

July 12, 2023

Mr. Greg Minikel, P.E.
Engineering Division Manager
Department of Public Infrastructure City of Manitowoc
900 Quay Street
Manitowoc, WI 54220

Re: Agreement for Newton Gravel Pit Water Main Extension Phases 2-3
raSmith Project No.: 2235356

Dear Mr. Minikel:

We are excited that the City of Manitowoc has chosen us for this exciting project and appreciate you for allowing raSmith to provide you with an agreement for these professional services. We look forward to working with City of Manitowoc on this project. We strive to develop a long-term, mutually beneficial relationship with our clients and are committed to understanding your challenges and developing solutions that meet your needs. Within this agreement we have spelled out the Scope of Services, an approximate schedule, some inclusions/exceptions and our professional service fees. Note that the fees are approximate/estimated for a project of this size with some upfront coordination/permitting needed with unknown requests that may service depending on these initial tasks. However, we believe we have captured each item needed and believe this should be a worst-case scenario and have structured this agreement as a Not to Exceed format. If something surfaces that may impact the costs, we will notify the City and adjust accordingly. However, as it is a not to exceed format, if items are not needed (such as less wetland delineations or less easements) there will be a savings and we will be below the not to exceed amount. Along with the aforementioned items I have included our level of effort spreadsheet which shows the task and hours along with the hours for each respective task and personnel, which will help with tracking the project.

Scope of Services

All costs and scope items are based upon a total project limit of approximately 8 miles, or about 47,000'. However, note that raSmith has already completed about 2 miles of survey and 1 mile of the watermain design under a previous contract. This work will be brought into the design for this new watermain extension project.

A. Survey and Data Gathering

- 1) Conduct corridor survey, over the entire right of way, including 10' past the right of way.
 - a) Control and benchmarks will be established throughout the project limits, with a maximum of 500' apart.
 - b) Visible property corner/right-of-way monuments and Public Land Survey System section/quarter section corner monuments will be picked up to help establish the existing right of way (along with using GIS mapping).
- c) Visible utilities will be mapped to the extent feasible, as marked by Digger's Hotline, sewer invert depths and pipe sizes and directions will be measured at manholes.
- 2) Compile additional City data and GIS information, including past watermain extensions.
- 3) Combine and merge survey with GIS data where appropriate. The existing surface will be generated based on merged survey and GIS data.
- 4) Utilize Robotic Total Station and Survey Grade GPS to accurately capture horizontal and vertical locations of improvements and spot elevations on hard surfaces.
Utilize GPS, UAS and Aerial LiDAR to capture additional spot elevations and monitor underground utility markings as completed by Diggers Hotline.



B. Ecological Services

1) We will first use a desktop analysis to determine where potential wetlands may exist over the entire corridor. We will look at both sides of the roadway in determining the best location (side) for the watermain. We will do this upfront (which survey is being completed) to identify where wetland delineation limits are required. We will then do a field delineation of the location and extents of wetland boundaries on the sides of the roadways where watermain will be constructed. We will identify wetland area in accordance with Sections NR 103 and NR 352 of the Wisconsin Administrative Code and with a field study and delineate using the Routine On-Site Determination Method as defined in the 1987 USACE Wetland Delineation Manual and in the Northcentral / Northeast Regional Supplement, topographic conditions and use professional judgement in performing the work. All wetlands will be flagged in the field and surveyed. Document the findings in a final wetland delineation report which shall include data sheets, site maps including a wetland boundary map, farmed areas, aerial photographs, and color copies of site photos. The field work and report shall be reviewed by appropriate agencies. We will work with the DNR and Corp of Engineers to determine jurisdictions and also any exemptions that might be considered and begin the wetland permitting process by beginning with exemption requests.

C. Archeological and Historical

1) We will conduct an Endangered Resource Review along with a screening for historical and archeological building artifacts. This will be through a desktop (office) analysis using state provided data. In addition, we will work with the WHS to confirm there are no historical artifacts or endangered resources (hits) within the right of way of these roadways and that no further field work or permitting is necessary with these items. We do not believe a Phase 1 Environmental Site Assessments will be required for this work, but if needed we can complete the Phase I by determining any recognized environmental condition with the scope of the Comprehensive Environmental Response, Compensation and liability Act (CERCLA). We will evaluate project sites for the presence of rare species through habitat assessment, post construction vegetative monitoring, review of the Natural Heritage Inventory (NHI), presence/absence surveys and for the potential presence of historical and/or archaeological buildings and artifacts.

