

August 19, 2022 - Revised
August 15, 2022 - Original

Mr. Joel Maerten, Supervisor
Town of Pendleton
6570 Campbell Boulevard
Lockport, NY 14094



Re: Proposal for Professional Engineering Services
Pendleton Town Park Improvements
File No. 22P1-0123 Rev.1

Dear Supervisor Maerten:

Nussbaumer & Clarke, Inc. (Nussbaumer) appreciates the opportunity to submit this proposal to provide professional engineering services to the Town of Pendleton (Town) in connection with the proposed Pendleton Town Park improvements that are to be completed as part of a grant received through the Consolidated Funding Application (CFA) process. We have based this proposal on our understanding of the scope of work and review of project elements included in the funding application.

PROJECT UNDERSTANDING

The Town has received grant funding (from multiple sources) to construct various facility improvements at the Town Park located on Campbell Boulevard. Park improvements include construction of a new Community Center, splash pad, restroom facility, parking lot paving, and construction of new pathways. A description and general scope of work for each park feature is presented below along with our understanding of the work that will be completed using Town forces and work items that are to be included in a separate bid package.

- **Community Center:** 10,800-square foot (sf) building to be sited at the location of the Pendleton Historical Building. It is our understanding that the total project costs will exceed \$500,000 and therefore will be subject to Wicks Law (requiring separate prime contracts for General, Mechanical, Electrical, and Plumbing. Nussbaumer will serve as a Program Manager and coordinate with the Town's retained architect, Life by Design, for preparation of Contract Documents suitable for public bidding.
- **Water Splash Pad and Bathroom:** A new 6,300 sf splash pad and 900 sf bathroom will be sited in the general area of the volleyball courts. The splash pad will be procured and installed by Parkitects - a listed park equipment supplier of the NY State bid list through Sourcewell. It is our understanding that site preparation (grading and stone) for the splash pad and bathroom will be handled using Town forces, while the utilities will be installed under a separate site Contract (drainage/sewer, water, electric). The meter and required backflow prevention device will be permitted and provided by the Town. The bathroom will consist of a pre-engineered building and will house the splash pad equipment.
- **Pathways:** Six feet wide handicap accessible pathways (approximately 1,800 sf) will be constructed to connect the playground, bathrooms, and splash pad to the perimeter pathway and parking area. This work will be included in the design bid package. Restoration of grass surfaces will be completed by the Town.



- **Parking Lot:** Asphalt paving of the existing stone parking lot area (approximately 37,000 sf) located in front of the proposed Community Center building. As proposed, paving will be included in the bid package. Site preparation and rough grading of the stone parking lot will be completed using Town forces.

SCOPE OF SERVICES

Nussbaumer proposes to serve as the overall Program Manager for the planned park improvements through completion of the construction phase. Nussbaumer will also prepare a separate general site Contract to install utility services and other site improvements in support of the proposed park facilities. The scope of work will include the demolition of existing structures, site grading, and installation of site utilities (i.e., electric, drainage, water, sewer, and gas). As proposed, a new single electrical service from Campbell Boulevard will be installed as part of the project for the Community Center, splash pad, and bathroom.

Task 1 – Contract Document Phase

Nussbaumer will complete the following tasks as part of the Contract Document Phase:

1. Coordinate with the Town and Life by Design to finalize the Community Center Contract Documents suitable for public bidding. Grant requirements will be incorporated into the Contract Documents. Architectural, mechanical, electrical, and plumbing plans to be stamped by Life by Design.
2. Prepare General Site Contract Documents including site drawings and details in support of park improvements (Community Center, splash park, and bathroom) suitable for bidding in accordance with all local, state regulations. Site drawings will be prepared using the topographic and boundary survey data completed by Niagara Boundary, dated February 2022. The anticipated list of drawings includes:
 - a. Title Sheet
 - b. General Plan Notes, Legend, and Abbreviations
 - c. Existing Conditions and Demolition Plan
 - d. Site Plan (for all park improvement features)
 - e. Site Utility Plan (sewer, water, drainage)
 - f. Grading and Erosion and Sedimentation Control Plan
 - g. Electric and Gas Site Plan and Details
 - h. Details Sheet
3. Meet with the Town to finalize project elements to be included into final bid documents.
4. Prepare backflow prevention engineering report and application for NCDOH approval (splash pad).
5. Coordinate with the Niagara County Sewer District for approval and permit to connect into the sanitary sewer system.
6. Submit draft Contract Documents to the Town at approximately 90 percent completion for review and comment.



