



Nielsen Madsen + Barber

CIVIL ENGINEERS AND LAND SURVEYORS

**CITY OF RACINE WATER UTILITY
CHRISTINA ESTATES ADDITION #1
CONSTRUCTION ADMINISTRATION SERVICES AGREEMENT**

This Agreement is made this _____ day of _____, 2021, by and between the CITY OF RACINE WATER UTILITY, hereinafter referred to as "UTILITY" and NIELSEN MADSEN & BARBER, S.C., Civil Engineers and Land Surveyors, hereinafter referred to as "NMB".

WITNESSETH that in consideration of the covenants herein, these parties agree as follows:

Section 1. Christina Estates Addition #1, herein referred to as the "PROJECT", consists of the construction of infrastructure, including: sanitary sewer, watermain, storm sewer, site grading, roadways, and other such improvements as shown on the site development drawings dated 12/10/20 and Released for Construction on the _____ day of _____ 2021. After written authorization by the UTILITY, NMB shall provide professional construction administration services for Christina Estates Addition #1. The scope of services to be provided will be in general accordance with Exhibit A - Construction Related Services Proposal attached hereto, and conditioned as follows:

A. Construction Survey

Provide office setup and a surveyor and surveyor's assistant to perform construction staking and field layout as required to construct the improvements. Provide a post-construction "As-Built" survey of said improvements.

B. Construction Observation

Provide qualified staff to perform Construction Observation at the construction site to observe, in general, if the Contractor's work (as it relates to the installation of watermain infrastructure) is in conformance with the plans, specifications, and contract documents, and to monitor the Contractor's progress as related to their Construction Contract. NMB is not responsible for the Contractor's construction means, methods, techniques, sequences, procedures, time of performance, compliance with laws and regulations, or safety precautions and programs in connection with the PROJECT. NMB does not guarantee the performance of the Contractor and is not responsible for the Contractor's failure to execute the work in accordance with the Construction Contract documents.



C. Construction Administration

Provide construction administration services as required for the PROJECT including a cursory review of UTILITY approved plans, attendance at the pre-construction meeting, periodic site visits during construction, day to day project coordination, final inspection of constructed work, and preparation of construction record drawings as described in Exhibit A attached hereto.

Section 2. The UTILITY shall compensate NMB for the professional services enumerated in Section 1 as follows:

| | |
|---|----------------|
| Section 1. A - Construction Survey* | \$2,300.00 |
| Section 1. B - Construction Observation* | \$5,600.00 |
| Section 1. C - Construction Administration* | \$1,000.00 |
| Reimbursable Expenses Estimate: | <u>\$60.00</u> |
| Project Estimate: | \$8,960.00 |

*Construction Survey, Construction Observation and Construction Administration fees will be based on the hourly rate of compensation for the actual work time performed plus reimbursement of out-of-pocket expenses including automobile travel at the business mileage rate approved by the United States Internal Revenue Services. Bill rates for all NMB staff can be found in Exhibit B, attached hereto.

NMB may submit requests for periodic progress payments for services rendered to UTILITY. Payments shall be due and owed by the UTILITY upon receipt of the invoices for services.

Section 3. The parties further agree:

The UTILITY shall obtain from others (if necessary), and furnish to NMB in AutoCAD format, complete construction drawings for the PROJECT which shall include, but not be limited to, the design location and elevation of all proposed property lines, rights-of-ways, easements, public utilities, pavements, drainageways, stormwater basins, light poles, sidewalks, and other public improvements required as part of the PROJECT.

This agreement may be terminated, in whole or in part, by either party if the other party substantially fails to fulfill its obligations under this agreement through no fault of the terminating party; or the UTILITY may terminate this agreement, in whole or in part, for its convenience. However, no such termination may be effected unless the terminating party gives the other party (1) not less than ten (10) calendar days written notice by certified mail of intent to terminate and (2) an opportunity for meeting with the terminating party before termination. If this agreement is terminated by either party, NMB shall be paid for services performed to the effective date of termination, including reimbursable expenses. In the event

of contract termination, the UTILITY shall receive reproducible copies of drawings, specifications and other documents completed by NMB.

