

Consulting Services Contract
City of Waukesha – Applied Technologies, Inc.
Project Name: South Side Pump Station Consolidation Construction Management Services

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, referred to herein as the City; and Applied Technologies, Inc., 13400 Bishop's Lane, Suite 270, Brookfield, WI 53005, 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:

South Side Pump Station Consolidation Construction Management Services

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 and the highest standards of the professions of the individual employees performing the Work for Consultant.
3. **Payment.** The City shall pay to Consultant a fee not to exceed \$414,200.00 for completion of the Work in compliance with the terms and conditions of this Contract. Consultant shall invoice the City monthly according to the fees shown in Schedule B, as Work progresses. All invoices shall be payable net 30 days. Schedule B is incorporated into this Contract by reference.
4. **Time.** Consultant shall commence the Work as promptly after execution of this Contract as is possible, and shall complete the Work according to the Schedule A substantial completion schedule, 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 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: Christopher Langemak, P.E.
City of Waukesha Engineering Division
201 Delafield Street
Waukesha WI 53188

To Consultant: Attention: James J. Smith, P.E.
Applied Technologies, Inc.
13400 Bishop's Lane, Suite 270
Brookfield, WI 53005

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:

Joseph P. Ciarro, Director of Finance
Date:_____

Applied Technologies, Inc.

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

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

SCHEDULE A - SCOPE OF WORK

PROJECT INTRODUCTION AND OVERVIEW

As funded in the City's CIP budget and a State of Wisconsin Clean Water Fund Loan, it is planned to construct this project in 2023 and 2024.

The project will include installation of two new sanitary interceptor sewers to allow the elimination of the Sunset Dr and Burr Oak pump stations. Where construction occurs in roadways, pedestrian ramps will be reconstructed and the roadway will be entirely replaced with new asphalt. The project also includes two replacement pump stations with buildings at Fox Point and West Avenue along with pump station upgrades at Heyer and Milky Way.

Generally, the project consists of the following:

- 1) Approximately 4,300 linear feet (LF) of open cut installation of 15- inch diameter pipe along Fox River Parkway within the roadway as well as along the parkway and through about 1,900 linear feet of wetlands. This sewer will allow the elimination of the Sunset pump station.
- 2) Approximately 1,200 LF of open cut installation of 18- inch diameter pipe along a tributary of the Fox River. This sewer will allow the elimination of the Burr Oak pump station.
- 3) Approximately 130 LF of 8-in diameter force main under US 18 by horizontal directional drilling. This replaces a section of ductile iron force main.
- 4) New Fox Point pump station with building and generator and abandonment and decommissioning of the existing pump station.
- 5) New West Avenue pump station with building and generator and removal and decommissioning of the existing pump station and building.
- 6) Upgrades at Heyer pump station including replacement pumping equipment, valves, electrical equipment, control systems, exterior generator, roof, doors, windows, and HVAC equipment.
- 7) Upgrades at Milky Way pump station including site improvements to provide better access and prevent flooding as well as a new exterior generator.
- 8) Drainage improvements to Milky Way Rd near the Milky Way pump station including curb and gutter, grading, and storm sewer.
- 9) Removal and decommissioning of the Sunset Dr and Burr Oak pump stations.

Construction is scheduled to begin in early 2023. The bid opening for construction is scheduled for December 2, 2022. The Construction Contract is anticipated to be awarded by the City of Waukesha Common Council on December 20, 2022. For the purpose of this Request, assume that the start of the Construction phase and the Notice to Proceed to be issued by February 6, 2023. There are several interim substantial completion dates prior to final completion:

1. Substantial Completion of Milky Way Pump Station Upgrades and Milky Way Force Main Upgrades: October 27, 2023
2. Substantial Completion of Heyer Pump Station Upgrades: April 26, 2024
3. Substantial Completion of Fox Point Pump Station, Fox River Parkway Interceptor, Burr Oak Interceptor and paving / landscaping restoration: April 19, 2024
4. Substantial Completion of West Avenue Pump Station: May 17, 2024
5. Substantial Completion of West Avenue, Sunset Drive, Fox Point and Burr Oak Pump Station Abandonment: June 29, 2024

6. Project Final Completion: September 27, 2024

Construction for this project will close sections of Fox River Parkway and Milky Way Rd. Traffic on W Sunset Dr will be reduced to one lane in each direction for the sanitary sewer crossing.

SCOPE OF SERVICES TO BE PROVIDED BY THE CONSULTANT:

- Provide Construction Site Representation and construction management services as requested by the City of Waukesha Engineering Division during construction of **South Side Pump Station Consolidation** project. See Quest Project No. 8318919 for project plans and specifications. Copies will also be available on a SharePoint site designated by the City.
- Observation of proposed infrastructure including: building systems (structural, architectural, HVAC, plumbing, electrical, roofing), horizontal directional drilling, open-cut excavation, sanitary sewer systems, storm sewer systems, roadway subgrade evaluation, road base installation, concrete curb and gutter, concrete flatwork, sidewalk and pavement, hot mix asphalt pavement, and restoration and additional infrastructure as needed and as shown on Plans. Other non-infrastructure observations as necessary including erosion control and traffic control.
- Assist the City of Waukesha and the Contractor with logistics associated with traffic control.
- Coordination with the Contractor, the Design Consultants and the City of Waukesha with the implementation and collection of instrumentation and other construction based monitoring.
- Understand and enforce the City of Waukesha Standard Construction Specifications (SCS) 2022 Edition, Standard Details, Special Provisions and other Contract Documents and practices.
- Attend the Pre-construction meeting(s) for the project. Meeting facilitation and agenda preparation will not be required for this task.
- Prepare weekly or periodic project progress meetings, act as chair of these meetings, prepare and distribute meeting-specific agendas in advance of each meeting, and prepare meeting-specific minutes and distribute to attendees and respective project participants.
- Work with, report to and communicate with the City of Waukesha Project Manager in charge of the project and the City Engineering Tech Supervisor. Each CSR shall be equipped with a phone and have equipment available to perform the required duties and acquiring elevations.
- Work with and communicate with the City's Design Consultants and other Construction Technical Consultant(s).
- Verify materials and products utilized in construction are in compliance with Contract Documents and the Specifications. The City's Engineering Design Consultant will provide technical review of all shop drawings and other data submitted by the contractor for conformance to information given in the Contract Documents and compatibility with the design concept of the project.
- Conduct on-site observations of the work in progress to determine if the work is proceeding in accordance with the Contract Documents and that completed work conforms to the Contract Documents. Consultant will not supervise, direct, or have control over the contractor's work, and will not be responsible for the contractor's means, methods, techniques, sequences, procedures, or health and safety precautions or programs, or for the contractor's failure to perform the construction work in accordance with the Contract Documents. Consultant will

report to the City the contractor's failure to perform, or observed deviation in its performance of, construction work in accordance with the Contract Documents.

- Confirm that all material and other tests as required by Contract Documents are provided.
- Direct visiting personnel representing the public, news reporting or other agencies having jurisdiction over the project to the City Project Manager. Consultant shall not present opinions, status updates or make public statements regarding the project, schedule, cost or any other statement.
- Prepare necessary field modifications in accordance with the City's instructions.
- Maintain at the job site, files for correspondence, reports of job progress meetings, shop drawings and samples, reproductions of original contract documents including all addenda, change orders, field orders, additional drawings, process reports and other project-related documents.
- Keep a daily diary, log book and daily reports (using City's format) recording hours on the job, weather conditions, data relevant to questions of extras or deductions, list of visiting officials, suppliers, daily activities, decisions, conversations and general daily observations. Capture multiple digital photos of daily construction progress and log.
- Consult with the City in advance of scheduled major tests, inspections, milestones or initiation of significant phases of the project.
- Notwithstanding the contractor's sole responsibility for job site safety, immediately report to the City any accident.
- Review contractor's Pay Requests and forward recommendations to the City Project Manager.
- Verify that improvements are installed at proper elevations and locations. Record grades and pipe inverts during construction for record drawings. Report deviations from Contract Documents to Contractor and City of Waukesha Project Manager. The City will not provide survey equipment.
- Be knowledgeable of concrete and compaction testing/sampling procedures and witness testing completed by Contractor.
- Measure and track quantities included in the Contract. Complete and deliver report with the tabulated quantities to the Project Manager.
- Verify materials by reviewing, cataloging and checking construction materials certifications, submittals and deliveries.
- Complete and deliver construction progress Daily Reports (DRs) using the current City-standard reporting formats to Project Manager on a daily basis. No format substitutions will be considered.
- Consultant shall use all applicable City of Waukesha reports and forms for reporting. No substitutions will be allowed. If additional formatted documents are necessary, the City will review and approve prior to use.
- Maintain a current working set of Record Drawings (red-lines) that indicate current changes to the project.

- Submit to the City a list of observed items (Punchlist) requiring completion or correction in accordance with the Contract Documents. Periodic punchlist(s) may be required prior to placing an item or structure in service. Maintain updated punchlists and verify that items are satisfactorily completed.
- Consultant will review certified payrolls submitted by the contractor for compliance with Davis-Bacon wage rate requirements.
- Coordinate pump station start up and training.
- Review and consolidate O&M manuals and deliver sets to the City.
- The Consultant's Office Project Manager shall be the one point of contact for the scheduling of CSR work and billing / invoicing questions.
- Provide construction staking/surveying services as requested by the Contractor through the City Project Manager. Contractor shall use the City-provided Survey Staking Request form. The following shall be considered part of the Survey Staking:
 - Point creation/ set-up from AutoCad (Civil3D) files.
 - Erosion Control, sewers, inlets, underground utilities, roadway, curb and gutter, sidewalk, grading limits and any other points required for the Contractor to complete the project.
 - Providing Cut-Sheets and other information for the Contractor's use using provided City Surveying Cut-Sheet.

