

Consulting Services Contract
City of Waukesha – Graef, Inc.
Project Name: 2017 General Construction Inspection Services

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, referred to herein as the City; and Graef, 125 S 84th Street, Suite 401, Milwaukee, WI 53214 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:

2017 General Construction Inspection Services

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, 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 and provide all Construction Inspection and construction staking services as specified by the City in individual work orders and as specified in the Scope of Work in Schedule A.
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 to Consultant an hourly fee for labor and expenses provided based upon the Rate information as set forth in the Consultant's proposal Dated January 13, 2017 for performance of the Work in compliance with the terms and conditions of this Contract. Consultant shall invoice the City, monthly. All invoices shall be payable net 30 days. The Hourly Rate for an Inspector for non-complex projects shall be \$65.00. The Hourly Rate for an Inspector for moderately complex projects shall be \$75.00. The Hourly Rate for an Inspector for Complex projects shall be \$78.00. The Hourly rate for the preparation of As-Built record drawings shall be \$90.00, with an estimate of 30 hours. The Hourly Rate for a Survey Office Technician shall be \$89.00. The Hourly Rate for a 1-Person Survey Crew shall be \$110.00. The Hourly Rate for a 2-person Survey Crew shall be \$157.00. The Hourly Rate for the Construction Project Manager shall be \$150.00 and shall not exceed 3% of Time relative to the Inspector's hours. These Rates shall not be adjusted for the duration of this Contract.
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 **December 31, 2017**, subject only to delays for circumstances beyond Consultant's control, provided Consultant recommences work promptly in good faith upon the return of normal circumstances.
5. **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.
6. **Changes.** This Contract can only be amended by the written mutual agreement of the Parties. No change to the scope of the Work, the personnel as indicated in the Consultant's Proposal Dated January 13, 2017, or the Hourly Rates to be paid to Consultant, shall be effective unless done by the written mutual agreement of the Parties.

7. **Indemnification.** Consultant shall indemnify and hold the City harmless from any and all third-party claims, demands, causes of action, lawsuits, judgments, penalties, and other liabilities of any kind arising out of, or connected in any way with, Consultant's performance of the Work, including court costs and actual attorney fees.
8. **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. Consultant shall obtain an endorsement making the City an additional insured and loss payee, 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.
9. **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.
10. **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.
11. **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.
12. **Governmental Immunities and Notice Requirement Preserved.** Nothing in this Contract shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.
13. **Permits and Licenses.** Consultant shall be responsible, at Consultant's expense, for obtaining all permits and licenses required for the performance of the Work unless expressly agreed by the City.
14. **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.

15. **Notices.** All notices required by this Contract, and all other communications between the Parties, shall be addressed as follows:

To the City: Attention: Jon Weil, PSS
City of Waukesha
130 Delafield Street
Waukesha WI 53188

To Consultant: Attention: Robert Warren, PE
Graef
125 S 84th Street, Suite 401,
Milwaukee, WI 53214

16. **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.
17. **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.
18. **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.
19. **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.
20. **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.
21. **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.
22. **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.
23. **Integration.** This Contract constitutes the entire agreement of the Parties formed by the City's RFP and the Consultant's responsive proposal; however, if any ambiguity in this Contract requires resolution, or this Contract is silent on a material point, then reference may be made to the RFP and the Consultant's proposal, in that order of priority, to construe this Contract. All other agreements and understandings of the parties with respect to the subject matter expressed in this Contract are unenforceable.
24. **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 20 days after delivery of the notice. Upon termination, Consultant shall be paid for all Work completed as of the date of termination.

City of Waukesha

By Shawn N. Reilly, Mayor

Date: _____

To certify that funds are provided for payment:

Richard L. Abbott, Director of Finance

Date: _____

GRAEF

By (print name) _____

Title: _____

Date: _____

Attested by Gina L. Kozlik, City Clerk

Date: _____

By (print name) _____

Title: _____

Date: _____

Schedule A

Scope of Work

A. General:

- Provide construction inspection services as requested by the City of Waukesha Engineering Division for infrastructure installation in 2017. Infrastructure includes: sanitary sewer systems, storm sewer systems, traffic signal conduit, bases and signal equipment, street light conduit and bases, subgrade evaluation, subgrade verification, road base installation, concrete curb, flatwork and pavement, hot mix asphalt pavement, and restoration and additional infrastructure as needed and shown on Plans. Other non-infrastructure observations will be requested when applicable and may include erosion control and traffic control.

Projects that the City is considering for the construction inspection services are for the following projects:

- Prairie Avenue Utility and Street Improvements
- NW Barstow Utility and Street Improvements
- Understand and enforce the City of Waukesha Specifications and practices. This may include attending an inspector's meeting at the City of Waukesha Engineering Division at a time to be determined.
- Attend pre-construction meetings as necessary for assigned projects. Meeting facilitation and agenda preparation will not be required for this task.
- The Inspector will work with, report to and communicate with the City of Waukesha Project Manager in charge of the project. The inspector shall be equipped with a phone and survey equipment for acquiring elevations. Please describe in the proposal the equipment the inspector will have, including any electronic reporting software.
- Review construction materials on-site to determine compliance with Contract Documents.
- Determine that improvements are installed at proper elevations and locations. Record grades and pipe inverts during construction for record drawings. Report deviations from Contract Documents to City of Waukesha Project Manager. The City will not provide the Inspector with survey equipment.
- Be knowledgeable of concrete and compaction testing/sampling procedures and witness testing completed by Contractor.
- Measure and track quantities included in the Contract. Complete and deliver report with the tabulated quantities to the Project Manager every two weeks.
- Complete and deliver Inspector's Daily Reports (IDRs) to Project Manager every two weeks.
- Attend meetings held at the job site or City Engineering office.

- Prepare and complete record drawings in electronic PDF format and produce 11" x 17" paper copies. The information must be formatted and provided to the City for placement into the City's GIS system no later than 60 days after Substantial Completion of the project. Electronic copies (PDF and AutoCad v2013) of the design drawings will be made available to the Consultant for record drawing preparation. The following shall be shown for each structure, appurtenances, and lateral ends or other features that are part of the sewer system:
 - Northing and Easting Coordinates in Excel or CSV (Comma Separated Values) format including point number, northing, easting, elevation and description of each structure (PNEZD)
 - Elevations of all rims, inverts, catch basins, gutter inlets and outlet sections shall be given. Invert elevations shall be documented at the time of installation.
 - Pipe size and structure type.
 - Type of frame to chimney seal.
- Provide staking services as requested by the Project Manager. The staking may include underground utilities, curb and gutter, sidewalk and any other surveying required to complete the project.
- Provide one point of contact for the scheduling of work and billing questions.