

**RESOLUTION NO. 2022-44  
(5/9/2022)**

**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE VILLAGE OF  
CALEDONIA APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH  
CLARK DIETZ, INC. FOR ENGINEERING SERVICES.**

The Board of Trustees of the Village of Caledonia, Racine County, Wisconsin do resolve as follows:

**WHEREAS**, the Village of Caledonia is in need of a Traffic Impact Analysis (TIA) for the Public Safety Building for an access out to 4 Mile Road (County Trunk Highway G) which cannot be performed with inhouse staff.

**WHEREAS**, the Village of Caledonia has been in discussion with a developer for the development of multiple properties within TID #4 and Professional Engineering Services have been requested by counsel to be part of the Development Review Team.

**WHEREAS**, staff has recommended that Clark Dietz, Inc be utilized for the TIA for the Public Safety Building because Clark Dietz is a subcontractor of FGM Architects, the designer of the Public Safety Building.

**WHEREAS**, counsel has recommended that Clark Dietz, Inc be utilized for Professional Engineering Services for the proposed development in TID #4 based on past work experience.

**WHEREAS**, the Professional Engineering Services would be utilized on an as needed basis and would be charged on a Time & Material basis according to the General Billing Rates. Professional Engineering Services that are identified outside of General Engineering will be scoped and authorized.

**NOW THEREFORE BE IT RESOLVED THAT**, the Board of Trustees of the Village of Caledonia approves the Professional Services Agreement set forth in **Exhibit A**.

Adopted by the Board of Trustees of the Village of Caledonia, Racine County, Wisconsin, this 9 day of May, 2022.

**VILLAGE OF CALEDONIA**

By: Lee Wish  
Lee Wishau  
Acting Village President

Attest: Joslyn Hoeffert  
Joslyn Hoeffert  
Village Clerk

**PROFESSIONAL SERVICES AGREEMENT**

**Project Name ("Project")**

**GENERAL ENGINEERING SERVICES**

This Agreement is by and between

**Village of Caledonia** ("Client")  
5043 Chester Lane  
Caledonia, WI 53402

and

**Clark Dietz, Inc. ("Clark Dietz")**  
759 North Milwaukee Street, Suite 624  
Milwaukee WI 53202

Who agree as follows:

Client hereby engages Clark Dietz to perform the services set forth in PART I - SERVICES BY CLARK DIETZ, and Clark Dietz agrees to perform the Services for the compensation set forth in PART III - COMPENSATION. Clark Dietz shall be authorized to commence the Services upon execution of this Agreement and written or verbal authorization to proceed from Client. Client and Clark Dietz agree that this signature page, together with Parts I - IV and attachments referred to therein, constitute the entire Agreement between them relating to the Project.

**Agreed to by Client**

**Agreed to by Clark Dietz**

By:   
Kathy Kasper

By: \_\_\_\_\_  
Mustafa Emir

Title: Village Administrator

Title: Executive Vice President

Date: 5/9/2022

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

**PART I  
SERVICES BY CLARK DIETZ**

**A. Project Description**

1. The "Client" is retaining Clark Dietz to perform General Engineering Services for a set fee and term. Clark Dietz will provide these services defined below in the scope of work on a fixed retainer basis.

**B. Scope**

Clark Dietz will provide Services only as specifically requested and directed by the Client, and upon written notice to proceed based on an approved Work Order for specific Services.

Services will be delivered on an hourly fee basis.

All Services shall be approved by Client in advance in the form of a Work Order setting forth the proposed Services with an estimate of the total cost at rates and costs at or below the Schedule of General Billing Rates and the Schedule of Project Related Expenses, or an agreed upon fixed fee.

