



City of Rochester

## REQUEST FOR PROPOSAL

# Professional Auditing Services

For Fiscal Years Ending  
June 30, 2023, 2024, 2025  
*(and Annual Optional Extensions  
for 2026 and 2027)*

### **DEADLINE:**

Written proposals must be **received by 3:00 p.m. Friday, February 10, 2023**. Please submit fifteen (7) hard copies and one (1) electronic copy of your firm's proposal to:

**James P. Smith, Council Chief of Staff**  
**City Council Office**  
**City of Rochester**  
**City Hall – Room 301A**  
**30 Church Street**  
**Rochester, NY 14614**

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## I. Introduction

### A. General Comments

This Request for Proposal (RFP) is a solicitation of major public accounting firms for proposals to perform annual financial audits of the City of Rochester and the Rochester Land Bank Corporation (RLBC) component unit including the following reports:

1. A "Single Audit" of the financial statements and Federal and State grant programs of the City of Rochester for the fiscal years ending June 30, 2023, 2024 and 2025, and an option to renew annually for up to two years, i.e., 2026 and 2027.
2. Audit of financial statements for these four related entities during the 3-to-5-year term of the agreement:
  - a) Rochester Public Library (RPL),
  - b) Rochester 2% Foreign Firefighters (2%) (Agreed upon procedures)
  - c) Rochester Arena – Blue Cross Arena (Agreed upon procedures)
3. Special audits to be undertaken, as requested, during the 3-to-5-year term of the agreement for the City of Rochester, Rochester Land Bank Corporation, and the three specified related entities.

### B. Scope of Examination

These audits shall be performed in accordance with Generally Accepted Auditing Standards (GAAS) as set forth by the American Institute of Certified Public Accountants (AICPA), the standards for financial audits set forth in the U.S. General Accounting Office's *Government Accounting Standards (2011)*, the provisions of the Single Audit Act of 1984 (including 1996 and any subsequent amendments) and the provisions of the U.S. Office of Management and Budget (OMB) Circular A-133, *Audits of State and Local Governments, and Non-Profit Organizations* in addition to the *Minimum Program for Audit of Financial Records* of the New York State Education Department. The audits will generally follow the guidelines for standard audit procedures of the Governmental Finance Officers Association (GFOA).

The City desires the auditors to express an opinion on the fair presentation of its governmental activities, its business-type activities, its discretely presented component units, each of its major funds, and its aggregate remaining fund information in conformity with Generally Accepted Accounting Principles (GAAP). The auditor is not required to audit the combining and individual fund financial statements and supporting schedules. However, the auditor is to provide an "in-relation-to" report on the combining and individual fund financial statements and supporting schedules based on the auditing procedures applied during the audit of the basic financial statements. The auditor is not required to audit the introductory section of the report or the statistical section of the report. The auditor shall also be responsible for performing certain limited procedures involving required supplementary information required by the Governmental Accounting Standards Board (GASB) as mandated by Generally Accepted Auditing Standards (GAAS).

The annual audits should minimally include:

1. A verification, on an unannounced basis, of cash on hand and in bank accounts.
2. A verification of securities and investments.
3. A test and verification of accounts receivable balances, including tax and water accounts.
4. A test and verification of accounts payable balances.
5. A test and verification of reported revenues.
6. A test and verification of reported expenditures, including a special test of payrolls.
7. A review of compliance with applicable Federal, State and City regulations.
8. A review of the adequacy of accounting procedures and systems of internal control.
9. Other reviews as deemed necessary to ensure adequacy and integrity of internal controls.
10. Review and comments on the City's Annual Comprehensive Financial Report (ACFR) for submission to the Government Finance Officers Association (GFOA) for the Certificate of Achievement in Financial Reporting.

However, in each year the audit should also include special tests and verification, using reduced standards of materiality, to provide for (a) the comprehensive review of specified transactions within a particular organizational unit or function or (b) the systematic review of a particular type of transaction in all organizational units and functions.

The specific review to be conducted in any year shall be determined by the City.

