



**REQUEST FOR PROPOSALS**

**2024**

**TERRACE TREE PLANTING**

Prepared by:  
City of Beloit  
Department of Public Works  
2351 Springbrook Court  
Beloit, WI 53511

Attention: Mike Ferger, Parks & Forestry Supervisor

INVITATION  
REQUEST FOR PROPOSAL

The City of Beloit will receive sealed written proposals for Terrace Tree Planting until 12:00 pm/noon local time on Monday, March 11, 2024 at Department of Public Works located at 2351 Springbrook Ct., Beloit, Wisconsin, 53511, in accordance with the specifications included in this proposal packet. The Proposal Packets may also be picked up at the Public Works Office.

Questions can be submitted by email to Mike Ferger, Parks & Forestry Supervisor at [fergerm@beloitwi.gov](mailto:fergerm@beloitwi.gov) no later than Monday, March 4, 2024. All questions will be reviewed and responded to by email by Wednesday, March 6, 2024.

All proposals **must** be submitted with all required forms and information in a fully **sealed envelope with the sealed outer envelope plainly marked as “2024 TERRACE TREE PLANTING PROPOSAL”** and are due prior to the time and date for submission of proposals indicated in this invitation, or prior to any extension thereof, issued to the proposers. Improperly marked proposals and proposals received after 12:00 pm/noon local time Monday, March 11, 2024 will not be considered; any proposal received improperly will be rejected. No proposal shall be withdrawn for a period of ninety (90) days after the scheduled due date for receipt of proposals without the consent of the City of Beloit

Address all proposals as follows:

2024 Terrace Tree Planting Proposal  
Attention: Mike Ferger, Parks & Forestry Supervisor  
City of Beloit  
2351 Springbrook Ct  
Beloit, Wisconsin 53511

The City of Beloit reserves the right to reject any or all proposals and to waive any informality, and to make the award in such a manner deemed right and proper for the best interest of the City.

## SCOPE OF SERVICES SUMMARY (BASE PROPOSAL)

The City of Beloit (hereinafter “City”) is seeking proposals from a qualified firm (hereinafter “Contractor” or “Proposer”) to furnish labor, equipment, and materials necessary to complete the planting of trees as specified herein.

All proposals must comply with the terms and conditions set forth in this Request for Proposal (RFP) and must contain all executed Proposal Forms specified in this section, including:

- Statement of Qualifications
- City of Beloit Proposal Form, Completed by Contractor
- Proposal Narrative
- Certificate of Insurance (to be provided only by selected **Contractor** after notification by the City)

The instructions contained herein must be followed for the Proposal to be considered responsive to this RFP. If any of the submittal requirements are omitted or any exceptions to the contractual terms and conditions are taken, then the Proposal shall be deemed nonresponsive. The City reserves the right to reject a Proposal if it is not in compliance with the required format.

## SECTION I - STANDARDS

1. Nomenclature. All plant materials used shall be true to name and size in conformity with the following standards:
  - a. American Joint Committee on Horticulture Nomenclature, Edition of Standardized Plant Names. (Published by Mount Pleasant Press, J. Horace McFarland Company, Harrisburg, PA).
  - b. American Standard for Nursery Stock. (Published by the American Association of Nurserymen, Inc., 230 Southern Building, Washington, D.C. 20005).

## SECTION II - PLANT MATERIALS

1. Plant List: A complete list of acceptable trees is provided on the proposal form with these specifications. Substitutions to the recommended list will be considered. However, priority will be given to trees from the recommended list.
2. Plant Quantity: Estimated total order of 135/150 trees. All trees shall be ball and burlap.
3. Measurements: All trees will be not less than two inches in diameter of trunk and measure eight inches up from the base of the tree.
4. Quality: All specified trees shall be typical of their species or variety.

All trees shall have normal, well-developed branches and vigorous root systems. They shall be sound, healthy, vigorous, free from defects, disfiguring knots, abrasions of the bark, sun scald injuries, plant diseases, insect eggs, borers, and all other forms of infections. All trees shall be nursery grown, unless otherwise stated, and shall have been grown under the same climatic conditions as the location of this project for at least one (1) year prior to date of planting on this project. Trees which have been held in storage will be rejected if they show signs of growth during storage. Collected trees shall be taken from a sub-grade favorable to good root development. All

collected materials shall be clean, sound stock and shall be free from decay. **Note: “Park” grade trees are not acceptable.**

5. Trees with multiple leaders will be rejected, unless specified otherwise. Trees with a cut or crooked leader, or with a damaged leader, including bark, abrasion of bark, sunscald, disfiguring knots, insect damage, mold, prematurely-opening buds, or cut limbs over three quarter (3/4) inch (2cm) diameter which are not completely callused, are cause for rejection.

