

**AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of November 15 , 2010 ("Effective Date") between

CITY OF FRANKLIN ("Owner")  
AND  
RUEKERT & MIELKE, INC. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Ryan Creek Interceptor - 124th Street to 60th Street ("Project").

Engineer's services under this Agreement are generally identified as follows:

Design Phase Services, Financial Analyses, Easement Acquisitions, Intermunicipal Agreement Assistance, Clean Water Fund Application & Assistance, and Sewer Service Area Amendment Assistance

Owner and Engineer further agree as follows:

**ARTICLE 1 – SERVICES OF ENGINEER**

**1.01 Scope**

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

**ARTICLE 2 – OWNER'S RESPONSIBILITIES**

**2.01 General**

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Exhibit C.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

## ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

### 3.01 *Commencement*

- A. Engineer is authorized to begin rendering services as of the Effective Date.

### 3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.

## ARTICLE 4 – INVOICES AND PAYMENTS

### 4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

### 4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
  - 1. 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; and
  - 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.

- C. *Disputed Invoices:* If Owner contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions:* If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

## ARTICLE 5 – OPINIONS OF COST

### 5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator as provided in Exhibit B.

### 5.02 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

## ARTICLE 6 – GENERAL CONSIDERATIONS

### 6.01 *Standards of Performance*

- 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 the subject 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. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

- C. *Consultants:* Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
1. Engineer and Owner shall comply with applicable Laws and Regulations.
  2. Prior to the Effective Date, Owner provided to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under this Agreement, provided to Engineer in writing. Engineer shall comply with such policies and procedures, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
  3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.
- F. Engineer shall not be required to sign any documents, no matter by who requested that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- G. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.
- H. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- I. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- J. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work;

or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.

- K. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

#### 6.02 *Design Without Construction Phase Services*

- A. Should Owner provide Construction Phase services with either Owner's representatives or a third party, Engineer's Basic Services under this Agreement will be considered to be completed upon completion of the Final Design Phase as outlined in Exhibit A.
- B. It is understood and agreed that if Engineer's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, and that such services will be provided by Owner, then Owner assumes all responsibility for interpretation of the Contract Documents and for construction observation or review and waives any claims against the Engineer that may be in any way connected thereto.

#### 6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants. Engineer agrees that all Documents are public records and that all Documents are available for inspection by and release to the public without any objection based upon copyright.
- B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. If the parties agree to other electronic transmittal procedures, such are set forth in Exhibit J.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the document's creator.

- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to the following limitations: (1) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; and (2) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer.

#### 6.04 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- C. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- D. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.
- E. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

#### 6.05 *Suspension and Termination*

##### A. *Suspension:*

1. By Owner: Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.

2. By Engineer: Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Engineer's performance has been substantially delayed through no fault of Engineer.

B. *Termination*: The obligation to provide further services under this Agreement may be terminated:

1. For cause,

- a. By either party upon 10 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
- b. By Engineer:
  - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
  - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
  - 3) Engineer shall have no liability to Owner on account of such termination under this subparagraph.
- c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, forthwith upon receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 10 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 10 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 20 days after the date of receipt of the notice.

2. For convenience,

- a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination*: The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination*:

1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with

this Agreement and all Reimbursable Expenses incurred through the effective date of termination.

2. In the event of termination by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

#### 6.06 *Controlling Law*

- A. This Agreement is to be governed by the law of the State of Wisconsin.

#### 6.07 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
  1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.
  2. 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.
  3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

#### 6.08 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H.



#### 6.09 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

#### 6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage 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, but only to the extent caused by any negligent, or intentional and wrongful as may be permitted by law, act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants.

