



**CITY OF ALBANY
DIVISION OF ENGINEERING**

**REQUEST FOR PROPOSALS
FOR
PROFESSIONAL CONSULTING SERVICES**

**PROPOSALS DUE: APRIL 19, 2019
AT 12:00 NOON**

CITY OF ALBANY

PUBLIC RESTROOM ASSESSMENT

RFP 2019-17

APRIL 5, 2019

City of Albany, New York

REQUEST FOR PROPOSALS FOR THE PROVISION OF PROFESSIONAL CONSULTING SERVICES FOR:

PUBLIC RESTROOM ASSESSMENT

CITY OF ALBANY, NEW YORK

RFP 2019-17

IMPORTANT NOTICE:

A restricted period under the Procurement Lobbying Law is currently in effect for this Procurement and it will remain in effect until approval of the Contract. Proposers are prohibited from contact related to this procurement with any City of Albany employee other than the designated contacts listed below refer to:

Designated Contacts for this Procurement:

For Project Specific Clarifications: Charles William

For Public Procurement Process Clarifications: Angelica Kang, Esq.

SECTION 1: PURPOSE

1.1 The City of Albany hereby requests proposals from qualified engineering/architectural firms to provide professional services related to the assessment of the public restrooms located in Twenty Seven (27) city owned buildings as outlined in the attached summary. Minority Business Enterprises and Women's Business Enterprises are encouraged to submit proposals.

SECTION 2: RECEIPT OF PROPOSALS

2.1 Three (3) copies of the Proposal must be received in a sealed envelope marked "Proposal Enclosed – Engineering Services – Public Restroom Assessment" no later than **April 19, 2019 at 12:00 noon** at the following address (late proposals cannot be accepted):

Angelica Kang
Assistant Corporation Counsel
City Hall – Room 106
24 Eagle Street
Albany New York, 12207

- 2.2 The cost proposal shall be included in a separately sealed envelope within the proposal submittal such that it may be reviewed independent of the remainder of the proposal.
- 2.3 Each proposal submitted will be the document upon which the City of Albany will make its initial judgment regarding each proposer's qualifications, methodology, and ability to provide the requested services.
- 2.4 Those submitting proposals do so entirely at their own expense. There is no expressed or implied obligation by the City to reimburse any firm or individual for any costs incurred in preparing or submitting proposals, preparing or submitting additional information requested by the City, or participating in any selection interviews.
- 2.5 Submission of any proposal indicates an acceptance of the conditions contained in this Request unless the submitted proposal clearly and specifically states otherwise.
- 2.6 The City of Albany reserves the right to accept or reject any and all proposals in whole or in part, to waive any and all informalities, require supplemental statements or information from any responsible party, negotiate potential contract terms with any respondent to this RFP, have discussions with any respondent to this RFP to correct and/or clarify responses which do not conform to the instructions contained herein and to disregard all non-conforming, non-responsive or conditional proposals.
- 2.7 The City of Albany reserves the right to award the work, in whole or in part, to one or more firms and individuals.
- 2.8 Any award of the consulting services work shall be conditioned on the later execution of a formal written contract. The City of Albany reserves the right to revoke or rescind any award at any time prior to the full execution of a formal written contract.
- 2.9 Respondents shall avoid submission of marketing materials.
- 2.10 All information submitted in response to this RFP is subject to the Freedom of Information Law (FOIL), which generally mandates the disclosure of documents in the possession of the City upon the request of any person unless the content of the document falls under a specific exemption to disclosure.

SECTION 3: QUALIFICATIONS OF PROPOSER

Each proposer shall provide a statement of qualifications including:

- a. A brief history and description of the firm submitting the proposal.

- b. Identification of the firm's professional staff members who will be assigned to this project if the firm's proposal is selected. Include a resume for each such professional staff member that details qualifications, years and types of experience, education, accomplishments, etc. Specify the extent of the availability and commitment of each such professional staff member who will be assigned to this project if the firm's proposal is selected.
 - c. At least three (3) references, including contact names, addresses, and telephone numbers.
 - d. A signed cover letter from a person within the firm who is authorized to make representations on behalf of the firm and to bind the firm.
 - e. A comprehensive description of the firm's experience in similar projects.
 - f. Any additional information which would serve to distinguish the firm from other firms submitting proposals such as examples of work on projects similar to the project contemplated by this RFP, any special expertise or experience of the firm, etc.
- 3.2 The City of Albany may make such inquiries it deems necessary to determine the ability of each proposer to perform the services contemplated by this RFP. Proposers shall promptly furnish all information and data for this purpose as may be subsequently requested by the City of Albany.

