

May 5, 2025

Mr. Michael Brofka  
Assistant Director DPW  
City of West Allis  
6300 West McGeoch Avenue  
West Allis, WI 53219

Re: Orchard Hills Canal Restoration

Dear Mr. Brofka:

Ruekert & Mielke, Inc. (R/M) is pleased to submit an agreement to provide services pertaining to initial design, survey, and grant tasks.

### Project Description:

We understand the project involves the stabilization of approximately 2,800 linear feet of the canal that transects the Orchard Hills neighborhood in the City of West Allis. The goal of the project is to improve the geomorphology of the canal and restore and stabilize the adjacent riparian corridor. The Figure A below provides the approximate project limits for the waterway that is defined by the red line. This proposal includes an initial survey, design, and grant services.



Figure A: Orchard Hills Canal Restoration Area

### Scope of Services:

The below services are to be performed for the project area of the Orchard Hills Canal as defined above in Figure A.

- Design:
  - A preliminary plan set will be developed with the following scope of service:
    - Drone captured topography and field data (wetland delineation and tree survey).
    - Existing aerial image.
    - Existing parcel data (if publicly available).
    - Proposed tree removal.
    - Preliminary proposed channel with estimated sizing, typical cross sections, stabilization elements and general restoration areas.
    - Design details.
  - Prepare for and attend up to two engineering design reviews with the City of West Allis.

- Grant Application:
  - Conduct necessary project partner meetings in preparation for the Fund for Lake Michigan Grant application. Coordination will occur by e-mail and in-person meetings, where necessary. Up to two meetings are anticipated with the client and key partners. Additional meetings and/or other coordination services involving other project partners may also be engaged at our standard hourly rates, subject to the approval of the client.
  - Develop Project approach, corresponding graphics, and applicable narratives for use in meetings and grant applications.
  - Prepare and submit one grant application to the Fund for Lake Michigan on the following dates:
    - August 15, 2025 – Pre-Application
    - September 12, 2025 – Final Application

**Items Excluded:**

Items not specifically included in the scope of this agreement are listed below. These items can be included as additional services if authorization in writing is provided:

- Grant administration services.
- Coordination with other project partners including, but not limited to, Milwaukee County.
- Flood studies and revisions to floodplain maps.
- Final design, bidding, and construction phase services.

**Responsibilities of others:**

The client is to provide information in a timely manner as requested to accurately complete grant applications and engineering design.

**Schedule:**

Below is the outlined schedule for the above-described services. It should be noted that some items are weather dependent and therefore, any schedule changes will be up to the discretion of R/M whereupon approval will be received from the client.

Proposed schedule:

Service	Date of Completion
30% Design	December 2025
Fund for Lake Michigan grant	September 2025

**Fee:**

The fee to complete the above scope of service will be a lump sum cost of \$17,458 which includes all labor, miscellaneous and reimbursable costs including travel time and mileage. Any application fees are excluded from this cost.

Mr. Michael Brofka  
Proposal for Orchard Hills Canal Restoration  
May 5, 2025  
Page 3

The above-described professional services will be provided to you in accordance with the attached three-page **RM Standard Terms & Conditions** dated January 1, 2024, which are made part of this agreement by reference. Please indicate your acceptance of this agreement by having the appropriate authorized official(s) affix their signature(s) where indicated and returning one fully executed copy to our office.

Respectfully,

RUEKERT & MIELKE, INC.

Nicholas Connor  
Senior Biologist  
[nconnor@ruekert-mielke.com](mailto:nconnor@ruekert-mielke.com)

NPC:cal  
Enclosure  
cc: Abigail H. Hanson, E.I.T., Ruekert & Mielke, Inc.

PROPOSAL FOR ORCHARD HILLS CANAL RESTORATION  
Between City of West Allis  
and  
Ruekert & Mielke, Inc.  
Dated May 5, 2025

CLIENT:

City of West Allis

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Designated Representative:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

CONSULTANT:

Ruekert & Mielke, Inc.

Signature: \_\_\_\_\_  
Jason P. Lietha, P.E.

Title: Senior Vice President

Date: May 5, 2025

Designated Representative:

Name: Nicholas P. Connor

Title: Senior Biologist

Phone Number: 262-953-3065

**A. Standards of Performance**

The standard of care for all Consultant services performed or furnished Consultant 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. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with Consultant's services.

**B. Designated Representatives**

With the execution of this Agreement, Consultant and Client shall designate specific individuals to act as Consultant's and Client's representatives with respect to the services to be performed or furnished by Consultant and duties and responsibilities of Client under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Assignment on behalf of the respective party whom the individual represents.

