

Memo

To: Village Board
Fr: Craig Berndt
Re: Construction Services Contract Approval for the Utility portion of the Hoffman Road project – OMNNI Associates
Date: January 16, 2014

Attached is the contract for construction engineering support services by OMNNI Associates for the Allouez water main and sanitary sewer replacement work for the Hoffman Road project. This is basically for on-site construction inspection and for contract administration (processing the contractor pay requests) of the utility portion of the project. The contract amount is \$35,790. It is recommended that this contract be approved.

The selection of the consulting engineer for the overall project was a qualifications based selection process – selection based on qualifications and cost. OMNNI was the top rated consultant based on these criteria.

The utility construction engineering services portion of the overall project is to be under contract to Allouez because this provides better direct control over this portion of the project. This is the way we want to handle this work. Hence, the contract between Allouez and OMNNI.

This contract has been reviewed by myself and the village attorney. Changes to the indemnification clause were made, and the contract is acceptable to the village attorney.

It is recommended that this contract be approved by the Village Board and signed.

Construction Services, CTH XX Utilities
Professional Services Agreement

THIS AGREEMENT is entered into between **Village of Allouez** (Client), 1900 Libal Street, Green Bay, WI 54301 and **OMNI Associates, Inc.** (Consultant), One Systems Drive, Appleton, WI 54914, for the following reasons:

- A. Client intends to install utilities (sanitary sewer and water main) on CTH XX (the Project); and,
- B. Client requires certain professional services in connection with the Project (the Services); and,
- C. Consultant is prepared to provide the Services.

In consideration of the promises contained in this Agreement, Client and Consultant agree as follows:

ARTICLE 1 - EFFECTIVE DATE

The effective date of this Agreement shall be January 2, 2014.

ARTICLE 2 - GOVERNING LAW

This Agreement shall be governed by the laws of the State of Wisconsin.

ARTICLE 3 - SCOPE OF SERVICES

- A. Consultant shall provide the Services described as in Attachment A, which is attached hereto and incorporated by reference.

ARTICLE 4 - SCHEDULE

Consultant shall exercise its reasonable efforts to perform those Services found in Attachment A and deliver the related Documents (if any) according to the following schedule:

- The Consultant's schedule will coincide with the construction scheduled in 2014 that will start on April 15, 2014 with an estimated completion by not later than June 10, 2014.

ARTICLE 5 - COMPENSATION

- A. In return for the performance of the foregoing obligations, Client shall pay to the Consultant on a time and materials basis to a maximum amount of \$35,790 in accordance with Attachment B, which is attached hereto and incorporated by reference.
- B. The Client will compensate the consultant for any services outside the scope of this agreement. Additional services will be charged in accordance with the rates in Attachment B.
- C. Invoices shall be due and payable upon receipt. Client shall give prompt written notice of any disputed amount and shall pay the remaining amount. If any invoice is not paid within 30 days, the Consultant may, without waiving any claim or right against the Client and without liability whatsoever to the Client, suspend or terminate the performance of services. Invoice amounts not paid within 30 days after receipt shall accrue interest at

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the rate of 1.5% per month (or the maximum rate permitted by law, if less), with payments applied first to accrued interest and then to unpaid principal. In the event that any portion of an account remains unpaid 30 days after billing, the Consultant may institute collection action. Client shall pay all costs of collection, including reasonable attorneys' fees incurred in connection with any litigation instituted to recover invoice amounts.

ARTICLE 6 - CLIENT'S RESPONSIBILITIES

Client shall perform and provide the following in a timely manner so as not to delay the Services of the Consultant. Unless otherwise provided in this Agreement, Client shall bear all costs incidental to compliance with the following:

- A. Place at Consultant's disposal all available information pertinent to the Project, including previous reports, drawings, specifications or any other data as may be reasonably required by Consultant to perform its Services.
- B. Give prompt written notice to Consultant whenever Client becomes aware of any development that affects the scope or timing of Consultant's Services, or any defect in the Services of Consultant.
- C. Advise Consultant of the identity and scope of services of any independent consultants retained by Client to provide services in regard to the Project.

