

CITY OF FRANKLIN
COMMON COUNCIL MEETING*
FRANKLIN CITY HALL – COMMON COUNCIL CHAMBERS
9229 WEST LOOMIS ROAD, FRANKLIN, WISCONSIN
AGENDA**
TUESDAY, FEBRUARY 21, 2017 AT 6:30 P.M.

- A. Call to Order and Roll Call.
- B. 1. Citizen Comment Period.
- C. Approval of Minutes:
Regular Common Council Meeting of February 7, 2017.
- D. Hearings.
- E. Organizational Business.
- F. Letters and Petitions.
- G. Reports and Recommendations:
 - 1. Donations to the Franklin Police Department: \$1,000 donation from N & S Towing Inc; \$2,500 donation from Savatore Purpero of C.W. Purpero, Inc.; \$25 donation from Mary Thebert and a \$200 donation from Patricia and Anthony Farchione. All to be deposited into the Police Canine Donation Account.
 - 2. Change in Accounting Treatment for Ryan Creek Sanitary Interceptor Sewer recommended by the City's new Auditors, Baker Tilley, LLC.
 - 3. Status Report from Staff Regarding the Ballpark Commons Development at and near The Rock Sports Complex, 7900 West Crystal Ridge Road.
 - 4. Franklin Senior Citizens, Inc. Program Update.
 - 5. Franklin Senior Citizens Travel Program Update for 2016 Year End.
 - 6. Request for Common Council Endorsement and Approval to Place a Fourth Advanced Life Support (ALS) Ambulance in Service.
 - 7. Conservation Easement at 11906-11908 West Loomis Road (Mills Hotel Wyoming, LLC., Applicant).
 - 8. An Ordinance to Amend Ordinance 2016-2240, An Ordinance Adopting the 2017 Annual Budgets for TID 3 and TID 4 for the City of Franklin for Fiscal Year 2017, to Provide Additional Appropriations for Tree Plantings in Connection with the South 27th Street Reconstruction and Professional Services.
 - 9. A Resolution Approving An Intergovernmental Cooperation Agreement Between the City of Franklin and the City Of Oak Creek Outlining Responsibilities for a Shared Street Tree Planting Project Related to the South 27th Street Reconstruction Project.
 - 10. A Contract with Ruckert & Mielke, Inc. for a Professional Services Task Order Related to Engineering in Area D, Roughly Between West Oakwood Road and West South County Line Road and South 27th Street and South 42nd Street.

11. Standards, Findings and Decision of the City of Franklin Common Council Upon the Application of Indian Community School of Milwaukee, Inc., for a Special Exception to Certain Natural Resource Provisions of the City of Franklin Unified Development Ordinance.
12. An Ordinance to Amend §15-3.0439 of the Unified Development Ordinance Planned Development District No. 34 (Hampton Inn and Suites Plus Mixed Use Commercial) to Allow for the Installation of New Signage, Canopies, Bollards and Reconfiguration of the Queuing Lanes at Mister Car Wash #488 498 (7700 West Rawson Avenue (David Hail, Vice President of Research and Development at Mister Car Wash, Applicant).
13. Status Update from the Quarry Monitoring Committee Pertaining to Quarry Monitoring.
14. Review of the Professional Services Agreement Between the City of Franklin and Stantec Consulting Services, Inc. for Quarry Monitoring Services for 2017.
15. Moving Franklin Forward. Common Council Action to Direct and Support All City of Franklin Public Officials and Staff to Take all Reasonable and Necessary Actions in Furtherance of the City of Franklin's Vision Statement "to Enhance the Quality of Life for Present and Future Generations by Providing Economic Growth through the Highest Quality of Residential, Recreational, and Business Development in Southeastern Wisconsin"; to Promote the City of Franklin Mission Statement "to Make Franklin the Primary Destination to Live and Learn, Work and Play, and to Do Business"; and to Repeal and Rescind any Prior Actions and Directions Inconsistent Therewith (Ald. Barber; Ald. Taylor).
16. Survey of Property Owners for the Extension of Sanitary Sewer and Water Utilities in a Corridor Along S. 76th Street from W. Oakwood Road to W. 1,465 Feet North of W. Ryan Road (South 100); North Side of W. Oakwood Road From a Point 670 Feet East of S. 76th Street to a Point 1,320' West of S. 76th Street; and W. Ryan Road (South 100) From a Point 1,250 Feet East of S. 76th Street to a Point 2,660 Feet West of S. 76th Street.
17. An Ordinance to Amend Ordinance 2016-2240, an Ordinance Adopting the 2017 Annual Budgets for the Grants Fund for the City of Franklin for Fiscal Year 2017, to Provide Additional Appropriations for Health Grants.
18. Request for Common Council Approval of a 5K Community Run/Walk on May 6, 2017.
19. Health Department Remodel Project Update and Authorization to Execute Asbestos Abatement Agreement with Professional Asbestos Removal & Survey Services Corp.
20. A Resolution Designating Public Depositories for the City of Franklin.
21. Professional Services Agreement Between the City of Franklin and Racine County for Services to Verify a Certified Soil Tester's Soil and Site Evaluation.

H. Licenses and Permits.

Miscellaneous Licenses from License Committee Meeting of February 21, 2017.

I. Bills.

Request for Approval of Vouchers and Payroll.

J. Adjournment.

*Notice is given that a majority of the Community Development Authority, Plan Commission, Quarry Monitoring Committee and Economic Development Commission may attend this meeting to gather information about an agenda item over which the Community Development Authority, Plan Commission, Quarry Monitoring Committee and Economic Development Commission has decision-making responsibility. This may constitute a meeting of the Community Development Authority, Plan Commission, Quarry Monitoring Committee and Economic Development Commission, per State ex rel. Badke v. Greendale Village Board, even though the Community Development Authority, Plan Commission, Quarry Monitoring Committee and Economic Development Commission will not take formal action at this meeting.

**Supporting documentation and details of these agenda items are available at City Hall during normal business hours.

[Note: Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information, contact the City Clerk's office at (414) 425-7500.]

REMINDERS:

February 21	Spring Primary Election	7:00 a.m. to 8:00 p.m.
February 23	Plan Commission Meeting	7:00 p.m.
March 6	Committee of the Whole	6:30 p.m.
March 7	Common Council Meeting	6:30 p.m.
March 9	Plan Commission Meeting	7:00 p.m.
March 21	Common Council Meeting	6:30 p.m.
March 23	Plan Commission Meeting	7:00 p.m.

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Community, 20 Single-Level Townhomes and Arboretum (9801 South 27th Street).

BIDS TO REVISE ENGINEERING
AND FINANCIAL SERVICES
PLAN WITHIN TID 4

G.3.

Alderman Taylor moved to direct staff to solicit bids to revise engineering and financial services plans within Tax Increment District No. 4 to support development activity with sewer and water in Area D, an area approximately between West Oakwood and West South County Line Roads and South 27th and South 42nd Streets, and further that staff have discussions with the Milwaukee Metropolitan Sewerage District and neighboring communities for possible cost-sharing, and return to the Common Council. Seconded by Alderwoman S. Mayer. On roll call, Alderman D. Mayer, Alderwoman Wilhelm, Alderman Taylor, and Alderwoman S. Mayer voted Aye; Alderman Dandrea and Alderman Barber voted No. Motion carried.

Alderman Taylor was excused from the meeting at 7:55 p.m.

RES. 2017-7247
SPECIAL USE AT 9563 SOUTH
60TH STREET (NEW RAM
EXPRESS, LLC, APPLICANT)

G.4.

Alderman Dandrea moved to adopt Resolution No. 2017-7247, A RESOLUTION IMPOSING CONDITIONS AND RESTRICTIONS FOR THE APPROVAL OF A SPECIAL USE FOR AN OVER-THE-ROAD TRUCKING COMPANY BUSINESS USE UPON PROPERTY LOCATED AT 9563 SOUTH 60TH STREET (MILICA RASIC, OWNER, NEW RAM EXPRESS, LLC, APPLICANT). Seconded by Alderwoman Wilhelm. All voted Aye; motion carried.

RES. 2017-7248
CSM AT 11906-11908 WEST
LOOMIS ROAD (MILLS HOTEL
WYOMING LLC, APPLICANT)

G.5.

Alderwoman S. Mayer moved to table a Resolution conditionally approving a 3 lot Certified Survey Map (Mills Hotel Wyoming, LLC, Applicant) (11906-11908 West Loomis Road). Seconded by Alderwoman Wilhelm. On roll call, all voted No. Motion failed.

Alderman Barber moved to adopt Resolution No. 2017-7248, A RESOLUTION CONDITIONALLY APPROVING A 3 LOT CERTIFIED SURVEY MAP, BEING PART OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 30, TOWN 5 NORTH, RANGE 21 EAST, IN THE CITY OF FRANKLIN, MILWAUKEE COUNTY, WISCONSIN (MILLS HOTEL WYOMING, LLC, APPLICANT) (11906-11908 WEST LOOMIS ROAD). Seconded by Alderman

Dandrea. On roll call, Alderman Dandrea, Alderman D. Mayer, and Alderman Barber voted Aye; Alderwoman Wilhelm and Alderwoman S. Mayer voted No. Motion carried.

- CONSERVATION EASEMENT AT 11906-11908 W. LOOMIS RD. (MILLS HOTEL WYOMING, LLC, APPLICANT) G.6. Alderman Barber moved to table to next meeting a Resolution authorizing certain officials to accept a Conservation Easement for and as part of the review and approval of a Certified Survey Map for property located at 11906-11908 West Loomis Road (Mills Hotel Wyoming, LLC., Applicant). Seconded by Alderwoman S. Mayer. All voted Aye; motion carried.
- GLOBAL NAVIGATION SATELLITE SYSTEM REFERENCE STATION G.7. Alderman D. Mayer moved to provide direction to staff to pursue an agreement with SmartNet North America and return to a future Common Council meeting with a location and draft agreement to allow SmartNew North America to locate a Global Navigation Satellite System Reference Station (GNSS) at a City of Franklin facility. Seconded by Alderman Dandrea. All voted Aye; motion carried.
- STUDY OF TRAFFIC FLOW AT S. 51ST ST. AND W. DREXEL AVE G.8. Alderwoman Wilhelm moved to accept the draft traffic study by the Southeast Wisconsin Regional Planning Commission related to the intersection of South 51st Street and West Drexel Avenue with the understanding that staff will bring forward and present a finalized report to the Common Council which will include a public input methodology no later than the second meeting in March 2017. Seconded by Alderman Dandrea. All voted Aye; motion carried.
- RES. 2017-7249 CHANGE ORDER 1 WITH LUNDA CONSTRUCTION FOR ST. MARTINS BRIDGE COST REDUCTION INCENTIVE G.9. Alderwoman S. Mayer moved to adopt Resolution No. 2017-7249, A RESOLUTION AUTHORIZING CHANGE ORDER 1 WITH LUNDA CONSTRUCTION COMPANY TO DEVELOP A PROPOSAL FOR W. ST. MARTINS BRIDGE COST REDUCTION INCENTIVE. Seconded by Alderman D. Mayer. All voted Aye; motion carried.
- COMPLETE CLEANUP OF PROPERTY AT 11436 W. SWISS ST. (CYNTHIA GIRMSCHIED, OWNER) G.10. Alderman Barber moved to authorize the execution and completion of cleanup of the property at 11436 W. Swiss Street (Cynthia Girmscheid, Owner), in accordance with the Circuit Court order, using EK Construction for an amount not to exceed \$10,000 and accounted for in a manner as determined by the Director of Finance and

Treasurer. Seconded by Alderwoman S. Mayer.

Alderman D. Mayer vacated his seat at 8:32 p.m.

Upon voice vote of the motion, all voted Aye. Motion carried.

AUTHORIZATION TO
PURCHASE TWO 2017 JEEP
CHEROKEES

- G.11. Alderman Dandrea moved to authorize Building Inspection to order two Jeep Cherokee Sport 4x4s, using State contract pricing, from Ewald Automotive Group, as per the 2017 Equipment Replacement Fund budget and to complete the vehicle and equipment set up. Seconded by Alderman Barber. All voted Aye; motion carried.

ORD. 2017-2254
AMEND ORDINANCE 2015-2198
TO PROVIDE ADDITIONAL
PARK APPROPRIATIONS

- G.12. Alderman Barber moved to adopt Ordinance No. 2017-2254, AN ORDINANCE TO AMEND ORDINANCE 2015-2198, AN ORDINANCE ADOPTING THE 2016 ANNUAL BUDGETS FOR THE GENERAL FUND FOR THE CITY OF FRANKLIN FOR FISCAL YEAR 2016, TO PROVIDE ADDITIONAL PARKS APPROPRIATIONS FOR MAINTENANCE COSTS. Seconded by Alderman Dandrea. All voted Aye; motion carried.

ORD. 2017-2255
AMEND ORDINANCE 2016-2240
TO PROVIDE APPROPRIATION
AND RE-APPROPRIATIONS

- G.13. Alderman D. Mayer returned to his seat at 8:36 p.m.
- Alderman D. Mayer moved to adopt Ordinance No. 2017-2255, AN ORDINANCE TO AMEND ORDINANCE 2016-2240, AN ORDINANCE ADOPTING THE 2017 ANNUAL BUDGETS FOR THE GENERAL FUND AND CAPITAL OUTLAY FUND FOR THE CITY OF FRANKLIN FOR FISCAL YEAR 2017, TO APPROPRIATE FUNDS FOR SOFTWARE DEVELOPMENT PROFESSIONAL SERVICES AND RE-APPROPRIATE UNUSED 2016 CAPITAL OUTLAY APPROPRIATIONS IN MUNICIPAL BUILDING, FIRE DEPARTMENT AND INFORMATION SYSTEMS EQUIPMENT. Seconded by Alderman Dandrea. All voted Aye; motion carried.