D. Water Main Design

Water Main Design will incorporate the ecological and survey data to design an 8-inch water main extension in each area as described, including all required appurtenances and water services extended to each identified property. Water main pipe, services, fittings, and fixtures will be designed in accordance with the City of Manitowoc Standard Specifications, the Manitowoc Public Utilities' (MPU) Watermain Specifications. We will work with the City to obtain the list of aforementioned impacted properties so water service connections can be incorporated into the design. Knowing some properties are located further away from the roadway, we will size water services for those buildings further than 100' from the right of way. All project drawings and the Special Provisions and Conditions will be completed in accordance with the City of Manitowoc Standard Specifications, the Manitowoc Public Utilities' (MPU) Watermain Specifications and to include all associated required permits. We will utilize a Technical Memorandum involving hydraulic modelling for design pressure considerations, supplied by the City for confirming fire flows for DNR approvals. Our actual design for the entire system, which might be completed in phases (but all bid per the implementation schedule) will each include:

Preliminary Engineering

- 1) Prepare preliminary plans (plan view and layout) and initial profile of the following items:
 - Confirm the preliminary layout and locations of the watermain from the initial meetings, and evaluations and move forward with engineering.
 - Develop a master watermain plan including any preliminary easements. Look at the complete area and identify locations of water services and prepare an overall phasing plan/map with services identified.
 - Prepare draft plans and specifications



- Layouts and preliminary plans will be plan view only to confirm value engineering ideas through 30%
- 2) Prepare preliminary cost estimates based on the preliminary designs.
 - Meet with the City to review the costs and improvements and provide value engineering options to assist with any cost-saving measures.
 - 3) Utilize these preliminary plans to work with the other stakeholders, especially PSC, DNR, RR and DOT.

Final Engineering

- 1) Upon reviews, agency feedback and coordination, and City approvals, we will move into and/or continue with the final design and permitting. This will include the final design computations such as fireflows and any wetland encroachments.
- 2) Final plans will be developed and include:
 - Title sheet, details, cross-sections
 - Construction staging and phasing plan. This plan will include coordination between each contract package.
 - Prepare final cost estimates and any additional value engineering feedback.
- 3) Submit the final plans to the City and review the 90% plans with the City. Submit plans to various reviewing agencies and utilities for final feedback and scheduling conflicts.

Bid Sets

- 1) Based upon the 90% final plan review from the City, comments from the reviewing agencies, and from the utilities, we will update the final plan set and specifications to bid documents. We understand and assume we will have multiple bid packages.

Bidding Phase (for each phase)

- 1) Prepare a final project bid manual, including plans and specifications, for advertising and bidding (submitted to the City for them to bid online through Quest).
- 2) Answer bidder's questions during bidding and prepare the necessary addendums.
- 3) Attend the bid opening and prepare a final bid tabulation and recommendation of award based upon the low bidder.

E. Management, Meetings, Permitting and Utility Coordination

Our level of effort and scope items include project management throughout the project, Items of particular include:

- 1) We will send out preliminary plans to utilities for planning and will continue to coordinate with utilities to confirm any conflicts.
- 2) DOT Coordination: We will communicate with the DOT and obtain required permits.
- 3) PSC: We will complete the required application for the Construction Authorization (CA)
- 4) DNR/Wetland: The intent is to avoid the wetland but we assume wetland disturbance permits are needed. Assuming the initial layout requires encroachment into the wetland, and the wetland is not exempt, we will coordinate any permitting with the DNR and US Army Corps of Engineers.
- 5) DNR Watermain Permit: We will prepare the necessary permitting applications for each extension.
- 6) DNR-NOI: We will prepare the necessary NOI (WRAPP) permit due to the disturbance of more than one acre.
- 7) Townships/County: We will continuously work with each of these entities confirming any permit and requirement needed for working in their right of way.
- 8) Railroad: We will assume a jack and bore (or similar trenchless crossing of the railroad) and obtain the necessary permit.
- 9) Begin initial coordination with local and state reviewing and regulatory agencies. This will include but not be limited to:
 - Gas
 - Communication utilities

This initial coordination will include calls, meetings, and correspondence to make all parties aware of the development, but also determine what requirements are necessary for future permitting (and confirm critical path and schedule). We will utilize the base plans to forward to agencies or utilize at meetings.



- 10) Numerous meetings with City staff and appropriate committee members, including the initial kick-off (before the survey), post-survey kick-off (to discuss the survey and existing plans), 30%, 90%, and final design meetings. Ultimately, we assume 14-15 meetings.

