

Request for Proposals
for
Quarry Monitoring Services
for the
City of Franklin, WI

PLEASE NOTE:
Two pages were added to the end of this draft document that list the changes that incorporated herein as compared to the draft version that was presented to the Common Council at the Committee of the Whole meeting on April 2, 2012.

Issued: _____

RFP Responses Due: 11:00 a.m. CST

at the
Office of the City Clerk
City of Franklin
9229 West Loomis Road
Franklin, WI 53132

Please be advised:

This project does not constitute a Public Works project as defined by Wisconsin Statutes; therefore, the City is under no obligation to engage in a sealed bid process or to select the lowest qualified bidder. Nonetheless, the process described herein is established to help the City to identify a contractor who can, as determined solely by the City, best provide the City with quarry monitoring services under terms and conditions acceptable to the City but mutually negotiated with the successful consultant.

The final decision on the selected consultant shall remain with the City of Franklin Common Council. The City of Franklin reserves the right to waive any or all formalities, to reject any or all proposals at the sole discretion of and for the benefit of the City of Franklin, or to negotiate special or specific terms with a consultant, that may deviate from those referenced herein, for the sole benefit of the City of Franklin.

Additionally, the City reserves the right to alter or change any or all aspects of the submittal requirements and the submittal and selection process as the City shall solely determine is in its best interest. In such event, the City shall strive to notify all participating consultants of such alterations or changes but is under no obligation to do so.

A copy of this RFP may be obtained by picking it up directly from:

Office of the City Clerk
City of Franklin
9229 West Loomis Road
Franklin, WI 53132

-- Or --

a potential respondent may request via email an electronic version of the RFP by emailing

lhuenig@franklinwi.gov

and using the "Subject" line **"Request For Quarry Monitoring RFP"**

The contact information provided when picking up the RFP will be used in the event of any subsequent distribution of supplemental RFP documents, including but not limited to answers to questions as issued by the City. Nonetheless, it is the responsibility of each party receiving an RFP to ensure that they have requested and/or received any supplemental documentation.

REQUEST FOR PROPOSAL

CITY OF FRANKLIN, WISCONSIN

QUARRY MONITORING SERVICES

Introduction

The purpose of this document is to explain the requirements and procedures for submission of formal proposals from consultants interested in performing work and providing expertise and experienced assistance to the City of Franklin in monitoring two (2) neighboring and fully operating limestone quarries. Vulcan Materials Company and Payne & Dolan, Inc. (d/b/a: Franklin Aggregates) extract limestone from the same rock formation. In 1997, the City of Franklin adopted Planned Development District zoning for the quarries allowing for the continued extraction in certain areas and under certain criteria and exacting standards. The selected consultant will assist the City in monitoring the criteria and standards as stated in the Planned Development District Ordinances and will also suggest upgrades to the criteria and standards to meet "State of the Art" techniques.

Background

The City of Franklin, Wisconsin, is located in the southwest corner of Milwaukee County, Wisconsin. The 2012 population, as estimated by the State of Wisconsin, is 35,504. Extraction of limestone at the current location of the quarries commenced in the 1940's, with a change in ownership and property ownership lines between the two quarries over the years. The extraction commenced prior to the City becoming an incorporated Wisconsin municipality in 1956.

During the early 1990's, quarry operators and citizens of Franklin embarked upon a communication process leading to the acceptance of voluntary blasting guidelines by the quarry operators. When the quarries approached the City for approval to expand the extraction area boundaries beyond the area allowed by zoning, a long, extensive, and exhaustive process took place eventually leading to the adoption of the Planned Development Districts, and the listing of criteria as standards.

For several years, even before the adoption of the Planned Development District, the City of Franklin Fire Department had been the agency responsible for collecting blasting data and receiving and following through on complaints of quarry operations from citizens. Periodically, a seismograph in the possession of the Fire Department was utilized to verify blasting information. The collected data of blast results and tabulation of complaints was reported on a monthly basis to the City of Franklin Common Council. The Fire Department did not interpret the information for improvements to blasting techniques.

Additional monitoring has also occurred in the past. For example, the Wisconsin Department of Natural Resources previously operated two air quality monitoring stations near the quarries for the expressed purpose of monitoring the air quality impacts from the quarries. The Wisconsin DNR, however, has discontinued that effort. Additionally, the most extensive monitoring occurred when the City contracted with a consultant for monitoring of the quarries from 2002 to 2005, while each quarry operator has continued to self-report blast results.

Issuing Agencies

This Request for Proposal (RFP) is being issued by the City of Franklin, State of Wisconsin. The consulting firm selected to do the work will contract with the City and be responsible to work with and assist the City of Franklin Common Council to monitor the quarries, as well as such staff and boards or commissions as the Common Council shall so determine is appropriate. The selected consultant would be expected to also coordinate with the Environmental Commission and the Plan Commission on issues which pertain to their areas of responsibility, as well as, coordinating the consultant's work with City staff responsible to the Common Council and advisory bodies.

Anticipated Term of Engagement

An initial one-year term with the ability to negotiate at least two additional one-year extensions is anticipated for a professional services agreement. This will enable the City to consider altering the scope of work required for future years after evaluating the results during the first year.

Scope of Work

In general, the work to be carried out shall consist of periodic blasting and air quality monitoring, analyzing monitoring results, preparation of reports and studies, and communicating the reports and studies with City Staff, the Common Council, and boards and/or commissions, as needed. Representation of studies, reports, and findings at public meetings will be the responsibility of the consultant from time to time.

