

DRAFT

AGREEMENT FOR RESIDENT PROJECT REPRESENTATION

Project Name: TERM RESIDENT PROJECT REPRESENTATION SERVICES

Consultant Name:

Agreement #:

Authorizing Ordinance:

I N D E X

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AGREEMENT

THIS AGREEMENT, entered into on the ___ day of _____, 2009, 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, New York _____, hereinafter referred to as the "Consultant."

WITNESSETH:

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

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

ART. 1, Part 1. Description of Project

Section 1.101 General Description

Resident Project Representation Services at any requested City Project at any location within the City limits or on City property hereinafter referred to as the "Project."

ART. 1, Part 2. Description of Professional Services

Section 1.201 General

- A. The Consultant shall furnish during the construction period, a Resident Project Representative as required. All Resident Project Representation work shall be performed under the supervision of a licensed professional engineer of the Consultant. The qualifications of all Consultant personnel doing work under this Agreement shall be subject to the review and approval of the City.
- B. The Consultant shall report regularly to the City upon the progress and quality of the work. The Consultant shall conduct on-site observations of the general progress of the work and shall consult with the City and the contractor giving opinions, suggestions, and recommendations, based on observations, as to any defects or deficiencies in the contractor's work.
- C. At the City's request, the Consultant will furnish one or more Resident Project Representatives to observe the daily on site construction operations of a City construction project.
- D. The Consultant agrees that, where the Project will involve the design or substantial renovation, relocation, or reconstruction of, or will involve the new construction of a building, facility, street, sidewalk, park, mall or other public area, then it will incorporate into its design, study and other work those facilities or improvements reasonably required to give handicapped persons access to and enjoyment of those facilities. Such facilities or improvements shall conform to the latest Americans with Disabilities Act - Accessibility Guidelines as developed by the U.S. Architectural and Transportation Barriers Compliance Board (Access Board).
- E. The Consultant will provide a Resident Project Representative(s) within four (4) weeks of a written request by the City. If the Consultant is unable to provide the required services, they will notify the City within one(1) week of receipt of any written request by the City for services.

- F. The City will give a two (2) weeks written notice to the Consultant prior to the time the services of any of the Consultant's Resident Project Representatives are no longer required.
- G. The Resident Project Representative(s) will perform technical on site observation of construction operations under the supervision of a City engineer or project manager.
- H. The minimum duration any Resident Project Representative will be used is 4 weeks unless a shorter duration is mutually agreed upon between the City and Consultant.
- I. The Consultant may not remove a Resident Project Representative from a City project without permission from the City. Requests to change a representative will require a written request to the City two(2) weeks prior to the date the Consultant intends to change a representative.
- J. The Consultant will submit the name, qualifications and resume of any proposed Resident Project Representative to the City for review prior to their placement on a City Project.
- K. The qualification, experience and salary levels of any Consultant Resident Project Representatives to be requested by the City and used on City Projects will be based on the National Institute for Certification of Engineering Technicians (NICET) levels I through IV.

Section 1.202 Basic Services

The specific duties of the Consultant shall include, but not be limited to, the following:

A. Resident Project Representation Services:

The Consultant shall provide the following services:

1. Record Assembly

The Consultant shall assemble the following records:

- a. A list of the Contractor's suppliers and subcontractors. The Consultant shall submit recommendations concerning such subcontractors and suppliers to the City.
- b. A record of field samples and field samples if necessary of materials delivered to the site and which samples are required by the contract documents.
- c. A complete set of contract documents with all revisions and agenda.
- d. Shop drawing and submittal logs and a complete set of approved shop drawings.
- e. A complete set of all correspondence and written records regarding the project.
- f. Copies of all guarantees, certifications and operation manuals for the project.
- g. A copy of all project schedules of all contractors as amended.
- h. A filed and labeled set of preconstruction and construction photographs.