### SECTION III - METHODS OF INSTALLATION

1. **Time of Planting:** The **Contractor** shall start its planting upon acceptance of the contract. It is projected that the spring planting shall be completed within three (3) weeks of the date of contract award. Should planting/weather conditions arise which are not conducive to meeting this goal, a new deadline will be discussed between the City of Beloit, and the awarded **Contractor**, but the spring planting must be completed prior to May 31, 2024, unless the date is changed by mutual agreement of the City and the **Contractor**. The fall planting which shall be the remainder of the plantings shall be completed by November 15, 2024, unless the date is changed by mutual agreement of the City and the **Contractor**. Any unplanted materials as of the contract termination date will be deleted from the purchase order. Only those **Contractors** who can satisfy this contract by this date should submit proposals on this project.
2. **Location:** All planting is within the terrace areas, cemeteries, golf course and parks throughout the City of Beloit. The **Contractor** will be provided with a list of locations for the trees. The **Contractor** must abide by the following criteria regarding planting location:
  - a. No tree will be planted closer than two (2) feet from the curb line or outer line of the sidewalk.
  - b. Minimum setback of thirty-five (35) feet from intersections and stop signs, fifteen (15) feet from alleys, and five (5) feet for hydrants, utility poles, and driveways.
  - c. Trees will be spaced in accordance with specifications adopted by the American Association of Nurserymen. Normal spacing will be forty (40) to sixty (60) feet, depending upon the tree species.
  - d. The Parks/Forestry Supervisor or designee will determine the planting location for each tree. A stake will define the exact planting location. The **Contractor** will receive a written list of the exact sites and species for each site.
  - e. The City will contact Diggers Hotline where necessary for the determination of underground utility lines. Trees will not be placed any closer than five (5) feet to any underground utility line. The City is responsible for determining the location of underground utility lines and will bear all costs associated with this requirement.
3. **Hole Excavation:** All trees shall be planted in holes at least twelve (12) inches or greater in diameter than their ball of earth. The depth of the holes shall be at least two (2) feet, and as much greater as is necessary to accommodate the roots, so that when the tree is placed therein, it is not necessary to raise or lower it to bring it to the proper finished grade. All holes shall be dug with straight vertical sides and round bottoms, or as directed.

4. Backfill, Topsoil, and Fertilization:
  - a. Some holes may require the addition of black dirt if the excavated subsoil is not adequate for proper tree growth. The Parks/Forestry Supervisor or his designee will make final determination of whether or not to add black dirt. The black dirt will be furnished by the **Contractor** as part of this contract. All excess subsoil shall be removed from the site by the **Contractor** to a location identified by the Parks/Forestry Supervisor or his designee.
  - b. Enough soil shall be used to bring the surface to finish grade when settled.
5. Mulching: All trees shall be mulched upon completion of planting. The mulching material shall consist of wood chips. Minimum depth shall be four (4) inches. Diameter mulched shall be six (6) inches wider than the size of the hole with three (3) inches clearance around the trunk.
6. Watering: Thoroughly water each tree immediately following planting.
7. Pruning and Repair: All plants shall be neatly pruned and/or clipped to preserve the natural character of the trees and in a manner appropriate to the particular requirements of each tree, and to the satisfaction of the Parks/Forestry Supervisor or his designee. No trees shall be pruned or clipped prior to delivery except with the permission of the Parks/Forestry Supervisor or his designee. Broken or badly bruised branches shall be removed with a clean cut. All pruning shall be done with sharp tools in accordance with instructions of the Parks/Forestry Supervisor or designee. All accidental damage to trees and shrubs occurring during the course of planting operations, which is not so great as to necessitate removal of a branch or replacement of a tree, shall promptly be treated as required in accordance with recognized horticultural practices and the instructions of the Parks/Forestry Supervisor or his designee.
8. All areas which are damaged or rutted by the **Contractor** shall be restored to preconstruction conditions.
9. The **Contractor** shall exercise precaution at all times for the protection of persons and property including proper traffic control. Safety provision of all applicable laws and ordinances shall be strictly observed. If necessary, the City of Beloit or its authorized representative may, upon submission of a written request, require the **Contractor** to discontinue hazardous work practices. It is required that the **Contractor** keep the necessary guards and protective devices on equipment operating at locations where work is being performed in order to prevent injury to the public or damage to the public property.

#### SECTION IV - MAINTENANCE, INSPECTION, GUARANTEES AND REPLACEMENTS

##### A. Maintenance

1. The **Contractor** is responsible for the maintenance including a watering schedule, fertilizing, spraying, and repairing, etc., upon completion of planting. The **Contractor** shall immediately notify the Parks/Forestry Supervisor or designee of any irregularities or deficiencies and their schedule to replace the tree.

##### B. Inspection

1. Inspection for beginning the Guarantee Period: Inspection of the planting work, to determine its completion for beginning the guarantee period, will be made by the Parks/Forestry Supervisor or designee upon notice requesting such inspection by the Contractor at least seven

(7) days prior to the anticipated date. All trees must be alive and healthy in order to be considered complete. Each phase of this project will be inspected separately.

2. Final Inspection and Replacements: Inspection of the tree to determine its final acceptance will be made at the conclusion of the guarantee period by the City Parks/Forestry Supervisor or designee. No trees will be accepted unless they are alive and healthy *and properly planted in the fall according to these specifications.*

C. Guarantees

1. Guarantee: All trees shall be guaranteed to remain alive and healthy for the full twelve (12) month period following the completion of planting.
2. The **Contractor** shall replace any trees which are dead or, in the opinion of the Parks/Forestry Supervisor or his designee, are in an unhealthy or unsightly condition, and/or have lost their natural shape due to dead branches. The cost of such replacement(s) shall be borne solely by the **Contractor**.
3. The Contractor shall also be responsible for resetting any trees to an upright position or to proper grade.

SECTION V - AWARD

A. Method of Award

1. The award will be determined by a scoring rubric evaluating price, quality, experience and availability of plant materials. The contract will not be awarded upon the basis of price alone.

**Statement of Qualifications.** A Proposal will be rejected unless the Proposer shows satisfactory evidence that the **Proposer** has been regularly engaged in the type(s) of service for which the proposal is submitted, and that the **Proposer** is fully prepared with the necessary capital, manpower, equipment, and facilities to conduct the work. In order to demonstrate this, a Statement of Qualifications must be developed and submitted as one of the components of the Proposal.

The Statement of Qualifications need not be elaborate, but must be clear, concise and contain sufficient details for proper evaluation. It should be distinguished from the other components of the Proposal, and should contain the following separately identified items of information:

- Identification (Name of Company)
- Experience
- References (Municipal preferred) include name, phone and email address
- Other qualifications

**Proposal Form.** The Proposer must use the City of Beloit Proposal Form enclosed in this packet to submit their proposal. The *Proposal Form* must be signed by a Principal of the Company, and, if submitted by a corporation, it must bear the corporate seal.

