

Monroe County



Maggie Brooks
County Executive

REQUEST FOR PROPOSALS

Richard and Annette Bloch Cancer Foundation
Cancer Survivors Park

April 24, 2006

Monroe County
Department of Environmental Services
Division of Engineering
7100 City Place
50 West Main Street
Rochester, New York 14614

REQUEST FOR PROPOSALS

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SECTION 1 - INVITATION TO PARTICIPATE

1.1 Purpose

Monroe County is soliciting proposals from firms to provide professional design and construction phase services for the Richard and Annette Bloch Cancer Foundation Cancer Survivors Park in Highland Park. Prospective consultants must offer a proposal that will meet the scope of services, qualifications and general description of work activities identified in Section 2 of this Request for Proposals ("RFP").

In responding to this RFP, consultants must follow the prescribed format as outlined in Section 3. By so doing, each consultant will be providing the County comparable data submitted by other consultants and, thus, be assured of fair and objective treatment in the County review and evaluation process.

1.2 RFP Coordinator; Issuing Office

This RFP is issued for Monroe County. The RFP Coordinator, identified below, is the sole point of contact regarding this RFP from the date of issuance until the selection of the successful consultant.

Michael J. Garland, P.E.
Deputy Director
MCDES, Division of Engineering
7th Floor, CityPlace
50 West Main Street
Rochester, New York 14614-1228
Phone: (585) 753-7511
Fax: (585) 324-1237
Email: mgarland@monroecounty.gov

1.3 Scope and Objectives

Monroe County has prepared this request for proposals to allow consultants to develop and submit proposals for professional design and construction phase services for the Richard and Annette Bloch Cancer Foundation (Bloch Foundation) Cancer Survivors Park in Highland Park.

1.4 Presentation and Clarification of the County's Intentions

As a result of this RFP, the County intends to enter into a contract with the selected consultant to supply the services described in Section 2. However, this intent does not commit the County to award a contract to any responding consultant, or to pay any costs incurred in the preparation of the proposal in response to this request, or to procure or contract for any services. The County reserves the right, in its sole discretion, to (a) accept or reject in part or in its entirety any proposal received as a result of this RFP if it is in the best interest of the County to do so; (b) award one or more contracts to one or more qualified consultants if necessary to achieve the objectives of this RFP and if it is in the best interest of the County to do so.

1.5 Time Line

The schedule of events for this RFP is anticipated to proceed as follows:

- ? ? This RFP will be available on Monday, April 24, 2006.
- ? ? All requests for RFP clarification must be submitted in writing to the RFP Coordinator at the address provided in Section 1 and received no later than 3:00 PM EST on Friday, May 12, 2006.
- ? ? All questions will be answered and documented in writing as an Addendum to the RFP. These will be sent out to all consultants who received the original RFP on or before Friday, May 19, 2006.
- ? ? Final RFP submissions must be received by 3:00 PM EST on Monday, June 12, 2006 at the address shown in Section 1. The right to withdraw will expire on this date.

1.6 An Overview of the Organization

Monroe County is located in the Finger Lakes Region of New York State, where the Genesee River meets the south shore of Lake Ontario. Monroe County has a population of over 735,000 residents. The County is comprised of 19 towns, 10 villages and the City of Rochester, the third largest city in New York State.

Monroe County government, with a workforce of approximately 4,600 full and part-time employees, has an annual operating budget close to \$1 Billion. County government provides a variety of services, including: public safety, health and human services, economic development, recreation, transportation and environmental services. Monroe County also owns and operates the Greater Rochester International Airport and Seneca Park Zoo.

Monroe County is a community of innovators on the cutting edge of scientific research and discovery; a community of entrepreneurs home to some of the world's best known brands and fastest growing companies; and, a community recognized for its leadership in arts, culture and higher education.

SECTION 2 – SCOPE OF WORK; CONSULTANT QUALIFICATIONS

2.1 General Scope of Work

The Cancer Survivors Park will be located on an approximately two-acre site on the southwest corner of Highland Avenue and Goodman Street in the City of Rochester as identified in the attached Location Map. The site is adjacent to Highland Park, which is a Frederick Law Olmstead designed park and on the National Register of Historic Places as part of the Mount Hope – Highland Historic District. The design and construction budget is seven hundred and fifty thousand dollars (\$750,000) and the Bloch Foundation will donate and provide sculptures and plaques worth an additional one hundred and fifty thousand dollars (\$150,000).

The Consultant scope of work will include, but not be limited to, planning, design, bid review, and construction inspection services. Please refer to the Bloch Foundation website (www.blochcancer.org) for information on the specific design requirements for the Park. The website also provides examples of the existing Cancer Survivor Parks around the United States.

A detailed scope of work will be developed with the selected Consultant and Monroe County. Refer to the attached Monroe County Standard Professional Services (A/E) Agreement for Basic and Special Services that may be required by the selected Consultant.

SECTION 3 - SPECIFIC PROPOSAL REQUIREMENTS

3.1 Submission of Consultant's Proposal(s)

- A. Acceptance Period and Location:** To be considered, Consultants must submit a complete response to this RFP. Consultants not responding to all information requested in this RFP or indicating exceptions to those items not responded to may have their proposals rejected.

Sealed proposals must be received at the address below on or before 3:00 p.m. Eastern Standard Time, on Monday, June 12, 2006.

Michael J. Garland, P.E.
Deputy Director
MCDES, Division of Engineering
7th Floor, CityPlace
50 West Main Street
Rochester, New York 14614-1228
Phone: (585) 753-7511
Fax: (585) 324-1237
Email: mgarland@monroecounty.gov

Refer to Section 3 for further detail regarding response formats and requirements. There will be no public opening of the proposals.

- B. Withdrawal Notification:** Consultants receiving this RFP who do not wish to submit a proposal should reply with a "No Proposal" letter to be received by the RFP Coordinator no later than the proposal submission date. This copy of the RFP is to be returned with the withdrawal correspondence. The RFP is the property of Monroe County and may not be reproduced or distributed for purposes other than proposal submission without the written consent of the Monroe County Attorney.
- C. Required copies: Consultants must submit one (1) signed original Proposal with a set of conceptual design drawings and five (5) complete copies of the signed original each with a set of conceptual design drawings. One (1) complete set of full size conceptual design drawings must be submitted on foam board suitable for display. Proposals should be clearly marked as "Richard and Annette Bloch Cancer Foundation Cancer Survivors Park."** The Consultant may respond electronically in addition to submitting hardcopies of its proposal as provided above. The Consultant will make no other distribution of proposals. An official authorized to bind the Consultant to its provisions must sign proposals.
- D. Economy of Preparation:** Proposals should be prepared as simply as possible and provide a straightforward, concise description of the Consultant's capabilities to satisfy the requirements of the RFP. Expensive bindings, color displays, promotional material, etc. are not necessary or desired. **Emphasis should be concentrated on accuracy, completeness, and clarity of content.** All parts, pages, figures, and tables should be numbered and clearly labeled. Vague terms such as "consultant complies" or "consultant understands" should be avoided.

3.2 Response Date

To be considered, sealed proposals must arrive on or before the location, time and date specified in Section 1. **Requests for extension of the submission date will not be granted.** Consultants mailing proposals should allow ample delivery time to assure timely receipt of their proposals.

3.3 Clarification of RFP and Questions

Questions that arise prior to or during proposal preparation must be submitted **in writing or via email** pursuant to instructions in Section 1 of this RFP. Questions and answers will be posted on the Monroe County website at www.monroecounty.gov no later than 3:00 p.m., May 19, 2006 and must be acknowledged in the RFP response. No contact will be allowed between the consultant and any other member of the County with regard to this RFP during the RFP process unless specifically authorized in writing by the RFP Coordinator. Prohibited contact may be grounds for Consultant disqualification.

3.4 Addenda to the RFP

In the event it becomes necessary to revise any part of this RFP, addenda will be posted on the website, as indicated in Section 3.3. **An acknowledgment of such addenda, if any, must be submitted with the RFP response.**

3.5 Organization of Proposal

This section outlines the information that must be included in your proposal. Please respond with your information in the same order as the items in the section.

