



**A G E N D A**  
**CITY OF WAUPUN BOARD OF PUBLIC WORKS**  
**MEETING**  
Waupun City Hall – 201 E. Main Street, Waupun WI  
Tuesday, November 12, 2024 at 4:30 PM

**The City of Waupun Board of Public Works and Facilities Committee will meet in-person, virtually and teleconference. Instructions to join the meeting are provided below:**

Virtual: <https://us02web.zoom.us/j/81987138114>

Meeting ID: 819 8713 8114

Phone: 312 626 6799 US (Chicago)

**CALL TO ORDER**

**ROLL CALL**

**PERSONS WISHING TO ADDRESS THE BOARD OF PUBLIC WORKS**--*State name, address, and subject of comments.*  
(2 Minutes)

***No Public Participation after this point.***

**FUTURE MEETINGS AND GATHERING INVOLVING THE BOARD OF PUBLIC WORKS**

1. Next Meeting: December 10, 2024, 4:30 p.m. Common Council Chambers, Waupun City Hall

**PRIOR MEETING MINUTES**

2. Approve Minutes from October 8, 2024 Board of Public Works

**CONSIDERATION - ACTION**

3. Public Emergency Declaration City Facility Roofs Damaged during Hailstorm
4. Recommend Approval of MSA Agreement for Alley Reconstruction Project (N. Mill St. to N. Madison St.)
5. Recommend Approval of MSA Agreement for Newton & Rock Avenue Reconstruction Project (Phase #2)
6. Recommend Approval of Estimate with All Phase, LLC to Rebuild the Aquatic Center Pool Heater

**ADJOURNMENT**

*Upon reasonable notice, efforts will be made to accommodate disabled individuals through appropriate aids and services. For additional information, contact the City Clerk at 920-324-7915.*



**Minutes - City of Waupun**  
Board of Public Works

Tuesday, October 8, 2024 – City Council Chambers

CALL TO ORDER

Chairman Matoushek called the meeting to order at 4:30pm

ROLL CALL

Alderspersons: Peter Kaczmarek, Kambria Ledesma, Mike Matoushek  
Citizens: Dale Heeringa, Andrew Sullivan, Dave Rens, Gregg Zonnefeld  
Ex-Officio: DPW Director Jeff Daane, City Administrator Kathy Schlieve

Additional Attendees: Mayor Rohn Bishop, Jaedon Buchholz

FUTURE MEETINGS AND GATHERING INVOLVING THE BOARD OF PUBLIC WORKS

1. Next Regularly Scheduled Meeting for the Board of Public Works is November 12, 2024

CONSIDERATION - ACTION

2. Approve Minutes from September 10, 2024, Board of Public Works Meeting – Motion by Sullivan, seconded by Heeringa. Motion carries unanimously
3. Approve Contractor for Snow Removal in Accordance with Waupun Municipal Code 7.07 Snow and Ice Removal – Motion by Rens to approve 2024-2025 snow removal contract to Jeff Kreuziger as presented. Seconded by Kaczmarek. Motion passes unanimously.
4. Review Flooding Areas of Concern and Recommend Stormwater Engineering Study to Examine Solutions – Daane presents on current challenges the city has been having with flooding from recent rain events. The presentation includes some highly impacted areas that need further investigation to determine how to best mitigate future flooding that impacts businesses, farmlands, and community properties. Motion by Zonnefeld, seconded by Sullivan to approve a recommendation to council to use stormwater funds in the amount of \$24,750 for Hazel-Pattee-W. Lincoln and Edgewood Dr. flood studies. Motion passes unanimously.

ADJOURNMENT

Motion by Sullivan, seconded by Zonnefeld. Motion passes unanimously.

Respectfully submitted,

Kambria Ledesma, Clerk  
City of Waupun



**AGENDA SUMMARY SHEET**

**MEETING DATE:** 11/12/24

**TITLE** Public Emergency Declaration City Facility  
: Roofs Damaged during Hailstorm

**AGENDA SECTION:** CONSIDERATION-ACTION

**PRESENTER:** Jeff Daane, Public Works Director

DEPARTMENT GOAL(S) SUPPORTED <i>(if applicable)</i>	FISCAL IMPACT	
Public Infrastructure	Insurance Settlement	

**ISSUE SUMMARY:**

All city facility roofs have been inspected following the May 2024 hailstorm. Hail damage was found on a majority of city buildings as listed on the included statement of loss. BRH Enterprise and our insurance adjuster have completed work on this claim and verified costs. Our deductible amount will be waived due to the size of the claim. In August, this board approved an emergency resolution authorizing a Public Emergency Declaration for City Facility Roofs Damaged during the Hailstorm specific to the DPW Garage, with final inspections of all facilities pending. That resolution is being modified from our initial findings on the DPW Garage to include all city facility roofs as identified in the attached statement of loss. WI Statute 62.15 (1b) permits the Board of Public Works and Common Council to declare an emergency when public interest is threatened. This must be done by resolution, which permits staff to order immediate repairs to the affected structure by foregoing the public bidding process. An emergency resolution is provided for your consideration. If we adhere to the public bidding process, it would delay replacement tied to the insurance settlement and is not advised due to damage identified.

**STAFF RECOMMENDATION:**

Approve resolution as presented for all city facilities and send to Council for final repair authorization

**ATTACHMENTS:**

Statement of Loss

**RECOMMENDED MOTION:**

Motion to approve the resolution declaring a public emergency for City roofs damaged during the May 2024 Hailstorm as presented, and recommend approval of repairs to the Common Council under emergency order.



less Recoverable Depreciation		\$ 9,610.56		
Actual Cash Value-Net Payment			\$ 65,876.01	\$ 65,876.01
<b>404 Watertown St</b>				
<b>NO DAMAGE</b>				\$ -
<b>313 Grove St</b>				
Replacement Cost		\$ 35,914.86		
less Recoverable Depreciation		\$ 4,500.68		
Actual Cash Value-Net Payment			\$ 31,414.18	\$ 31,414.18
<b>559 Home Ave</b>				
Replacement Cost		\$ 14,550.46		
less Recoverable Depreciation		\$ 1,617.57		
Actual Cash Value-Net Payment			\$ 12,932.89	\$ 12,932.89
<b>518 S. Madison</b>				
Replacement Cost		\$ 9,193.82		
less Recoverable Depreciation		\$ 992.27		
Actual Cash Value-Net Payment			\$ 8,201.55	\$ 8,201.55
<b>200 Beaver Dam</b>				
Replacement Cost		\$ 10,772.02		
less Recoverable Depreciation		\$ 1,138.95		
Actual Cash Value-Net Payment			\$ 9,633.07	\$ 9,633.07
<b>Forest Mount Cemetery</b>				
Replacement Cost		\$ 33,755.25		
less Recoverable Depreciation		\$ 3,891.45		
Actual Cash Value-Net Payment			\$ 29,863.80	\$ 29,863.80
<b>404 Pine St</b>				
Replacement Cost		\$ 1,015.21		
less Recoverable Depreciation		\$ 76.22		
Actual Cash Value-Net Payment			\$ 938.99	\$ 938.99
<b>503 W. Spring St</b>				
<b>NO DAMAGE</b>				\$ -
<b>300 N. Mill St</b>				
Replacement Cost		\$ 23,204.04		
less Recoverable Depreciation		\$ 3,014.99		
Actual Cash Value			\$ 20,189.05	\$ 20,189.05
<b>701 County Park</b>				
<b>No DAMAGE</b>				\$ -
<b>PITO</b>				
Replacement Cost		\$ 2,008.10		
less Recoverable Depreciation		\$ 216.35		
Actual Cash Value			\$ 1,791.75	\$ 1,791.75
<b>910 Newton Ave</b>				
<b>PENDING</b>				\$ -
<b>310 Rounsville ST</b>				
<b>PENDING</b>				\$ -
<b>716 Buwalda Dr</b>				
<b>PENDING</b>				\$ -
<b>BLDG CLAIM TOTAL</b>				<b>\$ 577,986.06</b>
<b>Payments to Date:</b>	<b>BLDG</b>			
07/29/24: City of Waupun	\$	107,818.66		
09/13/24: City of Waupun	\$	76,134.79		
11/1/24: City of Waupun	\$	250,000.00		
11/2/24: City of Waupun	\$	144,032.61		

