

Request for Proposal

Design Services

for

C24-04 Turtle Creek Sewer Replacement



Department of Public Works
Engineering Division
2400 Springbrook Ct
Beloit, WI 53511

1. Introduction

The City of Beloit, Wisconsin is requesting proposals and qualifications from professional engineering firms to prepare plans and specifications to publicly bid the C24-04 Turtle Creek Sewer Replacement project. The project will be constructed in the 2024 construction season.

The proposed project includes the replacement of approximately 330 linear feet of 10-inch diameter gravity sanitary sewer in the area of Turtle Creek Park with a dual barrel inverted siphon to allow the sewer to be installed deeper beneath Turtle Creek.

Any questions or comments regarding the RFP shall be directed via phone or e-mail to:

Dennis Weiland
2400 Springbrook Ct.
Beloit, WI 53511
608-481-0446
WeilandD@BeloitWI.gov

2. Scope of Services

The project deliverables will be one hard copy of complete plans and specifications, including a cost estimate, at the 60%, 90%, and final design stages. Electronic copies of the plans and specifications (.dwg and .pdf formats) will be required to be submitted as well. The City will provide bidding dates for 2024 to be placed in the specification manual. Expectations include the following:

1. Conduct a project kick-off meeting with City Staff and submit a complete project schedule with important milestone and deliverable dates. It is expected that the City will be provided written updates on project progress with an updated schedule on a monthly basis.
2. Obtain a topographical survey within the project area to be used during design and construction. Establish three temporary benchmarks that can be utilized during construction.
3. Coordination with utility companies to include the location of their utilities in the plans, and to coordinate any utility relocation required.
4. Coordinate with the affected property owner of 1126 Broad Street during the design phase for expected extent of work area & anticipated project schedule.
5. Prepare Plans, Specifications, and Cost Estimates at the following milestones:
 - a. Preliminary Plans, Specifications, and Cost Estimates at 60% and 90% complete design stages shall be submitted to City staff for review and concurrence.
 - b. Final Plans, Specifications, and Cost Estimate suitable for public bidding in accordance with industry standards. The City's front-end documents and specifications will be used for the Specifications Manual.
6. Prepare any needed addendums for bidding.
7. The City will coordinate with the newspaper and pay for the public bidding notices.

The City will upload all bidding documents to www.questcdn.com. The City will attend the bid openings and review all bids.

8. The City will perform all construction services although the design consultant will be expected to be available to answer any questions that may arise during construction with respect to the intent of the plans or specifications.
9. Obtain all necessary permits, including storm water and sanitary sewer permits from the Wisconsin DNR or the USACE.
10. Soil borings will be performed under a separate City contract. Results of the bore tests will be forwarded to the selected bidder when they become available.
11. Prepare any needed temporary or permanent easement documents needed for construction. Since this is an unknown, preparation of easement documents will be paid for as an additional fee. The proposal shall specify this additional fee on a per easement basis.

3. Project Details

The proposed project limits are between existing Sanitary Manhole #02_24 (north side of Turtle Creek) to #03_01 (south side of Turtle Creek), the locations of which are shown on Project Area Map in Appendix 1. The existing 10-inch diameter gravity sewer main between these manholes is exposed in the bottom of the creek. Note that the existing sewer crosses through Sanitary Manhole #32 shown on the Project Area Map.

The existing sewer would be replaced with a dual barrel inverted siphon to allow the sewer to be installed deeper beneath the creek bed.

Depth information at each manhole obtained by the City of Beloit Engineering Division is included in Appendix 1 as a preliminary reference for consultants. A sanitary system map showing the extent of the upstream sewer service area is also included in Appendix 2. Bore samples from a WISDOT project reconstructing the E. Grand Avenue bridge north of this syphon project is included in Appendix 3. A separate contract is out for soil borings which will provide a more accurate soil report at the project site, available in April.

4. Submittal Instructions

Proposals submitted in response to this RFP shall be clearly marked “**City of Beloit Design Services for Turtle Creek Sewer Replacement**” and shall be delivered hard copy or electronically to the following address:

Dennis Weiland
Project Engineer
Utilities and Engineering Facility
2400 Springbrook Ct
Beloit, Wisconsin 53511
WeilandD@BeloitWI.gov

All proposals are due no later than **10:00 A.M. Central Standard Time on March 15, 2024**. Three full hard copies of the proposal, or one printable electronic proposal shall be submitted. An original copy must contain all executed Proposal Forms specified in this section, including:

- Cover letter acknowledging the proposed scope of services.
- Project team with resumes. Limited to one page per team member.
- Listing of similar projects with references – Limit 3 projects.
- Contract Pricing Proposal – Base design fee shall be T&E not to exceed, and an additional fee shall be provided for each easement document that may need to be prepared.

The instructions contained herein must be closely followed for the proposal to be considered under this RFP. If any of the submittal requirements are omitted or any exceptions to the contractual terms and conditions are taken, the City shall reserve the right to deem the proposal non-responsive. The City further reserves the right to reject any proposal if it is not in compliance with the required format.

All proposals submitted become property of the City of Beloit. These materials will become public records and will be made available upon request.

