

RFP- City of Niagara Falls Parks Master Plan

I. Introduction

The City of Niagara Falls has funding available for consultant services for the completion of a needs assessment and master plan for Niagara Falls parks and open spaces. The master plan is to include a trail system designed to connect City parks and open space areas with the upper Niagara River, existing trails and the lower Niagara River. The project includes a minimum of two public informational meetings to receive comment and input to be considered for the Master Plan.

The City seeks to begin work immediately. It is the intent of this document to solicit proposals from qualified consultants to perform the services specified herein.

II. Objectives/Project Description

The City of Niagara Falls is located in Western New York bordered by the Niagara River and has a total area of approximately 16.8 square miles. Within the city are several public parks and open spaces. The purpose of this project is to provide the necessary analysis for the preparation of an updated City-wide Master Plan for the Niagara Falls Parks system. This plan will provide the City with clear guidance regarding proposed improvements and capital needs for each park, and outline a prioritized list of projects that the City can undertake to meet the recreational needs of its citizens. The Parks Plan will detail future acquisition, programming and maintenance needs for the City's parks and open spaces, and outline anticipated costs and recommended scheduling. The objectives are to develop a Parks Master Plan describing future recreational needs, goals, programming, and maintenance requirements for the individual existing parks, recommend improvements for currently undeveloped park lands and develop a conceptual design for a city-wide trail system connecting all city parks and open space areas with the Niagara River waterfront.

Note that a total of \$265,000 in funding is available for the project. Partial funding for the project is provided under Title 11 of the Environmental Protection Fund (EPF), and administered by the New York State Department of State (DOS). As such, all materials must include the following acknowledgment:

"This (document, report, map, etc.) was prepared for the New York State Department of State with funds provided under Title 11 of the Environmental Protection Fund."

All deliverables must be clearly labeled with the New York State Comptroller's Contract number (to be supplied) and the related task number in the following format:

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- Draft products: five paper copies and one electronic copy of each product
- Final products: five paper copies and one electronic copy of all final reports, designs, maps, drawings and plans). Electronic copies must be submitted in Adobe® Portable Document Format (PDF) on a labeled CD-R type CD using 300 dpi scanning resolution. The label must include "City of Niagara Falls", the contractor name and project title
- Pictures and photographs must be dated and captioned with the location and a brief description of the activity being documented.

It is anticipated that the City will form an Advisory Committee (AC) to facilitate this project.

The project focuses on the following activities:

TASK A - INVENTORY OF EXISTING FACILITIES (CITY-WIDE):

Overview – A needs assessment and evaluation/current condition report of existing facilities and conditions will be prepared by the Consultant for all the City parks. Work effort will result in a compilation of maps depicting existing features and conditions. Final data will be compiled using a Microsoft (MS) Access database with a Graphic User Interface (GUI) for each park, with an overview of all of the parks.

Maps to be provided will include:

- City-wide base map identifying the location of each City Park and open space, city destinations and landmarks, and existing trails and roads connecting the identified places
- Individual park maps and narrative descriptions depicting the natural features of the park including access points to the park, roads connecting the park with adjacent neighborhoods and with city destinations and/or landmarks, existing parking areas, existing trails, and existing recreation facilities.

The Contractor will be required to prepare an inventory and assessment for the following City parks:

- | | |
|-------------------------|------------------------------------|
| 1. Tom Miklejn Field | 16.Mackenna |
| 2. Caravelle Drive Park | 17.North & Lockport |
| 3. D'Amelio Park | 18.Orleans and 24 th |
| 4. DiFranco Park | 19.Orleans and 25 th |
| 5. Gill Creek | 20.Perry Park |
| 6. Gluck Park | 21.Porter Park |
| 7. Griffon Park | 22.70 th St Park (KIES) |
| 8. Hennipen Park | 23.Statue of Liberty Park |
| 9. Hyde Park | 24.63 rd Street Park |
| 10.Jayne Park | 25.Stephenson Park |
| 11.Jerauld Park | 26.Century Club Park |

