

August 3, 2022

Honorable Joel Maerten
Supervisor
Town of Pendleton
6570 Campbell Blvd.
Lockport, NY 14094



Re: Proposal for Professional Engineering Services
Town Fiscal Year 2022 Retainer
File No. 22P1-0113

Dear Supervisor Maerten:

Nussbaumer & Clarke, Inc. (Nussbaumer) appreciates this opportunity to submit a proposal to be Retained Engineer for the Town of Pendleton (Town).

Nussbaumer has been locally owned and operated since 1933. Our multi-discipline staff is committed to providing attentive, high-quality service to the communities of Western New York in which we live, work and play. Our experienced staff of planners, engineers, construction inspectors, grant writers, administrative professionals, and land surveyors, some of which are based just minutes away from the Town in our Lockport Office, can support projects from conception thought completion. Further details regarding the services Nussbaumer provides can be found at www.nussclarke.com.

Nussbaumer proposes to invoice the Town a monthly retainer of \$1,200 monthly. Specific project related work will be billed based upon effort expended at our 2022 Hourly Billing Rates (attached) upon request and approval of the Town.

Upon acceptance of our proposal, please sign both the original and the enclosed copy where indicated below and return a signed copy to our office. The original is for your file. This will then serve as our Agreement and Notice to Proceed.

Thank you for your consideration of this proposal. 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 M. Britton, P.E.
Vice President – Municipal Engineering

MTM/m - Att – 2022 Hourly Rate Table

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 2 | \$180.00 |
| Sr. Associate 1 | \$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 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.