



## PUBLIC WORKS COMMITTEE AGENDA

January 23, 2024 at 6:10 PM  
303 Mansion Street Mauston, WI

1. **Call to Order/Roll Call**
2. **Discussion and action relating to Minutes**
  - a. of January 9, 2024
3. **Discussion and action relating to MSA agreement for the Waste Water Treatment Facility project for \$567,750.**
  - a. MSA agreement
4. **Discussion and action relating to MSA agreement for the 2024 Clean Water Fund Administration \$19,500 and Labor Standards Monitoring for \$23,000.**
  - a. MSA Agreement CWF total of \$42,500
5. **Adjourn**

### NOTICE:

*It is possible that action will be taken on any of the items on the agenda and that the agenda may be discussed in any order. It is also possible that a quorum of other governmental bodies of the municipality may be in attendance at the above-stated meeting to gather information; no action will be taken by any governmental body at the above-stated meeting other than the governmental body specifically referred to above in this notice.*

*Also, upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information or to request this service, contact City Deputy Clerk Nicole Lyddy (608) 747-2706.*

*Any member of the public wishing to join the meeting telephonically should call City Hall by 4pm the day of the meeting. Staff will be happy to provide instructions on joining the meeting by phone. City Hall main number: 608-847-6676*



# PUBLIC WORKS COMMITTEE MINUTES

January 09, 2024 at 6:00 PM  
303 Mansion Street Mauston, WI

**1. Call to Order/Roll Call**

The Public Works Committee met in a regular session on Tuesday, January 9, 2024. Rick Noe called the meeting to order at 6:00 pm. Members present were Donna McGinley, Jim Allaby, and Rick Noe. Also present were Mayor Dennis Nielsen, City Administrator Daron Haugh, Director of Public Works Rob Nelson, and Deputy Clerk Nicole Lyddy by phone.

**2. Minutes**

a. Allaby/McGinley to approve minutes of December 12, 2023. Motion carried.

**3. A-1 Excavating pay request #6 for 2023 Northside Streets project**

a. Allaby/McGinley to recommend to the Council to pay \$225,830.30. Motion carried.

**4. A-1 Excavating Change Order #6 for Northeast project**

a. Allaby/Noe to Recommend to Council to approve Change Order #6 increase of \$43,092. Motion carried.

**5. Director of Public Works report**

Nelson gave the annual cemetery report.

**6. Adjourn**

McGinley/ Allaby to adjourn. The meeting adjourned at 6:06 pm.

\_\_\_\_\_  
Committee Chair

\_\_\_\_\_  
Date



# Professional Services Agreement

Section 3, Item a.

MSA Project Number: 00044088

This AGREEMENT (Agreement) is made effective January 23, 2023 by and between

**MSA PROFESSIONAL SERVICES, INC (MSA)**

Address: 1230 South Boulevard, Baraboo, WI 53913

Phone: (608) 216-2052

Representative: Steve Sell, PE Email: ssell@msa-ps.com

**CITY OF MAUSTON (OWNER)**

Address: 303 Mansion Street, Mauston, WI 53948

Phone: (608) 847-4070

Representative: Rob Nelson Email: rnelson@mauston.com

**Project Name:** Construction Related Services  
Mauston WWTF Upgrade

**The scope of the work authorized is:** See Attachment A: Scope of Services

**The schedule to perform the work is:** Approximate Start Date: Jan 2024  
Approximate Completion Date: Dec 20255

**The estimated fee for the work is:** \$315,250

**The lump sum fee for the work is:** \$252,500

**Total (est. & lump sum):** \$567,750


All services shall be performed in accordance with the General Terms and Conditions of MSA, which is attached and made part of this Agreement. Any attachments or exhibits referenced in this Agreement are made part of this Agreement. Payment for these services will be on a time and expense or lump basis as defined in Attachment 'A.' Services provided on a time and expense basis will be invoiced based on Attachment 'B' – Rate Schedule.

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


**CITY OF MAUSTON**

**MSA PROFESSIONAL SERVICES, INC.**

\_\_\_\_\_  
Dennis Nielsen  
Mayor  
Date: \_\_\_\_\_

\_\_\_\_\_  
  
Jason Miller, PE  
Vice President  
Date: January 17, 2024

\_\_\_\_\_  
Daron Haugh  
City Administrator  
Date: \_\_\_\_\_

\_\_\_\_\_  
  
Greg Gunderson, PE  
Senior Team Leader  
Date: January 17, 2024

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

1. **Scope and Fee.** The scope of Owner's Project (the "Project"), scope of MSA's services (the "Work"), and quoted fees for those services are defined in Attachment A. The scope and fee constitute a good faith estimate of the tasks and associated fees required to perform the services defined in Attachment A. This agreement upon execution by both parties hereto, can be amended only by written instrument signed by both parties. For those projects involving conceptual or process development service or involve renovation of an existing building or structure, activities often cannot be fully defined during initial planning. As the Project progresses, facts uncovered may reveal a change in direction which may alter the Work. MSA will promptly inform the OWNER in writing of such situations so that changes in this agreement can be made as required.

