

**Consulting Services Contract**  
**City of Waukesha – Bray Associates-Architects, Inc.**  
**Project Name: Fire Station 3**

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, referred to herein as the City; and Bray Associates-Architects, Inc., 829 South 1<sup>st</sup> Street, Milwaukee, Wisconsin 53204, referred to herein as Bray. Together, the City and Bray are referred to as the Parties.

**Recitals**

The City requires architectural consulting services in connection with the completion of Fire Station 3. Bray has represented to the City that it is able to perform the required services, and is willing to perform those services according to the City's requirements.

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

1. **Scope of Work.** Bray shall act as the Supervising Professional for the completion of construction of Fire Station 3, and in general shall perform all professional architectural services required for the completion of the project and required government approvals, including completion of final inspections, punch lists, and Wisconsin DSPS Form SBD-9720 HVAC Compliance Statement.
  - a. **Architectural Scope of Services.**
    - i. Review / advise on outstanding issues as identified by the City or the General Contractor
    - ii. Creation of punch list and subsequent verification of punch list completion
    - iii. Generation and execution of compliance statement
    - iv. Support of the City and the General Contractor in project closeout activities
  - b. **Engineering Scope of Services.**
    - i. Services of engineering consultants (e.g. civil, structural, plumbing, fire protection, HVAC, electrical, etc.) will be provided at the direction of the City and will be invoiced at the cost incurred plus ten percent.
  - c. **Specific Items.** Not in limitation of Bray's Work, the following specific items shall be reviewed by Bray, and appropriate corrective actions recommended:
    - i. Missing lag bolts on steel lintels. Screws were used instead of lag bolts.
    - ii. Window heads improperly sized and installed, and cavity flashing missing.
    - iii. Flag pole foundation – contractor installed a base that is larger than manufacturer's specification, but smaller than original architect's specification.
    - iv. Steel lintels at exterior masonry openings – improperly positioned, edges of steel lintels are not recessed 3/8" from the planar surfaces of the face brick.
    - v. Masonry control joints – missing rubber gasket spacing.
2. **Standard of Work.** Bray will perform the Work according to generally-accepted industry practices and the standards of the professions of the individual employees performing the Work for Bray.

3. **Compensation.** Bray shall be compensated by the City for performance of the Work on a time-and-materials basis, according to the following per-hour rate schedule:

Principal-in-Charge .....	\$175.00
Design Architect.....	\$135.00
Project Manager.....	\$125.00
Project Architect.....	\$100.00
Specification Writer .....	\$100.00
Quality Control .....	\$100.00
Construction Administration .....	\$100.00
Interior Designer .....	\$75.00
Graphic Designer .....	\$65.00
BIM Technician .....	\$70.00
Architectural Renderer .....	\$60.00
Clerical / Administrative.....	\$50.00

In addition, actual expenses incurred by Bray for reproductions, postage, and delivery shall be reimbursed to Bray by the City. Bray shall invoice the City, monthly. All invoices shall be payable net 30 days.

4. **Time.** Bray shall commence the Work as promptly after execution of this Contract as is possible, and shall complete the Work no later than March 1, 2018, subject only to delays for circumstances beyond Bray's control, provided Bray recommences work promptly in good faith upon the return of normal circumstances. The Contractor's failure to perform, or perform in a timely fashion, shall be considered a circumstance beyond Bray's control.
5. **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 Bray, shall be effective unless done by the written mutual agreement of the Parties.
6. **No Liability for Prior Architect's Work.** The City acknowledges that Bray was not the architect for the Fire Station 3 project, and is only providing Supervising Professional services to support the City in closing out the project. The City releases Bray from any and all liabilities that may arise as a result of the acts or omissions of all other architects or engineers, or the firms by which they are employed, who provided professional services to the City in connection with the Fire Station 3 project.
7. **Indemnification.** Bray 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 to the extent they arise from, or are or connected in any way with, Bray's performance of the Work, including court costs and actual attorney fees. The City shall indemnify and hold Bray harmless from any and all third-party claims, demands, causes of action, lawsuits, judgments, penalties, and other liabilities of any kind to the extent they arise from, or are or connected in any way with, the City's acts or omissions, including court costs and actual attorney fees.
8. **Insurance.** Bray shall maintain insurance of the following kinds and for not less than the following limits, at Bray's sole expense, at all times during the performance of the Work. Policies shall be occurrence, and not claims-made, policies, except for errors and omissions policies. Bray shall obtain an endorsement to general liability policies making the City an additional insured, and Bray'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, Bray 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. Professional liability-errors and omissions, \$2,000,000, with extended-reporting period endorsement.
9. **Record Keeping.** Bray 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. Bray acknowledges that such documents and records may be subject to public disclosure under Wisconsin's Open Records Law.
10. **Cooperation by City.** The City shall cooperate with Bray 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, limitations, or notice requirements imposed by Wis. Stats. §893.80 or any other law.
13. **Permits and Licenses.** Bray shall be responsible, at Bray's expense, for obtaining all permits and licenses required for the performance of the Work.
14. **Assignment Prohibited.** This Contract, and Bray's responsibility to perform the Work under this Contract, may not be assigned by Bray 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:
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|--------------|--|
| To the City: | Attention Director of Public Works<br>City of Waukesha<br>130 Delafield Street<br>Waukesha WI 53188                        |
| To Bray:     | Attention Matthew D. Wolfert<br>Bray Associates-Architects, Inc.<br>829 South 1 <sup>st</sup> Street<br>Milwaukee WI 53204 |
16. **Corporate Authorization.** The individuals executing this Contract on behalf of Bray warrant and represent that they are duly authorized to bind Bray to this Contract. Bray warrants and represents that the execution of this Contract is not prohibited by Bray's articles of incorporation, by-laws, operating agreement, or other internal operating orders, or by any applicable law, regulation or court order. Bray shall provide proof upon request.
17. **Assistance of Counsel, Voluntary Contract.** Bray 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. 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, Bray shall be paid for all Work completed as of the date of termination.
25. **Effective Date.** The effective date of this Contract is the last date of signature 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: \_\_\_\_\_

**Bray Associates-Architects, Inc.**

\_\_\_\_\_  
 By Matthew D. Wolfert  
 Title: President  
 Date: \_\_\_\_\_

\_\_\_\_\_  
 By (print name) \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_