



**Request for Proposal for  
Professional Auditing Services  
For Fiscal Years Ending  
2025, 2026, 2027**

City of Buffalo, Minnesota  
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Buffalo, MN 55313

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**July 11, 2025**

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## I. INTRODUCTION

### A. General Information

The City of Buffalo is requesting proposals from qualified firms of certified public accountants to audit its financial statements for the fiscal years ending December 31, 2025, 2026, and 2027. This audit is to be performed in accordance with auditing standards generally accepted in the United States of America; the standards for financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the provisions of the federal Single Audit Act, and the provisions of OMB Circular A-133.

There is no expressed or implied obligation for the City of Buffalo to reimburse responding firms for any expenses incurred in preparing proposals in response to this request.

To be considered, four (4) hard copies or one (1) PDF copy of a proposal must be received by Joshua Kent, Finance Director / Assistant City Administrator, at 212 Central Avenue Buffalo, MN 55313, [joshua.kent@ci.buffalo.mn.us](mailto:joshua.kent@ci.buffalo.mn.us) by 4:00 P.M. on August 1, 2025. The City of Buffalo reserves the right to reject any or all proposals submitted.

Proposals submitted will be evaluated by the Administration and Finance Departments, which consist of City Staff.

During the evaluation process the City reserves the right, where it may serve the City's best interest, to request additional information or clarifications from responding firms, or to allow corrections of errors or omissions. At the discretion of the City, firms submitting proposals may be requested to make oral presentations as part of the evaluation process.

The City reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the firm of the conditions contained in this request for proposals, unless clearly and specifically noted in the proposal submitted and confirmed in the engagement letter between the City of Buffalo and the firm selected.

It is anticipated that the selection of a firm will be completed by September 19, 2025. Following the notification of the selected firm, it is expected a Letter of Engagement will be executed by September 30, 2025.

B. Term of Engagement

An initial 3-year contract is contemplated subject to annual review of performance. All contract renewals will be at the sole discretion of the City, with scope of services and pricing to be negotiated. The City may select a formal bid process after the initial 3-year contract.

C. Subcontracting

Following the award of the audit contract, no subcontracting will be allowed without the expressed prior written consent of the City of Buffalo.

II. NATURE OF SERVICES REQUIRED

A. General

The City of Buffalo is soliciting the services of qualified firms of certified public accountants to audit its financial statements for the fiscal years ending December 31, 2025, 2026, and 2027. This audit is to be performed in accordance with the provisions contained in this request for proposals.

B. Scope of Work to be Performed

The City of Buffalo desires the auditor to express an opinion on the fair presentation of its basic financial statements in conformity with generally accepted accounting principles. The auditor shall also be responsible for performing certain limited procedures involving required supplementary information required by the Governmental Accounting Standards Board as mandated by generally accepted auditing standards. The auditor will assemble the Annual Comprehensive Financial Report. The auditor is not required to audit the MD&A, OPEB information, or the statistical section of the report.

An annual review of the preliminary Annual Comprehensive Financial Report shall be done to determine any corrective measures necessary for the City to continue to receive the GFOA's Certificate of Achievement for Excellence in Financial Reporting during this engagement.

C. Auditing Standards to Be Followed

To meet the requirements of this request for proposals, the audit shall be performed in accordance with:

1. Generally accepted auditing standards as set forth by the American Institute of Certified Public Accountants (AICPA)
2. The standards for financial audits as set forth in the U.S. General Accounting Offices' (GAO) *Government Auditing Standards*
3. The provisions of U.S. Office of Management and Budget (OMB) Circular A-133

4. The provisions of the *Minnesota Legal Compliance Audit Guide for Local Government*
5. Any other Federal, State and local requirements in effect now, or placed into effect during the engagements

D. Reports to be Issued

Following the completion of the audit of the fiscal year's financial statements, the auditor shall:

1. Issue an opinion letter on the City's basic financial statements in conformity with auditing standards generally accepted in the United States of America.
2. Issue a report on the consideration of the City's internal control over financial reporting.
3. Issue a report on the City's compliance with applicable laws and regulations.
4. Communicate in a letter to management any reportable conditions found during the audit.
5. If applicable, issue a report on the Schedule of Expenditures of Federal Awards required by OMB Circular A-133. If a single audit is needed, the schedule of federal financial assistance and related auditor's report, as well as the reports on the internal controls and compliance, will not be included in the ACFR. They will be the responsibility of the auditor.
6. Prepare any other requested or required reports agreed upon in the annual engagement letter.

If it should become necessary for the City to request the auditor to render any additional services to either supplement the services requested in this RFP or to perform additional work as a result of the specific recommendations included in any report issued on this engagement, then such additional work shall be performed only if set forth in an addendum to the contract between the City and the firm. Any such additional work agreed to between the City and the firm shall be performed at the same rates set forth in the schedule of fees and expenses included in the dollar cost bid. In the required report on internal controls, the auditor shall communicate any reportable conditions or material weaknesses, as defined by Government Auditing Standards, found during the audit.

