

REQUEST FOR PROPOSALS FOR:

Railroad Underpass Improvements Project

(at Atlantic Ave, Culver Road and Winton Road)

**City Project No. 24214
(Locally Funded Project)**

Issued: October 30, 2023



City of Rochester

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

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

**Structures
City Hall, 30 Church Street, Room 300B
Rochester, New York 14614**

TABLE OF CONTENTS

1.0 General Information

- Project Location Map
- Project Title, Limits and Information
- Project Timetable
- Submission Delivery Information
- Communications
- Pre-Proposal Meeting
- Preliminary Construction Budget
- General

2.0 Project Overview

- General Description
- Description of Improvements

3.0 Draft Scope of Services

4.0 Proposal Requirements

- Overview
- Proposal Evaluation Criteria
- Basic Services Fee / Hours
- Eligibility Qualifications and Requirements

5.0 City Provisions

- Living Wage Requirements
- Local Preference
- MWBE and Workforce Goals (for Professional Service Agreements)
- MWBE and Workforce Reporting (for Professional Service Agreements)
- Other Criteria

ATTACHMENTS

Exhibit A: Draft City of Rochester – MWBE Form A – MWBE Utilization Plan – Professional Consultant Services (Draft to be completed and returned)

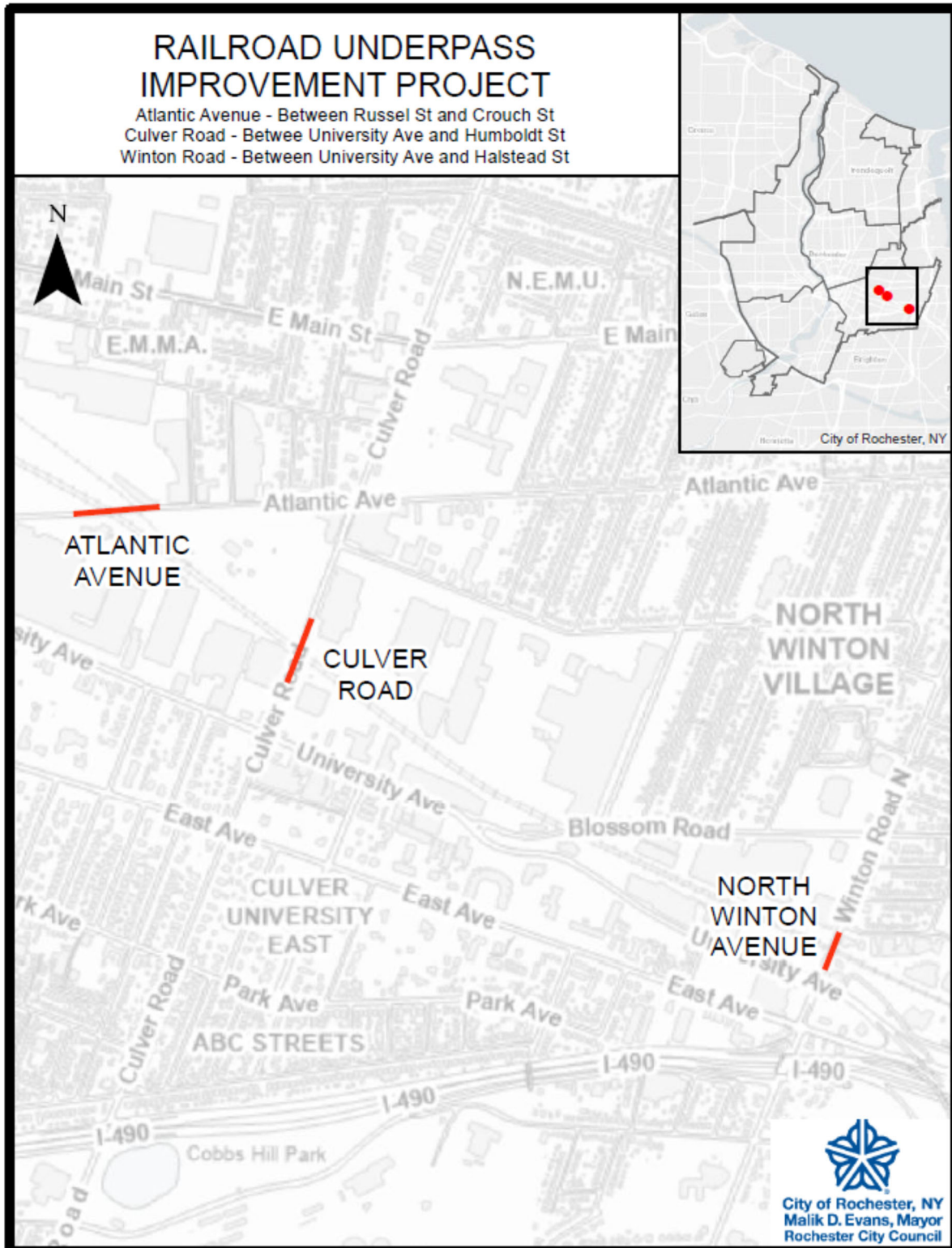
Exhibit B: Draft City of Rochester – Workforce Staffing Plan Form (Draft to be completed and returned)

Exhibit C: Consultant Information Form (To be completed and returned)

Exhibit D: Draft Agreement for Professional Services

1.0 GENERAL INFORMATION

PROJECT LOCATION MAP:



<u>PROJECT TITLE:</u>	Railroad Underpass Improvements Project
<u>PROJECT LIMITS:</u>	Railroad Underpasses at Atlantic Avenue, Culver Road and Winton Road
<u>PROJECT INFORMATION:</u>	This is a locally funded rehabilitation project that includes the design and preparation of engineering reports and construction contract documents for improvements to railroad underpasses located within the City of Rochester.

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 March 2024, based on this projection, schedule is as follows:

- | | |
|--|------------------------------------|
| • RFP Release | October 30, 2023 |
| • Pre-Proposal Meeting | N/A |
| • Deadline for Questions | November 10, 2023 at 1:00 pm |
| • Proposals Due | December 1, 2023 at 4:00 pm |
| • Consultant Selection & Award Notification | Dec. 2023 – Jan. 2024 |
| • City Council Approval of Agreement with Consultant | February 2024 |
| • Agreement Start Date/Notice to Proceed | March 2024 |

Design and construction timetable:

- | | |
|--|----------------------------|
| • Draft Design Report and 30% Plans | Spring 2024 |
| • 50% Plans and Draft Engineering Report | Summer 2024 |
| • 90% Plans (ADP) and Final Engineering Report | Fall 2024 |
| • 100% Plans (PS&E) | November 2024 |
| • Bid Phase & Award | December 2024 – March 2025 |
| • Construction Phase Services:
(excluding as-built preparation) | April 2025 – November 2025 |

A Professional Services Agreement (PSA) resulting from this RFP shall commence on the agreement start date. 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:

Five (5) proposal hard-copies and one (1) electronic proposal (preferably via USB storage device). Proposals must be postmarked or received no later than the **Proposal Due Date and Time** listed above to:

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

City of Rochester, Department of Environmental Services
Bureau of Architecture & Engineering
City Hall, 30 Church Street, Room 300B
Rochester, New York 14614

COMMUNICATIONS:

All communications by parties who have indicated an intent to submit or have submitted a proposal in response to this RFP, otherwise known as “Respondents”, shall be sent, in writing, to the listed City staff person(s) below. This shall include 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:

Primary Contact/Project Manager:

Tomas Andino, P.E., Senior Structural Engineer

tomas.andino@cityofrochester.gov

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

To ensure that all Respondents have a clear understanding of the scope and requirements of this RFP, the City will respond to all timely questions submitted via email to the City Contact(s) by the question deadline stated above. Questions and the responding answers will be sent via email to all Respondents who have provided an email 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. Notifications about timeline date changes, amendments to the RFP and other information about the RFP will be sent by email to Respondents who have provided an email address to the City Contact(s) and will be posted on the City’s website for this RFP.

The City’s failure to provide timely responses to RFP questions and updated information shall not delay or invalidate the City’s right to make a decision to award an agreement pursuant to this RFP.

PRE-PROPOSAL MEETING:

Pre-Proposal Meeting will not be held for this project. Respondents are encouraged to visit the project site and may submit questions as needed following the communication guidelines outlined herein.

PRELIMINARY CONSTRUCTION BUDGET:

The preliminary construction budget (including RPR) is approximately **\$1,415,000**.

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. The decision will be based on qualifications and compliance with the requirements of this RFP. 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.
- 5) Questions must be submitted in writing (preferably email) to the project contacts, listed above. All questions and City responses will be shared with all who have indicated intent to submit a proposal and have provided an email address.

2.0 PROJECT OVERVIEW

GENERAL DESCRIPTION:

This is a City of Rochester locally funded project.. The project includes rehabilitation to railroad underpasses within the City's ownership and maintenance responsibility.

A Railroad Underpass Evaluation Study was prepared for the City of Rochester in December 2017. Part of the study included inspections to various railroad underpasses. Visual inspections were performed to document deficiencies in terms of structural integrity, public safety, and overall aesthetics of the structure and its surroundings. The railroad owner and City of Rochester share maintenance responsibility for the underpasses. Table 1 summarizes the ownership and maintenance responsibilities.

