



CITY OF BUFFALO
NEW YORK

DEPARTMENT OF PUBLIC WORKS
65 NIAGARA SQUARE, ROOM 502 CITY HALL
BUFFALO, NY 14202
PHONE (716) 851-5636

**REQUEST FOR PROPOSALS
FOR
ARMED SECURITY GUARD SERVICES**

- ❖ **ISSUE DATE:**
May 21, 2021

- ❖ **PRE-PROPOSAL CONFERENCE & SITE WALK THROUGH:**
DEPARTMENT OF PUBLIC WORKS PARKS & STREETS
ROOM 616 CITY HALL
June 4, 2021 AT 9:00 AM

- ❖ **QUESTION SUBMISSION DEADLINE:**
June 11, 2021 BY 4:00 PM
VIA EMAIL TO: JJACOBS@BUFFALONY.GOV

- ❖ **ANSWERS POSTED TO CITY OF BUFFALO WEBSITE**
WWW.BUFFALONY.GOV/BIDS):
June 18, 2021

- ❖ **PROPOSAL SUBMISSION DATE:**
June 25, 2021 AT 11:00 AM

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I. INSTRUCTIONS TO OFFERORS

1. General Invitation

The City of Buffalo, through its Department of Public Works Parks & Streets (“City”) has issued this Request for Proposals seeking offers for the providing of armed security guard services, for real property owned by the City, including but not limited to, Buffalo City Hall and Buffalo Police and Fire Headquarters.

Offerors shall submit their proposals to the Department of Public Works Parks & Streets by no later than **June 25, 2021 at 11:00 am**. Offerors shall not submit more than one proposal. Proposals shall be sealed and clearly labeled on front of package “**ARMED SECURITY GUARD SERVICES**” and delivered to:

**Jennifer L. Jacobs, Senior Administrative Assistant
City of Buffalo Department of Public Works Parks & Streets
65 Niagara Square, Room 502 City Hall
Buffalo, New York 14202**

OFFERORS ASSUME ALL RISKS FOR THE TIMELY AND PROPER DELIVERY OF SUBMITTED PROPOSALS.

The received time of proposals will be determined by the clock at the above noted location. **NO CONSIDERATION WILL BE GIVEN TO PROPOSALS RECEIVED AFTER THE STATED DATE AND TIME.**

Offerors mailing their proposal must allow sufficient mail delivery time to ensure receipt of their proposal at the specified location no later than the specified date and time. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the Offeror, shall not excuse late proposal submissions. Similar types of delays, including but not limited to, bad weather or security procedures for parking and building admittance shall not excuse late proposal submissions. Offerors are cautioned that the City cannot be responsible for the actions of your chosen carrier or method of delivery.

Proposals are solicited in accordance with the terms, conditions and instructions as set forth in this Request for Proposals. Submission of proposals via telephone, facsimile, e-mail or any other method not specifically provided herein is prohibited. Proposals must be completed in accordance with the requirements of the Request for Proposals. No amendments or changes to proposals will be accepted after the closing date and time. No proposals shall be accepted after the stated deadline. The City reserves the right to reject any or all proposals.

Any material misrepresentation made by an Offeror may void their proposal and eliminate the Offeror’s proposal from further consideration. Any proposal that is based upon violation of federal, state or local law, or deemed by the City, in its sole discretion, to be non-responsive will be eliminated from consideration.

The City shall not be responsible for any expenses or charges incurred by any Offeror in preparing or submitting a proposal, or in their providing any additional information considered necessary by the City in the evaluation of their proposal.

2. Proposed Schedule

Listed below are anticipated target dates and relevant times by which actions related to this Request for Proposals will be completed. In the event that there is any change or deviation from this schedule, such change will be posted on the City’s website.

| <u>EVENT</u> | <u>DATE</u> |
|---|--------------------|
| Issuing of Request for Proposals | May 21, 2021 |
| Mandatory Pre-Proposal Conference & Site Walk Through | June 4, 2021 |
| Written Questions from Offerors due | June 11, 2021 |
| Responses to Questions posted on City website | June 18, 2021 |
| Proposals Due by 11:00 AM | June 25, 2021 |
| Target Award Date: | TBD |

For purposes of this solicitation, there will be a mandatory pre-proposal conference and walk through of Buffalo City Hall on June 4, 2021 with representatives from the Buffalo Police Department and Department of Public Works Parks and Streets. The purpose of this mandatory pre-proposal conference and site walk through is to perform a physical inspection of the building to ensure that all Offerors are familiar with the security needs of the City.

Offerors or their authorized representative are encouraged to contact Senior Administrative Assistant, Jennifer L. Jacobs at jjacobs@buffalony.gov by no later than 4:00 PM June 2, 2021 to confirm their attendance at the mandatory pre-proposal conference and site walk through. Those attending the mandatory pre-proposal conference and site walk through shall appear at 9:00 AM on June 4, 2021 at:

**City of Buffalo Department of Public Works Parks & Streets
65 Niagara Square, Room 616 City Hall
Buffalo, New York 14202**

PLEASE BE ADVISED THAT PROPOSALS WILL ONLY BE ACCEPTED FROM THOSE OFFERORS THAT ATTEND THE MANDATORY PRE-PROPOSAL CONFERENCE AND SITE WALK THROUGH. THERE SHALL BE NO EXCEPTIONS TO THIS REQUIREMENT.

3. Request for Proposals Review, Additional Information and Questions

Each Offeror is responsible for carefully examining the Request for Proposals and thoroughly familiarizing themselves with each of the City’s requirements prior to their submission of a proposal to ensure that their responses are in compliance with this solicitation.

Each Offeror is responsible for conducting its own investigations and any examinations necessary to ascertain conditions and requirements affecting the requirements of this Request for

Proposals. Failure to perform such investigations and examinations shall not relieve the Offeror from its obligation to comply, in every detail, with all of the provisions and requirements contained in the Request for Proposals.

For purposes of this solicitation, the City's designee shall be Senior Administrative Assistant, Jennifer L. Jacobs with the Department of Public Works Parks & Streets. **Questions regarding the Request for Proposals shall be directed to the City's designee only.** Any impermissible contact with any other City officer or employee of the City regarding the Request for Proposals during this procurement period shall result in the rejection of any such Offeror's proposal. Offerors shall communicate in writing only via email to the email address listed in the Request for Proposals. No other communications with the City's designee regarding the Request for Proposals are permitted during the procurement period.

All questions, requests for clarification or additional information must be sent by email to Senior Administrative Assistant, Jennifer L. Jacobs at jjacobs@buffalony.gov and must be received no later than **June 11, 2021 at 4:00 pm**. Offerors shall not communicate with the City's designee via any other method or outside of the time period set forth herein.

Questions received from all Offerors will be answered and shared with all Offerors via the City's website at www.buffalony.gov. No other officers, employees, or representatives of the City are to be contacted regarding this Request for Proposals. The City accepts no responsibility for, and the Offeror agrees not to rely upon, any verbal or written statements or representations from any other person, whether or not employed by the City.

The City may, in its sole discretion, also elect to provide both the question(s) and the written answer(s) to all known Offerors via e-mail. Offerors are solely responsible for ensuring that the City has accurate contact information, including e-mail address for the receipt of such correspondence. The City does not assume any responsibility for undelivered e-mails or for the receipt of any communication sent to any Offeror.

4. Addenda and Modifications

The City reserves the right, in its sole discretion, to amend this Request for Proposals at any time prior to the deadline for submission of the proposals. In the event that it becomes necessary to revise or expand upon any part of this Request for Proposals, all addendums, amendments, and interpretations will be made in writing and posted on the City's website at www.buffalony.gov. In addition, the City may mail or fax such changes to all who are known by the City to have received the Request for Proposals. It is the sole responsibility of the Offeror to ensure that the City has accurate contact information and to review the website for any such addendums, amendments, interpretations and/or modifications.

All addendums, amendments, interpretations and/or modifications shall be incorporated as part of the Request for Proposals as though they were originally set forth. No addenda will be issued later than forty-eight (48) hours prior to the date and time for the receipt of offers, except an addenda withdrawing the Request for Proposals, or addenda for postponement of the due date and/or time. The City does not assume any responsibility for the receipt of information sent to any Offeror.

Any information supplied by the City relative to this Request for Proposals must be considered in preparing proposals. All other contacts that an Offeror may have had before or after receipt of this Request for Proposals with any individuals, employees, subcontractors, consultants or representatives of the City and any information that may have been read in any news media or seen or heard in any communication facility regarding this Request for Proposals should be disregarded in preparing responses.

5. Proposal Format

Offerors are advised to adhere to the submittal requirements of the Request for Proposals. Failure to comply with the instructions of the Request for Proposals may cause their proposal to be rejected. Offeror must provide information in the appropriate areas throughout the Request for Proposals. Submission of a Proposal in response to this Request for Proposals constitutes acceptance of all requirements outlined in the Request for Proposals.

Four (4) copies of the proposals, including one (1) original and three (3) copies, must be prepared on 8" X 11" letter size paper, printed double-sided, and bound on the long side. **One (1) CDROM or Flash Drive containing an Adobe Portable Document Format (PDF) version of all proposal materials must also be provided.** Each page of the submission must be numbered in a manner so that it can be uniquely identified. Legibility, clarity and completeness are required.

The proposal must be signed by each individual Offeror or their authorized representative who shall have the authority to legally bind the Offeror(s). The proposal shall also contain a statement that the proposal, including all proposed prices, contained therein shall remain firm and unchanged for a period of ninety (90) days following the City's receipt of such proposal and the award of the contract. In addition, Offeror must state whether it is willing to hold pricing beyond this period, and if so, for how long.

6. Required Content

a) Cover Letter

All Offerors or their authorized representative shall prepare and sign a cover letter. Submission of the letter shall constitute a representation by the Offeror that it is willing and able to perform the services described in the Request for Proposals and their proposal.

