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FELLENZER III

ENGINEERING LLP

www.felllp.com

Principals:
Archle D. Fellenzer Jr., P.E.
Mark D. Fellenzer, P.E.
John D. Fellenzer, P.E.
Eric D. Fellenzer, P.E.

November 2, 2012

Town of Newburgh
1496 Route 300
Newburgh, NY 12550

Attn: James Osborne, PE

Re: Proposal /Contract for Engineering Services
New Generator Design (New and Old Town Halls)
Town of Newburgh
FE Project No. 12-257

Dear Mr. Osborne:

This letter/proposal is pursuant to the subject project and our recent site visit and provides a contract for our professional engineering services. This proposal is for preparing plans and specifications for the electrical design of a new natural gas fired emergency generator to service either one building (New Town Hall) or two buildings, the new Town Hall and old Town Hall.

This generator is estimated to be approximately 100 or 150 KW in size, but will be verified based on a load analysis. It is understood that the generator sizes as proposed are either a single service, or two services as may be decided by the town. Closed transition transfer switches (ATS) are recommended for seamless operation on re-transfer during exercising of equipment. The ATS's proposed shall match the existing service sizes. The ATS shall be located near the existing electrical services entrance at each building.

The proposed design shall include the following:

- I. Base Bid Design - New Town Hall Generator
- II. Add Alternate Bid Design - Old Town Hall Interconnection Connection.*

It is proposed that a single generator covers both buildings and that the add-alternate design shall include an up-sized generator and a second automatic transfer switch to accommodate the second building.

Fellenzer Engineering, LLP shall provide complete engineering services as follows in conjunction with the Department of Public Works.

ELECTRICAL

22 Mulberry Street, Suite 2A
Middletown, NY 10940
1845-343-1481 * fx 1-855-320-8735

181 Church Street, Suite 100
Poughkeepsie, NY 12601
1845-454-9704 * fx 1-855-320-8735

**NEW GENERATOR DESIGN- TOWN OF NEWBURGH (NEW AND OLD TOWN HALLS)
FE PROJECT NO. 12-257**

1. Field investigation to determine existing electrical and equipment ratings and service entrance configurations.
2. Electrical Load Analysis.
3. Generator sizing and design details (Base bid and Add-alternate).
4. Electrical generator service design.
5. Design of two ATS systems connected to the existing electrical services. (New and Old Town Halls)
6. Verification of utility billings with generator size recommendations.
7. Electrical service additions and alterations.
8. Development of conduit routing to meet existing site conditions.
9. Natural Gas piping design as a fuel source.
10. Equipment pads and appurtenances.

Our design work will be based on the following codes and standards:

1. Building Code of New York State.
2. NFPA 70, (NEC), & 72 & 101
3. ASHRAE 62

REQUIRED SERVICES TO BE PERFORMED BY OTHERS:

1. Proposed generator shall be skid mounted in a self-contained enclosure.
2. A new field constructed enclosure is not proposed at this time, but can be designed by this office if requested.

For all of the hereinbefore-outlined work we shall provide the following Engineering Services to assist in the bidding and construction phases of this project as follows:

1. Preparation of bid documents for contractor pricing.
2. Evaluation of bids and recommendations.
3. Shop drawings, approvals, and contractor clarifications.
4. Field visits, observation of construction during installation of new systems, and site meetings.
5. Punch listing and final project closeout.

Items (4 & 5) shall include 8 visits and standard shop drawing review.

Engineering construction phase exclusions shall be as follows:

1. Construction management (CM)
2. Coordination of trades
3. Construction-cost accounting
4. Any DEC, EPA, Regulatory Approvals

Engineering fees for these items can be provided at additional cost per our standard per diem rates.

Professional fees for the services outlined above are as follows:

NEW GENERATOR DESIGN- TOWN OF NEWBURGH (NEW AND OLD TOWN HALLS)
FE PROJECT NO. 12-257

Generator System Design (New & Old Town Halls)	\$12,900.00
Bidding and Construction Administration	\$ 4,800.00
Total	\$17,800.00

We will provide complete plans and specifications as follows:

1. Architectural Desktop (AUTOCAD) graphics of all design work.
2. Base specifications in CSI format.

Drawings to be prepared on Bond media, ready for printing. Specifications to be provided in written form on 8 1/2" by 11" copy.


