

June 5, 2024

Mr. Mike Gitter
Chief of Operations
City of Racine Water & Wastewater Utility
101 Barker Street
Racine, WI 53402

Re: Proposal for Professional Services
Woodman's Food Market Water Main

Dear Mr. Gitter:

Thank you for this opportunity to provide a proposal for professional services. The contents of this proposal letter spell out the Scope of Services, the proposed Completion Schedule, the Professional Fees, and the Assumptions/Conditions under which this proposal is being made.

Project Name

Woodman's Food Market Water Main

Scope of Services

raSmith will provide construction services for this project consisting of installing approximately 1,000 LF of water main with associated hydrants and valves within the future Woodman's property.

The proposed services include:

- Construction Administration including general contract administration, conduct the preconstruction meeting, preparation and provide recommendations for all pay requests, review and make recommendations on proposed change orders, provide schedule updates, perform visits throughout construction to ensure work is progressing as specified in the project specifications, punch list preparation and project closeout.
- Construction observation will be provided when the contractor is on site performing work. Observations will be documented in electronic format and a .pdf copy will be emailed to Utility staff.
- Record Drawings will be completed and GPS data for the water main will be collected and data sent to the Utility to update your GIS system.

Completion Schedule

Work is anticipated to start and be completed during the 2024 construction season.

Professional Fees

The above-described services will be provided for on a time-and-expense basis. Fees will be invoiced monthly as the project proceeds. The primary representative on site will be a Construction Technician supplied at a rate of \$105 per hour. A Construction Manager will be involved with the project at a rate of \$165 per hour.



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The estimated cost to complete the above-referenced activities is based on typical contractor production rates. The estimated fees for this proposal are oversight and management \$4,000; inspection and record drawings \$11,000 for a total of \$15,000. Usual and customary expenses such as mileage, postage, delivery, and applicable taxes are included in the above estimate, and will be invoiced at cost.

Assumptions/Conditions

Our estimated fees are based on the following set of assumptions and conditions. Deviations from these may result in additional fees:

- The terms and conditions set forth herein are valid for 30 days from the date of this proposal and are conditioned upon our completion of all services within 260 days of this date.
- The hourly rates are subject to change on an annual basis.
- No additional Geotechnical work is included in this proposal.
- Our professional fees are based on full days of uninterrupted work to the extent that can reasonably be expected for this type of project. Any unanticipated mobilization resulting from requests for partial days will result in additional fees which are not included in the estimate.

If you would like to authorize raSmith to proceed with your project, please sign the attached Professional Services Agreement Between Client and Professional and forward a signed copy of the entire Agreement to our office. Once received, we will execute and return a copy for your records. We look forward to working with you on this project.

Sincerely,
raSmith

A handwritten signature in black ink, appearing to read 'Paul S. Schafer'.

Paul S. Schafer, P.E.
Director of Construction Services

Enclosure: Professional Services Agreement (Contract)

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PROFESSIONAL SERVICES AGREEMENT
BETWEEN CLIENT AND PROFESSIONAL

THIS IS AN AGREEMENT effective as of _____ ("Effective Date") between _____ ("Client") and R.A. Smith, Inc. ("Professional").

Client's Project, of which Professional's services under this Agreement are a part, is generally identified as follows:

_____ ("Project").

Professional's services under this Agreement are generally identified as follows:

_____ ("Services").

Client and Professional further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Professional shall provide or furnish the Services solely for the benefit of Client as set forth in this Agreement and in the attached proposal. If authorized by Client, or if required because of changes in the Project, Professional shall furnish services in addition to those set forth above ("Additional Services").

2.01 *Payment Procedures*

- A. *Invoices:* Professional shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Client on a monthly basis. Invoices are due and payable within 30 days of invoice date. If Client fails to make any payment due Professional for Services, Additional Services, and expenses within 30 days after receipt of Professional's invoice, then (1) the amounts due Professional will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day, and (2) in addition Professional may, after giving seven days written notice to Client, suspend Services under this Agreement until Professional has been paid in full all amounts due for Services, Additional Services, expenses, and other related charges. Client waives any and all claims against Professional for any such suspension.
- B. *Payment:* As compensation for Professional providing or furnishing Services and Additional Services, Client shall pay Professional as set forth in this agreement. If Client disputes an invoice, either as to amount or entitlement, then Client shall promptly advise Professional in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion.

2.02 *Basis of Payment*

- A. Client shall pay Professional for Services in the amount and manner provided in the attached proposal.
- B. *Additional Services:* Unless specified in the attached proposal, for Additional Services, Client shall pay Professional an amount equal to the cumulative hours charged in providing the Additional Services by each class of Professional's employees, times standard hourly rates for each applicable billing class; plus reimbursement of expenses incurred in connection with providing the Additional Services and Professional's consultants' charges, if any.