#### C. Reports to be issued

The annual audit report shall include an opinion on the fair presentation of the financial statements in conformity with generally accepted accounting principles. Other reports and opinions are to be included as required by standard audit procedures and guidelines, and Single Audit requirements.

Specifically, the firm should expect to review and issue opinions on the City and Rochester Land Bank Corporation annual financial statements as they are published in the routine forms, including Official Statements (OSs) for both Fall and Spring note sales, and occasional bond or RAN sales; the Single Audit Report; and Annual Comprehensive Financial Reports (ACFRs), as well as electronic copies of these publications such as downloadable files on the City's web site.

Annual management letters shall also be submitted to the Mayor and City Council, the RPL Board of Trustees, and RLBC Board as appropriate, in relation to the accounting procedures and internal accounting controls used. The management letter should include any deficiencies observed during the course of the audit and recommendations for improvements.

Required annual Federal and State tax filings must also be prepared for RPL. Depending on funding levels, Federal Single Audit reports may also be required for these entities.

The auditors shall also be requested, on an as needed basis, to provide "comfort letters" for official statements in connection with the sale of debt securities.

#### **D. Evaluation Criteria**

The City will evaluate the following criteria in selecting a public accounting firm:

##### **1. Approach**

Your approach should be logical and effective, employing sophisticated techniques which have been previously utilized in municipal environments which are similar to the City of Rochester. This approach should result in meaningful recommendations for the City.

##### **2. Timing**

Your work should be carried out in a timely and non-disruptive manner. The City expects a commitment to continuity of personnel at all levels of the engagement team during the course of the audit.

Your audit timetable should be arranged to ensure that the City receives final audited financial statements by 5:00 pm on the 1<sup>st</sup> Friday of December to allow sufficient time to meet the publishing date (120 days after the June 30 fiscal year end).

##### **3. Utilization of Office of Public Integrity**

Internal auditors should be utilized to the fullest extent possible for coordination of internal and external audit efforts, to ensure adequate coverage and to minimize duplicate efforts. More specifically, up to 200 hours of assistance can be anticipated from the City of Rochester Office of Public Integrity in performing audit tasks.

##### **4. Qualifications of Engagement Personnel**

The individuals assigned to this engagement should possess extensive experience of the government environment, and be well qualified for their respective responsibilities as members of the engagement team. Diversity of personnel to be assigned to this engagement will be a factor in the evaluation of proposals. The annual audits shall be performed under the supervision of and conducted by a certified public accountant who has not less than (5) years' experience in public accounting. Continuity of personnel is also an important factor in the selection process.

##### **5. Firm-wide Industry Competence**

The firm selected must have demonstrated competence in governmental accounting and auditing. Complexity will be a factor in the evaluation of proposals. Construction Accounting is preferred, but not mandatory.

**6. Cost of Service**

Although quality of service is the primary consideration, cost of the service is also extremely important.

The fee commitment shall include all fees and expenses quoted on a yearly basis for a 3-year period. Extraordinary changes in circumstances which will cause adjustments to the quoted fee will be negotiated and agreed upon separately with the Authorized Agents of the City, RPL and RLBC, as appropriate.

Fees quoted in your written proposal should be allocated among the City of Rochester, and the 3 related entities. The decision to exercise the optional extensions is dependent on all entities agreeing to the extension.

**7. Location**

Preference will be given to firms located in the City of Rochester, through an additional weighting of 10%.

**8. MWBE**

Preference will also be given to MWBE firms and/or firms with diversity on the engagement team through an additional weighting of 10%.

**E. Format of Proposal**

To enable comparability in our analysis and evaluation of the public accounting firms, it is essential that a uniform format be employed in preparing the proposal. The content and format of the proposal should follow the guidelines of Section II of this RFP.

**F. Required Information and Timetable**

The appendices of this RFP contain general information about the City of Rochester and the 3 related entities which the City believes will be helpful in preparing the proposal.

