

**Consulting Services Contract
City of Waukesha – R. A. Smith, Inc.
Project Name: Area 7 Stormwater Design**

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, referred to herein as the City; and R. A. Smith, Inc., 16745 W. Bluemound Rd., Brookfield, WI 53005-5938 referred to herein as the Consultant. Together, the City and Consultant are referred to as the Parties.

Recitals

The City published a Request for Proposals, referred to as the RFP, for consulting services in connection with the following Project:

Area 7 Stormwater Design

The RFP contained a specific Scope of Work to be incorporated into the successful bidder's contract.

The Consultant submitted a proposal in response to the RFP, and was selected by the City to be awarded the contract for the Project.

The Consultant is willing to perform consulting services according to the Scope of Work stated in the RFP and the Consultant's responsive Proposal, as modified by the Parties, and to accept the award of the contract for the Project.

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

1. **Scope of Work.** The Consultant shall perform the Work described on Schedule A, according to the terms and conditions of this Contract. Schedule A is incorporated into this Contract by reference.
2. **Standard of Work.** Consultant will perform the Work according to generally-accepted industry practices and the highest standards of the professions of the individual employees performing the Work for Consultant.
3. **Payment.** The City shall pay to Consultant for Work performed, according to the fees shown in Schedule A, the total is not to exceed \$84,995.00. Consultant shall invoice the City monthly, and all invoices shall be payable net 30 days.
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 March 31, 2022, subject only to delays for circumstances beyond Consultant's control, provided Consultant re-commences work promptly in good faith upon the return of normal circumstances.
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.** Consultant shall indemnify, defend, and hold the City and its officials and employees harmless from any and all third-party claims, demands, causes of action, lawsuits, judgments, penalties, and other liabilities of any kind to the extent that they arise out of or in connection 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 professional errors and omissions policies. Consultant shall obtain an endorsement making the City an additional insured, 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. Excess liability-umbrella, \$5,000,000.
 - d. Worker compensation, statutory requirements.
 - e. Professional liability-errors and omissions, \$2,000,000, 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, Liability Limits, and Notice Requirements Preserved.** Nothing in this Contract shall be construed to be a waiver or modification of the governmental immunities, notice requirements, or limitations of liability 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 Chris Langemak, P.E.
 City of Waukesha
 201 Delafield Street
 Waukesha WI 53188

To Consultant: Attention Gary E. Raasch, P.E., CFM
 R.A. Smith, Inc.
 16745 W. Bluemound Road
 Brookfield, WI 53005-5938

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, subject to statutory governmental immunities and liability limits.
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, Construction of Contract.** This Contract constitutes the entire agreement of the Parties formed as a result of the City's RFP and the Consultant's responsive proposal. All other agreements and understandings of the parties with respect to the subject matter expressed in this Contract are unenforceable. If there are any conflicts among the terms of this Contract and any documents incorporated into this Contract, including Schedule A, then the terms of this Contract shall control.
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 incidental or consequential contract damages. There shall be no other limitations of Consultant's liability.
26. **Confidentiality; Public Records.** All documents created pursuant to this Contract, and all documents delivered to the City, are public records and will be subject to disclosure to the public under Wisconsin's Open Records law.
27. **Effective Date.** This Contract shall be effective as of the latest date of execution shown below.

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:

Bridget M. Souffrant, Director of Finance
Date: _____

R.A. Smith, Inc.

By (print name) _____
Title: _____
Date: _____

By (print name) _____
Title: _____
Date: _____



R.A. Smith, Inc.
16745 W. Bluemound Road
Brookfield, WI 53005-5938
(262) 781-1000 | rasmith.com

January 3, 2022

Chris Langemak
Project Engineer
City of Waukesha – Engineering Division
201 Delafield Street
Waukesha, WI 53188

Re: Proposal for Area 7 Stormwater Design
raSmith Project No.: 2210837

Dear Mr. Langemak:

Thank you for allowing raSmith to provide you with a proposal for professional services. We look forward to assisting the City of Waukesha in implementing your stormwater management plan. 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.

Project Understanding

The City is implementing storm sewer improvements in Area 7 (North High School vicinity) as proposed in the 2014 Stormwater Management Plan prepared by Graef and Donohue. Based on our recent stormwater modeling the City would like assistance with design of conveyance improvements downstream of approximately Michigan Avenue and MacKenzie Drive. Specifically, the project would consist of the following components:

- Upsize S. Comanche Lane cross culvert as necessary to avoid flood stage increases on Brookshire Lake
- Upsize Madison Street cross culvert as necessary to avoid flood stage increases on Brookshire Lake
- Increase conveyance capacity from Michigan Avenue and MacKenzie Drive to University Drive – capacity would be provided by enlarging the stream cross section, adding a storm sewer (box section or horizontal elliptical pipe) in University Drive, or a combination of stream modifications and storm sewer. Stream modifications will consist of lowering the adjacent floodplain and will not alter the low-flow stream channel.
- Stabilize erosion along inlet channel to Brookshire Lake and as needed along the stream channel between Madison Street and Les Paul Parkway.

