



City of Ewart

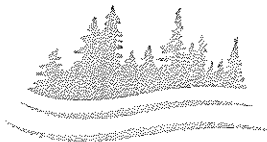
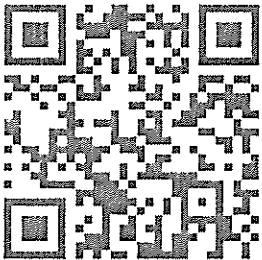
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Sarah Dvoracek
sarah.dvoracek@ewart.org*

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*Department of Public Works
Director/Zoning
Administrator/Airport
Manager
Mark Wilson
mark.wilson@ewart.org*

*Chief of Police
John Beam Jr.
john.beam@ewart.org*



January 15, 2019

To: Honorable Mayor and Council Members

From: Mark Wilson, Department of Public Works Director/Zoning
Administrator/Airport Manager

Subject: Contract Renewal with Mead & Hunt- Cross Connection Control
Program

It's my recommendation that the City of Ewart renew our contract with Mead and Hunt for our cross connection control process. Again this year the contract meets MDEQ requirements for both commercial and residential cross connection control program, and includes all reporting to the MDEQ.



101 W. Washington Street, Suite 211
Marquette, Michigan 49855
906.273.1544
meadhunt.com

January 15, 2019

Mark Wilson
DPW Supervisor
City of Ewart
200 South Main
Ewart, MI 49631

Subject: Cross Connection Control Program

Dear Mr. Wilson:

M&H Facility Operations, Inc. (M&H Facility) is pleased to submit this proposal to manage the City's Cross Connection Control Program.

Project Understanding

Our proposal is based on our current contract expiring March 31, 2019.

Scope of Services

After receipt of authorization to proceed, M&H Facility shall:

- Survey of 24 non-residential facilities per year at the "points of use" plumbing to identify direct/indirect cross connections.
- One re-survey of non-compliant facilities.
- Provide 55 electronic residential surveys.
- Perform residential surveys on identified high hazard homes (number determined by results of electronic residential surveys).
- Update inventory of testable backflow prevention assemblies located at each facility.
- Preparation and mailing of survey announcements, requirements and follow-up letters. All mailings will be printed on joint letter head with both Mead & Hunt and the City's logos on them.
- Provide copies of all mailings as requested by the City.
- Backflow Prevention Assembly Testing/Certification letters.
- All associated data entry per the Cross Connection Control Plan schedule.

- Complete and submit annual report to MDEQ.
- Notify City of non-compliance for enforcement.

Responsibilities of City of Evert

Our Scope of Services and Compensation are based on City of Evert performing or providing the following:

- A designated representative with complete authority to transmit instructions and information, receive information, interpret policy, and define decisions.
- Access to the project site.
- Available data, drawings, and information related to the project.
- Protection of M&H Facility-supplied digital information or data, if any, from contamination, misuse, or changes.

Work Not Included in the Scope of Services

The following items are excluded from this agreement and will be provided by the City of Evert or provided by M&H Facility as an Additional Service only as authorized by the City of Evert:

- Installation of devices
- Repair of devices
- Additional initial surveys (additional charge \$110/survey)
- Additional re-surveys after the first re-survey (additional charge \$110/re-survey)
- Enforcement

Project Schedule

- **Start date: February 1, 2019**
- **End Date: March 31, 2022**

Compensation

The work described under the Scope of Services will be performed on a lump-sum basis. The City of Evert will pay M&H Facility \$2,640.00 each year for non-residential surveys performed under this contract.

Michigan Plumbing Code requires annual testing of all testable backflow devices. Compensation is based on 80% completion of the annual testing of the 37 known testable backflow devices connected to the public water supply. If less than 80% annual testing of the 37 known testable devices is completed, an additional fee of \$9.95 per device will be assessed. This fee will be paid to M&H Facility Operations by the client.

Residential surveys will be billed at a rate of \$5/electronic survey sent, and \$55/residential survey performed. Number of electronic and residential surveys to be determined by the City.

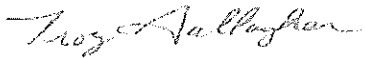
Authorization

The Scope of Services and Compensation stated in this proposal are valid for a period of thirty (30) days from date of submission. If authorization to proceed is not received during this period, this proposal may be withdrawn or modified by M&H Facility.