**Proposal Narrative.** The **Proposer** must use the format below to develop their required Proposal Narrative. The *Proposal Narrative* must include the following components:

1. Project Organization and Operating Plan. The Project Organization Plan provided by **Proposer(s)** shall contain an overall initial plan for providing the service(s). Further aspects of the Project Organization Plan should include: the organization's structure for all aspects of the service(s) including any subcontractor to be provided, time line for specific tasks, identification and background of the key personnel assigned to specific tasks, Traffic Control Plan and budget breakdown for the work.

The operating plan should include methods used to provide the service(s), policies and procedures, equipment utilization, and staffing supervision.

2. Equipment List. In the Proposal Narrative the **Proposer** shall provide a list of all frontline and backup mobile equipment to be used in providing the service(s), including the quantity, description, condition and age of specific items related to service proposal.
3. Tree Source. The **Proposer** shall provide a list of the nurseries that they will be purchasing stock from.
4. Other Components. The **Proposer** may provide any other information in the Proposal Narrative which it believes is essential to perform the service(s) being provided for in this RFP.

Certificate of Insurance. A Certificate of Insurance shall be provided to the City only by the successful Proposer, after Notice of Award is given by the City, for the types and amounts of insurance required by the Contract. The City must be named as an additional insured and listed on the certificate of insurance. The City must be notified in writing at least thirty (30) days prior to any cancellation or material change in the policies specified therein, and reserves the right to approve any such changes.

Right to Reject. The City reserves the right to award all or a portion of this Request for Proposals ("RFP") on a line-item basis to one or more bidders/proposers or the award may be made to the lowest/highest, responsible and best proposal total, whichever is in the best interest of the City. The City reserves the right to accept or reject any or all proposals and to accept any proposal deemed to be in the best interest of the City. In addition, the City reserves the right to reissue all or part of this RFP and/or not award any contract at its discretion and without penalty. The City reserves the right to waive or permit cure of nonmaterial variances in the offer if, in the judgment of the City, it is in the City's best interest to do so. Nonmaterial variances include minor informalities that do not affect responsiveness, that are merely a matter of form or format, that do not change the relative standing or otherwise prejudice other quoters/proposers, that do not change the meaning or scope of the RFP, or that do not reflect a material change in the services. A nonmaterial variance in a bid/proposal does not give one bidder/proposer a competitive advantage or benefit not enjoyed by the others. A nonmaterial variance may be accepted as responsive, or at the direction of the City, may be rejected as non-responsive. In the event the City waives or permits cure of nonmaterial variances, such waiver or cure will not modify the RFP requirements or excuse the bidder/proposer from full compliance with the specifications or other contract requirements if the bidder/proposer is awarded the contract.

Proposal Evaluation/Acceptance. The City will evaluate Proposals submitted in response to the RFP within ten (10) business days after proposal opening.

Notification. Written Notice to Award will be issued to the successful **Contractor** within twenty (20) business days after proposal opening. No work is to commence prior to the "Start Work" date under this RFP, nor shall any work proceed until notified in writing by the City.

**Agreement for Services.** The execution of the formal Contract for Purchase of Services (attached for reference) is contemplated to be within thirty (30) business days of the Proposal Due Date. The Contract shall be comprised of this RFP, the contents of the Proposal of the successful Contractor, and additional terms agreed to in writing by the City and Contractor. Failure of the successful Contractor to accept these terms as part of the Contractual arrangement may result in rejection of the proposal.

**Agreement for Contract Extension or Modification.**

***Modification.*** Upon mutual written agreement of the City and the Contractor, the terms Agreement for Services may be modified, including but not limited to, changes in the number of trees and species of trees to be provided in the calendar year 2024.

***Extension.*** An additional contract extension, upon mutual agreement of the Parties, may be granted for two (2) additional terms with fees to be negotiated between the two (2) parties.

***Assignment/Subcontracting.*** Contractor shall not assign or subcontract any interest or obligation under the Proposal without the City's prior written approval. All of the services in this Proposal shall be performed by the Contractor and its employees.

**SECTION VI - GENERAL CONDITIONS**

- a. **Revision to RFP.** In the event that it becomes necessary to revise any of this RFP, an Addendum to this RFP will be posted on the City RFP and Public Notice webpage. The City reserves the right to change submissions date(s) or other requirements for any reason, including providing Addenda or Supplements to the RFP.
- b. **Proposal Content.** Proposals must include the information outlined in this RFP. The City may reject as non-responsive at its sole discretion any submittal that does not provide complete and/or adequate responses or departs in any substantial way from providing the required information.
- c. **Withdrawal of Submittal.** Proposers may withdraw a submittal, in writing, at any time up to the due date and time. The written withdrawal notice must be received by Mike Ferger. The notice must be signed by an authorized representative of the firm submitting the proposal.
- d. **Obligation to Contract.** This RFP is only a solicitation for information. The City is not obligated to enter into a contract nor is it responsible for any costs associated with the preparation of proposals and interviews. Proposals received after the deadline will be disqualified from consideration.
- e. **Interpretations of RFP.** It is the responsibility of all prospective proposers to carefully read this entire RFP which contains provisions applicable to the successful completion and submission of a proposal. If you discover any ambiguity, inconsistency, error or omission in the RFP, you must notify the City in writing. Only interpretations or corrections of the RFP made in writing by the City are binding. You shall not rely upon any interpretation or corrections given by any other method.
- f. **Price.** Upon submission of a proposal to the City the offer to perform contractual services may not be withdrawn by the Consultant for a period of 90 days to allow the City the opportunity to evaluate the proposals and to take official action.
- g. **Assignment or Subcontract.** No part of the Contract shall be subcontracted without prior written consent of the City. The Consultant shall retain full responsibility for all work performed.