- A. **Transmittal Letter.** Each response to the RFP should be accompanied by a letter of transmittal not exceeding one (1) page that summarizes key points of the proposal and which is signed by an officer of the firm authorized to commit the Consultant to the obligations contained in the proposal. The transmittal letter should also include a phone number, fax number and e-mail address for the Consultant's contact person.
- B. **Table of Contents.** Include a Table of Contents at the beginning, which clearly outlines the contents of your proposal.
- C. **Company Information.** Provide information related to your company and any companies you are proposing to use as sub-contractors. Specifically address the following:
 - 1. Year the company was organized.
 - 2. Identification of company ownership.
 - 3. Financial history of the company covering the last three years. Attach the most recent copy of your latest financial statements prepared by an independent certified public accountant in

accordance with generally accepted accounting principals. Also include the following information: current balance sheet, statement of revenues and expenses, statement of cash flows, and appropriate notes to these documents.

4. Functions and location of your nearest regional office to Monroe County.
5. Anticipated growth of your organization including expansion of the client base and acquisitions

D. Consultant's Proposal. The Proposal should describe the Consultant's design team, conceptual design, qualifications, experience, and approach to designing the Cancer Survivors Park. The Proposal should address the Consultant's capability to perform all or most aspects of the project. Please note, only one Proposal can be submitted from each Consultant. The Proposal must include the following:

1. Conceptual design sketches and drawings submitted on 24" by 36" size sheets. The conceptual design must include:
 - a. A title sheet listing the title, "Conceptual Design Proposal for the Richard and Annette Bloch Cancer Foundation Cancer Survivors Park", a site location map and address, identifying the site at the "Southwest Corner of Highland Avenue and South Goodman Street, Rochester New York", Project client "Monroe County", and your Design Team's name, business address, and phone and fax numbers.
 - b. A color conceptual design plan (scale 1"-20'). The plan must show the placement of the sculptures and plaques donated by the Bloch foundation, the park sign, a parking area (10 spaces maximum), walkways, lighting, topography, major plantings, and other major design and landscape features. The plan must illustrate its ADA compliance. The conceptual design plan must be based on the attached Highland Park Elevation Survey.
 - c. Two (2) color elevation views showing the Park as seen from Goodman Street and from Highland Avenue.
 - d. A preliminary demolition and grading plan with the contours shown. The design must also be based on the attached Highland Park Elevation Survey. A minimum of one (1) color oblique view of the Park showing the entire site and all of the major design elements from a "bird's eye" view.
2. A description of the Consultant's understanding of the scope and purpose of the project.
3. A preliminary construction cost estimate based on the Consultant's proposed conceptual design. The construction will be publicly bid in compliance with New York State General Municipal Law, Wicks Law, and prevailing wages. Identify preliminary budget estimates for site work, clearing, demolition, paving, utilities, architectural items, mechanical, plumbing,

electrical, landscaping, and any other significant construction costs.

4. A description of how the Consultant's design team will be organized and the approach to the design. Include a list and organizational chart showing all of the design team's key project personnel and their respective disciplines. Specifically address civil, architectural, engineering, utility, cost estimating, and landscape architecture responsibilities. Include resumes of the key personnel to be assigned to this project.
 5. Descriptions of at least three (3) similar projects completed by the Consultant. Include a description of each project, photographs of the completed projects, the final design and construction costs for each project, an owner's representative familiar with the project and a contact phone number. Experience with historic parks projects should be emphasized.
 6. A description of the approach for M/WBE utilization for design and construction phase services.
- E. Insurance Certificates.** Each Consultant must supply a copy of their current Certificate of Insurance showing the insurance coverage at or above those described in Section 4.12 of this RFP.
- F. Exceptions to General Information for the Consultant.** For all exceptions to Section 4, the Consultant must indicate on a separate sheet labeled "Exceptions Taken to the General Information for the Consultant," the section number of any requirement to which an exception is being taken and an explanation of their position.
- G. Exceptions to the Standard Monroe County Contract.** For all exceptions to the Standard Monroe County Contract, the Consultant must indicate on a separate sheet labeled "Exceptions Taken to the Standard Monroe County Contract," the section number of any requirement to which an exception is being taken and an explanation of their position. It is not intended that new contract wording be proposed by the Consultant, but rather that the Consultant explain their position so that the conflict can be evaluated. If no exceptions are noted, the Consultant is presumed to have agreed with all sections of the standard contract.

3.6 Method of Evaluation

- A. Evaluation Committee:** Selected personnel from Monroe County and other designated organizations will form the evaluation committee for this RFP. It will be the responsibility of this committee to evaluate all properly prepared and submitted responses to the RFP and make a recommendation for award.

- B. Evaluation and Selection Criteria:** The Selection Committee will select Design Teams they wish to interview based on the Proposals received. Prior to evaluating each Consultant's proposal, the Selection Committee will develop an agreed-upon list of criteria to be used in evaluating potential consultants. Numerical rating factors will be assigned to each criterion on the basis of the Selection Committee's priorities and conception of the importance of each factor. Based on the Proposals and interviews, the Selection Committee will select three (3) Consultant's Proposals as finalists. The selection criteria used to evaluate each Proposal will include, but are not limited to, the following:

- ? ?The Conceptual Design Drawings
- ? ?Understanding of Scope of the Project
- ? ?Proposal Approach to Designing the Park
- ? ?General Technical and Professional Competence
- ? ?Specific Experience on Similar Projects
- ? ?Previous Performance Record
- ? ?Resident Engineering Capability for Construction Phase Services
- ? ?Capacity and Availability to Perform the Services
- ? ?Knowledge of County Parks Facilities and Operations
- ? ?Approach to M/WBE Utilization
- ? ?Local Office

The County and the Parks Advisory Committee will conduct a public workshop to review the three finalist's Proposals and to seek input from the public and residents. The Proposals will be sent to the Bloch Foundation for review and selection. **The Bloch Foundation will select the winning Proposal.**

- C. Contract Approval Process:** Consultants must be aware that any contract resulting from this request for proposals is subject to prior approval by the Monroe County Legislature and the Monroe County Law Department. The County anticipates awarding this contract on or about October 2006.

3.7 Investigations

The County reserves the right to conduct any investigations necessary to verify information submitted by the Consultant and/or to determine the Consultant's capability to fulfill the terms and conditions of the bidding documents and the anticipated contract. The County reserves the right to visit a prospective consultant's place of business to determine the existence of the company and the management capabilities required to administer this agreement. The County will not consider Consultants that are in bankruptcy or in the hands of a receiver at this time of tendering a proposal or at the time of entering into a contract.

SECTION 4 - GENERAL INFORMATION FOR THE CONSULTANT

4.1 Reservation of Rights

The County reserves the right to refuse any and all proposals, in part, or in their entirety, or select certain products from various Consultant proposals, or to waive any informality or defect in any proposal should it be deemed to be in the best interest of the County. The County is not committed, by virtue of this RFP, to award a contract, or to procure or contract for services. The proposals submitted in response to this request become the property of the County. If it is in its best interest to do so, the County reserves the right to:

- A. Make selections based solely on the proposals or negotiate further with one or more Consultants. The Consultant selected will be chosen on the basis of greatest benefit to the County as determined by an evaluation committee.
- B. Negotiate contracts with the selected Consultants.
- C. Award a contract to more than one Consultant for any portions of this specification.

4.2 Contract Negotiation

Negotiations may be undertaken with those Consultants whose proposals prove them to be qualified, responsible, and capable of fulfilling the requirements of this RFP. The contract that may be entered into will be the most advantageous to the County, price and other factors considered. The County reserves the right to consider proposals or modifications thereof received at any time before a contract is awarded, if such action is in the best interest of the County. Attached as RFP Appendix A is a copy of Monroe County's standard agreement which contains mandatory provisions.

4.3 Acceptance of Proposal Content

The contents of the proposal of the successful bidder may become contractual obligations, should a contract ensue. Failure of a Consultant to accept these obligations may result in cancellation of the award.

4.4 Prime Responsibilities

The selected Consultant will be required to assume responsibility for all services offered in its proposal whether or not provided by them. The selected Consultant will be liable, both individually and severally, for the performance of all obligations under the awarded contract and will not be relieved of non-performance of any of its subcontractors. Further, the County shall approve all subcontractors and will consider the selected Consultant to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

4.5 Property Rights

For purposes of this RFP and for the contract, the term "Work" is defined as all data, records, files, information, work products, discs or tapes developed, produced or generated in connection with the services to be provided by the Consultant. The County and the Consultant intend the contract to be a contract for services and each considers the Work and any and all documentation or other products and results of the services to be rendered by the Consultant to be a work made for hire. In submitting a proposal in response to this RFP, the Consultant acknowledges and agrees that the Work (and all rights therein) belongs to and shall be the sole and exclusive property of the County.

The Consultant and the Consultant's employees shall have no rights in or ownership of the Work and any and all documentation or other products and results of the services or any other property of the County. Any property or Work not specifically scheduled in the Contract, as property of the Consultant shall constitute property of the County.

