

AGREEMENT FOR PROFESSIONAL SERVICES

**Crittenden Blvd
2014 Preventive Maintenance**

Project Scope: Preventive Maintenance
City Project ID #: 14103
NYSDOT PIN: 4754.57
Consultant: _____
Agreement #: _____
Authorizing Ordinance: 2013 - _____

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AGREEMENT

THIS AGREEMENT, entered into on the ___ day of _____, 20___, by and between the CITY OF ROCHESTER, a Municipal Corporation having its principal office located at CITY HALL, 30 Church Street, Rochester, New York, 14614, hereinafter referred to as the "City" and **CONSULTANT**_[T1], located at **ADDRESS**, hereinafter referred to as the "Consultant."

WITNESSETH:

WHEREAS, the City, through the Department of Environmental Services, desires to engage the Consultant for the purposes of providing professional engineering design services required in connection with the **Crittenden Boulevard 2014 Preventive Maintenance 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 engineering services related to the Project.

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

ART. I, Part 1. DESCRIPTION OF PROJECT

A. Project Description

This project includes but not limited to improvements generally identified below.

Street Improvements

It is proposed Crittenden Boulevard will receive a traditional 1 ½" milling and resurfacing along with truing and leveling to improve the drainage and rideability. Preference will be given to cost effective treatments such as differential milling to preserve curb reveal, improve drainage, and, re-establish adequate crown while retaining existing pavement materials.

New granite curbing will be installed and the sidewalks will be replaced as needed. Sidewalk Curb Ramps will be reviewed and upgraded to assure compliance with current ADA standards.

Water Improvements

Basic adjustments of existing water valve covers is proposed.

Sewer Improvements

Adjustment and/or replacement of receiving basins frame and grates and manhole frame and covers are proposed.

Traffic Improvements

It is proposed that new pavement markings, signs (if necessary) and traffic signal loops be installed within the project limits.

B. Project Classification

Crittenden Boulevard is a Federal Aid principal arterial street that is not on the National Highway System. This project is to be developed in accordance with the New York State Department of Transportation's (NYSDOT) Policy and Procedure Manual. A preliminary environmental screening of the project assumes the project to be classified as a Type ___ Action in accordance with the definitions of the State Environmental Quality Review (SEQR) Act 17NYCRR15, and as a ~~D-List Categorical Exclusion~~ with documentation with respect to the Federal Highway Administration's Rules and Regulations 23CFR771.117(d)(1).

C. Policy and Procedures

1. The design of this project will be progressed in accordance with the current NYSDOT Locally-Administered Federal Aid Projects Manual and Design Procedure Manual (DPM) and appropriate sections of the Federal Aid Policy Guide (FAPG).

All work must comply with the requirements of all applicable state and federal environmental laws, regulations and policy, including those specified in Appendix A of the NYSDOT Design Procedure Manual.

ART. I, Part 2.DESCRPTION OF PROFESSIONAL SERVICES

Section 1.201 General

- A. The Consultant shall provide all basic engineering services required for the Project including surveys, planning and preliminary engineering. The Consultant shall provide project cost estimates with submissions as specified herein and at interim points as required by the City.
- B. The Consultant shall provide additional services and perform contingent tasks, if required, at the request of the City.
- C. The Consultant is to have on its staff and is to retain during the performance of its services all appropriate professional personnel necessary to completely and accurately perform the work and services required. Where the design of 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.
- D. The Consultant shall develop and submit to the City an implementation plan and schedule for the orderly and timely completion of requirements of this Agreement. The Consultant shall utilize appropriate graphics to illustrate the plan. All pertinent dates of meetings and submittals shall be identified subsequent to execution of this agreement.
- E. The Consultant shall be available to meet with the City periodically and as necessary to review the progress on the requirements of this Agreement and to provide engineering consultation.
- F. The Consultant shall maintain an up-to-date orderly assembled file of notes providing a history of the development of the Project. Notes shall include correspondence, calculations, documentation, references and other material necessary to establish the basis of the reports and recommendations.
- G. The Consultant shall prepare and furnish to the City, within one week of the meeting, minutes of all meetings held and monthly written progress reports in a format mutually agreed upon.