The cover letter must explain the Offeror's understanding of the City's intent, objectives, and how Offeror proposes to achieve those objectives. It must discuss the Offeror's plan for

implementing and monitoring the described services, including any proposed approach to project management, strategies, tools and safeguards for ensuring performance of all required services, equipment, software and firmware considerations, training and ongoing support, and any additional factors for the City's consideration. The proposed narrative shall be limited to ten (10) pages.

b) Company Profile

Offeror is required to prepare and submit a brief description of the Offeror's firm, company, or corporation, which shall include:

- i. Name, mailing address, email address, telephone number and fax number of the primary contact person for firm;
- ii. A brief description of firm, including the number of years in business, major markets served, company history, relevant operating segments, primary vision and strategy, number of employees, office locations and any Joint Venture Partners;
 - a. Workforce: Offerors should describe any programs or actions they undertake to attract, recruit, train, retain and promote minority and female employees, partners and associates and current representation of minorities and women;
 - b. Community Involvement: Offerors should describe any programs or initiatives they sponsor or support that further the development of minority or women-owned business enterprises;
 - c. Offeror Policies: Offerors should describe any procurement policies or practices they have adopted that provide M/WBE suppliers or services business opportunities.
- iii. A copy of any resolution or some other form of authority, signed by a Chief Executive Officer, Corporate Secretary, or managing partners, which lists the specific officers who are authorized to execute agreements on behalf of the Offeror;
- iv. Financial details demonstrating your firm's financial capacity to undertake and perform services;
- v. Demonstrable evidence of your firm's ability to secure and provide all required security at no less than the specified minimum policy limits, including but not limited to, the owner's and contractor's protective liability policy and performance bond;
- vi. A copy of Offeror's Proprietary Employer of Security Guard License evidencing that your firm, company, or corporation is a duly licensed security organization as required under Article 7 of General Business Law of the laws of the State of New York together with a copy of the bond evidencing that your firm, company or corporation is insured for the type of work to be performed under any contract arising from this Request for Proposals.

Each Offeror must provide a summary of their professional qualifications and the experience of all team personnel who will be assigned or dedicated to the services described in this Request for Proposals. For each person identified, describe the following information:

- i. Title and reporting responsibility;
- ii. Proposed role in this project, including the functions and tasks for which they will have prime responsibility (also indicate areas of secondary responsibility, if appropriate);
- iii. Pertinent areas of expertise and past experience;
- iv. Base location (local facility, as applicable);
- v. Curriculum vitae and corporate personnel profiles which describe their overall experience and expertise.
- vi. New York State Armed Guard Certification for each team personnel that will be assigned or dedicated to providing the services described in this Request for Proposals. The same will be required for any newly hired personnel that the successful Offeror hires and dedicates to providing said services.
- vii. First Aid and CPR Certifications for each team personnel that will be assigned or dedicated to providing the services described in this Request for Proposals. The same will be required for any newly hired personnel that the successful Offeror hires and dedicates to providing said services.
- viii. Background Screening and Criminal Record Check for each team personnel that will be assigned or dedicated to providing the services described in this Request for Proposals. The same will be required for any newly hired personnel that the successful Offeror hires and assigns or dedicates to providing said services. Said documentation shall be completed and submitted to the City prior to personnel's assignment for City services.

c) References

Each Offeror must provide references from at least five (5) government customers of comparable size as or larger than the City of Buffalo, where their services have been successfully implemented and have been in use for not less than one (1) year. Additionally, Offeror must show that they have engaged in security screening services in such buildings. References must identify supervisor and team personnel that worked at each location, schedule and project summary.

Descriptions should be limited to one page for each location. Experience will not be considered unless complete reference information is provided. At a minimum, the following information must be included for each client's reference:

- i. Client name, address, contact person name, telephone, and fax number;
- ii. Description of services provided similar to the services outlined in this Request for Proposals;
- iii. Identify security services, if any, that were subcontracted, and to what other company(ies);
- iv. Total dollar value of the contract;
- v. Contract term (start and expiration).

The City may solicit relevant information concerning Offeror's record of past performance from previous clients, or any other available sources.

d) Proposed Security Plan Description

Each Offeror must submit a comprehensive and detailed description of the process by which it will propose to perform the services described in this Request for Proposals. Offerors are free to make recommendations of how their proposed security plan and any additional features may be beneficial to the City meeting or exceeding its security goals.

All responses must include anticipated costs and the anticipated timeline for implementation. Each Offeror must provide an estimate of what resources or equipment the City will have to apply to successfully implement their proposed security plan. This estimate must, at a minimum, identify the reason, type and applied manpower hours that the Offeror expects the City to provide.

e) Fee Structure

The anticipated hours of operation where security officers shall be present is from 7:00 am – 6:00 pm Monday through Friday, except for holidays and such days that City Hall is closed to the general public for business. Additional coverage may be required for weekends, on such days and during such times when public meetings are being held in the building after the anticipated hours of operation, and under other circumstances.

Each Offeror shall provide a detailed list of all costs related to its performance of the services described under this Request for Proposals. All rates quoted shall remain constant for the entire term of the initial contract and any renewals or extensions thereof. Each proposal shall contain quotes based on the following information:

- a) Annual contract rate

- b) Hourly rate for security services when provided 7:00 am – 6:00 pm Monday through Friday, excluding holidays and such days when City Hall is otherwise closed for public business (ex. snow days).
- c) Hourly rate for security services performed outside of the times described in subsection (b) above, including weekends, after hour public meetings, and other times as required by the City.

7. *City's Reservations of Rights*

Upon submission of an offer in response to this Request for Proposals, each Offeror acknowledges and consents to the following conditions relative to the submission, review and consideration of its' proposal:

1. All costs incurred by the Offeror in connection with responding to this Request for Proposals and for participating in this procurement process shall be borne solely by the Offeror.
2. The City reserves the right, in its sole discretion, to reject for any reason any and all responses or components thereof and to eliminate any and all Offerors responding to this Request for Proposals from further consideration for this procurement.
3. The City reserves the right, in its sole discretion, to reject any Offeror that submits incomplete responses to this Request for Proposals, or a proposal that is not responsive to the requirements of this Request for Proposals.
4. The City reserves the right, without prior notice, to supplement, amend, or otherwise modify this Request for Proposals, or otherwise request additional information.
5. All proposals in response to this Request for Proposals shall become the property of the City and will not be returned.
6. All proposals in response to this Request for Proposals shall constitute public records subject to public disclosure.
7. The City may request that Offerors personally attend or send representatives to the City for interviews and a demonstration of Offeror's proffered services.
8. Any and all proposals in response to this Request for Proposals that are not received by the Department of Public Works Parks & Streets by **11:00 a.m. on June 25, 2021** shall be rejected and not subject to consideration.

9. Neither the City, nor its officers, officials nor employees shall be liable for any claims or damages resulting from the solicitation, preparation, or delivery of any proposal(s) submitted in response to this Request for Proposals.

The City reserves that it may, in its' sole discretion, exercise the following rights and options regarding this Request for Proposals and the procurement process in order to obtain the most advantageous offer for the City:

1. To waive irregularities and/or minor non-compliance by any Offeror with the requirements of this Request for Proposals;
2. To request clarification and/or further information from one or more Offerors after closing without becoming obligated to offer the same opportunity to all Offerors;
3. To enter into negotiations with one or more Offerors without being obligated to negotiate with, or offer the same opportunity, to all Offerors;
4. To reject any or all proposals or parts of proposals, to accept part or all of proposals on the basis of considerations other than lowest cost and to create a project of lesser or greater expense and reimbursement than described in this Request for Proposals or the Offeror's proposal based on the component prices submitted;
5. To determine that any proposal received in response to this Request for Proposals complies or fails to comply with the terms set forth herein;
6. To determine whether any perceived or actual conflict of interests exists that would affect or impair the award of any contract arising from this Request for Proposals to any Offeror(s);
7. To waive any technical non-conformance with the terms of this Request for Proposals;
8. To change or alter the schedule for any events called for in this Request for Proposals;
9. To conduct investigations of any or all of the Offerors, as the City deems necessary or convenient, to clarify the information provided as part of the proposal and to request additional information to support the information included in any proposal;
10. To suspend or terminate the procurement process described in this Request for Proposals at any time. If terminated, the City may determine to commence a new procurement process without any obligation to the Offerors;
11. The City shall be under no obligation to complete all or any portion of the procurement process described in this Request for Proposals.

Offerors are advised to submit a complete offer as their proposal. Any waiver, clarification or negotiation will not be considered an opportunity for Offerors to correct errors contained in their proposals.

II. INTRODUCTION

The City of Buffalo, through its Department of Public Works Parks & Streets (“City”) has issued this Request for Proposals seeking offers for the providing of armed security guard services at city-owned properties. The successful Offeror will be providing armed security guard services at Buffalo City Hall and Buffalo Police and Fire Headquarters. The City reserves the right to amend its need for armed security guard services during the term of the contract by adding or omitting locations. The hourly rate for any additional locations shall not exceed the rate quoted in the successful Offeror’s proposal.

The City intends to award a contract to the Offeror whose proposal is deemed to be in the best interest of the taxpayers. The successful Offeror must possess a demonstrative record of providing exceptional security service and support.

III. SCOPE OF WORK

Buffalo City Hall, 65 Niagara Square: The City’s objectives are to have armed security officers conduct screenings at a minimum of two (2) locations within the building during the hours that the building is open to the public. This shall include not less than eight (8) armed security officers and one (1) supervisor on location at all times during the hours of operation.

Buffalo Police and Fire Headquarters, 68 Court Street: The City requires one (1) armed security officer at this location between the hours of 7:00 AM – 5:00 PM. The armed security officer will be required to conduct security screening of visitors, conduct patrols around the exterior of the building, and such other duties as may be directed by the Buffalo Police Department.

The City reserves the right to add additional location(s) throughout any contract term. The need for armed security services to be provided at such additional locations, if any, shall be determined at the sole discretion of the City.

