

# City of West Allis

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RFP #17-043

PROFESSIONAL SERVICES – FINANCIAL AUDITING SERVICES

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# City of West Allis

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## NOTICE OF SOLICITATION

Finance Department  
City of West Allis  
7525 W. Greenfield Ave.  
West Allis, WI 53214  
Phone: 414-302-8260  
[purchasing@westalliswi.gov](mailto:purchasing@westalliswi.gov)

Proposals will be received at this office until January 3, 2018, at 4:00 PM for providing Professional Services – Financial Auditing Services to the City of West Allis.

Robert A Barwick, CPSM, CPPB  
Senior Buyer

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## Section I - INSTRUCTIONS

### I. **EXAMINATION OF THE REQUEST FOR PROPOSAL**

It is the responsibility of all prospective proposers to carefully read this entire Request for Proposals (hereafter referred to as RFP), which contains provisions applicable to successful completion and submission of a proposal, and consists of all documents shown in the Table of Contents. If you discover any ambiguity, inconsistency, error or omission in the RFP, you must notify the Senior Buyer, Finance Department, in writing. Only interpretations or corrections of the RFP made in writing are binding. You shall not rely upon any interpretation or corrections given by any other method.

### II. **PREPARATION AND SUBMISSION OF PROPOSALS**

- A. Deadline: Proposals and Pricing Statement/Cost must be received in the office of the Finance Department no later than 4:00 PM on January 3, 2018. Proposals received after the deadline will not be considered by the City.
- B. *Three (3) hard copies of the proposal, along with a separate pricing statement/cost of proposal, shall be mailed to: Finance Department, City of West Allis, 7525 W. Greenfield Avenue, West Allis, WI 53214, and one (1) electronic copy of the proposal shall be transmitted in pdf format emailed to [purchasing@westalliswi.gov](mailto:purchasing@westalliswi.gov). The following notation must appear in the subject line of the electronic (email) copy: RFP#17-043 PROFESSIONAL SERVICES – FINANCIAL ACCOUNTING SERVICES.*
- C. It is the intent of the City of West Allis to engage a firm who will provide professional services as described herein. However, the City reserves the right, at its sole discretion, to terminate this RFP process or negotiations with a selected firm and begin a new RFP process. Nothing herein, or in the process, shall be construed as having obligated the City to pay for any expenses incurred by respondents to this RFP, or to the selected firm prior to approval by the City of West Allis of a professional services agreement.

### III. **PROPOSAL COSTS**

The City shall not be liable for any costs incurred to prepare or submit a proposal for these services.

### IV. **TERM OF CONTRACT**

The initial term of the contract shall be for a three (3) year period, beginning with audit services for the City's 2017 Fiscal Year, and continuing through the 2019 Fiscal Year. Three (3) additional periods of one year may be contracted by mutual agreement.

City of West Allis, at its sole discretion, may terminate contract services upon written notification with or without cause, upon a 60 day notice.

### V. **GENERAL**

- A. Upon submission of a proposal to the City of West Allis, the offer to perform contractual services may not be withdrawn by the contractor for a period of 45 days to allow the City of West Allis the opportunity to take official action.
- B. Payments for services made under the agreement will be made within 30 days of receipt of an itemized invoice.
- C. No part of the contract shall be subcontracted without prior written consent of the City. Selected firm shall retain full responsibility for all work performed.
- D. Firm agrees to indemnify, hold harmless, and defend the City, its officers, agents and employees from any and all liability arising out of or in connection with this agreement where such liability is found upon or grows out of the errors, omissions, or negligent acts of any of the consultant, its agents or employees.

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E. Firm shall maintain insurance coverage as required and identified in the attached "Insurance Requirements" document (pages 9-11).

1. If Firm cannot meet the minimum insurance requirements outlined within this RFP:

- a. Provide a copy of the insurance you currently carry; and,
- b. Provide an estimate of how much it would cost to attain the additional insurances required within this RFP.

F. The City reserves the right to negotiate revisions to the Scope of Services and fees and to terminate negotiations if a final contract cannot be agreed upon.

G. Contract shall be construed according to the laws of the State of Wisconsin.

**VI. CONTACT INFORMATION**

Questions regarding this proposal may be directed to purchasing@westalliswi.gov

**VII. TIMELINE**

The following is the planned schedule for the selection process. The City reserves the right to modify the schedule.

RFP Released.....	Monday, December 11, 2017
Question Deadline.....	Monday, December 18, 2017
Intent to Respond to RFP Deadline.....	Monday, December 18, 2017
Respond to Questions.....	Wednesday, December 20, 2017
Proposals Due.....	Wednesday, January 3, 2018
Interview of Finalists (if necessary).....	During Period of January 8 – January 9, 2018
Selection.....	Tuesday, January 16, 2018

**VIII. NON-DISCRIMINATION STATEMENT**

The City of West Allis does not discriminate on the basis of race, color, religion, age, marital or veterans' status, sex, national origin, disability, or any other legally protected status in the admission or access to, or treatment or employment in, its services, programs or activities.

