

APPENDIX E

Consultant Services Agreement

APPENDIX E - CONSULTANT SERVICES AGREEMENT

BY AND BETWEEN

CITY OF JANESVILLE

And

[INSERT NAME OF CONSULTANT HERE]

For the

COMPENSATION AND BENEFITS STUDY

This AGREEMENT is made and executed by and between the **CITY OF JANESVILLE**, a Wisconsin Municipal Corporation located in the County of Rock, conducting its principal business at 18 North Jackson Street, P.O. Box 5005, City of Janesville, County of Rock, State of Wisconsin, 53547-5005 (hereinafter the "CITY")

and

, a corporation conducting its principal business at _____ Avenue, Suite _____, City of _____, County of _____, State of Wisconsin (hereinafter the "CONSULTANT").

In consideration of the covenants herein contained and payments by the CITY, the sufficiency of which is hereby acknowledged by the CONSULTANT, and the promises and performance promised by the CONSULTANT hereunder to the CITY, the CONSULTANT and the CITY hereby contract with each other to perform the services and pay the fees, respectively, hereinafter set forth, as applicable, according to the following terms and conditions:

I. UTILIZATION OF CONSULTANT'S SERVICES

The CITY hereby agrees to engage the CONSULTANT to perform the technical and professional services as hereinafter set forth. CONSULTANT shall at all times perform as an independent contractor.

II. SCOPE OF SERVICES – INCORPORATION OF ATTACHMENT OR APPENDIX

The CONSULTANT, in a manner consistent with the highest generally accepted standards and practices utilized by competent human resources firms in effect at the time and in the location of Consultant's performance of services, shall perform, carry out, and provide to the CITY in a professional manner all of the services required as set forth in this RFP.

III. PERSONNEL

A. The CONSULTANT represents that it employs, or will employ, at its own expense, all personnel required to perform the services under this Agreement.

B. All of the services required hereunder shall be performed by the CONSULTANT in a highly professional manner customary for the human resources profession in the same locale and as set forth in this RFP hereto. All of the CONSULTANT's personnel engaged in providing services shall be fully qualified and where applicable shall be authorized or permitted under State and Local law to perform such services. Sufficient technical supervision and administrative personnel shall be furnished at all times by the CONSULTANT to ensure proper and successful performance of this Agreement by the CONSULTANT in accordance with the foregoing highest professional standard of care.

C. None of the services covered by this Agreement shall be subcontracted by the CONSULTANT without the prior written approval of the CITY. A listing of the CONSULTANT's proposed subconsultant(s) is as follows:

Subconsultant(s):

D. Subconsultant(s) shall be tied contractually solely to the CONSULTANT. The CONSULTANT shall be responsible for the scope of services and the terms and conditions set forth in this Agreement. Nothing herein shall create or be construed as creating any direct or indirect contractual or other relationship between the CITY and any subconsultant.

IV. PROJECT MANAGER AND PROJECT STAFF

A. Assignment of Project Manager and Project Staff

The CONSULTANT shall assign the following individuals to manage and conduct the project described in this Agreement:

Project Manager: _____

Project Staff: _____

B. Changes in Project Manager and Project Staff

The CITY has the right to approve or disapprove any proposed change from the individuals named in Section IV.A. The CITY shall be provided by the CONSULTANT with a resume of any proposed substitute prior to such substitution, and shall be given the opportunity to interview that person prior to its decision to approve or disapprove. No work by the proposed substitute can occur prior to approval by the CITY.

V. DATA TO BE FURNISHED

Secondary sources of information, policies, data, reports, audits, and records as are existing and available in the CITY and are necessary for providing the services as outlined in this RFP hereto shall be furnished to the CONSULTANT without charge by the CITY. The CITY shall cooperate in every way reasonably possible in providing such data without undue delay.

VI. PERFORMANCE – TIME IS OF THE ESSENCE

This Agreement covers charges incurred by the CONSULTANT in furtherance of its duties set forth herein, beginning on the Agreement execution date. All services and required performance of the CONSULTANT shall be undertaken and completed by the CONSULTANT in such sequence as to timely fulfill the purpose of this Agreement. Time is of the essence in the CONSULTANT's performance and rendering of all services set forth in this Agreement.

VII. SCHEDULE AND PROGRESS REPORTS

The CONSULTANT and the CITY shall follow the project schedule included in this RFP. The CONSULTANT shall provide monthly progress reports to the CITY setting forth the status of the services according to the aforementioned project schedule, itemizing funds expended and outlining tasks to be performed in the ensuing month.

