all costs associated thereto.

ARTICLE I, Part 5. FEES

Section 1.501 General

- A. In no event whatsoever shall the total fee payable to the Consultant pursuant to this agreement, including all costs and disbursements whatsoever, exceed (maximum amount of contract; (\$)).
- B. The Consultant shall perform professional services for the not-to-exceed fees indicated in Schedule A, and in conjunction with the hourly rate schedule included in Appendix I of this Agreement.
- C. The Consultant shall have the right to bill the City for services performed and not already billed on a monthly basis.
- D. The Consultant shall provide project invoices based on an approved format or upon forms which shall be supplied by the City in order to receive payment.

Section 1.502 Fee For Basic Services and Reimbursable Expenses:

- A. The fee payable to the Consultant for basic services for each project component pursuant to this agreement shall be initially set forth as part of Schedule A.
- B. The fees payable to the Consultant for Reimbursable Expenses for each project component pursuant to this agreement shall be initially set forth in Schedule A.
- C. 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 fees, payable in the following manner:
 - 1. The Consultant's fee shall be computed on the basis of the number of hours expended on the Project times hourly rates as identified in Appendix I. All hourly rates for technical personnel, and the identity of project managers and principals shall be approved by the City prior to the Notice to Proceed. No changes will be made without approval of the City's Authorized Agent.
 - 2. The City will not pay overtime costs arising from work on any part of this Agreement.
 - 3. The Consultant shall be reimbursed the actual expenses for Reimbursable Expenses incurred in performing services under this Agreement. All reimbursement claims must be supported by adequate documentation and show appropriate share breakdown. Reimbursable Expenses are as outlined in Schedule A.
 - 4. All hourly rates for professional and technical personnel, and the identity and resumes of professional and technical staff, of project managers and principals shall be approved by the City's Authorized Agent prior to the Notice to Proceed. No changes will be made without the approval of the City's Authorized Agent.

5. Principals shall be reimbursed at a flat hourly rate, approved by the City's Authorized Agent.
6. All travel is to be made at the expense of the Consultant and is part of the Fee for Basic Services.

Section 1.503 Fee For Additional Services:

- A. The City agrees to pay the Consultant for additional services performed by the Consultant on the basis of the hourly rates for Project Managers, principals and technical employees in Appendix I of this Agreement.
- B. The City shall pay the Consultant as an expert witness at the rate of \$400.00 per day for any day or portion thereof for which the Consultant is required to appear as a witness.

Section 1.504 Fee Administration

- A. The Authorized Agents can mutually agree to amend Schedule A in writing for phase changes, allocation modifications or for Additional Services within the maximum authorized amount set forth in Section 1.501A.
- B. The City's Authorized Agent is authorized to request in writing such Additional Services as the Agent deems necessary, within the maximum authorized amount set forth in Section 1.501A.

ARTICLE I, Part 6. TERM

- A. This Agreement shall commence upon execution by the parties and shall terminate after the (as shown on the ordinance of this project) two-year guarantee inspection following project completion.
- B. The services required of the Consultant pursuant to this Agreement shall commence upon execution of this Agreement and shall terminate upon completion of the work authorized to be undertaken pursuant to the Agreement. However, no such termination shall relieve the Consultant of any outstanding duties imposed by this Agreement, including the requirement to hold the City harmless against loss arising out of any project performed under this Agreement.

ARTICLE I, Part 7. TIME OF PERFORMANCE

- A. For each phase of the work, the Consultant shall not commence work until receipt of a written notice to proceed and shall perform the work for that phase according to the Schedule agreed to by the City.
- B. The Consultant shall not be held responsible for delays caused by the City of Rochester or by other parties not directly under its control.
- C. The above time limits may be extended only by mutual written agreement of the parties hereto. It is understood that it is the intention of the City to have the service performed under this Agreement carried out as expeditiously as possible.