Signatures of authorized representatives of City of Evert and M&H Facility shall convert this proposal to an Agreement between the two parties, and receipt of one signed copy shall be considered authorization to proceed with the work described in the Scope of Services. All services shall be performed in accordance with the *General Terms and Conditions for Engineering, Architectural, or Consulting Services* which is attached hereto and made part of this Agreement and labeled as Exhibit A.

We appreciate the opportunity to submit this proposal to the City of Evert.

Respectfully submitted,
M&H FACILITY OPERATIONS, INC.



Troy Gallagher
Market Leader, Water/Wastewater

Attachment

Accepted by: CITY OF EVART

By: _____

Name: _____

Title: _____

*The above person is authorized to sign for Client
and bind the Client to the terms hereof.*

Date: _____

Approved by: M&H FACILITY OPERATIONS,
INC.


By: _____

Name: Casey Rose

Title: Department Manager, Water/Wastewater

Date: January 15, 2019

Exhibit A. General Terms and Conditions

M&H Facility Operations, Inc.
**General Terms and Conditions ("General Terms") for Engineering
Or Consulting Services**
Michigan

1. Receipt of the attached signed Contract (Contracts, Proposal, or Letter) will be considered written authorization to proceed.
2. M&H Facility Operations, Inc. (M&H Facility) will bill the Client monthly with net payment due in thirty (30) days. Past due balances shall be subject to an interest charge at a rate of 1% per month. In addition, M&H Facility may, after giving ten (10) days' written notice, suspend service under any agreement until the Client has paid in full all amounts due for services rendered and expenses incurred, including the interest charge on past due invoices. The fees or rates stated in the attached contract does not include any applicable state and local sales or use taxes. Any such taxes shall be the responsibility of the Client to pay.
3. The fees and scope of services stated in the attached document constitute an estimate of the fees and tasks required to perform the services as defined. For those projects involving conceptual or process development service, activities often cannot be fully defined during initial planning. As the project progresses, facts uncovered may also reveal a change in direction which may alter the scope. If the Client requests modifications or changes in the scope of the project, the time of performance of M&H Facility's services and the fees shall be adjusted before M&H Facility undertakes the additional work. M&H Facility is not acting as a Municipal Advisor as defined by the Dodd Frank Act.
4. The Client shall be liable for and shall indemnify and hold M&H Facility harmless for all costs and damages incurred by M&H Facility for delays caused in whole or in part by the Client's interference with M&H Facility's ability to provide services, including, but not limited to, the Client's failure to provide specified facilities or information, or inaccuracies in documents or other information required to be provided by the Client to M&H Facility. M&H Facility reserves the right to renegotiate the contract because of any unforeseen delays caused by events beyond M&H Facility's control, such as funding for the project.
5. The Client agrees to clarify and define project requirements and to provide such legal, accounting, and insurance counseling services as may be required for the project.
6. M&H Facility will maintain insurance coverage for: worker's compensation, general liability, automobile liability, and professional liability. M&H Facility will provide information as to specific limits upon written request. If the Client requires coverages or limits in addition to those that M&H Facility currently has in effect as of the date of the agreement, premiums for additional insurance shall be paid by the Client.
7. The limit of liability of M&H Facility (including its current or former employees, officers, directors, or shareholders) to the Client for any damages will be for a period of twelve (12) months from the date of the last bill from M&H Facility being first submitted to the Client regardless of whether or not such bill was paid by Client, and the extent any liability including all damages (direct, consequential, indirect, incidental, or other damages), claims, costs, expenses and legal fees of M&H Facility (including its current or former employees, officers, directors, or shareholders) and its sub-consultants to the Client or any and all third parties is limited to the amount of the fees billed by M&H Facility to the Client during the 12-month period prior to the date of the last bill being first submitted to the Client.