ARTICLE 7 - STANDARD OF CARE

The same degree of care, skill, and diligence shall be exercised in the performance of the Services as is ordinarily possessed and exercised by a member of the same profession, currently practicing, under similar circumstances. No other warranty, express or implied, is included in this Agreement or in any drawing, specification, report, opinion, or other instrument of service, in any form or media, produced in connection with the Services.

ARTICLE 8 - INDEMNIFICATION AND LIABILITY

- A. General. Having considered the potential liabilities that may exist during the performance of the Services, the relative benefits and risks of the Project, and the Consultant's fee for the Services, and in consideration of the promises contained in this Agreement, Client and Consultant agree to allocate and limit such liabilities in accordance with this Article.
- B. Indemnification. Consultant agrees to indemnify and hold the Client harmless from and against legal liability for all damages, liabilities or costs to the extent such damages, liabilities or costs are caused by the Consultant's negligent acts, errors, or omissions arising out of its performance of the Services. In the event damages, liabilities or costs are caused by the joint or concurrent negligence of Consultant and Client, they shall be borne by each party in proportion to its own negligence.

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- C. Limitation of Liability. In recognition of the relative risks and benefits of the Project to both the Client and the Consultant, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of the Consultant and Consultant's officers, directors, employees, shareholders and subconsultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Consultant and Consultant's officers, directors, employees, shareholders and subconsultants shall not exceed amount of available insurance, or the Consultant's total fee for services rendered on this Project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.
- D. Survival. The terms and conditions of this Article shall survive completion of the Services, or any termination of this Agreement.

ARTICLE 9 - INSURANCE

During the term of this Agreement, Consultant shall maintain the following insurance:

- A. General Liability Insurance, with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
- B. Automobile Liability Insurance, with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
- C. Workers' Compensation Insurance in accordance with statutory requirements and Employers' Liability Insurance, with a limit of \$100,000 for each occurrence.
- D. Professional Liability Insurance, with a limit of \$1,000,000 annual aggregate.

Consultant shall, upon written request, furnish Client certificates of insurance. Client shall require all Project contractors to include Client and Consultant as additional insureds on their General and Automobile Liability insurance policies, and to indemnify both Client and Consultant, each to the same extent.

Consultant and Client waive all rights against each other and their directors, officers, partners, commissioners, officials, agents, and employees for damages covered by property insurance during and after the completion of the Services. If the Services result in any construction related to the Project, a similar provision shall be incorporated into all construction contracts entered into by Client and shall protect Client and Consultant to the same extent.

ARTICLE 10 - LIMITATIONS OF RESPONSIBILITY

Consultant shall not be responsible for (a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project; (b) the failure of any contractor, subcontractor, vendor, or other Project participant, not under

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contract to Consultant, to fulfill contractual responsibilities to Client or to comply with federal, state, or local laws, regulations, and codes; or (c) procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to Consultant in this Agreement.

ARTICLE 11 - OPINIONS OF COST AND SCHEDULE

Because Consultant has no control over the cost of labor, materials, or equipment furnished by others, or over the resources provided by others to meet Project schedules, Consultant's opinion of probable costs and of Project schedules, if any, shall be made on the basis of experience and qualifications as a professional. Consultant does not guarantee that proposals, bids, or actual Project costs will not vary from Consultant's cost estimates or that actual schedules will not vary from Consultant's projected schedules.

ARTICLE 12 - REUSE OF DOCUMENTS

All documents, including, but not limited to, drawings, specifications, and computer software prepared by Consultant pursuant to this Agreement are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by Client or others on modifications or extensions of the Project or on any other project. Any reuse without prior written verification or adaptation by Consultant for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Consultant. Client shall indemnify and hold harmless Consultant and its subconsultants against all judgments, losses, damages, injuries, and expenses, including reasonable attorneys' fees, arising out of or resulting from such reuse. Any verification or adaptation of documents will entitle Consultant to additional compensation at rates to be agreed upon by Client and Consultant.

