

RESPONSES TO REQUESTS FOR CLARIFICATION

Issued By:



DEPARTMENT OF PUBLIC WORKS

Issued For:

2021-2022 MASTER ENGINEERING AND RELATED SERVICES CONSULTANT SELECTION

October 16, 2020

1. Insurance Requirements:

QUESTION - I have all the insurance requirements with the exception of the Umbrella Liability, which I have as \$2M in lieu of \$5M. I have never seen a request for such a high umbrella coverage, could you please clarify if the \$5M is the correct limit? Or, are there different limits for different engineering disciplines as opposed to a one size fits all coverage amount?

QUESTION - Wondering if those are able to be adjusted or if the requirements are across the board no matter the project?

QUESTION - If the firm does not prepare sealed construction drawings or perform construction management services and, accordingly, carries lower insurance liability levels than described in Attachment #2, how should that be addressed in the proposal?

QUESTION - We do not have the required \$5M umbrella policy for our business. Can this be waived for this small project? Will the City reimburse us for the premium if it cannot be waived?

QUESTION - If the firm does not prepare sealed construction drawings or perform construction management services and, accordingly, carries lower insurance liability levels than described in Attachment #2, how should that be addressed in the proposal?

ANSWER (to all above) - Firms should submit their existing insurance policies to have on file, and at the time of preparing a work order, the scope and value of work could allow for lesser coverage

2. Submittal Length:

QUESTION - We are seeking clarification on what the City means by "subject." Would you like a maximum of 19 pages for all combined activities under "GENERAL CIVIL Part A", or 19 pages for each activity such as 19 pages for "Transportation and Parking Analysis and Design", 19 pages for "Traffic Signal Analysis and Design", etc. under "GENERAL CIVIL Part A."

ANSWER – the intent is to have one Firm Identification/Cover Letter (1 page) for the entire response; and for each activity selected the response can have the maximum pages as identified in 4.0.2.f. (19 additional pages per activity)

QUESTION - Do the page count restrictions apply to each activity for which we are submitting? Or are they for the entire submittal regardless of number of activities? For example, if we apply for 7 activities, do we need to include all representative projects for all 7 activities in the 5 pages allowed for Representative Projects? Or would it be 5 per activity, for a maximum of 35?

ANSWER – see above

QUESTION - Are the pages limits identified on page 19 limits for the entire package regardless the number of activities submitted, e.g. a total of 20 pages is to be submitted no matter the number of activities, or are the page limits per activity, e.g. a firm submitting on 3 activities would submit a package that is a total maximum of 60 pages. Furthermore, if the page limit is per activity, is the firm to submit one overall Firm Identification/Cover Letter in total, or one Firm Identification/Cover Letter per activity.

ANSWER – see above

QUESTION - Does the 20 page limit described on p. 19 of the RFQ refer to the total proposal response or are those restrictions per service area the firm is applying for?

ANSWER – see above

QUESTION - Could you please verify page limits are for all activities not per activity

ANSWER – see above

3. Flash Drives:

QUESTION - Does the City want a flash drive with the FULL proposal for each activity we are proposing on OR do you want a flash drive with only the activity section from the proposal for each activity we are proposing on?

ANSWER – the response will require one hardcopy and one flashdrive per activity being pursued. Each flashdrive should be a full copy of the hardcopy. If a firm selects 5 activities, they will need to submit one (1) full hardcopy of the response and five (5) flasdrives of the full response. Bookmarking the appropriate sections is appreciated for reviewing.

QUESTION - Under Section 4.0, Submittals, you state 1 hard copy and 1 electronic copy of EACH activity. Does that mean that you want each activity to be a separate RFQ response or does that mean you want that many flashdrives? For example, if we apply for 7 activities, is it 7 different submittals, each with a unique pdf included on the single flashdrive? Or is it 1 submittal including all activities, but we provide 7 flashdrives with the single pdf version

ANSWER – see above

QUESTION - Under 4.0 Submittal it asks for “One (1) – electronic PDF version (flash drive) for EACH activity selected in the Activity Qualifications Checklist”
I take this to mean that if a firm submits on 8 activities, they should provide 8 flash drives and that the pdf on each flash drive would be the complete proposal and not just the relevant portion for each activity.