Completion Schedule

Assuming approval is granted at the July council meeting we will begin the survey coordination immediately and begin the field survey within 1-2 weeks. We will also begin the wetland delineations within 2-3 weeks following approval and ensure all delineations are done prior to end of season. These are completed by an assured delineator so no DNR approvals are needed. We will then work with you to begin establish an acceptable schedule that will be mutually agreed upon prior to beginning each phase of the extensions. Ultimately, we assume an early 2024 bid schedule that will be phased in over 1-2 months (assuming 3-4 separate bid packages).

Professional Fees

The above services will be provided on an hourly, not to exceed fee of \$489,500. Services will be billed each month based on the work completed.

Usual and customary expenses such as mileage, printing, delivery and postage are included in the hourly fees will be billed at cost as a reimbursable expense. Permit fees, beyond the DNR NOI are not included and will be billed as pass-through fees.

Client Responsibilities/Assumptions

The terms and conditions set forth herein are valid for 30 days from the date of this proposal and are conditioned upon our completion of all services by end of 2024.

We have provided various assumptions and potential out of scope services and fees within the attached level of effort spreadsheet, which includes Geotechnical and Phase 1 Assessment. Please refer this level of effort for a complete list of our services.

If you would like to authorize raSmith to proceed with your project, please sign the attached Professional Services Agreement Between Client and Professional, and forward a signed copy of the entire Agreement to our office. We look forward to working with you on this project.

Sincerely,
raSmith

Troy Hartjes, PE
Senior Project Manager

Enclosure: Terms and Conditions
Level of Effort



**PROFESSIONAL SERVICES AGREEMENT
BETWEEN CLIENT AND PROFESSIONAL**

THIS IS AN AGREEMENT effective as of _____ ("Effective Date") between the City of Manitowoc ("Client") and R.A. Smith, Inc. ("Professional").

Client's Project, of which Professional's services under this Agreement are a part, is generally identified as follows:
Newton Gravel Pit Water Main Extension Phases 2-3 ("Project").

Professional's services under this Agreement are generally identified as follows:
Scope of Services are listed within the attached proposal and level of effort ("Services").

Client and Professional further agree as follows:

1.01 Basic Agreement and Period of Service

- A. Professional shall provide or furnish the Services solely for the benefit of Client as set forth in this Agreement and in the attached proposal. If authorized by Client, or if required because of changes in the Project, Professional shall furnish services in addition to those set forth above ("Additional Services").

2.01 Payment Procedures

- A. *Invoices:* Professional shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Client on a monthly basis. Invoices are due and payable within 30 days of invoice date. If Client fails to make any payment due Professional for Services, Additional Services, and expenses within 30 days after receipt of Professional's invoice, then (1) the amounts due Professional 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) in addition Professional may, after giving seven days written notice to Client, suspend Services under this Agreement until Professional has been paid in full all amounts due for Services, Additional Services, expenses, and other related charges. Client waives any and all claims against Professional for any such suspension.
- B. *Payment:* As compensation for Professional providing or furnishing Services and Additional Services, Client shall pay Professional as set forth in this agreement. If Client disputes an invoice, either as to amount or entitlement, then Client shall promptly advise Professional in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion.

2.02 Basis of Payment

- A. Client shall pay Professional for Services in the amount and manner provided in the attached proposal.
- B. *Additional Services:* Unless specified in the attached proposal, for Additional Services, Client shall pay Professional an amount equal to the cumulative hours charged in providing the Additional Services by each class of Professional's employees, times standard hourly rates for each applicable billing class; plus reimbursement of expenses incurred in connection with providing the Additional Services and Professional's consultants' charges, if any.

3.01 Suspension and Termination

- A. The obligation to continue performance under this Agreement may be suspended:
 - 1. *By Client:* Client may suspend the Project for up to 90 days upon seven days written notice to Professional.
 - 2. *By Professional:* Professional may, after giving seven days written notice to Client, suspend services under this Agreement if Client has failed to pay Professional for invoiced services and expenses, as set forth in this Agreement.
- B. The obligation to continue performance under this Agreement may be terminated:
 - 1. For cause,
 - a. By either party upon 14 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Professional for its services is a substantial failure to perform and a basis for termination.
 - b. By Professional:
 - 1) upon seven days written notice if Client demands that Professional furnish or perform services contrary to Professional's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Professional's Services are delayed for more than 90 days for reasons beyond Professional's control, or as the result of the presence at the Site of undisclosed Constituents of Concern.
 - c. By Client, for convenience, effective upon Professional's receipt of written notice from Client

- d. Professional shall have no liability to Client on account of a termination for cause by Professional.
 - e. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under this section if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 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, 60 days after the date of receipt of the notice.
- C. In the event of any termination under this section, Professional will be entitled to invoice Client and to receive full payment for all Services and Additional Services performed or furnished in accordance with this Agreement, plus reimbursement of expenses incurred through the effective date of termination in connection with providing the Services and Additional Services, and Professional's consultants' charges, if any.