ARTICLE 13 - OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

The Client acknowledges the Consultant's construction documents, including electronic files, as the work papers of the Consultant and the Consultant's instruments of the professional service. Nevertheless, the final construction documents prepared under this Agreement shall become the property of the Client upon completion of the services and payment in full of all monies due to the Consultant. The Client shall not reuse or make any modification to the construction documents without the prior written authorization of the Consultant. The Client agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way connected with the unauthorized reuse or modification of the construction documents by the Client or any person or entity that acquires or obtains the construction documents from or through the Client without the written authorization of the Consultant.

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Under no circumstances shall the transfer of ownership of the Consultant's drawings, specifications, electronic files or other instruments of service be deemed a sale by the Consultant, and the Consultant makes no warranties, either express or implied, of merchantability and fitness for any particular purpose, nor shall such transfer be construed or regarded as any waiver or other relinquishment of the Consultant's copyrights in any of the foregoing, full ownership of which shall remain with the Consultant, absent the Consultant's express prior written consent.

ARTICLE 14 - TERMINATION AND SUSPENSION

This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement; provided, however, the nonperforming party shall have 14 calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party.

Client may terminate or suspend performance of this Agreement for Client's convenience upon written notice to Consultant. Consultant shall terminate or suspend performance of the Services on a schedule acceptable to Client, and Client shall pay Consultant for all the Services performed plus termination or suspension expenses. Upon restart of suspended Services, an equitable adjustment shall be made to Consultant's compensation and the Project schedule.

ARTICLE 15 - DELAY IN PERFORMANCE

Neither Client nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and delay in or inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either Client or Consultant under this Agreement. Consultant shall be granted a reasonable extension of time for any delay in its performance caused by any such circumstances.

Should such circumstances occur, the nonperforming party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance.

ARTICLE 16 - NOTICES

Any notice required by this Agreement shall be made in writing to the address specified below:

Client: Craig Berndt
Director of Public Works

Consultant: Michael Malcolm
Construction Project Manager

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Village of Allouez
1900 Libal Street
Green Bay, WI 54301
Tel: (920) 448-2800

OMNNI Associates, Inc.
One Systems Drive
Appleton, WI 54914
Tel: (920) 830-6175

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Client and Consultant.

ARTICLE 17 - DISPUTES

In the event of a dispute between Client and Consultant arising out of or related to this Agreement, the aggrieved party shall promptly report to the other party. If the parties cannot thereafter resolve the dispute, each party shall nominate a senior officer of its management to meet to resolve the dispute by direct negotiation.

Should such negotiation fail to resolve the dispute, the Client and Consultant agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation unless the parties mutually agree otherwise.

During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder.

ARTICLE 18 - EQUAL EMPLOYMENT OPPORTUNITY

The Consultant hereby affirms its support of affirmative action and that it abides by the provisions of the "Equal Opportunity Clause" of Section 202 of Executive Order 11246 and other applicable laws and regulations.

Consultant affirms its policy to recruit and hire employees without regard to race, age, color, religion, sex, sexual preference/orientation, marital status, citizen status, national origin or ancestry, presence of a disability or status as a Veteran of the Vietnam era or any other legally protected status. It is Consultant's policy to treat employees equally with respect to compensation, advancement, promotions, transfers and all other terms and conditions of employment.

Consultant further affirms completion of applicable governmental employer information reports including the EEO-1 and VETS-100 reports, and maintenance of a current Affirmative Action Plan as required by Federal regulations.

ARTICLE 19 - WAIVER

A waiver by either Client or Consultant of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

ARTICLE 20 - SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence

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of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if it did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

ARTICLE 21 - INTEGRATION

This Agreement, and respective attachments, if any, represents the entire and integrated agreement between Client and Consultant. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement.