ANSWER – see above

4. Staff Qualifications:

QUESTION - Under e. Firm's Key Staff Members (Up to Three) Is it 3 staff total or 3 staff for each activity?

ANSWER – 3 staff members per activity.

QUESTION - Item 21, Historical/Archaeological Analysis and Consultation states that it is recommended that consultants have staff qualified for archaeology. Could you please confirm that a qualified archaeologist on staff is not required and the prospective consultant could utilize a teaming partner to fill this role if it is needed?

ANSWER – it is not required. Should a firm be selected for a Master Contract, and subsequently a work order, they would be able to utilize another firm to meet the needs of the project

QUESTION - Is that page limit by activity, i.e. "Mechanical Services" or by overall category/subject, i.e. "Building Facilities". For example if we want to provide qualifications for both mechanical services and architectural services do we provide one package of information for "Building Facilities" or two packages one for "Mechanical Services" and one for "Architectural Services."

ANSWER – page limit is by activity (24 possible); and the response should address Activity #11 Architectural Services and #12 Mechanical Engineering Services separately (in 1 document)

QUESTION - Page 19, "e. Firm's Key Staff Members" indicates that at least three representative projects should be provided for the key staff members for each activity. Does this mean three projects total for the activity, or three projects for each Key Staff Member?

ANSWER – at least three representative projects for the staff members; some of which may not involve all 3 staff. Each staff member identified should be shown in at least one of the projects.

QUESTION - If a Consultant names a different Project Manager for different activity areas, are they able to provide three pages of project experience for each Project Manager? If the same Project Manager is designated for multiple activity areas, are separate three-page allotments provided for each area to allow demonstration of different project experience?

ANSWER – if the same Project Manager is shown for different activities, the representative projects may be changed to best suit the activity pursued. The 2 pages allotted for the Project Manager may also be different for each activity as well

QUESTION - Are Consultants allowed up to three total Staff Members per response or three total Staff Members per activity area?

ANSWER – 3 staff members per activity area.

5. Teaming:

QUESTION - For some service areas, if the firm does not provide all the described services, or would meet them with a partner firm, how should that be addressed in the proposal?

ANSWER – We realize that firms may not meet 100% of the services/tasks listed in the RFQ activities, and that subcontracting may need to occur at the time of creating the work order. The City has an 18% Small Business Enterprise (SBE) goal for participation in Public Works contracts (see attached example agreement) and therefore expects to see some subcontracting as appropriate. There is no need to identify potential subcontractors at this time.

QUESTION - If a future project requires a team or subcontracted approach, does the team or list of subcontractors need to be included in this proposal or only at the time of the specific project?

ANSWER – see above

QUESTION - Does the consultant need to have experience in all tasks listed below an activity? In the event the consultant does not have experience with one specific task can the consultant propose a sub-consultant? If so, should the subconsultant be declared at the time of the qualification submittal?

ANSWER – see above

6. Submittal of Documents:

QUESTION - Your website states that you are not accepting paper documents. However, the RFQ asks for a hardcopy and flashdrive. Please clarify how you wish to receive the submittals

ANSWER – the website refers to Bids on actual projects; this RFQ will require one hardcopy and one flashdrive per activity being pursued

QUESTION - Considering limited staff in many offices due to COVID, might the City be receptive to emailed PDF submittals instead of flash drives/print copies? If the City does require hard copies, should respondents submit qualifications for each activity under separate cover (similar to the flash drive directive)? Or should responses for all activities be compiled into a single document?

ANSWER – Emailed responses are not accepted – due to potential of size limits being exceeded. The hardcopy and each flashdrive should be a full response (cover, activity checklist, letter indicating responses to 4.0.2.b., and responses to 2.c, 2.d, 2.e for each activity selected).

QUESTION - please confirm that hard copies and a copy on a flash drive are required and that electronic copies via email are not requested.

ANSWER – see above

QUESTION - Can you confirm the original hard copy should combine all activities selected into one submittal and an electronic PDF should be submitted for each separate activity?