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12.Lafayette Park	27.Black Cherry Park
13.LaSalle Park	28.70 th
14.Liberty Park	29.91 st
15.Legends Basketball Court	30.South Junior Playground

Task A.1 - Project Initiation

The Consultant will hold an initiation meeting (**Meeting. No. 1**) with the AC in order to review the project requirements, exchange information and clarify roles and responsibilities of all parties. Accomplishments at this first meeting shall include the following:

- Establish a tentative schedule for AC meetings.
- Confirm understanding of the scope of services.
- Confirm expectations and roles of participants.
- Develop a list of contacts and stakeholders to facilitate additional data collection.

Task A.2 - Data Collection

The Consultant will conduct individual site visits to all parks for the purpose of preparing the inventory of facilities database. Team members, with guidance from City staff, will collect data on site amenities to include:

- Geographic location of the park within the city
- Natural features including topography, geology, surface hydrology, site ecology, flooding and erosion, sources of pollution and scenic resources
- Local and regional context of the park including demographics, tourist impact and business impact
- Existing developmental controls for the area including land ownership pattern, existing zoning, permits and approvals necessary for new pedestrian/bike trails and rights-of-way
- Existing utilities serving the park (water, sewer, solid waste, electricity, wireless internet access capacity, etc.)
- Existing transportation infrastructure within and adjacent to the park including road and rail networks
- Accessibility per ADA requirements
- Historic resources within the park
- Recreational resources – including facilities – condition, capacity and standards for each existing recreation facility; range of population using each facility; types of available passive and active recreational activities and recreation programs, and the population for which they are designed
- Existing park amenities and their condition including an assessment of park buildings, pools, band shells, etc. relative to structural, mechanical and electrical conditions.
- Management and maintenance of the park
- Existing funding sources for park operations

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- Summary of existing plans and projects influencing the City's park system history, development and improvements
- Analysis of site constraints, needs and opportunities for each park

Information will be recorded on specialized survey forms utilized for the database (see Task A.3 below). A photographic inventory of all parks will be accomplished utilizing digital cameras.

The level of effort for each Team member will vary from park to park, depending upon the type and number of structures, facilities and amenities that exist at each site, and the amount of current information available for each facility.

Upon completion of the site visits, the base maps will be annotated and updated electronically to be used during the planning and design tasks. The base maps, as well as pertinent digital photos taken during the site visits, will become part of the database.

Meeting No. 2 will then be held with select key stakeholders and presidents of block clubs and local sports organizations. We anticipate the following representatives would also be invited to participate in this meeting:

- Parks Superintendent
- Recreation Directors
- City Council liaison

Task A.3 - Data Entry

As part of the site visit activities, the inventory data on the survey forms will be entered into the database. The updated database shall include:

- A Graphic User Interface (GUI) – Easy to use desktop forms will be created and used to update the data on the different parks, their site amenities, and the conditions of each.
- Two levels of security – Level I – Read only permissions. Level II – Read, write, and execute permissions.
- A menu of queries and reports to evaluate City-wide conditions or conditions of a particular park. The menu could be customized, based on the City's needs.
- A user manual for accessing the database, etc. (created under the previous effort).

Task A.4 - Analysis/Summary & Report

This task will conclude with a brief analysis and summary of the inventory and general conditions of the parks and corresponding amenities, which will be organized into a report including photos and other findings information. This summary will also provide a "base year" assessment of conditions. As Task B, below, is completed with updated or new park plans, the information

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will be included in the newly established database. This will assist the City with their monitoring of conditions, improvements and/or removals, and in the preparation of schedules and budgets for parks planning and facilities.