- h. Written Contract Required. The City does not regard the submission of a proposal as the establishment of a contract. Once the City has selected a Contractor, it expects to enter into a Professional Services Contract (attached for reference) with the Contractor prior to the commencement of any work. The City reserves the right to negotiate the final terms and conditions of the contract to be executed. If the City and successful Contractor are unable to agree upon the terms of the Contract, the City reserves the right to discontinue negotiations, select another firm or reject proposals and reissue the RFP. Upon completion of negotiations agreeable to the City and proposer, a contract shall be executed no later than 30 days from the proposal due date.
- i. Non-Discrimination. The City does not discriminate against individuals 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. In connection with the performance of work under this Contract, the Consultant agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, marital status, sexual orientation, sex, disability, national origin, or ancestry. This provision must be included in all subcontracts.
- j. Background. The City reserves the right to conduct a background inquiry of each proposer which may include collection of appropriate criminal history information, contractual and business associations and practices, employment histories, and reputation in the business community. By submitting a proposal to the City, the proposer consents to such an inquiry and agrees to make available to the City such books and records the City deems necessary to conduct the inquiry.
- k. Rights of Review. The City reserves the right to reject any or all proposals, to award the contract in whole or in part to one or many proposers, to request additional information from any or all proposers, or to waive any informalities or incomplete responses in any of the proposal as determined to be in the best interest of the City.

**PROPOSAL APPLICATION FORM  
TERRACE TREES**

The undersigned hereby agrees to furnish all labor, equipment, manpower and material in accordance with the plans and specifications for supplying and planting the following trees for the prices listed below. It is understood that substitute species may be offered for the listed species. The substitute species should be of similar height, spread and form.

SPECIES - COMMON NAME	MIN QTY	MAX QTY	SPECIES SUBSTITUTION CONSIDERATION	UNIT PRICE
Sugar Maple <i>Acer saccharum</i>	30	30		
Autumn Blaze Freeman Maple <i>Acer frmanii, 'Autumn Blaze'</i>	30	30		
Sterling Silver Linden <i>Tilia tomentosa 'Sterling'</i>	30	60		
New Horizon Elm <i>Ulmus x 'New Horizon'</i>	20	45		
Flowering Crabapple <i>Malus Species and hybrids</i>	24	24		
Ivory Silk Lilac Tree <i>Syringa reticulate</i>	20	40		
Skyline Honey Locust <i>Gleditsia Triacanthos</i>	30	30		
Kentucky Coffee Tree <i>Gymnocladus Dioica</i>	30	30		
Hackberry <i>Celtis Occidentalis</i>	20	20		
Swamp White Oak <i>Quercus Bicolor</i>	10	20		
Red Oak <i>Quercus Rubra</i>	5	10		
Sycamore <i>Platanus Occientailis</i>	15	15		
Black Hills Spruce <i>Picea Glauca Var. densata</i>	10	15		



Department of Public Works  
2351 Springbrook Court  
Beloit, WI 53511

**PROPOSAL APPLICATION FORM  
TERRACE TREES**

**CORPORATION BIDDING**

\_\_\_\_\_  
Name of Corporation

\_\_\_\_\_  
Name of Person Submitting Proposal (Print)

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Primary Phone

\_\_\_\_\_  
Witness Name (Print)

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Witness Signature/Date

\_\_\_\_\_  
Authorized Signature/Date

or

**INDIVIDUAL OR PARTNERSHIP**

\_\_\_\_\_  
Name of Individual or Partnership

\_\_\_\_\_  
Name of Person Submitting Proposal (Print)

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Primary Phone

\_\_\_\_\_  
Witness Name (Print)

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Witness Signature/Date

\_\_\_\_\_  
Authorized Signature/Date



**TERRACE TREE PLANTING SCORING RUBRIC**

DATE: \_\_\_\_\_

CORPORATION NAME: \_\_\_\_\_

STAFF NAME: \_\_\_\_\_

Points will be awarded based upon the information provided within your proposal, and any supplemental information that you care to provide beyond the items as requested and/or required and stated within the RFP.			
1.	Statement of Qualifications	25	
2.	Proposal Narrative	25	
3.	Tree Species requested are able to be provided	25	
4.	Total Unit Price	25	
<b>TOTALS</b>		<b>100</b>	

**City of Beloit**  
**CONTRACT FOR PURCHASE OF SERVICES**  
**Project Name: TERRACE TREE PLANTING**

This Agreement is by and between the **City of Beloit**, a Wisconsin municipal corporation, referred to herein as the **City**; and \_\_\_\_\_, referred to herein as the **Contractor**. Together, the City and Contractor are referred to as the **Parties**.

The Contractor is a:  Corporation  Limited Liability Company  General Partnership  LLP  
 Sole Proprietor  Unincorporated Association  Other:

State of organization:

**Recitals**

The City has issued a Request for Proposals (RFP), for services in connection with the following Project:  
**TERRACE TREE PLANTING**

The RFP contained a specific Scope of Work to be incorporated into the successful bidder's Agreement.

The Contractor submitted a proposal in response to the RFP, and was selected by the City to be awarded the Agreement for the project.

The Contractor is willing to perform consulting services according to the Scope of Work stated in the RFP/RFQ and the Contractor's responsive proposal, and to accept the award of the Agreement for the project.

Now, therefore, the City and the Contractor agree and contract as follows:

1. **SCOPE OF WORK.** The Contractor shall perform the following services according to the following schedule(s) or attachment(s): List all attachments here by name, and attach and label them accordingly.