Request for additional information necessary to prepare a proposal should be directed to:

James P. Smith  
City of Rochester  
City Hall 30 Church Street, Room 301A  
Rochester, NY 14614  
VOICE: 585-428-6973/ FAX: 585-428-6973  
[council@cityofrochester.gov](mailto:council@cityofrochester.gov)

The following schedule has been developed to provide adequate time for the public accounting firms to prepare their proposals. It is imperative that these dates be followed:

Request for Proposal issued	January 30, 2023
Request for Proposal Informational Meeting (Virtual) (Zoom meeting link to be provided upon request of respondents)	February 3, 2023; 3:00PM
<b>Deadline for submission of written proposal</b>	<b>February 10, 2023; 3:00 pm</b>
Interview/presentations of finalist (if needed) via Zoom	February 14, 2023
Staff recommendations to Council and Board	February 16, 2023
Authorization by City Council	February 21, 2023
Execute Professional Services Agreement by	March 31, 2023

Timeline is subject to change at the discretion of the City of Rochester. No individual extensions will be granted.

#### G. Additional information

The Proposals submitted by the individual Vendor(s) is the document upon which the City will make its initial judgment regarding the Vendor's qualifications, understanding of the City's scope and objectives, methodology, and ability to complete services under the contract.

Those submitting Proposals do so entirely at their expense. There is no express or implied obligation by the City to reimburse any firm or individual for any costs incurred in preparing or submitting Proposals, preparing or submitting additional information requested by the City, or for participating in any selection interviews, and the RFP may be withdrawn by the City for any reason.

Submission of any Proposal indicates acceptance of the conditions contained in this RFP, unless clearly and specifically noted otherwise in the Proposal. The City reserves the right to reject any and all Proposals, in whole or in part, submitted in response to this RFP.

The City reserves the right to waive any and all informalities and to disregard all non-conforming, non-responsive or conditional Proposals.

The City may, at any time by written notification to all Vendors, change any portion of the RFP described and detailed herein.

There will be a pre-proposal virtual meeting on February 1, 2023, at 3:00 pm. Firms that indicate their intent to respond will be provided a Zoom meeting link. City staff will be available during the Zoom meeting to answer question. Questions and responses from this meeting will be posted on the City's website.

During the evaluation of Proposals, the City may require clarification of information or may invite Vendors to an oral presentation to clarify and or validate Proposal contents. Selected respondents may be invited to present their proposal virtually. Per the above schedule, RFP presentations will be scheduled, if needed, on February 14, 2023.

All questions concerning this RFP shall be submitted to the designated persons listed in the sections above in writing, preferably by e-mail. Replies will be issued by Addenda emailed to all firms that have indicated intent to submit a proposal and have provided an e-mail address. Questions received less than three (3) days prior to the date of submission of proposals will not be answered. Vendors should only rely on answers and other information given by formal written Addenda.

From the date of distribution of the RFP through the date of authorization to enter into an Agreement with a major public accounting firm by the City Council, Vendors may not initiate or continue any verbal or written communications regarding this RFP with any City officer, elected official, employee or other City representative. Such communications are expressly forbidden except with the written foreknowledge to and permission of the Chief of Staff. Violations will be reviewed by the Chief of Staff. If determined that such communication has compromised the competitive process or is otherwise deemed to be disruptive, inappropriate or unacceptable conduct, the RFP submitted by that Vendor may be disqualified from further consideration.

Proposals and all materials submitted with the proposal will become the property of the City of Rochester and will be subject to the New York State Freedom of Information Law (FOIL). 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 along with the proposal.



## **II. Content and Format of Proposal**

### **A. Approach to the Engagement**

This section of the proposal should be utilized to describe, in detail, your firm's approach to each area included in the RFP and the objectives that will be accomplished while providing professional services to the City of Rochester. You should provide us with a complete description of your specific approach which has been designed by you for use in municipalities and school districts, and how that approach can be tailored for use on this particular engagement. The content of your proposal should follow the format outlined below.