ANSWER – see above

QUESTION - Our firm has implemented a telecommute policy in order to keep employees and their families safe during the COVID-19 outbreak. As such, we kindly request that the City of Milwaukee accept electronic submittals via email, or secure file transfer for responses to RFQ 2021-2022 Master Engineering and Related Services Consultant Selection. At a minimum we would like to request the acceptance of electronic signatures for the original copy as our signatory is in close contact with immunocompromised persons and trying to avoid outside contact as much as possible

ANSWER – an electronic signature is acceptable for the response’s original copy

QUESTION - DPW website indicates that no paper submittals are currently submitted for bid opportunities and instead refers to BidExpress.com or email submittal, while RFQ indicates prospective firms must submit one original hard copy and one electronic PDF version via flash drive for each activity area. Please verify the correct submittal requirements for this RFQ.

ANSWER – the website refers to Bids on actual projects; this RFQ will require one hardcopy and one flashdrive per activity being pursued

7. Activity Requirements:

QUESTION - Item 4d – Does the City have specific modeling software/requirements for I/I analysis? And/or can the City provide an example scope from previous work?

ANSWER – the City will be looking for consultants to provide analysis using an appropriate software package for hydraulic modeling. At this time the City has no software requirements.

QUESTION - Item 5d and 5e – Does this work typically require a landscape architect to be on the team?

ANSWER – while not required, it would be preferred.

QUESTION - Item 8c – Can the City be more specific about what this item entails and/or provide an example scope from previous work?

ANSWER – the style of applications that the City like developed include: field data collection, generating work orders for City maintenance staff, responding to call center requests. The City would provide the data sets needed to build the applications.

QUESTION - Item 21 - Historical / Archaeological Analysis - Can these two services be split? Can a consultant submit on Historical Analysis but not Archaeological or vice versa?

ANSWER – If a firm can only provide 1 of the 2 services, they can still submit for that item.

8. Other

QUESTION - Can the City provide a standard exemplar Consultant agreement?

ANSWER – an example is attached

QUESTION - Will the City consider modifications to its standard agreement, and if so, how should Consultants submit any requests? Will requests to modify the standard agreement influence consultant selection?

ANSWER – if a firm is selected for the Master Contract, and subsequently selected for a project, at that time a request to modify the agreement can be made. The request will be sent to Assistant City Attorney to make a determination if the changes are acceptable.

CONTRACT NO. XXXX

**PROFESSIONAL SERVICES AGREEMENT
FOR
MASTER ENGINEERING SERVICES
BETWEEN
THE CITY OF MILWAUKEE**

AND

<COMPANY NAME>

THIS AGREEMENT is made and entered into this _____ day of _____, 2020, by and between the City of Milwaukee, a municipal corporation organized under the laws of the State of Wisconsin acting through its Commissioner of Public Works (the "City"), and <COMPANY NAME>, a corporation organized under the laws of the State of Wisconsin (the "Consultant").

WHEREAS, the City has determined that <COMPANY NAME> is qualified to provide engineering and related services for activities <LIST ALL APPLICABLE> on the master engineering and related consultant list;

WHEREAS, the City issued a Request for Qualifications (the "RFQ") on October 2, 2020 requesting qualifications to provide professional master engineering services;

WHEREAS, the Consultant desires to provide the professional services to the City upon the terms and conditions hereinafter set forth;

WHEREAS, the Consultant represents itself as being capable, experienced, and qualified to undertake and perform those certain services as hereinafter set forth as are required in accomplishing fulfillment of its obligation under the terms and conditions of this Agreement as an independent Consultant and not as an employee of the City;

WHEREAS, this agreement shall only apply to City-funded services and, in the event a state and/or federally funded service is necessary, a separate contract shall be executed;

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the City and the Consultant promise and agree as follows:

ARTICLE I

Retention of Services

The City hereby agrees to engage the Consultant and the Consultant hereby agrees to personally perform, as an independent Consultant and not as an employee of the City, the services identified in the first whereas clause and hereinafter set forth, all in accordance with the terms and conditions of this Agreement, the RFQ (Exhibit I) and the Consultant's Statement of Qualifications dated <MONTH DAY< YEAR> (Exhibit II), and executed work orders for specific services (collectively, the "Contract Documents").