The City and all of its officers, agents and employees are not liable for any costs incurred by the Consultant in replying to this RFP. The Consultant shall solely bear the entire costs for preparing and submitting proposal(s) in response to this RFP. All costs incurred during the selection process and negotiations will likewise be solely at the Consultant's expense.

5. Proposal Evaluation Process

The City of Beloit Engineering staff will review proposals for conformance with this RFP. A selection will be based on the following:

Project Team and Qualifications (30 pts):

Identify the consultant's proposed project team. Include a resume for each team member and identify what makes them qualified to successfully complete this project. It should be made clear which team members will be performing the work of each task and which team members will be providing QA/QC or project management functions for each task.

Related Project Experience (35 pts):

Describe other similar projects the firm has completed in the past including a contact for the client. List which proposed project team members worked on these past projects and specifically note which tasks these team members performed.

Fee (35 pts):

Identify all fees the consultant will charge for performing the tasks necessary to accomplish the objectives of this RFP. The fee shall be T&E not to exceed with an additional fee for each easement document required.

6. Proposed Schedule

- Request for Proposal Issued March 1, 2024
- Proposals due to City March 15, 2024
- Final Selection Notification March 22, 2024

A proposed schedule for the following items should be included with the proposal. The City understands that permitting is dependent on the permit authority. An expected permitting schedule should be included.

- 60% Plan Submittal and Project Discussion
- 90% Plan Submittal
- Expected Permitting Schedule
- Project Bid Documents Ready

7. Professional Services Contract

The selected consultant will be required to enter into a contract using the City of Beloit's Professional Services Contract template. This RFP, any addenda and the proposal of the selected consultant will become part of the contract. A copy of the template is attached in Appendix 4. Some firms may already have an agreed upon modification to this form which may be used.

This contract will be a Time and Expenses, Not-To-Exceed contract. The standard template will be modified to reflect this.

Payment for service under this contract will be made once per month. The invoices shall give enough detail for the City to know what work has been completed during the billing period.

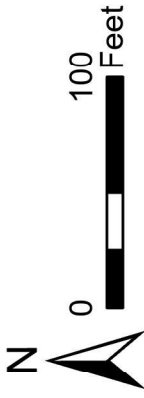
8. Request for Proposal Questions

All questions shall be submitted to Dennis Weiland, Project Engineer at WeilandD@BeloitWI.gov or 608-481-0446.

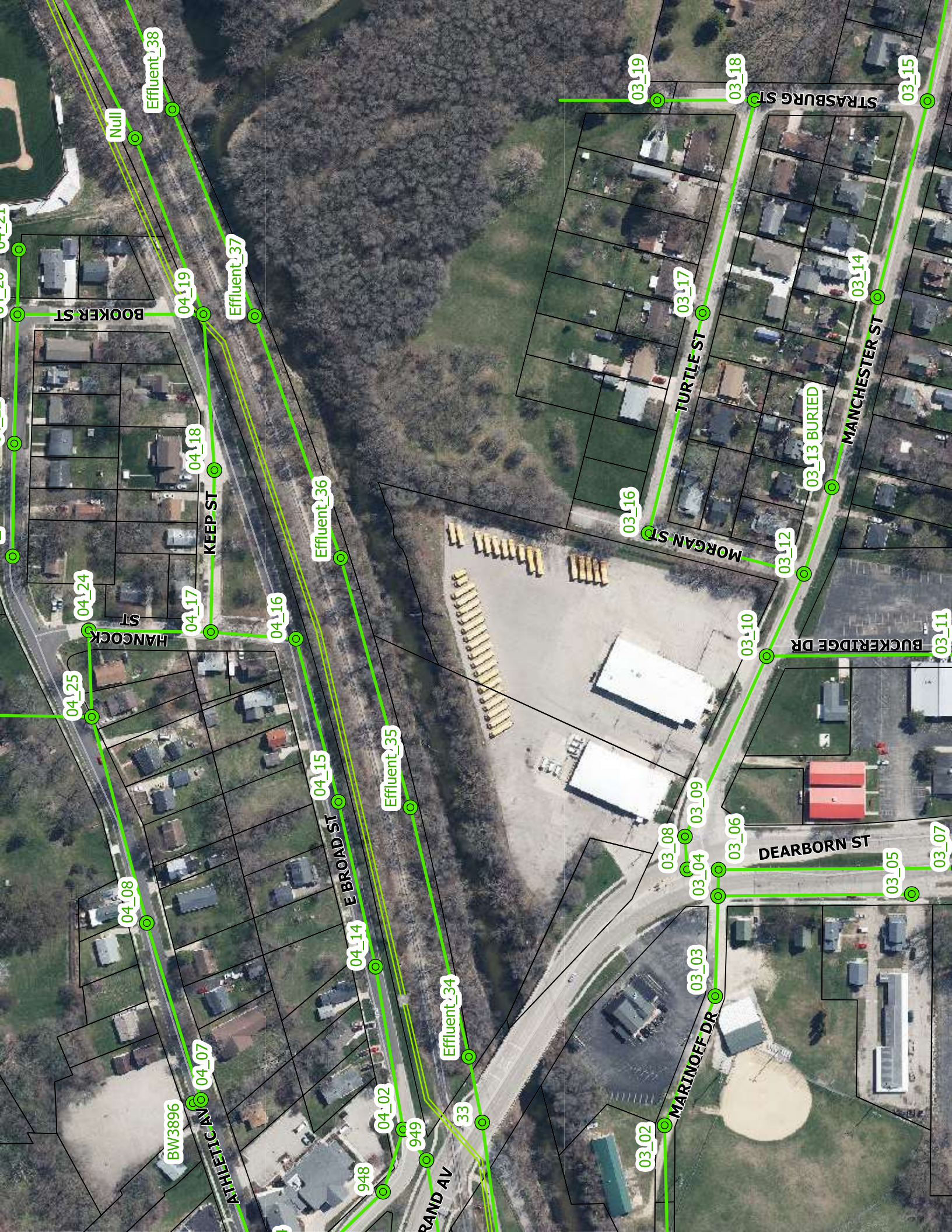
APPENDIX 1:

Project Area Map

C24-04 TURTLE CREEK SEWER REPLACEMENT



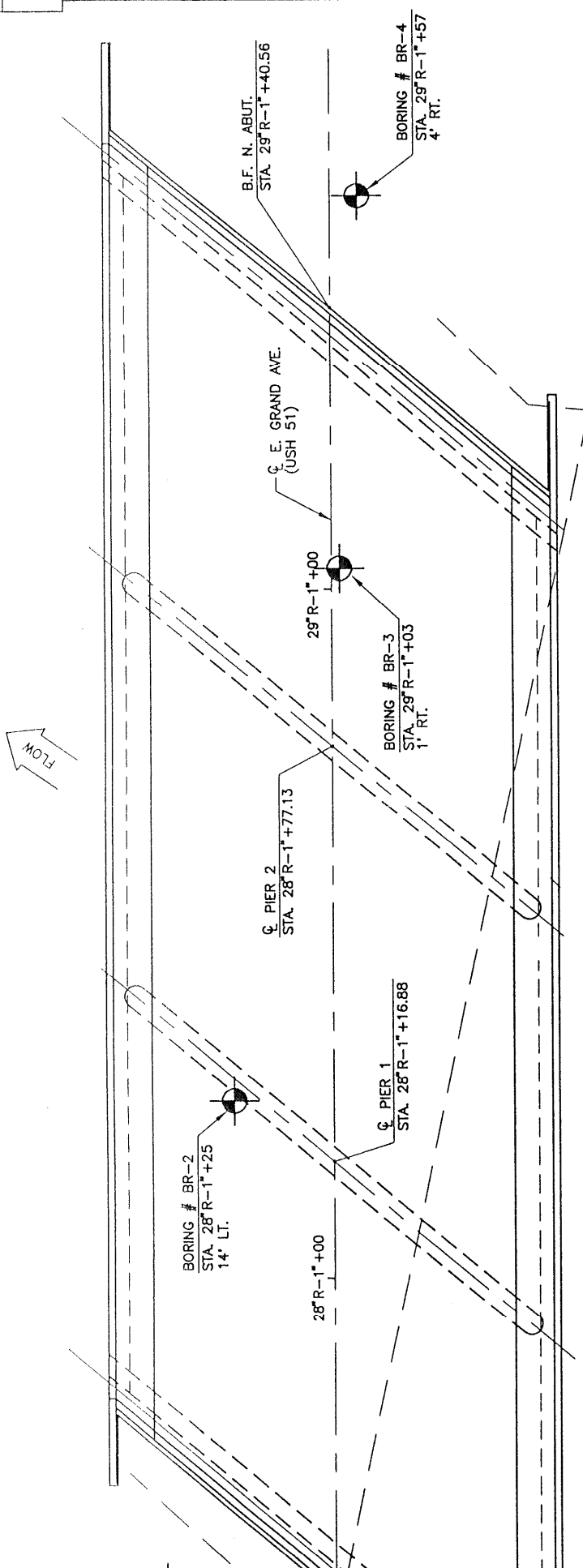
APPENDIX 2:
Sanitary Sewer System Map



APPENDIX 3:

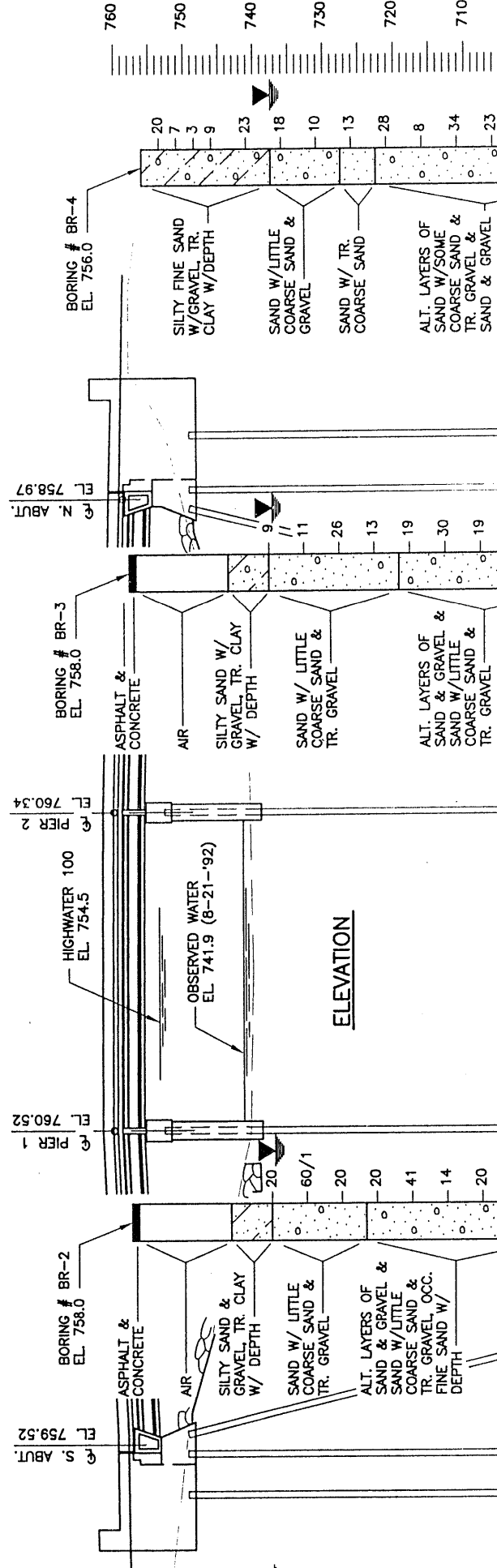
WISDOT Project 5350-00-72

Bore Samples



PLAN

BORINGS PERFORMED BY:
 ENVIRONMENTAL & FOUNDATION DRILLING, INC.
 217 RAEMISCH RD.
 WAUNAKEE, WI. 53597
 09/26-27/92



APPENDIX 4:

City of Beloit Contract for Professional Service

City of Beloit
CONTRACT FOR PURCHASE OF SERVICES

Project Name:

This Agreement is by and between the **City of Beloit**, a Wisconsin municipal corporation, referred to herein as the **City**; and _____, referred to herein as the **Consultant**. Together, the City and Consultant are referred to as the **Parties**.

The Consultant is a: Corporation Limited Liability Company General Partnership LLP
 Sole Proprietor Unincorporated Association Other:

State of organization:

Recitals

The City has issued request for proposals/quote, referred to as the RFP/RFQ, for consulting services in connection with the following Project:

The RFP/RFQ contained a specific Scope of Work to be incorporated into the successful bidder's Agreement.

The Consultant submitted a proposal in response to the RFP/RFQ, and was selected by the City to be awarded the Agreement for the project.

The Consultant is willing to perform consulting services according to the Scope of Work stated in the RFP/RFQ and the Consultant's responsive Proposal, and to accept the award of the Agreement for the project.

Now, therefore, the City and the Consultant agree and contract as follows:

1. **SCOPE OF WORK.** The Consultant shall perform the following services according to the following schedule(s) or attachment(s): List all attachments here by name, and attach and label them accordingly.

Order of Precedence: In the event of a conflict between the terms of this Contract for Purchase of Services and the terms of any document attached or incorporated herein, the terms of this Contract for Purchase of Services shall control and supersede any such conflicting term.

2. **TERM AND EFFECTIVE DATE.** This Agreement shall become effective upon execution by the City Manager, (or another City Official, if authorized) on behalf of the City of Beloit, unless another effective date is specified in the Attachment(s) incorporated in Section 1, however in no case shall work commence before execution by the City of Beloit.

The term of this Agreement shall be _____ (insert dates or reference attachments as needed).

3. **ENTIRE AGREEMENT.** This Contract for Purchase of Services, including any and all attachments, exhibits and other documents referenced in Section 1 (hereafter, "Agreement" or "Contract") is the entire Agreement of the parties and supersedes any and all oral contracts and negotiations between the parties. If any document referenced in Section 1 includes a statement that expressly or implicitly disclaims the applicability of this Contract for Purchase of Services, or a statement that such other document is the "entire agreement," such statement shall be deemed rejected and shall not apply to this Agreement.
4. **AMENDMENTS TO AGREEMENT.** This Agreement shall be binding on the parties hereto, their respective heirs, devisees, and successors, and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto. This Agreement may be amended only by written instrument signed by both parties. If in the reasonable judgment of the City, the scope or nature of the services to be performed by Consultant change or deviate materially from the scope or nature of the services described above, the City may, at its discretion, suspend performance of its services until a written agreement superseding this Agreement and adjusting the scope, schedule, and terms and conditions has been executed. Where additional work is to be completed on a time and expense compensation, charges shall be in accordance with the fee schedule submitted with the Consultant's Proposal.
5. **ASSIGNABILITY/SUBCONTRACTING.** Consultant shall not assign or subcontract any interest or obligation under this Agreement without the City's prior written approval. All of the services required hereunder will be performed by Consultant and employees of Consultant. All terms, conditions, covenants and agreements herein shall extend to and be obligatory upon any successors or assigns of Consultant upon the execution of any written consent by the City.
6. **DESIGNATED REPRESENTATIVE.**
 - A. Consultant designates _____ as Agreement Agent with primary responsibility for the performance of this Agreement. In case this Agreement Agent is replaced by another for any reason, the Consultant will designate another Agreement Agent within seven (7) calendar days of the time the first terminates his or her employment or responsibility using the procedure set forth in Section 17, Notices.
 - B. In the event of the death, disability, removal or resignation of the person designated above as the Agreement Agent, the City may accept another person as the Agreement Agent or may terminate this Agreement under Section 38, at its option.
7. **COMMENCEMENT AND PROGRESS.**
 - A. Services under this Agreement shall commence upon written order from the City to the Consultant. This order will constitute authorization to proceed.
 - B. The Consultant shall complete the services under this Agreement within the time for completion specified in the Scope of Services, including any amendments. The Consultant's services are completed when the City notifies the Consultant in writing that the services are complete and are acceptable. The time for completion shall not be extended because of any delay attributable to the Consultant, but it may be extended by the City in the event of a delay attributable to the City, or in the event of unavoidable delay caused by war, insurrection, natural disaster, or other unexpected event beyond the control of the Consultant. If at any time the Consultant believes that the time for completion of the work