A description of your audit should include, but not be limited to the following items:

1. Your approach to providing planning meetings with key City personnel in the financial audit and information technology areas.
2. Methods which will be utilized to perform a comprehensive evaluation of the City's system of internal control.
3. A specific timetable for completion of each segment of the engagement.
4. The nature and general description of audit programs and how those programs will ensure that an efficient examination is carried out.
5. A general description of the nature and timing of your interim audit examination and the objectives you would normally accomplish during this phase of your work.
6. A description of your audit software package and statistical sampling techniques.
7. A description of your final examination techniques and your plan for communicating the results of your review to management and City Council.

### **B. Office of Public Integrity**

The proposal should describe the nature of the methods utilized by your firm to perform the following, in relation to the City's internal audit department:

1. Methods used to evaluate the performance of the City's internal audit unit, and the timing involved.
2. The extent to which you will use the internal audit unit, the course of the examination, and what effect that use will have on your timing and our audit cost.

C. Experience, Education and Technical Expertise

The proposal should outline the extent of the firm's experience in the governmental, school district and construction fields, including a listing of the clients which are presently being served by the firm.

The proposal should describe in detail the nature and timing for its personnel, both general and governmental.

The proposal should indicate the organizational make-up of the firm's governmental unit and a brief background of key personnel included on the national management team.

The proposal should include a copy of your firm's most recent peer review.

D. Key Engagement Personnel

The proposal should include a position description of each key member of the engagement service team, as well as their individual responsibilities. In addition, the proposal should include background profiles of each of these individuals, specifically listing all prior governmental experience. The firm's rotation policy for key members of the engagement team should also be included.

E. Living Wage Requirement

For any professional Services Agreement exceeding \$50,000 the chosen Respondent will be required to comply with the City's Living Wage Requirements. Please include a written commitment to pay all "covered employees" a "living wage", as those terms are defined in the Rochester Living Wage Ordinance that can be found in Section 8A-18 of the City Municipal Code of the City of Rochester. The City Municipal Code can be found on the City's website ([www.CityofRochester.gov](http://www.CityofRochester.gov)) under the box titled, "At Your Service" and selecting, "Meet the Rochester City Council". The successful Respondent will be required to provide a list of job titles and wage levels of all "covered employees" in each of the years for which this agreement applies.

## F. Fee Estimate

The proposed fee schedule should be presented as shown below:

### Proposal Summary by Entity/ Component Unit and Fiscal Year

ENTITY/Component Unit	Three Year Contract			Optional Extension	Optional Extension	TOTAL
	2023	2024	2025	2026	2027	
<b>City of Rochester</b> <sup>1</sup>	\$	\$	\$	\$	\$	\$
Rochester Land Bank Corporation <sup>2</sup>						
Rochester Public Library <sup>3</sup>						
Rochester 2% Foreign Firefighters Fund						
Rochester Blue Cross Arena						
<b>Total City and City Related Entities</b>						
<b>Total Related Entities</b>	\$	\$	\$	\$	\$	\$
<b>All Entities:</b>	\$	\$	\$	\$	\$	\$
Hourly Rate for additional Work <sup>5</sup>	\$	\$	\$	\$	\$	n/a

<sup>1</sup> Standard Audit includes Single Audit if there are programs that meet the \$750,000 threshold.

<sup>2</sup> Standard Audit includes annual financial statements and any required Federal and State income tax filings.

<sup>3</sup> Standard Audit includes annual financial statements and any required 501(c) (3) Federal and State income tax filings.

<sup>5</sup> Additional services: The hourly rate would also be used for special audits, or other professional services. Such payments would not exceed \$50,000 during the term of the contract without further authorization by City Council or the respective Board.