- B. *Indemnification by Owner:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage 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, but only to the extent caused by any negligent, or intentional and wrongful as may be permitted by law, act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.
- C. *Environmental Indemnification:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage 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 (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *Percentage Share of Negligence:* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

#### 6.11 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of faxing or mailing, respectively.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* 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, which 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.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

- E. *Accrual of Claims:* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

## ARTICLE 7 – DEFINITIONS

### 7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:
1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
  2. *Agreement* – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
  3. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
  4. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
  5. *Construction Contract* – The entire and integrated written agreement between Owner and Contractor concerning the Work.
  6. *Construction Cost* – 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 or rights-of-way, or compensation for damages to properties; Owner's costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
  7. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

8. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
9. *Contract Documents* – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
10. *Contractor* – The entity or individual with which Owner has entered into a Construction Contract.
11. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
12. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
13. *Effective Date* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
14. *Engineer* – The individual or entity named as such in this Agreement.
15. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
16. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
17. *Owner* – The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
18. *PCBs* – Polychlorinated biphenyls.
19. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.
20. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

21. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
22. *Record Drawings* – Drawings depicting the completed Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, addenda, change orders, work change directives, field orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
23. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
24. *Resident Project Representative* – The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative agreed to by Owner.
25. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
26. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
27. *Site* – Lands or areas to be indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
28. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
29. *Subcontractor* – An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
30. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
31. *Supplier* – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
32. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants,

together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling and 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 pursuant to Exhibit B of this Agreement.

33. *Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

## **ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS**

### **8.01 *Exhibits Included:***

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Not included.
- E. Exhibit E, Not included.
- F. Exhibit F, Not included.
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Not included.
- J. Exhibit J, Special Provisions.
- K. Exhibit K, Form of Amendment to Owner-Engineer Agreement.

### **8.02 *Total Agreement:***

- A. This Agreement, (together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format of Exhibit K to this Agreement.

### **8.03 *Designated Representatives:***

- A. 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 responsibilities of Owner under this Agreement. Such an individual

shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications:*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
  3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner:

Engineer:

CITY OF FRANKLIN

RUEKERT & MIELKE, INC.

By: Thomas M. Taylor  
Thomas M. Taylor, Mayor

By: William J. Mielke  
William J. Mielke, President/CEO

Date: 11/15/2010

Date: 11/8/10

Countersigned:

By: Calvin A. Patterson  
Calvin A. Patterson  
Director of Finance and Treasurer

Date: 11/16/10

By: Sandra L. Wesolowski  
Sandra L. Wesolowski  
City Clerk

Date: 11/16/2010

Approved as to form, this 16th day of  
November, 2010:

By: Jesse A. Wesolowski  
Jesse A. Wesolowski  
City Attorney

Address for giving notices:

Address for giving notices:

City Clerk  
City of Franklin  
9229 West Loomis Road  
Franklin, Wisconsin 53132

Ruekert & Mielke, Inc.  
W233 N2080 Ridgeview Parkway  
Waukesha, Wisconsin 53188

Designated Representative (Paragraph 8.03.A):

Designated Representative (Paragraph 8.03.A):

John M. Bennett, P.E.

Joseph W. Eberle, P.E.

Title: Director of Public Works/  
City Engineer

Title: Senior Project Manager

Phone Number: (414) 425-7510

Phone Number: (262) 542-5733

Facsimile Number: (414) 425-3106

Facsimile Number: (262) 542-5631

E-Mail Address: jbenett@franklinwi.gov

E-Mail Address: jeberle@ruekert-mielke.com



## **Engineer's Services**

---

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

### **PART 1 – BASIC SERVICES**

#### **A1.01 Preliminary Design Phase**

- A. After selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, Engineer shall:
1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
  2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.
  3. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
  4. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in collating the various cost categories which comprise Total Project Costs.
  5. Perform or provide the following additional Preliminary Design Phase tasks or deliverables:
    - a. Prepare Preliminary Overall Project Schedule
    - b. Prepare Preliminary Cash Flow Projections
    - c. Prepare Preliminary Design Study Report
      - 1) Preliminary Route Determination
      - 2) Ultimate Service Area Determination
      - 3) Design Parameters
        - A. MMSD Criteria
        - B. City of Franklin Criteria
        - C. Minimum Velocity
        - D. Minimum Flows at Start-up
        - E. Flow Factors per Development Type

