Request for Proposals

Professional Design Services for the
Shoreline and Coastal Wetland Habitat Improvement Project
Grand Island State Park, Erie County, NY 14072

June, 2018
REQUEST FOR PROPOSALS FOR THE

Professional Design Services for the
Shoreline and Coastal Wetland Habitat Improvement Project
Grand Island State Park, Erie County, NY 14072

REQUESTED BY:
Buffalo Niagara Waterkeeper
721 Main Street
Buffalo, NY 14023
(716)852-7483
www.bnwaterkeeper.org

June, 2018

Jill Jedlicka, Executive Director
Renata Kraft, RLA, Deputy Executive Director
Katherine Winkler, Director of Bioregional Urban Design
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I. INTRODUCTION

Buffalo Niagara Waterkeeper (Waterkeeper) is a community-based, not-for-profit organization that leads the region’s effort to safeguard water resources for present and future generations. Waterkeeper received funding from the Habitat Enhancement and Restoration Fund (HERF) to complete a coastal wetland habitat Project, creating new coastal wetlands and shoreline restoration activities along a portion of the Niagara River located at Little Beaver Island. Waterkeeper will lead the Project Team that includes LDC Construction Co. and Applied Ecological Services. Waterkeeper is seeking a Consultant, or team of Consultants (hereafter referred to as “Consultant”) to provide professional design services that includes schematic level to final design package development in collaboration with the rest of the Project Team. Design elements include barrier rock reefs, coastal wetlands, and in-water and shoreline habitat enhancements. All Project components must meet the Project goals and requirements outlined by the funding committee which state that the Project will be “able to withstand the physical forces of site conditions within the Niagara River expected to impact the Project over the next 50 years.”

A. Objective

The purpose of the Shoreline and Coastal Wetland Habitat Improvement along Little Beaver Island Project (Project) is to create and restore riparian and nearshore habitats along a portion of the shoreline within Beaver Island State Park. The goal of the Project is to utilize bioengineering and/or hybrid restoration techniques to establish riverine and coastal wetland habitats and restore degraded shoreline areas to create healthy ecological conditions that will benefit a diverse community of plant and animal species. Project components envisioned in the conceptual plan include the strategic installation of barrier rock reefs; the creation of new habitat in nearshore areas between the barrier rock reefs; invasive plant species removal; and planting of native species. Additional objectives include:

- Creating new and restored areas of coastal wetland habitat to improve ecological conditions while providing important resting, feeding, and spawning habitat for numerous fish and wildlife species;
- Enhancing shoreline stability and preventing future property loss by addressing erosive forces and improving coastal resiliency;
- Improving habitat value and function of existing shoreline and upland habitats;
- Creating connective corridors for a variety of wildlife species and between the land and water interface; and,
- Reducing the occurrence of invasive species within the Project area.

A major goal of this Project is to achieve significant progress towards addressing the loss of critical riparian and nearshore habitats in the Niagara River resulting from a variety of physical disturbances, including ice scour, wind, and water level fluctuations. This Project also directly supports goals and opportunities outlined in the Niagara River Greenway Habitat Conservation Strategy (January 2013), and Niagara River Greenway Plan (April 2007), both of which identify riparian and coastal areas as a critical opportunity for restoration and protection.

B. Site Location, History and Context

Beaver Island State Park is located on the southern end of Grand Island, New York, in the upper Niagara River. The 950-acre park is owned and operated by the NYS Office of Parks, Recreation and Historic Preservation and offers recreational opportunities for the public including swimming, fishing, hiking, and kayaking. The park also contains a marina, golf course, and disc golf course.
Little Beaver Island is located at the southern end of the park and includes a parking lot, a portion of the disc golf course, and several picnic areas. This Project focuses on approximately 800 linear feet of shoreline and nearshore habitat of Little Beaver Island, beginning at the existing sills and extending downstream (westward, see Attachment A, Figure 01 for site location map) Erosive forces (including high velocity currents, wind energy, and ice scour) acting along the shoreline prevent the establishment of coastal wetland habitat and have led to extreme bank erosion and property loss.

