


AGENDA REPORT

TO: Mayor and City Commission
FROM: Ken Hibl, City Manager 
DATE: December 16, 2009
RE: Pettit Park Bathroom Shower Design Proposals

For the Agenda of December 21, 2009

Background. The 2009/2010 top-priority capital improvement project of the Clare Parks & Recreation Advisory Board is the construction of shower facilities for campground users at Pettit Park. To facilitate construction of the proposed capital project next spring, the Advisory Board asked Amanda Green, our Parks & Recreation Director, to solicit engineering design proposals for the project.

Two proposals (*see att'd copies*) were received, the low bid being submitted by Lapham Associates of Clare. The Clare Parks & Recreation Board has deferred its monthly meeting in December to January but asked Amanda to provide them information related to the design proposals once received to allow the process of design award to commence.

Amanda individually emailed the Parks & Recreation Advisory Board members with copies of the proposals and asked that they individually provide her their comments, any concerns, and recommendations related to the proposals. All comments Amanda received supported the award of the design work to Lapham's. The City Commission is now asked to make a decision regarding the design work.

Issues & Questions Specified. Should the City Commission award the design work for the Pettit Park Bathroom Shower to the low bidder?

Alternatives.

1. Award the design work to the low bidder.
2. Award the design work to the high bidder.
3. Set aside decision regarding this matter to a later date.

Financial Impact. If the low bidder is selected to accomplish the design work, the cost to the City will be \$2.2K. This cost was incorporated in the approved 2009/2010 approved City of Clare budget.

Recommendation. I recommend that the City Commission adopt Resolution 2009-049, thereby awarding the design work for the proposed Pettit Park Bathroom Showers to Lapham Associates.

Attachments.

1. Design Proposals.
2. Resolution 2009-049.



November 23, 2009

City of Clare Parks and Recreation
202 West Fifth Street
Clare, MI 48617

Lapham Associates is please to submit the following proposal for Professional Engineering Services located at Pettit Park Campground, 1551 N. McEwan, Clare, Michigan. *Lapham Associates* proposes the following scope of work:

SCOPE OF WORK

- 1 – Develop engineering plans for a proposed addition to the existing bathroom structure at Pettit Park Campground. The construction plans shall include plumbing, and electrical plans for the two proposed ADA compliant unisex shower stalls and maintenance room.
- 2 – The engineering design shall also include any necessary changes to utilities i.e. sanitary or water service leads needed to ensure the functionality of the building. This shall include any minor site grading in the immediate vicinity of the bathroom structure.

ITEMS OUTSIDE THE SCOPE OF THIS PROPOSAL

Lapham Associates will make every effort to complete the proposed development under this scope of work without any additional cost. However, there are instances that occur which fall outside the 'normal' development requirements. These include, but are not limited to:

- Soils borings and analysis.
- Permit fees, review fees or other fees associated with the project.

COOPERATION BY OWNER

- Owner's representatives will make themselves available to meet with Consultant.
- Owner will make record information available to Consultant.
- Owner will name an individual with authority to provide directives to Consultant.
- Owner will provide elevations of existing sewer lines relative to floor of existing building.

SCHEDULE

The following schedule is based on receipt of a notice to proceed by January 4, 2010.

Engineering and construction plans completed by February 1, 2010

COST OF SERVICES

The total cost of services defined in the Scope of Work is **\$2200.00**. The initial site visit will be scheduled upon acceptance of this proposal and receipt of a retainer of \$1100.00. Invoices will be submitted as the project progresses. Anticipated additional payments are as follows:

\$1100.00 upon completion and delivery of final engineering and construction plans.

ACCEPTANCE AND NOTICE TO PROCEED

This proposal is void if not signed within 30 days. The prices quoted assume *Lapham Associates* will complete the entire project; no credit will be given for work completed by others.

Please carefully read the attached "GENERAL AGREEMENT CONDITIONS" for the Provision of Limited Professional Services by *Lapham Associates*. These General Conditions shall be considered an integral part of this Proposal and, upon acceptance of the Proposal, is part of the agreement. We request that you acknowledge acceptance of this Proposal, including the attached General Conditions and authorize us to proceed, by signing and returning to us the enclosed copy of this Proposal.

The signature of an authorized representative of the Owner/Client in the space provided will indicate acceptance of the Proposal and the "Notice to Proceed".