LICENSES AND PERMITS

- H.1. Alderwoman Wilhelm moved to approve the following:
Grant Operator licenses to Tanya Bielski, 10568 W. Cortez Cir., #28, Franklin; Nicole Del Valle, 721 W. Grange Ave., #103, Milwaukee; Rebecca Fox, 8243 Shadwell Cir., Franklin; Leah Gdaniec, S76 W20251 Sunny Hill Dr., Muskego; Laura Martinez, 3742 E. Obrien

Rd., Oak Creek; and Toni Ruyle, 1835 Ellis Ave., Racine; hold for appearance the Operator license applications of Jeni Knoedler, 25710 Dover Line Rd., Waterford and Guy Ouellette, 5224 S. 60th St., Greendale; hold for respond from City Attorney the Operator's license application of Eric Reuteler, 2978 S. Herman St., Milwaukee. Seconded by Alderwoman S. Mayer. All voted Aye; motion carried.

Alderwoman Wilhelm moved to accept Police Incident Reports with no further action. Seconded by Alderwoman S. Mayer. All voted Aye; motion carried.

VOUCHERS AND PAYROLL

- I.1. Alderman D. Mayer moved to approve the following: City vouchers with an ending date of February 2, 2017 in the amount of \$3,075,389.72; Payroll dated January 20, 2017 in the amount of \$402,264.33 and payments of the various payroll deductions in the amount of \$396,934.10, plus City matching payments; and Payroll dated February 3, 2017 in the amount of \$358,415.62 and payments of the various payroll deductions in the amount of \$202,801.00, plus City matching payments and Estimated payroll dated February 17, 2017 in the amount of \$391,000.00 and payments of the various payroll deductions in the amount of \$370,000.00, plus City matching payments and Property Tax payments and refunds with an ending date of February 2, 2017 in the amount of \$17,000,049.75. Seconded by Alderman Barber. On roll call, all voted Aye. Motion carried.

ADJOURNMENT

- J. Alderwoman Wilhelm moved to adjourn the meeting at 8:40 p.m. Seconded by Alderman Dandrea. All voted Aye; motion carried.

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<p>APPROVAL</p> <p><i>Slw</i></p>	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING DATE</p> <p><i>2/21/2017</i></p>
<p>REPORTS & RECOMMENDATIONS</p>	<p>DONATIONS TO THE FRANKLIN POLICE DEPARTMENT</p>	<p>ITEM NUMBER</p> <p><i>G.1.</i></p>

The City of Franklin Police Department has received the following donations, both are to be used for the Canine Donation fund:

- 1) \$1000.00 donation from N & S Towing Inc.
- 2) \$2500.00 donation from Salvatore Purpero of C.W. Purpero, Inc.
- 3) \$25.00 donation from Mary Thebert.
- 4) \$200.00 donation from Patricia & Anthony Farchione.

COUNCIL ACTION REQUESTED

Motion to accept the \$1000 donation from N & S Towing Inc., the \$2500 donation from Salvatore Purpero of C.W. Purpero, Inc., the \$25.00 donation from Mary Thebert and the \$200.00 donation from Patricia & Anthony Farchione and that all donations be deposited into the Police Canine Donation Account.

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APPROVAL <i>slw</i>	REQUEST FOR COMMON COUNCIL ACTION	MEETING DATE Feb 21, 2017
REPORTS & RECOMMENDATIONS	Change in Accounting treatment for Ryan Creek Sanitary Interceptor Sewer recommended by new auditors	ITEM NUMBER <i>G.2.</i>

Background

The City of Franklin agreed to construct the Ryan Creek Interceptor Sanitary Sewer from S 60th Street to Muskego along Ryan Road in 2010. Included in the project was an intergovernmental agreement with Milwaukee Metropolitan Sewer District that had Franklin constructing, operating and maintaining the sanitary sewer during the term of a Clean Water Fund Loan used to finance the project. MMSD agreed to make all the principal and interest payments on the CWFL during its life. The City of Franklin agreed to transfer ownership of the project to MMSD once the loan was retired.

The City invested \$24.6 million in the project during construction. The Sanitary Interceptor Sewer was completed in the summer of 2014 and placed in service.

The City has been accounting for the project as a receivable from MMSD. The project was not placed on the City's financial records as an asset.

Analysis

For fiscal 2016, new auditors have been engaged to audit the financial statements. During planning discussions, the accounting treatment of the project was reviewed. The new auditors, Baker Tilly, LLC noted that they also audit and render an opinion on MMSD's financial statements.

Baker Tilly recommends that the project be listed as a contributed asset, and depreciated over the term of the loan. They do not agree with the current City treatment of this transaction.

The Finance Director prepared a proforma schedule (attached) of the impact on the Sewer Funds books. A \$24,221,000 sanitary sewer asset and \$367,000 of land easement rights would be placed upon the books as contributed capital. The sanitary sewer would be depreciated over 17 years. Then, when the Clean Water Fund Loan is retired, the assets would be contributed to MMSD, in accord with the intergovernmental agreement, and the assets would be removed from the financial records. That transaction would result in approximately \$367,000 of land easement rights being written off.

Baker Tilly audited MMSD in 2012 when the transaction was first recorded. At that time, Baker Tilly wrote an opinion to MMSD on recommended accounting treatment for the City of Franklin. (copy attached). At that time, Franklin Financial management chose not to record the project as an asset on the Sanitary Sewer Fund financial records. The City's auditors concurred with the treatment used.

Since 2012, new accounting rules have become pertinent that require the alternative treatment now being recommended.

Franklin's Finance Director's correspondence with Baker Tilly is attached describing the alternate treatment, along with communication from Baker Tilly (Franklin's new auditor) with Clifton Larson Allen (our old auditor) regarding this change.

Fiscal Impact

There is NO cash impact to the City as a result of this change. The new treatment will cause a restatement of the opening fund balance in the Sanitary Sewer fund for 2015 to reflect the book value of the project at Jan 1, 2015. A budget amendment will be needed for 2017 to permit the annual depreciation charge.

At the conclusion of the program, in 2031, the project will have an estimated net book value of \$367,000 (related to the easement rights in land), which will be written off upon contribution to MMSD per the intergovernmental agreement.

Recommendation

The Finance Committee reviewed this recommendation at its January 24, 2017 meeting and recommends adoption of this accounting treatment (on a vote of five ayes, no noes, and 2 abstentions).

John Knepel, partner with Baker Tilly, will be in attendance to answer any questions that might come up.

COMMON COUNCIL ACTION REQUESTED

Motion adopting revised accounting treatment for the Ryan Creek Interceptor Sanitary Sewer as an asset, to be depreciated over the life of the associated Clean Water Fund Loan, including the planned contribution to Milwaukee Metropolitan Sewer District at the retirement of the Clean Water Fund Loan per the terms of the 2010 intergovernmental agreement with MMSD and direct the Finance Director to prepare a Sanitary Sewer Fund 2017 budget amendment to provide for depreciation on the asset.

Paul Rotzenberg

From: Paul Rotzenberg
Sent: Tuesday, December 27, 2016 10:39 AM
To: Paul Frantz (paul.frantz@bakertilly.com)
Cc: John Knepel
Subject: Update on Franklin Accounting for Ryan Interceptor Project
Attachments: Ryan Creek restatement.xlsx

John's outbound phone message has him out all week. Good that he is taking some time away.

But stuff marches along. I tried calling you, but hard to get thru this week, even your switchboard did not pick up Tues morning.

I am in substantial agreement with the proposed restatement. I still need to think thru the 'discussion' with the Finance Committee and the Elected Officials. Having the conversation that our new Auditor does not agree with the prior Auditor and management's accounting, is something I have to think thru. A little tricky to describe. How does one say that the treatment of the transaction is so grey that the two auditors could not agree? On top of that, one of the Alderman, who is on the Finance Committee, was against the project from the very beginning.

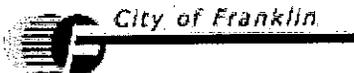
Attached is a proforma on the Ryan Creek Interceptor project, restating 2014 for balances as of that date. As I went thru the list of costs, I came across \$367,000 of land/easement costs included in the project. I don't believe those costs should be depreciated. This leaves a balance at the end of the year which becomes a contribution to MMSD from the City. Wonder if that changes your thinking on this accounting treatment, as I suspect folks did not anticipate a grant from the City's Sewer fund to MMSD at the end. I'm not sure how the Council will view the grant from the Sewer Fund. But, then again, we can make the point that MMSD made substantially all the loan payments, except for the first three year carrying costs.

Also, the attached has the amount of interest cost during construction, but I did not capitalize it. Seems to me we should, if we are going thru the trouble of the restatement. It just increases the cost of the asset and the subsequent depreciation. Do you agree??

Your thoughts on the treatment of the land easements and capitalized interest. I want to make sure that there will be no subsequent changes to accounting when I go to present this to Finance and Council. It will require a budget amendment to provide for the additional depreciation in 2017 which was not considered.

Paul Rotzenberg, CPA
Dir of Finance & Treasurer
414 427-7514

*Let Eff reported out of me - I
Nothing to record.*



City of Franklin
Re-stated Ryan Creek Interceptor Program

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
Amt in 000's																				
Deprac				712	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425
Capital Contrib	(24,588)																			
Total	(24,588)			712	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425
In Service																				
Deprac				712	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425
Capital Contrib	(24,588)																			
Total	(24,588)			712	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425	1,425
Balance Sheet - activity																				
A/R	24,588		(1,100)	(1,129)	(1,157)	(1,185)	(1,214)	(1,244)	(1,275)	(1,306)	(1,339)	(1,372)	(1,406)	(1,440)	(1,476)	(1,512)	(1,549)	(1,587)	(1,626)	(1,666)
Land	367																			
Asset	24,221		(712)	(1,425)	(1,425)	(1,425)	(1,425)	(1,425)	(1,425)	(1,425)	(1,425)	(1,425)	(1,425)	(1,425)	(1,425)	(1,425)	(1,425)	(1,425)	(1,425)	(1,425)
Accum Deprec				1,129	1,157	1,185	1,214	1,244	1,275	1,306	1,339	1,372	1,406	1,440	1,476	1,512	1,549	1,587	1,626	1,666
N/P	(24,588)																			
Bal Sheet - balances																				
A/R	24,588	24,588	23,488	22,359	21,202	20,017	18,803	17,559	16,284	14,978	13,639	12,257	10,861	9,421	7,945	6,433	4,884	3,297	1,671	5
land	367	367	367	367	367	367	367	367	367	367	367	367	367	367	367	367	367	367	367	367
Asset	24,221	24,221	24,221	24,221	24,221	24,221	24,221	24,221	24,221	24,221	24,221	24,221	24,221	24,221	24,221	24,221	24,221	24,221	24,221	24,221
Accum Deprec			(712)	(2,137)	(3,562)	(4,987)	(6,411)	(7,836)	(9,261)	(10,686)	(12,111)	(13,535)	(14,960)	(16,385)	(17,810)	(19,234)	(20,659)	(22,084)	(23,509)	(24,221)
Net Asset	24,221	24,221	23,509	22,084	20,659	19,234	17,810	16,385	14,960	13,535	12,111	10,686	9,261	7,836	6,411	4,987	3,562	2,137	712	-
N/P	(24,588)	(24,588)	(23,488)	(22,359)	(21,202)	(20,017)	(18,803)	(17,559)	(16,284)	(14,978)	(13,639)	(12,267)	(10,861)	(9,421)	(7,945)	(6,433)	(4,884)	(3,297)	(1,671)	(5)
Net Position	24,221	24,588	23,876	22,451	21,026	19,601	18,177	16,752	15,327	13,902	12,478	11,053	9,628	8,203	6,778	5,354	3,929	2,504	1,079	367
Prior Period Adj																				
Land			367,254																	
Asset			24,221,380																	
Accum Deprec			(712,394)																	
Contributed Cap			(23,876,240)																	
Annual Depreciation			712,394																	

Paul Rotzenberg

From: John Knepel <John.Knepel@bakertilly.com>
Sent: Friday, January 06, 2017 12:43 PM
To: Jacob Lenell
Cc: Paul Rotzenberg
Subject: City of Franklin

Jake.

We have been discussing with Paul the past reporting of the intergovernmental agreement between the city and MMSD relating to the Ryan Creek Interceptor Sewer (RCIS) project. It is our opinion that when the original transaction occurred, the project costs should have been capitalized as an asset of the Sanitary Sewer with an equal amount reported as a capital contribution from MMSD. This asset would have then been depreciated after being placed into service. Our opinion is based on the following:

- Page 5 of the agreement notes that it is the city's intent to own, operate and maintain the RCIS during the term of the loan until paid in full.
- Paragraph 7.12.4 of the Comprehensive Implementation Guide indicates that the entity that manages an asset where ownership is in question, should report the asset. Although we do not believe that ownership is questionable, this provides additional guidance that the entity which manages the asset should report it.

Paul has prepared a computation of the restatement amount of \$22,451,453 which would result in an increase of reported net position of the Business-Type Activity financial statements and Sanitary Sewer financial statements as of December 31, 2015. If you wish to see a copy of the computation, please contact Paul directly for it.

