

**CITY OF CLEVELAND – DEPARTMENT OF PUBLIC UTILITIES
ENVIRONMENTAL, ENGINEERING AND RELATED SERVICES**

REQUEST FOR PROPOSAL

ADDENDUM No. 2

SEPTEMBER 29, 2023

Proposals are due Thursday, October 5, 2023 by 12:00 p.m.

Attached is a Sample Agreement that would be a guide in executing an agreement for the services in the RFP.

SAMPLE AGREEMENT
Between
THE CITY OF CLEVELAND
And
NAME
For
Type of Services

THIS AGREEMENT for professional services is entered into as of this ____ day of _____, 20____, between the City of Cleveland ("City"), a municipal corporation of the State of Ohio, through its Director of ***** ("Director"), under the authority of Ordinance No. *****-**, passed by Cleveland City Council on *****, 20**, and Board of Control Resolution No. *****-**, adopted *****, 20** and _____, *****address***** ("Consultant"), through its duly authorized officer.

RECITALS:

1. The City desires to supplement the regularly employed staff of the Department of ***** in order to obtain the professional services necessary to *****.
2. Consultant has proposed by its letter dated ***** to provide the professional services to the City.
3. The City finds Consultant's Proposal acceptable and desires to hire Consultant to furnish the services under the terms, conditions and provisions in this Agreement.

In consideration of the foregoing, the payments and the mutual promises in this Agreement, the parties agree as follows:

ARTICLE I. SERVICES OF CONSULTANT

A. General

By execution of this Agreement, the City accepts and Consultant agrees to be bound by the Proposal of Consultant dated *****, attached as Exhibit "A," and the City's Request for Proposal ("RFP"), attached as Exhibit "B." Both of these documents are incorporated in this Agreement subject to any

changes or modifications that may be made by this Agreement. Complete copies of both Exhibit "A" and "B" are attached to the original of this Agreement on file in the City Division of Accounts and are incorporated in this Agreement as if fully rewritten. The cover page and several other descriptive pages of both documents are attached to all copies. Consultant is hired to supplement the regularly employed staff of the several departments of the City to *****, as more fully described in Exhibit "A" and Exhibit "B."

B. Specific Services

Consultant shall render the specific services listed and identified in Exhibit "A" and Exhibit "B."

C. Meetings and Reports

Consultant shall attend meetings and deliver reports in accordance with Exhibit "A" and Exhibit "B" and any other meetings or reports the Department requests.

ARTICLE II. ASSISTANCE OF THE CITY

The City shall assist Consultant to the extent possible as necessary during the term of this Agreement. Office and working facilities shall be provided Consultant on a space available basis only.

ARTICLE III. TERM

The term of this Agreement shall begin upon *****, and shall, unless extended by the City or unless sooner canceled or terminated under the provisions of this Agreement expire upon the project completion date of ****.

ARTICLE IV. PAYMENTS

A. Amount

The City shall pay Consultant for accomplishment of all work and services required hereunder a ***** fee not to exceed *****.

B. Payment

The City shall pay Consultant after submission to and approval by the Director a verified monthly billing itemizing the actual time and effort expended to the date of the billing and the amount of the billing less any prior payments. If the billing is not acceptable, the City shall inform Consultant as to

the reasons and the corrective actions necessary, if any, to qualify the billing for approval.

C. Acceptance

No approval given or payment made under this Agreement shall be conclusive evidence of the acceptance of performance under this Agreement either wholly or partially, and no payment made under this Agreement shall be construed to be an acceptance of deficient or unsatisfactory work.

ARTICLE V. CANCELLATION

The City may cancel this Agreement at any time with cause upon written notice to Consultant of such intent when either the progress or results achieved under this Agreement are unacceptable to the City.

If this Agreement is canceled by the City prior to completion, Consultant, within ten (10) days, shall submit a certified final progress report of the percentage of work completed by the date of cancellation. The City shall pay Consultant for the work completed as certified in this statement. Notwithstanding any other provision of this Agreement, including Exhibit "A" and Exhibit "B", all records, documents, materials and working papers prepared as part of the work under this Agreement shall become and remain the property of the City. Upon any such cancellation, Consultant shall turn over to the City all records, documents, working papers, computer disks of data and other materials which would be necessary, in the judgment of the City, to maintain continuity in progress of the work by another Consultant.

ARTICLE VI. SUBCONSULTANTS

Consultant shall not sublet or subcontract nor shall any Subconsultant commence performance of any part of the work or services included in this Agreement without the previous written consent of the Board of Control. Subcontracting, if permitted, shall not relieve Consultant of any of its obligations under this Agreement.