7. Finalize the documents based on review comments received.

Task 2 – Bid Phase

Nussbaumer will assist the Town during the bidding, which includes the following services:

1. Preparing an advertisement for bids for the project and providing to the Town for publication in the required newspaper.
2. Furnishing Contract Documents for bidding and construction purposes through Avalon Planroom Service or other online bidding platform approved by the Town. Nussbaumer will provide three (3) sets of construction documents for Contract execution.
3. Assisting the Town in securing bids, responding to bidder questions, preparation of addenda (if required), tabulating and analyzing the bid results, and furnishing recommendations on the award of the construction contracts.

Task 3 – Construction Administration

Nussbaumer will provide the following construction administration services throughout the duration of the project:

1. Schedule and conduct a pre-construction meeting(s) and prepare and distribute meeting minutes to all involved parties.
2. Distribute contractor shop drawing submittals for the Community Center building to the retained Architect for review and approval.
3. Review and approve contractor submittals for site materials to be used on the project for compliance with design concept and specification.
4. Conduct periodic progress meetings and site visits, on an as needed basis, to review project progress, schedule, and costs (for the duration of the construction contracts).
5. Review and make recommendations to the Town for all construction progress payment requests and generate summary and continuation sheet consistent with construction contract proposal (excludes supplemental funding agency forms and procedures).
6. Review and make recommendations to the Town for payment of any change order requests by the Contractor, generate summary and execution sheet detailing proposed change(s) (excludes supplemental funding agency forms and procedures).
7. As necessary, provide general consultation, advice, and problem resolution during construction.
8. Act as a liaison between on-site Contractors, Architect, and the Town to assist in resolving design clarifications and monitor progress.
9. Interpret Contract Documents and resolve unanticipated field problems by communications and visits to the site, as necessary.



10. For budgeting purposes, Nussbaumer assumes an active construction duration of five (5) months.
11. Provide review and oversight of all project change order requests.
12. Assist in development of final project punch list.
13. Prepare Record Drawings.

Task 4 – Resident Inspection

Nussbaumer will assign a part-time resident inspector to the project. Resident inspection services will be provided on an as needed basis in support of Town Department inspections, and are based on the following:

1. An active construction duration based upon 20 weeks (average of 8 hours per week for a total of 160 hours).
2. Confirm that work is being performed according to the final Contract Documents.
3. Review and clarify Contractor questions.
4. Make recommendations for field adjustments to the work.
5. Obtain measurements and quantities for contractor payments.
6. Complete final inspection and generate a project punch list for the project with the Contractor and Town prior to final acceptance of the work.

Assumptions:

1. Nussbaumer assumes that the Architect will serve as the primary entity to respond to Request for Information, and change order requests.
2. For purposes of this proposal, Nussbaumer assumes the Town Building Department will handle required inspections per NYS Building Code.

The standard of care for the professional services performed or furnished by Nussbaumer under this Agreement will be the care and skill ordinarily used by members of the surveying and/or engineering profession(s) practicing under similar circumstances at the same time and in the same locality. Nussbaumer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by our company.

Should applicable federal, state, or local laws, codes, rules, regulations and/or standards change during the course of this project, Nussbaumer reserves the right to renegotiate the stated fee.

Mr. Joel Maerten, Supervisor
Town of Pendleton
August 18, 2022 – Rev.



COMPENSATION AND PAYMENT

Nussbaumer will begin work on this project immediately upon receipt of written authorization. Nussbaumer proposes to complete this Project for a total estimated fee of \$65,780. A breakdown of our fee by task is detailed in Table 3.1.

Table 3.1 Detailed Fee Breakdown

Description	Fee
Contract Document Phase	\$23,500 Lump Sum
Bidding	\$ 4,500 Lump Sum
Construction Administration	\$22,400 Lump Sum
Resident Inspection (160 hours @ \$93/hr.)	\$14,880 Hourly Not-to Exceed
TOTAL FEE	\$65,280

Invoices for lump sum tasks will be issued monthly based upon percentage of work completed during the prior month. Resident inspection services will be invoiced monthly, based upon a standard hourly rate of \$ 93 per hour. Refer to Schedule A for standard terms and conditions.