The security screenings will require that all visitors and guests walk through a metal detector, checking all bags and packages being carried into the building, verifying employee identification and may also include operating x-ray machines. In addition, the armed security officers will be required to perform temperature screenings, as more fully described in the COVID Guidelines set forth below, and perform additional patrol type services throughout the interior and the exterior of the building, as well as a static office post.

1. Hours of Operation

The anticipated hours of operation where armed security officers shall be present in Buffalo City Hall is from 7:00 am – 6:00 pm Monday through Friday, except for holidays and such other days that City Hall is closed to the public for business. The City may require additional coverage on weekends and such days and during such times when the building, or portions thereof, is open to the public for meetings, and other occasions.

The City reserves the right and each Offeror shall agree that the specified hours and days for scheduled services may be subject to change in accordance with the specific needs of City. Offeror shall utilize its best effort to accommodate such change and such changes shall be accepted without the assessment of additional charges to the City. The City shall endeavor to provide at least twenty-four (24) hours' notice of any additional extended hours of coverage that may arise.

2. Labor and Equipment

The City shall provide at least three (3) free standing metal detectors as well as handheld metal detectors. Numerous surveillance cameras will be located throughout the interior and exterior of the building. Such videos will be monitored by armed security personnel and the City. Three X-ray machines for packages and bags shall also be present at the screening locations. **It is the responsibility of the successful Offeror to provide training on all screening equipment as per the manufacturer's recommendations and at their own expense.** All screening equipment is and shall remain the sole property of the City of Buffalo.

The City agrees to provide specific training to security officers on the use of City Hall access control systems, fire alarm systems, surveillance systems and public address systems. The City agrees to provide one time training to key personnel from the security agency on these systems. It shall then be the responsibility of the security agency, at their sole cost, to provide training to additional personnel on these systems.

3. COVID-19 Guidelines

The successful Offeror shall also be responsible for screening visitors, guests, and employees to ensure compliance with all COVID-19 guidelines, including but are not limited to, temperature screening, wearing of facial covering, social distancing, or any other requirement that may become necessary as related to COVID-19.

The parties shall agree upon written procedures for the temperature screening services. These procedures must align with the Centers for Disease Control (CDC) Guidelines and all applicable laws. The terms and conditions applicable to the provision of temperature screening services provided by the successful Offeror shall include, but are not limited, the following:

- a. The City agrees to provide all temperature screening equipment, including a copy of the manufacturer's instruction on use of both the stand up and handheld temperature screening devices. **It is the responsibility of the successful Offeror to provide training on all screening equipment as per the manufacturer's recommendations and at their own expense.**

- b. Guidelines on the acceptable and unacceptable temperature ranges for individuals to enter the facility: Any person exhibiting a temperature of 100.4 F and above shall be denied access to the building. Temperature of 100.3 F and less is acceptable to enter.
- c. The successful Offeror shall be responsible for denying access to anyone not in compliance with the temperature and mask guidelines. The successful Offeror shall immediately notify Buffalo Police and the designated City contact to take over for any individual that is non-compliant and refuses to leave the building.
- d. The successful Offeror shall contact the following individuals in the order listed if they experience malfunctioning with the temperature screening equipment. The City has spare equipment and will swap out malfunctioning equipment as needed.
 - 1. Building Maintenance Supervisor
 - 2. Building Maintenance Supervisor's assistant
 - 3. Deputy Director for Building Maintenance
 - 4. Deputy Commissioner for Buildings
 - 5. Commissioner of Public Works, Parks and Streets.
- e. Procedures on storage and disposal of equipment: The standup temperature screening stations may be left in place. The handheld screening equipment shall be stored by the successful Offeror at the security screening stations.
- f. Each Offeror shall submit with their proposal a copy of their firm's exiting COVID-19 related Health & Safety Guidelines, together with a statement that their armed security officers have been provided with and have reviewed a copy of the same. All armed security guard officers shall review the COVID-19 guidelines regarding entering and working at the client facility when signing in for their shift. A binder with the guidelines and signature log shall be provided at all sign-in locations. This binder shall be maintained by the successful Offeror on site and must be available for client inspection at all times. The successful Offeror acknowledges that its utilization of the City's Health & Safety Plan is done of its own accord. The City makes no warranties of the City's Health & Safety Plan for successful Offeror's employees.
- g. Any documentation necessary for the performance of the temperature screening services: the successful Offeror will log the name, date, time, and the temperature reading for any individual who is denied entry and provide that to the Commissioner of Public Works, Parks and Streets daily.
- h. The successful Offeror shall be responsible for providing Personal Protection Equipment ("PPE") for the armed security officers providing services.

The successful Offeror shall be responsible for cleaning and sanitizing the temperature screening equipment. The City agrees to provide a reasonable number of disposable masks, disposable gloves, and necessary supplies to disinfect security and temperature screening equipment. The City shall remain responsible for the calibration, maintenance, repair, and

replacement of all temperature screening equipment. In the event any training is required, the City shall provide the appropriate training on use of the temperature screening equipment.

IV. IMPLEMENTATION OF REQUIRED SERVICES

It shall be the responsibility of successful Offeror to furnish armed security guard services in conformity with the generally accepted practices in the security industry.

The successful Offeror shall provide armed uniform security services in and at Buffalo City Hall, Buffalo Police and Fire Headquarters, and such other location(s) that may be designated by the City, in accordance with the specified hours of operation. Security personnel shall be required to provide a variety of services, implementing the City's security objectives according to policies and procedures which may include but not limited to the following general tasks:

1. Entry and egress access control, roving patrols of interior and exterior building areas, visitor and building employee identification verification, incident and daily operating reports.
2. Monitoring and responding base building intrusion detection systems, alarms and fire detection equipment, responding as necessary to support other life safety duties as identified in post orders and standard operating procedures.
3. The successful Offeror's personnel shall take proper steps to prevent unauthorized entrances and access to the facility or content thereof.
4. While fulfilling regular security duties, successful Offeror's personnel may detain or otherwise identify any person committing a crime using reasonably necessary measures, in or about the premises, until said personnel is able to turn such person(s) over to the police.
5. Reporting in detail daily reports to employee's supervisor verbally and in writing, in a prescribed manner, regarding the performance of his/her shift and special reports regarding any problems or incidents occurring during his/her shift of all unusual situations and circumstances. Such daily reports will be submitted to the City on a weekly basis.
6. Conducting and or undertaking initial incident investigations and submitting appropriate detail reports to the City without undue delay. Special incident reports will be submitted to the City the following business day.
7. All security personnel furnished will give instructions or information to visitors upon request, or direct them to the appropriate administrative office if any questions cannot be answered. Security personnel will escort, from time to time, patrons to their vehicles at patron's request.

8. Successful Offeror shall perform any other duties or functions not specifically outlined or set forth above but which are identified as falling within the scope and realm of a security officer's responsibilities.

Captain Jeff Rinaldo and or his designee shall be contacted by phone to report any irregularities or incidents. In any breach of security, Captain Jeff Rinaldo and or his designee should be contacted immediately, along with the Buffalo Police Department and the successful Offeror's main office. A written report should be submitted within twenty-four (24) hours of such irregularity or incident. The successful Offeror shall also be responsible for directing an emailed copy of any such reports to Captain Jeff Rinaldo at jdrinaldo@bpdny.org.

1. Management and Supervision of Armed Security Guards

The successful Offeror shall provide not less than nine (9) armed security officers and one (1) supervisor on location at all times during the hours of operation at Buffalo City Hall and Buffalo Police and Fire Headquarters in accordance with the following specifications:

1. No security guard shall be permitted to work unless such officer is attired in a uniform equivalent to that of local law enforcement agencies; i.e.: color pants, shirt, tie and hat, plus outerwear as required. All security officers shall be required to wear their New York State security guard card on their outermost clothing. The City shall not be responsible to cover the costs, in part or whole, for armed security guard uniforms.
2. The successful Offeror shall provide and maintain a watchman's clock for recording patrol rounds and portable radios for the guards to be used while on rounds.
3. Not less than thirty (30) days prior to the first day of commencement of the services, and no later than the 20th day of each succeeding month, the successful Offeror shall provide Captain Jeff Rinaldo or his designee with a monthly schedule specifying each armed security guards' shift and assignment. The City understands and agrees that such schedule may be subject to change due to illness or emergency of the armed security guards.
4. All guards shall be scheduled for a personal interview and briefing with Captain Jeff Rinaldo and/or a member of Buffalo Police Department management prior their assignment. The City, including its Police Department, reserves the right to accept, reject, or request removal of armed security guard personnel from any City post assignment.
5. The City, including its Police Department reserves the right to inspect the screening, interviewing and testing procedures of the security agency personnel, and reserves the right to inspect personnel records of the security agency for any guard utilized for armed security guard services at any City location.
6. The successful Offeror shall be responsible for the work hours assumed and shall ensure that required manning is maintained. Security guards shall not be scheduled to work

more than eight (8) hours in any given day during which they also put in an eight (8) hour shift at their other employment. In no case shall a guard be scheduled to work more than twelve (12) hours in any twenty-four (24) hour period.