Irregularities and illegal acts. Auditors shall be required to make an immediate, written report of all irregularities and illegal acts or indications of illegal acts of which they become aware to the City Administrator and the City Council.

E. Special Considerations

1. The City of Buffalo will send its annual comprehensive financial report to the Government Finance Officers Association of the United States and Canada for review in their Certificate of Achievement for Excellence in Financial Reporting program.
2. During the term of the engagement the City of Buffalo may prepare one or more Official Statements in connection with the sale of debt securities, which will contain the general-purpose financial statements and the auditor's report thereon. The auditor shall be required, if requested by the underwriter, to issue any necessary documentation to substantiate the financial information contained in the Official Statement.
3. During the most recent financial statement audit, there were no material weakness cited. This finding is disclosed in *Attachment C*.

F. Working Paper Retention and Access to Working Papers

All working papers and reports must be retained, at the auditor's expense, for a minimum of three (3) years, unless the firm is notified in writing by the City of Buffalo of the need to extend the retention period. The auditor will be required to make working papers available, upon request, to the following parties or their designees:

- City of Buffalo
- MN State Auditor
- U.S. General Accounting Office (GAO)
- Parties designated by the federal or state governments or by the City of Buffalo as part of an audit quality review process
- Auditors of entities of which the City of Buffalo is a sub-recipient of grant funds

In addition, the firm shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.



### III. DESCRIPTION OF THE GOVERNMENT

#### A. Audit Contact Person

The auditor's principal contact with the City will be Chrissie Estrada, Assistant Finance Director, (763) 684-5415, [Chrissie.Estrada@ci.buffalo.mn.us](mailto:Chrissie.Estrada@ci.buffalo.mn.us).

#### B. Background Information

1. The City of Buffalo is located in Wright County and serves an area of 9.9 square miles with an estimated population of 16,711.
2. The City of Buffalo's fiscal year begins on January 1 and ends on December 31.
3. The City is a statutory city with a Council-Administrator form of government.
4. The City provides the usual services to its citizens which include police and fire services, parks, street construction and maintenance, and land use planning, including code enforcement. The City also provides water, sanitary sewer, storm sewer, fiber, electric, airport, civic center and liquor services.
5. The City has a total payroll of approximately \$15 million covering 111 full-time employees and 100 part-time and seasonal staff.
6. The City has a combined budget of \$74.1 million.
7. The City is organized into ten departments. The accounting and financial reporting functions of the City are centralized.
8. More detailed information on the City and its finances can be found in the 2025 annual budget and 2024 ACFR, which are available on the City's website at: <https://www.ci.buffalo.mn.us/194/Finance>.

#### C. Fund Structure

Information on the City's fund types and account groups can be found in the 2024 ACFR available on the City's website at: <https://www.ci.buffalo.mn.us/194/Finance>.

D. Budgetary Basis of Accounting

The City prepares its budgets on a basis consistent with generally accepted accounting principles.

E. Federal and State Financial Assistance

During one or more of the fiscal years to be audited, the City does expect to receive in excess of \$1,000,000 of State and Federal assistance from various programs. The specific programs and information will be available prior to the interim work.

F. Pension Plans

All full time and certain part-time employees of the City are covered by defined benefit pension plans administered by the Public Employees Retirement Association of Minnesota (PERA). The association administers the Public Employees Retirement Fund and the Public Employees Police and Fire Fund which are cost sharing, multiple employer retirement plans. The Buffalo Fire Department Relief Association has its own plan and submits an audited report to the City.

G. Component Units

The City has one blended presented component unit, the City of Buffalo HRA.

H. Magnitude of Finance Operations

The finance department is headed by Joshua Kent, Finance Director / Assistant City Administrator, and consists of 9 employees. The principal functions performed, and the number of employees assigned to each area, are as follows:

<u>Function</u>	<u>Number of Employees</u>
Accounting Technician	2
Utility Billing Specialists	3
Utility Billing Coordinator	1
Senior Accountant	1
Asst. Finance Director	1
Finance Director / Asst. City Admin	1

#### IV. TIME REQUIREMENTS

##### A. Proposal Calendar

Request for proposal issued	July 11, 2025
Due date for proposals	August 1, 2025

##### B. Notification and Contract Dates

Selected firms Presentations	August 25-27, 2025
Selected firm notified	September 19, 2025
Engagement Letter executed	September 30, 2025

##### C. Schedule for 2025 Fiscal Year Audit

The City will have all records ready for audit and all pertinent staff available to meet with the firm's personnel at a date that is mutually convenient. Each of the following should be completed by the auditor no later than the dates indicated.

###### 1. Interim Work

The auditor shall complete interim audit work by January 31, 2026.

###### 2. Detailed Audit Plan and Programs

By January 31, 2026 the auditor shall provide the City a detailed audit plan and a list of all schedules to be prepared by the City.

###### 3. Fieldwork

The auditor shall complete all fieldwork by March 31, 2026.

###### 4. Draft Reports

The Auditors shall have drafts of the audit report(s) available for the City to review by April 30, 2026. The City shall provide all recommendations, revisions and suggestions for improvement to the Auditors by May 15, 2026.

