

AGENDA ITEM

TO: Tim Vandall, City Administrator
FROM: Anthony J. Zell, Jr., Wastewater Utility Director 
DATE: September 14, 2023
SUBJECT: Construction Observation Services Contract for City Project 21-04 (McIntyre Sanitary Sewer Interceptor Extension Project)

Kansas state law requires full time construction observation during all active phases of all sanitary sewer construction. Lansing has previously used Monarch Engineering of Olathe, KS for these services, since Lansing does not have full-time staff that can be dedicated to this task.

Monarch Engineering has proposed a fee of \$75/hour and \$50/day travel expenses. The Director has asked other engineering firms for pricing, and most are nearly double these quoted fees. A copy of the agreement is attached.

Monarch Engineering has completed this work for Lansing on two recent sanitary sewer projects (NW Relief Sewer and Ward One Rehab project) with great success. The Director has a great long-standing relationship with the firm, and they have provided quality observation services in the past.

Policy Consideration: The City's purchasing policy Section 4.4.1 allows the City Administrator to waive the selection process for consultants who have worked on projects of a similar nature within the previous 18 months.

Financial Consideration: Funds will be taken from the Utility's engineering account (Fund 50) as part of the BASE grant.

Recommended Action: A motion to authorize staff to execute a contract for construction observation services in support of the McIntyre Interceptor Sanitary Sewer Project.

AGENDA ITEM

CONTRACT FOR CONSTRUCTION OBSERVATION SERVICES

This agreement is made in Johnson County, Kansas this _____ day of _____ 2023 by and between the City of Lansing, Kansas, hereinafter called the CLIENT, and Monarch Engineering Inc., hereinafter called the OBSERVER.

WHEREAS, the Client intends to manage the construction of certain sanitary sewer improvements in Leavenworth County, Kansas, herein referred to as the PROJECT.

WHEREAS, the CLIENT is empowered and authorized to contract with the OBSERVER for purpose of conducting construction observation and furnishing other related services in connection with the Project.

NOW, THEREFORE, the CLIENT and the OBSERVER, in consideration of the mutual covenants herein agree in respect to the performance of construction observation services by the OBSERVER and the Payment for these services by CLIENT as set forth below.

SECTION I. DEFINITIONS

As used throughout this agreement, the following terms shall have the following meanings unless otherwise stated or reasonably required by the contract.

- A. "Project" is as described above.
- B. "Engineer" means and includes a licensed professional engineer representing the design engineer. License is understood to be by the State Board of Technical Professionals for the practice of engineering in Missouri.
- C. "Inspector" shall be authorized representative of Monarch Engineering Inc.
- D. "Observer" is analogous to a substitute for the "Inspector" as described in Kansas Department of Health and Environment Regulations (K.A.R. No. 28-16-55, II. "Inspection of Sewerage System Construction, Part A") except the use of the word observer will not imply or be defined as being responsible for the quality of contractor work and shall be a representative of Monarch Engineering Inc.
- E. "Continuous" is defined as a physical presence, on the job site of a qualified observer while active phases of construction are in progress.
- F. "Qualified" is defined as an observer with an engineering degree and sewer construction training experience, an engineering technician or aide with

sewer construction training and experience, or an authorized representative who has construction background and training in sewer construction.

G. "Active Phases" is defined to include the following construction activities:

1. pipe laying: alignment, grade, embedment and jointing procedures
2. trench backfill
3. testing - air, hydrostatic, lamping, deflection, and TV or control structures, wet wells, dry wells, etc.,
4. any other construction activities specifically outlined in contract documents by the Client.

SECTION II. SCOPE OF SERVICES

Monarch Engineering Inc., shall provide continuous construction observation services in accordance with Kansas Department of Health and Environment Regulations (K.A.R. No. 28-16-55) entitled "Inspection of Sewerage Systems During Construction and Prohibited Connections"; II. "Inspection of Sewerage System Construction, Part A. Treatment Facilities, Mains, and Laterals")

"All sewerage construction projects shall have continuous inspections by a qualified inspector during active phases of sewerage construction to ensure that they comply with plans and specifications approved by the Kansas (State) Department of Health (now Kansas Department of Health and Environment) and to insure elimination of extraneous surface and groundwater. This shall include inspection of all sewers and manholes before they are covered but after the sewer are bedded."