The Scope of Work will consist of the following items:

1. Blast Monitoring, Data Collection, and Evaluation.

- a) **Review Blasting Reports:** Review all blasting reports prepared by each quarry operator for completeness of proper information, conformance with the criteria and standards of the PDD, and comparison to independent blast monitoring results.
- b) **Fixed-Location Blast Monitoring:** Provide independent blasting analysis through the use of a single, separate seismograph moving between multiple City-established blast monitoring sites or vaults. As to be determined in the final Professional Services Agreement, an appropriate seismograph and power source will either be provided by the City, with no cost incorporated into the bid proposal, or provided by the contractor, with a cost incorporated into the bid proposal. (Note: A contractor-provided seismograph must be approved by the City, must be digital, not analog, and must have sufficient internal memory.) The contractor shall manage and maintain the seismograph and battery source (if one), perform data collection (download) at least every three weeks, and evaluate blast data. Immediately following each episode of data collection and in coordination with City staff, the seismograph should generally be moved to a different vault site. Except if the seismograph breaks or malfunctions at no fault of the contractor, the seismograph is expected to be in operation 95% of the time.
- c) **Mobile-Location Blast Monitoring:**
 - i. Provide independent blasting analysis through the use of a separate, consultant-provided portable seismograph to conduct field blast measurements at up to twenty (20) locations or placements per year [expected to average two (2) locations per month during the months of March through October and one (1) location per month during the months of November through February]. Each such placement shall monitor at least one week of activity unless otherwise approved by the City. Collected blast-monitoring data will be downloaded at least once per month. The seismograph shall be positioned at a nearby residential property, upon the resident's permission and execution of waiver, or within the right-of-way or other

- location, upon approval of the City. The consultant is to propose and describe a methodology for securing and placing the seismograph at such residential locations.
- ii. Additionally, to confirm that the City and quarries' seismographs are obtaining similar results, a minimum of two side-by-side tests are required per quarry per year, with at least three months between the two tests at each quarry. If these tests do not yield similar results, the consultant may need to perform additional tests to reconcile or resolve any deviation between devices.
 - iii. Each placement required by this "Mobile-Location Blast Monitoring" section includes, but is not limited to, unit retrieval, unit set-up, battery adjustments or change out, and data collections. Furthermore, the contractor will provide a cost per placement (as described above) for any additional calls for seismograph services or placement, beyond those numbers and uses set forth above. City staff shall be responsible for identifying the residential properties, with recommendation from the consultant and taking into consideration complaints, comments, and requests received from area residents, and for obtaining the executed waivers. The consultant should anticipate that if a quarry is found to be failing to meet the standards of the PDD significantly more blast monitoring trips or occurrences may be required.
- d) Check Blasting Records: All blasting records will be reviewed on a monthly basis to check for compliance with the standards required in the PDD.

2. Air Quality Monitoring, Data Collection, and Evaluation. PM10 Monitoring: The consultant shall propose a work program and cost for each of the following options ("a" and "b"), one of which will be incorporated into the Professional Services Agreement:

- a) The consultant shall provide and/or perform the following:
 - i. Provide, for 6 one-week periods during each calendar year, a portable aerosol monitor which is a high volume or medium volume air sampler using filter media designed to take PM10-correlated measurements, suitable for taking measurements as per EPA 24-hour exposure standards. Specific periods of placement shall be determined by the City in consultation with the consultant. The aerosol monitors shall operate for 24 hours per day during each one-week period, with filter changes in accordance with the EPA 24-hour daily exposure limit standard. Results obtained must be sufficient to fairly determine through extrapolation if there is a violation of the PM10 standard. The findings of each visit will be documented in a form and manner as approved by the City of Franklin.
 - ii. On-call response in addition to "2. a) i." above, but providing similar services thereto, in order to address unique or special circumstances or conditions.
- b) The City shall provide the portable aerosol monitor identified above, but the consultant shall provide the staff to perform the work as generally specified in "2. a) i." and "2. a) ii." on pre-scheduled and/or on-call basis. For example, the City may lease/rent a monitor during the months of June and September, with more intensive air monitoring occurring during those two months. The aerosol monitor would be picked up at and returned to City Hall for each non-consecutive period of placement.

3. Quarry Operations Monitoring and Monitoring by Direct Observation.

- a) **Site Visits:** The consultant shall be responsible for unannounced visits to the sites of the quarries and the surrounding areas at least three (3) quarry operating days per month during the months of March through October and one (1) quarry operating day per month during the months of November through February, to observe and visually monitor all aspects of the extraction operation, including, but not limited to, ground vibration, air blast, noise, trucking operations, and other operations that may affect the citizens of Franklin, particularly in relation to dust distribution. The consultant shall vary the days of the week and times of day of each visit. The on-site visits will be in conjunction with the Direct Air Quality Observation required below. The findings of each visit will be documented in a form and manner as approved by the City of Franklin. (Visits onto property of the quarries must be announced to the operators upon arrival.) Collection of photographic evidence is expected where appropriate or effective.
- b) **Direct Air Quality Observation:** As part of the site visits required above, the consultant shall observe, measure, and visually monitor opacity, air quality, dust control and presence, and other conditions that may affect the citizens of Franklin. On-site direct air quality observations for each visit shall not be less than one hour in length (as such, additional time is needed for the other aspects of the Quarry Operations Monitoring site visits).
- c) **Quarry Operations Review:** Review quarry-provided or available records of all dust control measures and procedures and templates for monitoring air quality, reporting on air quality, addressing the impacts on air quality, and reacting to potential impacts on air quality. The consultant will observe operations and review documentation in relation to the control measures and procedures to evaluate compliance with their stated control measures and procedures, including trucking operations. For example, if a quarry has a stated procedure related to operations during heavy winds or dry period that is intended to reduce air borne dust, the consultant could, in part, review documentation and procedures related to wind speed and road way dust monitoring and review the quarry's compliance with such stated procedures.

4. Additional PDD Compliance. The consultant shall monitor that the quarry operators are in compliance with all Local, State, and Federal Statutes, rules, regulations, orders, and laws, as amended from time to time, to the extent they are applicable to the operator's use of their property for mining, blasting, dust control, etc., and to the extent they are applicable to the performance standards set forth in the PDD. The purpose of this section is to ensure the review and evaluation of the operations of quarry activities is inclusive of all requirements of the PDD, including any not specifically or clearly noted in items 1 and 2 above in this Scope of Work.

