

Village of Empire Deputy Clerk

From: Derith Smith <clerk@villageofempire.com>
Sent: Thursday, December 21, 2023 10:59 AM
To: Alacia Acton
Subject: Fwd: Village of Empire Sanitary Sewer Economic Impact Study
Attachments: 2023092 PSA Empire Sewer Impact Study.pdf

Derith A. Smith
Empire Village Clerk
11518 S LaCore St., PO Box 253
Empire, MI 49630
231-326-5466

PLEASE NOTE: All correspondence to and from this address is subject to the Michigan Freedom of Information Act (FOIA) and may be disclosed to third parties.

----- Original Message -----

From: Rowan Brady <rbrady@bria2.com>
To: "clerk@villageofempire.com" <clerk@villageofempire.com>
Date: 12/21/2023 10:02 AM
Subject: Village of Empire Sanitary Sewer Economic Impact Study

Dear Deith Smith,

My name is Rowan Brady and I am a planner with Beckett and Raeder, Inc. We have started working with the Village of Empire, Paul Skinner specifically, on an economic impact study for the potential sanitary sewer projects. Before we can start work, I need to sign a contract with the Village (see attached). Are you authorized to sign professional service agreements or is there someone else I should contact?

Thanks,
Rowan

Rowan Brady, AICP
Associate

Beckett&Raeder, Inc.
Making Great Places for over 50 Years
5211 Cascade Rd, Ste 300
Grand Rapids, MI 49546

Office: 734 663 2622
Direct Line: 616 585.1295

Ann Arbor 734 663 2622
Traverse City, MI 231 933 8400
Petoskey MI 231 347 2523
Grand Rapids, MI 616 585 1295
Toledo, OH 419 242 3428

Please visit us at www.bria2.com

SERVICE AGREEMENT
Empire Sewer Impact Study
Project #: 2023092

Firm: Beckett & Raeder, Inc.
535 West William, Suite 101
Ann Arbor, MI 48103
734.663.2622

Client: Village of Empire
PO Box 253
Empire, MI 49630
clerk@villageofempire.com

This Service Agreement ("Agreement") is between the Firm and Client and is effective on the date last signed by both parties. Client desires to retain Firm as an independent contractor to provide certain services and/or deliverables under the conditions set forth in this Agreement, and Firm desires to provide those services and/or deliverables.

For each project under this Agreement ("Project"), Firm and Client shall agree on a written Scope of Work ("Scope") that shall contain a description of one or more of the following, as applicable:

1. any and all documents, renderings, photographs, drawings, summaries, reports, analysis, studies or other written materials to be created and/or delivered by Firm ("Written Materials");
2. the services to be provided by Firm ("Services");
3. milestone and completion dates for each Written Material and Service;
4. the amount and timing of fees and expenses to be paid by Client to Firm for each Written Material and Service; and
5. all information and materials to be provided by Client as necessary for Firm to complete each Written Material and Service.

Written Materials and Services are collectively referred to as "Deliverables." Each Scope shall be attached to this Agreement and subject to the terms and conditions of this Agreement.

This Agreement is comprised of this cover page, the Terms and Conditions attached to this cover page and each Scope executed by the parties. Client's signature is required below and its initials are required at the end of the Terms and Conditions.

Prepared by:
Sara Kopriva, Senior Associate
(printed name and title)

AGREED AND ACCEPTED:
BECKETT & RAEDER, INC. / BRI, INC.

By:  _____
(signature)

Name: John Iacoangeli
(printed)

Title: Partner

Date: 12.18.2023

Village of Empire

By: _____
(signature)

Name: _____
(printed)

Title: _____

Date: _____

TERMS AND CONDITIONS

Warranties and Disclaimer.