**IX. AMERICANS WITH DISABILITIES ACT NOTICE**

Upon reasonable notice, the City will furnish appropriate auxiliary aids and services when necessary to afford individuals with disabilities an equal opportunity to participate in and to enjoy the benefits of a service, program or activity provided by the City.

**X. LIMITED ENGLISH PROFICIENCY STATEMENT**

It is the policy of the City of West Allis to provide language access services to populations of persons with Limited English Proficiency (LEP) who are eligible to be served or likely to be directly affected by our programs. Such services will be focused on providing meaningful access to our programs, services and/or benefits.

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## Section II - SPECIFICATIONS

### I. **SCOPE OF FINANCIAL AUDITING SERVICES**

- A. The audit shall be conducted in compliance with generally accepted government auditing standards (GAGAS).
- B. The audit shall be a financial review for the purpose of expressing an auditor's opinion on the extent to which the financial statements are fairly presented in conformity with generally accepted accounting principles as established by the Government Accounting Standards Boards (GASB).
- C. The audits shall be performed in accordance with generally accepted auditing standards, the standards set forth for financial audits in the U.S. General Accounting Office's (GAO) Government Auditing Standards, the provisions of the federal Single Audit Act and U.S. Office of Management and Budget (OMB) Circular A-133, Audits of State and Local Governments, Circular A-87, Circular A-102, the State Single Audit Guidelines issued by the Wisconsin Department of Administration, and Section 66.46 (6m) (b) 1 Stats.
- D. The Firm shall attend a pre-audit meeting with City staff to discuss the records to be audited and other general aspects of the audit. The City may require the Firm to include in the audit, additional records and procedures which are generally accepted and defined in the publications listed above.
- E. Funds to be examined

The following funds shall be examined. The Firm shall provide an estimated allocation of fees on an annual basis for each fund.

- 1. General Government
- 2. Single Audit Programs - Special Revenue Funds
  - Community Development Block Grants
  - Rental Housing Rehabilitation
  - Voucher Payment Program - Section 8
  - Section 8 (Housing Assistance)
  - All other single audit programs
- 3. Enterprise Funds
  - Water Utility
  - Sanitary Sewer Utility
  - Parking Utility
  - Senior Citizen's Housing
  - Storm Water Utility
  - Solid Waste Fund
- 4. Other
  - Internal Service Funds
  - Capital Project Funds
  - TIF's/TID's
  - Indemnification Fund – Quad Graphics
  - New Market Tax Credits
  - Other Special Revenue Funds
  - Other Funds as they arise

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## F. Opinion

The Firm shall express an opinion on the combined, and individual financial statements of all funds. If unable to express an "unqualified" opinion, the Firm shall state the reasons for qualification or disclaimer of opinion.

Further, the Firm shall observe the adequacy of the system of internal control and, if weaknesses are found, review such inadequacies with, and make recommendations to, the City Finance Director. The Firm is authorized to disclose, directly and immediately, to the appropriate law enforcement agency, any findings of suspected fraud or embezzlement.

## G. Miscellaneous

1. The partner and/or manager in charge of the audit on behalf of the Firm shall be available to attend up to two (2) public meetings annually, at which time the audit reports may be discussed.
2. The Firm shall provide, at no additional charge, routine consultation regarding recommended accounting procedures and Internal Revenue Service and Wisconsin Department of Revenue regulations as they apply to the City.
3. The Firm will prepare any necessary journal entries and explanations to reconcile the City's financial records to the CAFR, which includes the drafting of the GASB #34 entries. The Firm shall prepare the financial statements in accordance with GASB and GFOA CAFR Award program guidelines. The Firm shall review the draft version of the CAFR, including the financial statements, notes to the financial statements, MD&A, Transmittal Letter, Statistical Section, etc., for completeness and conformance with the requirements of the GFOA Certificate of Achievement for Excellence in Financial Reporting and provide any changes by June 15. The City will print, cover and bind all copies from camera-ready artwork furnished by the audit firm.
4. The Firm shall assist with the on-line filing of the SF-SAC form. (Data collection form for reporting on Audits of States, Local Governments, and non-profit organizations and similar documents as required.) In addition, the Firm shall prepare the on-line and hard copy of the US Housing and Urban Development Real Estate Assessment Center (REAC) report.
5. The Firm shall assist with the final State Report and related required documents.
6. Working Paper Retention and Access to Working Papers

All working papers and reports must be retained, at the Firm's expense, for a minimum of three (3) years, unless the Firm is notified in writing by the City of West Allis of the need to extend the retention period. The Firm will be required to make working papers available, upon request, to the following parties or their designees:

- a. City of West Allis
- b. U. S. General Accounting Office (GAO)
- c. Parties designated by the federal or state governments or by the City of West Allis as part of an audit quality review process.