The concept plan for this Project was strategically developed to leverage existing restoration investments within the Niagara River Greenway. The Project area is adjacent to the 10 acres of wetland habitat, which was restored as part of the Beaver Island Habitat Improvement Project (HIP) in 2011 by the New York Power Authority. The restoration objectives of the HIP were to “optimize habitat conditions and restore historical marsh habitat to benefit a diverse community of fish and wildlife species including warm and cool water fish, wading birds, waterfowl, and herptiles.”

This Project was selected as a top priority for improving habitat for rare, threatened, and endangered species, and for its potential contribution to the de-listing of the Niagara River as an Area of Concern. Habitat enhancements attained through this Project will build upon, and physically expand, existing habitat restoration efforts, maximizing the benefits achieved as a result and furthering the goals outlined in the Niagara River Remedial Action Plan and other regional conservation plans. The Project area also exists in an internationally significant Important Bird Area, and in proximity to NYS DOS Significant Coastal Fish and Wildlife Habitat areas, as well as occurrences of NY Natural Heritage Program designated rare species and communities, further indicating the significance of the connectivity and mutual ecological benefits achieved through this Project.

The improvements anticipated to be achieved by this Project will provide important habitat for a number of fish and wildlife species. Rare, threatened and endangered species that are targeted for benefit with this Project may include: pied-billed grebe, common tern, least bittern, sturgeon, and native mussel species. Additionally, the Strategy (January 2013) lists 71 species of greatest conservation need found within the Lake Erie basin which rely on aquatic and wetland habitats which have potential to benefit through the increased habitat proposed in this Project. Lessons learned from previous Projects, including living shoreline and habitat restoration Projects within the Buffalo and Niagara Rivers, will be utilized to achieve habitat goals and will help to advise the proper amount of flow behind, and between, structural features to better support habitat features while also reducing erosive forces and deterring the establishment of invasive species.

C. Project Budget

The maximum allowable design cost for the Project, which is inclusive of all the tasks listed in the Scope of Services, is $210,000. The total Project budget for all elements of construction is $1,000,000.00. Proposers will provide a design that maximizes the overall goals for the Project within these budgets.

II. PROPOSAL SUBMITTAL REQUIREMENTS AND PRE-PROPOSAL MEETING

The Project will be awarded to one Consultant that will be held solely responsible for providing the professional engineering services required for the Project design and construction management services for this Project.

Proposals must include the following:

1. Project approach letter.
2. Organization description.
Engineering Services for Shoreline and Coastal Wetland Habitat Improvement along Little Beaver Island
Grand Island, Erie County, New York

3. Designation of an office and individual (Project Manager) who will be directly responsible for all activities of the Consultant in connection with this Project.
4. Resumes of Project personnel with direct responsibility for completion of work.
5. Identification and resumes of all sub-Consultants and what tasks they will be conducting.
6. Five (5) references for work of a similar nature have been completed by the Consultant.
7. Detailed description of the items included within the Anticipated Scope of Services, in the order in which they are listed, within the Anticipated Scope of Services.
8. Detailed time schedule for Project completion.
9. Total cost for Consultant services including breakdown of costs for each task.
10. A list of all anticipated permits, and their associated permitting agency, that will be needed for implementation of the Project.
11. A statement certifying that the proposer is not currently employed by, or affiliated with, Buffalo Niagara Waterkeeper.
12. A statement providing availability of all required insurance at the time of contract execution and that the selected Consultant will hold Buffalo Niagara Waterkeeper and landowner harmless during the contract period.

For consistency, all proposals must follow the Anticipated Scope of Services outline identified within this RFP (Part II, below). Recommendations outside of the Anticipated Scope of Services, as outlined in this RFP, should be highlighted in the Project approach letter.

Submission:
One (1) electronic version of the proposal contained on a CD or thumb-drive and two (2) hardcopies of the proposal are required to be submitted no later than 4:00 PM on July 9, 2018. Facsimile and email submissions will not be accepted. Proposal envelopes should be clearly labeled to identify the name of the proposer and the Project name.

The cost and pricing must be broken down by each task and sub-task, including quantities that are included within each task for each price. Each task and subtask must be identified in the same order as it was outlined within the Anticipated Scope of Services. Please include a total price for completion of the entire proposal at the bottom of the cost proposal, cost not to exceed $210,000.00.