<b>PAYMENT RECONCILIATION:</b>				
Claim Amount Paid to Date:	\$ 577,986.06	\$ -	\$ -	\$ -
<b>TOTAL CLAIM RECONCILIATION:</b>				
Amount Claimed Per Feature	\$ 577,986.06			
Less: Payments to Date	\$ 577,986.06	\$ -	\$ -	\$ -
Amount Now Due	\$ -	\$ -	\$ -	

RESOLUTION # \_\_\_\_\_

**A RESOLUTION DECLARING AN EMERGENCY TO CITY FACILITY ROOFS**

THIS RESOLUTION is made by the Board of Public Works of the City of Waupun;

**FINDINGS AND DETERMINATION:**

WHEREAS, significant hail damage was identified to the roofs of a majority of City of Waupun public facilities, including building and park structures located at 903 Waupun St.; 810 Lincoln St.; 201 E Main St.; 22 S Madison St.; 123 Forest St.; 510 Spring Street; 16 E Main St.; 301 E Main St; 728 W Lincoln St; 313 Grove St; 559 Home Ave; 518 S Madison St; 200 Beaver Dam St; Forest Mound Cemetery; 404 Pine St; 300 N Mill; 903 N Madison St.; with the potential for additional damage at facilities pending inspection located at 910 Newton; 310 Rounsiville St; and 716 Buwalda Dr; and,

WHEREAS, widespread damage, has produced leaks, which if not repaired immediately, may lead to further structural issues with public facilities that could endanger public welfare by compromising delivery of essential services in the community,

NOW THEREFORE BE IT RESOLVED THAT the Board of Public Works declares an emergency under WI Statute 62.15 at City of Waupun public facilities for the purpose of expediting roof repair on critical public facilities and that the emergency should remain in place until needed repairs are complete.

Dated this 12<sup>th</sup> day of November, 2024.

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Mike Matoushek, Jr.  
Chairman, Board of Public Works

ATTEST:

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Angela Hull

City Clerk





**AGENDA SUMMARY SHEET**

**MEETING DATE:** 11/12/24

**TITLE:** Recommend Approval of MSA Agreement for Alley Reconstruction Project (N. Mill St. to N. Madison St.)

**AGENDA SECTION:** BOARD/COMMITTEE/COMMISSION RECOMMENDATIONS

**PRESENTER:** Jeff Daane, Public Works Director

DEPARTMENT GOAL(S) SUPPORTED <i>(if applicable)</i>	FISCAL IMPACT	
High Performance Government	\$28,570 – TID 3 Expense	

**ISSUE SUMMARY:**

The alley located between N. Mill St. and N. Madison St. has some utility issues along with failing blacktop. The project will help with traffic flow along with overall appearance. This agreement is to engineer and have the project ready for bid in 2026.

**STAFF RECOMMENDATION:**

Recommend approval of contract to the Common Council

**ATTACHMENTS:**

MSA agreement for Alley Reconstruction project

**RECOMMENDED MOTION:**

Motion to recommend approval of the MSA agreement for the Alley Reconstruction project N. Mill St. to N. Madison St to the Common Council as presented.



# Professional Services Agreement

MSA Project Number: 00212159

This AGREEMENT (Agreement) is made effective October 24, 2024 by and between

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

Address: 201 Corporate Drive, Beaver Dam, WI 53916

Phone: 920-392-5136

Representative: Jason Laue, MSA Project Manager

Email: [jlaue@msa-ps.com](mailto:jlaue@msa-ps.com)

**CITY OF WAUPUN, WI (OWNER)**

Address: 201 E. Main Street, Waupun, WI 53963

Phone: 920-324-7912

Representative: Kathy Schlieve, City Administrator

Email: [kathy@cityofwaupunwi.gov](mailto:kathy@cityofwaupunwi.gov)

**Project Name:** Alley Reconstruction Project (N. Mill St. to N. Madison St.)  
City of Waupun, Fond du Lac County, Wisconsin

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

**The schedule to perform the work is:** See Attachment A: Scope of Services

**The estimated fee for the work is:** \$28,570

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 basis. Attachment B: Rate Schedule is attached and made part of this Agreement.

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

**CITY OF WAUPUN, WI**

**MSA PROFESSIONAL SERVICES, INC.**

\_\_\_\_\_  
Kathy Schlieve, City Administrator

\_\_\_\_\_  
Jason M. Laue, MSA Project Manager

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

Date: October 24, 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"), 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 18% 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 accept project 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 12 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 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 to Owner, in contract or tort or otherwise, for any special, indirect, consequential, or liquidated damages incurred by Owner including specifically, but without limitation, loss of profit or revenue, loss of capital, delay damages, loss of goodwill, 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.

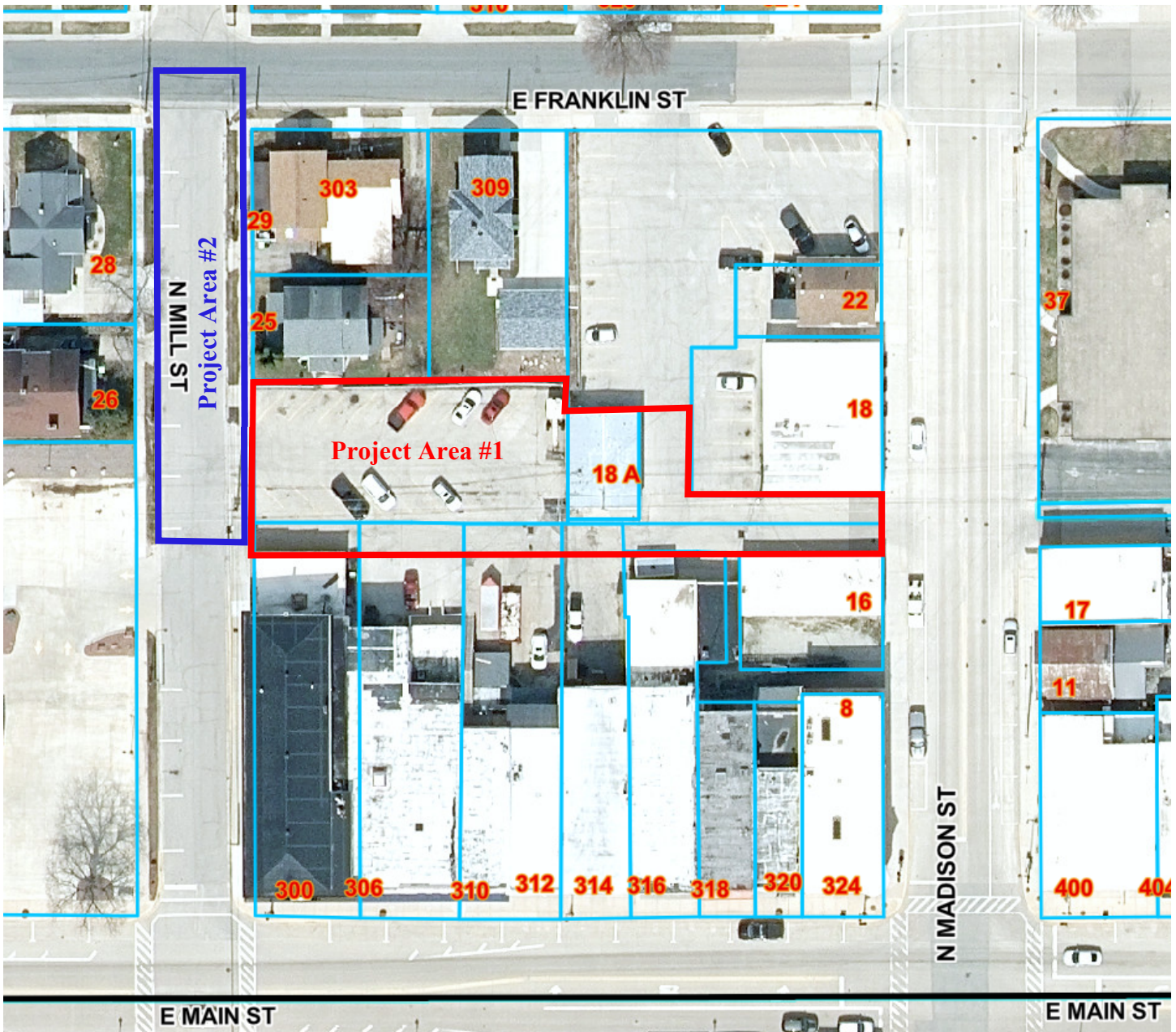
32. **Understanding.** This agreement contains the entire understanding between the parties on the subject matter hereof and no representations. Inducements, promises or agreements not embodied herein (unless agreed in writing duly executed) shall be of any force or effect, and this agreement supersedes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