- A. Construction observer will record information as directed by the Client, on the observer's plans for use on as-built drawings.
- B. Construction observer will record measurements taken by the contractor as directed by the Client.
- C. Construction observer will conduct preliminary inspections of materials to be used for the sanitary sewer installation. Observer will verify that pipe sizes and types, manholes diameters and type on-site meet the requirements of the Project plans and specifications.
- D. Construction observer will be present for materials testing, and verify

conformance as stipulated by the specifications outlined in contract documents.

- E. Upon the request of the Client, the construction observer will attend the final inspection of the completed sanitary sewer installation conducted by the Platte County Regional Sewer District.
- F. Given appropriate notice, construction observer will attend meetings as requested by the Client, with Client's, contractors, suppliers and other interested parties.
- G. Construction observer is not responsible for conducting soil compaction or materials testing, or any laboratory testing as required by the Client. Observer is responsible for verifying conformance of said tests to the specifications and notifying Client immediately if test results do not meet the requirements of the specifications.
- H. Each Observer will be responsible for providing observation services for one, and only one, construction crew on-site. If more than one pipe laying crew is working on the Project, the Client shall make provisions for additional Observation for the Project, unless the Observer can reasonably and reliably monitor work of each additional crew.

SECTION III. INDEPENDENT CONTRACTOR

- A. The Client and Observer agree that the Observer is an independent contractor and nothing in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting the Observer as an employee of the Client for any purpose.
- B. It in no way should be implied or construed in any manner that the Client is responsible for wages, taxes, and benefits of the Observer or the Observer's representative(s).

SECTION IV. DRAWINGS AND SPECIFICATIONS

- A. All documents, including drawings, specifications, and computer software prepared by the Engineer is the property and responsibility of the Engineer. Errors and omissions in the plans and specifications are solely the responsibility of the Engineer.
- B. The Client shall provide one (1) full-sized and one (1) half-sized copy of the plans and specifications for each observer to be used on the project.

SECTION V. COMPENSATION TO OBSERVER

- A. The Client shall pay the Observer for completion of all construction observation services described in Section II on an hourly basis at **\$75.00 per hour**, for construction observation services rendered, and **\$50.00/day** for expenses.
- B. The Observer shall submit monthly invoices to the Client for construction observation services rendered and any reimbursable expenses which have been approved by the Client for the previous month.
- C. If the Client fails to make any payment in full the Observer for services and expenses within 30 days, the amount due the Observer shall include a collection fee and charge at a rate of one and a half percent (1.5%) per month from the beginning of month of which the invoice was submitted. Collection fee shall include, without limitation, legal fees, collection agency fees and expenses, court costs, collection bonds and reasonable Observer staff costs at standard billing rates for the Observer's time spent in efforts to collect.

SECTION VI. SERVICES BY AND PAYMENT TO OTHERS

Any work authorized by the Client, performed by someone other than the Observer or the Observers representative, in connection with the proposed improvements, shall be paid by the Client directly to the third party or parties. In addition to payments for actual construction work, this work shall include necessary permits, licenses, ownership certificates, material testing, advertising costs, cost of test borings, subsurface explorations, and other special test when required. Fees for such extra work shall be subject to negotiation between the Observer, Client and the third party. Fees shall be approved prior to the execution of the extra work.

SECTION VII. SUBCONTRACTING OF SERVICES

- A. The Observer shall not Subcontract any of the services to be performed under this Agreement without the approval of the Client regarding the work to be subcontracted and the individuals proposed to accomplish the subcontracted portion of the project.
- B. All wages, taxes and benefits of all Subcontractors contracted by the Observer, shall be the responsibility of the Observer.

SECTION VIII. MEDIATION

- A. Mediation may, in the discretion of the parties, be the means to settle all questions arising under this contract. If both parties consent in writing, any matter in dispute under this contract may be submitted to mediation. If each of the parties to this agreement has given consent, mediation shall be conducted in accordance with the provisions of the Kansas Uniform Arbitration Act as amended (K.S.A. 5-401 et seq.). In the event that the parties have by their written consent elected to submit a matter to arbitration, arbitration shall be the exclusive remedy of the parties. Any decision rendered by the mediator(s) shall be final and judgement may be entered upon the decision or award in accordance with the provisions of the Kansas Uniform Arbitration Act.
- B. Unless the parties mutually agree in writing to submit a dispute to mediation pursuant to Section IX (A) of this Agreement, any dispute arising between the parties shall be resolved pursuant to Kansas law in the District Court of Kansas, Johnson County, Kansas.

