

Consulting Services Contract
City of Waukesha – UW-Milwaukee Cultural Resource Management
Project Name: 2021-2022 Professional Archaeological Services

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, referred to herein as the City; and The Board of Regents of the University of Wisconsin System on behalf of the University of Wisconsin-Milwaukee, 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:

2021-2022 Professional Archaeological 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 Archaeological services as specified by the City in individual work orders and as specified in the Work described on Schedule A. Schedule A is 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 Work performed, according to the fees shown in Schedule A. Consultant shall invoice the City monthly, and all invoices shall be payable net 30 days.
4. **Time.** This Contract shall expire December 31, 2022.
5. **Ownership of Work Product.** All reports and tangible deliverables created under this Agreement shall be the property of the City. All original data shall remain the property of Contractor. At the request of the City, copies of such materials will be provided to the City and the City shall have a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use and authorize others to use such materials for non-commercial purposes.
6. **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.
7. **Indemnification.** To the extent permitted by Wis. Stats. §895.46(1) and §893.82, Consultant shall 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.
8. **Insurance.** Consultant warrants and represents that it is self-funded for liability (including general, professional, and automobile) insurance as an agency of the State of Wisconsin under Sec. 895.46, 893.82 and 20.505(2)(k) of Wisconsin Statutes. This liability insurance protection applies to UWM officers, employees and

agents while acting within the scope of their duties. The liability insurance is funded to pay in excess of \$.1 million for negligent acts or omissions of its officers, employees, and agents, in accordance with the Statutes. Coverage is continuous under the law. Consultant cannot extent liability insurance protection to any other person.

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, 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.
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.
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: Kristine Walker
 City of Waukesha
 130 Delafield Street
 Waukesha WI 53188
 - To Consultant: Attention: Jennifer R. Haas
 University of Wisconsin Milwaukee Cultural Resource Management
 Sabin Hall, SAB 280
 3413 N. Downer Ave.
 Milwaukee, WI 53211-0413
16. **Corporate Authorization.** The individuals executing this Contract on behalf of the Consultant represent that they are duly authorized to bind the Consultant to this Contract. Consultant 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. **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.
20. **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.
21. **Governing Law and Jurisdiction.** This Contract will be construed and enforced according to the laws of Wisconsin.
22. **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.
23. **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.
24. **Limitation of Liability.** Consultant shall not be liable for incidental or consequential contract damages. There shall be no other limitations of Consultant's liability.
25. **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.
26. **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:

 Bridget M. Souffrant, Director of Finance
 Date: _____

**The Board of Regents of the University of Wisconsin System
on behalf of the University of Wisconsin-Milwaukee**

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

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

SCHEDULE A

SCOPE OF SERVICES TO BE PROVIDED BY THE CONSULTANT:

Professional archaeological services include providing archival and literature research to identify known archaeological and burial sites within areas of proposed construction projects as well as burial site monitoring by a "Qualified Archaeologist" as specified under Wis. Statutes 157.70 (1) (i) and Wis. Admin Code HS 2.04 (6). Also, the archaeologist may assist the City of Waukesha with obtaining permission/permitting to construct within burial sites from the Wisconsin Historical Society.

The firm will provide archeological services, field monitoring and permit assistance on an "as-needed" basis for projects to be determined during the 2-year term of the contract.

Methods and techniques used during the study will follow those standards promulgated in the Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation and the Guide for Public Archeology in Wisconsin, as Revised. The use of these documents as guides for historic preservation planning is endorsed by the Wisconsin State Historic Preservation Office (SHPO) and the Wisconsin Archeological Survey, the statewide professional organization.

Consultant's cost per hour includes all labor, equipment and all other costs necessary to complete Archaeological research and field monitoring. Costs associated with administrative services, billing preparation, computer charges, mileage, meals, lodging, printing, plotting, copying, faxing and phone bills will not be paid by the City. Hourly rates shall not be adjusted during this contract.

Archaeological Research

Field Monitoring

Straight Time: (7 A.M. – 5 P.M.)	\$ <u>39.52</u> /hour	\$ <u>39.52</u> /hour
Overtime: (After 5 P.M.)	\$ <u>57.47</u> /hour	\$ <u>57.47</u> /hour

The Board of Regents of the University of Wisconsin System on behalf of the University of Wisconsin
Kate Mollen

DocuSigned by:
Kate Mollen 11/18/2020

Name of Organization Authorized Agent's Signature Date