

Consulting Services Contract
City of Waukesha – Donohue & Associates, Inc.
Project Name: Storm Sewer and Flood Mitigation Engineering Services-2023-2024

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, referred to herein as the City; and Donohue & Associates, Inc., 3311 Weeden Creek Road, Sheboygan, WI 53081, 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:

Storm Sewer and Flood Mitigation Engineering Services-2023-2024

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-Scope of Work and Schedule B-Price, according to the terms and conditions of this Contract. Schedule A and B are incorporated into this Contract by reference.
2. **Standard of Work.** Consultant will perform the Work according to generally accepted industry practices in the professions of the individual employees performing the Work for Consultant.
3. **Payment.** The City shall pay to Consultant the hourly wages in the attached proposals for performance of the Work in compliance with the terms and conditions of this Contract. Consultant shall invoice the City, monthly. 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 December 31, 2024, 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 negligence or intentional misconduct, 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. **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.
14. **Notices.** All notices required by this Contract, and all other communications between the Parties, shall be addressed as follows:

To the City: Attention: Jonathan Schapekahn, P.E.
City of Waukesha
201 Delafield Street
Waukesha WI 53188

To Consultant: Attention: Joseph Holzwart, P.E. and
Michael Stohl, P.E.
Donohue & Associates, Inc.
3311 Weeden Creek Road
Sheboygan, WI 53081

15. **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.
16. **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.
17. **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.
18. **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.
19. **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.
20. **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.
21. **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.
22. **Integration.** 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.
23. **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.
24. **Limitation of Liability.** Consultant shall not be liable for incidental or consequential contract damages.
25. **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.
26. **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:

Joseph P. Ciarro, Director of Finance
Date: _____

Donohue & Associates, Inc.

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

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

Schedule A

OVERVIEW

A City-Wide Storm Water Management Plan, dated October 2014, was completed by GRAEF. The plan identified 10 drainage areas of concern and recommended various improvements for each area to mitigate flooding of streets and prevent flooding of buildings during severe rainfall events in a manner that has an appropriate balance between the cost to reduce flooding versus the damage and costs from the flooding.

City staff will identify the specific drainage area(s) of concern to be examined by the engineering consultant. Each drainage area has its own specific characteristics and challenges which will require the engineering consultant to examine the existing conditions and results found in the GRAEF storm water plan and, in consultation with City staff, determine the constructable solutions to the drainage issues.

ENGINEERING STUDIES TO INCLUDE THE FOLLOWING:

- Storm Water Engineering
 - Conduct further analysis of the alternatives identified in the City-Wide Storm Water Management Plan to mitigate the flooding caused by the design storms, typically the 3.8- and 6-inch rainfall events. The modeling shall utilize XP-SWMM analyzing the project areas with a maximum 5-foot grid size to produce high resolution results similar to those found in the City-Wide Storm Water Management Plan.
 - Review available geotechnical information and make recommendations if further geotechnical exploration is necessary.
 - Update the hydraulic and hydrologic model to include any additional survey data.
 - Increase storm sewer capacity by means of new parallel storm sewers or larger replacement storm sewers or culverts.
 - Extend the modeling areas, if needed, to determine the effects of any storm water alternatives.
 - Evaluate the environmental impacts of creating new stormwater ponds or modifying or expanding storage in existing ponds in the selected areas.
 - Examine potential water quality features that could be added to the projects or where additional storm water may be discharged into open lands.
 - Coordinate with the Wisconsin DNR, Wisconsin DOT and other regulatory agencies as necessary to verify the scope of the proposed alternatives will be permissible.
 - Incorporate any additional modeling which may have been completed by GRAEF and Donohue into the hydraulic and hydrologic model.
 - Provide cost estimates, broken down by geographic storm water alignments.
 - Prioritize the determined storm water mitigation alternatives based on cost, feasibility, permitting, and flood reduction impact.

- Topographical Survey
 - Conduct topographic survey to encompass any storm sewer alignments necessary to update the hydraulic and hydrologic model and for the preparation of construction drawings for bidding.

All engineering and design shall meet the standards and requirements of the City of Waukesha.

ADDITIONAL PROJECT ELEMENTS:

- Attend the following meetings as directed by the City:
 - Initial kickoff meeting
 - Conference calls as necessary
 - Alternatives selection meetings
 - Public information meetings
 - Review meeting
- Submit any studies / reports for review at the following milestones:
 - 30%
 - 60%
 - 90%
- Submit any plans for review at the following milestones:
 - 30%
 - 60%
 - 90%
- Deliverables as directed by the City:
 - Alternatives analysis report
 - Progress documents at milestones
 - Cost estimates of the alternatives
 - Final plans and specifications for bidding purposes

ITEMS AVAILABLE FROM THE CITY INCLUDE:

- The City's modified AutoCAD Civil 3D template
- Wetland delineations performed by SEWRPC or other consultants
- Reports from prior design studies
- Updated flood mitigation XP-SWMM modeling files
- Scanned images of design and/or record drawings, as may be available
- City GIS data

AGENCY AND UTILITY INVOLVEMENT:

The Department of Public Works anticipates that the following organizations (but not limited to) will have some involvement in these projects:

- Wisconsin DNR
- Wisconsin DOT
- US Army Corps of Engineers
- Any other permitting agencies

Schedule B

11.08.2022 | City of Waukesha, WI: Storm Sewer and Flood Mitigation Engineering Services

I

Hourly Rates

Proposed Fixed Hourly Rates

Donohue proposes the following rates for 2023 and 2024 Storm Sewer and Flood Mitigation Engineering Services. Donohue's and subconsultant TerraTec's standard expenses (mileage, printing) will be billed at cost.

Donohue's Team	Rate 2023 (Per Hour)	Rate 2024 (Per Hour)
Project Manager: Joe Holzwart, Eng. IV	\$170	\$170
QC: Sandy Kimmler, Eng. IV	\$170	\$170
Lead Engineer: Joe Holzwart, Eng. IV	\$170	\$170
Engineering Support:		
Ben Grunwald, Eng. I	\$120	\$120
Michael Styf, Eng. III	\$150	\$150
Michelle Madrid, Eng. III	\$150	\$150
Nate Winter, Eng. I	\$120	\$120
Modeler: Ben Grunwald, Eng. I	\$120	\$120
Modeling Tech Support: Steve Sticklen, Eng V	\$185	\$185
Administrative Support	\$70	\$70
Survey Crew: Led by Professional Land Surveyor Steve Arnold, TerraTec:	\$100	\$105
Equipment	Rate 2023	Rate 2024
Survey Equipment (TerraTec)	\$150/day	\$155/day