- 4) Develop Sub-Basin Boundaries & Routing
  - A. Develop Service Area Trunk Sewers
  - B. Develop Service Area Local Sewers
- 5) Preliminary Pipe Sizing & Depth
- 6) Open Cut Section
  - A. Backfill Options
  - B. Restoration
- 7) Tunnel Section
  - A. Geological Impacts for Trenchless Design
  - B. Viable Trenchless Construction Methods
  - C. Viable Shaft Construction Methods
  - D. Jacking Pipe Selection
  - E. Jacking and Receiving Shaft Locations
  - F. Jacking and Receiving Shaft Surface Requirements
  - G. Settlement Monitoring
  - H. Long Term Settlement Issues
  - I. Guidance and Steering
  - J. Slurry and Lubrication Management
  - K. Risk Management Tools
- 8) Connection to Existing MIS
- 9) Bid Strategy
- 10) Description of Construction Impacts on Traffic (trucks, workers), Noise, and odors
- 11) Connections to Interceptor
  - A. Trunk sewers
  - B. Laterals
- 12) Pipe Material Selection
- 13) Construction Methods
  - A. Open Cut Section
  - C. Water Course Crossing Options
  - D. Tunnel Section
  - E. Connection to Existing MIS
- 14) Restoration
  - A. Pavement
  - B. Unimproved areas
  - C. Wetlands
- 15) Future Maintenance Access
- 16) Prepare Draft Report

- 17) Submit Draft Report for Initial Review
    - A. Franklin
    - B. MMSD
  - 18) Prepare Responses to Comments on Draft Report
  - 19) Prepare Final Report
  - 20) Submit Final Report for Review & Approval
    - A. Franklin
    - B. MMSD
6. Furnish 3 review copies of the Preliminary Design Phase documents and any other deliverables to Owner within 90 calendar days of authorization to proceed with this phase, and review them with Owner. Within 10 calendar days of receipt, Owner shall submit to Engineer any comments regarding the Preliminary Design Phase documents and any other deliverables.
7. Revise the Preliminary Design Phase documents and any other deliverables in response to Owner's comments, as appropriate, and furnish to Owner 3 copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within 7 calendar days after receipt of Owner's comments.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables have been delivered to Owner.

#### A1.02 *Final Design Phase*

- A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other deliverables subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
  2. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities.
  3. Advise Owner of any adjustments to the opinion of probable Construction Cost known to Engineer.

4. Perform or provide the following additional Final Design Phase tasks or deliverables:

- a. Conduct Pre-Design Workshop
- b. Review MMSD Records of Existing Facilities
- c. Field Survey
  - 1) Create Ground Control System for GPS & Survey Control
  - 2) Create Coordinate Data for Property Monument Location
  - 3) Land Records Research
  - 4) Contact Diggers' Hotline
  - 5) Provide Survey Control
  - 6) Perform Survey of Adjacent Lands
    - A. Process Downloads & Analyze Data
    - B. Perform Adjustments of Data
    - C. Clean Up and Produce Line Work
  - 7) As-Build Existing MIS Connection Manholes
  - 8) Obtain Existing Utility Locations Marked by Others
  - 9) Obtain Route Profile
  - 10) Obtain Survey of Existing Streets
  - 11) Obtain Private Well Locations within 400 feet of proposed pipeline
  - 12) Stake Soil Borings for Driller
  - 13) Obtain Soil Boring Locations after Drilling
  - 14) Obtain Site Information of Critical Stream Crossings
- d. Mapping
  - 1) Obtain Current Mapping from Milwaukee County (MCAMLIS)
    - A. Aerial Photography
    - B. Contours
    - C. LIDAR
    - D. Planimetrics
    - E. Floodplain
    - F. Environmental
  - 2) Convert for Design Use
    - A. Create Surface from LIDAR
    - B. Combine Survey and LIDAR
- e. Site Investigations
  - 1) Archeological / Cultural Investigation
    - A. Coordination Meeting
    - B. Consultation with Department of Natural Resources & Wisconsin Historical Society
    - C. Literature & Archival Research
    - D. Field Archaeological Survey
    - E. Report Preparation

