



A COMMUNITY OF CHOICE

OFFICE OF THE CITY ENGINEER

2101 O'Neil Avenue Room 206

Cheyenne, Wyoming 82001

Phone (307)637-6268 Fax (307)637-6256

MEMO

TO: Mayor Patrick Collins
City Council Members

FROM: Thomas D. Cobb, PE, City Engineer

DATE: October 17, 2022

SUBJECT: Professional Services Agreement between the City of Cheyenne and Terracon Consulting Engineers Proposal for Materials Testing & Special Inspection Services for City of Cheyenne Fire & Rescue Department - New Emergency Response Facilities Converse Avenue, Countryside Avenue, and Hansen Street (3 Locations)

The City of Cheyenne would like to engage a firm that has experience with third party materials testing and specialized inspection services for building and site construction.

I reviewed the Statement of Qualifications on file with the City of Cheyenne and found Terracon with the qualifications, personnel, and expertise necessary to provide the independent professional services required for this important project.

Reason for Agreement:

Third party independent professional specialized inspection and materials testing required for the site and building construction of the City of Cheyenne Fire & Rescue Department - New Emergency Response Facilities located on Converse Avenue, Countryside Avenue, and Hansen Street (3 Locations).

Cost and Funding:

Funding for this project will come from the 2021 1% Special Purpose Sales and Use Tax. The total professional services will be a cost not-to-exceed \$ 121,980. We respectfully request your approval of this professional services agreement.

APPROVED

By John Brodie at 10:44 am, Oct 19, 2022

City Contract No. _____

PROFESSIONAL SERVICES AGREEMENT

for

City of Cheyenne Fire Rescue Department – New Emergency Response Facilities Converse Avenue, Countryside Avenue, and Hansen Street (3 Locations)

THIS AGREEMENT is made and entered into this _____ day of _____, 2022, by and between the City of Cheyenne (“City”), located at 2101 O’Neil Avenue, Cheyenne, Wyoming 82001, and Terracon Consulting Engineers (“Consultant”), 1505 Old Happy Jack Road, Cheyenne, Wyoming 82001.

RECITALS

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the City and the Consultant as follows:

1. SCOPE OF WORK

The Consultant agrees to provide services as described for the above-mentioned project, in accordance with the Scope of Work attached hereto as Exhibit A-1, incorporated by reference, and expressly made a part hereof.

2. TIME OF PERFORMANCE

This Agreement shall commence on the date the last required signature is attached hereto and shall continue in full force and effect until the scope of work is completed in accordance with Exhibit A-1, unless this Agreement is earlier terminated pursuant to its provisions.

3. COMPENSATION

In consideration of the services to be performed pursuant to this Agreement, the Consultant will bill the City and the City agrees to pay Consultant a total sum not to exceed one hundred twenty thousand dollars (\$120,000.00).

4. CONSULTANT RESPONSIBILITY

In providing services under this Agreement, the Consultant shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Upon notice to the Consultant, the Consultant will, without additional compensation, correct those services not meeting such a standard.

5. COMPLIANCE WITH LAWS

The Parties agree that they will perform their obligations as provided in this Agreement in accordance with all applicable laws and ordinances.

6. DRUG-FREE WORKPLACE

In compliance with the Drug-Free Workplace Act of November 1988, the City of Cheyenne has established an Alcohol and Controlled Substance Policy that pertains to alcohol and drug usage by City Employees. All architects, engineers, and other consultants under contract with City of Cheyenne, and their employees and sub-consultants, are required to comply with the provisions of the City's Alcohol and Controlled Substance Policy for drug and/or alcohol usage on City property or other sites occupied by the Consultant while performing the duties and responsibilities of the Agreement. It is the responsibility of the Consultant to familiarize themselves with the requirements of this policy and to inform all their employees and sub-consultants of the requirements and ensure their compliance. If the Consultant, their employees, or sub-consultants are found in violation of this policy, the Agreement may be terminated.

7. INDEMNIFICATION/HOLD HARMLESS

The Consultant agrees to indemnify, hold harmless and defend the City from and against any and all liabilities, claims, penalties, forfeitures and suits, and the cost and expenses incident thereto, including reasonable attorney's fees, which may hereafter arise as a result the performance of the Consultant's duties, including death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders to the extent caused by (1) the Consultant's breach of any term or provision of this Agreement; or (2) any negligent or wrongful act, error or omission by the Consultant, or its employees or sub-consultants in the performance of this Agreement. The Consultant acknowledges that it may incur a financial obligation to the City pursuant to the terms of this paragraph.