ARTICLE 22 - SUCCESSORS AND ASSIGNS

Client and Consultant each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners, to the other party to this Agreement and to the successors, executors, administrators, permitted assigns, legal representatives, and partners of such other party in respect to all provisions of this Agreement.

ARTICLE 23 - ASSIGNMENT

Neither Client nor Consultant shall assign any rights or duties under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, Consultant may assign its rights to payment without Client's consent. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent Consultant from engaging independent consultants, associates, and subcontractors to assist in the performance of the Services.

ARTICLE 24 - NO THIRD PARTY RIGHTS

The Services provided for in this Agreement are for the sole use and benefit of Client and Consultant. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than Client and Consultant.

ARTICLE 25 - CONSULTANT'S ERRORS AND OMISSIONS

It is understood by the Client and the Consultant that the Consultant's Services will be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project, using the standard of care ordinarily used by members of the architectural and engineering professions practicing under similar condition at the same time and locality.

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It is further understood that revisions, field changes, modifications and/or design clarifications ("Changes") may be necessary during the Project related to the Consultants work product. These changes do not include revisions, changes, modifications and/or additions requested by the Client and/or Owner which are outside the scope of the Consultant's Services as defined in the Agreement.

No fee will be assessed against the Consultant by either the Client or the Owner without the written agreement and approval of the Consultant.

IN WITNESS WHEREOF, Client and Consultant have executed this Agreement.

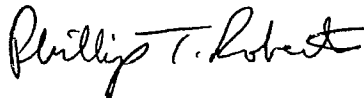
Village of Allouez
(Client)

OMNNI Associates, Inc.
(Consultant)



Craig Berndt
Director of Public Works

Michael A. Malcolm
Project Manager



Date: _____

Phillip T. Roberts
Transportation Program Manager

Date: December 10, 2013

Attachment A -Construction Administration Scope of Work

OMNNI proposes to provide the following:

1. **Construction Administration Approach** – Assign an experienced construction engineer to provide full-time inspection during the installation of all Village utilities. Full-time inspection is critical to assure all work is in accordance with the design and is in conformance with the project specifications. It is also important to document the final position of all utility installations in order to prepare accurate as-built plans for the Village’s permanent records. OMNNI’s construction administration services will include:
 - a. Provide pre-construction services including coordinating a pre-construction meeting, review of contractor schedule, and review of submittal documents.
 - b. Provide a survey crew to stake all utility installations.
 - c. Coordinate utility contractor work with Brown County construction superintendent for any utility and roadway construction work that takes place concurrently.
 - d. Act as Project Engineer as provided in the specifications.
 - e. Provide coordination with utilities during construction.
 - f. Maintain weekly diaries, logs and records as needed for a record of the Contractor’s progress and provide weekly reports to the Village.
 - g. Conduct erosion control inspections and prepare report documentation in accordance with WDNR requirements. Coordinate with utility contractor to correct all deficiencies.
 - h. Assure that all material incorporated into the work are in accordance with project specifications.
 - i. Monitor contractor trench compaction efforts to assure there are no future settlement problems. If compaction efforts are marginal, provide nuclear density testing to assure adequate compaction.
 - j. Provide materials testing of trench backfill material to assure accordance with project specifications.
 - k. Document the final position of all utility installations prior to backfilling operations.
 - l. Notify the Village and County of any unanticipated project conditions or changes in the utility construction schedule.
 - m. Review contractor pay requests for accuracy and make recommendations to the Village for approval.
 - n. If necessary, prepare construction change orders.
 - o. Prepare and deliver an electronic copy of the “as-built” or “record” plan of the utility installation to the Village.