5. Reporting Requirements and Coordination with City Staff.

- a) The consultant shall provide bi-monthly reports which shall be submitted to the Planning Manager no later than the 15th of the month (March, May, July, September, November, and January) following the end of the bi-monthly period. The reports shall include a summary of the consultant's review of all blasting reports in total and per quarry; independent monitoring results in total and per quarry; discussion on complaint data and responses relative to monitoring results in total and per quarry; recommendations for addressing adverse impacts, non-compliant results, and adverse trends that are evident in the report data; and comments or recommendations as to the location or method of placement of all such monitors used as part of these services. From time to time as required by the City, the consultant may be responsible to present the report and recommendations at a public meeting, which will generally occur outside of normal business hours in the evenings and which will not exceed 8 such meeting occurrences in any calendar year, without providing extra compensation.
- b) The consultant shall provide a summary report compiling the prior-year's bi-monthly reports which shall be submitted to the Planning Manager no later than the 30th of January each year. This report shall provide or address the recommendations or amendments as set forth in item c) below.
- c) The consultant shall be responsible for annually, or at other such times as circumstances warrant, proposing any amendments to the PDD Ordinances to require use by the operator of new methods, processes, procedures, facilities, practices, or equipment in quarry operations that will materially diminish adverse impacts on the community or nearby residents. The proposal shall include an analysis or summary as to the extent to which the use of such methods, processes, procedures, facilities, practices, or equipment is proven and demonstrated to be effective in operator's industry in reducing adverse impacts and to the extent to which they are cost effective in reducing adverse impacts. Note that the consultant may conclude and report that no amendments are recommended and that each quarry is being operated with the industry's current best methods, processes, procedures, facilities, practices, or equipment.
- d) The consultant shall be provided a copy of all complaints of quarry operations as received by the City and shall work with City Staff in regards to addressing said complaints and shall adjust or modify any such monitoring schedule to respond to complaints as determined by the consultant, in consultation with the City staff.
- e) Upon becoming aware of such an event, the consultant shall immediately (prior to noon of the next business day) report to the Planning Manager any blast or condition that exceeds the allowances of the PDD.
- f) Unlimited interaction with City Staff during regular business hours is expected and incorporated herein.

Access to PDD Documents:

Each quarry has an adopted PDD that is part of the City's Unified Development Ordinance. The PDD defines the parameters of operation for each quarry and those parameters provide the standards incorporated into this RFP. It is strongly recommended that each proposing consultant review the PDD documents prior to submitting their proposal to this RFP.

An electronic copy of the PDD Documents is available at [location of FTP website] until [Date].

Proposal Requirements:

The City of Franklin reserves the right to waive any or all formalities, to reject any or all proposals at the sole discretion of and for the benefit of the City of Franklin, or to negotiate special or specific terms with a consultant, that may deviate from those referenced herein, for the sole benefit of the City of Franklin.

Additionally, the City reserves the right to alter or change any or all aspects of the submittal requirements and the submittal and selection process as the City shall solely determine is in its best interest. In such event, the City shall strive to notify all participating consultants of such alterations or changes but is under no obligation to do so.

By submitting a proposal, each proposing consultant acknowledges and agrees to the City's reservation of rights referenced herein.

1. Contents of Sealed Proposal: Proposal responses are to be straightforward, clear, concise, submitted in an 8-1/2 x 11 format, and shall at a minimum include the following:

- a) Cover Letter / Management Summary: An introduction of the firm, a statement of understanding of the project, a summary of the firm's approach to management of and approach to the Scope of Work, and other such introductory information deemed appropriate or relevant by the firm.
- b) Work Program: A work program describing the precise manner in which the Scope of Work is proposed to be undertaken. Additionally, the work program should describe any amount of modification to, deviation to, or expansion of the scope of work outlined in this RFP. The work program may propose alternative or additional services the consultant believes are in the best interest of the City or reflective of current industry best practices. The work program should identify and breakdown the anticipated hours of staff effort dedicated to individual tasks and responsibilities. The work program should be divided into at least the following sections:

Blast Monitoring, Data Collection, and Evaluation
Air Quality Monitoring, Data Collection, and Evaluation.
Quarry Operations Monitoring and Monitoring by Direct Observation
Additional PDD Compliance.
Reporting Requirements and Coordination with City Staff.
(Additional categories as determined by the proposing consultant – if needed)

- c) Firm Qualifications:

- i. A clear and concise statement indicating the consultant's (and any sub-contractor proposed to be used by the consultant) knowledge, past performance, experience, and familiarity with the type of work set forth within this RFP, with quarry operations (surface mining) in general, and with any related or required field of expertise.
 - ii. A clear and concise statement demonstrating expertise in communicating technical issues to the general public visually, verbally, and in writing.
 - iii. A list of at least three (3) references within the past ten (10) years for whom the consultant has provided similar services to those described in this RFP, including a brief description of the project. (Public sector references are encouraged.) (If the consultant does not have at least three (3) such references, provide a clear statement to that effect with the remaining references.) Include a contact name, address, and telephone number(s) for each reference.
 - iv. Litigation or Early Termination: A statement indicating if, within the last 10 years, your firm (or any sub-contractor) was involved with any litigation in connection with any similar project(s) or your firm had a contract for a related scope of services terminated early or prior to the contract's scheduled end-of-term. If yes, describe the circumstances of the suit or termination and provide related contact names and telephone numbers.
 - v. A statement indicating any work performed for and the nature of the work performed for Vulcan Materials Company and/or Payne & Dolan Inc. or their successors or assigns, along with when that work was performed within the last 10 years, the location of the project, and contact information for that contract or assignment.
 - vi. A statement indicating any work performed for and the nature of the work performed for a third party monitoring any quarry operations of Vulcan Materials Company and/or Payne & Dolan Inc., along with when that work was performed within the last 10 years, the location of the project, and contact information for the third party.
- d) Staff Qualifications: A statement and supporting documentation indicating the professional background and experience of the key persons who will be assigned to the project by the consultant (including the key persons of any sub-contractor proposed to be used by the consultant). Provide resumes of key personnel as an appendix to the proposal response. Note: It is the expectation of the City that key members, especially the Project Manager, shall have significant demonstrated experience with this type of project and should be committed to stay with the project.
- e) A statement indicating acceptance of the Anticipated General Professional Services Agreement Terms, as indicated herein, and detailing any anticipated general Professional Services Agreement term(s) to which the contractor requests or requires any meaningful modification, including exclusion thereof.
- f) Any additional comments or attachments necessary to address RFP addendum(s) distributed by the City (if any), where, unless otherwise specified by the addendum(s),