**ATTACHMENT A:  
SCOPE OF SERVICES**

**PROJECT UNDERSTANDING IS:**

The "Project" involves the reconstruction of public utilities (sanitary, water, and storm sewer) and street infrastructure along the alley between N. Mill Street and N. Madison Street (within Project Area #1) within the City of Waupun, Wisconsin. The "Project" also involves the extension of new water main (to complete a water main loop) along N. Mill Street from the alley to E. Franklin Street (within Project Area #2). See the exhibit below for an illustration of the proposed project areas.





MSA proposes to provide the following scope of services. When OWNER or CITY is mentioned herein it should be construed to mean the City of Waupun, WI. When ENGINEER is mentioned herein it should be construed to mean MSA PROFESSIONAL SERVICES, INC. performing in the role of project representative for the Owner.

The Owner shall furnish any available pertinent project information for use by MSA. This may include reports, investigations, property descriptions, land use restrictions, development agreements, permits/approvals, easements, data from previous designs, concept maps, wetland delineations, architectural building plans, and any other information relative to the design and construction of the proposed improvements.

## **THE SCOPE OF THE WORK AUTHORIZED IS:**

### **1. TOPOGRAPHIC DATA COLLECTION & BASE MAPPING**

MSA shall provide topographic data collection of the project site to prepare a base map of existing conditions within the immediate area of the project limits (generally within 25 feet), which will be used for all additional work. The proposed survey work includes the following basic services:

- a. Location of existing right-of-way survey markers, if visible and readily observable.
- b. Location, elevation, size, and type (as applicable) of existing public utility structures and piping systems (culverts, manholes, inlets, water valves/hydrants, storm sewer, sanitary sewer, and water main) as readily observable or as marked by contacting Digger's Hotline. MSA will not be liable for issues resulting from mapping utilities that are not members of Digger's Hotline or from utilities that are incorrectly marked or not completely marked by the Digger's Hotline representative(s).
- c. Location of any private utility facilities within or adjacent to the project site (electric, telephone, natural gas, cable TV, fiber optic) as marked by contacting Digger's Hotline. MSA will not be liable for issues resulting from mapping utilities that are not members of Digger's Hotline or from utilities that are incorrectly marked or not completely marked by the Digger's Hotline representative(s).
- d. Location of other pertinent features such as: trees, fences, walls, poles, surface structures, driveways, and other related features as readily observable.

A base map of these existing conditions will be prepared and shall include ground contours at a 1-foot interval across the project site as well as other pertinent site features as described above. The base map of existing conditions shall be used for the subsequent design work.

## 2. ROAD RIGHT-OF-WAY ESTABLISHMENT

MSA has already performed previous survey work within this area of the City, which is anticipated to also be used to establish the public right-of-way for the alley and N. Mill Street related to this project.

## 3. ALLEY ENGINEERING PLAN PREPARATION

MSA shall prepare engineering plans for the proposed utility and street reconstruction improvements along the alley (Project Area #1 shown above). Using the topographic data of the existing site conditions, the City provided concept plan, and City staff input; engineering plan sheets depicting the following shall be prepared:

- i. Existing Site Conditions & Erosion Control Plan Sheets depicting existing site conditions and proposed erosion control measures required by the applicable approval agencies.
- i. Utility Plan & Profile Sheets depicting location, size, and elevation of the proposed public sanitary sewer, water, and storm sewer utilities that will be reconstructed within the project areas. Layout and design of other utilities (electric, gas, telephone, street lighting, etc.) are assumed to be performed by others and are not included in this contract.
- ii. Street Plan Sheets depicting location, size, and elevation of the proposed alley improvements as well as the parking lot area to the north of the alley. It will also show basic (grass lawn) site restoration details. If specific landscaping plantings and a detailed landscaping plan are required as a part of regulatory approvals, the details of this work effort shall be provided by others or provided by MSA as additional services.
- iii. Construction Details Plan depicting various details for construction clarification purposes and street cross-section sheets.

MSA shall submit a copy of the preliminary engineering plans (in PDF format) to the City for their review and comments. MSA shall attend one meeting with the City staff to review the preliminary plans, discuss any site construction constraints, review any applicable design requirements, and discuss staff comments/concerns.

MSA shall finalize the plans based upon the comprehensive comments received. The City shall provide MSA with fire flow data for the existing water system surrounding the project area. MSA shall also coordinate the final design with affected private utilities (electric, telephone, natural gas, and cable television) as applicable.

Deliverables: One electronic (PDF format) version of the preliminary plan set.  
One electronic (PDF format) version of the final plan set.

#### **4. N. MILL STREET WATER LOOP ENGINEERING PLAN PREPARATION**

MSA shall prepare engineering plans for the proposed water main loop along N. Mill Street (Project Area #2 shown above). This plan sheet(s) shall depict the location, size, and elevation of the proposed water loop and shall be incorporated into the Alley's plan set for bidding and construction purposes. It will also show basic (grass lawn) site restoration details.

#### **5. PUBLIC INFORMATIONAL MEETING & PRIVATE PAVING COORDINATION**

MSA shall attend one public informational meeting at a date and time mutually agreed upon with the City staff to review the proposed project with any interested business owners adjacent to the project area. It is assumed that the City staff will handle all notification and coordination of the meeting. MSA can assist the City staff with any inclusion of private pavement replacement along the south side of the alley as directed by the City as well as private business coordination.

#### **6. PROJECT SPECIFICATIONS**

MSA shall prepare project specifications to local requirements and reference the current State of Wisconsin Specifications for Sewer and Water Main Construction as well as the State of Wisconsin Specifications for Highway and Structure Construction. The specifications will also include work items and estimated quantities for the site improvements, which shall be used for bidding purposes.

Deliverables: One electronic (PDF format) of the project specifications.

#### **7. PROJECT PERMITTING**

MSA proposes to complete the following permitting related services that are anticipated for this project.

- a. Submit permit applications on behalf of the City to the applicable review agencies. Anticipated permits are as follows:
  - i. WDNR public sanitary sewer extension permit.
  - ii. WDNR public water extension permit.