This communication is provide in accordance with AU-C Section 510.12, *Discovery of Possible Material Misstatements in Financial Statements Reported on by a Predecessor Auditor*.

Please let me know if you would like to discuss the issue in more detail.

John Knepel, Partner
Baker Tilly Virchow Krause, LLP
777 E. Wisconsin Ave., 32nd Floor
Milwaukee, WI 53202
414 777 5359 (direct); 414 777 5555 (fax)
John.Knepel@bakertilly.com; bakertilly.com

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Memorandum

To: Paul Rotzenberg
From: John Knepel
CC: Paul Frantz
Elisa Gilbertson
Wendi Unger (IR)
Heather Acker (PPP)
Audit file
Date: December 21, 2016
Re: Answers to questions from kickoff meeting

On October 6, 2016, members of Baker Tilly and the City of Franklin met to discuss various issues regarding the upcoming 2016 audit. One question raised at that meeting which required further research for an answer related to the following.

The City of Franklin entered into an Intergovernmental Cooperation Agreement with MMSD in 2010 for the construction and financing of the Ryan Creek Interceptor Sewer. The City obtained a Clean Water Fund Loan to finance the project. MMSD, through the intergovernmental cooperation agreement, is required to make payments to the City of Franklin beginning in 2015 equal to the debt service of the loan until the loan is paid off. During this time, the City of Franklin owns and maintains the interceptor sewer. The City currently only reports a receivable from MMSD and a liability for the Clean Water Fund Loan. The interceptor sewer is not reported as a capital asset. The question raised was whether the current reporting of this transaction was appropriate. The city's previous auditors had raised questions about the reporting but no changes were made.

Baker Tilly has been the auditor of MMSD for a number of years and had reviewed the accounting treatment for this transaction in 2012 from the perspective of MMSD. At that time, MMSD requested Baker Tilly to also provide its opinion on the accounting treatment of the transaction from the perspective of the City of Franklin. A memo to Mark Kaminski, Controller for MMSD, was issued on June 29, 2012 outlining our opinions on the accounting treatment for this transaction (see attached). Baker Tilly's opinion as to the accounting treatment for the City of Franklin is materially different from what has been reported by the City of Franklin. Our opinion at that time was that the cost of the interceptor should have been reported as a capital asset of the sewer utility and depreciated over the life of the agreement. Our opinion at this time has not changed. As a result, the business-type activity and sewer utility net position reported as of December 31, 2015 is approximately \$24 million understated. Consequently, we recommend that the City of Franklin report a prior period adjustment to correct this transaction in its 2016 financial statements.



BAKER TILLY

Baker Tilly Virchow Krause, LLP
Ten Terrace Ct, PO Box 7398
Madison, WI 53707-7398
tel 608 249 6622
fax 608 249 8532
bakertilly.com

- > To Mark Kaminski, Controller, Milwaukee Metropolitan Sewerage District
- > From Baker Tilly Virchow Krause, LLP
- > Date June 29, 2012
- > Re Proposed Accounting for the Ryan Interceptor Project

Background

The City of Franklin (City) is constructing the Ryan Interceptor (project) which will ultimately become an asset of the Milwaukee Metropolitan Sewerage District (MMSD). The City is financing the project with Clean Water Fund Loan Bonds (CWFL) and as such is required to maintain ownership of the assets until the related CWFL is paid in full. MMSD has agreed to make payments to the City beginning in 2015 which will mirror the debt service on the CWFL. Construction of the project will begin in 2012 with completion planned for late 2014. The CWFL is anticipated to be paid off in 2022. The project will have a 50 year service life.

Proposed Accounting Treatment - MMSD

The project will ultimately be an asset of MMSD and will be benefiting MMSD during the period when the CWFL is still outstanding and the project must be owned by the City. As such, during the early years MMSD has an intangible asset which can be amortized, and once the CWFL is paid off and ownership of the project transfers from the City to MMSD, then this becomes a tangible asset to be depreciated.

- > As the project is constructed MMSD would record a debit to an intangible asset (Ryan Interceptor Rights) and a credit to a liability (Due to City of Franklin). In theory, this liability should match the CWFL draws that the City makes.
- > As payments are made to the City each year the principal portion is a decrease in the liability and the interest portion is interest expense.
- > The intangible asset is amortized on a straight line basis over 50 years from the date placed into service.
- > When the CWFL is paid in full, the asset transfers to MMSD. The intangible asset is closed to a tangible asset and the accumulated amortization is transferred to the accumulated depreciation account. The asset is now depreciated over the remaining years of its 50 year life.

Proposed Accounting Treatment – City

While we are not Franklin's auditors, you have asked us to provide potential accounting for the transactions from Franklin's viewpoint. The project is required to remain an asset of the City until the CWFL is paid in full, however the City will also receive annual payments from MMSD to offset the debt service on the CWFL. As such the project should be a capital asset depreciated by the city over the remaining life of the CWFL at the time it is placed into service. In addition, the City will recognize a long-term receivable and contributed capital for the amount of the project as MMSD will be reimbursing the city for the debt service.

- > As the project is constructed the City will increase CWIP and drawn funds on the CWFL. In addition a long-term receivable should be established (Due from MMSD) along with recognition of contributed revenue equal to the amount of CWFL draws.
- > Once the asset is completed it should be closed to plant in service and depreciated over the remaining loan period.
- > As CWFL payments are made the liability for the bonds will be decreased and interest expense recorded. In addition the reimbursements from MMSD will be booked as a decrease to the long-term receivable and interest income which will offset the interest expense.
- > When the CWFL is paid in full the asset transfers to MMSD. At this time the asset should be fully depreciated on the City's books and as such there is no income statement effect of the transfer.

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<p>Approval <i>Slw</i></p>	<p>Council Action Sheet</p>	<p>MEETING DATE 2/21/17</p>
<p>REPORTS & RECOMMENDATIONS</p>	<p>Status report from staff regarding the Ballpark Commons development at and near The Rock Sports Complex, 7900 W. Crystal Ridge Road</p>	<p>ITEM NUMBER <i>G. 3.</i></p>

Background

Staff continues to assist the Ballpark Commons development team pursuing development at and near the Rock Complex at 7900 W. Crystal Ridge Drive. The Common Council approved general plans for the development at their April 4, 2016 meeting. Following approval of the project plan for tax increment finance (TIF) district #5 by the Common Council and Joint Review Board in September of 2016 the mechanism for City support of the project was created. The state has since certified the TIF district.

At the Common Council's February 7, 2017 meet, Alderman Dan Mayer requested that staff provide an update on the status of the project.

Action

Director of Economic Development, Aaron Hertzberg will provide a status report regarding the Ballpark Commons development.

COUNCIL ACTION REQUESTED

Motion to receive and file the status report from staff regarding the Ballpark Commons development at and near The Rock Sports Complex, 7900 W. Crystal Ridge Road.

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<p>APPROVAL</p> <p><i>Slw</i> </p>	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING DATE</p> <p>2/21/2017</p>
<p>REPORTS & RECOMMENDATIONS</p>	<p>Franklin Senior Citizens, Inc. Program Update</p>	<p>ITEM NUMBER</p> <p>G.4.</p>

At their February 17, 2015 meeting, the Common Council directed that the Franklin Senior Citizens, Inc. organization attend and give a status update on the organization semi-annually (January and July). Attached is correspondence on 2016 statistics and activities of the Franklin Senior Citizens, Inc. organization.

Due to the more stringent requirements by HUD for what can be used as "Public Service" Community Development Block Grant (CDBG) funds through Milwaukee County, the Franklin Senior Citizens, Inc. program activities are no longer funded through the Milwaukee County CDBG funds. Their activities are funded strictly through the City's general "Recreation" operating fund. For 2016 (and several past budget years), \$10,000 was adopted for supporting the Franklin Senior Citizens, Inc. activities; which include funding a portion of the cost of their monthly business meeting luncheon at Root River Center, a monthly social luncheon at Brenwood Park Senior Apartments (minus the Seniors co-pay of \$2 each), and miscellaneous operating supply costs and IT tech room support services.

For 2016, \$8,878.56 was expended from the \$10,000 City adopted budget for Senior Citizen Activities. A general breakout is as follows: Monthly Business Luncheon, \$5,859; Monthly Social Luncheon, \$1,808.61; Supplies, IT Tech Support Services, and Other Expenses, \$1,210.95.

Mr. Fred Knueppel, President of the Franklin Senior Citizens, Inc., will be in attendance at the February 21, 2017 Common Council meeting.

COUNCIL ACTION REQUESTED

This item is being provided at the direction of the Common Council for its information. No action is being requested.

2016 Franklin Senior Citizens, Inc. Activities

Breakdown of Reported Expenditures and Reimbursement by City

Annual Appropriation **\$10,000**

Month	Franklin Seniors Social				Business Luncheon				Office, Misc., and Computer Center Costs	Total Program Cost Reimbursement (01,0521,5723)		
	Combined Program Cost	Participant Co-Pay (\$2 Each)	Program Cost Reimbursement	Seniors Attendance	Combined Program Cost	Participant Cost (Approx. \$ Each)	Extra Costs paid by Fr. Senior Inc for special venues	Program Cost Reimbursement (\$4.50 Each)			Misc. Costs/Entertainment Reimbursement	Seniors Attendance
January	182.65	(78.00)	104.65	39	1,035.50	(545.00)		490.50	-	109	86.79	681.94
Feb.	285.84	(62.00)	223.84	31	940.50	(495.00)		445.50	-	99	99.19	768.53
March	164.63	(60.00)	104.63	30	959.50	(505.00)		454.50	-	101	84.29	643.42
April	163.52	(64.00)	99.52	32	1,016.50	(535.00)		481.50	-	107	108.54	689.56
May	301.49	(68.00)	233.49	34	1,007.00	(530.00)		477.00	-	106	99.36	809.85
June	181.11	(74.00)	107.11	37	959.50	(505.00)		454.50	-	101	111.78	673.39
July	192.48	(52.00)	140.48	26	1,063.89	(559.89)		504.00	-	112	111.78	756.26
August	188.66	(50.00)	138.66	25	1,969.25	(650.00)	(734.25)	585.00		130	99.36	823.02
Sept.	279.65	(60.00)	219.65	30	1,044.89	(549.89)		495.00		110	111.78	826.43
October	207.52	(56.00)	151.52	28	968.90	(509.90)		459.00		102	99.36	709.88
Nov.	145.62	(58.00)	87.62	29	1,297.89	(550.00)	(252.89)	495.00		110	99.36	681.98
Dec.	241.44	(44.00)	197.44	22	1,356.89	(609.39)	(230.00)	517.50		115	99.36	814.30
TOTALS	\$2,534.61	-\$726.00	\$1,808.61	363	\$13,620.21	-\$6,544.07	-\$1,217.14	\$5,859.00	\$0.00	1,302	\$1,210.95	\$8,878.56
Avg / Event	\$211.22	-\$60.50	\$150.72	30.3	\$1,135.02	-\$545.34		\$488.25		108.5		\$1,121.44
												Remaining Balance for 2016

<p>APPROVAL</p> <p><i>Slw</i> </p>	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING DATE</p> <p>2/21/2017</p>
<p>REPORTS & RECOMMENDATIONS</p>	<p>Franklin Senior Citizens Travel Program Update for 2016 Year End</p>	<p>ITEM NUMBER</p> <p>G. 5.</p>

To fulfill the June 19, 2007 directive of the Common Council requesting that an update of the Franklin Seniors Travel Program be prepared semi-annual, reporting in January and July of each year, attached is correspondence from Mr. Basil Ryan on July through December 2016 trip statistics and activities.

The 2016 budget for the Senior Travel Program was \$12,000; \$10,000 as adopted and an additional \$2,000 approved by the Common Council on 2/16/2016.

For the period January 1, 2016 through December 31, 2016, a total of ten (10) trips were taken; 2 where the event host paid for the bus transportation and 8 that were paid by the City, expending \$9,435 against the \$12,000 Senior Travel Program Budget for 2016, leaving a \$2,565 unspent balance for 2016.

The 2017 budget for the Senior Travel Program was established at \$11,400 – \$10,000 plus \$1,400 carryover of anticipated unspent 2016 funds. As the actual amount unspent for 2016 was \$2,565, staff recommends that the Common Council direct staff to effectuate the carryover of the total unspent 2016 funds of \$2,565 to 2017 by bringing forth a budget modification for an additional \$1,165 (\$2,565-\$1,400) to a future Council meeting.

COUNCIL ACTION REQUESTED

Motion to accept and file the Senior Travel Program 2016 year-end report and to further direct staff to effectuate the carryover of unspent 2016 Senior Travel Program funds in the amount of \$2,565 to the 2017 Senior Travel Program budget by bringing forth a budget modification to a future Council meeting.

February 12, 2017

Mayor and Common Council Members
Franklin City Hall
9229 West Loomis Road
Franklin, WI 53132

Ladies and Gentlemen:

The Franklin Senior Travelers information for July to December 2016 is provided.

Three City of Franklin sponsored bus trips were taken in August, September and December with 241 participants.

August – Titledown During Training, Green Bay, WI

September – Million Dollar Quartet, Fireside Theater, Fort Atkinson, WI

December – Very Merry Mansions, Henry Jacob Mansion, Joliet, IL and Kemper Mansion, Kenosha, WI

Two additional trips, which the event host paid for the bus transportation, were taken in July and October. The city of Franklin did not partner or pay for the bus transportation in July and October. We mention this only to show that there is a demand by the Franklin senior community for trips. There were 119 participants on these two trips.

