

RESOLUTION: 117-19

**RESOLUTION AUTHORIZING AGREEMENT FOR CERTAIN
PROFESSIONAL SERVICES ADOPTED BY THE BOROUGH OF
CLAYTON**

WHEREAS, there exists a need for specialized services on behalf of the Borough of Clayton; and

WHEREAS, funds are or will be available for this purpose; and

WHEREAS, the Local Public Contracts Law, N.J.S.A. 40A:11-1 requires that notice with respect to contracts for Professional Services awarded without competitive bids must be publicly advertised.


NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Clayton, County of Gloucester, and State of New Jersey as follows:

1. That Sickels & Associates, Inc., of Woodbury, New Jersey is hereby hired to provide bid and construction administration/observation services for the 2018 NJDOT Municipal Aid Program – Reconstruction of Roosevelt Boulevard – Phase II for a total amount not to exceed \$25,020.00.
2. The term of this contract shall be from May 9, 2019 to May 8, 2020.
3. Donna Nestore, CFO, for the Borough of Clayton certifies that \$25,020.00 is available through the 2019 Municipal Budget - Engineering.
4. The Contract is awarded without competitive bidding as a "Professional Service" in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-11-5(1)(a), and the Fair and Open Process because it is for services performed by persons authorized by law to practice a recognized profession.
5. A copy of this resolution as well as the Contract shall be placed on file with the Clerk of the Borough of Clayton.
6. A notice in accordance with the Local Public Contracts Law of New Jersey shall be published in The Sentinel or South Jersey Times.
7. The Mayor and Clerk of the Borough of Clayton are hereby authorized to execute a Contract outlining the above on behalf of the Borough of Clayton.

ADOPTED at a meeting of the Mayor and Council of the Borough of

Clayton, County of Gloucester, and State of New Jersey on May 9, 2019.

BOROUGH OF CLAYTON



THOMAS BIANCO, Mayor

Attest:



CHRISTINE NEWCOMB, Borough Clerk

April 23, 2019

Borough of Clayton
125 N. Delsea Drive
Clayton, New Jersey 08312

Attention: Mayor and Council

Reference: *Proposal for Professional Services
2018 NJDOT Municipal Aid Program-Construction Mgt.
Reconstruction of Roosevelt Boulevard – Phase II
S&A File No. C-135-03
S&A Proposal No. 2019-45*

Dear Mayor and Council:

Sickels & Associates, Inc. would like to thank you for the opportunity to offer this proposal for bid and construction administration/observation in connection with the above referenced project.

It is our understanding that the Borough wishes to proceed with bidding the Reconstruction of Roosevelt Boulevard Phase II from to Poe Avenue to Washington Avenue. NJDOT Acting Commissioner Diane Gutierrez-Saccetti's letter, dated February 21, 2018, to Mayor Bianco confirmed the approval of \$220,418.00. The Borough's overall application requested \$210,290.00 for construction and \$31,542.00 for construction inspection and material testing for the project. The construction plans have been completed to maximize the available grant money between the aforementioned streets.

Within the latter amount, this office's construction management fees were included in accordance with NJDOT regulations. As reflected in the NJDOT's allocation, the construction management fees were not funded.

It appears the construction management fees will be the responsibility of the Borough unless the portion of the grant used for construction is reduced. The NJDOT permits up to 15% of the construction costs to be reimbursed by the NJDOT through the grant money. If the Borough wishes to use the DOT grant for reimbursement, we request the Borough to advise us of same prior to the award of the low bidder.

Therefore, we have prepared the following proposal for the various bid and construction management services that we anticipate will be required on the above referenced project. Said services are based upon Sickels & Associates, Inc.'s understanding of the project as described herein.

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If the Clayton Police Department determines it is necessary for their services with respect to traffic control, the associated costs are the responsibility of the Borough. The NJDOT has indicated any costs for the use of the Clayton Police Department cannot be paid for by the grant funding.

For ease of review, the proposal is organized in the following manner; Our Understanding of the Project, Description of Services, Consulting Fee and Terms and Conditions.