7. Each guard shall be entitled to breaks and lunches as permitted under NYS Labor Law. No guard shall leave their assigned post unless he or she is relieved in the proper manner by the on-duty supervisor.
8. The successful Offeror shall have a supervisor "on duty" and on site at all times during the hours of operation, unless directed otherwise by the City. Successful Offeror shall also be responsible for providing the City with a twenty-four (24) hour contact person, for the life of the contract, who can be contacted quickly by the Police Department with reasonable effort. "Reasonable Effort" is intended to mean by the use of a telephone, radio or an answering service, or some other system mutually agreed upon by the Police Department and the successful Offeror. "On Duty" shall not mean that the supervisor is "On Call" at his home. The supervisor shall be responsible for all guards and shall have the authority to change guard schedules, terminate employment, discipline, "Take Charge" of all guard activities and other related management prerogatives as pertaining to the armed security guards.
9. All security guards shall be required and shall become familiar with the City's rules and safety regulations.
10. The successful Offeror shall furnish appropriate and necessary management and supervision of its employees and shall be solely responsible for instituting and invoking disciplinary actions of employees not in compliance with Offeror's rules and regulations, as well as any other policy established by the City. The successful Offeror agrees to remove any of their employees from their City assignment, at the request of the City, including its Police Department, and replace them with an appropriate substitute.
11. The successful Offeror shall be able to supply armed security guard personnel in sufficient number to handle or cover periods of work stoppage at the same hourly rate.
12. The successful Offeror shall be responsible for advertising and recruiting help, preparing paychecks, payroll taxes, social security and withholding taxes, preparing W-2's, unemployment and workers' compensation claims and liability insurance. The obligation of the City shall be solely to remit payment to the successful Offeror for the number of hours provided monthly in accordance with the contract price schedule. No overtime shall be charged to the City unless it is so requested and prior written approval is provided by the City. The successful Offeror shall provide a schedule of values/payment schedule to the City representative for review and approval.
13. The successful Offeror shall develop a comprehensive set of Post Orders documenting both general procedures as well as site specific responsibilities. Post Orders shall be prepared prior to the commencement of the contract and must be reviewed and approved by City before contract commencement. All security guard personnel are required to read

and verify they understand the Post Orders during site inspections.

2. Additional Responsibilities of the Successful Offeror

The successful Offeror shall also be responsible for ensuring that all of its security personnel meet the following minimum requirements:

1. Successfully complete and pass New York State security training courses prior to assumption of duty. This shall include but is not limited to New York State Armed Guard certifications.
2. Ability to speak English (multilingual desirable) and write all reports to document incidents as required.
3. Ability to issue written warnings as warranted. Able to take photographs and document violations and incidents as required.
4. Physically capable of pursuing and detaining or identifying individuals who have committed criminal acts.
5. Ability to follow all the terms and conditions in the Post Order and standard manual if applicable.
6. Able to respond to and take command of emergency situations and provide protection with professionalism.

3. Security Personnel License, Training & Background Screening Requirements

All security guard personnel shall be trained and licensed in accordance to Article 7A of General Business Law §89 and shall further comply with any and all other applicable State and Federal laws in the performance of their duties.

The successful Offeror shall be required to provide a copy of its NYS Proprietor Security Guard License, the NYS issued Security Guard license and training certification for each of its' personnel that would be assigned or dedicated to provide armed security guard services at any City location with the submission of the proposal. The successful Offeror shall not permit any of its personnel with an expired license or a training certification to perform work for the City. The successful Offeror shall ensure that the City maintains a current copy of all such required licenses and training certificates for its staff throughout the life of any contract arising from this Request for Proposals, including any renewals or extensions thereof.

The cost for the successful Offeror's staff training shall be considered as part of the successful Offeror's operational expenses and must be considered when calculating an overall hourly rate. Offeror shall ensure that the City's minimum staff requirements are maintained and not affected by any required armed security guard training. The time spent by staff in such a

training programs, though required, shall not be billable to the City.

The successful Offeror shall also be responsible to provide training to its officers and provide proof of the following items together with their proposal and throughout the life of the contract, including any renewals or extensions thereof:

1. All security officers must submit a copy of the first aid and CPR certifications for each officer assigned to provide armed security guard services at any City location. Such certifications shall be maintained, at no additional cost to the City, throughout the life of the contract.
2. Use of automated external defibrillator
3. Successful Offeror must conduct drug screening exams of any and all security officers assigned to provide armed security guard services at any City location at least once a year at no cost to the City. Documentation of such screening shall be provided to the City no later than thirty (30) days before the commencement of each annual contract term.
4. Successful Offeror shall conduct background screenings on all security officers assigned to provide armed security guard services at any City location and provide copies of such background screenings to the City. A criminal record check must be part of the screening process. The City requires those screenings for any and all Offerors' current and newly hired employees that are assigned for City services over the life of the contract, including any extensions or renewals thereof. Additionally, the City reserves the right to require such screenings be conducted at least once every three years for personnel assigned to City Hall.

4. Successful Offeror's Personnel Record Keeping

The successful Offeror shall maintain an accurate and complete personnel file, for each armed security guard that it assigns or dedicates to perform work under any contract arising from this Request for Proposals. Said file shall specifically contain copies of licenses, the training certifications and biographical data of all personnel assigned or dedicated to provide armed security guard services at any City location, together with the above-mentioned criteria in subsection (2) of this section, and shall include:

1. Personal information of the employee, sex/race/DOB/and social security number.
2. Copies of New York State driver's license and security guard license.
3. Security personnel weekly timesheets, which shall state the employee's name and hours worked/shift. The successful Offeror shall submit all invoices to the City together with an itemized employee timesheet for the time period covered on the invoice.
4. Copies or notification of all disciplinary actions taken by contractor or City of Buffalo. This will include all verbal or written documentation of warnings or discipline.

All required documentation and personnel files shall be readily available for inspection by any authorized City representative, during initial research and during the course of any contract arising from this Request for Proposals, including any extensions or renewals thereof. The City reserves the right to perform an audit of the successful Offeror's payroll and related records of employees assigned to provide armed security guard services at any City location to ascertain that such employee's records indicate payment received for the specific hours worked for the City. Such audit will be at the sole discretion of and at the sole option of the City.

V. EVALUATION AND SELECTION PROCESS

The process for selecting a successful proposal for this Request for Proposals will be an open and competitive process. The professional services sought herein are not subject to New York State's competitive bidding requirements. Therefore, while total costs will be considered in the award of any contract arising from this Request for Proposals, it is not the determining factor. The lowest cost of any proposal may not necessarily be selected.

Representatives from the Buffalo Police Department and the Department of Public Works Parks & Streets will oversee the release and the evaluation of the proposals. The City reserves the right, at the time of the evaluation of any proposals, to request any additional information that it deems necessary in its review of any proposal. The City intends to award a contract to the Offeror whose proposal it deems to be in the best interests of the taxpayers. The City is under no obligation to award any contract in whole or in part, and it reserves the right, in its' sole discretion, to cancel this Request for Proposals at any time before or after closing, without providing reasons for such cancellation. If only one proposal is received, the City reserves the right to reject it.

Evaluation Process

The City's evaluation process will be structured to secure a highly skilled, diligent, responsive, and experienced armed security guard services that will be effective in providing the highest quality of services that the City requires. Offerors are encouraged to submit proposals that fully meet and/or exceed the specifications contained in this solicitation by providing recommendations of alternatives, enhancements or improvements in available equipment, coverages, etc., as options for consideration by the City.

Offerors must specifically identify any requirement contained in this solicitation that they are unable to satisfy. Offeror's recommended features that enhance the City's security needs, or recommendations for additional forms of coverage and/or equipment, must be separately identified in the proposal, including their cost, so as to not impact the evaluation of the proposal where they contribute to an additional cost. The City will consider such options, in its sole discretion, as supplements to any contract arising from this solicitation after the determination to award has been made.

The evaluation criteria that the City will utilize will consider, but may not be limited to, the following factors:

Evaluation Criteria will be based on:

1. Compliance with Request for Proposals requirements; [10%]
2. Demonstrative experience and ability to fulfill the requirements contained in the Request for Proposals; [40%]
 - a. Qualifications and resumes of team personnel providing security guard services;
 - b. Staff availability to perform tasks, including experience and ability to have a fixed number of armed security officers dedicated to provide services at Buffalo City Hall, Buffalo Police and Fire Headquarters, and any possible future locations;
 - c. Proposed security plan and methodology to achieve desired results;
 - d. Estimated time frame for project commencement;
3. Proposed cost; [20%]
4. References and other factors which the BPD considers relevant. [10%]
5. Diversity Practices [20%]
 - a. Offeror's minority workforce development, community involvement and vendor policies [15%]; and
 - b. Offeror's women workforce development, community involvement and vendor policies [5%]

Proposals that are incomplete and missing key components necessary to fully evaluate the proposal may, at the sole discretion of the committee, be rejected from further consideration due to "non-responsiveness" and rated non-responsive. Proposals providing responses to all sections will be eligible for detailed analysis.

VI. GENERAL TERMS/REQUIREMENTS

1. Contract Award

The successful Offeror may be awarded an initial one (1) year contract, with three (3) additional options to renew at one (1) year each term, at the sole discretion of the City. All renewals shall be in writing and the pricing shall remain unchanged, except where the price has been modified as a result of the City's election to have Offeror provide additional services or increase personnel. Such terms ensure that there will be no interruptions in the services required to provide necessary while maintaining a high level of service.

Transition services may be required to avoid an interruption in the provision of armed security guard services. For any contract arising from this solicitation, the successful Offeror may be required to continue to provide armed security guard services and/or assist with the transition to a succeeding contractor, following the termination of a contract or upon the expiration of all renewals. The City may require the successful Offeror to continue to provide armed security guard services through such transition for a period not to exceed one (1) year beyond the effective date of termination or the expiration of all renewals of the awarded contract. The successful Offeror and City shall memorialize in writing the continued provision of such services. The fees covering such transition period shall not exceed the armed security guard fees paid during the preceding contract year.

The contract with the successful Offeror shall include the terms of this Request for Proposals and together with those terms of the Offeror's proposal, which are not inconsistent with the Request for Proposals, and which have been specifically accepted by the City of Buffalo.

2. Indemnification/Hold Harmless

For any contract arising from this Request for Proposals, the successful Offeror(s) shall defend, indemnify and save harmless the City and its officers and employees from all claims, suits, actions, damages, losses, and costs of every name, nature, and description to which the City may be subjected or put by reason of any injury to the person or property of another, or the property of the City, resulting from the negligence or carelessness, active or passive, of the Offeror, its employees, agents or subcontractors, in the performance of any work under the contract. In addition to and in furtherance of the foregoing indemnity, the insurance coverage described herein must include language that states that the insurance carrier will defend the City for any and all claims arising or resulting from the contract. Furthermore, the whole, or so much of the money to become due under the contract as shall be considered necessary by the City, may be retained by it until all suits or claims for damages shall have been settled or otherwise disposed of, and evidence to that effect furnished to the satisfaction of the City.