- F. Submittal to Department of Natural Resources & Wisconsin Historical Society
- 2) Phase I Environmental Assessment
- 3) Wetlands
  - A. SEWRPC Wetland Delineation
  - B. Field Survey Results
  - C. Create Exhibit & Send to SEWRPC for their Records and Report
- 4) Endangered Resources
  - A. Preparation of WDNR Endangered Resources Review Request
  - B. Follow Up to WDNR Response
- 5) Private Well Surveys
  - A. Document Status of Private Wells within 400 feet of Pipeline
    - 1. Obtain DNR Records of Private Wells
    - 2. Determine Water Levels in Wells (Assume 50 Wells)
    - 3. Determine Water Quality (Bacteriological Testing Only)
- f. Geotechnical
  - 1) Geotechnical Data Report
    - A. Research Previous Geotechnical Work in Area
    - B. Prepare Drilling Program - Phase 1
    - C. Clear Utilities
    - D. Obtain Property Access (City to Arrange)
    - E. Stake Borings
    - F. Drill Project (Estimated 46 Borings)
    - G. Perform Cone Penetration Tests (4)
    - H. Prepare Boring Logs
    - I. Perform Laboratory Analysis
    - J. Install Monitoring Wells
    - K. Obtain Survey Data for Monitoring & Well Locations
    - L. Research Regional Geology
    - M. Review Phase 1 Findings
      - 1. Prepare Recommendations & Requirements for Additional Geotechnical Information
    - N. Prepare Drilling Program - Phase 2
    - O. Clear Utilities
    - P. Obtain Property Access (City to Arrange)
    - Q. Stake Borings
    - R. Bore Project - Phase 2 (Assume 13 Borings)
    - S. Prepare Boring Logs
    - T. Perform Laboratory Analysis
    - U. Prepare Report

1. Findings
  2. Conclusions
  3. Recommendations
  4. Coordinate with Preparation of Geotechnical Baseline Report
- 2) Geotechnical Baseline Report - Tunnel Portion of Project
    - A. Introduction
    - B. Project Description
    - C. Summary of Geologic & Geotechnical Information
    - D. Project Geologic Setting
    - E. Ground Characterization
    - F. Design Considerations - Tunnels & Shafts
    - G. Construction Considerations - Tunnels & Shafts
    - H. Establish Baselines
- g. Design
- 1) Determine Final Sewer Route
  - 2) Verify Sewer Sizing and Hydraulics
  - 3) Design Interceptor
    - A. Prepare Base Drawings for Design
    - B. Prepare Plan & Profile of Interceptor Route
  - 4) Determine Location of Connecting Sewers
  - 5) Open Cut Section
    - A. Design of Bedding Sections for each Pipe Material Type
    - B. Design of Trench Sections for each Material Type
    - C. Construction Methods
    - D. Design Pavement Restoration
  - 6) Tunnel Section
    - A. Design of Shaft(s)
    - B. Trenchless Construction Method
    - C. Installation of Carrier Pipe in Tunnel
    - D. Backfill of Annular Space
    - E. Geotechnical Instrumentation for Ground Movement
    - F. Design Jacking or Casing Pipe
  - 7) Drafting
    - A. Cover / Index Sheets
    - B. Plan & Profile Sheets
    - C. Detail Sheets
    - D. Traffic Control Plans
    - E. Staging Plans
    - F. Drafting Quality Control
  - 8) Design Traffic Control Plan
  - 9) Design Wetland Mitigation and Prepare Natural Resource

- Protection Plan
- 10) Design Details
    - A. Bedding Sections
    - B. Manholes
    - C. Waterway Crossings
    - D. Connections to Interceptor
    - E. Traffic Control
    - F. Restoration
    - G. Typical Sections – Street Restoration
    - H. Erosion Control
  - 11) Specifications
    - A. General Requirements
    - B. Site Clearing
    - C. Sheet piling & Bracing
    - D. Traffic Control
    - E. Rock Removal
    - F. Grading
    - G. Sanitary Sewer – Open Cut
    - H. Sanitary Sewer – Tunnel
    - I. Dewatering
    - J. Erosion Control
    - K. Restoration
      - 1. Roadways
      - 2. Unimproved Areas
    - L. Wetland Mitigation
    - M. Landscaping
    - N. Concrete
  - 12) 30 % Design Review
    - A. Internal Quality Control Review
    - B. City of Franklin review
    - C. MMSD Review
    - D. Prepare Responses to Comments
  - 13) 60% Design Review
    - A. Internal Quality Control Review
    - B. City of Franklin review
    - C. MMSD Review
    - D. Prepare Responses to Comments
  - 14) 90% Design Review
    - A. Internal Quality Control Review
    - B. City of Franklin review
    - C. MMSD Review
    - D. Prepare Responses to Comments