**1. Terrace Tree RFP (City of Beloit, 3/11/2024)**

**2. Contractor's Responsive Proposal**

**Order of Precedence:** In the event of a conflict between the terms of this Contract for Purchase of Services and the terms of any document attached or incorporated herein, the terms of this Contract for Purchase of Services shall control and supersede any such conflicting term.

2. **TERM AND EFFECTIVE DATE.** This Agreement shall become effective upon execution by the City Manager, (or another City Official, if authorized) on behalf of the City of Beloit, unless another effective date is specified in the Attachment(s) incorporated in Section 1, however in no case shall work commence before execution by the City of Beloit.

The term of this Agreement shall be March 15, 2024 through November 15, 2024. Subsequent seasons shall commence on March 15 and end on November 15. The Parties shall have the right to extend this Agreement for two (2) additional annual periods (March 15, 2025 – December 15, 2025; March 15, 2026

– December 15, 2026).

3. **ENTIRE AGREEMENT.** This Contract for Purchase of Services, including any and all attachments, exhibits and other documents referenced in Section 1 (hereafter, “Agreement” or “Contract”) is the entire Agreement of the parties and supersedes any and all oral contracts and negotiations between the parties. If any document referenced in Section 1 includes a statement that expressly or implicitly disclaims the applicability of this Contract for Purchase of Services, or a statement that such other document is the “entire agreement,” such statement shall be deemed rejected and shall not apply to this Agreement.
4. **AMENDMENTS TO AGREEMENT.** This Agreement shall be binding on the parties hereto, their respective heirs, devisees, and successors, and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto. This Agreement may be amended only by written instrument signed by both parties. If in the reasonable judgment of the City, the scope or nature of the services to be performed by Contractor change or deviate materially from the scope or nature of the services described above, the City may, at its discretion, suspend performance of its services until a written agreement superseding this Agreement and adjusting the scope, schedule, and terms and conditions has been executed. Where additional work is to be completed on a time and expense compensation, charges shall be in accordance with the fee schedule submitted with the Contractor’s Proposal.
5. **ASSIGNABILITY/SUBCONTRACTING.** Contractor shall not assign or subcontract any interest or obligation under this Agreement without the City's prior written approval. All of the services required hereunder will be performed by Contractor and employees of Contractor. All terms, conditions, covenants and agreements herein shall extend to and be obligatory upon any successors or assigns of Contractor upon the execution of any written consent by the City.
6. **DESIGNATED REPRESENTATIVE.**
  - A. Contractor designates \_\_\_\_\_ as Agreement Agent with primary responsibility for the performance of this Agreement. In case this Agreement Agent is replaced by another for any reason, the Contractor will designate another Agreement Agent within seven (7) calendar days of the time the first terminates his or her employment or responsibility using the procedure set forth in Section 17, Notices.
  - B. In the event of the death, disability, removal or resignation of the person designated above as the Agreement Agent, the City may accept another person as the Agreement Agent or may terminate this Agreement under Section 39, at its option.
7. **COMMENCEMENT AND PROGRESS.**
  - A. Services under this Agreement shall commence upon written order from the City to the Contractor. This order will constitute authorization to proceed.
  - B. The Contractor shall complete the services under this Agreement within the time for completion specified in the Scope of Services, including any amendments. The Contractor's services are completed when the City notifies the Contractor in writing that the services are complete and are acceptable. The time for completion shall not be extended because of any delay attributable to the Contractor, but it may be extended by the City in the event of a delay attributable to the City, or in the event of unavoidable delay caused by war, insurrection, natural disaster, or other unexpected event beyond the control of the Contractor. If at any time the Contractor believes that the time for completion of the work should be extended because

of unavoidable delay caused by an unexpected event, or because of a delay attributable to the City, the Contractor shall notify the City as soon as possible, but not later than seven (7) calendar days after such an event. Such notice shall include any justification for an extension of time and shall identify the amount of time claimed to be necessary to complete the work.

- C. Services by the Contractor shall proceed continuously and expeditiously through completion of each phase of the work.
- D. Progress reports documenting the extent of completed services shall be prepared by the Contractor and submitted to the City with each invoice under Section 11 of this Agreement, and at such other times as the City may specify.
- E. The Contractor shall notify the City in writing when the Contractor has determined that the services under this Agreement have been completed. When the City determines that the services are complete and are acceptable, the City will provide written notification to the Contractor, acknowledging formal acceptance of the completed services.

8. **STANDARD OF WORK.** Contractor will perform the Work according to generally-accepted industry practices of the professions of the individual employees performing the Work for Contractor.

9. **FEES AND PAYMENT.** Total fees payable to Contractor shall not exceed the amount of \$        for all services, materials, equipment, and authorized reimbursable expenses under this Agreement unless an Amendment to Agreement, signed by both parties, approves additional fees. Any such additional fees shall be defined in writing and shall be authorized prior to execution of such work. Contractor shall invoice the City monthly, as Work progresses. All invoices shall be payable net 30 days.

10. **EXTRA SERVICES.** The City may require the Contractor to perform extra services or decreased services, according to the procedure set forth in Section 11. Extra services or decreased services means services which are not different in kind or nature from the services called for in the Scope of Services, Section 1, but which may increase or decrease the quantity and kind of labor or materials or expense of performing the services. Extra services may not increase the total contract price, as set forth in Section 9, unless the Agreement is amended as provided in Section 4 above.

11. **BASIS FOR PAYMENT.**

A. General.

(1) The City will pay the Contractor for the completed and accepted services rendered under this Agreement on the basis and at the contract price set forth in Section 9 of this Agreement. The City will pay the Contractor for completed and approved "extra services", if any, if such "extra services" are authorized according to the procedure established in this section. The rate of payment for "extra services" shall be the rate established in this Agreement. Such payment shall be full compensation for services rendered and for all labor, material, supplies, equipment and incidentals necessary to complete the services.