2. **Owner's Responsibilities.**

(a) Project Scope and Budget

The OWNER shall define the scope and budget of the Project and, when applicable, periodically update the Project budget, including that portion allocated for the cost of the Work. The Project budget shall include contingencies for design, development, and, when required by the scope of the Project, construction of the Project. The OWNER shall not significantly increase or decrease the overall Project scope or schedule, the portion of the budget allocated for the cost of the Work, or contingencies included in the overall budget or a portion of the budget, without the agreement of MSA to a corresponding change in the Project scope, quality, schedule, and compensation of MSA.

(b) Designated Owner Representative

The OWNER shall identify a Designated Representative who shall be authorized to act on behalf of the OWNER with respect to the Project. OWNER's Designated Representative shall render related decisions in a timely manner so as to avoid unreasonable delay in the orderly and sequential progress of MSA's services. MSA shall not be liable for any error or omission made by OWNER, OWNER's Designated Representative, or OWNER's consultant.

(c) Tests, Inspections, and Reports

When required by the scope of the Project, the OWNER shall furnish tests, inspections, and reports required by law or the Contract Documents, such as planning studies; preliminary designs; structural, mechanical, or chemical tests; tests for air, water, or soil pollution; and tests for hazardous materials.

(d) Additional Consultants

MSA's consultants shall be identified in Attachment A. The OWNER shall furnish the services of other consultants other than those designated in Attachment A, including such legal, financial, accounting, and insurance counseling services as may be required for the Project.

(e) OWNER Provided Services and Information

MSA shall be entitled to rely on the accuracy and completeness of services and information furnished by the OWNER, Designated OWNER Representative, or Consultant. MSA shall use reasonable efforts to provide prompt written notice to the OWNER if MSA becomes aware of any errors, omissions, or inconsistencies in such services or information.

3. **Billing.** MSA will bill the OWNER monthly with net payment due upon receipt. Balances due past thirty (30) days shall be subject to an interest charge at a rate of 12% per year from said thirtieth day. In addition, MSA may, after giving seven days written notice, suspend service under any agreement until the OWNER has paid in full all amounts due for services rendered and expenses incurred, including the interest charge on past due invoices.

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

5. **Access to Site.** Owner shall furnish right-of-entry on the Project site for MSA and, if the site is not owned by Owner, warrants that permission has been granted to make planned explorations pursuant to the scope of services. MSA will take reasonable precautions to minimize damage to the site from use of

equipment, but has not included costs for restoration of damage that may result and shall not be responsible for such costs.

6. **Location of Utilities.** Owner shall supply MSA with the location of all pre-existent utilities and MSA has the right to reasonably rely on all Owner supplied information. In those instances where the scope of services require MSA to locate any buried utilities, MSA shall use reasonable means to identify the location of buried utilities in the areas of subsurface exploration and shall take reasonable precautions to avoid any damage to the utilities noted. However, Owner agrees to indemnify and defend MSA in the event of damage or injury arising from damage to or interference with subsurface structures or utilities which result from inaccuracies in information of instructions which have been furnished to MSA by others.

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

8. **Construction.** When applicable to the scope of the Project, the OWNER shall contract with a licensed and qualified Contractor for implementation of construction work utilizing a construction contract based on an EJCDC construction contract and general conditions appropriate for the scope of the Project and for the delivery method. In the construction contract, the OWNER shall use reasonable commercial efforts to require the Contractor to (1) obtain Commercial General Liability Insurance with contractual liability coverage insuring the obligation of the Contractor, and name the OWNER, MSA and its employees and consultants as additionally insureds of that policy; (2) indemnify and hold harmless the OWNER, MSA and its employees and consultants from and against any and all claims, damages, losses, and expenses ("Claims"), including but not limited to reasonable attorney's fees and economic or consequential damages arising in whole or in part out of the negligent act or omission of the contractor, and Subcontractor or anyone directly or indirectly employed by any of them. This agreement shall not be construed as giving MSA, the responsibility or authority to direct or supervise construction means, methods, techniques, sequence, or procedures of construction selected by the contractors or subcontractors or the safety precautions and programs incident to the work, the same being the sole and exclusive responsibility of the contractors or subcontractors.

9. **Standard of Care.** In conducting the services, MSA will apply present professional, engineering and/or scientific judgment, which is known as the "standard of care". The standard of care is defined as that level of skill and care ordinarily exercised by members of the same profession practicing at the same point in time and in the same or similar locality under similar circumstances in performing the Services. The OWNER acknowledges that "current professional standards" shall mean the standard for professional services, measured as of the time those services are rendered, and not according to later standards, if such later standards purport to impose a higher degree of care upon MSA.