ARTICLE I, Part 8. REMOVAL OF PERSONNEL

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

ARTICLE I, Part 9. AUTHORIZED AGENT

A. The City hereby designates the:

Holly E. Barrett, P.E., City Engineer
City of Rochester
Department of Environmental Services
Bureau of Architecture and Engineering
30 Church Street, Room 300 B
Rochester, New York 14614-1278

B. The Consultant hereby designates:

Name

Title

Firm

Address 1

Address 2

or an authorized representative in case of absence, as Authorized Agents for the receipt of all notices, demands, vouchers, orders, permissions, directions, and other communications pursuant to this Agreement, if dispatched by registered or certified mail, postage prepaid, or delivered personally to the Authorized Agents designated herein.

The parties reserve the right to designate other or additional Authorized Agents upon written notice to the other.

ARTICLE I, Part 10. OWNERSHIP OF DOCUMENTS

All original notes, drawings, specifications and survey maps prepared by the Consultant under this Agreement, upon completion of the work required herein, or upon acceptance by the City of each individual Assessment report will become the property of the City and shall be delivered to the City's Authorized Agent. The Consultant may provide a complete reproducible set of drawings, specifications, survey maps and all other documents in lieu of the originals.

ARTICLE I, Part 11. CONFIDENTIALITY

Section 1.1101 General

The Consultant agrees that any and all data, analyses, materials or other information, oral or written, made available to the Consultant with respect to this Agreement, and any and all data, analyses, materials, reports or other information, oral or written, prepared by the Consultant with respect to this Agreement shall, except for information which has been or is publicly available, be treated as confidential; and shall not be utilized, released, published or disclosed by the Consultant at any time for any purpose whatsoever other than to provide consultation or other services to the City.

Section 1.1102 Freedom of Information Law

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

ARTICLE I, Part 12. ORGANIZATIONAL CONFLICT OF INTEREST

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

ARTICLE II

ARTICLE II, Part 1. Qualifications, Indemnity and Insurance

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

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

Section 2.102 Consultant's Liability

The Consultant hereby agrees to defend, indemnify and save harmless the City of Rochester against any and all liability, loss, damage, detriment, suit, claim, demand, cost, charge, attorney's fees and expenses of whatever kind or nature which the City may directly or indirectly incur, suffer or be required to pay by reason or in consequence of the carrying out of any of the provisions or requirements of this Agreement, where such loss or expense is incurred directly or indirectly by the City, its employees, subcontractors or agents, as a result of the negligent act or omission, breach or fault of the Consultant, its employees, agents or subcontractors. If a claim or action is made or brought against the City and for which the Consultant may be responsible hereunder in whole or in part, then the Consultant shall be notified and shall be required to handle or participate in the handling of the portion of the claim for which it may be responsible as a result of this section.

Section 2.103 Professional Liability Insurance

The Consultant shall procure at its own expense professional liability insurance for services to be performed pursuant to this Agreement, insuring the Consultant against malpractice or errors and omissions of the Consultant, in the amount of One Million Dollars. The Consultant shall provide the City with a certificate of insurance from an authorized representative of a financially responsible insurance company evidencing that such an insurance policy is in force. The certificate shall contain a thirty (30) day cancellation clause which shall provide that the City shall be notified not less than thirty (30) days prior to the cancellation, assignment or change of the insurance policy. The Consultant shall also give at least thirty (30) days notice to the City of such cancellation, amendment or change, and of any lapse of insurance coverage under this Agreement.

Section 2.104 General Liability Insurance

The Consultant shall obtain at its own expense general liability insurance for protection against claims of personal injury, including death, or damage to property, arising out of the Project. The amount of said insurance coverage shall in the amount Two Million Dollars if said insurance is a "Defense within Limits" policy under which all claim expenses are included within both the applicable limit of liability and self-insured retention. Otherwise, the insurance coverage shall be in the amount of One Million Dollars. Said insurance shall be issued by a reputable insurance company, authorized to do business in the State of New York. Said insurance shall also name the City of Rochester as an insured and copies of the policy endorsements reflecting the same should be provided. The Consultant shall provide the City with a certificate of insurance from an

authorized representative of a financially responsible insurance company evidencing that such an insurance policy is in force. Furthermore, the Consultant shall provide a listing of any and all exclusions under said policy. The insurance shall stipulate that, in the event of cancellation or modification the insurer shall provide the City with at least thirty (30) days written notice of such cancellation or modification. In no event shall such liability insurance exclude from coverage any municipal operations or municipal property related to this Agreement.