Task A – Deliverables

- City-wide base map
- Individual park base maps and associated narrative descriptions
- Summary of existing related plans and projects
- Analysis of site constraints
- Meeting minutes (**Meetings No. 1 and 2**) summarizing agreements/understandings reached

TASK B - NEEDS & OPPORTUNITIES ASSESSMENT (CITY-WIDE):

Under this task the Consultant will prepare a report based on the findings of Task A and the meetings with the AC, block clubs and sports organizations.

Task B.1 – Establish Base Level of Service

The Consultant will identify a base level of service using the results and data from Task A.

Task B.2 – Parks and Recreation Survey

The Consultant shall create and distribute a survey to the public to solicit input on the existing parks system and associated recreation activities and programs, including but not limited to: the importance/influence of city parks and recreation activities on daily residential life and the level of tourism into the area. The survey will include two sets of questions – one for residents and the other for businesses relying on local tourism.

Task B.3 – Needs Assessment Evaluation

The Consultant will assess indicators of recreational demand and recommend improvements to the City's park system.

This system-wide assessment will be used to guide the development or revision of individual park Master Plans that would be completed under Task C.

As part of this task, in order to better understand projected demand for recreational facilities, the Consultant will conduct a meeting (**Meeting No. 3**) with the following anticipated participants:

- The AC
- Parks Superintendent
- Recreation Directors
- City Council liaison
- Other representatives or officials as directed by the City

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Task B.4 – City-wide Public Meeting (Meeting No. 4)

The Consultant will conduct a city-wide public information meeting to receive comment and input to be considered for the individual Master Plans.

Task B.4 – Recommended Capital Improvements and Potential Funding Sources

The Consultant will identify capital improvement recommendations based on the findings under Tasks A and B. They will also provide a list of potential funding sources that may be available to fund specific short-term and long-term projects.

Task B – Deliverables

- Meeting minutes (**Meetings No. 3 and 4**)
- Survey copy and results
- Needs & Opportunities Assessment Report
- Report on recommended capital improvements and potential funding sources

TASK C – MASTER PLANS (BY INDIVIDUAL PARK)

The ultimate goal of Task C is to provide the AC with one concise document for parks and recreation planning that sets forth findings, management policies and programming and recommendations to address current and future needs. The updated information provided for this task will also be useful in updating other City of Niagara Falls planning efforts, thereby providing for consistency in the City's overall parks and recreation planning. The overall Master Plan will be created through the compilation of individual park Master Plans.

Task C.1 – Individual Park Master Plans

- The Consultant will conduct a meeting (**Meeting No. 5**) with the AC to review the individual park Master Plan to receive comments.
- Based on comments, the Consultant will finalize the individual park Master Plans for the selected parks and prepare an opinion of probable construction costs for each park based on short- and long-term recommendations.

Task C – Deliverables

- Meeting minutes (**Meeting No. 5**)
- Final individual park Master Plans
- Opinion of probable costs for recommended improvements (short- and long-term)

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TASK D – Conceptual Design for City-wide Trail System:

The Consultant shall prepare a Conceptual Design of a City-wide Trail System. The conceptual design of the trail system shall provide for safe non-motorized travel, integrate parks and trails, support the mix of active and passive recreation opportunities that the city parks and open space provide, and preserve natural areas to maintain the community's natural heritage.

Task D – Deliverable

- Conceptual Design for City-wide trail system

Task E – Preliminary City of Niagara Falls Parks Needs Assessment and Master Plan Report

The Consultant shall, in consultation with the AC, prepare a preliminary parks and recreation master plan incorporating the results of the Inventory Report, the Needs Assessment Report and the Individual Park Master Plan. The report will be formatted to facilitate updates/additions in the likely case a phased approach is taken for park development. In addition to the items listed below, the Plan shall include best management practices to avoid or reduce water quality impairments from upland runoff or in-water activities and to avoid impacts, if any, to State-designated Significant Coastal Fish and Wildlife Habitat areas, other Coastal Management Program special management areas, and other sensitive resources.

