

Consulting Services Contract
City of Waukesha – Powrtek Engineering, Inc.
Project Name: Frame Park Lighting and Electrical Concept Design and Construction Documents

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, referred to herein as the City; and Powrtek Engineering, Inc., 565 Milwaukee Avenue, Suite 3B, Burlington, WI 53105, referred to herein as the Consultant. Together, the City and Consultant are referred to as the Parties.

Recitals

The City published a Request for Proposals, referred to as the RFP, for consulting services in connection with the following Project:

Frame Park Lighting and Electrical Concept Design and Construction Documents

The RFP contained a specific Scope of Work to be incorporated into the successful bidder's contract.

The Consultant submitted a proposal in response to the RFP, and was selected by the City to be awarded the contract for the Project.

The Consultant is willing to perform consulting services according to the Scope of Work stated in the RFP and the Consultant's responsive Proposal, as modified by the Parties, and to accept the award of the contract for the Project.

Now, therefore, the City and the Consultant agree and contract as follows:

1. **Scope of Work.** The Consultant shall perform the Work described in the attached Schedules A, B, C, and D, according to the terms and conditions of this Contract. Schedules A, B, C, and D are incorporated into this Contract by reference.
2. **Standard of Work.** Consultant will perform the Work according to generally-accepted industry practices and the highest standards of the professions of the individual employees performing the Work for Consultant.
3. **Payment.** The City shall pay Consultant for performance of the Work in compliance with the terms and conditions of this Contract, as follows:
 - a. A flat \$50,650.00 upon completion of the Work titled "Powrtek Engineering Breakdown" in Schedule C.
 - b. A flat \$23,600.00 upon completion of the Work titled "Surveying" in Schedule C.
 - c. A flat \$7,793.00 upon completion of the Work titled "Surveying" in Schedule C.
 - d. Up to a maximum of \$21,870.00 on a time-and-material basis for the Work described in Schedule D, at the rates shown in Schedule C.
 - e. Consultant shall invoice the City for all amounts due. All invoices shall be payable net 30 days.
4. **Time.** Consultant shall commence the Work as promptly after execution of this Contract as is possible, and shall complete the Work no later than September 30, 2022, subject only to delays for circumstances beyond Consultant's control, provided Consultant re-commences work promptly in good faith upon the return of normal circumstances.
5. **Subcontractor.** Consultant agrees and acknowledges that it will hire R.A. Smith, Inc. as a subcontractor to perform certain portions of the Work. R.A. Smith, Inc., is not a party to this Contract, and will not be under contract with the City. Consultant is solely responsible for payment for all Work performed by R.A. Smith, Inc., and will indemnify and hold the City harmless from any and all claims for payment by R.A. Smith for any Work

described in this Contract. Consultant will not allow any liens to be placed by any party on any City property for claims for payment for the provision of any materials or performance of any Work described in this Contract, will take immediate action to remove any such liens, and will indemnify and hold the City harmless from any expense to remove such liens from any City property arising from the provision of any materials or performance of any Work described in this Contract.

6. **Ownership of Work Product.** All materials produced in the performance of the Work shall be the sole property of the City, and shall be kept confidential and not disclosed to any third party without the prior written permission of the City.
7. **Changes.** This Contract can only be amended by the written, mutual agreement of the Parties. No change to the scope of the Work, or the total amount to be paid to Consultant, shall be effective unless done by the written mutual agreement of the Parties.
8. **Indemnification.** Consultant shall indemnify, defend, and hold the City and its officials and employees harmless from any and all third-party claims, demands, causes of action, lawsuits, judgments, penalties, and other liabilities of any kind to the extent that they arise out of or in connection with Consultant's performance of the Work, including court costs and actual attorney fees.
9. **Insurance.** Consultant shall maintain insurance of the following kinds and for not less than the following limits, at Consultant's sole expense, at all times during the performance of the Work. Policies shall be occurrence, and not claims-made, policies, except for professional errors and omissions policies. Consultant shall obtain an endorsement making the City an additional insured, and Consultant's insurance shall be primary, not excess, and non-contributory. All policies shall be from insurers licensed to issue such policies in Wisconsin. Upon the execution of this Contract, Consultant shall deliver a certificate of insurance to City showing that all requirements of this section are met.
 - a. Commercial general liability, including products-completed operations, \$1,000,000 per occurrence, \$2,000,000 aggregate per project.
 - b. Automobile liability, \$1,000,000 bodily injury, \$1,000,000 property damage.
 - c. Excess liability-umbrella, \$5,000,000.
 - d. Worker compensation, statutory requirements.
 - e. Professional liability-errors and omissions, \$2,000,000, with extended-reporting period endorsement.
10. **Record Keeping.** Consultant shall keep all documents and records generated in the performance of the Work for no less than 7 years after completion of the Work, and shall make them available to the City at the City's request. Consultant acknowledges that such documents and records may be subject to Wisconsin's Open Records Law.
11. **Cooperation by City.** The City shall cooperate with the Consultant in the performance of the Work, and shall respond timely to all reasonable requests for information and access.
12. **Parties Are Independent Contractors.** Nothing in this Contract shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Contract, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions.
13. **Governmental Immunities, Liability Limits, and Notice Requirements Preserved.** Nothing in this Contract shall be construed to be a waiver or modification of the governmental immunities, notice requirements, or limitations of liability imposed by Wis. Stats. §893.80 or any other law.