2. Observation

The Consultant will make the following observations:

- a. On-site observations of the work in progress for the City as a basis for determining that the project is proceeding in accordance with the contract documents.
- b. Attend and chair pre-construction conferences, and arrange for and chair job meetings before and during the construction. Meeting minutes of all minutes shall be prepared and distributed by the Consultant.
- c. Consult with the City prior to and observe all on-site tests.
- d. Observe such off-site operations as directed by the City.
- e. Observe that all permits and licenses which are necessary have been obtained prior to work proceeding on that element of the work which requires the permit or license.
- f. After receipt of Notice to Proceed from the City for this Agreement, periodically observe any work being done within the Project limits before or during the Project work by other municipal agencies, other contractors or private utilities working under a City Permit. The Consultant will observe the work to determine that other contractors coordinate their work properly with Project work and that the work complies with City Permit requirements. The Consultant will work with the City of Rochester Permit Office in the observation of this work and obtain copies of all permits from the Permit Office. The Consultant will notify the appropriate contractor or utility and, if necessary, the City Permit Office of: any obvious defects in any portion of their work that would affect any pavement structures or features within the City Right-Of-Way; any portions of their work that may interfere or conflict with future City work; and of any unsatisfactory maintenance and protection of traffic. Enforcement of any Permit requirements will be done by the City Permit Office.
- g. Conduct, in company with the City and others designated by the City, a final inspection of the project for conformance with the contract documents and acknowledge completion of the project in accordance with the contract documents in writing prior to final payment to the contractor. The approval of the City and other proper Agency approvals shall be required as a condition for the acceptance of the work by the City.

3. Liaison

The Consultant will perform the following liaison activities:

- a. Obtain and transmit to the contractor and to the City, the Designer's interpretation of the contract documents and the instructions of the City Engineer's representative concerning the project.
- b. Transmit to the designer of the project all modifications to contract drawings for creation of a set of as-built drawings.
- c. Coordinate and monitor all material testing done by City approved testing laboratories on the project. This shall include review and

recommendation for payment of testing laboratory billing to the City for testing services of the project.

- d. Coordinate work on the project with construction that is occurring on other projects adjacent, near, or on the project site. This shall include coordination and liaison activities with project representatives and attendance at any required project meetings.
- e. Receive from the Contractor and transmit to the City Finance Department all Contractor and Subcontractor weekly certified payroll records. The Consultant shall notify the Project Manager and the City Finance Department of any failures by the Contractor to comply with submission requirements.

4. Construction Review

The Consultant shall review and make recommendations upon the following:

- a. Construction schedules from each contractor.
- b. Payment requisitions from each contractor for each fiscal share of the project.
- c. Requests of the Contractor for interpretation of the Contract Documents. The Consultant shall review these requests and respond to the City and Contractor with its interpretation of the intent of the Contract documents. The Consultant shall forward to and obtain from the Designer any requests for interpretation or design changes which in the opinion of the Consultant cannot be made by the Consultant.
- d. Claims by each contractor.
- e. Contractor requests regarding proposed changes to the requirements of the contract documents.
- f. Change Orders including recommendations regarding the associated costs and impacts on the project schedule.
- g. Construction schedules and proposed work locations of any contractor doing work in the Project limits under permit with the City of Rochester.

5. Record Creation

The Consultant shall create and maintain the project records. Upon completion of the project the Consultant shall deliver a bound, categorized set of these records shall include the following:

- a. A list of all permits, licenses, reviews and approvals required by contract documents.
- b. A daily diary or log book, on forms approved by the City which records hours on the job site, weather conditions, list of visiting officials, daily activities, the locations and amount of pay items installed by the contractor, decisions, manning levels by trade, observations in general, and specific observations in more detail (as in the case of observing test procedures).
- c. Weekly and monthly reports on forms approved by the City of the progress of the project and the contractor's compliance with both the

construction schedule and the contract documents. Weekly and monthly reports are to be distributed by the Consultant to all parties required by the City.

- d. Monthly progress payments (and final payment) for the contractors on forms approved by the City. Separate payment estimates, must be prepared by the Consultant for all fiscal shares.
 - e. Change Orders as required on forms approved by the City.
 - f. All modifications to construction schedules for the project.
 - g. Minutes of all meetings.
 - h. A final punch list of all items remaining incomplete at the time of substantial acceptance by the City of the project.
 - i. A guarantee punch list of all items to be corrected under the Guarantee provisions of the construction contract. Such punch list is to be based upon an inspection made by the Resident Project Representative sixty (60) construction season days before the expiration of the construction guarantee period.
 - j. Marked up prints, drawings and other data indicating all modifications to contract drawings for creation with As-Built drawings.
 - k. Labeled pre-construction and construction photographs.
 - l. Project unit quantities apportioned by fiscal share indicating any necessary quantity calculation, date of installation, location and quantity amount.
 - m. Water service and sewer lateral tap cards on forms approved by the appropriate agency.
 - n. All permits of any contractor doing work within the Project limits under permit with the City.
6. Authority To Stop Work

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

Section 1.203 Additional Services

The following shall constitute Additional Services:

- A. Performing work not described under Basic Services requested and authorized in writing by the City's Authorized Agent including, but not limited to the following:
 - o Special travel.
 - o Property surveys, and preparation of plots and legal descriptions.