Section 2.105 Workers' Compensation and Disability Benefits Insurance

This Agreement shall be void and of no effect unless the Consultant shall require all the Consultant's subcontractors to keep insured, during the life of this Agreement, all employees of said subcontractors as are required to be insured under the provisions of the Workers' Compensation Law of the State of New York. In the event the Consultant hires its own employees to do any work called for by this Agreement, then the Consultant agrees to so insure its own employees. The Consultant shall provide proof to the City, duly subscribed by an insurance carrier, that such Workers' Compensation and Disability Benefits coverage has been secured. In the alternative, Consultant shall provide proof of self-insurance or shall establish that Workers' Compensation and/or Disability Benefits coverage is not required by submitting a completed New York State Workers' Compensation Board's form WC/DB-100.

Section 2.106 Copyright or Patent Infringement

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

Section 2.107 No Individual Liability

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

ARTICLE II, Part 2. Specific Design Restrictions

Section 2.201 Environmental Policy

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

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

ARTICLE II, Part 3. Employment Practices

Section 2.301 Equal Employment Opportunity 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 Employment Opportunity, in accordance with the requirements set forth herein. The City further does not discriminate on the basis of handicap status in admission, or access to, or treatment or employment in its programs and activities. The City is including these policy statements in all bid documents, contracts, and leases. Contractors, lessors, vendors and suppliers shall agree to comply with State and Federal Equal Opportunity laws and regulations and shall submit documentation regarding Equal Opportunity upon the City's request.

B. Definitions

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 which the employment relates. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that applicants are hired and that employees are treated during their employment, without regard to their age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability, or marital status. 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 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 approved by the City's MWBE Officer, shall be incorporated into this Agreement as Exhibit B, detailing the percentage of the workforce utilized to perform the work of this agreement who will be either Minority or Women, including both the Consultants 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 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 A. 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 the Agreement as an amendment pursuant to Section 2.707.

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 2.302 Title VI OF THE CIVIL RIGHTS ACT OF 1964

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

Section 2.303 The MacBride Principles

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

Section 2.304 Compliance with Labor Laws

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

Section 2.305 Living Wage Requirements

A. Applicability of Living Wage Requirements

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

B. Compliance

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

C. Exemption

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

ARTICLE II, Part 4. Operations

Section 2.401 Compliance with Air and Water Acts

The Consultant and any and all subcontractors agree as follows:

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

Section 2.402 Political Activity Prohibited

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

Section 2.403 Lobbying Prohibited

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

Section 2.404 Anti-Kickback Rules

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

Section 2.405 Withholding of Salaries

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

Section 2.406 Discrimination Because of Certain Labor Matters

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

Section 2.407 Status as Independent Contractor

The Consultant, in accordance with its status as an independent contractor, covenants and agrees that it shall conduct itself in a manner consistent with such status, that it will neither hold itself nor its employees out as, nor claim to be an officer or employee of the City by reason hereof, and that it and its employees will not by reason hereof, make any claim, demand or application for any right or privilege applicable to an officer or employee of the City, including but not limited to Workers' Compensation coverage, unemployment insurance benefits, social security coverage, and retirement membership or credit.

ARTICLE II, Part 5. Documents

Section 2.501 Patents and Copyrights

The Consultant agrees that, in the event it, or any of its employees' develop any material for which a copyright can be obtained which material was developed as a result of or in connection

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

Section 2.502 Audit

The Consultant agrees to maintain sufficient on-site records and information necessary for the documentation of any and all facets of program operation specified by this Agreement. The Consultant shall maintain all books, documents, papers and other evidence pertinent to the performance of work under this Agreement in accordance with generally acceptable accounting principles, and 40 CFR Part 30 in effect during the term of this Agreement. The Consultant agrees to permit on-site inspection and auditing of all records, books, papers and documents associated with this Agreement by authorized representatives of the City and further agrees to provide necessary staff support to the performance of such audit. The Consultant agrees to maintain for a period of six (6) consecutive years following termination of this Agreement any and all records, reports and other documentation arising from the performance of this Agreement; however, this period shall be extended beyond six years for any and all records and information pertaining to unresolved questions, which have been brought to the Consultant's attention by written notice by the City. The Consultant agrees to furnish to the City data to include but not be limited to, intake records, status change notices, termination notices, and follow-up records. Said reports will be submitted periodically as required by the City.

