

**Consulting Services Contract
City of Waukesha – Engberg Anderson, Inc.**

Project Name: Architectural Analysis and Redesign of the Existing Evidence Storage Room
at the 1901 Delafield St. Police Station

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, referred to herein as the City; and Engberg Anderson, Inc., 320 E. Buffalo Street, Suite 500, Milwaukee, WI 53202, 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:

**Architectural Analysis and Redesign of the Existing Evidence Storage Room at the
1901 Delafield St. Police Station**

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, as modified by the Parties, 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 \$16,720.00 for performance of the Work in compliance with the terms and conditions of this Contract. Reimbursable expenses, billed at Consultants' costs, will include project related postage, travel, architectural prints, photocopies, and final report production. These costs to be no more than \$425.00, exclusive of structural engineering costs, if required. These expenses are allocated as follows:
 - 6 trips to Waukesha \$23.50 each.
 - 5 Final Design Reports with PDF copy \$50 each.
 - Miscellaneous printing and postageConsultant 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 no later than July 8, 2019, subject only to delays for circumstances beyond Consultant's control, provided Consultant re-commences 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. **Indemnification.** Consultant shall indemnify, defend, and hold the City and its officials and employees harmless from any and all third-party claims, demands, causes of action, lawsuits, judgments, penalties, and other liabilities of any kind to the extent that they arise out of or in connection 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, except for professional errors and omissions policies. Consultant shall obtain an endorsement making the City an additional insured, 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, 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 Katie Jelacic, P.E.
 City of Waukesha
 130 Delafield Street
 Waukesha WI 53188

To Consultant: Attention Bill Robinson, Partner
Engberg Anderson, Inc.
320 E. Buffalo St., Ste 500
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, subject to statutory governmental immunities and liability limits.
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, 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.
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.
25. **Limitation of Liability.** Consultant shall not be liable for incidental or consequential contract damages. There shall be no other limitations of Consultant's liability.

26. 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.

27. 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:_____

Engberg Anderson, Inc.

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

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

Schedule A

Scope of Services

Task 1 – Review

1. The consultant will review the existing Property room and the surrounding space in the current building
2. The consultant will review all previously developed information that has been gathered by the city related to repairs needed to protect the existing evidence storage room, as well as determine the current space needs of the City.
3. The consultant will review the existing building plans for the Police Station.
4. If the Architect would like to visit the station, then please contact Kevin Rice at krice@waukesha-wi.gov or 262-524-3778.

Task 2 - Analysis:

1. The consultant will propose the best alternative to the City to increase the room for future capacity and how to insure the integrity of the evidence.
2. A conceptual plan should be finalized to assist in the future design.
3. If the final proposed solution is an addition, then a rendering/illustration should be developed to the City.

Task 3 – Design (If approved by the City)

1. If the project is approved for the 2020 CIP budget, then the consultant would finalize the design and produce bid documents for bidding in late 2019 or early 2020.

Task 4 –Cost Estimate:

1. The consultant shall develop a cost estimate for the final proposed resolutions which can be used to receive 2020 CIP funding.
2. The Cost for the analysis and the Design and Bidding phase shall be separate line item cost.

Task 5 – Project timeline.

1. The consultant will be approved at the Board of Public Works meeting on April 18, 2019.
2. Common Council award on May 7, 2019.
3. The final report with cost estimate is due to the City by (July 8, 2019).
4. If the project is approved in the 2020 budget, the Design will be finalized to allow bidding for late 2019 or early 2020.