SECTION 4: SCOPE OF SERVICES

- 4.1 Attend a project kickoff meeting with the City of Albany to review the project goals, objectives, and schedule.
- 4.2 Selected consultant shall present their proposed project plan for review and approval by the City. Plan shall include proposed inspection team members, project approach and schedule. The City shall provide notification to building occupants and provide escorts when necessary. The selected consultant shall not deviate from the approved schedule without prior approval from the City.
- 4.3 Each inspection shall include a comprehensive evaluation of each restroom. Evaluation points shall include, but not be limited to the following:
 - a. ADA Accessibility.
 - b. General appearance and cleanliness.
 - c. Toilet Stalls: Toilets & Parts, Toilet Tissue Dispensers, Toilet Tissue, Feminine Care Receptacles, Toilet Seat Covers, Grab Bars.
 - d. Counters: Sinks, Faucets, Soap Dispensers, Hand Soap, Paper Towel Dispensers, Paper Towels.

- e. Interior Fixtures: Urinals, Urinal Screens, Trash Receptacles, Trash Can Liners, Mirrors, Wall Lighting, Light Bulbs, Air Fresheners.
- f. Entry: Doors, Push-Plates, Pulls & Kick-Plates, Signage, Door Hardware.
- g. Floors: Floor Tile, Flooring Adhesive, Molding, Floor Drains.
- h. Ceiling: Ceiling Tiles, Exhaust Fans, Overhead Lighting, Light Bulbs.
- i. Area Outside Restroom: Hand Sanitizer Stations, Drinking Fountains, Flooring.

4.4 Report

- a. Based upon the results of the inspection, prepare a report summarizing the restroom evaluations.
- b. The report shall recommend improvements on a priority basis along with all associated costs including consultant costs when necessary.
- c. Submit a preliminary report to the city for review and comment.
- d. Upon receipt of comments, submit final report to the City.
- e. Assume a total of two (2) meeting during this phase of the project

4.5 Project Administration: This project will be administered by the City of Albany Division of Engineering under the direction of Randall J. Milano, City Engineer. Any questions concerning the submittal should be directed to Charles William. at (518) 434- 5675, or faxed to (518) 434-5696. E-mail to cwilliam@albanyny.gov.

4.6 Project Schedule:

- ✓ Proposal Submission April 19, 2019
- ✓ Executed Contract..... May 17, 2019
- ✓ Project Kick Off Meeting..... May 24, 2019
- ✓ Complete Evaluation May 17, 2019
- ✓ Submit Preliminary Report July 12, 2019
- ✓ Submit final Report..... August 2, 2019

4.7 Project Deliverables: The following deliverables shall be submitted to the City of Albany for review:

- ✓ Preliminary Report.....One (1) digital copy in PDF format.
- ✓ Final Report.....Three (3) hard copies and Ten (10) digital copies in PDF format on CD.

SECTION 5 WORK PROPOSAL

5.1 Address the Scope of Services referenced in Section 4 above, including a detailed work plan and project approach that includes task definitions and methodology, milestones, and project schedule.

SECTION 6: COST PROPOSAL

6.1 Provide the individual proposed cost for each of the services set forth in Section 4. Subsections 4.1 through 4.7.

6.2 Clearly set forth in detail any and all additional expenses for which you expect to be reimbursed. The proposal must, however, provide a guarantee that no additional fees will be charged to the City of Albany without prior written consent by the City.

6.3 As identified in Section 2.2, the cost proposal shall be included in a separately sealed envelope within the proposal submittal such that it may be reviewed independently.

SECTION 7: DESIGN DELEGATION

7.1 Unless noted otherwise, the selected proposer will be responsible for the design and certification of all components of this project. Design delegation to the contractor of any component of this project is strictly prohibited without prior written consent from the City of Albany. It is critical that the Consultant takes complete responsibility for the design of the work and avoids delegation of design to others.

7.2 If the Consultant wants to delegate design, he/she will request in a letter to the City Engineer that delegation be authorized, explain specifically why for each case, and state that the work is ancillary to the project. The City Engineer will review the request and provide a written reply.

7.3 In all cases when design is delegated, the Consultant shall provide the layout, loading, performance requirements, geometry, referenced standards and all other design parameters required so the Contractor's design professional is able to design the components or systems. The Consultant shall be responsible to

review and approve the contractor's submittal for conformance with the design concept.

SECTION 8: CONTRACT

- 8.1 The selected proposer(s) will be required to execute a contract with the City of Albany. A sample City of Albany Professional Services Agreement has been included for review.
- 8.2 All requests for revisions to City of Albany Professional Services Agreement must be received on or before April 15, 2019. All requests shall be made in writing to Charles William at the following address:

Division of Engineering
One Conners Blvd.
Albany, NY 12204
Phone: (518) 434-5675
E-mail: cwilliam@albanyny.gov

- 8.3 After that date, the City will no longer accept any requests for revisions to the City of Albany Professional Services Agreement.

SECTION 9: PROPOSAL EVALUATION:

- 9.1 Proposals shall remain valid until the execution of a contract by the City of Albany or July 29, 2019 whichever comes first.
- 9.2 Proposals shall be examined and evaluated by the City of Albany, Engineering Division and the Corporation Counsel's Office to determine which Proposal provides the most favorable system in the most cost effective manner. The Proposal should be thorough, comprehensive, detailed and meet the requirements of this RFP. A recommendation will be made for a contract award to the Proposal with the overall best qualified proposal based on all the following criteria:
- ❖ Proposer's demonstrated capabilities, professional qualifications, and experience.
 - ❖ The wherewithal of the proposer(s) to render the requested services to the City in a timely fashion.
 - ❖ Total proposed cost.
 - ❖ Completeness of the proposal.
- 9.3 The selection of a proposal will not be based solely on a monetary evaluation. Considerable weight will be given to experience in the areas required and the track record of the proposer(s).

SECTION 10: ALTERNATIVES

- 10.1 Proposals may include alternative matters or items not specified or requested in this RFP. However, all such alternatives matters or items must be listed separately from the proposal and the cost(s) thereof must be separate and itemized.

SECTION 11: INDEMNIFICATION:

- 11.1 The selected proposer will be required to defend, indemnify, and save harmless the City of Albany, its employees and agents, from and against all claims, damages, losses and expenses (including without limitations, reasonable attorney's fees) arising out of, or in consequence of, any negligent or intentional act or omission of the selected proposer, its employees or agents, to the extent of its or their responsibility for such claims, damages, losses, and expenses.

SECTION 12: REQUEST FOR PROPOSAL CLARIFICATION:

- 12.1 All inquiries with respect to this Request for Proposals shall be directed to the following:

For project specific clarifications:

Charles William
Division of Engineering
One Conners Blvd.
Albany, NY 12204
Phone: (518) 434-5675
Fax: (518) 434-5696
E-mail: cwilliam@albanyny.gov

For public procurement process clarifications:

Angelica Kang, Esq.
Assistant Corporation Counsel
Department of Law
City Hall, Room 106
24 Eagle Street
Albany, New York 12207
Phone: (518) 434-5050
E-mail: akang@albanyny.gov

- 12.2 All questions about the meaning or intent of the specifications shall be submitted **in writing**. Replies will be posted via the City's website: <http://www.albanyny.gov/NewsandEvents/RFPs.aspx>, along with the electronic version of this RFP. Questions received less than four (4) business days prior to the date of submission of proposals will not be answered. Only questions

answered by formal written Addenda will be binding. Oral or other interpretations or clarifications will be without legal effect.

- 12.3 In addition, any changes, additions or deletions to this RFP will also be posted on the City's website: <http://www.albanyny.gov/NewsandEvents/RFPs.aspx>, along with the electronic version of this RFP. Respondents are urged to check the City's website frequently for notices of any clarification of or changes, additions, or deletions to this RFP.

OTHER THAN THE CONTACT IDENTIFIED ABOVE, PROSPECTIVE RESPONDENTS SHALL NOT APPROACH THE CITY'S EMPLOYEES DURING THE RESTRICTED PERIOD OF THIS RFP PROCESS ABOUT ANY MATTERS RELATED TO THIS RFP OR ANY QUALIFICATIONS SUBMITTED PURSUANT THERETO.

SECTION 13: MODIFICATION AND WITHDRAWAL OF PROPOSALS:

- 13.1 Proposals may be modified or withdrawn by an appropriate document duly executed (in the manner that a proposal must be executed) and delivered to the place where proposals are to be submitted at any time prior to the opening of proposals.
- 13.2 If within twenty-four (24) hours after the proposals are opened, any proposer files a duly signed written notice with the City and promptly thereafter demonstrates to the reasonable satisfaction of the City that there was a material and substantial mistake in the preparation of its proposal, that proposer may withdraw its proposal. Thereafter, that proposer will be disqualified from further proposal on the work.