- o Serving as an Expert Witness on behalf of the City
 - o Materials testing other than that performed by a testing laboratory on contract with the City unless specifically included as a basic service reimbursable expense.
 - o Televised inspection of sewers, unless specifically included as a basic service reimbursable expense.
 - o. Preparation of an environmental impact statement (EIS) and all services related to the preparation and approval of the EIS for the Project.
- B. If the Consultant is caused expense due to substantial revisions of previously approved studies, design documents, drawings or specifications, or if the scope of the project is significantly enlarged either by expansion of the project's physical limits or by increase of the Consultant's responsibilities, such revisions or scope changes having been requested in writing by the City's Authorized Agent

ART. I Part 3. City Responsibilities

Section 1.301 City Responsibilities include:

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

ART. I, Part 4. Fee

Section 1.401 General

- A. In no event whatsoever shall the total fee payable to the Consultant pursuant to this Agreement, including all costs and disbursements whatsoever, exceed (\$ amount)
(Written amount of contract).
- B. The Consultant shall have the right to bill the City for services performed and not already billed on a monthly basis.
- C. Payment Request

The Consultant shall submit duly executed vouchers upon forms which shall be supplied and in the manner pre- prescribe by the City in order to receive payment.

Section 1.402 Fee for Basic Services and Reimbursable Expenses

- A. The maximum fee payable to the Consultant for Basic Services pursuant to this Agreement shall be initially set forth in Schedule A.
- B. The maximum fees payable to the Consultant for Reimbursable Expenses pursuant to this Agreement shall be initially set forth in Schedule A.
- C. The City agrees to pay and the Consultant agrees to accept as full payment for the work and services performed pursuant to this Agreement, the following fees, payable in the following manner:

- 1. Fee Computation

The Consultant's fee shall be the actual payroll costs within a monthly billing period of the Consultant's technical and professional personnel times a multiplier of _____ to cover overhead and profit within the phase limits shown in Schedule A.

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

- 3. The Consultant shall be reimbursed the actual expenses for Reimbursable Expenses incurred in performing services under this Agreement. All reimbursement claims must be supported by adequate documentation and show appropriate share breakdown. Reimbursable Expenses are as outlined in Schedule A.

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

ay be made without the approval of the City's Authorized Agent.

- 5. All travel is to be made at the expense of the Consultant and is part of the Fee for Basic Services.

Section 1.403 Fee for Additional Services

- A. The City agrees to pay the Consultant for Additional Services performed by the Consultant on the following basis: Adjustments to the Basic Services fee for unanticipated change of scope of the project shall be made at the rate of (multiplier) times actual payroll expenses for the consultant's technical and professional personnel.
- B. The City shall pay the Consultant as an expert witness at the rate of \$400.00 per day for any day or portion thereof for which the Consultant is required to appear as a witness.
- C. The City shall pay the Consultant to provide property survey and preparation of plots and legal descriptions at \$350 per plot.

Section 1.404 Fee Administration

- A. The Authorized Agents can mutually agree to amend Schedule A in writing for phase changes, allocation modifications or for Additional Services within the maximum authorized amount set forth in Section 1.401 A.
- B. The City's Authorized Agent is authorized to request in writing such Additional Services as the Agent deems necessary, within the maximum authorized amount set forth in section 1.401A.

ART. I, Part 5. Term

Section 1.501

This Agreement shall commence upon execution by the parties and shall terminate three (3) months after completion of a two year guarantee inspection of the Project designated herein.

ART. I, Part 6. Time of Performance

Section 1.601

- A. The Consultant shall not commence work prior to receiving a written Notice to Proceed from the City's Authorized Agent.
- B. It is understood that it is the intention of the City to have the services performed under this Agreement carried out as expeditiously as possible.

