



WEST DES MOINES WATER WORK BOARD OF TRUSTEES MEETING COMMUNICATION

ITEM:**DATE:** October 16, 2017

6. Recommendations from Staff
 - b. Resolution – Adopting Resolution and Entering a Professional Service Agreement between the City of West Des Moines, West Des Moines Water Works and KJW Diversified Services, Inc.

FINANCIAL IMPACT:

Water Works will be responsible for one-third of the contract price, with a fixed 12-month cost of \$27,999.92.

SUMMARY:

Approval of the Professional Service Agreement allows the West Des Moines Water Works to join with the City of West Des Moines to receive security assessments of our facilities and safety training (specifically Active Shooter Response) for our personnel. Given that our water system facilities are a high value target and our staff interacts with the public every day, these assessments and trainings are vital to ensuring the safety of employees and our continued ability to produce and deliver safe, reliable potable water. The trainings and physical assessment of the buildings will be performed over a 12-month time period. At the completion of the physical assessment, KJW will develop a five-year security improvement implementation plan and propose a budget to remedy deficiencies in safety and security aspects of our facilities.

BACKGROUND:

Recent nationwide acts and threats of violence have resulted in the need for increased employee safety training and protection of vital community assets like water treatment and distribution facilities. This evening, at respective Council and Board meetings, the City of West Des Moines and West Des Moines Water Works are both considering a joint contract with a local security training consultant, KJW Diversified Services, Inc (KJW). KJW was founded by former Des Moines Police Department Captain, Kelly Willis. Mr. Willis will be joined by Charles Hull, United States Secret Service, Department of Homeland Security Special Agent, to perform physical security assessments of our water treatment plant and critical facilities along with hands-on response training to provide tools to keep employees alive and safe in the event of an active shooter situation.

**A RESOLUTION TO ENTER A PROFESSIONAL SERVICE AGREEMENT BETWEEN
THE CITY OF WEST DES MOINES, BOARD OF TRUSTEES OF THE WEST DES
MOINES WATER WORKS AND KJW DIVERSIFIED SERVICES INC**

WHEREAS, management of the West Des Moines Water Works is vested in the Board of Trustees, and

WHEREAS, the West Des Moines Water Works has a responsibility to their customers and employees to maintain a safe and secure water supply and work environment, and

WHEREAS, the critical nature of water supply infrastructure and employees responsible for the operation, maintenance and day-to-day functioning of the utility require a specialized and thorough Facility and Employee Security Plan (FESP), and

WHEREAS, the City of West Des Moines recognizes the need for enhanced security and training for City staff and facilities, and

WHEREAS, the West Des Moines Water Works and City of West Des Moines believe that entering a joint security consulting contract with KJW Diversified Services will result in a consistent, complete and cost effective facility assessment and safety training.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES
OF THE WEST DES MOINES WATER WORKS, AS FOLLOWS:**

That the General Manager is authorized to execute a joint contract on behalf of the Water Works Board of Trustees between the Water Works, City of West Des Moines and KJW Diversified Services, Inc. for security assessments of Water Works facilities and safety training of employees.

PASSED AND APPROVED this 16th day of October, 2017

BOARD OF TRUSTEES, WEST DES MOINES WATER WORKS

Karen Novak Swalwell
Chair

Attest:

Diana Wilson
Secretary

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF WEST DES MOINES, WEST DES MOINES
WATERWORKS AND KJW DIVERSIFIED SERVICES, INC.**

This Agreement is made and entered into this _____ day of _____, 20__, by and between the **City of West Des Moines, Iowa**, a municipal corporation (hereinafter "City"), **West Des Moines Water Works**, (hereinafter "WDMWW"), and **KJW Diversified Services Inc.**, with its principal office at 4953 Oak Hill Drive, West Des Moines IA 50265 (hereinafter "Consultant"), as follows:

1. CONSULTANT SHALL PERFORM THE FOLLOWING WORK, PERSONAL SERVICES, AND/OR FURNISH THE NECESSARY EQUIPMENT, ADDITIONAL TRAINING STAFF, SUPPLIES, OR MATERIALS TO THE CITY OF WEST DES MOINES IN CONNECTION WITH THE WEST DES MOINES/WEST DES MOINES WATERWORKS FACILITIES AND EMPLOYEE SECURITY PLAN:

SCOPE OF SERVICES

Consultant shall provide products and/or services as detailed in the attached "Exhibit 1", identified as the "Scope of Services" and within such additional Exhibits as may be mutually agreed between the parties.