Proposal By: *Lapham Associates*

Timothy L. Lapham P.S., P. E., President

Date

Accepted By: The City of Clare Parks and Recreation Department

Authorizing signature and title/position

Date

Printed Name _____

GENERAL AGREEMENT CONDITIONS

Effective January 1, 2009

THE AGREEMENT: This AGREEMENT is made by and between Paul B. Lapham and Associates, Inc. d/b/a LAPHAM ASSOCIATES, hereinafter referred to as LAPHAM ASSOCIATES, and the acceptor of the attached proposal, hereinafter referred to as CLIENT. The AGREEMENT between the parties consists of these GENERAL CONDITIONS, the attached PROPOSAL, and any exhibits or attachments noted in the PROPOSAL. Together, these elements will constitute the entire AGREEMENT superseding any and all prior negotiations, correspondence, or agreements either written or oral. Any changes to this AGREEMENT must be mutually agreed to in the form of a written AMENDMENT to this AGREEMENT.

DEFINITIONS: For reasons of interpretation, and for use throughout this AGREEMENT, the following apply: CLIENT shall be the person or entity for direct payment for services rendered and shall be the duly authorized representative of OWNER. OWNER shall be the person or entity that owns the property upon which the services or improvements pursuant to this AGREEMENT are made. The OWNER shall further be the subject of any construction liens filed in accordance with the laws of the State of Michigan or the state where the property is located. CONSULTANT shall be LAPHAM ASSOCIATES along with their authorized representatives or assigns.

CONFIDENTIALITY: The services outlines under this AGREEMENT are to be provided to the parties specifically named. No other parties may use any information provided by CONSULTANT under this AGREEMENT without prior written consent and appropriate compensation for additional charges and/or liability assumed.

OWNERSHIP OF DOCUMENTS: All reports, drawings, field data, field notes, laboratory test data, calculations, estimates, or other documents, including those on electronic media, prepared by CONSULTANT as instruments of service under this AGREEMENT shall remain the property of LAPHAM ASSOCIATES. The CLIENT shall not revise or modify any such documents without the prior written consent of LAPHAM ASSOCIATES. All original documents and copies, produced as a direct or indirect result of this AGREEMENT, shall be the property of LAPHAM ASSOCIATES, and LAPHAM ASSOCIATES reserves the right to reuse all documents without the consent of CLIENT.

TERMS OF PAYMENT: CLIENT will pay LAPHAM ASSOCIATES as indicated in the PROPOSAL and its attachments. All invoices will be due and payable upon receipt of invoice. If CLIENT objects to all or any portion of any invoice, CLIENT will so notify LAPHAM ASSOCIATES in writing within ten (10) calendar days of the invoice date, identify the cause of disagreement, and pay that portion of the invoice not in dispute. In the absence of written notification described above, the balance as stated on the invoice will be paid. All fees for services rendered under this AGREEMENT are subject to a finance charge of 1½ % per month or an annual rate of 18% on any balance past due more than thirty (30) days after the date of the original invoice. In the event CLIENT fails to pay LAPHAM ASSOCIATES within thirty (30) days after an invoice is sent to CLIENT, CLIENT agrees that LAPHAM ASSOCIATES shall have the right to consider this AGREEMENT breached and upon ten (10) days written notice, terminate all services and demand full payment for all services rendered. The OWNER and CLIENT jointly and severally shall be responsible for all debts incurred under this AGREEMENT as well as all debts incurred in collecting delinquent debts within the limits of the law. Payments will first be applied to accrued interest and then to the principal unpaid amount. All time spent and expenses incurred (including reasonable attorneys' fees) in connection with collection of any delinquent amount will be paid by CLIENT to LAPHAM ASSOCIATES in accordance with LAPHAM ASSOCIATES' current fee schedule.

CHANGED CONDITIONS AND ADDITIONAL FEES: Any changes, modifications, additions or substitutions made to this AGREEMENT shall be charged in addition to the fee quoted herein. Additional fees will be charged according to LAPHAM ASSOCIATES "Standard Service Rates" which is in effect at the time of the services. A copy of the current "Standard Service Rates" and any revisions thereto will be provided at the request of the CLIENT.

OUTSIDE CHARGES AND SUB-CONSULTANT FEES: The services of the CONSULTANT DO NOT include fees for permits, permit inspections, application fees, outside consultants, attorney fees, title searches, abstracts, reproductions, or any other "outside" or "sub-consultant" charges or services not specifically detailed. All such charges are subject to a 15% surcharge if invoiced through the offices of LAPHAM ASSOCIATES.

