



September 24, 2010

Rodney Scheel, Planning Director  
City of Stoughton  
381 E. Main Street  
Stoughton, WI 53589

Re: Agreement for Engineering Consulting Services  
623 8th Street Remediation

Dear Mr. Scheel:

Vierbicher Associates, Inc. (Consultant) is pleased to submit this Agreement to provide Engineering Consulting Services to the City of Stoughton (Client).

**I. SCOPE OF PROJECT**

Client wishes to address contaminated soil located at 623 8th Street.

**II. SCOPE OF SERVICES**

**A. General**

Consultant shall:

1. Prepare plans, specifications, regulatory permit applications, and bidding documents.
2. Bid and award contract.
3. Provide contract administration during construction.
4. Provide construction staking.

**B. Specific Services Provided by Consultant**

1. Design Services

Ayres Associates conducted a contamination assessment on the 623 8th Street property during the summer of 2010. The results of this assessment are contained within the Remedial Action Options Report dated August 2010. Consultant will implement the recommendations of Remedial Action Alternative 2 - Hot Spot Soil Removal and Capping as identified in the report. No additional contamination assessment is included in the scope of this project.

- a. Prepare final plans and specifications to enable construction of the project. Modify permit applications prepared for the Elven Sted Development to include remediation work proposed herein to obtain regulatory agency approval (Dane County Land Conservation Erosion Control, DNR WRAPP and Chapter 30 permits). Note: Street opening, closing and encumbrance permits will be the responsibility of the Contractor.
- b. Prepare final Opinion of Probable Cost and construction schedule. Meet with the Client to review final plans, specifications, cost estimates, and schedules.
- c. Provide the Client with one complete set of all plans, specifications, bid documents, significant reports, and correspondence. Submit plans, specifications and permit applications to regulatory agencies as required.

2. Bidding and Award of Contract

- a. Prepare advertisement for bids, solicit bids and coordinate the bid process, including request for prevailing wage determination.
- b. Assist with the bid opening and make a recommendation concerning award of contract.
- c. Provide plans and specifications to bidders.

3. Contract Administration Services

- a. Ayres Associates will provide the City with a proposal on 9/28/10 for construction observation, sampling, documentation, and closure reporting. This work is not included as part of this contract.
- b. Conduct a preconstruction meeting with the Contractor, Client's representatives, utility companies and other parties directly affected by the construction.
- c. Provide one-time horizontal alignment and vertical control staking for hot spot removal, soil cap, and other miscellaneous grades in conjunction with the remediation activities. Two trips for staking are anticipated. Any restaking required as a result of vandalism, Contractor negligence, or other cause is not a part of this contract. Contractor will be responsible for costs related to restaking due to Contractor negligence.

- d. Review and take appropriate action on all Contractor pay requests and change orders. Request and ensure Contractor submittal of lien waivers.
- e. Conduct final inspection of the project with Ayres and Client or its representative. Prepare final punchlist, if necessary, and coordinate with Contractor for completion of the project.
- f. Prepare final pay request and submit project completion letter/documentation.

**III. SCHEDULE**

This Agreement is based upon the following anticipated schedule:

<u>Activity</u>	<u>Date</u>
A. Authorization to Proceed .....	9/29/10
B. 1st Advertisement to Bid.....	10/13/10
C. 2nd Advertisement to Bid.....	10/20/10
D. Award of Contact .....	10/27/10
D. Preconstruction Conference .....	11/5/10
D. Start Construction .....	11/8/10
E. Substantial/Final Completion .....	12/3/10

**IV. FEES**

The fixed fees to provide the scope of services described above are as follows:

Design Services .....	\$5,200
Bidding and Contract Award .....	\$2,100
Construction Staking .....	\$2,000
Contract Administration and Observation Services .....	\$1,800

Consultant submits invoices monthly for work completed to date. Payment is due upon receipt. For invoices not paid after 30 days, interest will accrue at the rate of 1½% per month.

**V. GENERAL TERMS AND CONDITIONS**

The General Terms and Conditions attached hereto are incorporated herein by reference.

Please indicate your approval for us to proceed with this work by signing in the space provided below and returning one copy to our office. Feel free to call me with any questions or concerns.