SECTION 1.202 BASIC SERVICES

- Design plans for each street shall be prepared by the consultant.
- The Highway Right of Way (Boundary) lines shall be depicted for each of the streets. Property lines for each parcel adjacent to the right of way lines will not be required.
- In the event a road diet occurs a signage plan must be prepared by the consultant.
- In the event a road diet occurs a public informational meeting will be conducted by the consultant. The city will schedule and facilitate the public meeting.
- The consultant shall present the work zone traffic control plans to the city's Traffic Control Board for their approval of the plan.
- Perform a traffic safety assessment. The City will provide to the consultant the accident reports for these streets between January 2011 and December 2013.
- Gather field data to tabulate needed curb, base repair, handicap ramp improvements for current ADA compliance, receiving basin improvements, sewer and water casting adjustments, and, confirm paving limits.
- Design for replacement of existing traffic loops.
- Design for incorporating new signage to accommodate new pavement marking plans.
- Design for retrofitting existing traffic signal arms or span wires along with signal head relocation to accommodate new pavement marking plan.
- Complete a R.O.W. Clearance Certificate to submitted with the P.S.&E. package.
- Acquire necessary Highway Work Permits from NYSDOT and railroad agreements as necessary.
- Prepare plans and specifications for bids utilizing NYSDOT pay items. The City of Rochester shall provide a generic contract proposal book for preparation of the final proposal book.
- It is assumed that in all cases existing traffic will be maintained throughout the construction. Otherwise, detour analyses may be required for any proposed detours.
- The consultant shall aid the city in advertising, bidding and award phases in accordance with the FAFPL process to have the construction funding obligated in the 2014 federal fiscal year ending September 30, 2014.

A. Preliminary Investigation Phase

1. Existing Data

The Consultant shall make maximum utilization of existing planimetric, topographic and utility maps and surveys, as available from the City, County, State, or private utilities. Base mapping shall consist of record drawings, GIS, and supplemented with survey data collected in the field. The project shall be tied to the New York state Plane Coordinate System, western zone, NAD'83. The information shall be plotted at a 1" = 20' scale, and show the NAD '83 coordinate grid, planimetric, topographic and utility details in the project area. Mapping shall be prepared on 22" X 34" mylar and digital form in accordance with the City Digital Record File Standards.

2. Existing Sewer, Water and Other Facilities

The Consultant shall locate and identify all storm, sanitary or combined sewer manholes and catch basins, water valves and services, and other similar

structures within the Project Area.

The Consultant shall evaluate the physical condition of existing storm sewer drains, catch basins, and shall utilize such information in the design of the Project.

The condition and capacity of other utilities shall be reviewed with their respective owners by the Consultant. All planned improvements will be noted so that construction efforts can be coordinated between the City and third parties.

3. Traffic

Provisions for bicyclists and pedestrians shall be evaluated and appropriate improvement recommended. The Consultant shall review all parking and regulatory signing and make recommendations for their improvement. A traffic safety assessment for each street shall be prepared by the consultant as part of this agreement.

4. Roadway

The Consultant shall evaluate the existing roadway conditions including pavement, curbs, sidewalks, etc. The Consultant shall prepare recommendations for proposed roadway features. Recommendations shall include roadway sections, either pavement rehabilitation or reconstruction, curbs, sidewalks, etc., as appropriate.

5. Coordination

The Consultant shall meet with utilities/agencies identified by the City to review their involvement with the Project.

6. Review Meeting

The Consultant shall present its findings of Preliminary Investigation at a review meeting with the City and others designated by the City and prepare minutes of this meeting. The Consultant shall incorporate into the design of the Project any comments or directions resulting from this meeting with the City.

B. Preliminary Plans & Report

1. The preliminary design and the preparation of preliminary plans for the elements of the project shall be accomplished by the Consultant. The Consultant shall provide an in-depth design review at 35% complete including the following information:

- a. Preliminary plans, including a cover sheet, legend, typical sections pavement marking and signage plans. These plans shall be at the scale of 1" = 20'.

