

Department of Public Works

City Hall
730 Washington Ave.
Racine, WI 53403
262.636.9121 - Public Works
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Mark H. Yehlen, P.E.
Commissioner of Public Works/City Engineer

Thomas M. Eeg, P.E.
Asst. Commissioner of Public Works/Operations

John C. Rooney, P.E.
Asst. Commissioner of Public Works/Engineering

January 10, 2012

Ald. Sandy Weidner
Chairwoman, Public Works
and Services Committee
Racine, Wisconsin

**RE: Professional Services – Racine Safety Building Parking Deck Review
Contract 50-11 (K1-055)
Arnold & O'Sheridan, Inc., consultant**

Dear Ald. Weidner:

Submitted for your review and approval is Amendment No. 1 on the subject contract. Amendment No. 1 is in the not-to-exceed amount of \$9,800.00 and is for final design and administration for repairs to the parking garage.

Funding for these professional services is available in Account 992.210.5010, Structural Leak Repairs.

Sincerely,

A handwritten signature in blue ink, which appears to be "T. Eeg", is written over the word "Sincerely,".

Thomas M. Eeg
Assistant Commissioner of Public Works/Operations

TME:das

January 5, 2012

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4125 N 124th Street
Brookfield, WI 53005

Thomas M. Eeg, P.E.
Assistant Commissioner of Public Works/Operations
City of Racine – Department of Public Works
730 Washington Avenue
Racine, WI 53403

www.arnoldandosheridan.com



Re: **Safety Building Parking Garage Repair**
A & O Project Number: 120002

Dear Tom:

Thank you for the opportunity to submit an engineering proposal for a repair of the parking garage for the Safety Building located on Washington Avenue across from City Hall. Work on this project will build upon the findings and recommendations included in our condition evaluation dated December 1, 2011. We propose to provide engineering services for the lump sum fee of \$9,800.

We will provide the following scope of services:

Planning

- Conduct a site review to verify work items and cost estimate.
- Discuss with you repair options, phasing and potential costs.

Construction Documents

- Develop plans, details and specifications for the repair work.
- Provide you with a check set of documents for review to be certain that you and I have the same understanding of work to be completed. We will make revisions to documents as necessary.

Bidding

- Provide you with 30 sets of documents for your distribution to interested bidders.
- Contact potential bidders on your behalf, to help solicit interest in this project.
- Respond to contractor questions during the bidding period.
- Prepare addenda as needed.
- Review submitted bids and provide our opinion of the bids.

Construction Administration

- Attend a pre-construction meeting with the selected Contractor.
- Provide two site visits during construction. Our site reviews will be to verify the quality and quantity of work completed. Project meetings will be conducted as part of our site reviews.
- Respond to Contractor questions, review request for payment from the Contractor, and review product submittals, test reports, schedule submittals, and issue clarification documents relative to the repairs as needed.
- Provide a final punch-list review.
- Assemble and submit project closeout documents.

Preliminary schedule (estimated dates):

- February 1, 2012 – Authorization to proceed.
- February 15, 2012 - Construction Documents complete.
- March 1, 2012 – Commence bidding.
- June 1, 2012 – Construction start.



This proposal is written with the anticipation that the restoration will be completed within a 45 day construction period.

Arnold & O'Sheridan's proposal is written to provide engineering services through the time of the final project closeout for the project outlined in the Construction Documents. The final project closeout date shall be defined as 45 days after the construction completion date. The construction completion date shall be defined as the date by which the Contractor shall complete all construction and vacate the site. This date shall be established through the timeline set forth in the specifications at the start of construction. We reserve the right to request additional compensation for work beyond the original scope of services. Additionally, if through no fault of the Engineer, the Contractor fails to complete their work in closing out the project by the final project closeout date, we propose to provide our services on a time and material basis from the proposed final project closeout date to the actual closeout date. This request will be tied to a Liquidated Damages clause that we propose to make a part of the Owner/Contractor Agreement and further stipulated in the specifications.

I will be the Project Manager. Please contact me with all information concerning the project schedule, meeting dates, requests for information, and project directives.

The following Project related expenses will be billed as reimbursable expenses:

- Fees paid for securing approval of authorities having jurisdiction over the Project

For all reimbursable expenses, a multiple of 1.1 times the expenses incurred will be charged to the project.

The Arnold & O'Sheridan, Inc. Standard Terms and Conditions (copy attached) should be considered a part of this proposal and are incorporated herein by reference.

We assume a City of Racine contract will be executed for this project. Please forward the completed contract to us for our signature. This proposal may be used as an attachment to the contract for the purpose of defining the scope of the project.

Arnold & O'Sheridan requires a signed proposal, contract, or written authorization to proceed prior to performing services on all of its projects.

Please note that the proposed engineering fees contained in this proposal are valid for 60 days from the date of this proposal.

ARNOLD & O'SHERIDAN, INC. | Consulting Engineers

Please call me if you have any questions regarding our proposal. We look forward to working with you on this project.