STANDARD OF CARE: LAPHAM ASSOCIATES will strive to perform services under this AGREEMENT in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this AGREEMENT, or in any report, opinion, document, or otherwise.

CONSTRUCTION COSTS: LAPHAM ASSOCIATES has no control over cost of labor and materials during competitive bidding, and, therefore, does not guarantee the accuracy of any statements of probable construction costs or any semi-detailed or detailed opinion of cost.

ASSIGNMENT: CLIENT agrees that no portion of this contract may be assigned to any party other than the assigns or representatives of LAPHAM ASSOCIATES.

GOVERNMENTAL ACTIONS: CONSULTANT shall not be liable for damages resulting from delays, actions, inactions, or conditions placed upon the CONSULTANT's work by Governmental Regulatory Agencies. No guarantee, either written or implied, is made regarding receipt of any governmental permit.

INSURANCE: LAPHAM ASSOCIATES maintains Workers Compensation and Employer's Liability Insurance in accordance with state law. In addition, LAPHAM ASSOCIATES maintains Comprehensive General Liability Automobile Liability and Professional Liability Insurance under such coverage that LAPHAM ASSOCIATES considers appropriate. The costs of coverage indicated above are included in LAPHAM ASSOCIATES' quoted fees. If CLIENT deems additional or increased limits of coverage necessary, LAPHAM ASSOCIATES will attempt to obtain the additional requested insurance and will invoice CLIENT separately for any costs associated with the increased coverage.

SITE ACCESS AND SITE SAFETY: CLIENT will grant or obtain free access to the site for all equipment and personnel necessary for CONSULTANT to perform the work set forth in this AGREEMENT. CLIENT will notify any and all possessors of the project site that CLIENT has granted CONSULTANT free access to the site. CONSULTANT will take reasonable precautions to minimize damage to the site, but it is understood by CLIENT that, in the normal course of our work, some damage may occur and the cost for restoration of such damage is not part of this AGREEMENT and is the responsibility of CLIENT.

CLIENT is responsible for accurately delineating the locations of all subterranean structures and utilities. CONSULTANT will take reasonable precautions to avoid known subterranean structures, and CLIENT waives any claim against CONSULTANT, and agrees to defend, indemnify, and hold CONSULTANT harmless from any claim or liability for injury or loss, including costs of defense, arising from damage done to subterranean structures and utilities not identified or accurately located. In addition, CLIENT agrees to compensate LAPHAM ASSOCIATES for any time spent or expenses incurred by CONSULTANT (including reasonable attorneys' fees) in defense of any such claim, with compensation to be based upon LAPHAM ASSOCIATES' prevailing fee schedule and expense reimbursement policy.

It is understood and agreed that CONSULTANT may take what CONSULTANT believes are prudent measures should CONSULTANT encounter situations that CONSULTANT believes create a danger to public health, safety, or welfare. CLIENT understands this situation and agrees to defend CONSULTANT and hold CONSULTANT harmless from claims arising from CONSULTANT's exercise of professional responsibility in this regard.

DISCOVERY OF UNANTICIPATED HAZARDOUS MATERIALS: Hazardous materials may exist at a site where there is no reason to believe they could or should be present. LAPHAM ASSOCIATES and CLIENT agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. LAPHAM ASSOCIATES and CLIENT also agree that the discovery of unanticipated hazardous materials may make it necessary for CONSULTANT to take immediate measures to protect health and safety. CLIENT agrees to compensate LAPHAM ASSOCIATES for any equipment decontamination or other costs incidental to the discovery of unanticipated hazardous materials.

LAPHAM ASSOCIATES agrees to notify CLIENT when unanticipated hazardous materials are encountered. CLIENT agrees to make any disclosures required by law to the appropriate governing agencies. CLIENT also agrees to hold CONSULTANT harmless for any and all consequences of disclosure made by CONSULTANT that are required by governing law. In the event CLIENT does not own the project site, CLIENT recognizes that it is CLIENT's responsibility to inform the property owner of the discovery of unanticipated hazardous materials or suspected hazardous materials.

Notwithstanding any other provisions of the AGREEMENT, CLIENT waives any claim against CONSULTANT and, to the maximum extent permitted by law, agrees to defend, indemnify, and save CONSULTANT harmless from any claim, liability, and/or defense costs for injury or loss arising from CONSULTANT's discovery of unanticipated hazardous materials or suspected hazardous materials, including, but not limited to, any costs created by delay of the project and any costs associated with possible reduction of the property's value.