VIII. COMPENSATION

The basis for payments by the CITY to the CONSULTANT for services performed under this Agreement shall be on a lump sum, not-to-exceed basis.

A. Staff Services

Direct personnel expense based on standard hourly rate categories for the project as attached in the Appendix. These amounts will be used for any amendments or changes in scope necessary during the project.

Total Compensation for services

Notwithstanding anything else in this Agreement to the contrary, the total amount of compensation that the CITY must pay to the CONSULTANT for all phases of the Consultant's services rendered to the CITY under this Agreement shall not exceed _____ 00/100 Dollars (\$ _____).

B. Other Direct Costs and Expenses (not necessary in lump sum)

The CONSULTANT shall be reimbursed on an actual cost basis for reasonable direct costs and expenses incurred by the CONSULTANT in performing services under this Agreement such as, but not limited to, printing supplies, computer costs, travel, telephone, food and lodging, subcontractor services, reproduction, and agency approval fees. The CONSULTANT shall maintain proper records of all such direct costs and expenses, which records shall be open to inspection during all business hours by the CITY. The total maximum amount of reimbursable expenses for which the CITY shall be responsible to pay the CONSULTANT under this Agreement in no event shall exceed _____ and 00/100 Dollars (\$ _____).

C. Total Compensation, Costs, and Expenses

The aggregate total compensation, costs, and expenses that the CITY shall be obligated to pay to the CONSULTANT for services rendered by the CONSULTANT under this Agreement shall not exceed the sum of Sections VIII.A, Staff Services and VIII.B, Other Direct Costs and Expenses. The maximum aggregate compensation and cost/expense reimbursement under this Agreement to the CONSULTANT from the CITY shall not exceed _____ and 00/100 Dollars (\$ _____).

IX. METHOD OF PAYMENT

The CITY shall pay the CONSULTANT for services rendered on a monthly basis, which periodic payments shall constitute full and complete compensation for the CONSULTANT's services under this Agreement. Such sums shall be paid in accordance with monthly billings prepared by the CONSULTANT and approved by the CITY. Said billings shall be governed by, and determined, in the following manner:

- A. Hourly payroll costs, overhead, other direct costs, and subcontract costs incurred during the monthly billing period will be submitted to the CITY for payment based on an estimated percentage of completed work for a lump sum contract.
- B. The CITY shall cause payments to be made in accordance with such invoices, if such invoices are approved, no later than thirty (30) days after approval of the invoice. The CITY must determine whether or not it approves a particular invoice within thirty (30) days after receipt of the invoice. If the invoice is modified by the CONSULTANT, the CITY must determine whether or not it approves of such invoice as modified within fifteen (15) days after receipt of the modified invoice.

- C. Acceptance by the CONSULTANT of the final payment shall constitute payment in full for all services performed under the Agreement.

X. **RECORDS AND AUDITS**

The CONSULTANT shall maintain complete and accurate records with respect to allowable costs incurred and manpower expended under this Agreement for not less than seven (7) years from the date of final payment. All such records shall be maintained on a generally accepted accounting basis and shall be clearly identified and readily accessible. The CONSULTANT shall provide free access to the representatives of the CITY at all times to such data and records. The CONSULTANT shall allow inspection and auditing of all data and records of the CONSULTANT relating to his performance under the Agreement, the making of copies of and transcripts therefrom as necessary to allow inspection of all Agreement data, documents, proceedings, and activities related to this Agreement for a period of seven (7) years from the date of the final payment under this Agreement and all other pending matters are closed. Such inspections may occur during any and all business hours of the CONSULTANT. Such right to inspections shall not be denied for any reason and shall be immediately permitted and facilitated by the CONSULTANT upon CITY request.

XI. **TERMINATION OF THE AGREEMENT**

The CITY reserves the right to terminate this Agreement at any time and without cause by giving the CONSULTANT not less than five (5) calendar days prior written notice of such termination. Such termination shall be effective on the sixth (6th) calendar day after the date of the notice of termination. In the event of such termination, the CITY shall be liable only for the services rendered to the date of termination based upon fees and costs/expenses described herein and actually rendered and/or incurred with the CITY's permission by the CONSULTANT prior to the date of such termination notice. All completed or partially completed documents and all other related material the CONSULTANT has created and/or collected prior to the termination date shall remain the exclusive property of the CITY.