(2) The Contractor shall submit invoices, on the form or format approved by the City and as may be further specified in Section 1 of this Agreement. The City will pay the Contractor in accordance with the schedule, if any, set forth in Section 1. The final invoice, if applicable, shall be submitted to the City within three months of completion of services under this Agreement.

(3) Should this Agreement contain more than one service, a separate invoice and a

- separate final statement shall be submitted for each individual service.
- (4) Payment shall not be construed as City acceptance of unsatisfactory or defective services or improper materials.
  - (5) Final payment of any balance due the Contractor will be made upon acceptance by the City of the services under the Agreement and upon receipt by the City of documents required to be returned or to be furnished by the Contractor under this Agreement.
  - (6) The City has the equitable right to set off against any sum due and payable to the Contractor under this Agreement, any amount the City determines the Contractor owes the City, whether arising under this Agreement or under any other Agreement or otherwise.
  - (7) Compensation in excess of the total Agreement price will not be allowed unless authorized by an amendment under Section 4.
  - (8) The City will not compensate for unsatisfactory performance by the Contractor.

**B. Service Orders, Extra Service, or Decreased Service.**

- (1) Written orders regarding the services, including extra services or decreased services, will be given by the City, using the procedure set forth in this Section.
- (2) The City may, by written order, request extra services or decreased services, as defined in Section 10 of this Agreement. Unless the Contractor believes the extra services entitle it to extra compensation or additional time, the Contractor shall proceed to furnish the necessary labor, materials, and professional services to complete the services within the time limits specified in the Scope of Services, Section 1 of this Agreement, including any amendments under Section 4 of this Agreement.
- (3) If in the Contractor's opinion the order for extra service would entitle it to extra compensation or extra time, or both, the Contractor shall not proceed to carry out the extra service, but shall notify the City, pursuant to Section 17 of this Agreement. The notification shall include the justification for the claim for extra compensation or extra time, or both, and the amount of additional fee or time requested.
- (4) The City shall review the Contractor's submittal and respond in writing, either authorizing the Contractor to perform the extra service, or refusing to authorize it. The Contractor shall not receive additional compensation or time unless the extra compensation is authorized by the City in writing.

12. **OWNERSHIP OF WORK PRODUCT.** Any reports, specifications, drawings, or other documents prepared by the Contractor in the performance of its obligations under this Agreement shall become the property of the City. All such materials shall be returned to the City upon completion, termination, or cancellation of this Agreement. The Contractor shall not use, willingly allow, or cause such materials to be used for any purpose other than the performance of all Contractor's obligations under this Agreement without the written consent of the City. The City agrees that the Contractor shall not be responsible for any re-use by the City, or by third parties that obtained the documents from or through the City, for purposes other than original intent of the documents provided by the Contractor.

13. **SAFETY.**

- a. Contractor shall comply with all Occupational Safety and Health Administration (OSHA), State, and Local safety and health standards and any other applicable rules and regulations.

14. **RECORD KEEPING.** Contractor shall keep all documents and records generated in the performance of the Work for no less than 7 years after completion of the Work, and shall make them available to the City at



the City's request. Contractor acknowledges that such documents and records may be subject to Wisconsin's Open Records Law.

15. **COOPERATION BY CITY.** The City shall cooperate with the Contractor in the performance of the Work, and shall respond timely to all reasonable requests for information and access.
16. **PARTIES ARE INDEPENDENT CONTRACTORS.** Nothing in this Agreement shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Agreement, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions.
17. **NOTICES.** All notices required by this Agreement, and all other communications between the Parties, shall be addressed as follows:

To the City                      Name:  
    Address:  
    City/ST/ZIP:  
    Phone:  
    Email:

To the Contractor              Name:  
    Address:  
    City/ST/ZIP:  
    Phone:  
    Email:

18. **GOVERNMENTAL IMMUNITIES AND NOTICE REQUIREMENT PRESERVED.** Nothing in this Agreement shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.
19. **PERMITS AND LICENSES.** Contractor shall be responsible, at Contractor's expense, for obtaining all permits and licenses required for the performance of the Work unless expressly agreed by the City.
20. **NO WAIVER.** No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or Contractor shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City or Contractor therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.
21. **NON-DISCRIMINATION.** The undersigned will not discriminate against any qualified employee or qualified applicant for employment because of race, color, national origin, ancestry, religion, age, marital status, disability, sex, or sexual orientation. In the event any portion of this Agreement is subcontracted by the undersigned, said subcontract shall include a provision prohibiting the subcontractor from discriminating against any qualified employee or qualified applicant for employment because of race, color, national origin, ancestry, religion, age, marital status, disability, sex, or sexual orientation. This provision is inserted herein in compliance with Section 1.09 of the Code of General Ordinances of the City of Beloit, and shall be interpreted so as to carry out the intent of said ordinance.

22. **AFFIRMATIVE ACTION REQUIREMENT.** Contractor (has adopted) (agrees to adopt) [STRIKE ONE] an affirmative action plan to increase in Contractor's partners, associates and employees, the representation and number of under-represented groups which have been victims of employment discrimination in all of Contractor's departments, job classifications and salary categories. Contractor agrees to include the same provision in its subcontracts and to require its subcontractors to include the same provision in their subcontracts. This provision is inserted herein in compliance with Section 1.09 of the Code of General Ordinances of the City of Beloit, and shall be interpreted so as to carry out the intent of that ordinance.