Section 2.503 Content of Sub-Agreements

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

ARTICLE II, Part 6. Termination

Section 2.601 Termination for Convenience of the City

- A. This Agreement may be terminated by the City in accordance with this section in whole, or from time to time, in part, whenever for any reason, the City shall determine that such termination is in the best interest of the City. Any such termination shall be effective upon written notice to the Consultant. However, no such termination shall relieve the Consultant of any outstanding duties imposed by the Agreement, including the requirement to hold the City harmless and to maintain insurance coverage insuring against loss arising out of the Project.

- B. If the Agreement is so terminated the City may take over the work and services and prosecute the same to completion by contract or otherwise. The Consultant, upon such termination, shall transfer title, and in the manner directed by the City, shall deliver to the City the completed or partially completed, plans, drawings information, other property and records of work being performed, which, if this Agreement had been completed, would be required to be furnished to the City.
- C. After receipt of written notice of termination, the Consultant shall promptly submit to the City its termination claim in a form acceptable to the City. Such claim shall in no event be submitted later than one year from the effective date of termination.
- D. In the event that the parties cannot agree, in whole or in part, as to the amount due by reason of the termination of the Agreement pursuant to this clause, the City shall pay the Consultant the amount determined as the total of the following:
 - 1. The cost of all work performed prior to the effective date of termination.
 - 2. The cost of settling and paying claims arising out of and as a direct result of the termination;
 - 3. A sum as profit on subdivision 1. above, determined to be fair and reasonable, provided however, that if the Consultant would have sustained a loss on the entire Agreement had it been completed, no profit shall be included or allowed under this subdivision 3., and an appropriate adjustment shall be made reducing the amount of settlement to reflect the indicated rate of loss. The total sum to be paid under this section shall not exceed the total price of this Agreement specified hereinabove, reduced by the amount of payments otherwise made, and further secured by the value of work remaining incomplete at the time of the termination of this Agreement.

Section 2.602 Termination for Default

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

termination had been issued pursuant to the clause of this Agreement entitled "Termination for the Convenience of the City."

- F. The rights and remedies of the City provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

ARTICLE II, Part 7. General

Section 2.701 Prohibition Against Assignment

The Consultant agrees that it is prohibited from assigning or otherwise disposing of this Agreement or any of its contents, or of its right, title or interest therein, or of its power to execute such contract to any other person or corporation without the previous consent in writing of the City.

Section 2.702 Compliance with All Laws

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

Section 2.703 Successors

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

Section 2.704 Interest of City and Consultant in Contract

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

Section 2.705 Permits, Laws and Taxes

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

Section 2.706 Obligations Limited to Funds Available

The parties specifically agree that the Consultant's duty to perform work under this Agreement and the City's obligation to pay for that work, including any out-of-pocket and subcontracting expenses of the Consultant, shall be limited to the amount of money actually appropriated by the

City Council and encumbered (i.e., certified as being available) for this Project by the City Director of Finance (or his authorized deputy). This provision shall limit the parties' obligation to perform even though this Agreement may provide for the payment of a fee greater than the appropriated and encumbered amount.