NMB agrees to hold harmless and indemnify the UTILITY and each of its officers, agents, and employees from any and all liability claims, losses or damages arising out of or alleged to arise from negligence in the performance of the services under this agreement, but not including liability that may be due to the sole negligence of the UTILITY or other consultants, contractors or subcontractors working for the UTILITY or their officers, agents, and employees.

The UTILITY agrees to hold harmless and indemnify NMB and each of their officers, agents and/or employees from any and all liability claims, losses or damages arising out of or alleged to arise from negligence in the performance of the services under this agreement that may be due to the sole negligence of the UTILITY or other consultants, contractors or subcontractors working for the UTILITY or their officers, agents and/or employees.

The UTILITY acknowledges that NMB is a Service Corporation (S Corp) and further acknowledges that the corporate entity, as the party to this contract, expressly avoids contracting for individual responsibility of its officers, directors, or employees.

The UTILITY and NMB agree that any claim made by either party arising out of any act of the other party, or any officer, director, or employee of the other party in the execution or performance of the agreement, shall be made solely against the other party and not individually or jointly against such officer, director, or employees.

For the duration of the PROJECT, NMB shall procure and maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease, or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom, alleged to arise from NMB's negligence in the performance of services under this agreement. The UTILITY shall be named as an additional insured on NMB's general liability insurance policy.

See Exhibit B "Standard Terms and Conditions" for insurance limits.

Notwithstanding any other provision of this agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of NMB and their officers, directors, employees, agents, and any of them, to the UTILITY and anyone claiming by, through or under the UTILITY, for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the PROJECT or the agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or

breach of contract or warranty express or implied of NMB or their officers, directors, employees, agents or any of them, hereinafter referred to as the "UTILITY'S CLAIMS", shall not exceed the total insurance proceeds available to pay on behalf of or to NMB by their insurers in settlement or satisfaction of UTILITY'S CLAIMS under the terms and conditions of NMB's insurance policies applicable thereto, including all covered payments made by those insurers for fees, costs and expenses of investigation, claims adjustment, defense and appeal.

NMB is responsible for the quality, technical accuracy, timely completion and coordination of all as-built surveys, as-built drawings, certifications, reports, and other professional services furnished or required under this agreement and shall endeavor to perform such services with the same skill and judgment which can be reasonably expected from similarly situated professionals.

All reports, drawings, specifications, and electronic files prepared or furnished by NMB pursuant to this agreement are instruments of service in respect to the PROJECT and NMB shall retain the right of reuse of said documents and electronic files by and at the discretion of NMB whether or not the PROJECT is completed. Reproducible copies of NMB's documents and electronic files for information and reference in connection with the use and occupancy of the PROJECT by the UTILITY and others shall be delivered to and become the property of the UTILITY upon request; however, NMB's documents and electronic files shall not be reused by the UTILITY or others on future additions or extensions of the PROJECT without field verification. Any such reuse without verification or adaptation by NMB for the specific purpose intended will be at the UTILITY's sole risk and without liability or legal exposure to NMB, and the UTILITY shall indemnify and hold harmless NMB from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting therefrom.

The compensation for engineering services set forth in Section 2 hereof may include supervision of a geotechnical subconsultant and/or laboratory services required by NMB for the PROJECT, but the cost of such subconsultant and laboratory services shall be a separate expense to the UTILITY. NMB shall make all necessary arrangements, subject to the prior approval by the UTILITY, and employ qualified subconsultants for all geotechnical subconsultant and/or laboratory services, and the UTILITY shall reimburse NMB for the actual costs of the geotechnical subconsultant and/or laboratory services plus ten percent (10%) service charge upon submission of proper invoices.