Firm warrants that (a) all Deliverables provided to Client shall be Firm's original work, or that Firm will have acquired all rights necessary to fulfill its obligations under this Agreement and each Scope; (b) all Deliverables shall be provided in a diligent, prompt, and professional manner by individuals with the necessary knowledge and training to provide such Deliverables; and (c) all Deliverables will be provided in accordance with the milestones agreed to in the applicable Scope; provided that Client timely, accurately and completely performs all of its obligations under this Agreement and the Scope. The warranties described in this Section are the only warranties Firm makes under this Agreement. FIRM DISCLAIMS, AND CLIENT HEREBY WAIVES, ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR USE.

Insurance.

Upon request, Firm will furnish the Client with a written description of insurance coverages being maintained by Firm, which may be related to Firm's provision of Deliverables. No oral representations regarding insurances shall be binding upon Firm.

Termination.

This Agreement may be terminated by either party with or without cause upon thirty (30) days prior written notice to the other party. In the event of termination, Firm shall be paid all amounts due and owing from Client for Firm's performance up to the effective date of termination. Upon payment of all such amounts, Firm shall deliver to Client all Written Materials under each Scope, whether in final form or as works in process; provided that Firm assumes no liability for the use of any Written Materials that are a work in process upon delivery to Client, unless specifically agreed to in writing by Firm. All provisions of this Agreement relating to ownership, indemnification and limitations of liability shall survive termination of this Agreement.

Payment.

Firm shall bill for Deliverables, and reimbursable costs incurred, on a periodic basis as set forth in the Scope. Each invoice shall be due and payable within thirty (30) days of receipt by Client. If an invoice is not paid within this time period Firm may, upon seven (7) days written notice to Client, suspend provision of Deliverables under the applicable Scope until all past due amounts are paid. In addition, invoices over sixty (60) days past due may be charged monthly interest at the rate of eighteen percent (18%) per annum on the unpaid balance or the highest lawful rate, whichever is less.

Cost Estimates.

Since Firm has no control over the cost of labor and materials or over competitive bidding and/or market conditions, any estimates of equipment, construction or operating costs will be made on the basis of Firm's experience, but Firm does not warrant the accuracy of such estimates as compared to contractors' bids or actual costs incurred.

Client Responsibilities - Generally.

Client shall provide Firm with all access to Client's personnel, facilities, computers, materials and all other equipment reasonably necessary for Firm to provide the Deliverables as specified in the applicable Scope. Client will obtain any consent required from a third party to permit Firm to access and use that third party's hardware, software or other proprietary material under Client's possession and control in order for Firm to provide the Deliverables under the applicable Scope. Client warrants that it shall timely, accurately and completely perform those obligations and assume those responsibilities specified in this Agreement and in each applicable Scope, including, but not limited to, the timely rendering of all required decisions and approvals. Should Client fail to comply with this warranty, Firm shall receive an appropriate extension of time to provide the Deliverables under the applicable Scope, and Client shall reimburse Firm for all additional direct costs or expenses incurred by Firm as a result of Client's noncompliance.

Site Access and Security.

Client shall obtain authorization for entry and use of land as necessary for Firm to timely perform its obligations under this Agreement. Client shall be solely responsible for any claims arising from the disturbance of surface or subsurface lands or waters caused by the performance of any of Firm's obligations under this Agreement, except for such damage as caused by the sole negligence of Firm.

Site Conditions.

Client recognizes that the presence of hazardous materials or pollution on or beneath the surface of a site may create risks and liabilities. Firm has neither created nor contributed to the presence of any hazardous materials or pollution. Consequently, Client recognizes and hereby acknowledges that this Agreement accordingly limits Firm's liability.

Federal / Local Right to Know Compliance.

In compliance with the Federal Hazard Communication Standards and applicable local laws or ordinances, Client shall provide Firm with a list of hazardous substances in the work place to which Firm employees or subcontractors may be exposed in performance of its obligations under this Agreement and each Scope. Client shall also provide a listing of protective measures in case exposure to said hazardous substances occurs.

Shop Drawings.

If shop drawing review is provided under a Scope, Firm will check and review samples, catalog data, schedules, shop drawings laboratory, shop and mill tests and materials and equipment, and all other data which the contractor is required to submit, only for conformance with the design concept of the project and compliance with the information given by the construction Contract Documents.