3. Insurance Coverage and Performance Bond Requirements

The City of Buffalo requires insurance coverage as listed below for this service. Note: The term "Offeror" shall also include the successful Offeror(s), their respective agents, representatives, employees or subcontractors; and the term "City of Buffalo" (hereinafter called the "City") shall include their respective officers, agents, officials, employees, volunteers, boards and commissions. The insurance required shall be written for not less than the scope and limits of insurance specified hereunder, or required by applicable federal, state and/or municipal law, regulation or requirement, whichever coverage requirement is greater. It is agreed and understood that the scope and limits of insurance specified hereunder are minimum requirements and shall in no way limit or exclude the City from additional limits and coverage provided. Coverage shall be primary and non-contributory and shall be maintained during the entire contract term.

Minimum Scope and Limits of Insurance

3.1 Workers' Compensation Insurance and Disability Insurance:

With respect to all operations the Offeror performs the Offeror shall carry Workers' Compensation Insurance and Disability Insurance in accordance with the requirements of the laws of the State of New York. Evidence of Workers' Compensation Insurance and Disability Insurance must be provided on the New York State approved form. Each certificate of insurance evidencing such coverages shall be submitted by the Offeror and must name the City of Buffalo as certificate holder.

3.2 Commercial General Liability Insurance:

With respect to all operations the Offeror performs the Offeror shall carry Commercial General Liability insurance providing for a total limit of not less than one million dollars (\$1,000,000) per occurrence. Each annual aggregate limit shall not be less than two million dollars (\$2,000,000). A certificate of insurance evidencing such coverage shall be submitted by the Offeror and must name the City of Buffalo as additional insured and certificate holder. The City of Buffalo shall also be named as additional insured and certificate holder under any umbrella/excess liability policies.

3.3 Commercial Automobile Liability Insurance:

With respect to any owned, non-owned, or hired vehicles the Offeror shall carry Automobile Liability insurance providing not less than one million dollars (\$1,000,000) per accident for bodily injury and property damage. A certificate of insurance evidencing such coverage shall be submitted by the Offeror and must name the City of Buffalo additional insured and certificate holder.

3.4 Owner's and Contractor's Protective Liability Insurance:

The Offeror shall obtain and maintain such insurance as will protect the City of Buffalo as the named insured from all liability for damages for personal injury, including but not limited to death, which may arise from operations under the contract, also for the City of Buffalo's liability for property damage which might arise from operations under the awarded contract. A certificate of insurance certificate evidencing such coverage in an amount of not less than two million dollars (\$2,000,000) per occurrence shall be submitted by the Offeror and must name the City of Buffalo as the named insured.

3.5 "Tail" Coverage:

If any of the required liability insurance is on a "claims made" basis "tail" coverage will be required at the completion of this contract for a duration of 24 months, or the maximum time period reasonably available in the marketplace. Offeror shall furnish certification of "tail" coverage as described or continuous "claims made" liability coverage for 24 months following Contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the effective date of the pertinent Contract.

If continuous “claims made” coverage is used, Offeror shall be required to keep the coverage in effect for the duration of not less than 24 months from the end of the Contract.

3.6 Acceptability of Insurers:

All of Offeror’s insurance policies shall be written by insurance companies admitted in the State of New York and authorized to do business in the State of New York or otherwise acceptable to the City’s Comptroller in his sole discretion.

3.7 Subcontractors:

The Offeror shall require subcontractors to provide the same “minimum scope and limits of insurance” as required herein, as is applicable to the work performed by the subcontractor. All Certificates of Insurance shall be provided to the Corporation Counsel’s office as required herein and must be acceptable to the Corporation Counsel in his sole discretion.

3.8 Aggregate Limits:

Any aggregate limits must be declared to and approved by the City. It is agreed that the Contractor shall notify the City when fifty percent (50%) of the aggregate limits are eroded during the contract term. If the aggregate limit is eroded for the full limit, the Offeror agrees to reinstate or purchase additional limits to meet the minimum limit requirements stated herein. The premium shall be paid for solely by the Offeror. Deductibles and Self-Insured Retentions: Any deductible or self-insured retentions must be declared to and approved by the City. All deductibles or self-insured retentions are the sole responsibility of the Offeror to pay and/or to indemnify.

3.9 Notice of Cancellation or Nonrenewal:

Each insurance policy required shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in coverage or in limits except after 30 days prior written notice has been given to the City.

3.10 Waiver of Governmental Immunity:

Unless requested otherwise by the City, the Offeror and his insurer shall waive governmental immunity as defense and shall not use the defense of governmental immunity in the adjustment of claims or in the defense of any suit brought against the City.

3.11 Performance Bond:

The successful Offeror will be required to enter into a contract and furnish a performance bond guaranteeing the faithful performance of the contract in the penal amount of the contract price, such bond to be executed by the Offeror as principal, and by a duly incorporated company authorized to guarantee the performance of the contract and to do business in the State of New York as surety. Said bond must be maintained throughout the entire contract term and including

any renewals or extensions thereof. The performance bond and all continuation certificates shall be subject to approval as to form by the Corporation Counsel and approved as to sufficiency by the Comptroller of the City of Buffalo. The amount of the performance bond shall be based on the total amount of the contract.

3.12 Certificates of Insurance:

As evidence of the insurance coverage required for any contract arising out of this Request for Proposals, the Offeror shall furnish certificate(s) of insurance to the Police Department prior to the award of the contract and prior to the Offeror's commencement of services under the contract. The certificate(s) will specify all parties who are endorsed on the policy as additional insureds (or Loss Payees). The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. Renewals of expiring certificates shall be filed thirty (30) days prior to expiration. The City reserves the right to require complete, certified copies of all required policies at any time.

All insurance certificates and the performance bond, including all renewals and continuations thereto, must be mailed to:

Jennifer L. Jacobs
Senior Administrative Assistant
Department of Public Works, Parks & Streets
65 Niagara Square
613 City Hall
Buffalo, New York 14202

4. Non-Discrimination

The successful Offeror(s) shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sexual orientation, gender identity or expression, military status, age, sex, disability, marital status, or familial status. Such prohibition against discrimination shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

The successful Offeror(s) shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City, setting forth this nondiscrimination clause. In addition, the Offeror(s) shall, in all solicitations or advertisements for employees placed by or on behalf of the Offeror(s), state that all qualified applicants will receive consideration for employment without regard to race, creed, religion, ancestry, sex, national origin, affectional preference, disability, age, marital status or status with regard to public assistance or status as disabled veteran or veteran of the Vietnam era, and comply in all other aspects with the requirements the Buffalo City Code and Ordinances.

5. *Executive Order 16-04*

The City encourages the selection of individuals, firms and businesses that are active in the recruitment, training and retention of women, blacks, Hispanics and all other minority groups. The inclusion of specific selection criteria for those individuals, firms and businesses desiring to provide professional services to the City, that also considers the firm's recruitment, training and retention of women, blacks, Hispanics and all other minority groups, supports and encourages these practices.

Pursuant to Executive Order 16-04, issued in accordance with the laws of the State of New York and Article 2, Sections 2-3 and Article 4, Section 4-1 of the Charter of the City of Buffalo, all City departments are required to incorporate into their Requests for Proposals (RFPs) or Requests for Qualifications (RFQs) for professional services, including but not limited to, legal, architectural, accounting and engineering services, the following:

1. A minimum of fifteen percent (15%) of the total score of the professional services response to a RFP or RFQ issued by the City of Buffalo is to be based on the Offeror's minority workforce development, community involvement and Offeror policies;
2. A minimum of five percent (5%) of the total score of the professional services response to a RFP or RFQ issued by the City of Buffalo is to be based on the Offeror's women workforce development, community involvement and Offeror policies.
3. The factors to be considered include, but are not limited to, the following:
 - a. Workforce: Offerors should describe any programs or actions they undertake to attract, recruit, train, retain and promote minority and female employees, partners and associates and current representation of minorities and women.
 - b. Community Involvement: Offerors should describe any programs or initiatives they sponsor or support that further the development of minority or women-owned business enterprises in the City of Buffalo.
 - c. Offeror Policies: Offerors should describe any procurement policies or practices they have adopted that provide M/WBE suppliers or services business opportunities.

6. *Americans with Disabilities Act Compliance Provisions*

Any Offeror(s) awarded a contract pursuant to the Request for Proposals are required to abide by the regulations of the Americans with Disabilities Act of 1990 (ADA) which prohibits discrimination against individuals with disabilities. The contractor will not discriminate against any employee or applicant for employment because of their disability and will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, promotion, demotion, transfer, recruitment or recruitment advertising, layoff, discharge, compensation and fringe benefits, classification, referral and training. The ADA also requires Offerors associated with the City of Buffalo to provide qualified applicants and employees with disabilities with reasonable accommodation that does not impose undue hardship. Offeror(s) also agree to post in a

conspicuous place, accessible to employees and applicants, notices of their policy on non-discrimination.

In the event of the contractor's noncompliance with the non-discrimination clauses of this contract, this contract may be canceled, terminated, or suspended, in whole or in part, and the contractor may be declared ineligible by the Buffalo Common Council from any further participation in City contracts in addition to other remedies as provided by law.

7. General Compliance

The successful Offeror(s) agrees to comply with all applicable Federal, State and local laws and regulations governing the services to solicited under this Request for Proposals.

8. Performance Monitoring

The City will monitor the performance of the successful Offeror(s) against goals and performance standards required herein. Substandard performance as determined by the City will constitute non-compliance with this agreement. If action to correct such substandard performance is not taken by the Offeror within a reasonable period of time after being notified by the City, contract termination procedures will be initiated. All services provided by the successful Offeror(s) shall be subject to the approval and acceptance by the City. The City shall review each portion of the work when certified as complete and submitted by the Offeror and shall inform the Offeror of any apparent deficiencies, defects, or incomplete work, at any stage of the contract.