**C. Payments to Consultant**

Invoices will be prepared in accordance with Consultant's standard invoicing practices and will be submitted to Client by Consultant monthly, unless otherwise agreed. Invoices are due and payable within 30 days of receipt. If Client fails to make any payment due Consultant for services and expenses within 30 days after receipt of Consultant's invoice therefore, the amounts due Consultant 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. In addition, Consultant may, after giving seven days written notice to Client, suspend services under this Agreement until Consultant has been paid in full all amounts due for services, expenses, and other related charges. Consultant's standard hourly rates are subject to annual adjustment.

**D. Ownership and Reuse of Documents**

All documents and services prepared or furnished by Consultant pursuant to this Agreement are instruments of service, and Consultant shall retain an ownership and property interest therein (including the copyright and the right of reuse) whether or not the Project is completed. Consultant grants Client a limited license to use the deliverable documents on the Project, extensions of the Project, and for related uses of the Client, subject to receipt by Consultant of full payment due and owing for all services relating to preparation of the documents. Such limited license shall not create any rights in third parties. Reuse of any documents pertaining to this Agreement by Client shall be at Client's sole risk; and Client agrees to indemnify, defend, and hold Consultant harmless from all claims, damages, and expenses including reasonable attorney's fees arising out of such reuse of documents by Client or by others acting through Client.

**E. Permits and Approvals**

It is the responsibility of the Client to obtain all necessary permits and approvals for the Project. Consultant will assist the Client in obtaining permits and approvals as mutually agreed to in writing.

**F. Opinions of Probable Cost**

Consultant's opinions of probable construction cost (if any) are to be made on the basis of Consultant's experience, qualifications, and general familiarity with the construction industry. However, because Consultant 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, Consultant cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from opinions of probable construction cost prepared by Consultant. If Client requires greater assurance as to probable construction costs, then Client agrees to obtain an independent cost estimate.

**G. Client and Third Party Provided Information**

Consultant shall have the right to rely on the accuracy of any information provided by Client and third parties. Consultant will not review this information for accuracy.

**H. Access**

Client shall arrange for safe access to and make all provisions for Consultant and Consultant's subconsultants to enter upon public and private property as required for Consultant to perform services under this Agreement.

**I. Construction Observation**

Consultant will observe the work as agreed to for general compliance with the construction documents. Consultant shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Consultant have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to that contractor's furnishing and performing of its work. Consultant shall not be responsible for the acts or omissions of any contractor. Consultant has no stop work authority. Consultant 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 Consultant.

**J. Environmental**

The parties acknowledge that Consultant's services do not include any services related to unknown or undisclosed Constituents of Concern. Consultant assumes no liability for the detection or removal of any hazardous substances found at or adjacent to the Project site.

#### K. Termination of Contract

1. Either party may at any time terminate this Agreement with 7 days written notice for cause 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.
2. Client may terminate this Agreement for convenience with 30 days written notice, or the Project may be suspended by Client with 30 days written notice.
3. Consultant may terminate this Agreement for cause with 7 days written notice (a) if Consultant is requested to furnish or perform services contrary to Consultant's responsibilities as a licensed professional, (b) if Consultant's services are delayed or suspended for more than 90 days for reasons beyond Consultant's control, (c) if payment due Consultant remains unpaid for 90 days, or (d) as the result of the presence of undisclosed Constituents of Concern. Consultant will have no liability to Client on account of any termination by Consultant for cause.
4. In the event of any termination, Client shall pay to Consultant all amounts owing to Consultant under this Agreement, for all work performed up to the effective date of notice.

#### L. Insurance

Consultant will maintain insurance at a minimum in the amounts following. Insurance certificates will be provided if requested by Client.

- General Liability \$1,000,000 Each Occurrence / \$2,000,000 General Aggregate
- Auto Liability \$1,000,000 Combined Single Limit
- Workers Compensation Statutory
- Employers Liability \$1,000,000 Each Accident / \$1,000,000 Each Employee / \$1,000,000 Policy Limit
- Umbrella \$1,000,000 Occurrence / Aggregate
- Professional Liability \$1,000,000 Per Claim / Aggregate

#### M. Indemnification and Allocation of Risk

1. To the fullest extent permitted by law, Consultant shall indemnify and hold harmless Client, Client's officers, directors, partners, and employees from damages and judgments (including reasonable fees), but only to the extent caused by any negligent act or omission of Consultant or Consultant's officers, directors, partners, employees, and subconsultants in the performance of Consultant's services under this Agreement.
2. To the fullest extent permitted by law, Client shall indemnify and hold harmless Consultant, Consultant's officers, directors, partners, employees, and subconsultants from damages and judgments (including reasonable fees), but only to the extent caused by any negligent act or omission of Client or Client's officers, directors, partners, employees, and consultants with respect to this Agreement.
3. To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, will not exceed the percentage share that the party's negligence bears to the total negligence of Client, Consultant, and all other negligent entities and individuals.
4. The indemnification provision of paragraph M.1. is subject to and limited by the provisions agreed to by Client and Consultant in paragraph N. "Limit of Liability," of this Agreement.

#### N. Limit of Liability

To the fullest extent permitted by law, the total liability, in the aggregate, of Consultant and Consultant's officers, directors, partners, employees, agents, and subconsultants, or any of them to Client and anyone claiming by, through, or under Client, for any and all injuries, losses, damages and expenses, whatsoever arising out of, resulting from, or in any way related to this Agreement from any cause or causes including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract or warranty, express or implied, of Consultant or Consultant's officers, directors, partners, employees, agents, and subconsultants, or any of them, shall not exceed the total amount of \$1,000,000, 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, including without limitation active and passive negligence, however alleged or arising, unless otherwise prohibited by law. In no event shall the Consultant's liability exceed the amount of available insurance proceeds.

#### O. Consequential Damages

To the fullest extent permitted by law, Client and Consultant waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, consultants and subconsultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement, any Task Order, or a Specific Project, from any cause or causes. Such excluded damages include but are not limited to loss of profits or revenue; loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; and cost of capital.

#### P. Third Party Beneficiaries

All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Consultant and not for the benefit of any other party. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either Client or the Consultant. Consultant's services under this Agreement are being performed solely for the Client's benefit, and no other entity shall have any claim against Consultant because of this Agreement or the performance or nonperformance of services hereunder. Client agrees to include a provision in all contracts with contractors and other entities involved in this Project to carry out the intent of this paragraph.

#### Q. Severability and Waiver of Provisions

Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Client and Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

#### R. Hold Harmless

Consultant's commitments as set forth in this Agreement are based on the expectation that all of the services described in this Agreement will be provided. In the event Client later elects to reduce the Consultant's scope of services, Client hereby agrees to release, hold harmless, defend and indemnify Consultant from any and all claims, damages, losses, or costs associated with or arising out of such reduction in services.

#### S. Consultant's Services

Consultant's Services do not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Client, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) providing surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements; or (4) providing legal advice or representation.

#### T. Changed Conditions

If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to the Consultant are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, the Consultant may call for renegotiation of appropriate portions of this Agreement. The Consultant shall notify the Client of the changed conditions necessitating renegotiation, and the Consultant and the Client shall promptly and in good faith enter into renegotiation of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the right to terminate this Agreement in accordance with the Termination provision hereof.

#### U. Delays

Consultant shall not be liable for any loss or damage arising directly or indirectly from any delays for causes beyond the Consultant's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters or acts of God; fires, riots, war or other emergencies; pandemics, failure of any government agency to act in timely manner; failure of performance by the Client or the Client's contractors or consultants; or discovery of any hazardous substances or differing site conditions. If the delays resulting from any such causes increase the cost or time required by the Consultant to perform its services in an orderly and efficient manner, the Consultant shall be entitled to a reasonable adjustment in schedule and compensation.

#### V. Entire Agreement

This Agreement is the entire Agreement between the Client and the Consultant. It supersedes all prior communications, understandings and agreements, whether oral or written. Amendments to this Agreement must be in writing and signed by both the Client and the Consultant.

#### W. Assignment

Neither party to this Agreement shall transfer, sublet, or assign any rights or duties under or interest in this Agreement, including but not limited to monies that are due or monies that may be due, without the prior written consent of the other party. Subcontracting to subconsultants normally contemplated by the Consultant as a generally accepted business practice shall not be considered an assignment for purposes of this Agreement.

#### X. Dispute Resolution

Client and Consultant agree to negotiate all disputes between them in good faith for a period of 60 days from the date of notice, prior to invoking mediation. Subsequent to negotiation, Client and Consultant agree to submit any and all unsettled claims, counterclaims, disputes, and other matters in questions between them arising out or relating to this Agreement or the breach thereof ("disputes") to mediation as a condition precedent to litigation. Client and Consultant agree to participate in the mediation process in good faith and on a confidential basis.

#### Y. Governing Law

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

#### Z. Definitions

1. Contractor - Any person or entity (not including the Consultant, its employees, agents, representatives, subcontractors, and subconsultants), performing or supporting construction activities relating to the Project, including but not limited to contractors, subcontractors, suppliers, Client's work forces, utility companies, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.

2. Constituent of Concern – any substances, including without limitation asbestos, asbestos-containing materials, toxic or hazardous substances, PFASs, PCBs, combustible gases and materials, petroleum or radioactive materials (as each of these is defined in applicable state, provincial or federal statutes), pollutants, viruses, bacteria or pathogens of any kind, or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the Project site.

**END OF DOCUMENT**

Page 3 of 3 pages

**(Ruekert & Mielke, Inc. Standard Terms and Conditions)**

~Raw Materials > AGREEMENT > Terms and Conditions > RM Standard Terms and Conditions Consulting~