

## CONSULTANT CONTRACT

THIS AGREEMENT is made by and between the City of West Allis, Wisconsin (the City) and tes Historical Consulting, LLC (the Consultant).

WHEREAS, the City has received a grant from the federal Department of Interior, through a subgrant from the State Historic Preservation Office of the State of Wisconsin (SHPO); and

WHEREAS, the stipulated *Memorandum of Agreement (MOA)* and *Scope of Work (SOW)* for this project include producing National Register of Historic Places (NRHP) nomination documents for the following three individual properties;

- Tony Mazurco House (12233 W. Cleveland Avenue)
- James William Pauers House (2479 S. Green Links Drive)
- Longfellow School (2211 S. 60<sup>th</sup> Street)

and WHEREAS, the Consultant meets the Secretary of the Interior's Professional Qualification Standards for Architectural History, is capable of providing the professional services required, and is willing to make those services available to complete nomination documents;

NOW THEREFORE, the parties hereto mutually agree as follows;

### I. Scope of Services

The Consultant will meet all stipulations in the *MOA* and *SOW* for completion of the nomination(s), and will coordinate all project work with the SHPO.

The Consultant will produce all deliverables in the *MOA* and *SOW*, and will comply with the conditions and requirements of the *MOA* between the City and the SHPO, which is hereby incorporated into this agreement.

The consultant shall assume responsibility for presenting the nomination(s) to the State Historic Preservation Review Board when it appears on the Board's agenda. Any edits or supplementary information required by the National Register Coordinator, State Review Board, the National Park Service will be provided by the consultant. This process may extend beyond of the *Period of Performance* of the grant. Costs associated with this review process will be included in the project budget.

### II. Period of Performance

The services of the Consultant shall commence on the signing of this agreement and shall be completed so that all final products are completed and accepted by the SHPO by July 29, 2024.

### III. Compensation and Method of Payment

The City shall compensate the Consultant up to \$[amount] for work performed toward the completion of the project described in the *MOA* and *SOW* governing the funding of the project. Payments up to 90% of the grant amount may be made invoiced by the Consultant and paid by the City at any time during the project's *Period of Performance*. 10% of the maximum amount of compensation shall be retained until all project work has been completed and all deliverables submitted and accepted as satisfactory.

If this contract is terminated under the provisions of Article IX below, the Consultant shall be compensated for all services performed and expenses incurred up to the date of termination.

### IV. Amendments

The City may occasionally propose changes to the scope of services to be performed hereunder. Such changes, including increases or decreases in the amount of compensation paid to the Consultant,

which are mutually agreed upon by the City and the Consultant shall be incorporated in written amendments to this agreement.

**V. Compliance with Federal, State, and Local Laws**

The Consultant shall comply with all federal and state laws and regulations concerning equal opportunity, affirmative action and fair employment opportunities. The Consultant further agrees to comply with all applicable regulations, laws, ordinances, and codes to the state and local government and policies, guidelines and requirements of this federal grant program identified as 15.904 in the Catalog of Federal Domestic Assistance.

**VI. Interest of the Consultant**

The Consultant covenants that they now have no personal interest, direct or indirect, in any property or business of any kind, and shall not acquire any such interest, which would conflict in any manner or degree with the performance of services under this contract.

**VII. Indemnification**

The Consultant agrees to indemnify, defend and hold harmless the City and its agents from and against all loss or expense (including costs and attorney's fees) by reason of any claim or suit arising out of the acts or omissions of the Consultant its employees, agents or assigns the Consultant from liability imposed by law upon the Consultant or its agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or person or on any account of damages to property, including loss of use thereof, whether caused by or contributed to by the Consultant or its agents or employees.

The Consultant shall indemnify and hold harmless the State Historic Preservation Officer, the Wisconsin Historical Society, all its officers, agents and employees from all suits, action, or claims of any character brought for or on account of any injuries for damages received by any persons or property resulting from the operations of the Consultant in executing work under this agreement.