2. **Construction Administration Staff**– OMNNI will provide the following staff to administer the Village Utility Construction:

- a. Mike Malcolm, Project Manager- Mike will provide any necessary scheduling of OMNNI staff for inspection, staking and materials testing.
- b. Ben Backus, Project Engineer- Ben will be assigned as the construction project engineer and will provide full-time construction administration services for the Village utility installation work.
- c. Additional project support services- OMNNI would provide survey services to stake the utilities for the contractor and materials testing services for backfill material and if required, for density testing of trench compaction.

Attachment B -Compensation

1. **Consultants Hourly Rates and Expenses** – OMNNI's fee schedule for the project is as follows:

Project staff charge out rates:

Mike Malcolm, Project Manager*	\$105/hour
Materials Project Manager*	\$100/hour
RLS/Survey Coordinator*	\$78/hour
Ben Backus, Resident Engineer	\$70/hour
Survey Crew Chief	\$70/hour
Survey Assistant	\$50/hour
Materials Technician	\$50/hour

*Minimal involvement is anticipated

Project expense charges:

Company Vehicle Mileage	\$0.90/mile
Personal Vehicle Mileage	\$0.565/mile (or current Federal rate)
GPS/Robotic Total Station	\$15/hour
Spray Paint	\$4.00/each
Flagging Ribbon	\$3.00/each
Wood Lath	\$0.40/each
Wood Hubs	\$0.30/each
Stake chasers	\$0.20/each

Travel Time and Mileage:

OMNNI's Resident Engineer, Ben Backus, resides in DePere. The Village would not incur any expenses for Ben's travel time or mileage to or from the project site.

2. **Construction Administration Fees** – The construction administration costs will be dependent on the time allotted to the contractor to complete the utility installation. The timeframe cannot be accurately estimated without review of the final utility design to determine the depth of trench excavation which will impact the daily production rates. The number of water service connections, sanitary sewer lateral replacements and the extent of work on side roads will also impact the construction time. OMNNI has developed a construction administration cost estimate based on the following assumptions

- Allow a reasonable amount of time for pre-construction coordination, pre-construction meeting, and submittal reviews.
- Assume a construction inspector for utility construction timeframe of 8 weeks at 40 hours per week.

- Allow a reasonable amount of time for project closeout and preparation of as-built record drawings.
- Include time for staking of watermain and sanitary sewer and preparation of cut sheets.
- Assume material testing will include 2 trench backfill gradation tests and 4- ½ days of trench backfill density testing.
- Include anticipated expenses that would be charged based on the estimated level-of-effort.

PUBLIC WORKS DEPARTMENT

Brown County

2198 GLENDALE AVENUE
GREEN BAY, WI 54303

PHONE (920) 492-4925 FAX (920) 434-4576
EMAIL: bc_highway@co.brown.wi.us

PAUL H. VAN NOIE
DIRECTOR

September 13, 2013

Ms. Peggy Hawley
Omni Associates
One Systems Drive
Appleton, WI 54914-1654

*BROWN COUNTY AWARD OF
CONTRACT*

RE: Project XX-13 & 14

Dear Peggy,

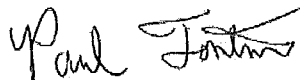
Per your engineering design service proposal of September 12, 2013, the Brown County Public Works Department hereby awards Omni Associates the engineering contract for the 2014 CTH XX-13&14 construction project, located in the Village of Allouez.

We are requesting two contracts for execution. The first contract will be with Brown County (send to me) for Tasks 1 thru 9 for a cost not to exceed fee of \$77,900. As work progresses, we will need you to track Task 5 separately as that cost is 100% Village of Allouez. This puts all the design efforts into one unified contract.

The second contract will be with the Village of Allouez (sent to Craig) for Task 10 for a cost not to exceed \$35,790 for the utility construction administration.

We look forward to working with you and the Omni project team on the CTH XX project. If you have any questions regarding this matter, please feel free to give me a call at (920) 662-2170 or Craig Berndt at (920) 448-2800.

Sincerely,



Paul Fontecchio, P.E.
Engineering Manager

Copy: Craig Berndt, Village of Allouez
Paul Van Noie, Brown County