Railroad Bridge and Underpass Ownership and Maintenance Responsibility	
Railroad	City of Rochester
Primary Beams and Girders	Pavement
Secondary Superstructure Members	Surface Drainage
Bearings	Curbs
Bridge Seat and Pedestals	Sidewalk
Backwall	Signage
Wingwalls/Retaining Walls within railroad right-of-way	Wingwalls/Retaining Walls outside of railroad right-of-way
Pier Cap Beam	Overhead Gutter Systems
Pier Columns	Lighting
Concrete/Stone Abutment Stem	Maintenance Washing Under Bridge
Concrete/Stone Pier Stem	Guide Railing
Vegetation on Bridge	Median
Bridge Fascia	Vegetation at Approaches
Bridge Railings	
Topside of Bridge	

Table 1: Railroad Underpass Maintenance Responsibility

DESCRIPTION OF IMPROVEMENTS:

The railroad underpasses included in this project were selected based on priority include Atlantic Avenue, Culver Road and Winton Road. The scope of work for each railroad underpass is intended to address the highest priority needs within the City's maintenance responsibility. The improvements as generally identified include:

A. Atlantic Avenue Railroad Underpass

The existing overhead gutter system along the bridge is in poor condition. Portions of the existing gutter are missing or detached from the girder. The condition of the gutters are allowing water to leak on the sidewalk and cause slippery and icy conditions in the winter. Underpass improvements shall include but are not limited to:

- Clear sidewalks of garbage and debris.
- Clean existing lights and light covers. Replace light fixtures that are not functioning.
- Remove and replace missing portions of overhead gutter system.
- Replace any damaged portions of sidewalk.
- Remove vegetation along underpass approach.

B. Culver Road Railroad Underpass

The existing pedestrian railing under the railroad bridge is in extremely poor condition. In several locations the pedestrian railing has links missing and is not providing an adequate barrier between the elevated sidewalk and roadway. Underpass improvements shall include but are not limited to:

- Clear sidewalks of garbage and debris.
- Clean existing lights and light covers. Replace light fixtures that are not functioning.
- Remove and replace existing pedestrian railing.
- Remove vegetation along underpass approach.

C. Winton Road Railroad Underpass

The existing sidewalk under the railroad bridge is supported by a lower concrete retaining wall. Portions of the concrete along the retaining wall are spalled and cracked. Due to length and condition of the retaining way it is anticipated that the majority of the construction budget will be allocated for concrete repairs. Underpass improvements shall include but are not limited to:

- Clear sidewalks of garbage and debris.
- Clean existing lights and light covers. Replace light fixtures that are not functioning.
- Repair lower concrete retaining wall that supports the sidewalk.
- Remove vegetation along underpass approach.

D. CSX Agreement

The railroads within the project limits are owned and maintained by CSX. Proposed improvements will need to meet the requirements of the CSX Public Project Manual. The consultant will coordinate with CSX and will prepare and obtain all necessary railroad permits and/or agreements.

3.0 DRAFT SCOPE OF SERVICES

The Consultant being selected through this Request for Proposals process will enter into an agreement with the City to provide structural engineering design services related to all phases of the Project. The Consultant shall meet all standards and codes used in engineering design services as required, including but not limited to the following:

- Preliminary and Final Design
- Environmental Reviews
- Engineers' Design Report
- Contract Documents
- Bidding/Award
- Construction Administration

Resident Project Representation (RPR) services are not included. RPR staffing needs and resumes should not be included in the Respondents proposal.

A Draft Professional Services Agreement (PSA) has been included within Exhibit D of this document.

4.0 PROPOSAL REQUIREMENTS

OVERVIEW:

Proposals must be postmarked or received by the City no later than the **“Proposals Due date and time”** listed in the Project Timetable above. 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 the proposal shall be deemed authorization for the City to contact Respondent's references. Evaluation of the proposal will be conducted by the City based on information provided in the Respondent's proposal 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 \$20,000 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 goals).

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 Respondents, or to execute a Professional Services Agreement 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 proposal and negotiate with Consultants to serve the City's best interest.

PROPOSAL EVALUATION CRITERIA:

The RFP is designed to facilitate the evaluation and selection of a Consultant that is best able to achieve the City's objectives. The response to each section shall be clearly indicated and addressed or an explanation provided for why the Respondent is not submitting a proposal for a specific section or requirement of the RFP. Proposals must be succinct, contain a table of contents and all pages must be numbered. **In no case shall specified page maximums in any section be exceeded.** All Sections of the proposal must contain tabs. 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).**

Proposers should understand that the City's MWBE and Workforce Goals and Reporting applies to and will be incorporated into any agreement resulting from proposals submitted for this RFP.

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

Firm Qualifications (10% Score – 1 page max.)

1) Firm and Sub-Consultant Identification & Qualifications:

A brief description of the firm including the local office location, number of local employees, and disciplines that are available locally relevant to this project. Provide a statement indicating that the firm is qualified to perform the services identified in this RFP. Identify the sub-consultants that will be utilized on the project, including primary tasks they will be

responsible for. Include a statement of the firm's ability to meet the proposed project schedule as it relates to the firm's workload over the life of the project.

- 2) Relevant Firm and Sub-Consultant(s) Experience: Include three (3) recent projects the Consultant and the sub-consultant(s) has provided services **relevant** to those required herein. The list should include project name, project type, client name, the specific dates when work was performed and the type of work services performed.
- 3) MWBE and Workforce Goals: Respondents shall provide the following statements:
 - a. Whether or not the Respondent is a New York State certified MWBE. Refer to Section 5.0 City Provisions for City preferences.
 - b. Whether or not the Respondent will use New York State certified MWBE subcontractors and what percentage of the total contract amount will be performed by said MWBE subcontractors. (Note – if the Respondent is a New York State certified MWBE, they will not receive bonus weighting points by stating that they are self-fulfilling this requirement.)
 - c. The total percentage of the project team workforce that will be utilized to perform the work of this contract who will be either Minority (M) or Women (W), including both the Respondent's workforce and that of any subcontractors who will be utilized. (Note – The Respondent's workforce percentages shall be provided for the entire project team.)
- 4) MWBE Form A (MWBE Utilization Plan): This form shall be submitted as part of the proposal regardless of percentages or whether goals are met. The draft form can be found in **Exhibit A** of this RFP and shall be completed with the anticipated percentage of total contract column filled out and shall be **included in an appendix** in the Respondent's proposal.
- 5) Professional Consultant Services Workforce Staffing Plan Form: This form must be submitted for all consultants within the project team and in addition a single form which combines all personnel onto a single form. These draft forms can be found in **Exhibit B** of this RFP and shall be **included in an appendix** in the Respondent's proposal.
- 6) Consultant Information Form (CIF): This form must be filled out by the prime consultant only to verify that the prime consultant information listed on New York State Department of State database is correct and provide local contact information. Sub-consultants do not need to complete this form. This form can be found in **Exhibit C** of this RFP and shall be **included in an appendix** in the respondent's proposal.

Technical Proposal (40% score – 3 pages max., excluding Project Map(s))

- 1) Project Understanding and Technical Approach: Communicate an in-depth understanding of the project scope and unique technical approach for all services to be provided, including all multi-disciplinary engineering (e.g. structural, lighting, utilities, environmental, etc.) as applicable. Highlight experience with structural design, railroad coordination and the City's general project policies and procedures.

- 2) Project Map: Provide a single page 11"x17" map of the project corridor showcasing your understanding of the project.

Project Team Qualifications (50% score)

- 1) Project Team (1 page max.): Identify the **key** project team members by name and specific responsibilities on the project. This section should showcase, as applicable, **key** project team members' relevant experience with structural design, railroad coordination and the City's general project policies and procedures.
- 2) Organizational Chart (1 page max.): Provide a single page 8.5"x11" detailed Organizational Chart identifying the key project team members, including sub-consultant(s), and their specific responsibilities on the project.
- 3) Team Resumes (1 page per team member): Include for all **key** project team members 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.

BASIC SERVICES FEE / HOURS:

The proposal SHALL NOT include any proposed design fees, however the City does require that the proposal include the proposed staff and specific staff assignments. **The information provided shall 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.**

A table/spreadsheet shall be provided with an itemized breakdown of estimated personnel hours for all staff assigned to the project (including both the prime consultant and all sub-consultants) for each task included in the following design phases:

- A. Preliminary Design
- B. Final Design
- C. Advertising, Bid Opening and Award
- D. Construction Support

A summary page shall be included to summarize the total hours of the prime consultant and any proposed subcontractors. This table/spreadsheet and summary page as well as a list of direct reimbursable expenses shall be provided as an appendix of the Respondent's proposal.

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, sub-consultant costs, total project cost summaries and technical assumptions.

ELIGIBILITY QUALIFICATIONS AND REQUIREMENTS:

The City of Rochester requires that all firms 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 firms, 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:

The **selected consultant** will be required to comply with Rochester Living Wage requirements. Rochester City Council adopted the Rochester Living Wage Ordinance (8A-18), effective July 1, 2001, which requires covered employers who are awarded City service contracts of \$50,000 or more to pay a Living Wage, as defined in the Ordinance, to their employees who perform work under the contract.

LOCAL PREFERENCE:

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

Responding Company	Weighted Awarded
Firms who respond directly to this proposal and are located within the City of Rochester	10%

MWBE AND WORKFORCE GOALS (for Professional Services Agreements):

The City of Rochester desires to encourage minority and women owned (MWBE) businesses to participate in opportunities to enter into PSAs with the City and to encourage minorities and women in the workforce. Pursuant to Ordinance No. 2018-54, the City has a goal that 30% of the aggregate annual contract awards for professional service contracts over \$10,000 be awarded to minorities (M) (15%) and women (W) (15%). The City has also established minority workforce goals of 20% M and 6.9% W for professional services consulting contracts. For more information please see <http://www.cityofrochester.gov/mwbe>.