Consultant shall be and remain solely responsible to the City for the acts or faults of any Subconsultant and of such Subconsultant's officers, agents and employees, each of whom shall for this purpose, be considered an agent or employee of Consultant to the extent of its subcontract. Consultant shall file a conformed copy of the applicable subcontract with the City. Consultant and any Subconsultant shall jointly and severally agree that the City of Cleveland is not obligated to pay or to be liable for the payment of any sums due any Subconsultant.

ARTICLE VII. INDEMNIFICATION

Consultant shall indemnify and save harmless the City and its respective officers, agents and employees from and against all suits or claims that may be based upon any injury to persons or property arising out of an error, omission or negligent act of Consultant or its Subconsultant; and Consultant shall, at its own expense, defend the City in all litigation, pay all attorneys' fees, damages, court costs and other expenses arising out of the litigation or claims incurred in connection therewith; and shall, at its own expense, satisfy and cause to be discharged the judgments as may be obtained against the City, or any of its officers, agents or employees, arising out of such litigation. This indemnification shall survive the term of this Agreement.

ARTICLE VIII. INSURANCE REQUIREMENT

Consultant and each of its Subconsultants shall, at their expense and at all times during the performance of services under this Agreement, maintain comprehensive general and professional liability insurance insuring themselves against the indemnification obligations undertaken in Article VII, Indemnification above. Consultant shall require its Subconsultants to obtain insurance and shall be responsible for enforcement of its Subconsultants's obligation to obtain insurance to satisfy the requirements hereunder. The policies shall be with companies authorized to do business in Ohio and rated "A" or above by A.M. Best Company or equivalent. The comprehensive general liability insurance policy shall: be occurrence type; name the City as an additional insured; have limits of not less than Two Million Dollars (\$2,000,000.00) for any one incident; have a "per project" endorsement; and be primary with respect to Consultant's general liability, notwithstanding any other insurance covering the City. Consultant's insurance policy shall include valuable papers coverage in the amount of not less than One Hundred Thousand Dollars (\$100,000.00). The professional liability insurance shall have limits of not less than Five Million Dollars (\$5,000,000.00) for any one incident, and if not written on an occurrence basis, shall be maintained for a period of not less than two (2) years following the completion of the services to be provided.

A. Notice of Cancellation

The City shall be listed as an additional insured on all required insurance policies or evidence of insurance. Consultant shall notify the Director, in writing, at least 30 days before it cancels or reduces the required insurance coverage(s), and immediately upon receiving notice of any cancellation or reduction of any required insurance coverage by an insurance company.

B. Copy of Insurance Policy

Upon the request of the Director of Law of the City of Cleveland, Consultant shall immediately provide the Director of Law an exact copy of the insurance policy or policies required in this Agreement.

C. Certificate of Insurance

Upon execution of this Agreement, Consultant shall submit to the City a certificate(s) of insurance with respect to such policy or policies. If the additional insured endorsement required above is not available at the Agreement execution date, Consultant shall submit to the City a notation of the endorsement together with either a Binder or an Advice of Insurance with respect to such endorsement. Consultant shall also provide a copy of the endorsement naming the City as an additional insured under Consultant's comprehensive general liability coverage. The endorsement shall be submitted no later than thirty (30) days after the execution date hereof.

D. Policy

The certificate(s), Binder or Advice required in paragraphs B and C above shall, as to form, coverage and carrier, be satisfactory to the Director of Law. If at any time, the coverage or carrier on any policy shall become unsatisfactory to the Director of Law, Consultant shall immediately provide a new certificate meeting the requirements of the Director of Law.

E. No Limit of Liability

The limits of insurance specified above shall in no way constitute the upper limits of liability for which Consultant is responsible under Article VII, Indemnification above.

ARTICLE IX. STATE INDUSTRIAL COMPENSATION

Consultant shall be required at all times during the term of this Agreement to subscribe to and comply with the Workers Compensation Laws of the State of Ohio and pay such premiums as may be required under those laws and to save the City harmless from any and all liability from or under the Workers' Compensation laws.

ARTICLE X. SOCIAL SECURITY ACT

Consultant shall be and remain an independent Consultant with respect to all services performed under this Agreement and agrees to and does accept full

and exclusive liability for the payment of any and all contributions or taxes for social security, unemployment benefits, pensions and annuities now or will be imposed under any state or federal laws which are measured by the wages, salaries or other remuneration paid to persons employed by Consultant on work performed under the terms of this Agreement and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or may be issued or promulgated under the respective laws by any duly authorized state or federal official. Consultant also agrees to indemnify and save harmless the City of Cleveland from any such contributions or taxes or liability.

ARTICLE XI. INTEREST OF CONSULTANT

Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Consultant further covenants that no person having any such interest shall be employed in the performance of this Agreement.