XII. **CONFLICT OF INTEREST**

The CONSULTANT hereby warrants and represents that it has, at the time of execution of this Agreement, no interest, and that it shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed pursuant to this Agreement. The CONSULTANT further covenants that in the performance of this Agreement no person having any such interest shall be employed by the CONSULTANT.

XIII. **ASSIGNABILITY**

The CONSULTANT shall not assign any interest in this Agreement and shall not transfer any interest in the same without the prior written consent of the CITY.

XIV. OWNERSHIP OF WORK PRODUCT

All Work Product prepared by the CONSULTANT shall, upon payment by the CITY, be the property of the CITY. The term "Work Product" as used herein includes, but is not limited to, any and all documents, papers, written material, manuals, photographs, charts, graphs, plans, drawings, video tapes, and other information or deliverables collected or created under this Agreement as set forth in this RFP. The term does not include financial records, accounting records, working papers, or other information pertinent only to the administration of this Agreement.

XV. CONFIDENTIALITY

The CITY may provide confidential information to the CONSULTANT for the performance of services hereunder. Such information will be clearly marked "Confidential Information". No Confidential Information given to the CONSULTANT under this Agreement shall be made available to any individual or organization by the CONSULTANT without the prior written approval of the CITY. Notwithstanding the foregoing, CONSULTANT shall have no confidentiality obligation with respect to information that 1) becomes generally available to the public other than as a result of disclosure by CONSULTANT or its agents or employees; 2) was available to CONSULTANT on a non-confidential basis prior to its disclosure by CITY; or 3) becomes available to CONSULTANT from a third party who is not, to the knowledge of CONSULTANT, bound to retain such information in confidence. In the event CONSULTANT is compelled by subpoena, court order, or administrative order to disclose any confidential information, CONSULTANT shall promptly notify CITY and shall cooperate with CITY prior to disclosure so that CITY may take necessary actions to protect such Confidential Information from disclosure.

XVI. AGREEMENT CHANGES

The parties hereto may both from time to time require and/or desire changes in the Scope of Services and the time of performance as set forth herein. Such changes, including any increase or decrease in the scope of services and/or in the amount of compensation to the CONSULTANT, that are mutually agreed upon by and between the parties hereto shall be incorporated as written amendments to this Agreement. The CITY at any time and from time to time may request and/or require the CONSULTANT to perform additional services and/or to not perform and/or to modify previously agreed upon services, in which event(s) the CONSULTANT shall forthwith comply. The CONSULTANT may not modify, add to, or subtract from the services they are obligated to render under this Agreement without the express prior written authorization/concurrence of the CITY. Any claim by the CONSULTANT for an adjustment under this clause for additional services must be asserted within ten (10) days from the date of receipt by the CONSULTANT of the notification of change request from the CITY.

XVII. INDEMNIFICATION

The CONSULTANT shall indemnify, save, and keep harmless the CITY, its officers, agents, and employees of and from all liabilities, liens, judgments, costs, damages, and expenses to the extent caused by Consultant's negligent and intentional acts, errors, and omissions, and those of its officials, officers, employees, representatives, and agents (collectively "CONSULTANT") that may in any way be suffered by the CITY and/or or by any of its elected and/or appointed officials, officers, employees, representative and/or agents (hereinafter the "CITY OFFICIALS"), or that may accrue against or be charged to or recovered from the CITY and/or CITY OFFICIALS arising from Consultant's negligent acts, errors, or omissions in the CONSULTANT's performance of services under this Agreement.

XVIII. INSURANCE

The CONSULTANT shall at all times obtain and solely at CONSULTANT's cost and expense maintain insurance to protect the CONSULTANT from claims under worker's compensation acts; claims due to bodily or personal injury or death of any employee or any other person; claims due to injury or destruction of property; and claims arising out of negligent and/or intentional acts, errors, or omissions of the CONSULTANT and each and every of the CONSULTANT's officials, officers, employees, independent contractors, contractees, subconsultants, representatives, and agents, as well as the employees and agents of the CITY. The insurance shall provide a minimum of One Million Dollars (\$1,000,000.00) coverage per occurrence and a minimum of Two Million Dollars (\$2,000,000.00) general aggregate. CONSULTANT's professional liability insurance shall provide a minimum of One Million Dollars (\$1,000,000.00) each claim and annual aggregate. The CONSULTANT shall provide to the CITY proof of such coverage at the time of execution of this Agreement and forthwith at all other times upon demand by the CITY. Failure to do so shall constitute a material breach of this Agreement.