###### 5. Date Final Report is Due May 22, 2026

The final auditor reports should be delivered to the Finance Director at 212 Central Avenue Buffalo, MN 55313 by May 22, 2026.

V. ASSISTANCE TO BE PROVIDED TO THE AUDITOR & REPORT PREPARATION

A. Finance Department and Clerical Assistance

The finance department staff and applicable City management will be available during the audit to assist the firm by providing information, documentation, and explanations. The preparation of audit confirmations will be the responsibility of the City.

B. Work Area, Telephones, Copiers, Fax Machines, Internet Connection

The City will provide the auditor with a conference room that includes adequate work space, desks, and chairs. The auditor will also be provided with access to telephone lines, copiers, and wireless internet connectivity.

C. Report Preparation (ACFR). The assembly of the ACFR will be the responsibility of the auditor. The City will be responsible for reviewing the financial report.

## VI. PROPOSAL REQUIREMENTS

### A. General Requirements

#### 1. Submission of Notification of Interest

Time will be made available to Audit Firms for an on-site visit should one be desired.

#### 2. Inquiries

Inquiries concerning the request for proposals and the subject of the request for proposals should be made to:

Chrissie Estrada, Asst. Finance Director  
Chrissie.Estrada@ci.buffalo.mn.us  
(763) 684-5415

#### 3. Submission of Proposals

The following material is required to be received by August 1, 2025 for a proposing firm to be considered:

##### a. Four (4) hard copies or one (1) PDF copy of the Proposal to include the following:

##### i. Title Page

Title page showing the request for proposals subject; the firm's name; the name, address, and telephone number of the contact person; and the date of the proposal.

##### ii. Table of Contents

##### iii. Transmittal Letter

A signed letter of transmittal briefly stating the proposer's understanding of the work to be done, the commitment to perform the work within the time period, a statement why the firm believes it to be best qualified to perform the engagement and a statement that the proposal is a firm and irrevocable offer for 60 days.

##### iv. Detailed Proposal

The detailed proposal should follow the order set forth in Section VI.B (Proposal) of this request for proposals.

- b. Proposers should send the completed proposal to the following address or email address:

Joshua Kent, Finance Director / Asst. City Administrator  
City of Buffalo  
212 Central Avenue  
Buffalo, MN 55313  
Joshua.Kent@ci.buffalo.mn.us

B. Proposal

1. General Requirements

The purpose of the Proposal is to demonstrate the qualifications, competence and capacity of the firms seeking to undertake an independent audit of the City of Buffalo in conformity with the requirements of this request. As such, the substance of proposals will carry more weight than their form or manner of presentation

The Proposal should demonstrate the qualifications of the firm and of the particular staff to be assigned to this engagement. It should also specify an audit approach that will meet the request for proposals requirements.

2. Independence

The firm should provide an affirmative statement that is independent of the City as defined by Government Auditing Standards.

The firms should also list and describe the firm's professional relationship involving the City or any of its agencies for the past five (5) years, together with a statement explaining why such relationships do not constitute a conflict of interest relative to performing the proposed audit.

3. License to Practice in Minnesota

An affirmative statement should be included that the firm and all assigned key professional staff are properly registered and licensed to practice in Minnesota.

4. Firm Qualifications and Experience

The proposer should state the size of the firm, the size of the firm's governmental audit staff, the location of the office from which the work on this engagement is to be performed and the number and nature of the professional staff to be employed in this engagement on a full-time basis and the number and nature of the staff to be so employed on a part-time basis.

If the proposer is a joint venture or consortium, the qualifications of each firm comprising the joint venture or consortium should be separately identified and the firm that is to serve as the principal auditor should be

noted, if applicable.

The firm is also required to submit a copy of the report on its most recent external quality control peer review, with a statement whether that quality control review included a review of specific government engagements.

The firm shall also provide information on the results of any federal or state desk or field reviews of its audits during the past five (5) years. In addition, the firm shall provide information on the circumstances and status of any disciplinary action taken or pending against the firm during the past five (5) years with state regulatory bodies or professional organizations.

5. Partner, Supervisory and Staff Qualifications and Experience

Identify the principal supervisory and management staff, including engagement partners, managers, other supervisors and specialists, who would be assigned to the engagement. Indicate whether each such person is registered or licensed to practice as a certified public accountant in Minnesota. Provide information on the government auditing experience of each person, including information on relevant continuing professional education for the past three (3) years and membership in professional organizations relevant to the performance of this audit. Engagement partners, managers, other assigned staff may be changed if those personnel leave the firm, are promoted, or are assigned to another office; provided that the replacements have substantially the same or better qualifications or experience. The City retains the right to approve or reject replacements.

6. Similar Engagements with Other Government Entities

For the firm's office that will be assigned responsibility for the audit, list the most significant engagements (up to 5) performed in the last five years that are similar to the engagement described in this request for proposal. These engagements should be ranked on the basis of total staff hours. Indicate the scope of work, date, engagement partners, total hours, and the name and telephone number of the principal client contact.

