



CITY OF ANTIGO

PUBLIC WORKS COMMITTEE MEETING

MULTI-PURPOSE ROOM

Wednesday, September 22, 2021

CITY HALL, 700 EDISON STREET

5:30 PM

Call to Order

Discussion and Action May Occur on Any of the Following Agenda Items:

1. Approval of the Minutes from the June 23 and August 11, 2021 Meeting
2. Request for Children at Play or Slow Signs for Alley Located Between Watson and Aurora Streets (Requested by Corey and Elizabeth Ploeger)
3. Approval of the Amendment to Ruekert and Mielke Contract for Clermont Street Sanitary Sewer Project
4. Ruekert & Mielke Construction Staking & Submittal Review Proposal
5. 3-Party Design Agreement between the Wisconsin Department of Transportation, City of Antigo and Ruekert & Mileke for a STP-Urban Project on 7th Avenue from Dorr to Clermont Streets
6. Professional Services Agreement with Ayres Associates for the Design, Construction Administration and Inspection Associated with a FED EDA Grant Project to Extend Deleglise Street through the Saratoga Industrial Park
7. Consider Entering into a Professional Services Agreement with MSA Professionals for a City-Wide Water Leak Detection Study

Any Other Matters Authorized by Law to be Considered

Adjournment

Upon reasonable notice, efforts will be made to accommodate disabled individuals through appropriate aids and services. For additional information, contact Jaime Horswill, 700 Edison Street, Antigo, Wisconsin 54409. (715) 623-3633 extension 100. Members of and possibly a quorum of members of other governmental bodies may be in attendance to gather information. Any governmental body other than that specifically referred to above will take no action.

DATE MAILED: September 15, 2021

TOM BAUKNECHT

Corey & Elizabeth Ploeger
329 Watson Street
Antigo, WI 54409

City of Antigo
700 Edison Street
Antigo, WI 54409

RECEIVED

AUG 26 2021

CITY OF ANTIGO

August 23, 2021

Dear City of Antigo,

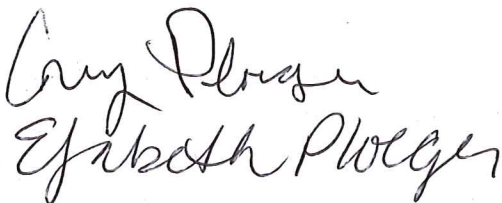
We are writing to request "children playing" or "slow" signs for the alley behind our home. The alley is located between Watson Street and Aurora Street. This particular location has 8 young children living there full-time that play together regularly. That is not counting the friends, nieces, nephews, and grandchildren that also come to visit.

This location is within a block, or less, of City Park, East Elementary, Frisch Greenhouse, and Antigo Cemetery. This alley has vehicles going through it regularly every day, and at times can be very busy. As a neighborhood we have bought multiple "children playing" signs from places like Walmart & Menards. These small signs are often not acknowledged by the drivers, or have been stolen.

We are hoping that signs from the City of Antigo will make people see them, unable to remove them, and hopefully acknowledge them.

Thank you for your time and consideration.

Sincerely,



Corey Ploeger
Elizabeth Ploeger
(715) 350-3015

Attachment: PW Request (5118 : Children at Play sign)



To: Mayor and City Council
From: Charley Brinkmeier, Land Surveyor/Project Manager
Date: September 22, 2021
Re: Approval of the Amendment to Ruekert and Mielke Contract for Clermont Street Sanitary Sewer Project

Do to the contamination meeting with the Wis DNR and extra design work on the piles, R&M went over their original estimate of \$7,500 by an additional \$2,500. The extra work is very much appreciated and we would recommend approval of the additional \$2,500

June 7, 2021

Mr. Charley Brinkmeier, P.E.
Public Works Director
City of Antigo
700 Edison Street
Antigo, WI 54409

Re: Clermont Street Sanitary Sewer Stream Crossing
Amendment to Letter Agreement for Design Services

Dear Mr. Brinkmeier:

The level of work for the design of the Clermont Street Sanitary Sewer Stream Crossing was greater than expected in our May 28, 2020 letter proposal. The contaminated soils at the work site from the activities of City Gas Company required additional engineering services to ensure the design adequately addressed the site conditions in compliance with Wisconsin Department of Natural Resources (WDNR) regulations. Additional engineering services were also required to address proper casing support for the stream crossing.