14. **Permits and Licenses.** Consultant shall be responsible, at Consultant's expense, for obtaining all permits and licenses required for the performance of the Work.
15. **Assignment Prohibited.** This Contract, and the Consultant's responsibility to perform the Work under this Contract, may not be assigned by the Consultant without the City's written consent.
16. **Notices.** All notices required by this Contract, and all other communications between the Parties, shall be addressed as follows:

To the City: Attention Jeff Hernke
 City of Waukesha
 201 Delafield Street
 Waukesha WI 53188

To Consultant: Attention Greg Sadowski, P.E.,
 Powrtek Engineering, Inc.
 565 Milwaukee Avenue, Suite 3B
 Burlington, WI 53105

17. **Corporate Authorization.** The individuals executing this Contract on behalf of the Consultant warrant and represent that they are duly authorized to bind the Consultant to this Contract. Consultant warrants and represents that the execution of this Contract is not prohibited by the Consultant's articles of incorporation, by-laws, operating agreement, or other internal operating orders, or by any applicable law, regulation or court order. Consultant shall provide proof upon request.
18. **Assistance of Counsel, Voluntary Contract.** The Consultant acknowledges that it has either had the assistance of legal counsel in the negotiation, review and execution of this Contract, or has voluntarily waived the opportunity to do so; that it has read and understood each of this Contract's terms, conditions and provisions, and their effects; and that it has executed this Contract freely and not under conditions of duress.
19. **Adequacy of Consideration.** The Parties acknowledge that the consideration expressed in this Contract is adequate and sufficient to make the obligations contained in this Contract binding upon the Parties.
20. **Costs of Enforcement.** The Parties agree that in the event legal action is necessary to enforce any term or condition of this Contract, then the breaching Party will pay the non-breaching Party's costs incurred in such legal action, including actual attorney fees. If a judgment is taken, then costs of enforcement will be added to the judgment, subject to statutory governmental immunities and liability limits.
21. **Severability.** If any term of this Contract is held unenforceable by a court having jurisdiction, then to the extent the unenforceable term can be severed from the remainder of this Contract without affecting the enforceability of the remainder of this Contract or substantially frustrating its purpose, it will be so severed, and the remainder of this Contract will remain in effect and enforceable.
22. **Survival and Parties Bound.** Unless specifically limited in this Contract, any term, condition or provision of this Contract will survive the execution of this Contract or any stated time periods, to the extent necessary for their performance. This Contract is binding upon, and inures to the benefit of, the Parties' successors, assigns, heirs, executors, trustees and personal representatives.
23. **Governing Law and Jurisdiction.** This Contract will be construed and enforced according to the laws of Wisconsin. If a lawsuit arises out of this Contract, it shall be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.

- 24. **Integration, Construction of Contract.** This Contract constitutes the entire agreement of the Parties formed as a result of the City's RFP and the Consultant's responsive proposal. All other agreements and understandings of the parties with respect to the subject matter expressed in this Contract are unenforceable. If there are any conflicts among the terms of this Contract and any documents incorporated into this Contract, including Schedule A, then the terms of this Contract shall control.
- 25. **Termination.** Either party may terminate this Contract without cause by giving written notice of termination to the other party, with termination to occur no sooner than 30 days after delivery of the notice. Upon termination, Consultant shall be paid for all Work completed as of the date of termination.
- 26. **Limitation of Liability.** Consultant shall not be liable for incidental or consequential contract damages. There shall be no other limitations of Consultant's liability.
- 27. **Confidentiality; Public Records.** All documents created pursuant to this Contract, and all documents delivered to the City, are public records and will be subject to disclosure to the public under Wisconsin's Open Records law.
- 28. **Effective Date.** This Contract shall be effective as of the latest date of execution shown below.

