

REQUEST FOR PROPOSALS FOR THE OPERATION OF A FOOD SERVICE CONCESSION AT KERSHAW PARK

Proposals are assumed to meet all procedures and accept all conditions and requirements of this Request for Proposal unless clearly labeled as a "Request for Exception." Requests for Exception are not discouraged, and will be judged within the overall City goal of providing a safe, attractive, convenient and affordable food concession for visitors to Kershaw Park that produces a net profit for the City.

INFORMATION

The City of Canandaigua will accept proposals for the licensing of a food service concession at Kershaw Park, Lakeshore Drive, Canandaigua, until 2:00 p.m. on **Tuesday, March 21, 2023**. Proposal documents are available at the City of Canandaigua Public Works Department office at 205 Saltonstall St., Canandaigua. All proposals must follow the procedures and meet the requirements listed in the proposal document. Proposals shall be submitted in a sealed envelope marked ***"Food Service Concession Proposal."***

A pre-proposal meeting will be held on **Tuesday, March 7, 2023** at 10:00 a.m. at the Hurley Building Conference Room, 205 Saltonstall Street, Canandaigua, followed by a site visit to the concession facility at the bathhouse at Kershaw Park.

GENERAL CONDITIONS

Concession License

The City grants the licensee the right to sell the goods, merchandise and services described in the proposal at the concession facility located in the bathhouse at Kershaw Park (location shown Appendix A). The City grants the licensee the right to occupy and use that portion of the Kershaw Park bathhouse shown on the plan attached (Appendix B). Vendors are limited to selling soft drinks, food, ice cream, or other similar confections.

Premises

The premises to be occupied by the licensee include the concession area and storage room in the bathhouse at Kershaw Park. The concession area is approximately 230 square feet and the storage room is approximately 100 square feet. Anything outside of 200 square feet outside of the concession area is not provided. The concession has 200-amp electrical service with 7 duplex 20-amp outlets in the concession area and 2 in the storage room. All outlets are on a ground fault interruption circuit breaker. Electric service, water service and a hot water heater are provided. There is no telephone connection provided. Two service windows open to the park and to the beach area. No alterations to the premises are permitted without written approval from the City.

Equipment

The Licensee shall furnish and install, at his/her own expense, all equipment, stationary or mobile, used in the proper operation of his business. Fixed equipment that shall remain the property of the City of Canandaigua includes counter tops, a three-section stainless steel commercial sink, a hot water heater, a small porcelain sink and two circulating fans. Also included in the equipment are the following; one refrigerator and one upright freezer. The Licensee shall be responsible for all other machines or vending equipment, these will not be provided by the City. Vending Carts, if included as a part of the proposal, must be provided by the Licensee and must be portable, hand operated pushcarts of a design that would be compatible with the design of other park amenities. (See Appendix C for example.) Pictures of cart must be included.

Term of Contract

The duration of this Agreement shall be for the period May 5, 2023 through September 15, 2023.

The Licensee shall have reasonable time prior to the official opening date and subsequent to the official closing date of Kershaw Park to install and remove all of his/her own equipment, such time for installation and removal to be approved by the City. The Licensee may operate his/her concession during a mutually agreed upon set of hours. When the duration has concluded, the Licensee will remove all his/her equipment by November 3, 2023. The Licensee will clean the space upon exiting and return all keys.

The term may be extended for up to two additional one-year terms upon mutual agreement.

Protection of Property

Protection of licensed property and personal property shall remain the sole responsibility of the Licensee.

Property Damage

The Licensee waives any and all claims for compensation for any and all loss or damage sustained by reason of any defect, deficiency or impairment of light, electrical current, gas or water supply which may occur from time to time for any cause, or for any loss or damage sustained by the Licensee resulting from fire, water, tornado, civil commotion or riots or earth movement.

In the event that the premises shall suffer minor damage by fire or other casualty, but shall not be rendered untenable, the premises shall be repaired by the Licensee to the extent of the insurance proceeds available for such purpose.

Right to Inspect Premises

The Licensee shall allow the City Manager's designee access to the premises at all reasonable hours for the purpose of examining and inspecting the premises, or making necessary structural building or utility repairs, or for any other purpose, not unduly affecting the operation of the Licensee's business.