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- d. Auditors of entities of which the City of West Allis is a sub recipient of grant funds or governmental loans.

In addition, the firm shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

7. The Firm shall act as advisor to the City in the City's submittal of the Comprehensive Annual Financial Report (CAFR) to the Government Finance Officers Association in pursuit of Certification of Achievement for Excellence in Financial Reporting. The City shall prepare, and be responsible for, non-financial statistics and the MD&A, with review by the Firm.

## **II. Cost of Information Preparation**

The costs of developing and submitting a proposal, discussions required to clarify items related to the proposal, and/or future interviews is entirely the responsibility of the applicant. All proposals and other information provided to the City becomes the property of the City. The City reserves the right to use such proposals and other material or information and any of the ideas presented therein without cost to the City.

## **III. Qualifications**

Demonstrate and provide evidence of significant knowledge and experience in providing Financial Auditing Services.

## **IV. Proposal Contents and Format**

In order to be considered as a qualifying proposal, the following information is required. Each submittal should include the items listed below. However, the organization may include additional materials as appropriate.

- A. Three (3) hard copies of the proposal shall be mailed to: Finance Department, City of West Allis, 7525 W. Greenfield Avenue, West Allis, WI 53214, and one (1) electronic copy shall be transmitted in pdf format emailed to [purchasing@westalliswi.gov](mailto:purchasing@westalliswi.gov).
- B. An officer who is authorized to execute legal documents on behalf of the Firm shall sign the proposal.
- C. Information within the proposal should be clearly marked and formatted with the following sections:
  1. Executive Summary: Provide an overview of the proposed services, your organization and its ability to be able to provide the services proposed.
  2. Detailed Information – Response Requested: Please respond to the following statements:
    - Provide a description of your firm (size, location, staffing level, longevity, etc.).
    - Explain the qualifications of the team members that will be assigned to this engagement. Also, identify the project manager who will be responsible for the engagement.
    - Detail your firm's experience on similar engagements; please include a summary describing three (3) similar and relevant past engagements managed by the project manager to be assigned to the City of West Allis. These examples should include a brief summary of each engagement.

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- Explain your firm's approach to successfully providing these services, including what you see as your role, and how you communicate with the City.
  - Explain your expectations for the City and its staff as it relates to your ability to successfully provide these services.
  - Please identify specialized computer software packages and other technology tools used to service your clients.
  - Describe, in detail, your firm's data analysis process including the methods and strategies you employ and the type of reports and forms that can be expected by the City as part of this engagement.
3. References: Provide a minimum of five (5) municipal references, for similar size organizations with similar offerings, including the name of person(s) who may be contacted, title of the person, mailing address, email address and phone number. Please include references for the specific project manager who will be assigned to the City of West Allis
4. Cost Summary: A detailed cost for services broken into product and service costs. Also provide any and all other costs pertinent to the Scope of Work required for these services. Proposals shall clearly list the fee for each year of the proposed contract, including a not-to-exceed sum to include all of the firm's costs including but not limited to: labor, materials, supplies, equipment, transportation costs, meals, lodging, computer software, etc. All expense reimbursements will be the responsibility of the firm.
5. Additional Services: The proposing firm will be allowed to propose additional services offerings as part of an alternate quote. However, the basic proposal must include all stated requirements listed herein.
6. All work shall be accomplished in accordance with the provisions of the laws of the State of Wisconsin.

## **V. EVALUATION AND SELECTION PROCESS**

### RATING CRITERIA

- a. Experience and successes in providing Financial Auditing Services to similar organizations
- b. Skill, ability and capacity to perform the specific scope of services required
- c. Quality of proposal and format
- d. Proposed methodology, best practices utilized, and strategies employed
- e. Additional resources offered / provided
- f. Overall impression
- g. Price

The City of West Allis reserves the right to reject any and all proposals for any reason at its sole discretion and to negotiate the terms and conditions of the eventual contract with the consultant awarded the project. The consultant to whom the contract is awarded will be notified as early as possible.



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## Section III - INSURANCE REQUIREMENTS FOR CONSULTANTS

### **A. INSURANCE REQUIRED**

Consultants shall purchase and maintain for the duration of the contract as required by the City or by Law, insurance indemnifying against claims, suits, personal injury, bodily injury to persons, or damage to property which arises from, or in connection with the performance of the work hereunder by the Consultant. Some contracts may require Completed Operations, Professional Liability or other insurance beyond the contract term.

Any deductibles or self-insured retentions shall be identified to the City; those which exceed \$10,000 must be declared to and approved by the City. The City may require a review of the latest audited financial statements of the Consultant. At the option of the City, the insurer shall not reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, agents and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defenses expenses.