The following additional work tasks were needed for design of the sanitary sewer stream crossing:

Task 1 Hazardous Material Handling

- Reviewed Phase 1 site investigation report to identify the limits and levels of contamination on the project site.
- Reviewed project with Mr. John Hunt, WDNR, to determine design requirements to meet Wisconsin Administrative Code regulations. Performed coordination of project with Mr. Hunt.
- Determined requirements for handling hazardous material.
- Completed WDNR Form 4400-315 "Recommended Template for Request to Manage Materials" under Wisconsin Administrative Code NR 718.12 or NR 718.15. Responded to WDNR questions and obtained signatures and approval of the form.
- Prepared work plan to conform with regulatory requirements.
- Performed design and prepared plans and specifications for impervious stockpile liner and berm for excavated material. Prepared plan showing temporary stockpile.
- Designed and prepared trench cut-off Detail on Plan Sheet DT-01.
- Modified design to permit backfill of excavated contaminated material.
- Performed design and developed specification for handling trench dewatering.
- Expanded bid from to incorporate handling of the hazardous material conditions.
- Prepared construction sequence to ensure compliance with hazardous material permit.

Task 2 Designed helical pier supports to provide long-term service and no settlement.

Task 3 Modified plans to show realignment of stream crossing.

Task 4 Added rigid insulation location and specification to Plan Sheet SW-01 to address WDNR plan review comments.

The above described engineering services were supplied on a time and expense basis. The original budget of \$7,500.00 is increased \$1,500.00 for the additional design services associated with hazardous material handling and \$1,000.00 for additional design services for the helical pier supports. The revised budget is \$10,000.00 for design of the stream crossing.



Mr. Charley Brinkmeier, P.E.
Amendment for Clermont Street Sanitary Sewer Stream Crossing
June 7, 2021
Page 2

The above described professional services are provided to you in accordance with the two page RM Standard Terms & Conditions (Engineering Services) dated June 17, 2014, attached in the original agreement. Please indicate your acceptance of this agreement amendment by having the appropriate authorized official(s) affix their signature(s) where indicated and returning a fully executed copy to our office.

If you have any questions or comments, please feel free to contact me (920) 876-6382.

Respectfully,

RUEKERT & MIELKE, INC.

A handwritten signature in blue ink, appearing to read 'Kevin J. Wagner'.

Kevin J. Wagner, P.E. (WI)
Fox Valley Office Manager
kwagner@ruekert-mielke.com

KJW:cal

Enclosure(s)

cc: Taryn S. Nall, P.E., Ruekert & Mielke, Inc.

Attachment: R&M Clermont St Amendment to Agreement (4100 : Ruekert and Mielke Amendment to Contract)



Mr. Charley Brinkmeier, P.E.
 Amendment for Clermont Street Sanitary Sewer Stream Crossing
 June 7, 2021
 Page 3

CLIENT NAME:

City of Antigo, Wisconsin

ENGINEER:

Ruekert & Mielke, Inc.

By: _____

Title: _____

Date: _____

By: _____

Stanley R. Sugden, P.E.

Title: President

Date: June 7, 2021

ATTEST:

By: _____

Title: _____

Date: _____

Designated Representative:

Name: _____

Title: _____

Phone Number: _____

Designated Representative:

Name: Kevin J. Wagner, P.E.