City of Waukesha

 By Shawn N. Reilly, Mayor
 Date: _____

 Attested by Gina L. Kozlik, City Clerk
 Date: _____

To certify that funds are provided for payment:

 Denise Vandebush-Kohlmann, Director of Finance
 Date: _____

Powrtek Engineering, Inc.

 By (print name) _____
 Title: _____
 Date: _____

 By (print name) _____
 Title: _____
 Date: _____

Schedule A – Scope of Work

Overview

The Work will consist of the design, engineering, and construction supervision for the replacement of lighting in Frame Park. Located in downtown Waukesha along the Fox River, Frame Park is the center of many activities, from leisure walking, bike riding, playground use, paddle boat rentals, day and night baseball games, formal gardens, and other community events.

Currently Frame Park has a post top Victorian pole and luminaire. The existing system was installed in 1994. At that time conduit, concrete bases, lighting cabinets, wire, and poles were installed. Since then, only routine maintenance has occurred. The existing system is showing its age and has become a strain on our maintenance program.

The City requires a complete new system that will keep the peaceful scene and provide light that offers a sense of safety for patrons. The new lighting will illuminate all presently-illuminated areas, including parking lots, sidewalks and paths, and gathering spaces.

There are currently 153 post-top lighting units and 6 roadway lighting units. There is one roadway pole for a camera system at the playground, this will need to be included in the design.

The preferred voltage is 120 volts.

The City currently has a specific post-top luminaire and pole. This information will be provided in an Appendix to this RFP. The City does currently use a 14-foot pole for most applications in the Parks with other height options available for parking lots and specific use spaces depending on design requirements. The City will procure poles and fixtures based on the Consultant's design in early 2022.

The Consultant will look at power demand for lighting and receptacles throughout the park and specify needed power cabinets. Currently there are three large cabinets that the City would like to see reduced in size. Pictures of the existing cabinets will be included in the Appendix. The existing 240/120-volt services can be reused if they work with the new design.

The Consultant will:

Review the existing lighting systems and current lighting needs for safety and security in Frame Park.

Design lighting systems that will be efficient and cost effective, in both construction and operation.

Review City Construction Standards as published on the Department of Public Works website, to create a design that meets current City Standards for construction and materials.

Create construction documents for a complete lighting system, including power cabinets.

Review submittals of materials and equipment submitted by contractors.

Work with City Staff for input in the lighting design.

Required Meetings

One site meeting with staff for the engineer to get a understanding of the needs for the park.

Approximately four meetings with staff, can be done via Microsoft Teams or in person to go over design elements.

One Parks, Recreation, and Forestry Board Meeting.

One Common Council Meeting.

Preliminary Design

Review the existing lighting system with City Staff for possible revisions.

Procure a survey of the existing Park within the project limits that is necessary for the design process.

Prepare preliminary designs along with preliminary cost estimates for budget purposes, for City Staff to review.

Meet with City Staff and PRFB to present plans and as necessary to achieve the goals of the project.

Final Design and Bidding

After approval by City Staff and PRFB, prepare a final design and specifications and an updated cost estimate.

Prepare design and specifications for City to put out for bidding.

Assist the City during the bidding process to answer questions and approve submittals.

Provide a digital copy of the plans in AutoCAD Civil 3D format and in PDF 11x17 format.

Construction Phase Services

An hourly rate will be paid for answering questions, approving submittals, and site visits if necessary.

Information Available from the City

City Staff can provide additional information regarding the existing lighting systems in Frame Park.

Preparation of Bid Documents, public bidding via Quest, addendums during the bidding process, project award through the Board of Public Works and Common Council, change orders and project management.

Existing documentation of the lighting systems, power cabinets, and park use.

Tentative Schedule	
<u>Tasks</u>	<u>Target Dates</u>
Project Kick-off	January 2021
Concept Design & Preliminary Budget	February 2021
Light Pole and Luminaire quantities	March 2022
City Review	March 2022
Final Design	April 2022
Bidding	April 2022
Award	May 2022
Construction	June 2022
Completion	September 2022