SECTION 14: INSURANCE REQUIREMENTS:

- 14.1 The selected proposer will be required to procure and maintain at its own expense the following insurance coverage:
- A) Workers' Compensation and Employer's Liability Insurance: Must show evidence of Worker's Compensation insurance at State statutory limits, a policy or policies providing protection for employees in the event of job-related injuries;
 - B) General Liability Insurance: A policy or policies of comprehensive general liability insurance of general liability limits of \$1,000,000 per occurrence/\$2,000,000 aggregate;
 - C) Errors and Omissions Insurance: A policy or policies of errors and omissions insurance with limits of not less than one million dollars (\$1,000,000.00). Said insurance must be issued by an insurer licensed to do business in the State of New York and must have an A.M. Best rating of not less than "A"; and

- D) Automobile Liability Insurance: In the event that Respondent is using a vehicle in business, a policy or policies of comprehensive automobile liability insurance with limits of not less than \$1,000,000 for each accident because of bodily injury, sickness, or disease, including death at any time, resulting therefrom, sustained by any person caused by accident; and a policy or policies with limits of not less than \$1,000,000 for damage because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance, or use of any automobiles, including owned, non-owned and hired.

14.2 Each policy of insurance required shall be in form and content satisfactory to the City of Albany, and shall provide that:

- A) The City of Albany is named as additional insured on a primary and non-contributing basis.
- B) Said insurance must be issued by an insurer licensed to do business in the State of New York and must have an A.M. Best rating of not less than "A".
- C) The insurance policies shall not be changed or cancelled until the expiration of thirty (30) days after written notice to the City of Albany.
- D) The insurance policies shall be automatically renewed upon expiration and continued in force unless the City of Albany is given sixty (60) days written notice to the contrary.

14.3 No work shall commence under the contract until the selected proposer has delivered to the City of Albany or its designee proof of issuance of all policies of insurance required by the Contract to be procured by the selected proposer. If at any time, any of said policies shall be or become unsatisfactory to the City, the selected proposer shall promptly obtain a new policy and submit proof of insurance of the same to the City for approval. Upon failure of the selected proposer to furnish, deliver, and maintain such insurance as above provided, the contract may, at the election of the City, be declared suspended, discontinued or terminated. Failure of the selected proposer to procure and maintain any required insurance shall not relieve the selected proposer from any liability under the contract, nor shall the insurance requirements be constructed to conflict with the obligations of the selected proposer concerning indemnification.

SECTION 15: NON-COLLUSIVE PROPOSAL CERTIFICATE & ACKNOWLEDGMENT:

15.1 Each proposer shall complete and submit with its, his, or her proposal the "Non-Collusive Proposal Certificate" and the "Acknowledgment" found on the pages 12 and 13 of this RFP.

SECTION 16: PROCUREMENT FORMS AND REQUIREMENTS:

- 16.1 Additional requirements for this RFP are described below. Relevant statements, where required to be submitted, must be executed and included in the submission in the following order: 1. Iran Divestment Act Statement and 2. Non-Discrimination and Diversity Requirements.
- 16.2 Iran Divestment Act: Every Proposal made to the City must contain the following statement, signed by the Respondent on company letterhead and affirmed as true under penalty of perjury:

"By submission of this proposal, each proposer and each person signing on behalf of any proposer certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each proposer is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law."

The list in question is maintained by the New York State Office of General Services. For further information and to view this list please go to:

<http://www.ogs.ny.gov/about/regs/ida.asp>

- 16.3 Non-Discrimination and Diversity Requirements: Pursuant to Federal laws and regulations, the New York State Executive Law Article 15-A and the City of Albany General Code Chapter 48, Article III Omnibus Human Rights Law, the City recognizes its obligation under the law to prevent discrimination on the grounds of race, sex, creed, color, religion, national origin, sexual orientation, gender, age, disability, marital or domestic partner, or English proficiency and to promote opportunities for maximum feasible participation of certified minority- and women-owned business enterprises and the employment of minority group members and women in the performance of City contracts.

In furtherance of these rules and principles, the City of Albany highly encourages the participation of certified minority- and women-owned business enterprises ("MWBE") at the City's goal levels and the employment of minority groups' members and women in the performance of its contracts. The City of Albany hereby notifies all Consultants submitting a proposal that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, sex, creed, color, religion, national origin, sexual orientation, gender, age, disability, marital or domestic partner, or English proficiency in consideration for award.

Further, every Proposal made to the City must contain the following statement, signed by the Respondent on company letterhead and affirmed as true under penalty of perjury:

“The Respondent, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, sex, creed, color, religion, national origin, sexual orientation, gender, age, disability, marital or domestic partner, or English proficiency in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Respondent will not participate directly or indirectly in the discrimination prohibited by the federal, state and local laws and regulations, including employment practices. In all solicitations, either by competitive bidding, or negotiation made by the Respondent for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Respondent of the Respondent’s obligations under this Statement and the federal, state and local laws and regulations relative to Non-discrimination on the grounds of race, sex, creed, color, religion, national origin, sexual orientation, gender, age, disability, marital or domestic partner, or English proficiency.”

SECTION 17: SUBMISSION REQUIREMENTS:

17.1 All Proposers shall be required to submit a complete proposal. As outlined in this RFP, all proposals shall include the following:

- A) Statement of Qualifications as outlined in Section 3.
- B) Work Proposal as outlined in Section 5.
- C) Cost Proposal as outlined in Section 6.
- D) Non-Collusive Proposal Certificate and Acknowledgment Form as outlined in Section 15
- E) Iran Divestment Act statement, as outlined in Section 16.
- F) Non-Discrimination and Diversity statement, as outlined in Section 16.

17.2 Failure to include all of the above items may result in the proposal being considered nonresponsive.

NON-COLLUSIVE PROPOSAL CERTIFICATE
PURSUANT TO NEW YORK STATE GENERAL MUNICIPAL LAW SECTION 103-D

By submission of this proposal, each proposer and each person signing on behalf of any proposer certifies, and in the case of a joint proposal 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 the proposal 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 proposer or with any competitor;
- (2) Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the proposer and will not knowingly be disclosed by the proposer prior to the opening, directly or indirectly, to any other proposer or to any competitor; and
- (3) No attempt has been made or will be made by the proposer to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

(Signature)

(Print Name and Title)

(Name of Partnership or Corporation)

(Date)

ACKNOWLEDGMENT BY PROPOSER

If Individual or Individuals:

STATE OF _____)
COUNTY OF _____) SS.:
On this _____ day of _____, 2019, before me personally appeared _____ to me known and known to me to be the same person(s) described in and who executed the within instrument, and he/she/they severally acknowledged to me that he/she/they executed the same.

Notary Public, State of _____
Qualified in _____
Commission Expires _____

If Corporation:

STATE OF _____)
COUNTY OF _____) SS.:
On this _____ day of _____, 2019, before me personally appeared _____ to me known, who, being by me sworn, did say that he/she is the (give title) _____ of the (name of corporation) _____, the corporation described in and which executed the above instrument; that he/she knows the seal of the corporation, and that the seal affixed to the instrument is such corporate seal; that it was so affixed by order of the board of directors of the corporation, and that he/she signed his/her name thereto by like order.

Notary Public, State of _____
Qualified in _____
Commission Expires _____

If Partnership:

STATE OF _____)
COUNTY OF _____) SS.:
On this _____ day of _____, 2019, before me personally came _____, to me known to be the individual who executed the foregoing, and who, being duly sworn, did depose and say that he/she is a partner of the firm of _____ and that he/she has the authority to sign the same, and acknowledged that he/she executed the same as the act and deed of said partnership.

Notary Public, State of _____
Qualified in _____
Commission Expires _____

CITY OF ALBANY

City-Owned Buildings With Public Restrooms

	Address	Building Name / Description	Date	F.A.	No. of Public Bathrooms			Location(s)
					M	F	U	
1	Austain Ave 63	Westland Hills Park	1974	1,155	1	1	-	
2	Brevator St. 130	AFD Station #10	1988	8,887	-	-	1	Located at front area
3	Clinton Ave. 670	AFD Station #7	1890	4,200	-	-	1	
4	Clinton Ave. 775	Bleeker Stadium Locker House	1937	6,728	1	1	2	
5	Clinton Ave. 809	Skating Rink			1	1	-	
6	Colvin Ave. Rear 60	Westland Hills Pk Pool House			1	1	-	
7	Delaware Ave. 164	Lincoln Park Bath House	1940	12,736	1	1	2	Note, first Floor bathrooms are in locker rooms - entire room including showers to be evaluated
8	Delaware Ave. 360	AFD. Station #9	1910	11,348	-	-	1	
9	First Ave. 131	Seasonal buildings - Baseball			1	1	-	
10	First Ave. 65	Krank Park			1	1	-	
11	Hoffman Ave. 21	Youth & Recreation	1950	9,168	-	-	2	
12	Madison Ave. 1123	Steamer #10 Theatre	1928	8,980	-	-	2	
13	Manning Blvd. 700	AFD. - Arbor Hill	1990	13,641	-	-	1	
14	McCarty Ave. 175	American Legion Memorial Pk.			1	1		
15	New Scotland Ave. 441	AFD. Station #11	1926	5,808	-	-	1	
16	North Lark St. 2	Arbor Hill Sortball field			-	-	2	
17	North Lark St. 45	Arbor Hill Community Center	1910	8,220	1	1	-	
18	O'Neil Rd. 65	Golf Course Club House	1992	8,632	1	1	-	Note, Bathrooms are in locker rooms - entire room including showers to be evaluated
19	Partridge St. 316	Ridgefield Park	1980	2608	1	1	-	
20	Partridge St. 389	Seasonal Buildings - Baseball			1	1	-	
21	Quackenbush St. 21	Albany Visitors Center	1800	2,602	1	1	-	
22	Richard Connors Blvd. 1	Department of General Services	1991		1	1	-	
23	S. Pearl St. 289	AFD. South End			-	-	1	
24	Second Ave. 239	Albany Civic Theatre	1891	5,940	1	1		
25	Washington Ave. 324	AFD. Station #1	1891	5,113	-	-	1	
26	Willet St. 35	Washington Park - Lake House			1	1	-	
27	Woodlawn Ave. 249	Seasonal Building - Baseball			1	1	-	

AGREEMENT
BY AND BETWEEN
THE CITY OF ALBANY
AND

FOR THE PROVISION OF DESIGN
SERVICES FOR PUBLIC RESTROOM ASSESSMENT

This Agreement made _____, 2019 (hereinafter referred to as the “EFFECTIVE DATE”) by and between the CITY OF ALBANY, a New York municipal corporation with its principal offices at 24 Eagle Street, Albany, New York, 12207 (hereinafter referred to as the “CITY”) and _____, a _____ corporation, with its offices located at _____ (hereinafter referred to as “CONSULTANT”).

WITNESSETH

WHEREAS, the CITY issued a Request for Proposals dated April 5, 2019 (which is hereinafter referred to as the “RFP” and which is incorporated herein, and made a part of this Agreement and marked “EXHIBIT A”) for the provision of public restroom assessment; and

WHEREAS, the CONSULTANT submitted a Proposal dated April 19, 2019, (which is hereinafter referred to as the “Proposal” and which is incorporated herein, and made a part of this Agreement and marked “EXHIBIT B”) for the provision of said design services for Tivoli Preserve Trail & Park Improvements; and

WHEREAS, the CITY has selected CONSULTANT to provide the said public restroom assessment,

NOW, THEREFORE, THE PARTIES HERETO, IN CONSIDERATION OF THE MUTUAL COVENANTS SET FORTH IN THIS AGREEMENT, AGREE AS FOLLOWS:

ARTICLE I. SCOPE OF SERVICES

CONSULTANT agrees to provide the Scope of Services for public restroom assessment, as forth in the CITY’s RFP numbered 2019-14 and dated April 5, 2019, a copy of which is incorporated herein, and the Scope of Services as more specifically set forth on pages [PAGE #s] of CONSULTANT’s Proposal, a copy of which is incorporated herein. All services and deliverables shall be provided within the time period set forth in Section 4.6 of the CITY’s RFP.

ARTICLE II. FEES

In consideration of the terms and obligations of this Agreement, the CITY agrees to pay, and the CONSULTANT agrees to accept, the following fee:

Any task description that does not have a cost associated must be approved by the City Engineer or his designated representative, upon the submission of a task order by CONSULTANT. No task order submitted by CONSULTANT will be accepted that does not include a “not to exceed” quote for that task.

The CONSULTANT shall submit to the CITY itemized bills, properly executed claim forms, vouchers, and such other necessary information or supporting documentation as may be required by the CITY in order to process payment.

ARTICLE III. TERM OF THE AGREEMENT

The term of this AGREEMENT will be as set forth in the RFP.

ARTICLE IV. RELATIONSHIP

The CONSULTANT is, and will function as, an independent contractor under the terms of the Agreement and shall not be considered an agent or employee of the CITY for any purposes, and the employees of the CONSULTANT shall not in any manner be, or be held out to be, agents or employees of the CITY.

ARTICLE V. OWNERSHIP OF DOCUMENTS

All documents, including original drawings, estimates, specifications, field notes, and data prepared and furnished by the CONSULTANT pursuant to this Agreement shall be the property of the CITY.

ARTICLE VI. LICENSES

The CONSULTANT shall at all times obtain and maintain all licenses required by the State of New York to perform the services contemplated by this Agreement.

ARTICLE VII. ASSIGNMENTS

The CONSULTANT is, as per Section 109 of the New York General Municipal Law, prohibited from assigning, transferring, conveying, subcontracting or otherwise disposing of this Agreement, or of its right, title, or interest therein without the previous consent in writing of the CITY.

ARTICLE VIII. INDEMNIFICATION

To the fullest extent permitted by law, the CONSULTANT shall defend, indemnify, and save harmless the CITY, its boards, employees, agents and volunteers, from and against any and all claims, liabilities, actions, demands, damages, losses and expenses (including but not limited, without limitation reasonable attorney's fees and all other costs of defense) arising out of, or in consequence of, any negligent or intentional act or omission of CONSULTANT, its employees or agents, including subcontractors, in the direct or indirect performance of CONSULTANT's services. Both PARTIES shall notify each other in writing within thirty (30) days of any such claims or demands and shall cooperate in the defense of any such actions.

ARTICLE IX. INSURANCE

Notwithstanding the terms, conditions or provisions, in any other writing between the parties, the CONSULTANT hereby agrees to effectuate the naming of the CITY, its boards, officers and employees as additional insureds on a primary and non-contributory basis on the CONSULTANT's insurance policies, with the exception of the Worker's Compensation.

All policies of insurance required shall be in the following form and content satisfactory to the CITY:

- a) Said insurances must be issued by an insurer licensed to do business in the State of New York and must have an A.M. Best rating of not less than "A".
- b) The insurance policies shall state that the organizations coverage shall be primary coverage for the municipality, its boards, officers and employees.
- c) The insurance policies shall state the CONSULTANT agrees to indemnify the municipality for any applicable deductibles.
- d) The insurance policies shall not be changed or cancelled until the expiration of thirty (30) days after written notice to the CITY.
- e) The insurance policies shall be automatically renewed upon expiration and continued in force unless the CITY is given sixty (60) days written notice to the contrary.

The CONSULTANT will be required to procure and maintain at its own expense the following insurance coverage:

- (a) Workers' Compensation and Employer's Liability Insurance: Must show evidence of Worker's Compensation insurance at State statutory limits, a policy or policies providing protection for employees in the event of job-related injuries;
- (b) Commercial General Liability Insurance: A policy or policies of comprehensive general liability insurance of general liability limits of \$1,000,000 per occurrence/\$2,000,000 aggregate;

- (c) Errors and Omissions/ Professional Liability Insurance: A policy or policies of errors and omissions insurance with limits of not less than one million dollars (\$1,000,000.00). Said insurance must be issued by an insurer licensed to do business in the State of New York and must have an A.M. Best rating of not less than "A"
- (d) Excess/Umbrella Insurance: A policy or policies of insurance with limits of \$2,000,000 per occurrence/\$2,000,000 aggregate.
- (e) Pollution Liability Insurance: A policy or policies of pollution liability insurance of liability limits of \$2,000,000 per occurrence/\$2,000,000 aggregate.
- (f) Automobile Liability Insurance: In the event that Respondent is using a vehicle in business, a policy or policies of comprehensive automobile liability insurance with limits of not less than \$1,000,000 for each accident because of bodily injury, sickness, or disease, including death at any time, resulting therefrom, sustained by any person caused by accident; and a policy or policies with limits of not less than \$1,000,000 for damage because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance, or use of any automobiles, including owned, non-owned and hired.

No work shall commence under the contract until the selected proposer has delivered to the CITY or its designee proof of issuance of all policies of insurance required by the Contract to be procured by the selected proposer. If at any time, any of said policies shall be or become unsatisfactory to the CITY, the selected proposer shall promptly obtain a new policy and submit proof of insurance of the same to the CITY for approval. Upon failure of the selected proposer to furnish, deliver, and maintain such insurance as above provided, the contract may, at the election of the CITY, be declared suspended, discontinued or terminated. Failure of the selected proposer to procure and maintain any required insurance shall not relieve the selected proposer from any liability under the contract, nor shall the insurance requirements be construed to conflict with the obligations of the selected proposer concerning indemnification.

ARTICLE X. PROFESSIONAL CONSULTING SERVICES

The ARCHITECT/ENGINEER shall not engage, contract with, or use of the services of any additional consultants without obtaining prior written approval by the CITY. The ARCHITECT/ENGINEER shall submit to the CITY for its approval a report of the scope of services to be provided by each of said consultants, with the latter's acknowledgement thereof. No provision of this Agreement and no approval by the CITY of the consultant's scope of services shall, however, be construed as an agreement between the CITY and any such consultant or with any person, firm, or corporation engaged by, contracted with, or whose services are utilized by the ARCHITECT/ENGINEER, or in any way affect the responsibilities of the ARCHITECT/ENGINEER hereunder. Unless otherwise agreed to in writing by the CITY, the fees of any consultants retained by the ARCHITECT/ENGINEER shall be deemed covered by the total sum to be paid by the CITY to the ARCHITECT/ENGINEER as set forth in Article II and the ARCHITECT/ENGINEER alone is responsible for their work.

ARTICLE XI. ACCOUNTING RECORDS

Proper and full accounting records shall be maintained by the CONSULTANT. Said records shall clearly identify the services provided under this Agreement. Such records shall be subject to periodic and final audit by the CITY upon request. Such records shall be accessible to the CITY for a period of six (6) years following the date of final payment by the CITY to the CONSULTANT for the provision of the services contemplated herein.

ARTICLE XII. CONFIDENTIALITY

The CONSULTANT agrees to keep confidential and not to disclose to any person or entity, other than the CONSULTANT's employees, subcontractors and the general contractor and subcontractors, if appropriate, any data or information not previously known to and generated by the CONSULTANT or furnished to the CONSULTANT and marked "CONFIDENTIAL" by the CITY. These provisions shall not apply to information in whatever form that is in the public domain, nor shall it restrict the CONSULTANT from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other legitimate authority, or if disclosure is reasonably necessary for the CONSULTANT to defend itself from any legal action or claim.

ARTICLE XIII. TERMINATION OF AGREEMENT

Notwithstanding any provisions of this agreement, the CITY shall have the right at any time, with or without cause, to terminate the services contemplated by this Agreement upon written notice of such termination. In the event of such termination of this Agreement, the CONSULTANT shall be entitled to prorated compensation for all services provided and authorized by the CITY pursuant to this Agreement prior to the written termination notice. Once such prorated compensation has been paid, the CITY shall have no further obligations to the CONSULTANT.

ARTICLE XIV. MODIFICATIONS

This Agreement may only be modified by a formal written amendment executed by the CITY and the CONSULTANT.

ARTICLE XV. PARTIAL INVALIDITY

If any term, part, provision, section, subdivision, or paragraph of this Agreement shall be held unconstitutional, invalid, or ineffective, in whole or in part, such determination shall not be deemed to invalidate the remaining terms, parts, provisions, sections, subdivisions, or paragraphs thereof.

ARTICLE XVI. CONTRACT DOCUMENTS

It is understood and agreed by the parties hereto that the following documents are incorporated into this Agreement and become as fully a part of this Agreement as if fully set forth herein:

1. The RFP dated April 5, 2019
2. The Proposal dated April 19, 2019;

In the event of any discrepancy, disagreement, or ambiguity among the documents referenced above, said documents shall be given preference in the following order to interpret and to resolve any such discrepancy, disagreement, or ambiguity:

- i. This Agreement;
- ii. The RFP dated April 5, 2019;
- iii. The Proposal dated April 19, 2019;

ARTICLE XVI. NO WAIVER

The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of the Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

ARTICLE XVII. NON-DISCRIMINATION REQUIREMENTS

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the CONSULTANT will not discriminate against any employee, applicant or anyone in the performance of this Agreement because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status.

Furthermore, in accordance with Section 220-e of the Labor law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Agreement shall be performed within the State of New York, CONSULTANT agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin; (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. If this is a building service agreement as defined in Section 230 of the Labor Law, then, in accordance with Section 230 thereof, CONSULTANT agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability; (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. CONSULTANT is subject to fines of \$50 per person per day for any violation of Section 220-e or Section 239 as well as

possible termination of this Agreement and forfeiture of all monies due hereunder for a second or subsequent violation.

ARTICLE XVIII. EXECUTORY

This Agreement shall be deemed executory only for the extent of monies available to the CITY for the performance of the terms hereof and no liability on account thereof shall be incurred by the CITY beyond monies available to or appropriated by the CITY for the purpose of the Agreement and, if applicable, that this Agreement shall automatically terminate upon the termination of State or Federal funding available for such contract purpose.

ARTICLE XIX. GOVERNING LAW

This AGREEMENT shall be governed by and construed according to the law of the State of New York.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed on the day and year first written above.

CITY OF ALBANY

CONSULTANT

Katherine M. Sheehan
Mayor

Consultant Name and Title

NOTARY ACKNOWLEDGEMENT

STATE OF NEW YORK)
COUNTY OF _____) ss.:

On this _____ day of _____, 2019, before me personally appeared CONSULTANT REP, to me known to be the individual who executed the foregoing instrument, and who, being duly sworn by me did say that he is TITLE of the firm CONSULTANT, and that he has the authority to sign same, and acknowledged that he executed the same as the act and deed of the firm.

Notary Public, State of New York
Qualified in _____
Commission Expires _____

NOTARY ACKNOWLEDGEMENT

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:
CITY OF ALBANY)

On this _____ day of _____, 2019, before me personally came Katherine M. Sheehan, to me known and known to me to be the Mayor of the City of Albany, New York and the same person who executed the foregoing instrument; and she acknowledged that she executed the foregoing instrument on behalf of the City of Albany, New York as said Mayor pursuant to the authority vested in her.

Notary Public, State of New York
Qualified in _____
Commission Expires _____