Major changes in plans after completion of submittals as required by Owner to be made at our standard per diem rates in addition to fee range noted above. (See attached schedule).

It is understood that the attached fee schedule and general terms and conditions are hereby made part of this agreement.

Payments shall be per monthly billings and are to be made within fifteen (15) days of invoicing. The retainer shall be applied to the final billings.

Thank you for this opportunity to assist you. If you have any questions about this proposal/contract, please contact us and we will be happy to discuss these items in more depth. If this proposal is acceptable, please return a signed copy of this document to us, and we will begin the work.

Very truly yours,



John D. Fellenzer, P.E.
Principal

James Osborne, P.E.

11.2.12

Date

Date

JDF/emh

Principals:
Archie D. Fellenzer Jr., P.E.
Mark D. Fellenzer, P.E.
John D. Fellenzer, P.E.
Eric D. Fellenzer, P.E.

**2012 STANDARD ENGINEERING FEE SCHEDULE
EFFECTIVE JANUARY 1, 2012 TO DECEMBER 31, 2012**

CATEGORY/HOURLY RATE

Principal (P.E.)	\$162.00
Project Engineer (P.E.)	\$140.00
Project Manager	\$126.00
Senior Engineer	\$120.00
Senior Designer	\$108.00
Engineer.....	\$ 98.00
Designer.....	\$ 92.00
CAD Designer	\$ 89.00
CAD Operator	\$ 81.00
Administrative Support	\$ 68.00

EXPENSES

Auto Travel	\$.55 cents per mile, plus tolls & parking
Hotel, air travel, meals, etc.....	Cost + 10%
UPS, Federal Express Charges.....	Cost + 10%

IN-HOUSE PRINTING

Standard Size* Paper B&W Plot.....	\$ 5.00 each
Standard Size* Paper Color Plot.....	\$ 7.50 each
Standard Size* Vellum B&W Plot.....	\$11.50 each
Standard Size* Mylar B&W Plot	\$29.75 each
Photocopies (8-1/2" x 11").....	\$ 0.20/page

*Standard size equals up to E size sheet. Larger sizes shall be charged an additional, proportional cost. For copies of paper drawings, an additional charge of \$5.00 per sheet will be added to the print /plot cost. Expenses not listed above, and incurred on behalf of the client, shall be invoiced at 1.10 times the expense.

TERMS AND CONDITIONS

- Refer to contract for applicability of these itemized charges.
- A service charge of 1.5% shall be applied on account balances not paid within 30 days after rendering of statement.
- Accounts 60 days past due will be notified and work will stop.
- Accounts 90 days past due will be referred for collection.
- A retainer is required on new accounts and as indicated in the contract.
- The retainer will be applied to the final invoice of an account.

Fellenzer Engineering, LLP
General Terms and Conditions of Agreement

The engagement of Fellenzer Engineering, LLP (FE) by client is under the following terms and conditions and is an integral part of the collective agreement between client and FE.

