

Introduced by: City Manager Nathan Mai-Lombardo

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH NAVIGATE BUILDING SOLUTIONS FOR FIRE STATION #2 PROJECT

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BERKELEY, MISSOURI, AS FOLLOWS:

- Section 1.** The City Manager is hereby authorized to execute a Master Services Agreement and Task Order #1 Agreement with Navigate Building Solutions for the Fire Station #2 Preconstruction and Construction Services.
- Section 2.** The agreement is attached and hereby incorporated herein and made a part of this ordinance, as if fully set out herein.
- Section 3.** This Ordinance shall be in full force and effect from and after its date of passage.

1st Reading this _____ day of _____ 2023
2nd Reading this _____ day of _____ 2023
3rd Reading, PASSED and APPROVED, this _____ day of _____ 2023

Babatunde Deinbo, Mayor

ATTEST:

Deanna L. Jones, City Clerk

Final Roll Call:

Approved as to Form:
Donnell Smith, City Attorney

Councilwoman Verges	Aye ___	Nay ___	Absent ___	Abstain ___
Councilwoman Williams	Aye ___	Nay ___	Absent ___	Abstain ___
Councilman Hoskins	Aye ___	Nay ___	Absent ___	Abstain ___
Councilwoman Anthony	Aye ___	Nay ___	Absent ___	Abstain ___
Councilman Hindeleh	Aye ___	Nay ___	Absent ___	Abstain ___
Councilwoman-at-Large Crawford-Graham	Aye ___	Nay ___	Absent ___	Abstain ___
Mayor Deinbo	Aye ___	Nay ___	Absent ___	Abstain ___

ON-CALL OWNER REPRESENTATIVE - MASTER SERVICES AGREEMENT

DATE: November 7, 2023

OWNER:

City of Berkeley
8425 Airport Road
Berkeley, MO 63134

OWNER REPRESENTATIVE

(hereinafter NAVIGATE):

NAVIGATE Building Solutions, LLC
8419 Manchester Rd
Brentwood, MO 63144

The Interlocal Purchasing Systems (TIPS): NAVIGATE Vendor #8613, Contract #2301041

PROJECT(S):

As defined by Task Order – See Exhibit A

SCHEDULE:

This master agreement is in affect from November 21, 2023 through December 31, 2028.

The schedule for services shall be defined by each Task Order.

SCOPE OF OWNER REPRESENTATIVE'S SERVICES:

For each Task Order NAVIGATE shall, in general, have primary management responsibility for the Project and shall coordinate all project matters. As such, NAVIGATE shall serve as the Owner's Principal point of contact and liaison between the Architect, Engineers, Contractors and other consultants/vendors throughout each project. NAVIGATE shall advocate for the Owner's interests of quality, timely and cost-sensitive design and construction while maintaining professional relationships with contractors.

NAVIGATE shall perform those specific services as defined by Task Order which may include some or all services identified on Exhibit B – Available Services. Key services that require further delineated include:

Detailed Estimates: NAVIGATE shall have the ability to prepare detailed General Contractor grade estimates OR third-party estimate review if requested by Task Order.

Detailed Schedules and Logistics Plans: Many Owner projects may include complex renovations and/or work in active parks/facilities. As such NAVIGATE shall be prepared and have the ability to generate detailed schedules, phasing plans, site logistic plans and operational impact plans if requested by Task Order.

Contractor Oversight: Many projects may have a phased schedule or scope of work that limits the benefit of bidding the work in a single package to General Contractors (GC). As such, NAVIGATE shall have the ability to provide the required home office support and onsite coordination of multiple contractor(s) performing the Work if requested by Task Order.

OWNER'S RESPONSIBILITIES

The Owner shall identify a single representative authorized to act on the Owner's behalf with respect to the Project.

NAVIGATE is a licensed professional engineering firm, but will not be performing professional engineering services for the Owner. As such, Owner shall retain all professional design consultants, legal support and construction contractors required for the project(s). In the role of Owner Representative,

NAVIGATE does not assume any responsibility for design errors/omissions, preliminary project estimates or work performed by the design professionals, legal support and/or contractors contracted by the Owner.