OUR UNDERSTANDING OF THE PROJECT

The project will involve milling of the roadway, resurfacing with hot mixed asphalt base and surface course, replace damaged curb and driveway aprons, install concrete curb where feasible to improve drainage conditions and install paint striping and signage. There is no sidewalk on this street.

Our approach to this project as outlined in the Description of Services consists of the following two (2) phases.

PHASE V Bid Administration

PHASE VI Contract Administration/Construction Observation

DESCRIPTION OF SERVICES:

Based on the above project description, our scope of services will include the following activities:

PHASE V BID ADMINISTRATION

Assist the Borough with the bidding process by:

1. Prepare and Submit Notice to Bidders to Newspaper.
2. Attending Bid-Opening Meeting.
3. Reviewing Bids for completeness.
4. Tabulate Bids and recommending award.

PHASE VI CONTRACT ADMINISTRATION/CONSTRUCTION OBSERVATION

Assist the Borough during the construction process by:

1. Attending the pre-construction conference.

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2. Complete NJDOT Applications for initial 75% grant disbursement.
3. Reviewing contractor's vouchers and recommending payment.
4. Full time observation and coordination during construction activities with the Borough and the Contractor.
5. Preparing observation reports identifying the progress of the project and any observed deviation from the contract documents.
6. Preparing interim and final list of quantities to reflect those actually constructed based upon observation reports and field measurements.
7. Upon substantial completion, conduct an inspection of the work for conformance with the contract documents and issue a punch list of any defects and/or deficiencies to the Borough.
8. Upon notification that punch list items have been completed, conduct a final inspection for conformance with the contract documents and issue a recommendation of acceptance.
9. Closing out project and submit final change order to NJDOT for final release of remaining grant funding.

CONSULTING FEE FOR SERVICES RENDERED

Based on the understanding of the project and description of service, our total consulting fee to complete the various activities described herein is estimated at **\$25,020.00** plus the cost of reimbursable expenses which will be invoiced separately.

Said consulting fee is apportioned in accordance with the following breakdown:

Phase V	Bid Administration	\$ 1,450.00
Phase VI	Contract Administration/ Construction Observation	<u>\$23,570.00</u>
TOTAL		\$25,020.00

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Please note the estimated cost of the NJDOT pavement core analysis is **\$1,650.00**. The cost for this service, required by the NJDOT for release of the last 25% of the grant, will be in addition to the costs included within Phase V of this Proposal.

The above fee is our estimate of the normal services necessary to complete the project based upon the cost estimate and scope of work the NJDOT. However, should the need arise for additional work by virtue of major revisions or redesign as required by the reviewing agencies, or should additional services beyond those outlined in the Description of Services be required, then said work will be considered as extra and invoiced as Additional Services at the hourly rates per our Annual Fee Schedule.

Sickels & Associates is prepared to commence work immediately upon receipt of authorization. This proposal assumes that authorization to proceed will be issued within sixty (60) days from the date of this proposal. The terms and conditions of this proposal shall remain in effect for sixty (60) days.

If you concur with our Description of Services, Consulting Fee, and Terms and Conditions, please initial Section 5.8 of the Terms and Conditions, execute the Proposal Acceptance & Notice to Proceed and return same to our office. Our fee schedule is the same as that provided with the RFQ to the Municipality.

We would like to thank you for the opportunity to offer the services of our firm and we look forward to working with you. Should you have any questions or require further information, please contact us at (856) 848-6800.

Very truly yours,

SICKELS & ASSOCIATES, INC.



Mark R. Brunermer, PE, CME
President

MRB:kc

Enclosure: Terms & Conditions

cc: Sue Miller, Administrator (*via email only*)
Donna Nestore, C.F.O. (*via email only*)
Christine Newcomb, Borough Clerk (*via email & regular mail*)
Patricia Owens, S&A, Inc.

File: 2019-45

Reference: **Proposal for Professional Services**
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PROPOSAL ACCEPTANCE & NOTICE TO PROCEED

Having reviewed the proposal for the various surveying services, including the Terms and Conditions of the Service Agreement which is a part thereof, acceptance of the proposal is hereby confirmed. Sickels & Associates, Inc. is authorized to proceed with the work.

