

**RESOLUTION NO. 2024-11
(3-05-2024)**

**A RESOLUTION BY THE PUBLIC WORKS & CAPITAL IMPROVEMENTS &
STORMWATER & WASTEWATER COMMITTEE OF THE VILLAGE OF
STURTEVANT AUTHORIZING A TIME AND EXPENSE PROFESSIONAL
SERVICES AGREEMENT WITH RA SMITH FOR A SANITARY SEWER FLOW
ANALYSIS**

WHEREAS, RA Smith submitted a Time and Expense Professional Services Agreement to provide sanitary sewer flow calculations for a Village-wide sanitary sewer flow analysis to determine the projected 2040 flow requested by Racine Wastewater Utility; and

WHEREAS, the Village is satisfied with the Proposal from RA Smith; and

WHEREAS, at this time the Village would like to proceed with the Sanitary Sewer Flow Analysis.

NOW THEREFORE, the Village Board of the Village of Sturtevant, Racine County, Wisconsin does hereby resolve:

1. That RA Smith is authorized to proceed with the Project at a cost not to exceed \$15,000.00
2. That the funds for said work shall be taken from account 101-51300-290.
3. That the Village President and Village Clerk are authorized to execute contracts, agreements or other documents necessary to carry out the intent of this resolution.

Adopted by the Village Board of the Village of Sturtevant, Racine County, Wisconsin, this 5th day of March 2024.

Village of Sturtevant

By


Michael Rosenbaum, President

Attest


Cheryl Zamecnik, Village Clerk



CREATIVITY BEYOND ENGINEERING

R.A. Smith, Inc.
16745 W. Bluemound Road
Brookfield, WI 53005-5938
(262) 781-1000 | rasmith.com

February 14, 2024

Mr. Jack Feiner
Public Works Manager
Village of Sturtevant
2801 Eighty-Ninth Street
Sturtevant, WI 53177
feinerj@sturtevant-wi.gov

Re: Proposal for Village of Sturtevant – Sanitary Sewer Flow Analysis
raSmith Opportunity No.: 2242100

Dear Jack:

Thank you for allowing raSmith to provide you with a proposal for professional services. We are excited for the opportunity to work with the Village of Sturtevant on the Sanitary Sewer Flow Analysis project. raSmith has the project management skills, relevant experience, and staff availability to deliver a successful project. Our team will review all aspects of your project, discuss your specific needs, and collaborate with you throughout the duration of your project. The contents of this proposal letter spell out the Project Understanding, Scope of Services, Project Schedule to be provided, the Professional Fees, and the Client Responsibilities/Assumptions under which this proposal is being made.

Project Understanding

The Village has requested raSmith to provide sanitary sewer flow calculations for a Village-wide sanitary sewer flow analysis to determine the projected 2040 flow requested by Racine Wastewater Utility. The average daily flow (2016-2018) is currently 1.02 million gallons per day (MGD) with a flow allocation of 1.78 MGD for the Village. The previous Village Engineer projected 2040 average daily flow would be 3.00 MGD (based on an email from April 9, 2020); however, calculations supporting that value have not been found. The following is how we propose to develop 2040 sanitary sewer flow projections for the Village.

raSmith will request existing metered flow data (2020-2023, if available) from the Racine Wastewater Utility. Using this flow data in conjunction with GIS data from both the Village and Wisconsin Department of Natural Resources (WDNR) we will establish base line sewer flow conditions for the currently developed land within the Village. This will develop "per-acre" sewer flows based on zoning and land uses.

The same Village GIS and WDNR information will be utilized along with aerial mapping to determine what remains as developable land within the Village. Flow rates, based on a flow per acre, will be assigned to each of the zoning and land uses of the developable parcels to provide a projected flow calculation that assumes the Village is in a full build-out condition.

The developed flow rates will be reviewed with any existing data from Racine Wastewater Utility to ensure there is conformance with their data. Combining the existing flow data with the potential developed flow will provide a build-out flow for the Village (assuming the Village's corporate limits do not increase). Finally, a rate factor can be determined to provide a sense of how quickly the developable lands may develop in an attempt to predict what the projected flow rate may be in 2040. This rate factor would be determined using building permits information over the last 3 years as an indicator for potential growth rate by 2040.



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While these calculations have many variables which are not controlled and difficult to determine, i.e. development rates which are impacted by the economy and interest rates, the intent of the project is to provide calculations to the Village which have definition and utilize best available data to determine a potential future Village-wide sanitary sewer flow in the year 2040.

Scope of Services

Provide a summary report based on the calculations performed as described in the Project Understanding.

Project Schedule

We anticipate beginning work as soon as authorized. The final report is anticipated to be complete by no later than April 26, 2024.

Professional Fees

The above services will be provided on an hourly time-and-expense basis for a fee not to exceed **\$15,000.00**.

Services will be billed each month based on the work completed. All usual and customary expenses such as mileage, printing, delivery, permit fees and postage are not included in the above fee and will be billed at cost as a reimbursable expense.

This proposal does not include any services beyond those described in the above Scope of Services.

raSmith offers an array of supplemental services that are available at your request. Please refer to Attachment A for a complete list of our services.

Client Responsibilities/Assumptions

- A. 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 design services by May 1, 2024.
- B. The hourly rates shown on the Professional Fees Rate Schedule are subject to change on an annual basis.
- C. The Client shall provide any existing data relevant to the proposed project including, but not limited to, electronic AutoCAD base files, any original Design or As-Built Plans, CCTV data and reports, original flow calculations, building permit data for the last 3 years, and/or GIS electronic data. Verification of information provided by others is not a part of the Scope of Services; therefore, any problems arising out of the use of such information shall not be the responsibility of raSmith.
- D. After work has commenced, any revisions requested by the Client, or necessitated by conditions beyond our control, will be considered extra work requiring additional compensation.



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If you would like to authorize raSmith to proceed with your project, please sign the attached Professional Services Agreement and forward a signed copy of the entire Agreement to our office. Once received, we will execute and return a copy for your records. If there are any questions concerning the above or the terms as presented, please contact me.

Thank you again for your consideration of raSmith to work on your project.

Sincerely,
raSmith

A handwritten signature in black ink, appearing to read 'Jason M. Feucht'.

Jason M. Feucht, P.E.
Assistant Director of Municipal Services

Enclosures: Professional Services Agreement - Contract
Corporate Overview - Attachment A
Rate Schedule - 2024

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**PROFESSIONAL SERVICES AGREEMENT
BETWEEN CLIENT AND PROFESSIONAL**

THIS IS AN AGREEMENT effective as of _____ ("Effective Date") between Village of Sturtevant ("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:

Sanitary Sewer Flow Analysis ("Project").

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

as specified within the Project Understanding and Scope of Services in the Proposal letter ("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: Sanitary Sewer Flow Analysis

Client: Village of Sturtevant

Professional: R.A. Smith, Inc.

By: _____

By: _____

Print name: Jack Feiner

Print name: Jason Feucht, P.E.

Title: Public Works Manager

Title: Assistant Director of Municipal Services

Date Signed: _____

Date Signed: _____

Address for Client's receipt of notices:

Address for Professional's receipt of notices:

Village of Sturtevant

R.A. Smith, Inc.

2801 Eighty-Ninth Street

16745 West Bluemound Road

Sturtevant, WI 53177

Brookfield, WI 53005

Client's Phone: (262) 866-7202

Professional's Phone: (262) 317-3356

Client's Email: feinerj@sturtevant-wi.gov

Professional's Email: jason.feucht@rasmith.com