Sincerely,



Travis J. Schreiber, PE  
Project Manager

Attachment: General Terms and Conditions

Client

Consultant

\_\_\_\_\_  
Jim Griffin, Mayor  
City of Stoughton  
381 E. Main Street  
Stoughton, WI 53589




\_\_\_\_\_  
Travis Schreiber, PE  
Project Manager  
Vierbicher Associates, Inc.  
999 Fourier Drive, Suite 201  
Madison, WI 53717

\_\_\_\_\_  
9/24/10  
Date

\_\_\_\_\_  
9/24/10  
Date

\_\_\_\_\_  
John D. Neal, Finance Director



\_\_\_\_\_  
Witness

\_\_\_\_\_  
Roethe, Krohn, Pope & McCarthy  
City Attorney

**VIERBICHER ASSOCIATES, INC. (CONSULTANT)  
GENERAL TERMS AND CONDITIONS OF SERVICES**

**1. Services Not Provided as Part of This Contract**

Environmental studies, resident inspection services, archaeological investigations, soil borings, flood plain analysis, wetland delineations, public hearing representation, easements, property descriptions or surveys, negotiations for property rights acquisitions, and other detailed studies or investigations, unless specifically identified above, are not included as part of this work. Inspection or testing for hazardous materials such as asbestos, mold, lead paint or PCBs are also not included.

**2. Additional Services**

The Scope of Services in this Agreement is intended to cover services normally required for this type of project. However, occasionally events occur beyond the control of the Consultant or the Client that create a need for additional services beyond those required for a standard contract.

The Consultant and/or Client shall promptly and in a timely manner bring to the attention of the other the potential need to change the Scope of Services set forth above, necessitated by a change in the Scope of Project, Scope of Services, or the Schedule. When a change in the Scope of Services, Schedule, or Fees is agreed to by the Consultant and Client, it shall be initiated by written authorization of both parties.

**3. Client's Responsibility**

- A. Provide Consultant with all criteria and full information as to Client's requirements for the project, including design objectives and constraints, capacity and performance requirements, flexibility, expandability, and any budgetary limitations; furnish copies of all design and construction standards which Client will require to be included in the drawings and specifications; and furnish copies of Client's standard forms, and conditions, including insurance requirements and related documents for Consultant to include in the bidding documents, or otherwise when applicable.
- B. Furnish to Consultant any other information pertinent to the project including reports and data relative to previous designs, or investigations at or adjacent to the site, including hazardous environmental conditions and other data such as reports, investigations, actions or citations.
- C. Arrange for safe access to and make all provisions for Consultant to enter upon public and private property as required for Consultant to perform services under this Agreement.
- D. Examine all alternate solutions, studies, reports, sketches, drawings, specifications, proposals, and other documents presented by Consultant and render timely decisions pertaining thereto.
- E. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and substantial completion and final payment inspections.
- F. If more than one prime contract is to be awarded for the work designed or specified by Consultant, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime contractors, and define and set forth in writing the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Consultant.
- G. If Client designates a Construction Manager or an individual or entity other than, or in addition to, Consultant to represent Client at the site, the Client shall define and set forth in writing the duties,

responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Consultant and make a part of this Agreement.

**4. Fees**

- A. The fees set forth in this Agreement are based on the assumption that the work will be completed within the time frame set forth herein. If significant delays to the project occur, which are not due to the negligence of the Consultant, e.g. decisions of the Client, regulatory approvals, deferrals to the next construction season or calendar year, etc., the Consultant reserves the right to negotiate and adjust an appropriate change to the fees.
- B. Reimbursable expenses are included in the above stated fees or estimates.
- C. We submit invoices monthly for work completed to date. Fixed fees will be submitted on the basis of percent of the Scope of Services completed. Estimated fees will be submitted on the basis of time and expense incurred in accordance with Consultant's fee schedule in effect at the time the costs are incurred.
- D. Invoices are due upon receipt. For invoices not paid after 30 days, interest will accrue at the rate of 1 ½% per month.
- E. When estimates of fees or expenses are quoted, they are simply that, estimates. Actual costs invoiced may be higher or lower due to actual fees or expenses incurred. When fees or expenses are anticipated to be higher or lower than estimated we will make every effort to inform you in a timely manner, even prior to incurring the costs, if possible.
- F. Consultant will bill additional services, if requested, in accordance with the fee schedule in effect at the time the work is performed or as otherwise negotiated.

**5. Dispute Resolution**

In the event a dispute shall develop between the Client and the Consultant arising out of or related to this Agreement, the Client and Consultant agree to use the following process to resolve the dispute:

- A. The Client and Consultant agree to first negotiate all disputes between them in good faith for a period of at least 30 days from notice first being served in writing to the Client or Consultant of the dispute.
- B. If the Client and Consultant are unable to resolve the dispute by negotiation as described above, the Client and Consultant agree to submit the dispute to non-binding mediation. Such mediation shall be conducted in accordance with Construction Industry Dispute Resolution procedures of the American Arbitration Association.
- C. If the Client and Consultant are unable to resolve the dispute by negotiation or by mediation, they are free to utilize whatever other legal remedies are available to settle the dispute.

**6. Insurance**

**A. Consultant**

Consultant maintains general liability and property insurance; vehicle liability; and workers' compensation coverage meeting state and federal mandates. We also carry professional liability insurance to cover losses from potential errors and omissions by our

employees or others that work at our direction. Certificates of Insurance will be provided upon written request.

**B. Client**

The Client shall procure and maintain, at its expense, general liability, property insurance and, if appropriate, workers' compensation and builders risk insurance.

**C. Contractor**

The Consultant shall procure from the Contractor, as directed by the Client and/or as provided in the Scope of Services, Certificates of Insurance for the type and amounts as directed by the Client.

**7. Limitations of Liability**

A. Client and Consultant agree to allocate certain of the risks so that, to the fullest extent permitted by law, Consultant's total aggregate liability to Client is limited to the amount of Consultant's insurance policy limits for any and all injuries, damages, claims, losses, expenses, or claim expenses (including attorney's and expert witness' fees) arising out of this Agreement from any cause or causes. Such causes include, but are not limited to, Consultant's negligence, errors, omissions, strict liability, statutory liability, breach of contract, breach of warranty, negligent misrepresentation, or other acts giving rise to liability based upon contract, tort, or statute.

Consultant has maintained professional liability insurance for several years at a limit of \$2,000,000 per claim/\$2,000,000 aggregate. Consultant currently carries the same level of insurance, and intends to carry at least this amount in the future, as long as the insurance is commercially available and affordable.

B. The Client and Consultant mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damage, liability or cost, including reasonable attorney's fees and costs of defense, arising from their own negligent acts, errors, or omissions in the performance of their services under this Agreement, to the extent that each party is responsible for such damages, liabilities and costs on a comparative basis of fault.

**8. Use of Documents**

A. All documents developed as a result of this Agreement are instruments of services with respect to this project. The Consultant shall retain an ownership and property interest therein, including the right of reuse, whether or not the project is completed.

B. Client may make and retain copies of documents for information and reference in connection with use on this project. Such documents are not intended or represented to be suitable for reuse by Client or others on extensions of this project or on any other project. Any such reuse or modification without written verification or adaptation by Consultant, as appropriate for the specific purpose intended, will be at Client's sole risk and without liability exposure to Consultant from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom.

C. If there is a discrepancy between the electronic files and the hard copies, the original hard copies govern.

**9. TERMINATION**

The obligation to provide further services under this Agreement may be terminated:

**A. For Cause**

1. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, through no fault of the terminating party. The failing party shall have the right, within 30 days, to correct or remedy the cited failures.

2. By Consultant

a. Upon seven days written notice if Consultant believes that he is being requested by Client to furnish or perform services contrary to Consultant's responsibilities as a licensed professional. Consultant shall have no liability to Client on account of such termination.

b. Upon seven days written notice if the Consultant's services for the project are delayed or suspended for more than 90 days for reasons beyond Consultant's control.

c. Upon seven days written notice if the Client has failed to pay for previous services rendered and/or if his account is more than 90 days past due.

**B. To Discontinue Project**

By Client effective upon the receipt of notice by Consultant.

**C. Reimbursement for Services**

Consultant shall be reimbursed for all services and expenses rightfully incurred prior to termination.

**10. Successors Assigns and Beneficiaries**

A. Client and Consultant each is hereby bound and the partners, successors, executors, administrators and legal representatives of Client and Consultant are hereby bound to the other party by this Agreement and to the partners, 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 Consultant may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted 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 of responsibility under this Agreement.

**11. Controlling Laws**

This Agreement is to be governed by the laws of the state in which the project is located.