ART. I, Part 7. Authorized Agent

Section 1.701

- A. The City hereby designates the:

City Engineer
City Hall Rm 300B
30 Church Street
Rochester, New York 14614

- B. The Consultant hereby designates the:

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

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

ART. I, Part 8. Ownership of Documents

Section 1.801

- A. All original drawings, project records, specifications, the two digital record files, and survey maps prepared by the consultant under this Agreement, upon completion of the work required herein, will become the property of the City and shall be delivered to the City's Authorized Agent. The Consultant may provide a complete

reproducible set of drawings, specifications, project records, survey maps and all other documents in lieu of the originals.

ARTICLE II

ARTICLE II, Part 1. Qualifications, Indemnity and Insurance

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

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

Section 2.102 Consultant's Liability

The Consultant hereby agrees to defend, indemnify and save harmless the City of Rochester against any and all liability, loss, damage, detriment, suit, claim, demand, cost, charge, attorney's fees and expenses of whatever kind or nature which the City may directly or indirectly incur, suffer or be required to pay by reason or in consequence of the carrying out of any of the provisions or requirements of this Agreement, where such loss or expense is incurred directly or indirectly by the City, its employees, subcontractors or agents, as a result of the negligent act or omission, breach or fault of the Consultant, its employees, agents or subcontractors. Such indemnification shall specifically exclude any claims or actions brought against the City for losses, damages or injuries caused by or related to pollution or contamination (as those terms are defined by statute or federal or state regulation) at the subject property, to the extent that such losses, damages or injuries are not a result of the Consultant's negligence or intentional wrongdoing, or that of its employees agents or subcontractors. If a claim or action is made or brought against the City and for which the Consultant may be responsible hereunder in whole or in part, then the Consultant shall be notified and shall be required to handle or participate in the handling of the portion of the claim for which it may be responsible as a result of this section.

Section 2.103 Professional Liability Insurance

The Consultant shall procure at its own expense professional liability insurance for services to be performed pursuant to this Agreement, insuring the Consultant against malpractice or errors and omission of the Consultant. The amount of said insurance coverage shall be in the amount of Two Million Dollars if said insurance is a "Defense within Limits" policy under which all claim expenses are included within both the applicable limit of liability and self-insured retention. Otherwise, the insurance coverage shall be in the amount of One Million Dollars. The Consultant shall provide the City with a certificate of insurance from an authorized representative of a financially responsible insurance company evidencing that such an insurance policy is in force. The certificate shall contain a thirty (30) day cancellation clause which shall provide that the City shall be notified not less than thirty (30) days prior to the cancellation, assignment or change of the insurance policy. The Consultant shall also give at least thirty (30) days notice to the City of such cancellation, amendment or change, and of any lapse of insurance coverage under this Agreement.

Section 2.104 General Liability Insurance

The Consultant shall obtain at its own expense general liability insurance in the amount of at least One Million Dollars, for protection against claims of personal injury, including death, or damage to property, arising out of the Project. Said insurance shall be issued by a reputable insurance company, authorized to do business in the State of New York. Said insurance shall also name the City of Rochester as an insured. The Consultant shall provide the City with a certificate of insurance from an authorized representative of a financially responsible insurance

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

Section 2.105 Workers' Compensation and Disability Benefits Insurance

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

Section 2.106 Copyright or Patent Infringement

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

Section 2.107 No Individual Liability

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

ARTICLE II, Part 2. Specific Design Restrictions

Section 2.201 Environmental Policy

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

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

ARTICLE II, Part 3. Employment Practices

Section 2.301 Equal Employment Opportunity

A. General Policy

The City of Rochester, New York reaffirms its policy of Equal Opportunity and its commitment to require all contractors, lessors, vendors and suppliers doing business with the City to follow a policy of Equal Employment Opportunity, in accordance with the requirements set forth herein. This policy is adopted pursuant to the City's Affirmative Action Plan, Article XV - Contract Compliance. The City further does not discriminate on the basis of handicap status in

admission, or access to, or treatment or employment in its programs and activities. The City is including these policy statements in all bid documents, contracts, and leases. Contractors, lessors, vendors and suppliers shall agree to comply with State and Federal Equal Opportunity laws and regulations and shall submit documentation regarding Equal Opportunity upon the City's request.

B. Definitions

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

MINORITY GROUP PERSONS - shall mean a person of Black, Spanish surname American, Asian American or American Indian ethnic or racial origin and identity.