Title: Project Manager

Phone Number: (920) 876-6382

Attachment: R&M Clermont St Amendment to Agreement (4100 : Ruekert and Mielke Amendment to Contract)



To: Mayor and City Council
From: Charley Brinkmeier, Land Surveyor/Project Manager
Date: September 22, 2021
Re: Ruekert & Mielke Construction Staking & Submittal Review Proposal

We asked R&M to give us a proposal to complete the construction, staking and submittal reviews for the Clermont Street Sanitary Sewer project. They have submitted a proposal for \$2,500 which we are recommending the committee approves.

June 7, 2021

Mr. Charley Brinkmeier, P.E.
Public Works Director
City of Antigo
700 Edison Street
Antigo, WI 54409

Re: Clermont Street Sanitary Sewer Stream Crossing
Proposal for Construction Services

Dear Mr. Brinkmeier:

Ruekert & Mielke, Inc. (R/M) is pleased to submit a proposal to provide engineering services to assist the City of Antigo with construction to replace the sanitary sewer stream crossing southeast of the intersection of Clermont Street and 10th Avenue. The work authorized by this agreement includes shop drawing review and processing, and construction staking of the sanitary sewer improvements.

The above described engineering services will be supplied on a time and expense basis and will not exceed \$2,500.

The above described professional services will be provided to you in accordance with the attached two page R/M Standard Terms & Conditions (Engineering Services) dated June 17, 2014, which are made part of this agreement by reference. Please indicate your acceptance of this agreement by having the appropriate authorized official(s) affix their signature(s) where indicated and returning a fully executed copy to our office.

If you have any questions or comments, please feel free to contact me (920) 876-6382.

Respectfully,

RUEKERT & MIELKE, INC.



Kevin J. Wagner, P.E. (WI)
Fox Valley Office Manager
kwagner@ruekert-mielke.com

KJW:cal

Enclosure(s)

cc: Taryn S. Nall, P.E., Ruekert & Mielke, Inc.

Attachment: R&M Construction Services (4102 : Ruekert & Mielke Construction Staking & Submittal Review)



Mr. Charley Brinkmeier, P.E.
 Proposal for Construction Services
 June 7, 2021
 Page 2

CLIENT NAME:

City of Antigo, Wisconsin

ENGINEER:

Ruekert & Mielke, Inc.

By: _____

Title: _____

Date: _____

By: _____

Stanley R. Sugden, P.E.

Title: President

Date: June 7, 2021

ATTEST:

By: _____

Title: _____

Date: _____

Designated Representative:

Name: _____

Title: _____

Phone Number: _____

Designated Representative:

Name: Kevin J. Wagner, P.E.

Title: Project Manager

Phone Number: (920) 876-6382

Attachment: R&M Construction Services (4102 : Ruekert & Mielke Construction Staking & Submittal Review)

A. Standards of Performance

The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.

B. Authorized Representative

With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and duties and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Assignment on behalf of the respective party whom the individual represents.

C. Payments to Engineer

Invoices will be prepared in accordance with Engineer's standard invoicing practices and will be submitted to Owner by Engineer monthly, unless otherwise agreed. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice therefore, the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges.

D. Ownership and Reuse of Documents

All documents prepared or furnished by Engineer pursuant to this Agreement are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Engineer grants Owner a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the documents. Such limited license shall not create any rights in third parties. Reuse of any documents pertaining to this Agreement by Owner shall be at Owner's sole risk; and Owner agrees to indemnify, defend, and hold Engineer harmless from all claims, damages, and expenses including reasonable attorney's fees arising out of such reuse of documents by Owner or by others acting through Owner.

E. Construction Review

Engineer will observe the work as agreed to for general compliance with the construction documents. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with Laws and Regulations applicable to that contractor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any contractor. Engineer has no stop work authority.

F. Environmental

Engineer assumes no liability for the detection or removal of any hazardous substances found at or adjacent to the Project site.