All required insurance under this Contract is to be placed with insurers with a Best's rating of no less than A-VII. Said carriers to be admitted status with the State of Wisconsin, unless otherwise approved in advance by the City. The City reserves the right to approve non-admitted carriers with a Best's rating of no less than AX.

Work shall not be commenced under the Contract until all insurance required under this paragraph has been obtained and evidence thereof in the form of certificates, with original endorsements effecting coverage, are filed with and approved by the City. The City reserves the right to require complete, certified copies of all required insurance policies upon the filing of a claim or lawsuit where the insurer denies coverage.

The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms approved by the City. For Workers' Compensation-related risks, only forms approved by the Insurance Commissioner are to be used.

Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages shall be subject to all of the insurance requirements that are applicable to the Consultant. No subcontractor shall be permitted to commence work until all required coverages have been obtained and certificates and endorsements thereof are filed with the City.

If any part of a loss is not covered because of the application of a deductible or retention, said loss shall be borne by the general Consultant and not the City. Failure to maintain the required insurance may result in termination of this Contract at the option of the City.

### **B. GENERAL ENDORSEMENTS**

The protection afforded by the required insurance policies under this Contract shall include, but shall not be limited to, the following:

1. Occurrence Based Policies. All required Liability insurance under this Contract shall be written on an "occurrence" form, except separately approved Professional Liability Policies.
2. Representation of Coverage Adequacy. By requiring insurance for this Contract, the City does not represent or warrant that coverage and limits will be adequate to protect the Consultant, subcontractor, their agents or any project engineer.

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3. Cross-Liability Coverage. If the Consultant's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.
4. Cancellation. The policy shall not be suspended, voided, canceled, reduced in coverage or in limits except after at least thirty (30) days prior written notice has been given to the City.
5. Additional Insureds. The City, its officers (elected and appointed), employees, agents and volunteers must be named as additional insureds as their interests may appear on the Consultant's liability insurance policies, which insure the City up to the required limits. Additional insured status shall be endorsed onto the respective insurance policy by the appropriate ISO Endorsement Form approved by the City and executed by duly authorized agents of said carrier.
6. Primary Insurance. Consultant's insurance shall provide primary insurance to the City, to the exclusion of any other insurance or self-insurance programs the City may carry. Any insurance or self-insurance maintained by the City shall be excess of the Consultant's insurance and shall not contribute to it.
7. Waiver of Subrogation. Consultant waives all rights against the City, its officers, employees, agents and volunteers for recovery of damages to the extent these damages are covered by the insurance the Consultant is required to carry pursuant to this Contract.
8. Reporting. Failure to comply with any insurance policy reporting provisions shall not affect coverage provided to the City.
9. Cross Liability. The required insurance coverages shall apply separately to each insured against whom claim is made or suit brought, except with respect to the limits of the insurer's liability.
10. Indemnification. The policies shall contain an acknowledgement by the underwriters that the Consultant shall indemnify and save harmless the City against any and all claims resulting from the wrongful or negligent acts or omissions of the Consultant or other parties acting on its behalf under the Contract to which the insurance applies; and that the hold harmless assumption on the part of the Consultant shall include all reasonable costs necessary to defend a lawsuit including actual reasonable attorney fees.

## **C. MINIMUM LIMITS AND OTHER PROVISIONS**

### **1. WORKER'S COMPENSATION INSURANCE.**

Wisconsin statutory limits for all employees of the bidder to whom the award is made.

All subcontractors and material men shall furnish to the Consultant and the City certificates of similar insurance for all of their respective employees, unless such employees are covered by the protection afforded by the Consultant.

### **2. GENERAL LIABILITY INSURANCE.**

Contractor shall maintain, and a Certificate of Insurance shall be furnished for Worker's Compensation, Comprehensive General Liability, including Contractual Liability, and Automobile Liability insurance for any claims that may arise from operations under this contract in the following amounts:

Bodily Injury	\$1,000,000	each occurrence
	1,000,000	aggregate
Property Damage	500,000	each occurrence
	500,000	aggregate
Automobile Liability	1,000,000	each accident
Worker's compensation		per State Statute

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Certificates of insurance, in a form satisfactory to the City Attorney, shall be filed with the City and shall provide 30 days' notice of cancellation.

3. BUSINESS AUTOMOBILE LIABILITY INSURANCE.

- a. Coverage. Coverage must be as broad as CA 00 01 Ed. 1992) - Occurrence Form Code No. 1, "any auto".

Comprehensive Coverage for all Owned, Non-Owned or Hired Motor Vehicles driven by the employees of the Consultant or Subcontractors, including vehicles and equipment owned by the City if used exclusively for the project.

Uninsured or Underinsured Motorists Liability Coverage at full policy limits.

- b. Minimum Limits of Liability:  
Minimum Limits are the same as specifications for General Liability Insurance.