Maintenance

The Licensee is responsible for the maintenance, general housekeeping and repair of the concession area on a daily basis. This includes keeping the facility clean of debris and in a clean and sanitary fashion, during and upon termination of license.

The licensed premises are provided as is without warranty as to condition or suitability for Licensee's purposes. Any required improvements shall be made at the sole expense of the Licensee. No alternations or improvements shall be made without the City's prior written approval of such improvements as shown on plans and specifications. Any improvements that the Licensee is entitled to remove shall be removed promptly upon termination or expiration of the license and Licensee shall restore the premises to the condition they were in before the improvement was made.

Licensee agrees to pay for any expenses incurred for the installation of additional utility or telephone connections for new or relocated equipment during the term of the agreement with the approval of the City.

License renewal

The City grants the Licensee the option to renew this license for two (2) successive beach seasons, with terms to be negotiated. If both parties cannot agree to terms by December 31 of the current season for the next season, the City retains its option to terminate the license and solicit new proposals for the following year.

Approval for Sale of Goods

All goods, merchandise and services offered by the Licensee for sale shall be of good quality and variety and the quality, variety, quantity and all prices charged will be subject to approval of the City.

Deliveries

Delivery of supplies and merchandise shall be during normal business hours and shall be made directly to the Licensee. The City shall not accept deliveries for the Licensee.

Catering

The Licensee shall have the right to contract with and cater to any picnic group using the facilities of Kershaw Park.

Advertising

The Licensee shall erect one or more suitable signs at the premises informing the public of the nature of the products and services provided, prices and the name of the Licensee furnishing the same. All signage, advertising and promotional materials shall meet the approval of the City prior to installation or distribution. Prices will be clearly displayed at the point of purchase.

Trash Disposal

The Licensee shall not permit garbage and other refuse to accumulate or gather in, about or around the premises except in covered garbage receptacles approved by the City. The Licensee will be responsible for all waste removal. No waste shall be stored overnight in the facility. All waste must be placed on drip proof trays to keep floors sanitary.

The Licensee shall abide by all applicable City and County waste recycling regulations. The Licensee shall be solely responsible for the removal and proper disposal of all hazardous or toxic waste.

Employees

A list of all employees shall be provided to the City and kept current. An on-site manager will be designated. All Licensees' employees shall be clearly identified as employees of Licensee by means of shirt, hat, badge or other means of identification approved by the City.

Licensee shall employ and maintain sufficient help to properly and adequately serve the public at all times.

The City reserves the right to require Licensee to remove any employee from working at the food service concession who in the opinion of the City, is incompetent or disorderly.

Special Events and Festivals

The City maintains the right to hold special events or festivals on the Kershaw Park grounds and facilities and to allow the sale and/or dispensing of food, beverage and/or souvenir items by other parties for the duration of the special events/festivals without prejudicing the terms of this agreement. The Licensee shall have the right to operate out of the bathhouse per the terms expressed herein during any special event or activity. However, the City reserves the right on such occasions to suspend or restrict the Licensee's right to operate its Vending Cart(s).

Amplified Sound

Licensee shall not use sound amplifying devices to attract customers to the concession.

Containers

All liquids are to be dispensed in paper/plastic/reusable cups. No bottles or other glass containers shall be permitted to leave the concession stand.

Alcohol, Cannabis and Tobacco Products

No alcoholic beverages, cannabis or tobacco products shall be sold or consumed in connection with the operation of the concession stand.

Accident Reporting

The Licensee shall report to the city all accidents that occur on or around the premises of the concession stand on the form provided by the Aquatics supervisor.

Compliance with Laws

Licensee shall comply with all laws, ordinances, rules and regulations of the federal, state and municipal authorities and departments relating to or affecting any and all parts of this agreement and shall at his own cost and expense, secure and obtain any and all permits and licenses that may be necessary in connection herewith. No propane gas cylinders shall be stored in the Kershaw building at any time.

Termination of License

Either party shall have the right to terminate the license with 30 days written notice. In the event of a material breach of this license by the Licensee, the City shall have the right to terminate this agreement on 72 hours written notice to the Licensee. A breach of any condition of this license shall constitute an event of default, including but not limited to the Licensee's failure to pay the license fee when due, or failure to operate the business during the agreed upon hours of operation. In the event of default and termination of this agreement, the Licensee shall remain liable for the license fee for the entire term. The City shall be under no obligation to re-license the premises for the remainder of the license term. If at the time of default there is any unpaid license fee due or to become due, which is in excess of the license fee security deposit, the City shall have the right to take possession of the licensed premise and any equipment or inventory on the premises as additional security, sell same in a commercially reasonable manner, and apply the sales proceeds to any balance due the City.