8. INSURANCE REQUIREMENTS

The Consultant must provide proof of the following insurance coverages:

Commercial General Liability Insurance

For claims arising out of bodily injury, illness, or death, or from damage to or destruction of property of others, including loss or use thereof, with minimum limits of \$1,000,000 per occurrence, \$2,000,000 aggregate for the entire term of the Agreement.

Workers' Compensation

Workers' compensation coverage shall be in effect for the entire term of the Agreement, as required by Wyoming law, for all employees or agents providing services under this Agreement. Consultant shall provide the City with proof of workers' compensation or employer's liability insurance coverage.

Professional Liability Insurance

The Consultant shall provide proof of professional liability insurance or errors and omissions liability insurance in an amount not less than \$500,000 to protect the City from any and all claims arising from the Consultant's negligence in the performance of duties under this Agreement. The City prefers that this liability insurance coverage be provided

pursuant to an “occurrence” policy. If this coverage is provided pursuant to a “claims made” policy:

- a. Consultant shall, concurrently with the execution of this Agreement, provide the City with a certificate of insurance demonstrating that such coverage is or shall be in effect at the time the Consultant begins the provision of services under this Agreement; and
- b. In the event the Consultant’s services extend into a future policy period, the Consultant shall, prior to the policy expiration date, provide the City with a new certificate of insurance demonstrating that such coverage is or shall be in effect during all periods of time that Consultant will provide services under this Agreement; and
- c. Consultant shall maintain said “claims made” coverage for a period of five (5) years following the last date that Consultant has provided services under this Agreement; and
- d. In the event the Consultant or the insurer terminates “claims made” coverage prior to the expiration of the periods provided in subparagraphs a., b., or c. of this paragraph, the Consultant shall provide to the City advance written notification of the termination of said coverage and shall provide the City with an endorsement for an extended reporting period (“tail coverage”) which shall be in effect for a period of time not less than five (5) years following the last date that Consultant has provided services under this Agreement.

Additional Insurance Information

The Consultant shall name the City of Cheyenne as an **Additional Insured** by endorsement on its insurance policies and shall provide the City with a copy of the endorsements. This requirement does not apply to workers’ compensation and professional liability insurance policies.

Consultant shall provide the City with certificates of insurance acknowledging the above-stated coverages prior to beginning any work under this Agreement.

It is understood and agreed that these policies are primary and not contributory. All policies required under this Agreement shall be in effect for the duration of the Agreement. It shall be an affirmative obligation upon Consultant to immediately notify in writing the city risk manager, city clerk, and city attorney of any fact, circumstance, or occurrence that has resulted in or may result in the cancellation of, or substantive change to any insurance coverage required by this Agreement, and failure to do so shall be construed to be a breach of this Agreement.

If requested by the City, the Consultant shall provide the City with copies of insurance policies and/or policy endorsements listing the City of Cheyenne as an additional insured. The City’s failure to request or review such policies, endorsements, or certificates shall not

affect the City's rights or Consultant's obligation hereunder. Any insurance company providing coverage under this Agreement shall have a minimum A. M. Best rating of A- (excellent).

9. MINORITY AND DISADVANTAGED BUSINESS ENTERPRISES (49 C.F.R. Part 26)

All parties to this Agreement assure that no person will be excluded from participation in, denied the benefits of, or otherwise discriminated against, in connection with the award and performance of this Agreement on the grounds of age, race, color, disability, national origin or sex.

10. MONTHLY REPORT

With every monthly billing, Consultant shall provide the City Representative with a written statement of the status of the work with respect to the Scope of Work, time sheets, and work schedule. Failure to provide the required monthly report will delay processing of any payment request until the report is submitted.

11. INDEPENDENT CONSULTANT

The Consultant shall function as an independent consultant for the purposes of this Agreement. The Consultant shall assume sole responsibility for any debts or liabilities that may be incurred by the Consultant in fulfilling the terms of this Agreement. Nothing in this Agreement shall be interpreted as authorizing the Consultant or its agents or employees to act as an agent or representative of or on behalf of the City or to incur any obligation of any kind on the behalf of the City.

12. TAXES

The Consultant agrees to pay all valid taxes, excises, license fees, permit fees, bills, debts, and obligations incurred by and in connection with its operations under this Agreement.

13. DEFAULT

Each and every term and condition in this Agreement shall be deemed to be a material element of the Agreement. In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default.

14. REMEDIES

In the event a party has been declared in default, such defaulting party shall be allowed a period of fifteen (15) days within which to cure the default. In the event the default remains uncorrected, the non-defaulting party declaring default may elect to:

- a. Terminate the Agreement and seek damages, which damages shall not exceed the contract amount; or
- b. Treat the Agreement as continuing and require specific performance.

