

**Consulting Services Contract**  
**City of Waukesha – Robert W. Baird & Co.**  
**Project Name: Multipurpose Building Financial Analysis**

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, referred to herein as the City; and Robert W. Baird & Co., Incorporated, 777 East Wisconsin Avenue, 25<sup>th</sup> Floor, Milwaukee, WI 53202, referred to herein as the Consultant or Baird. 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:

Financial and Development Analysis for the Future Multipurpose Municipal Building.

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 on behalf of itself, Bray Associates Architects, Inc. Ayres Associates and CBRE 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 the Work described on Schedule A, according to the terms and conditions of this Contract. 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 to Consultant a total, flat Contract Price of **Sixty Thousand Seven Hundred Twenty-Four Dollars (\$60,724.00)** for performance of the Work in compliance with the terms and conditions of this Contract. Consultant shall invoice the City, monthly. No more than 90% of the Contract Price shall be payable before Consultant's Work is complete and delivered to the City. 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 within 6 weeks from the time the project is awarded to the consultant, 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, or the total amount to be paid to Consultant, shall be effective unless done by the written mutual agreement of the Parties.
7. **Limitation of Liability.** The Consultant's liability for damages to the City is limited to direct damages for breach of contract and for negligent performance of contract, and City waives all consequential, indirect, and punitive damages.

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.
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 Director of Public Works  
                                   City of Waukesha  
                                   130 Delafield Street  
                                   Waukesha WI 53188

To Consultant:       Attention Bradley Viegut  
                                   Robert W. Baird & Co., Inc.  
                                   777 E Wisconsin Ave 25<sup>th</sup> Floor  
                                   Milwaukee WI 53202

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: \_\_\_\_\_

\_\_\_\_\_  
 Attested by Gina L. Kozlik, City Clerk  
 Date: \_\_\_\_\_

To certify that funds are provided for payment:

\_\_\_\_\_  
Richard L. Abbott, Director of Finance  
Date: \_\_\_\_\_

**Robert W. Baird & Co., Incorporated**

\_\_\_\_\_  
By Bradley Viegut, Managing Director  
Date: \_\_\_\_\_

## Schedule A

### Scope of Work:

Options identified by the study were: 1) building a New City Hall on another site in the downtown area, 2) building a New City Hall on the existing City Hall site, and 3) building a new City Hall on top of the City's Metro Transit parking structure. Under option 1 it is possible that the building may be a mixed use building consisting of City Hall and private development. It is further possible that under this option the building may also be privately owned and that the City may lease space for City Hall.

### Phase 1 Financial Analysis:

1. The purpose of the first phase is to preliminarily identify financing and funding restrictions that may exist with each option listed above to further educate the City on realistic financing possibilities before proceeding to selection of a preferred option and the development of detailed financing plan.
2. The first phase of this analysis will consist of identifying the City's options for financing a new City Hall, including the options for repaying the financing for each option. The pros and cons of each financing and funding option.
3. The analysis should include a written description of the financing options for each option, a description of eligible sources of repayment and a written description of the pros and cons of the option.
  - a. The analysis should specifically consider:
    - i. Implications of owning vs. leasing;
      1. Owning vs Operating lease
      2. Owning vs Capital lease
    - ii. Preliminary impacts to the Expenditure Restraint Program (ERP)
    - iii. Joint development with a private/public partnership;
    - iv. Financial implications of dispositioning of vacant City owned property;
    - v. Preliminary impacts on levy limits for owning vs. leasing;
    - vi. Preliminary impacts of the impacts on borrowing capacity;
    - vii. Preliminary impacts on overall debt structure
    - viii. Potential changes to state law that would allow for alternative financing scenarios not currently available or limited by state law.
    - ix. The Consultant shall develop 3 or 4 comparable recent case studies, within this region, in which public/private projects of this type support economic development (especially projects in which public facilities occupy a private sector building on the basis of leasing or partial investment). Case studies should discuss initial capital investment as well as ongoing issues regarding operation and maintenance.
4. A written report should be prepared summarizing the findings and recommendations of the options above.

## **Phase 2 Financial Analysis**

1. The second phase will consist of developing a more detailed financing plan for the three City Hall options.
2. To that end, for each City Hall option the consulting team should consider and develop an analysis on the following:
  - a. Recommended option for financing and development of applicable preliminary debt service schedules for any proposed financing.
  - b. The identification and detailed analysis of proposed sources of repayment for the financing option.
  - c. The identification of the impacts to the City's general obligation borrowing capacity for each option.
  - d. The tax levy impacts for each option and the impacts on levy limits under each option, taking into account:
    - i. Existing debt structure
    - ii. Anticipated debt structure of ongoing "normal" capital financing
    - iii. Anticipated Tax Increment District closures
  - e. Options for the use of proceeds from the sale of any City owned lands that may be vacated under each option.
  - f. Evaluate and compare the annual occupancy costs of leasing and owning office space over a long term, 21- year time period.
  - g. If the use of Tax Incremental Financing ("TIF") is recommended for repaying portions of TIF-eligible project costs, the preparation of preliminary tax increment projections and cash flow analyses.

## **Development Analysis**

1. The Consultant shall provide and analyze how each redevelopment can impact surrounding property values and development opportunities and minimize negative impacts. The costs and benefits for such impacts need not be as precise as the property redevelopment options on each of the three sites.
2. The Consultant shall also evaluate any critical actions of the part of the city needed to facilitate the development (such as subsidies or regulatory actions). This analysis will also be used to estimate potential TIF revenues for subsidizing the investments.
3. Identify high level concept plans (development envelopes or bubble diagrams) for representative prototypical redevelopment alternatives showing how much and what type of building space and parking can be developed within the identified opportunity sites.
4. Identify the best split of private/public space in a building.

## **Meetings Anticipated and Time Schedule**

1. The consultant should assume at least 3 meetings with staff.
2. Meeting Presentations: The Consultant should assume one presentation to the AD Hoc Committee and one presentation to the Common Council.

3. The report should be ready to present to the Ad Hoc Committee within 6 weeks from the time the project is awarded to the consultant.

### **City's Responsibility**

The City has included the Space Needs Study that was prepared for the Ad Hoc Committee, which evaluates the options. Additional site investigation is not anticipated as part of this proposal but may be undertaken in future site evaluation efforts or as an amendment to this contract.

### **Financial Advisory or Underwriting Services**

This Scope of Work pertains only to consulting services and expressly does not cover any financial advisory, underwriting or other services that are directly related to any specific financings or offerings. The City understands that the term "financial advisory services" means any financial advisory or consultant services with respect to an issuance of securities, including advice with respect to the structure, timing, terms and other similar matters concerning such issuance.

If the City proposes, determines or undertakes to effect an issuance of municipal securities at any time during the term of this Agreement, Baird does not seek the role of financial advisor or municipal advisor; rather, Baird seeks to serve as underwriter for potential debt issues related to the proposed Multipurpose Municipal Building. Thus, the City may engage Baird as underwriter with respect to such issuance. If the City determines to so engage Baird and Baird determines to accept such engagement, The City and Baird would enter into a separate written underwriting engagement letter. The City understands that if Baird acts as underwriter on an offering sold on a negotiated basis Baird may provide incidental financial advice to the City, including advice with respect to the structure, timing, terms and other similar matters concerning the offering. The City further understands that Baird's primary role as underwriter would be to purchase, or arrange the placement of, securities in an arm's-length commercial transaction between the City and Baird and that Baird, as underwriter, would have financial and other interests that differ from those of the City.