All work will be completed in accordance with the current engineering services agreement between Nussbaumer and the Town of Pendleton by resolution on August 8, 2022.

Should this revised proposal meet with your approval, please sign below and return a copy to us for our files. This will then serve as our Agreement and Notice to Proceed.

We look forward to continuing our work with the Village. If you have any questions or need any additional information, please feel free to call.

Sincerely,

NUSSBAUMER & CLARKE, INC.

Michael T. Marino, P.E.
Chief Executive Officer

David Britton, P.E.
Vice President, Municipal Engineering

MTM/m

c: File-01 (w/att.)

Accepted by: TOWN OF PENDLETON

Signature: _____ Title: _____

Printed Name: _____ Date: _____



CORPORATE OFFICE
 3556 Lake Shore Road
 Suite 500
 Buffalo, NY 14219-1494
 Phone: (716) 827-8000
 Fax: (716) 826-7958

BRANCH OFFICES
 Lockport
 North Tonawanda
 East Aurora

2022 HOURLY RATE SCHEDULE

Job Title	Hourly Rate
Principal Engineer / Principal Surveyor	\$230.00
Sr. Associate	\$168.00
Associate	\$153.00
Project Manager	\$144.00
Sr. Project Engineer	\$139.00
Project Engineer / Project Architect	\$124.00
Engineer 2	\$108.00
Engineer 1	\$93.00
Sr. CADD Designer	\$134.00
CADD Designer	\$105.00
CADD Technician	\$93.00
Engineering Technician	\$82.00
Municipal Infrastructure Specialist	\$92.00
Water Distribution Specialist 1	\$93.00
Water Distribution Specialist 2	\$67.00
Project Surveyor	\$129.00
Survey Technician 3	\$103.00
Survey Technician 2	\$88.00
Survey Technician 1	\$77.00
1 Person Survey Crew	\$155.00
1 Person Survey Crew (Prevailing Wage)	\$200.00
2 Person Survey Crew	\$180.00
2 Person Survey Crew (Prevailing Wage)	\$300.00
Construction Administrator	\$103.00
Sr. Construction Observer	\$113.00
Construction Observer	\$93.00
Grant Writer	\$72.00
Administrative Assistant	\$72.00

Testimony/Court Attendance (above rate for Job Classification - 4 Hour Minimum Charge)

Fixed Costs

Mileage	at Current Federal Rate
Expenses such as Tolls, Copies, Printing	at Cost
Subconsultant or Third Party Expense	at Cost plus 10%

Rates are subject to increase January 1st of each calendar year.

This proposal is issued subject to the client's acceptance of the terms and conditions set forth on the attached/included Schedule "A". By accepting the proposal, the client agrees that these terms and conditions will be incorporated into the resulting agreement ("Agreement") between the client and Nussbaumer & Clarke, Inc. ("Nussbaumer") for the work covered in the proposal ("Work").

SCHEDULE "A"

It is understood that fees quoted herein for the Work are subject to change upon written notice to the client should unforeseen complications and/or problems develop during the course of the Work.

No documents will be released unless all fees have been paid for Work completed. The client agrees that Nussbaumer will not be responsible for providing copies of records generated for this project in case of loss of records by fire, theft or other causes. Copies of finished product will be furnished upon payment for costs of reproductions.

Original tracings of drawings and all other records generated in connection with the Work are the property of Nussbaumer and may not be used without written permission. Tracings may be filed with the County or Municipality, if the tracing was produced for that purpose. Reproducible tracings will be furnished at cost for preparing same and will be noted as a copy. With the exception of original submittals, any blueprints ordered and used in connection with the Work will be billed at cost.

To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Nussbaumer and its officers, directors, members, partners, agents, employees, and consultants, to client and/or owner and anyone claiming by, through, or under client and/or owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Work from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Nussbaumer or its officers, directors, members, partners, agents, employees, or consultants shall not exceed the total compensation received by Nussbaumer for the Work. Nussbaumer shall not be liable to the client under any circumstances for indirect, special, incidental or consequential damages, nor shall Nussbaumer be liable to the client for lost revenue or profits of any nature or character.