should be extended because of unavoidable delay caused by an unexpected event, or because of a delay attributable to the City, the Consultant shall notify the City as soon as possible, but not later than seven (7) calendar days after such an event. Such notice shall include any justification for an extension of time and shall identify the amount of time claimed to be necessary to complete the work.

- C. Services by the Consultant shall proceed continuously and expeditiously through completion of each phase of the work.
- D. Progress reports documenting the extent of completed services shall be prepared by the Consultant and submitted to the City with each invoice under Section 11 of this Agreement, and at such other times as the City may specify.
- E. The Consultant shall notify the City in writing when the Consultant has determined that the services under this Agreement have been completed. When the City determines that the services are complete and are acceptable, the City will provide written notification to the Consultant, acknowledging formal acceptance of the completed services.

8. **STANDARD OF WORK.** Consultant will perform the Work according to generally-accepted industry practices of the professions of the individual employees performing the Work for Consultant.

9. **FEES AND PAYMENT.** Total fees payable to Consultant shall not exceed the amount of \$ for all services, materials, equipment, and authorized reimbursable expenses under this Agreement unless an Amendment to Agreement, signed by both parties, approves additional fees in writing. Any such additional fees shall be defined in writing and authorized prior to execution of such work. Consultant shall invoice the City monthly, as Work progresses. All invoices shall be payable net 30 days.

10. **EXTRA SERVICES.** The City may require the Consultant to perform extra services or decreased services, according to the procedure set forth in Section 10. Extra services or decreased services means services which are not different in kind or nature from the services called for in the Scope of Services, Section 1, but which may increase or decrease the quantity and kind of labor or materials or expense of performing the services. Extra services may not increase the total contract price, as set forth in Section 9, unless the Agreement is amended as provided in Section 4 above.

11. **BASIS FOR PAYMENT.**

A. General.

(1) The City will pay the Consultant for the completed and accepted services rendered under this Agreement on the basis and at the contract price set forth in Section 9 of this Agreement. The City will pay the Consultant for completed and approved "extra services", if any, if such "extra services" are authorized according to the procedure established in this section. The rate of payment for "extra services" shall be the rate established in this Agreement. Such payment shall be full compensation for services rendered and for all labor, material, supplies, equipment and incidentals necessary to complete the services.

(2) The Consultant shall submit invoices, on the form or format approved by the City and as may be further specified in Section 1 of this Agreement. The City will pay the Consultant in accordance with the schedule, if any, set forth in Section 1. The final invoice, if applicable, shall be submitted to the City within three months of completion of services under this Agreement.

- (3) Should this Agreement contain more than one service, a separate invoice and a separate final statement shall be submitted for each individual service.
- (4) Payment shall not be construed as City acceptance of unsatisfactory or defective services or improper materials.
- (5) Final payment of any balance due the Consultant will be made upon acceptance by the City of the services under the Agreement and upon receipt by the City of documents required to be returned or to be furnished by the Consultant under this Agreement.
- (6) The City has the equitable right to set off against any sum due and payable to the Consultant under this Agreement, any amount the City determines the Consultant owes the City, whether arising under this Agreement or under any other Agreement or otherwise.
- (7) Compensation in excess of the total Agreement price will not be allowed unless authorized by an amendment under Section 4.
- (8) The City will not compensate for unsatisfactory performance by the Consultant.

B. Service Orders, Extra Service, or Decreased Service.

- (1) Written orders regarding the services, including extra services or decreased services, will be given by the City, using the procedure set forth in Section 10.
- (2) The City may, by written order, request extra services or decreased services, as defined in Section 9 of this Agreement. Unless the Consultant believes the extra services entitle it to extra compensation or additional time, the Consultant shall proceed to furnish the necessary labor, materials, and professional services to complete the services within the time limits specified in the Scope of Services, Section 1 of this Agreement, including any amendments under Section 4 of this Agreement.
- (3) If in the Consultant's opinion the order for extra service would entitle it to extra compensation or extra time, or both, the Consultant shall not proceed to carry out the extra service, but shall notify the City, pursuant to Section 17 of this Agreement. The notification shall include the justification for the claim for extra compensation or extra time, or both, and the amount of additional fee or time requested.
- (4) The City shall review the Consultant's submittal and respond in writing, either authorizing the Consultant to perform the extra service, or refusing to authorize it. The Consultant shall not receive additional compensation or time unless the extra compensation is authorized by the City in writing.

12. **OWNERSHIP OF WORK PRODUCT.** Any reports, specifications, drawings, or other documents prepared by the Consultant in the performance of its obligations under this Agreement shall become the property of the City. All such materials shall be returned to the City upon completion, termination, or cancellation of this Agreement and payment in full of all monies due the Consultant. The Consultant shall not use, willingly allow, or cause such materials to be used for any purpose other than the performance of all Consultant's obligations under this Agreement without the written consent of the City. The City agrees that the Consultant shall not be responsible for any re-use by the City, or by third parties that obtained the documents from or through the City, for purposes other than original intent of the documents provided by the Consultant.

13. **SAFETY.**

- a. Consultant shall comply with all Occupational Safety and Health Administration (OSHA) and State and Local safety and health standards and any other applicable rules and regulations.

b. Consultant's work or field personnel shall not be responsible for determining or implementing the means, methods, techniques, sequences or procedures of construction. Consultant will not be responsible for evaluating, reporting or effecting job conditions concerning health, safety or welfare, unless specifically requested in writing. Consultant's work or failure to perform same shall not in any way excuse any contractor, subcontractor or supplier from performance of its work in accordance with contract documents.

14. **RECORD KEEPING.** Consultant shall keep all documents and records generated in the performance of the Work for no less than 7 years after completion of the Work, and shall make them available to the City at the City's request. Consultant acknowledges that such documents and records may be subject to Wisconsin's Open Records Law.

15. **COOPERATION BY CITY.** The City shall cooperate with the Consultant in the performance of the Work, and shall respond timely to all reasonable requests for information and access.

16. **PARTIES ARE INDEPENDENT CONTRACTORS.** Nothing in this Agreement shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Agreement, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions.

17. **NOTICES.** All notices required by this Agreement, and all other communications between the Parties, shall be addressed as follows:

To the City	Name:
	Address:
	City/ST/ZIP:
	Phone:
	Email:

To the Consultant	Name:
	Address:
	City/ST/ZIP:
	Phone:
	Email:

18. **GOVERNMENTAL IMMUNITIES AND NOTICE REQUIREMENT PRESERVED.** Nothing in this Agreement shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.

19. **PERMITS AND LICENSES.** Consultant shall be responsible, at Consultant's expense, for obtaining all permits and licenses required for the performance of the Work unless expressly agreed by the City.

20. **NO WAIVER.** No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or Consultant shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City or Consultant therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver

of any subsequent breach of the same covenant, term or condition.

21. **NON-DISCRIMINATION.** The undersigned will not discriminate against any qualified employee or qualified applicant for employment because of race, color, national origin, ancestry, religion, age, marital status, disability, sex, or sexual orientation. In the event any portion of this Agreement is subcontracted by the undersigned, said subcontract shall include a provision prohibiting the subcontractor from discriminating against any qualified employee or qualified applicant for employment because of race, color, national origin, ancestry, religion, age, marital status, disability, sex, or sexual orientation. This provision is inserted herein in compliance with Section 1.09 of the Code of General Ordinances of the City of Beloit, and shall be interpreted so as to carry out the intent of said ordinance.

22. **INDEMNIFICATION.**

- a. Consultant hereby agrees to indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives and volunteers, and each of them, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs and expenses of whatsoever kind or nature in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive, of Consultant or of anyone acting under its direction or control or on its behalf, even if liability is also sought to be imposed on City, its elected and appointed officials, officers, employees, agents, representatives and volunteers. The obligation to indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives and volunteers, and each of them, shall be applicable except to the extent that liability results from the negligence of the City, its elected and appointed officials, officers, employees, agents, representatives and volunteers.
- b. Consultant shall reimburse the City, its elected and appointed officials, officers, employees, agent or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.
- c. In the event that Consultant employs other persons, firms, corporations or entities (sub-contractor) as part of the work covered by this Agreement, it shall be Consultant's responsibility to require and confirm that each sub-contractor enters into an Indemnity Agreement in favor of the City, its elected and appointed officials, officers, employees, agents, representatives and volunteers, which is identical to this Indemnity Agreement.
- d. This indemnity provision shall survive the termination or expiration of this Agreement.

23. **INSURANCE**

- a. Consultant shall not commence work under this Agreement until it has obtained the insurance required herein. All coverages shall be with insurance carriers licensed and admitted to do business in the State of Wisconsin. All coverages shall be with carriers acceptable to the City. A minimum AM Best Rating of A-VII is required.
- b. It is hereby understood and agreed that the insurance required by the City is primary coverage and that any insurance or self-insurance maintained by the City, its officers, council members, agents, employees or authorized volunteers will not contribute to a loss.