Sincerely,

ARNOLD & O'SHERIDAN, INC.
CONSULTING ENGINEERS



Kevin M. Graham

Kevin M. Graham
Project Manager - Structural

Attachment

c: File

CITY OF RACINE

By: _____
John Dickert, Mayor

ATTEST:

By: _____
Janice Johnson Martin, City Clerk

APPROVED AS TO FROM:

By: _____
Robert K. Weber, City Attorney

Provisions have been made to pay the liability that will accrue hereunder.

By: _____
David Brown, Finance Director

ARNOLD & O'SHERIDAN, INC. STANDARD TERMS AND CONDITIONS



- Services.** Arnold & O'Sheridan, Inc. (A&O), a Wisconsin corporation, will perform the services set forth in the proposal under these Terms and Conditions. A&O's services shall be performed in a manner consistent with that degree of skill and care ordinarily exercised by practicing design professionals performing similar services in the same locality, at the same site and under the same or similar circumstances and conditions. A&O makes no other representations or warranties, whether expressed or implied, with respect to the services rendered hereunder.
- Compensation.** In consideration of the services performed by A&O, the Client shall pay A&O as provided in the proposal. A&O's client is responsible for reimbursable expenses incurred, including, but not limited to, travel, mileage, printing and CAD services.
- Terms of Payment.** Invoices will be sent no more often than monthly for the services performed and the expenses incurred for this job, during the preceding monthly period. A&O's client should pay the full amount of the invoice within 30 days of the invoice date. If the client fails to make any payment due A&O within 30 days of the invoice date, the amount due A&O shall include a finance charge at the rate of one percent per month, calculated from the 30th day after the date of the invoice.
- Force Majeure.** A&O shall not be liable for any loss or damage due to failure or delay in rendering any service called for under the proposal resulting from any cause beyond A&O's reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of the Client to furnish timely information or approve or disapprove of the Consultant's services or work product, or delays caused by faulty performance by the Client's or by contractors of any level. When such delays beyond A&O's reasonable control occur, the Client agrees that A&O shall not be responsible for damages, nor shall A&O be deemed in default of this Agreement.
- Independent Contractor.** It is agreed between the parties that employment by A&O's client of construction contractors or subcontractors to construct work and perform maintenance constitutes them independent contractors and as such they are completely responsible to A&O's client for the performance of their contracts, and maintaining the construction schedules. It is further agreed that these construction organizations are solely responsible for the means, methods, techniques, sequences and procedures of construction, and for safety precautions incident thereto. The presence of an A&O project manager at the work site will not relieve these construction organizations of these responsibilities. Accordingly, A&O shall not supervise, direct, or have control over construction contractors' or subcontractors' work. A&O shall not have authority over or responsibility for the construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the work of any construction contractor or subcontractor.
- Insurance.** Where A&O's client requires that project construction contractors or subcontractors provide liability insurance, A&O's client shall require such contractors or subcontractors to name A&O as an additional insured. A&O's client shall require contractors and subcontractors to submit certificates evidencing proof of such coverage directly to A&O at 1111 Deming Way, Suite 200, Madison, Wisconsin 53717.



7. **Patents.** A&O shall not conduct patent searches in connection with its services under the proposal and assumes no responsibility for any patent or copyright infringement arising therefrom. Nothing in the proposal or these terms and conditions shall be construed as a warranty or representation that anything made, used or sold arising out of the services performed under the proposal will be free from patent or copyright infringement.
8. **Termination of Contract.** Either party may at any time, upon seven days' prior written notice to the other party, terminate this Agreement. Upon such termination, A&O's client shall pay to A&O all amounts owing under the proposal for all work performed up to the effective date of termination, plus reasonable termination costs. Reasonable termination costs shall include, but not be limited to, the cost of terminating any contracts, leases or other obligations incurred by A&O in connection with the services set forth in the proposal.
9. **A&O's Right to Suspend its Services.** In the event that A&O's client fails to pay A&O the amount due on any invoice within 60 days of the date of the invoice, A&O may, after giving seven days' written notice to its client, suspend its services until payment in full for all services and expenses is received. The Client agrees to indemnify and hold A&O harmless from any claim or liability resulting from such suspension.
10. **Instruments of Service.** Any drawings, specifications or reports prepared by A&O under the attached proposal shall be the property of A&O's client. A&O shall have the unlimited right, however, to use such drawings, specifications and reports and the intellectual property therein. A&O's client shall use such drawings, specifications and reports only for the project or purpose for which they were prepared. "Documents" as referred to herein are limited to the printed copy (hard copy) that is signed or sealed by A&O, its agents or employees. Files on electronic media of text, data, graphics, or of other types that are furnished by A&O, are only for the convenience of A&O's client. Because electronic media can deteriorate or be modified, inadvertently or otherwise, without authorization of the data's creator, the party receiving electronic data agrees that it will perform acceptance tests or procedures within 30 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected in the 30-day period will be corrected by the creator of the electronic data. Electronic drawings will not contain A&O's or its engineer's seal or title block identification. The creator of electronic files is under no obligation to maintain hardware or software to use the media of transfer at a future date. Any conclusions derived from electronic files that are not specifically a requirement of the project work are at the user's sole risk. Accordingly, the electronic documents provided to the Client are for informational purposes only and are not intended as an end-product. A&O makes no warranties, either expressed or implied, regarding the fitness or suitability of the electronic documents. Accordingly, the Client agrees to waive any and all claims against the A&O and A&O's consultants relating in any way to the unauthorized use, reuse or alteration of the electronic documents.
11. **Opinions of Probable Cost.** When required as part of its work, A&O will furnish opinions of probable cost, but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analysis of alternate solutions, and utilitarian considerations of operations and maintenance costs prepared by A&O hereunder will be made on the basis of A&O's experience and qualifications and will represent A&O's judgment as an experienced and qualified design professional. However, users of the probable cost opinions must recognize that A&O does not have control over the cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices or performing the work.