G. Owner Provided Information

Engineer shall have the right to rely on the accuracy of any information provided by Owner. Engineer will not review this information for accuracy.

H. Permits and Approvals

It is the responsibility of the Owner to obtain all necessary permits and approvals for the Project. Engineer will assist the Owner in obtaining permits and approvals as mutually agreed to in writing.

I. Access

Owner shall arrange for safe access to and make all provisions for Engineer and Engineer's consultants to enter upon public and private property as required for Engineer to perform services under this Agreement.

J. Limit of Liability

To the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, employees, agents, and consultants, or any of them to Owner and anyone claiming by, through, or under Owner, for any and all injuries, losses, damages and expenses, whatsoever arising out of, resulting from, or in any way related to this Agreement from any cause or causes including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract or warranty, express or implied, of Engineer or Engineer's officers, directors, partners, employees, agents, and consultants, or any of them, shall not exceed the total amount of \$2,000,000.

K. Insurance

Engineer will maintain insurance coverage for Workers' Compensation, General Liability, and Automobile Liability and will provide certificates of insurance to Owner upon request.

L. Termination of Contract

Either party may at any time terminate this Agreement with 7 days written notice for cause in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. Owner may terminate this Agreement for convenience with 30 days written notice, or the Project may be suspended by Owner with 30 days written notice. In the event of suspension or cancellation for convenience by Owner, Owner shall pay to Engineer all amounts owing to Engineer under this Agreement, for all work performed up to the effective date of notice.

M. Indemnification and Allocation of Risk

1. To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, Owner's officers, directors, partners, and employees from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of Engineer or Engineer's officers, directors, partners, employees, and consultants in the performance of Engineer's services under this Agreement.

2. To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer, Engineer's officers, directors, partners, employees, and consultants from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of Owner or Owner's officers, directors, partners, employees, and consultants with respect to this Agreement.

3. To the fullest extent permitted by law, Engineer's total liability to Owner and anyone claiming by, through, or under Owner for any injuries, losses, damages and expenses caused in part by the negligence of Engineer and in part by the negligence of Owner or any other negligent entity or individual, shall not exceed the percentage share that Engineer's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

4. The indemnification provision of paragraph M.1. is subject to and limited by the provisions agreed to by Owner and Engineer in paragraph J. "Limit of Liability," of this Agreement.

N. Independent Contractor

All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either Owner or the Engineer. Engineer's services under this Agreement are being performed solely for the Owner's benefit, and no other entity shall have any claim against Engineer because of this Agreement or the performance or nonperformance of services hereunder. Owner agrees to include a provision in all contracts with contractors and other entities involved in this Project to carry out the intent of this paragraph.

O. Force Majeure

Engineer shall not be liable for any loss or damage due to failure or delay in rendering any service called for under this Agreement resulting from any cause beyond Engineer's reasonable control.

P. Severability and Waiver of Provisions

Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

Q. Dispute Resolution

Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in questions between them arising out or relating to this Agreement or the breach thereof ("disputes") to mediation as a condition precedent to litigation.

R. Public Records

Engineer agrees to comply with the requirements of Wisconsin Statutes Sections 19.32 to 19.39 and Sections 19.81 to 19.98 – Wisconsin Public Records Law and Open Meetings Law.

END OF DOCUMENT



To: Mayor and City Council
From: Mark Desotell, Director of Administrative Services
Date: September 22, 2021
Re: 3-Party Design Agreement between the Wisconsin Department of Transportation, City of Antigo and Reukert & Mileke for a STP-Urban Project on 7th Avenue from Dorr to Clermont Streets

As part of the process for the advancement of the 7th Avenue (Dorr to Clermont Streets) reconstruction project, staff recommended the use of Ruekert & Mielke to WisDOT as the design consultant subsequent to a Quality Based Selection process. WisDOT then negotiated a 3-party contract for the costs associated with the anticipated design services.