SCHEDULE

The schedule of the work to be performed shall conform to the schedule set forth in the attached "Exhibit 1", and within such additional Exhibits as may be mutually agreed between the parties.

COMPENSATION

The compensation for the work to be performed shall conform to the compensation set forth in the attached "Exhibit 1", and within such additional Exhibits as may be mutually agreed between the parties.

In consideration of said payments, Consultant agrees to perform all services, work, and/or provide all training staff, materials, supplies, and equipment, and to carry out the provisions of the Agreement in a professional manner and to the satisfaction of the City and WDMWW. If the performance of this Agreement involves the services of others or the furnishing of equipment, supplies, or materials, Consultant agrees to pay for the same in full and at the time of payment by the City and WDMWW, and to certify in writing to the City and WDMWW that said payments have been so made.

2. **INSURANCE.** Consultant understands and agrees that Consultant shall have no right of coverage under any and all existing or future City or WDMWW comprehensive, self, or personal injury policies. Consultant shall provide insurance coverage for and on behalf of Consultant that will sufficiently protect Consultant, WDMWW and the City, including their respective officials, employees, agents, contractors, or assigns, in connection with this Agreement
3. **TERM OF CONTRACT.** Unless earlier terminated under this Agreement, or otherwise mutually agreed by the parties, the term of this Agreement shall commence upon execution by the parties and shall be completed on or before the ____ day of _____, 20__.
4. **NOTICE.** Any notice to the parties required under this Agreement shall be in writing, delivered to the person designated below, by United States mail or in hand delivery, at the indicated address unless otherwise designated in writing.

FOR THE CITY:

Name: City of West Des Moines
Attn: Ryan T. Jacobson

FOR THE CONSULTANT:

Name: KJW Diversified Services Inc.
Attn: Kelly J. Willis

City Clerk
Address: 4200 Mills Civic Pkwy, Suite 2B
City, State: West Des Moines, IA 50265-0320

Address: 4953 Oak Hill Drive
City, State: West Des Moines, IA 50265

FOR WDMWW:

Name: West Des Moines Water Works
Attn: Diana Wilson
Director
Address: 4200 Mills Civic Pkwy, 1D
City, State: West Des Moines, IA 50265-0320

5. GENERAL COMPLIANCE. In the conduct of the services/work or the supplies, equipment, or materials contemplated hereunder, Consultant shall comply with applicable federal, state, and local law, rules, and regulations, technical standards, or specifications issued by the City and WDMWW. Consultant must qualify for and obtain any required licenses prior to commencement of work.
6. STANDARD OF CARE. Services provided by Consultant under this Agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.
7. INDEPENDENT CONSULTANT. Consultant understands and agrees that Consultant and Consultant's employees, agents, servants, or other personnel are not City or WDMWW employees. Consultant shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits, or any other form of compensation or benefit to Consultant or any of Consultant's employees, agents, servants, or other personnel performing the services or work or supplying equipment or materials specified herein, whether it be of a direct or indirect nature. Further in that regard, it is expressly understood and agreed that for such purposes neither Consultant nor Consultant's employees, agents, servants, or other personnel shall be entitled to any City or WDMWW payroll, insurance, unemployment, worker's compensation, retirement, or any other benefits whatsoever.
8. NON-DISCRIMINATION. Consultant will not discriminate against any employees or applicants for employment on the basis of age, color, creed, disability, gender identity, national origin, race, religion, sex, sexual orientation, or veteran status and will include a similar non-discrimination provision in all agreements associated with this professional services agreement.
10. HOLD HARMLESS AND INDEMNIFICATION. Consultant agrees to indemnify and hold harmless the City and WDMWW, their officers, agents, and employees from any and all claims, demands, causes of action, liability, loss, damage, or injury, both to person and property, arising out of, related to, or connected to services/work performed under this Agreement, a breach of this Agreement, or any omission or negligence arising out of performance or non-performance of this Agreement. This indemnification applies to and includes, but is not limited to, the payment of all penalties, fines, judgments, awards, decrees, attorney fees, expert witness fees, investigation fees, settlements, related costs or expenses, interest and any reimbursements incurred by or assessed to the City or WDMWW, their officials, employees, agents, contractors and assigns, related to or connected with the services/work performed under this Agreement.
11. ASSIGNMENT. Consultant shall not assign or otherwise transfer this Agreement or any rights or obligations therein without first receiving prior written consent of the City and WDMWW.
12. AUTHORIZED AMENDMENTS TO AGREEMENT.
 - A. All Parties agree and acknowledge as a part of this Agreement, that no amendments to this Agreement, or other form or order or directive, may be issued by the City or WDMWW which requires additional compensable work to be performed, which work causes the aggregate amount payable under the Agreement to exceed the amount appropriated for this Agreement as listed above, unless the Consultant

has been given a written assurance by the City and WDMWW that lawful appropriations to cover the costs of the additional work have been made.

- B. The Parties further agree and acknowledge as a part of this Agreement that no Agreement amendments, or other form or order or directive which requires additional compensable work to be performed under this Agreement, shall be issued by the City or WDMWW unless funds are available to pay such additional costs, and Consultant shall not be entitled to any additional compensation for any additional compensable work performed under this Agreement, and expressly waives any rights to additional compensation, whether by law or equity, unless prior to commencing the additional work, Consultant was given a written amendment describing the additional compensable work to be performed, and setting forth the amount of compensation to be paid, which amendment was signed by the authorized City and WDMWW representative. It is the Consultant's sole responsibility to know, determine, and ascertain the authority of the City and WDMWW representative signing any amendment to this Agreement.
13. **CONTRACT INTERPRETATION.** No amendment or modification of this Agreement shall be valid unless expressed in writing and executed by the parties hereto in the same manner as the execution of the contract. The laws of the State of Iowa shall govern this Agreement. This is a completely integrated agreement and contains the entire agreement of the parties, and any prior written or oral agreements which are different from the norms, conditions, and provisions of the Agreement shall be of no effect and shall not be binding upon either party. All parties agree that any judicial action under the terms of this Agreement shall be exclusively in the District Court for Polk County, Iowa.
14. **SUSPENSION AND TERMINATION OF AGREEMENT.**
- A. The City and WDMWW independently reserve the right to suspend this Agreement at any time. Such suspension takes effect when the City or WDMWW give written notice to Consultant and shall be effective as of the date established in the suspension notice. Payment for Consultant's services shall be made by the suspending party for services performed to the date established in the suspension notice.
 - B. Upon ten (10) days written notice to Consultant, the City and WDMWW may independently terminate the Agreement at any time, with or without cause. In such case, Consultant shall have no claims against the City or WDMWW except for the value of the work performed up to the date the Agreement is terminated.
 - C. This Agreement may also be terminated at any time with or without cause by the mutual agreement of the parties. In such case, Consultant shall have no claims against the City or WDMWW except for the value of the work performed up to the date the Agreement is terminated.
15. **TAXES.** Consultant shall pay all applicable taxes required to be paid for the services/work covered by this Agreement. The City is a municipal corporation and, therefore, not subject to state and local tax, use tax, or federal excise taxes.
16. **SEVERABILITY.** If any portion of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Agreement shall continue in full force and effect.
17. **MISCELLANEOUS HEADINGS.** Titles to articles, paragraphs, and subparagraphs are for information purposes only and shall not be considered a substantive part of this Agreement.
18. **FURTHER ASSURANCES.** Each party hereby agrees to execute and deliver such additional instruments and documents and to take all such other action as the other party may reasonably request from time to time in order to effect the provisions and purposes of this Agreement.
19. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall constitute an original, no other counterpart needing to be produced, and all of which when taken together shall constitute the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers or agents on the day and year first above written.

KJW DIVERSIFIED SERVICES

By: _____
Name _____
Title _____

WITNESS:

By: _____
Name _____
Title _____

CITY OF WEST DES MOINES

By: _____
Name _____
Title _____

ATTEST:

By: _____
Name: _____
Title: _____

WEST DES MOINES WATER WORKS

By: _____
Name _____
Title _____

ATTEST:

By: _____
Name _____
Title _____

Exhibit 1

SCOPE OF SERVICES

This Scope of Services is made pursuant to a Professional Services Agreement ("Agreement") between the City of West Des Moines, West Des Moines Water Works and KJW Diversified Services, Inc. This Scope of Services incorporates all terms and provisions of the Agreement.

Start Date -- Consultant is to begin providing the consulting services: *(choose only one)*

- ☒ immediately after this Scope of Services is signed by both parties
☐ on the following date: _____
☐ other (such as occurrence of an event): _____

This Scope of Services will: *(choose only one)*

- ☒ have an Initial Term of 12 months
☐ have an Initial Term ending on the following date: _____
☐ terminate on completion of all tasks and final acceptance or non-acceptance of all Deliverables described in this Scope of Services

Consulting services will be performed at: *(indicate ALL that apply)*

- ☒ Clients' premises in West Des Moines
☐ Client's premises in _____
☐ Consultant's premises in Des Moines _____
☐ Other locations to be determined by client

Check here if Client will pay travel, meal, lodging, communications, photocopies and other reasonable expenses. Only as pre-approved by Client.

☒ Check here if Consultant is to provide progress reports every month.

If this Statement of Work is connected with a specific Client project, state name of project: City of West Des Moines and West Des Moines Water Works Facility and Employee Security Plan (FESP)

Project Coordinators:

Each Party designates one of its employees to serve as the other party's primary point of contact for new or unresolved questions/issues relating to this Scope of Services. Either party may change its designated project coordinator, but shall promptly inform the other party of the change.

Clients designates: City of West Des Moines - Tom Hadden; West Des Moines Water Works - Diana Wilson
Consultant designates: Kelly Willis

Brief overview of the engagement:

Consultant will train and implement the Active Shooter Response (ASR) training program for all full and part time City of West Des Moines and West Des Moines Water Works employees. ASR training will include "hands on" training and the tools to keep employees alive and safe in the event of an active shooter situation until First Responders arrive on the scene.

A facility assessment will be completed on all 12 of the City's employee-occupied municipal buildings and the Water Works Plant. Training will be provided to over 500 City employees plus an additional 35 Water Works employees.

Schedule, Tasks and Deliverables:

1. Consultant will provide building assessments for twelve City of West Des Moines employee-occupied buildings and the Water Works Plant. Each building is expected to take an average of 45 days to assess, except the Water Works Plant is expected to take longer. Consultant will work on the assessments on Monday, Wednesday and Friday of each week until all assessments are completed.
2. Consultant will prepare a training outline and training materials, which shall be presented to the Security Committee, City of West Des Moines, Fire and Police Departments and the City Manager for approval prior to Consultant training City of West Des Moines and West Des Moines Water Works employees.
3. Consultant will provide all City of West Des Moines and West Des Moines Water Works employees a basic two hour training, including on-site departmental training.
4. Consultant will provide advanced training, consistent with and in addition to the two hour basic training, to all interested City of West Des Moines and West Des Moines Water Works employees.
5. Consultant will begin training employees as soon as practicable. Consultant will provide training on Tuesdays and Thursdays of each week. Consultant will provide two classes on each day, training up to 20 people per class. Training will continue each week until all qualified employees have been trained.
6. Consultant will provide a Five-Year Hardware Implementation Plan.

Fees:

Fees for this Statement of Work will be: *(choose only one)*

☒ fixed price only (see further information below)

☐ time-and-materials only (see further information below)

☐ combination fixed price and time-and-materials (see further information below about each category)

Fixed price information:

Total fixed price for this Scope of Services:

\$2,333.33 per month (total of \$27,999.96 for the full term of the contract) - shall be paid by West Des Moines Water Works

\$4,666.67 per month (total of \$56,000.04 for the full term of the contract) - shall be paid by the City of West Des Moines

The City of West Des Moines and West Des Moines Water Works shall only be responsible for their respective portion of the contract fee. In no instance shall either the City of West Des Moines or the West Des Moines Water Works become responsible for the other's obligations or liabilities under this Agreement.

Consultant to invoice Clients as follows:

Consultant shall individually invoice the City of West Des Moines and West Des Moines Water Works on a monthly basis.

Each party represents that the individual signing on its behalf has read this Scope of Services, understands it, and has full authority to bind such party.

CITY

City of West Des Moines
4200 Mills Civic Parkway
West Des Moines, IA 50265
Phone: 515-222-3610

CONSULTANT

Kelly Willis
4953 Oak Hill Drive
West Des Moines, Iowa 50265
Phone: (515) 971-6505

By: _____
(Print Name)

(Signature)

Its: _____
(Title)

(Date)

By: _____
(Print Name)

(Signature)

Its _____
(Title)

(Date)

WDMWW

West Des Moines Water Works
4200 Mills Civic Parkway
West Des Moines, IA 50265
Phone: 515-222-3460

By: _____
(Print Name)

(Signature)

Its: _____
(Title)

(Date)