9. Independent Contractor

Nothing contained in this agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The successful Offeror(s) shall at all times remain an independent contractor with respect to the services to be performed under the contract. Any and all employees of Offeror(s) or other persons engaged in the performance of any work or services required by Offeror under the contract shall be considered employees or sub-vendors of the Offeror only and not of the City; and any and all claims that might arise, including Worker's Compensation claims under the Worker's Compensation Act of the State of New York or any other state, on behalf of said employees or other persons while so engaged in any of the work or services to be rendered herein, shall be the sole obligation and responsibility of Offeror.

10. Accounting Standards

The successful Offeror(s) agrees to maintain the necessary source documentation and enforce sufficient internal controls as dictated by generally accepted accounting practices to properly account for expenses incurred under the contract.

11. Retention of Records

The successful Offeror(s) shall retain all records pertaining to any and all matters related to the services described in this Request for Proposals and any contract arising therefrom for a period of three (3) years following the date of expiration or termination of the contract.

12. Inspection of Records

All records with respect to any matters covered by this Request for Proposals and any contract arising therefrom shall be made available to the City or its designees at any time during normal business hours, as often as the City deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. This section shall survive the expiration or termination of any contract arising from this solicitation. The successful Offeror agrees that said records shall be maintained for not less than three (3) years following the date of expiration or termination of the contract.

13. Living Wage Policy & Minority/Women Business Enterprise Goal

The Buffalo Living Wage ordinance applies to City contracts for services, in excess of \$50,000 annually, where the contractor providing the service employs more than ten (10) people and where the City is obligated to expend funds or is entitled to receive funds from a contractor in connection with a contract or subcontract for services. Professional contracts such as legal, architectural or engineering services are excluded from the requirements of the Living Wage Ordinance. Notwithstanding the foregoing, the attached "City of Buffalo Living Wage Commission Application for Contract with the City of Buffalo" must be completed and accompany each proposal. Proposals failing to include the completed forms will be rejected from consideration.

In addition, each Offeror must submit an executed Form 2A statement together with its proposal indicating that the Offeror will work towards the City's business utilization goal for minority business enterprise of 25% and women business enterprise of 5%. Offerors must submit with their proposals a statement identifying the percentage of minorities and the percentage of women currently employed with the company.

14. Applicable Law

The laws of the State of New York shall govern all interpretations of any contract arising from this Request for Proposals, and the appropriate venue and jurisdiction for any litigation which may arise hereunder will be in the courts located within the County of Erie, State of New York, regardless of the place of business, residence or incorporation of the Offeror. Each party agrees that all claims and matters shall be heard and determined in any such court and each party waives any right to object to such filing based on venue, forum non-conveniens, or similar grounds. No such actions shall be commenced or maintained against the City unless the contractor shall, not less than sixty (60) days before the commencement or filing of such action(s), submit to the City via certified mail to the address for notices contained herein, an informal complaint specifically detailing each and every perceived allegation or grievance and

that the City shall be afforded a reasonable amount of time within which to resolve any such claims.

15. Conflict and Priority

In the event that a conflict is found between provisions in any contract arising from this Request for Proposals, the successful Offeror's Proposal or the City's Request for Proposals, the provisions in the following rank order shall take precedence: 1) Contract; 2) Request for Proposals; and 3) Offeror's Proposal.

16. Ownership of Materials

Notwithstanding the Offeror's proprietary information, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports, equipment or other materials resulting from any contract arising from this Request for Proposals shall constitute the property of the City. The City may use, extend, or enlarge any document produced under the contract without the consent, permission of, or further compensation to the Offeror.

17. Termination

The City shall have the unilateral right to terminate any contract awarded hereunder, without cause, upon ten (10) days written notice to the successful Offeror.

The City shall pay contractor all compensation earned prior to the date of termination less any damages and costs incurred by the City as a result of the breach.

Notwithstanding the above, the Offeror shall not be relieved of liability to the City for damages sustained by the City as a result of any breach of the contract by the Offeror. The City may, in such event, withhold payments due to the Offeror for the purpose of set-off until such time as the exact amount of damages due to the City is determined. The rights or remedies provided for herein shall not limit the City, in case of any default by the Offeror, from asserting any other right or remedy allowed by law, equity, or by statute.

18. Prime Contractor Responsibility

All sub-contractors will be subject to prior approval by the City. Prior to contract execution, the successful Offeror(s) will be required to furnish the corporate or company name and the names of the officers and principals of all sub-contractors. Notwithstanding any such approval by the City, the successful Offeror(s) shall itself be solely responsible for the performance of all work set forth in any contract resulting from the Request for Proposals and for compliance with the price and other terms provided in the contract. The successful Offeror(s) shall cause the appropriate provisions of its proposal and the contract to be inserted in all subcontracts.

The City's consent to or prior approval of any subcontract or subcontractor proposed by an Offeror shall not create or purport to create any obligation of the City to any such

subcontractor, or any form of contractual relationship or relationship of privity between the City and the subcontractor. Any Offeror who obtains such approval or consent of the City shall be required to insert a clause so providing in all subcontracts.

19. Disclaimer

This Request for Proposals and the process it describes are proprietary to the City and are for the sole and exclusive benefit of the City. This Request for Proposals is not binding on the City. No other party, including any Offeror to this Request for Proposals or further Offerors to any Request for Proposals that may be issued by the City, is intended to be granted any rights hereunder. Any response to this Request for Proposals, including written documents and verbal communication, with the exception of materials marked as trade secrets or confidential, may be subject to public disclosure by the City, or any authorized agent of the City. Any materials submitted or ideas elicited in response to this Request for Proposals shall be the sole and absolute property of the City with the City having title thereto and unrestricted use thereof.

20. Publicity

All publicity (including, but not limited to, news releases, news conferences, and commercial advertising) relating to this Request for Proposals and/or the services or products sought by this Request for Proposals and/or any contract awarded pursuant to this Request for Proposals shall require the prior written approval of the City.

21. Offerors Restricted

No proposal shall be accepted from or contract awarded to any City employee or official, or any firm in which a City employee or official has a direct or indirect financial interest. No Offeror may be the prime contractor or prime Offeror for more than one proposal submitted pursuant to this Request for Proposals. Entities that are legally related to each other or to a common entity may not submit separate proposals as prime contractors or prime Offerors. Any proposal may be rejected that, in the City's sole judgment, does not comply with these conditions. Nothing contained in this Request for Proposals is intended to preclude a proposal by a system integrator that proposes to perform the substantive work proposed through sub-contractors.

22. New York State Executory Clause

Any contract(s) arising from this Request for Proposals shall be deemed executory only to the extent of monies appropriated and available for the purpose of the contract, and no liability on account thereof shall be incurred by the City beyond the amount of such monies. Neither the full faith and credit nor the taxing powers of the City of Buffalo are pledged to the payment of any amount due or to become due under such contract. It is understood that neither this contract nor any representation by any public employee or officer creates any legal or moral obligation to appropriate or make monies available for the purpose of the contract.

23. General Municipal Law §109: Assignment of Contracts

In accordance with General Municipal Law §109 Offeror is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of any contract arising from this solicitation, or of any right, title, or interests herein, or the power to execute such contract, to any other person or corporation without the previous consent in writing of the City.

If any Offeror, to whom any contract is let, granted or awarded, as required by law, shall without the previous written consent of the City, assign, transfer, convey, sublet or otherwise dispose of the contract, or any right, title or interest therein, or the power to execute such contract, to any other person or corporation, the City shall have the unilateral right to revoke and annul such contract, and the City shall be relieved and discharged from any and all liability and obligations growing out of such contract to such contractor, and to the person or corporation to which such contract shall have been assigned, transferred, conveyed, sublet or otherwise disposed of, and such contractor, and his assignees, transferees or sub-lessees shall forfeit and lose all moneys, theretofore earned under such contract, except so much as may be required to pay his employees. The provisions of this section shall not hinder, prevent, or affect an assignment by any such contractor for the benefit of his creditors made pursuant to the laws of the State of New York.

24. Copyright and Patent Rights

The successful Offeror warrants that there are no existing claims of violation and Offeror has no knowledge of any potential claims of violation of copyrights or patent rights in products being offered in their proposal as of the date of proposal submission. Offeror(s) shall indemnify and defend the City of Buffalo in any claim or action brought against the City of Buffalo based upon a claim that the software or hardware provided by the Offeror violated any copyright or patent rights.

25. Confidentiality

Offerors understand and agree that all records and information obtained either directly or indirectly by reason of this Request for Proposals and the proposed work to be performed thereto, involve both the physical and technical security of the Buffalo City Hall. To that end, all Offerors shall execute and return with their proposals a duly executed copy of the Confidentiality and Non-Disclosure Agreement that has been attached to this Request for Proposals. Furthermore, Offerors agree that they shall not sell, divulge, disclose or communicate in any manner whatsoever to any third party, without the prior written consent of the City, any information obtained directly from the City throughout the course of this procurement or any contract arising therefrom. Contractor agrees to comply with all applicable Federal and State laws and regulations governing the use and rights of access to City records and information. These provisions shall remain in full force and effect for an indefinite period even after the termination of the contract.