## **APPENDIX A**

### **CITY OF ROCHESTER OVERVIEW**

The City began 2021-22 with an operating budget of \$560,867,400 consisting of general and enterprise funds. (See <http://www.cityofrochester.gov> for City Budgets from fiscal 2001-2022, Annual Comprehensive Financial Reports from fiscal 2002-2021 and recent Bond Anticipation Note Sale, March 3, 2022 Official Statement:

<https://emma.msrb.org/IssuerHomePage/Issuer?id=4B7DAD694965CE86DC6673015D198166>

As of June 30, 2021, the City had 14 governmental funds, 4 of which are major; and 6 business-type funds, all of which are reported as major. In addition, there is an Internal Service Fund, a Private Purpose Trust Fund, and a Custodial Fund. Primary Government Statement of Activities expenses in fiscal 2020-21 totaled \$857,649,000.

The Bureau of Accounting is responsible for reviewing and processing all City financial transactions, for maintaining records of these transactions, and for recording, classifying and reporting information on the financial position of the City. The accounting records are maintained on the Tyler Munis Financial Information System, which is a computerized ERP system.

The accounting system is supported by automated sub-systems including tax receivables, water receivables and payroll. All of these systems are operated and maintained by the Department of Information Technology.

The Mayor's Office unit of Public Integrity / Audit & Review is responsible for the periodic review of these systems and related procedures. (See Appendix M for a list of recent audits performed by the Bureau.)

**APPENDIX B****City of Rochester****REVENUE SUMMARY  
SUMMARY OF REVENUE CHANGES**

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	Amended 2020-21	Approved 2021-22	Change	Percent Change
General				
Taxes				
Property Tax (City & School)	159,227,900	160,137,500	909,600	0.6%
Delinquent & Supplemental Taxes	7,550,300	7,463,000	-87,300	-1.2%
In-Lieu-of-Tax Payments	14,071,700	15,080,400	1,008,700	7.2%
Interest & Penalties	2,120,000	2,120,000	0	0.0%
Sales Tax	137,693,200	161,776,100	24,082,900	17.5%
Utilities Gross Receipts Tax	7,200,000	6,900,000	-300,000	-4.2%
Mortgage Tax	2,000,000	2,300,000	300,000	15.0%
Taxes Total	329,863,100	355,777,000	25,913,900	7.9%
Departmental Income	9,184,500	8,149,400	-1,035,100	-11.3%
Use of Money & Property	1,299,800	963,600	-336,200	-25.9%
Fines & Forfeitures	4,452,100	3,687,600	-764,500	-17.2%
Licenses & Permits	3,190,000	3,245,200	55,200	1.7%
Sale of Property & Compensation for Loss	2,331,600	2,641,200	309,600	13.3%
Miscellaneous	18,003,000	24,242,300	6,239,300	34.7%
Intergovernmental – New York State	103,935,300	105,398,600	1,463,300	1.4%
Intergovernmental – Federal	7,463,500	6,324,300	-1,139,200	-15.3%
Intergovernmental – Other	22,203,600	22,191,000	-12,600	-0.1%
Interfund Revenue & Transfers	<u>-100,639,900</u>	<u>-101,638,000</u>	<u>-998,100</u>	1.0%
General Total	401,286,600	430,982,200	29,695,600	7.4%
Animal	2,172,200	2,373,500	201,300	9.3%
Library	17,049,400	17,767,200	717,800	4.2%
Water	42,004,100	39,648,700	-2,355,400	-5.6%
War Memorial	2,296,200	2,255,400	-40,800	-1.8%
Parking	14,191,900	11,292,800	-2,899,100	-20.4%
Cemetery	2,693,000	3,233,800	540,800	20.1%
Public Market	1,818,600	1,799,700	-18,900	-1.0%
Refuse	28,533,900	29,406,700	872,800	3.1%
Local Works	<u>20,988,100</u>	<u>22,107,400</u>	<u>1,119,300</u>	5.3%
Grand Total	533,034,000	560,867,400	27,833,400	5.2%