ARTICLE II
Work Orders

Work Orders shall be developed using a standard form (Exhibit III) and shall identify the specific scope of services, the completion date, any specific standards, and the total cost. The cost basis for all work under the master engineering services contract shall be actual costs plus a fixed fee not-to-exceed a specified amount. A level of effort spreadsheet shall be an attachment to the work order documenting labor hours by position, labor costs by position, overhead costs, fixed fee, direct expenses, and subconsultant costs for each task included in the scope of services that provide the basis for the total cost.

Consultants selected to provide master engineering services shall not be guaranteed a minimum number of work orders during the service period. Furthermore, selection of individual consultants to perform specific services shall be at the sole discretion of the Commissioner of Public Works acting in the best interests of the City of Milwaukee.

ARTICLE III
Term of Agreement and Early Termination

3.1 Term of Agreement/Option to Renew. The term of this Agreement shall commence on the date hereof, and shall end two (2) years from the date of commencement. The contract may be extended for three additional one year terms upon mutual consent of the City and the selected consultants. In addition to all other remedies inuring to the City should this Agreement not be completed by the dates specified in this Section 3.1, in accordance with all the terms, requirements, and conditions set forth in the Contract Documents, the Consultant shall continue to be obligated thereafter to fulfill the Consultant's responsibility to complete the services associated with any executed work orders.

3.2 Changes. The City may authorize changes in the Contract Documents. Such changes, including any increase or decrease in the contracted scope of services and/or increase or decrease in the amount of the Consultant's compensation and/or completion date which are mutually agreed upon by and between the City and Consultant, shall be incorporated in written amendments to the Contract Documents. No changes to this Contract shall be valid unless incorporated as a written, mutually agreed amendment thereto. Determination of the cost for a change in an individual work order shall be based on the original work order hourly rates.

3.3 Termination for Cause. If, through any cause, the Consultant shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Consultant of such termination and specifying the effective date, at least ten days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other materials related to the services performed by the Consultant under this Agreement for which compensation has been made or may be agreed to be made shall, at the option of the City, become the property of the City. Notwithstanding the foregoing, the Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Consultant, and the City may withhold any payments to the Consultant for the purpose of setoff until such time as the exact amount of the damages due to the City from the Consultant is determined.

3.4 Termination for Convenience. The City may terminate this Agreement at any time and for any reason by giving written notice to the Consultant of such termination and specifying the effective date, at least seven days before the effective date of such termination. If this Agreement is terminated by the City pursuant to this Section 2.5, the Consultant will be paid an amount which bears the same ratio to the total compensation as the services actually and satisfactorily performed bear to the total services of the Consultant covered by this Agreement, less payments for such services as were previously made. The value of the services rendered and delivered by the Consultant will be determined by the City.

ARTICLE IV
Scope of Services

The Consultant is required to perform, do and carryout in a satisfactory, timely, and professional manner the services set forth in the Contract Documents. The Consultant is required to furnish all services and labor necessary as indicated in the Contract Documents, including without limitation, materials, equipment, supplies, and incidentals.

ARTICLE V
Standards of Performance

The Consultant agrees that the performance of the services, pursuant to the terms, conditions and agreements of this Agreement, shall be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances providing like services. The Consultant agrees to abide by all federal, state and local laws, regulations, and ordinances, and all provisions of this Agreement.

ARTICLE VI
Compensation and Terms of Payment

6.1 Compensation. The Consultant will be compensated by the City for the services provided under this Agreement on an actual cost plus fixed fee not-to-exceed basis, subject to the terms, conditions and contingencies set forth within the Contract Documents.

6.2 Not to Exceed. Notwithstanding the foregoing Section 6.1, total compensation to the Consultant under this Agreement shall be dependent on City staffing levels and future budget appropriations. A not to exceed compensation for each work order will be agreed on between the City and the Consultant prior to execution of individual work orders.