- b) Preliminary cost estimates with share breakdown.
- c. Consultant shall provide copies of the plans to various agencies and utilities as indicated by the City. The consultant shall utilize the city's reproduction services contract for project related mass production of plans.

2. Meetings

a. Review Meetings

The Consultant shall present for review the Preliminary Plans at a review meeting with the City and others designated by the City and prepare minutes of this meeting. The Consultant shall incorporate any comments and direction resulting from this review meeting with the City.

b. Neighborhood Meeting(s)

At the request of the City and in cooperation with the City the Consultant shall conduct a meeting with neighborhood groups and merchant's associations neighboring the Project Area. At the meeting the Consultant shall attempt to determine the problems, needs, and priorities of such associations and their members and shall solicit suggested methods of remedying their problems with current road, sidewalk and other related facilities. The Consultant shall also utilize such meeting to keep residents and merchants informed of the progress of the project, in order to stimulate their involvement and cooperation. In order to facilitate the dissemination of information at such meetings, the Consultant shall prepare necessary display and information material. The Consultant shall provide a memorandum summarizing these meeting.

- c. The Consultant shall present the project to the Traffic Control board for approval of any traffic or geometric changes.

C. Final Design Phase

- 1. The Final Design and the preparation of detailed Contract Documents shall be accomplished by the Consultant in accordance with applicable City, County, State and Federal procedures for all elements of work as defined in the Preliminary Plans and Report Phase, including:

- a. Street geometrics, including widenings or narrowings, alignment and intersection layout.
- b. Street section including subgrade, pavement, shoulders, curbing, sidewalks, requirements for right-of-way etc.
- c. Traffic features including pavement markings, parking zones, signing, street signs and signalization.
- d. Sewer manholes and inlets including location, grades and types.

- e. Water facilities - Replacement and/or adjustment of existing valve box covers.
 - f. Utility disposition: The Consultant shall prepare a detailed utility construction schedule. Such schedule shall identify work, duration, impacts and conflicts.
 - g. Parking, bus stop and access drive facilities.
 - h. Maintenance of traffic and services for the Project. It is anticipated traffic will be maintained on each street during construction activities. The Work Zone Traffic Control plan shall consist of standard details in accordance with the latest federal MUTCD.
2. The Consultant shall make the following submissions and meeting presentations:
 - a. Consultant shall provide copies of the advance final plans to various agencies and utilities as indicated by the City. The consultant shall utilize the city's reproduction services contract for project related mass production of plans. Two (2) sets each of specifications, quantities and estimates shall be submitted at the 90% advance final completion stage of the Contract Documents.
 - b. The Consultant shall present the advance final design documents at a review meeting with the City and others designated by the City, if so requested.
 3. The Consultant is to provide the City with an updated cost estimate including the basis for quantities in the estimate and the funding share breakdown for the project based on complete drawings and specifications. In addition, a quantity work-up book is to be prepared and submitted.
 4. The Consultant is to prepare for the City's Contract Documents including the Project Summary, Special Instructions to Bidders, Bidding Forms, Special Terms and Conditions, Special Laws and Regulations, Project Specifications and working drawings for the Project. The bid documents are to be based upon standard City forms wherever applicable using the Standard construction documents. The Consultant is to furnish the Contract Documents under this Agreement, some of which are to be delivered by the consultant to utilities or other agencies as indicated by the City at the beginning Notice to Proceed of the Project. The consultant shall utilize the city's reproduction services contract for project related mass production of plans.
 5. The consultant shall aid the city in obtaining all necessary work permits and agreements necessary to construct this project including but not limited to a New York State Highway Work Permit and necessary Railroad agreements.

D. Bidding Phase

1. The Consultant shall prepare addenda as required. Such addenda shall be prepared as required by the City's Purchasing agent. The quantity of copies of the addenda as designated by the city shall be submitted to the City and designated utilities and agencies.
2. The Consultant is to assist the City in pre-bid meetings and pre-award meetings, obtaining bids, and reviewing and recommending awards, evaluating alternate bids, and preparing a construction contract.
3. The Consultant shall prepare the conformed copies of the contract documents, prepare bid tabulations in a format agreed upon by the City, prepare a share breakdown based on the low bidders bid, prepare analysis of the bid tabulations and letter of recommendation for award. This information shall be returned to the City in 10 working days after bid opening, or sooner if required.