Those negotiations address not only the cost of design services but also identify the responsibilities of each party to the agreement. The attached 3-party agreement as drafted by WisDOT was submitted to all parties for review. Staff sent a copy for review by the City attorney with no recommended changes to be considered. It is my recommendation that the Public Works Committee approve the 3-party agreement for the design of 7th Avenue from Dorr to Clermont Streets accordingly.

The project is scheduled to include a new asphalt surface with curb/gutter and sidewalk replacements without the need to address water main or sanitary sewers. It is anticipated that storm sewer corrections will be addressed. Any lead service lines will also be evaluated for replacement.



To: Mayor and City Council
From: Mark Desotell, Director of Administrative Services
Date: September 22, 2021
Re: Professional Services Agreement with Ayres Associates for the Design, Construction Administration and Inspection Associated with a FED EDA Grant Project to Extend Deeglise Street through the Saratoga Industrial Park

We are currently in the negotiation phase with Ayres Associates as the selected design and construction management firm for the project. At the time of the agenda packet deadline final information was not available for inclusion into the Committee packets. If final information becomes available it will either be distributed ahead of or at the meeting accordingly. If, not, the agenda item will be "pulled" accordingly.

Please feel free to reach out to me with any questions.



To: Mayor and City Council
From: Mark Desotell, Director of Administrative Services
Date: September 22, 2021
Re: Consider Entering into a Professional Services Agreement with MSA Professionals for a City-Wide Water Leak Detection Study

MSA Professionals were hired to conduct a Water System Study for the replacement of the water tower at the treatment plant and the rehabilitation of the industrial site tower north of Hwy 64. The study also include the analysis for a future consideration of an additional and/or a replacement well. The results of that study will be presented to the Public Works Committee in October.

During a preliminary review of the study it was evident that the City is experiencing significant water losses in mains and service lines that is not being accounted for amongst production, water-meter billings and known losses. It was decided that a Water Meter Detection Study would be the appropriate next step in identifying the sources of water loss within the system. We conducted a similar effort for sanitary sewers (smoke testing) before the recent Downtown construction work.

It is my recommendation to hire MSA Professionals to conduct and summarize this acoustic-style testing so that the date is available for corrective action efforts and for the next phase of the Water System Study for addressing water tower design parameters.

A copy of the proposed Professional Services Agreement (PSA) is in your packets; it is also being reviewed by the city Attorney as well.



Professional Services Agreement

This AGREEMENT (Agreement) is made today September 22, 2021 by and between CITY OF ANTIGO (OWNER) and MSA PROFESSIONAL SERVICES, INC. (MSA), which agree as follows:

Project Name: Water Leak Detection Study

The scope of the work authorized is: See Attached Scope of Services (3 pages)

The schedule to perform the work is: Approximate Start Date: October 1, 2021
Approximate Completion Date: Dec. 2021

The lump sum fee for the work is: \$15,900

All services shall be performed in accordance with the General Terms and Conditions of MSA, which is attached and made part of this Agreement. Any attachments or exhibits referenced in this Agreement are made part of this Agreement. Payment for these services will be on a lump sum basis.

Approval: Authorization to proceed is acknowledged by signatures of the parties to this Agreement.

CITY OF ANTIGO

MSA PROFESSIONAL SERVICES, INC.

Bill Brandt
Mayor
Date: _____

Scott Martin
Scott Martin, P.E.
Regional Public Works Manager
Date: 9/15/21

Attest:

Kaye Matucheski
City Clerk/Treasurer
Date: _____

Phil Kriesel
Phil Kriesel,
Team Leader
Date: 9/15/21

700 Edison Street
Antigo, WI 54409
Phone: 715-623-3633

1835 N Stevens Street
Rhineland, WI 54501
Phone: 715-362-3244

ATTACHMENT B: SCOPE OF SERVICES

PROJECT UNDERSTANDING AND APPROACH

The City of Antigo municipal water system consists of the following:

- 69.3 miles of watermain
- 565 hydrants

MSA intends to coordinate and complete a water leak detection survey in an effort to identify locations of leaks in the water system.