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

10. **Municipal Advisor.** MSA Professional Services, Inc. is not acting as a 'Municipal Advisor' to the owner pursuant to Section 15B of the Exchange Act. For financial advice related to the corresponding project, the client is encouraged to discuss their finances with internal and/or external advisors and experts before making decisions incurring debt and/or supporting those obligations. MSA desires to serve each client well by providing the best information publicly available and is providing information as part of its engineering responsibilities to inform client options. The information is not intended to provide financial advice or recommendations and is not bound by the formal Municipal Advisor fiduciary duty.

11. **Conduct Expectations.** Owner and MSA understand their respective obligations to provide a safe, respectful work environment for their employees. Both parties agree that harassment on the job (unwelcome verbal, physical or other behavior that is related to sex, race, age, or protected class status) will not be tolerated and will be addressed timely and in compliance with anti-harassment laws.

**12. Electronic Documents and Transmittals.** Owner and MSA agree to transmit and related correspondence, documents, text, data, drawings and the like in digital format in accordance with MSA's Electronic Data Transmittal policy. Each party is responsible for its own cybersecurity, and both parties waive the right to pursue liability against the other for any damages that occur as a direct result of electronic data sharing.

**13. Building Information Modelling (BIM).** For any projects, and not limited to building projects, utilizing BIM, OWNER and MSA shall agree on the appropriate level of modelling required by the project, as well as the degree to which the BIM files may be made available to any party using the Electronic Document Transmittal provisions of section 10 of this Agreement.

**14. Construction Site Visits.** If the scope of services includes services during the Construction Phase, MSA shall make visits to the site as specified in Attachment A– Scope of Services. MSA shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct or have control over Contractor's work nor shall MSA have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. Accordingly, MSA neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

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

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

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

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

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

**18. Insurance.** MSA will maintain insurance coverage for: Worker's Compensation, General Liability, and Professional Liability. MSA will provide information as to specific limits upon written request. If the OWNER

requires coverages or limits in addition to those in effect as of the date of the agreement, additional insurance shall be paid by the OWNER. The liability of MSA to the OWNER for any indemnity commitments, or for any damages arising in any way out of performance of this contract is limited to such insurance coverages and amount which MSA has in effect.

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

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

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

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

**21. Accrual of Claims.** To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement will be deemed to have accrued, and all statutory periods of limitation will commence, no later than the date of Substantial Completion; or, if Engineer's services do not include Construction Phase services, or the Project is not completed, then no later than the date of Owner's last payment to Engineer.

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

through negotiation or mediation, OWNER and MSA agree and consent that such matter may be resolved through legal action in the court having jurisdiction as specified in this Agreement.

**23. Exclusion of Special, Indirect, Consequential and Liquidated Damages.** MSA shall not be liable, in contract or tort or otherwise, for any special, indirect, consequential, or liquidated damages including specifically, but without limitation, loss of profit or revenue, loss of capital, delay damages, loss of goodwill, claim of third parties, or similar damages arising out of or connected in any way to the Project or this contract.

**24. Limitation of Liability.** Neither MSA, its Consultants (if any), nor their employees shall be jointly, severally, or individually liable to the OWNER in excess of the amount of the insurance proceeds available.

**25. Successors and Assigns.** The successors, executors, administrators, and legal representatives 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. Neither party may assign, sublet, or transfer any rights under or interest (including, but without limitation, claims arising out of this Agreement or money that is due or may become due) in this Agreement without the written consent of the other party, which shall not be unreasonable withheld, except to the extent that any assignment, subletting, or transfer is mandated by law.

**26. Notices.** Any notice required under this Agreement will be in writing, and delivered: in person (by commercial courier or otherwise); by registered or certified mail; or by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line. All such notices are effective upon the date of receipt.

**27. Survival.** Subject to applicable Laws and Regulations, all express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

**28. Severability.** Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and MSA.

**29. No Waiver.** A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Agreement.

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

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

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



**ATTACHMENT A:  
SCOPE OF SERVICES**

**PROJECT UNDERSTANDING**

The City of Mauston owns and operates a Wastewater Treatment Facility (WWTF) that provides sewage treatment to meet the City’s Wisconsin Pollutant Discharge Elimination System (WPDES) permit requirements. The WWTF was built and commissioned at its current location in 1983 and expanded in 2000. The WWTF primarily consists of a 5-cell aerated lagoon system including chemical feed facilities for phosphorus removal. Sewage is conveyed to the WWTF through a series of 12 lift stations. The facilities have maintained reliable conveyance, treatment, and permit compliance over the years, however, due to the age and condition, the facilities require a significant upgrade to maintain reliability and operability.