Accepted this 9th day of May, 2019

By: Anthony J. Saban Council President
SIGNATURE TITLE

Anthony J. Saban
NAME (PLEASE PRINT OR TYPE)

Borough of Clayton
COMPANY

ADDRESS

PHONE NUMBER FAX NUMBER

CLIENT'S E-MAIL ADDRESS

TERMS AND CONDITIONS OF SERVICE AGREEMENT

ARTICLE 1.0 - AGREEMENT:

- 1.1 The contents of the proposal including Our Understanding of the Project, Description of Services, Consulting Fee, and Terms and Conditions of Service Agreement , together with any addenda to same, constitutes the entire AGREEMENT between the **BOROUGH OF CLAYTON** hereinafter referred to as the CLIENT and **SICKELS & ASSOCIATES, INC.**, hereinafter referred to as the ENGINEER. Nothing herein is to be considered to be inferred or implied.

ARTICLE 2.0 - CONSULTING FEES, REPRODUCTION COST & APPLICATION FEES

- 2.1 **CONSULTING FEES:** CLIENT and ENGINEER agree that the fees quoted in Fees for Services Rendered Section of the Proposal for Professional Services are fair and reasonable and necessary to complete the project phases outlined in the Description of Services. Services requested and/or provided beyond said tasks shall be considered as extra and treated as Additional Services under Article 4.0.
- 2.2 **SPECIAL CONSULTANT FEES:** All consultant fees for special services such as Floodplain Determinations and Delineations; Environmental Assessment/Audits and Impact Statements, Natural Resource Inventories, Archaeological or Historical Investigation; Traffic Assessment/Impact Statements; Material Sampling, Coring and Testing; and Construction Management, Inspection, Monitoring and Observation shall be borne and paid directly by CLIENT.
- 2.3 **PRINTING AND REPRODUCTION COSTS:** All reproduction and printing costs will be invoiced to CLIENT according to the following rates: \$0.20 for each photo copy, \$2.70 for each 24 inch by 36 inch print and \$24.00 for each 24 inch by 36 inch mylar and cloth.
- 2.4 **REIMBURSABLE EXPENSE:** All expenses incurred in providing services to or on behalf of the CLIENT on the project, including, but not limited to mileage, travel, express and certified mail, certified owners list, photography, assessment maps, aerial maps and sampling, testing and laboratory fees shall be the responsibility of the CLIENT and shall be invoiced accordingly. A surcharge of twenty percent (20%) shall be added to all such invoices.
- 2.5 **APPLICATION FEES:** The payment of all application fees shall be the responsibility of the CLIENT and shall be paid directly by CLIENT to the applicable agency or Board.

ARTICLE 3.0 - PRICE GUARANTEE:

- 3.1 The proposal assumes that authorization to proceed and the required retainer amount will be received from the CLIENT, by ENGINEER, within thirty (30) calendar days from the date of the Proposal. The Terms and Conditions of the Proposal shall remain in effect and may be accepted by CLIENT for thirty (30) *calendar days from said date.
- 3.2 If the PROPOSAL ACCEPTANCE AND NOTICE TO PROCEED is not executed and returned, along with the required retainer, to ENGINEER, within thirty (30) calendar days of the date of same, ENGINEER reserves the right of revise the Terms and Conditions including any and all fees and/or costs quoted herein.

ARTICLE 4.0 - ADDITIONAL SERVICES:

- 4.1 Any and all services provided by the ENGINEER on behalf of the CLIENT, other than that specifically outlined in the Description of Services, shall be invoiced to CLIENT on a time and material basis according to the prevailing hourly rates on our Annual Fee Schedule, as published or as attached hereto and made a part hereof.
- 4.2 A reasonable amount of revisions and/or modifications is anticipated to address comments of the reviewing agencies. Any revision and/or modification that are required due to omission or error by ENGINEER will be revised and/or modified under the terms of the Agreement. Any revision and/or modification that significantly affect and/or alter the original design when such revision and/or modification is due to causes beyond ENGINEER 's control shall be considered Additional Services and shall be invoiced as such.
- 4.3 Prior to increasing the original scope of services or initiating any major revision, modification or change, ENGINEER will submit a change order to CLIENT for authorization to proceed with the additional work. CLIENT shall furnish, or direct ENGINEER to provide the necessary Additional Services within a reasonable time so as not to delay the services of ENGINEER.