- c. *Worker's Compensation and Employers Liability Minimum Requirements as required by Statute:* Consultant shall cover or insure under applicable labor laws relating to worker's compensation insurance, all of their employees in accordance with the law in the State of Wisconsin. Consultant shall provide statutory coverage for work related injuries and employer's liability insurance with limits of \$100,000 each accident, \$500,000 disease policy limit and \$100,000 disease each employee.
- d. *Liability Insurance:* Consultant shall procure and maintain during the life of this Agreement the following Commercial General Liability Insurance and Automobile Liability insurances:
 - i. PROFESSIONAL LIABILITY (Errors and Omissions)
 - (a) Minimum Limits
 - i. \$2,000,000 each claim/\$2,000,000 annual aggregate
 - ii. Any deductible not to exceed \$25,000 each claim
 - (b) Must continue coverage for 3 years after final payment for service/job
 - ii. GENERAL LIABILITY COVERAGE
 - a. Commercial General Liability
 - i. \$2,000,000 general aggregate
 - ii. \$1,000,000 products - completed operations aggregate
 - iii. \$1,000,000 personal injury and advertising injury
 - iv. \$2,000,000 each occurrence limit
 - b. Claims made form of coverage is not acceptable.
 - c. Insurance must include:
 - i. Premises and Operations Liability
 - ii. Blanket Contractual Liability including coverage for the joint negligence of the City, it officers, council members, agents, employees, authorized volunteers and the named insured
 - iii. Personal Injury
 - iv. Explosion, collapse and underground coverage
 - v. Products/Completed Operations
 - vi. Independent Contractors
 - iii. BUSINESS AUTOMOBILE COVERAGE
 - a. Minimum Limits - \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage each accident
 - b. Must cover liability for "Any Auto" - including Owned, Non-Owned and Hired Automobile Liability
- e. *Additional Insured:* Consultant shall name the City, including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and their board members, employees and volunteers as Additional Insured on the General Liability Coverage. This coverage shall be primary to the Additional Insured, and not contributing with any other insurance or similar protection available to the Additional Insured, whether other available coverage is primary, contributing or excess.
- f. *Waiver of Workers Compensation Subrogation:* The workers' compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to

waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses paid under the terms of the policy that arises from the work performed by the named insured for or on behalf of the City.

- g. *Cancellation Notice*: All insurances required by this Agreement shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of Cancellation or Ten (10) days for Non-Renewal shall be sent to: City of Beloit; Attn: Risk Management; 100 State Street; Beloit, WI 53511.
- h. *Proof of Insurance Coverage*: Consultant shall provide to the City, at the time this Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City. If so requested, certified copies of any or all policies shall also be furnished. The Additional Insured Policy endorsement must accompany the Certificate of Insurance. A copy of the Certificate of Insurance must be on file with Risk Management. If no Certificates of Insurance and/or policies are provided to the City upon execution of this Agreement, the Agreement shall be null and void.
- i. *Continuation of Coverage*: If any of the above coverage expires during the term of this Agreement, the Consultant shall deliver renewal certificates and/or policies to the City at least ten (10) days prior to the expiration date.

- 24. **THIRD PARTY RIGHTS.** This Agreement is intended to be solely between the parties hereto. No part of this Agreement shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.
- 25. **AUDIT AND RETAINING OF DOCUMENTS.** The Consultant agrees to provide all reports requested by the City including, but not limited to, financial statements and reports, reports and accounting of services rendered, and any other reports or documents requested. Financial and service reports shall be provided according to a schedule (when applicable) to be included in this Agreement. Any other reports or documents shall be provided within five (5) working days after the Consultant receives the City's written requests, unless the parties agree in writing on a longer period. Payroll records and any other documents relating to the performance of services under the terms of this Agreement shall be retained by the Consultant for a period of three (3) years after completion of all work under this Agreement, in order to be available for audit by the City or its designee.
- 26. **CORPORATE AUTHORIZATION.** The individuals executing this Agreement on behalf of the Consultant warrant and represent that they are duly authorized to bind the Consultant to this Agreement. Consultant warrants and represents that the execution of this Agreement is not prohibited by the Consultant's articles of incorporation, by-laws, operating agreement, or other internal operating orders, or by any applicable law, regulation or court order. Consultant shall provide proof upon request.
- 27. **ASSISTANCE OF COUNSEL, VOLUNTARY AGREEMENT.** The Consultant acknowledges that it has either had the assistance of legal counsel in the negotiation, review and execution of this Agreement, or has voluntarily waived the opportunity to do so; that it has read and understood each of this Agreement's terms, conditions and provisions, and their effects; and that it has executed this Agreement freely and not under conditions of duress.
- 28. **ADEQUACY OF CONSIDERATION.** The Parties acknowledge that the consideration expressed in this Agreement is adequate and sufficient to make the obligations contained in this Agreement binding upon

the Parties.