**VIII. Termination of Contract for Cause**

If, through any cause, the Consultant shall fail to fulfill in timely and proper manner its obligations under this contract, or if the Consultant shall violate any of the covenants, agreements or stipulations of the Agreement, the Village shall thereupon have the right to terminate this contract by giving notice to the Consultant of such termination and specifying the effective date of such termination. In such event, all finished or unfinished documents, data, studies, reports, or other materials prepared by the Consultant under this contract shall, at the option of the City, become the property of the City, and the Consultant shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City as a result of any breach of contract by the Consultant. The City may withhold any payments to the Consultant for the purpose of set-off until such time as the exact amount of damages due to the City from the Consultant is determined.

**IX. Termination to Contract for Convenience**

The City or the Consultant may terminate this agreement at any time by giving at least twenty (20) days' notice in writing to the other party. If the contract is terminated as provided herein, the Consultant will be paid for the time and expenses incurred up to the termination date. If this contract is terminated due to the fault of the Consultant, Article VIII hereof relative to termination shall apply.

**X. Records and Audits**

The Consultant shall maintain records, adequate to identify and account for all costs pertaining to this contract and such other records as may be deemed necessary to assure proper accounting for all project funds. These records will be made available for audit purposes to the City or any authorized

representative, and will be retained for four (4) years after the expiration of this contract unless permission to destroy them is granted by the SHPO.

#### **XI. Worker's Compensation**

This is intended as, and is, an independent contract between the City and the Consultant. Neither the Consultant nor any partner or employee of the Consultant shall, by provision of this contract, become an employee of the City.

#### **XII. Equal Opportunity and Affirmative Action**

In the performance of services under this contract, the Consultant agrees to not discriminate against any employee or applicant on the basis of race, color, religion, sex (including pregnancy and gender identity), ethnicity, political affiliation, sexual orientation, marital status, disability, genetic information, age, membership in an employee organization, retaliation, parental status, military service, or other non-merit factor. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause:

"This program receives financial assistance for identification and preservation of historic properties. The U.S. Department of the Interior prohibits discrimination on the basis of race, color, national origin or handicap (mental and/or physical impairment)."

#### **XIII. Ownership of Documents**

All of the reports, forms, information, data, etc., prepared or assembled by the Consultant under this contract are the property of the City. The Consultant agrees that they shall not be made available to any individual or organization at any time without prior written approval of the City.

#### **XIV. Intellectual Property**

- A. The Consultant hereby grants the SHPO a non-exclusive, irrevocable, royalty-free license to all copyrightable material ("Material") created within the scope of the agreement without limitation. The SHPO shall have the right to reproduce, alter, modify, publish, and display all Material created under the scope of this agreement as necessary in the opinion of SHPO to conform to and comply with their requirements and standards, and those of the National Park Service.
- B. Further Warranties and Indemnities
  - (1) The Consultant represents and warrants to that:
    - (a) the Consultant is the sole author of the Material or has all rights to the Material, and the Material is original;
    - (b) the Consultant has the right, power and authority to enter this contract, and is the sole owner of the Material; and
    - (c) The Material contains no material that (i) infringes any copyright or other proprietary right, and to the best of the Consultant's knowledge, contains no material that (ii) is libelous or a violation of any right of privacy or publicity, or (iii) would otherwise subject SHPO to legal liability.
  - (2) The Consultant will indemnify and hold harmless SHPO from any loss, damage, expense (including reasonable defense costs), recovery or judgment that either party may incur ("Costs") as a result of any claim made against either which, if sustained, would constitute

a breach of a representation or warranty made by the Contractor in this Contract (each, a "Claim").

- (3) All warranties, representations and indemnities made by the Consultant in this Contract will survive any termination of this Contract, and will inure to the benefit of the SHPO, the Wisconsin Historical Society, the State of Wisconsin, and the National Parks Service, and their respective officers, directors, officials, employees, agents and volunteers.

**XV. Severability**

It is mutually agreed that, in case any provision of the contract is determined by a court of law to be unconstitutional, illegal or unenforceable, it is the intention of the parties that all other provisions of the contract remain in full force.

IN WITNESS THEREOF, parties hereto have caused this agreement to be executed the year and date written below by their proper officers and representatives.

---

Consultant

Date

---

Executive Director

Date

City of West Allis