

City of Rochester

Request for Proposals

Genesee Valley Park Boathouse Management and Operation

Proposals to be received by

5:00 PM, Monday, November 1, 2021

Submit Proposals to:

Sara Scott, Director of Recreation & Parks Stewardship, City of Rochester Department of Recreation & Human Services, Sara.Scott@cityofrochester.gov

REQUEST FOR PROPOSAL (RFP)

The City of Rochester is seeking proposals (Proposal(s)) from qualified Consultants to enter into an professional services agreement (PSA) to manage, operate and promote the Genesee Valley Boathouse and adjacent facilities, (the Facilities). See attached map of Facilities. The Consultant's responsibilities shall include maintaining and operating the Facilities, promoting and providing water sport activities targeted toward City residents with a focus on youth and families, and operating the canoe livery at Genesee Valley Park Boathouse, herein referred to as the "Project".

BACKGROUND

Genesee Valley Park (GVP), one of three original parks in the Rochester Park System, was designed by Frederick Law Olmsted and constructed in the 1890s. The southwest quadrant of the park was designed for active play and water sports.

The Genesee Valley Park Boathouse, located off Elmwood Avenue near the GVP Sports Complex, consists of a 10,240 square foot building including office space, and two addition boat storage buildings with 600' of permanent ADA accessible dock and is one of the few hand carried boat launches on the river. The Facilities as well as approximately 10 aluminum canoes are owned by the City. In addition to the City owned canoes, additional kayaks, canoes, paddles and life jackets and other equipment are the necessary equipment (Equipment) for the services and programs at the Facilities. The site has been the home to canoeing, kayaking, rowing and sculling for the past 30+ years.

The City has a desire to encourage and increase awareness and use of the site by City residents particularly youth and adults who are members of groups historically under-represented in paddling sports, including people of color.

The City is seeking a Consultant to maintain, operate and promote the Genesee Valley Park Boathouse and the adjacent facilities and to provide associated public paddle sport programs including, but not limited to: canoe and kayak livery operations, public canoe and kayak lessons, a youth rowing program and adaptive and inclusive outrigger canoe programming.

In addition to programming responsibilities, the Consultant will also be responsible for issuing and administering agreements with schools, clubs and individuals for storage of Equipment on site and use of indoor and outdoor facilities as well as provide general oversight of the casual use of facilities and/or docks by the public. The City will grant Consultant a license for the use of the Facilities which

will allow Consultant to undertake the services required and authorize Consultant to execute sublicenses or permits for the Facilities and Equipment.

The Consultant will be required to provide the services described below in the Scope of Services without monetary compensation from the City, but may retain all revenues generated by activities at the Facility, including programs, use of City or Consultant owned Equipment and use of the Facilities. All such fees imposed by Consultant shall be included in Consultant's annual budget to be submitted to the City for review and approval.

Ideal Respondents will have experience designing and administering programming for City residents (including youth and families) - and a demonstrated commitment to equity and inclusion in the development of all paddle sport programming.

Timeline

Activity	Time	Date
RFP Release		September 20, 2021
Deadline for questions	12:00PM	September 27, 2021
Response for questions submitted	5:00PM	October 4, 2021
Proposals due	5:00PM	November 1, 2021
Consultant Selection and Award Notification	9:00AM	November 29, 2021
City Council Approval of PSA with Consultant		January 2022* (anticipated)
PSA Start Date		March 1, 2022

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

Communications

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

Sara Scott. Director of Recreation & Parks Stewardship. Sara.Scott@cityofrochester.gov

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

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

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

SCOPE OF SERVICES

The City is seeking the services of a Consultant to perform the following services to implement the Project. The proposal shall address each of the requested services, using the same identifying language, including any paragraph or section numbers or letters as used in the RFP.