Proposals must be delivered to:

Mark Bogdan
Program Manager
Buffalo Niagara Waterkeeper
721 Main Street
Buffalo, NY 14203

A pre-proposal meeting will be held, rain or shine, at 9:00 AM on Monday, June 12, 2018 at the Project site location. Attendance by the primary Consultant at the pre-proposal meeting and site visits is mandatory for those wishing to submit a proposal.

Bids may not exceed the Project Cost specified in this Request for Proposals. However, Consultants are encouraged to suggest items, and their cost, that might be deleted or added to the Project in order to maintain the overall Project budget, and to improve the outcome of the Project. Any such suggested additions or deletions must be identified by being highlighted and include a statement about the item’s impact upon the Project’s overall schedule.
III. EVALUATION OF PROPOSALS

Waterkeeper will review all proposals submitted in accordance with this RFP. All proposals will be reviewed in accordance with, and be subject to, the criteria, procedures, submission requirements, and other requirements outlined in this RFP. Proposals will be evaluated based on (but not limited to): Clarity of proposal, understanding of the Project, Project work plan, Project schedule, budget, experience/past performance of team, experience of Project manager, team qualifications, etc.

After receipt and Waterkeeper’s review of the proposals, Waterkeeper may, at its discretion, interview one or more Consultants that submitted a proposal, to allow the Consultant teams an opportunity to present their proposal to, and discuss it with, Waterkeeper, and to answer Waterkeeper’s questions regarding their proposal.

If a contract is to be awarded, Waterkeeper will award the contract to the Consultant whose proposal, at Waterkeeper’s discretion, is in the best interest of the Project. Buffalo Niagara Waterkeeper is not required to select the lowest bidder.

Waterkeeper does not assume the responsibility or liability of costs incurred by Consultants responding to this RFP or to any subsequent requests for proposals, interviews, additional information, submissions, etc. prior to issuance of an agreement.

Minimum Qualifications of Consultants

All Consultants submitting a proposal shall be actively engaged and experienced in, or shall subcontract to sub-Consultants who are directly experienced in, the nature of the work described in this RFP. The selected Consultant must:

1. Be able to provide professional design services including development of complete plans, specifications and estimates, that are professionally sealed by a New York State Licensed Professional Engineer;
2. Possess five (5) years or more of direct experience completing professional design services for shoreline habitat restoration Projects using native vegetation, bioengineering techniques, and other habitat enhancement features in riverine environments;
3. Be experienced in identifying and obtaining all needed permits and agency notifications, and assisting in the SEQR process;
4. Include team members with hydrological engineering experience;
5. Be willing to travel to, and be present at, on-site and off-site professional and public meetings;
6. Possess the ability to convey technical information verbally and in written format;
7. Be willing to work proactively with Project partners, especially during the design process;
8. Agree to all General Terms and Conditions.

IV. ANTICIPATED SCOPE OF SERVICES

Task 01 – Kick-off Meeting

Prior to beginning work, the selected Consultant will participate in a Project kick-off meeting with Waterkeeper and selected partners. The purpose of the meeting will be to introduce all members of the Project team, review Project communication protocols, review the final scope of services, review and finalize the Project schedule, and to discuss design milestones and deliverables. At this meeting,
Waterkeeper will provide preliminary design concepts as a basis of design. Attendance by key Project members is mandatory.

Task 02 – Background Review/Surveys/Data Collection/Existing Conditions Report

Tasks will include, but will not be limited to:
1. Site visits and reconnaissance of the Project Site.
2. Data collection and analysis evaluations such as:
   a. Complete topographic, bathymetric, and boundary surveys of Project Sites;
   b. Hydrologic and hydraulic analyses;
   c. Evaluate locations for placement of Project elements;
   d. Attend a Technical Advisory Committee meeting.

The Consultant shall submit to Waterkeeper an existing conditions report which adequately describes the existing conditions of the Project Site (based on background review, surveys, and data collection) so as to critique and advise any additional development of the existing design concept.