Non-discriminatory Practices

Licensee shall comply with all state and federal regulations regarding nondiscrimination in employment and service of customers.

The City requires the best efforts on the part of its Licensees to solicit and obtain the participation of minorities and women as subcontractors, suppliers and employees on this license.

Right to Reject Proposals

The City reserves the right to reject any or all proposals, and to waive technicalities, irregularities and omissions or solicit new proposals if, in the City's judgment, the best interests of the City will be served thereby.

Right to Negotiate

This Request for Proposal does not constitute an offer by the City. If the City decides to proceed with the awarding of a concession license, City staff will meet with the selected Proposer(s) to negotiate the specific terms of the license. The general conditions of the license are outlined in the RFP. The City reserves the right to negotiate final terms and conditions of the license with the final selected Proposer(s).

Questions

Any questions about the above conditions concerning the terms shall be in writing to the City Manager. Questions regarding the building shall be directed to the Park Maintenance Supervisor. Any interpretation or correction of the documents will be made only by addendum duly issued and a copy of the addendum will be mailed or delivered to each person receiving a set of Proposal Documents. No oral interpretations will be made to any Proposer as to the meaning of the Proposal Documents or any part thereof, and neither the City of Canandaigua nor the City Manager will be responsible for any other explanations or interpretations of the Proposal Documents. All such addenda duly issued shall be part of the Proposal Documents, and all Proposes shall be bound by such addenda, whether or not received by them. In addition, thereto, copies of the addenda will be posted at the Department of Parks and Recreation, 205 Saltonstall Street, Canandaigua, New York 14424.

Proposal Acceptance

Acceptance of a proposal will be the enactment of a Resolution of Award by the City Council. The acceptance shall obligate the Proposer to execute the License.

Execution of License

The Proposer whose proposal has been accepted shall execute the license within five (5) calendar days of the acceptance of the proposal.

Execution of the License includes signing the agreement and furnishing the required bonds and certificate of insurance.

Failure of the Proposer whose proposal is accepted to execute the license shall constitute a breach of his obligation created by the acceptance of his proposal by the City of Canandaigua and in such event the City may determine that such Proposer's proposal and the acceptance thereof shall be null and void and the City shall be entitled to take action for damages. Such damages shall include the amount of the proposal finally executed in excess of that of the abandoned proposal, and all other items of cost to the City resulting from such breach. In recovery of the damages, the City may proceed against the sum represented by the security deposit, or take such other action as the City may deem best in the public interest.

Payment

Payment of the licensing fee shall be made by Licensee to the City in one installment at the time of execution of this agreement by Licensee.

Proposal Documents

The license comprises the documents listed below:

- A. Information
- B. General Conditions
- C. Proposal Documents
- D. Addendum (if used)
- E. Proposal
- F. Appendix
- G. Proposal Signature Sheet

Successors and Assigns

This license and all of the covenants hereof shall insure to the benefit of and be binding upon the City and the Licensee, respectively, and his partners, successors, assigns and legal representatives. Neither the City nor the Licensee shall have the right to assign, transfer or sublet interests or obligations hereunder.

Qualifications

The Proposer must meet the following qualifications:

- A. Currently be in the restaurant or concession business and have two (2) years experience in the business.
- B. Provide a minimum of three business references, with at least one reference that speaks to financial ability.
- C. Fully complete the proposal documents.

The City reserves the right to investigate information submitted by any Proposer and to independently evaluate the qualifications of each Proposer and to request additional information from any or all Proposers.

Criteria

The City will evaluate proposals according to the following criteria:

Proposals are assumed to meet all procedures and accept all conditions and requirements of this Request for Proposal unless clearly labeled as a "Request for Exception." Requests for Exception are not discouraged, and will be judged within the overall City goal of providing a safe, attractive, convenient and affordable food concession for visitors to Kershaw Park that produces a net profit for the City.

