M E M O R A N D U M

TO: File

FROM: Sandy Wirtanen, Procurement Specialist IV

DATE: September 26, 2017

SUBJECT: MA 5700 NA170000238

The Master Agreement was created and administered by the Law Department. All original documents are located with the Law Department. The Purchasing Office is not responsible for any procurement actions taken for this Master Agreement Contract other than the creation of the payment mechanism for accounting purposes.

City of Austin
Law Department
301 W. 2nd Street, P.O. Box 1088
Austin, Texas 78767-1088
(512) 974-2268

(512) 974-2268
Writer's Direct Line

(512) 974-2912
Writer's Fax Line

September 7, 2017

Rob McCullough
McCullough & Associates
4100 Spring Valley Road, Suite 750
Dallas, TX 75244

RECEIVED
SEP 25 2017

RE: New Central Library

Dear Mr. McCullough:

This letter confirms that you will provide consultation and/or expert services for the City of Austin in the above referenced matter. The City requires consultants to follow certain policies outlined in the attached Terms of Engagement. Please sign and return this Engagement Letter to Teresa Medina in the enclosed envelope, confirming that you agree to the following conditions:

1) The consult and/or expert must include proof of professional liability insurance with minimum limits of $500,000 per occurrence, per "Section II H" of attached Terms of Engagement.
2) The consult and/or expert must register through the City's Vendor Connection System at https://www.austintexas.gov/financeonline/vendor_connection/index.cfm before any invoice can be paid.

Assistant City Attorney Gordon R. Bowman is assigned to this project and will coordinate all services. You must receive advance authorization from me or my designees before providing any other professional services. The City will pay for the services you provide in a total amount **not to exceed $10,000.00** for all fees and expenses billed under this agreement. **We agree that your hourly rate for services, described above shall be $375.00 per hour.** Further, we agree that fees will be paid based on hours actually worked, and billed on a monthly basis.

If you have any questions, please do not hesitate to call me or the Managing Attorney.

Sincerely,

Anne L. Morgan
City Attorney

AGREED:

R McCullough 9/25/17
Rob McCullough Date

Attachments: Terms of Engagement

ALM/tmm

CITY OF AUSTIN – TERMS OF ENGAGEMENT
Consultants/Expert Witness

I. DEFINITIONS

- "**Agreement**" means this Terms of Engagement, including all exhibits and any written amendments, and the Engagement Letter.
- "**Consultant**" means you and your company.
- "**City**" means City of Austin

II. DUTIES OF CONSULTANT

A. Scope of Services

The Consultant shall provide consulting and/or expert witness services as specified in the Engagement Letter and this Agreement.

B. Conflict of Interest

As a Consultant you may be asked to work for various clients whose interests are adverse to those of the City. By signing the Engagement Letter, Consultant affirms that no such conflict exists. Further, Consultant affirms that during the course of this engagement, you will refrain from engaging in any work that conflicts with the City. Should such a conflict arise, you shall contact the Managing Attorney immediately to discuss the situation.

C. Assignment

The Consultant may not assign this Agreement in whole or in part, or subcontract any consulting/expert witness services without the prior written consent of the Managing Attorney.

D. Authorized Expenditure Ceiling

The total cost of fees and expenses to the City for consulting/expert witness services in this matter shall not exceed the authorized expenditure amount specified in the Engagement Letter. If the City requires additional services, a new or amended Agreement is required before fees or expenses exceeding the expenditure ceiling are incurred. **The City will not pay any amount in excess of the authorized expenditure ceiling without a new or amended written agreement.** The authorized expenditure ceiling may be increased if additional work is authorized.

E. Expenses

The City agrees to reimburse the Consultant for the reasonable, actual cost of expenses incurred in this matter as provided in the Billing Requirements section of this Agreement. The Consultant shall exercise prudence in incurring expenses. The Consultant agrees to timely pay for all reasonable expenses incurred during its work for of the City. Such payments shall be made as they become due and payable subject to reimbursement as provided in this Agreement.

F. No Increase in Billing Rates

The City will not increase billing rates for any matter which is in progress without the written approval of the City Attorney in an amended Rate Schedule.

G. Indemnity

The Consultant shall indemnify and hold the City harmless from any claims, liability, damages, suits, causes of action, and judgments arising out of or caused by the negligence, gross negligence, malpractice, or willful misconduct of the Consultant in the rendering of consulting/expert witness services.

H. Insurance

The Consultant shall carry professional liability insurance with minimum limits of five hundred thousand ($500,000) per occurrence and shall not permit such insurance to be canceled or lapse during this engagement. The Consultant shall provide an insurance certificate or other proof of insurance to the Managing Attorney with the return of the signed Engagement Letter.