- 15) 100% Design Review
- 16) Internal Quality Control
- h. Utility Coordination
  - 1) Meetings with Utilities
  - 2) Prepare Submittals
- 5. Prepare and furnish Final Design Phase documents for review by Owner, its legal counsel, and other advisors, and assist Owner in the preparation of other related documents. Within 150 days of receipt, Owner shall submit to Engineer any comments and, subject to the provisions of Paragraph 6.01.G, instructions for revisions.
- 6. Revise the bidding documents in accordance with comments and instructions from the Owner, as appropriate, and submit 3 final copies of the bidding documents, a revised opinion of probable Construction Cost, and any other deliverables to Owner within 30 calendar days after receipt of Owner's comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when the submittals required by Paragraph A1.02.A.6 have been delivered to Owner.
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is 4. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

**A1.03 Intermunicipal Agreements Assistance**

- A. Assist Owner with negotiations with MMSD and City of Muskego for Intergovernmental Cooperation Agreements under Wis. Stat § 66.0301.



#### A1.04 *Sewer Route Landowner Negotiations & Easement Acquisitions*

##### A. Assist Owner with negotiations and acquisition of Project easements.

1. Attend informational meetings with property owners
2. Determine easements required
3. Prepare cadastral map of necessary easements
4. Prepare and send letters of introduction to affected property owners
5. Obtain title work
6. Prepare legal descriptions & exhibits of easements
7. Create coordinate data for easement staking
8. Assist City Attorney with relocation order
9. Conduct sales study
10. Prepare appraisals
11. Assist with acquisitions
12. Project management
13. Negotiate with property owners
14. Assist City Attorney with Jurisdictional Offer To Purchase
15. Obtain title commitments
16. Assist City Attorney with easement agreements (15 - 20 easements)
17. Map final easement boundaries

#### A1.05 *Financial Plan Preparation*

- A. Complete Clean Water Fund loan Intent to Apply & Priority Evaluation Ranking forms
- B. Preparation of Financing Plan
  1. Provide Overview Of Financing Plan (planning strategies and meetings)
  2. Prepare Financing Plan
    - a. Outline and develop overall plan
    - b. Develop timeline for Project financing and cash flows
    - c. Meetings with City Staff
- C. Prepare Clean Water Fund loan application
  1. Meetings and teleconferences with DNR and DOA staff
  2. Obtain necessary contracts, bid documents, user charge system, information, budget detail and statement of land ownership
  3. Prepare MBE/WBE/SBRA Certification forms
  4. Prepare Plan Of Operation Certification checklist
  5. Prepare Force Account Certification checklist
  6. Prepare Reimbursement And Authorize Representative Resolutions
  7. Prepare Project budget worksheet
  8. Prepare Project cost categories
  9. Prepare parallel cost ratio

10. Prepare required financial information or submittal (Part V of application)
11. Develop 5-year debt service schedules
12. Develop debt service coverage information
13. Prepare 4-year revenue and expenditure projections
14. Prepare 4-year operation and maintenance projections
15. Prepare replacement fund schedule
16. Prepare IRS tax related information (Part VI of application)
17. Prepare User Charge System and Ordinance certification
18. Work with DNR and DOA on loan application review

A1.06 *Sewer Service Area Amendments*

- A. Determine initial boundaries of sewer service area amendment request.
- B. Attend meetings with Regulatory Agencies.
  1. SEWRPC
  2. DNR
  3. MMSD
- C. Attend Public Hearing.

## PART 2 – ADDITIONAL SERVICES

### A1.07 A2.01 Additional Services Requiring Owner's Written Authorization

A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.