It is assumed that the disturbance area for the project will remain below 1-acre and that a WisDNR WRAPP permit will not be required for this project. All permit and review fees shall be the responsibility of the Owner and are not included in the fees shown herein. MSA will request a check from the Owner for the fee amount when it has been determined prior to submittal. Any other permits not specifically listed as included within this contract are assumed to be by others or can be performed by MSA as an extra to this contract. MSA can also assist the Owner with any calculations, additional information, and/or modifications to the

project documents that are requested by the review agencies as directed by the Owner on a time and expense basis.

Deliverables: Permit applications filled out on behalf of the Owner for the permits listed above.

## **8. BIDDING RELATED SERVICES**

Assist the Owner during the bidding process as follows.

- a. Prepare an advertisement for bid and provide to Owner for publication in official newspaper.
- b. Assist Owner in advertising for and obtaining bids or proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the bidding documents.
- c. Coordinate the distribution of the bid documents to perspective bidders, subcontractors and suppliers.
- d. Answer bidder's questions and issue addenda as appropriate to clarify, correct, or change the bidding documents.
- e. Conduct a public online bid opening, compile the bid results and make a recommendation for the award of the construction contract to the Owner.
- f. Assist the Owner with the preparation and execution of a construction contract (including performance bonds, payment bonds, and insurance certificates).

Deliverables: One electronic (PDF format) version of the ad for bid.  
One electronic (PDF format) version of the bid summary and the recommendation for award of the construction contract.

## **9. CONSTRUCTION ADMINISTRATION SERVICES**

Provide construction administration services as directed by the City staff, which may include (but is not limited to) the following:

- a. Conduct a preconstruction conference with the contractor(s), representatives of the Owner, resident field engineer, project manager, and other affected service utilities as applicable.
- b. Review and approve shop drawings and submittals as applicable.
- c. Confer with the Owner in preparing, administering and accepting change orders and field modifications.
- d. Review the contractor's periodic payment requests and make a recommendation to the Owner for payment.
- e. Provide a periodic review of the construction progress and work schedule.
- f. Assist the Owner with the construction contract closeout documentation.
- g. Prepare construction record drawings of the completed utility improvements (sanitary sewer, water, and/or storm sewer).

## **10. CONSTRUCTION STAKING SERVICES**

Provide construction staking for alignment and grade for the proposed site improvements as directed by the City staff on a time and expense basis. Additional staking required because of lost or damaged stakes during construction or staking in addition to what is described within the project specifications can be provided as an additional cost. Staking will require a 72-hour prior notice.

## **11. CONSTRUCTION OBSERVATION SERVICES**

MSA shall provide the services of a Resident Project Representative (RPR) to observe the activities of the construction contractor, attend construction meetings, provide quality assurance testing, etc. as directed by the City staff on a time and expense basis. Services include travel time to/from the site, onsite observation time, documentation, record keeping, and reimbursable expenses. Also conduct a final site visit with the Contractor and the Owner. Prepare a punch list of items to be corrected and/or completed. Provide a follow-up check to see that all punch list items are successfully completed.

### **ASSUMPTIONS & CONDITIONS OF SERVICE:**

1. MSA is not responsible for the timeliness or outcome of agency reviews or approvals.
2. Fees charged by agencies for plan review, inspection, or other purposes are the sole responsibility of the client including fees for bid advertisement and public notices, if required.
3. Payment is expected in accordance with the "Prices and Terms of Payment" section of our standard contract. In addition to the provisions set forth therein, MSA Professional Services, Inc. reserves the right to stop work any time after balances are more than 30 days past due and all other efforts are exhausted to resolve any conflicts or disputes.
4. If work is requested of MSA that is not included in the Scope of Services herein, or is a change to work in progress, MSA shall notify the Owner of the change in scope and the Owner shall provide written (letter, email, contract amendment, etc.) authorization to proceed prior to starting the work.
5. All work will be done in accordance with the terms and conditions set forth in the contract. Items not specifically mentioned in the scope of services are not a part of this contract.
6. Additional meetings not mentioned in the enclosed scope of services will be attended by MSA staff when requested by the client on a time and expense basis as additional work.
7. It is assumed that MSA will not be involved in acquisition of any additional property from adjacent land owners and that the project area does not impact any wetlands, floodplains, environmentally sensitive areas, contaminated soils, hazardous materials, endangered species habitat, cultural/historical sensitive areas, or

involve high bedrock, and/or groundwater issues unless specifically indicated in the scope of work. If additional investigation into any of these items or if testing performed by a sub-consultant is required, it shall be provided by others or provided by MSA as additional services.

8. MSA assumes no liability for the project’s compliance with local zoning, land use, and shoreland ordinances. No platting, parcel subdividing, easement description preparation, etc. is included in this contract. These items shall be provided by others or provided by MSA as additional services.
9. This proposal assumes that the layout and location of the improvements will be adhered to throughout the project once provided (or approved) by the Owner and that no major changes will be made during the course of the work. If changes are made, MSA will provide the client with an estimated fee for inclusion of the changes into the plans and will require the client’s authorization of the additional fee prior to making any change.
10. Other design services (storm water management ponds, earthwork calculations, retaining walls, site lighting, special assessments, cross-section sheets, etc.) not specifically mentioned in this proposal or any offsite design will be completed by others or by MSA as additional services.

**FEE SCHEDULE SUMMARY:**

1. Topographic Data Collection & Base Map	\$ 3,470	
2. Road Right-of-Way Establishment	Already Completed	
3. Alley Engineering Plan Preparation	\$ 9,680	
4. N. Mill Street Water Loop Engineering Plan	\$ 2,940	
5. Public Informational Meeting & Private Paving	\$ 3,910	
6. Project Specifications	\$ 3,250	
7. Project Permitting	\$ 2,560	
8. Bidding Related Services	\$ 2,760	
9. Construction Administration Services	As Directed By City Staff	
10. Construction Staking Services	As Directed By City Staff	
11. Construction Observation Services	As Directed By City Staff	
=====		
<b>TOTAL</b>	<b>\$ 28,570</b>	<b>(Per Diem)</b>

**The retainer amount required is:**       None

**THE ESTIMATED PROJECT SCHEDULE:**

As directed by the City staff or as dictated by the work efforts undertaken. It is anticipated that the project design shall occur in 2025 and the project construction shall occur in 2026.

**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.



# AGENDA SUMMARY SHEET

**MEETING DATE:** 11/12/24

**TITLE:** Recommend Approval of MSA Agreement for Newton & Rock Avenue Reconstruction Project (Phase #2)

**AGENDA SECTION:** BOARD/COMMITTEE/COMMISSION RECOMMENDATIONS

**PRESENTER:** Jeff Daane, Public Works Director

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DEPARTMENT GOAL(S) SUPPORTED ( <i>if applicable</i> )	FISCAL IMPACT	
Public Infrastructure	\$136,210 some costs shared with Utilities	

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**ISSUE SUMMARY:**

This agreement supports final engineering work for second phase of Rock/Newton reconstruction. It will also take the project from bidding through construction and final closeout documents.

**STAFF RECOMMENDATION:**

Recommend the agreement to the Common Council for approval

**ATTACHMENTS:**

MSA Newton and Rock Avenue Reconstruction project phase 2 agreement

**RECOMMENDED MOTION:**

Motion to recommend approval of the MSA Newton and Rock Avenue Reconstruction project phase 2 agreement to the Common Council as presented.