I. Work Products

It is agreed that all files, reports, exhibits, pleadings, data compilations, memoranda, and other work product produced under this Agreement, collectively, the "Documents," are the property of the City of Austin. Upon termination, the Consultant may retain a copy of the Documents, but the Consultant shall deliver the original Documents to the City Attorney on request, at no expense to the City.

III. BILLING REQUIREMENTS

A. Billing Requirements

1. The negotiated hourly rates on the attached Rate Schedule include all overhead and internal charges associated with your Consultant's practice. The City will not separately pay for overhead or Consultant costs associated with services of secretaries, word processors, librarians, investigators, or other support staff.
2. The City will not pay for time spent preparing, discussing, or correcting a billing statement.
3. A copy of all invoices, bills, and receipts for expenses shall be attached to the monthly bill.
4. Expenses over and above the limits set forth herein shall be borne solely by the Consultant and shall not be reimbursed under this Agreement.

B. Billing Statement Requirements

All billing statements must contain the following information:

1. Itemized bills must be submitted on Consultant letterhead on a monthly basis.
2. Itemized bills must include a remittance page.
3. IRS taxpayer identification number of the Consultant.
4. The company's name and address which must exactly match the name and address on the Vendor Connection system.
5. Style of case or description of the matter.
6. Dates of service and a detailed description of service. Vague descriptions, such as "review," "update," and "research" without more specifics are not acceptable.
7. Name, classification, and billing rate for the person doing the task, and specific time for service to a tenth of an hour.
8. Detailed listing of all expenses with supporting documentation for all third party and travel expenses.

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Sales and Use Tax. The Consultant's invoices to the City must not contain these taxes.

*** Please note that billing statements are subject to release under the Public Information Act.**

C. Expenses

The City **will not** pay for the following expenses:

1. General operating expenses other than long-distance phone bills, postage, and copying (not to exceed 10 cents per page).
2. Unnecessary use of express mail, facsimile transmissions, or couriers.

3. Any computerized legal research over $200.00 without prior Managing Attorney approval.

D. Travel

The City **will not** pay:

1. For air travel expenses in excess of standard coach or economy fares. We ask that you advantage of special fares or discounts whenever possible, and check with the Managing Attorney for information on City vendor discounts.
2. For lodging and meals that exceed the per diem rates established by the U. S. General Services Administration.
3. For alcoholic beverages.
4. For charges from in room hotel "honor" bars.

The City **will pay** for automobile mileage, at a rate not to exceed the amount permitted as a Consultant expense under the Internal Revenue Code.

IV. DUTIES OF CITY

A. Payment Terms

1. The City shall pay the Consultant on the basis of monthly invoices submitted by the Consultant and approved by the City Attorney or designee.
2. The City shall make payments to the Consultant within 30 days of receipt of an invoice, if it meets contract and billing requirements.

B. Disputed Payments

1. If the City disputes any item in an invoice the Consultant submits for any reason, the Managing Attorney shall advise the Consultant of the issue and will pay only the undisputed portion of the invoice. The City will not pay for time spent discussing or correcting an invoice.
2. If the dispute is later resolved in the Consultant's favor, the City will pay the disputed amount.

C. Written Amendment

This Agreement may be amended only by a written document signed by the City Attorney.

V. GENERAL PROVISIONS

A. Compliance with Laws

This Agreement and all disputes concerning this Agreement shall be governed by the laws of the State of Texas. Venue of any civil action between the parties regarding this Agreement shall lie exclusively in Travis County, Texas. All obligations of the parties shall be deemed performable in Travis County, Texas.

B. Right to Audit

The City has the right to inspect and audit all books, records, and documents of the Consultant pertaining to this engagement at any reasonable time, to the extent necessary to verify the accuracy of any statement, charge, or computation.

C. Audit Expenses

If the Consultant is asked to provide information to the City, including, but not limited to City auditors (either City employees or professionals hired by the City to audit the City's records) or the City finance department, the Consultant shall provide such information at no additional cost to the City.

D. Entireties

This Agreement, together with the engagement letter, shall constitute the entire Agreement and understanding of the parties concerning this engagement. There shall be no amendment or modification to this Agreement, except in writing signed by all parties.

E. Severability

If any provision of this Agreement is declared invalid, illegal, or unenforceable by a court or an agency of competent jurisdiction, such declaration shall not affect the remainder of this Agreement and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

VI. TERMINATION

Termination of Agreement

The City may terminate this Agreement with or without cause at any time. Upon receipt of a written request by the City, the Consultant shall immediately discontinue work under the Agreement and transmit all files or written materials to the City. Thereafter, only those consulting/expert witness services necessary to transfer files to the City may be performed.