such addendum(s) were not completely addressed within the above “Proposal Requirements” components.

- g) The applicant firm’s Federal Employer Identification Number, a statement certifying that the proposing consultant takes no exception(s) to this RFP, and a statement stipulating that the proposal is executed and submitted by an individual or individuals duly authorized to execute legal documents on behalf of the proposing consultant, including the original executing signatures on at least one copy of the submitted proposal. (If the proposing consultant does take any exception(s) to any portion of this RFP, the specific portion of the RFP to which exception(s) is taken shall be identified and explained.)
- h) Project Costs and Fees: Complete Appendix B “Project Costs” and prepare and submit a schedule of “Estimated Staff Effort”.

The schedule of “Estimated Staff Effort” should identify the tasks required by and set forth in the Scope of Work and work program, and for each task identify the employee and estimated number of hours anticipated to complete that task. A format similar to Appendix B –Project Costs but identifying staff effort instead of dollars could be used. Understanding the anticipated staff effort expected by each proposing consultant is an important aspect of putting the proposed project costs in context and being able to evaluate each proposing consultant’s understanding of the RFP and the scope of the project. Additionally, this information aids in comparing submitted proposals on an equal basis. The information will also be used within the process to retain a relationship to the competitive RFP responses and process in the event it becomes necessary to modify the scope of work based on available resources. A schedule of Estimated Staff Effort, however, can not be used to request additional payment for base services if the successful consultant underestimates the workload necessary for the identified services.

Additionally, a consultant who proposes alternate work programs or service recommendations should submit a statement or schedule including all project-related costs or fees. It should clearly indicate any variance from costs as structured in Appendix B. If alternate work program costs, other than the cumulative “not-to-exceed” costs, are presented on an “estimated” basis, clear information must be provided on the components of the estimate and on the formula or factors used in calculating the estimates. Please note that the inability of the City to clearly identify all potential costs of the project could lead to elimination from further consideration.

- i) Hourly rates for all principles and employees of the consultant and sub-contractors that may be used to provide supplemental and on-call services described in the Scope of Work and to provide services outside the primary scope of services in the event additional services or adjustments to the Scope of Work are separately negotiated during the term of the Professional Services Agreement.
- j) Notice of Confidential Information. It is the responsibility of the proposing consultant to clearly identify information in their proposal that the proposing consultant considers

to be confidential in accordance with Wisconsin or Federal public records laws. To the extent that the City agrees with that designation, such information will be held in confidence whenever possible. If the City disagrees with that designation, the City will inform the proposing consultant in writing, and the proposing consultant will be given the opportunity to alter the designation or withdraw their proposal. All other information will be considered public record, with the complete proposals available as public record following completion of the proposing consultant interviews to ensure identification of all identified confidential information and to maintain the integrity of the process.

- k) A statement indicating any aspect of this RFP to which the proposing consultant takes exception which is not already addressed in alternative work programs (section “b” above) or contract terms (section “e” above). Please note that exceptions may result in having the proposal deemed unacceptable or classified as not reasonably susceptible to being selected for award. If the proposing consultant takes no exception to any aspects of this RFP, they may submit a statement to that effect.

2. Directives for Submittal:

- a) Consultant shall submit eight (8) bound copies of the complete proposal response as set forth herein, which submission must be received at the Office of the City Clerk at the following address by 11:00 a.m. Central Standard time on _____, 2012.

Office of the City Clerk
City of Franklin
9229 West Loomis Road
Franklin, WI 53132

- b) Envelopes or packages containing the proposal and any related materials shall be sealed and clearly marked on the outside in the following manner: “Proposal for Quarry Monitoring Services for the City of Franklin”. Additionally, the envelopes or packages shall indicate the proposing consultant’s name and return address.
- c) Envelopes or packages containing proposals and related materials which are received after the date and time state above shall be returned unopened. Telegraphic, e-mail, or facsimile (fax) proposals are not acceptable and will not be considered.

3. Costs Incurred in Responding to this RFP. The City of Franklin shall not be liable for any costs incurred by any proposing consultant, contractor, or sub-contractor responding to or participating in a response to this Request for Proposal, any costs associated with discussions required for clarification of items related to this proposal, or any costs associated with negotiating a Professional Services Agreement. All costs required for the preparation and submission of a proposal and for participating in negotiating a Professional Services Agreement shall be borne by each proposing consultant.

Consultant Selection Procedures:

The City of Franklin, Wisconsin, will be solely responsible for selection of a consultant to complete the desired work. The selection process is anticipated to generally be as set forth below; HOWEVER, THE CITY RESERVES THE RIGHT TO ALTER OR CHANGE ANY OR ALL ASPECTS OF THE SELECTION PROCESS AS THE CITY SHALL SO DETERMINE IS IN ITS BEST INTEREST. The evaluation of the proposals shall be within the sole judgment and discretion of the City.