6.3 Invoicing and Payments. Payments to the Consultant for services rendered under this Agreement will be based on itemized invoices submitted on a monthly basis by the Consultant to the City. These invoices shall document costs to date to the same level of detail as the level of effort spreadsheet (labor hours by position, labor costs by position, overhead costs, fixed fee, direct expenses, and subconsultant costs) along with percent completion of each task. Invoices shall be reviewed and approved by the Commissioner of Public Works or his designee. The final five percent (5%) of the contract amount shall be retained. The final payment of the balance due the Consultant for the completed services shall be made upon completion and acceptance by the City of the services performed by the Consultant under this Agreement. All payments made under this Agreement shall be subject to the City's prompt payment policy set forth in section 6.4, below.

6.4 Prompt Payment Policy. The City, as a matter of policy, shall strive to make timely payment on all invoices. Payments to the Consultant will be deemed timely if the payment is mailed, delivered, or transferred within forty-five calendar days after receipt of a properly completed invoice or receipt and acceptance of the service under the work order, whichever is later. If the City does not make payment by the 45th calendar day, the City shall pay simple interest beginning with the 31st calendar day at the rate of one percent per month (unless the City disputes the amount of the invoice).

6.5 Additional Fringe or Employee Benefits. The Consultant shall not receive nor be eligible for any fringe benefits or any other benefits to which City employees are entitled to or are receiving.

6.6 Taxes, Social Security, Insurance, and Government Reporting. Personal income tax payments, social security contributions, insurance, and all other governmental reporting and contributions required as a consequence of the Consultant receiving payment under this Agreement shall be the sole responsibility of the Consultant.

6.7 Withholding of Salaries. If in the performance of this Agreement, there is an underpayment of salaries by the Consultant or by any subcontractor thereunder, the City shall withhold from the Consultant out of payments due to it an amount sufficient to pay employees underpaid the difference between the salaries required hereby to be paid and the salaries actually paid such employees for the total number of hours worked. The amounts withheld shall be disbursed by the City for and on account of the Consultant or subcontractor, if any, to the respective employees to whom they are due.

ARTICLE VII
Personnel, Qualifications, Subcontracting

7.1 **Required Personnel.** The Consultant represents that it has or will secure at its own expense all personnel required to perform the services set forth in the Contract Documents. These personnel shall not be employees of or have any contractual relationship to the City.

7.2 **Fully Qualified.** The Consultant represents that all personnel engaged in the performance of the services set forth in the Contract Documents shall be fully qualified and shall be authorized or permitted under state and local law to perform the services.

7.3 **Subcontracting.** None of the services to be performed under the Contract Documents shall be subcontracted without the prior written approval of the City. If any of the services are subcontracted, the performance of such services shall be specified by written contract and shall be subject to each provision of this Agreement. The Consultant shall be as fully responsible to the City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by it, as it is for acts and omissions of persons directly employed by it.

ARTICLE VIII
Indemnification and Defense of Suits

In case any action in court, claim, or proceeding before an administrative agency is brought against the City or any of its officers, agents, or employees for the failure, omission, or neglect of the Consultant, in whole or in part, to perform any of the covenants, acts, matters, or things by this Agreement undertaken, or for injury or damage caused by the negligence of the Consultant, its officer, agents and employees, the Consultant shall defend, indemnify, and save harmless the City and its officers, agents, and employees from all losses, damages, costs, expenses, judgments, or decrees arising out of such action. Provided, however, that in no event shall consultant's total liability for loss (indemnity or defense) exceed consultant's prorata share of all fault causing any injury or loss. The City shall tender the defense of any claim or action at law or in equity to the Consultant or the Consultant's insurer, and upon such tender, it shall be the duty of the Consultant or the Consultant's insurer to defend such claim or action without cost or expense to the City or its officers, agents, or employees. The Consultant shall be solely responsible for the conduct and performance of the services required under the terms and conditions of this Agreement and for the results therefrom. Nothing in this Article VIII shall be construed to impose liability on the Consultant for the negligence of the City, or of its officers, agents, or employees in the performance of this Agreement.