## APPENDIX C

### City of Rochester EXPENDITURE SUMMARY SUMMARY BY DEPARTMENT

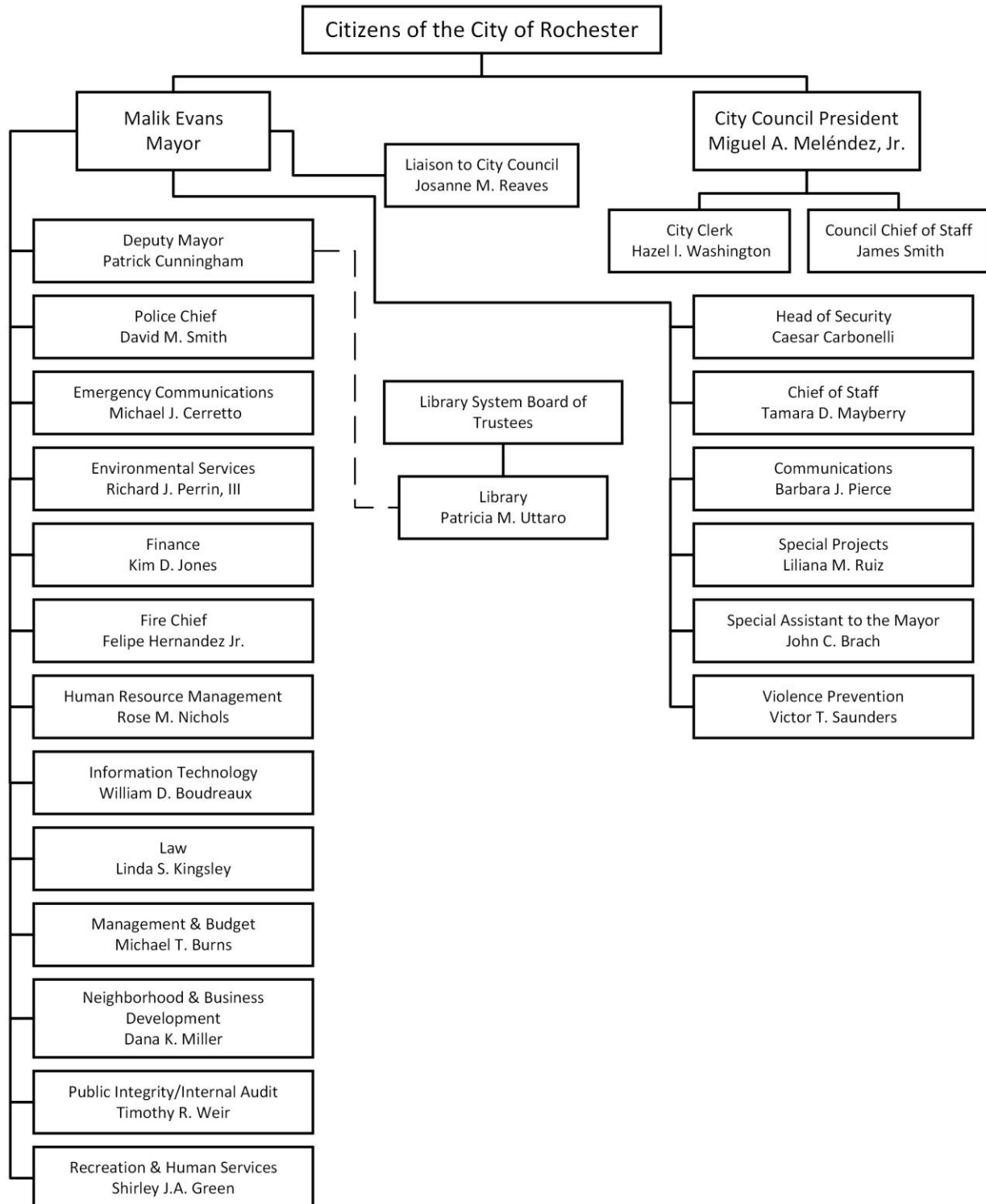
1-35

<b>Year-to-Year Comparison</b>				
	<u>Budget 2020-21</u>	<u>Budget 2021-22</u>	<u>Variance</u>	<u>Percent</u>
City Council and Clerk	2,512,500	7,128,300	4,615,800	183.7
Administration:				
Mayor's Office	4,717,300	3,956,900	-760,400	-16.1
Management & Budget	731,700	779,300	47,600	6.5
Human Resource Management	2,718,100	2,810,900	92,800	3.4
Communications	3,141,500	3,276,600	135,100	4.3
Law	2,034,000	2,691,100	657,100	32.3
Information Technology	6,839,300	8,083,500	1,244,200	18.2
Finance (Excluding Parking)	5,318,500	5,512,300	193,800	3.6
Finance (Parking)	6,150,000	5,929,900	-220,100	-3.6
Neighborhood & Business Development	10,988,900	11,349,500	360,600	3.3
Environmental Services	88,327,500	91,717,200	3,389,700	3.8
Emergency Communications	15,360,400	15,292,400	-68,000	-0.4
Police	95,269,900	90,802,800	-4,467,100	-4.7
Fire	53,768,200	54,212,300	444,100	0.8
Library	12,375,300	12,415,500	40,200	0.3
Recreation & Human Services	15,084,500	17,346,100	2,261,600	15.0
Undistributed Expense	148,996,100	161,094,300	12,098,200	8.1
Contingency	2,687,800	8,452,200	5,764,400	214.5
Cash Capital	16,474,600	20,788,000	4,313,400	26.2
Debt Service	<u>39,537,900</u>	<u>37,228,300</u>	<u>-2,309,600</u>	-5.8
TOTAL	533,034,000	560,867,400	27,833,400	5.2

## APPENDIX D

### City of Rochester

#### MANAGEMENT CHART



## **APPENDIX K**

### **Financial Statements City of Rochester Year Ended June 30, 2022**

*The most recent financial statements for the City  
are available from the following links:*

<http://www.cityofrochester.gov/article.aspx?id=8589937000>