**C. Schedule**

1. This agreement shall remain in effect for starting on May 1, 2022 until December 31, 2027.

**D. Assumptions/Conditions**

This agreement is subject to the following assumptions/conditions:

1. This Agreement and any legal actions concerning its validity, interpretation and performance shall be governed by the laws of the State of Wisconsin.
2. Traditional street or road reconstruction projects (other than mill and overlay type rehabilitation) involving topographic survey, plan profile design, and a full set of construction drawings are not included in General Engineering Services. These projects, when needed, will be separately scoped and authorized by the Client.
3. Sewer, water, and drainage construction projects involving topographic survey, plan profile design, DNR/MMSD permitting, and a full set of construction drawings are not included in General Engineering Services. These projects, when needed, will be separately scoped and authorized by the Client.
4. Legal descriptions, the preparation of right-of-way or temporary construction easement drawings, descriptions or negotiation/acquisition services when needed, will be separately scoped and authorized by the Client.
5. Traffic studies, geotechnical investigations, or contaminated site Phase I or Phase II environmental assessment investigations or remediation activities, when needed, will be separately scoped and authorized by the Client.

**PART II  
CLIENT'S RESPONSIBILITIES**

Client shall, at its expense, do the following in a timely manner so as not to delay the Services:

**A. Information/Reports**

Provide Clark Dietz with reports, studies, site characterizations, regulatory decisions and similar information relating to the Services that Clark Dietz may rely upon without independent verification unless specifically identified as requiring such verification.

**B. Representative**

Designate a representative for the project who shall have the authority to transmit instructions, receive information, interpret and define Client's requirements and make decisions with respect to the Services. **The Client representative for this Agreement will be Anthony Bunkelman, PE, Public Services Director.**

**C. Decisions**

Provide all criteria and full information as to Client's requirements for the Services and make timely decisions on matters relating to the Services.

**PART III**

**COMPENSATION**

**A. Compensation**

1. Total compensation to Clark Dietz for services rendered on the Project in accordance with PART I, SERVICES of this Agreement will be invoiced on a hourly basis. The hourly rates billed includes salaries, payroll taxes and insurance, employee fringe benefits, general overhead costs, profit, and project related expenses.

**B. Billing and Payment**

1. Timing/Format
  - a. Invoices shall be submitted monthly. Invoices shall be considered past due if not paid within 45 calendar days of the date of the invoice. Such invoices shall be prepared in a form supported by documentation required by the Client.
2. Billing Records

Clark Dietz shall maintain accounting records of its costs in accordance with generally accepted accounting practices. Access to such records will be provided during normal business hours with reasonable notice during the term of this Agreement and for 3 years after completion.

**PART IV  
STANDARD TERMS AND CONDITIONS**

1. **STANDARD OF CARE.** Services shall be performed in accordance with the standard of professional practice ordinarily exercised by the applicable profession at the time and within the locality where the services are performed. No warranty or guarantee, express or implied is provided, including warranties or guarantees contained in any uniform commercial code.
2. **CHANGE OF SCOPE.** The Scope of Services set forth in this Agreement is based on facts known at the time of execution of this Agreement, including, if applicable, information supplied by Clark Dietz and Client. Clark Dietz will promptly notify Client of any perceived changes of scope in writing and the parties shall negotiate modifications to this Agreement.
3. **DELAYS.** If events beyond the control of Clark Dietz, including, but not limited to, fire, flood, explosion, riot, strike, war, process shutdown, act of God or the public enemy, and act or regulation of any government agency, result in delay to any schedule established in this Agreement, such schedule shall be extended for a period equal to the delay. In the event such delay increases the cost or time required for Clark Dietz to perform its services, Clark Dietz shall be entitled to an equitable adjustment in compensation and extension of time.
4. **TERMINATION/SUSPENSION.** Either party may terminate this Agreement upon 30 days written notice to the other party in the event of substantial failure by the other party to perform in accordance with its obligations under this Agreement through no fault of the terminating party. Client shall pay Clark Dietz for all Services, including profit relating thereto, rendered prior to termination, plus any expenses of termination.
5. **REUSE OF INSTRUMENTS OF SERVICE.** All reports, drawings, specifications, computer data, field data notes and other documents prepared by Clark Dietz as instruments of service shall remain the property of Clark Dietz. Clark Dietz shall retain all common law, statutory and other reserved rights, including the copyright thereto. Reuse of any instruments of service including electronic media, for any purpose other than that for which such documents or deliverables were originally prepared, or alteration of such documents or deliverables without written authorization or adaptation by Clark Dietz for the specific purpose intended, shall be at Client's sole risk.
6. **ELECTRONIC MEDIA.** In accepting and utilizing any drawings, reports and data on any form of electronic media generated and furnished by Clark Dietz, the Client agrees that all such electronic files are instruments of service of Clark Dietz, who shall be deemed the author, and shall retain all common law, statutory law and other rights, without limitation, including copyrights.