This brings our Franklin senior participation for July through December 2016 to 360 seniors.

As we mentioned in our July 14, 2016 report, we anticipated correctly based on the above success of the program and budgeted accordingly. From May to December, those trips were averaging \$1,507. For 2017, we have been informed by Badger Bus that there will be a cost increase but we have not been informed of the final numbers. If we plan to take the same number of trips as we did in 2016 and have no increase in senior participants, we will use the remaining money and will have a slight deficit. But if we experience a larger senior participation in the 2017 program, we will have to limit the number of trips. This is only because of the success of the program.

Franklin Senior Travelers have a website to keep our seniors up-to-date on future and past trips. We encourage you to visit: www.franklinseniortravelers.com

Sincerely,

Basil Ryan
Franklin Senior Travelers

Attachment

2016 FRANKLIN SENIOR TRAVELERS BUS TRANSPORTATION BUDGET

Date	Trip Description	Bus Cost	Paid By	Balance
				5,395
July	NO TRIP - BUDGET CONSTRAINTS	N/A		N/A
8/9/2016	Titletown, Green Bay, WI	2,100	City of Franklin	3,295
9/28/2016	Million Dollar Quartet, Fireside	1,700	City of Franklin	1,595
October	NO TRIP - BUDGET CONSTRAINTS	N/A		N/A
November	NO TRIP - BUDGET CONSTRAINTS	N/A		N/A
12/6/2016	Very Merry Mansions, IL and WI	1,030	City of Franklin	565
	Balance of \$565 for remainder of 2016 to be applied to 2017 budget.			
	Franklin gave additional \$2,000 in 2016 Franklin senior transportation fund.			
	This brings our budget for 2017 to \$12,565.			

2016 Senior Bus Travel Trips**\$10,000 in adopted budget and then \$2,000 additional funds approved on 2/16/2016 - Ordinance 2016-2205****\$ 12,000**

	Trip Date	Venue	CITY Budget
			01.0521.5721
1	1/13/2016	Legends in Concert-Fireside Dinner Theater	\$ 850.00
2	2/13/2016	Dorf Kapelle Fasching Celebration (Sheboygan Falls, WI)	850.00
3	4/24/2016	Ernest in Love at the In Tandem Theatre (Cudahy & Milw, WI)	500.00
4	5/11/2016	Fireside Dinner Theater - Sister Act	1,265.00
5	6/22/2016	Fireside Dinner Theater (double-decker badger coach)	1,140.00
6	8/9/2016	Titelown During Training - Green Bay, WI (2 56 pas coaches)	2,100.00
7	9/28/2016	Fireside - Million Dollar Quartet	1,700.00
8	12/6/2016	Victorian Holiday at Jacob Henry Mansion Estate (Joliet, IL)	1,030.00
TOTAL \$			9,435.00
FUNDS REMAINING \$			2,565.00

<p>APPROVAL</p> <p><i>Slw</i></p>	<p>REQUEST FOR COUNCIL ACTION</p>	<p>MEETING DATE</p> <p><i>2/21/2017</i></p>
<p>REPORTS AND RECOMMENDATIONS</p>	<p>Request Council endorsement and approval to place a fourth Advanced Life Support (ALS) ambulance in service.</p>	<p>ITEM NUMBER</p> <p><i>G.6.</i></p>

Over the past several years, the Franklin Fire Department has pursued the operational strategy of training as many of its members as possible to provide emergency medical care at the Paramedic level. Paramedic is the highest level of pre-hospital licensure, and requires nearly 2000 hours of initial training and a significant continuing education commitment. Currently, all but five sworn employees are licensed paramedics with practice privileges in the Milwaukee County EMS System (MC EMS), meaning that every vehicle that leaves the fire station on an emergency response has at least one provider that is able to provide an immediate ALS-level assessment and intervention on every call.

The advantage of this strategy is two-fold. First, and most importantly, is the immediate provision of the highest level of care to the public. There are also significant inherent operational advantages in having all employees trained and licensed to the same level.

At this time, the Department has three transporting paramedic ambulances in service, but enough paramedics on duty each day to staff a fourth. The department has obtained approval from MC EMS to place a fourth ALS unit in service, and is proposing upgrading the existing Basic Life Support ambulance at Station #1 to a transporting ALS unit (Med-281). This would allow coverage of back-to-back ALS calls in Station #1's area (which are frequent in this response area), as well as improving secondary responses throughout the City, and adding more overall ALS capacity to the MC EMS system.

The existing BLS ambulance is already largely equipped as paramedic unit, with the exception of the required 12-lead cardiac monitor/defibrillator, the purchase of which has already been requested and approved in the Department's 2017 Capital Outlay request.

This represents an improvement in service level to the City, County, and region; though it is important to note that it does not address overall staffing issues related to increasing EMS call volume due to existing and planned high-density multifamily and senior housing.

The Fire Chief recommends approval.

COUNCIL ACTION REQUESTED

Request council approval of the Fire Department request to place a fourth ALS unit in service.

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<p style="text-align: center;">APPROVAL</p> <p style="text-align: center;"><i>Slw</i></p>	<p style="text-align: center;">REQUEST FOR COUNCIL ACTION</p>	<p style="text-align: center;">MEETING DATE</p> <p style="text-align: center;">02/21/17</p>
<p style="text-align: center;">REPORTS & RECOMMENDATIONS</p>	<p style="text-align: center;">RESOLUTION AUTHORIZING CERTAIN OFFICIALS TO ACCEPT A CONSERVATION EASEMENT FOR AND AS PART OF THE REVIEW AND APPROVAL OF A CERTIFIED SURVEY MAP FOR PROPERTY LOCATED AT 11906- 11908 WEST LOOMIS ROAD (MILLS HOTEL WYOMING, LLC, APPLICANT)</p>	<p style="text-align: center;">ITEM NUMBER</p> <p style="text-align: center;"><i>G. 7.</i></p>

At its February 7, 2017 meeting, the Common Council moved to table action on the subject Conservation Easement until its next meeting.

It can be noted that the Conservation Easement did not include a required portion of protected steep slopes, and that the legal description may have had an error.

However, the applicant has not yet made these corrections.

It can be noted that approval of the related Certified Survey Map includes a condition that "The Unified Development Ordinance required percentage (or greater) of the steep slopes located on Lot 1 shall be included in and protected as part of the conservation easement. The CSM and the Conservation Easement shall be revised accordingly, prior to recording with the Milwaukee County Register of Deeds."

COUNCIL ACTION REQUESTED

A motion to table action on adoption of Resolution No. 2017-_____, authorizing certain officials to accept a conservation easement for and as part of the review and approval of a certified survey map for property located at 11906-11908 West Loomis Road (Mills Hotel Wyoming, LLC, Applicant), until such time as the necessary corrections to the easement have been made by the applicant and forwarded to the Common Council for its review and approval.

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APPROVAL <i>Slw</i> <i>pd</i>	REQUEST FOR COUNCIL ACTION	MEETING DATE Feb 21, 2017
REPORTS & RECOMMENDATIONS	AN ORDINANCE TO AMEND ORDINANCE 2016-2240, AN ORDINANCE ADOPTING THE 2017 ANNUAL BUDGETS FOR TID 3 AND TID 4 FOR THE CITY OF FRANKLIN FOR FISCAL YEAR 2017, TO PROVIDE ADDITIONAL APPROPRIATIONS FOR PLANTINGS IN CONNECTION WITH THE S 27TH STREET RECONSTRUCTION AND PROFESSIONAL SERVICES	ITEM NUMBER <i>G. 8.</i>

Background

The TID 3 project plan included provisions for landscaping needs to be incurred with the S 27th Department of Transportation (DOT) reconstruction project nearing completion. The cost will be shared by the Cities of Franklin and Oak Creek.

The Common Council authorized the Development Director to seek Engineering services for Water and Sanitary Sewer infrastructure in Area D as the February 7, 2017 meeting.

Analysis

The City Engineer has estimated Franklin's share of the landscaping costs.

A proposed contract for water and sanitary sewer infrastructure is being proposed later in the meeting.

Options

Adopt the Ordinance providing the appropriation Or
Take no action.

Recommendation

The Director of Finance recommends adopting the Ordinance providing 2017 appropriations to complete the landscaping portion of the S 27th Street reconstruction project and Area D Engineering Services

Fiscal Impact

The TID 3 project plan included the landscaping costs. Sufficient TID 3 fund balance is available to provide for this project cost.
TID 4's Project plan includes costs for Professional Engineering services for utility infrastructure and has fund balance to provide the resources.

COUNCIL ACTION REQUESTED

Motion adopting an ordinance to amend ordinance 2016-2240, an ordinance adopting the 2017 annual budgets for TID 3 and TID 4 for the City of Franklin for fiscal year 2017, to provide additional appropriations for plantings in connection with the S 27th street reconstruction and professional services.

Note: Requires a Roll Call Vote

STATE OF WISCONSIN: CITY OF FRANKLIN: MILWAUKEE COUNTY

ORDINANCE NO. 2017_____

AN ORDINANCE TO AMEND ORDINANCE 2016-2240, AN ORDINANCE ADOPTING THE 2017 ANNUAL BUDGETS FOR TID 3 AND TID 4 FOR THE CITY OF FRANKLIN FOR FISCAL YEAR 2017, TO PROVIDE ADDITIONAL APPROPRIATIONS FOR PLANTINGS IN CONNECTION WITH THE S 27TH STREET RECONSTRUCTION AND PROFESSIONAL SERVICES

WHEREAS, the Common Council adopted the 2017 Budget for the City of Franklin providing resources and appropriations for 2017 and

WHEREAS, the reconstruction of S 27th Street project includes landscaping costs which the Cities of Franklin and Oak Creek will share, and

WHEREAS, the landscaping costs are included in the TID 3 authorized project plan, and

WHEREAS, the Council authorized soliciting bids for professional services for water and sanitary sewer infrastructure in Area D, and

WHEREAS, the 2017 TID 3 and TID 4 budget requires appropriations for the project costs, and

WHEREAS, the Common Council of the City of Franklin believes these expenditures provide for the well being of the Community.

NOW, THEREFORE, the Common Council of the City of Franklin does hereby ordain as follows:

Section 1	That the 2017 Budget of TID 3 be adjusted as follows:			
	Highway	Landscaping	Increase	80,000
Section 2	That the 2017 Budget of TID 4 be adjusted as follows:			
	Engineering	Professional Services	Increase	80,000

Section 3 Pursuant to §65.90(5)(a), Wis. Stats., the City Clerk is directed to publish a Class 1 notice of this budget amendment within ten days of adoption of this ordinance.

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this _____ day of _____, 2017.

APPROVED:

Stephen R Olson, Mayor

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

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APPROVAL <i>slw</i>	REQUEST FOR COUNCIL ACTION	MTG. DATE 02/21/2017
Reports & Recommendations	RESOLUTION APPROVING AN INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN THE CITY OF FRANKLIN AND THE CITY OF OAK CREEK OUTLINING RESPONSIBILITIES FOR A SHARED STREET TREE PLANTING PROJECT RELATED TO THE SOUTH 27TH STREET RECONSTRUCTION PROJECT	ITEM NO. <i>6.9.</i>

BACKGROUND

The WisDOT S. 27th Street (STH 241) reconstruction project (W. Villa Drive to W. College Ave.) is substantially complete. However, there remains a significant amount of streetscaping work to be completed. This includes installation of the remaining signage and plantings.

In March of 2014, under Resolution No. 2014-6974, the City entered into an Intergovernmental Memorandum of Understanding between the City of Franklin and the City of Oak Creek documenting local cost-sharing pertaining to the development of the South 27th Street Corridor Plan. One of the provisions of that agreement established that the cost of project trees shall be split equally between the two cities.

WisDOT did not include the trees and other plantings as part of its work under the road building contract. It has adopted a policy where it provides a credit toward both cities overall project cost share, with each city then being responsible for purchasing and installing the trees and plantings for their long-term health and maintenance.

ANALYSIS

Engineering and Forestry staff from Franklin and Oak Creek have collaboratively worked out what is felt to be a fair distribution of tasks to administer a joint tree-planting contract. It is thought appropriate that these tasks be formalized in the attached Intergovernmental Cooperation Agreement. The agreement provides that:

- There are approximately 162 trees to be planted, 81 for each city.
- Franklin will be responsible for project trees planted along the west side of S. 27th Street and within the road median north of W. Rawson Ave.
- Oak Creek will be responsible for project trees planted along the east side of S. 27th Street and within the road median south of W. Rawson Ave.
- Each city will purchase its own tree stock.
- There will be a publicly bid contract for planting of the city-provided tree stock.
- Oak Creek will prepare the tree-planting bid package, publicly advertise for bids, award the contract and administer it.
- Oak Creek will invoice Franklin for one-half of the contractor's costs under the tree-planting contract.
- Oak Creek will provide the topsoil and mulch for all project trees.
- Franklin will provide staking materials for all project trees.
- Franklin will store all project tree stock at its DPW yard.
- Franklin will accept all project clean excavation spoils at its DPW yard.

This Intergovernmental Cooperation Agreement is expected to be signed Tuesday, February 21, 2017, in Oak Creek.

OPTIONS:

Sign the agreement, or table.

FISCAL NOTE

The TID 3 project plan anticipated the needs for landscaping costs in connection with the Department of Transportation reconstruction of S 27th Street. A 2017 TID 3 budget amendment is under consideration earlier in the meeting to provide appropriations for this project. Oak Creek will invoice the City of Franklin for its share of this project, estimated at \$25,000 to \$30,000.