The parks and recreation master plan shall include, but not be limited to:

- Proposed recommendations, strategies and actions to meet the identified needs - based on the Needs and Opportunities Assessment Report, the findings of the first public information meeting, and the public survey.
- Individual preliminary park master plans. To better convey to municipal leaders and the public the proposed recommendations, 30 individual preliminary park master plans will be prepared – including graphics and other illustrative materials.
- Conceptual designs/graphics showing pedestrian, bicycle and vehicular circulation. To improve public access, improve circulation, and enhance access to scenic resources.
- Design standards/guidelines. To establish aesthetic standards for improvements in city parks and provide a unified look for the parks system, or establish a desired identity/theme for each park.

The design guidelines may include:

- architectural styles and details
- building mass (including height, length, setbacks, and coverage)

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- site coverage by buildings, walkways, landscaping, and parking areas
 - width and type of pedestrian walkways, sidewalks, and waterfront esplanades
 - bulkheads and railings
 - way-finding signs
 - type of benches, lighting, planters, bicycle racks, trash receptacles and other landscape amenities
 - trails types and widths
 - types of plants trees, shrubs, flowering plants or groundcover - native plants or plants that have proven to be non-invasive in the region
-
- Conceptual design for City-wide trail system
 - Cost estimates and possible public and private funding sources.
 - Proposed implementation schedule and methods of implementation.
 - Identified federal, state and local regulatory requirements – permits and approvals.
 - Proposed managerial and operations structure.

Task E – Deliverable

- Preliminary Parks and Recreation Master Plan

TASK F - PUBLIC INFORMATION MEETING (MEETING NO. 6)

The Consultant will conduct a second city-wide public information meeting to present the results of this project for the City. The materials will include a PowerPoint presentation and graphic presentation boards for residents to review before and after the presentation.

Task F – Deliverable

- Meeting minutes (**Meeting No. 6**)

TASK G – FINAL CITY OF NIAGARA FALLS PARKS NEEDS ASSESSMENT AND MASTER PLAN REPORT

Under this task, the Consultant will provide final deliverables based on input received in Task D.

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Task G.1

- The Consultant will conduct a meeting with the AC (**Meeting No. 7**) to review the final comments and refinements gathered at the public information meeting and receive final direction from the AC.

Task G - Deliverables

- Meeting minutes (**Meeting No. 7**)
- Individual Park Master Plans and cost estimates.
- Final City of Niagara Falls Parks and Recreation Master Plan.
- One (1) digital copy of the completed deliverables.

Proposal Submission Requirements

A. Miscellaneous Requirements

The City of Niagara Falls reserves the right to reject all proposals which do not comply with these instructions. Proposals will not be returned and will become property of the City once submitted.

1. Each proposal should be typed or printed double spaced on no more than ten 8 1/2" x 11" pages. Proposals must be received by 3:00 pm on September 22, 2011. Four (4) copies of the proposal should be submitted to:

Thomas J. DeSantis
City Hall – Planning Dept.
745 Main Street
P.O. Box 69
Niagara Falls, New York 14302-0069

2. Expenses incurred in the preparation of the proposals are borne by the Company with the understanding that the Company may not apply to the City for reimbursement of these expenses.
3. Each proposal should be accompanied by a cover letter signed by an officer empowered by the Company to sign such material and thereby commit the Company to the obligations contained in the proposal.
4. Supplements or amendments to the RFP, if any, will be mailed by the City.
5. The Company shall maintain in force the insurance requirements specified in attachment (See Instructions for City of Niagara Falls Standard Insurance Certificate attached).
6. The Consultant shall agree to abide by all applicable Federal, State, and Local laws, rules and regulations regarding equal opportunity and affirmative action. The City has established the following goals for the participation of certified minority and women-owned businesses (M/WBE's) on this project:

MBE's:	8 percent of the total dollar value
WBE's:	5 percent of the total dollar value

Describe how the Company will meet these requirements.