The Commission contracted with MSA to design the facility upgrades, develop two (2) sets of Contract Documents, and to administer two (2) public biddings. Phase 1 entitled, *2023 Wastewater Treatment Facility Upgrade, City of Mauston, Juneau County, Wisconsin (dated October 2023)* were publicly bid in November 2023. The Bid was award to the lowest responsive bidder, Olympic Builders, in December 2023. Construction is scheduled to begin in approximately February 2024 and continue through December 2025. Phase 2 consists primarily of upgrades to the remote lift stations, and will be publicly bid in approximately September 2024 after notification of Community Development Block Grant (CDBG) funding. Both projects are scheduled to be completed by December 2025.

Through this Agreement, MSA will provide construction-related services (CRS) that generally include construction administration, construction observation (RPR), and post-construction documentation for **Phase 1 only. CRS for Phase 2 will be part of a future agreement.**

**SCOPE OF SERVICES**

**Construction Administration Phase (Lump Sum)**

1. MSA will provide project updates and correspond with the Owner. Formal correspondence includes the following:
  - a. Monthly invoice and project update
  - b. Daily and weekly progress reports (as prepared by RPR; reviewed by Project Manager)
  - c. Attend up to four (4) Council or Committee Meetings to update the City as requested.
2. Prepare for and attend one (1) pre-construction meeting onsite with up to two (2) staff. Other staff may attend meeting virtually as determined by MSA.
3. Prepare for and attend Contractor-led progress meetings during construction.
  - a. Weekly Meetings – attended and participate in-person by RPR. Project Manager will attend virtually on an as-needed basis. *Weekly meetings will only be held during weeks with active construction onsite.*
  - b. Monthly Meetings – attended in-person by RPR and Project Manager. Other MSA staff will attend virtually, as needed.
  - c. Coordination Meetings – attend any trade-specific coordination meetings specified in the Contract Documents (e.g. pre-submittal mtg, masonry mock-up, P&ID loop review, SCADA factory test). Attendance will be a mix of virtual and/or in-person and attended by the appropriate staff.
4. MSA will provide review and response of submittals made by the Contractor

- a. Review initial shop drawing submittal and up to one (1) additional resubmittal per specification section. *As detailed in the Contract Documents, the Owner can recoup costs from the Contractor for any Engineer costs related to responding to more than one (1) resubmittal per section.*
- b. Review one (1) material O&M submittal per specification section. No resubmittal reviews are included in the scope.
5. Review monthly contractor-prepared pay applications.
6. Prepare and negotiate up to three (3) Change Orders (COs).
7. Attend and participate in the start-up and commissioning of equipment as specified in the Contract Documents. *As specified, any costs (including Engineer time) realized by the Owner related to any failed or canceled start-ups, can be recouped from the Contractor.*
8. Conduct one (1) onsite review to determine if the project is substantially complete.
9. MSA will develop one (1) punch list at Substantial Completion. MSA will confirm punch list completion.
10. Reimbursables (e.g. copies, postage, mileage, and equipment) are included in the fees.

### **Construction Observation Phase (Time & Expense)**

1. Perform duties of the Resident Project Representative (RPR) as defined in the Contract Documents with the primary responsibility to observe and document construction activities, interpret the Contract Documents, and communicate with the Owner and Contractor.
2. RPR will attend and participate in weekly and monthly construction meetings
3. For budgetary purposes, MSA has estimated a total of 2,150 hours onsite during construction. The estimate is based on award to the lowest bidder, Olympic Builders.
  - a. 1,750 hours for onsite Resident Project Representative
    - i. Approx. 20-24 hours per week from contractor mobilization (April 2024) through estimated substantial completion (July 2025); 70 weeks total
    - ii. Approx. 8-10 hours per week from substantial completion (August 2025) through final completion (December 2025); 22 weeks total
  - b. 400 hours for Professional Engineering staff
    - i. Assist/support RPR to address field questions and communicate design intent to Contractor and Owner. Any questions that require a formal response will be through Field Orders (FO's), Requests for Information (RFI's), Supplementary Instructions (SI's) and/or Work Change Directives (WCD's).
    - ii. Conduct periodic site visits to review/document construction progress and correspond with Contractor and Owner.
4. Copies, postage, mileage, and equipment are included in the fees.
5. Services for this phase will be invoiced based on the Rate Schedule included as Attachment 'B.' Rates are subject to change annually.

### **Post-Construction Phase (Lump Sum)**

1. Provide up to five (5) days onsite for start-up documentation, operator training, troubleshooting, and further optimization of new processes and systems.
2. Prepare & provide record drawings to Owner in PDF format and one (1) 11x17 hard copy. Record Drawings will be based upon mark-ups provided by the Contractor and any changes made through RFIs, FOs, and/or COs.
3. MSA will prepare an Operation & Maintenance Manual to meet the requirements of DNR's Clean Water Fund Loan Program (CWFLP) in PDF format and one (1) bound hard copy.