29. **COSTS OF ENFORCEMENT.** The Parties agree that in the event legal action is necessary to enforce any term or condition of this Agreement, then the breaching Party will pay the non-breaching Party's costs incurred in such legal action, including actual attorney fees. If a judgment is taken, then costs of enforcement will be added to the judgment.
30. **SEVERABILITY.** If any term of this Agreement is held unenforceable by a court having jurisdiction, then to the extent the unenforceable term can be severed from the remainder of this Agreement without affecting the enforceability of the remainder of this Agreement or substantially frustrating its purpose, it will be so severed, and the remainder of this Agreement will remain in effect and enforceable.
31. **SURVIVAL AND PARTIES BOUND.** Unless specifically limited in this Agreement, any term, condition or provision of this Agreement will survive the execution of this Agreement or any stated time periods, to the extent necessary for their performance. This Agreement is binding upon, and inures to the benefit of, the Parties' successors, assigns, heirs, executors, trustees and personal representatives.
32. **GOVERNING LAW AND JURISDICTION.** This Agreement will be construed and enforced according to the laws of Wisconsin. If a lawsuit arises out of this Agreement, it shall be filed in the state Circuit Court for Rock County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.
33. **INTEGRATION.** This Agreement constitutes the entire agreement of the Parties formed by the City's RFP and the Consultant's responsive proposal; however, if any ambiguity in this Agreement requires resolution, or this Agreement is silent on a material point, then reference may be made to the RFP and the Consultant's proposal, in that order of priority, to construe this Agreement. All other agreements and understandings of the parties with respect to the subject matter expressed in this Agreement are unenforceable.
34. **COMPLIANCE WITH APPLICABLE LAWS.** The Consultant shall become familiar with, and shall at all times comply with and observe all federal, state, and local laws, ordinances, and regulations which in any manner affect the services or conduct of the Consultant and its agents and employees.
35. **CONFLICT OF INTEREST.**
 - A. The Consultant warrants that it and its agents and employees have no public or private interest, and will not acquire directly or indirectly any such interest, which would conflict in any manner with the performance of the services under this Agreement.
 - B. The Consultant shall not employ or contract with any person currently employed by the City for any services included under the provisions of this Agreement.
36. **PUBLIC RECORDS LAW.** Consultant understands that the City is bound by the Wisconsin Public Records Law, Wis. Stat. § 19.21, *et seq.* Pursuant to Wis. Stat. § 19.36(3), the City may be obligated to produce, to a third party, the records of the Consultant that are "produced or collected" by the Consultant under this Agreement ("Records"). The Consultant is further directed to Wis. Stat. § 19.21, *et seq.*, for the statutory definition of Records subject to disclosure under this paragraph, and the Consultant acknowledges that it has read and understands that definition. Irrespective of any other term of this Agreement, the Consultant is (1) obligated to retain Records for seven (7) years from the date of the Record's creation, and (2) produce such Records to the City if, in the City's sole determination, the City is required to produce the Records to a third party in response to a public

records request. Consultant's failure to retain and produce Records as required by this paragraph shall constitute a material breach of the Agreement, and Consultant must defend and hold the City harmless from liability due such breach. The provisions of this paragraph shall survive the term of this Agreement, or any extensions or renewals of it.

37. **CONFIDENTIALITY.** Consultant agrees not to use or disclose any information it receives from the City under this Agreement that the City has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by the City. The City agrees not to disclose any information it receives from the Consultant, that the Consultant has previously identified as confidential and which the City determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the Wisconsin Open Records Law pursuant to Wis. Stat. § 19.21 *et seq.* The duty of the City and the Consultant to maintain confidentiality of information under this section continues beyond the term of this Agreement, or any extensions or renewals of it.
38. **DEFAULT/TERMINATION.**
- A. In the event Consultant shall default in any of the covenants, agreements, commitments, or conditions herein contained, and any such default shall continue unremedied for a period of ten (10) days after written notice thereof to Consultant, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Consultant, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of Consultant under this Agreement.
- B. Notwithstanding paragraph A., above, Either party may terminate this Agreement without cause by giving written notice of termination to the other party, with termination to occur no sooner than 20 days after delivery of the notice. Upon termination, Consultant shall be paid for all Work completed as of the date of termination.
39. **AGREEMENT NOT TO BE CONSTRUED AGAINST ANY PARTY.** This Agreement is the product of negotiation between the parties hereto and no term, covenant or provision herein or the failure to include a term, covenant or provision shall be construed against any party hereto solely on the basis that one party or the other drafted this Agreement or any term, covenant or condition contained herein.
40. **COUNTERPARTS, ELECTRONIC DELIVERY.** This Agreement may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Agreement may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original. Executed copies or counterparts of this Agreement may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Agreement, fully executed, shall be as valid as an original.

Signature Page to Follow

IN WITNESS WHEREOF, the parties hereto have set their hands.

Date: _____

Date: _____

CITY OF БЕЛОIT

CONSULTANT

By: _____
(Signature)

Print Name of Contracting Entity

(Print Name and Title of Person Signing)

By: _____
(Signature)

ATTEST:

(Print Name and Title of Person Signing)

By: _____
(Signature)

(Print Name and Title of Person Signing)

APPROVED AS TO FORM:

By: _____
Elizabeth A. Krueger, City Attorney