RECOMMENDATION

Motion to adopt Resolution No. 2017-_____, a resolution approving an Intergovernmental Cooperation Agreement between the City of Franklin and the City of Oak Creek outlining responsibilities for a shared street tree planting project related to the South 27th Street reconstruction project.

Department of Engineering GEM

STATE OF WISCONSIN : CITY OF FRANKLIN : MILWAUKEE COUNTY

RESOLUTION NO. 2017- _____

A RESOLUTION APPROVING AN INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN THE CITY OF FRANKLIN AND THE CITY OF OAK CREEK OUTLINING RESPONSIBILITIES FOR A SHARED STREET TREE PLANTING PROJECT RELATED TO THE SOUTH 27TH STREET RECONSTRUCTION PROJECT.

WHEREAS, WisDOT S. 27th Street (STH 241) reconstruction project (W. Villa Drive. to W. College Ave.) is substantially complete; and

WHEREAS, under Resolution No. 2014-6974 , the City entered into an Intergovernmental Memorandum of Understanding between the City of Franklin and the City of Oak Creek documenting local cost-sharing pertaining to the development of the South 27th Street Corridor Plan.; and

WHEREAS, One of the provisions of said Intergovernmental Memorandum of Understanding established that cost of project trees shall be split equally between the two cities; and

WHEREAS, Staff from Franklin and Oak Creek have collaboratively worked out what is felt to be a fair distribution of tasks to administer a joint tree planting contract; and

NOW, THEREFORE BE IT RESOLVED by the Common Council of the City of Franklin to enter an Intergovernmental Memorandum of Understanding with the City of Oak Creek outlining responsibilities for a shared street tree planting project related to the South 27th Street Reconstruction Project.

INTRODUCED at a regular meeting of the Common Council of the City of Franklin this _____, 2017, by Alderman _____.

PASSED AND ADOPTED by the Common Council of the City of Franklin on the _____ day of _____, 2017.

APPROVED:

Stephen R. Olson, Mayor

ATTEST:

Sandra L. Wesolowski, City Clerk

AYES _____ NOES _____ ABSENT _____

INTERGOVERNMENTAL COOPERATION AGREEMENT
South 27th Street Corridor Plan: STREET TREE PLANTING

This Agreement is made and entered into this ____ day of _____, 2017, by and between the CITY OF FRANKLIN, 9229 West Loomis Road, Franklin, Wisconsin 53132 (“FRANKLIN”) and the CITY OF OAK CREEK, 8040 South 6th Street, Oak Creek, Wisconsin 53154 (“OAK CREEK”), municipal corporations organized and existing under and by virtue of the laws of the Constitution and laws of the State of Wisconsin (collectively, the “PARTIES”).

WITNESSETH:

WHEREAS, the Wisconsin Department of Transportation is reconstructing South 27th Street (US Highway 241) between West College Avenue and West Villa Drive (the “CORRIDOR”), and South 27th Street is the shared border between FRANKLIN and OAK CREEK; and

WHEREAS, pursuant to prior agreement(s) with the Department of Transportation, the PARTIES are responsible for the purchase and installation of approximately 162 trees in the CORRIDOR (the “PROJECT”); and

WHEREAS, the PARTIES entered into an Intergovernmental Memorandum of Understanding Between the City of Franklin and the City of Oak Creek Documenting Cost-Sharing Pertaining to the Development of the *South 27th Street Corridor Plan, A Joint Project, City of Franklin, City of Oak Creek* on the 25th day of March, 2014, which Memorandum provides at paragraph IV. that with certain unrelated exceptions, “[a]ll of the costs of the implementation of the *South 27th Street Corridor Plan* Streetscape elements,... shall be shared by the parties as follows: Franklin 50%; Oak Creek 50%”, and with the Streetscape elements listed in Exhibit A annexed thereto including street tree planting; and

WHEREAS, the purpose of this Agreement is to set forth the understanding of the PARTIES with respect to the PROJECT.

NOW, THEREFORE, it is hereby agreed by and between the PARTIES as follows:

1. FRANKLIN will purchase tree stock for all PROJECT trees to be planted on the west side of the South 27th Street Right-of Way and on median locations north of West Rawson Avenue.

2. OAK CREEK will purchase tree stock for all PROJECT trees to be planted on the east side of the South 27th Street Right-of Way and on median locations south of West Rawson Avenue.
3. The PARTIES will separately and individually establish the locations for their respective PROJECT trees to be planted.
4. FRANKLIN will provide survey data of the FRANKLIN tree locations to OAK CREEK.
5. OAK CREEK will provide contract administration for a contractor to install all FRANKLIN and OAK CREEK trees in the entire CORRIDOR, including, but not limited to: develop plans and specifications; solicit bidders, receive bids, and award contract; and issue change orders and approve pay requests.
6. FRANKLIN will provide review and comment on Oak Creek's plans, specifications, change orders, etc.
7. FRANKLIN will receive delivery of all PROJECT tree stock at the Franklin Public Works Department (7979 West Ryan Road, Franklin, Wisconsin 53132) and allow the contractor to access the Department site as needed to retrieve trees.
8. FRANKLIN will receive the contractor's clean spoils at the Franklin Public Works Department site.
9. OAK CREEK will provide topsoil and mulch for the contractor to use for the entire PROJECT.
10. The PARTIES will coordinate supervision of the contractor's work.
11. FRANKLIN will provide staking materials for the entire PROJECT.
12. The PARTIES will water, maintain, and otherwise care for their respective trees after contractor installation.
13. OAK CREEK will invoice FRANKLIN for one-half of contract payments made to the contractor.
14. This document may be signed in counterparts, all of which, when taken together shall constitute one Agreement.

15. This Agreement shall be effective only upon the approval of the respective governing bodies of FRANKLIN and OAK CREEK.

IN WITNESS WHEREOF, the PARTIES have executed and delivered this AGREEMENT under corporate seal as of the date and year first above written.

CITY OF FRANKLIN

CITY OF OAK CREEK

By: _____
Stephen R. Olson, Mayor

By: _____
Stephen A. Scaffidi, Mayor

By: _____
Sandra L. Wesolowski, City Clerk

By: _____
Catherine A. Roeske, City Clerk

By: _____
Paul Rotzenberg, Director of
Finance and Treasurer

By: _____
Bridget M. Souffrant, Finance
Director/Comptroller

Approved As To Form:

By: _____
Jesse A. Wesolowski, City Attorney

By: _____
Melissa L. Karls, City Attorney

APPROVAL <i>Slw</i>	REQUEST FOR Council ACTION	MEETING DATE 2/21/17
REPORTS AND RECOMMENDATIONS	Contract Ruekert & Mielke, Inc. for a professional services task order related to engineering in Area D, roughly between W. Oakwood and W. South County Line Roads and S. 27 th and S. 42 nd Streets.	ITEM NUMBER <i>G, 10.</i>

Request

Staff is requesting approval of a contract with Rueker & Mielke, Inc. for professional engineering services outlined in the attached February 15, 2017 letter to the Economic Development Director. Activities outlined in referenced Task Order #2, include: meeting with MMSD and the surrounding communities regarding sanitary sewer service and a combined sewage pump station, meeting with the City of Franklin staff, and the Common Council regarding phasing of development and estimating project costs thereof, including providing cost estimates for municipal sanitary sewer and water services to Area D, roughly between W. Oakwood and W. South County Line Roads and S. 27th and S. 42nd Streets.

Funding

The scope of services for this limited task order is capped at \$10,000. These services are eligible for funding from tax increment financing district (TID) #4, which includes the entirety of Area D. There is a corresponding budget amendment in your Council Packet that makes appropriate changes to the budget for TID #4 to accommodate approval if this item.

Background

The request follows a directive to staff to solicit bids from consultants for such services from the Common Council at the time of their February 7, 2017 meeting. The Common Council approved rezoning this land for Mixed-Use Business Park at the November 1, 2016 Council Meeting.

Ruekert & Mielke, Inc. previously provided an engineering review of this area and is therefore uniquely qualified to build on their prior experience with Area D in Franklin. Task Order #2, builds on an existing professional services agreement between the City of Franklin and Ruekert & Mielke, Inc. dated November 4, 2014, also included.

Next Steps

With approval, work will commence as outlined in the task agreement. Staff will also request Ruekert & Mielke make a presentation to the Common Council regarding their approach to the project, status of work, and potential next steps at the time of their March 6, 2017 Committee of the Whole meeting. Based on feedback, staff will look to engage a financial consultant to review project cost estimates for TIF eligibility, analysis, and cash flow.

COUNCIL ACTION REQUESTED

A motion to contract Ruekert & Mielke, Inc. for a professional services task order related to engineering in Area D, roughly between W. Oakwood and W. South County Line Roads and S. 27th and S. 42nd Streets.

W233 N2080 Ridgeview Parkway • Waukesha, WI 53188-1020 • Tel. (262) 542-5733

February 15, 2017

Mr. Aaron Hertzberg
Economic Development Director
Department of City Development
City of Franklin
9229 West Loomis Road
Franklin, WI 53132

RE: Franklin Corporate Park – Area D
Task Order No. 2
Preliminary Planning

Dear Mr. Hertzberg:

Enclosed is Task Order No. 2 to the Agreement for Professional Services previously approved by the City on November 4, 2014. This Task Order is for services for meeting with MMSD and the surrounding communities regarding sanitary sewer service and a combined sewage pump station, meetings with City Staff and the Common Council regarding phasing of development and estimating project costs thereof, including providing cost estimates for municipal sanitary sewer and water service to the same area.

Based upon my previous experience, the cost for our services for this work is TID eligible. Since the exact number and extent of the above meetings and effort is unknown at this time, we proposed to provide these services on an hourly basis with an estimated not-to-exceed fee of \$10,000. Our efforts will be directed by you.

If this arrangement meets with your approval, please have the appropriate City official(s) sign where indicated and return one copy of the executed Task Order to me.

Please contact me with any questions.

Very truly yours,

RUEKERT & MIELKE, INC.



Joseph W. Eberle, P.E. (WI, IL, MN)
Senior Project Manager
jeberle@ruekert-mielke.com

JWE:sjs
Enclosure
cc: File

~58-10013 Franklin Corporate Park > 103- Preliminary Planning - Task Order #2 > Correspondence > Hertzberg-20170215-Task Order 2 Preliminary Planning.docx~

TASK ORDER

This is Task Order No. 2,
consisting of 2 pages

Task Order

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated November 4, 2014 ("Agreement"), Owner and Engineer agree as follows:

1. Specific Project Data

- A. Effective Date of Task Order: February 15, 2017
- B. Owner: City of Franklin
- C. Engineer: Ruekert & Mielke, Inc.
- D. Specific Project (title): Franklin Corporate Park
- E. Specific Project (description): Planning Services

2. Services of Engineer

- A. the specific services to be provided or furnished by Engineer under this Task Order are as follows:
 - 1. Meet with representatives of MMSD, City of Oak Creek, Village of Caledonia and Town of Raymond regarding sanitary sewer services.
 - 2. Meet with Common Council and City Staff as requested.
 - 3. Develop project phasing alternatives and cost estimates as requested.
- B. All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.

3. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2 of the Agreement and in Exhibit B.

4. Task Order Schedule

In addition to any schedule provisions provided in Exhibit A or elsewhere, the parties shall meet the following schedule:

- A. Provide services as requested within timelines requested.

5. Payments to Engineer

A. Owner shall pay Engineer for services rendered under this Task Order as follows:

<u>Description of Service</u>	<u>Amount</u>	<u>Basis of Compensation</u>
Study and Report Phase (A1.01)	\$10,000	Hourly

Compensation items and totals based in whole or in part on Hourly Rates are estimates only. Lump sum amounts and estimated totals included in the breakdown by phases incorporate Engineer's labor, overhead, profit, reimbursable expenses, if any, and Consultants' charges, if any. Total compensation shall not exceed amount stated unless previously approved in writing by Owner.

B. The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C.

6. Terms and Conditions

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is February 15, 2017.

OWNER:

ENGINEER:

City of Franklin

Ruekert & Mielke, Inc.

By: _____

By: Steven C. Wurster

Name: Steve Olson

Name: Steven C. Wurster, P.E.

Title: Mayor

Title: Senior Vice President/COO

Date: _____

Date: February 15, 2017

DESIGNATED REPRESENTATIVE FOR TASK ORDER

Name: _____

Name: Joseph W. Eberle, P.E.

Title: _____

Title: Senior Project Manager

Address: _____

Address: W233 N2080 Ridgeview Parkway
Waukesha, WI 53188-1020

Email: _____

Email: jeberle@ruekert-mielke.com

Phone: _____

Phone: 262-953-3030

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth in this Agreement; in Exhibit B, "Owner's Responsibilities"; and in each Task Order.
- B. Owner shall pay Engineer as set forth in each Task Order, pursuant to the applicable terms of Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement; such responsibility extends to requirements, instructions, programs, reports, data, and other information furnished by Owner pursuant to any Task Order. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of: (1) any development that affects the scope or time of performance of Engineer’s services; (2) the presence at the Site of any Constituent of Concern; or (3) any relevant, material defect or nonconformance in Engineer’s services, the Work, the performance of any Constructor, or in Owner’s performance of its responsibilities under this Agreement.

ARTICLE 3 – TERM; TIMES FOR RENDERING SERVICES

3.01 *Term*

- A. This Agreement shall be effective and applicable to Task Orders issued hereunder for five years from the Effective Date of the Agreement.
- B. The parties may extend or renew this Agreement, with or without changes, by written instrument establishing a new term.