Respondents shall be awarded MWBE bonus weighting as follows:

1. The City will give preference to Consultants who are New York State certified MWBEs. Consultants who meet this requirement shall receive **an additional weighting of 10%**.
2. The City will give preference to Consultants who utilize state certified MWBE sub-consultants with bona fide offices and operations in the Empire State Development Finger Lakes Region, which includes the following counties: Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming and Yates. State-certified MWBEs

from outside the Region may be counted if there are insufficient businesses in the Region to perform the specialized work or consulting services required. If one or more MWBE subcontractors will perform 10% to 20% of the work of the contract – measured as either a percent of the total contract amount or as a percent of the total full-time-equivalent labor hours budgeted for this project, the Consultant shall receive **an additional weighting of 5%**. If MWBE sub-consultants will perform more than 20% of the work of the contract, the Consultant shall receive an **additional weighting of 10%**. **(Note – if the Respondent is a New York State certified MWBE, they will not receive bonus weighting points by stating that they are self-fulfilling this requirement.)**

3. Respondents shall provide sufficient documentation with their proposal to support the additional preference weighting as an MWBE Consultant or for use of MWBE sub-consultants. If one or more MWBE sub-consultants are proposed, they must be named and the size of the subcontract identified. If selected, the Respondent shall submit an MWBE Utilization Plan on the City's form for approval by the MWBE Officer. Once approved, the Utilization Plan shall be incorporated into the PSA.

If the total amount of a PSA is increased by 5% or more at any time during the term of the PSA, the Consultant shall submit a revised MWBE Utilization Plan for approval by the MWBE Officer. The MWBE Officer may also issue a revised MWBE Utilization Plan for unforeseen changes in the availability of MWBE sub-consultants during the term of the PSA.

4. The City will give preference to Consultants who meet or exceed the City's workforce goals, which are: 20% M and 6.9% W. Consultants who demonstrate that the project team workforce that will be utilized to perform the work of this contract, including both the Respondent's workforce and that of any subcontractors who will be utilized, that meets or exceeds these goals shall receive an **additional weighting of 10%**. (Note – The final workforce percentages shall be provided for the entire project team.) If selected, the Respondent shall submit a final Workforce Staffing Plan on the City's Form for review by the MWBE Officer. Once reviewed, the Workforce Staffing Plan shall be incorporated into the PSA. The calculated percentages of workforce utilization shall be based on actual hours worked and billed over the term of the project. The final determination of a workforce goals accomplished during the contract shall be based on hours reported in the workforce utilization reports.
5. If selected, the Respondent shall provide a MWBE utilization and sub-consultant/supplier payment certification and/or workforce utilization reports on the City's forms. These reports shall be submitted with each invoice or as otherwise requested by the MWBE Officer.
6. A failure to submit the required sub-consultant/supplier payment certification and/or workforce utilization reports shall constitute a default in the performance of the Agreement subject to potential termination for default by the City. In addition, if the selected Respondent fails to meet the most recent MWBE Utilization Plan and/or

Workforce Staffing Plan, for which additional weight was awarded by the end of the PSA, such failure may result in disqualification from award of future contracts with the City.

7. Summary of additional evaluation weighting points for MWBE and Workforce Goals:

Category of Additional Evaluation Points	Additional Weighted Award
Respondent is New York State Certified MWBE	10%
Utilize MWBE Sub-Consultants for 10-20% of work	5%
Utilize MWBE Sub-Consultants for more than 20% of work	10%
Meet or exceed workforce goals of 20% M and 6.9% W	10%

MWBE AND WORKFORCE REPORTING (for Professional Services Agreements):

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 under Professional Service Agreement. The consultant may be required to file City provided forms quarterly, or as otherwise required by the City, to verify that MWBE goals and minority workforce goals for a specified task or project are achieved. Examples of all 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.

Exhibit A

Draft City of Rochester – MWBE Form A – MWBE Utilization
Plan – Professional Consultant Services
(Draft to be Completed and Returned)

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

MWBE GOALS: MBE 15%, WBE 15%

Project Name _____ **Agreement #** N/A

Consultant _____ **Total Contract Amount* \$** N/A **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

Draft City of Rochester – Workforce Staffing Plan Form
(Draft to be Completed and Returned)

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: N/A			20.00%	6.90%
CLASSIFICATION	NUMBER OF EMPLOYEES WORKING ON PROJECT						MINORITY %	FEMALE %
	TOTAL		MINORITY		NON-MINORITY			
	M	F	M	F	M	F		
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:
---------------------------	-------

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: N/A			20.00%	6.90%
CLASSIFICATION	NUMBER OF EMPLOYEES WORKING ON PROJECT						MINORITY %	FEMALE %
	TOTAL		MINORITY		NON-MINORITY			
	M	F	M	F	M	F		
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:
---------------------------	-------

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: N/A		20.00%	6.90%	
CLASSIFICATION	NUMBER OF EMPLOYEES WORKING ON PROJECT						MINORITY %	FEMALE %
	TOTAL		MINORITY		NON-MINORITY			
	M	F	M	F	M	F		
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:
---------------------------	-------

Exhibit C

Consultant Information Form
(To be Completed and Returned)



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:	

Exhibit D

Draft Agreement for Professional Services

AGREEMENT FOR PROFESSIONAL SERVICES

Railroad Underpass Improvements Project

DRAFT

Project Scope: Design Services
City Project No.: 24214
NYSDOT PIN: N/A
Consultant Name:
Agreement #:
Authorizing Ordinance: 202X - XXX

INDEX

ARTICLE I

Part 1. DESCRIPTION OF PROJECT

Section 1.101 General Project Information
Section 1.102 Schedule and Construction Budget
Section 1.103 Project Manager
Section 1.104 Project Classification
Section 1.105 Policy and Procedures
Section 1.106 Standards and Specifications

Part 2. DESCRIPTION OF PROFESSIONAL SERVICES

Section 1.201 General
Section 1.202 Data Collection and Analysis
Section 1.203 Preliminary Design
Section 1.204 Environmental
Section 1.205 Right-of-Way
Section 1.206 Final Design
Section 1.207 Advertising, Bid Opening and Award
Section 1.208 Construction Support
Section 1.209 Construction Inspection
Section 1.210 Additional Services

Part 3. SUBCONTRACTS

Part 4. CITY RESPONSIBILITIES

Part 5. FEES

Section 1.501 General
Section 1.502 Fee for Basic Services, Reimbursable Expenses, Fixed
Fee and Retainage
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

Schedule B Time Schedule

Attachment A NYS Prevailing Wage Rates and Supplements Schedule

Attachment B Living Wage Ordinance

Attachment C Submittal Requirements

Attachment D City Digital Record File Standards

Attachment E City of Rochester Tax Law Exemption Letter

Exhibit A Professional Consultant Services Workforce Staffing Plan
(TO BE FILLED OUT BY CONSULTANT FOR THE COMBINED
PROJECT TEAM)

Exhibit B MWBE Form A - MWBE Utilization Plan Professional Consultant Services
(TO BE FILLED OUT BY CONSULTANT)

Exhibit C Professional Consultant Services Workforce Utilization Reporting

Exhibit D Consultant Information Form (CIF)

Appendix A Staffing and Fee Schedule (Including Overhead and Max Salary Rates)

AGREEMENT

THIS AGREEMENT, entered into on the ____ day of _____, 202X, 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, located at Address, 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 engineering design services in connection with the **Railroad Underpass Improvements Project**, 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 General Project Information

Project Name:	Railroad Underpass Improvements Project
City Project No.	24214
NYS DOT PIN:	N/A
Street (Limits):	Atlantic Avenue (between Russel St. and Crouch St.) Culver Road (between University Ave. and Humboldt St.) Winton Road (between University Ave. and Halstead St.)
Sponsor:	City of Rochester
County:	Monroe

Project Information: This is a locally funded rehabilitation project that includes design and preparation of engineering report and construction contract documents for improvements to railroad underpasses located within the City of Rochester.

Section 1.102 Schedule and Construction Budget

A. Schedule

- | | |
|--|----------------------------|
| • Agreement Start Date/Notice to Proceed | March 2024 |
| • 30% Plans | Spring 2024 |
| • 50% Plans | Summer 2024 |
| • 90% (ADP) and Final Engineering Report | Fall 2024 |
| • 100% Plans (PS&E) | November 2024 |
| • Bid Phase & Award | December 2024 – March 2025 |
| • Construction Phase Services | April 2025 - November 2025 |

B. Construction Budget

The Preliminary Construction Budget (including RPR) is **\$1,415,000**.

Section 1.103 Project Manager

The City's Project Manager shall receive copies of all project correspondence. The City's Project Manager and contact information for this project is:

Tomas Andino, P.E.
Bureau of Architecture and Engineering Services
City of Rochester
City Hall, 30 Church Street, Room 300B
Rochester, New York 14614
(585) 428-6535
tomas.andino@cityofrochester.gov

The Consultant's Project Manager and contact information for this project is:

Consultant PM Name
Consultant Firm Name
Address Line 1
Address Line 2
(XXX) XXX-XXXX
Email Address

Section 1.104 Project Classification

Classification under the New York State Environmental Quality Review Act (SEQRA) Part 617, Title 6 of the Official Compilation of Codes, Rules, and Regulations of New York State (6 NYCRR Part 617) is assumed to be **SEQRA Type II**.

Section 1.105 Policy and Procedures

The design of this project shall be progressed in accordance with the City of Rochester policies and procedures.

