

Consulting Services Contract
City of Waukesha – UW-Milwaukee Cultural Resource Management
Project Name: Archeological Services for the 2022 Surface Transportation Program 2022 St. Paul Ave.
Reconstruction Project

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:

Archeological Services for the 2022 Surface Transportation Program 2022 St. Paul Ave. Reconstruction Project

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, 2021.
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: Craig Ausen, P.E. City of Waukesha 130 Delafield Street Waukesha WI 53188
To Consultant:	Attention: Thomas R. Marcussen UW-Milwaukee Office of Sponsored Programs P.O. Box 340 Milwaukee, WI 53201-0340
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:

Richard L. Abbott, 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 WORK



Sabin Hall, Rm 290
3413 N. Downer Ave
Milwaukee, WI
53211-0413
414 229-3078 phone
414 229-5848 fax

Alexander E. Damien, P.E.
Department of Public Works
Engineering Department
130 Delafield Street
Waukesha, WI 53188-3616

August 6, 2019

**RE: Section 106: Archaeological and Architecture/History Investigations
St. Paul Avenue, Madison Street to W. North Street
City of Waukesha, Waukesha County
UWM-CRM 2019-272**

Dear Mr. Damien,

The Board of Regents of the University of Wisconsin System through Cultural Resource Management (Department of Anthropology) at the University of Wisconsin-Milwaukee (UWM) proposes to conduct cultural resource investigations for the above referenced project in the City of Waukesha.

The project consists of a full reconstruction; sidewalk will be added to a portion of the project. Although most work would occur within the existing road right-of-way some areas of property acquisition are anticipated for the project.

The cultural resource investigations are designed to address compliance requirements obtaining from Section 106 of the National Historic Preservation Act, as well as Wisconsin Statutes §44.40 and §157.70. The methods and techniques used during the study will follow those standard promulgated in the *Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation*, the *Guide for Public Archaeology in Wisconsin*, and the *Architecture-History Survey Manual*. The use of these documents as guides for historic preservation planning is endorsed by the Wisconsin State Historic Preservation Office (SHPO). The investigations will follow those guidelines and processes outlined in Chapter 26 of the Facilities Development Manual.

Scope of Work

The archaeological study will consist of archives and literature research and field investigations. The archival research will identify all previously reported archaeological sites both within the area of potential effect (i.e. all areas of proposed ground disturbing activities) and within a one mile radius of the area of potential effect (APE). The archival research will also document locales within the APE that have already been subjected to archaeological survey. Preliminary research indicates that there are no previously reported archaeological sites adjacent to the project area.

Field investigations will consist of intensive Phase I archaeological survey of the APE using visual reconnaissance and shovel probe testing.

Historical Investigations

The architectural/historical investigations will consist of archives/literature research and field inventory. The area of potential effect will include all areas of proposed ground disturbing activity as well as a contextual “zone” around the study area. The archival research will document above ground structures/buildings that have been surveyed (i.e. survey cards have been prepared) within the APE and which buildings/structures are listed on the National or State Registers of Historic Places. The field inventory will identify those buildings/structures within the APE that are at least 40 years old, retain good or better integrity, and show potential for architectural and/or historical significance. Inventory cards will be prepared for those buildings/structures that meet the aforementioned criteria. Preliminary research indicates are numerous previously surveyed properties adjacent to the project area that are in the Wisconsin Historic Preservation Database (WHPD). Moreover, one property, the Louis Yanke Saloon (200 Madison Street, AHI 16816) is listed in the National Register of Historic Places.

Reports/Submittals

The results of the archaeological investigations will be documented using standard WisDOT reporting forms for archaeological and historical studies: the Archaeological Field Survey Report Form (AFSR), the Archaeological Literature and Records Review Form, and the Architecture History Survey Form (AHSF). UWM-CRM will also complete the relevant portions of the WisDOT Section 106 Review form.

Given the presence of a NRHP-listed property, a Determination of No Adverse Effect (DNAE) documentation is included in the scope and cost.

Costs

The attached budget proposal includes projected salaries, travel expenses and supply costs associated with the proposed level of field and reporting. In addition, UWM requires each funded project to recover the costs of personnel related expenses under the heading of Fringe Benefits. The cost of physical plant maintenance and contract administration are recovered under the heading of Indirect Costs. UWM-CRM does not charge profit on funded projects. The cost is included as Attachment 1.

Please note that the cost assumes that no significant archaeological sites will be identified during the course of the work. The scope/cost includes survey of up to six properties. Determination of Eligibility forms are not included in the scope and cost.

As always, if there are questions or concerns regarding the scope of work, or to further discuss the project, please do not hesitate to contact me at (414) 229-3078 or at haasjr@uwm.edu.

Sincerely,



A handwritten signature in black ink, appearing to read "JRH".

Jennifer R. Haas, Ph.D.
Principal Investigator



Attachment 1: Cost Estimate

University of Wisconsin-Milwaukee
Cultural Resource Management
BUDGET ESTIMATE 2019-272
Section 106: Archaeological and Architecture/History Investigations
West St. Paul Avenue Reconstruction

DIRECT COSTS

A: SALARIES & WAGES

TASK	PERSONNEL											
	Senior				LTE				Students			
	Title	\$/hr	Hrs	Total\$	Title	\$/hr	Hrs	Total\$	Title	\$/hr	Hrs	Total\$
Coordination & Administration	Archaeologist	24.01	2	48.02								
Architecture/History Field Work Report, & DNAE	Historian	24.01	120	2881.20								
Archaeology Field Work & Report	Archaeologist	24.01	32	768.32	Archaeoloigs	24	10	240.10				

SUBTOTAL LABORS	\$3,697.54	\$240.10	\$0.00
TOTAL LABORS			\$3,937.64

B: FRINGE BENEFITS

33% of Senior Personnel	\$1,220.19	
11.5% of LTE Personnel	\$27.61	
3.1% of Student Personnel	\$0.00	
TOTAL FRINGE BENEFITS		\$1,247.80

C: SUPPLIES & EXPENSES

Supplies	\$0.00	
Meals & Lodging	\$0.00	
Vehicle Rental & Gasoline	\$247.43	
TOTAL SUPPLIES		\$247.43

D: TOTAL DIRECT COSTS	(A+B+C)	\$5,432.87
E: INDIRECT COSTS	(D X .52)	\$2,825.09
TOTAL PROJECT COSTS	(D + E)	\$8,257.96