Task 03 – Development of Engineering Plans and Specifications

The Consultant will collaborate directly with Waterkeeper throughout the design development phase. Waterkeeper will provide the initial conceptual intent (Attachment A Figure 02), which will be the basis for schematic design development by the Consultant. The Consultant is expected to provide a critique and advice on the conceptual design and then proceed to provide schematic through final design plans, specifications and opinions of probable cost for review, with check-ins with Waterkeeper and Project partners occurring at each review phase at 60%, 90%, and 100% completion. The Consultant will satisfactorily address feedback provided at each check-in before progressing the design to the next phase. The Consultant will be required to submit an opinion of probable cost at the 60%, 90% and 100% Project completion. In addition, the Consultant will participate in presenting the design to the funding committee for approval prior to construction. The Consultant will develop the 100% construction document bid package, stamped by a NY State Licensed Professional Engineer, sufficient for the construction of all Project elements. Final submissions to include PDF documents of all plans and specifications, AutoCAD (DWG.files) for drawings, and Microsoft Word documents for the approved specifications.

Task 04 – Permitting

Waterkeeper and LDC Construction will lead efforts required for acquiring all necessary permits for the Project in collaboration with the Consultant. Consultant shall identify all required permits necessary for the professional design and construction of the Project. Consultant shall assist obtaining approved permits for Project implementation, including any, and all federal, state, multi-state and/or local permitting. These permits may include, but are not limited to, State Environmental Quality Review Act (SEQR), New York State Protection of Waters, and State Pollution Discharge Elimination Systems (SPDES). Additional permits and/or notifications may include but are not limited to: agency notification for endangered/threatened species, archeological clearances, historical building/places clearances, material transport, proper disposal of materials, and certified landowner notifications. Consultant’s attendance at any required pre-application meeting with agency representatives will be required as needed by permit(s). Permit fees shall be identified by the Consultant and payment of such will be the responsibility of Waterkeeper.
Task 05 – Construction Oversight

The Consultant is expected to provide construction oversight during construction implementation in order to ensure construction activities comply with the engineering design and specifications. These construction oversight services should be included in the scope and any related costs should be included in the proposal. Waterkeeper will serve as the Construction Administrator, in the capacity of coordinating the construction phase, (organizing daily morning construction tailgate meetings, providing follow up meeting minutes, coordinating any submittals or Request for Information (RFI) to the Project team, and facilitating correspondence with landowners and Project funders).

Task 06 – Post-Construction

The Consultant will attend a final site walkthrough with Project partners. The consultant is to provide an accurate as-built drawings for the Project, incorporating any as-built survey data and changes made during construction. The Consultant shall submit as-built drawings to Waterkeeper in the following formats: Three (3) hard copy full size prints, one (1) electronic file/PDF and one (1) cad file/ DWG files. Waterkeeper will review as-built drawings for accuracy and clarity. It is the responsibility of the Consultant to make any revisions requested by Waterkeeper to the as-built drawings.

Task 07 - Reporting

Monthly Progress Reports shall be required and be submitted to Waterkeeper. Reporting due dates will be set by Waterkeeper and will be identified in the Agreement between Waterkeeper and the selected Consultant.

A short summary report stating the goals of the Project and tasks completed to reach those goals will be required from the selected Consultant at the time of their request for final payment. The following items must be included as a separate appendix to the final Project report:
1. Primary and Secondary Data collected.
2. Construction drawings, specifications, and associated notes or reports.
3. Summary of all monthly progress reports submitted to Waterkeeper.

V. PROJECT SCHEDULE

A pre-proposal meeting will be held, rain or shine, at 9:00 AM on Tuesday, June 12th, 2018 at the Project site. Attendance by the primary Consultant at the pre-proposal site visit is mandatory for those wishing to submit a proposal.

Project proposals are due by 4:00 PM on July 9, 2018.

Consultant interviews, if deemed necessary by Waterkeeper, are anticipated to be held on July 11 and 12, 2018. All respondents will be notified in writing as to whether they were selected or not selected to provide the services described in this RFP by July 16, 2018.