Section 1.106 Standards and Specifications

The design of this project shall conform to the current edition of the NYSDOT Standard Specifications for Construction and Materials, the NYSDOT Highway Design Manual (HDM), the NYSDOT Highway Design Manual, the Manual on Uniform Traffic Control Devices (MUTCD) and the New York State Supplement to the MUTCD, including all applicable revisions. Any special specifications must be justified and approved by NYSDOT. City of Rochester and Monroe County standard construction details shall be utilized wherever possible.

Assumption: XXX (#) new special specifications with justification forms are required.

All drawings, CAD and DTM files shall utilize NYSDOT drawing and CAD standards and shall be completed using Microstation and InRoads software. The City will provide a standard Cover Sheet. Consultants shall use their own border. Contract drawings shall be scaled appropriately for plotting on 11"x17" paper.

ART. I, Part 2. DESCRIPTION OF PROFESSIONAL SERVICES

Section 1.201 General

A. Project Familiarization

The **City** will provide the Consultant with the following information:

1. Plans for future related improvements or development in the area of the project
2. Traffic Safety Recommendations from MCDOT (if they exist)
3. Record as-built plans
4. Other relevant documents pertaining to the project

The **Consultant** will become familiar with the project before starting any work. This includes a thorough review of all supplied project information and a site visit to become familiar with field conditions.

B. Meetings

The **Consultant** will prepare for and attend all meetings as directed by and in coordination with the City's Project Manager. Meetings may be held to:

1. Provide engineering consultation.
2. Present, discuss, and receive direction on the progress and scheduling of work in this contract.
3. Present, discuss, and receive direction on project specifics.
4. Discuss and resolve comments resulting from review of project documents, agency review, and coordination with other agencies.
5. Manage sub-consultants and subcontractors.

The **Consultant** will be responsible for the preparation of all meeting minutes and the minutes shall be submitted to all meeting attendees within **one (1)** week of the meeting date.

The following meetings are required. **Consultant** and the **City** shall determine which phase of design these meetings will occur.

1. Progress Meetings

Recurring Progress Meetings with the City shall be scheduled to discuss project progress, outstanding items, etc.

2. Other Meetings

The **Consultant** will prepare for and attend any other meetings necessary during the duration of design. If necessary, the **Consultant** will provide visual aids and present a technical discussion of the improvements.

Assumption: XXX (X) meetings

C. Cost and Progress Reporting

For the duration of this contract, the **Consultant** will prepare and submit to the City on a monthly basis a Progress Report in a format approved by the City. The Progress Report must contain the Cost Control Report. The beginning and ending dates defining the reporting period must correspond to the beginning and ending dates for billing periods, so that this reporting process can also serve to explain billing charges. (In cases where all work under this contract is officially suspended by the City, this task will not be performed during the suspension period.)

D. Subconsultants and Subcontractors

1. The **Consultant** will be responsible for coordinating and scheduling work, including work to be performed by subconsultants and subcontractors.
2. Procurement of subconsultants and subcontractors must be in accordance with the requirements set forth in Article II of this Agreement and the NYSDOT LPM.

E. Project Submissions

The **Consultant** shall prepare and submit to the City a memorandum for each milestone submittal outlining the progress of the project, submission documents, status of key project items, summary of Engineer's Cost Estimate, and any outstanding issues and requests for additional information.

All milestone submittals shall be submitted to the City and other agencies as indicated in the Drawing Submittal Requirements document in Attachment C - Submittal Requirements.

A Drawing Submittal Checklist is provided in Attachment C - Submittal Requirements. The Drawing Submittal Checklist is not all-inclusive and is provided as a guide only. The **Consultant** shall confirm with the City the necessary plans, details, tables, etc. required for each milestone submittal well in advance of the submittal deadline.

The **Consultant** shall coordinate with the City to determine the necessary format and final number of hard-copies for each document being submitted prior to printing. Unless directed otherwise by the City, utility companies and other agencies should only be sent Plans for review. For federal-aid projects, the **Consultant** shall confirm with the City and NYSDOT which documents the RLPL requires for each submission.

If directed by the City, the **Consultant** shall submit directly to the City's Project Manager prior to submitting to other agencies. The Consultant shall address all comments as requested by the City prior to the Utility/Agency (UA) submittal.

Unless directed otherwise by the City, the **Consultant** should allow for a 3 week minimum review period for all submittals. The **Consultant** shall prepare written responses to all review comments in a timely manner and incorporate all comments and direction received on subsequent submittals.

F. Engineer's Cost Estimates

The **Consultant** shall develop and maintain an Engineer's Cost Estimate (EE) for the duration of the project. The EE shall include share breakdowns.

The **Consultant** will provide to the City an EE for each design alternative, at all milestone submittals and as necessary to incorporate significant design changes and any comments received from the City or other reviewing agencies. The EE for each design alternative and for the 30% submission does not need to be itemized.

The **Consultant** shall update the 100% EE to incorporate any changes made during bidding (i.e. Addendums). After the bid opening, the **Consultant** shall submit to the City all quantity computations used to develop the EE in both Excel and PDF format. The quantity computations shall include any Addendum related changes that were made during bidding.

G. Schedule

The **Consultant** shall develop and submit to the City a detailed Project Schedule (Gantt Chart) for the orderly and timely completion of requirements of this Agreement. The Project Schedule shall be maintained for the duration of the Project.

H. Utility Coordination

For the duration of this agreement, the **Consultant** shall coordinate with all utility agencies that have facilities within the project limits. Coordination efforts shall include but are not limited to coordinating with all utility agencies to determine if there are any impacts or upgrades to their facilities within the project limits.

Affected utility companies must apply for and obtain a permit from the City of Rochester for all work performed within the public right-of-way. The **Consultant** shall work closely with the utility companies to ensure they submit permits in a timely manner so that they can complete any necessary utility work in advance of the project. The **Consultant** shall review all permit plans received by the affected utility agencies. The appropriate depth of cover must be verified by the utility company for all proposed curb modifications and other work.

All metal castings (manholes, pullboxes, valve box covers, etc.) within the roadway shall be evaluated by the utility companies and if necessary adjusted to grade with a concrete collar after final paving is complete. Evaluations and adjustments shall be in accordance with the most current version of the City's *Policy of Requirements for Utility Appurtenances Within the Public Right-of-Way*.

I. Railroad Coordination

For the duration of this agreement, the **Consultant** shall coordinate with all railroad agencies that have active, inactive or abandoned facilities within the project limits. Coordination efforts shall include but are not limited to preparing the necessary plans for railroad agency review and addressing any review comments from the railroad agency. The **Consultant** shall utilize and comply with all requirements set forth by the affected railroad for all work and coordination necessary to complete the project. The **Consultant** shall become familiar with the requirements outlined in NYSDOT HDM Chapter 23-Railroads.

The **City** will prepare and obtain all necessary railroad permits and agreements early so not to delay the project. If required by the railroad agency, the **Consultant** shall sign a letter (prepared by the **City**) indicating that the railroad agency can bill for any cost related to the project that may be incurred by the railroad agency prior to execution of a signed Preliminary Engineering and/or Construction Agreement between the City and the railroad agency. The letter will allow the railroad agency to incur cost and bill the Consultant (typically up to \$5,000) for work performed in advance of a fully executed agreement between the City and the railroad agency. The **City** will reimburse the Consultant for and billings paid to the railroad agency as a reimbursable expense.

J. Other General Consultant Responsibilities

The **Consultant** shall:

1. Provide all basic engineering services required for the Project including surveys (as needed), planning and preliminary engineering.
2. Have on its staff and is to retain during the performance of its services all appropriate professional personnel necessary to completely and accurately perform the work and services required. The **Consultant** shall provide a list of its employees assigned to the Project which provides the employee's name and title prior to the start of work. The

Consultant shall notify the City prior to changing project personnel. No changes in project managers will be made without approval of the City. Where the design of structural, mechanical, electrical, civil or other engineering features of the work is included in the Project, such must be supervised, reviewed and approved by an engineer registered to practice in the State of New York.

3. Maintain an up-to-date, orderly, assembled file of Project notes and records. Files shall include but are not limited to a history of the development of the Project, correspondence, calculations, documentation, references, and other material necessary to establish the basis of the reports, recommendations and design of the Project.
4. Be 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.

Section 1.202 Data Collection and Analysis

A. Utility Mapping

The **Consultant** shall obtain record mapping and plot all above-ground and underground utilities on the plans, including any facilities that may be paved over or buried (e.g. manhole covers, cleanouts, etc.). All underground utilities must be depicted on the plans with size, type and material. This effort will include plotting areaway locations on the base mapping that might be in conflict with proposed improvements. All underground utilities 24" in size or greater shall be drawn to scale on the base mapping. Utility mapping shall utilize standard NYSDOT line styles and provide annotation depicting type of facility and ownership. The **City** will provide mapping of any known city owned street lighting and fiber optic conduit.

Assumption: *Overhead utilities are not required to be included in the design mapping as it is anticipated they will be unaffected by this project.*

B. Field Edit and Site Photographs

The **Consultant** shall perform a field investigation to ensure the accuracy of the data, existing features, etc. The **Consultant** is responsible for verifying and accurately depicting all existing conditions as well to keep the base mapping current for the duration of the project.

The **Consultant** shall take both overall photographs of the site(s) and specific photographs of affected elements. Organize and store photographs with easily identifiable file naming convention.

C. Supplemental Survey

The **Consultant** shall perform supplemental survey when needed for design purposes and to keep the base mapping, existing Digital Terrain Model (DTM) and Survey Point file current for the duration of the project.

Assumption: *XXXX (#) additional days of supplemental survey will be required.*

D. Base Mapping and Drawings

The **Consultant** shall develop base mapping for the project in accordance with Section 1.202.E.

Plans with aerial photographs are not acceptable. All GIS data provided to the Consultant from the City are approximate only and are not guaranteed to be accurate or complete. The **Consultant** is responsible for verifying and accurately depicting all existing conditions as well to keep the base mapping current for the duration of the project.

The **Consultant** shall develop Survey Control drawings for inclusion in the plan set. The Survey Control drawings should depict at a minimum the survey centerline, control point coordinates and elevations, a table of benchmarks, control point swing ties, datum information, notes, and any other necessary survey related information shall be developed for the project and signed and sealed by a licensed professional land surveyor.

E. Standards

Survey mapping shall be developed in accordance with the standards set forth in the [NYSDOT Land Surveying Standards and Procedures Manual](#) and in accordance with the City of Rochester standards. Horizontal datum used for the project shall be referenced to the NYS Plane Coordinate System, western zone (NAD 83, 86 Realization) and tied to the Rochester City Survey (RCS) monumentation. Vertical datum shall be referenced to Rochester Topographic Survey (RTS) monumentation. All CAD and DTM files shall utilize NYSDOT drawing and CAD standards and shall be completed using Microstation and InRoads software.

F. Determination of Existing Conditions

The **Consultant** will determine, obtain or provide all information needed to accurately describe in project documents the existing conditions within and adjacent to the project limits.

1. Utilities

The **Consultant** shall contact 811 Dig Safely NY to acquire a design ticket and obtain utility contacts and record mapping. The **Consultant** shall coordinate with all utilities to ensure all utility appurtenances (above and below ground) are shown completely and accurately on the plans within the project limits. Condition assessment of existing utilities shall be completed by the respective utilities companies. The **Consultant** shall review the condition of utilities with their respective owners. All planned improvements must be noted so that construction efforts can be coordinated between the City and third parties. The **Consultant** shall coordinate and receive verification in writing from all utilities that their facilities are mapped correctly and completely on the plans and shall forward the documentation to the City for filing purposes.

Refer to Section 1.201.H for additional requirements.

Assumption: Existing overhead utilities are not required to be shown as it is anticipated they will remain unaffected by this Project.

2. Railroads

The **Consultant** shall identify all existing railroads and railroad crossings within and adjacent to the project and determine if the rail line is active, inactive or abandoned.

Refer to Section 1.201.I for additional requirements.

3. Lighting

The **Consultant** shall identify and depict existing street lighting conduit (size and material) on the plans and review information supplied by the City's Street Lighting division regarding the condition

and light levels of the street lighting system. The **City** will provide available street lighting record plans that may not be supplied through the 811 dig safely NY design ticket.

4. Water

The **Consultant** shall identify and depict on the plans all existing water features, including mains and services (size and material), hydrants, valve boxes, curb boxes, vaults, etc. The **City** will provide available record plans that may not be supplied through the 811 Dig Safely design ticket.

5. Sidewalk and Curb

The **Consultant** shall conduct on-site field reconnaissance to identify the existing conditions of sidewalks and curbs that are anticipated to remain within the project limits. Spot sidewalk replacement shall be identified per the City's *Hazardous Sidewalk Repair Program* criteria:

- 1.5" or greater in elevation differential between mainline sidewalk flags, including sidewalks that have a temporary asphalt pad to cover the trip hazard.
- Cracked into more than 5 pieces.
- Any broken flags on either side of one being replaced.
- Half inch-deep spalls over more than 30% of the surface.
- Asphalt covered sidewalks.
- Asphalt walks that are desiccated to the point that they are crumbling.
- The City does not typically replace sidewalks that do not pose a tripping hazard, but are slanted, hold water or are at a bad elevation. However, replacement should be considered in areas with high pedestrian traffic.
- Other sidewalk flags based on engineering judgement and as approved by the City.

Spot curb replacement shall be discussed with the City. Typically on a Milling & Resurfacing project, spot curb replacement is limited to missing or broken sections of curb.

The **Consultant** will document the sidewalk and curb inventory and recommend treatments for City's review.

6. Retaining Walls

The **Consultant** shall identify all existing retaining walls that may potentially be impacted by the construction activities and record the existing conditions, prior to construction, with photographs and measurements with a smart level on the vertical plumb of the retaining wall to ensure continued stability and no damages occurred during construction activities.

Section 1.203 Preliminary Design (30%)

A. Design Criteria

The **Consultant** will identify the applicable design standards to be used for this project, such as City of Rochester, MCDOT, FHWA, and NYSDOT, and will establish project-specific design criteria in accordance with the [NYSDOT Project Development Manual](#). The **City** will approve the selected project design criteria.

Based on the selected design criteria, the **Consultant** will identify all existing non-standard features that are within and immediately adjacent to the project limits. Non-standard features that correlate with a high accident rate will be noted. The **Consultant** shall develop non-standard feature justification forms for all non-standard features and submit to the City for review.

B. Development of Alternatives

1. Selection of Design Alternative(s)

The **Consultant** shall identify and evaluate potential design alternative concepts that would meet the City's defined project objectives. These evaluations are not to be carried beyond the point of establishing the feasibility of each concept as a design alternative; only those significant environmental and geometric design constraints that bear on the feasibility should be identified.

For each design alternative the **Consultant** shall prepare the following concept drawings:

- **Typical Sections**
- **Plans**
- **Profiles**
- **Where pertaining to feasibility:** significant environmental and geometric design constraints, labeled as such.

These concept drawings will include only the minimum information needed to select design alternatives to be studied in further detail.

The **Consultant** will prepare and submit a matrix identifying all pros and cons for all design alternative concepts for the City's review.

Assumption: XXX (#) design alternative concept(s) will be evaluated

The **Consultant** will meet with the City to discuss the concepts, using the drawings as discussion aids to describe the relative order-of-magnitude costs, advantages, disadvantages, and problem areas of each. From these concepts the City will select one, or in some cases more, design alternative(s) for further development.

2. Detailed Evaluations of Alternative(s)

The **Consultant** will further evaluate each design alternative and the null alternative with specific engineering analyses and considerations. Analyses will be conceptual and limited to determining the relative suitability of each design alternative, and will include:

- a. Design geometry (where applicable) justification for retaining nonstandard design features, per the HDM.
- b. Environmental constraints and potential environmental impact mitigation measures (identified under Section 1.204).
- c. Traffic flow and safety considerations, including signs.
- d. Pavement.
- e. Structures, including retaining walls, culverts, and areaways.
- f. Drainage.
- g. Maintenance responsibility.
- h. Maintenance and protection of traffic during construction.
- i. Soil and foundation considerations.
- j. Utilities.
- k. Railroads.
- l. Right-of-way acquisition requirements.
- m. Conceptual landscaping (performed by a Registered Landscape Architect).
- n. Accessibility for pedestrians, bicyclists and the disabled.

- o. Lighting.
- p. Streetscape amenities.
- q. Construction cost factors.

The **Consultant** shall prepare the following drawings for each design alternative analyzed:

- **Typical Sections**
- **Plans**
- **Profiles**
- **Where pertaining to feasibility:** See Section 1.203.B.1 for requirements.

C. Preparation of Draft Engineers Report

The **Consultant** will prepare a Draft Engineers Report, which will include the results of analyses and/or studies performed in all Sections of this document.

The **Consultant** shall submit copies of the Report to the City for review in accordance with Section 1.201.E. The number of copies required for submittal shall be coordinated with the City. The **City** and MCDOT will review the Report and provide the **Consultant** with review comments. The **City** will determine if the Report will require a review from any other agencies.

If requested by the City, the **Consultant** shall attend a review meeting with the City and other advisory agencies designated by the City and prepare minutes of the meeting.

The **Consultant** will prepare individual responses to review comments and revise the Report accordingly.

The Report should be an all-inclusive and comprehensive document that shall document all the design aspects of the project and include the results of analyses and/or studies performed in other sections of this document. The **City** will provide the Consultant with a sample report(s) if requested by the Consultant.

Assumption: XXX (X) hard copies of the Report will be complied and submitted to the City as well as in electronic (PDF) format.

D. Preparation of Preferred Alternative (30% Plan Submission)

For the preferred alternative, the Consultant shall prepare the following drawings for City and Utility/Agency review:

- **Cover Sheet**
- **Plan Sheet Layout and Index of Drawings**
- **Legend, Abbreviations, Line and Point Symbology**
- **Typical Sections**
- **Plans**
- **Profiles**
- **Other Drawings:** The **Consultant** shall coordinate with the City to determine if there any other drawings that may be necessary.

The **Consultant** shall submit the 30% Plans and Engineer's Cost Estimate in accordance with Sections 1.201.E and 1.201.F. The **Consultant** will prepare and submit a Transmittal Memorandum in accordance with Section 1.201.E.

E. Meetings

Refer to Section 1.201.B

F. Utility and Railroad Coordination

Refer to Sections 1.201.H and 1.201.I

Section 1.204 Environmental

A. SEQRA Classification

The project is assumed to be a **SEQRA Type II**. The **Consultant** will assist the City in complying with SEQRA (6 NYCRR Part 617). The **City** is the Lead Agency. The **Consultant** will complete the Environmental Assessment Form(s) for the project.

The **Consultant** will document the results of SEQRA processing in the body of the Engineers Report and will include documentation of the final SEQRA determination in the Appendix of the Engineers Report.

B. Screenings and Preliminary Investigations

The **Consultant** will screen and perform preliminary investigations to determine potential impacts resulting from the design alternative(s) for:

- a. General Ecology and Endangered Species
- b. Ground Water
- c. Surface Water
- d. State Wetlands
- e. Federal Jurisdictional Wetlands
- f. Floodplains
- g. Coastal Zone Management
- h. Navigable Waterways
- i. Historic Resources
- j. Parks
- k. Hazardous Waste
- l. Asbestos
- m. Noise
- n. Air Quality
- o. Energy
- p. Farmlands
- q. Invasive Species
- r. Visual Impacts
- s. Critical Environmental Areas
- t. Environmental Justice

Work will be performed, as summarized in the LPM and detailed in the PDM and The Environmental Manual (TEM), to determine whether further detailed analysis or study is required. The results of these screenings and preliminary investigations will be summarized in the appropriate sections of the Engineers Report.

Assumption: Project is eligible for programmatic “No Effect” for Northern Long-Eared Bat.

Assumption: *Coordination with City of Rochester Division of Environmental Quality (DEQ) will be required for any encountered or suspected hazardous waste and/or contaminated materials.*

C. Detailed Studies and Analyses

Based on the work performed in Section 1.204.B, the **Consultant** will determine whether detailed analysis or study is required. Prior to commencing such detailed study or analysis, the **City** must concur with the Consultant's determination.

Detailed study or analysis work will be performed and documented as detailed in the LPM, as well as in the PDM and the TEM. Results of the detailed study or analysis will be summarized in the appropriate section of the Engineers Report.

D. Environmental Permits and Approvals

The **Consultant** will obtain all applicable permit(s), certification(s) and agreements necessary to construct the project.

E. Meetings

Refer to Section 1.201.B

F. Utility and Railroad Coordination

Refer to Sections 1.201.H and 1.201.I

Section 1.205 Right-of-Way

Assumption: *No right-of-way survey or mapping required. No property acquisitions or easements required.*

Section 1.206 Final Design (50%, 90%, 99%, 100%)

The following is a summary of tasks to be completed during the various stages of the Final Design Phase of the project. The **City** will provide the Consultant with sample plans if requested by the Consultant.

A. Lighting

The **City** will provide the Consultant with railroad underpass lighting recommendations developed by the City Street Lighting Division. The **Consultant** will design all proposed lighting improvements and coordinate with the City Street Lighting Division.

Existing and proposed lighting features (poles, hand holes, conduit, meters, power points, wiring diagrams, etc.) shall be depicted on the plans. Separate tables shall be prepared for lighting related features as necessary. Tables shall include all information and notes necessary to accurately depict the work.

The **Consultant** shall perform a Photometric Analysis if the existing lighting system is altered or a new lighting system is proposed. The **Consultant** shall submit the results of Photometric Analysis to the City for review. The Photometric Analysis shall consider luminaire type and wattage, foot candle level, uniformity ratio, and spacing.

The **Consultant** shall coordinate the need to install new meters and power points with RG&E and the City Street Lighting Division. The **Consultant** shall coordinate the need to maintain the existing lighting system during switchover with the City's Street Lighting division, as needed.

Assumption: *Photometric Analysis and street lighting design is required*

B. Retaining Walls

The **Consultant** will design new or replacement retaining walls necessary to complete the project and submit all design calculations to the City for review.

C. Hazardous Waste and Contaminated Materials

The **Consultant** shall coordinate with the City of Rochester Division of Environmental Quality for depicting and detailing Hazardous Waste and/or Contaminated Materials handling in the plans and contract documents.

D. Corridor Specific Recommendations

The **Consultant** shall investigate, evaluate, recommend and justify the need for any corridor specific improvements. The **Consultant** shall prepare and submit to the City a written memorandum outlining the corridor specific recommendations. Recommendations shall not be implemented without prior approval from the City.

E. Permits and Approvals

The **Consultant** will obtain all applicable permit(s), certification(s) and agreements necessary to construct the project, including but not necessarily limited to:

1. NYSDOT Highway Work Permit – PERM #33

Any impact to NYS roads will require a Highway Work Permit. The **Consultant** shall submit design plans of any work on NYS ROW or WZTC schemes for work or work zones which will impact NYSDOT roads or property. The **Consultant** shall obtain the most current PERM #33 Process Guidelines document from the NYSDOT project liaison for additional permit process.

F. Meetings

Refer to Section 1.201.B

G. Utility and Railroad Coordination

Refer to Sections 1.201.H and 1.201.I

H. Preparation of Final Engineer's Report

The **Consultant** will prepare the Final Engineer's Report to include all relevant existing and proposed project related information. The **Consultant** will incorporate any necessary changes resulting from reviews and any comments received from the public, stakeholders, neighborhood groups or other agencies.

The **Consultant** will submit copies of the Draft Final Engineer's Report to the City for review. The **Consultant** will coordinate with the City to determine the number and format of the Draft Final Engineer's Report to be submitted. The **City** will review the Draft Final Engineer's Report and provide the Consultant with review comments. The **Consultant** will revise the Draft Final Engineer's Report to incorporate the comments.

The **Consultant** shall compile and submit to the City, two (2) hard copies of the Final Engineer's Report and in electronic (PDF) format.

I. Contract Proposal Book

The **Consultant** will confirm with the City which generic Contract Proposal Book to utilize for the Project. Contract Proposal Books and City Standard Special Notes can be found and downloaded from the City's website.

J. Construction Management Plan (CMP)

The **Consultant** shall prepare a draft Construction Management Plan (CMP) in accordance with the LPM Chapter 12 for submission to the City.

K. Submittals

1. Detailed Design Plans (50%)

The **Consultant** will advance the approved design alternative to 50% completion and submit the following documents:

- Transmittal Memorandum (in accordance with Section 1.201.E)
- Plans (in accordance with Section 1.201.E) and any other drawings that may be necessary as determined by the **City** and the **Consultant**
- Engineer's Cost Estimate (in accordance with Section 1.201.F)
- New or PIN Only Special Specifications (if known)
- New or PIN Only Special Specification Justifications (if known)

The 50% submission format and distribution shall be in accordance with Section 1.201.E.

2. Advance Detail Plans (ADP) (90%)

The **Consultant** will advance the design to 90% completion (ADP) and submit the following documents:

- Transmittal Memorandum (in accordance with Section 1.201.E)
- Plans (in accordance with Section 1.201.E) and any other drawings that may be necessary as determined by the **City** and the **Consultant**
- Engineer's Cost Estimate (in accordance with Section 1.201.F)
- New or PIN Only Special Specifications
- New or PIN Only Special Specification Justifications

The **Consultant** shall also submit the following documents as they are complete but no more than two (2) weeks after the ADP submission or as directed by the City's Project Manager:

- Pre-Final Engineer's Report
- Draft Contract Proposal Book
- Draft Construction Management Plan
- Any necessary Permits

The 90% submission format and distribution shall be in accordance with Section 1.201.E.

Assumption: XXX (X) Add Alternates will be included in the Project.

3. Pre-PS&E (99%)

The **Consultant** will advance the design to 99% completion (Pre-PS&E) and submit the following documents.

- Transmittal Memorandum (in accordance with Section 1.201.E)
- Plans (in accordance with Section 1.201.E) – Unstamped
- The FINAL versions of all other documents submitted at 90%

- PS&E Transmittal Memo
- Mylar Cover Sheet – for routing of signatures
- Status of Special Specifications Table
- Hazardous Waste / Contaminated Materials Report

The 99% submission format and distribution shall be in accordance with Section 1.201.E. The intent is to ensure all comments from the 90% submission have been adequately addressed.

If approved by the City, the 99% submission may be used to obtain Construction Authorization (CA) for federal funded projects. The **City** will coordinate the request for CA and review the necessary documents, including the Plans, Engineer's Estimate, PS&E Transmittal Memo and ROW Clearance Certificate.

4. Contract Documents / PS&E (100%)

The **Consultant** will prepare a complete package of bid-ready (100% complete) contract documents. The PS&E submission shall include the following contract documents:

- Transmittal Memorandum (in accordance with Section 1.201.E)
- Plans (in accordance with Section 1.201.E) – Signed and Stamped
- The FINAL versions of all other documents submitted at 99%
- Supplemental Information Available to Bidders
- Any other necessary contract documents not submitted at 99%

The 100% submission format and distribution shall be in accordance with Section 1.201.E.

The **City** will coordinate the request for Construction Authorization with the NYSDOT if this did not occur at the Pre-PS&E submission.

Section 1.207 Advertising, Bid Opening and Award

A. Advertisement

The **City** will place the advertisements on BidNet, Daily Record and NYS Contract Reporter.

The **Consultant** is to prepare for, attend and assist the City in the pre-bid meeting. Meeting Minutes will be prepared by the **Consultant**.

The **Consultant** shall prepare addenda as needed during the bidding phase, including a summary of "Modifications to the Contract Documents and/or Drawings", revised pages of the Contract Proposal Book and addendum drawings. Such addenda shall conform to the requirements of the City's Purchasing Agent and in the format requested by the City.

***Assumption:** Two (2) addendums will be required for the project.*

B. Bid Opening (Letting)

The **City** will hold the public bid opening. The **Consultant** shall attend the bid opening if directed by the City. The **City** will supply the contractors' original bid proposal documents to the **Consultant**, which is necessary to complete the bid analysis and award recommendation as described below.

C. Award

The **Consultant** will analyze the bid results and prepare a letter of recommendation for award addressed to the City Engineer and signed by the Consultant. The letter of recommendation

shall be packaged with the necessary award documentation. The analysis shall comply with Chapter 14-Advertisement, Contract Letting and Award from the NYSDOT Local Projects Manual (LPM).

This information shall be returned to the City within **five (5)** working days or as directed by the City. The **Consultant** shall submit the bid tabulations, low-bidder's share breakdown, bid analysis, and recommendation letter. The **Consultant** shall coordinate with the City on the number and format required for the submittal.