The Client agrees not to reuse these electronic files, in whole or in part, for any purpose other than for the Project. The Client agrees not to transfer these electronic files to others without the prior written consent of Clark Dietz. The Client further agrees that Clark Dietz shall have no responsibility or liability to Client or others for any changes made by anyone other than Clark Dietz or for any reuse of the electronic files without the prior written consent of Clark Dietz.

Any changes to the electronic specifications by either the Client or Clark Dietz are subject to review and acceptance by the other party. If Clark Dietz is required to expend additional effort to incorporate changes to the electronic file specifications made by the Client, these efforts shall be compensated for as Additional Services.

In addition, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Clark Dietz, its officers, directors, employees and subconsultants (collectively, Clark Dietz) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from any changes made by anyone other than Clark Dietz or from any use or reuse of the electronic files without the prior written consent of Clark Dietz.

The Client is aware that differences may exist between the electronic files delivered and the printed hard-

copy construction documents. In the event of a conflict between the signed construction documents prepared by Clark Dietz and electronic files, the signed or sealed hard-copy construction documents shall govern.

7. **OPINIONS OF CONSTRUCTION COST.** Any opinion of construction costs prepared by Clark Dietz is supplied for the general guidance of the Client only. Since Clark Dietz has no control over competitive bidding or market conditions, Clark Dietz cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to Client.

8. **SAFETY.** Clark Dietz specifically disclaims any authority or responsibility for general job site safety and safety of persons other than Clark Dietz employees.

9. **RELATIONSHIP WITH CONTRACTORS.** Clark Dietz shall serve as Client's professional representative for the services and may make recommendations to Client concerning actions relating to Client's contractors. Clark Dietz specifically disclaims any authority to direct or supervise the means, methods, techniques, sequences or procedures of construction selected by Client's contractors.

10. **THIRD PARTY CLAIMS.** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or Clark Dietz. Clark Dietz's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against Clark Dietz because of this Agreement or the performance or nonperformance of services hereunder. The Client and Clark Dietz agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this Project to carry out the intent of this provision.

11. **MODIFICATION.** This Agreement, upon execution by both parties hereto, can be modified only by a written instrument signed by both parties.

12. **PROPRIETARY INFORMATION.** Information relating to the Project, unless in the public domain, shall be kept confidential by Clark Dietz and shall not be made available to third parties without written consent of Client, unless so required by court order.

13. **INSURANCE.** Clark Dietz will maintain insurance coverage for Professional, Comprehensive General, Automobile, Worker's Compensation and Employer's Liability in amounts in accordance with legal, and Clark Dietz business requirements. Certificates evidencing such coverage will be provided to Client upon request. For projects involving construction, Client agrees to require its construction contractor, if any, to include Clark Dietz as an additional insured on its commercial general liability policy relating to the Project, and such coverages shall be primary.

14. **INDEMNITIES.** Clark Dietz agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors and employees against all damages, liabilities or costs, to the extent caused by Clark Dietz' negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom Clark Dietz is legally liable.

The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Clark Dietz, its officers, directors, employees and subconsultants against all damages, liabilities or costs, to the extent caused by the Client's negligent acts in connection with the Project and that of its contractors, subcontractors or consultants or anyone for whom the Client is legally liable.

Neither the Client nor Clark Dietz shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

15. **LIMITATIONS OF LIABILITY.** In recognition of the relative risks and benefits of the Project to both the Client and Clark Dietz, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of Clark Dietz and their officers, directors, partners, employees, shareholders, owners and subconsultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of Clark Dietz and their officers, directors, partners,

employees, shareholders, owners and subconsultants shall not exceed Clark Dietz's total fee for services rendered on this Project, or \$ 250,000 , whichever is greater. 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.