4. Complete closeout documentation (e.g. collect lien waivers, close/report on permits, notify regulatory agencies)
5. MSA will communicate with Owner and Contractor on warranty items that arise during the 1-year warranty period identified in the Contract Documents. MSA will conduct an onsite review at the 11-month mark with the Owner and Contractor.
6. Copies, postage, mileage, and equipment are included in the fees.

#### **Owner Responsibilities**

1. Onsite Observation when MSA is not onsite. *MSA is only providing parttime observation as requested by the Owner. Therefore, construction activities will occur when MSA is not present and unable to document compliance with the Contract Documents.*
2. Attended and participate in meetings scheduled by the Contractor or Engineer.
3. Act upon Pay Applications and Change Orders on a timely basis
4. Provide direction to Contractor as requested by Engineer

#### **Additional Services (May be Provided by MSA for additional fee)**

1. Additional meetings not outlined in the scope
2. Additional Onsite Observation. *As identified above, MSA is only providing parttime observation based on an estimated schedule/budget.*
3. Funding Services. *Funding services will be provided through a separate contract.*
4. Additional reimbursables (e.g. hard copies of Pay Applications, RFIs, COs, Field Orders, etc.) not outlined in the scope. *Per the Contract Documents, hard copies of final approved Shop Drawings and equipment O&M Manuals are provided by the Contractor.*
5. Construction Staking. *MSA will reset any control points prior to construction. However, as specified, the Contractor shall provide their own staking.*
6. Administering and responding to RFIs determined to be frivolous by the Engineer.
7. Excessive Submittal Reviews & participating in failed or cancelled Equipment Start-ups. *As defined by the Contract documents, related Engineering fees will be invoiced as an additional service, and the Owner has the right to be reimbursed by the Contractor.*
8. Services outside completion dates. *MSA's scope of services are based upon the Contractor meeting the contracted completion dates. Services provided after the contracted completion dates will be invoiced as an additional service, and the Owner shall be reimbursed by the Contractor through the Liquidated Damages provisions of the Contract Documents.*
9. Field Testing. *All field testing (e.g. concrete, geotechnical, coatings) are provided by a 3<sup>rd</sup> party through the Contractor.*
10. Permit Fees. *Any permit fees paid by MSA will be invoiced to the Owner as a reimbursable cost.*
11. Changes in Project Scope. *Any changes in project scope via Change Order, Work Change Directive, RFI, or Field Order, that requires design by MSA, will be invoiced as an additional service*

**ATTACHMENT B:  
RATE SCHEDULE**

<u>CLASSIFICATION</u>	<u>LABOR RATE</u>
Administrative .....	\$ 75 – \$150/hr.
Architects .....	\$ 75 – \$215/hr.
Community Development Specialists .....	\$135 – \$185/hr.
Digital Design .....	\$175 – \$195/hr.
Environmental Scientists/Hydrogeologists .....	\$105 – \$185/hr.
Geographic Information Systems (GIS) .....	\$ 95 – \$185/hr.
Housing Administration .....	\$ 95 – \$170/hr.
HR .....	\$ 135 - \$150/hr.
Inspectors/Zoning Administrators .....	\$105 – \$130/hr.
IT Support .....	\$175 – \$195/hr.
Land Surveying .....	\$ 75 – \$185/hr.
Landscape Designers & Architects .....	\$ 75 – \$215/hr.
Planners .....	\$ 75 – \$205/hr.
Principals .....	\$210 – \$315/hr.
Professional Engineers/Designers of Engineering Systems .....	\$150 – \$200/hr.
Project Managers .....	\$150 – \$230/hr.
Real Estate Professionals .....	\$135 – \$165/hr.
Staff Engineers .....	\$ 75 – \$145/hr.
Technicians .....	\$ 95 – \$150/hr.
Wastewater Treatment Plant Operator .....	\$ 90 – \$115/hr.

REIMBURSABLE EXPENSES

Copies/Prints .....	Rate based on volume
Specs/Reports .....	\$10
Copies .....	\$0.12/page
Plots .....	\$0.006/sq.in.
Flash Drive .....	\$10
GPS Equipment .....	\$20/hour
Dini Laser Level .....	\$30/per day
Mailing/UPS .....	At cost
Mileage – Reimbursement .....	IRS Rate – IRS Rate + \$5/day
Mileage – MSA Vehicle .....	\$0.75 mile standard/ \$0.67 mile for DOT
Nuclear Density Testing .....	\$25.00/day + \$10/test
Organic Vapor Field Meter .....	\$100/day
PC/CADD Machine .....	Included in labor rates
Robotic Survey Equipment .....	\$20/hour - \$15/hour for DOT
Stakes/Lath/Rods .....	At cost
Travel Expenses, Lodging, & Meals .....	At cost
Traffic Counting Equipment & Data Processing .....	At cost
Geodimeter .....	\$30/hour
Drone Flight .....	\$375/flight

Labor rates represent an average or range for a particular job classification. These rates are in effect until December 31, 2024.