In addition to compliance with the right to audit provisions of the contract, the Consultant must deliver to the County, no later than the twenty-four (24) hours after receipt of the County's written request for same; all completed, or partially completed, Work and any and all documentation or other products and results of the services under such contract. The Consultant's failure to timely deliver such work or any and all documentation or other products and results of the services will be considered a material breach of the contract. With the prior written approval of the County, this twenty-four (24) hour period may be extended for delivery of certain completed, or partially completed, work or other such information, if such extension is in the best interests of the County.

The Consultant will not make or retain any copies of the Work or any and all documentation or other products and results of the services provided under such Contract without the prior written consent of the County.

4.6 Contract Payment

Actual terms of payment will be the result of agreements reached between Monroe County and the Consultant selected.

4.7 News Release

News releases pertaining to this RFP or the services to which it relates will not be made without prior approval by the County and then only in coordination with the County Department of Communications and Special Events.

4.8 Notification of Consultant Selection

All Consultants who submit proposals in response to this RFP will be notified by the RFP Coordinator of acceptance or rejection of their proposal.

4.9 Incurring Costs

Monroe County is not liable for any costs incurred by Consultants prior to the effective date of the contract.

4.10 Material Submitted

All right, title and interest in the material submitted by the Consultant as part of a proposal shall vest in Monroe County upon submission of the Consultant's proposal to Monroe County without any obligation or liability by Monroe County to the Consultant. Monroe County has the right to use any or all ideas presented by a Consultant.

Monroe County reserves the right to ownership, without limitation, of all proposals submitted. However, because Monroe County could be required to disclose proposals under the New York Freedom of Information Law (Public Officers Law §§ 84 - 90), Monroe County will, to the extent permitted by law, seek to protect the Contractor's interests with respect to any trade secret information submitted as follows:

Pursuant to Public Officers Law § 87, Monroe County will deny public access to Consultants' proposal to the extent the information constitutes a trade secret, which if disclosed would cause substantial harm to the Consultant's competitive position, provided the Consultant identified the information it considers to be a trade secret and explains how disclosure would cause harm to the Consultant's competitive position.

4.11 Indemnification

The Consultant shall defend, indemnify and save harmless the County, its officers, agents, servants and employees from and against all liability, damages, costs or expenses, causes of actions, suits, judgments, losses, and claims of every name not described, including attorneys' fees and disbursements, brought against the County which may arise, be sustained, or occasioned directly or indirectly by any person, firm or corporation arising out of or resulting from the performance of the services by the Consultant, its agents or employees, the provision of any products by the Consultant, its agents or employees, arising from any act, omission or negligence of the Consultant, its agents or employees, or arising from any breach or default by the Consultant, its agents or employees under the Agreement resulting from this RFP. Nothing herein is intended to relieve the County from its own negligence or misfeasance or to assume any such liability for the County by the Consultant.

4.12 Insurance Requirements

The Consultant shall procure and maintain at his own expense until final completion of the work covered by the contract, insurance for liability for damages imposed by law of the kinds and in the amounts hereinafter provided, issued by insurance companies authorized to do business in the State of New York, covering all operations under the Contract whether performed by the Consultant or by his subcontractors.

The successful Consultant shall furnish to the County a certificate or certificates of insurance in a form satisfactory to the Monroe County Attorney showing that he has complied with all insurance requirements set forth in the contract for services, that certificate or certificates shall provide that the policies shall not be changed or canceled until thirty (30) days written notice has been given to the County. Except for Worker's Compensation Insurance, no insurance required herein shall contain any exclusion of municipal operations performed in connection with the Contract resulting from this proposal solicitation. The kinds and amounts of insurance are as follows:

- A. **WORKER'S COMPENSATION AND DISABILITY INSURANCE:** A policy covering the operations of the Consultant in accordance with the provisions of Chapter 41 of the Laws of 1914, as amended, known as the Workers' Compensation Law, covering all operations under contract, whether performed by him or by his subcontractors. The Contract shall be void and of no effect unless the person or corporation making or executing same shall secure compensation coverage for the benefits of, and keep insured during the life of said Contract, such employees in compliance with the provisions of the Worker's Compensation Law known as the Disability Benefits Law (chapter 600 of the Laws of 1949) and amendments hereto.
- B. **LIABILITY AND PROPERTY DAMAGE INSURANCE** issued to the Consultant naming Monroe County as an additional insured, and covering liability with respect to all work performed by him under the Contract. The minimum limits for this policy for property damage and personal injury shall be \$1,000,000 per occurrence, \$3,000, 000 aggregate covered under liability and damage property. All of the following coverage shall be included:
 - Comprehensive Form
 - Premises-Operations
 - Products/Completed Operations
 - Contractual Insurance covering the Hold Harmless Provision
 - Broad Form Property Damage
 - Independent Consultants
 - Personal Injury
- C. **CONTRACTOR'S PROTECTIVE LIABILITY INSURANCE** issued to the Consultant and covering the liability for damages imposed by law upon the said Consultant for the acts or neglect of each of his subcontractors with respect to all work performed by said subcontractors under the agreement.
- D. **PROFESSIONAL LIABILITY INSURANCE** covering errors and omissions of the Consultant with minimum limits of \$2,000,000 per occurrence.
- E. **MOTOR VEHICLE INSURANCE** issued to the Consultant and covering liability and property damage on the Consultant's vehicles in the amount of \$1,000,000 per occurrence.

All proposals shall be considered final when received.

**CONTRACT APPENDIX A
CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, AND RESPONSIBILITY**

The undersigned certifies, to the best of his/her knowledge and belief, that the Contractor and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
2. Have not within a three-year period preceding this transaction/application/proposal/ contract/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 2 of this certification; and
4. Have not within a three-year period preceding this transaction/application/proposal/contract/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

Date: _____

[Print Name of Contractor]

By:

[Print Signature]

[Print Name]

[Print Title/Office]

STANDARD MONROE COUNTY CONTRACT

THIS AGREEMENT made on the _____ day of _____, _____, by and between _____, Rochester, New York 14614, hereinafter referred to as the "OWNER" and _____ with offices at _____, hereinafter referred to as the "CONSULTANT".

WITNESSETH

WHEREAS, the OWNER requires professional services in connection with the hereinafter referred to as the "PROJECT", and

WHEREAS, the CONSULTANT has submitted a scope and fee proposal, attached hereto as Appendix "A" dated, _____, _____, to perform the required services, and

WHEREAS, attached hereto is Appendix "B", Additional Service - Resident Project Representation, and

WHEREAS, attached hereto is Appendix "C", Additional Service - Coordination and Scheduling, and

WHEREAS, the OWNER accepted the CONSULTANT'S proposal on _____, _____.

NOW THEREFORE, the OWNER and the CONSULTANT, for the consideration hereinafter set forth, agree as follows:

SECTION I - SCOPE OF WORK

The CONSULTANT shall provide the professional services as described in Appendix A in connection with the PROJECT. In the event of a discrepancy between Appendix A and other Sections of this Agreement, Appendix A shall govern.

SECTION II - BASIC SERVICES OF THE CONSULTANT

The Basic Services of the CONSULTANT shall be as described below and as further qualified/defined in Appendix A.

A. GENERAL - The CONSULTANT shall:

1. Perform or provide all professional services required in connection with the PROJECT as hereinafter stated, and/or as stated in the proposal (Appendix A) and in the Contract Documents for construction for the PROJECT. The Contract Documents include drawings, specifications and reports that are used to construct the PROJECT.
2. Serve as the OWNER'S professional representative in all phases of the PROJECT.