CLIENT acknowledges that CONSULTANT has neither created nor contributed to the creation or existence of any type of hazardous or toxic waste, material, chemical, compound, or substance, or any other type of environmental hazard, contamination, or pollution, whether latent or patent, or the release thereof or the violation of any law or regulation relating thereto, at the site of the project, and it is understood that CONSULTANT shall have no liability for any such condition, and CLIENT shall indemnify CONSULTANT for any and all loss, cost, or damage actually sustained and incurred by CONSULTANT in connection therewith. CLIENT further agrees to be responsible for ultimate disposal of any samples secured by CONSULTANT which are found to be contaminated, including drill cuttings, drilling fluids, and decontamination fluids.

RISK ALLOCATION: Many risks potentially affect LAPHAM ASSOCIATES by virtue of entering into this AGREEMENT to perform professional and/or consulting services on behalf of CLIENT, one of which is the potential for human error by CONSULTANT. For CLIENT to obtain the benefit of a fee which includes a nominal allowance for dealing with LAPHAM ASSOCIATES' liability, CLIENT agrees to limit CONSULTANT's liability to CLIENT and to all other parties under all theories of recovery, including, but not limited to, breach of contract, warranty, tort (including negligence), strict or statutory liability, or any other cause of action for claims arising out of CONSULTANT's performance of the services described in this AGREEMENT. The aggregate liability of LAPHAM ASSOCIATES will not exceed \$50,000 or LAPHAM ASSOCIATES' total fee for the services rendered on the project, whichever is greater, for negligent professional acts, errors, or omissions, and both agree that they will not be liable to each other, under any circumstances, for special, indirect, consequential, or punitive damages arising out of or related to this AGREEMENT. CLIENT agrees to indemnify and hold harmless CONSULTANT from and against all liabilities in excess of the monetary limit established above. If CLIENT wishes, LAPHAM ASSOCIATES will be pleased to discuss higher limits and the associated charges involved.

The parties also agree that CLIENT will not seek damages in excess of the limitations indirectly through suits with other parties who may join LAPHAM ASSOCIATES as a third-party defendant, including their officers, employees, agents, affiliates, and subcontractors.

TERMINATION: upon ten (10) days written notice, either the CLIENT or LAPHAM ASSOCIATES may terminate all work under this AGREEMENT, with or without cause. Upon termination, LAPHAM ASSOCIATES shall be entitled to payment for all services rendered up to the time of the termination subject to all original terms of payment plus reasonable termination expenses, including, but not limited to the cost of completing analyses, records, and reports necessary to document job status at the time of termination.

ENFORCEMENT: Should actions be necessary to enforce any provision of the AGREEMENT or to collect any portion of fees payable, then CLIENT shall pay all costs of litigation, collection expenses, witness fees, court costs and reasonable attorney fees to LAPHAM ASSOCIATES should the CONSULTANT prevail. In the event CLIENT initiates a lawsuit against CONSULTANT due to an alleged failure to perform, error, omission, or negligence and the lawsuit is not successfully prosecuted, the CLIENT agrees to pay original and additional CONSULTANT fees and any and all costs of defense including reasonable attorney fees and associated court costs.

LEGAL JURISDICTIONAL AND SEVERABILITY: The parties to this AGREEMENT agree that any action brought to enforce any provision of this AGREEMENT shall only be brought in a court of competent jurisdiction located in the County in the State where the work is being completed. Should any provision of this AGREEMENT be unenforceable for any reason, all other provisions shall remain in force and enforceable to the maximum extent of the law.

DISPUTE RESOLUTION: All claims, disputes, and other matters in controversy between LAPHAM ASSOCIATES and CLIENT arising out of or in any way related to this AGREEMENT shall be submitted to binding arbitration by a panel of three (3) arbitrators. LAPHAM ASSOCIATES shall appoint one person not beneficially interested in LAPHAM ASSOCIATES as its arbitrator. CLIENT shall appoint one person not beneficially interested in CLIENT as its arbitrator. The two arbitrators so appointed shall then select a third person to serve as the third arbitrator. Payment for the services of the arbitrators shall be as determined by the arbitrators. A judgment on the award may be entered in the Circuit Court for the County of Clare, Michigan.

GOVERNING LAW: The law of the State of Michigan will govern the validity of this AGREEMENT, as well as their interpretation and performance. If any of the provisions contained in this AGREEMENT are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired. Limitations of liability and indemnities shall survive termination of this AGREEMENT.