Record Drawings

Consultant shall prepare Record Drawings of the entire project and shall include the following information: Invert, size, slope (pitch) and type of material of each span of pipe as installed. Inverts, size, type of material, height of rings (chimney), seals, frame/grate or frame/lid, rim elevations of all installed structures. Thickness and type of all pavements, including base materials. Coordinates (Northing / Easting), and elevations of all exterior corners of all cast-in-place concrete structures based on current City Surveying standards and project elevation datum of NAVD 1988.

Consultant will provide the City with record drawings in Autodesk Civil 3D (2018 format) as well as shape files (ArcGIS format) shall be provided to the City by within 60 days after Final Completion of the entire project.

- The following shall be shown for each structure, appurtenances, and lateral ends or other features that are part of the system:
 - Northing and Easting Coordinates in CSV (Comma Separated Values) text format including point number, northing, easting, elevation and description of each structure (PNEZD).
 - Elevations of all rims, inverts, catch basins, gutter inlets and outlet sections shall be given. Invert elevations shall be documented at the time of installation.

SCOPE OF SERVICES PROVIDED BY DESIGN CONSULTANT:

Donohue & Associates will provide the following:

- Respond to requests for information related to the Contract Documents.
- Provide technical review of all shop drawings and other data submitted by the contractor for conformance to information given in the Contract Documents and compatibility with the design concept of the project.
- Will be available and may be on-site during certain operations.

SCOPE OF SERVICES PROVIDED BY THE CITY OF WAUKESHA:

- One hard copy of the approved plans and specifications and one electronic copy in PDF and AutoCAD 2022 Civil 3D format.
- One hard copy of City's Standard Construction Specifications, 2022 Edition or one electronic (PDF) copy.
- Schedule a Preconstruction meeting. Coordinate, or perform the facilitation and meeting minute preparation for the meeting.
- Construction Daily Report (DR) forms and quantity tabulation forms will be provided electronically.
- Construction Administration forms will be provided electronically.

CITY OF WAUKESHA
South Side Pump Station Consolidation
Price Proposal
Revised 1/6/2023

	LABOR HOURS										TOTALS	
	Applied Technologies Lead/(Pump Stations)			Ruekert & Mielke Sub/(Pipelines)								
	Siehr		Longhini	Nyenhuis	Pisarek	Hallada	Schulz	Grota	Survey Tech.*	Erosion Control Specialist*		
	LCSR	CSR	OPM	LCSR	CSR	OPM	PLS*	Survey Crew Chief*				
Hourly Billing Rate	\$143	\$143	\$146	\$121	\$105	\$152	\$160	\$145	\$105	\$125	Hours	Cost
CONSTRUCTION OBSERVATION												
Onsite Inspection - Pump Stations		850									850	\$121,550
Onsite Inspection - Pipelines				987						108	1095	\$132,927
Subtotal	0	850	0	987	0	0	0	0	0	108	1,945	\$254,477
CONSTRUCTION RELATED SERVICES												
Contract Administration			40			19					59	\$8,728
Pay Requests/Quanity Measurements	60			36							96	\$12,936
Progress Meetings	120			28							148	\$20,548
Contract Clarifications / RFI's	60										60	\$8,580
Preparation of Contract Modifications	30										30	\$4,290
Record Drawing Preparation	120										120	\$17,160
Prepare/Update Punchlists	48			36							84	\$11,220
Subtotal	438	0	40	100	0	19	0	0	0	0	597	\$83,462
CONSTRUCTION SURVEY/STAKING												
Staking Set-up and Coordination							12	30			42	\$6,270
Silt Fence Staking								26	26		52	\$6,500
Sanitary Sewer Staking								62	62		124	\$15,500
Storm Sewer Staking								9	9		18	\$2,250
Curb & Gutter Staking								9	9		18	\$2,250
Sidewalk & Ramps								9	9		18	\$2,250
Pump Station Stakeout (Fox Point, West Avenue, Milky Way)								26	26		52	\$6,500
Clearing & Grubbing Stakeout								9	9		18	\$2,250
As-Built Collection (Horizontal)								18	18		36	\$4,500
Subtotal	0	0	0	0	0	0	12	198	168	0	378	\$48,270
O&M Manual												
Deliver Vendor O&M Manuals to the City		16									16	\$2,288
Subtotal	0	16	0	0	0	0	0	0	0	0	16	\$2,288
Start Up and Training												
Start-up and Training on-site		32									32	\$4,576
Equipment Testing		36									36	\$5,148
Subtotal	0	68	0	0	0	0	0	0	0	0	68	\$9,724
EXPENSES												
Mileage, GPS equipment rental, supplies and materials											\$15,979	
Subtotal											\$15,979	
TOTAL	438	934	40	1,087	0	19	12	198	168	108	3,004	\$414,200