3.02 *Times for Rendering Services*

- A. The Effective Date of the Task Order and the times for completing services or providing deliverables will be stated in each Task Order. Engineer is authorized to begin rendering services under a Task Order as of the Effective Date of the Task Order.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer’s services is impaired, or Engineer’s services are delayed or suspended, then the time for completion of Engineer’s services, and the rates and amounts of Engineer’s compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Specific Project, or Engineer’s services, then the time for completion of Engineer’s services, and the rates and amounts of Engineer’s compensation, shall be adjusted equitably.

- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in a Task Order within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.
- F. With respect to each Task Order, the number of Construction Contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established shall be identified in the Task Order. If the Work designed or specified by Engineer under a Task Order is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), then the Task Order will state the schedule for performance of Engineer's services in order to sequence and properly coordinate such services as are applicable to the Work under the Construction Contracts. If the Task Order does not address such sequencing and coordination, then Owner and Engineer shall jointly develop a schedule for sequencing and coordination of services prior to commencement of final design services; this schedule is to be prepared and included in or become an amendment to the authorizing Task Order whether or not the work under such contracts is to proceed concurrently.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 Invoices

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices, the terms of Exhibit C, and the specific Task Order. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 Payments

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
 - 1. 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; and
 - 2. Engineer may, after giving seven days written notice to Owner, suspend services under any Task Order issued until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date of a Task Order any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under the Task Order, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner

shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C and the specific Task Order.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs for a Specific Project shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* 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. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures*
 - 1. Engineer and Owner shall comply with applicable Laws and Regulations.

2. Engineer shall comply with the policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 3. Each Task Order is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date of the Task Order. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date of the Task Order to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of the Task Order of Owner-provided written policies and procedures;
 - c. changes after the Effective Date of the Task Order to Owner-provided policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in Engineer having to certify, guarantee, or warrant the existence of conditions whose existence Engineer cannot ascertain within its services for that Specific Project. Owner agrees not to make resolution of any dispute with Engineer or payment of any amount due to the Engineer in any way contingent upon Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor'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 Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to such Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or for enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.

- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at a Site, Engineer, its Consultant, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. For each design performed or furnished, Engineer shall be responsible only for those Construction Phase services that have been expressly required of Engineer in the authorizing Task Order. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against Engineer that may be in any way connected to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in the authorizing Task Order.

6.03 *Use of Documents*

- A. All Documents 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 Specific Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under the specific Task Order, then Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Specific Project. Engineer grants Owner a limited license to use the Documents on the Specific Project, extensions of the Specific 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, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Specific Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Specific Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and its Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written

verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Specific Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Specific Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Specific Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement or a Task Order does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

- A. Commencing with the Effective Date of the Agreement, Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer that is applicable to a Specific Project.
- B. Owner shall require Contractors to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Specific Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor.
- C. Engineer shall deliver to Owner certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished promptly after the Effective Date of the Agreement and at renewals thereafter during the life of this Agreement.
- D. All policies of property insurance relating to a Specific Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Specific Project. Owner and Engineer shall take appropriate measures in other Specific Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.

- E. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- F. Under the terms of any Task Order, or after commencement of performance of a Task Order, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner.

6.06 *Suspension and Termination*

A. *Suspension*

- 1. By Owner: Owner may suspend a Task Order for up to 90 days upon seven days written notice to Engineer.
- 2. By Engineer: Engineer may suspend services under a Task Order (a) if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or (b) in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.A.4.
- 3. A suspension on a specific Task Order, whether by Owner or Engineer, shall not affect the duty of the two parties to proceed with their obligations under other Task Orders.

B. *Termination for Cause—Task Order:* The obligation to provide further services under a specific Task Order may be terminated for cause:

- 1. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms of the specific Task Order or this Agreement, whose terms govern the specific Task Order, through no fault of the terminating party.
- 2. By Engineer:
 - a. upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - b. upon seven days written notice if the Engineer's services under a Task Order are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.A.5.
 - c. Engineer shall have no liability to Owner on account of such termination.
 - d. Notwithstanding the foregoing, neither this Agreement nor the Task Order will terminate under Paragraph 6.06.B.1 if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day

period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

- C. *Termination for Cause—Agreement:* In the case of a default by Owner in its obligation to pay Engineer for its services under more than one specific Task Order, Engineer may request immediate payment of all amounts invoiced on other Task Orders, and may invoice Owner for continued services on such Task Orders on a two-week billing cycle, with payment due within one week of an invoice. If Owner fails to make such payments, then upon seven days notice Engineer may terminate this Agreement, including Engineer's services under all Task Orders.
- D. *Termination for Convenience by Owner:* Owner may terminate a Task Order or this Agreement for Owner's convenience, effective upon Engineer's receipt of notice from Owner.
- E. *Effective Date of Termination:* The terminating party under Paragraphs 6.06.B, C, and D may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Task Order materials in orderly files.
- F. *Payments Upon Termination:*
 - 1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with the specific Task Order and this Agreement, and for all expenses incurred through the effective date of termination, to the extent that the specific Task Order (or Task Orders) allows reimbursement for such expenses. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
 - 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.F.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using the basis of compensation for Additional Services, as indicated in the specific Task Order.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the State of Wisconsin.

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
2. 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.
3. The Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in any Construction Contract Documents prepared for any Specific Project under this Agreement.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H.

6.10 *Environmental Condition of Site*

- A. With respect to each specific Task Order, Specific Project, and Site (unless indicated otherwise in a specific Task Order):
 1. Owner represents to Engineer that as of the Effective Date of the Task Order, to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
 2. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (a) Owner and (b) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
 3. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
 4. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, immediately

suspend performance of services on the portion of the Specific Project affected thereby until such portion of the Specific Project is no longer affected.

5. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under the specific Task Order, then the Engineer shall have the option of (a) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (b) terminating the specific Task Order for cause on seven days notice.
6. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under a specific Task Order or this Agreement.

6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to this Agreement, any Task Order, or any Specific Project, provided that any such claim, action, loss, damages, or judgment 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 Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants.
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations.
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys' fees) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under any Site, provided that (1) any such claim, cost, loss, damages, action, or judgment 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, and (2) nothing in this Paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

- F. *Mutual Waiver:* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement, any Task Order, or a Specific Project, from any cause or causes.

6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services under each Task Order, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under the Task Order. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* 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, which 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.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under a Specific Project shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion of such Specific Project.
- F. *Applicability to Task Orders:* The terms and conditions set forth in this Agreement apply to each Task Order as if set forth in the Task Order, unless specifically modified. In the event of conflicts between this Agreement and a Task Order, the conflicting provisions of the Task Order shall take precedence for that Task Order. The provisions of this Agreement shall be modified only by a written instrument. Such amendments shall be applicable to all Task Orders issued after the effective date of the amendment if not otherwise set forth in the amendment.
- G. *Non-Exclusive Agreement:* Nothing herein shall establish an exclusive relationship between Owner and Engineer. Owner may enter into similar agreements with other professionals for the same or different types of services contemplated hereunder, and Engineer may enter into similar or different agreements with other project owners for the same or different services contemplated hereunder.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto and any Task Order) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits or Task Order, or in the following definitions:
1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 2. *Additional Services*—Services to be performed for or furnished to Owner by Engineer in accordance with a Task Order, but which are not included in Basic Services for that Task Order.
 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Article 8.
 4. *Application for Payment*—The form acceptable to Engineer which is to be used by a Contractor in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
 5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with a specific Task Order, as specified in the Task Order (but not including Additional Services performed or furnished pursuant to an amendment to the specific Task Order).
 6. *Change Order*—A document which is signed by a Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
 7. *Change Proposal*—A written request by a Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
 8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

9. *Construction Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The numbers of days or the dates by which a Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion, and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of an entire Specific Project designed or specified by or for Engineer under this Agreement and the specific Task Order, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damage to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with a Specific Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Specific Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and their employees, agents, and representatives.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to a Specific Project as Engineer's independent professional associates, consultants, subcontractors, or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by a Contractor.
19. *Effective Date of the Agreement*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

20. *Effective Date of the Task Order*—The date indicated in the Task Order on which it becomes effective, but if no such date is indicated, it means the date on which the Task Order is signed and delivered by the last of the two parties to sign and deliver.
21. *Engineer*—The individual or entity named as such in this Agreement.
22. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
24. *Owner*—The individual or entity with which Engineer has entered into this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning Specific Projects.
25. *Record Drawings*—Drawings depicting the completed Specific Project, or a specific portion of the completed Specific Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Resident Project Representative*—The authorized representative, if any, of Engineer assigned to assist Engineer at the Site of a Specific Project during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of the RPR. The duties and responsibilities of the RPR will be as set forth in each Task Order.
27. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
28. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for a Contractor and submitted by a Contractor to Engineer to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
29. *Site*—Lands or areas indicated in the Construction Contract Documents for a Specific Project as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for use of a Contractor.
30. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
31. *Specific Project*—The total specific undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under a specific Task Order are a part.

32. *Subcontractor*—An individual or entity having a direct contract with a Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with a Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Task Order*—A document executed by Owner and Engineer, including amendments if any, stating the scope of services, Engineer's compensation, times for performance of services and other relevant information for a Specific Project.
36. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Specific Project, including Construction Cost and all other Specific Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, the total costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Specific Project, and the cost of other services to be provided by others to Owner.
37. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents for a Specific Project. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning; all as required by such Construction Contract Documents.
38. *Work Change Directive*—A written directive to a Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. *Day*: The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Suggested Form of Task Order*

- A. The Suggested Form of Task Order is attached as Attachment 1, and shall be used as the basis for preparing a specific Task Order for each Specific Project under this Agreement.

8.02 *Exhibits Included:*

- A. Exhibit A, Engineer's Services for Task Order. Services, tasks, and terms in Exhibit A as included with this Agreement are for reference in preparing the scope of services for specific Task Orders, and are contractually binding only to the extent expressly incorporated in a specific Task Order.
- B. Exhibit B, Owner's Responsibilities. This Exhibit applies to all Task Orders.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses. The terms of Exhibit C that will be applicable to and govern compensation under a specific Task Order will be determined by the selection of compensation methods made in Paragraph 6, "Payments to Engineer," of the specific Task Order.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative. This Exhibit is not contractually binding except when expressly incorporated in a specific Task Order.
- E. Exhibit E, Notice of Acceptability of Work. Engineer shall use this Notice of Acceptability of Work form at the conclusion of construction on a Specific Project if (1) the form is expressly incorporated by reference in a specific Task Order, and Engineer's scope of services in the specific Task Order includes providing such a notice to Owner and Contractor, and (2) the Work is in fact acceptable pursuant to applicable requirements, subject to the terms of the notice.
- F. Exhibit F, Not Used.
- G. Exhibit G, Insurance. This Exhibit is applicable to all Task Orders
- H. Exhibit H, Dispute Resolution. This Exhibit is applicable to all Task Orders.
- I. Exhibit I, Not Used.
- J. Exhibit J, Special Provisions. This Exhibit is applicable to all Task Orders.
- K. Exhibit K, Amendment to Task Order. Owner and Engineer may use this form during a Specific Project to modify the specific Task Order.

8.03 *Total Agreement*

- A. This Agreement (together with the Exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties.
- B. An executed Task Order under this Agreement (including any incorporated exhibits or attachments) constitutes the entire agreement between Owner and Engineer with respect to the Specific Project, and supersedes all prior written or oral understandings. Such a Task Order may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments to such a Task Order should be based whenever possible on the format of Exhibit K to this Agreement.

8.04 *Designated Representatives*

- A. 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 responsibilities of Owner under this Agreement. Such individuals shall have authority to

transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party that the individual represents. Each Task Order shall likewise designate representatives of the two parties with respect to that Task Order.

8.05 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.05:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

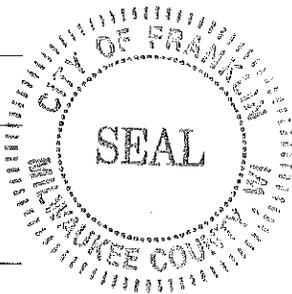
IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on Page 1.

OWNER:
By: *Steve Olson*
Name: Steve Olson
Title: Mayor
Date Signed: 11/14/14

ENGINEER:
By: *William Mielke*
Name: WILLIAM J. MIELKE
Title: PRESIDENT / CEO
Date Signed: November 4, 2014

ATTEST:
By: *Sandra L. Wesolowski*
Name: Sandra L. Wesolowski
Title: City Clerk
Date Signed: 11/17/2014

Approved as to form:
By: *Jesse A. Wesolowski*
Name: Jesse A. Wesolowski
Title: City Attorney
Date Signed: 11/20/14



Address for Owner's receipt of notices:
9229 W. Loomis Road
Franklin, WI 53132

Address for Engineer's receipt of notices:
W233 N2080 Ridgeview Parkway
Waukesha, WI 53188-1020

DESIGNATED REPRESENTATIVE (Paragraph 8.04):
Name: NICK FUCHS
Title: Senior Planner
Phone Number: (414) 425-4024
E-Mail Address: nfuchs@franklinwi.gov

DESIGNATED REPRESENTATIVE (Paragraph 8.04):
Name: Joseph W. Eberle, P.E.
Title: Senior Project Manager
Phone Number: 262-542-5733
E-Mail Address: jeberle@ruekert-mielke.com

**SUGGESTED FORM OF
TASK ORDER**

This is Task Order No. _____, consisting of _____ pages.
--

Task Order

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated _____, 2014 ("Agreement"), Owner and Engineer agree as follows:

1. Background Data

- a. Effective Date of Task Order:
- b. Owner:
- c. Engineer:
- d. Specific Project (title):
- e. Specific Project (description):

2. Services of Engineer

A. The specific services to be provided or furnished by Engineer under this Task Order are as follows:

B. Resident Project Representative (RPR) Services

If the scope of services established in Paragraph 2.A above includes RPR services, then Exhibit D of the Agreement is expressly incorporated in this Task Order by reference.