If directed by the City, the **Consultant** shall expedite the delivery of the bid tabulations and share breakdown prior to completion of the remaining award documents.

The **Consultant** shall submit Conformed Construction Plans to the City and other agencies in the format described in Attachment C - Drawing Submittal Requirements.

The **Consultant** shall submit to the City all CAD and InRoads files used to develop the Conformed Construction Plans and all quantity computations used to develop the Engineer's Estimate in both Excel and PDF format. The quantity computations shall include any Addendum related changes that were made during bidding.

Section 1.208 Construction Support

Work under this section will always be in response to a specific assignment from the City under one of the tasks below:

- A. In response to unanticipated and/or varying field conditions, changes in construction procedures or as requested by the City, the **Consultant** will conduct on-site field reconnaissance and/or field meetings and, where required, prepare Field Change Sheets modifying pertinent contract plan sheets. The **Consultant** shall submit Field Change Drawings to the City and other agencies in the format described in Attachment C - Drawing Submittal Requirements. Field Change Drawings shall be developed in accordance with the NYSDOT Manual for Uniform Record Keeping (MURK) Part 1A, Section 91.

Assumption: XXX (#) on-site field visits and XXX (#) Field Change Sheets

- B. The **Consultant** will analyze and make recommendations on the implementation of changes proposed by the City or the construction contractor. This includes the Traffic Control Plan.
- C. The **Consultant** will interpret and clarify design concepts, plans, specifications and any other Requests for Information (RFI).
- D. The **Design Consultant** should only be reviewing specialty shop drawings and/or other contractor submittals. The **RPR Consultant** should be reviewing and approving most submittals from the contractor, including standard material submittals items that are on the NYSDOT approved list.

Assumption: XXX (#) reviews

- E. The **Consultant** shall attend the RPR hand-off meeting, pre-construction meeting, all construction progress meetings and the final walkthrough meeting.

Assumption: XXX (#) construction progress meetings

- F. The **Consultant** shall develop record plans based on red-line drawings furnished by the Resident Project Representative. The record plans shall be developed in accordance with the NYSDOT Manual for Uniform Record Keeping (MURK) Part 1A, Section 91. Sample record plans will be provided by the City. The **Consultant** shall submit record plans to the City and other agencies in the format described in Attachment C - Drawing Submittal Requirements.
- G. The **Consultant** shall provide digital record files conforming to the City standards provided in Attachment D - City Digital Record File Standards.

Corrections of design errors and omissions are **NOT** reimbursable.

Section 1.209 Construction Inspection

Construction inspection (CI) / Resident Project Representation (RPR) services are not included in this agreement. If needed, CI / RPR services will be solicited through a separate request for proposals process by the City's Construction Division.

Section 1.210 Additional Services

Work not described under Basic Services shall constitute as additional services. The following are examples of additional services:

- A. If the Consultant is caused expense due to substantial revisions of previously approved studies, design documents, drawings or specifications, such revisions having been ordered in writing by the City, or if the scope of the project is significantly enlarged either by expansion of the project's physical limits or by increase of the Consultant's responsibilities.
- B. If the Consultant is requested to prepare an Environmental Impact Statement (EIS) for the Project, all services related to the preparation and approval of the EIS shall constitute additional services.
- C. Should the City require the services of the Consultant as an Expert Witness on behalf of the City and request such services in writing, serving as an Expert Witness shall constitute as additional services.

If the Consultant is of the opinion that any work is beyond the scope of this agreement and constitutes extra work, the **Consultant** shall promptly notify the City's Authorized Agent in writing of this fact **prior to beginning any of the work**. The **City** shall be the sole judge as to whether or not such work is in fact beyond the scope of this agreement and constitutes extra work. In the event that the City determines that such work does constitute extra work the **City** shall provide extra compensation to the Consultant in a fair and equitable manner. If necessary, an amendatory agreement providing the compensation and describing the work authorized shall be issued by the City to the Consultant for execution **after** approvals have been obtained from any necessary City, State, and Federal Highway Administration authorities.

ARTICLE I, Part 3. SUBCONTRACTS

All services to be performed under this Agreement shall be performed with the Consultant's own employees, unless the City agrees that the Consultant may subcontract such services. Copies

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

ARTICLE I, Part 4. CITY RESPONSIBILITIES

The **City** shall:

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

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 **X Hundred and X thousand dollars (\$XXX,000), including design contingency.**
- B. The **Consultant** shall have the right to bill the City on a monthly basis for services performed and not already billed.
- C. The **Consultant** shall submit duly executed invoices on a **monthly basis**, plus supporting documentation required by the City, in order to receive payment.

- D. The **City** may audit the Consultants performance of this agreement, the adequacy of the Consultants accounting system, and the reasonableness of the Consultants overhead rates, and retain the results for New York State or Federal audit of the project. Costs claimed by or previously paid to the Consultant that cannot be appropriately supported or which do not comply with applicable City, New York State, or Federal regulations are subject to disallowance. Amounts paid to the Consultant that are subsequently disallowed are subject to recovery by the City from the Consultant or, at the option of the City, may be offset or reduced against current or future payment claims on this or other projects.

Section 1.502 Fee for Basic Services, Reimbursable Expenses, Fixed Fee, and Retainage

- A. The following fees shall be payable to the Consultant pursuant to this Agreement the following shall be as initially set forth in the Schedule A:

1. Basic Services
2. Overhead Allowance
3. Reimbursable Expenses
4. Fixed Fee
5. Additional Service Allowance

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

1. Basic Services Fee Computation

- a. The Consultant's Basic Services fee shall be computed at the rate of 100% times actual direct salary expenses based on rates approved by the City's Authorized Agent for the Consultant's technical and professional personnel, except for surveyors, within the phase limits shown in Schedule A.
- b. Surveyor's wages are subject to the New York State Department of Labor, Bureau of Public Works, Prevailing Rate schedules. The **City** will pay the incremental cost due to the prevailing wage rate schedules established by the New York State Department of Labor. This incremental cost and supplemental benefits may be paid either as a component of basic services or as a direct cost, provided that only one of these methods may be chosen and applied to this agreement.
- c. If the prevailing wage incremental costs and supplemental benefits are paid as a direct cost, see Section 6.02.B.6, below.

2. Overtime Premium

The **City** will pay premium time for overtime, but not subject to a multiplier.

3. Overhead Allowance

An overhead allowance shall be established as a percentage of direct salary expenses for Basic Services, as described in Section 1.502.B.1 above, and shall conform to the Federal Acquisition Regulations (48 Code of Federal Regulations Part 31). The percentage is subject to audit and adjustment and shall not exceed the lowest rate of the following: that

established by City or New York State Department of Transportation audits for the period being billed or the rate designated below. The rates for progress payment billings by the **Consultant** and subconsultants for this agreement are:

PRIME CONSULTANT	XXX% (office)
SUBCONSULTANT	XXX% (office)
SUBCONSULTANT	XXX% (office)

An increase in the approved overhead rate shall not be a reason for a change in the total fee payable for Basic Services or the Fixed Fee.

The **Consultant** shall provide the City with a copy of the following documents issued to the Consultant or subconsultants that apply to the periods during which services for this agreement are provided:

- a. Audits of the firm conducted to establish overhead rates in accordance with Federal Acquisition Regulations or to establish adequacy of the firms accounting systems with respect to Federal regulations or Government Accounting Standards; and,
- b. Correspondence from New York State or comparable agencies establishing overhead billing rates for Federal Aid projects, including NYS Department of Transportation pre-negotiation, pre-award, and overhead audit letters and related audit reports.

4. Consultant Overhead Approval Documentation

The **Consultant** shall submit to the City's Authorized Agent at least annually a copy of a current New York State Department of Transportation Pre-negotiation or Overhead Audit Reports, or of comparable audit reports performed by an independent Certified Public Accountant according to Government Auditing standards (GAO Yellow Book), to demonstrate that the Consultants rates and financial records conform to Federal Acquisition Regulations (48 CFR Part 31). (NYSDOT Form CONR385 acknowledgment letters, and pre-negotiation or overhead rate letters without the attached audit reports, are not acceptable for meeting this requirement.)

5. Fixed Fee

The Fixed Fee is within the total fee amount defined in Section 1.501.A. The Fixed Fee is a negotiated lump sum fee which in this agreement shall be as detailed in Schedule A. It is payable in proportion to the value of the completed Basic Services tasks listed in Schedule A as a percentage of the Basic Services total.

The amount of the monthly payment of this lump sum fee shall be equal to the percentage of the basic services fee billed during that month. The **Consultant** may request payment of any unpaid balance of the payable portion of the Fixed Fee upon successful meeting of the terms and conditions of this agreement and its final close-out.

6. Reimbursable Expenses

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 break-down. Reimbursable Expenses are as outlined in Schedule A.

Direct salary, overhead and other expenses for subconsultants, billed to the City as reimbursable expenses, shall be paid on the basis outlined above for Basic Services, Overtime Premium, Overhead Allowance and Fixed Fee.

If the prevailing wage incremental costs and supplemental benefits for Surveyors are paid as a reimbursable expense (see Section 1.502.B.1, above), the **Consultant** shall compute these costs as follows. The difference between the employees' normal hourly wage and the appropriate prevailing wage, plus a payroll additive applied to this difference for any incremental social security, disability, or workers compensation insurance beyond those costs applied to the normal wage, will be considered as a project-related reimbursable expense. Regarding the wage supplement connected to the prevailing wage rate, the difference between the applicable, published wage supplement to be paid and those deductions which may be made for the employer's contributions in accordance with the Department of Labor's accepted procedures, plus a payroll additive applied to this difference as for the normal wage above, will be considered to be a project-related reimbursable expense. No overhead multiplier may be applied to these costs.