- A. Compliance with request for proposal including general conditions.
- B. Demonstrated relevant experience.
- C. Financial strength, credit worthiness and available capital.
- D. Quality and variety of goods, merchandise and services as described in the proposal.
- E. References.
- F. Quality of proposal submitted.
- G. Amount of bid for Licensing fee (\$1,500 is the required minimum bid).

Proposal

All proposals must include the following information:

- A. Name, address and phone numbers of Proposer, all principals and investors.
- B. Documentation of current operation of a restaurant or concession business and documentation of two (2) years previous experience.
- C. Complete description of concession operation proposed including goods, merchandise and services to be provided, prices, days and hours of operation, number of employees, their responsibilities and salaries, financial accounting methods and equipment to be purchased. Emphasis should be on quality service. If the proposal includes operation of vending cart(s) within the park, include a photograph of such cart(s). The City will entertain proposals requesting exclusive food service concession rights for Kershaw Park and/or Lakeshore Drive, with the exception of special events and festivals. Any exceptions taken to the proposal document conditions must be stated in the proposal.
- D. Complete set of City Proposal Documents with Non-Collusion Certification and Proposal Signature Sheet.

Proposals shall be submitted in a sealed envelope marked "*Food Service Concession Proposal*" to the City of Canandaigua Parks and Recreation Department, 205 Saltonstall Street, Canandaigua, NY 14424 no later than **2:00 p.m. on Tuesday, March 21, 2023.**

CITY OF CANANDAIGUA

NON-COLLUSIVE CERTIFICATION

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

- 1. The prices and fees in this 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 and fees with any other Proposer or with any competitor.
- 2. Unless otherwise required by law, the prices and fees 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.
- 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 proposal for the purpose of restricting competition.
- 4. The Proposer herein has carefully examined the annexed form of the proposal and proposal documents.

STATE OF _____

COUNTY OF _____

CITY OF _____

SS _____

Signature of Proposer

Business Address

Sworn to and subscribed before me this _____ day of _____, 2010

Notary Public

PROPOSAL SHEET

Company: _____

Representative/Contact Person: _____

Address: _____

Telephone Number: _____

Fax Number: _____

Bid Amount (including minimum \$1,500.00 Licensing fee): _____

Exceptions (if any) to Contract:

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Insurance Requirements

The Licensee shall procure and maintain at his own expense insurance for liability for damages, costs or claims in the amount and kinds hereinafter provided with insurance companies authorized to do business in New York State, such policies to embrace all operations to be performed under the license whether by the licensee or his employees.

The licensed premises shall not be occupied until all required insurance policies and certificates of insurance have been approved by the City. All policies shall provide for thirty days written notice to the City by certified mail before cancellation.

The Insurance and Indemnification provisions of the contract shall be as follows:

- A. Workmen's Compensation and Employer's Liability Insurance covering all operations under the License.
- B. General Liability Insurance with a minimum combined single limit of \$1,000,000 for bodily injury and property damage. This insurance shall indicate on the Certificate of Insurance the following coverages:
 - (1) Premises - Operations
 - (2) Independent Contractor and Subcontractors
 - (3) Products and Completed Operations
 - (4) Broad Form Contractual
- C. Disability Benefits: The Contractor shall provide proof of compliance with the Disability Benefits Law.
- D. Protective Liability Insurance: The licensee shall provide the original and duplicate policy of insurance to the City. This insurance contract shall name the City of Canandaigua as the insured and remain in effect until the license has been terminated.

The insurance shall provide minimum limits of liability per occurrence of \$1,000,000 for bodily injury and property damage. Said insurance shall provide that the term "Owner" or "City of Canandaigua" shall be deemed to include all boards, bureaus, divisions, departments, and offices of the City and the individual members, employees and agents thereof in their official capacities.

All policies and certificates of insurance of the Contractor shall contain the following clauses:

- A. Insurers shall have no right of recovery or subrogation against the City of Canandaigua (including its agents and agencies as aforesaid), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverages for any and all losses covered by the above described insurance.
- B. The clause "other insurance provisions" in a policy in which the City of Canandaigua is named as an insured, shall not apply to the City.
- C. The insurance companies issuing the policy or policies shall have no recourse against the City of Canandaigua (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.
- D. Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of the Licensee.