B. Proposal Content

The proposal should contain the following sections:

1. Technical - Describe the approach to be taken in addressing the scope of work.

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2. Describe the management plan to be used in completing the tasks set forth in the scope of work. This description should include proposed project schedule showing starting and completion dates for all tasks and a staff-loading-by-task chart showing individuals allocated time by task, hourly wage rates, and total labor charges. Resumes of proposed personnel should be included in this section.
3. Qualifications - Describe the Company's related experience and identify references including contact person and phone number for each referenced job.
4. Insurances - List types and limits of the Company's insurances.
5. Cost Proposal - Submit separate cost breakdown of labor and expenses for each component of the scope of work. Fees should include all expenses including labor, travel, phone, reproduction costs and other reimbursables. It shall include all services outlined in this proposal. Any survey work necessary will be negotiated as a separate item and may be performed by City staff.

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Proposal Review

Upon receipt of the proposals, the AC will be assembled and proposals will be judged according to the following point system:

Technical: **50 points**
Understanding of scope of work
Appropriateness and reasonableness of approach

Management and Staffing: **35 points**
Project schedule (15)
Efficiency of management plan (10)
Breakdown of staff and labor (10)

Company Qualifications: **30 points**
Experience with projects of similar scope including landscape design, waterfront parks, master plans, recreation planning and community-based design

Cost: **35 Points**
Reasonableness of fee (15)
Thoroughness of cost breakdown (10)

Maximum Total **150 points**

It is the intention of the City of Niagara Falls to select one Consultant based solely on this RFP and on the quality of the proposals received. (Sub-consultants and/or joint ventures are permitted). Top ranked firms may be requested to prepare and give an oral presentation before a city selection committee. Selected and non-selected firms will be notified in writing. The selected firm should be prepared to begin work immediately upon execution of an agreement. **See sample contract attached.**

The City of Niagara Falls reserves the right to reject any late or incomplete submission, and all proposals for whatever reason.

Any questions regarding this RFP should be directed to:

Thomas DeSantis, Senior Planner
phone: (716) 286-4477
fax: (716) 286-4485
desantis@nfez.org

OR

Phone: (716)286-4477
planning@nfez.org

INSTRUCTIONS FOR CITY OF NIAGARA FALLS STANDARD INSURANCE CERTIFICATE

Standard Insurance Requirements apply to the following classifications:

- Construction and Maintenance
- Purchase of, or lease of, merchandise or equipment
- Professional Services
- Property Leased to Others or Use of Facilities or Grounds
- Concessionaire Services
- Livery Services
- All purpose Public Entity Contracts

The Provider of any of the above classifications shall obtain, at his own costs and expense, the following insurance coverage with insurance companies licensed in the State of New York with a Best Rating of at least B+ and shall provide a Certificate of Insurance as evidence of such coverage to the City of Niagara Falls before commencement of work and/or lease or delivery of merchandise or equipment.

Certificate should be made to the City of Niagara Falls, New York, City Hall, 745 Main Street, P.O. Box 69, Niagara Falls, N.Y. 14302-0069, and should reference the operation.

Prior to non-renewal, cancellation of insurance policies, or material change, at least 30 days advance written notice shall be given to the Certificate Holder.

All Certificates of Insurance shall be approved by the Law Department prior to the inception of any work.

Minimum coverage with limits and provisions are as follows:

A. Comprehensive General Liability:

With a minimum combined single limit of liability for Bodily Injury and Property Damage of \$1,500,000.00 per occurrence and \$3,000,000.00 annual aggregate. The coverage shall include:

- * Premises and Operations
- * Products and Completed Operations
- * No exclusion for X C U coverages (explosion, collapse and underground)
- * Independent Contractors
- * Broad Form Property Damage
- * Contractual Liability
- * Fire Legal Liability
- * Personal Injury Liability (Coverage A, B, and C)
- * Liquor Liability (if alcoholic beverages are to be dispensed under NYS license.)