[https://www.cityofrochester.gov/Land\\_Bank\\_Reports/](https://www.cityofrochester.gov/Land_Bank_Reports/)



**APPENDIX L**

**Financial Statements**

**Available upon request**

**Rochester Public Library  
Year Ended June 30, 2022**

**Rochester 2% Foreign Firefighters  
Year Ended December 31, 2021**

**APPENDIX M**  
**FISCAL YEAR 2021-2022 AUDIT REPORTS**

<u>AUDIT REPORT</u>	<u>ISSUE DATE</u>
Financial Disclosure Conflict Review 2021	07/15/21
NBD Property Code Violations 2021	07/20/21
RPD Federal Forfeiture Proceeds	09/30/21
Freed Maxick & Battaglia Outside Audit (FY 2021)	10/30/21 *
Purchasing Card Review	11/04/21
DES Bureau of Water Inventory	12/21/21
DES Riverside Cemetery Cash Handling Audit	03/17/22
DRHS Public Market Cash Handling Audit	03/30/22
Financial Disclosure Conflict Review 2022	06/14/22
ROC City Skate Park Grant	06/30/22**
Washington Square Parking Garage	06/30/22**
Traffic Violations Agency Corrective Action Review	Ongoing
NBD Property Code Violations 2022	Ongoing
Risk Assessment 2022-23 Preliminary Work	Ongoing
Branch Library Cash Handling Audit	Ongoing
Freed Maxick & Battaglia Outside Audit (FY 2022)	Ongoing*

\* OPI provides 200 hours of audit support (per contract)

\*\* Estimated completion date

## **APPENDIX N**

### **Professional Services Agreement Sample**

#### **AGREEMENT FOR PROFESSIONAL SERVICES**

**THIS AGREEMENT**, is made this \_\_, day of \_\_\_\_\_, 2023, 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, herein after referred to as the “City”.

#### **WITNESSETH:**

**WHEREAS**, the City desires to secure the professional services of a Consultant to provide \_\_\_\_\_, 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 CONSULTANT'S SERVICES**

A.