Section 2.707 Extent of Agreement

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

Section 2.708 Law and Forum

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

Section 2.709 No Waiver

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

Section 2.710 Severability

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

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

THE CITY OF ROCHESTER

FIRM NAME (match Ordinance)

BY: _____

BY: _____

Malik D. Evans, Mayor

Name: (Per Consultants Information Form)

Federal Tax Payer Id No.: _____

STATE OF NEW YORK
COUNTY OF MONROE

On this ____ day of _____, 20__, before me, the subscriber, personally came Malik D. Evans to me known, who being by me duly sworn, did depose and say that he resides in the City of Rochester, that he is the Mayor of the City of Rochester, the municipal corporation described in the above Agreement; that he signed his name thereto by authority of Ordinance No. _____

Notary Public

STATE OF NEW YORK
COUNTY OF MONROE

On this ____ 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

SCHEDULE A FEE SCHEDULE

DRAFT

Project Name: Blue Cross Arena Lobby Floor Replacement
 Project Scope: Architectural/Engineering Services
 Consultant Name:
 Agreement #:
 Authorizing Ordinance:

SCHEDULE A – FEE SCHEDULE		
ITEM DESCRIPTION	FIRM & PAY LIMITS	%
I. General Coordination	Consultant's Name	
Kickoff / Monthly Progress Meetings	\$0	
Stakeholder Coordination Meetings	\$0	
Utility/agency Coordination Meetings	\$0	
TOTAL I.	\$0	100
II. Site Reconnaissance		
Design Survey & Supplemental Survey	\$0	
Design Mapping	\$0	
Miscellaneous Reconnaissance	\$0	
TOTAL II.	\$0	100
III. Design		
Conceptual Design Alternatives (see reimbursable)	\$0	
Preliminary Design Plans, Specifications and Estimate	\$0	
Final Design Plans, Specifications and Estimate	\$0	
Permits	\$0	
TOTAL III.	\$0	100
IV. Bid and Award		
Bid and Award Services	\$0	
TOTAL IV.	\$0	100
VI. Construction		
Construction Administration	\$0	
RPR (Resident Project Representation) Services	\$0	
TOTAL VI.	\$0	100
VII. REIMBURSABLE EXPENSES		
Sub-Consultant: Name	\$0	
Sub-Consultant: Name (MBE)	\$0	
Sub-Consultant: Name (WBE)	\$0	
Printing, Postage, Plots etc.	\$0	
TOTAL VII.	\$0	100
VIII. ADDITIONAL SERVICES		
Additional Services	\$0	
TOTAL VIII.	\$0	100
GRAND TOTAL I.-VIII.	\$0	100

APPENDIX I

HOURLY RATE SCHEDULE

DRAFT

Project Name: Blue Cross Arena Lobby Floor Replacement
Project No.: 23014
Consultant Name:
Agreement #: _____
Authorizing Ordinance: _____

**APPENDIX I
HOURLY RATE SCHEDULE**

<u>Title</u>	<u>Hourly Rates</u>
Project Manager	\$xxx
Etc.	\$xxx

EXHIBIT A MWBE UTILIZATION PLAN

DRAFT

EXHIBIT B WORKFORCE STAFFING PLAN

DRAFT

EXHIBIT D

CONSULTANT INFORMATION FORM



City of Rochester
Department of Environmental Services
Bureau of Architecture and Engineering
Revised: September 23, 2021

Consultant/Contractor Information Form

Project Name: _____

(Please Note: Consultant/Contractor to verify and submit form for each new project)

Part A: Department of State Verification

Please supply the following information and verify that it matches the information shown on following website:

<https://apps.dos.ny.gov/publicInquiry/>

Current Entity Name:	
DOS ID #:	
Initial DOS Filing Date:	
County:	
Jurisdiction:	
Entity Type:	
Current Entity Status:	

Chief Executive Officer Information:

Name:	
Address:	

Principal Executive Office Information:

Name:	
Address:	

☐

The information provided and located on the DOS website matches.

☐

The information on the DOS website is out of date. The information provided is the corrected information.

☐

Check box if your firm is certified and listed on the New York State Directory of Certified Minority and Women-Owned Business Enterprises (MWBE).

Part B: Local Office Information

Please supply the name of the person who will be administering the project. Also identify the local address of where the project will be administered.

Name:	
Title:	
Address:	

Part C: Executed Agreement Information

Please supply the name of the person who will be administering the executed agreement.

Name:	
Title:	