The Consultant must agree to commence work on the issue date and to fully complete the Project within the time limit specified in the Agreement. The Project Team is to submit all final drawings, and have all required permits approved by October 15, 2018 or at such later date as shall be established by Waterkeeper. The Project’s construction start date is targeted for November 01, 2018 or at such later date as shall be established by Waterkeeper. All deliverables identified in the Scope of Services are targeted for completion by Spring of 2019.
VI. AGREEMENT

The selected Consultant will be required to enter into a Consulting Agreement with Waterkeeper, using Waterkeeper’s standard Agreement template. A copy of this template is provided as Attachment B. This Template serves as a SAMPLE only and is subject to change based on project requirements.

The Consultant will not begin any work outlined within the RFP prior to being notified by Waterkeeper in writing, through means of a "Notice to Proceed" issued by Waterkeeper. The Consultant must agree to commence work on the issue date contained within "Notice to Proceed" and to fully complete the Project within the time limit specified in the Agreement.

VII. INDEMNIFICATION

The selected Consultant will be required to indemnify and hold harmless Waterkeeper and their agents and employees in accordance with the indemnification clause as presented in the Sample Agreement (7. INDEMNIFICATION) provided as Attachment B.

VIII. INSURANCE

The selected Consultant will be required to maintain the types and limits of insurance as outlined in Attachment B, Section 9. Insurance certificates naming Buffalo Niagara Waterkeeper as additional insured which reflect a Waiver of Subrogation, must be provided to Waterkeeper prior to the commencement of the Project. A sample certificate is provided as Attachment C.

IX. QUESTIONS REGARDING THE RFP

Responders who have any questions regarding this RFP/Project are permitted to submit questions in writing to Juliann Parker, Administrative Assistant, at the following e-mail address: projects@bnwaterkeeper.org with the subject line “Questions Regarding RFP for Little Beaver Island Habitat Improvement Design”. All questions must be received by 4:00 PM June 25, 2018. All questions will be answered in writing and sent to all Consultants that were in attendance at the mandatory Pre-Proposal site visit, via e-mail correspondence. No questions will be answered over the phone.

Other Waterkeeper personnel are NOT authorized to discuss this request for proposals with responders, before the proposal submission deadline. Contact regarding this RFP with any person not listed above could result in disqualification.

X. MISCELLANEOUS

Waterkeeper reserves the right to postpone or withdraw this RFP; to accept or reject any and all proposals; to modify or amend the terms of this RFP or to waive any requirement of this RFP with respect to one or more respondents; to negotiate or hold discussions during the interview process (if conducted) regarding the terms of any proposal received in response to this RFP or take any other actions with respect to issuance or award of this RFP; all as Waterkeeper may deem to be in the best interest of Waterkeeper and the Project.

Waterkeeper does not assume the responsibility or liability of costs incurred by Consultants responding to this RFP or to any subsequent requests for proposals, interviews, additional information, submissions, etc. prior to issuance of an Agreement.
ATTACHMENT A, FIGURE 01

(PROJECT LOCATION MAPS)
ATTACHMENT A, FIGURE 02

(Buffalo Niagara Waterkeeper’s CONCEPTUAL DESIGN)
LITTLE BEAVER ISLAND

Shoreline and Coastal Wetland Habitat Improvement along Little Beaver Island

A. Barrier Rock Reef and Cove Enhancement Design

B. Shoreline Tree Protection and Cove Enhancement Design

www.coastalreview.org
baylandinc.com
Motor Island - Habitat Improvement Project
ATTACHEMENT B

(SAMPLE CONSULTANT AGREEMENT)
CONSULTING AGREEMENT BETWEEN

BUFFALO NIAGARA WATERKEEPER

AND

XXXXXXX

FOR

XXXXXXX

This Consulting Agreement ("Agreement") is made effective as of XXXXXXX by and between Buffalo Niagara WATERKEEPER and XXX.

In this Agreement, the party that is contracting to receive services, Buffalo Niagara WATERKEEPER, shall be referred to as “WATERKEEPER,” and the party who will be providing the services, XXX, shall be referred to as “Consultant.”

Consultant has a background in the area of XXX and is willing to provide services to WATERKEEPER pursuant to the terms and conditions of this Agreement.

WATERKEEPER desires to have services provided by Consultant and Consultant desires to provide services to WATERKEEPER.