#### **SECTION 2.     CITY RESPONSIBILITIES**

#### **SECTION 3.     TERM**

The duration of the agreement will be from \_\_\_\_\_

#### **SECTION 4.     FEE**

## **SECTION 5.     AUTHORIZED AGENT FOR THE CITY AND THE CONSULTANT**

**A.**           The City hereby designates:

**B.**           The Consultant hereby designates:

or their authorized representatives in case of absence, as Authorized Agents of the City and of the Consultant for receipt of all notices, demands, vouchers and other communications and all orders, permissions, and directions pursuant to this Agreement, which shall be sufficiently communicated, given and/or delivered if dispatched by registered or certified mail, postage prepaid, or delivered personally to the authorized agents designated herein. The parties reserve the right to designate other or additional agents upon written notice to the other party which shall be signed by the Authorized Agent of the requesting party.

## **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**

Consultant shall acquire insurance in an amount sufficient to cover any and all claims for damages that may arise under this agreement, including personal injury, death, damage to property, and if applicable, monetary damages. Consultant shall submit proof of insurance listing the City as an additional insured and providing thirty (30) days' notice of cancellation to the City. In no event shall such insurance exclude from coverage any municipal operations or municipal property related to this Agreement. Such policy (is) shall be subject to City approval.

## **SECTION 8.     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 coverage has been secured. In the alternative, Consultant shall provide proof of self-insurance or shall establish that Workers' Compensation coverage is not required by submitting the then current and required New York State Workers' Compensation Board's form.

## **SECTION 9. EQUAL 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 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.

### **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 shall not discriminate on the basis 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. The Consultant agrees to make a good faith effort to employ minority group persons and females and 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, 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 employees are treated during their employment, without regard to their race, color, religion, sex, age or national origin. 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. The Consultant agrees to post notices in conspicuous places available to employees and applicants for employment, and to include language in all solicitations or advertisements for employment placed by or on behalf of the Consultant, reflecting this nondiscrimination policy.

2. If the Consultant is found guilty of discrimination in employment on the grounds of age, race, creed, color, 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 10. COMPLIANCE WITH ALL LAWS**

The Consultant shall familiarize itself and comply with all applicable laws, ordinances and regulations of all federal, state and municipal governments or the legally constituted agencies thereof.

#### **SECTION 11. AUDIT**

The Consultant agrees that to the extent provisions of the Federal Acquisition Regulations apply to services provided by Consultant under this Agreement, the City shall, until the expiration of three (3) years after final payment, have access to and the right to examine 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. In all other instances, the City shall have the right during the term of this Agreement, and up to one (1) year thereafter, to inspect all relevant records related to invoices submitted by Consultant or Fee modifications requested by Consultant.

#### **SECTION 12. PROHIBITION AGAINST ASSIGNMENT**

The parties are 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 consent, in writing, of both parties. However, Contractor may assign its rights to receive payment upon prior written approval of the City unless otherwise prohibited by law.

### **SECTION 13. 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 14. 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 15. 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 16. 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 17. 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 18. 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 19. 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.

## **SECTION 20. TERMINATION FOR DEFAULT**

The performance of work under this Agreement may be terminated by the parties in accordance with this clause in whole, or from time to time in part, whenever either party shall default in the performance of this Agreement in accordance with its terms. Upon termination due to City's default, Consultant shall be paid that part of the fee proportionate to the amount of services provided by Consultant under this Agreement as of the date of default. Upon termination due to Consultant's default, the City may take over the work to be performed and complete the same by contract or otherwise, and the Consultant shall be liable to the City for any excess cost occasioned thereby.

## **SECTION 21. 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 are at least \$50,000, or involves retention by the Consultant of fees of at least \$50,000 during a period of one year. If this Agreement is amended to increase the amount payable hereunder of at least 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](http://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 22. 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.

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

**CITY OF ROCHESTER**

BY: \_\_\_\_\_  
Malik D. Evans, Mayor - City of Rochester

**CONSULTANT**

\_\_\_\_\_  
Name:  
Taxpayer Id. No.:

STATE OF NEW YORK)  
COUNTY OF MONROE) SS:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me the subscriber, Malik D. Evans, personally 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 \_\_\_\_\_, 2023, 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