The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

The Owner shall furnish all legal, insurance and accounting services, including auditing services that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

When NAVIGATE is requested to perform services during the construction phase, any construction contracts issued by the Owner (after the date of the Task Order authorizing such services) for the project identified in the Task Order shall include: 1) an indemnity provision in favor of and protecting the Owner and NAVIGATE; 2) a provision requiring that the Owner and NAVIGATE be named as additional insured on the general liability, auto liability, pollution liability and excess liability insurance policies carried by the Contractors.

NAVIGATE makes no representations, warranties or promises of any kind with regard to whether or not the Project is eligible for receipt of incentives, grants, reimbursements or any other kind of monetary relief or assistance from any federal, state, local or other governmental agency. Navigate shall be paid for its services regardless of whether the Owner receives any such assistance from governmental agencies.

CLAIMS AND DISPUTES

NAVIGATE shall indemnify, defend and hold harmless the Owner, together with its elected officials, employees, agents, architects and engineers, and authorized representatives, from and against any and all losses, suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, reasonable attorney fees, costs and expenses of whatsoever kind or nature whether arising before or after completion of the work and in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, by reason of any action, omission, fault or negligence whether active or passive of NAVIGATE, or of anyone acting under its direction or control or on its behalf in connection with or incidents to the performance of the Contract. NAVIGATE's indemnity and hold harmless obligations shall apply to the fullest extent permitted by law.

NAVIGATE and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.

The Owner and NAVIGATE shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in county where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. If the parties do not resolve a dispute through mediation, they shall litigate the dispute unless otherwise mutually agreed.

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither party's individual employees, principals, officers, directors or members shall be subject to personal liability or damages arising out of or connect in any way to the Projects, Task Orders or to this Agreement.

Notwithstanding any other provision of this Agreement, Owner agrees that, to the fullest extent permitted by law, NAVIGATE's total liability to the Owner for any and all injuries, claims, losses, expenses, damages, or claims expenses of any kind arising from any services provided by or through NAVIGATE under this Agreement, shall not exceed the amount of NAVIGATE's fee earned under this Agreement. This limitation of liability shall apply to all phases of NAVIGATE services performed in connection with the Project(s) / Task Orders(s), whether subsequent to or prior to the execution of this Agreement.

INSURANCE

NAVIGATE must provide a Certificate of Insurance and Endorsement satisfactory to the Owner and naming the Owner as additional insured. This certificate shall remain in force for the length of the contract and extensions.

A. Commercial General Liability

1. General Aggregate \$3,000,000
2. Product, Completed Operations Aggregate \$3,000,000
3. Personal and Advertising Injury \$1,000,000
4. Each Occurrence \$1,000,000
5. Excess or Umbrella Liability \$3,000,000
6. Fire Legal Liability Damage \$100,000
7. Medical Expenses \$100,000

B. Automobile Liability

1. Combined Single Limit \$3,000,000

C. Excess Liability

1. Each Occurrence \$3,000,000
2. Aggregate \$3,000,000
3. Disease, Policy Limit \$500,000
4. Disease, Each Employee \$100,000

D. Professional Liability \$3,000,000.00

E. Workers Compensation and Employers Liability (\$1,000,000 Each Accident)

TERMINATION OR SUSPENSION

If the Owner fails to make payments to NAVIGATE in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at NAVIGATE's option, cause for suspension of performance of services under this Agreement. If NAVIGATE elects to suspend services, NAVIGATE shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, NAVIGATE shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, NAVIGATE shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of NAVIGATE's services. NAVIGATE's fees for the remaining services and the time schedules shall be equitably adjusted.

If the Owner suspends the Project, NAVIGATE shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, NAVIGATE shall be compensated for expenses incurred in the interruption and resumption of NAVIGATE's services. NAVIGATE's fees for the remaining services and the time schedules shall be equitably adjusted.

The Owner may terminate this Agreement upon not less than 30 days' written notice to NAVIGATE.

In the event of termination, NAVIGATE shall be compensated for services performed prior to termination plus termination expenses.

MISCELLANEOUS PROVISIONS

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or NAVIGATE.

Unless otherwise required in this Agreement, NAVIGATE shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

NAVIGATE shall from time to time provide estimates of the project costs. Any such estimate shall be viewed as a projected cost and not a guaranteed cost.

NAVIGATE shall have the right to include photographic or artistic representations of the design of the Project among NAVIGATE's promotional and professional materials.

Any disputes between parties shall be governed by Missouri Law.

COMPENSATION

NAVIGATE shall be compensated for the lump sum amount as defined by Task Order.

Payments to NAVIGATE

Payments for services shall be made monthly in accordance with the percentage of work completed for each Phase and/or for time incurred. Payments are due and payable upon presentation of NAVIGATE's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the legal rate prevailing from time to time in the State of Missouri.

The Owner shall not withhold amounts from NAVIGATE's compensation to impose a penalty or liquidated damages on NAVIGATE.

SCOPE OF THE AGREEMENT

This Agreement represents the entire and integrated agreement between the Owner and NAVIGATE and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and NAVIGATE.

This Agreement is comprised of the following documents listed below:

1. Exhibit A – Task Order Template
2. Exhibit B – Available Services



Craig Schluter
Member
NAVIGATE Building Solutions, LLC.

11/7/2023

Date

Nathan Mai-Lombardo
City Manager
City of Berkeley, MO

Date



EXHIBIT A – Task Order Template

OWNER REPRESENTATIVE, ON-CALL MASTER SERVICES AGREEMENT

DATE: October 11, 2023

MASTER AGREEMENT: Owner Representative, On-Call Master Services Agreement made between City of Berkeley and Navigate Building Solutions dated October 11, 2023.

PROJECT:

TASK / SCHEDULE / COMPENSATION

TEMPLATE

Craig Schluter
Member
NAVIGATE Building Solutions, LLC.

Nathan Mai-Lombardo
City Manager
City of Berkeley, MO

Exhibit B

Scope of Services

Owner Representation / Construction Management / Project Management

PRE DESIGN SERVICES

Project Program, Feasibility, Need Assessment Review
Control Budget / Schedule Development
Site Evaluation / Selection / Acquisition Support
Consultant Procurement (RFQ, RFP, Contract Development)
Community Engagement - Supporting Role
Alternative Approach Consultation
 Design Build
 [CM@Risk](#)
 Performance Contracting

DESIGN PHASE SERVICES

Coordinate All Project Matters
Provide and Maintain Organized Filing System
Schedule, Attend, Record Project Meetings
Prepare and Monitor Comprehensive Master Schedule
Prepare General Contractor Grade Detailed Estimates
Prepare and Monitor Total Program Budget
Coordinate with Governmental Agencies and Utilities
Assist in Obtaining Building Permits and Special Permits
Provide Constructability Input to Design
Provide VE Opportunities to Design
Review Consultant and Contractor VE Opportunities to Design
Coordinate the Contracting of any Required Owner Direct Vendors
Provide Input Regarding Material/Vendor Availability
Coordinate Furniture Design/Procurement
Coordinate Audio Visual and Security Design/Procurement
Coordinate IT and Phone Design/Procurement
Provide preliminary Site Logistic Plans
Review/Approve AE & CM Pay Requests
Assist with the development Division 1 Documents
Prepare Cash Flow Projections for Financing
Prepare Strategy for Unit and Alt. Upgrades
Prepare Contingency Strategies for Risk Management
Establish Construction Phase Communication Protocol
 Submittal Reviews
 Testing & Inspections
 Change Management
 Quality Assurance & Safety
 Document Control
Review and Assist with Labor Strategies
Review and Assist with Inclusion (MBE) Strategies
Review and Assist with LEED Certification Process
Review and Assist with Project Advertisement's for Bid
Conduct Bidder Marketing and Project Awareness Initiatives
Facilitate Pre Bid Meetings
Coordinate Bidder Requests for Information
Facilitate Bid Receipt and Documentation
Analyze Bid Results and Second Tier Contracts
Analyze Bonding Strategies Flush Out Hidden Owner Cost/Risks
Analyze Insurance Strategies and Flush Out Hidden Owner Costs/Risks
Analyze/Negotiate Final Contract Values, Inclusions and Exclusions
Coordinate Permit Receipt and Contractor Mobilization

CONSTRUCTION PHASE SERVICES

Maintain Owner's Project Files
Provide Site Observation and Prepare Site Observation Reports
Have the Ability to Directly Manage Contractors in Lieu of a GC
Receive and Process RFI's
Assist with the development of Solutions for RFI's
Coordinate Document Interpretation
Coordinate Technical Design Problems/Omissions
Coordinate Shop Drawing Review & Approval
Issue Design Change Directives
Administer Change Request Program
Analyze CO Scope/Price from Contractor
Monitor Contractor's QA/QC Program
Monitor Contractor's Schedule Submittals
Review Regulatory Compliance (Building Permit Issues)
Monitor Contractor's Labor Relations Program
Review/Approve Contactor's Payment Applications:
 Review Progress Update
 Review Direct payments
 Review Certified Payrolls/Lien Waivers
 Review Submittal Logs
Prepare Monthly Report
Document Field Activities via Progress Photos
Manage Regular Budget Updates
Manage Regular Schedule Updates
Issue Notice of Non-Conformance
Coordinate and Administer Weekly Project Meetings
Monitor Testing & Inspection Activities
Coordinate & Administer CM/A-E/ Owner Meeting
Monitor Utility Tie-Ins and Relocations
Review Contractor Daily Reports
Coordinate Technical Submittal Process
Prepare Substantial Completion Punch Lists
Prepare Walk-Through and Final Punch Lists
Monitor Final Punch List work
Review Final Completion Submittals:
 Record Drawings from the Field
 Reproducible of Record Drawings
 Equipment Data & Maintenance Manuals
 Consent of Surety
 Final Lien Waivers and Releases
 Guarantees, Warranties and Affidavits

MOVE-IN / START-UP PHASE SERVICES

Coordinate Furniture, Fixture & Equipment Items (FF&E)
Schedule FF&E Deliveries & Coordinate Installation
Prepare Move-In Schedule & Coordinate Activities
Coordinate Testing & Systems Startup
Manage Master Key System
Coordinate Contract Close-Out w/ Contractor
Coordinate Contract Close-Out with Design Professionals
Coordinate Building Operator Training

TASK ORDER #1

ON-CALL OWNER REPRESENTATIVE MASTER SERVICES AGREEMENT

TASK ORDER NUMBER 01

DATE: November 7, 2023

MASTER AGREEMENT: Owner Representative, On-Call Professional Services Agreement made between City of Berkeley and NAVIGATE Building Solutions dated November 7, 2023.

The Interlocal Purchasing Systems (TIPS): NAVIGATE Vendor #8613, Contract #2301041

PROJECT(S):

Fire Station – Preconstruction and Construction Services

SCOPE OF WORK

1. Pre-Construction Services:
 2. Design Phase Project Management: Attend, coordinate and produce meeting minutes for the Project Coordination Meetings. Distribute follow-up documentation and action items to attendees from each of these meetings. Coordinate and oversee follow up activities.
 3. Pre-Construction Schedule Management: Develop a Pre-Construction Schedule of activities and oversee Design Team, Owner and third-party deliverables.
 4. Budget Management and Bidding Process: NAVIGATE will perform the following budget management services.
 - 4.1 Construction Schedule and Project Phasing Plans: Generate a preliminary construction schedule and project phasing plans. Assist with identifying long lead items that will impact the schedule and incorporate these items into the master schedule. Ensure schedule and phasing considerations are included in the project budget and the bidding documents.
 - 4.2 Site Logistics Planning: Generate site logistic plans. Incorporate site boundaries, pedestrian and vehicular traffic ways, Owner daily operational impacts, contractor preliminary laydown and staging areas into these plans. Ensure site logistic considerations are included in the project budget and bidding documents.
 - 4.3 Total Program Budgeting: Generate a Total Program Budget in collaboration with Owner Staff. Continuously update the Total Program Budget throughout the design process and submit updates to staff.
 - 4.4 Inflation and Supply Chain Analysis: Track current market inflation and supply chain risks. Make recommendations during design to help mitigate cost and schedule impacts.
 - 4.5 Contractor Contract: Assist the Owner's Legal Counsel with the development of a standard contractor contract for inclusion in the bid documents. Provide NAVIGATE contract recommendations to assist with enforcing contractor terms during construction. Such recommendations will include but not limited to schedule, budget, and quality considerations. If required, NAVIGATE will generate bid packages that align with the project bid strategy.
 - 4.6 Bid Marketing: Reach out to local contractors and vendors to increase bidder interest. Generate a call/contract list to update bidders through the bidding process. Coordinate and run a pre bid meeting. Follow up with potential bidders after the bid meeting to ensure proper bid coverage.

5. Post Bid Evaluation and Contract Development Support: Review project documents and bid submissions. Generate a report to the Owner staff and Council on findings from post bid evaluations. Assist with contract negotiations and approval.
6. Meetings: Attend all meetings virtually or in person as required.

A. Construction Services:

1. Review contractor staging and parking areas, security measures and procedures for project completion.
2. Provide administrative, management and related services to coordinate the completion of work.
3. Provide job coordination as required.
4. Ensure the Contractor's maintenance of current job site construction documents.
5. Conduct progress meetings with the Contractor for project document compliance.
6. Coordinate meetings as necessary with the Architect/Engineer.
7. Conduct pre-installation meetings with Contractor for critical scopes of work.
8. Review requests for information submitted from contractor. Coordinate RFI solutions with design consultants and Owner.
9. Coordinate and file project submittals.
10. Review progress schedules with site progress to maintain the overall project schedule.
11. Monitor Contractor's process of inspection and testing procedures required as per the construction documents.
12. Provide cost control measures including cash flow reports and forecasting.
13. Review pay requests for accuracy before they are processed by the Owner.
14. Collect, review and file certified payroll.
15. Assist the Owner in the disbursement of payments to the Architect, Contractors and/or material suppliers.
16. Aid the Owner in the review and approval/rejection of requests for extra work.
17. Submit recommendations for approval of extra work and upon the Owner's approval obtain the necessary change order documentation for the Owner's authorization.
18. Generate periodic field reports documenting current project progress/status.
19. Generate monthly project dashboards for internal school staff updates.
20. Maintain Total Program Budget and update monthly with current activities.
21. Assist with Owner move and user interface coordination.
22. Coordinate Owner direct procurement of Furniture.

C. Post Construction Services:

1. Monitor the Contractor's Tests of mechanical and electrical equipment and systems and initial start-up procedures.
2. Monitor the Contractor's completion of punch-list items and final inspections for acceptance and approval.
3. Aid in the delivery of As-Built drawings as well as training for electrical and mechanical systems.
4. Assist in obtaining final approvals from all applicable local governing agencies having jurisdiction.
5. Obtain all the necessary documents required prior to releasing final payments.
6. Secure and convey to the Owner all required affidavits, guarantees, operational and maintenance manuals, releases, and related documents.
7. Manage the Owner's occupancy of the facility and aid in the completion of the start-up process.

D. Additional Services:

1. NAVIGATE shall request additional services required to analyze claims (including claims for extra compensation) asserted by the Contractors or the Architect and/or resolving any back charge claims that Owner may assert against any Architect or Contractors, including assistance with any legal proceedings instituted by Owner and/or any Architect or Contractor.

SCHEDULE

Pre-Construction Services are expected to go from 11/21/23 to 1/31/24.

Construction Services are expected to go from 2/1/24 – 2/1/25.

COMPENSATION

NAVIGATE shall be paid monthly \$9,500 for preconstruction and construction services.

PAYMENTS:

NAVIGATE will invoice \$9,500 on the first of every month while they are providing either preconstruction or construction services.



Craig Schluter
Member
NAVIGATE Building Solutions, LLC.

11/7/23

Nathan Mai-Lombardo
City Manager
City of Berkeley