15. TERM AND TERMINATION

The term of this Agreement shall be from the date of execution and continue until the scope of work is completed in accordance with Exhibit A-1. The parties may by mutual written agreement renew or extend this Agreement. The City may, without cause, and upon thirty days' written notice to the Consultant, terminate this Agreement in whole or in part at any time, for the City's convenience. Upon receipt of such notice, the Consultant shall:

- a. Discontinue all services affected; and
- b. Deliver to the City within five (5) days all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Consultant in performing this Agreement, whether completed or in process.
- c. In the event of termination for convenience, the City will pay the Consultant for accepted work done and expenses incurred to the date of termination. Such acceptance shall not be unreasonably withheld.

16. ADDITIONAL REMEDIES

In the event the Consultant fails to strictly perform in accordance with this Agreement, the City may elect to correct the deficiencies and charge the Consultant. In the event of default of any of the conditions by either party which shall require the party not in default to commence legal or equitable action against the defaulting party each party shall bear its own costs and expenses, including without limitation, attorney's fees.

17. GOVERNING LAW, JURISDICTION AND VENUE

The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The courts of the State of Wyoming shall have jurisdiction over any action arising out of this Agreement and over the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.

18. GOVERNMENTAL IMMUNITY

The City of Cheyenne, along with its officials and employees, does not waive its governmental immunity by entering into this Agreement, except to the extent necessary for the parties to pursue a contract action to clarify or enforce the written terms of the Agreement. Furthermore, the City specifically retains all immunities and defenses available to it as a sovereign or governmental entity pursuant to Wyo. Stat. § 1-39-101, *et seq.*, and all other relevant state and federal law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be constructed as a waiver of governmental immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to governmental or sovereign immunity shall be construed in favor of governmental immunity.

19. MONITORING ACTIVITIES

The City shall have the right to monitor all activities related to this Agreement that are performed by the Consultant or its sub-consultants. This shall include, but not be limited to, the right to make site inspections at any time and with reasonable notice; to bring experts and consultants on site to examine or evaluate completed work or work in progress; to examine the books, ledgers, documents, papers, and records pertinent to this Agreement; and to observe personnel in every phase of performance of the related work.

20. OWNERSHIP OF DOCUMENTS AND WORK PRODUCT

All deliverables by the Consultant, all work product of the Consultant, all notes, calculations, memoranda, or any other documentation generated by the Consultant pursuant to the scope of this Agreement, shall be the property of the City of Cheyenne and shall be provided to the City of Cheyenne immediately upon request.

21. NON-DISCRIMINATION

The Consultant shall comply with the Civil Rights Act of 1964, Wyoming Fair Employment Practices Act of 1965, Wyo. Stat. § 27-9-101, *et seq.*, the Americans With Disabilities Act, as amended, 42 U.S.C. § 12101, *et seq.*, and the Age Discrimination Act of 1975, 42 U.S.C. §§ 6101-6107, and any properly promulgated rules and regulations thereto, and shall not discriminate against any individual on the grounds of age, sex, creed, color, race, religion, national origin, ancestry, pregnancy or qualifying disability in connection with the performance under this Agreement.

22. FORCE MAJEURE.

The performance of the Agreement by either party shall be subject to force majeure including, but not limited to, acts of God, fire, flood, natural disaster, war or threat of war, acts or threats of terrorism, civil disorder, unauthorized strikes, governmental regulation or advisory, recognized health threats as determined by the World Health Organization, the Centers for Disease Control, or local government authority or health agencies (including, but not limited to, the health threats of COVID-19, H1N1, or similar infectious diseases), curtailment of transportation facilities, or other similar occurrence beyond the control of the parties, where any of those factors, circumstances, situations, or conditions or similar ones prevent, dissuade, or unreasonably delay the performance required by this Agreement. The Agreement may be cancelled by either party, without liability, damages, fees, or penalty, and any unused deposits or amounts paid shall be refunded, for any one or more of the above reasons, by written notice to the other party.

23. PROFESSIONAL REGISTRATION

The Consultant shall endorse, as required by law, plans and reports prepared under this Agreement, and shall affix thereto his or her seal of professional registration, showing that he or she is licensed to practice in the State of Wyoming, if necessary.

24. ENTIRETY OF AGREEMENT

This Agreement consisting of seven (7) pages and Exhibit A-1 consisting of eleven (11) pages, contain the entire understanding of the parties. There are no other terms or conditions, written or oral, concerning or controlling this matter.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

City of Cheyenne

(SEAL)

By: _____
Patrick J. Collins, Mayor

Attest:

Kristina F. Jones, City Clerk

Date: _____

Consultant

By: _____

Print Name: _____