E. Construction Phase

The Consultant shall provide the following services:

1. Provide, during the construction contract to be entered into by the City for the construction of this Project, to the satisfaction of the City, periodic engineering consultation services to verify adherence to the design and to assist in the administration of the construction until final completion and acceptance by the City.
2. Visit the job whenever requested by the City for the purpose of clarifying or interpreting any phase of the work.
3. Attend on-the-job field meetings, as needed, and provide minutes of these meetings to the City and to parties designated by the City.
4. Based on marked up prints, drawings and other data furnished by the resident Project Representative and the Contractor, furnish the city a set of reproducible drawings showing the Construction, certified as actually built. In addition, a set of drawings showing sewer construction shall be submitted to the Division of Pure Waters, and a set of drawings showing traffic items to the Monroe County Department of Transportation.
5. The Consultant shall provide a digital as-built drawing based on actual field measurements taken during construction and based on the survey completed under Article 1, Part 2, Section 1.202, Subsection A, Paragraph 2. (Surveys Mapping and Exhibits). The digital format must conform to the City digital standards and at a minimum contain separate layers for those feature outlined under Article 1, Part 8, Paragraph B.

Section 1.203

Additional Services

The following shall constitute 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, such shall constitute additional services.
- 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 additional services.
- D. Performing work not described under Basic Services requested and authorized in writing by the City's Authorized Agent.
- E. If the Consultant is of the opinion that any work the Consultant has been directed to perform 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.

ART. I Part 3. CITY RESPONSIBILITIES

The City shall:

- A. Provide as complete information as is reasonably possible regarding its 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.

- A. The fee payable to the Consultant for Basic Services pursuant to this Agreement shall be as initially set forth in Schedule A.
- B. The fee payable to the consultant for Overhead Allowance pursuant to this Agreement shall be as initially set forth in Schedule A.
- C. The fees payable to the Consultant for Reimbursable Expenses pursuant to this Agreement shall be as initially set forth in Schedule A.
- D. The fees payable to the Consultant for the Fixed Fee pursuant to this Agreement shall be as initially set forth in Schedule A.
- E. 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.

If the prevailing wage incremental costs and supplemental benefits are paid as a direct cost, see Section 1.402.E.5, 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 1.402.E.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 initially estimated for progress payment billings by the Consultant and subconsultants for this agreement are

Consultant	XXX%;
Sub-Consultant 1	XXX%;
Sub-Consultant 2	XXX%;
Sub-Consultant 3	XXX%;

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 firm=s 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.

Consultant Overhead Approval Documentation

The Consultant shall submit to the Citys 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.)

4. Fixed Fee

The Fixed Fee is within the total fee amount defined in Section 1.401.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.

5. 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 1.402.E.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.

6. 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.

7. 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 1.403 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 1.401.A on the following basis:
 - 1. 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 1.402, plus a fixed fee subject to the approval of the NYSDOT;
 - 2. 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.
- B. The City shall pay the Consultant as an expert witness at the rate of \$400.00 per day for any day or portion thereof for which the Consultant is required to appear as a witness.
- C. The City shall pay the Consultant to provide property survey and preparation of plots and legal descriptions at \$350 per plot.
- D. 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.
- E. Should anticipated payments for additional services calculated on these bases, cause the total of the agreement to exceed the maximum set forth in Section 1.401.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 1.404 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 1.401.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 1.401.A.

ART. I, Part 5.TERM

This Agreement shall commence upon execution by the parties and shall terminate six (6) months after completion and acceptance of the study designated herein. 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.

ART. I, Part 6.TIME OF PERFORMANCE

- A. For each phase of the work, the Consultant shall not commence work until receipt of a verbal 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 of Rochester 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.

ART. I, Part 7.AUTHORIZED AGENT

- A. The City hereby designates:
James R. McIntosh, PE
City Engineer
City Hall - 300B
30 Church Street
Rochester, New York 14614
- B. The Consultant hereby designates:
_____, PE
Title
Address
Rochester, NY 146XX

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. Such indemnification shall specifically exclude any claims or actions brought against the City for losses, damages or injuries caused by or related to pollution or contamination (as those terms are defined by statute or federal or state regulation) at the subject property, to the extent that such losses, damages or injuries are not a result of the Consultant's negligence or intentional wrongdoing, or that of 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 omission of the Consultant. The amount of said insurance coverage shall be in the amount of Two Million Dollars if said insurance is a "Defense within Limits" policy under which all claim expenses are included within both the applicable limit of liability and self-insured retention. Otherwise, the insurance coverage shall be in the amount of One Million Dollars. 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 in the amount of at least One Million Dollars, for protection against claims of personal injury, including death, or damage to property, arising out of the Project. 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. 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 the then current and required New York State Workers= Compensation Board=s form.

Section 2.106 Copyright or Patent Infringement

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

Section 2.107 No Individual Liability

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

ARTICLE II, Part 2. Specific Design Restrictions

Section 2.201 Environmental Policy

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

The Consultant, therefore, shall assist the City in determining whether environmental impact statements ("EIS") should be prepared and shall assist the City or the City's

Environmental Specialist in preparing any necessary EIS. The Consultant shall not be required to prepare an EIS, unless specifically required by Article I of this Agreement.

ARTICLE II, Part 3. Employment Practices

Section 2.301 Equal Employment Opportunity

A. General Policy

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

B. Definitions

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

MINORITY GROUP PERSONS - shall mean a person of Black, Spanish surname American, Asian American or American Indian 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, disability, or marital status in the performance of services or programs pursuant to this Agreement, or in employment for the performance of such services or programs, against any person who is qualified and available to perform the work in which the employment relates. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that applicants are hired and that employees are treated during their employment, without regard to their age, race, creed, color, national origin, sex, sexual orientation, disability, or marital status.

2. If the Consultant is found guilty of discrimination in employment on the grounds of age, race, creed, national origin, sex, sexual orientation, 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.

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

Section 2.302 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 2.303 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 2.304 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. The 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 be granted 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 Consultant shall acquire 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 authorized representatives of the State of New York or the United States Government if State or Federal funding is involved in this agreement, 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

A. 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.

B. The Consultant shall be permitted to contract with other professions (particularly in the fields of forestry, horticulture or landscape architecture) for portions of the Project provided, however,

1. The City approves, in writing, the selection of the individual, firm or firms contracted with.

2. The Consultant shall remain responsible to the City for all provisions of this Agreement pertaining to services by other professionals.

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.

Section 2.711 Debarment and Suspension

The Consultant certifies, by the signing of this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any Federal department or agency. Assistance under this part shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any contractor or sub recipient during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.

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

THE CITY OF ROCHESTER

(CONSULTANT)

By: _____

By: _____

_____ – Mayor

Federal Tax Payer Id. No

-

STATE OF NEW YORK
COUNTY OF MONROE) SS:

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

Notary Public

STATE OF NEW YORK
COUNTY OF MONROE

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

**Crittenden Boulevard
2014 Preventive Maintenance**

**SCHEDULE A
FEE SCHEDULE (I_VI)**

ITEM DESCRIPTION	FIRM and PAY LIMITS	Sub-Consultant _____%	TOTAL 100%
	Consultant ____%		
I. BASIC SERVICES			
Direct Technical Salaries			
Preliminary Design	X,XXX	X,XXX	X,XXX
Final Design & Contract Documents	X,XXX	0	X,XXX
Advertise, Bidding & Award	X,XXX	0	X,XXX
Construction Support	X,XXX	0	X,XXX
TOTAL I.	X,XXX	X,XXX	X,XXX
II. OVERHEAD ALLOWANCE			
NYSDOT approved rate (%)	XXX	XXX	
TOTAL II.	X,XXX	X,XXX	X,XXX
III. REIMBURSABLE EXPENSE			
Travel	X,XXX	X,XXX	X,XXX
Reproduction (Drawings, Reports, etc.)	X,XXX	X,XXX	X,XXX
Supplemental Wages	X,XXX	X,XXX	X,XXX
TOTAL III.	X,XXX	X,XXX	X,XXX
IV. FIXED FEE			
10% - 15%	XX	XX	
TOTAL IV.	X,XXX	X,XXX	X,XXX
SUB TOTAL I.-IV.	X,XXX	X,XXX	X,XXX
V. SUBCONTRACTOR & ADDITIONAL SERVICES			
Contingency	X,XXX	X,XXX	X,XXX
TOTAL V.	X,XXX	X,XXX	X,XXX
GRAND TOTAL, I.-V.	X,XXX	X,XXX	X,XXX

Notes:

1A. For subcontracts to this consultant contract \$25,000 in value and above:

1. The Consultant shall prepare a contract document describing the work, schedule, and method of payment in sufficient detail for obtaining sealed bids for the work. The Consultant shall provide the work description and will submit it to the City for review. The Consultant shall modify the work description as necessary before including it in the contract document.

2. The Consultant shall advertise in the New York Contract Reporter or a regional newspaper of general circulation for sealed bids from a sufficient number of prospective qualified subcontractors to ensure that at least three (3) bids are received. Upon receipt of at least three bids, the Consultant shall submit all bids to the City along with a recommended choice. The City will either concur with the recommendation or accept one of the other bids. The City will then advise the Consultant in writing to proceed.

3. Upon receipt of written authorization from the City to proceed, the Consultant shall execute the contract with the subcontractor and oversee the subcontractor's operations/services to the extent of assuring that the work is performed as described in the contract and that the work performed conforms to applicable requirements.

1B. For subcontracts to this consultant contract \$15,000 to \$25,000 in value:

1. The Consultant shall prepare a contract document describing the work, schedule, and method of payment in sufficient detail for obtaining sealed bids for the work. The Consultant shall provide the work description and will submit it to the City for review. The Consultant shall modify the work description as necessary before including it in the contract document.

2. The Consultant shall solicit sealed bids from a sufficient number of prospective qualified subcontractors to ensure that at least three (3) bids are received. Upon receipt of at least three bids, the Consultant shall submit all bids to the City along with a recommended choice. The City will either concur with the recommendation or accept one of the other bids. The City will then advise the Consultant in writing to proceed.

3. Upon receipt of written authorization from the City to proceed, the Consultant shall execute the contract with the subcontractor and oversee the subcontractor's operations/services to the extent of assuring that the work is performed as described in the contract and that the work performed conforms to applicable requirements.

1C. For subcontracts to this consultant contract up to \$15,000 in value:

1. The Consultant shall prepare a contract document describing the work, schedule, and method of payment in sufficient detail for obtaining reliable quotations (non-binding estimates) for the work. The Consultant shall provide the work description and will submit it to the City for review. The Consultant shall modify the work description as necessary before including it in the contract document.

2. The Consultant shall solicit quotations from a sufficient number of prospective qualified subcontractors (typically three) to ensure that the work will be performed in the most economical manner. The Consultant shall maintain and keep for review records of the quote solicitation process to document competition for the service. The Consultant

shall execute the contract with the selected subcontractor and oversee the subcontractor's operations/services to the extent of assuring that the work is performed as described in the contract and that the work performed conforms to applicable requirements.

SCHEDULE B - TIME SCHEDULE

<u>PHASE</u>	<u>Days From Notice to Proceed</u>
Scoping and Design Phases I-IV	XX days
Design Phase	
Advanced Detail Plans (Design Phase V)	XX days
PS&E (Design Phase VI) No later than 8/15/2014	XX days
Bidding & Award Phase	<u>90 days</u>
Total	XXX days

Note: The time allowed for each phase includes time for the consultant effort and submission and approval of deliverables.

EXHIBIT A -- STAFFING AND FEE ANALYSIS

NYSDOT "Shelliii" Spreadsheet

ATTACH NYSDOT "Shelliii" ANALYSIS

EXHIBIT B - ASSUMPTIONS

**ATTACH LIST OF NEGOTIATED, APPROVED LIST OF ASSUMPTIONS THAT UNDERLIE
THE AGREED SCOPE OF SERVICES**

OR

**DEVELOP THE SCOPE OF SERVICES TO INCORPORATE THE AGREED ASSUMPTIONS
AND INCLUDE THE FOLLOWING STATEMENT:**

The Consultant's assumptions are incorporated in task descriptions of Section 1.202, Basic Services.

