

Consulting Services Contract
City of Waukesha – The Sigma Group, Inc.
Project Name: 2023-2024 Environmental Services for Municipal Construction Projects

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, referred to herein as the City; and The Sigma Group, Inc., 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:

2023-2024 Environmental Services for Municipal Construction Projects

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 services described in Schedule A-Scope of Work and Schedule B-Price, as requested by the City in individual written work orders, according to the terms and conditions of this Contract. Services performed by Consultant are referred to herein as the Work. Schedule A and B are 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 B. Consultant shall invoice the City monthly, and all invoices shall be payable net 30 days.
4. **Term.** This Contract shall expire December 31, 2024.
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: Kristine V. Walker
City of Waukesha
201 Delafield Street
Waukesha WI 53188 |
| To Consultant: | Attention: Kristin Kurzka, P.E., P.G.
Senior Project Manager
The Sigma Group, Inc.
1300 West Canal Street
Milwaukee, WI 53233 |
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:

Joseph P. Ciurro, Director of Finance

Date: _____

The Sigma Group, Inc.

By (print name) _____

Title: _____

Date: _____

By (print name) _____

Title: _____

Date: _____

SCHEDULE A

SCOPE OF SERVICES FOR 2023-2024 ENVIRONMENTAL SERVICES

OVERVIEW

The City of Waukesha is requesting proposals and a statement of qualification for providing on-call or as-needed professional environmental services pertaining to municipal construction activities for 2023 and 2024 City of Waukesha design and construction projects.

Projects involving Environmental Services may include roadway improvements, traffic signal upgrades, bridge maintenance, flood mitigation and park improvement projects.

Anticipated environmental services include:

- Contamination Testing
- Stormwater Management
- Wetland Delineation/Determinations
- Permit Review/Preparation
- Environmental Impact Analysis

A fixed hourly rate will be paid for the time required to complete the requested environmental determinations, analysis or review.

The number of projected hours is not estimated at this time and may vary. The City will use a qualification and cost-based selection process to make the selection of the chosen firm. The consultant will be engaged for a term of up to a maximum of twenty-four (24) months commencing with the date of appointment which is expected to be mid-January. The hourly rate provided by the Consultant for the various tasks shall be fixed for the duration of the Contract.

SCOPE OF SERVICES TO BE PROVIDED BY THE CONSULTANT:

- Provide Environmental Services to facilitate design and construction of the City's Municipal construction projects. The Consultant is responsible for the quality, technical accuracy and timely completion and delivery of all services to be furnished by the Consultant under this Contract. Anticipated tasks and deliverables may include:
 - Site Surveys
 - USACE and State Wetland and Waterway Confirmations, Determinations and Delineations
 - Rare, Threatened and Endangered Resource Evaluations
 - Environmental Impact Analysis
 - WDNR Permit Preparation and Submittal
 - Chapter 30
 - Wetland and Waterway
 - USACE Section 404/401 Permit Preparation and Submittal
 - Contamination Testing, Analysis, Review and Remediation Recommendations
 - Soil
 - Groundwater
 - Phase I and Phase II Environmental Site Assessments
 - Demolition Inspection
 - Hazardous Material and Asbestos Testing
 - Laboratory Work

SCOPE OF SERVICES PROVIDED BY THE CITY OF WAUKESHA

- Provide one electronic copy of the approved plans and Special Provisions in PDF format. One electronic (PDF) copy of the City's Standard Construction Specifications – most recent edition.
- Request for Environmental Services at least 72 hours prior to the expected start.
- Schedule and coordinate field meetings with local, state and regional agencies if necessary.
 - Coordinate, or perform the facilitation, prepare agenda and minute preparation for the meetings.
- Collect and supply survey data points for:
 - Wetland Boundaries
 - Soil Boring Locations
 - Field Sample Locations

The City **will not** provide survey equipment or testing of or analysis of any samples.

ANTICIPATED PROJECTS FOR 2023

The following projects are scheduled for 2023 construction, and may require the scope of services included in this request:

West Broadway and East Avenue Utility, Street, and Traffic Signal Improvements
 Delafield Street and Lemira Avenue Utility and Street Improvements
 Horeb Skate Park Reconstruction
 Lowell Park Tennis Court Reconstruction and Lighting Upgrades
 Mindiola Park Phase II Improvements
 2023 Alley Reconstruction Program (Three anticipated)
 2023 Asphalt Street Resurfacing
 2023 Sanitary Sewer Lining
 Area 1, Area 2 & Area 3 Flood Mitigation
 Formal Gardens Pathway, Irrigation and Drainage System Improvements

Note: The above list is not exhaustive, and additional projects may be added.

COMPENSATION

- Costs associated with administrative services, billing preparation, computer charges, mileage, meals, lodging, printing, plotting, copying, faxing and phone bills **will not** be paid by the City. Please fill in the included Rate Sheet for proposed rates.
- Normal work hours are expected to be between 7 A.M. – 5 P.M. If work continues past 5:00 P.M. payment will be made at the rate quoted for normal work hours. Hourly rates shall not be adjusted during this contract.

Rate Sheet

CITY OF WAUKESHA ENGINEERING DIVISION
SCOPE OF SERVICES FOR
2023-2024 MUNICIPAL ENVIRONMENTAL SERVICES

Project Manager	\$ <u>145.00</u> /hour
Lead Scientist	\$ <u>125.00</u> /hour
Scientist/Engineer	\$ <u>100.00</u> /hour
Environmental Tech	\$ <u>95.00</u> /hour

The Sigma Group, Inc

Firm Name


Agent's Signature

12.19.22
Date