1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; review and evaluation of the effects on the design requirements for the Project of any statements and documents prepared by others.
2. Services to verify the accuracy of drawings or other information furnished by Owner or others.
3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
4. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
5. Providing renderings or models for Owner's use.
6. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.
7. Furnishing services of Consultants for other than Basic Services.
8. Services attributable to more prime construction contracts than specified in Paragraph A1.02.D.
9. Services during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.
10. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and

- performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
11. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
  12. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.
  13. Providing any type of property surveys or related engineering services (in addition to those furnished under Basic Services), needed for the transfer of interests in real property; and providing other special field surveys.
  14. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.
  15. Preparation of operation and maintenance manuals.
  16. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.
  17. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
  18. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
  19. Overtime work requiring higher than regular rates.
  20. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

## **Owner's Responsibilities**

---

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
  - 1. Zoning, deed, and other land use restrictions.
  - 2. Copies of previous explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
  - 3. Copies of previous environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
  - 4. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.
- E. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.

- F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
  - 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
  - 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
  - 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
- J. Place and pay for advertisement for Bids in appropriate publications.
- K. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- L. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- M. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.
- N. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.

O. Perform or provide the following additional services:

1. Provide a Project Manager to coordinate City activities.
2. Obtain right of entry permission from property owners for Project Site visits and field work.
3. Provide legal services as required for Project.
4. Provide insurance counseling as required for Project.
5. Provide review comments as requested.
6. Attend joint meetings with Regulatory Agencies, impacted property owners, utilities, and other affected parties.
7. Provide traffic control for investigations of existing MIS at 60th & Ryan Road.
8. Pay all application, permit and license fees required for Project approvals.
9. Arrange for and schedule meetings with impacted property owners as required.
10. Arrange for SEWRPC to identify wetlands in Project area.
11. Provide names, addresses and Tax Key Numbers of all affected property owners in Project area.
12. Arrange for mapping from Milwaukee County (MCAMLIS).

This is **EXHIBIT C**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 15, 2010.

**Payments to Engineer for Services and Reimbursable Expenses**  
**Basic Services – Standard Hourly Rates**

---

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

**ARTICLE 2 – OWNER'S RESPONSIBILITIES**

**C2.01 Compensation For Basic Services – Standard Hourly Rates Method of Payment**

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer's Consultants' charges, if any.
2. Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2.
3. The total compensation for services under Paragraph C2.01 is estimated to be \$1,630,241.45 based on the following estimated distribution of compensation:

a. Project Management	\$ 237,130.00
b. Preliminary Design Study Report	\$ 236,828.00
c. Intermunicipal Agreements	\$ 40,391.00
d. Sewer Route Landowner Negotiations & Easement Acquisitions	\$ 147,752.00
e. Sewer Service Area Public Involvement	\$ 10,070.00
f. Design Phase Engineering	\$ 811,231.45
g. Cost Estimates	\$ 57,214.00
h. Financial Plan Preparation & CWF Application	\$ 67,029.00
i. Sewer Service Area Amendments	\$ <u>22,506.00</u>
Total	\$ 1,630,241.45
4. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner.
5. The total estimated compensation for Engineer's services included in the breakdown by phases as noted in Paragraph C2.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses and Engineer's Consultants' charges.



6. The amounts billed for Engineer's services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultants' charges.

#### *C2.02 Compensation For Reimbursable Expenses*

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.
- B. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. In addition, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project.

#### *C2.03 Other Provisions Concerning Payment*

- A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.05.
- B. Factors. The Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
- C. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

This is **Appendix 1 to EXHIBIT C**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 15, 2010.

### **Reimbursable Expenses Schedule**

Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Reimbursable expenses for services performed on the date of the Agreement are:

#### **REIMBURSABLES**

##### **Mileage**

For Engineers and Technicians	.50/mile
For Construction Review Technicians	.54/mile
For Survey Crews	.62/mile
Print reproductions	.25/sq. foot
Color copies	.25/page
Black/White copies	.08/page
Color plots	2.00/sq. foot
Scanning	.25/sq. foot
GPS equipment	100.00/day
ATV fee	25.00/day
Robotics equipment	100.00/day

This is **Appendix 2 to EXHIBIT C**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 15, 2010.