1. Pre-Submittal Questions: Any consultant anticipating submitting a response to this RFP may submit any questions concerning the RFP to the Planning Manager via email at jdietsl@franklinwi.gov prior to [DATE]. The Planning Manager will provide an acknowledgment of receipt of the email. The Planning Manager will provide the questions and answers via email to all consultants who have requested a copy of the RFP.

2. Opening of Submissions: At 11:15 a.m. Central Standard time on _____, 2012, in the Common Council Chambers of Franklin City Hall, the City Clerk shall open the sealed bids and compile a list of the proposing consultants who have provided a submission for the RFP. (Note: As an RFP for professional services and given the nature of the potential cost structure involved, cost components of the bids will not be announced at this time.)

3. Initial Screening: The Planning Manager, on behalf of the City, shall review each formal consultant proposal to determine if the submission meets the requirements of the RFP. The City, at its sole discretion, may determine to consider minor deviations from the submission requirements as inconsequential and allow such proposal to proceed for further consideration. If the Planning Manager determines that a submission includes a consequential error or omission, the Planning Manager shall consult with the City Attorney, who shall review the proposal and the Planning Manager's review and determine if the proposal meets the requirements of the RFP or if the proposal shall be excluded from further consideration. If a proposal is to be excluded from further consideration as a result of the initial screening, the Planning Manager shall promptly notify the consultant in writing of their exclusion and the reason therefore.

4. Screening: A staff workgroup consisting of the Planning Manager, a Planning Commission member, the City Engineer (also a Plan Commission member), the Director of Administration, the Fire Chief, and a Citizen Representative shall review each formal consultant proposal passing the Initial Screening. Under penalty of possible disqualification, no proposing consultant or potential proposing consultant shall contact or lobby staff workgroup members during the evaluation process, except for contacting the Planning Manager in regards to Pre-submittal Questions (item number 1 on preceding page). The staff workgroup will select proposals for further review (interview) based on the proposing consultant's qualifications, related project experience, fees and costs, work plan, and proposed scope of service, including proposed alternatives (if deviating from that provided for herein). Based upon this review, two (2) or more consultants will be selected for follow-up interviews.

5. Proposing Consultant Interviews: The proposing consultants remaining after the initial screening and screening will be invited to attend an interview before the staff workgroup. The

staff workgroup reserves the right to prepare and distribute a supplemental questionnaire prior to the interview. The purpose of the interview would be to allow each invited proposing consultant to make a presentation before the staff workgroup on elements of their RFP and work plan and to allow staff workgroup members the opportunity to ask questions of the proposing consultants. It is anticipated that each proposing consultant interview would be generally limited to a period of one (1) hour. Representatives of the proposing consultant shall include a principle of the firm, the proposed project manager, and key personnel that will be working directly on the project.

6. Staff Workgroup Recommendation and Protests: Based upon a one-person-one-vote evaluation, the staff workgroup will prepare a recommendation to the Common Council. If the recommendation of the staff workgroup is not unanimous or the recommended consultant did not receive four (4) votes as the first choice, the Planning Manager shall prepare a summary for the Common Council summarizing, from his perspective, the distinctions between the two top vote getters. The staff workgroup recommendation will be based upon the proposing consultant's qualifications, related project experience, fees and costs, work plan, and proposed scope of service, including proposed alternatives (if deviating from that provided for herein), and any other such factor the staff workgroup determines relevant based upon the submissions and the subsequent interview process. After selecting their recommended consultant, the staff workgroup shall vote in a similar manner to determine their second choice. Each interviewed consultant will be notified in writing as to whether or not their firm has been recommended by the staff workgroup for selection by the Common Council. In the event any interviewed firm that was not recommended for selection wishes to protest the proposal process or appeal the recommendation, such firm shall submit a written protest to Jesse Wesolowski, City Attorney, at 11402 West Church Street, Franklin, Wisconsin, 53132 before 5:00 p.m. one week after the postmark on the written notice that the firm was not the recommended consultant. The proposing consultant's failure to comply with these procedures shall constitute a waiver of any right to further pursue a proposal protest. The City Attorney shall have the authority to interrupt, intervene, amend, alter, or forestall the remaining steps of the process as he so shall determine is appropriate and in the best interest of the City.

7. Professional Services Agreement Development: The selected consultant will enter into a professional services agreement with the City, so prior to submission of the staff workgroup recommendation to the Common Council, the Mayor may cause a proposed professional services agreement to be negotiated with the recommended consultant. It is anticipated that the professional services agreement will largely incorporate the Anticipated General Professional Services Agreement Terms appended hereto (Appendix A), as well as other such terms and conditions as deemed appropriate and mutually agreed to. For information purposes only, Appendix A includes a sample of anticipated general Professional Services Agreement terms to be incorporated into the professional services agreement.

An initial one-year term with the ability to negotiate at least two additional one-year extensions is anticipated. This will enable the City to consider altering the scope of work required for future years after evaluating the results during the first year.

PLEASE BE ADVISED that should the selected proposals for the full scope of work as set forth herein result in anticipated costs that exceed available resources, the City reserves the

right and expects to negotiate a reduced Scope of Work and/or Work Plan based upon the fees, costs, and rates as submitted in the RFP response. As such, the City does not anticipate re-issuing a revised RFP even in the event of significant changes in the Scope of Work, if, upon further review and in the sole discretion of the City, such changes become necessary.

Should a tentative agreement be reached on all aspects of a professional services agreement, the proposed agreement along with the staff workgroup recommendation shall be submitted to the Common Council for its consideration. Should a tentative agreement not be reached on a fair and reasonable scope of service, work plan, terms and conditions, and/or costs and fees, the Common Council shall be so informed, and the Mayor may cause a proposed professional services agreement to be negotiated with the second choice of the staff workgroup.

