



City of Norwich

Department of Finance – Purchasing Agent
100 Broadway, Room No. 105
Norwich, CT 06360

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ADDENDUM

RFP No.: 20-11

Addendum No.: 1

Issued: December 20, 2019

Opening Date and Time: January 9, 2020 at 2:00 P.M.

Title: Absence and Substitute Management Software

Bidders Note

This Addendum is issued to provide all bidders with a copy of the City's Agreement for Professional Services.

All other terms and conditions remain the same.



City of Norwich

100 Broadway
Norwich, CT 06360

Phone: (860)823-3700
Fax: (860)885-2131

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT made and entered into this ___ day of _____, by and between, hereinafter called “**Consultant**” and the City of Norwich, 100 Broadway, Norwich, CT 06360, hereinafter called “**City**.”

WHEREAS, the City desires to enter into an agreement for services, and the Consultant represents itself as competent and qualified to accomplish the specific requirements of this agreement to the satisfaction of the City, therefore this agreement is entered into under the following terms and conditions:

The Consultant agrees to perform the ___ services described below

- 1. TERM OF THE AGREEMENT:** The start date for this agreement shall be ___ and the completion date shall be _____.
- 2. SERVICE TO BE PERFORMED:** The Consultant shall perform the services in accordance with the provisions contained in RFP No. _____, as specifically stated in the _____ and as may be specifically designated and additionally authorized by the City. Such additional authorizations will be in the form of a Purchase Order. Each Purchase Order shall set forth a specific scope of services, the amount of compensation and the required completion date.
- 3. COMPENSATION:** The City shall pay Consultant _____, (\$ _____), in accordance with the provisions contained in the _____, which is attached hereto as Exhibit _____, and incorporated herein as if set forth in full.
- 4. STANDARD OF CARE:** Consultant shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily provided by a Consultant under similar circumstances and Consultant shall, at no additional cost to the City, re-perform services which fail to satisfy the foregoing standard of care.
- 5. INDEMNIFICATION**

For General Liability – To the fullest extent permitted by law and except with respect to damages, liabilities and costs arising or alleged to have arisen out of the Consultant’s acts, errors or omissions in the performance of professional services that are addressed in this agreement, the Consultant agrees to defend, indemnify and hold harmless the City, its officers (both elected and appointed), employees and agents from and against liabilities, claims, damages and costs (including attorneys’ fees) to the extent caused by the Consultant’s performance, acts, errors or omissions under this Agreement.

For Professional Liability – With respect to damages, costs, liabilities and expenses that arise from or are alleged to have arisen from the Consultant’s acts, errors or omissions in the performance of the professional services that are addressed in this Agreement and to the fullest extent permitted by law, the Consultant agrees to hold the City, its officers (both elected and appointed), employees and agents harmless from and against liabilities, damages and costs (including reasonable attorney’s fees) to the extent caused by the negligence of the Consultant in performance of services under this Agreement. This indemnification excludes the duty of the Consultant to defend the City. However, the absence of the duty to defend shall not preclude the City from seeking its reasonable attorneys’ fees as part of its damages where and to the extent such fees are caused by the Consultant’s negligence. Nothing in this paragraph shall apply to indemnification of general liability.

Upon completion of all services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive indefinitely.

The Consultant shall pay all claims, losses, liens, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, reasonable attorney's fees (including appellate attorney's fees) and costs.

City reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of Consultant under the indemnification agreement. Nothing contained herein is intended nor shall it be construed to waive City's rights and immunities under the common law or Connecticut General Statutes as amended from time to time.

- 6. INDEPENDENT CONSULTANT:** Consultant undertakes performance of the services as an independent contractor under this Agreement, and shall be wholly responsible for the methods of performance. The City shall have no right to supervise the methods used, but the City shall have the right to observe such performance. Consultant shall work closely with the City in performing services under this Agreement.
- 7. PAYMENTS:** The City shall pay in full the Agreement Sum to the Consultant upon completion of the work listed in Article 2 of this Agreement unless the parties agree otherwise. The City shall pay the Consultant for work performed subject to the specifications of the job and subject to any additions and deductions by subsequent change order provided in the agreement documents.
- 8. COMPLIANCE WITH LAWS:** In performance of the services, Consultant shall comply with applicable regulatory requirements including federal, state, and local laws, rules regulations, orders, codes, criteria and standards.
- 9. INSURANCE:** During the performance of the services under this Agreement, the Consultant shall maintain the following insurance policies, written by an insurance company authorized to do business in Connecticut, and shall provide the City with a Certificate of Insurance naming the City of Norwich, its officers (both elected and appointed), employees and agents as additional insured on the following policies:
 - Comprehensive General Liability (including completed operations coverage) in the amounts of \$1,000,000 each occurrence and \$2,000,000 aggregate
 - Commercial Automobile Coverage, including owned, non-owned, leased and hired vehicles (if used on City property) in the amount of \$1,000,000 combined single limit.

The minimum limits of coverage shall be \$1,000,000 per Occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This coverage shall be an "Any Auto" type policy. The City must be listed as an Additional Insured under the Policy. Thirty (30) days written notice must be provided to the City via Certified Mail in the event of cancellation.