1. Development and oversight of public paddle sport programs offered at the Facility, including but not limited to, the following:
 - a. Canoe and kayak livery operation at least four days per week which includes weekends between Memorial Day weekend and Labor Day. This period may be extended by Consultant.
 - b. Adaptive and inclusive outrigger canoe program for people who are physically challenged, for a minimum of 200 participants annually.
 - c. Canoe and kayak lessons delivered by a certified instructor at the facility in Genesee Valley Park, for a minimum of 50 participants annually.

2. Design and implementation of a youth rowing program for the greater Rochester area targeting youth ages 13-18 to be conducted from April through November, weather permitting. The program should have a targeted enrollment of 10 participants, with at least 20 percent being City residents, with a goal of 50 percent City representation by 2024.
3. Promotion of the Facility through participation in community efforts and collaborations with Genesee River-focused organizations with the purpose of increasing community access and awareness of the riverfront and to promoting expansion and access to the river by City residents – particularly low-income and minority residents.
4. Responsibility for acquiring and maintaining adequate supply of all Equipment and facilities sufficient to operate community focused paddling/rowing programming and proper and reasonable maintenance of all such Equipment.
5. Maintenance of public access to river front and ensure accessibility to the general public. This access to launch hand carried craft must be maintained at all times but can be limited during events with City approval.
6. Responsibility for maintenance and repair of all property, structures, the grounds, mechanical systems, and docks located directly in front of the Facility, including the aluminum dock and jet floats, all comprising the Facility, up to an annual amount of five thousand dollars (\$5,000). The City may assist with costs above such amount upon agreement of the parties and approval of City Council.
7. Construction and financing of all building modifications, additions, improvements and new Facilities may be undertaken by Consultant, subject to City review and approval. Major improvements to the Facility may be undertaken by the City, in consultation with Consultant. The Consultant must obtain any/all building permits, comply with zoning regulations and procedures and obtain other approval as required. Participation in community efforts and collaborations with Genesee River-focused organizations with the purpose of increasing community access and awareness of the riverfront and to promoting expansion and access to the river by City residents – particularly low-income and minority residents.
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9. Responsibility for issuance and administration of all agreements for use of Facilities, including docks and Equipment.
10. Submission of an annual budget, fee structure and program/operation plan to the City for review and approval by November 15 of each year.
11. Submission of an annual report and documentation of the past year's activities by March 1 of each year.
12. Fundraising for programs referred to in paragraphs 1 b and c above is strongly encouraged. If required funding cannot be obtained, the Consultant will establish reasonable fees for participants of programs after discussion and approval from the Department of Recreation and Human Services.
13. Consultant shall obtain and maintain, at its own expense, insurance for the coverages listed below, written for no less than the limits of liability specified for each coverage:

Commercial General Liability

Bodily Injury and Property Damage Limit	\$1,000,000 each occurrence
Products/Completed Operations Limit	\$2,000,000 aggregate
Personal Injury & Advertising Injury Limit	\$1,000,000 each person or organization
General Aggregate	\$2,000,000 on a per location basis

Business Automobile Liability

Combined Single Limit for Bodily Injury and Property Damage applicable to all	
Owned, Non-Owned and Hired Autos	\$1,000,000 each accident

Excess "Umbrella" Liability

Bodily Injury and Property Damage Limit	\$5,000,000 each occurrence
Products/Completed Operations Limit	\$ 5,000,000 aggregate
General Aggregate	\$ 5,000,000 on a per location basis

Workers' Compensation & Employers' Liability

Statutory Workers Compensation coverage

Employers Liability Insurance with limits of at least

\$500,000 Bodily injury by Accident-Each Accident

\$500,000 Bodily Injury by Disease – Each Employee

\$500,000 Bodily Injury by Disease – Policy Limit.

a. The City of Rochester and their respective officers, employees and agents shall be named as Additional Insured including Completed Operations on a primary and non-contributory basis under the policies for General Liability coverage and Excess "Umbrella" Liability coverage.