C. All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.

3. Additional Services

A. Additional Services that may be authorized or necessary under this Task Order are as follows:

Task Order Form

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and American Society of Civil Engineers. All rights reserved.

4. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2 of the Agreement and in Exhibit B, subject to the following:

5. Task Order Schedule

In addition to any schedule provisions provided in Exhibit A or elsewhere, the parties shall meet the following schedule:

6. Payments to Engineer

A. Owner shall pay Engineer for services rendered under this Task Order as follows:

Description of Service	Amount	Basis of Compensation
1. Basic Services (Part 1 of Exhibit A)	\$[]	[]
a. Study and Report Phase (A1.01)	\$[]	[]
b. Preliminary and Final Design Phase (A1.02, A1.03)	\$[]	[]
c. Bidding or Negotiating Phase (A1.04)	\$[]	[]
d. Construction Phase (A1.05)*	\$[]	[]
e. Resident Project Representative Services* (A1.05.A.2).	\$[]	[]
f. Post-Construction Phase (A1.06)	\$[]	[]
g. Commissioning Phase (A1.07)	\$[]	[]
h. Other Services (see A1.08, and 2) D above)	\$[]	[]
TOTAL COMPENSATION (lines 1.a-h)		
2. Additional Services (Part 2 of Exhibit A)	(N/A)	[]

*Based on a []-month continuous construction period.

Compensation items and totals based in whole or in part on Hourly Rates are estimates only. Lump sum amounts and estimated totals included in the breakdown by phases incorporate Engineer's labor, overhead, profit, reimbursable expenses (if any), and Consultants' charges, if any. For lump sum items, Engineer may alter the distribution of compensation between individual phases (line items) to be consistent with services actually rendered, but shall not exceed the total lump sum compensation amount unless approved in writing by the Owner.

B. The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C.

7. Consultants retained as of the Effective Date of the Task Order:

8. Other Modifications to Agreement and Exhibits:

9. Attachments:

10. Other Documents Incorporated by Reference:

11. Terms and Conditions

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is _____

OWNER:

By: _____

Name: Steve Olson

Title: Mayor

ENGINEER:

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

Name: Sandra L. Wesolowski

Title: City Clerk

Date Signed: _____

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: _____

Title: _____

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: Joseph W. Eberle, P.E.

Title: Senior Project Manager

Address: W233 N2080 Ridgeview Parkway
Waukesha, WI 53188-1020

Email Address: _____

Email Address: jeberle@ruekert-mielke.com

Task Order Form

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and American Society of Civil Engineers. All rights reserved.

This is **EXHIBIT A**, consisting of 15 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services - Task Order Edition** dated November 4, 2014.

Engineer's Services for Task Order

Engineer shall provide the following Basic and Additional Services but only to the extent outlined in a specific Task Order.

PART 1—BASIC SERVICES

A1.01 Study and Report Phase Services

A. As Basic Services, Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Specific Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.
 - a. If Owner has already identified one or more potential solutions to meet its Specific Project requirements, then proceed with the study and evaluation of such potential solutions:
 - b. If Owner has not identified specific potential solutions for study and evaluation, then assist Owner in determining whether Owner's requirements, and available data, reports, plans, and evaluations, point to a single potential solution for Engineer's study and evaluation, or are such that it will be necessary for Engineer to identify, study, and evaluate multiple potential solutions.
 - c. If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify three alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.
2. Identify potential solution(s) to meet Owner's Specific Project requirements, as needed.
3. Study and evaluate the potential solution(s) to meet Owner's Specific Project requirements.
4. Visit the Site, or potential Specific Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.
5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Specific Project-related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Specific Project requirements, and preparation of a related report.

Exhibit A – Engineer's Services

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6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Specific Project.
 7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Specific Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Specific Project.
 8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs.
 9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.
 10. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.
 11. Pursuant to the Task Order schedule, furnish the required number of review copies of the Report and any other Study and Report Phase deliverables to Owner, and review it with Owner. Owner shall submit to Engineer any comments regarding the furnished items within the time established in the Task Order schedule.
 12. Pursuant to the Task Order schedule, revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and furnish the required number of copies of the revised Report and any other Study and Report Phase deliverables to the Owner.
- B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.

A1.02 *Preliminary Design Phase*

- A. As Basic Services, Engineer shall:
1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Specific Project.
 2. In preparing the Preliminary Design Phase documents, use any specific applicable Specific Project Strategies, Technologies, and Techniques authorized by Owner during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.

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3. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.
 4. Visit the Site as needed to prepare the Preliminary Design Phase documents.
 5. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
 6. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.
 7. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.
 8. Pursuant to the Task Order schedule, furnish the required number of review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner, and review them with Owner. Within the time established in the Task Order schedule, Owner shall submit to Engineer any comments regarding the furnished items.
 9. Pursuant to the Task Order schedule, revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner the required number of copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

A1.03 *Final Design Phase*

- A. As Basic Services, Engineer shall:

1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.
4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.
6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.
9. Pursuant to the Task Order schedule, furnish for review by Owner, its legal counsel, and other advisors, the required number of copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, and review them with Owner. Within the time required by the Task Order schedule, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.
10. Pursuant to the Task Order schedule, revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit the required number of final copies of such documents to Owner after receipt of Owner's comments and instructions.

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- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.
- C. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Task Order is one. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Task Order.

A1.04 Bidding or Negotiating Phase

A. As Basic Services, Engineer shall:

1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
 2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.
 3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
 4. Consult with Owner as to the qualifications of prospective contractors.
 5. Consult with Owner as to the qualifications of Subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
 6. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.01.B.2 of this Exhibit A.
 7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
 8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors.

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A1.05 Construction Phase

A. As Basic Services, Engineer shall:

1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in the Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the testing services identified in Exhibit B, Paragraph B2.01.A.
4. *Pre-Construction Conference:* Participate in a pre-construction conference prior to commencement of Work at the Site.
5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
6. *Original Documents:* If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.

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8. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
9. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Agreement, this Task Order, and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
 - b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.
10. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a

functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.

12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
13. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
14. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
15. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews, obtain information, and prepare findings, conclusions, and recommendations for Owner's use, subject to the limitations and responsibilities under the Agreement and the Construction Contract.
16. *Non-reviewable matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
17. *Shop Drawings, Samples, and Other Submittals:* Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
18. *Substitutes and "or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.01.B.2 of this Exhibit A.
19. *Inspections and Tests:*
 - a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the

Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.

- b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
 - c. Pursuant to the terms of the Construction Contract, require additional inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
20. *Change Proposals and Claims:* (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.
21. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
- a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).
 - b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Agreement or this Task Order. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods,

techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.
 23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
 24. *Final Notice of Acceptability of the Work:* Conduct a final visit to the specific Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") (also available as a construction form, EJCDC® C-626 (2013)) that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under the Agreement and this Task Order.
 25. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the specific Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the specific Project involves more than one prime contract as indicated in Paragraph A1.03.C, then Construction Phase services may be

rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the final Construction Contract under the Task Order.

A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, as Basic Services, Engineer shall:
1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
 2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

A1.07 *Commissioning Phase*

- A. As Basic Services, Engineer shall:
1. Assist Owner in connection with the adjusting of Specific Project equipment and systems.
 2. Assist Owner in training Owner's staff to operate and maintain Specific Project equipment and systems.
 3. Prepare operation and maintenance manuals.
 4. Assist Owner in developing procedures for (a) control of the operation and maintenance of Specific Project equipment and systems, and (b) related record-keeping.
 5. Prepare and furnish to Owner, in the format agreed to, Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.

A1.08 *Other Services:* Each specific Task Order may include Basic Services that do not fit into the categories above. Such services should be expressly stated in the specific Task Order itself.

PART 2—ADDITIONAL SERVICES

A2.01 Additional Services Requiring an Amendment to Task Order

- A. *Advance Written Authorization Required:* During performance under a Task Order, Owner may authorize Engineer in writing to furnish or obtain from others Additional Services of the types listed below. Unless expressly indicated above or in the specific Task Order to be included Basic Services, the following services are not included as part of Basic Services and will be paid for by Owner as Additional Services, using the basis of compensation for Additional Services, as indicated in the specific Task Order.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Specific Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Specific Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Specific Project.
 2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
 3. Services resulting from significant changes in the scope, extent, or character of the portions of the Specific Project designed or specified by Engineer, or the Specific Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of the Task Order or are due to any other causes beyond Engineer's control.
 4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2.
 5. Services required as a result of Owner's providing incomplete or incorrect Specific Project information to Engineer.
 6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
 7. Undertaking investigations and studies including, but not limited to:
 - a. detailed consideration of operations, maintenance, and overhead expenses;
 - b. based on the engineering and technical aspects of the Project, the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services do

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- not include rendering advice regarding municipal financial products or the issuance of municipal securities;
- c. preparation of appraisals;
 - d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
 - e. detailed quantity surveys of materials, equipment, and labor; and
 - f. audits or inventories required in connection with construction performed or furnished by Owner.
8. Furnishing services of Consultants for other than Basic Services.
 9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
 10. Providing the following services:
 - a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.C or the specific Task Order.
 - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
 11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services.
 12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
 13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
 14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A.
 15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
 16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be

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performed in the Construction Phase, rather than merely shifting performance of such services to a later date.

17. Preparing Record Drawings, and furnishing such Record Drawings to Owner.
 18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
 19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
 20. Preparation of operation, maintenance, and staffing manuals.
 21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
 22. Assistance to Owner in training Owner's staff to operate and maintain Specific Project equipment and systems.
 23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
 24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, mediation, lien or bond claim, or other legal or administrative proceeding involving the Project.
 25. Overtime work requiring higher than regular rates.
 26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8.
 27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
 28. Excessive services during any correction period, or with respect to guarantees called for in the Construction Contract (except as agreed to under Basic Services).
 29. Provide assistance in responding to the presence of any Constituent of Concern at any Site, in compliance with current Laws and Regulations.
 30. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.
- B. *Advance Written Authorization Not Required:* Engineer shall advise Owner in advance that Engineer will immediately commence to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner. Unless expressly indicated above or in the specific Task Order to be

included Basic Services, the following services are not Included as part of Basic Services and will be paid for by Owner as Additional Services, using the basis of compensation for Additional Services, as indicated in the specific Task Order.

1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

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This is **EXHIBIT B**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated November 4, 2014.

Owner's Responsibilities

Article 2 of the Agreement is amended and supplemented to include the following responsibilities unless expressly stated otherwise in a Task Order.

B2.01 Specific Responsibilities

A. Owner shall:

1. Provide Engineer with all criteria and full information as to Owner's requirements for the Specific Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
2. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
3. Furnish to Engineer any other available information pertinent to the Specific Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
4. Following Engineer's assessment of initially-available Specific Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - a. Property descriptions.

Exhibit B – Owner's Responsibilities

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- b. Zoning, deed, and other land use restrictions.
 - c. Utility and topographic mapping and surveys.
 - d. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 - e. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
 - f. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Specific Project, the Site, and adjacent areas.
 - g. Data or consultations as required for the Project but not otherwise identified in this Agreement.
5. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
 6. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
 - a. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 - b. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 - c. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
 7. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
 8. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

Exhibit B – Owner's Responsibilities

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9. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
10. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
11. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, other work is to be performed at or adjacent to the Site by others or by employees of Owner, or if Owner arranges to have work performed at the Site by utility owners, then Owner shall coordinate such work unless Owner designates an individual or entity to have authority and responsibility for coordinating the activities among the various prime Contractors and others performing work. In such case Owner shall define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
12. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
13. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
14. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
15. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
16. Place and pay for advertisement for Bids in appropriate publications.
17. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
18. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
19. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.

Exhibit B – Owner's Responsibilities

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This is **EXHIBIT C**, consisting of 4 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated November 4, 2014.

Payments to Engineer for Services and Reimbursable Expenses

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER'S RESPONSIBILITIES

C2.01 *Basis of Compensation*

- A. The bases of compensation (compensation methods) for Basic Services (including, if applicable, the bases of compensation for individual phases of Basic Services) and for Additional Services shall be identified in each specific Task Order (see Suggested Form of Task Order, Paragraph 6). Owner shall pay Engineer for services in accordance with the applicable basis of compensation.
- B. The three following bases of compensation are used for services under the Task Orders, as identified in each specific Task Order:
 1. Lump Sum (plus any expenses expressly eligible for reimbursement)
 2. Standard Hourly Rates (plus any expenses expressly eligible for reimbursement)
 3. Percentage of Construction Cost (plus any expenses expressly eligible for reimbursement)

C2.02 *Explanation of Compensation Methods*

A. *Lump Sum*

1. Owner shall pay Engineer a Lump Sum amount for the specified category of services.
2. The Lump Sum will include compensation for Engineer's services and services of Consultants, if any. The Lump Sum constitutes full and complete compensation for Engineer's services in the specified category, including labor costs, overhead, profit, expenses (other than those expenses expressly eligible for reimbursement, if any), and Consultant charges.
3. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the expenses reasonably and necessarily incurred by Engineer in connection with the performing or furnishing of the services in the category specified in the Task Order.
4. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

B. *Standard Hourly Rates*

1. For the specified category of services, the Owner shall pay Engineer an amount equal to the cumulative hours charged to the Specific Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class. Under this method, Engineer shall also be entitled to reimbursement from Owner for the expenses identified in Paragraph C2.03 below, and Appendix 1.
2. Standard Hourly Rates include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
3. Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit as Appendices 1 and 2.
4. The total estimated compensation for the specified category of services shall be stated in the Task Order. This total estimated compensation will incorporate all labor at Standard Hourly Rates, and reimbursable expenses (including Consultants' charges, if any).
5. The amounts billed will be based on the cumulative hours charged to the specified category of services on the Specific Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus reimbursable expenses (including Consultant's charges, if any).
6. The Standard Hourly Rates and Reimbursable Expenses Schedule shall be adjusted annually as of February of each year to reflect equitable changes in the compensation payable to Engineer.