3. Give consultation and professional advice to the OWNER during the performance of its services.
 4. Designate the Principal of the firm in responsible charge of the PROJECT, and the Project Manager that shall be responsible for the CONSULTANT'S day-to-day management of the PROJECT.
- B. PLANNING - After receiving written authorization from the OWNER to proceed, the CONSULTANT shall:
1. Collect and compile existing PROJECT data including but not limited to PROJECT survey, PROJECT features, subsurface investigations and environmental investigations.
 2. Prepare a report that details existing conditions, and outlines the needs of the PROJECT.
 3. Identify and evaluate PROJECT alternatives which meet the needs of the PROJECT.
 4. Provide the owner with a recommended alternative along with associated cost estimate.
 5. Compile above documents into a complete PROJECT report.
 6. Attend and participate in various public participation activities.
 7. Provide the copies of the PROJECT report necessary for filing with the owner and other jurisdictions.
- C. PROGRAM DEVELOPMENT AND CONCEPT DESIGN - After receiving written authorization from the OWNER to proceed the CONSULTANT shall:
1. Consult with the OWNER to determine the program requirements of the PROJECT.
 2. Attend and conduct workshops as necessary to define program requirements.
 3. Collect and review existing record information.
 4. Make recommendations to the OWNER where additional information will be required.
 5. Conduct an initial code review.
 6. Prepare concept level site and building plans.
 7. Provide a concept level opinion of probable construction cost.
- D. PRELIMINARY/SCHEMATIC DESIGN - After receiving written authorization from the OWNER to proceed the CONSULTANT shall:

1. Consult with the OWNER to determine the requirements of the PROJECT.
2. Make recommendations to the OWNER on the necessity of providing or obtaining other services, such as:
 - a. Property, Boundary, Right of Way, Topographic or Utility Surveys.
 - b. Core Borings, Probing or Subsurface Explorations.
 - c. Laboratory testing and inspection of samples or materials.
 - d. Other special consultations.
3. Furnish a Boring Location Plan, if required.
4. Prepare a Preliminary Engineering Report (Report) on the PROJECT. The Report should include schematic layouts and sketches, cost estimates, and preliminary Construction Drawings for the PROJECT. It should be in sufficient detail to indicate clearly any problems involved, the alternate solutions available to the OWNER and the CONSULTANT'S recommendations.
5. Provide the number of copies of the Report necessary for filing with the OWNER and other jurisdictional and financial authorities or as stipulated in the proposal.
6. Attend conferences and perform any engineering services necessary to obtain approval of the Report by jurisdictional and financial authorities.

E. FINAL DESIGN

After receiving written authorization from the OWNER to proceed, the CONSULTANT shall:

1. On the basis of the approved preliminary design documents, prepare detailed Contract Documents (Contract Drawings, specifications and reports) that will be used to bid the PROJECT.
 - a. The CONSULTANT shall prepare Contract Drawings using computer aided drafting (CAD) technology that meets the requirements of this Agreement.
 - b. Contract Documents (drawings, specifications and reports) must comply with the New York State Uniform Fire Prevention and Building Code, Federal handicapped accessibility requirements, and ANSI/CABO 92.
2. Furnish engineering data to the OWNER and prepare the required documents so that the OWNER may secure approval from such

governmental authorities as have jurisdiction over design criteria applicable to the PROJECT. For building related projects requiring a Monroe County building permit, it is the responsibility of the CONSULTANT to complete a Monroe County "Building Permit Package", and submit two (2) sets of plans and specifications for submission to the Monroe County Code Enforcement Officer. The CONSULTANT must obtain a Building Permit from the Code Officer prior to the start of construction.

3. Advise the OWNER of any adjustment of the cost estimate for the PROJECT caused by changes in scope, design requirements or construction costs and furnish a revised cost estimate for the PROJECT based on the completed drawings and specifications.
4. Prepare proposal forms and Notice to Bidders and assist in assembling documents for bidding purposes.
5. Submit to the OWNER for approval one (1) set of Contract Documents [original plans on either vellum or mylar (3 mils thick, dbl. mat) and original specifications (single sided)] signed and sealed as required. The drawing size shall be 30" x 42", 22" x 34", or 24 x 36" sheet size, as directed by the County, unless otherwise regulated by the State of New York or the United States Federal Government.
6. Prepare Addenda as required.
7. Assist the OWNER in obtaining and evaluating bids, prepare the bid tabulation and provide a recommendation for award of contracts for the construction of the PROJECT.
8. Furnish and prepare a set of reproducible (either vellum or mylar) "Construction Drawings" showing all changes made by addenda during the bid period. CAD files of the Construction Drawings meeting the requirements of this Agreement shall be provided to the OWNER at this time.

F. CAD DRAWING FILE REQUIREMENTS: The CAD drawing files turned over to the OWNER shall be in an AutoCad format with no external references. Where external references have been used during development of the drawings, those external references shall be bound to the drawings before the CAD files are provided to the OWNER. The file format shall contain separate layers, appropriate to the PROJECT, for the following features:

- Drawing borders and title blocks;
- All work items to be "removed".
- Dimensions, column lines & designations and centerlines;
- Fire rating indicators
- Building walls, doors, and windows and general construction details and features;
- Building reflected ceiling plans;
- Building modular furniture;

- Building HVAC;
- Building plumbing;
- Building sprinkler/fire protection;
- Building electrical;
- Building lighting plans
- Topographical information;
- Easements, Right of Way lines, property lines and monuments;
- All control monumentation (RCS, USC & GS, etc.);
- Street Curb Lines;
- Sidewalks;
- Driveway aprons with labels, if applicable;
- Street lights with labels, if applicable;
- Street lines (determined by survey methods);
- Grid or grid tics (100' spacing) with NAD '83 coordinate values labeled on grid;
- Watermains (if constructed as part of the PROJECT);
- Sewer Mains (if constructed as part of the PROJECT);
- Public utilities

Notes related to any one of the above items should be created on the same layer. The CONSULTANT may create additional layers or sub-layers to suit PROJECT needs. Any layers listed above that do not pertain to the PROJECT may be omitted.

- G. CONSTRUCTION PHASE SERVICES - After receiving written authorization from the OWNER to proceed the CONSULTANT shall:
1. Consult with and advise the OWNER, act as the OWNER'S representative and issue instructions of the OWNER to the Contractor.
 2. Make periodic visits to the site to observe the progress and the quality of the executed work and to determine if the work is proceeding in accordance with the Contract Documents, the New York State Uniform Fire Prevention and Building Code, Federal handicapped accessibility requirements, and ANSI/CABO 92.
 3. Attend regularly scheduled job meetings, progress meetings, pay estimate meetings and coordination meetings. When required by the OWNER, the Principal of the firm in responsible charge of the PROJECT, as well as the Project Manager, shall be designated to attend all or certain of these meetings.
 4. Based on on-site observations as an experienced and qualified design professional keep the OWNER informed, in writing, about the progress of the work and notify the OWNER of any defects or deficiencies in the Contractor's work. To fulfill this obligation, however, CONSULTANT need not make exhaustive or continuous on-site inspections, nor are they responsible for the techniques and sequences of construction, the safety of the Contractor's or subcontractor(s) personnel, or the Contractor's failure to perform the work in accordance with the Contract Documents.

CONSULTANT remains liable for and responsible for the safety of his own employees, subconsultants and agents.

5. Unless otherwise specified in the Contract Documents, within 10 business days check and approve the following for conformance with the PROJECT design concept and compliance with the Contract Documents:
 - a. Samples
 - b. Catalog Data
 - c. Schedules
 - d. Shop Drawings
 - e. Product Data
 - f. Laboratory, Shop and Mill tests of materials and equipment
 - g. Other data which the Contractor is required to submit
 - h. Operational testing of the completed PROJECT, as appropriate.

The approval stamp shall contain the following:

- Approved.
- Approved with changes noted.
- Resubmission of corrected drawing is required.
- Disapproved. Revise and resubmit.
- _____.

Approval subject to all provisions of the contract documents, without exception.

NAME OF CONSULTANT

By: _____ Date: ____/____/____

6. Evaluate proposed modifications to the plans and/or specifications of the PROJECT and evaluate construction claims; provide the OWNER with written recommendations, including adequate justification, for approval or disapproval of such modifications or claims; and prepare change orders as required.
7. Based on on-site observations as an experienced and qualified design professional and on review of the Contractor's applications for payment, determine the amount owing to the Contractor and approve in writing payment to the Contractor in such amounts; such approvals of payment to constitute a representation to the OWNER, based on such observations and review and the data comprising such applications, that the work has progressed to the

point indicated and that, to the best of his knowledge, information and belief, the quality of the work is in accordance with the Contract Documents, subject to the results of any subsequent test called for in the Contract Documents and any qualifications stated in his approval.