8. M&H Facility and the Client agree that the ultimate liability for contaminants or pollutants regardless of its source, and for the actual, alleged, or threatened discharge, dispersal, release, or escape of pollutants, mycotoxins, spores, smoke, vapors, soot, fumes, mold, acids, alkalis, toxic chemicals, mildew, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, buildings, the atmosphere, or body of water shall remain with Client, and the responsibility and/or liability for any of the foregoing and for the ownership and maintenance of any toxic, hazardous, or asbestos materials relating to the project shall remain with the Client.
9. Client and M&H Facility shall not, during the term of the Contract or after the termination of the Contract for a period of one year disclose any Confidential Information to any person or entity, or use any Confidential Information to any person or entity, or use any Confidential Information for the benefit of the Client or M&H Facility as the case may be, or any other person or entity, except with the prior written consent of M&H Facility or the Client, as the case may be, or as required by law. The term "Confidential Information" means information marked or designated by M&H Facility or the Client as confidential. Confidential Information includes, but is not limited to, ideas, specifications, techniques, models, data, programs, documentation, processes, know-how, and financial and technical information.
10. Termination of the Contract by the Client or M&H Facility with or without cause, shall be effective upon ten (10) days' written notice to the other party. The written notice may or may not include the reasons and details for termination. M&H Facility will prepare a final invoice showing all charges incurred through the date of termination; payment is due as stated in Paragraph 2. If the Client breaches the Contract or if the Client fails to carry out any of the duties contained in these General Terms, M&H Facility may, upon ten (10) days' written notice, suspend services without further obligation or liability to the Client.
11. M&H Facility may release data, models, plans, CAD files, and/or drawings electronically or by any other means to any other party involved in the project; and if such release is not provided for in the Scope of Services, fees may be adjusted before the documents are prepared for electronic submittal. Data and image files, both electronic and hard copy (hereinafter "files") are part of M&H Facility's instruments of service and shall not be used for any purpose other than for the described project. Any reuse of files or services pertaining to this project or any other project shall be at the Client's sole risk and without liability or legal exposure to M&H Facility. M&H Facility makes no representation as to compatibility of electronic files with the Client's hardware or software. Differences may exist between these electronic files and corresponding hard-copy documents. M&H Facility makes no representation regarding the accuracy or completeness of the electronic files provided. In the event that a conflict arises between the signed or sealed hard-copy documents prepared by M&H Facility and the electronic files, the signed or sealed hard-copy documents shall govern. Because information presented on the electronic files can be modified, unintentionally or otherwise, M&H Facility reserves the right to remove all indicia of ownership and/or involvement from each electronic display. Under no circumstances shall delivery of the files for reuse be deemed a sale by M&H Facility and M&H Facility makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall M&H Facility be liable for any loss of profit, delayed damages, or any consequential damages as a result of reuse or changes to files or any data therein.
12. M&H Facility will provide services in accordance with generally accepted professional practices. M&H Facility disclaims all warranties and guarantees, express or implied. The parties agree that this is a contract predominately for services and is not subject to any Uniform Commercial Code. Similarly, M&H Facility will not accept those terms and conditions offered by the Client in its purchase order, requisition, or notice of authorization to proceed, except as set forth herein or expressly agreed to in writing. Written acknowledgment of receipt, or the actual performance of services subsequent to receipt of such purchase order, requisition, or notice of authorization to proceed, is specifically deemed not to constitute acceptance of any terms or conditions contrary to those set forth herein. Nothing in the Contract and/or General Terms is intended to create, nor shall it be construed to create, a fiduciary duty owed by either party to the other party.
13. M&H Facility cannot and does not guarantee that proposals, bids, or opinions of probable costs will not vary from the actual and/or final project or construction costs or that the project or construction costs will not vary from the final costs of the project. The Client agrees to indemnify and to hold M&H Facility harmless for any claim arising out of or related in any way to project or construction costs

