

## Department of Public Works

City Hall  
730 Washington Ave.  
Racine, WI 53403  
262.636.9121 - Public Works  
262.636.9191 - Engineering



Richard M. Jones, P.E.  
Commissioner of Public Works

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

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

December 30, 2009

Legistar Item: 09-4596

TO: Alderman Greg Holding, Chairman  
Public Works and Services Committee

FROM: John Rooney *JCR*  
Assistant Commissioner of Public Works/Engineering

RE: Proposal for Design and Review of the Festival Hall Retaining Wall,  
Contract 06-10 (K0-006) PS – Arnold & O'Sheridan, Inc., Consultants

We have received a proposal from Arnold & O'Sheridan, Inc. for the design and review of the Festival Hall retaining wall. The concrete testing, report and preparation plans, specifications and estimates are in the not-to-exceed amount of \$16,500. Funding is available in Account No. 101-990-5010, Festival Hall Retaining Wall.

If the Committee agrees, the appropriate action would be to approve the proposal and authorize the Mayor and City Clerk to enter into the agreement.

CC: Joy Hansche  
File

December 17, 2009

John C. Rooney, P.E.  
**City of Racine – Department of Public Works**  
730 Washington Avenue  
Racine, WI 53403



Re: **Festival Park Retaining Wall Repair**  
A & O Project Number: 091219

Dear John:

Thank you for the opportunity to submit an engineering proposal for the Festival Park Retaining Wall project in Racine. We understand the project includes repair of a concrete retaining wall and adjacent sidewalk. Our engineering services will be provided in two parts; evaluation and repair.

For evaluation, we will provide the following scope of services:

- Conduct a site review to document and quantify the deterioration of the retaining wall and project extents.
- Provide a letter report summarizing our observations, conclusions, recommendations, and estimated cost for construction.

We propose to provide engineering services for evaluation for the lump sum fee of \$2,000.

As an added service, we recommend having cores extracted from the retaining wall and sent to a lab for compressive strength testing and petrographic analysis. This testing will help us to better assess the cause for the concrete deterioration and to help develop a long term repair approach. A core for compressive strength testing and one for petrographic analysis would be taken at each half length section of wall for a total of four cores. This cost will vary depending on whether cores are extracted by a local company and the time required for receiving test results. The cost for the extraction and testing of cores is approximately \$3,000.

Work on this project will build upon the findings and recommendations that will be included in our letter report.

For repair, we will provide the following scope of services:

**Planning**

- Provide one meeting with you to discuss 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 A&O have the same understanding of work to be completed. A&O will make revisions to documents as necessary.

**Bidding**

- Provide 25 sets of documents and distribute to interested bidders.

- Contact potential bidders on your behalf, to help solicit interest in this project.
- Conduct a pre-bid meeting.
- Answer contractor questions during the bidding period.
- Review submitted bids and provide our opinion of the bids.

**Construction Administration**

- Conduct a pre-construction meeting with the selected Contractor.
- Provide 2 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 any clarification documents relative to the repairs as needed.
- Provide a final punch-list.
- Assemble and submit project closeout documents.



Recommendations for repair of the retaining wall will be based on our field review and additional proposed testing. Engineering cost will vary depending on the repair approach taken. Our cost for repair will be estimated until scope and extent of repair is known. We propose to provide engineering services for repair for an estimated fee range of \$8,500 to \$11,500.

Assuming authorization to proceed by January 1, we propose to conduct our site review and have a letter report to you by January 15, 2010. Depending on time for receiving test results, our report date may change. We propose to provide review documents to you by February 1, 2010 and construction documents by March 1, 2010 so bidding can commence by April 1, 2010. Construction is anticipated to start on or before May 1, 2010.

This proposal is written with the anticipation that the repair work 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 bases 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.



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.*

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

A handwritten signature in cursive script that reads "Kevin M. Graham".

---

Kevin M. Graham  
Structural Technician

**Attachment**

**c: File**

## ARNOLD & O'SHERIDAN, INC.

### STANDARD TERMS AND CONDITIONS



1. **Services.** Arnold & O'Sheridan, Inc. (A&O), a Wisconsin corporation, will perform the services set forth in the proposal under these Terms and Conditions.
2. **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.
3. **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 30<sup>th</sup> day after the date of the invoice.
4. **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.
5. **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.
6. **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.
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.
11. **Estimated Costs.** Any "estimated costs" provided by A&O, represents A&O's judgment as a design professional familiar with the industry. It is recognized, however, that neither A&O nor its client has control over the costs of labor, materials or equipment, over contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, A&O cannot and does not warrant or represent that bids or negotiated prices will not vary from the cost estimates prepared by A&O.
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. **Limit of Liability.** A&O will perform its professional services under this Agreement by the exercise of due care and skill in accordance with applicable professional standards for services of this type under these circumstances. To the fullest extent permitted by law, the total liability, in the aggregate, for Engineer and Engineer's Officers, Directors, Partners, Employees, Agents, and Independent Professional Associates and Consultants, and any of them to Owner and anyone claiming by, through, or under Owner, for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any cause or causes including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract or breach of warranty of Engineer or Engineer's Officers, Directors, Partners, Employees, Agents, and Independent Professional Associates and Consultants, or any of them, shall not exceed \$100,000.



14. **Governing Law.** The proposal and these terms and conditions shall be governed by the laws of the State of Wisconsin.
15. **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.
16. **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.
17. **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.
18. **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, comprising 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.
19. **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.

\*\*\*