# Professional Services Agreement

MSA Project Number: 00212157

This AGREEMENT (Agreement) is made effective October 7, 2024 by and between

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

Address: 201 Corporate Drive, Beaver Dam, WI 53916

Phone: 920-392-5136

Representative: Jason Laue, MSA Project Manager

Email: [jlaue@msa-ps.com](mailto:jlaue@msa-ps.com)

**CITY OF WAUPUN, WI (OWNER)**

Address: 201 E. Main Street, Waupun, WI 53963

Phone: 920-324-7912

Representative: Kathy Schlieve, City Administrator

Email: [kathy@cityofwaupunwi.gov](mailto:kathy@cityofwaupunwi.gov)

**Project Name:** Newton & Rock Avenue Reconstruction Project (Phase #2)  
City of Waupun, Fond du Lac County, Wisconsin

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

**The schedule to perform the work is:** See Attachment A: Scope of Services

**The estimated fee for the work is:** \$136,210

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 basis. Attachment B: Rate Schedule is attached and made part of this Agreement.

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

**CITY OF WAUPUN, WI**

**MSA PROFESSIONAL SERVICES, INC.**

\_\_\_\_\_  
Kathy Schlieve, City Administrator

\_\_\_\_\_  
Jason M. Laue, MSA Project Manager

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

Date: October 7, 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"), 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 18% 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 accept project 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 12 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 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 to Owner, in contract or tort or otherwise, for any special, indirect, consequential, or liquidated damages incurred by Owner including specifically, but without limitation, loss of profit or revenue, loss of capital, delay damages, loss of goodwill, 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.

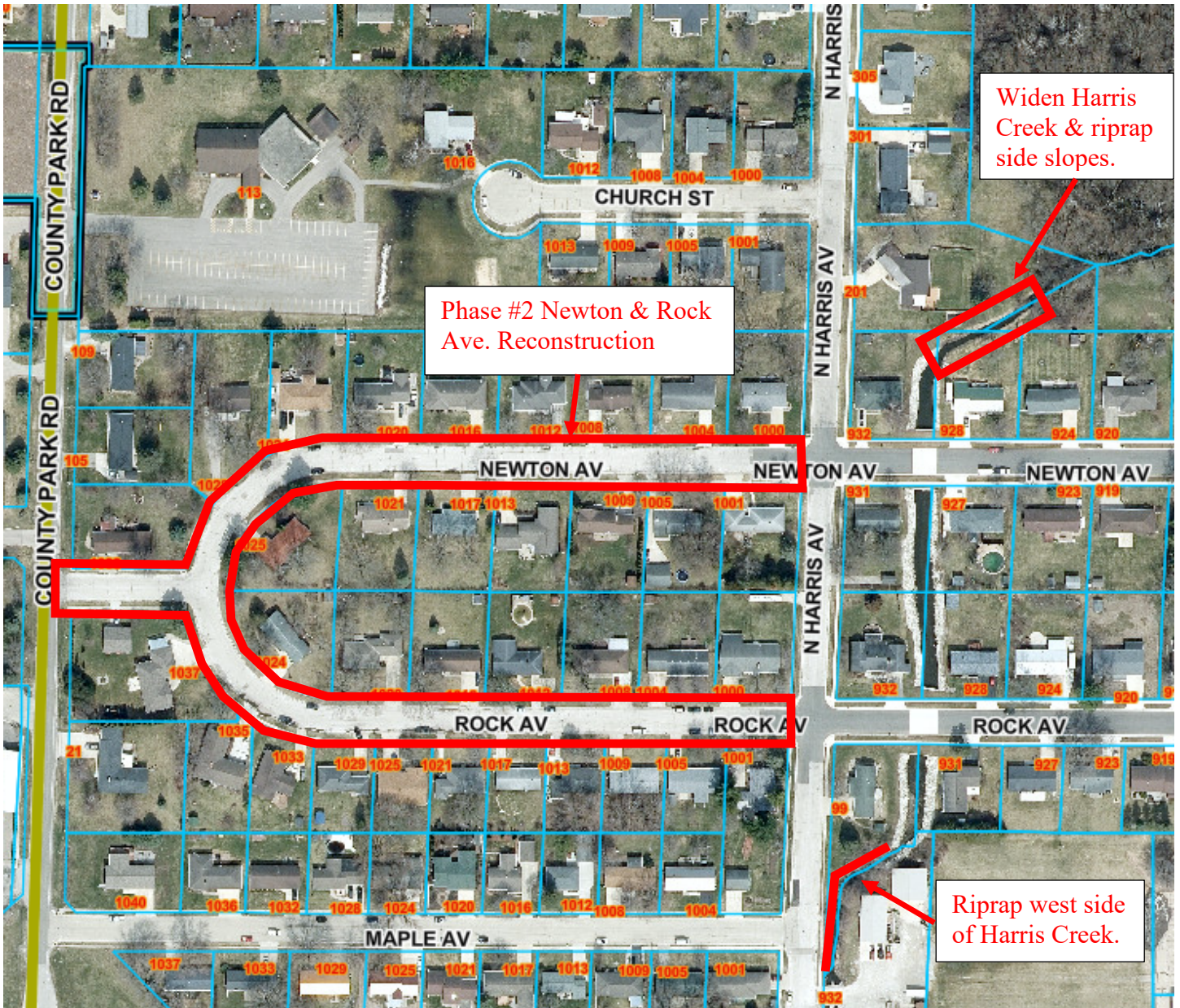
32. **Understanding.** This agreement contains the entire understanding between the parties on the subject matter hereof and no representations. Inducements, promises or agreements not embodied herein (unless agreed in writing duly executed) shall be of any force or effect, and this agreement supersedes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



**ATTACHMENT A:  
SCOPE OF SERVICES**

**PROJECT UNDERSTANDING IS:**

The "Project" involves the reconstruction of public utilities (sanitary, water, and storm sewer) and street infrastructure along Newton Avenue (N. Harris Ave. to Rock Avenue) and Rock Avenue (N. Harris Ave. to County Park Road) within the City of Waupun, Wisconsin. The "Project" also involves Phase #2 improvements along Harris Creek. See the exhibit below for an illustration of the proposed project areas.



MSA proposes to provide the following scope of services. When OWNER or CITY is mentioned herein it should be construed to mean the City of Waupun, WI. When ENGINEER is mentioned herein it should be construed to mean MSA PROFESSIONAL SERVICES, INC. performing in the role of project representative for the Owner.

The Owner shall furnish any available pertinent project information for use by MSA. This may include reports, investigations, property descriptions, land use restrictions, development agreements, permits/approvals, easements, data from previous designs, concept maps, wetland delineations, architectural building plans, and any other information relative to the design and construction of the proposed improvements.

## **THE SCOPE OF THE WORK AUTHORIZED IS:**

### **1. FINAL ENGINEERING DESIGN**

MSA proposes to complete the following design related services:

- MSA previously prepared construction plans for the reconstruction of all of Newton and Rock Avenue; however, the City has only constructed the eastern half to-date. MSA shall re-organize and finalize the proposed Phase #2 construction plans for the Newton & Rock Avenue Reconstruction Project (western half) and incorporate comments from the City staff.
- Finalize Harris Creek Phase #2 improvement plan(s) and incorporate them into the Newton & Rock Avenue Reconstruction Phase #2 plans.
- Provide overall project management of the design team and maintain communication with the client.
- Provide quality control reviews on all project documents.
- Submit final construction documents to the Owner for review and final approval as well as to the applicable private utilities. Based upon Owner's approval, MSA shall prepare submittals for State permits and begin bidding related tasks.

Deliverables: One electronic (PDF format) version of the final design plan set.

### **2. PROJECT SPECIFICATIONS**

MSA will prepare project specifications to local requirements and reference the current State of Wisconsin Specifications for Sewer and Water Main Construction as well as the State of Wisconsin Specifications for Highway and Structure Construction. The specifications will also include work items and estimated quantities for the site improvements, which shall be used for bidding purposes.

Deliverables: One electronic (PDF format) version of the project specifications.



### **3. PROJECT PERMITTING**

MSA proposes to complete the following permitting related services that are anticipated for this project.