The following Indemnification Agreement shall be, and is hereby a provision of the license and shall be endorsed on the reverse sides of all certificates of insurance:

The Licensee agrees to protect, defend, indemnify and void the City of Canandaigua and its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character in connection with or arising directly or indirectly out of this agreement and/or the performance hereof. Without limiting the generality of the foregoing, any and all such claims etc., relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, shall be included in the indemnity hereunder. The Licensee further agrees to investigate, handle, respond to, provide defense for and defend any such claims, etc., at his sole expense and agrees to bear all other costs and expenses related thereto, even if it (claims etc.) is groundless, false or fraudulent.

In any case in which such indemnification would violate Section 5-322-1 of the New York General Obligations Law, or any other applicable legal prohibition, the foregoing provisions concerning indemnification shall not be construed to indemnify the City for damage arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the City or its employees.

Payment of Taxes

The Licensee shall promptly pay, when due, all sales taxes, retail sales and use taxes, consumer taxes, property tax (if assessed for the licensed area), permit fees, license fees, Pure Water charges and/or other taxes or fees which may be assigned, charged or levied against it when said taxes or fees are due and payable with respect to the Licensee's operation.

CITY OF CANANDAIGUA

AGREEMENT

THIS AGREEMENT made effective the _____ day of _____ by and between the **CITY OF CANANDAIGUA**, a municipal corporation organized and existing under and by virtue of the Laws of the State of New York and being one of its political subdivisions, by and through its **Public Works Department** having its principle place of business at 2 North Main Street, Canandaigua, New York, 14424, Ontario County, New York, hereinafter called "City", and _____, a corporation having offices at _____, hereinafter called "Contractor."

WITNESSETH:

WHEREAS, the City desires to have a concession service at Kershaw Park; and

WHEREAS, Contractor agrees to provide a food concession service; and

WHEREAS, the parties are desirous of entering into a contract for said purposes.

NOW THEREFORE, in consideration of the mutual promises and covenants hereinafter contained the parties agree as follows:

- 1. **SCOPE OF WORK.** Scope of work is contained in the Contract Documents herein.
- 2. **TERM.** **May 5, 2013 to September 15, 2013** with three additional mutually agreed upon successive beach seasons.
- 3. **CONSIDERATION.** Consideration shall not exceed: _____.
- 4. **INSURANCE.** Contractor agrees to maintain insurance as specified by attached Appendix "B" and shall provide the Canandaigua Clerk/Treasurer with a certificate of insurance naming the City of Canandaigua as an additional insured. Self-employed persons must carry such workers' compensation coverage as directed by the Clerk/Treasurer. If Workers' Compensation Insurance is required by law and Contractor fails to provide it than this Agreement shall be void and of no effect unless the person or corporation making or performing the same shall secure compensation for the benefit of, and keep insured during the life of said contract, such employees, in compliance with the provisions of such law. The cost of obtaining any additional insurance shall be the responsibility of Contractor.
- 5. **COMPLIANCE WITH RULES, REGULATIONS AND LAWS.** It is mutually agreed that all rules, regulations and laws pertaining hereto shall be deemed to be part of this Agreement, and anything contained herein that may be in whole or in part inconsistent therewith shall be deemed to be hereby amended and modified to comply with such legislation, rules, regulations and laws, for and during such time the same shall be in effect, but at no other time. If any provision contained herein is found now or during the life of this

Agreement to be null and void, in whole or in part as a matter of law, then said clause or part hereof shall be deemed to be severed and deleted from this Agreement leaving all other clauses or parts thereof in full force and effect. It is further agreed that there shall be no gap in the coverage or applicability of said remaining clauses or parts thereof.

Contractor, if applicable, agrees to comply with the Federal Commercial Drivers License Drug and Alcohol Testing Program requirements set forth in 49 CFR Parts 40 and 382. In acceptance of this Agreement, Contractor covenants and certifies that it will comply in all respects with all Federal, State, County or other Municipal Law which pertains hereto regarding work on municipal contracts, matters of employment, length of hours, workers' compensation and human rights.