In addition, the City has a related project consisting of removing a driveway stream crossing, restoring the stream, and reconstructing a parking lot along Harris-Highland Drive at St. Paul Avenue.

To assist the City with these projects, raSmith proposes to provide the following services:

Scope of Services

- A. Obtain and review City survey data and available Waukesha County topographic mapping for the project area.
- B. Provide recommendations for upsizing culverts at Madison Street and Comanche Lane based on the latest XP-SWMM modeling.



- C. Evaluate possible modifications to increase stream cross section capacity from approximately MacKenzie Drive and Michigan Avenue to the University Drive crossing. Use the latest XP-SWMM model to evaluate the capability of a modified stream section to convey design flows without flooding.
- D. Based on the feasible stream section modifications, determine the additional storm sewer improvements needed, if any, to convey design flows without street flooding.
- E. Use available wetland delineation report to identify the wetland impact associated with proposed stream section modifications.
- F. Prepare a brief report describing the stream modification analysis results and meet with the City to discuss.
- G. For the flow conveyance modifications selected by the City, prepare 50% draft construction plans and technical specifications for the culvert replacements, stream section modifications, additional storm sewer, and stream channel stabilization. The designs will be based on survey data, wetland boundaries and utility information provided by the City. Draft construction plans will be prepared in 11x17 page format at 1"=40' scale. Preliminary details will be developed and drafted as needed to supplement standard details. The design performance will be confirmed by modeling, as needed.
- H. Prepare applications for necessary permits from WDNR and other agencies as needed, and coordinate with them during their review.
- I. Revise design drawing in response to City review comments on draft submittal and prepare 90% complete plans and technical specifications.
- J. After City review, prepare final construction plans and bidding documents consistent with City standards. The City will advertise and bid the project.
- K. Provide final deliverables in digital format, AutoCAD Civil 3D and MS-Word.
- L. Attend a public information meeting to present analysis findings and discuss impacts.

For the Harris-Highland Drive project, we will review the documents and drawings already prepared by the City and identify additional content that may be needed. After discussion with the City, and using AutoCAD files from the City, we will make the necessary additions and revisions to the drawings and provide final deliverables to the City for bidding. We will also prepare applications for necessary permits from WDNR and other agencies as needed, and coordinate with them during their review.

Completion Schedule

We will work with you to complete the designs as soon as possible. We anticipate that the 50% draft plans will be provided within six weeks after receiving the required data and authorization from the City. We will strive to complete the final deliverables in time for bid advertisement the last week of March 2022.

Professional Fees

The above services will be billed based on actual time spent on the project at our hourly rates previously submitted to and approved by the City. At this time, we anticipate the fees will be approximately \$85,000, as shown in the following table. We will bill each month based on the work completed.



raSmith Team Member	Hourly Billing Rate 2022	Estimated Hours	Estimated Cost
Project Manager	\$158.00	60	\$9,480
Senior Project Engineer	\$158.00		\$0
Senior Design Engineer	\$146.00	50	\$7,300
Water Resources Engineer	\$135.00	40	\$5,400
Project Engineer	\$121.00	65	\$7,865
Civil Engineer/Modeler	\$106.00	235	\$24,910
Civil Engineer/Modeler	\$97.00	120	\$11,640
Engineering Tech	\$85.00	160	\$13,600
Project Ecologist	\$120.00	40	\$4,800
Survey Project Manager	\$142.00		\$0
2-Member Field Crew with GPS/Robotics	\$212.00		\$0
Field Person with GPS/Robotics	\$146.00		\$0
Survey Technician	\$106.00		\$0
Total		770	\$84,995.00

Client Responsibilities/Assumptions

The City will provide the following data:

- Field survey design and utility data, wetland delineation report, and photos for the project corridor from Brookshire Lake inlet upstream to MacKenzie Drive, the Madison Street and Comanche Lane crossings, and the stream channel downstream of Madison Street.
- AutoCAD files for Harris-Highland Drive project, including topography, utilities, wetland boundaries, and previous design.

We look forward to working with you on these projects.

Sincerely,
raSmith

Gary E. Raasch, P.E., CFM
Senior Water Resources Project Manager