b. The policies may contain no exclusions relating to NY Labor Law or Municipal Operations

c. All policies must include Waiver of Subrogation endorsements in favor of all Additional Insured

d. The insurance carriers providing the required coverages shall be licensed to do so in New York State, and shall be rated no lower than "A- X" by the most recent Best's Key Rating Guide or Best's Agent's Guide, unless otherwise agreed to by the Owner.

e. Consultant shall deliver prior to commencement of the Work, Certificates of Insurance (including copies of the Additional Insured endorsements) acceptable to the City certifying that policies of insurance for the required coverages have been issued and are in effect. Upon expiration or cancellation of any policy during the period the coverages under such policy are required to be maintained, Consultant immediately shall deliver to the City a Certificate of Insurance evidencing proper renewal or replacement of the policy.

f. Subcontractor's Liability Insurance

Consultant shall require any Subcontractor to: (a) maintain insurance coverages and limits of liability in accordance with the provisions of this Agreement (though the Umbrella Liability limits required of each Subcontractor may be adjusted, if agreed to by the City, in advance of any work being undertaken); and (b) name the City, Consultant, and their respective officers, employees and agents and agents as Additional Insureds on a direct primary basis under its General Liability Insurance policy and Excess "Umbrella" Liability Insurance policy. Consultant

shall be responsible for obtaining Certificates of Insurance from each Subcontractor evidencing coverage in accordance with these Insurance Requirements and shall not permit work to be undertaken until compliance with such Insurance Requirements is evidenced.

The term of the PSA resulting from this RFP shall commence on March 1, 2022 for a term of three (3) years, with an option to renew for up to two (2) additional three (3) year terms upon agreement of the parties.

PROPOSAL PREPARATION AND SUBMISSION PROCESS

Proposals must be postmarked or received by the City no later than **November 1, 2021**. Respondents can submit proposal in electronic form to Sara.Scott@cityofrochester.gov. Please title email submission: *Genesee Valley Park Boathouse Activation RFP*. Respondents can also submit paper proposals to:

**ATTN: Sara Scott
Director of Recreation & Parks Stewardship
57 St. Paul Street
Rochester, NY 14604**

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

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

Submission of a proposal shall be deemed authorization for the City to contact Respondent's references. Evaluation of proposals will be conducted by the City based on information provided in the Respondent's proposals and on such other available information that the City determines to be relevant.

Respondents shall provide sufficient information in their written proposals to enable the City review team to make a recommendation to the Mayor. The City reserves the right to invite any or all Respondents to an interview to discuss their proposal. Any expenses resulting from such an interview will be the sole responsibility of the Respondent. The City is under no obligation to select any of the responding Respondents or to conduct the Project described herein. The City may amend or withdraw the RFP at any time, within its sole discretion. The City shall have no liability for any costs incurred in preparing a proposal or responding to the City's requests with respect to the proposal.

PROPOSAL CONTENT

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

- A. **Project statement:** A Project narrative that describes the Respondent's understanding of the City's needs and the unique value the Respondent will bring to the project.
- B. **Description of Services:** Methodology the Respondent will use to perform the services required in this RFP. The proposal should address, in detail, the tasks as described in the Scope of Services, identified by numbered or lettered sections.
- C. **Respondent's Qualifications:** Information about the Respondent and its qualifications for this Project. Include information about prior engagements similar to that being solicited herein by the City. Documented evidence of the Respondent's capacity to perform the work, including **three** professional references, contact names, and phone numbers.
- D. **Viability:** An overview of a business plan including a projection of both costs and revenues related to fees/usage and/or other sources of income or funding, which demonstrates a sustainable business model to provide the services tasks/responsibilities described in the Project.
- E. **Project Personnel:** The name and resume of the Respondent's lead person for the Project. Names, resumes, and roles of all staff who will be involved in the Project. Provide data on the diversity of Respondent's overall workforce.
- F. **Subcontractors** (if applicable): Names, resumes, and roles of sub-contractors, associates, or any non-employees who will be involved in the Project.
- G. **Rochester Presence:** Information about Respondent's presence in the City of Rochester and/or any collaborative relationships with local groups/organizations that are to be formed for this Project.

- H. **MWBE (*only necessary if a for-profit entity*):** Statement as to whether or not the Respondent is a bona fide MWBE firm, will use bona fide MWBE subcontractors and the percentage of the workforce utilized to perform the work of this contract who will be either Minority (M) or Women (W), including both the Consultant's workforce and that of any subcontractors who will be utilized,

EVALUATION CRITERIA

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

Proposal: The Respondent's comprehension of the needs of the City as demonstrated by its description of its approach to the elements listed in the Scope of Services section of this RFP.

Experience: The Respondent's relevant experience in providing the same or similar services.

Viability: The budget/business plan is important to the City; however, based on evaluation of other criteria the main evaluation criteria for the budget/business plan will be on the respondents ability to sustainably operate the facility and provide affordable and accessible programing for City residents.

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

MWBE and Workforce Goals : 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. A determination will be made by the City's MWBE Officer about the applicability of these goals to the PSA that will be executed in response to the RFP. For more information please see <http://www.cityofrochester.gov/mwbe>.

Respondents shall be awarded MWBE bonus weighting as follows:

1. The City will give preference to Consultants who are New York State certified MWBEs. Consultants who meet this requirement shall receive **an additional weighting of 10%.**

2. The City will give preference to Consultants who utilize state certified MWBE subcontractors with bona fide offices and operations in the Empire State Development Finger Lakes Region, which includes the following counties: Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming and Yates. State-certified MWBEs from outside the Region may be counted if there are insufficient businesses in the Region to perform the specialized work or consulting services required. If one or more MWBE subcontractors will perform 10% to 20% of the work of the contract – measured as either a percent of the total contract amount or as a percent of the total full-time-equivalent labor hours budgeted for this project, the consultant shall receive **an additional weighting of 5%**. If MWBE subcontractors will perform more than 20% of the work of the contract, the Consultant shall receive an **additional weighting of 10%**.
3. Respondents shall provide sufficient documentation with their proposal to support the additional preference weighting as an MWBE Consultant or for use of MWBE subcontractors. If one or more MWBE subcontractors are proposed, they must be named and the size of the subcontract identified. If selected, the Respondent shall submit an MWBE Utilization Plan on the City's form for approval by the MWBE Officer. Once approved, the Utilization Plan shall be incorporated into the PSA.
 - a. If the total amount of a PSA is increased by 5% or more at any time during the term of the PSA, the Consultant shall submit a revised MWBE Utilization Plan for approval by the MWBE Officer. The MWBE Officer may also issue a revised MWBE Utilization Plan for unforeseen changes in the availability of MWBE subcontractors during the term of the PSA.
4. The City will give preference to Consultants who meet or exceed the City's workforce goals, which are: 20% M and 6.9% W. Consultants who demonstrate that their and/or their subcontractors' workforce on this Project meets or exceeds these goals shall receive an **additional weighting of 10%**. If selected, the Respondent shall submit a Workforce Staffing Plan on the City's Form for review by the MWBE Officer. 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 MWBE utilization and subcontractor/supplier payment certification and/or workforce utilization reports on the City's forms. These reports shall be submitted with each invoice or as otherwise requested by the MWBE Officer.
6. A failure to submit the required subcontractor/supplier payment certification and/or workforce utilization reports shall constitute a default in the performance of the Agreement subject to potential termination for default by the City. In addition, if the selected Respondent fails to meet the most recent MWBE Utilization Plan and/or Workforce Staffing Plan, for which additional weight was awarded by the end of the PSA, such failure may result in disqualification from award of future contracts with the City.
7. Summary of additional evaluation weighting points for MWBE and Workforce Goals:

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

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

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

The selection of a Consultant is within the City's sole discretion and no reasons for rejection or acceptance of a proposal are required to be given. The City reserves the right to reject any or all proposals or to accept a proposal that does not conform to the terms set forth herein. The City

further reserves the right to waive or modify minor irregularities in the proposals and negotiate with Consultants to serve the City's best interest.