3.01 *Suspension and Termination*

- A. The obligation to continue performance under this Agreement may be suspended:
 - 1. *By Client:* Client may suspend the Project for up to 90 days upon seven days written notice to Professional.
 - 2. *By Professional:* Professional may, after giving seven days written notice to Client, suspend services under this Agreement if Client has failed to pay Professional for invoiced services and expenses, as set forth in this Agreement.
- B. The obligation to continue performance under this Agreement may be terminated:
 - 1. For cause,
 - a. By either party upon 14 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Professional for its services is a substantial failure to perform and a basis for termination.
 - b. By Professional:
 - 1) upon seven days written notice if Client demands that Professional furnish or perform services contrary to Professional's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Professional's Services are delayed for more than 90 days for reasons beyond Professional's control, or as the result of the presence at the Site of undisclosed Constituents of Concern.
 - c. By Client, for convenience, effective upon Professional's receipt of written notice from Client

- d. Professional shall have no liability to Client on account of a termination for cause by Professional.
 - e. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under this section if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
- C. In the event of any termination under this section, Professional will be entitled to invoice Client and to receive full payment for all Services and Additional Services performed or furnished in accordance with this Agreement, plus reimbursement of expenses incurred through the effective date of termination in connection with providing the Services and Additional Services, and Professional's consultants' charges, if any.

4.01 *Successors, Assigns, and Beneficiaries*

- A. Client and Professional are hereby bound and the successors, executors, administrators, and legal representatives of Client and Professional are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Client nor Professional may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Client or Professional to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Professional and not for the benefit of any other party.

5.01 *General Considerations*

A. Standard of Care

The standard of care for all professional engineering and related services performed or furnished by Professional under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Professional makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Professional. Subject to the foregoing standard of care, Professional and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

B. Design Without Construction Phase Services

Professional shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Professional have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor to comply with laws and regulations applicable to such Constructor's furnishing and performing of its work. Professional shall not be responsible for the acts or omissions of any Constructor. Professional neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform its work.

C. Opinions of Cost

Professional's opinions (if any) of probable construction cost are to be made on the basis of Professional's experience, qualifications, and general familiarity with the construction industry. However, because Professional has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Professional cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by Professional. If Client requires greater assurance as to probable construction cost, then Client agrees to obtain an independent cost estimate. Professional shall not be responsible for any decision made regarding the construction contract requirements, or any application, interpretation, clarification, or modification of the construction contract documents other than those made by Professional or its consultants.

D. Use of Documents

All documents prepared or furnished by Professional are instruments of service, and Professional retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Client shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Client, subject to receipt by Professional of full payment due and owing for all Services and Additional Services relating to preparation of the documents and subject to the following limitations:

1. Client acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Professional, or for use or reuse by Client or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Professional;

2. Any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Professional, as appropriate for the specific purpose intended, will be at Client's sole risk and without liability or legal exposure to Professional or to its officers, directors, members, partners, agents, employees, and consultants;
3. Client shall indemnify and hold harmless Professional and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Professional; and
4. Such limited license to Client shall not create any rights in third parties.

E. Liability

To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Professional and Professional's officers, directors, employees, and Consultants, to Client and anyone claiming by, through, or under Client for any and all injuries, claims, losses, expenses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project, Professional's or its Consultants services or this Agreement from any cause or causes whatsoever, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Professional or Professional's officers, directors, employees, or Consultants shall not exceed the total amount of \$100,000 or the total compensation received by Professional under this Agreement, whichever is less.

F. Indemnification

To the fullest extent permitted by Laws and Regulations, Client shall indemnify and hold harmless Professional and Professional's officers, directors, employees, and Consultants from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of Professionals, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of the Client or Client's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Client with respect to this Agreement or to the Project.

G. Dispute Resolution

Client and Professional agree to negotiate each dispute between them in good faith during the 30 days after written notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law. The venue for all disputes shall be the state of Wisconsin. Attorney fees will be borne by the non-prevailing party.

H. Governing Law

This Agreement is to be governed by the law of the state of Wisconsin.

6.01 *Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Client and Professional and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument. Nothing in this Agreement between Professional and Client shall create a contractual relationship between either Professional and Client and an outside third party.

7.01 *Lien Notice*

- A. As required by the Wisconsin construction lien law, Professional hereby notifies Client that persons or companies performing, furnishing, or procuring labor, services, materials, plans, or specifications for the construction on Client's land may have lien rights on Client's land and buildings if not paid. Those entitled to lien rights, in addition to the undersigned Professional, are those who contract directly with the Client or those who give the Client notice within 60 days after they first perform, furnish, or procure labor, services, materials, plans or specifications for the construction. Accordingly, Client probably will receive notices from those who perform, furnish, or procure labor, services, materials, plans, or specifications for the construction, and should give a copy of each notice received to the mortgage lender, if any. Professional agrees to cooperate with the Client and the Client's lender, if any, to see that all potential lien Professionals are duly paid.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Project Name: _____

Client: _____

Professional: _____

By: _____

By: _____

Print name: _____

Print name: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

Address for Client's receipt of notices:

Address for Professional's receipt of notices:

R.A. Smith, Inc.
16745 West Bluemound Road
Brookfield, WI 53005

Client's Phone: _____

Professional's Phone: _____

Client's Email: _____

Professional's Email: _____