8. In company with the OWNER conduct all official interim and final inspections of the PROJECT for conformance with the PROJECT design concept and compliance with the Contract Documents.
9. Obtain all guarantees and certifications from the Contractor(s) and deliver the same to the OWNER.
10. Certify to the OWNER, in writing, that in the CONSULTANT'S opinion and to the best of its knowledge the work is complete and in substantial conformance with the Contract Documents, is operating as intended, and, if applicable, conforms with New York State Uniform Fire Prevention and Building Code (19 N.Y.C.R.R.) except for approved variances; recommend acceptance and start of the guarantee period(s); and approve in writing final payment to the Contractor(s).
11. Furnish, prepare, and certify a set of reproducible (mylar) Record Drawings and supplemental drawings at the end of the PROJECT. This set shall be the "Construction Drawings", updated to show revisions in the work. Supplemental drawings shall be included as needed to provide a complete record. These Record Drawings shall show all approved changes made in the work based on the CONSULTANT'S files, observations made in the field by the CONSULTANT during the course of the work, the Contractor(s) approved red line drawings and the Resident Project Representative's redlines when applicable. Record Drawings shall show the actual location of the constructed facilities in the same manner and detail as was shown on the bid drawings. The Construction Drawings are to be modified into Record Drawings by reflecting all changes to elevations, dimensions, stationing and notations as specifically denoted on the Construction Drawings. Drawing revisions and notations for the Record Drawings include the deletion of all linework and notations related to removed work, and the revision of all notes stated in the present tense to past tense where applicable. The Record Drawings shall show only features and items remaining after the completion of the PROJECT. The CONSULTANT shall perform Record Drawing services within 90 calendar days of the start of the guarantee period.
 - a. At the commencement of the construction work the OWNER shall furnish the CONSULTANT one set of prints for the CONSULTANT'S sole use in the maintenance of the CONSULTANT'S redlines and shall be clearly marked as such. During the progress of the work, the CONSULTANT shall conduct such observations as may be necessary to verify and approve the accuracy and completeness of the CONTRACTOR'S information provided on red line drawings.

- b. The CONSULTANT shall sign and seal each mylar sheet in indelible ink and certify them to be "Record Drawing". The certification shall be located on the lower right hand corner on each sheet and state the following:
 "I hereby certify by my signature and seal below, that I have prepared this record drawing which is, to the best of my knowledge and in my professional opinion, a true representation of the work as constructed on the _____, Project No. ____."
- c. CAD files of the Record Drawings shall be provided to the OWNER at this time; CAD drawing files shall meet the same requirements of this Agreement.
- d. The CONSULTANT shall guarantee the accuracy of the Record Drawings for a period of one year from the date of acceptance by the OWNER. If the OWNER finds any errors or omissions in the Record Drawings the CONSULTANT shall make the necessary corrections at no additional cost when requested by the OWNER.

H. SPECIAL SERVICES - Provide Special Services as defined in Appendix A.

SECTION III - ADDITIONAL SERVICES OF THE CONSULTANT

If authorized in writing by the OWNER, the CONSULTANT shall perform additional services not included in this Agreement for an agreed upon fee. Additional services shall include but are not limited to:

- B.
 - 1. Resident Project Representation Services as described in Appendix
 - 2. Coordination and Scheduling Services as described in Appendix C
 - 3. Furnishing property, boundary, right-of-way, topographic and utility surveys; and other special consultation.
 - 4. Assisting in obtaining easements.
 - 5. Revising previously approved studies, reports, design documents, drawings, or specifications.
 - 6. Preparing detailed renderings, exhibits or scale models for the PROJECT.
 - 7. Furnishing additional copies of reports, drawings and specifications, or other reimbursable reproduction services.
 - 8. Serving as an expert witness for the OWNER in any litigation or other proceedings involving the PROJECT.

9. Assisting in the preparation of contracts for and supervising the performance of the making of core borings, probings, or sub-surface explorations; hydrographic surveys; laboratory testing and inspection of samples of materials.
10. Providing professional services for the preparation of Contract Documents for managing hazardous materials. It is recognized that this may raise liability questions, which will have to be resolved prior to proceeding by special language to be in the amendment covering such work.
11. Providing additional services in connection with the PROJECT not otherwise provided for in this Agreement.

SECTION IV - CONSULTANT FEE

The CONSULTANT fee shall be as quantified in Appendix A and cover all CONSULTANT fees for the scope of work as defined in this Agreement, including the following (unless noted otherwise in Appendix A):

- ?? Direct Labor
- ?? Premium Overtime Labor
- ?? Subconsultant and Subcontractor Costs
- ?? Direct Non-Salary Costs (Reimbursables)
- ?? Overhead
- ?? Fixed Fee (Profit)

The following definitions/guidelines apply with reference to the above:

A. Direct Labor:

Direct labor represents the hourly pay rate (or salaries) of professional and technical staff that are charging directly to the PROJECT. The services of all Clerical, Secretarial, Administrative, Support, Billing, Marketing, and Accounting personnel are not billable by the CONSULTANT to the OWNER, as these are factored into the overhead rate. A Technical Typist and/or other support personnel may be billable for time spent in preparing documents such as design reports, specifications, environmental impact statements, etc., but their time must be justified (e.g. marketing personnel may be used in the development of public hearing handouts; secretarial personnel may be used to take notes during a public hearing).

The overhead rate for multi-year contracts shall remain the same as for the first year of the Agreement. Reasonable increases in the maximum hourly salary rates will be allowed (currently a maximum of 3% per year; % increase will be set by the OWNER), subject to prior approval by the OWNER. Note that PROJECT budgets (CONSULTANT fees) will be established based on the agreed upon average hourly salary rate for each job title that is projected to be in effect at the agreed upon PROJECT mid-point; actual billings will be based upon the actual direct salary rates (subject to the cap on maximum hourly rates) for the assigned staff for each job title.

B. Premium Overtime Labor:

This represents that portion of the hourly pay rate above the regular hourly pay rate, for job chargeable professional and technical employees. Note that on their Staffing Table (see below), CONSULTANTS shall provide their overtime policy for each job title. Note that the premium portion of overtime labor cannot be billed without prior approval by the OWNER's Project Manager.

C. Subconsultant and Subcontractor Costs:

Subconsultant and Subcontractor costs shall be billed by the CONSULTANT to the OWNER at cost, without any mark-up (i.e. at a multiplier of 1.0).

D. Direct Non-Salary Costs (Reimbursables):

The following direct non-salary costs shall be billed to the OWNER at cost, without any mark-up (i.e. at a multiplier of 1.0):

- ?? mileage/travel (routine mileage within Monroe County will not be reimbursed, except on-location mileage of an inspector at a construction site within Monroe County will be reimbursed)
- ?? printing/copying costs of major reports, sets of drawings, etc. (copying costs for routine day-to-day correspondence will not be reimbursed)
- ?? postage (postage for routine day-to-day correspondence will not be reimbursed)
- ?? long distance phone calls and faxes
- ?? permit application fees
- ?? Right-of-way Maps (on a per map basis)
- ?? film/developing
- ?? supplemental benefits and prevailing wage rate differentials for surveyors
- ?? laboratory testing
- ?? as applicable, field office costs including trailer rental, copier rental, utility costs including phones, office equipment costs (fax machine, computers, etc.) and consumables (inspector rulers/tapes, paint), etc.
- ?? special PROJECT related insurance requested by the OWNER to provide coverage above and beyond industry standards (e.g. professional liability insurance at a \$5 million limit on a large project).

The following costs cannot be billed to the OWNER:

- ?? CADD machine (workstation) time (considered part of overhead)
- ?? insurance premium to meet requirement for naming the OWNER as an additional insured

E. Overhead (OH):

Overhead Rate is a multiplier that is applied to a CONSULTANT'S direct labor costs on a project to cover the firm's overhead expenses (e.g. rent, utilities, computer equipment, insurance, employee fringe benefits, support/administrative staff such as accounting and marketing personnel, etc.). Note that this multiplier for overhead should not be applied to premium overtime labor.

F. Fixed Fee (Profit):

Fixed Fee is a multiplier that is applied to the sum of the CONSULTANT'S Direct Labor (but not Premium Overtime Labor) and Overhead, and represents the CONSULTANT'S profit. The CONSULTANT will be paid the full dollar amount of their Fixed Fee, even if they complete the job for fewer manhours (labor costs) than identified in their Agreement, except that their Fixed Fee will be pro-rated (based on the Direct Labor actually expended) should the PROJECT be either completed or terminated sooner than expected through actions outside the control of the CONSULTANT (e.g. a construction project is completed ahead of schedule due to a contractor's acceleration of the schedule; the OWNER elects to terminate the progression of the PROJECT's design prior to completion).

SECTION V - PERIOD OF SERVICES

The services called for herein shall commence when authorized in writing by the OWNER and shall extend to the end of the construction contract guarantee period.

SECTION VI - PAYMENTS TO THE CONSULTANT

The OWNER will process requests from the CONSULTANT and make payments on a monthly basis. Payments will be made within thirty (30) days of receipt of the request contingent on:

- A. Submission of properly executed vouchers by the CONSULTANT. (The OWNER will provide the forms and instructions for completing them.)
- B. Review and approval of the vouchers by the OWNER or its designee.
- C. Review and release of payment by the Controller of Monroe County.