C. Compliance

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

1. The Consultant agrees that he will not discriminate against any employee for employment because of age, race, creed, color, national origin, sex, sexual orientation, disability, or marital status in the performance of services or programs pursuant to this Agreement, or in employment for the performance of such services or programs, against any person who is qualified and available to perform the work in which the employment relates. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that applicants are hired and that employees are treated during their employment, without regard to their age, race, creed, color, national origin, sex, sexual orientation, disability, or marital status.

2. If the Consultant is found guilty of discrimination in employment on the grounds of age, race, creed, national origin, sex, sexual orientation, disability or marital status by any court or administrative agency that has jurisdiction pursuant to any State or Federal Equal Opportunity laws or regulations, such determination will be deemed to be a breach of contract, and this Agreement will be terminated in whole or part without any penalty or damages to the City on account of such cancellation or termination and the Consultant shall be disqualified from thereafter selling to, submitting bids to, or receiving awards of contract with the City of Rochester for goods, work, or services until such time as the Consultant can demonstrate its compliance with this policy and all applicable Federal and State Equal Opportunity laws and regulations.

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

Section 2.302 The MacBride Principles

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

Section 2.303 Compliance with Labor Laws

The Consultant specifically agrees to comply with the labor law requirements of Articles 8 and 9 of the Labor Law of the State of New York, and, more specifically, with the requirements of Sections 220, 220-a, 220-d and 220-e of the Labor Law. These provisions require the payment of prevailing wages and supplements to, the verification of payment of wages of, and

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

Section 2.304 Living Wage Requirements

A. Applicability of Living Wage Requirements

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

B. Compliance

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

C. Exemption

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

ARTICLE II, Part 4. Operations

Section 2.401 Compliance with Air and Water Acts

The Consultant and any and all subcontractors agree as follows:

A. The Consultant, and its subcontractors warrant that any facility to be utilized in the performance of any non-exempt contract or subcontract is not listed on the list of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.

B. The Consultant promises to comply with all of the requirements of Sections 144 of the Clean Air Act, as amended (47 USC 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended (33 USC 1318) relating to the inspection, monitoring, entry, reports and information as well as all other requirements specified in Section 114 and Section 308, and all regulations and guidelines issued thereunder.

C. A condition for the award of the Agreement is that prompt notice will be given to the City of any notification received from the Director, Office of Federal Activities, EPA,

indicating that a facility utilized or to be utilized for the Agreement is under consideration to be listed on the EPA list of Violating Facilities.

D. The Consultant warrants to the City that it has not been convicted under Section 113(c)(1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

Section 2.402 Political Activity Prohibited

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

Section 2.403 Lobbying Prohibited

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

Section 2.404 Anti-Kickback Rules

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

Section 2.405 Withholding of Salaries

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

Section 2.406 Discrimination Because of Certain Labor Matters

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

Section 2.407 Status as Independent Contractor

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

ARTICLE II, Part 5. Documents

Section 2.501 Patents and Copyrights

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

Section 2.502 Audit

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

Section 2.503 Content of Sub-Agreements

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

ARTICLE II, Part 6. Termination

Section 2.601 Termination for Convenience of the City

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

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

B. If the Agreement is so terminated the City may take over the work and services and prosecute the same to completion by contract or otherwise. The Consultant, upon such termination, shall transfer title, and in the manner directed by the City, shall deliver to the City the completed or partially completed, plans, drawings information, other property and records of work being performed, which, if this Agreement had been completed, would be required to be furnished to the City.

C. After receipt of written notice of termination, the Consultant shall promptly submit to the City its termination claim in a form acceptable to the City. Such claim shall in no event be submitted later than one year from the effective date of termination.

D. In the event that the parties cannot agree, in whole or in part, as to the amount due by reason of the termination of the Agreement pursuant to this clause, the City shall pay the Consultant the amount determined as the total of the following:

1. The cost of all work performed prior to the effective date of termination.
2. The cost of settling and paying claims arising out of and as a direct result of the termination;
3. A sum as profit on subdivision 1. above, determined to be fair and reasonable, provided however, that if the Consultant would have sustained a loss on the entire Agreement had it been completed, no profit shall be included or allowed under this subdivision 3., and an appropriate adjustment shall be made reducing the amount of settlement to reflect the indicated rate of loss. The total sum to be paid under this section shall not exceed the total price of this Agreement specified hereinabove, reduced by the amount of payments otherwise made, and further secured by the value of work remaining incomplete at the time of the termination of this Agreement.