## **Standard Hourly Rates Schedule**

---

### *A. Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Article C2.

### *B. Schedule:*

#### **STANDARD HOURLY RATES**

Engineer 9	\$185.00
Engineer 8	175.00
Engineer 7	160.00
Engineer 6	135.00
Engineer 5	114.00
Engineer 4	104.00
Engineer 3	94.00
Engineer 2	84.00
Engineer 1	74.00
Senior Engineering Technician	94.00
Engineering Technician	74.00
Director – Economics Group	145.00
Senior Economics Consultant	135.00
Economic Consultant	103.00
Construction Review Manager	107.00
Senior Economic Analyst	90.00
Crew Chief /Surveyor	90.00
Surveying Technician	67.00
Administrative Assistant	57.00
Project Assistant	57.00

## **Additional Services – Standard Hourly Rates**

---

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

### **C2.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment**

A. Owner shall pay Engineer for Additional Services, if any, as follows:

1. *General:* For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.16, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.

B. *Compensation For Reimbursable Expenses:*

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services.

C. *Other Provisions Concerning Payment For Additional Services:*

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.05.
2. *Factors:* The Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

## **Insurance**

---

Paragraph 6.04 of the Agreement is supplemented to include the following agreement of the parties.

### **G6.04 Insurance**

A. The limits of liability for the insurance required by Paragraph 6.04.A and 6.04.B of the Agreement are as follows:

1. By Engineer:

- |  |              |
|--|--------------|
| a. Workers' Compensation:  | Statutory    |
| b. Employer's Liability --   |              |
| 1) Each Accident:  | \$ 1,000,000 |
| 2) Disease, Policy Limit:  | \$ 1,000,000 |
| 3) Disease, Each Employee:   | \$ 1,000,000 |
| c. General Liability --  |              |
| 1) Each Occurrence (Bodily Injury and Property Damage):                              | \$ 1,000,000 |
| 2) General Aggregate:  | \$ 2,000,000 |
| d. Excess or Umbrella Liability --   |              |
| 1) Each Occurrence:  | \$10,000,000 |
| 2) General Aggregate:  | \$10,000,000 |
| e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage): |              |
| Each Accident  | \$ 1,000,000 |
| f. Professional Liability --   |              |
| 1) Each Claim Made   | \$ 2,000,000 |
| 2) Annual Aggregate  | \$ 2,000,000 |

B. *Additional Insureds:*

1. The following persons or entities are to be listed on Contractor's general liability policies of insurance as additional insureds, and on any applicable property insurance policy as loss payees, as provided in Paragraph 6.04.B:
  - a. Ruekert & Mielke, Inc.  
W233 N2080 Ridgeview Parkway  
Waukesha, WI 53188-1020  
\_\_\_\_\_  
Engineer
  - b. Jacobs Associates  
465 California Street, Suite 1000  
San Francisco, CA 94104-1824  
\_\_\_\_\_  
Engineer's Consultant
  - c. Cedarburg Science  
P.O. Box 72020  
Cedarburg, WI 53012  
\_\_\_\_\_  
Engineer's Consultant
  - d. AECOM  
11425 W Lake Park Drive  
Milwaukee, WI 53224  
\_\_\_\_\_  
Engineer's Consultant
  - e. Single Source  
12750 West North Avenue, 2nd Floor  
Brookfield, WI 53005  
\_\_\_\_\_  
Engineer's Consultant
  - f. EMCS, Inc.  
1300 West Canal Street, Suite 200  
Milwaukee, WI 53233  
\_\_\_\_\_  
Engineer's Consultant
  - g. Patricia A. Roeper & Associates, Inc.  
3603 North 63rd Street  
Milwaukee, WI 53216  
\_\_\_\_\_  
Engineer's Consultant
2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability and property policies of insurance.
3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.04.A.