If the work to be performed is undertaken pursuant to a home improvement contract and a City right-of-way permit is required only by reason of the installation, repair or replacement of a driveway, apron, or sidewalk within the City right-of-way, then the limits of liability for comprehensive general liability set forth in this section shall be \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

The City of Niagara Falls shall be named as an Additional Insured on the General Liability Policy with the following provisions:

1. The insurance company or companies issuing the policies shall have no recourse against the City of Niagara Falls for payment of any premiums or for assessments under any form of policy.
2. The insurance shall apply separately to each insured (except with respect to the limit of liability.)

- B. Auto Liability:** (if licensed vehicles are to be used in the operation)
With a combined single limit for Bodily Injury and Property Damage of \$1,000,000.00 each occurrence, the coverage shall include Owned, Hired and Non-owned autos (Symbol 1 should be designated for Liability Coverage on Business Auto Policy.)
- C. Excess Umbrella Liability:**
If General Liability and/or auto limits are lower than required in the above sections, Umbrella Liability or Excess Liability to the required limit is acceptable.
- D. Owners Protective Liability:** (on contracts for construction which exceed a cost of \$100,000.00)
With a minimum limit of \$1,500,000.00 each occurrence and \$3,000,000.00 aggregate. Named insured shall be the City of Niagara Falls, New York.
- E. Professional Liability:**
If the contract includes professional services (engineers, architects, etc.), contractor will carry professional liability insurance with a minimum limit of one million dollars (\$1,000,000.00).
- F. Property Insurance:** (if applicable)
Contractor shall purchase and maintain property insurance upon the work at or off the site to 100% of the contract completed value. This insurance shall include the interest of the Owner, Contractor, and Subcontractors in the work; shall insure against the perils of fire and extended coverage; shall include "all risk" insurance for physical loss and damage including theft, vandalism and malicious mischief, collapse and water damage. All such insurance required by this paragraph shall remain in effect until the Work is completed and accepted by the owner.
- G. Statutory Workers' Compensation and Employers Liability:**
All contractors doing business with or vendors entering upon City of Niagara Falls property shall carry the above insurance in compliance with the Worker's Compensation Law of the State New York.
- H. Performance and Payment Bond:** (where applicable)
A performance and payment bond shall be issued by a Surety company who is licensed by the Insurance Department of the State of New York in favor of the City of Niagara Falls in the amount of not less than one hundred (100) percentum of the total amount and shall be delivered before commencement of lease or assumption of operations under contract.

<p>Note: If the contract is for Professional Services only (engineers, architects, etc.), Paragraphs D, F, and H will not apply.</p>

CONSULTANT SERVICES AGREEMENT
FOR THE
CITY OF NIAGARA FALLS
NEW YORK

PROJECT NAME
PROJECT NAME
PROJECT NAME

CITY OF NIAGARA FALLS, NIAGARA COUNTY

This agreement made this ____ day of _____, 20____, by and between the **CITY OF NIAGARA FALLS, NEW YORK**, (herein after referred to as the “**CITY**”), and:

DESIGNER/CONSULTANT FIRM
DESIGNER/CONSULTANT FIRM
Consultant Address
Consultant Address
Consultant Address

(herein referred to as the “**CONSULTANT**”)

WITNESSETH:

WHEREAS, the Mayor of the City of Niagara Falls, on _____ has authorized the City Engineer to engage the services of a Consultant Engineer to prepare plans and specifications, and advertise for sealed bids for

PROJECT NAME
PROJECT NAME
PROJECT NAME

Whereas, the Consultant has submitted a proposal in writing to the City Engineer to perform the aforesaid services, which proposal has been found acceptable to the City Engineer,

Now, therefore, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

FIRST

RETENTION OF CONSULTANT: The City agrees to retain and hereby does retain the Consultant to perform professional engineering services as more fully set forth in section "THIRD" of this agreement, in connection with the construction of the project.