26. Freedom of Information Law

The City of Buffalo is subject to the provisions of Article 6 Section 89 of New York State Public Officer's Law, entitled the Freedom of Information Law. All proposals, in their entirety, submitted in response to this Request for Proposal shall constitute a record subject to public disclosure pursuant to the Freedom of Information Law. It is the sole responsibility of each Offeror to this Request for Proposal to identify those portions deemed to constitute a "trade secret" or proprietary information of the commercial enterprise. Any such information shall be clearly marked "CONFIDENTIAL". The phrase trade secret is more extensively defined to include a formula, process, device or compilation of information used in one's business which confers a competitive advantage over those in similar businesses who do not know it or use it. The subject of the trade secret must not be of public knowledge or of a general knowledge in the trade or business. A corresponding letter, on company letterhead, must be provided describing the factors and extent to which the disclosure of the "CONFIDENTIAL" information would cause substantial injury to the competitive position of the commercial enterprise. The entire proposal shall not be marked "CONFIDENTIAL". Any portion of the proposal that is not clearly identified as "CONFIDENTIAL" may be disclosed pursuant to the Freedom of Information Law. **THE CITY OF BUFFALO DOES NOT ASSUME ANY RESPONSIBILITY WHATSOEVER TO ANY OFFEROR IN THE DISCLOSURE OF RECORDS PURSUANT TO THE FREEDOM OF INFORMATION LAW, COURT ORDER, OR ANY OTHER METHOD OF DISCLOSURE PROVIDED FOR UNDER THE LAW.**

27. Inquiries

Pursuant to Article IX of New York State Finance Law §139-j, no Offeror shall engage in any impermissible contact with the governmental entity during the "restricted period" for this Request for Proposals. Contact shall include any oral, written or electronic communication with the governmental entity under circumstances where a reasonable person would infer that the communication was intended to influence the governmental entity's conduct or decision regarding the governmental procurement. The "restricted period" shall mean the period of time commencing with the earliest written notice, advertisement or solicitation of a request for proposals, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from Offeror intending to result in a procurement contract with the governmental entity and ending with the final contract award and approval by the governmental entity and, where applicable, the State Comptroller. Except as otherwise permitted under State Finance Law §139-j(3), any contact with the governmental entity, other than to discuss current business with the City of Buffalo, or during the question and answer period (via e-mail ONLY) with the person(s) identified below, may result in a Offeror's immediate disqualification.

All inquiries during the question and answer period only should be directed via e-mail only to: **Senior Administrative Assistant, Jennifer L. Jacobs, Department of Public Works Parks & Streets: jjacobs@buffalony.gov by no later than 4:00 PM on June 11, 2021.**

28. Conflicts of Interest

Confidentiality and lack of potential conflicts of interest is vital to maintaining the integrity of every contract entered into with the City. Therefore, each Offeror must disclose any perceived, potential or actual conflicts of interests and/or relationships and/or connections. Such relationships may include, but are not limited to, connections to persons and organizations within the City of Buffalo through:

- a. Professional or Political associations
- b. Political donations
- c. Blood or Marriage
- d. Friendships
- e. City of Buffalo employees who currently work for your company, or come to work for your company during the RFP process, and after (should you receive a contract from the City of Buffalo) as employees or consultants
- f. Union Affiliations/Memberships
- g. Board Member

Each Offeror further agrees that no member of the governing body, officer, employee or agent of the City shall have any pecuniary interest or otherwise, direct or indirect, in the any contract arising from this solicitation.

29. Statement of Compliance and Conflict of Interest

Your signature below denotes that your organization, company or corporation and /or the officers, directors, employees or agents thereof have reviewed and agreed to comply with State Finance Law §139-k. No past or present lobbyist, employee, officer or board member of your organization, company or corporation may contact any past or present City of Buffalo employee, union leader, elected official (City or otherwise) in an attempt to influence the award of this RFP.

Additionally, any potential or identified conflicts of interest shall be disclosed. As conflicts are discovered, they must be disclosed in writing, to the designated contact person identified in the RFP, during the entire RFP, award, contract negotiation, ratification and execution process and even after contract award.

Conflict or Potential Conflict:

Signature: _____

Company: _____

Title: _____

Date: _____

30. Non-Collusion Certification

If the Offeror is a corporation, the execution of the non-collusive certification in the form of proposal shall be deemed to include the signing to non-collusion as the act and deed of the corporation. An executed copy of the attached non-collusion certificate, must accompany the proposal.

No proposal shall be considered for an award nor will any award be made to an Offeror where the proposal does not include the statement as to non-collusion as set forth in the form of proposal herein, provided however, that if in any case the Offeror cannot make the foregoing certification, the Offeror shall so state and furnish with the proposal a signed statement which sets forth in detail the reasons therefore. In such event, the proposal shall not be considered for award nor shall any award be made unless the City determines that such disclosure was not made for the purpose of restricting competition. In this connection, it should be noted that the fact that an Offeror has published price lists, rates or tariffs covering items being procured or has informed prospective customers of the proposed or pending publication of new or revised price lists for such items, or has sold the same items to other customers at the same price as being proposed, does not constitute, without more, a disclosure to any other Offeror or to any competitor within the meaning of the non-collusive certification included in the form of proposal.

NON-COLLUSION BIDDING CERTIFICATION

PROJECT NAME: _____

PROPOSALS DUE DATE: _____

_____, being duly sworn, deposes and affirms that:
(Name)

I am the, _____, with the _____
(Title) (Company Name)

located at _____ am familiar with the enclosed proposal
or (Company Address)

bid submitted herein to the City of Buffalo, a municipal corporation with offices located at 65 Niagara Square, Buffalo, New York; and

Where pursuant to New York State General Municipal Law §103-d, every bid or proposal hereafter made to a political subdivision of the state or any public department, agency or official thereof where competitive bidding is required by statute, rule, regulation or local law, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury, I hereby affirm that the statements contained herein are true:

(a) By submission of this bid or proposal, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

- (1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- (2) (Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
- (3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

Dated: _____

Name:
Title:

State of New York)
County of Erie) ss

On _____ day of _____ in the year _____, before me the undersigned, personally appeared _____, 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 he/she acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public/Commissioner of Deeds



APPLICATION FOR CONTRACT WITH THE CITY OF BUFFALO

The City’s Living Wage Ordinance applies to contracts for services in which the City pays – or receives – more than \$50,000 per year, and the contractor employs more than ten people. If you are bidding, responding to an RFP, or otherwise planning to make a contract with the City, you must complete this form, which will be forwarded to the Living Wage Commission. Your subcontractors need not file a separate Application, but they must pay a living wage. If you win the contract, you and your subcontractors will file quarterly reports with the Commission.

You must certify that you will pay at least the living wage, which is based on 150% of the federal poverty line for a family of three and adjusted each year. For July 1, 2021 to June 30, 2022, the rate will be \$15.84 per hour.

There are two exceptions to the Ordinance. Professional contracts such as legal, architectural, or engineering services are not covered by the Ordinance. Also, persons employed in construction work covered by prevailing wage laws are exempt. Employers of tipped workers may take a tip credit, so long as tips plus wages equal or exceed the living wage rate.

The City department responsible for the contract should forward the completed Application for Contract of the employer awarded the contract to: Living Wage Commission, c/o Cornell University ILR, 617 Main St., Suite 300, Buffalo, NY, 14203, lwcbuffalo@gmail.com.

1. Company Information

| | |
|---------------------------|--|
| Company Name: | |
| Executive Officer: | |
| Address: | |
| City, State, Zip: | |

| | |
|--------------------------------|--|
| Phone No.: | |
| Total No. of Employees: | |

2. Please describe the specific project or service for which the contract is sought:

| |
|--|
| |
| |

3. Contract Information

| | |
|---|--|
| Dollar Value of Your Proposal/Contract: | |
| Identifying City Contract or Project Number: | |
| Start and End Dates of Contract: | |

4. If you answer "Yes" to any of these, you need not complete parts 5, 6, and 7

| | | |
|---|------------------------------|-----------------------------|
| A) Are all persons who will work under the contract construction workers covered by federal or state prevailing wage laws? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| B) Is this a contract for professional services such as legal, architectural, or engineering? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| C) Do you employ less than ten people? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| D) Is the total value of the contract less than \$50,000 per year? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

5. Please describe the employees who will work on this contract. Attach additional sheets as needed.

| Job Title | Duties to be Performed | Hourly Wage | Receives Health Benefits? |
|------------------|-------------------------------|--------------------|----------------------------------|
| | | | |

| | | | |
|--|--|--|--|
| | | | |
| | | | |
| | | | |

6. Subcontractors

| | |
|---|--|
| Will there be subcontractors? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| If yes, please provide name address, and phone for each subcontractor. Attach additional sheets as needed. | |

7. Signature by an official with the legal authority to make binding commitments.

I certify that if awarded a City contract I will fully comply with the Living Wage Ordinance.

Date: _____ Signature: _____

Print: _____

Title: _____

FORM 2A – OFFERORS AFFIRMATIVE ACTION STATEMENT

The _____
(Company Name)

hereby states that we will make good faith efforts to ensure a diverse workforce and minority business participation for this proposal/bid in accordance with the City of Buffalo Charter, Chapter 96, Bonds and Contracts.

We will work toward a minority workforce goal of 25%, and woman workforce goal of 5%. In addition, we will work toward a business utilization goal for minority business enterprise of 25% and woman business enterprise of 5%.

(Signature of Authorized representative of Offeror)

Date _____

BIDS/PROPOSALS FAILING TO INCLUDE OR COMPLETE ANY OF THE ABOVE ITEMS WILL BE CONSIDERED NON-RESPONSIVE AND WILL NOT BE ACCEPTED.

EEO-2



CITY OF BUFFALO

DEPARTMENT OF MANAGEMENT INFORMATION SYSTEMS
65 Niagara Square, 1201 City Hall
Buffalo, New York 14202
(716) 851-4836



CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality and Non-Disclosure Agreement is entered into as of this ____ day of the month of _____ in the year _____ between the City of Buffalo, a municipal corporation with offices located at 65 Niagara Square, Buffalo, New York 14202, hereinafter referred to as the “City” and _____ a company/individual/corporation, with offices located at _____, hereinafter referred to as the “Contractor”.