7. Payments and Retainage

The amount payable in each billing period shall be the sum of the fee for Basic Services plus Overhead Allowance plus the Fixed Fee amount plus Reimbursable Expenses, as calculated above, less a Retainage of 0%. The Retainage will be withheld until 30 days after final audits have been made and amounts due verified or adjusted according to audit findings.

The **Consultant** shall pay a subconsultant's invoice within 5 business days of receiving payment from the City for the Consultant invoice which included the billing for the subconsultant's invoice. The **Consultant** shall permit the City to review records related to subconsultant agreements, services, and billings; to verify payment of subconsultant invoices; and to adjust payments to the Consultant based upon such reviews and verifications.

8. Hourly Rates Approval

All hourly rates for technical personnel, and the identity of project managers and principals shall be approved by the City's Authorized Agent prior to the Notice to Proceed. No changes may be made without approval by the City.

Section 1.503 Fee for Additional Services

- A. The **City** agrees to pay the Consultant for additional services performed by the Consultant within the maximum set forth in Section 1.501.A on the following basis:
- B. Adjustments to the Basic Services fee for extra work due to unanticipated change of scope of the project, or other extra work approved by the City's Authorized Agent, shall be made at the rate of 100% times actual payroll expenses for the Consultant's technical and professional personnel, plus an overhead allowance as authorized in Section 1.502.B.3, plus a Fixed Fee subject to the approval of the NYSDOT;
- C. Adjustments to the Basic Services fee for additional work which is within the original or amended scope of the agreement may be approved at the sole discretion of the City's

Authorized Agent; such adjustment will be calculated as above, however, no Fixed Fee adjustment will be allowed.

- D. 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.
- E. The **City** shall pay the Consultant to provide property survey and preparation of plots and legal descriptions at \$350 per plot.
- F. Should the City utilize the Consultant to provide Resident Project Representation services, the construction phase services portion of this Agreement shall be terminated and shall be negotiated in the subsequent agreement for Resident Project Representation services.
- G. Should anticipated payments for additional services calculated on these bases, cause the total of the agreement to exceed the maximum set forth in Section 1.501.A, the **City** will seek approval to issue the Consultant an amendatory agreement describing the additional services and providing compensation there from any necessary City, State, and Federal authorities.

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 1.501.A.
- 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 1.501.A.

ARTICLE I, Part 6. TERM

This Agreement shall commence upon execution by the parties and shall continue until three (3) months after completion of the two-year guarantee inspection of the Project. 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, and requirements for audits and recovery of disallowed costs.

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

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:

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 14614-1279

B. The **Consultant** hereby designates:

Name, P.E.
Title
Consultant
Address
Rochester, New York

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

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

ARTICLE I, Part 10. OWNERSHIP OF DOCUMENTS

A. Documents and Delivery

All original analyses, reports, graphics, estimates, quantity backup, design notes, drawings, specifications, survey maps, CAD files, etc. prepared by the Consultant under this Agreement, upon completion of the work required herein, will become the property of the City and shall be delivered to the City's Authorized Agent in digital format. The **Consultant** shall provide a complete reproducible hard copy of these documents if requested by the City's Authorized Agent.

B. Digital Format

The **Consultant** shall provide digital record files conforming to the City standards provided in Attachment D - City Digital Record File Standards.

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

Section 2.105 Workers' Compensation and Disability Benefits Insurance

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

Section 2.106 Copyright or Patent Infringement

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

Section 2.107 No Individual Liability

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

ARTICLE II, Part 2. Specific Design Restrictions

Section 2.201 Environmental Policy

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

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

ARTICLE II, Part 3. Employment Practices

Section 2.301 Equal Employment Opportunity 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 to which the employment relates. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that applicants are hired and that employees are treated during their employment, without regard to their of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability, or marital status. Such actions shall include, but not be limited to the following: employment, upgrading, demotions or transfers, recruitment and recruitment advertising, layoffs, terminations, rates of pay and other forms of compensation, and selection for training, including apprenticeship.
2. The Consultant agrees that its employment practices shall comply with the provisions of Chapter 63 of the Rochester Municipal Code, which restricts inquiries regarding or pertaining to an applicant's prior criminal conviction in any initial employment application.
3. If the Consultant is found guilty of discrimination in employment on the grounds of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability, or marital status by any court or administrative agency that has jurisdiction pursuant to any State or Federal Equal Opportunity laws or regulations, such determination will be deemed to be a breach of contract, and this Agreement will be terminated in whole or part without any penalty or damages to the City on account of such cancellation or termination and the Consultant shall be disqualified from thereafter selling to, submitting bids to, or receiving awards of contract with the City of Rochester for goods, work, or services until such time as the Consultant can demonstrate its compliance with this policy and all applicable Federal and State Equal Opportunity laws and regulations.

4. The Consultant shall cause the foregoing provisions to be inserted in all subcontracts, if any, for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

D. MWBE and Workforce Utilization Goals

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

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

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

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

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

signed by the Consultant and the MWBE Officer, such revised plan(s) shall be incorporated into 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 shall be in writing and filed with the City Title VI Coordinator within one hundred eighty (180) days following the date of the alleged discriminatory occurrence. Title VI Discrimination Complaint Forms may be obtained from the City at no cost to the complainant, or on the City's website at www.cityofrochester.gov, or by calling (585) 428-6185.

Section 2.303 The MacBride Principles

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

Section 2.304 Compliance with Labor Laws

The Consultant specifically agrees to comply with the labor law requirements of Articles 8 and 9 of the Labor Law of the State of New York, and, more specifically, with the requirements of Sections 220, 220-a, 220-d and 220-e of the Labor Law. These provisions require the payment of prevailing wages and supplements to, the verification of payment of wages of, and require preference in the employment of New York residents, and prohibit discrimination based on race, creed, color, sex, national origin, or age, and prohibit the permitting or requiring of more than eight hours per day and forty hours per week from laborers, mechanics, or workers on a public works construction

project. The foregoing requirements do not generally apply to professional staff, draftsmen, or clerical help or most other employees of an engineer or architect who is performing design, research, or inspection work only. The Consultant shall, however, comply with all state, federal and local non-discrimination and equal employment opportunity laws and rules and will be subject under this Agreement to fines, penalties and contract termination when the City reasonably determines that the Consultant has unlawfully discriminated because of the race, color, creed, national origin, sex or age of any applicant for employment or any employees.

Section 2.305 Living Wage Requirements

A. Applicability of Living Wage Requirements

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

B. Compliance

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

C. Exemption

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

ARTICLE II, Part 4. Operations

Section 2.401 Compliance with Air and Water Acts

The Consultant and any and all subcontractors agree as follows:

- A. The Consultant, and its subcontractors warrant that any facility to be utilized in the performance of any non-exempt contract or subcontract is not listed on the

list of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.

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

Section 2.402 Political Activity Prohibited

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

Section 2.403 Lobbying Prohibited

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

Section 2.404 Anti-Kickback Rules

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

Section 2.405 Withholding of Salaries

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

Section 2.406 Discrimination Because of Certain Labor Matters

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

Section 2.407 Status as Independent Contractor

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

ARTICLE II, Part 5. Documents

Section 2.501 Patents and Copyrights

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

to use, reproduce, manufacture and distribute the product or mater which has been patented or copyrighted.

Section 2.502 Audit

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

Section 2.503 Content of Sub-Agreements

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

ARTICLE II, Part 6. Termination

Section 2.601 Termination for Convenience of the City

- A. This Agreement may be terminated by the City in accordance with this section in whole, or from time to time, in part, whenever for any reason, the City shall determine that such termination is in the best interest of the City. Any such termination shall be effective upon written notice to the Consultant. However, no

such termination shall relieve the Consultant of any outstanding duties imposed by the Agreement, including the requirement to hold the City harmless and to maintain insurance coverage insuring against loss arising out of the Project.

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

Section 2.602 Termination for Default

- A. The performance of work under this Agreement may be terminated by the City in accordance with this clause in whole, or, from time to time, in part, whenever the Consultant shall default in performance of this Agreement in accordance with its terms (including in the term "default" any failure by the Consultant to make progress in the prosecution of the work hereunder which endangers such performance) and shall fail to cure diligently such default within a period of ten days or (or such longer period as the City may allow) after delivery by the City of a notice specifying the default.

- B. If this Agreement is to be terminated, the City may take over the work and services and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the City for any excess cost occasioned thereby.
- C. The total fee payable shall be such proportionate part of the fee as the value of the actual work completed and delivered bears to the value of the work required or contemplated by this Agreement.
- D. This Agreement may not be so terminated if the failure to perform arises from unforeseeable causes beyond the control and without the fault or negligence of the Consultant.
- E. If, after notice of termination of this Agreement under the provisions of this section, it is determined for any reason that the Consultant was not in default or that the default was excusable the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the clause of this Agreement entitled "Termination for the Convenience of the City."
- F. The rights and remedies of the City provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

ARTICLE II, Part 7. General

Section 2.701 Prohibition Against Assignment

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

Section 2.702 Compliance with All Laws

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

Section 2.703 Successors

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

Section 2.704 Interest of City and Consultant in Contract

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

Section 2.705 Permits, Laws and Taxes

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

Section 2.706 Obligations Limited to Funds Available

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

Section 2.707 Extent of Agreement

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

Section 2.708 Law and Forum

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

Section 2.709 No Waiver

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

Section 2.710 Severability

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

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

THE CITY OF ROCHESTER

BY: _____
Malik D. Evans, Mayor

CONSULTANT

BY: _____
Name: _____

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