



CITY OF WAUKESHA

Administration

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Committee: Board of Public Works	Date: 1/19/2017
Common Council Item Number: ID 17-0112	Date: 2/7/2017
Submitted By: Fred Abadi, Director of Public Works	City Administrator Approval: Kevin Lahner, City Administrator
Finance Department Review: Rich Abbott, Finance Director	City Attorney's Office Review: Brian Running, City Attorney Click here to enter text.
Subject: Approve contract for 2017 Professional Archaeological Services for construction projects.	

Details:
Archaeological services are needed on N Grand Avenue / South Street Construction project for construction oversight & monitoring of areas with potential archaeological significance. The Engineering Division solicited for proposals on December 13, 2016 and two consultants responded by the deadline of January 13, 2017. The Engineering Division recommends using the University of Wisconsin Milwaukee Cultural Resource Management Department for this work as they provided the lowest hourly rates. See the attached spreadsheet for the comparison.

Options & Alternatives:
Another Consultant could be hired for this work but the UW – Milwaukee Cultural Resource Management Department provided the lowest hourly rates and have done a good job for the City in previous years. Construction on N. Grand Ave and South St would not be able to progress without these services.

Financial Remarks:
These professional services were budgeted for in the 2017 CIP Budget. Total Expense: \$13,157.20

Account Breakdown:
7399.68290.71480 – \$6,000.00
7399.68290.71430 - \$6,000.00
2010.68290 - \$1,157.20

Executive Recommendation:
Recommend approval of contract with the University of Wisconsin Milwaukee Cultural Resource Management Department for Professional Archaeological Services for 2017 Construction Projects.



Consulting Services Contract
City of Waukesha – UW-Milwaukee Cultural Resource Management
Project Name: 2017 Professional Archaeological Services

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, referred to herein as the City; and University of Wisconsin Milwaukee Cultural Resource Management, Sabin Hall, SAB 280, 3413 N. Downer Ave., Milwaukee, WI 53211-0413, 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:

2017 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 to Consultant an hourly fee for labor and expenses provided based upon the Rate information as set forth in the Consultant's proposal Dated January 13, 2017 for performance of the Work in compliance with the terms and conditions of this Contract. Consultant shall invoice the City, monthly. All invoices shall be payable net 30 days. The Straight Time Hourly Rate for Archaeological Research shall be \$35.56. The Overtime Hourly Rate for Archaeological Research shall be \$53.34. The Straight Time Hourly Rate for Field Monitoring shall be \$35.56. The Overtime Hourly Rate for Field Monitoring shall be \$53.34. These Rates shall not be adjusted for the duration of this Contract
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 **December 31, 2017**, 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. **Indemnification.** Consultant 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 arising out of, or connected in any way 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. 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 unless expressly agreed by the City.
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: Jon Weil
 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 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: _____

University of Wisconsin Milwaukee Cultural Resource Management

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

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

Schedule A

Scope of Work

A. General:

Provide a "Qualified Archaeologist," as specified under Wis. Stats. 157.70 (1) (i) and Wis. Admin Code HS 2.04 (6). Archival/literature research will be conducted as requested to identify known archaeological and burial sites within areas of proposed construction projects. On-site archaeological field monitoring by a qualified Archaeologist will also be provided on an as-needed basis. Also, the qualified Archaeologist may assist the City of Waukesha with obtaining permission to construct within burial sites from the Wisconsin Historical Society.

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.