Section 2.602 Termination for Default

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

B. If this Agreement is to be terminated, the City may take over the work and services and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the City for any excess cost occasioned thereby.

C. The total fee payable shall be such proportionate part of the fee as the value of the actual work completed and delivered bears to the value of the work required or contemplated by this Agreement.

D. This Agreement may not be so terminated if the failure to perform arises from unforeseeable causes beyond the control and without the fault or negligence of the Consultant.

E. If, after notice of termination of this Agreement under the provisions of this section, it is determined for any reason that the Consultant was not in default or that the default was excusable the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the clause of this Agreement entitled "Termination for the Convenience of the City."

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

ARTICLE II, Part 7. General

Section 2.701 Prohibition Against Assignment

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

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

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

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

Section 2.702 Compliance with All Laws

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

Section 2.703 Successors

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

Section 2.704 Interest of City and Consultant in Contract

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

Section 2.705 Permits, Laws and Taxes

A. In the event that services performed by the Consultant for the City are subject to taxation under Article 28 of the Tax Law (sales and compensating use tax) the Consultant shall receive from the City the material necessary to obtain a tax exempt certificate upon written request.

B. The Consultant shall pay all taxes, applicable to the work and materials supplied under this Agreement, it being understood that in no case shall any such tax be borne by the City, except as provided in subparagraph A. above.

Section 2.706 Obligations Limited to Funds Available

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

Section 2.707 Extent of Agreement

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

Section 2.708 Law and Forum

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

Section 2.709 No Waiver

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

Section 2.710 Severability

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

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

THE CITY OF ROCHESTER

(CONSULTANT)

By: _____

By: _____

Robert J. Duffy – Mayor

Federal Tax Payer Id. No

Approved as to Form:

Approved for Funds:

Corporation Counsel
City of Rochester

Director of Finance
City of Rochester

STATE OF NEW YORK
COUNTY OF MONROE

On this day of , 200 , before me, the subscriber, personally came ROBERT J. DUFFY, to me known, who being by me duly sworn, did depose and say that he resides in the City of Rochester, that he is the Mayor of the City of Rochester, the municipal corporation described in the above Agreement; that he signed his name thereto by authority of Ordinance No. .

Notary Public

STATE OF NEW YORK
COUNTY OF MONROE

On this _____ day of _____, 200_, 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

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ATTACHMENT 1:

**NOTICE TO EMPLOYEES CONCERNING CITY
OF ROCHESTER LIVING WAGE ORDINANCE.**

NOTICE TO EMPLOYEES CONCERNING CITY OF ROCHESTER LIVING WAGE ORDINANCE.

THIS SHALL SERVE AS NOTICE TO ALL EMPLOYEES THAT ANY EMPLOYER WHO IS A CONTRACTOR OR SUBCONTRACTOR DIRECTLY INVOLVED IN PROVIDING A SERVICE TO THE CITY OF ROCHESTER PURSUANT TO A SERVICE CONTRACT THAT INVOLVES THE EXPENDITURE BY THE CITY OF AT LEAST \$50,000 DURING THE PERIOD OF ONE YEAR SHALL BE SUBJECT TO THE REQUIREMENTS OF THE **ROCHESTER LIVING WAGE ORDINANCE**. COVERED EMPLOYERS SHALL PAY NO LESS THAN A LIVING WAGE TO THEIR COVERED EMPLOYEES, AS SET FORTH IN SECTION 8A-18 OF THE MUNICIPAL CODE OF THE CITY OF ROCHESTER. SUCH EMPLOYEES SHALL HAVE THE RIGHT TO FILE A COMPLAINT WITH THE CITY IF THEY BELIEVE THAT THEIR EMPLOYER IS NOT COMPLYING WITH THE REQUIREMENTS OF SECTION 8A-18, BY CALLING THE BELOW LISTED TELEPHONE NUMBER. COMPLAINTS MUST BE MADE WITHIN ONE YEAR FROM THE DATE OF VIOLATION AND WILL BE INVESTIGATED PROMPTLY BY THE CITY. ALL COMPLAINTS WILL BE TREATED AS CONFIDENTIAL AND WILL NOT BE DISCLOSED TO THE EMPLOYER WITHOUT THE CONSENT OF THE EMPLOYEE, EXCEPT WHEN REQUIRED TO ACCESS INFORMATION NECESSARY TO INVESTIGATE THE COMPLAINT.

TELEPHONE NO. 428-