A. GENERAL

1. The fee estimate for the proposed scope of services is valid for 60 days from the date of proposal. Upon authorization to proceed, the fee rates shall remain in effect for a period of one (1) year. FE reserves the right to revoke the fee estimate by giving notice thereof to the client.
2. All schedules set forth in the attached scope of services commence upon receipt of a signed agreement and, if requested, a retainer. All retainer amounts will be applied to the final invoice. FE reserves the right to require the client to pay an advance retainer before continuing with any work on the project.
3. FE reserves the right to require written authorization from the client before commencing any work on any additional services. Any fee adjustment required shall be established at that time.
4. All documents produced by the FE under this Agreement shall remain the property of FE and will not be used by the client for any other endeavor without the consent of the FE. The client further agrees to indemnify and hold harmless FE from any claims and damages that arise due to the alteration, reuse, or misuse of FE's work Product.
5. FE is not responsible for delays caused by factors beyond the FE's reasonable control. When such delays beyond FE's reasonable control occur, the client agrees FE is not responsible for damages, nor shall FE be deemed to be in default of this Agreement.
6. The obligation to provide further services under this agreement may be terminated by either party upon seven (7) days written notice. In the event of any termination, FE shall be paid for all services rendered to the date of termination, as well as for all reimbursable expenses. Until FE is paid in full all sums due it, FE shall not be obligated to turn over to the client any of its work products, including drawings, specifications, calculations, notes and other documents generated by FE.
7. It is understood that the scope of work defined in this agreement is based on the information provided by the client. If this information is incomplete or inaccurate, or if unexpected site conditions are discovered, additional services may be required, the scope of work may change even as the work is in progress. FE shall make reasonable effort to contact the client when a change in the scope of work appears necessary, and the client, by agreeing to the change, also recognizes that the estimate of cost or contract figure may also change.
8. Unless otherwise agreed in writing, the client will furnish FE with right-of-way access to the site and structure(s) in order to conduct the planned exploration or field services. FE shall take reasonable precautions to minimize damage to the site and structure(s) due to its operations, but has not included in the fee the cost of restoration of any damage resulting from the operations. If the client provides a written request, FE will restore any damage to the site and/or structure(s) and add cost of restoration to the fee.
9. Record drawings, if requested by client, shall be prepared at additional cost based on information provided by the installing contractor(s). FE will not be responsible for the accuracy of this information, nor for any errors or omissions which may appear in the record drawings as a result.
10. FE shall have no responsibility for the discovery, presence, or removal of any hazardous material on the project site, however, these services can be provided at additional cost if requested by the client.
11. FE and/or its authorized sub-consultant will conduct the research that in its professional opinion is reasonable with respect to the assumed locations of existing underground improvements. Such services by FE or its sub-consultant will be performed in a manner consistent with the ordinary standard of care. The client recognizes that the research may not identify all underground improvements and that the information upon which FE relies may contain errors or may not be complete. The client agrees, to the fullest extent permitted by law, to waive all claims and causes of action against FE and anyone for whom FE may be legally liable, for damages to underground improvements resulting from subsurface penetration locations established by FE.
12. If any provision of this Agreement shall be prohibited or found invalid under applicable law, it shall be deemed modified to conform to the minimum requirements of such law, or, if for any reason it is not deemed so modified, it shall be prohibited or invalid only to the

extent of such prohibition or invalidity without the remainder thereof or any other such provision in this agreement being prohibited or invalid.

13. This contract is the entire agreement and replaces all previous representations.
14. All services shall be performed by FE using that degree of care and skill ordinarily exercised under similar circumstances by reputable members of the profession practicing in this or similar locations.
15. **Presence/Discovery of Mold and/or other Hazardous Materials.**
Unless specifically included in writing, both parties acknowledge that FE's Scope of Services does not include any services related to the presence of mold or other hazardous materials. In the event that FE or any other party encounters any mold or other hazardous materials on or about the Project site, or should it become known to FE that such materials may be present on or about the Project site or any adjacent areas that may affect the performance of FE's services, FE may, at its option and without liability for consequential or any other damages, suspend performance of the FE services under this Agreement until the Client retains appropriate consultants or contractors to identify and abate or remove the mold or other hazardous materials. The Client agrees to bear all costs, losses and expenses, including the cost of FE's additional services, arising out of or in any way connected with the discovery of mold or other hazardous materials.
16. In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the Client and FE agree that all disputes between them arising out of or relating to this Agreement or the Project shall be submitted to nonbinding mediation unless the parties mutually agree otherwise. The Client and the Consultant further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors, sub-consultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between the parties to all those agreements.
17. In the event the parties to this Agreement are unable to reach a settlement of any dispute arising out of this Agreement or related to the services under this Agreement, in accordance with Paragraph A15, then such disputes may, with the consent of both parties, be settled by binding arbitration in accordance with the rules of the Construction Industry Arbitration Rules of the American Arbitration Association current as of the date of this Agreement then pertaining.

B. INVOICING AND PAYMENT

1. Invoices will be rendered monthly and become due 15 days after invoice date. Any invoice outstanding for more than 30 days after date of invoice will be subject to a charge of one (1.5) percent per month (18 percent annual interest rate).
2. Should it become necessary to utilize legal or other resources to collect any or all moneys rightfully due for services rendered under this agreement, FE shall be entitled to full reimbursement of all such costs, including reasonable attorney's fees, as part of this agreement.
3. Invoice payments must be kept current for the work to continue. If the client fails to pay any invoice due to FE within 30 days of the date of invoice, FE may, without waiving any other claim or right against Client suspend services under this agreement until FE has been paid in full all amounts due FE and / or any of its consultants and sub-contractors and shall not be responsible for any consequential damages arising from said work stoppage.
4. Invoicing for out-of-pocket expenses including copying, travel, and overnight mailing shall be billed as per the attached rate sheet.
5. Regardless of any credit terms that may be granted by FE to Client, FE may, at its sole discretion, require payment of an invoice in full at the time of delivery of a design submission.
6. Services not indicated and which are subsequently requested, either verbally or in writing, will be considered additional services. The fee will be based upon either a mutually agreed fixed fee or on an hourly basis at rates in effect the time the services are performed, plus reimbursable expenses as previously defined.
7. Payment to FE is the sole responsibility of signatory of this agreement and is not subject to third party agreement.

C. ALLOCATION OF RISK

1. FE agrees to carry the following insurance during the term of this agreement: Workmen's Compensation, General Liability, Professional Liability and Comprehensive Automobile Liability. Certificates of insurance will be furnished upon request. If the client requires

insurance coverage or limits in excess of FE's normal policies, and it is available, client agrees to reimburse FE for such additional expense.

2. The client shall indemnify and hold harmless FE and its officers and employees on account of any claims, damages, losses, litigation, expenses, and reasonable attorney's fees arising out of any claims, damages, personal injuries, property losses and/or economic damages sustained by any person or entity, to the extent caused by negligent acts, omissions or negligence of the client, its agents, employees, professional consultants or subconsultants other than FE in connection with this project.
3. For any such damage on account of any error, omission, or other professional negligence, FE's liability will be limited to the greater of \$50,000.00 or the amount equal to the total engineering fee on this project as set forth in the project's contract. If, due to FE error, any required item or component of the project is omitted from the construction documents, FE shall not be responsible for paying the cost to add such item or component to the extent that such item or component would have been otherwise necessary to the project or otherwise adds value or betterment to the project. In no event shall FE be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the project.
4. For projects involving work on existing buildings, some assumptions may be made regarding existing systems and conditions, some of which may be concealed by existing materials or cannot be investigated by reasonable visual observations. It is understood that these assumptions cannot be verified without damaging or destroying existing construction materials, which is outside the scope of our professional services.
5. For inspection and report / study projects, it is understood that only conditions that are both present and apparent at the time of the site visit are covered and that the report is not a guarantee or warranty.
6. FE shall not be liable to any person that is not a party to the written agreement as to any statement, representation, and/or calculation set forth in the drawings, specifications, calculations, notes and other documents generated by FE.
7. Notwithstanding any other provision of the Agreement, neither party shall be liable to the other for any consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by the client or FE, their employees, agents, subconsultants, or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.
8. The Client and FE agree that certain increased costs and changes may be required because of possible omissions, ambiguities or inconsistencies in the drawings and specifications prepared by FE and, therefore, that the final construction cost of the Project may exceed the estimated construction cost and/or contractor's bid price. The Client agrees to set aside a reserve in the amount of 7 percent of the Project construction costs and/or contractor's bid price (whichever is greater) for all rehabilitation and renovation projects and 5 percent of the Project construction costs and/or contractor's bid price (whichever is greater) for all other projects as a contingency to be used, as required, to pay for any such increased costs and changes. The Client further agrees to make no claim by way of direct or third-party action against FE or its subconsultants with respect to any increased costs within the contingency because of such changes or because of any claims made by the Contractor relating to such changes.

D. CONSTRUCTION SUPPORT SERVICES

1. It should be understood that the presence of FE's field representative shall be for the purpose of providing observation of the construction work. Under no circumstances is it FE's intent to directly control or supervise the physical activities of the contractor's workmen to accomplish the work on this project. FE's observation of the work will not relieve the contractor of his responsibility to complete the project in accordance with the contract plans and specifications. The presence of FE's field representative at the site is to provide the client with a continuing source of information based upon the field representative's observations of the contractor's work, but does not include any superintending, supervision, or direction of the actual work of the contractor or the contractor's workmen. It is understood that FE shall not be responsible for job or site safety on the project.
2. The client agrees to supply FE with specifications, plans and other necessary materials for the project pertinent to providing the services.
3. Any estimate prepared by FE of the probable construction cost of the project or any part thereof is not to be construed nor is it intended, as guarantee of the actual contracted cost.

The titles used in this Agreement are for general reference only and are not part of the Agreement.

The foregoing terms and conditions supersede any other terms and conditions set forth in any other document exchanged between the parties hereto.