16. **CONSEQUENTIAL DAMAGES.** Notwithstanding any other provision of this agreement, and to the fullest extent permitted by law, neither the Client nor Clark Dietz, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and Clark Dietz shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

17. **ACCESS.** Client shall provide Clark Dietz safe access to the project site necessary for the performance of the services.

18. **ASSIGNMENT.** The rights and obligations of this Agreement cannot be assigned by either party without written permission of the other party. This Agreement shall be binding upon and insure to the benefit of any permitted assigns.

19. **HAZARDOUS MATERIALS.** Clark Dietz and Clark Dietz' consultants shall have no responsibility for discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. If required by law, the client shall accomplish all necessary inspections and testing to determine the type and extent, if any, of hazardous materials at the project site. Prior to the start of services, or at the earliest time such information is learned, it shall be the duty of the Client to advise Clark Dietz (in writing) of any known or suspected hazardous materials. Removal and proper disposal of all hazardous materials shall be the responsibility of the Client.

20. **REMODELING AND RENOVATION.** For Clark Dietz' services provided to assist the Client in making changes to an existing facility, the Client shall furnish documentation and information upon which Clark Dietz may rely for its accuracy and completeness. Unless specifically authorized or confirmed in writing by the Client, Clark Dietz shall not be required to perform or have others perform destructive testing or to investigate concealed or unknown conditions. The Client shall indemnify and hold harmless Clark Dietz, Clark Dietz' consultants, and their employees from and against claims, damages, losses and expenses which arise as a result of documentation and information furnished by the Client.

21. **CLIENT'S CONSULTANTS.** Contracts between the Client and other consultants retained by Client for the Project shall require the consultants to coordinate their drawings and other instruments of service with those of Clark Dietz and to advise Clark Dietz of any potential conflict. Clark Dietz shall have no responsibility for the components of the project designed by the Client's consultants. The Client shall indemnify and hold harmless Clark Dietz, Clark Dietz' consultants and their employees from and against claims, damages, losses and expenses arising out of services performed for this project by other consultants of the Client.

22. **NO WAIVER.** No waiver by either party of any default by the other party in the performance of any particular section of this Agreement shall invalidate another section of this Agreement or operate as a waiver of any future default, whether like or different in character.

23. **SEVERABILITY.** The various terms, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.

24. **STATUTE OF LIMITATION.** To the fullest extent permitted by law, parties agree that, except for claims for indemnification, the time period for bringing claims under this Agreement shall expire one year after Project Completion.



25. DISPUTE RESOLUTION. In the event of a dispute arising out of or relating to this Agreement or the services to be rendered hereunder, Clark Dietz and the Client agree to attempt to resolve such disputes in the following manner: First, the parties agree to attempt to resolve such disputes through direct negotiations between the appropriate representatives of each party. Second, if such negotiations are not fully successful, the parties agree to attempt to resolve any remaining dispute by formal nonbinding mediation conducted in accordance with rules and procedures to be agreed upon by the parties.

**SCHEDULE OF GENERAL BILLING RATES**

**CLARK DIETZ, INC.**

January 1, 2022

<b><u>TITLE</u></b>	<b><u>HOURLY RATE</u></b>
Principal	\$250.00
Engineer 8	235.00
Engineer 7	225.00
Engineer 6	205.00
Engineer 5	185.00
Engineer 4	160.00
Engineer 3	145.00
Engineer 2	130.00
Engineer 1	120.00
Technician 5	160.00
Technician 4	145.00
Technician 3	130.00
Technician 2	115.00
Technician 1	95.00
Intern	90.00
Clerical	90.00

Notes:

The rates in this schedule will be reviewed and adjusted as necessary but not sooner than six months after the date listed above. Rates include actual salaries or wages paid to employees of Clark Dietz plus payroll taxes, FICA, Worker's Compensation insurance, other customary and mandatory benefits, and overhead and profit. All project related expenses and subconsultants will be billed at 110% of actual cost to cover handling and administrative expenses.