## **Dispute Resolution**

---

Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

### *H6.08 Dispute Resolution*

- A. Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation.
- B. If either party alleges a dispute or controversy with the other party arising out of or relating to this Agreement, then either party shall have the right to demand non-binding mediation within twenty (20) days after the complaining party has provided the other party with written notice describing the dispute and the complaining party's position with reference to the resolution of the dispute.
- C. All mediation hearings shall take place exclusively in the Greater Metropolitan Milwaukee Area in the State of Wisconsin and shall be held within thirty (30) days after the mediator has been appointed. If the Owner and Engineer have not agreed upon a mediator within ten (10) days of the request for mediation, the parties shall jointly request the Chief Judge for the Circuit Courts of Milwaukee County, Wisconsin, to appoint a mediator who shall, if reasonably available in the sole judgment of the appointing Judge, be a retired or former Circuit Court Judge for Waukesha County or Milwaukee County.
- D. The mediation hearing shall be informal and the mediator shall have the right to hear and review all testimony and evidence presented by either party. The mediator shall fix his or her own reasonable compensation and shall assess the cost and charges of the mediation to either or both of the parties as the mediator shall determine to be fair and reasonable. The mediator shall also be authorized, in his or her sole discretion, to award to the party whose contention is upheld, any sums as he or she may deem proper for the time, expense, and trouble incident to the mediation. The mediator shall issue a written finding which shall state how he or she proposes to resolve the dispute between the parties. The mediator's decision shall be rendered within thirty (30) days after the completion of the mediation hearings. The mediator's decision shall not be binding on either party; however, neither party shall have the right to commence any legal proceedings against the other party until the dispute has been mediated and the mediator has issued his or her written findings.
- E. No work related to this Agreement shall be interrupted or delayed during any mediation proceeding except upon written agreement of both parties.

- F. The mediator shall not be a witness in any legal proceedings related to this Agreement nor shall the decision of the mediator be used as evidence or referred to in any legal proceedings related to this Agreement.
- G. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the dispute resolved by a court of competent jurisdiction.



This is **EXHIBIT J**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 15, 2010.

## **Special Provisions**

---

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 Engineer 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.

Conflict of Interest.

Engineer 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. Engineer warrants that it will immediately notify the Owner if any actual or potential conflict of interest arises or becomes known to the Engineer. Upon receipt of such notification, an Owner review and written approval is required for the Engineer to continue to perform work under this Agreement.

Governing Law and Disputes.

In addition to the provisions of subparagraph 6.06 A. and Exhibit H: i) the venue for any disputes arising under this Agreement shall be the Circuit Court for Milwaukee County; and ii) the prevailing party shall be entitled to its costs, including its reasonable attorneys' fees, incurred in any litigation.

Records.

Engineer shall maintain all of its records pertaining to this Agreement for not less than three years following the completion of this Agreement and shall provide for the inspection and copying of such records by the Owner upon request.

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 15, 2010.

**AMENDMENT TO OWNER-ENGINEER AGREEMENT**

Amendment No. \_\_\_\_\_

1. *Background Data:*

- a. Effective Date of Owner-Engineer Agreement: \_\_\_\_\_
- b. Owner: City of Franklin
- c. Engineer: Ruekert & Mielke, Inc.
- d. Project: Ryan Creek Interceptor - 124th Street to 60th Street

2. *Description of Modifications:*

[NOTE TO USER: Include the following paragraphs that are appropriate and delete those not applicable to this amendment. Refer to paragraph numbers used in the Agreement or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments.]

- a. Engineer shall perform or furnish the following Additional Services:
- b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows:
- c. The responsibilities of Owner are modified as follows:
- d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:
- e. The schedule for rendering services is modified as follows:
- f. Other portions of the Agreement (including previous amendments, if any) are modified as follows:

*[List other Attachments, if any]*

3. *Agreement Summary (Reference only):*

- a. Original Agreement amount: \$ \_\_\_\_\_
- b. Net change for prior amendments: \$ \_\_\_\_\_
- c. This amendment amount: \$ \_\_\_\_\_
- d. Adjusted Agreement amount: \$ \_\_\_\_\_

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is 2010.

OWNER:

City of Franklin

By:

John M. Bennett, P.E.

Title:

Director of Public Works/City  
Engineer

Date Signed: \_\_\_\_\_

ENGINEER:

Ruekert & Mielke, Inc.

By:

Joseph W. Eberle, P.E.

Title:

Senior Project Manager

Date Signed: \_\_\_\_\_