The estimated compensation amounts for construction survey, construction observation, and construction administration services set forth in Section 2 above include overtime hours for Resident Project Representatives, Field Technicians and Surveyors. In the event the Contractor performs work on Sundays or legal holidays, during which time NMB Representatives are required to be present, the UTILITY shall pay extra compensation at NMB's hourly rates on a time and a half basis.

Any provision or part thereof of this agreement held to be void or unenforceable under any law shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the parties. The parties agree that this agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

This agreement contains and embodies the entire and integrated agreement between parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral.

IN WITNESS WHEREOF, the parties hereto have caused the execution of this agreement by their duly authorized officers this _____ day of _____, 2021.

NIELSEN MADSEN & BARBER, S.C.

RACINE WATER UTILITY

BY: _____
Mark D. Eberle
Vice-PresidentPresident

BY: _____

ATTEST:

ATTEST:

EXHIBIT A

Construction Administration Proposal

NMB proposes to provide construction administration services for the PROJECT as follows:

Section 1.A - Construction Survey

1. Locate and verify horizontal control set in field by Developer's Engineer, hereinafter referred to as DEVELOPER. Verify vertical control as indicated on design plans. File all data for future reference.
2. Watermain – Field Staking:
 - a) Centerline of watermain at 50' intervals and at all fittings, valves and grade changes with hub, lath and grade.
 - b) Centerline of all hydrants with hub, lath, grade and offset.
 - c) Service ends in cul-de-sacs and on curves (location lath) with offsets.
3. "As-Built" Surveys:
 - a) Watermain alignment.
 - b) Location and elevation of valves, hydrants and water service curb stops.

Section 1.B - Construction Observation

1. Review plans and specifications prior to start of the PROJECT.
2. Ensure the following PROJECT requirements are being performed by the CONTRACTOR:
 - a) Specific PROJECT details.
 - b) Traffic control requirements/closures.
 - c) Erosion control requirements.
 - d) Permit conditions and requirements.
 - e) Notification requirements (police, fire, school bus, garbage collection, etc.).
 - f) Schedule PROJECT milestone dates.
 - g) Adjacent property considerations.
3. Review the daily work schedules and scheduled events with the CONTRACTOR.
4. Serve as the PROJECT liaison (between the UTILITY and the residents, CONTRACTOR and the residents, and the contractor and the UTILITY).

5. Review all materials for the PROJECT as they are delivered to the project site. Reject materials not conforming to the specifications.
6. Observe all work performed and determine conformance with the approved plans and specifications.
7. Interpret contract documents when unique situations or questions arise. Request verification of interpretation from the UTILITY and inform the CONTRACTOR of the determination.
8. Evaluate modifications required due to field conditions. Request approval of the required field changes from the UTILITY and/or DEVELOPER, if necessary, and inform the CONTRACTOR of the necessary changes.
9. Compute quantities of work performed, verify the quantities with the CONTRACTOR, and submit to the DEVELOPER for future use in pay requests.
10. Collect all certifications required by the contract documents.
11. Develop a punch list as work proceeds. Review the punch list and inspect for completion with the CONTRACTOR.
12. Develop construction reports and daily inspection logs indicating the work performed that day, materials used, changes made, interference encountered, manpower and equipment used, weather conditions, visitors to the site, test reports, location sketches (lateral ties) and general comments on events and progress.

Section 1.C - Construction Administration

1. Perform a cursory review of UTILITY approved plans, specifications and other PROJECT related documents.
2. Establish, maintain, and store project files.
3. Prepare for and attend a pre-construction meeting.
4. Review contractor's shop drawing submittals, comment, and distribute.
5. Coordinate survey requirements or other significant scheduled events with the CONTRACTOR and UTILITY.