6. **GOVERNING LAW AND VENUE.** The Laws of the State of New York, excluding its choice of law provisions, shall govern and control the within Agreement. The parties agree to submit themselves in any legal action or proceeding arising out of or relating to this agreement, or for the recognition and enforcement of any judgment in respect thereof, to the exclusive general jurisdiction of the Supreme Court of the State of New York, Ontario County, if in State Court, or the courts of the United States District Court, Western District of New York, if in Federal Court, and all related appellate courts. The parties agree to be subject to personal jurisdiction in and consent to service of process issued by a court in which venue is proper as defined in this paragraph.
7. **CONFLICT OF INTEREST.** Contractor hereby stipulates and certifies that there is no member of the Canandaigua City Council or other Canandaigua City Officer or Employee forbidden by law to be interested in the Agreement directly or indirectly, who will benefit therefrom or who is a party thereto.
8. **LICENSES.** Contractor hereby agrees that it will obtain, at its own expense, all licenses or permits necessary for this work, if any are necessary prior to the commencement of said work.
9. **WARRANTIES AND REPRESENTATIONS.** Contractor warrants and represents, that it is qualified by training and experience to perform the services outlined in this Agreement.
10. **CONFIDENTIAL INFORMATION.** The Contractor agrees that any information or data obtained, documents produced, or any other material received by the Contractor during the furtherance of Contractor's obligations in accordance with this Agreement will be treated by the Contractor in full confidence and will not be revealed to any other persons, firms, or organizations.

(Delete if not a Business Associate) Contractor specifically covenants and certifies that it will comply in all respects with the federal, Health Insurance Portability and Accountability Act of 1996 ("HIPAA Privacy Rule") with respect to Protected Health Information ("PHI") and with the

“Business Associate Agreement” of Appendix C, which is attached hereto and made a part hereof. For purposes of HIPAA and Appendix C, Contractor shall be referred to as a “Business Associate”.

11. **INDEPENDENT CONTRACTOR STATUS.** Contractor covenants and agrees that it will conduct itself consistent with its status, said status being that of an independent contractor and that itself, its employees or agents will neither hold themselves out as, nor claim to be an officer or employee of the City of Canandaigua, for such purposes as, but not limited to, Workers’ Compensation coverage, Unemployment Insurance Benefits, Social Security or Retirement membership or credit.
(Delete if not a Business Associate) For sole purposes of the HIPAA Privacy Rule, Contractor shall be considered a Business Associate.
12. **HOLD HARMLESS.** Contractor shall at all times save harmless the City of Canandaigua, its officers, and its employees, together with their officers, agents, servants, and employees, from and against any and all liability, losses, claims, suits, causes of action, costs, expenses, damages or judgments or for the defense or payment thereof, based on any claim, action or cause of action whatsoever, including any action for libel, slander, or personal injury, or any affiliated claims, by reason of any act or failure to properly act on the part of Contractor or its agents, officers, employees and/or sub-contractors and in particular as may arise from Contractor’s performance under this contract, except those arising out of any willful misconduct or grossly negligent act of City.
13. **NOTICE OF INJURY.** In the event that Contractor’s employee, agent, or sub-contractor is injured or causes injury or damage while in performance of services under this Agreement then Contractor shall cause written notice to be served upon the Canandaigua City Attorney at 2 North Main Street, Canandaigua, New York 14424 within twenty-four hours of any such injury or damage.
14. **AUDIT.** Contractor shall take such action, if applicable and as necessary and appropriate, to comply with Federal Circular A-128 or Circular A-133 relative to Single Audit of Federal Financial Assistance. In any event, Contractor shall provide the City with appropriate documentation should the City wish to conduct an audit relative to the expenditure of the funds pursuant to this agreement.
15. **EXAMINATION OF BUDGET AND APPROPRIATION OF FUNDS.** It is expressly understood by and between the parties that any and all payments made pursuant to the within contract may not be in an amount in excess of the sum appropriated therefore in the Budget. Contractor specifically acknowledges its responsibility to examine the Budget to assure itself that the within contract price complies with the amount appropriated therefore. Should the contract price exceed the amount appropriated for the object purpose of the contract, the within contract shall be unenforceable, unless approved by a majority of a roll call vote of the Canandaigua City Council. The contract shall be deemed executory only to the extent of money available to the City of Canandaigua for the performance of the terms hereof

and the City of Canandaigua shall incur no liability, beyond monies available, for the purpose thereof.

The preceding clause shall not apply to contracts for provision of services where the State of New York or the U.S. Government mandates the payment and/or amount thereof. In that event, the Department Head represents that there is a funding source sufficient to pay for services provided pursuant to the contract.