4.01 *Successors, Assigns, and Beneficiaries*

- A. Client and Professional are hereby bound and the successors, executors, administrators, and legal representatives of Client and Professional 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 Client nor Professional may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated 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, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Client or Professional to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Professional and not for the benefit of any other party.

5.01 *General Considerations*

A. *Standard of Care*

The standard of care for all professional engineering and related services performed or furnished by Professional 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. Professional makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Professional. Subject to the foregoing standard of care, Professional 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.

B. *Design Without Construction Phase Services*

Professional shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Professional have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor to comply with laws and regulations applicable to such Constructor's furnishing and performing of its work. Professional shall not be responsible for the acts or omissions of any Constructor. Professional neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform its work.

C. *Opinions of Cost*

Professional's opinions (if any) of probable construction cost are to be made on the basis of Professional's experience, qualifications, and general familiarity with the construction industry. However, because Professional 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, Professional cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by Professional. If Client requires greater assurance as to probable construction cost, then Client agrees to obtain an independent cost estimate. Professional shall not be responsible for any decision made regarding the construction contract requirements, or any application, interpretation, clarification, or modification of the construction contract documents other than those made by Professional or its consultants.

D. *Use of Documents*

All documents prepared or furnished by Professional are instruments of service, and Professional retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Client shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Client, subject to receipt by Professional of full payment due and owing for all Services and Additional Services relating to preparation of the documents and subject to the following limitations:

1. Client acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Professional, or for use or reuse by Client or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Professional;

2. Any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Professional, as appropriate for the specific purpose intended, will be at Client's sole risk and without liability or legal exposure to Professional or to its officers, directors, members, partners, agents, employees, and consultants;
3. Client shall indemnify and hold harmless Professional 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 Professional; and
4. Such limited license to Client shall not create any rights in third parties.

E. Liability

To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Professional and Professional's officers, directors, employees, and Consultants, to Client and anyone claiming by, through, or under Client for any and all injuries, claims, losses, expenses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project, Professional's or its Consultants services or this Agreement from any cause or causes whatsoever, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Professional or Professional's officers, directors, employees, or Consultants shall not exceed the total amount of \$100,000 or the total compensation received by Professional under this Agreement, whichever is less.

F. Indemnification

To the fullest extent permitted by Laws and Regulations, Client shall indemnify and hold harmless Professional and Professional's officers, directors, employees, and Consultants from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of Professionals, 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 (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of the Client or Client's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Client with respect to this Agreement or to the Project.

G. Dispute Resolution

Client and Professional agree to negotiate each dispute between them in good faith during the 30 days after written notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute may be mediated. If mediation is not used or is unsuccessful, then the parties may exercise their rights at law. The venue for all disputes shall be the state of Wisconsin. Attorney fees will be borne by the non-prevailing party.

H. Governing Law

This Agreement is to be governed by the law of the state of Wisconsin.

6.01 *Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Client and Professional and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument. Nothing in this Agreement between Professional and Client shall create a contractual relationship between either Professional and Client and an outside third party.

7.01 *Lien Notice*

- A. As required by the Wisconsin construction lien law, Professional hereby notifies Client that persons or companies performing, furnishing, or procuring labor, services, materials, plans, or specifications for the construction on Client's land may have lien rights on Client's land and buildings if not paid. Those entitled to lien rights, in addition to the undersigned Professional, are those who contract directly with the Client or those who give the Client notice within 60 days after they first perform, furnish, or procure labor, services, materials, plans or specifications for the construction. Accordingly, Client probably will receive notices from those who perform, furnish, or procure labor, services, materials, plans, or specifications for the construction, and should give a copy of each notice received to the mortgage lender, if any. Professional agrees to cooperate with the Client and the Client's lender, if any, to see that all potential lien Professionals are duly paid.



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

Project Name: Newton Gravel Pit Water Main Extension Phases 2-3

Client: _____ Professional: R.A. Smith, Inc.

By: _____ By: 

Print name: _____ Printname: Troy Hartjes, PE

Title: _____ Title: Senior Project Manager

Date Signed: _____ Date Signed: July 12, 2023

Address for Client's receipt of notices:

Address for Professional's receipt of notices:

Department of Public Infrastructure City of Manitowoc

R.A. Smith, Inc.

900 Quay Street

16745 West Bluemound Road

Manitowoc, WI 54220

Brookfield, WI 53005

Client's Phone: 920-686-6910

Professional's Phone:

Client's Email: gminikel@manitowoc.org

Professional's Email: