

Consulting Services Contract
City of Waukesha – Stony Point Hydrology, LLC
Project Name: Woodfield Dam Evaluation

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, 201 Delafield Street, Waukesha, Wisconsin 53188-3646, referred to herein as the City; and Stony Point Hydrology, LLC, 137 Wisconsin Avenue, Suite 309, Waukesha, Wisconsin 53186-4953, referred to herein as the Consultant. Together, the City and Consultant are referred to as the Parties.

Recitals

The City requires an evaluation of the dam at Woodfield Park to determine its safety and compliance with state regulations. Consultant has represented that it has the ability to perform such services, and the City wishes to engage the Consultant to perform those services.

Now, therefore, the City and the Consultant agree and contract as follows:

1. **Scope of Work.** The Consultant shall perform the Work described in the attached Proposal, dated March 7, 2017, according to the terms and conditions of this Contract. Schedule A is incorporated into this Contract by reference. Any conflicts between the Proposal and this Contract shall be resolved in favor of this Contract.
2. **Standard of Work.** Consultant will perform the Work according to generally-accepted industry practices and the usual and customary standards of the professions of the individual employees performing the Work for Consultant.
3. **Payment.** The City shall pay to Consultant a total, flat Contract Price of Two Thousand Four Hundred Dollars (\$2,400.00) for performance of the Work in compliance with the terms and conditions of this Contract. ~~Consultant shall invoice the City, monthly.~~ One-half of the Contract Price shall be paid upon the execution of this Contract, and the remainder shall be paid upon completion of the Work and delivery of all deliverables to the City. If additional Work beyond that which is specified in the Proposal is agreed upon in writing by the Parties, then it shall be billed at \$120.00 per hour.
4. **Time.** Consultant shall commence the Work as promptly after execution of this Contract as is possible, and shall complete the Work no later than August 1, 2017, subject only to delays for circumstances beyond Consultant's control.
5. **Ownership of Work Product.** All materials produced in the performance of the Work shall be the sole property of the City, and shall be kept confidential and not disclosed to any third party without the prior written permission of the City.
6. **Changes.** This Contract can only be amended by the written, mutual agreement of the Parties. No change to the scope of the Work, or the total amount to be paid to Consultant, shall be effective unless done by the written mutual agreement of the Parties.
7. **Indemnification.** Subject to the limitation of liability in section 25, Consultant shall indemnify and hold the City harmless from any and all third-party claims, demands, causes of action, lawsuits, judgments, penalties, and other liabilities of any kind arising out of, ~~or connected in any way with,~~ Consultant's performance of the Work, including court costs and actual attorney fees.
8. **Insurance.** Consultant shall maintain insurance of the following kinds and for not less than the following limits, at Consultant's sole expense, at all times during the performance of the Work. Policies shall be occurrence, and not claims-made, policies, except for errors and omissions policies. Consultant shall obtain an endorsement making the City an additional insured and loss payee, and Consultant's insurance shall be

primary, not excess, and non-contributory. All policies shall be from insurers licensed to issue such policies in Wisconsin. Upon the execution of this Contract, Consultant shall deliver a certificate of insurance to City showing that all requirements of this section are met.

- a. Commercial general liability, including products-completed operations, \$1,000,000 per occurrence, \$2,000,000 aggregate per project.
 - b. Automobile liability, \$1,000,000 bodily injury, \$1,000,000 property damage.
 - c. Umbrella, \$1,000,000.
 - d. Professional liability-errors and omissions, \$1,000,000, with extended-reporting period endorsement.
9. **Record Keeping.** Consultant shall keep all documents and records generated in the performance of the Work for no less than 7 years after completion of the Work, and shall make them available to the City at the City's request. Consultant acknowledges that such documents and records may be subject to Wisconsin's Open Records Law.
10. **Cooperation by City.** The City shall cooperate with the Consultant in the performance of the Work, and shall respond timely to all reasonable requests for information and access.
11. **Parties Are Independent Contractors.** Nothing in this Contract shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Contract, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions.
12. **Governmental Immunities and Notice Requirement Preserved.** Nothing in this Contract shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.
13. **Permits and Licenses.** Consultant shall be responsible, at Consultant's expense, for obtaining all permits and licenses required for the performance of the Work.
14. **Assignment Prohibited.** This Contract, and the Consultant's responsibility to perform the Work under this Contract, may not be assigned by the Consultant without the City's written consent.
15. **Notices.** All notices required by this Contract, and all other communications between the Parties, shall be addressed as follows:

To the City: Attention Ron Grall
 City of Waukesha
 Dept of Parks Recreation and Forestry
 1900 Aviation Dr
 Waukesha WI 53188-2471

To Consultant: Attention Michael Schwar
 Stony Point Hydrology, LLC
 137 Wisconsin Avenue
 Suite 309
 Waukesha WI 53186-4953

16. **Corporate Authorization.** The individuals executing this Contract on behalf of the Consultant warrant and represent that they are duly authorized to bind the Consultant to this Contract. Consultant warrants and

represents that the execution of this Contract is not prohibited by the Consultant's articles of incorporation, by-laws, operating agreement, or other internal operating orders, or by any applicable law, regulation or court order. Consultant shall provide proof upon request.

17. **Assistance of Counsel, Voluntary Contract.** The Consultant acknowledges that it has either had the assistance of legal counsel in the negotiation, review and execution of this Contract, or has voluntarily waived the opportunity to do so; that it has read and understood each of this Contract's terms, conditions and provisions, and their effects; and that it has executed this Contract freely and not under conditions of duress.
18. **Adequacy of Consideration.** The Parties acknowledge that the consideration expressed in this Contract is adequate and sufficient to make the obligations contained in this Contract binding upon the Parties.
19. **Costs of Enforcement.** The Parties agree that in the event legal action is necessary to enforce any term or condition of this Contract, then the breaching Party will pay the non-breaching Party's costs incurred in such legal action, including actual attorney fees. If a judgment is taken, then costs of enforcement will be added to the judgment.
20. **Severability.** If any term of this Contract is held unenforceable by a court having jurisdiction, then to the extent the unenforceable term can be severed from the remainder of this Contract without affecting the enforceability of the remainder of this Contract or substantially frustrating its purpose, it will be so severed, and the remainder of this Contract will remain in effect and enforceable.
21. **Survival and Parties Bound.** Unless specifically limited in this Contract, any term, condition or provision of this Contract will survive the execution of this Contract or any stated time periods, to the extent necessary for their performance. This Contract is binding upon, and inures to the benefit of, the Parties' successors, assigns, heirs, executors, trustees and personal representatives.
22. **Governing Law and Jurisdiction.** This Contract will be construed and enforced according to the laws of Wisconsin. If a lawsuit arises out of this Contract, it shall be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.
23. **Integration.** This Contract constitutes the entire agreement of the Parties formed by the City's RFP and the Consultant's responsive proposal; however, if any ambiguity in this Contract requires resolution, or this Contract is silent on a material point, then reference may be made to the RFP and the Consultant's proposal, in that order of priority, to construe this Contract. All other agreements and understandings of the parties with respect to the subject matter expressed in this Contract are unenforceable.
24. **Termination.** Either party may terminate this Contract without cause by giving written notice of termination to the other party, with termination to occur no sooner than 20 days after delivery of the notice. Upon termination, Consultant shall be paid for all Work completed as of the date of termination.
25. **Limitation of Liability.** Consultant shall not be liable for any incidental or consequential damages arising from Consultant's performance of the Work.
26. **Use of Documents.** All documents produced by the Consultant under this Agreement are instruments of the Consultant's professional service for use in the project for which the Consultant was retained. These documents may not be used by the Client for any other purpose without the prior written consent of the Consultant.
27. **Termination of Services.** This Agreement may be terminated at any time by either party should the other party fail to perform its obligations hereunder. In the event of termination for any reason whatsoever, the Client

shall pay the Consultant for all services rendered to the date of termination, and all reimbursable expenses incurred prior to termination and reasonable termination expenses incurred as the result of termination.

City of Waukesha

By Shawn N. Reilly, Mayor
Date: _____

Attested by Gina L. Kozlik, City Clerk
Date: _____

To certify that funds are provided for payment:

Richard L. Abbott, Director of Finance
Date: _____

Stony Point Hydrology, LLC

By Michael T. Schwar, Managing Member
Date: _____



PROPOSAL

March 7, 2017

Mr. Ron Grall, Director
City of Waukesha Parks, Recreation and Forestry Department
1900 Aviation Drive
Waukesha WI, 53188

Dear Mr. Grall,

Thank you for contacting Stony Point Hydrology LLC (SPH) regarding the evaluation of improvements to Woodfield Park Dam. We are glad to provide you with this proposal, which describes the scope of services, fees and schedule for the project. The services described shall be performed according to the terms and conditions of the attached Services Agreement.

Introduction

Woodfield Park Dam is located approximately 600 feet north of the intersection of W. St. Paul Avenue and Harris Highland Drive in the City of Waukesha. The dam was constructed prior to 1950, before non-agricultural development occurred in its watershed, and is now owned by the City. The pond behind the dam is designated as an urban fishing water and it is stocked annually by the Wisconsin Department of Natural Resources with rainbow trout. Over time portions of the dam have fallen into disrepair and upgrades are needed to meet current State dam safety requirements. In 2015 Patrick Engineering provided an assessment of the improvements to the embankment, spillway and outlet structure that would be required to bring the facility up to current safety standards.

With this study, SPH shall provide additional information regarding both dam improvement and dam removal options in order to support the City's decision-making process as it determines a course of action with regard to the dam. One important consideration is that bringing the dam up to current standards and obtaining a State dam permit would not be sufficient to sustain the resource value to the City. Because of the sediment that has accrued within the dam's impoundment over time little deep water habitat remains and what is present is likely to decline in the future. Along with rehabilitating the dam, some degree of sediment removal would be necessary to rehabilitate and extend the life of the fishing resource. Alternatively, the impoundment provided by the dam could be removed and a free-flowing stream restored to the area, an option that would have the advantages of reducing the maintenance responsibilities and potential liabilities associated with dam ownership.

Proposed Scope of Services

We have developed the following scope of services in order to evaluate the two alternative approaches to addressing the safety issues at Woodfield Park Dam:

1. SPH shall review the Patrick Engineering study and its recommendations to bring the dam in conformance with State dam safety requirements. Building on this study, SPH shall develop an itemized list of the analysis and construction tasks required for dam safety improvements including:
 - a. Characterizing the makeup of the berm,
 - b. Increasing spillway capacity to at least the 100-year flow and allowing for safe conveyance of higher flows,
 - c. Provision of means to manage/draw down the impoundment,
 - d. Stabilizing the area immediately downstream of the existing outlet structure, and
 - e. Refit the upstream culvert to prevent management by stoplogs

In addition to the Patrick Engineering work we shall use comparable projects to develop planning-level estimates of the costs to execute these tasks, including design, permitting and construction activities.

2. SPH shall outline the process and requirements necessary to remove sediment from the existing impoundment in order to enhance fishing habitat. Using similar projects in the region SPH shall develop a planning level estimate of the costs to design, permit and conduct such sediment removal.
3. SPH shall evaluate the tasks necessary to enact dam removal by removing the existing outlet structure and a portion of the embankment, create a transition between the existing impoundment and the stream below, and conduct some sediment removal within the current pond to minimize release downstream. This would eliminate the impoundment and allow a free flowing stream to develop in this area. Using similar projects in the region SPH shall develop a planning level estimate of the costs to design, permit and construct such a project. It is assumed that only a portion of the dam embankment will have to be removed to accomplish this alternative, and that neither upstream nor downstream fish passage is a concern.
4. SPH shall develop a draft memorandum detailing the results of Tasks 1 through and provide it to City of Waukesha staff for review and comment. In addition to a narrative describing the analysis performed, this memorandum shall include:
 - a. A site map,
 - b. Figures displaying sketches of the individual alternatives on aerial photos,
 - c. Itemized estimates of probable cost for each alternative, and
 - d. A matrix comparing alternative costs and benefits.

SPH shall revise the draft memorandum based on City of Waukesha comments and issue the revised report as final.

Assumptions and Conditions

We have assumed the following regarding the scope of our services:

- The City shall provide any previous reports and/or design information it may have regarding the dam and the upstream impoundment.
- Two alternatives shall be considered – either repair the dam and dredge the impoundment or remove the dam.
- Estimated costs shall be provided at a planning- or budgeting-level and are subject to change as more information becomes evident through the planning and design process.

Contract, Fees and Schedule

Services by SPH on this project shall be conducted according to the terms and conditions described in the attached Services Agreement. The draft memorandum shall be completed for City of Waukesha review within three weeks of authorization to proceed, and the final shall be completed within one week of receipt of City comments. The fee for this work would be a lump sum of \$2,400 to be billed in up to two installments as work is completed. Additional work can be conducted as authorized at a rate of \$120/hour.

Receipt of a signed copy of the Services Agreement shall be authorization for SPH to proceed with the services described in this proposal.

Thank you for the opportunity to provide this proposal. Please contact me at 262-470-3485 if you have any questions.

Stony Point Hydrology LLC



Michael Schwar, PhD PE
Principal Engineer

Enclosure: Services Agreement (please return a signed copy)