- a. Submit permit applications on behalf of the Owner to the applicable review agencies. Anticipated permits are as follows:
  - i. WDNR WRAPP permit for site disturbance over 1-acre.
  - ii. WDNR WDNR public sanitary sewer extension permit.
  - iii. WDNR public water extension permit.
  - iv. WDNR general waterway permit

All permit and review fees shall be the responsibility of the Owner and are not included in the fees shown herein. MSA will request a check from the Owner for the fee amount when it has been determined prior to submittal. Any other permits not specifically listed as included within this contract are assumed to be by others or can be performed by MSA as an extra to this contract. MSA can also assist the Owner with any calculations, additional information, and/or modifications to the project documents that are requested by the review agencies as directed by the Owner on a time and expense basis.

Deliverables: Permit applications filled out on behalf of the Owner for the permits listed above.

### **4. BIDDING RELATED SERVICES**

Assist the Owner during the bidding process as follows.

- a. Prepare an advertisement for bid and provide to Owner for publication in official newspaper.
- b. Assist Owner in advertising for and obtaining bids or proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the bidding documents.
- c. Coordinate the distribution of the bid documents to perspective bidders, subcontractors and suppliers.
- d. Answer bidder's questions and issue addenda as appropriate to clarify, correct, or change the bidding documents.
- e. Conduct a public online bid opening at MSA's Beaver Dam office, compile the bid results and make a recommendation for the award of the construction contract to the Owner.
- f. Assist the Owner with the preparation and execution of a construction contract (including performance bonds, payment bonds, and insurance certificates).

Deliverables: One electronic (PDF format) version of the ad for bid.  
One electronic (PDF format) version of the bid summary and the recommendation for award of the construction contract.

## 5. CONSTRUCTION ADMINISTRATION SERVICES

Provide construction administration services on a time and expense basis as directed by the City, which may include (but is not limited to) the following:

- a. Construction Administration & Management: Manage and coordinate project team, budget and schedules. Maintain communication with Owner, Contractor, and stakeholders on project.
- b. Pre-Construction Meeting: Coordinate and conduct preconstruction meeting.
- c. Submittal Review: Review Contractor Shop Drawings, Submittals, Schedules and Samples for compliance with Construction Documents.
- d. Change Orders: Review Change Order requests from Contractor; recommend Change Orders to Owner as appropriate. (assume up to 1 change order)
- e. Applications for Payment: Review Contractor Applications for Payment; make payment recommendation to Owner as appropriate. (assume up to 5 pay requests)
- f. Project Closeout: Assist the City staff with project closeout activities for this project including review of the Contractor's completion documents (lien waivers, warranty documentation, etc.) for compliance with construction contract and readiness for final payment.
- g. Record Drawings & Lateral Cards: Prepare record drawings and lateral cards for the sanitary, water, and storm sewer utility improvements based on addenda, Field Orders, Change Orders and Contractor's Records.

Deliverables: One electronic (PDF format) version of preconstruction meeting minutes.

One electronic (PDF format) shop drawing and submittal reviews.  
One electronic (PDF format) periodic payment recommendations.  
One set of electronic (PDF format) record drawings.

## 6. CONSTRUCTION STAKING SERVICES

MSA can provide construction staking for alignment and grade of the proposed project improvements as directed by the Owner on a time and expense basis. Additional staking required because of lost or damaged stakes during construction or staking in addition to what is described within the project specifications can be provided as an additional cost. Staking will require a 72-hour prior notice. The proposed construction staking may include (but is not limited to) the following:

Sanitary Sewer Staking: Set one offset hub at each manhole along with offset hubs at 100-foot intervals along the length of the mainline pipe run between manhole structures. The offset distance shall be mutually agreed upon by the Contractor and the Engineer.

Water Staking: Set one offset hub at each hydrant, cross, tee, or bend point along with offset hubs at 100-foot intervals along the length of the water mainline pipe run between fittings. Set one lath at proposed curb stop

locations for the contractor's reference. The offset distance shall be mutually agreed upon by the Contractor and the Engineer.

Storm Sewer Staking: Set one offset hub at each manhole as well as two offset hubs for each storm inlet aligned with the curb. The offset distance shall be mutually agreed upon by the Contractor and the Engineer.

Curb Staking: Set one offset hub along the new street curb at 50-foot intervals along the length of the new street. The offset distance shall be mutually agreed upon by the Contractor and the Engineer.

## **7. CONSTRUCTION OBSERVATION SERVICES**

MSA can provide the services of a Resident Project Representative (RPR) to observe the activities of the construction contractor, attend construction meetings, provide quality assurance testing, etc. as directed by the Owner on a time and expense basis for the project. The MSA design engineer can also make periodic site visits, correspondences, etc. as necessary to assist the Contractor and field RPR with answering the questions during construction, reviewing the intent of the project plans and specifications, assisting with conflict resolution, etc. Services include travel time to/from the site, onsite observation time, documentation, record keeping, and reimbursable expenses). Also conduct a final site visit with the Owner and the Contractor. Prepare a punch list of items to be corrected and/or completed. Provide a follow-up check to see that all punch list items are successfully completed. The construction observation services may include (but are not limited to) the following. Note that the estimated fee for construction observation services listed within the fee schedule below includes the following assumptions:

- Assume contractor's production rate for sanitary, water, and storm installation at 150 LF per day, 200 LF per day, and 250 LF per day, respectively. The estimated fee is based on a senior field R.P.R. with over 20-years of experience. The production rates and trips noted herein should be re-evaluated once the City selects a contractor for this project and the contractor provides a proposed work schedule.
- Sanitary Sewer Mainline Work: Assume 13 trips (11-hours each) to the project site (includes travel time, construction observation, and records keeping) by the R.P.R. to observe sanitary sewer installation work.
- Water Mainline Work: Assume 10 trips (11-hours each) to the project site (includes travel time, construction observation, and records keeping) by the R.P.R. to observe water installation work.
- Sanitary Lateral & Water Service Work: Assume 8 trips (11-hours each) to the project site (includes travel time, construction observation, and records keeping) by the R.P.R. to observe sanitary lateral and water service installation work.

- Storm Sewer Work: Assume 12 trips (11-hours each) to the project site (includes travel time, construction observation, and records keeping) by the R.P.R. to observe storm sewer installation work.
- Harris Creek Work: Assume 8 trips (4-hours each) to the project site (includes travel time, construction observation, and records keeping) by the R.P.R. to observe the improvement work along Harris Creek.
- Street Reconstruction Work: Assume 14 trips (4-hours each) to the project site (includes travel time, construction observation, and records keeping) by the R.P.R. to observe installation of roadway improvements and to perform quality assurance testing (proof-roll testing, curb & gutter string line review, sidewalk & driveway formwork review, and asphalt paving review).
- Final Site Walk-Thru: Assume one site visit by Engineer to review the project work with the City staff and develop a punchlist of deficiency items to be sent to the Contractor. Assume one follow-up site visit with City Staff to confirm that the Contractor has addressed all punchlist items to the satisfaction of the City.

**ESTIMATED FEE SCHEDULE SUMMARY:**

<u>DESCRIPTION</u>	<u>ESTIMATED FEE</u>
1. Final Engineering Design	\$ 5,870
2. Project Specifications	\$ 3,240
3. Project Permitting	\$ 5,990
4. Bidding Related Services	\$ 2,760
5. Construction Administration (City of Waupun Split)	\$ 13,280
Construction Administration (Waupun Utilities Split)	\$ 13,280
6. Construction Staking (Sanitary & Water)	\$ 4,990
Construction Staking (Storm & Curb)	\$ 5,510
7. Construction Observation (Sanitary & Water)	\$ 48,720
Construction Observation (Storm & Street)	\$ 32,570
=====	
<b>TOTAL ESTIMATED FEE</b>	<b>\$136,210 (Per Diem)</b>

The retainer amount required is: **None**

**NOTE: The retainer will be applied toward the final invoice on this project.**

**ASSUMPTIONS & CONDITIONS OF SERVICE:**

1. MSA is not responsible for the timeliness or outcome of agency reviews or approvals.
2. Fees charged by agencies for plan review, inspection, or other purposes are the sole responsibility of the client including fees for bid advertisement and public notices, if required.
3. Payment is expected in accordance with the "Prices and Terms of Payment" section of our standard contract. In addition to the provisions set forth therein, MSA Professional Services, Inc. reserves the right to stop work any time after

balances are more than 30 days past due and all other efforts are exhausted to resolve any conflicts or disputes.