8. The recommendation to the Common Council will include the summary from the Planning Manager, the proposed Professional Services Agreement (the negotiated tentative agreement), if available, and a presentation from the recommended consultant regarding the proposed scope of work and their qualifications and related experience. **As part of reaching a tentative agreement on a Professional Services Agreement, the proposing consultant acknowledges the ultimate authority of the City of Franklin Common Council to approve the Agreement, to disapprove the Agreement, or to demand further modification to or conditions of approval of the Agreement.** (Upon placement on the Common Council agenda of the staff workgroup recommendation, the submissions of each proposing consultant will also be made available for public inspection.)

9. **The final decision on the selected consultant shall remain with the City of Franklin Common Council. The City of Franklin reserves the right to waive any or all formalities, to reject any or all proposals at the sole discretion of and for the benefit of the City of Franklin, or to negotiate special or specific terms with a consultant for the benefit of the City of Franklin.**

APPENDIX A

Anticipated General Professional Services Agreement Terms

The City of Franklin reserves the right to add to, delete from, or modify any of the following anticipated general Professional Services Agreement terms or to negotiate special or specific terms with a consultant for the benefit of the City of Franklin.

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT (hereinafter "AGREEMENT"), made and entered into this _____ day of _____, 2012, between the City of Franklin, 9229 West Loomis Road, Franklin, Wisconsin 53132 (hereinafter "the CITY") and _____ (hereinafter "the CONTRACTOR"), whose principal place of business is _____, Wisconsin.

WITNESSETH

WHEREAS, the CONTRACTOR is duly qualified and experienced as a quarry monitoring service contractor and has offered services for the purposes specified in this AGREEMENT; and

WHEREAS, in the judgment of the CITY, it is necessary and advisable to employ the CONTRACTOR in connection with providing quarry monitoring services, as described in Attachment A, for the City of Franklin.

NOW, THEREFORE, in consideration of these premises and the following mutual covenants, terms, and conditions, the CITY and the CONTRACTOR agree as follows:

I. BASIC SERVICES AND AGREEMENT ADMINISTRATION

- A. The CONTRACTOR shall provide services to the CITY for the quarry monitoring activities specified in Attachment A.
- B. The CONTRACTOR shall serve as the CITY's professional representative in matters to which this AGREEMENT applies. The CONTRACTOR may employ the services of outside consultants and subcontractors when deemed necessary by the CONTRACTOR to complete work under this AGREEMENT following approval by the City.

- C. The CONTRACTOR is an independent contractor and all persons furnishing services hereunder are employees of, or independent subcontractors to, the CONTRACTOR and not of the CITY. All obligations under the Federal Insurance Contribution Act (FICA), the Federal Unemployment Tax Act (FUTA), and income tax withholding are the responsibility of the CONTRACTOR as employer. The CITY understands that express agreements may exist between the CONTRACTOR and its employees regarding extra work, competition, and nondisclosure.

II. FEES AND PAYMENTS

The CITY agrees to pay the CONTRACTOR, for and in consideration of the performance of Services [Additional language to be determined, likely reference to an attachment incorporating a schedule of Costs/Fees, such as the RFP Appendix B Project Costs]:

- A. The CONTRACTOR shall invoice the CITY bi-monthly following delivery of required reports for the prior bi-monthly period. The invoice shall include base costs and any adjustment for additional services as provided for herein. The CITY shall pay any undisputed invoices within 30 days of receipt. Alternatively, the CITY shall notify the CONTRACTOR of any dispute to an invoice, and the nature of the dispute, within 30 days of receipt of the invoice.
- B. In consideration of the faithful performance of this AGREEMENT, the CONTRACTOR will not exceed the fee for Services without written authorization from the CITY to perform work over and above that described in the original AGREEMENT or Attachment A. [Verify against final negotiated service structure].
- C. Should the CITY find deficiencies in work performed or reported, it will notify the CONTRACTOR in writing within thirty (30) days of receipt of invoice and related report and the CONTRACTOR will remedy the deficiencies within thirty (30) days of receiving the CITY's notice, which period may be extended by mutual agreement of the CONTRACTOR and the CITY's Planning Manager. This Subsection shall not be construed to be a limitation of any rights or remedies otherwise available to the CITY.

III. MODIFICATION AND ADDITIONAL SERVICES

- A. This AGREEMENT may only be amended by written instrument signed by both the CITY and the CONTRACTOR.
- B. The CITY may, in writing, request changes in the Basic Services required to be performed by the CONTRACTOR under this AGREEMENT. Upon acceptance of the request of such changes, the CONTRACTOR shall submit a "Change Order

Request Form” to the CITY for authorization, notice to proceed, and signature. Following execution the City shall return a copy to the CONTRACTOR. Should any such actual changes be made, an equitable adjustment (based upon fees, costs, and rates set forth in Attachment B, where applicable) will be made to compensate the CONTRACTOR or reduce the fixed price, for any incremental or decremental labor or direct costs, respectively. Any claim by the CONTRACTOR for adjustments hereunder must be made to the CITY in writing no later than forty-five (45) days after receipt by the CONTRACTOR of notice of such changes from the CITY.

IV. ASSISTANCE AND CONTROL

- A. [Name], [Title], will serve as Project Manager and will coordinate the work of the CONTRACTOR, and be solely responsible for communication within the CITY’s organization as related to all issues originating under this AGREEMENT.

V. TERMINATION

- A. This AGREEMENT may be terminated by either party to this AGREEMENT upon thirty (30) days written notice. Upon such termination by the CITY, the CONTRACTOR shall be entitled to payment of such amount as shall fairly compensate the CONTRACTOR for all work approved and completed up to the date of termination, except that no amount shall be payable for any losses of revenue or profit from any source outside the scope of this AGREEMENT, including but not limited to, other actual or potential AGREEMENTS for services with other parties.
- B. In the event that this AGREEMENT is terminated for any reason, the CONTRACTOR shall deliver to the CITY all data, reports, summaries, correspondence, and other written, printed, or tabulated material pertaining in any way to services that the CONTRACTOR may have accumulated. Such material is to be delivered to the CITY whether in completed form or in process.
- C. The rights and remedies of the CITY and the CONTRACTOR under this section are not exclusive and are in addition to any other rights and remedies provided by law or appearing in any other article of this AGREEMENT.
- D. Failure to maintain the designated staff or such similarly qualified staff as determined by the City may lead to termination of the agreement, as determined by the city.