Therefore, for mutual consideration, the sufficiency of which is acknowledged by the parties hereto, the parties agree as follows:

1. DESCRIPTION OF SERVICES.

   a. Consultant agrees to undertake, carry out and complete for WATERKEEPER in a satisfactory and competent manner, all of the work and services set forth in the Scope of Services attached hereto as Appendix A and made part of this Agreement.

   b. Consultant agrees to maintain close liaison with WATERKEEPER’s project director to ensure a well-integrated project effort and to achieve performance goals during the Agreement. Consultant will meet weekly, unless otherwise agreed with the project manager and provide an electronic narrative and quantitative progress report to WATERKEEPER on dates, XXXXXXX, XXXXXXX, and XXXXXXXX as well as the Final Contract Report, provided for in Appendix A, no later than XXXXXXX.

2. KEY PERSONNEL. WATERKEEPER’s project manager is WATERKEEPER’s (title, name) Consultant’s project manager is XXX’s (title, name)

3. TERM. This Agreement shall be effective on XXXXXXX and shall continue through XXXXXXXX unless terminated sooner or extended as hereinafter provided.
4. COMPENSATION AND MAXIMUM COST.

a. In full and complete consideration of Consultant’s satisfactory performance under this Agreement, WATERKEEPER agrees to pay Consultant an amount not to exceed XXXXX, including expenses, as follows:

1. A monthly invoice will be submitted by the Consultant. Invoices shall provide a total percent complete for the project and the amount will be calculated based on the percentage.

2. Payments are anticipated to be released by WATERKEEPER within 60 days of receipt of invoice from Consultant and the timing of said payments is contingent upon RIVERKEEPER’s reimbursement from Funder [insert name of funder]

3. The amount stated above includes compensation and all expenses incurred by Consultant in direct support of performing the services outlined in Appendix A.

a. Upon termination of this Agreement, payments under this paragraph shall cease, provided, that Consultant shall be entitled to full payment for each Task completed or goal achieved prior to the date of termination and for which Consultant has not yet been paid.

4. TERMINATION.

a. Either party may terminate this Agreement at any time by giving thirty (30) days written notice to the other contracting party. In the case of termination by WATERKEEPER, Consultant shall, upon receipt of notice of termination, refrain from incurring any additional costs under this Agreement and shall use the best efforts to cancel any commitments made prior to receipt of such notice. Termination shall not affect any commitments of Consultant that have properly become legally binding prior to the effective date of termination. WATERKEEPER shall pay Consultant for each Task completed prior to Consultant’s receipt of notice of termination and for each goal achieved within 30 days of Consultant’s receipt of notice of termination. Any prepaid but unearned funds shall be returned to WATERKEEPER.

b. It is understood and agreed, in the event that WATERKEEPER has evidence that Consultant is in default upon any of its obligations hereunder, WATERKEEPER shall be entitled to either suspend the contract until an acceptable remedy is established or to terminate the Agreement. Such termination shall be effective immediately upon receipt of official written notification from WATERKEEPER. WATERKEEPER shall also be entitled to pursue any rights or remedies which WATERKEEPER may have against Consultant by reason of such default.

6. RELATIONSHIP OF PARTIES. It is understood by the parties that Consultant is an independent contractor with respect to WATERKEEPER, and not an employee of
WATERKEEPER. WATERKEEPER will not provide fringe benefits, including health
insurance benefits, paid vacation, or any other employee benefit, for the benefit of Consultant.

7. INDEMNIFICATION. If either the Consultant or WATERKEEPER is negligent in carrying
out its obligations hereunder, the negligent party agrees to defend, indemnify and hold harmless
the other party from all claims, losses, expenses, fees including reasonable attorney fees, costs,
and judgments that may be asserted against the other party which arise from or are related to the
negligent party’s performance or failure to perform pursuant to this Agreement.

8. ASSIGNMENT. Consultant’s obligations under this Agreement may not be assigned or
transferred to any other person, firm, or corporation without the prior written consent of
WATERKEEPER.

9. INSURANCE. Prior to commencement of any work and until completion and final acceptance
of the work, the Consultant shall, at its sole expense, maintain the following insurance on its
own behalf, and furnish to Buffalo Niagara WATERKEEPER certificates of insurance
evidencing same and reflecting the effective date of such coverage as follows:

The term “Consultant” as used in these Insurance Requirements, shall mean and include Consultants and/or
subconsultants of every tier.

a. Worker’s Compensation and Occupational Disease Insurance in accordance with the
applicable law or laws; Employer’s Liability Insurance. This includes sole proprietorships and
officers of corporations who will be performing work on the Project(s).

b. Commercial General Liability with a combined Bodily Injury and Property Damage limit of
not less than ONE million ($1,000,000) dollars per occurrence and TWO million
($2,000,000) dollars in the aggregate. The aggregate must be applicable on a per project
basis. Coverage must include the following perils:
   1. Broad Form Blanket Contractual Liability
   2. Completed Operations/Products Liability including Pollution Liability (where
      applicable).
   3. Broad Form Property Damage
   4. Personal and Advertising Injury Liability
   5. Independent Contractors

c. Commercial Automobile Liability Insurance covering the use of all Owned, Non-Owned,
   and Hired Vehicles with a combined Bodily Injury and Property Damage Limit of at least
   ONE million ($1,000,000) dollars.

d. Commercial Umbrella Liability Insurance at a TWO million ($2,000,000) dollars per
   occurrence and aggregate limit. The coverage should be on a follow-form basis and including
   naming Owner as Additional Insured on a Primary & Non-Contributory Basis.
c. Professional Liability not less than **ONE** million ($1,000,000) dollars per claim or combined single limit and to be maintained 3 years after substantial completion of the Project(s).

d. Pollution Liability Insurance covering losses caused by pollution incidents that arise from the operations of the Consultant described under the scope of services of this contract. This is to include all work completed by the Consultant, or any subconsultant to the consultant or anyone else for whom the consultant is legally liable with limits not less than **ONE** million ($1,000,000) dollars per occurrence and aggregate limit and shall be maintained for the duration of the work and for a period of 3 years after substantial completion of the project.

   a. All pollutant exclusions shall be evidenced on the certificate of insurance, or a copy of the policy provided. These limits can be shared across a combined Consultants Pollution/Professional Liability Policy.

   b. The Definition of “Covered Services” shall not exclude the services required in the scope of this contract.

g. The amount of insurance contained in the aforementioned insurance coverages shall not be construed to be a limitation of the liability on the part of the Consultant or any of its subconsultants.

h. With the exception of workers’ compensation and professional liability (but not contractors pollution liability), blanket additional insured endorsements should be included reflecting the inclusion of the interests of Buffalo Niagara WATERKEEPER, their officers partners, representatives, agents, employees and affiliated companies as an Additional Insured on a direct, primary & non-contributing basis including Completed Operations.

i. Coverage is to be endorsed to reflect that a Waiver of Subrogation.

j. Coverage is to be provided on an “occurrence” basis with carriers licensed and admitted to do business in the State of New York, with an A.M. Best financial rating of “A-” (or better) or otherwise acceptable to Buffalo Niagara WATERKEEPER.

k. The Consultant shall file certificates of insurance prior to the commencement of work with WATERKEEPER for approval of adequacy of protection and the satisfactory character of the Insurer. A sample certificate of insurance is provided as Attachment B.

l. The Consultant shall provide certificates evidencing the required coverages to Buffalo Niagara WATERKEEPER on an annual basis.
m. Any type of insurance or any increase of limits of liability not described above which the Consultant requires for its own protection or on account of statute shall be its own responsibility and at its own expense.

n. The carrying of the insurance described shall in no way be interpreted as relieving the Consultant of any responsibility of liability under contract.

o. Any policies effected by the Consultant on its Owned and/or Rented Equipment and Materials shall contain a provision requiring the insurance carriers to waive their rights of subrogation to Buffalo Niagara WATERKEEPER and all other indemnitees named in the Agreement or Change Order.