APPENDIX A

PREVAILING WAGE RATES AND SUPPLEMENTS SCHEDULE

The "Prevailing Wage Schedule" and "List of Employers Ineligible to Bid on or be Awarded any Public Work" for this contract are available on the New York State Department of Labor's website. They can be accessed by visiting the New York State Department of Labor's website at <http://wpp.labor.state.ny.us/wpp/doFindProject.do?method=showIt>, and entering the assigned PRC# at the proper location on the website. The PRC# can be found on the PW 200 form which immediately follows this page.

The PRC number for this agreement is: 0406648.

APPENDIX B

STANDARD NEW YORK STATE AND FEDERAL CLAUSES

Section 1. Extra Work

If the Consultant is of the opinion that any work the Consultant has been directed to perform 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 necessary City officials and, if required, from the Federal Highway Administration.

Section 2. Non-Discrimination Requirements.

The Consultant agrees to comply with all applicable Federal, State and local Civil Rights and Human Rights laws with reference to equal employment opportunities and the provision of services. In accordance with Article 15 of the Executive Law (also known as the Human rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Consultant shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Consultant agrees that neither it nor its subconsultants shall, by reason of race, creed, color, disability, sex or national origin; (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Consultant agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability; (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Consultant is subject to fines of \$50.00 per person per day for any violation of Section 220-e

or Section 239 as well as possible termination of this contract and forfeiture of all monies due hereunder for a second or subsequent violation.

Section 3. Agreement Executory.

The Consultant specifically agrees that the Agreement shall be deemed executory only to the extent of the monies available, and no liability shall be incurred by the State or Federal governments beyond the monies available for the purpose.

Section 4. Inspection.

The duly authorized representatives of the State, and on Federally aided projects, representatives of the Federal Highway Administration, shall have the right at all times to inspect the work of the Consultant.

Section 5. Proprietary Rights.

The Consultant agrees that if patentable discoveries or inventions should result from work described herein, all rights accruing from such discoveries or inventions shall be the sole property of the Consultant. However, the Consultant agrees to and does hereby grant to the United States Government and the State of New York a non-exclusive, non-transferable, paid-up license to make, use, and sell each subject invention throughout the world by and on behalf of the Government of the United States and States and domestic municipal governments, all in accordance with the provisions of 48 CFR 1-27.

Section 6. Certification required by 49 CFR, Part 29.

The signator to this Agreement, being duly sworn, certifies that, except as noted below, its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership):

- A. is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
- B. has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past three years;
- C. does not have a proposed debarment pending; and,
- D. has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

Section 7. Certificate required by 40 CFR 1506.58

If the work of the Project includes the preparation of an Environmental Impact Statement (EIS), the signator to this Agreement, being duly sworn, certifies that its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership) does not have any financial or other interest in the outcome of the project including:

- A. an existing contract for the Project's ROW incidental work or construction engineering; or
- B. ownership of land, options to buy land, or some business enterprise which would be financially enhanced or diminished by any of the Project alternatives.

This does not preclude the Consultant from being awarded a future contract covering the work described in Item 1 of this Article or being awarded Phases V and VI Final Design after the EIS has been approved.

Section 8. Certification for Federal-Aid Contracts

The prospective participant certifies, by signing this Agreement, to the best of his or her knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of Member of Congress in connection with this Federal contract, grant loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title

31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

9. Records Retention

The Consultant shall establish and maintain complete and accurate books, record documents, accounts and other evidence directly pertinent to performance under this contract (collectively called the "Records@"). The Records must be kept for a minimum of six (6) years after final payment is received. The City, State, Federal Highway Administration, or any authorized representatives of the Federal Government, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York, or a mutually agreeable reasonable venue within the State, for the term specified for the purposes of inspection, auditing, and copying.