Construction Phase Services.

When authorized to provide construction observation or construction management services, Firm's liability with regard to the compliance of construction to Construction Documents prepared by Firm shall be only as expressly described in the Scope.

Ownership and Use of Deliverables.

Unless otherwise expressly provided in a Scope, Firm will own all rights, title and interests, including intellectual property rights, in and to all Deliverables and other materials created in connection with or pursuant to this Agreement. No Deliverables will be considered "works made for hire" as that term is used in association with the U.S. Copyright Act. Nothing herein shall be construed to restrict, or constitute an assignment of, any of Firm's rights or proprietary interests in its methodologies, techniques, technology or products. Upon the payment of all amounts owed to Firm under the applicable Scope, Client will own its copies of all Deliverables provided to Client by Firm, and may copy, use, modify, adapt, translate and distribute all such Deliverables within its organization without restriction. The Deliverables may be used only for Client's business purposes as described in the applicable Scope. Any reuse or other use of any Deliverables after they have left the custody of Firm shall be at Client's sole risk without liability to, or cause of action against, Firm.

Limitation of Liability.

In recognition of the relative risks, rewards and benefits of the Projects to both the Client and the Firm, the risks have been allocated such that the Client agrees that, regardless of the form of action or theory of recovery, in no event shall Firm be liable to Client in connection with this Agreement and/or Deliverables for any (a) indirect, special, exemplary, consequential, incidental or punitive damages, even if Firm has been advised of the possibility of such damages; (b) lost profits, lost revenue, lost business expectancy, business interruption losses or benefit of the bargain damages; (c) act or omission of any third party, except for Firm's authorized subcontractors; and/or (d) direct damages in an amount in excess of all amounts received by Firm under the Scope under which the claim arose or \$100,000, whichever is less. These limitations apply to, without limitation, Firm's negligence, errors, omissions, strict liability, and breach of contract.

Dispute Resolution.

Any dispute between the parties arising out of or related to this Agreement and/or the Deliverables shall be initially submitted to non-binding mediation and in such event each party shall be equally responsible for the expense of the neutral mediator. If mediation is unsuccessful or is not commenced within thirty (30) days of written notice to the other party of a dispute, the dispute shall be resolved by arbitration. These dispute resolution procedures shall be conducted in accordance with the Construction Industry Rules of the American Arbitration Association and the arbitrator(s) shall have the power to award legal and equitable remedies. Judgment upon the award may be entered in any court having jurisdiction thereof. Nothing herein shall prevent either party from seeking injunctive or other equitable relief from a court of competent jurisdiction pending the conduct and outcome of arbitration.

No Employee Solicitation.

During the term of this Agreement and for a period of one (1) year after its termination, Client shall not hire, solicit for hire, use, and/or contract with any individual(s) who was or is a Firm employee during the term of this Agreement. Client stipulates to the reasonableness of this provision to protect Firm's legitimate business interests in its workforce.

No Third Party Rights.

This Agreement does not create any rights or benefits to parties other than the Client and Firm.

Independent Contractor Status

Firm is an independent contractor and not an employee, agent, joint-venturer or partner of Client. Firm has no authority to create any obligations for Client, is not entitled to any benefits of Client employees, and is responsible for its own costs and legal responsibilities of doing business, including insurance, taxes, workers compensation, equal opportunity compliance, immigration requirements, and employment benefits.

Subcontractors.

Unless expressly prohibited in a Scope, Firm may use subcontractors to provide Deliverables for Client.

Assignment.

Customer may not assign this Agreement, or any Scope, in whole or in part, without Firm's prior express written consent, which shall not be unreasonably withheld or delayed. Any attempted assignment without such written consent shall be void. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

Force Majeure.

Firm shall not be responsible or liable for any delays, errors or increased costs in the provision of Deliverables that are due to causes not within its reasonable control or are caused by the acts or omissions of third parties including, but not limited to, weather conditions, fire, theft, vandalism, strikes or labor disputes, war, disasters, acts of god, material shortages, supplier price increases, fuel shortages, or similar occurrences.