6. Review weekly schedules to determine if the overall project is on schedule.
 7. Anticipate potential problems and relay those concerns to the UTILITY, CONTRACTOR, and DEVELOPER (or other appropriate party).
 8. Day to day project coordination with the following:
 - a) DEVELOPER, UTILITY, and CONTRACTOR.
 - b) Permitting authorities.
 - c) Other affected parties such as schools, property owners, businesses, etc.
 9. Make periodic site visits (usually daily during active construction) to determine, in general, if the project is proceeding in accordance with the contract documents.
 - a) This activity will include, but not be limited to:
 - Site visits during actual construction phase.
 - Substantial completion inspection and submittals.
 - Final punch list verification after the construction inspector has left the site.
 - Water valve box inspection.
 - Miscellaneous time on site meeting with other affected parties such as UTILITY personnel, homeowners, businesses, other government agencies, or (permitting authorities) and follow up on complaints.
 10. Review requests for reduction in DEVELOPER'S letter of credit in accordance with the requirements of the letter of credit and the development agreement to provide recommendations to the UTILITY for such reductions.
 - a) This activity will include but not be limited to:
 - Review of the CONTRACTOR'S request for payment; review of the CONTRACTOR'S lien waiver issued to the DEVELOPER.
 - Review of retained funds, tracking and compilation of unanticipated project costs (extras) and the tracking of contingency fund balance.
 11. Develop and provide final record drawings and other construction documents and distribute to the UTILITY, and DEVELOPER.
 - a) This activity will include, but not be limited to:
 - Modifications to the original plans (released for construction and if amended in electronic form) to reflect changes made during construction and survey as-built locations of appurtenances.
 - Development of lateral information sheets for water services for future use by the UTILITY staff.
 - Construction observation reports.
 - Spreadsheet tabulation of newly installed watermain assets.
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EXHIBIT B
Nielsen Madsen + Barber
STANDARD TERMS AND CONDITIONS
(Effective January 1, 2021)

COMPENSATION

| Staff Type | Billing Rate/Hr. |
|--------------------------------|------------------|
| Project Manager | \$150.00 |
| Civil Engineer I | \$120.00 |
| Civil Engineer II | \$100.00 |
| Civil Engineer III | \$ 90.00 |
| Design Engineer I | \$ 80.00 |
| Design Engineer II | \$ 75.00 |
| CADD Operator | \$100.00 |
| Professional Land Surveyor I | \$130.00 |
| Professional Land Surveyor II | \$115.00 |
| Survey Crew Chief | \$ 95.00 |
| Survey Assistant | \$ 65.00 |
| Survey Line & Grade Specialist | \$ 85.00 |
| Construction Services Manager | \$110.00 |
| Field Engineer I | \$110.00 |
| Field Engineer II | \$100.00 |
| Construction Technician I | \$ 80.00 |
| Construction Technician II | \$ 75.00 |
| Construction Technician III | \$ 70.00 |
| Project Assistant | \$ 60.00 |
| Expert Witness Testimony | \$200.00 |

REIMBURSABLE EXPENSES

Reimbursable expenses will be charged at cost plus a ten percent (10%) service charge. Such expenses shall include, but not be limited to, travel, reproduction, shipping/delivery charges, document retrieval fees, sub-consultant and subcontractor fees, permitting & recording fees, specialized equipment rental and other specialized supply costs directly related to the execution of the specific project. Fixed rate reimbursable expenses will be charged as follows:

| | | |
|--|---------------|----------------|
| Travel (mileage) | | \$0.56 / mile |
| Overnight/Courier Delivery | | Actual Cost |
| Recorded Document Retrieval | | Actual Cost |
| All Terrain Vehicle (ATV) Usage | | \$40.00 / hour |
| Global Positioning System (GPS) Usage | | \$40.00 / hour |
| Specialized Materials as Requested by Client | | Actual Cost |
| Copy Charges (per sheet) | Black & White | Color |
| 8.5" x 11" | \$0.10 | \$0.15 |
| 8.25" x 14" | \$0.10 | \$0.20 |
| 11" x 17" | \$0.15 | \$0.30 |
| 12" x 18" | \$0.15 | \$0.30 |
| 18" x 24" | \$1.00 | \$3.00 |
| 22" x 34" | \$1.75 | \$5.00 |
| 24" x 36" | \$2.00 | \$6.00 |
| 30" x 42" | \$3.00 | \$8.80 |
| 36" x 36" | \$3.00 | \$9.00 |
| 36" x 48" | \$5.00 | \$10.00 |