The Consultant shall also provide a Certificate of Insurance reflecting the following coverage:

- Professional Liability (Errors and Omissions) Insurance in the amount of \$2,000,000 each occurrence
- Workers Compensation Coverage in accordance with State of Connecticut requirements. The policy must contain a waiver of subrogation in favor of the City of Norwich, executed by the insurance company.

The City of Norwich, its officers (both elected and appointed), employees and agents shall be named as additional insured on all policies, except Professional Liability and Workers Compensation, on a primary and non-contributory basis.

In the event that sub-Consultants used by the Consultant do not have insurance, or do not meet the insurance limits, Consultant shall indemnify and hold harmless the City for any claim in excess of the sub-Consultants' insurance coverage, arising out of negligent acts, errors or omissions of the sub-Consultants.

Consultant shall not commence work under this Agreement until all insurance required as stated herein has been obtained and such insurance has been approved by the City.

10. CITY'S RESPONSIBILITIES: The City shall be responsible for providing access to all project sites, and for providing project-specific information.

11. TERMINATION OF AGREEMENT

Termination for Convenience: This Agreement may be terminated by the City for convenience, upon seven (7) days of written notice by the City to the Consultant in which event the Consultant shall be paid its compensation for services performed to termination date, including services reasonably related to termination. In the event that the Consultant abandons this Agreement or causes it to be terminated, Consultant shall indemnify the city against loss pertaining to this termination.

Default by Consultant: In addition to all other remedies available to the City, this Agreement shall be subject to cancellation by the City for cause, should the Consultant neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of thirty (30) days after receipt by Consultant of written notice of such neglect or failure.

12. NONDISCLOSURE OF PROPRIETARY INFORMATION: Consultant shall consider all information provided by City and all reports, studies, calculations, and other documentation resulting from the Consultant's performance of the Services to be proprietary unless such information is available from public sources. Consultant shall not publish or disclose proprietary information for any purpose other than the performance of the services without the prior written authorization of City or in response to legal process.

13. UNCONTROLLABLE FORCES: Neither the City nor Consultant shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

Neither party shall, however, be excused from performance if nonperformance is due to forces, which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

14. CONNECTICUT LAW: It is agreed that this agreement shall be governed by, construed, and enforced in accordance with the internal laws of the State of Connecticut.

- 15. VENUE:** In the event of litigation, the parties do agree to be mutually bound to submit themselves to the personal jurisdiction of the state courts of Connecticut. The venue for any court proceeding shall be in the Superior Court for the Judicial District for Norwich at New London, Connecticut.
- 16. WAIVER OF JURY TRIAL:** CONSULTANT HEREBY EXPRESSLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (1) ARISING UNDER THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR (2) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN AGREEMENT OR TORT OR OTHERWISE; AND CONSULTANT HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THE CITY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF CONSULTANT'S CONSENT TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.
- 17. MISCELLANEOUS**
- Nonwaiver:** A waiver by either City or Consultant of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.
- Severability:** Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement. The provisions of this section shall not prevent the entire Agreement from being void should a provision, which is of the essence of the Agreement, be determined to be void.
- 18. SUCCESSORS AND ASSIGNS:** The City and Consultant each binds itself and its director, officers, partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives.
- 19. CONTINGENT FEES:** The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.
- 20. TRUTH-IN-NEGOTIATION CERTIFICATE:** Execution of this Agreement by the Consultant shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete and current as of the date of the Agreement and no higher than those charged the Consultant's most favored customer for the same or substantially similar service.

The said rates and cost shall be adjusted to exclude any significant sums should the City determine that the rates and costs were increased due to inaccurate, incomplete or non-current wage rates or due to inaccurate representations of fees paid to outside Consultants. The City shall exercise its rights under this "Certificate" within one (1) year following payment.

21. OWNERSHIP OF DOCUMENTS: Consultant shall be required to work in harmony with other **Consultants** relative to providing information requested in a timely manner and in the specified form. Any and all documents, records, disks, original drawings, or other information shall become the property of the City upon completion for its use and distribution as may be deemed appropriate by the City.

22. FUNDING: This agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Council of the City of Norwich in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

23. NOTICE: Whenever either party desires or is required under this Agreement to give notice to any other party, it must be given by written notice either delivered in person, sent by United States Postal Service (USPS) Certified Mail, USPS Express Mail, air or ground courier services, or by messenger, as follows:

CITY:

John L. Salomone, City Manager
City of Norwich
100 Broadway
Norwich, CT 06360

Michael E. Driscoll, Corporation Counsel
Brown Jacobson PC
22 Courthouse Square
Norwich, CT 06360

CONSULTANT

Notices shall be effective when received at the address specified above. Changes in the respective addresses to which such notice may be directed may be made from time to time by any party by written notice to the other party. Facsimile is acceptable notice effective when received, however, facsimiles received (i.e.; printed) after 4:30 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Consultant and City.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed in two (2) original copies on the day and year first above written.

OWNER:

CONSULTANT:

John L. Salomone
Its City Manager

Its Duly Authorized Agent

Approved as to form:

Michael E. Driscoll, Corporation Counsel

Date Signed _____