VI. INSURANCE

The CONTRACTOR shall, during the life of the AGREEMENT, maintain insurance coverage, with an authorized insurance carrier operating within the State of Wisconsin, at least equal to the minimum limits set forth below:

- | | | |
|----|---|--|
| A. | Limit of General/Commercial Liability | \$2,000,000 |
| B. | Automobile Liability: Bodily Injury/Property Damage | \$1,000,000 |
| C. | Excess Liability for General Commercial or Automobile Liability | \$3,000,000 |
| D. | Worker's Compensation and Employers' Liability | \$500,000 or per statute
whichever is greater |
| E. | Professional Liability | \$1,000,000 |

Upon the execution of this AGREEMENT, the CONTRACTOR shall supply the CITY with a suitable statement certifying said protection and defining the terms of the policy issued, which shall specify that such protection shall not be cancelled without thirty (30) calendar days prior notice to the CITY, and naming the CITY as an additional insured for General Liability.

VII. INDEMNIFICATION AND ALLOCATION OF RISK

- A. To the fullest extent permitted by law, the CONTRACTOR shall indemnify and hold harmless the CITY and the CITY'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 the CONTRACTOR or the CONTRACTOR's officers, directors, partners, employees, and consultants in the performance of the CONTRACTOR's services under this AGREEMENT.
- B. To the fullest extent permitted by law, the CITY shall indemnify and hold harmless the CONTRACTOR and the CONTRACTOR'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 the CITY or the CITY's officers, directors, partners, employees, and consultants with respect to this AGREEMENT.
- C. To the fullest extent permitted by law, the CONTRACTOR's total liability to the CITY and anyone claiming by, through, or under the CITY for any injuries, losses, damages and expenses caused in part by the negligence of the CONTRACTOR and in part by the negligence of the CITY or any other negligent entity or individual, shall not exceed the percentage share that the CONTRACTOR's negligence bears to the total negligence of the CITY, the CONTRACTOR, and all other negligent entities and individuals.

VIII. TERM AND TIME FOR COMPLETION

- A. The initial term of this agreement shall be thirteen months from receipt of a Notice to Proceed. The term anticipates monitoring and at-quarry work occurs for 12 months, thereby leaving one month to compile, report, and present results for

the final period and to provide the required annual summary information and recommendations.

- B. In order to enable the City to evaluate its complete quarry monitoring program and to consider altering the scope of work required for future years, the initial term may be extended for a period and for terms as mutually agreed to in writing by the CITY and the CONTRACTOR. Each such subsequent term may also be extended for a period and for terms as mutually agreed to in writing by the CITY and the CONTRACTOR.
- C. The CONTRACTOR shall commence immediately upon receipt of a Notice to Proceed and shall complete all work required herein by [DATE].

IX. DISPUTES

This AGREEMENT shall be construed under and governed by the laws of the State of Wisconsin. The venue for any actions arising under this AGREEMENT shall be the Circuit Court for Milwaukee County. The prevailing party shall be awarded its actual costs of any such litigation, including reasonable attorney fees.

X. RECORDS RETENTION

The CONTRACTOR shall maintain all records pertaining to this AGREEMENT during the term of this AGREEMENT and for a period of not less than three (3) years following its completion. Such records shall be made available by the CONTRACTOR to the CITY for inspection and copying upon request.

XI. CONFLICT OF INTEREST

The nature of this project requires an impartial, unbiased approach on the part of the CONTRACTOR. The CONTRACTOR shall not, during the performance of these services, engage in any other professional relationship or representation that would create any type of conflict or conflict of interest with regard to the consulting services provided hereby to and for the CITY.

Further, the CONTRACTOR warrants that neither it nor any of its affiliates has any financial or other personal interest that would conflict in any manner with the performance of the services under this AGREEMENT and that neither it nor any of its affiliates will acquire directly or indirectly any such interest. The CONTRACTOR warrants that it will immediately notify the CITY if any actual or potential conflict of interest arises or becomes known to the CONTRACTOR. Upon receipt of such notification, a review and written approval by the CITY is required for the CONTRACTOR to continue to perform work under this AGREEMENT.

XII. PROFESSIONALISM

The CONTRACTOR stipulates that the same degree of care, skill and diligence shall be exercised in the performance of the services as is possessed and exercised by a member of the same profession, currently practicing, under similar circumstances, and all persons providing such services under this AGREEMENT shall have such active certifications, licenses and permissions as may be required by law.

XIII. PURSUANT TO LAW

Notwithstanding anything to the contrary anywhere else set forth within this AGREEMENT, all services and any and all materials and/or products provided by the CONTRACTOR under this AGREEMENT shall be in compliance with all applicable governmental laws, statutes, decisions, codes, rules, orders, and ordinances, be they Federal, State, County or Local.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed on the day and year first above written.

CITY OF FRANKLIN, WISCONSIN

CONTRACTOR

BY: _____

BY: _____

PRINT NAME: _____

PRINT NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

BY: _____

BY: _____

PRINT NAME: _____

PRINT NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

ATTACHMENT A to the AGREEMENT

ATTACHMENT A will incorporate the Scope of Work from the RFP and/or the Work Plans from the consultant's RFP submission and/or any such negotiated deviations or alterations.

ATTACHMENT B to the AGREEMENT

An attachment B might incorporate a schedule of Costs and Fees,
such as the RFP's Appendix B: Project Costs.

City of Franklin – Quarry Monitoring Services Request for Proposals

Appendix B – Project Costs Part 1.

Base Bi-Monthly Charges:

1. Blast Monitoring, Data Collection, and Evaluation

- | | |
|---|-----------------|
| a) Review Blasting Reports: | Included |
| b) Fixed-Location Blast Monitoring
with a City-provided seismograph: | Included |
| c) Mobile-Location Blast Monitoring: | Included |
| d) Check Blasting Records | <u>Included</u> |

Cost for Scope of Work #1 (A) _____

2. Air Quality Monitoring, Data Collection, and Evaluation

PM10 Monitoring: with Consultant-Provided Aerosol Monitor [2.a] (B) _____

3. Quarry Operations Monitoring and Monitoring by Direct Observation

- | | |
|------------------------------------|----------|
| a) Site Visits: | Included |
| b) Direct Air Quality Observation: | Included |
| c) Quarry Operations Review: | Included |

Cost for Scope of Work #3 (C) _____

4. Additional PDD Compliance and

5. Reporting Requirements and Coordination with City Staff.

Subtotal All Bi-Monthly Responsibilities (D) _____

SUBTOTAL BASE TOTAL COSTS (A) + (B) + (C) + (D) = (E) _____

Annual Reporting Requirement [Scope of Work 5.c] (F) _____

TOTAL BASE ANNUAL COSTS (E) + (F) _____

City of Franklin – Quarry Monitoring Services Request for Proposals

Appendix B – Project Costs Part 2.

Additional Required Costs or Cost Adjustments Per Scope of Work

1. Blast Monitoring, Data Collection, and Evaluation

- a) Additional Cost for Scope of Work #1 if the Proposing Consultant supplies the Fixed-Location Blast Monitoring seismograph

Possible adjustment to Project Costs Part 1. (A) _____

- c) Additional Mobile-Location Blast Monitoring:

“Furthermore, the contractor will provide a cost per placement (as described above) for any additional calls for seismograph services or placement, beyond those numbers and uses set forth above.” [From Scope of Work 1.c) iii..]

Unit cost pricing or possible adjustment to Project Costs Part 1. (A) _____

2. Air Quality Monitoring, Data Collection, and Evaluation

Reduction to Cost (B) with City-Provided aerosol monitor

Possible adjustment to Project Costs Part 1. (B) _____

Additional Cost for each placement of a Consultant-provided aerosol monitor
[From Scope of Work 2. a) ii.]

Unit cost pricing/possible adjustment to Project Costs Part 1.(B) _____

Additional Cost for each placement of a City-provided aerosol monitor
[As may be required per Scope of Work 2. b)]

Unit cost pricing/possible adjustment to Project Costs Part 1. (B) _____

THE FOLLOWING SUMMARIZES THE CHANGES INCORPORATED SINCE A DRAFT DOCUMENT WAS REVIEWED BY THE COMMITTEE OF THE WHOLE ON 4/1/12.

1. Page 3, Issuing Agencies: Replace “The consulting firm selected to do the work will contract with the City and be responsible to work with and assist the City of Franklin Common Council, Plan Commission, and staff to monitor the quarries.” With “The consulting firm selected to do the work will contract with the City and be responsible to work with and assist the City of Franklin Common Council to monitor the quarries, as well as such staff and boards or commissions as the Common Council shall so determine is appropriate.”
2. Page 5, Mobile-Location Blast Monitoring: Added the following text into the language discussing how decisions on placement of the monitor will occur: ”and taking into consideration complaints, comments, and requests received from area residents.”
3. Page 6: Added “trucking operations” to “Site Visits” (sections “a”) and “Quarry Operations Review” (section “c”) of “Quarry Operations Monitoring and Monitoring by Direct Observation” to ensure that monitoring the practices of trucking operations is part of the review.
4. Page 7, Reporting Requirements and Coordination with City Staff: Add the following as a component of the consultant’s bi-monthly reports: “and comments or recommendations as to the location or method of placement of all such monitors used as part of these services.”
5. Page 7, Reporting Requirements and Coordination with City Staff: Reduce the number of evening meetings expected of the consultant and built-in to the base RFP from 15 to 8, thereby leaving 1 for each bi-monthly report and 2 for special circumstances.
6. Page 9, Firm Qualifications: The statement that references be “City references” was altered to simply “references,” but the following parenthetical was added: “ (Public sector references are encouraged.)”.
7. Page 10, Contents of Sealed Proposal: Clarified the proposing consultant’s report of exceptions to the RFP by removing the requirement from item “g” that the proposing consultant submit “a statement certifying that the proposing consultant takes no exception(s) to this RFP” and “(If the proposing consultant does take any exception(s) to any portion of this RFP, the specific portion of the RFP to which exception(s) is taken shall be identified and explained.)”. , The following section, however, which provides greater flexibility for the consultant, was added to page 11:
 - k) A statement indicating any aspect of this RFP to which the proposing consultant takes exception which is not already addressed in alternative work programs (section “b” above) or contract terms (section “e” above). Please note that exceptions may result in having the proposal deemed unacceptable or classified as not reasonably susceptible to being selected for award. If the proposing consultant takes no exception to any aspects of this RFP, they may submit a statement to that effect.

8. Page 12, Pre-Submittal Questions: Removed the text “will determine what questions merit response and” so that the Planning Manager will respond to all questions received.

9. Page 12, Staff Workgroup: A “Citizen Representative” was added to the work group, who will be determined in a manner as decided outside the scope of the RFP itself, so no specific reference is incorporated herein. With one additional member, the number of documents to be submitted was increased by one where appropriate.

10. Page 14, Recommendation to the Common Council: The following tow items were added as part of the presentation to the Common Council of a recommendation: “and a presentation from the recommended consultant regarding the proposed scope of work and their qualifications and related experience” and “(Upon placement on the Common Council agenda of the staff workgroup recommendation, the submissions of each proposing consultant will also be made available for public inspection.)”.

DRAFT