4. If work is requested of MSA that is not included in the Scope of Services herein, or is a change to work in progress, MSA shall notify the Owner of the change in scope and the Owner shall provide written (letter, email, contract amendment, etc.) authorization to proceed prior to starting the work.
5. All work will be done in accordance with the terms and conditions set forth in the contract. Items not specifically mentioned in the scope of services are not a part of this contract.
6. Additional meetings not mentioned in the enclosed scope of services will be attended by MSA staff when requested by the client on a time and expense basis as additional work.
7. It is assumed that MSA will not be involved in acquisition of any additional property from adjacent land owners and that the project area does not impact any wetlands, floodplains, environmentally sensitive areas, contaminated soils, hazardous materials, endangered species habitat, cultural/historical sensitive areas, or involve high bedrock, and/or groundwater issues unless specifically indicated in the scope of work. If additional investigation into any of these items or if testing performed by a sub-consultant is required, it shall be provided by others or provided by MSA as additional services.
8. MSA assumes no liability for the project's compliance with local zoning, land use, and shoreland ordinances. No platting, parcel subdividing, easement description preparation, etc. is included in this contract. These items shall be provided by others or provided by MSA as additional services.
9. This proposal assumes that the layout and location of the improvements will be adhered to throughout the project once provided (or approved) by the Owner and that no major changes will be made during the course of the work. If changes are made, MSA will provide the client with an estimated fee for inclusion of the changes into the plans and will require the client's authorization of the additional fee prior to making any change.
10. Other design services (earthwork calculations, retaining walls, site lighting, easements, cross-section sheets, etc.) not specifically mentioned in this proposal or any offsite design will be completed by others or by MSA as additional services.

## THE ESTIMATED PROJECT SCHEDULE:

- October 2024: Authorization for MSA to proceed as outlined above.
- Oct. – Dec. 2024: Final Engineering Design and Specification Tasks.
- Jan. – Feb. 2025: Permitting & Bidding Tasks.
- Spring - Fall 2025: Construction of project.

**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.



# AGENDA SUMMARY SHEET

**MEETING DATE:** 11/12/24  
**AGENDA SECTION:** BOARD/COMMITTEE/COMMISSION RECOMMENDATIONS  
**PRESENTER:** Jeff Daane, Public Works Director

**TITLE:** Recommend Approval of Estimate with All Phase, LLC to Rebuild the Aquatic Center Pool Heater

DEPARTMENT GOAL(S) SUPPORTED <i>(if applicable)</i>	FISCAL IMPACT	
High Performance Government	\$39,859	

**ISSUE SUMMARY:**

At the November 12, 2024 Board of Public Works meeting, the Board will consider a recommendation to the Common Council for repairing or replacing the current pool heater. As previously discussed, the heater failed in August and, per previous conversation, staff have been working with contractors on pricing to determine the best path forward. The council previously directed staff to reserve up to \$89K in the 2025 budget for replacement of the pool heater. After that meeting work, All Phase inspected the heater and identified issues with the heat exchanger in addition to the boiler failure. All Phase is recommending a complete rebuild of the boiler, with new fire brick, burners and heat exchanger at a cost of \$39,895, which is far less than the estimates previously shared for a full replacement of the system (\$89K, plus gas piping for a two smaller units, and \$91k plus labor for replacement of larger unit).

**STAFF RECOMMENDATION:**

Rebuild the existing boiler with new fire brick, burners and heat exchanger as outlined in the All Phase quote.

**ATTACHMENTS:**

Repair quote from All-Phase

**RECOMMENDED MOTION:**

Motion to recommend approval of the All- Phase repair quote for \$39,859 to rebuild the existing boiler with new fire brick, burners and heat exchanger as presented. Funds for the project have been allocated in the 2025 capital improvement budget.



All-Phase HVAC LLC  
 1804 Shaler Dr  
 Waupun, WI 53963

Phone: (920) 763-2301  
 allphasecomforts@gmail.com  
 AllPhaseComforts.com

Item	Description	Equipment	Quantity	Price	Amount
Misc	Cost to rebuild existing boiler with new fire brick, burners and heat exchanger. Includes all misc material to complete repair. The system repair will have a 1 year parts and labor warranty		1	\$39,859.00	\$39,859.00

Subtotal: \$39,859.00

Tax: \$0.00

Total: \$39,859.00





## SERVICE CONTRACT

Date: 8/16/2024  
 Site Address: City of Waupun  
 201 E Main Street  
 Waupun, WI 53963  
 Attn: Jeff Daane  
 Phone: (920) 210-8200  
 Email: [jeff@cityofwaupun.org](mailto:jeff@cityofwaupun.org)

### SCOPE OF SERVICES:

#### Replacement of the pool heater

- Removal of the existing Raypak P-4001 natural gas pool heater
- Installation of a Lochinvar CopperFin2 heater rack
- Installation of (2) new Lochinvar CPN2072 natural gas pool heaters
- Piping modifications to accept the new heaters
- Commissioning of the new heaters
- Training on the operation of the new heaters
- Travel, materials, and installation

Gas piping, venting and electrical modifications will be required which must be completed by licensed mechanical and electrical contractors and is not included in this contract.

Initial \_\_\_\_\_

### NOTES:

- If any further repairs are required, they will be billed additionally.

### PRICING – VALID FOR 30 DAYS

Price: \$ 89,241.34  
 Tax: \$ EXEMPT  
 Total: \$ 89,241.34

### PAYMENT TERMS

50% initial payment and 50% due upon completion

BUILDING YOUR IMAGINATION

W9684 Beaverland Parkway | PO Box 413 | Beaver Dam, WI 53916 | 920-885-3366 | [neumanpools.com](http://neumanpools.com)

## SIGNATURES

Owner has read and understands the payment terms, conditions, and lien rights.

### Neuman Pools, Inc.

Signature: \_\_\_\_\_

Jeff Gruszynski – Service Manager

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

### Owner

Signature: \_\_\_\_\_

Print Name / Title: \_\_\_\_\_

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

As required by Wisconsin Construction Lien Law, NEUMAN POOLS, INC. hereby notifies the Owner that persons or companies furnishing labor or materials for construction on Owner's land may have lien rights on Owner's land and buildings, if not paid. Those entitled to lien rights, in addition to NEUMAN POOLS, INC., are those who contract directly with the Owner, or those who give the Owner notice within 60 days after they first furnish labor or materials for the construction improvement. Accordingly, Owner probably will receive notices from those who furnish labor or materials for the construction improvement and should give a copy of each notice received to his mortgage lender, if any. NEUMAN POOLS agrees to cooperate with the Owner and their lender, if any, to see that all potential lien claims are duly paid.