Note: Locating leaks on plastic water piping is less reliable as compared to metal water piping.

SCOPE OF SERVICES

1. On-site leak detection survey, which includes the following:
 - Monitor all hydrants and valves, if necessary, with Gutermann AquaScope 3 to determine if a leak is occurring.
 - All areas where a leak is confirmed will be further investigated with a Gutermann AquaScan 610 computerized correlator to pinpoint the location of the leak.
 - Labor and equipment provided by Waterworks Services LLC, Wausau, Wisconsin.
2. Correspondence with Owner
 - Phone and email correspondence to schedule leak detection survey and address miscellaneous questions related to the project.
3. Preparation of a summary memo and a map noting the locations of all located leaks.
 - Prepare and deliver 1 printed copy and 1 electronic copy of the final summary memo and map for the Owner.
4. Preparation of Capital Improvement Plan focused on addressing leaks identified
 - Group projects of similar construction needs
 - Prepare Preliminary Cost Estimates

OWNER TO PROVIDE

- Access to any and all relevant structures and equipment as necessary to complete evaluation.
- Access to hydrants and operation of valves as required.
- Copies of any reports, maintenance evaluations, historic pipe materials, or other determinations performed to date.

ADDITIONAL SERVICES – not included in this scope of services

- Additional meetings with Owner
- Emergency service calls to locate leaks

**MSA PROFESSIONAL SERVICES, INC. (MSA) –
GENERAL TERMS AND CONDITIONS OF SERVICES (PUBLIC - Wisconsin)**

1. **Scope and Fee.** The quoted fees and scope of services constitute the best estimate of the fees and tasks required to perform the services as defined. This agreement upon execution by both parties hereto, can be amended only by written instrument signed by both parties. 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 reveal a change in direction which may alter the scope. MSA will promptly inform the OWNER in writing of such situations so that changes in this agreement can be made as required. The OWNER agrees to clarify and define project requirements and to provide such legal, accounting and insurance counseling services as may be required for the project.

2. **Billing.** MSA will bill the OWNER monthly with net payment due upon receipt. Past due balances shall be subject to an interest charge at a rate of 12% per year from said thirtieth day. In addition, MSA may, after giving seven days written notice, suspend service under any agreement until the OWNER has paid in full all amounts due for services rendered and expenses incurred, including the interest charge on past due invoices.

3. **Costs and Schedules.** Costs and schedule commitments shall be subject to change for delays caused by the OWNER's failure to provide specified facilities or information or for delays caused by unpredictable occurrences including, without limitation, fires, floods, riots, strikes, unavailability of labor or materials, delays or defaults, by suppliers of materials or services, process shutdowns, acts of God or the public enemy, or acts of regulations of any governmental agency. Temporary delays of services caused by any of the above which result in additional costs beyond those outlined may require renegotiation of this agreement.

4. **Access to Site.** Owner shall furnish right-of-entry on the project site for MSA and, if the site is not owned by Owner, warrants that permission has been granted to make planned explorations pursuant to the scope of services. MSA will take reasonable precautions to minimize damage to the site from use of equipment, but has not included costs for restoration of damage that may result and shall not be responsible for such costs.

5. **Location of Utilities.** Consultant shall use reasonable means to identify the location of buried utilities in the areas of subsurface exploration and shall take reasonable precautions to avoid any damage to the utilities noted. However, Owner agrees to indemnify and defend Consultant in the event of damage or injury arising from damage to or interference with subsurface structures or utilities which result from inaccuracies in information of instructions which have been furnished to Consultant by others.

6. **Professional Representative.** MSA intends to serve as the OWNER's professional representative for those services as defined in this agreement, and to provide advice and consultation to the OWNER as a professional. Any opinions of probable project costs, reviews and observations, and other decisions made by MSA for the OWNER are rendered on the basis of experience and qualifications and represents the professional judgment of MSA. However, MSA cannot and does not guarantee that proposals, bid or actual project or construction costs will not vary from the opinion of probable cost prepared by it.

7. **Construction.** This agreement shall not be construed as giving MSA, 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.

8. **Standard of Care.** In conducting the services, MSA will apply present professional, engineering and/or scientific judgment, and use a level of effort consistent with current professional standards in the same or similar locality under similar circumstances in performing the Services. The OWNER acknowledges that "current professional standards" shall mean the standard for professional services, measured as of the time those services are rendered, and not according to later standards, if such later standards purport to impose a higher degree of care upon MSA.

MSA does not make any warranty or guarantee, expressed or implied, nor have any agreement or contract for services subject to the provisions of any uniform commercial code. Similarly, MSA will not accept those terms and conditions offered by the OWNER in its purchase order, requisition, or notice of authorization to proceed, except as set forth herein or expressly agreed to in writing. Written acknowledgement 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.

9. **Construction Site Visits.** MSA shall make visits to the site at intervals appropriate to the various stages of construction as MSA deems necessary in order to observe, as an experienced and qualified design professional, the progress and quality of the various aspects of Contractor's work.

The purpose of MSA's visits to, and representation at the site, will be to enable MSA to better carry out the duties and responsibilities assigned to and undertaken by MSA during the Construction Phase, and in addition, by the exercise of MSA's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. On the other hand, MSA shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct or have control over Contractor's work nor shall MSA have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. Accordingly, MSA neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

10. **Termination.** This Agreement shall commence upon execution and shall remain in effect until terminated by either party, at such party's discretion, on not less than thirty (30) days' advance written notice. The effective date of the termination is the thirtieth day after the non-terminating party's receipt of the notice of termination. If MSA terminates the Agreement, the OWNER may, at its option, extend the terms of this Agreement to the extent necessary for MSA to complete any services that were ordered prior to the effective date of termination. If OWNER terminates this Agreement, OWNER shall pay MSA for all services performed prior to MSA's receipt of the notice of termination and for all work performed and/or expenses incurred by MSA in terminating Services begun after MSA's receipt of the termination notice. Termination hereunder shall operate to discharge only those obligations which are executory by either party on and after the effective date of termination. These General Terms and Conditions shall survive the completion of the services performed hereunder or the Termination of this Agreement for any cause.

This agreement cannot be changed or terminated orally. No waiver of compliance with any provision or condition hereof should be effective unless agreed in writing and duly executed by the parties hereto.

11. **Betterment.** If, due to MSA's error, any required or necessary item or component of the project is omitted from the construction documents, MSA's liability shall be limited to the reasonable costs of correction of the construction, less what OWNER'S cost of including the omitted item or component in the original construction would have been had the item or component not been omitted. It is intended by this provision that MSA will not be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the project.

12. **Hazardous Substances.** OWNER acknowledges and agrees that MSA has had no role in generating, treating, storing, or disposing of hazardous substances or materials which may be present at the project site, and MSA has not benefited from the processes that produced such hazardous substances or materials. Any hazardous substances or materials encountered by or associated with Services provided by MSA on the project shall at no time be or become the property of MSA. MSA shall not be deemed to possess or control any hazardous substance or material at any time; arrangements for the treatment, storage, transport, or disposal of any hazardous substances or materials, which shall be made by MSA, are made solely and exclusively on OWNER's behalf for OWNER's benefit and at OWNER's direction. Nothing contained within this Agreement shall be construed or interpreted as requiring MSA to assume the status of a generator, storer, treater, or disposal facility as defined in any federal, state, or local statute, regulation, or rule governing treatment, storage, transport, and/or disposal of hazardous substances or materials.