12. **Payments Marked "Paid In Full".** We may accept letters, checks, or other types of payments showing "payment in full" or using other language to indicate satisfaction of your debt, without waiving any of our rights to receive full payment under this Agreement. Satisfaction of your debt for less than the full amount requires a written agreement, signed by one of our authorized employees.
13. **Governing Law.** The proposal and these terms and conditions shall be governed by the laws of the State of Wisconsin.
14. **No Assignment.** Neither party shall assign its rights, interests or obligations under the proposal without the express written consent of the other party. Any assignment made without such written consent shall be void; however, such consent shall not be unreasonably withheld. A&O shall not, in connection with any such assignment by the Client, be required to execute any documents that in any way might, in the sole judgment of the A&O, increase A&O's contractual or legal obligations or risks, or the availability or costs of its professional or general liability insurance.
15. **No Waiver.** The failure of either party to enforce, at any time, the provisions of the proposal or these terms and conditions shall not constitute a waiver of such provisions or the right of A&O or its client at any time to avail themselves of such remedies as either may have for any breach or breaches of such provisions.
16. **Services to be Furnished by Client.** A&O's client shall, at no cost to A&O:
 - a. Provide all data and information in its possession as may be required by A&O to perform the services set forth in the proposal.
 - b. Provide access to the work site so that A&O's employees may perform the work under the proposal without interference.
 - c. Designate a person to act as its representative, who shall have complete authority to transmit instructions, receive information, and interpret and define its policies and decisions with respect to the services under the proposal.
 - d. Give prompt notice to A&O should it observe or otherwise become aware of any defect in the services provided by A&O.
 - e. Furnish to A&O, prior to any performance by A&O, a copy of any engineering, design, and construction standards, which it shall require, A&O to follow in its performance of services under the proposal.
17. **Waiver of Subrogation.** Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of material supplied or installed by others, compromising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance. To the extent damages are covered by property insurance during construction, A&O, Client, Owner, Contractors, Consultants, agents and employees of any of them waive all rights against each other for damages. Client shall require of the Owner, Contractors, Consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.
18. **Entire Agreement.** The proposal and these terms and conditions, upon their acceptance by A&O's client, shall constitute the entire and integrated understanding between the parties and supersede all prior and contemporaneous negotiations, representations and agreements, whether

written or oral, with respect to the subject matter herein. This agreement may not be amended by A&O's client or the owner issuing a purchase order containing additional or contradictory terms. The proposal and these terms and conditions may be amended only by written instrument signed by A&O and A&O's client.



19. **Mediation:** The Client and A&O agree to submit all claims and disputes arising out of this Agreement to non-binding mediation prior to the initiation of legal proceedings. This provision shall survive completion or termination of this Agreement; however, neither party shall seek mediation of any claim or dispute arising out of this Agreement beyond the period of time that would bar the initiation of legal proceedings to litigate such claim or dispute under the applicable law.
20. **Information Reliance:** A&O shall be entitled to rely, without liability, on the accuracy and completeness of any and all information provided by Client, Client's consultants and contractors, and information from public records, without the need for independent verification.
21. **Certifications:** A&O shall not be required to sign any documents, no matter by whom requested, that would result in A&O's having to certify, guaranty, or warrant the existence of conditions that A&O cannot ascertain.
22. **Third Parties:** Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Client or A&O. A&O's services hereunder are being performed solely for the benefit of the Client, and no other entity shall have any claim against A&O because of this Agreement or A&O's performance of services hereunder.
23. **Consequential Damages:** Neither the Client nor A&O shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action including negligence, strict liability, breach of contract and breach of warranty.
24. **Agreed Remedy:** To the fullest extent permitted by law, the total liability, in the aggregate, of A&O and A&O's officers, directors, employees, agents, and consultants to Client and anyone claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to A&O's services, the Project or this Agreement, from any cause or causes whatsoever, including but not limited to, negligence, strict liability, breach of contract or breach of warranty shall not exceed the total compensation received by A&O under this Agreement, or the total amount of \$50,000, whichever is greater.
25. **Indemnity:** The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless A&O, its officers, directors, employees, consultants and Subconsultants (collectively A&O) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with the services performed under this Agreement, except for damages, liabilities or costs arising from the A&O's sole negligence or willful misconduct.

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