7. Specific Audit Approach

The proposal should set forth a work plan, including an explanation of the audit methodology to be followed, to perform the services required in Section II of this request for proposal. In developing the work plan, reference should be made to such sources of information as the City's budget and related materials, organizational charts, manuals and programs, and financial and other management information systems.

Proposers will be required to provide the following information on their audit approach:

- a. Proposed segmentation of the engagement
- b. Level of staff and number of hours to be assigned to each proposed segment of the engagement
- c. Sample size and the extent to which statistical sampling is to be used in the engagement

8. Identification of Anticipated Potential Audit Problems

The proposal should identify and describe any anticipated potential audit problems, the firm's approach to resolving these problems and any special assistance that will be requested from the City.

9. Report Format

The proposal should include sample formats for required reports.

C. Dollar Cost Bid

1. Total All-Inclusive Maximum Price

The dollar cost bid should contain all pricing information relative to performing the audit engagement as described in this request for proposal. The total all-inclusive maximum price to be bid is to contain all direct and indirect costs including all out-of-pocket expenses.

The City will not be responsible for expenses incurred in preparing and submitting the proposal. Such costs should not be included in the proposal.

2. Rates by Partner, Manager, Supervisory and Staff Level Times and Hours Anticipated for Each

The dollar cost bid should include a schedule of professional fees and expenses, presented in the format provided in Attachment B, that supports the total all-inclusive maximum price.

3. Rates for Additional Professional Services

If it should become necessary for the City to request the auditor to render any additional services to either supplement the services requested in this RFP or to perform additional work as a result of the specific recommendations included in any report issued on this engagement, then such additional work shall be performed only if set forth in an addendum to the contract between the City and the firm. Any such additional work agreed to between The City and the firm shall be performed at the same rates set forth in the schedule of fees and expenses included in the dollar



cost bid.

4. Manner of Payment

Progress payments will be made on the basis of hours of work completed during the course of the engagement and out-of-pocket expenses incurred in accordance with the firm's dollar cost bid proposal. Interim billing shall cover a period of not less than a calendar month.

VII. EVALUATION PROCEDURES

A. Administration and Finance Departments

Proposals submitted will be evaluated by members of the Administration and Finance Departments.

The City reserves the right to retain all proposals submitted and use any idea in a proposal regardless of whether that proposal is selected.

B. Evaluation Criteria

Proposals will be evaluated using three sets of criteria. Firms meeting the mandatory criteria will have their proposals evaluated and scored for both technical qualifications and price. The following represent the principal selection criteria which will be considered during the evaluation process.

1. Mandatory Elements

- a. The audit firm is independent and licensed to practice in Minnesota.
- b. The firm has no conflict of interest with regard to any other work performed by the firm for the City.
- c. The firm adheres to the instructions in this request for proposal on preparing and submitting the proposal
- d. The firm submits a copy of its last external quality control review report and the firm has a record of quality audit work.

2. Technical Qualifications

- a. Expertise and Experience
  1. The firm's past experience and performance on comparable government engagements
  2. The quality of the firm's professional personnel to be assigned to the engagement and the quality of the firm's

management support personnel to be available for technical consultation

b. Audit Approach

1. Adequacy of a proposed staffing plan for various segments of the engagement
2. Adequacy of sampling techniques
3. Adequacy of analytical procedures

3. Price

Please complete Attachment B

C. Oral Presentations

It is expected that the City will request all firms selected as a finalist to make an oral presentation. Such presentations will provide firms with an opportunity to answer any questions the City may have on a firm's proposal.

D. Final Selection

The Finance Director and City Administrator will recommend to the City Council the appointment of a CPA firm judged to be most responsive and responsible proposer for the auditing services requested. The final decision with respect to the appointment will be made by the City Council.

E. Right to Reject Proposals

Submission of a proposal indicates acceptance by the firm of the conditions contained in this request for proposal unless clearly and specifically noted in the proposal submitted and confirmed in the engagement letter between the City and the firm selected. The City of Buffalo reserves the right without prejudice to reject any or all proposals.

## ATTACHMENT A

### PROPOSER GUARANTEES AND WARRANTIES

- I. Proposer warrants that it is willing and able to comply with State of Minnesota laws with respect to foreign (non-state) corporations.
- II. Proposer warrants that it is willing and able to obtain an errors and omissions insurance policy providing a prudent amount of coverage for the willful or negligent acts, or omissions of any officers, employees or agents thereof.
- III. Proposer warrants that it will not delegate or subcontract its responsibilities under an agreement without the prior written permission of the City.
- IV. Proposer warrants that all information provided by it in connection with this proposal is true and accurate.