SECTION IX. RIGHT TO TERMINATE CONTRACT

- A. Termination for Convenience:

The Client or Observer may, when the interests of the Client or Observer so require, terminate this contract in whole or in part, for their convenience. The Client's or the Observer's representative shall give written notice of the termination to the other party specifying that the contract or a designated part thereof shall be terminated and when termination becomes effective. The Observer shall incur no further obligations in connection with the terminated work on the date set in the notice of termination, the Observer

will stop work to the extent specified. Compensation shall be limited to work already completed. The Observer shall be paid the contracted value of the services rendered up to the time of termination on the basis of the payment provisions of this Agreement. Compensation shall not include anticipatory profit or consequential damages which shall not be allowed.

B. Termination for Default:

If the Observer is violating any of the conditions of this agreement or is executing the same in bad faith, the Client may serve written notice on the Observer of its intention to terminate the contract and unless within five (5) days after the serving of the notice, a satisfactory arrangement has been made for the continuance thereof, this contract shall terminate. Upon termination, the Observer shall be paid the reasonable value of those services satisfactorily rendered in accordance with the compensation agreement herein, provided the Observer submits a written, itemized statement of all work completed prior to termination. The Client retains the right to withhold the compensation or any portion thereof for damages incurred as a result of the Observer's breach of this Agreement. Copies of all completed reports, computations and data prepared pursuant to this Agreement shall be delivered to the Client when and if this Agreement is terminated.

C. Erroneous Termination for Default

If, after notice of termination of the Observer's right to proceed under the provisions of this clause, it is determined for any reason that the Observer was not in default under the provisions of this clause, the right and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the clause entitled "Termination for Convenience".

D. If the Client fails to make payment to the Observer in accordance with the payment terms herein, this shall constitute a material breach of this Agreement and shall be cause for termination of this Agreement by the Observer.

SECTION X. FORCE MAJEURE

A. Neither party hereto shall be liable for its failure to perform hereunder due to contingencies beyond its reasonable control, including, but not limited to, strikes, riots, war, fire and acts of nature not including normal weather.

- B. The Observer shall attempt contact the project contractor to determine whether construction is scheduled for that day. The Observer shall be entitled to four (4) hours compensation for each day the Observer arrives at the project site after the contractor has informed the Observer work is scheduled, or the contractor's decision was not available prior to arriving at the site.

SECTION XI PERIOD OF SERVICE

- A. Services described in this Agreement, and the Observer's compensation for said services, have been agreed upon in anticipation of the orderly and continuous progress of the project through completion of construction. If delays occur due to reasons beyond the control of the Observer, the time of performance of the Observer shall be adjusted appropriately.
- B. If such delay or suspension extends for more than one year for reasons beyond the Observer's control, or if the Observer for any reason is required to render services more than one year after substantial completion, the compensation provided for elsewhere in this Agreement shall be subject to re-negotiation.

SECTION XII GENERAL TERMS

A. Conformity to Law:

The Observer agrees to comply with and conform to all applicable laws and administrative codes in the performance of the tasks and duties as required by this Agreement.

B. Worker's Compensation:

The Observer acknowledges his status as an independent contractor and, therefore, waives any and all claims against the Client which may arise from personal injury by an accident arising out of and in the course of the performance of his duties under this Agreement.

C. This Agreement represents the entire and integrated agreement between the Client and the Observer and supersedes all prior negotiations, representations, or agreements related to the subject matter hereof, either written or oral. This Agreement may be amended only in writing executed and delivered by the parties hereto.

D. Limitation of Liability: In recognition of the relative risks and benefits of the Project to both the Client and the Observer, the risks have been allocated such that the Clients agrees, to the fullest extent permitted by law, to limit the liability of the Observer to the Client for any and all claims, losses, costs, damages, of any nature whatsoever or claims expenses from any cause or causes, including attorney's fees and costs and expert witness fees and costs, so that the total aggregate liability of the Observer to the Client shall not exceed \$5,000. 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.

IN WITNESS WHEREOF, the parties hereto by their authorized representatives have hereunto subscribed their names this _____ day of June, 2023.

Executed in duplicate with copy to the Client and Observer.

CLIENT

CITY OF LANSING

OBSERVER

MONARCH ENGINEERING, INC.

Anthony Zell
Director of Wastewater Utilities

Matthew L. Harding, P.E.
President