Notices.

All notices required to be given in writing shall be delivered by mail, courier, hand-delivery, facsimile, or email, and shall be effective upon receipt; provided that the sender shall have the duty of demonstrating receipt.

Waiver.

Any waiver of a party's right or remedy related to this Agreement must be in writing, signed by that party to be effective and no waiver shall be implied from a failure of either party to exercise a right or remedy.

Governing Law.

This Agreement shall be deemed to have been made in the State in which the Deliverables are provided and shall be governed by, and construed in accordance with, the laws of that State.

Severability.

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such provision will be enforced to the fullest extent that it is valid and enforceable under applicable law. All other provisions of this Agreement shall remain in full force and effect.

Entire Agreement - Amendment / Modification.

This Agreement, which includes these Terms and Conditions and all Scopes, is the sole understanding of the parties with respect to the stated subject matter and may be amended only by a written agreement signed by both parties. No terms or conditions of either party's invoice, purchase order or other administrative document shall modify the terms and conditions of this Agreement, regardless of the other party's failure to object to such form.

Initial here:  (Firm)

_____ (Client)

ATTACHMENTS

The following attachments are incorporated as part of this Agreement.

- Scope of Work
- Project Schedule, Gantt Chart, Milestone Chart, Etc.
- Professional Fees and Reimbursables
- Other:
- Other:

December 2, 2023

Paul Skinner
Village of Empire
10088 W Front St
Empire, MI 49630

Regarding: Village of Empire Economic Impact Study for Proposed Sanitary System

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initiative

Village of Empire,

Below is a scope of services for an economic impact study for the proposed sanitary sewer system for the Village of Empire. The scope of services is drafted based on conversations between Beckett & Raeder, Inc. Associate Rowan Brady, AICP and the Village of Empire Wastewater Taskforce.

Task 1: Funding Sanitary Systems. BRI will outline various ways local units of government fund sanitary systems and the impact of those funding mechanisms on users of the system, residents, and other relevant parties. Special attention will be given to Michigan communities which have sanitary systems and that are of similar size, geography, and position to the Village of Empire.

Task 2: Evaluation of Proposed Sanitary Sewer Systems. BRI will evaluate the three proposed systems for their economic impact on the Village. The analysis will comparatively evaluate the systems, highlighting the relative economic impact of each system in place of exact economic figures. This analysis will also include analysis of a "no action" scenario.

Task 3: Evaluation of Redevelopment / Development Sites. BRI will analyze three sites selected by the Village and evaluate the impact of each proposed system on those sites. BRI will determine what/where are the development opportunities on each site. Exact economic figures, including jobs, tax revenue, and overall economic impact will be provided for each site under each proposed system.

Task 4: Final Presentation. BRI will present its findings to the Village of Empire Village Council at a regularly scheduled meeting.

The initiation of the project is contingent upon receiving the three proposed sanitary systems from the Village and its respective engineering firm(s), a GIS parcel layer of the Village, the most recent assessing roll from the Village of Empire, and a signed professional service agreement.

The project is anticipated to be completed within three (3) months.

Beckett & Raeder, Inc.
535 West William
Suite 101
Ann Arbor, MI 48103

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734 663 6759 fx

www.bria2.com

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113 Howard Street
Petoskey, MI 49770

231 347 2523 ph
231 347 2524 fx

Traverse City Office
148 East Front Street
Suite 207
Traverse City, MI 49684

231.933 8400 ph
231 944 1709 fx

Grand Rapids Office
5211 Cascade Road SE
Suite 300
Grand Rapids, MI 49546

616 585 1295 ph

Beckett & Reader, Inc. will solely rely on the engineering information provided by the Village and its consultants to perform our assessment.

Project not to exceed: **\$5,900.00**.

This proposal in its entirety is valid for a period of ninety (90) days.

Thank you,

A handwritten signature in black ink, appearing to read 'R. Brady', written in a cursive style.

Rowan Brady, AICP

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