Signature of Official: \_\_\_\_\_

Name (typed): \_\_\_\_\_

Title: \_\_\_\_\_

Firm: \_\_\_\_\_

Date: \_\_\_\_\_

## ATTACHMENT B

### SCHEDULE OF PROFESSIONAL FEES AND EXPENSES FOR THE AUDIT OF THE DECEMBER 31, 2025 FINANCIAL STATEMENTS

	<u>Hours</u>	<u>Standard Hourly Rates</u>	<u>Quotes Hourly Rates</u>	<u>Total</u>
Partners	<hr/>	<hr/>	<hr/>	<hr/>
Manager(s)	<hr/>	<hr/>	<hr/>	<hr/>
Supervisors(s)	<hr/>	<hr/>	<hr/>	<hr/>
Staff	<hr/>	<hr/>	<hr/>	<hr/>
Other:	<hr/>	<hr/>	<hr/>	<hr/>
	<hr/>	<hr/>	<hr/>	<hr/>
Subtotal	<div style="background-color: #cccccc; width: 100px; height: 15px;"></div>			<div style="background-color: #cccccc; width: 100px; height: 15px;"></div>

**Total all-inclusive maximum price for 2025 City audit**

**Total all-inclusive maximum price for 2026 City audit**

**Total all-inclusive maximum price for 2027 City audit**

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#### Other / Optional Fees:

Single Audit Fees, if required

Alternative (software/programs) for draft financial statement  
preparation and related assistance –  
    indicate if one-time fee or on going

Alternative for final report preparation printing and publishing -  
    anticipated annual (on-going) fee

Note: the rate quoted should not be presented as a general percentage of the standard hourly rate or as a gross deduction from the total all-inclusive maximum price.

**ATTACHMENT C**  
**CITY OF BUFFALO, MINNESOTA**  
**SCHEDULE OF FINDINGS AND QUESTIONED COSTS**  
**YEAR ENDED DECEMBER 31, 2024**

**Financial Statements**

1. Type of auditors' report issued: Unmodified
2. Internal control over financial reporting:
- Material weakness(es) identified? \_\_\_\_\_yes            x       no
  - Significant deficiency(ies) identified? \_\_\_\_\_yes            x       none reported
3. Noncompliance material to financial statements noted? \_\_\_\_\_yes            x       no

**Federal Awards**

1. Internal control over major federal programs:
- Material weakness(es) identified? \_\_\_\_\_yes            x       no
  - Significant deficiency(ies) identified? \_\_\_\_\_yes            x       none reported
2. Type of auditors' report issued on compliance for major federal programs: Unmodified
3. Any audit findings disclosed that are required to be reported in accordance with 2 CFR 200.516(a)? \_\_\_\_\_yes            x       no

**Identification of Major Federal Programs**

<b>Assistance Listing Numbers</b>	<b>Name of Federal Program or Cluster</b>
20.205	Highway Planning and Construction
Dollar threshold used to distinguish between Type A and Type B programs:	\$1,000,000
Auditee qualified as low-risk auditee?	_____yes <u>      x      </u> no

**ATTACHMENT C**  
**CITY OF BUFFALO, MINNESOTA**  
**SCHEDULE OF FINDINGS AND QUESTIONED COSTS**  
**YEAR ENDED DECEMBER 31, 2024**

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**Section II – Financial Statement Findings**

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Our audit did not disclose any matters required to be reported in accordance with *Government Auditing Standards*.

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**Section III – Findings and Questioned Costs – Major Federal Programs**

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Our audit did not disclose any matters required to be reported in accordance with 2 CFR 200.516(a).

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**Section IV – Other Items for Consideration – Minnesota Legal Compliance**

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None reported.

## ATTACHMENT D

### Agreement for Professional Services

This Agreement ("Agreement") is made on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the City of Buffalo, a municipal corporation (hereinafter "City"), and \_\_\_\_\_, a \_\_\_\_\_ (hereinafter "Consultant").

#### Preliminary Statement

The City has adopted a policy regarding the selection and hiring of consultants to provide a variety of professional services for City projects. That policy requires that persons, firms or corporations providing such services enter into written agreements with the City. The purpose of this Agreement is to set forth the terms and conditions for the performance of professional services by the Consultant.

The City and Consultant agree as follows:

1. **Scope of Work Proposal.** The Consultant agrees to provide the professional services shown in the proposal attached hereto ("Work") in consideration for the compensation set forth in Provision 3 below. The terms of this Agreement shall take precedence over and supersede any provisions and/or conditions in any proposal submitted by the Consultant.
2. **Term.** The term of this Agreement shall be from \_\_\_\_\_, \_\_\_\_\_, through \_\_\_\_\_, \_\_\_\_\_, the date of signature by the parties notwithstanding.
3. **Compensation for Services.** The City agrees to pay the Consultant the compensation described in Attachment B attached hereto for the Work, subject to the following:
  - A. Any changes in the Work which may result in an increase to the compensation due the Consultant shall require prior written approval of the City. The City will not pay additional compensation for Work that does not have such prior written approval.
  - B. Third party independent contractors and/or subcontractors may be retained by the Consultant when required by the complex or specialized nature of the Work when authorized in writing by the City. The Consultant shall be responsible for and shall pay all costs and expenses payable to such third party contractors unless otherwise agreed to by the parties in writing.

## ATTACHMENT D

4. ***City Assistance.*** The City agrees to provide the Consultant with the following assistance concerning the Work to be performed hereunder:
  - A. Depending on the nature of the Work, Consultant may from time to time require access to public and private lands or property. To the extent the City is legally and reasonably able, the City shall provide access to and make provisions to enable the Consultant to enter upon public and private land and property as required for the Consultant to perform and complete the Work.
  - B. The City shall furnish the Consultant with a copy of any special standards or criteria promulgated by the City relating to the Work, including but not limited to design and construction standards, that is needed by the Consultant in order to prepare for the performance of the Work.
  - C. A person shall be appointed to act as the City's representative with respect to the Work to be performed under this Agreement. Such representative shall have authority to transmit instructions, receive information, interpret, and define the City's policy and decisions with respect to the Work to be performed under this Agreement, but shall not have the right to enter into contracts or make binding agreements on behalf of the City with respect to the Work or this Agreement.
5. ***Method of Payment.*** The Consultant shall submit to the City, on a monthly basis, an itemized invoice for Work performed under this Agreement. Invoices submitted shall be paid in the same manner as other claims made to the City. Invoices shall contain the following:
  - A. For Work reimbursed on an hourly basis, the Consultant shall indicate for each employee, his or her name, job title, the number of hours worked, rate of pay for each employee, a computation of amounts due for each employee, and the total amount due for each project task. The Consultant shall verify all statements submitted for payment in compliance with Minnesota Statutes Sections 471.38 and 471.391. For reimbursable expenses, if provided for in Exhibit A, the Consultant shall provide an itemized listing and such documentation of such expenses as is reasonably required by the City. Each invoice shall contain the City's project number and a progress summary showing the original (or amended) amount of the Agreement, current billing, past payments and unexpended balance due under the Agreement.
  - B. To receive any payment pursuant to this Agreement, the invoice must include the following statement dated and signed by the Consultant: "I declare under penalty of perjury that this account, claim, or demand is just and correct and that no part of it has been paid."

The payment of invoices shall be subject to the following provisions:



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- A. The City shall have the right to suspend the Work to be performed by the Consultant under this Agreement when it deems necessary to protect the City, residents of the City or others who are affected by the Work. If any Work to be performed by the Consultant is suspended in whole or in part by the City, the Consultant shall be paid for any services performed prior to the delivery upon Consultant of written notice from the City of such suspension.
  - B. The Consultant shall be reimbursed for services performed by any third party independent contractors and/or subcontractors only if the City has authorized the retention of and has agreed to pay such persons or entities pursuant to Section 3B above.
6. ***Project Manager and Staffing.*** The Consultant has designated \_\_\_\_\_ and \_\_\_\_\_ (“Project Contacts”) to perform and /or supervise the Work, and as the persons for the City to contact and communicate with regarding the performance of the Work. The Project Contacts shall be assisted by other employees of the Consultant as necessary to facilitate the completion of the Work in accordance with the terms and conditions of this Agreement. Consultant may not remove or replace Project Contracts without the prior approval of the City.
7. ***Standard of Care.*** All Work performed by the Consultant under this Agreement shall be in accordance with the normal standard of care in Wright County, Minnesota, for professional services of like kind.
8. ***Audit Disclosure.*** Any reports, information, data and other written documents given to, or prepared or assembled by the Consultant under this Agreement which the City requests to be kept confidential shall not be made available by the Consultant to any individual or organization without the City’s prior written approval. The books, records, documents and accounting procedures and practices of the Consultant or other parties relevant to this Agreement are subject to examination by the City and either the Legislative Auditor or the State Auditor for a period of six (6) years after the effective date of this Agreement. The Consultant shall at all times abide by Minn. Stat. § 13.01 et seq. and the Minnesota Government Data Practices Act, to the extent the Act is applicable to data, documents, and other information in the possession of the Consultant.
9. ***Termination.*** This Agreement may be terminated at any time by the City, with or without cause, by delivering to the Consultant at the address of the Consultant set forth on page 1, a written notice at least seven (7) days prior to the date of such termination. The date of termination shall be stated in the notice. Upon termination the Consultant shall be paid for services rendered (and reimbursable expenses incurred if required to be paid by the City under this Agreement) by the Consultant through and until the date of termination so long as the Consultant is not in default under this Agreement. If however, the City terminates the Agreement because the Consultant is in default of its obligations under this Agreement, no further payment shall be payable or due to the Consultant following the delivery of the termination notice, and the City may, in addition to any

## ATTACHMENT D

other rights or remedies it may have, retain another consultant to undertake or complete the Work to be performed hereunder.