ARTICLE IX
Insurance

The Consultant shall be solely responsible to meet the Consultant's insurance needs as required by the City, including public and professional liability and property damage, during the term of this Agreement or any extension thereof. A Certificate of Insurance shall be provided to the City as evidence thereof naming the City as an additional insured for public liability and property damage, and providing for a 30 day notice to the City prior to termination or cancellation of the policy. The City reserves the right to require review and approval of the actual policy of insurance before it executes this Agreement. The minimum limits of insurance required by the City under this Agreement are set forth in Exhibit IV attached hereto.

ARTICLE X
Conflicts of Interest

10.1 **The City - Governing Body.** No officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement. No member of the Governing Body of the locality and no other public official of such locality who exercises any functions or responsibilities in the review or approval of the carrying out of this Agreement, shall have any personal interest, direct or indirect, in this Agreement.

10.2 **Consultant.** The Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Consultant further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. An interest on the part of the Consultant or its employee must be disclosed to the City.

ARTICLE XI
Non-Discrimination and Equal Employment

11.1 Discrimination. The Consultant agrees not to discriminate against any qualified employee or qualified applicant for employment because of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories; not to discriminate for the same reasons in regard to tenure, terms, or conditions of employment; not to deny promotion or increase in compensation solely for these reasons; not to adopt or enforce any rule or employment policy which discriminates between employees on account of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories; not to penalize any employee or discriminate in the selection of personnel for training, solely on the basis of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories.

11.2 Subcontracts. The Consultant shall include or cause to be included in each subcontract covering any of the services to be performed under this Agreement a provision similar to the above paragraph, together with a clause requiring such insertion in further subcontracts that may in turn be made.

ARTICLE XII
Addresses and Notices

Unless otherwise provided in the Contract Documents, any notice, communication, request, reply or advice (herein severally and collectively, for convenience, called "notice"), herein provided or permitted to be given, made or accepted by one party to the other must be in writing and may be given or be served by depositing the same in the United States mail, postage paid and certified and addressed to the party to be notified, with return receipt requested. Notice deposited in the mail in the manner described above shall be conclusively deemed to be effective, unless otherwise stated in this Agreement, from and after the expiration of three (3) days after it is deposited. Notice given in any other manner should be effective only if and when received by the party to be notified. For the purpose of notice, the address of the parties shall be as follows:

If to the City, to:	Jeffrey S. Polenske Commissioner of Public Works City of Milwaukee Frank P. Zeidler Municipal Building 841 North Broadway, Room 501 Milwaukee, WI 53202
---------------------	--

If to the Consultant, to:	Attention: <CONTACT NAME> <COMPANY NAME> <ADDRESS> <CITY STATE ZIP>
---------------------------	--

ARTICLE XIII
Records, Audits, Confidentiality

13.1 Access to Records. The Consultant shall maintain books, records, documents and other evidence directly pertinent to performance under this Agreement in accordance with accepted applicable professional practices. The City, or any of its duly authorized representatives, shall have access to such books, records, documents, papers, or any records of the Consultant which are directly pertinent to this Agreement, for the purpose of making audits, examinations, excerpts and transcriptions.

13.2 Establishment and Maintenance of Records / Public Records Law. Records shall be maintained in accordance with requirements prescribed by the City with respect to all matters covered by this Contract. Both parties understand that the City is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. Section 19.21, *et seq.* Consultant acknowledges that it is obligated to assist the City in retaining and producing records that are subject to the Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Agreement, and that the Consultant must defend and hold the City harmless from liability under that law. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of the final payment under this Agreement.

ARTICLE XIV
Small Business Enterprise (SBE) Program

14.1 Policy and Goal. In accordance with Chapter 370 of the Milwaukee Code of Ordinances, Small Business Enterprise requirement, it is the City's policy to accomplish Small Business Enterprise (SBE) participation in all contracting activities in the City's Department of Public Works. The City has established for itself an overall goal of eighteen percent (18%) SBE participation for Public Works contracts. In an effort to meet these overall goals, the Commissioner of Public Works, as Contracting Officer for the City, expects the Consultant to use its best efforts to enable SBEs to be considered fairly as subcontractors and material suppliers under all Public Works contracts. The requirement for this Agreement is 18% SBE participation unless otherwise identified in the individual work order.