4. PROFESSIONAL LIABILITY/ERRORS AND OMISSIONS COVERAGE

- a. Coverage. Standard form; coverage provided on a claims-made basis with at least one year extended reporting period; to include all liability assumed by the Consultant for the Project.
- b. Minimum Limits of Liability:  
Minimum \$1 Million (project specific).

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## SECTION IV – SAMPLE OF CITY OF WEST ALLIS PROFESSIONAL SERVICES AGREEMENT

CITY OF WEST ALLIS  
DEPARTMENT OF XXXXXX  
GENERAL CONDITIONS OF AGREEMENT FOR  
PROFESSIONAL SERVICES

CONSULTANT:

PROJECT:

### 1.01 BASIC SERVICES

- A. Basic Services of CONSULTANT to be provided under this AGREEMENT are listed in the Scope of Services, attached hereto and made a part of this Agreement by reference.
- B. Payment for Basic Services shall be made in accordance with Section 3 of this Agreement.

### 2.01 SERVICES REQUIRING AUTHORIZATION IN ADVANCE

- A. Those services listed in the Scope of Services but not identified in Section 1 of this AGREEMENT may be requested by the DEPARTMENT to complete the work, are considered additional services. The DEPARTMENT may request CONSULTANT at a future date to perform any or all of these services by a written authorization to proceed with the Additional Service(s). The written authorization to proceed shall become an Amendment to the Agreement.
- B. Payment for the Additional Service(s) shall be in accordance with Section 3 of this AGREEMENT.

### 3.01 BASIC SERVICES

- A. DEPARTMENT shall pay CONSULTANT for Basic Services rendered under Section 1 on the basis of CONSULTANT'S Hourly Rate, plus Reimbursable Expenses and Services of Professional Associates and other Consultants as defined in this Section 3.
- B. CONSULTANT estimates that the total cost required to perform Basic Services as enumerated in Section 1 will not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

Given the assumptions which must be made, the DEPARTMENT recognizes that the CONSULTANT cannot guarantee the complete accuracy of its estimate of total cost, and, therefore waives any claim against CONSULTANT in this regard, except to the extent that any cost overrun can be attributable to fraudulent conduct, bad faith or inexcusable ignorance or incompetence.

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## 3.02 ADDITIONAL SERVICES

DEPARTMENT shall pay CONSULTANT for Additional Services rendered under Section 2 as follows:

1. For Additional Services of CONSULTANT'S principals and employees engaged directly on the Project and rendered pursuant to Section 2, on the basis of CONSULTANT'S Hourly Rate.
2. For services and Reimbursable Expenses of independent Professional Associates and Consultants employed by CONSULTANT to render Additional services pursuant to Section 2, the amount billed to CONSULTANT therefore.

## 3.03 REIMBURSABLE EXPENSES

- A. As used in this Agreement Reimbursable Expenses mean the actual expense incurred by CONSULTANT or its independent Professional Associates or Consultants, directly or indirectly in connection with the Project, such as expenses for: toll telephone calls and express mailings, reproduction of reports, drawings, specifications, bidding documents, laboratory tests and similar Project-related items in addition to those required under Section 1; and, if authorized in advance by the DEPARTMENT, overtime work requiring higher than regular rates.
- B. The Reimbursable Expenses for Basic Services are as set forth in the Consultant's Hourly Rates attached hereto and made a part of this Agreement.

## 3.04 HOURLY RATES.

As used in this Agreement hourly rates used as a basis for payment mean salaries and wages (basic and incentive) paid to all CONSULTANT'S personnel engaged directly on the Project, including but not limited to other technical and business personnel as set forth in the Consultant's Hourly Rates.

## 3.05 TIME OF PAYMENT

CONSULTANT shall submit monthly statements on or before the twentieth of the month for Basic and Additional Services rendered and for Reimbursable Expenses incurred. The DEPARTMENT shall make prompt payment on or before the twentieth of the month following the date of the CONSULTANT monthly statement.

## 4.01 COMMENCEMENT OF WORK

- A. CONSULTANT shall commence the work to be performed under this Agreement upon receipt of a written Work Order or verbal authorization to proceed from the DEPARTMENT. Each Work Order or verbal authorization shall define by task(s) the scope of services to be performed. Verbal authorizations shall be followed up with written Work Orders.
- B. Additional services shall be commenced at within the time agreed to between the CONSULTANT and the DEPARTMENT at the time such services are authorized.
- C. The DEPARTMENT shall not be liable to CONSULTANT and/or any of its independent Professional Associates and Consultants and/or subcontractors for claims or damages

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or monetary claims of any nature caused by or arising out of delays from any cause whatsoever, including but not limited to any time which may be specified for the notice to proceed under this Agreement. The sole remedy against the DEPARTMENT for delays shall be the allowance to claimant of additional time for completion of work, the amount thereof to be reasonable as determined by the DEPARTMENT.