C. *Percentage of Construction Cost.*

1. *General:* An amount equal to 5-1/2 percent of the Construction Cost. This amount includes compensation for Engineer's Services. The percentage of Construction Cost noted herein accounts for labor, overhead, profit, and expenses (other than any expressly allowed Reimbursable Expenses).
2. As a basis for payment to Engineer, Construction Cost will be based on one or more of the following determinations with precedence in the order listed for Work designed or specified by Engineer.
 - a. For Work designed or specified and incorporated in the completed Project, the actual final price of the Construction Contract(s), as duly adjusted by Change Orders.
 - b. For Work designed or specified but not constructed, the lowest bona fide Bid received from a qualified bidder for such Work; or, if the Work is not bid, the lowest bona fide negotiated proposal for such Work.
 - c. For Work designed or specified but not constructed upon which no such Bid or proposal is received, Engineer's most recent opinion of probably Construction Cost.

- d. Labor furnished by Owner for the Project will be included in the Construction Cost at current market rates including a reasonable allowance for overhead and profit. Materials and equipment furnished by Owner will be included at current market prices.
 - e. For purposes of determining Construction Cost under this provision, no deduction is to be made from Construction Contract pricing on account of any penalty, liquidated damages, or other amounts withheld from payments to Contractor(s).
3. *Reimbursable Expenses:* In addition to the Percentage of Construction Cost, Engineer is also entitled to reimbursement from Owner for the following Reimbursable Expenses outlined in Paragraph C2.03:
4. *Progress Payments:*
- a. The portion of the amounts billed for Engineer's services that is on account of the Percentage of Construction Cost will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period. If any Reimbursable Expenses are expressly allowed, Engineer may also bill for any such Reimbursable Expenses incurred during the billing period.
 - b. Upon conclusion of each phase of Basic Services, Owner shall pay such additional amount, if any, as may be necessary to bring total compensation paid during such phase on account of the percentage of Construction Cost to the following estimated percentages of total compensation payable on account of the percentage of Construction Cost for all phases of Basic Services:

Preliminary Design Phase	10%
Final Design Phase	70%
Bidding or Negotiating Phase	5%
Construction Phase	15%
	100%

- c. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner.

C2.03 *Reimbursable Expenses*

- A. Expenses eligible for reimbursement include the following expenses reasonably and necessarily incurred by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Task Order: transportation (including mileage), lodging, and subsistence incidental thereto; and courier services; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, permit fees and similar Specific Project-related items; Consultant charges for geotechnical, wetland and environmental investigations, and archeological and cultural resource investigations; and any other expenses identified in Appendix 1.
- B. The amounts payable to Engineer for reimbursable expenses will be the Project-specific internal expenses actually incurred or allocated by Engineer, plus all invoiced external reimbursable expenses allocable to the Specific Project, the latter multiplied by a factor of 1.10.

- C. Whenever Engineer is entitled to compensation for the charges of its Consultants, those charges shall be the amount billed by such Consultants to Engineer times a factor of 1.10.
- D. The external reimbursable expenses and Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C2.04 *Serving as a Witness*

- A. For services performed by Engineer's employees as witnesses giving testimony in any litigation, arbitration or other legal or administrative proceeding under Paragraph A2.01.A.20, at a rate of 1.25 times the witness's standard hourly rate. Compensation for Consultants for such services will be by reimbursement of Consultants' reasonable charges to Engineer for such services.

C2.05 *Other Provisions Concerning Payment*

- A. *Extended Contract Times:* Should the Contract Times to complete the Work be extended beyond the period stated in the Task Order, payment for Engineer's services shall be continued based on the Standard Hourly Rates Method of Payment.
- B. *Estimated Compensation Amounts*
 - 1. When estimated compensation amounts have been stated in a Task Order and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer so that total compensation for such services will not exceed said estimated amount when such services are completed. If Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, the Engineer shall give written notice thereof to Owner and shall be paid for all services rendered thereafter.

This is **Appendix 1 to EXHIBIT C**, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition**, dated November 4, 2014.

Reimbursable Expenses Schedule

Expenses eligible for reimbursement are subject to review and adjustment per Exhibit C. Rates and charges for reimbursable expenses as of the date of the Agreement are:

MILEAGE

For Engineers and Technicians	.56/mile
For Construction Review Technicians	.60/mile
For Survey Crews	.68/mile
Print reproductions	.30/sq. foot
Color copies	.30/page
B&W copies	.10/page
Color plots	2.50/sq. foot
Scanning	.30/scan
Flow Probe	100.00/day
GPS equipment	100.00/day
ATV fee	100.00/day
Robotics equipment	100.00/day

This is **Appendix 2** to **EXHIBIT C**, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated November 4, 2014.

Standard Hourly Rates Schedule

The following standard hourly rates are subject to review and adjustment per Exhibit C. Hourly rates for services as of the Effective Date of the Task Order are:

<u>ENGINEERING SERVICES</u>	
Engineer 9 (Company President)	\$205.00
Engineer 7 (Principal / Senior PM)	165.00
Water/Wastewater Engineer 7	165.00
Engineer 6 (Senior PM)	150.00
Water/Wastewater Engineer 6 (Senior PM)	150.00
Engineer 5 (PM)	129.00
Engineer 4 (Proj Engineer)	119.00
Engineer 3	99.00
Engineer 2	94.00
Engineer 1	82.00
Engineer Technician 3	98.00
Engineer Technician 2	87.00
Engineer Technician 1	77.00
<u>IT/GIS TECHNICIAN SERVICES</u>	
Asset Management Consultant	150.00
IT/GIS Analyst 4	138.00
IT/GIS Analyst 2	113.00
IT/GIS Analyst 1	98.00
IT/GIS Technician 2	87.00
IT/GIS Technician 1	77.00
<u>SCADA SERVICES</u>	
Senior SCADA Analyst	\$152.00
<u>SURVEYING SERVICES</u>	
Professional Land Surveyor	109.00
Crew Chief / Surveyor	99.00
Surveying Technician	71.00
<u>CONSTRUCTION REVIEW SERVICES</u>	
Construction Review Manager	125.00
Senior Construction Review Technician	84.00
Construction Review Technician	72.00
<u>ADMINISTRATIVE SERVICES</u>	
Project Assistant	60.00
Administrative Assistant	60.00

Exhibit C – Appendix 2 – Standard Hourly Rates Schedule

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This is **EXHIBIT D**, consisting of 5 pages, referred to in and part of the **Agreement Between Owner and Engineer for Professional Services – Task Order Edition** dated November 4, 2014.

Schedule of Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

The following duties, responsibilities, and limitations of authority may be incorporated in the Task Order for a Specific Project:

D1.01 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative (“RPR”) to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer’s representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR’s actions.
- B. Through RPR’s observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor’s work in progress, for the coordination of the Constructors’ work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor’s failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, as incorporated in this Task Order, are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 1. *General:* RPR’s dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR’s dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor’s safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
5. *Liaison*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor. ,
7. *Shop Drawings and Samples:* Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
9. *Review of Work; Defective Work*
 - a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
 - b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work; and
 - c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. *Inspections, Tests, and System Start-ups*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.

11. *Records*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Upon request by Engineer, photograph or video work in progress or Site conditions.
- d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- e. Maintain records for use in preparing Specific Project documentation.
- f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

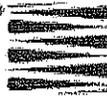
12. *Reports*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.

- b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
 - c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
 - d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.
13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.
15. *Completion:*
- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion, submit a punch list of observed items requiring completion or correction.
 - b. Participate in Engineer's visit to the Site in the company of, Owner, and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
 - c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).
- D. Resident Project Representative shall not:
- 1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
 - 2. Exceed limitations of Engineer's authority as set forth in this Agreement.
 - 3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
 - 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.

5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Specific Project in whole or in part.

This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated November 4, 2014.

EJCDC 
**ENGINEERS JOINT CONTRACT
DOCUMENTS COMMITTEE**

NOTICE OF ACCEPTABILITY OF WORK

SPECIFIC PROJECT:

OWNER:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

To: _____
OWNER

And To: _____
CONTRACTOR

From: _____
ENGINEER

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated, _____ and the following terms and conditions of this Notice.

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the professional judgment of Engineer.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Specific Project (including observation of the Contractor's work) under Engineer's Agreement with Owner, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

By: _____

Title: _____

Dated: _____

This is **EXHIBIT G**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated November 4, 2014.

Insurance

Paragraph 6.05 of the Agreement is amended and supplemented to include the following agreement of the parties.

G6.05 Insurance

A. The limits of liability for the insurance required by Paragraphs 6.05.A and 6.05.B of the Agreement are as follows, unless and except as specifically modified by a specific Task Order:

1. By Engineer:

a.	Workers' Compensation:	Statutory
b.	Employer's Liability –	
	1) Bodily injury, each accident:	\$1,000,000
	2) Bodily injury by disease, each employee:	\$1,000,000
	3) Bodily injury/disease, aggregate:	\$1,000,000
c.	General Liability –	
	1) Each Occurrence (Bodily Injury and Property Damage):	\$1,000,000
	2) General Aggregate:	\$3,000,000
d.	Excess or Umbrella Liability –	
	1) Each Occurrence:	\$10,000,000
	2) General Aggregate:	\$10,000,000
e.	Automobile Liability – Combined Single Limit (Bodily Injury and Property Damage):	\$1,000,000
f.	Professional Liability –	
	1) Each Claim Made:	\$2,000,000
	2) Annual Aggregate:	\$2,000,000

Exhibit G - Insurance

B. Additional Insureds:

1. Engineer and the Consultants Identified in the Task Order for a Specific Project shall be listed on Owner's general liability policies of insurance as additional insureds.
2. During the term of each Task Order the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability policies of insurance.
3. The Owner shall be listed on Engineer's general liability policy.

This is **EXHIBIT H**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated November 4, 2014.

Dispute Resolution

Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

H6.09 Dispute Resolution

- A. *Mediation*: Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement, including any Task Order, or the breach thereof ("Disputes") to mediation. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution method of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

Exhibit H – Dispute Resolution

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This is **EXHIBIT J**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 4, 2014.

Special Provisions

Pursuant to Law.

Notwithstanding anything to the contrary anywhere else set forth within this Agreement, all services and any and all materials and/or products provided by Engineer under this Agreement shall be in compliance with all applicable governmental laws, statutes, decisions, codes, rules, orders, and ordinances, be they Federal, State, County or Local.

Conflict of Interest.

Engineer warrants that neither it nor any of its affiliates has any financial or other personal interest that would conflict in any manner with the performances of the services under this Agreement and that neither it nor any of its affiliates will acquire directly or indirectly any such interest. Engineer warrants that it will immediately notify the Owner if any actual or potential conflict of interest arises or becomes known to the Engineer. Upon receipt of such notification, an Owner review and written approval is required for the Engineer to continue to perform work under this Agreement.

Governing Law and Disputes.

In addition to the provisions of subparagraph 6.07 A. and Exhibit H: i) the venue for any disputes arising under this Agreement shall be the Circuit Court for Milwaukee County; and ii) the prevailing party shall be entitled to its costs, including its reasonable attorney's fees, incurred in any litigation.

Records.

Engineer shall maintain all of its records pertaining to this Agreement for not less than three years following the completion of this Agreement and shall provide for the inspection and copying of such records by the Owner upon request.

Exhibit J—Special Provisions

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This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated November 4, 2014.

Amendment To Task Order No. _____

1. Background Data:

- a. Effective Date of Task Order:
- b. Owner:
- c. Engineer:
- d. Specific Project:

2. Description of Modifications

- a. Engineer shall perform the following Additional Services: []
- b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Task Order and previous amendments, if any, is modified as follows: []
- c. The responsibilities of Owner with respect to the Task Order are modified as follows: []
- d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation: []
- e. The schedule for rendering services under this Task Order is modified as follows: []
- f. Other portions of the Task Order (including previous amendments, if any) are modified as follows: []

[List other Attachments, if any]

3. Task Order Summary (Reference only)

- a. Original Task Order amount: \$[]
- b. Net change for prior amendments: \$ []
- c. This amendment amount: \$ []
- d. Adjusted Task Order amount: \$ []

The foregoing Task Order Summary is for reference only and does not alter the terms of the Task Order, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Task Order as set forth in this Amendment. All provisions of the Agreement and Task Order not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is _____.

OWNER:

ENGINEER:

By: _____

By: _____

Title: _____

Title: _____

Date
Signed: _____

Date
Signed: _____

SAMPLE

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