XIX. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Agreement, the CONSULTANT shall comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60), and specifically agrees as follows:

- A. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, creed, sex, color, or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color, or national origin. 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 to be provided by the CITY setting forth the provisions of this non-discrimination clause.

- B. The CONSULTANT will, in all solicitation or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, or national origin.
- C. The CONSULTANT will cause the foregoing provisions to be inserted in all subcontracts with subcontractors for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that foregoing provisions shall not apply to Contracts or subcontracts for standard commercial supplies or raw materials.

XX. INTEREST OF PUBLIC OFFICIALS

A. Interest of Members of the City

No member of the governing body of the CITY and no other officer, employee, or agent of the CITY who exercises any functions or responsibilities in connection with the planning and carrying out of the project, shall have any personal financial interest, direct or indirect, in this Agreement; and the CONSULTANT shall take appropriate steps to assure compliance.

B. Interest of Other Local Public Officials

No member of the governing body of the City and no other public official of such City, who exercises any functions or responsibilities in connection with the planning and carrying out of the project, shall have any personal financial interest, direct or indirect, in this Agreement; and the CONSULTANT shall take appropriate steps to assure compliance.

XXI. BEST EFFORTS

The CONSULTANT shall apply its best efforts and professional judgment in performing its services under this Agreement and for timely fulfilling each and every of the individual requirements set forth in the Scope of Services for this project as set forth defined in this RFP hereto. The CITY reserves the right to request and require modifications, and changes in the documentation, study, project results, and/or plans, as applicable, that in the City's sole discretion and judgment are in the best interests of the CITY.

XXII. DISPUTE RESOLUTION

Any and all disputes related to this Agreement that are not resolved by mutual agreement of the parties shall be resolved in a State of Wisconsin circuit court of competent jurisdiction. Such circuit court shall be located in the City of Janesville, County of Rock. Either party may sue the other for declaratory judgment, damages, specific performance, injunctive relief, or

any other legal or equitable relief as may be provided by law. The performance of this Agreement, its interpretation, and the resolution of all disputes connected therewith shall be governed, interpreted, and resolved in accord with the laws of the State of Wisconsin. Notwithstanding the foregoing, any dispute not resolved by mutual agreement of the parties may also be resolved by binding mediation and/or arbitration but only in the event that the City of Janesville requests, demands, or consents to same.

XXIII. RESPONSIBILITIES OF THE CITY

At its own expense, the CITY will have the following responsibilities regarding the administration of the Agreement by the CONSULTANT.

A. Project Officer

Tara Semenchuk, Human Resources Director, shall be the Project Officer and act as the CITY's representative with respect to the services performed under this Agreement.

B. Prompt Response

To prevent an unreasonable delay in the CONSULTANT's services, the CITY will examine and approve or disapprove all reports and other documents within a reasonable time period, unless otherwise specified herein.

XXIV. COMPLETENESS OF THE AGREEMENT

This cover document and each and every of its attachments, appendices, and schedules contain all the terms, promises, conditions, and provisions of this Agreement. Any alteration shall be invalid unless made in writing, signed by both parties, and incorporated as an amendment to this Agreement. This document may be prepared and executed in multiple originals. All attachments hereto are incorporated herein by reference as if fully set forth verbatim, and are enumerated and described, supra.

XXV. SEVERABILITY

Every part, term, and provision of this Agreement is severable from others. Notwithstanding any possible future finding by duly constituted authority that a particular part, term, or provision is invalid, void, or unenforceable, this Agreement has been made with the clear intention that the validity and enforceability of the remaining parts, terms, and provisions shall not be affected thereby.

XXVI. This Agreement is signed in the State of Wisconsin and shall be subject to and interpreted under the laws of the State of Wisconsin.

XXVII. No provision of this Agreement or attachment hereto shall be interpreted for or against either party because that party, or that party's attorney, drafted that provision or attachment.

XXVIII. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns.

XXIX. The parties hereto acknowledge and agree that all of the provisions of this Agreement and attachments hereto are valid and binding.

XXX. Any and all ambiguities, conflicts, interpretations, and matters of application arising from and/or pertaining to this Agreement or any of its attachments shall be resolved in the manner most favorable to the City.

IN WITNESS WHEREOF, the parties have executed this Agreement on this the <day> day of <month>, <year>.

CITY OF JANESVILLE

<CONSULTANT>

By: Mark A. Freitag,
City Manager

By: