

April 3, 2009

Mr. David Simpson, P.E.
City Engineer
City of Muskego
P.O. Box 749
Muskego, WI 53150-0749

Mr. John M. Bennett
Engineer/Director of Public Works
City of Franklin
9229 West Loomis Road
Franklin, WI 53132

Re: Professional Consultant Services for Franklin/Muskego Advanced Facilities Planning --
MMSD 2020 Facilities Plan

Dear David and Jack:

The Cities of Muskego and Franklin have been in the process of ensuring that the recommended projects within the Franklin/Muskego Advanced Facilities Plan are in the best interest of the communities.

At the most recent staff level meeting with MMSD, it was decided to reevaluate the current alternatives and to see whether a hybrid alternative would be more prudent. Additionally, acceptable design flow velocities for force mains were changed, ultimate build-out flows for the City of Franklin were decreased and force main pipe material has been changed to ductile iron.

It is our desire to continue to assist your communities with the development of a hybrid alternative, act as your representative at technical design meetings with MMSD and advise you until acceptable projects for both communities are recommended by MMSD and added to their 2020 Facilities Plan.

To accomplish these goals, we anticipate assisting your communities with the following work tasks:

1. Attend Design Discussion Meeting with MMSD (April 2009).
2. Develop and evaluate one hybrid alternative project list for recommendation to MMSD.
3. Attend staff level meeting with communities.
4. Represent communities at additional design discussion meeting with MMSD.
5. Review official MMSD response/recommendation technical memorandum.
6. Attend technical memorandum review meeting.



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Most of this work will be completed by Kevin Contardi, P.E., Senior Project Manager, while Bill Mielke and Mike Campbell will attend two of the meetings and oversee all work tasks completed. Our proposed fee for this work is \$6,950. Reimbursables, drafting, and administrative assistance are included in this fee.

Since our services are benefiting both communities, we propose to show each community all of our invoicing for this project, however, each community would be invoiced for half of our efforts.

In the event additional meetings or evaluation is required, those services would be completed as out-of-scope work tasks, which would be authorized by both communities before any out-of-scope work is completed.

The professional services described above and in the scope of services will be provided to you in accordance with the attached two page **Standard Terms & Conditions** dated December 7, 2000, which are made part of this agreement. Please have the appropriate authorized official(s) affix their signature(s) where indicated and returning two fully executed copies to our office.

I am available to address any questions you may have regarding this proposal at your convenience. We look forward to the opportunity to assist your Cities with such an important planning project.

If you have any questions or comments, please feel free to contact me at the below phone number.

Very truly yours,

RUEKERT/MIELKE


Kevin J. Contardi, P.E.
Senior Project Manager

KJC:crp

Enclosure(s)

cc: William J. Mielke, P.E., R.L.S, Ruekert/Mielke
Michael F. Campbell, P.E., Ruekert/Mielke
File



Ruekert·Mielke

engineering solutions for a working world

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CLIENT NAME:

City of Muskego

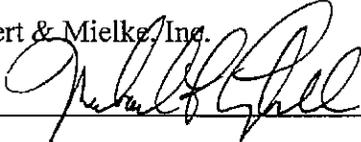
By: _____

Title: _____

Date: _____

ENGINEER:

Ruekert & Mielke, Inc.

By:  _____

Title: Senior Vice President

Date: April 3, 2009

Designated Representative:

Name: _____

Title: _____

Phone Number: _____

Facsimile Number: _____

Designated Representative:

Name: Kevin J. Contardi, P.E.

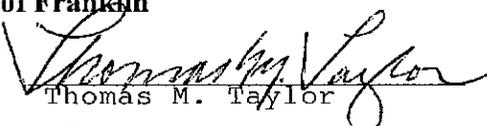
Title: Senior Project Manager

Phone Number: (262) 542-5733

Facsimile Number: (262) 542-5631

CLIENT NAME:

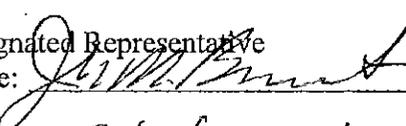
City of Franklin

By:  _____
Thomas M. Taylor

Title: Mayor

Date: 4/27/09

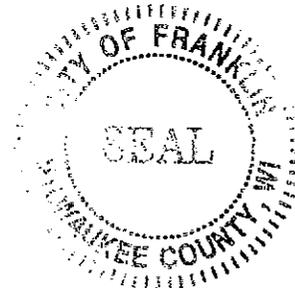
Designated Representative

Name:  _____

Title: City Engineer

Phone Number: 414-425-7510

Facsimile Number: 414-425-3106



A. Standard of Care

The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

B. Authorized Representative

Contemporaneous with the execution of this Agreement, ENGINEER and OWNER shall designate specific individuals to act as ENGINEER's and OWNER's representatives with respect to the services to be performed or furnished by ENGINEER and duties and responsibilities of OWNER under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Assignment on behalf of each respective party.

C. Payments to ENGINEER

Invoices will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER monthly, unless otherwise agreed. Invoices are due and payable within 30 days of receipt. If OWNER fails to make any payment due ENGINEER for services and expenses within 30 days after receipt of ENGINEER's invoice therefor, the amounts due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and other related charges.

D. Ownership and Reuse of Documents

All documents prepared or furnished by ENGINEER pursuant to this Agreement are instruments of service, and ENGINEER shall retain an ownership and property interest therein. Reuse of any documents pertaining to this Agreement by OWNER shall be at OWNER's sole risk; and OWNER agrees to indemnify, defend, and hold ENGINEER harmless from all claims, damages, and expenses including attorney's fees arising out of such reuse of documents by OWNER or by others acting through OWNER.

E. Opinions of Probable Construction Cost

Construction Cost is the cost to OWNER of those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include costs of services of ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER pursuant to this Agreement. Construction Cost is one of the items comprising Total Project Costs.

F. Total Project Costs

Total Project Costs are the sum of the Construction Cost, allowances for contingencies, the total costs of services of ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, OWNER's costs for legal, accounting, insurance counseling or auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to OWNER.

G. Hazardous Environmental Conditions

It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to a "Hazardous Environmental Condition," i.e. the presence at the site of asbestos, PCBs, petroleum, hazardous waste, or radioactive materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Project. In the event ENGINEER or any other party encounters a Hazardous Environmental Condition, ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Assignment affected thereby until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the site is in full compliance with applicable laws and Regulations. OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the site in connection with ENGINEER's activities under this Agreement.

H. Access

OWNER shall arrange for safe access to and make all provisions for ENGINEER and ENGINEER's consultants to enter upon public and private property as required for ENGINEER to perform services under this Agreement.

I. Limit of Liability

To the fullest extent permitted by law, the total liability, in the aggregate, of ENGINEER and ENGINEER's officers, directors, partners, employees, agents, and consultants, or any of them to OWNER and anyone claiming by, through, or under OWNER, for any and all injuries, losses, damages and expenses, whatsoever arising out of, resulting from, or in any way related to this Agreement from any cause or causes including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract or warranty, express or implied, of ENGINEER or ENGINEER's officers, directors, partners, employees, agents, and Consultants, or any of them, shall not exceed the total amount of \$2,000,000.

J. Insurance

ENGINEER will maintain insurance coverage for Workers' Compensation, General Liability, and Automobile Liability and will provide certificates of insurance to OWNER upon request.

K. Termination of Contract

Either party may at any time, upon seven days prior written notice to the other party, terminate this Agreement. Upon such termination, OWNER shall pay to ENGINEER all amounts owing to ENGINEER under this Agreement, for all work performed up to the effective date of termination.

L. Indemnification and Allocation of Risk

1. To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless OWNER, OWNER's officers, directors, partners, and employees from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of ENGINEER or ENGINEER's officers, directors, partners, employees, and consultants in the performance of ENGINEER's services under this Agreement.

2. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, ENGINEER's officers, directors, partners, employees, and consultants from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of OWNER or OWNER's officers, directors, partners, employees, and consultants with respect to this Agreement.

3. To the fullest extent permitted by law, ENGINEER's total liability to OWNER and anyone claiming by, through, or under OWNER for any injuries, losses, damages and expenses caused in part by the negligence of ENGINEER and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that ENGINEER's negligence bears to the total negligence of OWNER, ENGINEER, and all other negligent entities and individuals.

4. In addition to the indemnity provided under paragraph L.2. of this Exhibit, and to the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's officers, directors, partners, employees, and consultants from and against injuries, losses, damages and expenses (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other disputes resolution costs) caused by, arising out of, or resulting from an unexpected Hazardous Environmental Condition, provided that (i) any such injuries, losses, damages and expenses is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, and (ii) nothing in this paragraph L.4. shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual or entity's own negligence or willful misconduct.

5. The indemnification provision of paragraph L.1. is subject to and limited by the provisions agreed to by OWNER and ENGINEER in paragraph I. "Limit of Liability," of this Agreement.

M. Independent Contractor

All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either OWNER or the ENGINEER. ENGINEER's services under this Agreement are being performed solely for the OWNER's benefit, and no other entity shall have any claim against ENGINEER because of this Agreement or the performance or nonperformance of services hereunder. OWNER agrees to include a provision in all contracts with CONTRACTORS and other entities involved in this project to carry out the intent of this paragraph.

N. Force Majeure

ENGINEER shall not be liable for any loss or damage due to failure or delay in rendering any service called for under this Agreement resulting from any cause beyond ENGINEER's reasonable control.

O. Severability and Waiver of Provisions

Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

P. Dispute Resolution

1. OWNER and ENGINEER agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in questions between them arising out of relating to this Agreement or the breach thereof ("disputes") to mediation.

Q. Construction Review

1. ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

END OF DOCUMENT