14.2 Forms and Reports. The Consultant shall prepare and submit accurate and timely SBE utilization forms and reports to the City. The reports shall include, but not be limited to, Project Participation (SBE Form A), Monthly Utilization (SBE Form D), and SBE Subcontractor Payment Certification (Form E) forms as directed. Failure to submit the required forms and reports to the City may result in disqualification of future bids, delay of payments, or other appropriate sanctions. Final contract payments will not be made until final SBE Utilization Reports and SBE Subcontractor Payment Certification forms are on file with the City.

14.3 Compliance Reviews. During the performance of this Agreement, the Commissioner reserves the right to conduct compliance reviews. If the Consultant is not in compliance with the specifications, the Commissioner will notify the Consultant in writing of the corrective action that will bring the Consultant into compliance. If the Consultant fails or refuses to take corrective action as directed, the Commissioner may take one or more of the following actions: (i) Terminate or cancel this Agreement, in whole or in part; (ii) Remove the Consultant from the list of qualified firms and refuse to accept future proposals for a period not to exceed three years; or (iii) Impose other appropriate sanctions.

ARTICLE XV
Additional Provisions

15.1 Captions. The captions appearing at the first of each numbered section of this Agreement are inserted and included solely for convenience, but shall never be considered or given any effect in construing this Agreement or the duties, obligations or liabilities of the respective parties hereto, or in ascertaining intent if any questions of intent should arise.

15.2 Severability. The provisions of this Agreement are severable. If any provision or part of this Agreement or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

15.3 Entire Agreement. This Agreement, and the Exhibits attached hereto, constitute the entire agreement between the parties hereto relating to the subject matter hereof, and all prior agreements, correspondence, discussions and understandings of the parties (whether oral or written) are merged herein and made a part hereof, it being the intention of the parties hereto that this Agreement shall serve as the complete and exclusive statement of their agreement together.

15.4 No Additional Waiver Implied. The failure of any party to insist, in any one or more instance, upon performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition by any other party hereto, but the obligation of such other party with respect to such future performances shall continue in full force and effect.

15.5 Amendment. This Agreement shall be amended only by formal written supplementary amendment. No oral amendment of this Agreement shall be given any effect. All amendments to this Agreement shall be in writing executed by both parties.

15.6 Applicable Law and Venue. This Agreement and all questions arising in connection herewith shall be governed by and construed in accordance with the internal laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in Milwaukee County for matters arising under state law and in Federal District Court for the Eastern District of Wisconsin for matters arising under federal jurisdiction.

15.7 Independent Consultant. In performing its obligations under this Agreement, the Consultant shall act as an independent consultant solely for its own account and not as an agent, representative, or employee of the City.

15.8 Assignment. This Agreement shall be binding on the heirs, successors, and assigns of each party hereto. The employment by the City of the Consultant to perform the services set forth in this Agreement is a personal contract and the Consultant shall not assign, sublet or transfer the Consultant's interest or obligations under the provisions of this Agreement without the prior written consent of the City. Provided, however, that claims for money due or to become due the Consultant from the City under this Contract may be assigned to a bank, trust company, or other financial institution without such prior written consent.

Notices of any such assignment or transfer shall be furnished promptly to the City. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the City.

15.9 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered but one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

15.10 Conflicts. In the event of conflicts between provisions of the base contract and/or the provisions of any of the contract exhibits, the various documents shall govern in the following order: The Agreement, Exhibit III, Exhibit II, Exhibit I.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day, month and year set forth above.

<COMPANY NAME>

By: _____

Its: _____

Date: _____

CITY OF MILWAUKEE

By: _____
Commissioner of Public Works

Date: _____

CITY ATTORNEY

Examined and approved as to content
This ____ day of _____, 2020

Assistant City Attorney

COUNTERSIGNED

By: _____
Comptroller

Date: _____

CITY ATTORNEY

Examined and approved as to execution
This ____ day of _____, 2020

Assistant City Attorney