In accordance with State Finance Law, the City shall have no liability under this Agreement to Contractor or to anyone else beyond funds appropriated and available for this contract.

16. **TAXES.** The City shall not be responsible for payment of any state or federal taxes, which may be incurred by Contractor, pursuant to this Agreement.
17. **TERMINATION.**
 - a.) The City may terminate this Agreement at any time with 30 days advance written notice if the City determines that Contractor is unable or unwilling to provide the services described in this Agreement or the Contractor fails to immediately correct any problems after notification of such problem from the City.
 - b.) The City may terminate this Agreement immediately upon written notice in the event of bankruptcy, insolvency, or any other financial condition creating reasonable doubt as to Contractor's ability to perform hereunder.
 - c.) Upon written notice of termination from the City, the Contractor shall immediately cease all work under this Agreement and remit all outstanding funds, if any, due to the City.
 - d.) No such termination shall affect or discharge any obligations of either party, which arose prior to the effective date of termination with respect to warranties, indemnification, monies owed or confidential information.
18. **CONFLICT OF TERMS.** In the event that a conflict exists between the terms and conditions of this Agreement and any exhibits, appendices, or attachments hereto, that are proposed by Contractor, the terms and conditions of this Agreement shall control, unless such conflicting or additional terms are accepted in a writing making reference to this Agreement and signed by the City. Performance of the Scope of Work pursuant to this Agreement shall be deemed to be unqualified acceptance of the terms and conditions contained herein.
19. **COUNTERPARTS.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
20. **ASSIGNABILITY.** This contract may not be assigned, transferred, conveyed, sublet or disposed of without the previous consent, in writing, of the City of Canandaigua.

- 21. **AMENDMENTS.** This Agreement may be amended, modified or extended only by written instrument duly authorized and executed by the parties with the same formality as this Agreement.
- 22. **WAIVER.** The failure of the City to insist, in any one or more instances, upon the full performance of any of the terms and conditions of this Agreement, or to exercise any rights it may have hereunder, shall not be construed as a waiver of any legal rights it may have with respect to such nonperformance, or be construed as the City's condoning of further nonperformance of such terms or conditions.
- 23. **NOTICES.** Any notice or consent required or permitted to be given pursuant to this Agreement shall be given to the respective parties in writing, by ordinary, first class mail or otherwise delivered to the addresses listed above, or any other addresses the parties may from time to time designate. Notices and consents, which are sent by mail, shall be deemed received by the other party five (5) days following their deposit in the U.S. Mail. Contractor agrees to accept service of process at the address listed above in any action brought by the City pursuant to this Agreement.
- 24. **HEADINGS.** Titles, captions, or headings to any provision, article, etc. shall not limit the full contents of the same. Each article has the same full force and effect as if no title existed.
- 25. **MERGER CLAUSE.** The parties agree the foregoing and the attached exhibits constitute the entire Agreement between the parties and shall supersede any verbal statements or other writings, except an amendment, mutually agreed upon between the parties and in writing, and designated as an amendment to this Agreement, shall supersede or vary the positions herein.
- 26. **AUTHORIZATION.** Each party asserts and acknowledges that the signatory indicated below is authorized and empowered to execute this Agreement on behalf of that party. Contractor acknowledges that this Agreement has no force and affect unless approved by the Canandaigua City Council.

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

CITY OF CANANDAIGUA

Dated: _____ BY: _____
John Goodwin, City Manager

Dated: _____ BY: _____
Contractor

APPROVED AS TO FORM:

CANANDAIGUA CORPORATION COUNSEL

STATE OF NEW YORK)

ss:

COUNTY OF ONTARO)

On this _____ day of _____, 2013____, before me personally came _____, to me known, who being by me duly sworn, did depose and say that he/she resides in _____, New York; that he/she is the _____ of the _____, the municipal corporation described in and which executed the above instrument; and that he/she signed his/her name thereto by order of the Canandaigua City Council.

NOTARY PUBLIC

STATE OF NEW YORK)

ss:

COUNTY OF _____)

On this _____ day of _____, 2013____, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he/she resides in the _____, of _____ New York; that he/she is the _____ of _____, the corporation described in and which executed the above instrument; and that he/she signed his/her name thereto with the authority of and by order of the _____ of said corporation.

NOTARY PUBLIC