23. **INDEMNIFICATION.**

- a. Contractor hereby agrees to indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives and 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 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 Contractor or of anyone acting under its direction or control or on its behalf, even if liability is also sought to be imposed on City, its elected and appointed officials, officers, employees, agents, representatives and volunteers. The obligation to indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives and volunteers, and each of them, shall be applicable except to the extent that liability results from the negligence of the City, its elected and appointed officials, officers, employees, agents, representatives and volunteers.
- b. Contractor shall reimburse the City, its elected and appointed officials, officers, employees, agent 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.
- c. In the event that Contractor employs other persons, firms, corporations or entities (sub-contractor) as part of the work covered by this Agreement, it shall be Contractor's responsibility to require and confirm that each sub-contractor enters into an Indemnity Agreement in favor of the City, its elected and appointed officials, officers, employees, agents, representatives and volunteers, which is identical to this Indemnity Agreement.
- d. This indemnity provision shall survive the termination or expiration of this Agreement.

24. **INSURANCE**

- a. Contractor shall not commence work under this Agreement until it has obtained the insurance required herein. All coverages shall be with insurance carriers licensed and admitted to do business in the State of Wisconsin. All coverages shall be with carriers acceptable to the City. A minimum AM Best Rating of A-VII is required.
- b. It is hereby understood and agreed that the insurance required by the City is primary coverage and that any insurance or self-insurance maintained by the City, its officers, council members, agents, employees or authorized volunteers will not contribute to a loss.
- c. *Worker's Compensation and Employers Liability Minimum Requirements as required by Statute:*

Contractor shall cover or insure under applicable labor laws relating to worker's compensation insurance, all of their employees in accordance with the law in the State of Wisconsin. Contractor shall provide statutory coverage for work related injuries and employer's liability insurance with limits of \$100,000 each accident, \$500,000 disease policy limit and \$100,000 disease each employee.

- d. *Liability Insurance*: Contractor shall procure and maintain during the life of this Agreement the following Commercial General Liability Insurance and Automobile Liability insurances:
- i. PROFESSIONAL LIABILITY (Errors and Omissions)
    - (a) Minimum Limits
      - i. \$2,000,000 each claim/\$2,000,000 annual aggregate
      - ii. Any deductible not to exceed \$25,000 each claim
    - (b) Must continue coverage for 3 years after final payment for service/job
  - ii. GENERAL LIABILITY COVERAGE
    - a. Commercial General Liability
      - i. \$2,000,000 general aggregate
      - ii. \$1,000,000 products - completed operations aggregate
      - iii. \$1,000,000 personal injury and advertising injury
      - iv. \$2,000,000 each occurrence limit
    - b. Claims made form of coverage is not acceptable.
    - c. Insurance must include:
      - i. Premises and Operations Liability
      - ii. Blanket Contractual Liability including coverage for the joint negligence of the City, it officers, council members, agents, employees, authorized volunteers and the named insured
      - iii. Personal Injury
      - iv. Explosion, collapse and underground coverage
      - v. Products/Completed Operations
      - vi. Independent Contractors
  - iii. BUSINESS AUTOMOBILE COVERAGE
    - a. Minimum Limits - \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage each accident
    - b. Must cover liability for "Any Auto" - including Owned, Non-Owned and Hired Automobile Liability
- e. *Additional Insured*: Contractor shall name the City, including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and their board members, employees and volunteers as Additional Insured on the General Liability Coverage. This coverage shall be primary to the Additional Insured, and not contributing with any other insurance or similar protection available to the Additional Insured, whether other available coverage is primary, contributing or excess.
- f. *Waiver of Workers Compensation Subrogation*: The workers' compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses paid under the terms of the policy that arises from the work performed by the named insured for or on behalf of the City.

- g. *Cancellation Notice:* All insurances required by this Agreement shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of Cancellation or Ten (10) days for Non-Renewal shall be sent to: City of Beloit; Attn: Risk Management; 100 State Street; Beloit, WI 53511.
- h. *Proof of Insurance Coverage:* Contractor shall provide to the City, at the time this Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City. If so requested, certified copies of any or all polices shall also be furnished. The Additional Insured Policy endorsement must accompany the Certificate of Insurance. A copy of the Certificate of Insurance must be on file with Risk Management. If no Certificates of Insurance and/or policies are provided to the City upon execution of this Agreement, the Agreement shall be null and void.
- i. *Continuation of Coverage:* If any of the above coverage expires during the term of this Agreement, the Contractor shall deliver renewal certificates and/or policies to the City at least ten (10) days prior to the expiration date.

- 25. **THIRD PARTY RIGHTS.** This Agreement is intended to be solely between the parties hereto. No part of this Agreement shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.
- 26. **AUDIT AND RETAINING OF DOCUMENTS.** The Contractor agrees to provide all reports requested by the City including, but not limited to, financial statements and reports, reports and accounting of services rendered, and any other reports or documents requested. Financial and service reports shall be provided according to a schedule (when applicable) to be included in this Agreement. Any other reports or documents shall be provided within five (5) working days after the Contractor receives the City's written requests, unless the parties agree in writing on a longer period. Payroll records and any other documents relating to the performance of services under the terms of this Agreement shall be retained by the Contractor for a period of three (3) years after completion of all work under this Agreement, in order to be available for audit by the City or its designee.
- 27. **CORPORATE AUTHORIZATION.** The individuals executing this Agreement on behalf of the Contractor warrant and represent that they are duly authorized to bind the Contractor to this Agreement. Contractor warrants and represents that the execution of this Agreement is not prohibited by the Contractor's articles of incorporation, by-laws, operating agreement, or other internal operating orders, or by any applicable law, regulation or court order. Contractor shall provide proof upon request.
- 28. **ASSISTANCE OF COUNSEL, VOLUNTARY AGREEMENT.** The Contractor acknowledges that it has either had the assistance of legal counsel in the negotiation, review and execution of this Agreement, or has voluntarily waived the opportunity to do so; that it has read and understood each of this Agreement's terms, conditions and provisions, and their effects; and that it has executed this Agreement freely and not under conditions of duress.
- 29. **ADEQUACY OF CONSIDERATION.** The Parties acknowledge that the consideration expressed in this Agreement is adequate and sufficient to make the obligations contained in this Agreement binding upon the Parties.
- 30. **COSTS OF ENFORCEMENT.** The Parties agree that in the event legal action is necessary to enforce any term or condition of this Agreement, then the breaching Party will pay the non-breaching Party's costs

incurred in such legal action, including actual attorney fees. If a judgment is taken, then costs of enforcement will be added to the judgment.

31. **SEVERABILITY.** If any term of this Agreement is held unenforceable by a court having jurisdiction, then to the extent the unenforceable term can be severed from the remainder of this Agreement without affecting the enforceability of the remainder of this Agreement or substantially frustrating its purpose, it will be so severed, and the remainder of this Agreement will remain in effect and enforceable.
32. **SURVIVAL AND PARTIES BOUND.** Unless specifically limited in this Agreement, any term, condition or provision of this Agreement will survive the execution of this Agreement or any stated time periods, to the extent necessary for their performance. This Agreement is binding upon, and inures to the benefit of, the Parties' successors, assigns, heirs, executors, trustees and personal representatives.
33. **GOVERNING LAW AND JURISDICTION.** This Agreement will be construed and enforced according to the laws of Wisconsin. If a lawsuit arises out of or relating to this Contract, it shall be filed in the state Circuit Court for Rock County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.
34. **INTEGRATION.** This Agreement constitutes the entire agreement of the Parties formed by the City's RFP and the Contractor's responsive proposal; however, if any ambiguity in this Agreement requires resolution, or this Agreement is silent on a material point, then reference may be made to the RFP and the Contractor's proposal, in that order of priority, to construe this Agreement. All other agreements and understandings of the parties with respect to the subject matter expressed in this Agreement are unenforceable.
35. **COMPLIANCE WITH APPLICABLE LAWS.** The Contractor shall become familiar with, and shall at all times comply with and observe all federal, state, and local laws, ordinances, and regulations which in any manner affect the services or conduct of the Contractor and its agents and employees.
36. **CONFLICT OF INTEREST.**
  - A. The Contractor warrants that it and its agents and employees have no public or private interest, and will not acquire directly or indirectly any such interest, which would conflict in any manner with the performance of the services under this Agreement.
  - B. The Contractor shall not employ or contract with any person currently employed by the City for any services included under the provisions of this Agreement.
37. **PUBLIC RECORDS LAW.** Contractor understands that the City is bound by the Wisconsin Public Records Law, Wis. Stat. § 19.21, *et seq.* Pursuant to Wis. Stat. § 19.36(3), the City may be obligated to produce, to a third party, the records of the Contractor that are "produced or collected" by the Contractor under this Agreement ("Records"). The Contractor is further directed to Wis. Stat. § 19.21, *et seq.*, for the statutory definition of Records subject to disclosure under this paragraph, and the Contractor acknowledges that it has read and understands that definition. Irrespective of any other term of this Agreement, the Contractor is (1) obligated to retain Records for seven (7) years from the date of the Record's creation, and (2) produce such Records to the City if, in the City's sole determination, the City is required to produce the Records to a third party in response to a public records request. Contractor's failure to retain and produce Records as required by this paragraph shall constitute a material breach of the Agreement, and Contractor must defend and hold the City harmless from liability due such breach. The provisions of this paragraph shall survive the term of this Agreement, or any extensions or renewals of it.

38. **CONFIDENTIALITY.** Contractor agrees not to use or disclose any information it receives from the City under this Agreement that the City has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by the City. The City agrees not to disclose any information it receives from the Contractor, that the Contractor has previously identified as confidential and which the City determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the Wisconsin Open Records Law pursuant to Wis. Stat. § 19.21 *et seq.* The duty of the City and the Contractor to maintain confidentiality of information under this section continues beyond the term of this Agreement, or any extensions or renewals of it.
39. **DEFAULT/TERMINATION.**
- A. In the event Contractor shall default in any of the covenants, agreements, commitments, or conditions herein contained, and any such default shall continue unremedied for a period of ten (10) days after written notice thereof to Contractor, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Contractor, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of Contractor under this Agreement.
- B. Notwithstanding paragraph A., above, either party may terminate this Agreement without cause by giving written notice of termination to the other party, with termination to occur no sooner than 20 days after delivery of the notice. Upon termination, Contractor shall be paid for all Work completed as of the date of termination.
40. **AGREEMENT NOT TO BE CONSTRUED AGAINST ANY PARTY.** This Agreement is the product of negotiation between the parties hereto and no term, covenant or provision herein or the failure to include a term, covenant or provision shall be construed against any party hereto solely on the basis that one party or the other drafted this Agreement or any term, covenant or condition contained herein.
41. **COUNTERPARTS, ELECTRONIC DELIVERY.** This Agreement may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Agreement may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original. Executed copies or counterparts of this Agreement may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Agreement, fully executed, shall be as valid as an original.

**Signature Page to Follow**

IN WITNESS WHEREOF, the parties hereto have set their hands.

Date: \_\_\_\_\_

CITY OF BELOIT

By: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

Gwanny J. Tjoa, Assistant City Attorney

I hereby certify that sufficient funds are in the treasury to meet the expense of this contract or that provision has been made to pay the liability that accrues under this contract.

By: \_\_\_\_\_

Eric R. Miller, City Comptroller

Date: \_\_\_\_\_

CONTRACTOR

\_\_\_\_\_

Print Name of Contracting Entity

By: \_\_\_\_\_

(Signature)

\_\_\_\_\_

(Print Name and Title of Person Signing)