10. **Subcontractor.** The Consultant shall not enter into subcontracts for services provided under this Agreement without the express written consent of the City. The Consultant shall promptly pay any subcontractor involved in the performance of this Agreement as required by the State Prompt Payment Act.
11. **Independent Consultant.** At all times and for all purposes herein, the Consultant is an independent contractor and not an employee of the City. No statement herein shall be construed so as to find the Consultant an employee of the City.
12. **Non-Discrimination.** During the performance of this Agreement, the Consultant shall not discriminate against any person, contractor, vendor, employee or applicant for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation or age. The Consultant shall post in places available to employees and applicants for employment, notices setting forth the provision of this non-discrimination clause and stating that all qualified applicants will receive consideration for employment. The Consultant shall incorporate the foregoing requirements of this Provision 12 in all of its subcontracts for Work done under this Agreement, and will require all of its subcontractors performing such Work to incorporate such requirements in all subcontracts for the performance of the Work. The Consultant further agrees to comply with all aspects of the Minnesota Human Rights Act, Minnesota Statutes 363.01, et. seq., Title VI of the Civil Rights Act of 1964, and the Americans with Disabilities Act of 1990.
13. **Assignment.** The Consultant shall not assign this Agreement, nor its rights and/or obligations hereunder, without the prior written consent of the City.
14. **Services Not Provided For.** No claim for services furnished by the Consultant not specifically provided for herein shall be paid by the City.
15. **Compliance with Laws and Regulations.** The Consultant shall abide with all federal, state and local laws, statutes, ordinances, rules and regulations in the performance of the Work. The Consultant and City, together with their respective agents and employees, agree to abide by the provisions of the Minnesota Data Practices Act, Minnesota Statutes Section 13, as amended, and Minnesota Rules promulgated pursuant to Chapter 13. Any violation by the Consultant of statutes, ordinances, rules and regulations pertaining to the Work to be performed shall constitute a material breach of this Agreement and entitle the City to immediately terminate this Agreement.
16. **Waiver.** Any waiver by either party of a breach of any provisions of this Agreement shall not affect, in any respect, the validity of the remainder of this Agreement.
17. **Indemnification.** The Consultant agrees to defend, indemnify and hold the City, its Council, officers, agents and employees harmless from any liability, claims, damages,

## ATTACHMENT D

costs, judgments, or expenses, including reasonable attorney's fees, resulting directly or indirectly from a negligent act or omission (including without limitation professional errors or omissions) of the Consultant, its agents, employees, and/or subcontractors pertaining to the performance of the Work provided pursuant to this Agreement and against all losses by reason of the failure of said Consultant to fully perform, in any respect, all of the Consultant's obligations under this Agreement.

### 18. *Insurance.*

A. General Liability. Prior to starting the Work, the Consultant shall procure, maintain and pay for such insurance as will protect against claims for bodily injury or death, and for damage to property, including loss of use, which may arise out of operations by the Consultant or by any subcontractor of the Consultant, or by anyone employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall include, but not be limited to, minimum coverage and limits of liability specified in this Provision 18 or required by law. Except as otherwise stated below, the policies shall name the City as an additional insured for the Work provided under this Agreement and shall provide that the Consultant's coverage shall be primary and noncontributory in the event of a loss.

B. The Consultant shall procure and maintain the following minimum insurance coverage and limits of liability with respect to the Work:

Worker's Compensation:	Statutory Limits
Employer's Liability (Not needed for Minnesota based Consultant):	\$500,000 each accident \$500,000 disease policy limit \$500,000 disease each employee
Commercial General Liability:	\$1,000,000 per occurrence \$2,000,000 general aggregate \$2,000,000 Products – Completed Operations Aggregate \$100,000 fire legal liability each occurrence \$5,000 medical expense
Comprehensive Automobile Liability:	\$1,000,000 combined single limit (shall include coverage for all owned, hired and non-owned vehicles.

C. The Commercial General Liability policy(ies) shall be equivalent in coverage to ISO form CG 0001, and shall include the following:

a. Personal injury with Employment Exclusion (if any) deleted;

## ATTACHMENT D

- b. Broad Form Contractual Liability coverage; and
  - c. Broad Form Property Damage coverage, including Completed Operations.
- D. Professional Liability Insurance. The Consultant agrees to provide to the City a certificate evidencing that it has in effect, with an insurance company in good standing and authorized to do business in Minnesota, a professional liability insurance policy. Said policy shall insure payment of damage for liability arising out of the performance of professional services for the City, in the insured's capacity as the Consultant, if such liability is caused by an error, omission, or negligent act of the insured or any person or organization for whom the insured is liable. Said policy shall provide an aggregate limit of \$\_\_\_\_\_. Said policy shall not name the City as an additional insured.
- E. Consultant shall maintain in effect all insurance coverage required under this Provision 18 at Consultant's sole expense and with insurance companies licensed to do business in the state in Minnesota and having a current A.M. Best rating of no less than A-, unless otherwise agreed to by the City in writing. In addition to the requirements stated above, the following applies to the insurance policies required under this Provision:
- a. All policies, except the Professional Liability Insurance policy, shall be written on an "occurrence" form ("claims made" and "modified occurrence" forms are not acceptable);
  - b. All policies, except the Professional Liability Insurance and Worker's Compensation Policies, shall contain a waiver of subrogation naming "the City of Buffalo";
  - c. All policies, except the Professional Liability Insurance and Worker's Compensation Policies, shall name "the City of Buffalo" as an additional insured;
  - d. All policies, except the Professional Liability Insurance and Worker's Compensation Policies, shall insure the defense and indemnify obligations assumed by Consultant under this Agreement; and
  - e. All policies shall contain a provision that coverage afforded thereunder shall not be canceled or non-renewed or restrictive modifications added, without thirty (30) days prior written notice to the City.

A copy of the Consultant's insurance declaration page, Rider and/or Endorsement, as applicable, which evidences the compliance with this Paragraph 18, must be filed with City prior to the start of Consultant's Work. Such documents evidencing

## ATTACHMENT D

insurance shall be in a form acceptable to City and shall provide satisfactory evidence that Consultant has complied with all insurance requirements. Renewal certificates shall be provided to City prior to the expiration date of any of the required policies. City will not be obligated, however, to review such declaration page, Rider, Endorsement or certificates or other evidence of insurance, or to advise Consultant of any deficiencies in such documents and receipt thereof shall not relieve Consultant from, nor be deemed a waiver of, City's right to enforce the terms of Consultant's obligations hereunder. City reserves the right to examine any policy provided for under this Provision 18.

- F. If Consultant fails to provide the insurance coverage specified herein, the Consultant will defend, indemnify and hold harmless the City, the City's officials, agents and employees from any loss, claim, liability and expense (including reasonable attorney's fees and expenses of litigation) to the extent necessary to afford the same protection as would have been provided by the specified insurance. Except to the extent prohibited by law, this indemnity applies regardless of any strict liability or negligence attributable to the City (including sole negligence) and regardless of the extent to which the underlying occurrence (i.e., the event giving rise to a claim which would have been covered by the specified insurance) is attributable to the negligent or otherwise wrongful act or omission (including breach of contract) of Consultant, its contractors, subcontractors, agents, employees or delegates. Consultant agrees that this indemnity shall be construed and applied in favor of indemnification. Consultant also agrees that if applicable law limits or precludes any aspect of this indemnity, then the indemnity will be considered limited only to the extent necessary to comply with that applicable law. The stated indemnity continues until all applicable statutes of limitation have run.

If a claim arises within the scope of the stated indemnity, the City may require Consultant to:

- a. Furnish and pay for a surety bond, satisfactory to the City, guaranteeing performance of the indemnity obligation; or
- b. Furnish a written acceptance of tender of defense and indemnity from Consultant's insurance company.

Consultant will take the action required by the City within fifteen (15) days of receiving notice from the City.

19. ***Ownership of Documents.*** All plans, diagrams, analysis, reports and information generated in connection with the performance of this Agreement ("Information") shall become the property of the City, but the Consultant may retain copies of such documents as records of the services provided. The City may use the Information for any reasons it deems appropriate without being liable to the Consultant for such use. The Consultant shall not use or disclose the Information for purposes other than performing the Work contemplated by this Agreement without the prior consent of the City.

## ATTACHMENT D

20. ***Dispute Resolution/Mediation.*** Each dispute, claim or controversy arising from or related to this Agreement or the relationships which result from this Agreement shall be subject to mediation as a condition precedent to initiating arbitration or legal or equitable actions by either party. Unless the parties agree otherwise, the mediation shall be in accordance with the Commercial Mediation Procedures of the American Arbitration Association then currently in effect. A request for mediation shall be filed in writing with the American Arbitration Association and the other party. No arbitration or legal or equitable action may be instituted for a period of 90 days from the filing of the request for mediation unless a longer period of time is provided by agreement of the parties. Cost of mediation shall be shared equally between the parties. Mediation shall be held in the City of Buffalo unless another location is mutually agreed upon by the parties. The parties shall memorialize any agreement resulting from the mediation in a Mediated Settlement Agreement, which Agreement shall be enforceable as a settlement in any court having jurisdiction thereof.
21. ***Annual Review.*** Prior to each anniversary of the date of this Agreement, the City shall have the right to conduct a review of the performance of the Work performed by the Consultant under this Agreement. The Consultant agrees to cooperate in such review and to provide such information as the City may reasonably request. Following each performance review the parties shall, if requested by the City, meet and discuss the performance of the Consultant relative to the remaining Work to be performed by the Consultant under this Agreement.
22. ***Conflicts.*** No salaried officer or employee of the City and no member of the Board of the City shall have a financial interest, direct or indirect, in this Agreement. The violation of this provision shall render this Agreement void.
23. ***Governing Law.*** This Agreement shall be controlled by the laws of the State of Minnesota.
24. ***Counterparts.*** This Agreement may be executed in multiple counterparts, each of which shall be considered an original.
25. ***Severability.*** The provisions of this Agreement are severable. If any portion hereof is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision shall not affect the remaining provisions of this Agreement.
26. ***Entire Agreement.*** Unless stated otherwise in this Provision 26, the entire agreement of the parties is contained in this Agreement. This Agreement supersedes all prior oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties, unless otherwise provided herein. The following agreements supplement and are a part of this Agreement: None.

## **ATTACHMENT D**

IN WITNESS WHEREOF, the undersigned parties have entered into this Agreement as of the date set forth above.

CITY OF BUFFALO

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Administrator

(CONSULTANT)

By: \_\_\_\_\_

Its: \_\_\_\_\_