To the fullest extent permitted by law, the client agrees to indemnify and hold Nussbaumer, along with its current and future owners, officers, directors, members, shareholders, parent corporations, subsidiaries, related entities, affiliates, agents, and employees (collectively "Indemnitees") harmless from, against and for all claims by third parties ("Third-Party Claims"), which are caused by the negligence or willful misconduct of the the client or its employees, agents, consultants, or anyone acting by, through, on behalf of, or under the client. Notwithstanding the foregoing or anything else in the Agreement, the client's indemnification obligations do not apply to any Indemnitee for any portion of any Third-Party Claims caused by the negligence of such Indemnitee.

This Agreement, unless previously terminated by written notice shall be terminated by completion of the Work. Termination before completion shall be accompanied by payment for Work completed to that date at per diem rates set forth in the attached schedule of fees.

All claims or disputes of any kind arising out of the relationship between client and Nussbaumer shall be submitted to mediation prior to filing suit. The language to be used in mediation shall be English. Any action filed between the parties shall be filed in the state or federal courts in and for Erie County, New York. The prevailing party shall be entitled to recover its costs, including reasonable attorneys' fees.

Nussbaumer shall render invoices to client monthly as set forth in this proposal. Invoices shall be due and payable in full by the client to Nussbaumer within 30 days of billing. If payment is not received within 60 days of billing, client shall be considered in breach of contract and Nussbaumer reserves the right to stop Work under this Agreement, or work under any other agreement with the client, until such time that all Work is paid in full, including interest at 18% per annum commencing at the 60th day from billing. If applicable, all outstanding unpaid invoices must be paid in full prior to filing of the Map Cover with the county Clerk's Office.

Client shall promptly review invoices and notify Nussbaumer of any objection thereof; absent such objection in writing within fifteen (15) days of the date of the invoice, the invoice shall be deemed proper and acceptable.

It is also agreed and understood that in the event that Nussbaumer finds it necessary to take legal action for collection of any outstanding amounts due under this Agreement, the client herein agrees to pay all costs of litigation, including legal fees, court costs, filing and/or recording fees as well as costs involving time spent in preparation for litigation and/or legal proceedings. Should legal proceedings be initiated, it is understood that all proceedings would take place in Erie County, New York. This Agreement, the Work, and any disputes relating to either the Agreement or the Work shall be governed by the laws of the State of New York, without regard to conflicts of law rules.

This proposal shall be valid for a period of 30 days, after which Nussbaumer shall have the right to revise any portion thereof. It is also understood that fees quoted herein shall be subject to a 10% increase for those phases of Work not yet completed after a period of one year from date of authorization to proceed.

All fees quoted are for the Work as outlined. Any work not ordered will not be billed. Any work not included in the Agreement or any additional items which may be necessary in order to comply with laws, rules or regulations made effective subsequent to this proposal will be charged as extras on a time basis or a mutually agreed upon fixed fee.

Quantities and cost estimates are subject to change due to, but not limited to, actual field conditions encountered, additions or changes to the Work, and changes in conditions on which estimates were based. The client acknowledges and agrees that Nussbaumer was entitled to and did in fact rely on the information provided by the client in performing estimates concerning the Work as embodied in this proposal.

Any revisions to the Work caused by client, Municipality, County or Governmental or Governing Agencies, to the extent they increase Nussbaumer's costs of performance under the Agreement, shall be billed in accordance with the itemized per diem schedule.

The client shall arrange or establish Nussbaumer's right to enter the property. If the client does not own the site, Nussbaumer shall require reasonable verification that permission to enter the site has been granted.

The parties agree and acknowledge that there are no verbal representations, promises, understandings or agreements concerning or relating to the Work other than as contained in the Agreement. All previous negotiations and agreements between the parties concerning or relating to the Work are merged into the Agreement. Modifications of the Agreement must be in writing, except to the extent that the invoice may include, and client shall be obligated to pay, fees or expenses that were orally authorized in order to proceed promptly with the Work.