p. Consultant shall not file any mechanic’s, laborer’s or materialman’s lien, or suffer or permit any such lien to be filed against the Properties or any part thereof by reason of work, labor, services, or materials requested and/or supplies claimed to have been requested by or on behalf of WATERKEEPER; and if such lien shall at any time be so filed, within sixty (60) days after Landowner provides notice of the filing thereof to WATERKEEPER or Consultant, Consultant shall cause it to be canceled, bonded or discharged of record. To the extent Consultant fails to remove any mechanic’s, laborer’s or materialman’s lien filed against the Properties within the time period set forth above, then Landowner may arrange bond or pay the amount of such claim upon which the lien is based and Consultant shall thereafter be liable to Landowner for the amount so paid, and any costs incurred by Landowner by reason of such lien, immediately upon demand, plus interest at the rate of nine percent (9%), except Landowner shall have no right to take the foregoing action if Consultant has commenced the removal of the lien within sixty (60) days of receiving notice of the same and has thereafter continuously and diligently been pursuing its removal of the same and continues to do so until conclusion. This provision shall survive the termination of this Agreement.

q. Should the Consultant engage a subconsultant, the same conditions will apply under this Agreement to each subconsultant.

10. MODIFICATION. This Agreement may be modified or amended only if the amendment is made in writing and is signed by both parties.

11. GENERAL OBLIGATIONS. In performance of the work authorized under this Agreement, Consultant agrees to comply with all applicable laws and regulations, particularly those associated with solicitation of charitable contributions pursuant to New York not-for-profit corporations’ law.

12. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.
13. GOVERNING LAW. Regardless of the place of physical execution or performance this Agreement shall be construed according to the laws of the State of New York and shall be deemed to have been executed in the State of New York.

14. NOTICES. All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States mail, postage prepaid, addressed as follows:

   Company: Buffalo Niagara WATERKEEPER   Consultant
   Contact:  c/o XXXXXX   Contact:  c/o XXXXXX
   Address:  721 Main Street   Address:  721 Main Street
               Buffalo, New York 14203
   Email:  
   Phone Number: 716-852-7483
   Tax ID/EIN/SS #: 22-2993054

Either party may change such address from time to time by providing written notice to the other in the manner set forth above.

15. ACCESS TO RECORDS. It is understood that at any time during the contract period WATERKEEPER and any grantor providing funds for these services may have access to any and all contract records regarding the scope of services.

16. WARRANTY OF ORIGINALITY. Consultant warrants that all material produced by Consultant and delivered to WATERKEEPER hereunder shall be original, except for such portion as is included with permission of the copyright owners thereof, that it shall contain no libelous or unlawful statements of materials and will not infringe upon any copyright, trademark, patent, statutory or other proprietary rights of others and that it will hold harmless WATERKEEPER from any costs, expenses, damages resulting from any breach of this warranty.

17. SEVERABILITY. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, that such provision shall be deemed to be written, construed, and enforced as so limited.

18. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties and there are not other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.

By:
APPENDIX A
Scope of Services

In accordance with the terms of this contract Agreement, WATERKEEPER retains the services of _________________ to provide the following services in support of Buffalo Niagara WATERKEEPER.
ATTACHMENT C

(SAMPLE INSURANCE REQUIREMENT)
**CERTIFICATE OF LIABILITY INSURANCE**

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFER NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

**CONTACT**

**PRODUCER**

License # BR-1009544
Lawley Agency, LLC
361 Delaware Avenue
Buffalo, NY 14202

**E-MAIL ADDRESS:**

**PHONE**

(A/C, No, Ext): 1 (716) 849-8618

**FAX**

(A/C, No): 1 (716) 849-8291

**AUTHORIZED REPRESENTATIVE**

Sample

**CERTIFICATE NUMBER:**

**REVISION NUMBER:**

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

Sample Certificate for Contractors

Re: Project # / Location

Buffalo Niagara Riverkeeper is listed as an additional insured under General Liability, Auto, and Umbrella on a primary, noncontributory basis in regards to on-going and completed operations if required by signed, written contract. Waiver of Subrogation applies in favor of Buffalo Niagara Riverkeeper under General Liability, Auto and Umbrella if required by signed written contract.

**CERTIFICATE HOLDER**

Buffalo Niagara Riverkeeper
721 Main Street
Buffalo, NY 14203

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

**AUTHORIZED REPRESENTATIVE**

Sample