MISCELLANEOUS

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

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

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

The relationship between City and Consultant shall be one of independent contractor, not employer/employee. Consultant shall hire all staff as the Consultant's employees or subcontractors.

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

Attachment A

(Sample City of Rochester PSA Form- to be revised as required upon award of contract)

AGREEMENT FOR PROFESSIONAL SERVICES

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

WITNESSETH:

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

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

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

SECTION 1. DESCRIPTION OF SERVICES

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

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

SECTION 2. TERM

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

SECTION 3. FEE

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

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

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

SECTION 4. AUTHORIZED AGENT FOR THE CITY AND THE CONSULTANT

A. The City hereby designates:

B. The Consultant hereby designates:

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

SECTION 5. TERMINATION FOR DEFAULT

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

SECTION 6. INDEMNIFICATION

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

whole or in part, then the Consultant shall be notified and shall handle or participate in the handling of the defense of such matter.

SECTION 7. INSURANCE

A. Workers' Compensation and Disability Benefits Insurance

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

B. General Liability Insurance

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

SECTION 8. EQUAL OPPORTUNITY AND MWBE AND WORKFORCE UTILIZATION GOALS

A. General Policy

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

B. Definitions

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

C. Compliance

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

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

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

D. MWBE AND WORKFORCE UTILIZATION GOALS

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

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

The Consultant shall submit a workforce staffing plan, which, when reviewed by the City's MWBE Officer, shall be incorporated into this Agreement as Exhibit A, detailing the percentage of the workforce utilized to perform the work of this agreement who will be either minority or women, including both the Consultant's workforce and that of any subcontractors who will be utilized.

Consultant shall submit workforce utilization reports on the City's forms with each invoice or as otherwise requested by the MWBE Officer. The Consultant understands and accepts that the calculated percentages of workforce utilization shall be based on actual hours worked and billed over the term of the project. The final determination of a workforce goals accomplished during the contract shall be based on hours reported in the workforce utilization reports.

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

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

Consultant's failure to submit MWBE and subcontractor/supplier payment certification forms, if required, and the workforce utilization reports shall constitute a default in the performance of this Agreement. Failure to meet the goals stated in the most recent workforce staffing plan and/or the

MWBE utilization plan incorporated into the Agreement may result in disqualification from award of future contracts with the City.

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

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

SECTION 10. FREEDOM OF INFORMATION LAW

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

SECTION 11. LIVING WAGE REQUIREMENTS

A. Applicability of Living Wage Requirements

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

B. Compliance

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

C. Exemption

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

SECTION 12. COMPLIANCE WITH MACBRIDE PRINCIPLES

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

SECTION 13. COMPLIANCE WITH ALL LAWS

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

SECTION 14. AUDIT

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

SECTION 15. PROHIBITION AGAINST ASSIGNMENT

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

SECTION 16. OBLIGATIONS LIMITED TO FUNDS AVAILABLE

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

SECTION 17. EXTENT OF AGREEMENT

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

SECTION 18. STATUS AS INDEPENDENT CONTRACTOR

The Consultant, as an independent contractor, covenants and agrees to conduct the work under this Agreement consistent with such status. The Consultant shall neither pretend nor claim to be an officer or employee of the City by reason hereof, nor make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the City, including but not limited to Workers' Compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.

SECTION 19. LAW

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

SECTION 20. NO-WAIVER

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

SECTION 21. SEVERABILITY

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

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

CITY OF ROCHESTER

BY: _____
Lovely A. Warren, Mayor

CONSULTANT

BY: _____
Name:

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

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

Notary Public

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

On the ____ day of _____, 20__ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to

me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public