SECTION VII - RESPONSIBILITIES OF THE OWNER

The OWNER shall:

- A. Provide full information to the CONSULTANT about the requirements for the PROJECT.
- B. Examine all studies, reports, sketches, estimates, drawings, specifications, proposals, and other documentation presented by the CONSULTANT and render decisions pertaining thereto within a reasonable time so as not to delay the work of the CONSULTANT.

- C. Advertise for proposals from bidders, open the proposals at the appointed time and place and pay for all costs incident thereto.
- D. Obtain approval of the New York State and United States Federal authorities having jurisdiction over the PROJECT.
- E. Furnish, or direct the CONSULTANT to provide, at the OWNER'S expense, necessary additional services as stipulated in Section III of this Agreement, or other services as required.
- F. Contract for core borings, probings or sub-surface explorations; hydrographic surveys; laboratory testing and inspection of materials. The OWNER may, at its option, authorize the CONSULTANT to provide these services in accordance with Section III.
- G. Obtain easements with assistance of the CONSULTANT.

SECTION VIII - GENERAL CONDITIONS

A. SUSPENSION OR TERMINATION OF WORK

1. The OWNER may at any time, and for any reason, direct CONSULTANT to suspend work under this Agreement. Such direction shall be in writing and shall specify the period during which work is to be suspended. CONSULTANT shall resume work upon the date specified in such direction, or upon such other date as the OWNER may thereafter specify in writing.
2. OWNER may terminate this Agreement for cause, upon ten (10) day's written notice, in the event that:
 - a. CONSULTANT shall fail to diligently, timely and expeditiously perform any of its obligations as specified in this Agreement;
 - b. CONSULTANT shall make a general assignment for the benefit of its creditors; a receiver shall be appointed on account of CONSULTANT'S insolvency; it otherwise shall be insolvent; an order for relief shall be entered against CONSULTANT under Chapter 7 or 11 of the Bankruptcy Code; or
 - c. CONSULTANT otherwise shall be in default hereunder.

Upon such termination for cause, CONSULTANT shall be entitled to such amount of compensation which has not theretofore been paid to CONSULTANT and which shall compensate CONSULTANT for the portion of the work satisfactorily performed prior to the termination date, provided, however, that the OWNER shall be entitled to deduct from such amount and from any amount due and payable to CONSULTANT to the termination date, but withheld or not paid, all additional expenses which the OWNER may incur over that which the OWNER would have incurred in connection with the

PROJECT if CONSULTANT had not defaulted hereunder, including, without limitation, the expense of engaging another consultant for the PROJECT. Nothing herein shall limit in any manner any and all rights or remedies otherwise available to the OWNER by reason of a default by CONSULTANT under this Agreement, including, but not limited to, the right to seek full reimbursement from CONSULTANT for all expenses incurred or to be incurred by the OWNER by reason of CONSULTANT'S default hereunder and which the OWNER would not have incurred if CONSULTANT had not defaulted hereunder.

3. In addition to the OWNER'S rights to terminate this Agreement for cause the OWNER may at any time, and for any reason, terminate this Agreement for its convenience by written notice to CONSULTANT specifying the termination date, which shall be not less than thirty (30) days from the date such notice is given. In the event of such termination, CONSULTANT shall be paid such amount of compensation which has not theretofore been paid to CONSULTANT as shall compensate CONSULTANT for the portion of the work satisfactorily performed prior to the termination date plus Reimbursable Expenses and actual expenses incurred by CONSULTANT directly attributable to such termination. After payment as provided for in the preceding sentence has been made, CONSULTANT may be entitled, subject to negotiation, to a single payment in an amount not to exceed five percent (5%) of the unpaid contract amount provided for in Section V, Paragraph A hereof for any authorized phases of work actually commenced which payment shall constitute CONSULTANT'S compensation for lost profit or overhead reimbursement as a result of termination of the Agreement.
4. Except as specifically provided in this Subsection, the termination of this Agreement shall not give rise to any claim against OWNER for damages or other compensation with regard to such termination.
5. Upon any termination of this Agreement in accordance with the provisions of SECTION III - Subsection A, the CONSULTANT shall:
 - a. discontinue all of its services upon the date of termination, except as may be required to complete any item or portion of said service to a point where discontinuance will not cause unnecessary waste or duplicative work or cost;
 - b. cancel, or, if so directed by the OWNER, transfer to the OWNER all commitments and CONSULTANT'S agreements and other agreements made by CONSULTANT relating to the PROJECT, to the extent same are cancelable or transferable by CONSULTANT;
 - c. transfer to the OWNER in the manner, to the extent and at the time directed by the OWNER, all supplies, materials and other property produced as part of, or acquired in the

performance of, CONSULTANT'S services in connection with the PROJECT; and

d. take such other reasonable actions as the OWNER may direct.

B. OWNERSHIP OF DOCUMENTS

All documents, including original drawings, CAD files, estimates, specifications, field notes and data are to become the property of the OWNER and may not be copyrighted by the CONSULTANT. The CONSULTANT may at its expense retain reproducible copies of drawings and copies of other documents.

C. ESTIMATES

Since the CONSULTANT has no control over the cost of labor and materials or over competitive bidding and market conditions, the estimates of construction cost provided for herein are to be made on the basis of its experience and qualifications, but the CONSULTANT does not guarantee the accuracy of such estimates as compared to the Contractors' bids or the PROJECT construction cost.

D. AUDIT, ACCESS TO RECORDS

1. Compliance with Federal Single Audit Act: In the event the CONSULTANT is a recipient through this Agreement, directly or indirectly, of any funds of or from the United States Government, CONSULTANT agrees to comply fully with the terms and requirements of Federal Single Audit Act [Title 31 United States Code, Chapter 75], as amended from time to time. The CONSULTANT shall comply with all requirements stated in Federal Office of Management and Budget Circulars A-102, A-110 and A-133, and such other circulars, interpretations, opinions, rules or regulations that may be issued in connection with the Federal Single Audit Act.

Delete the following if specific federal funding is not identified.

Of the amount specified in §_____ of this Agreement,

_____ Dollars

\$(_____) of such amount or

_____ Percent (____ %) of such amount, is

being passed-through the County from the United States Government under the following:

Award Name:_____

Award Number:_____

Award Year:_____

Name of Federal Agency:_____

The Award [] is [] is not related to Research and Development.

If on a cumulative basis the CONSULTANT expends Five Hundred Thousand and no/100 Dollars (\$500,000.00) or more in federal funds in any fiscal year, it shall retain all documents relating to the federal programs for three (3) years after the close of the CONSULTANT'S fiscal year in which any payment was received from such federal programs.

If on a cumulative basis the CONSULTANT expends less than Five Hundred Thousand and no/100 dollars (\$500,000.00) in federal funds in any fiscal year, it shall retain all documents relating tot he federal programs for three (3) years after the close of the CONTRACTOR's fiscal year in which any payment was received from such federal programs.

All required documents must be submitted within nine (9) months of the close of the CONSULTANT'S fiscal year end to:

Monroe County Internal Audit Unit
304 County Office Building
39 West Main Street
Rochester, New York 14614

[Optional, include the following only if department administering contract/agreement desires copies of documents]

[Monroe County Department of _____]
[_____]]
[_____]]
[Rochester, New York 146____]

2. Right of Inspection and Audit: The CONSULTANT shall, upon request of the OWNER, provide the OWNER such documentation, records, information and data and response to such inquiries as the OWNER may deem necessary or appropriate and shall fully cooperate with internal and/or independent auditors designated by the OWNER and permit such auditors to have access to, examine and copy all records, documents, reports and financial statements as the OWNER deems necessary to assure or monitor payments to the CONSULTANT under this Agreement.
3. Survival of Right of Inspection and Audit: The OWNER's right of inspection and audit pursuant to this Agreement shall survive the payment of monies due to CONSULTANT and shall remain in full force and effect for a period of three (3) years after the close of the Contractor's fiscal year in which any funds or payment was received from the OWNER under this Agreement.

E. INSURANCE

1. The CONSULTANT agrees to procure and maintain in force for the periods indicated, such insurance policies as will protect those named as insured parties, including their officers, officials, employees, and agents from claims for bodily injuries, death, or property damage which may arise from the performance of work

under the Agreement whether or not such performance be by the CONSULTANT itself or by any subcontractor or anyone else employed by them directly or indirectly. The following insurance policies with insurance companies authorized to do business in the State of New York are required.