SECOND

ACCEPTANCE OF RETENTION: The Consultant accepts such retention as set forth in section "THIRD" of this agreement and, subject to the conditions therein contained, agrees to devote his professional engineering skill and judgement to the work and will so design, plan, and inspect the work that every phase therefrom will conform to all current local ordinances and all State and Federal Laws and regulations.

Whenever the Consultant shall deem the consulting services of persons outside of his own organization to be necessary, excluding testing agencies and laboratories for subsurface investigation and material testing personnel as hereinafter provided, he shall obtain such services at his own cost and expense; subject, however, to the prior written approval of the City Engineer. Whenever the City shall deem it advisable, after the first progress payment has been received, the Consultant shall furnish proof that all compensation due and owing for said services has been made prior to the receipt by the consultant of progress payments on his fees from the City under the contract.

THIRD

Work to be Performed: The services to be rendered by the Consultant shall be generally to undertake professional engineering services necessary to do the planning, construction documents, and site inspection for the work at the following locations:

Insert: PROJECT DESCRIPTION

Design Standards: The Consultant is to utilize City of Niagara Falls Department of Engineering Standards and such others as deemed appropriate and professionally responsible.

Professional Services: The professional services to be rendered by the Consultant shall be performed to the satisfaction of the City Engineer and in a form and manner approved by him. Such services shall include the following:

1. Scope Definition
 - a. Conceptual Study
 - b. Condition Appraisal
2. Preliminary Design
3. Final Design & Bidding
4. Engineering Services During Construction
5. Services of Full time Resident Inspector during Construction

and shall include the items hereinafter set forth in the attached scope of work.

FOURTH

PAYMENTS

1. Subject to the provisions of paragraphs “2”, “3”, “4” and “5” of this section, the City agrees to pay the Consultant and the Consultant agrees to accept from the City, in full payment for the services herein provided.
2. Development of the fee charged by the Consultant for the resident inspector(s) shall be based upon the direct salary cost of such Resident Inspector – \$00.00/hr - times a factor of X.X. The term “direct salary cost” is defined as the time card rate only times the number of hours worked, and does not include taxes, fringe benefits or insurance. Overtime rates shall be based upon the direct salary cost of the Resident Inspector as calculated above times a factor of 1.50.
3. The Consultant shall select and hire, with the approval of the City Engineer, laboratories to be employed for materials testing during construction, when the services are both mutually agreed to and/or necessary. The cost of this item shall be a reimbursable expense to the Consultant in a direct cost basis (with no mark-up) for a total amount not to exceed \$ 000000.00. The Consultant shall supervise all work covered under this item.
4. Progress payments made under paragraph “1” shall be made to the Consultant in accordance with the following schedule:

- a. upon completion of the Scope Definition and Conceptual Study Phase
 - Conceptual Study Phase \$ 000000.00
 - Condition Appraisal \$ 000000.00
- b. upon completion of the Preliminary Design Phase \$ 000000.00
- c. Final Design and Bidding Phase
 - upon 80% completion \$ 000000.00
 - upon 100% completion \$ 000000.00
 - upon taking bids \$ 000000.00
- d. Engineering Services during Construction Phase, lump sum, with progress payments based upon the percentage of construction completed: \$ 000000.00
- e. Services of Resident Inspector for a total of \$ 000000.00

Total Fee not to exceed:	<u>\$ 000000.00</u>
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5. The Consultant is advised that after the conceptual study, condition appraisal, and preliminary engineering phases are complete, the City Engineer may terminate the Project if the Consultant's primary cost estimates are in excess of the budgeted construction money available.
6. The Scope Definition and Conceptual Study Phase for all items in this proposal shall be completed within XXX weeks, and final plans and specifications necessary to enable the work to be advertised for bids shall be completed within XXX weeks for a total of XXX weeks, after approval of this agreement by the City of Niagara Falls.
7. If any contractor or subcontractor shall submit a claim for damages or extra work based upon any determination by the Consultant alleged to have been improperly made, and such claim shall be settled on or upheld by the final judgment of the courts, the Consultant shall not receive any additional compensation for any assistance rendered by him to the City in defending such claims, nor for any testimony by such Consultant during any of the court proceedings. Otherwise, the Consultant shall be entitled to additional compensation for any assistance rendered to the City as an expert witness on any litigation with third parties arising out of the performance of work.