## 4.02 COMPLETION OF WORK

- A. CONSULTANT shall complete the work to be performed under this Agreement within the time specified in the Scope of Services, or if none is specified, then within a reasonable time for the type of work involved.
- B. Additional services shall be completed within the time agreed to between the CONSULTANT and the DEPARTMENT at the time such services are authorized.

## 5.01 APPLICABLE LAW

This AGREEMENT shall be governed by the laws of the State of Wisconsin and venue for any action concerning this Agreement shall be in Milwaukee County, Wisconsin. The CONSULTANT shall at all times comply with all federal, state and local laws, ordinances and regulations in effect during the period of this AGREEMENT.

## 6.01 APPROVALS OR INSPECTIONS

None of the approvals or inspections performed by the DEPARTMENT shall be construed or implied to relieve the CONSULTANT from any duty or responsibility it has for its professional performance, unless the DEPARTMENT formally assumes such responsibility through a letter from the DEPARTMENT expressly stating that the responsibility has been assumed.

## 7.01 DISPUTE RESOLUTION

In the event a dispute arises under this agreement, which is not resolvable through informal means, the parties agree to submit the dispute to the following resolution mechanism prior to pursuing other available legal remedies. Upon receipt of a written request by either party to utilize this provision each party shall have five working days to notify the other as to the name and address of the person designated to hear the dispute for that party. Upon designation of the dispute resolution representatives, those persons shall have ten working days to appoint a mutually acceptable third person to hear the dispute, and to agree on a time and location to hear the matter in dispute. The representatives shall jointly determine the procedure to be used for gathering information and hearing the dispute. Binding mediation or arbitration shall not be chosen as a dispute resolution method.

## 8.01 ASSIGNMENT

Neither this AGREEMENT nor any right or duty, in whole or in part, of the CONSULTANT under this AGREEMENT may be assigned, delegated or subcontracted without the written consent of the DEPARTMENT.

Nothing under this AGREEMENT shall be construed to give any rights or benefits in this AGREEMENT to anyone other than the DEPARTMENT and the CONSULTANT, and all duties and responsibilities undertaken pursuant to this AGREEMENT will be for the sole

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and exclusive benefit of the DEPARTMENT and the CONSULTANT and not for the benefit of any of any other party.

## 9.01 CANCELLATION; TERMINATION

- A. The DEPARTMENT reserves the right to cancel this AGREEMENT in whole or in part, without penalty, due to non-appropriation of funds or for failure of the CONSULTANT to comply with terms, conditions, or specifications of this AGREEMENT.
- B. The DEPARTMENT may terminate this AGREEMENT for any reason at any time upon not less than 10 days' written notice to the CONSULTANT.
- C. In the event of termination the DEPARTMENT shall pay the CONSULTANT for that portion of the work satisfactorily performed prior to the date of termination.
- D. If this AGREEMENT is cancelled or terminated by the DEPARTMENT for reasons other than the failure of the CONSULTANT to comply with terms, conditions or specifications of this AGREEMENT, the CONSULTANT shall also be entitled to reasonable cancellation or termination costs relating to costs incurred by the CONSULTANT for commitments, which had become firm prior to the cancellation or termination.
- E. Upon cancellation or termination under PARAGRAPH A. or B., above, the CONSULTANT shall promptly discontinue all affected work (unless the notice of termination directs otherwise), and deliver or otherwise make available to the DEPARTMENT all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the CONSULTANT in performing this AGREEMENT, whether completed or in progress.
- F. If any undisputed invoice shall not be paid within the payment terms of this AGREEMENT, CONSULTANT shall have the right, after giving seven (7) days written notice, to suspend all Services on the project until all accounts have been paid. If any overdue invoice shall not be paid within forty-five (45) calendar days after the date of the invoice, CONSULTANT shall have the right to terminate this AGREEMENT.

## 10.01 DISCLOSURE

If a city official (as defined under section 3.02(l) of the Revised Municipal Code of the City of West Allis), a member of official's immediate family, or any organization in which a city official or a member of the official's immediate family owns or controls a ten percent (10%) interest, is a party to this AGREEMENT, and if this AGREEMENT involves payment of more than three thousand dollars (\$3,000) within a twelve (12) month period, this AGREEMENT is voidable by the City unless appropriate disclosure is made according to section 3.5 of the Revised Municipal Code, before signing the AGREEMENT. Disclosures shall be made to the Ethics Board of the City of West Allis, 7525 West Greenfield Avenue, West Allis, Wisconsin 53214 (Telephone 414-302-8200).

## 11.01 ENTIRE AGREEMENT; AMENDMENTS

This AGREEMENT, together with the specifications in the proposal and referenced parts and attachments, shall constitute the entire agreement between the parties and previous communications or agreements pertaining to the subject matter of this AGREEMENT are hereby superseded. Any contractual revisions including cost adjustments and time



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extensions may be made only by a written amendment to this AGREEMENT, signed by both parties prior to the ending date of this AGREEMENT.

## 12.01 FORCE MAJEURE

No party shall be responsible to the other party for any resulting losses and it shall not be a default of this Agreement if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, unusual adverse weather conditions, or by any other cause not within the control of the party whose performance was interfered with and which by the exercise of reasonable diligence such party is unable to prevent, whether of the class of enumerate causes or not, and the time for performance shall be extended by the period of delay occasioned by any such cause. Upon the occurrence of a force majeure, written notice to the other party shall be given as herein provided. If the period of non-performance exceeds thirty (30) days from the receipt of the notice, the party whose ability to perform has not been so affected may, by written notice, terminate this Agreement.

## 13.01 INDEMNIFICATION; LIABILITY

A. To the fullest extent allowable by law, Consultant hereby indemnifies and shall defend and hold harmless the City of West Allis, its elected and appointed officials, officers, employees or authorized representatives or volunteers and each of them from and against any and all suits, actions, legal or administrative proceedings, claims demands, damages, liabilities, interest, attorneys' fees, costs, and expenses of whatsoever kind or nature whether arising before, during, or after completion of the work hereunder and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive, of Consultant or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Agreement. Consultant's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the sole fault, sole negligence, or willful misconduct of the City of West Allis, or its elected and appointed officials, officers, employees or authorized representatives or volunteers. This indemnity provision shall survive the termination or expiration of this Agreement.

In any and all claims against the City of West Allis, its elected and appointed officials, officers, employees or authorized representatives or volunteers by an employee of Consultant, any subcontractor, or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Consultant or any subcontractor under worker's compensation, disability benefit, or other employee benefit laws.

No provision of this indemnification clause shall give rise to any duties not otherwise provided for by this Agreement or by operation of law. No provision of this indemnity clause shall be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to the City of West Allis, its elected and appointed officials, officers, employees or authorized representatives or volunteers



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under this or any other contract. This clause is to be read in conjunction with all other indemnity provisions contained in this Agreement. Any conflict or ambiguity arising between any indemnity provisions in this Agreement shall be construed in favor of indemnified parties except when such interpretation would violate the laws of the state in which the job site is located.

Consultant shall reimburse the City of West Allis, its elected and appointed officials, officers, employees or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any received by the City of West Allis, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

- B. DEPARTMENT agrees to indemnify, defend and hold harmless CONSULTANT and its subcontractors, consultants, agents, directors, and employees from and against all claims, suits, damages, and losses, including, but not limited to, those claims, suits, damages, or losses caused or arising out of, relating to, or based upon: 1) the acts, omissions, or other conduct of DEPARTMENT; and [2) the actual or threatened dispersal, discharge, escape, release, or saturation of smoke, vapors, soot, fumes acids, alkalis, toxic chemicals, liquids, gases, or any other materials, irritants, contaminants, or pollutants in or into the atmosphere or on, onto, upon, in or into the surface or subsurface of soil, water or water course, objects, or any tangible or intangible matter, whether abated or not; except to the extent that such damage or loss is caused by the negligent acts or willful misconduct of CONSULTANT or its agents, officers, directors, or employees.] [For environmental services only.]

## 14.01 INDEPENDENT CONTRACTOR

The DEPARTMENT agrees that the CONSULTANT shall have sole control of the method, hours worked, and time and manner of any performance under this AGREEMENT other than as specifically provided herein. The DEPARTMENT reserves the right only to inspect the job site or premises for the purpose of insuring that the performance is progressing or has been completed in compliance with the AGREEMENT. The DEPARTMENT takes no responsibility for supervision or direction of the performance of the AGREEMENT to be performed by the CONSULTANT or the CONSULTANT'S employees or agents. The DEPARTMENT further agrees that it will exercise no control over the selection and dismissal of the CONSULTANT'S employees or agents.

## 15.01 REPORT AND DOCUMENTATION REQUIREMENTS

- A. The CONSULTANT'S invoices will be reduced by the sums set forth below for each week that the CONSULTANT fails to submit a report or document required under this AGREEMENT'S time schedule unless the DEPARTMENT determines that such delay is attributable to a force majeure as defined in SECTION 8., above. These reductions shall accrue in the amount of 5% of the Work Order for the first week and 10% of the Work Order for each week thereafter, for each report or document, which is overdue.
- B. Assessment of reductions under this SECTION does not preclude the DEPARTMENT from pursuing any other remedies or sanctions because of the CONSULTANT'S failure to comply with any of the terms of this AGREEMENT, including a suit to enforce the terms of this AGREEMENT.

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- C. With respect to any individual failure to submit a report or document required under this AGREEMENT'S time schedule, the DEPARTMENT may at its sole discretion, in whole or in part, waive its right to penalties otherwise due under this SECTION.

## 16.01 NO WAIVER OF CONDITIONS

The failure of either party to insist on strict performance of this AGREEMENT does not constitute a waiver of any of the provisions of this AGREEMENT or a waiver of any default of the other party.

## 17.01 OWNERSHIP OF DOCUMENTS

- A. Upon completion of the services provided for in this AGREEMENT, or upon payment for services as provided for in SECTION 5., all reports, specifications, charts, sketches, drawings and other documents, whether finished or not, shall become the property of the DEPARTMENT.
- B. CONSULTANT shall retain one copy of all documents for its file. Any documents generated by CONSULTANT used by the DEPARTMENT beyond the intended purpose shall be at the sole risk of the DEPARTMENT, unless otherwise agreed upon by CONSULTANT in writing. To the fullest extent permitted by law, DEPARTMENT shall indemnify, defend and hold harmless CONSULTANT, its subcontractors, consultants, officers, directors, employees and agents, for any loss or damages arising out of the unauthorized use of such documents by the DEPARTMENT.

## 18.01 OWNERSHIP OF WASTES [Environmental Contract Only]

The DEPARTMENT acknowledges that the CONSULTANT is not, by virtue of this AGREEMENT, the owner or generator of any waste materials generated as a result of the services performed by the CONSULTANT under this AGREEMENT.

## 19.01. PERIOD OF AGREEMENT

This AGREEMENT shall commence upon its signing by both parties and shall follow the schedule developed herein, during which period all performance as described in this AGREEMENT shall be fully completed to the satisfaction of the DEPARTMENT.

## 20.01 RELEASE OF INFORMATION

The CONSULTANT may not issue press releases or provide information to any third party regarding the Project without the prior written approval of the DEPARTMENT, except as required by Federal or State regulations, or court order.

## 21.01 SAFETY

The CONSULTANT shall initiate, maintain and provide supervision of safety precautions and programs for CONSULTANT'S own employees, and shall require its subcontractors or sub-consultants to comply with state and local safety laws and regulations in connection with its services. However, the CONSULTANT is not responsible for the elimination or abatement of safety hazards created or otherwise resulting from work at the project site carried on by other persons or firms directly employed by the DEPARTMENT as separate

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consultants or contractors. The DEPARTMENT agrees to require any such separate consultants or contractors to comply with federal, state and local safety laws and regulations and to comply with all reasonable requests and directions of the CONSULTANT for the elimination or abatement of any safety hazards at the project site.

## 22.01 SITE ACCESS; DATA

- A. Unless the Scope of Work provides otherwise, the DEPARTMENT shall obtain or provide reasonable access for the CONSULTANT to the project site when necessary and at any reasonable time requested.
- B. The DEPARTMENT shall attempt to provide the CONSULTANT with all relevant data and information in its possession regarding the project site. However, in providing such data and information, the DEPARTMENT or the CONSULTANT assumes no responsibility for its accuracy, reliability or completeness.

## 23.01 STANDARD OF PERFORMANCE

The CONSULTANT'S services shall be performed with the usual thoroughness, skill and competence of the consulting profession, in accordance with the standard for professional services prevailing at the time those services are rendered.

## 24.01 SURVIVAL

These General Terms and Conditions shall survive the completion of the services under this AGREEMENT and the termination of this AGREEMENT for any cause.

## 25.01 SUCCESSORS AND ASSIGNS

The DEPARTMENT and the CONSULTANT each bind themselves, their partners, successors, assigns and legal representatives to the other party to this AGREEMENT and to the partners, successors, assigns and legal representatives of the other party with respect to all covenants of this AGREEMENT.

## 26.01 TITLES

The headings or titles of SECTIONS of this AGREEMENT are used for convenience and ease of reference and are not intended to limit the scope or intent of the SECTIONS.

## 27.01 ACCESS TO RECORDS

- A. The CONSULTANT and subcontractors to the CONSULTANT if any, agree to maintain for inspection by the DEPARTMENT all books, documents, papers, accounting records and other evidence pertaining to all costs incurred under this AGREEMENT and to make such materials available at their respective offices at all reasonable times during the life of the AGREEMENT and for three (3) years from the date of final payment under the AGREEMENT, and to furnish copies thereof if requested.
- B. If more than a nominal number of copies are requested, the additional copies shall be furnished at the expense of the DEPARTMENT.

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## 28.01 ERRORS AND OMISSIONS

The CONSULTANT shall be responsible for the accuracy of the work performed by the CONSULTANT under the AGREEMENT, and shall promptly make necessary revisions or corrections resulting from its negligent acts, errors or omissions without additional compensation.

## 29.01 CONFLICT OF INTEREST

- A. The CONSULTANT warrants it has no public or private interest, and shall not knowingly acquire directly or indirectly any such interest, which would conflict in any manner with the performance of the work under the AGREEMENT.
- B. The CONSULTANT shall not employ any person employed by the DEPARTMENT for any work included under the provisions of the AGREEMENT.