- a. POLICY - General Liability (covering claims for bodily injury, death or property damage).
LIMITS - \$1,000,000 per accident; \$3,000,000 aggregate
PERIOD -
NAMED INSUREDS - CONSULTANT and MONROE COUNTY.
 - b. POLICY - Professional Liability.
LIMITS -
PERIOD -
NAMED INSURED - CONSULTANT
 - c. POLICY - Protective Public Liability Covering Operations of Subcontractors
LIMITS - \$1,000,000 per accident; \$2,000,000 aggregate
PERIOD -
NAMED INSUREDS - CONSULTANT and MONROE COUNTY.
 - d. POLICY - Automobile Bodily Injury Liability and Property Damage
(covering owned, non-owned, and hired vehicles).
LIMITS - Separate Coverage - Bodily Injury \$1,000,000 each person; \$1,000,000 each accident; Property Damage \$1,000,000, combined coverage \$1,000,000.
PERIOD -
NAMED INSUREDS - CONSULTANT and MONROE COUNTY
2. An original certificate(s) of insurance, referencing by name the PROJECT covered by this Agreement, must be submitted to the OWNER along with the original Agreement executed by the CONSULTANT. The certificate(s) will be subject to approval for both adequacy and duration of protection and will contain a thirty (30) day notice of cancellation in favor of the OWNER.
 3. The coverage amounts stated above are minimum requirements.
 4. The CONSULTANT shall also procure a policy or policies covering its obligations in accordance with any applicable Worker's Compensation or Disability Benefits Law and maintain the same in force during the full term of this Agreement. This coverage must also be submitted (or noted) on an insurance certificate as above.

F. SAVE HARMLESS PROVISION

The CONSULTANT hereby agrees to indemnify, defend and save harmless the OWNER against any and all liability, loss, damage, detriment, suit, claims, demand, cost, charge, attorney's fees, and expenses of whatever kind or nature which the OWNER 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 OWNER, or its employees, subcontractors, or agents, as a result of any error, omission, breach, or other negligent acts, together with intentional misconduct, of the CONSULTANT, its employees, agents, or subcontractors. If a claim or action is made or brought against the OWNER, 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 defend, handle or pay for the defense or handling of the portion of the claim for which it is responsible as a result of this provision. With respect to claims involving professional errors or omissions by CONSULTANT, to the extent such a claim is made against the OWNER and then subjected to a disclaimer or denial of coverage by the CONSULTANT'S general liability insurer, then for such claims involving professional errors or omissions by CONSULTANT, CONSULTANT shall indemnify and save the OWNER harmless from and against any and all claims, demands, actions, causes of action, suits, judgments, liability, expenses including attorney fees, and damages arising or growing out of any negligent act or failure to act, or intentional misconduct, on the part of CONSULTANT, and its sub-consultants, agents or employees.

G. SUCCESSORS AND ASSIGNS

The OWNER and the CONSULTANT each binds itself and its partners, successors, executors, and administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. CONSULTANT shall not assign, sublet, or transfer its interest in this Agreement without the written consent of the OWNER. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body, which may be a party hereto.

H. ROYALTIES AND PATENTS

The CONSULTANT shall notify the OWNER in writing of any royalties and license fees for which the OWNER might become obligated as a result of any possible proprietary processes recommended by the CONSULTANT under this Agreement. The CONSULTANT shall save the OWNER harmless from loss if it has failed to so notify the OWNER.

I. PERMITS, LAWS, TAXES

1. The CONSULTANT shall comply with Federal, State, and Local laws, regulations, and ordinances affecting the work, shall give proper public authorities requisite notice in connection with the work, and, at its own expense, shall obtain and pay for necessary licenses, Monroe County building and/or other permits, etc. The CONSULTANT shall be solely responsible for damage resulting from its neglect to obey laws, regulations, rules and ordinances, and should it perform any work called for by this Agreement, knowing it to be contrary to such laws, regulations, rules, and ordinances, and

without notifying the OWNER in writing and obtaining written consent to proceed, it shall bear costs and damages arising there from.

2. In the event that services performed by the CONSULTANT for the OWNER are subject to taxation under Article 28 of the Tax Law (sales and compensating use tax) the OWNER shall either obtain a tax-exempt certificate or reimburse the CONSULTANT for the tax.
3. The CONSULTANT shall pay all taxes applicable to the work and material supplied under this Agreement, it being understood that in no case shall any such tax be borne by the OWNER except as provided in paragraph 2, above.

J. INDEPENDENT CONTRACTOR

The CONSULTANT agrees that in accordance with its status as an independent contractor, it will conduct itself with such status; that it will neither hold itself out as nor claim to be an officer or employee of the OWNER or the State of New York by reason hereof; and that it will not by reason thereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the OWNER or the State of New York, including, but not limited to, Worker's Compensation coverage, Unemployment Insurance Benefits, Social Security coverage or Retirement membership or credit.

K. LABOR LAW

1. The CONSULTANT specifically agrees, as required by the Labor Law, Sections 220 and 220-e, as amended, that the execution of this Agreement by the CONSULTANT binds it to the following specific agreements required by Law:
 - a. No laborer, worker or mechanic in the employ of the CONSULTANT, subcontractor or other person doing or contracting to do the whole or part of the work included in the Agreement shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week in the performance of work included in this Agreement, except in the emergencies set forth in the Labor Law;
 - b. The wages (including supplements) paid for a legal day's work shall not be less than the prevailing rate of wages (including supplements) as defined by law;
 - c. The minimum hourly rate of wages (including supplements) to be paid shall not be less than that designated by the Industrial Commissioner;
 - d. The minimum hourly supplements to be paid shall be in accordance with the prevailing practices in the locality where the contract is located and shall be not less than those

designated by the Industrial Commissioner. Supplements as defined in Section 220 of the Labor Law, as amended mean all remuneration for employment paid in any medium other than cash or reimbursement for expenses or any other payments which are not wages within the meaning of the law, including but not limited to health, welfare, non-occupational disability, retirement, vacation benefits, holiday pay and life insurance;

- e. The Labor Law provides that the Agreement may be forfeited and no sum paid for work done thereunder on a second conviction for willfully paying less than:
 - The stipulated wage scale (including supplements) as provided in the Labor Law, Section 220, Subdivision 3, as amended, or
 - The stipulated minimum hourly scales (including supplements) as provided in the Labor Law, Section 220-d, as amended;
2. The CONSULTANT specifically agrees as required by the provisions of Labor Law, Section 220-e, as amended, that:
- a. In the hiring of employees for the performance of work under the Agreement of any subcontractor hereunder, no CONSULTANT or subcontractor or any person acting on behalf of such CONSULTANT or subcontractor, shall by reason of race, creed, color, national origin, genetic predisposition, age, disability, marital status, or handicap discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates.
 - b. No CONSULTANT or subcontractor, nor any person on its behalf shall in any manner discriminate or intimidate any employee hired for the performance of work under the Agreement on account of race, creed, color, national origin, age, disability, marital status, or handicap.
 - c. There may be deducted from the amount payable to the CONSULTANT under the Agreement a penalty of fifty dollars (\$50.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the Agreement.
3. In accordance with Labor Law Section 220.3-a., the CONSULTANT shall submit, on a monthly basis, a certified transcript of the payroll records for all survey crew members engaged in work on this PROJECT.
4. The Agreement may be canceled or terminated and all monies due or to

become due thereunder may be forfeited for a second or any subsequent violation of the terms or conditions or this section of the Agreement.

L. NON-DISCRIMINATION PROVISIONS

1. During the performance of this Agreement, the CONSULTANT agrees as follows:
 - a. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability, marital status, or handicap and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination because of race, creed, color, sex, national origin, genetic predisposition, age, disability, marital status, or handicap. Such action shall be taken with reference to, but not limited to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay, or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
 - b. The CONSULTANT will send to each labor union or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice to be provided by the State Commission for Human Rights, advising such labor union or representative, of the CONSULTANT'S agreement under clauses a. through g. (hereinafter called "non-discrimination clauses"). If the CONSULTANT was directed to do so by the Contracting Agency as part of the bid or negotiation of this Agreement, the CONSULTANT shall request such labor union or representative to furnish it with a written statement that such labor union or representative will not discriminate because of race, creed, color, sex, national origin, genetic predisposition, age, disability, marital status, or handicap and that such labor union or representative will affirmatively cooperate within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment and the terms and conditions of employment under this agreement shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with a request that it furnish such a statement, the CONSULTANT shall promptly notify the State Commission of Human Rights of such failure or refusal.
 - c. The CONSULTANT will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commission

for Human Rights setting forth the substance of the provisions of clauses a. and b. and such provisions of the State's laws against discrimination as the State Commission for Human Rights shall determine.