INVOICING

All projects will be invoiced for the work performed to date every 30 days. Payment in full of the invoiced amount is to be made upon receipt. Unpaid invoices will be considered delinquent after 30 days and will accrue interest charges of 1½% per month, beginning from the date of the invoice. Lien notices will be sent out for any invoices remaining unpaid after 60 days.

LIEN RIGHTS

In order to comply with Wisconsin Statute 779.02 regarding notice to preserve lien rights, the following statutory notice is served upon the Owner/Owner's representative and is made a part of this proposal and/or contract: As required by the Wisconsin construction lien law, Nielsen Madsen & Barber, S.C. hereby notifies Owner/Owner's representative that persons or companies furnishing labor or materials for design / development or construction on Owner's land may have lien rights on Owner's land and buildings if not paid. Those entitled to lien rights, in

addition to Nielsen Madsen & Barber, S.C., are those who contract directly with the Owner or those who give notice within 60 days after they first furnish labor or materials for the construction and should give a copy of each notice received to his mortgage lender, if any. Nielsen Madsen & Barber, S.C. agrees to cooperate with the Owner and his lender, if any, to see that all potential lien claimants are duly paid.

LIMITATION OF COSTS

Nielsen Madsen & Barber, S.C. (NMB) will not be obligated to continue providing services or incur costs beyond the agreed upon fee unless Client agrees in writing to a revised cost.

CLIENT'S RESPONSIBILITIES

Client shall arrange for access to and make all provisions for NMB personnel to enter upon private and public property as required for NMB to perform services under this Agreement.

Client shall provide NMB with all available information regarding this project as required. NMB shall be entitled to rely upon information and documentation provided by the Client or consultants retained by the Client in relation to this project, however, NMB assumes no responsibility or liability for their completeness or accuracy.

COST OPINIONS

Any cost opinions or project economic evaluations provided by NMB will be on the basis of experience and judgment, but, because NMB has no control over market conditions or bidding procedures, we cannot warrant that bids, construction cost, or project economics will not vary from these opinions.

STANDARD CARE

The services provided by NMB under this Agreement will be performed as reasonably required in accordance with generally accepted standards for services as offered in the proposal for this project at the time and the place where the services are performed.

INSURANCE

Throughout the duration of the project, NMB will procure and maintain the following insurance:

| Liability | Limits of Liability |
|--|--------------------------|
| Worker's Compensation and Employer's Liability | \$ 500,000 / incident |
| Comprehensive General Liability | \$1,000,000 / Occurrence |
| Comprehensive General Liability | \$2,000,000 / Aggregate |
| Professional Liability | \$2,000,000 / Occurrence |
| Automobile Liability | \$1,000,000 / Accident |
| Umbrella Liability | \$5,000,000 / Occurrence |
| Umbrella Liability | \$5,000,000 / Aggregate |

Within the limits of this insurance, NMB agrees to hold the Client harmless from and against loss, damage, injury or liability arising directly from the negligent acts or omissions of employees, agents or subcontractors of NMB. Should the Client require other types of insurance coverage, limits in excess of the above limits, and/or certificates naming any other(s) than the Client as additional insured parties, NMB's cost of obtaining such coverage, limits or certificates shall be reimbursable by the Client.

TERMINATION

The Client shall within thirty (30) days of termination remunerate NMB for services rendered and costs reasonably incurred, in accordance with NMB's fee schedule. Costs shall include those incurred up to the time of termination.