FIFTH

EXTRA WORK: No extra work beyond the scope of this agreement shall be performed by the Consultant unless the City Engineer of the City shall with permission of the Mayor, in writing, specifically direct such work to be performed. In the event such work is authorized, the City and the Consultant shall execute a contract amendment describing the extra work and providing for the compensation to be paid therefor. Upon a request by the City, the Consultant will continue working during negotiations for said contract amendment.

SIXTH

TECHNICAL DATA: City acknowledges the Drawings, Schedules, and Specifications prepared by the Consultant as instruments of professional service. Nevertheless, the Drawings, Schedules, and Specifications prepared under this Agreement shall become the property of the City upon completion of the work and payment in full of all monies due the Consultant.

SEVENTH

WORKER'S COMPENSATION AND PROFESSIONAL LIABILITY INSURANCE: This agreement shall be void and of no effect unless the Consultant shall secure Worker's Compensation and Professional Liability Insurance, as outlines in the "Instructions for City of Niagara Falls Standard Insurance Certificate" that immediately follows this agreement.

EIGHTH

PRIOR TERMINATION OF CONTRACT: If at any state of work, hereunder, the City determines not to proceed any further with the Project, then the City shall have the right to terminate this contract, provided that compensation shall be made to the Consultant on the basis of the work which has been accomplished and approved by the City Engineer plus the expenses actually incurred by him to the date of termination, less any payments previously made.

NINTH

ASSIGNMENT: The agreement contemplates the particular services of the Consultant and the Consultant shall not assign, transfer or otherwise dispose of this contract, or his right, title, and interest therein, to any person, firm or corporation, except that monies due to the Consultant and approved for payment by the City may be assigned by him to any bank or financial institution which is rendering financial assistance to the Consultant on this work.

TENTH

EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTIONS: the Consultant agrees to abide by all applicable Federal, State, and Local laws, rules and regulations regarding equal opportunity employment and affirmative action.

ELEVENTH

INDEMNIFICATION: The party of the second part, except as herein otherwise provided shall, to the full extent permissible by New York law, indemnify, defend and hold harmless the City of Niagara Falls, its officers, agents, engineers, servants and employees from and against any and all claims, suits, loss, cost charges, expenses and/or damage of any kind including bodily injury, death and damage to property of the City or others claimed to be sustained or arising directly or indirectly out of or in consequence of this agreement or the work or activities undertaken pursuant hereto.

Notwithstanding the paragraph immediately above, to the extent that the loss or liability shall arise by reason of acts or omissions covered by professional liability insurance provided for and provided as required by this agreement, the liability and responsibility of the party of the second part to indemnify and save the City harmless **with respect to this specific acts or omissions** shall be limited as follows:

The party of the second part, A Professional Engineer, Architect of Land Surveyor, agrees to indemnify the City of Niagara Falls, its officers, employees, servants and agents from and against any liability which they may incur, including reasonable attorney fees, to the extent that the damage, loss or liability was incurred by the negligent acts, errors or omissions of the Professional Engineer, Architect or Land Surveyor.

TWELFTH

GENERAL: This agreement represents the entire agreement between the City and the Consultant and supersedes all prior negotiations, representation, or agreements, either written or oral. This agreement may be amended only by written instrument signed by both the City and the Consultant.

IN WITNESS WHEREOF, the City and the Consultant have executed this agreement on the day and year first above written.

THE CITY OF NIAGARA FALLS, NEW YORK

By: _____
Mayor of Niagara Falls, New York

Attest: _____

Date: _____

**CONSULTANT
CONSULTANT
CONSULTANT**

By: _____
NAME, TITLE

Attest: _____

Date: _____