# Professional Services Agreement

Section 4, Item a.

MSA Project Number: 00044087

This AGREEMENT (Agreement) is made effective \_\_\_\_\_ by and between

**MSA PROFESSIONAL SERVICES, INC (MSA)**

Address: 1230 South Boulevard, Baraboo, WI 53913

Phone: (608) 355-8894

Representative: Brittney Mitchell

Email: BMitchell@msa-ps.com

**CITY OF MAUSTON (OWNER)**

Address: 303 Mansion Street, Mauston, WI 53948

Phone: (608) 847-4070

Representative: Rob Nelson

Email: RNelson@mauston.com

**Project Name:** 2024 CWF Administration & Labor Standards Monitoring

**The scope of the work authorized is:** See Attachment A: Scope of Services

**The schedule to perform the work is:** Approximate Start Date: 1/17/2024  
Approximate Completion Date: TBD

**The lump sum fee for the work is:** Clean Water Fund Administration \$19,500  
Labor Standards Monitoring: \$23,000

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

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

**CITY OF MAUSTON**

**MSA PROFESSIONAL SERVICES, INC.**

\_\_\_\_\_  
Dennis Nielsen

Mayor

Date: \_\_\_\_\_

*Brittney Mitchell*

\_\_\_\_\_  
Brittney Mitchell

Team Leader

Date: 1/17/2024

**OWNER ATTEST:**

\_\_\_\_\_  
Daron Haugh

City Administrator

Date: \_\_\_\_\_

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

1. **Scope and Fee.** The scope of Owner's Project (the "Project"), scope of MSA's services (the "Work"), and quoted fees for those services are defined in Attachment A. The scope and fee constitute a good faith estimate of the tasks and associated fees required to perform the services defined in Attachment A. This agreement upon execution by both parties hereto, can be amended only by written instrument signed by both parties. For those projects involving conceptual or process development service or involve renovation of an existing building or structure, activities often cannot be fully defined during initial planning. As the Project progresses, facts uncovered may reveal a change in direction which may alter the Work. MSA will promptly inform the OWNER in writing of such situations so that changes in this agreement can be made as required.

2. **Owner's Responsibilities.**

(a) Project Scope and Budget

The OWNER shall define the scope and budget of the Project and, when applicable, periodically update the Project budget, including that portion allocated for the cost of the Work. The Project budget shall include contingencies for design, development, and, when required by the scope of the Project, construction of the Project. The OWNER shall not significantly increase or decrease the overall Project scope or schedule, the portion of the budget allocated for the cost of the Work, or contingencies included in the overall budget or a portion of the budget, without the agreement of MSA to a corresponding change in the Project scope, quality, schedule, and compensation of MSA.

(b) Designated Owner Representative

The OWNER shall identify a Designated Representative who shall be authorized to act on behalf of the OWNER with respect to the Project. OWNER's Designated Representative shall render related decisions in a timely manner so as to avoid unreasonable delay in the orderly and sequential progress of MSA's services. MSA shall not be liable for any error or omission made by OWNER, OWNER's Designated Representative, or OWNER's consultant.

(c) Tests, Inspections, and Reports

When required by the scope of the Project, the OWNER shall furnish tests, inspections, and reports required by law or the Contract Documents, such as planning studies; preliminary designs; structural, mechanical, or chemical tests; tests for air, water, or soil pollution; and tests for hazardous materials.

(d) Additional Consultants

MSA's consultants shall be identified in Attachment A. The OWNER shall furnish the services of other consultants other than those designated in Attachment A, including such legal, financial, accounting, and insurance counseling services as may be required for the Project.

(e) OWNER Provided Services and Information

MSA shall be entitled to rely on the accuracy and completeness of services and information furnished by the OWNER, Designated OWNER Representative, or Consultant. MSA shall use reasonable efforts to provide prompt written notice to the OWNER if MSA becomes aware of any errors, omissions, or inconsistencies in such services or information.

3. **Billing.** MSA will bill the OWNER monthly with net payment due upon receipt. Balances due past thirty (30) days shall be subject to an interest charge at a rate of 12% per year from said thirtieth day. In addition, MSA may, after giving seven days written notice, suspend service under any agreement until the OWNER has paid in full all amounts due for services rendered and expenses incurred, including the interest charge on past due invoices.