ARTICLE XII. DEFAULT AND REMEDIES

A. Consultant shall be in default of this Agreement upon the happening of any of the following events:

1. If Consultant fails to observe or perform any of the covenants or agreements to be observed or performed by it under this Agreement and such failure continues for a period of five (5) days after written notice is given Consultant by the City;
2. The filing, execution or occurrence of: (i) a petition or other proceeding by, or a finding against, Consultant for its dissolution, reorganization or liquidation; (ii) a petition in bankruptcy by Consultant; (iii) an adjudication of Consultant as bankrupt or insolvent; (iv) an assignment or petition for assignment for the benefit of creditors;
3. If Consultant abandons or discontinues its operations for the City except when such abandonment or discontinuance is caused by fire, earthquake, war, strike, or other calamity beyond its control.

B. Upon the happening of any one or more of the events as set forth in Paragraph A of this Article, or upon any other default or breach of this Agreement, the City may, at its option, exercise concurrently or successively any one or more of the following rights and remedies:

1. Without waiving such default to pay any sum required to be paid by Consultant to others than the City and which Consultant has failed to pay under the terms and conditions of this Agreement. Any amounts paid by the City in fulfilling the obligations of Consultant under this Agreement, including all interest, costs, damages, attorneys' fees and penalties shall be repaid by Consultant to the City on demand with the interest rate of 12% per annum from the date of the City's payment;
2. To enjoin any breach or threatened breach by Consultant of any covenants, agreements, terms, provisions or conditions;
3. To sue for the performance of any obligation, promise or agreement devolving upon Consultant for performance or for damages for the nonperformance of this Agreement, all without terminating this Agreement;
4. To terminate this Agreement.

C. All rights and remedies granted to the City in this Agreement and any other rights and remedies which the City may have at law and in equity are declared to be cumulative and not exclusive and the fact that the City may have exercised any remedy without terminating this Agreement shall not impair the City's rights later to terminate or to exercise any other remedy granted or to which it may be otherwise entitled.

ARTICLE XIII. ASSIGNMENT PROHIBITED

Consultant shall not assign, transfer, convey, sell or pledge its rights or interest in this Agreement or any part of this Agreement, or any right or privilege created under this Agreement and upon any attempt by Consultant to do so, this Agreement shall immediately terminate.

ARTICLE XIV. CAMPAIGN CONTRIBUTIONS

Consultant hereby certifies that beginning on the date the contract is awarded and extending until one year following conclusion of the contract, all persons identified in Ohio Revised Code Sections 3517.13(I)(3) and 3517.13(J)(3), as applicable, are in compliance with Ohio Revised Code Sections 3517.13(I)(1) and 3517.13(J)(1).

ARTICLE XV. NOTICE AND PAYMENTS

All notices which may be proper or necessary to be served and payments to be made under this Agreement shall be sent by regular mail, postage prepaid, to the following addresses or to such other address as either party may later designate for such purpose. To the City: c/o Director of *****, 1201 Lakeside Ave., Room *****, Cleveland, Ohio 44114. To the Consultant: c/o *****.

ARTICLE XVI. EQUAL OPPORTUNITY

This Agreement is a "contract", and Consultant is a "Consultant" within the meaning of Chapter 187 of the Codified Ordinances of Cleveland, Ohio 1976. During the term, Consultant shall comply with all terms, conditions and requirements imposed on a "Consultant" in the Equal Opportunity Clause, Section 187.22(b) C.O., attached hereto as Exhibit ***** and made a part of this Agreement. A copy of this Equal Opportunity Clause shall be made a part of every subcontract or agreement entered into for goods or services, and shall be binding on all persons, firms and corporations with whom Consultant may deal.

ARTICLE XVII. CONSTRUCTION OF AGREEMENT

All terms and words used in this Agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context or sense of this Agreement or any paragraph or clause herein may require, the same as if such words have been fully and properly written in the number and gender. Consultant agrees that no representation or warranties of any type shall be binding upon the City, unless, expressly authorized in writing in this Agreement. In the event of any conflict between the provisions of this Agreement and the language of the Consultant's Proposal, the provisions of this Agreement shall govern. In the event of any conflict between the scope of services contained in the Proposal and the RFP, the City's RFP shall control. The headings of sections and paragraphs, if any, to the extent used in this Agreement are used for reference only, and in no way define, limit, or describe the scope or intent of any provision. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed original, but such counterparts together shall constitute but one and the same instrument. The following attached documents are incorporated with and made a part of this Agreement:

1. Exhibit "A" - Consultant's Proposal
2. Exhibit "B" - City's Request for Proposals
3. Exhibit "C" - Equal Opportunity Clause
4. Ordinance No. _____
5. Board of Control Resolution No. _____

The parties have caused this instrument to be executed as of the date and year first above written.

CITY OF CLEVELAND

By: _____

Director of *****

By: _____

Title: _____

Taxpayer ID Number

The legal form and correctness of the within instrument is approved.

BARBARA A. LANGHENRY
Director of Law

By: _____

Assistant Director of Law

Date: _____