even if such claim arises out of and/or has been caused in whole or in part by negligence on the part of M&H Facility.

14. If the Client is a municipality or state authority or any government authority/agency, the Client agrees to indemnify and hold harmless M&H Facility for all claims arising out of or related in any way to acts done by M&H Facility WHILE IMPLEMENTING A DECISION OF THE CLIENT MADE DURING THE CLIENT'S EXERCISE OF LEGISLATIVE, QUASI-LEGISLATIVE FUNCTIONS. In the event M&H Facility shall be made a party to any suit or litigation on account of an injury or damage to person, life, or property as a result of such acts done by M&H Facility, the Client shall, at Client's sole expense, defend such actions on behalf of M&H Facility, including claims and causes of action at common law, arising under any statute, or arising out of any governmental demand or request; and, if judgment shall be obtained or claim allowed in any proceedings against M&H Facility, the Client shall pay and satisfy such judgment or claim in full.
15. Neither the Contract nor these General Terms shall be construed as imposing upon or providing to M&H Facility the responsibility or authority to direct or supervise construction means, methods, techniques, sequence, or procedures of construction selected by the contractors or subcontractors or the safety precautions and programs incident to the work of the contractors or subcontractors.
16. M&H Facility shall not be liable, in contract or tort or otherwise, for any special, indirect, consequential, or liquidated damages including specifically, but without limitation, loss of profit, loss of use or revenue, loss of capital, delay damages, loss of goodwill, claim of third parties, or similar damages. M&H Facility shall not be liable for any loss due to terrorism.
17. To the fullest extent permitted under applicable law, the Client agrees to indemnify and hold harmless M&H Facility and its sub-consultants from any liability, damages, claim, costs, expenses, or legal fees, for injury or loss arising from errors, omissions, or inaccuracies in documents or other information provided by the Client to M&H Facility or for any other injury or loss caused by the Client, its employees, agents, other consultants.
18. The parties agree that M&H Facility's services in connection with the Contract and General Terms shall not subject any of M&H Facility's current or former employees, officers, directors or shareholders to any personal legal liability for any breaches of this agreement or for any negligence in performing any services in connection with this agreement even if such claim arises out of and/or has been caused in whole or in part by negligence on the part of M&H Facility's current or former employees, officers, directors, or shareholders. Therefore, notwithstanding anything to the contrary contained herein, the Client agrees that the Client's sole and exclusive remedy for any breach of contract or any negligent performance of services in connection with this agreement shall be a claim against M&H Facility, and any claim, demand, suit, or judgment shall be asserted only as against M&H Facility's corporate entity, and not against any of M&H Facility's current or former employees, officers, directors, or shareholders, and the Client covenants not to sue these individuals. Each of M&H Facility's current and former employees, officers, directors, or shareholders are made express beneficiaries of this Paragraph.
19. None of the rights and/or obligations of either party hereunder may be assigned except with the prior written consent of the other party, and any attempted assignment without such consent shall be void.
20. The limitations and indemnity provided herein shall not apply to the willful or intentional acts of M&H Facility or its employees, shareholders, officers, or directors. The Client acknowledges and agrees that it has had an opportunity to negotiate with respect to the limitations of the General Terms and understands and agrees that if those Paragraphs were not included herein the fees for the services provided in connection with the General Terms and Contract Terms would be significantly higher. The Client further acknowledges that it is a sophisticated party with experience in the acquisition of consulting services.
21. If a dispute arises out of or relates to the Contract and/or General Terms or its breach, the parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, the parties shall endeavor to settle the dispute by mediation. If mediation is unsuccessful, then the parties may exercise their rights at law.
22. If any term or provision of this Contract is held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Contract shall remain in full force.
23. Client and M&H Facility understand and agree that neither this agreement nor the performance of it by M&H Facility shall render M&H Facility as "Client" or "operator" for the facilities as those terms are used in the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq., as amended, and the Comprehensive Environmental Response Compensations and Liability Act, 42 U.S.C. 6901 et seq., or similar federal, state, or local environmental legislation, and M&H Facility's liability shall remain limited as stated under these Terms and Conditions.
24. As part of these General Terms, Client agrees to perform all functions that retain all responsibilities and obligations related to the facilities not expressly assumed herein by M&H Facility, including, without limitation, the following: a) Client shall promptly procure and continually maintain, in full force and in accordance with their respective terms, all easements, permits, licenses, and other similar approvals and consents granted to or received by Client which pertain to all facilities and component parts thereof and which are necessary to operate and maintain the facilities; b) Client shall be responsible for expenditures for all capital improvement; c) Client shall, at all times, provide and maintain access to the facilities for M&H Facility, its agents, and employees; d) Client will provide M&H Facility the use of all existing equipment owned by the Client necessary for M&H Facility to properly render services; e) Client shall be responsible for all fines and penalties imposed together with related costs and expenses to the extent not attributable to M&H Facility according to Paragraph 6 of these General Terms; f) Client shall designate an individual to act as a liaison to M&H Facility in connection with the performance of services by M&H Facility under these General Terms; and g) Client shall make repairs to the facilities as necessary to keep equipment functional.
25. The Client shall provide M&H Facility with all criteria, programs, existing studies, reports, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability and any anticipated funding sources and budgetary limitations. In addition, Client shall arrange for safe and legal access to and make all provisions for M&H Facility to enter upon public and private property in order for M&H Facility to perform services under this agreement.
26. Nothing contained in the Contract or the General Terms shall create a contractual relationship with or a cause of action in favor of a third party against M&H Facility. M&H Facility's services under the Contract are being performed solely for the Client's benefit, and no other party or entity shall have any claim against M&H Facility because of the Contract or General Terms or the performance or nonperformance of services hereunder.
27. The General Terms and Contract shall be construed and interpreted in accordance with the laws of the state of Michigan. No action may be brought except in the state of Michigan.