ARTICLE 5.0 - RETAINER, PAYMENT OF FEES AND EXPENSES

- 5.1 No retainer shall be required prior to ENGINEER initiating work.
- 5.2 The ENGINEER will submit to the CLIENT invoices for printing and reproduction costs and reimbursable expenses incurred. Invoices may be submitted monthly. CLIENT shall have sufficient available funds to pay all fees associated with the Agreement.

- 5.3 The CLIENT is financially responsible for all expenses incurred by the ENGINEER as a result of the ENGINEER'S providing service to the CLIENT or on behalf of the CLIENT, in accordance with the Proposal, Agreement, Description of Services, and services related thereto, or in accordance with any amendments or revisions to the Description of Services. These costs shall be included, but shall not be limited to, printing and reproduction costs, travel expenses, mileage expense, express and certified mailing costs, courier costs, the costs of obtaining any mailing list or other information from any agency or Board, photography costs, the costs to obtain any assessment maps, aerial maps and the costs of any sampling, testing and/or laboratory fees or any other costs incurred on behalf of the CLIENT.
- 5.4 Payment, in the full amount, must be received within thirty (30) calendar days from the date of the invoice. Thereafter, interest will be added to the outstanding balance at the rate of one and one half percent (1-1/2%) per month for a total of eighteen percent (18%) per annum. Payment of fees shall be made consistent with the terms of the Proposal for Professional Services. Interest at the rate set forth herein shall be added to any payment not made when due.
- 5.5 CLIENT must submit in writing to ENGINEER by certified mail all comments or discrepancies relative to any fee or expense being invoiced within ten (10) calendar days of the date of the invoice. If no discrepancy or errors is reported with said period, the account will be considered correct.
- 5.6 Invoices for costs and expenses will be considered delinquent if payment is not received within forty five (45) calendar days of the date of the invoice. Delinquency will constitute just cause for cessation of work and may at the option of ENGINEER be considered as termination of the Agreement by CLIENT.
- 5.7 In the event that any account remains delinquent more than forty five (45) calendar days, ENGINEER may turn the account over to an agency and/or legal counsel for collection. In such case, there shall be added to the amount due, minimum sum of fifteen percent (15%) of the outstanding balance. CLIENT agrees that this amount is a reasonable minimum amount for collection and legal fees. The CLIENT hereby agrees that CLIENT will be responsible to pay ALL costs incurred by ENGINEER to collect any delinquent or outstanding balances, which shall include, but not be limited to, legal fees and costs, expert fees, court costs, any and all other costs related to the collection of delinquent or outstanding balances owed by the CLIENT.

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- 5.8 If CLIENT has not made payment of delinquent or outstanding amounts due in accordance with the provisions of this section, the ENGINEER, after providing written notice of it's intent to do so, may discontinue or terminate providing any and all engineering services to the CLIENT, solely at the discretion of the ENGINEER. CLIENT ACKNOWLEDGES NOTICE OF THIS PROVISION, BY INITIALING SAME BELOW, AND AGREES TO RELEASE THE ENGINEER FROM ANY LIABILITY RESULTING FROM THE ENGINEER TERMINATING SERVICES RESULTING FROM THE CLIENT'S FAILURE TO MAKE PAYMENT.

CLIENT INITIAL _____

ARTICLE 6.0 - TERMINATION OF SERVICES

- 6.1 This Agreement is subject to termination by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform or to meet their obligations in accordance with the terms and conditions hereof through no fault of the terminating party. In the event CLIENT terminates the Agreement, said notice must be submitted to ENGINEER by certified mail
- 6.2 In the event of termination, CLIENT shall make payment to ENGINEER consistent with the terms and provisions of the Proposal for Professional Services.

