

THIS IS AN AGREEMENT effective as of February 15, 2020 ("Effective Date") between the Village of Allouez ("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:

Village of Allouez Webster Avenue Study ("Project").

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

Conceptual design of improvements to Webster Avenue from Allouez Avenue to the north Village Limits.
("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 Attachment A, titled Webster Avenue 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. Other than sums withheld on a disputed invoice, due for 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.
- 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 on a lump sum basis of \$13,904.40 including all labor and direct expenses charged in support of the project. The lump sum fee is based on the level-of-effort presented in Attachment B, titled Webster Avenue Fee Breakdown. Fees will be invoiced monthly on a percent complete basis.
- B. *Additional Services:* 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:

PROFESSIONAL SERVICES AGREEMENT BETWEEN CLIENT AND 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 \$2,000,000.

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 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.

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.



PROFESSIONAL SERVICES AGREEMENT
BETWEEN CLIENT AND PROFESSIONAL

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Project Village of Allouez Webster Avenue Study

Client: Village of Allouez

Professional: R.A. Smith, Inc.

By: _____

By: Brad Severson

Print name: _____

Print name: Brad Severson, P.E.

Title: _____

Title: Project Manager

Date Signed: _____

Date Signed: 2/15/2021

Firm's Certificate No.: 1R12170

State of: Wisconsin

Address for Client's receipt of notices:

Address for Professional's receipt of notices:

R.A. Smith, Inc.
16745 West Bluemound Road
Brookfield, WI 53005



CREATIVITY BEYOND ENGINEERING

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

February 15, 2021

Sean J. Gehin, P.E.
Director of Public Works
Village of Allouez
1900 Libal Street
Green Bay, WI 54301

Re: Proposal for Webster Avenue

Dear Mr. Gehin:

raSmith appreciates the opportunity to work with the Village of Allouez on the Webster Avenue project. As your trusted advisor, we are committed to understanding your challenges and providing cost-effective and timely solutions.

Scope of Services

Concept Development Task

Two concept designs will be developed for Webster Avenue from Allouez Avenue to the north Village limits:

- Alternative 1 will add a 6' wide terrace and 5' wide sidewalk outside of the existing curb on each side of Webster Avenue.
- Alternative 2 will eliminate the existing medians and reconstruct Webster Avenue with an 11' inside lane, 12' outside lane, 5' bike lane, 6' terrace, and 5' sidewalk on each side.

Each alternative will be drawn on aerial photos provided by the Village or Brown County. Existing and proposed right of way will be shown. Existing right of way will be based on GIS lines provided by the Village or Brown County. A typical section will be shown on each exhibit. Deliverables for the Concept Development Task are:

- A pdf file and hard copy roll plot of the two concept alternatives. Typical sections for each alternative will be shown on the roll plots.
- Conceptual cost estimate identifying construction, real estate, and costs to bury existing overhead utilities.

Alternative Refinement Task

raSmith will create a conceptual roadway layout design, identify right of way and environmental impacts, and develop a conceptual level cost estimate for one reconstruction alternative design concept. This refined alternative will be a combination of the two alternatives designed under the Concept Development Task. raSmith will evaluate the corridor in segments and identify the most appropriate typical section for each segment. Deliverables for the Alternative Refinement Task are:

- A pdf file and hard copy roll plot of the refinement alternative. Typical sections will be shown on the roll plot.
- Conceptual cost estimate identifying construction, real estate, and costs to bury existing overhead utilities.



Sean J. Gehin, P.E.
Director of Public Works
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Meetings

raSmith will attend up to three (3) meetings as part of the project, anticipated to include the following:

- Brown County and Village of Allouez: Two meetings (in person)
- Village Board: One meeting (in person)

Extra Services

Traffic analysis, field survey, intersection design, analysis and design of access modifications, and preparation of reports are not part of the study and will be considered Extra Services.

Completion Schedule

The Concept Development alternatives will be submitted to the Village within one month of receiving authorization to proceed. The Alternative Refinement alternative will be submitted to the Village within one month of receiving comments on the Concept Development alternatives.

Professional Fees

The above services will be provided for a lump sum fee of \$13,904.40, including usual and customary expenses such as mileage, printing, delivery and postage. Services will be billed each month based on the work completed.

Client Responsibilities/Assumptions

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 services within 365 days.

Sincerely,
raSmith

A handwritten signature in black ink, appearing to read 'Brad Severson'.

Brad Severson, P.E.
Project Manager

Attachment B - Webster Avenue Fee Breakdown					Hours per Task	Labor Fee per Task
Labor Task	raSmith Hours					
	Project Manager	Senior Design Engineer	Design Engineer	Technician		
	\$148	\$127	\$110	\$90		
Concept Development (2 alts)	6	6	20	16	48	\$5,290.00
Alternative Refinement (1 alt)	2	3	18	4	27	\$3,017.00
Estimates	2	2	12	0	16	\$1,870.00
Meetings	10	6	0	4	20	\$2,602.00
Project Management/Quality Control	4	2	0	0	6	\$846.00
Total	24	19	50	24	117	\$13,625.00
					Expenses	
					Reimbursable Expenses	\$279.40
						\$279.40
					Total Project Fee	\$13,904.40