CONSULTANT ACTING AS AGENT FOR CLIENT: As a normal practice, CONSULTANT will not act as the AGENT for OWNER/CLIENT unless the CLIENT provides written permission to do so, specifies extent, and accepts liability for AGENTS actions while acting in such a capacity.

PROPOSAL

December 3, 2009

Amanda Green, Recreation Director
City of Clare Parks and Recreation
202 West Fifth Street
Clare, MI 48617

Re: Professional Architectural and Engineering Services
Pettit Park Campground Shower Facility Addition

Dear Ms. Green:

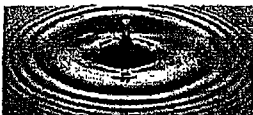
Thank you for the opportunity to provide this proposal for the architectural and engineering design services required for the proposed shower facility addition to the existing Pettit Park Campground bathroom building. We understand that the shower addition is to attach to, and align with, the existing bathroom building, the new addition is to contain two unisex shower stalls and a maintenance room, the shower stalls are to be ADA compliant and the aesthetics of the two structures are to match. We will provide your office the necessary number of completed and sealed drawings and specifications ready for bidding and construction.

The following assumptions have been made in the preparation of this proposal:

- The proposal includes one schematic layout submission to your office for review and approval. Final documents will incorporate any revisions and comments you may have.
- The proposal includes review of shop drawing submittals.
- The proposal does not include bidding assistance. We have assumed that The City of Clare will issue the drawings for bidding, will review the bids, select a contractor and issue a contract.
- Construction administration for the project is not included. It is assumed that The City of Clare will oversee the construction.
- No landscape or site lighting work is included.

No specific timeline was given in the RFP for completion of the design work but we believe all design work can be completed within 30 calendar days,

We propose to provide the above described services for a fixed fee of Three Thousand Nine Hundred Forty Dollars (\$3,940.00).



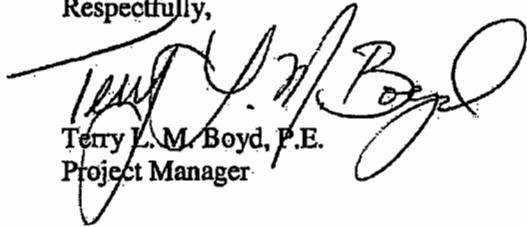
Based on our telephone conversation of November 25, it is our understanding that the sewage line from the existing bathrooms is sloped in the wrong direction (the bathroom building was built too low) and sewage backups occur. As you are aware, the proposed shower facility will also need to be connected to the sewer system and the current underground piping configuration will not work. We have discussed the situation with Mr. Bob Bonham from the DPW and believe installing a small grinder pump station to collect waste from these buildings is a viable and cost effective solution. Per your request, we propose to provide you with the necessary drawing and specifications for The City of Clare to bid and install a pump station solution.

We propose to provide the above described sewage solution for a fixed fee of Six Hundred Eighty Dollars (\$680.00).

We hope that this proposal meets your needs and expectations. Please feel free to contact me if you have any questions or comments.

We look forward to continuing our working relationship with The City of Clare.

Respectfully,



Terry L. M. Boyd, P.E.
Project Manager

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123 W Front Street, Traverse City, MI 49684

RESOLUTION 2009-0049

A RESOLUTION OF THE CLARE CITY COMMISSION APPROVING ENGINEERING PROPOSALS FOR DESIGN OF THE PETTIT PARK SHOWER FACILITY.

WHEREAS, top priority listed within the City of Clare Parks & Recreation Master Plan Capital Improvement Schedule for the 2009/2010 budget year is the construction of shower facilities for campground users at Pettit Park; and

WHEREAS, the City solicited design proposals to facilitate desired construction of the new shower facilities in Spring 2010; and

WHEREAS, two proposals for engineering/design services were received, the low bid for said services being made by Lapham Associates of Clare; and

WHEREAS, the City Staff has recommended the award of said design services work to Lapham Associates; and

WHEREAS, the Clare City Commission has reviewed and considered said proposal and recommendation.

NOW THEREFORE BE IT RESOLVED that the Clare City Commission hereby approves the award of design services for the proposed Pettit Park Shower Facilities to Lapham Associates of Clare for a cost not to exceed \$2,200.

The Resolution was introduced by Commissioner supported by Commissioner . The Resolution declared adopted by the following roll call vote:

YEAS:

NAYS:

ABSENT:

Resolution approved for adoption on this 21st day of December 2009.

Diane Schmidt, City Clerk