All samples of hazardous substances, materials or contaminants are the property and responsibility of OWNER and shall be returned to OWNER at the end of a project for proper disposal. Alternate arrangements to ship such samples directly to a licensed disposal facility may be made at OWNER's request and expense and subject to this subparagraph.

13. **Insurance.** MSA will maintain insurance coverage for: Worker's Compensation, General Liability, and Professional Liability. MSA will provide information as to specific limits upon written request. If the OWNER requires coverages or limits in addition to those in effect as of the date of the agreement, premiums for additional insurance shall be paid by the OWNER. The liability of MSA to the OWNER for any indemnity commitments, or for any damages arising in any way out of performance of this contract is limited to such insurance coverages and amount which MSA has in effect.

14. **Reuse of Documents.** Reuse of any documents and/or services pertaining to this project by the OWNER or extensions of this project or on any other project shall be at the OWNER's sole risk. The OWNER agrees to defend, indemnify, and hold harmless MSA for all claims, damages, and expenses including attorneys' fees and costs arising out of such reuse of the documents and/or services by the OWNER or by others acting through the OWNER.

15. **Indemnification.** To the fullest extent permitted by law, MSA shall indemnify and hold harmless, OWNER, and OWNER's officers, directors, members, partners, agents, consultants, and employees (hereinafter "OWNER") from reasonable claims, costs, losses, and damages, including reasonable attorney's fees, arising out of or relating to the PROJECT, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of MSA or MSA's officers, directors, members, partners, agents, employees, or Consultants (hereinafter "MSA"). In no event shall this indemnity agreement apply to claims between the OWNER and MSA. This indemnity agreement applies solely to claims of third parties. This agreement does not give rise to any duty on the part of MSA to defend the OWNER on any claim arising under this agreement.

To the fullest extent permitted by law, MSA's total liability to OWNER and anyone claiming by, through, or under OWNER for any cost, loss or damages caused in part or by the negligence of MSA and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that MSA's negligence bears to the total negligence of OWNER, MSA, and all other negligent entities and individuals.

16. **Dispute Resolution.** OWNER and MSA desire to resolve any disputes or areas of disagreement involving the subject matter of this Agreement by a mechanism that facilitates resolution of disputes by negotiation rather than by litigation. OWNER and MSA also acknowledge that issues and problems may arise after execution of this Agreement which were not anticipated or are not resolved by specific provisions in this Agreement. Accordingly, both OWNER and MSA will endeavor to settle all controversies, claims, counterclaims, disputes, and other matters in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, unless OWNER and MSA mutually agree otherwise. Demand for mediation shall be filed in writing with the other party to this Agreement. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. Neither demand for mediation nor any term of this Dispute Resolution clause shall prevent the filing of a legal action where failing to do so may bar the action because of the applicable statute of limitations. If despite the good faith efforts of OWNER and MSA any controversy, claim, counterclaim, dispute, or other matter is not resolved through negotiation or mediation, OWNER and MSA agree and consent that such matter may be resolved through legal action in any state or federal court having jurisdiction.

17. **Exclusion of Special, Indirect, Consequential and Liquidated Damages.** Consultant 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 or revenue, loss of capital, delay damages, loss of goodwill, claim of third parties, or similar damages arising out of or connected in any way to the project or this contract unless caused by negligence or willful misconduct of MSA.

18. **State Law.** This agreement shall be construed and interpreted in accordance with the laws of the State of Wisconsin.

19. **Jurisdiction.** OWNER hereby irrevocably submits to the jurisdiction of the state courts of the State of Wisconsin for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement. OWNER and MSA further consent that the venue for any legal proceedings related to this Agreement shall be Langlade County, Wisconsin.

20. **Understanding.** This agreement contains the entire understanding between the parties on the subject matter hereof and no representations. Inducements, promises or agreements not embodied herein (unless agreed in writing duly executed) shall be of any force or effect, and this agreement supersedes any other prior understanding entered into between the parties on the subject matter hereto.