WHEREAS, the City has expended substantial resources in developing its business operations, products and relationships with suppliers, manufacturers, customers and others in the United States and/or other countries; and

WHEREAS, New York State Public Officers Law permits the City to deny access to records that if disclosed, would jeopardize the capacity of the City or any entity that has shared information with the City to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures; and

WHEREAS, the City and Contractor are desirous of entering into a governmental relationship and/or transaction, which may include the City’s granting of access to records and information that are not generally available to the public and that may properly be withheld from public disclosure where such records and information may include but not be limited to the disclosure of the City’s critical infrastructure, including but not limited to, its operations, products, systems, assets, and information technology and/or details thereof; and

WHEREAS, the City has expressed to the Vendor its concerns over the disclosure and unauthorized re-dissemination to third parties of records, information, or details whether general or specific relative to the City’s critical infrastructure, including its information technology, some of which may be proprietary and subject to copyright protection; and

WHEREAS, the City has expressed to the Contractor its concerns over the disclosure and unauthorized re-dissemination to third parties of such records or information relative to the City's critical infrastructure configuration, including its information technology, which, if disclosed, could jeopardize the health, safety, welfare or security of the City, its residents or its economy; and

WHEREAS, the City has conditioned its willingness to disclose or allow access to its critical infrastructure configuration, including its information technology, to the Contractor based upon the Contractor's agreement that the Contractor's agents, employees, and/or representatives shall (i) keep confidential all records and information disclosed by the City, (ii) limit the use of all such records and information disclosed by the City for the sole purpose of activities related to the potential or actual governmental relationship between the Contractor and the City.

NOW THEREFORE, in consideration of the promises and agreements herein contained, the parties agree as follows:

That the purpose of this Agreement is to grant the Contractor limited conditional access to the City's critical infrastructure configuration, including its information technology, and such information that is not generally available or required to be made available to members of the public pursuant to applicable law.

ARTICLE 1 DEFINITIONS

Section 1.01 Definitions

As used in this Agreement, the words or phrases listed below shall have the meanings indicated:

(a) "Critical infrastructure" shall mean the systems, assets, places or things, whether physical or virtual, so vital to the City that the disruption, incapacitation or destruction of such systems, assets, places or things could jeopardize the health, safety, welfare or security of the City, its residents or its economy.

(b) "Confidential Information" means any data or information that is relative to the City's critical infrastructure, including its information technology, some of which may be proprietary and subject to copyright protection and not generally known or available to the public, including, but not limited to, any plans, operations, specifications information, any scientific or technical information, invention, design, process, procedure, formula, improvement, technology or method; any concepts, reports, data, know-how, works-in-progress, designs, development tools, specifications, computer software, source code, object code, flow charts, databases,

inventions, information and trade secrets; and any other information that should reasonably be recognized as confidential information of the City that if disclosed would jeopardize the security of its critical infrastructures and information technology assets, such assets encompassing both whether in tangible or intangible forms.

(1.) Notwithstanding anything in the foregoing to the contrary, confidential information shall not include information which: (a) was known by the Contractor prior to receiving the confidential information from the City; (b) becomes rightfully known to the Contractor from a third-party source not known (after diligent inquiry) by the Contractor to be under an obligation with the City to maintain confidentiality; (c) is or becomes publicly available through no fault of or failure to act by the Contractor in breach of this Agreement; (d) is required to be disclosed in a judicial or administrative proceeding, or is otherwise requested or required to be disclosed by law or regulation.

ARTICLE II COVENANTS AND AGREEMENTS

Section 2.01. Confidentiality of Information; Duty of Non-Disclosure

Contractor acknowledges that the dissemination or unauthorized re-dissemination to third parties of the City's confidential information could jeopardize the security of the City's critical infrastructures, including its' information technology, assets, tangible and intangible, electronic and physical infrastructures.

Contractor shall not disclose to any person or entity except as necessary to in good faith conduct its investigation of a potential contractual relationship with the City, or use for its own personal or commercial gain any confidential information disclosed by the City or otherwise learned by reason of Contractors' contractual relationship with the City.

Section 2.02. Use of Confidential Information

Contractor agrees to use the confidential information solely in connection with the current or contemplated contractual relationship between the parties and not for any purpose other than as authorized by this Agreement without the prior written consent of an authorized representative of the City. No other right or license, whether expressed or implied, in the confidential information is granted to the Contractor hereunder. All rights and title to the confidential information shall remain solely with the City. All use of the confidential information by the Contractor shall be for the benefit of the City and any modifications and improvements thereof by the Contractor shall be the sole property of the City.

Section 2.03. Compelled Disclosure of Confidential Information

Notwithstanding anything in the foregoing to the contrary, the Contractor may disclose confidential information pursuant to any governmental, judicial, or administrative order, subpoena, discovery request, regulatory request or similar method, provided that the Contractor promptly notifies, to the extent practicable, the City in writing of such demand for disclosure so that the City, at its' sole expense, may seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the confidential information. The Contractor agrees that it shall not oppose and shall cooperate with efforts by, to the extent practicable, the City with respect to any such request for a protective order or other relief. Notwithstanding the foregoing, if the City is unable to obtain or does not seek a protective order and the Contractor is legally requested or required to disclose such confidential information, disclosure of such confidential information may be made without liability.

Section 2.04. Term

This Agreement shall remain in effect until the latter of such time as the City provides to the Contractor thirty (30) days written notification of its termination of this contract, or one (1) year following the disclosure of the confidential information as described under subsection (b)(1) of Section 1.01 entitled Definitions.

Section 2.05. Remedies

Both parties acknowledge that the confidential information to be disclosed hereunder is of a unique and valuable character, and that the unauthorized dissemination of the confidential information would result in a significant security risk to the City. The damages to City that would result from the unauthorized dissemination of the confidential information would be impossible to calculate. Therefore, both parties hereby agree that the City shall be entitled to injunctive relief preventing the dissemination of any confidential information in violation of the terms hereof. Such injunctive relief shall be in addition to any other remedies available hereunder, whether at law or in equity. The City shall be entitled to recover its costs and fees, including reasonable attorneys' fees, incurred in obtaining any such relief. Further, in the event of litigation relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and expenses.

Section 2.06. Return of Confidential Information

Contractor shall immediately return and redeliver to the other all tangible material embodying the confidential information provided hereunder and all notes, summaries, memoranda, drawings, manuals, records, excerpts or derivative information deriving there from and all other documents or materials ("Notes")

(and all copies of any of the foregoing, including “copies” that have been converted to computerized media in the form of image, data or word processing files either manually or by image capture) based on or including any confidential information, in whatever form of storage or retrieval, upon the earlier of (i) the completion or termination of the dealings between the parties contemplated hereunder or (ii) the termination of this Agreement. Alternatively, the Contractor, with the written consent of the City may (or in the case of Notes, at the Contractor’s option) immediately destroy any of the foregoing embodying confidential information (or the reasonably non-recoverable data erasure of computerized data) and, upon request, certify in writing such destruction by an authorized officer of the Contractor supervising the destruction).

Section 2.07. Notice of Breach

Contractor shall notify the City in writing immediately upon discovery of any unauthorized use or disclosure of confidential information by Contractor or its representatives, or any other breach of this Agreement by Contractor or its representatives, and will cooperate with efforts by the City to help the City regain possession of confidential information and prevent its further unauthorized use.

Section 2.08. Severability

Although the restrictions contained in this Agreement are considered by the parties to be reasonable for the purpose of protecting the confidential information, if any such restriction is found by a court of competent jurisdiction to be unenforceable, such provision will be modified, rewritten or interpreted to include as much of its nature and scope as will render it enforceable. If it cannot be so modified, rewritten or interpreted to be enforceable in any respect, it will not be given effect, and the remainder of the Agreement will be enforced as if such provision was not included.

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and this Agreement shall read and be enforced as though it were included herein. If through mistake or otherwise, any such provision is not inserted, or is not properly inserted, then upon written application of either party, this Agreement shall be forthwith physically amended to make such insertion or correction.

Any failure by either party to enforce the other party’s strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

Section 2.09. Prior Agreements

This Agreement constitutes the entire understanding between the parties and supersedes any and all prior or contemporaneous understandings and agreements, whether oral or written, between the parties, with respect to the subject matter

hereof. This Agreement can only be modified by a written amendment signed by the party against whom enforcement of such modification is sought.

Section 2.10. Jurisdiction

The validity, construction and performance of this Agreement shall be governed and construed in accordance with the laws of New York State applicable to contracts made and to be wholly performed within such state, without giving effect to any conflict of law provisions thereof. The Federal and state courts located in New York State shall have sole and exclusive jurisdiction over any disputes arising under the terms of this Agreement.

Section 2.11. Notices

Any notices or communications required or permitted to be given hereunder may be delivered by hand, deposited with a nationally recognized overnight carrier, electronic-mail, or mailed by certified mail, return receipt requested, postage prepaid, in each case, to the address of the other party first indicated above (or such other addressee as may be furnished by a party in accordance with this paragraph). All such notices or communications shall be deemed to have been given and received (a) in the case of personal delivery or electronic-mail, on the date of such delivery, (b) in the case of delivery by a nationally recognized overnight carrier, on the third business day following dispatch and (c) in the case of mailing, on the seventh business day following such mailing.

For City of Buffalo:
Darryl Springer
Management Information Systems
65 Niagara Square
1201 City Hall
Buffalo, New York 14202

For Vendor:

Section 2.12. Assignment

This Agreement is personal in nature, and neither party may directly or indirectly assign or transfer it by operation of law or otherwise without the prior written consent of the other party, which consent will not be unreasonably withheld. All obligations contained in this Agreement shall extend to and be binding upon the parties to this Agreement and their respective successors, assigns and designees.

Section 2.13. Miscellaneous

Paragraph headings used in this Agreement are for reference only and shall not be used or relied upon in the interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of this date.

Date: _____

Daryl Springer
Deputy Commissioner
Dept. of Management Information Systems

Date: _____

Contractor

ACKNOWLEDGMENTS

State of New York)
County of Erie) ss.

On the ____ day of _____, in the year 2021, before me, the undersigned, personally appeared Daryl Springer, 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 he/she acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public/Commissioner of Deeds

State of _____)
County of _____) ss.

On the ____ day of _____, in the year 2021, before me, the undersigned, personally appeared _____, 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 he/she acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public/Commissioner of Deeds