ARTICLE 7.0 - CLIENT'S RESPONSIBILITY:

- 7.1 CLIENT shall provide full information as to his requirements for the project and shall assist ENGINEER by placing at his disposal all available information pertinent hereto prior to entering into the Agreement.
- 7.2 CLIENT shall furnish to ENGINEER, as required by him for performance of his Basic Services, data prepared by services of others, such as soil investigations and subsurface explorations, material and equipment requirements, appropriate professional interpretations of property, boundary, easement, right-of-way, topographic and utility surveys and property descriptions, zoning and deed restriction, and other special data or conciliation not covered in ENGINEER 'S Basic Services, all of which ENGINEER may rely upon in performing his services.
- 7.3 CLIENT shall examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER, obtain advice of legal and insurance council, and other consultant as CLIENT deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay or hinder the services of the ENGINEER.

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- 7.4 CLIENT shall furnish approvals and permits from all governmental authorities having jurisdiction over the project and such approvals and consents from others as may be necessary for implementation and/or completion of the project.
- 7.5 CLIENT shall guarantee access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform his services.
- 7.6 CLIENT shall give prompt written notice to ENGINEER whenever CLIENT observes or otherwise becomes aware of any defect in the project.

ARTICLE 8.0 - REPORTS, DESIGNS, PLANS & RELATED DOCUMENTS

- 8.1 All documents which are subject to the Agreement shall be prepared in a professional workmanlike manner and based on accepted, current Surveying and Planning practices and where not specifically directed otherwise by CLIENT, will conform to applicable requirements of current, published ordinances and regulations of the various review agencies.
- 8.2 No presentations and/or express or implied warranties are made to CLIENT by ENGINEER as to the success, approval or the issuance of permits or approvals on any application submitted by CLIENT, or on his behalf, based in whole or in part upon the reports, studies, designs, plans and/or related documents prepared by ENGINEER.
- 8.3 All documents prepared by ENGINEER pursuant to the Agreement shall be the sole property of ENGINEER until payment, on any unpaid balance, is made in full by the CLIENT. CLIENT agrees that until payment is made in full, he shall have no proprietary interest in any document prepared by ENGINEER. CLIENT hereby agrees that the ENGINEER shall have the absolute right to request return of any and all documents prepared by ENGINEER and submitted to Municipal, County, State and/or other parties on behalf of CLIENT in the event of non-payment of outstanding fees by CLIENT.

ARTICLE 9.0 - COMPLIANCE WITH REGULATIONS; APPROVALS AND PERMITS:

- 9.1 All work will be performed in accordance with current applicable Municipal and County Ordinances and State Regulations relative to the work.

- 9.2 On request of CLIENT, ENGINEER may prepare an outline of various approvals and permits that may be required to implement construction of the improvements designed by ENGINEER. However, because of ever changing rules and regulations of the various approving agencies, the ENGINEER does not guaranty the completeness of same. The ENGINEER further advises the CLIENT to obtain legal counsel to guide the CLIENT in furtherance of the laws, rules, regulations, ordinances and other requirements related to it's project. Legal counsel should be obtained to review said outline and certify completeness.

ARTICLE 10.0 - LIMITATION OF LIABILITY AND INDEMNIFICATION

- 10.1 CLIENT and ENGINEER have contemplated the risks, rewards and benefits of the Project. In view of this fact, the parties have arrived at an acceptable fee for the services to be rendered under the Agreement. In so doing, the risks have been allocated such that the CLIENT agrees, to the fullest extent permitted by law, the ENGINEER's liability to the CLIENT for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of the Agreement from any cause or causes shall not exceed the total fee received for the services rendered under the Agreement. Such causes include, but are not limited to the ENGINEER's negligence, errors or omissions, strict liability, breach of contract or breach of warranty.
- 10.2 CLIENT shall indemnify and hold harmless, ENGINEER and their consultants, agents, directors, officers and employees from and against all claims, damages, losses and expenses, direct and indirect, and consequential damage, including but not limited to fees and charges of legal counsel and courts and arbitration costs, arising out of or resulting from work of others to the fullest extent permissible by law, regardless of any action or omission (active, passive or comparative negligence included) on the part of ENGINEER.

-----END OF DOCUMENT-----