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

5. **Access to Site.** Owner shall furnish right-of-entry on the Project site for MSA and, if the site is not owned by Owner, warrants that permission has been granted to make planned explorations pursuant to the scope of

services. MSA will take reasonable precautions to minimize damage to the site from use of equipment not included costs for restoration of damage that may result and shall not be responsible for such costs.

6. **Location of Utilities.** Owner shall supply MSA with the location of all pre-existent utilities and MSA has the right to reasonably rely on all Owner supplied information. In those instances where the scope of services require MSA to locate any buried utilities, MSA shall use reasonable means to identify the location of buried utilities in the areas of subsurface exploration and shall take reasonable precautions to avoid any damage to the utilities noted. However, Owner agrees to indemnify and defend MSA in the event of damage or injury arising from damage to or interference with subsurface structures or utilities which result from inaccuracies in information of instructions which have been furnished to MSA by others.

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

8. **Construction.** When applicable to the scope of the Project, the OWNER shall contract with a licensed and qualified Contractor for implementation of construction work utilizing a construction contract based on an EJCDC construction contract and general conditions appropriate for the scope of the Project and for the delivery method. In the construction contract, the OWNER shall use reasonable commercial efforts to require the Contractor to (1) obtain Commercial General Liability Insurance with contractual liability coverage insuring the obligation of the Contractor, and name the OWNER, MSA and its employees and consultants as additionally insureds of that policy; (2) indemnify and hold harmless the OWNER, MSA and its employees and consultants from and against any and all claims, damages, losses, and expenses ("Claims"), including but not limited to reasonable attorney's fees and economic or consequential damages arising in whole or in part out of the negligent act or omission of the contractor, and Subcontractor or anyone directly or indirectly employed by any of them. This agreement shall not be construed as giving MSA, the responsibility or authority to direct or supervise construction means, methods, techniques, sequence, or procedures of construction selected by the contractors or subcontractors or the safety precautions and programs incident to the work, the same being the sole and exclusive responsibility of the contractors or subcontractors.

9. **Standard of Care.** In conducting the services, MSA will apply present professional, engineering and/or scientific judgment, which is known as the "standard of care". The standard of care is defined as that level of skill and care ordinarily exercised by members of the same profession practicing at the same point in time and in the same or similar locality under similar circumstances in performing the Services. The OWNER acknowledges that "current professional standards" shall mean the standard for professional services, measured as of the time those services are rendered, and not according to later standards, if such later standards purport to impose a higher degree of care upon MSA.

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

10. **Municipal Advisor.** MSA Professional Services, Inc. is not acting as a 'Municipal Advisor' to the owner pursuant to Section 15B of the Exchange Act. For financial advice related to the corresponding project, the client is encouraged to discuss their finances with internal and/or external advisors and experts before making decisions incurring debt and/or supporting those obligations. MSA desires to serve each client well by providing the best information publicly available and is providing information as part of its engineering responsibilities to inform client options. The information is not intended to provide financial advice or recommendations and is not bound by the formal Municipal Advisor fiduciary duty.

11. **Conduct Expectations.** Owner and MSA understand their respective obligations to provide a safe, respectful work environment for their employees. Both parties agree that harassment on the job (unwelcome verbal, physical or other behavior that is related to sex, race, age, or protected class status) will not be tolerated and will be addressed timely and in compliance with anti-harassment laws.

**12. Electronic Documents and Transmittals.** Owner and MSA agree to transmit and related correspondence, documents, text, data, drawings and the like in digital format in accordance with MSA's Electronic Data Transmittal policy. Each party is responsible for its own cybersecurity, and both parties waive the right to pursue liability against the other for any damages that occur as a direct result of electronic data sharing.

**13. Building Information Modelling (BIM).** For any projects, and not limited to building projects, utilizing BIM, OWNER and MSA shall agree on the appropriate level of modelling required by the project, as well as the degree to which the BIM files may be made available to any party using the Electronic Document Transmittal provisions of section 10 of this Agreement.

**14. Construction Site Visits.** If the scope of services includes services during the Construction Phase, MSA shall make visits to the site as specified in Attachment A– Scope of Services. MSA shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct or have control over Contractor's work nor shall MSA have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. Accordingly, MSA neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

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

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

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

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

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

**18. Insurance.** MSA will maintain insurance coverage for: Worker's Compensation, General Liability, and Professional Liability. MSA will provide information as to specific limits upon written request. If the OWNER requires coverages or limits in addition to those in effect as of the date of the agreement, premiums for additional



insurance shall be paid by the OWNER. The liability of MSA to the OWNER for any indemnity coverage for any damages arising in any way out of performance of this contract is limited to such insurance coverages and amount which MSA has in effect.