- d. The CONSULTANT will state, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, sex, national origin, genetic predisposition, age, disability, marital status, or handicap.
- e. The CONSULTANT will comply with the provisions of Section 290-301 of the Executive Law and Civil Rights Law, will furnish all information and reports deemed necessary by the State Commission for Human Rights under these non-discrimination clauses and such sections of the Executive Law, and will permit access to its books, records and accounts by the State Commission for Human Rights, the Attorney General and Industrial Commissioner for the purposes of investigation to ascertain compliance with these non-discrimination clauses and such sections of the Executive Law and the Civil Rights Law.
- f. This Agreement may be forthwith canceled, terminated or suspended in whole or in part, by the contracting agency upon the basis of a finding made by the State Commission for Human Rights that the CONSULTANT has not complied with these non-discrimination clauses, and the CONSULTANT may be declared ineligible for future contracts made by or on behalf of the OWNER or the State of New York or public authority or agency of the OWNER or the State of New York until it satisfies the State Commission for Human Rights that it has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commission for Human Rights after conciliation efforts by the Commission have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the Commission, notice thereof has been given to the CONSULTANT, and an opportunity has been afforded it to be heard publicly before three members of the Commission. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law.
- g. The CONSULTANT will include the provisions of clauses a. through f. in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to operations to be performed within the State of New York. The CONSULTANT will take such action in enforcing such provisions of such subcontract or purchase order as the contracting agency may direct,

including sanctions or remedies for non-compliance. If the CONSULTANT becomes involved in or is threatened with litigation by a subcontractor or vendor as a result of such direction by the contracting agency, the CONSULTANT shall promptly so notify the Attorney General, requesting him to intervene and protect the interests of the State of New York.

M. MBE/WBE PARTICIPATION

1. MBE/WBE participation is required for this PROJECT. The policy of the OWNER is to increase the level of Minority and Women's businesses in all possible areas of Monroe County procurement. In furtherance of that policy, the OWNER requires the CONSULTANT to utilize best efforts to achieve goals for MBE/WBE participation on this PROJECT. The percentage goals are ten percent (10%) MBE and 2 percent (2%) WBE of the total cost of professional services provided under this Agreement.

The CONSULTANT may substitute Minority or Women CO-OP Student Employment for M/WBE Utilization. The CO-OP Student must be utilized on the PROJECT for at least 50% of their work hours. Minority Students shall be credited against MBE requirements and Women Students shall be credit against WBE requirements. Student credit shall equal the student's billing rate times the hours worked on the PROJECT.

2. Within 15 days after execution of the Agreement, the CONSULTANT shall submit to the M/WBE Officer an M/WBE Utilization Plan. The Utilization Plan should be accompanied by executed sub-contracts or signed letters of intent from the M/WBE firms identified in the plan.
3. The CONSULTANT shall submit by February 1 an Annual Utilization Report indicating M/WBE payments made during the previous year.
4. When submitting the request for payment, the CONSULTANT will list M/WBE firms scheduled for payment for the specific period. The CONSULTANT shall identify the portion of the payment that is attributed to the M/WBE firm. The CONSULTANT shall also submit payment records, which demonstrate payment by the CONSULTANT to M/WBE firms used on the PROJECT.
5. Prior to final payment the CONSULTANT shall submit affidavits certifying payments to subconsultants for work previously paid for by the OWNER, and the Final Utilization Report.
6. The OWNER will require documentation of such good faith effort, which should include as a minimum the following activities;
 - a. Identification of work which could be subcontracted;

- b. Verification of effort to contact all appropriate certified MBEs and WBEs in writing. Such verification shall be for appropriate portions of the work, which could be performed by the MBE, and WBE subcontracts and shall clearly describe the potential subcontracting categories for the PROJECT. A lead time of less than 10 days will not be considered reasonable;
 - c. Verification of negotiation in good faith with M/WBE firms interested in performing work on the PROJECT. The CONSULTANT shall be responsible for documenting all such negotiations in order to demonstrate the unacceptability of any M/WBE firms, which are not chosen to perform work on the PROJECT.
7. In order to qualify for a waiver of any of the M/WBE goals, the CONSULTANT must make a good faith effort to obtain a M/WBE subconsultant. In judging whether the CONSULTANT has made a good faith effort to meet the M/WBE utilization requirements, the OWNER will consider the different kinds of effort as well as the intensity of those efforts.

N. NOTICE OF JOB VACANCIES

1. The CONSULTANT recognizes the continuing commitment on the part of OWNER to assist those receiving temporary assistance to become employed in jobs for which they are qualified, and the OWNER's need to know when jobs become available in the community.
2. The CONSULTANT agrees to notify the OWNER when the CONSULTANT has or is about to have a job opening within Monroe County. Such notice shall be given as soon as practicable after the CONSULTANT has knowledge that a job opening will occur. The notice shall contain information that will facilitate the identification and referral of appropriate candidates in a form and as required by the Employment Coordinator. This would include at least a description of conditions for employment, including the job title and information concerning wages, hours per work week, location and qualifications (education and experience).
3. Notice shall be given in writing to:
Employment Coordinator
Monroe County Department of Human and Health Services
691 St. Paul Street, Room 535
Rochester, New York 14605
Telephone: (585) 530-3613
Fax: (585) 530-4506
4. The CONSULTANT recognizes that this is an opportunity to make a good faith effort to work with the OWNER for the benefit of the community. Nothing contained in this provision, however, shall be interpreted as an obligation on the part of the CONSULTANT to

employ any individual who may be referred by or through the OWNER for job openings as a result of the above notice. Any decisions made by the CONSULTANT to hire any individual referred by or through the OWNER shall be voluntary and based solely upon the CONSULTANT'S job requirements and the individual's qualifications for the job, as determined by the CONSULTANT.

SECTION IX - DISPUTE RESOLUTION

In an effort to resolve any conflicts that arise during the design or construction of the PROJECT or following the completion of the PROJECT, the OWNER and the CONSULTANT agree that all unresolved disputes between them arising out of or relating to this Agreement shall first be submitted to non-binding mediation unless the parties mutually agree otherwise.

The OWNER and the CONSULTANT further agree to include a similar mediation provision in all agreements with subcontractors and subconsultants retained for the PROJECT and to require all subcontractors and subconsultants also to include a similar mediation provision in all agreements with their subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

The OWNER and the CONSULTANT agree to select a mediator from lists suggested by each party. The mediator will be a person knowledgeable in the type of matter under dispute and may be an accredited mediator, contractor, CONSULTANT, or otherwise knowledgeable person. Whenever possible the mediator will be from the local area.

The cost of the mediator will be shared equally by the parties to the dispute. All mediation sessions shall be held in Monroe County.

SECTION X - EXECUTING SIGNATURES AND NOTARIZATIONS

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

OWNER: _____

BY: _____
Maggie Brooks, County Executive

CONSULTANT: _____
Name of Firm

Corporate Seal
(If a Corporation)

BY: _____

TITLE: _____

Firm's Social Security # or Federal I.D.#

STATE OF NEW YORK:
COUNTY OF MONROE:

SS

On the ___ day of _____ in the year 200__ before me, the undersigned, a Notary Public in and for said State, personally appeared **MAGGIE BROOKS**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature of individual taking
Acknowledgment
Stamp:

(ACKNOWLEDGEMENT BY CONSULTANT)

STATE OF _____:
COUNTY OF _____:

SS

On this ___ day of _____, 20___, before me, the subscriber personally came _____, to me known, who being by me duly sworn did depose and say that he/she is _____, of the firm _____, described in and which executed the above instrument; and that he/she is authorized to sign his name thereto.

Notary Public

(ACKNOWLEDGEMENT BY CONSULTANT, IF A CORPORATION)

STATE OF _____:
COUNTY OF _____:

SS

On this __ day of _____, 20__ before me the subscriber, personally came _____ to me known, who being duly sworn, did depose and say that he/she resides in the _____ of New York, that he/she is the of _____, the Corporation described herein, and which executed the above instrument; that he/she knows the seal of said Corporation; that the seal affixed to said instrument is such Corporate seal; that it was so affixed by the order of the Board of Directors of said Corporation; and that he/she signed his/her name thereto by like order.

Notary Public