## SALES TERMS AND CONDITIONS

**Terms and Conditions.** These terms and conditions shall apply to all orders or transactions entered into by and between the buyer listed on this order ("Buyer") and Neuman Pools, Inc. ("NPI"). NPI will accept orders, sell Products and Services (defined below), and do business only on these terms and conditions. These terms and conditions, the terms and conditions on the first page of this order and any NPI quotation accepted by Buyer, shall be collectively referred to hereinafter as the "Agreement." As used herein, "Products and Services" shall mean all items being sold by NPI to Buyer, whether materials, products to be manufactured or delivered, services to be rendered or any combination thereof. NPI's acceptance of Buyer's order is expressly conditioned on Buyer's unqualified acceptance of the Agreement. Buyer, upon placing an order for the purchase of Products and Services shall be deemed to have accepted all the terms and conditions of the Agreement without modification. Buyer may also accept an order in writing or electronically. Unless otherwise agreed to in a writing signed by NPI, any term or condition contained in any Buyer purchase order or other form or correspondence that purports to add to or is in any way inconsistent with the Agreement shall be inapplicable and of no force or effect whatsoever.

**Time of Delivery.** NPI shall use commercially reasonable efforts to fill Buyer's orders within the time stated but in no event shall NPI be liable for any damages associated with NPI's inability to meet any such timeframes or deadlines.

**Price; Taxes.** Unless otherwise stipulated, all prices stated in NPI's quotations shall be good only for a period of thirty (30) days from the date of such quotation. Thereafter, the price for Products and Services sold hereunder shall be NPI's price in effect as of the date of shipment. Unless specifically otherwise set forth in the Agreement, Buyer shall be responsible for obtaining any and all permits or other governmental approvals required in connection with the Products and Services, and prices do not include the cost of such approvals, cost of freight or handling, cost or charges for insurance or any production, sales, use, transfer, transportation, excise or other taxes, tariffs, or customs duties, or costs arising from unforeseen, concealed or unusual conditions or circumstances, and Buyer shall pay directly or be charged by NPI for all such costs and/or charges in addition to the price(s) of the Products and Services supplied hereunder and Purchaser shall be obligated to pay such charges and costs on the same terms as apply to payment of the price(s) hereunder. NPI may make partial shipments.

**Shipment; Payments.** As applicable, all materials and products shall be shipped F.O.B. NPI's plant, unless otherwise agreed. Risk of loss and title to Products and Services shall pass to Buyer upon performance of the services and delivery of the material or products to the carrier for shipment. Payment of each invoice shall be due, without deduction or setoff, within thirty (30) days of the invoice date. Interest of 1.5% per month will be added to all amounts outstanding more than thirty (30) days.

**Specifications.** NPI may make any change in design of, or in the way it manufactures or produces, any Product if, in NPI's sole judgment, such changes are necessary or desirable to improve the safety or performance of such Product.

**Cancellation.** Buyer may not cancel orders placed with NPI, except with NPI's prior written consent and then only if Buyer makes payment to NPI to indemnify it against all loss and damage incurred by NPI on account of such cancellation.

**Inspection.** Buyer shall inspect all Products and Services within ten (10) days after receipt thereof and shall notify NPI of any rejection of such Products and Services within such ten (10) day period, after which Buyer shall be deemed to have accepted such Products and Services.

**Security Interest.** Buyer hereby grants to NPI and NPI hereby retains a security interest in all materials and products sold hereunder and all accessories and additions thereto, whether presently upon Buyer's premises or hereafter acquired, and all proceeds from the sale or other

disposition of the foregoing. Buyer hereby authorizes NPI and its agents to file any financing statements and other documents necessary to create, perfect and maintain the perfection of the security interest granted hereunder

**LIMITED WARRANTY.** NPI warrants to Buyer that (a) at the time of delivery, the Products and Services shall conform to the written specifications approved by NPI for such Products and Services; and (b) the Products and Services shall be free from defects in material and workmanship. **THE FOREGOING LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. ANY AND ALL OTHER EXPRESS, STATUTORY OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED. NO WARRANTY IS MADE WHICH EXTENDS BEYOND THAT WHICH IS EXPRESSLY CONTAINED HEREIN.**

**Inspection and Return under Warranty.** Buyer must give written notice to NPI of any suspected defect in the Products and Services within the above-described inspection period; otherwise, Buyer will be deemed to have accepted such Products and Services. Buyer must obtain a return authorization from NPI prior to returning any materials or products for warranty service under this Section. Buyer shall be responsible for all costs and expenses associated with returning the materials or products to NPI for warranty service. NPI reserves the right to apply a restocking charge of 35% of the purchase price of the returned goods, plus freight charges to all returns.

**LIMITATION OF LIABILITY. THE REMEDIES OF BUYER SET FORTH HEREIN ARE EXCLUSIVE AND, IN ANY EVENT, THE TOTAL AGGREGATE LIABILITY OF NPI WITH RESPECT TO ANY CLAIMS UNDER THE AGREEMENT OR REGARDING THE EQUIPMENT, SERVICES, WORK, SPARE OR REPLACEMENT PARTS AND SERVICES INCIDENTAL THERETO AS FURNISHED HEREUNDER, WHETHER BASED IN CONTRACT, INDEMNITY, TORT, STRICT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE PRICE PAID FOR THE PRODUCTS AND SERVICES UPON WHICH ANY SUCH CLAIM IS BASED. IN NO EVENT SHALL NPI BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES ARISING FROM ANY CAUSE WHATSOEVER, WHETHER BASED ON CONTRACT, TORT, WARRANTY OR ANY OTHER THEORY OF LIABILITY.**

**Indemnification.** Buyer shall defend, indemnify and hold NPI and its officers, directors, shareholders, affiliated companies, employees, agents and representatives harmless against any claims, losses, damages, liabilities or expenses (including, without limitation, reasonable attorneys' fees and other costs and expenses of litigation) resulting from or otherwise connected with any of the following: (a) bodily injury, death or property damage caused by Buyer's or its agents' acts or omissions with respect to the Products and Services; or (b) any design, specification, material or component supplied or approved by Buyer for the design, manufacture, installation, repair or services in connection with the Products and Services.

**Intellectual Property Rights.** NPI shall retain all intellectual property rights in and to the Products and Services, including, without limitation, any rights under patents as well as any unpatented information such as trade secrets, confidential information, trademarks, trade dress or copyrights. Nothing in the Agreement shall be deemed or construed to be a transfer or license of any of NPI's intellectual property. Buyer shall obtain rights to such intellectual property only to the extent that NPI may grant such rights in writing.

**Force Majeure; Remedies; Limitation of Actions.** NPI shall not be liable for any delay in the performance of the Agreement by reason of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, earthquakes, telecommunications outages, acts of God, war, terrorism, governmental action or any other cause which is beyond the reasonable control of NPI. In the event of any such delay, NPI's performance hereunder shall be postponed by such length of time as may be reasonably necessary to compensate for the delay. Each of the rights and remedies of NPI under the Agreement is cumulative and in addition to any other or further remedies provided under the Agreement or at law or equity. Any action by Buyer for any loss or damage with respect to the Agreement shall be commenced within one (1) year from the earlier of the date of: initial operation, substantial completion, last date of services or date of shipment, as applicable.

**Miscellaneous.** If any court of competent jurisdiction determines that any provision of the Agreement is invalid or unenforceable, then such invalidity or unenforceability shall have no effect on the other provisions hereof, which shall remain valid, binding and enforceable and in full force and effect, and such invalid or unenforceable provision shall be construed in a manner so as to give the maximum valid and enforceable effect to the intent of the parties expressed in the Agreement. Buyer may not assign any of its rights, duties or obligations under the Agreement without NPI's prior written consent. The rights of all parties hereunder and the construction of every provision hereof shall be governed by the laws of the State of Wisconsin, without giving affect to principles of conflicts of law. The parties agree that any action arising out of the Agreement or in connection with the goods covered hereunder shall be brought in the federal, state or local court located in or otherwise having jurisdiction over Dodge County in the State of Wisconsin and the parties hereby consent to personal jurisdiction in such courts and waive any objection based on jurisdiction or venue of any such action.