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

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

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

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

**21. Accrual of Claims.** To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement will be deemed to have accrued, and all statutory periods of limitation will commence, no later than the date of Substantial Completion; or, if Engineer's services do not include Construction Phase services, or the Project is not completed, then no later than the date of Owner's last payment to Engineer.

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

23. **Exclusion of Special, Indirect, Consequential and Liquidated Damages.** MSA shall not be liable, in contract or tort or otherwise, for any special, indirect, consequential, or liquidated damages including specifically, but without limitation, loss of profit or revenue, loss of capital, delay damages, loss of goodwill, claim of third parties, or similar damages arising out of or connected in any way to the Project or this contract.

24. **Limitation of Liability.** Neither MSA, its Consultants (if any), nor their employees shall be jointly, severally, or individually liable to the OWNER in excess of the amount of the insurance proceeds available.

25. **Successors and Assigns.** The successors, executors, administrators, and legal representatives 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. Neither party may assign, sublet, or transfer any rights under or interest (including, but without limitation, claims arising out of this Agreement or money that is due or may become due) in this Agreement without the written consent of the other party, which shall not be unreasonable withheld, except to the extent that any assignment, subletting, or transfer is mandated by law.

26. **Notices.** Any notice required under this Agreement will be in writing, and delivered: in person (by commercial courier or otherwise); by registered or certified mail; or by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line. All such notices are effective upon the date of receipt.

27. **Survival.** Subject to applicable Laws and Regulations, all express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

28. **Severability.** Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and MSA.

29. **No Waiver.** A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Agreement.

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

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

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

## ATTACHMENT A: SCOPE OF SERVICES

Scope of Services: CWFP Administration and Labor Standards Monitoring

### SECTION 1: CWFP Loan Administration

MSA agrees to assist the OWNER with loan administration services including the following:

1. Work with the Owner and the WDNR to compile the necessary documentation required for CWFP loan closing(s):
  - Updated budget(s) to include all costs for loans
  - DBE compliance and all bidding documentation for project(s)
  - All award documentation and executed construction contract(s) for project(s)
  - Updated construction schedule
  - Disbursement request, along with all corresponding invoices
  - Use of American Iron and Steel Certification
  - WDNR Form 8700-201 Federal Equivalency Projects Assurances and Certification if needed
  - Ensure DNR has all corresponding Plan and Spec Approval letters for project
  - Final documentation of Green Project Reserve as needed
  - Proof of final user charge adoption for sewer rates (if necessary)
  - Intermunicipal Agreement (if applicable)
  - Title and Deed, and cashed check for any applicable land purchase
  - Statement of Payoff amount (if project has interim financing)
  - Legal Opinion from attorney regarding 20-year ownership of all land involved in project(s)
  - Facilitate any necessary coordination between other funding sources to allow CWFP to correctly understand all funding sources and amounts listed on project budgets.
2. Provide administrative services as required after loan closings. Establish and maintain CWFP Administration Files
  - Application files and required documentation
  - Financial Assistance Agreement contracts
  - Financial management/disbursements
  - Environmental review
  - Change Orders and Misc. Purchases (as approved by DNR)
  - Project closeout file
  - General correspondence files
  - Labor standards files
3. Work with the Owner and the WDNR through loan close-out at the end of the project.

## **SECTION 2: Provide Federal Labor Standards Monitoring for Construction Project(s)**

1. Serve as Labor Standards Officer on behalf of Owner
2. Secure/utilize current federal wage rate schedules, per CWFP requirements
3. Include (or provide for inclusion if requested) all applicable federal labor standards information in all bidding specifications and contract documents
4. Conduct required pre-construction conference and review wage requirements, funding processes and procedures, and payment procedures per all funding agencies as it relates to construction
5. Assist Owner with on-the-job employee interviews (HUD Form 11) and compare interviews to payrolls received; follow up on discrepancies between interviews and payroll documents
6. Review contractor & all sub-contractor payroll records for Davis-Bacon wage rate compliance on a weekly basis during construction:
  - a. Verify signed Certificate of Compliance attached to Payroll report
  - b. Verify that payroll reports include the following:
    - i. Name and Address of employees
    - ii. Employee Identification number
    - iii. Federal classification
    - iv. Base wage hourly amount
    - v. Fringe benefit hourly amount
    - vi. Standard Deductions
    - vii. Other Deductions (with explanations)
    - viii. Identified Apprentice(s) and current level in certified program
  - c. Verify receipt of required attachments to the payrolls:
    - i. Union Wage Sheet, or Documentation of Approved Fringe Plan(s), i.e. name, address, phone number, and frequency of deposit on behalf of employees
    - ii. Authorization of "Other" deductions, i.e. Child Support orders, signed plan/insurance/savings enrollment sheets
    - iii. Apprentice Contracts and corresponding Union Contract including ratios of journeymen to apprentices
6. Assist Owner in resolving labor standards compliance issues