

# CITY OF WISCONSIN DELLS MEETING AGENDA

**MEETING DESCRIPTION:** FINANCE COMMITTEE  
**DATE:** TUESDAY, OCTOBER 19, 2015 **TIME:** 6:00 P.M. **LOCATION:** MUNICIPAL BUILDING COUNCIL CHAMBERS - 300 LA CROSSE STREET, WISCONSIN DELLS, WI 53965

	COMMITTEE MEMBERS		
	Ald Brian Holzem Chair	Ald. Mike Freel	
	Mayor Brian Landers	Ald. Dar Mor	

AGENDA ITEMS	
1	CALL TO ORDER, ATTENDANCE NOTED
2	APPROVAL OF THE OCTOBER 13, 2015 MEETING MINUTES
3	DISCUSSION AND DECISION ON SCHEDULE OF BILLS PAYABLE DATED OCTOBER 19, 2015; AND ANY OTHER RELATED FINANCIAL INFORMATION
4	DISCUSSION AND DECISION ON KILBOURN FIRE DEPARTMENT SERVICE CONTRACT WITH TOWNSHIPS
5	DISCUSSION AND DECISION ON PROPOSAL FROM ZEBRADOG TO DEVELOP BRAND/GRAPHIC STANDARDS/TEMP WEBSITE FOR THE DELLS RIVER ARTS DISTRICT
6	DISCUSSION AND DECISION ON PROPOSAL FROM MSA FOR FINAL IMPLEMENTATION PLAN AND BUDGET FOR RIVER ARTS DISTRICT
7	DISCUSSION AND DECISION ON PROPOSAL FROM MSA FOR 2016 WEDC CDI GRANT APPLICATION
8	DISCUSSION AND DECISION ON PROPOSAL FROM MSA FOR 200 AND 500 BLOCK CAFÉ ZONES DESIGN AND CONSTRUCTION
9	DISCUSSION AND DECISION ON PROPOSAL FROM MSA FOR PRELIMINARY DESIGN OF DOWNTOWN PLAZA AREAS
10	NEXT FINANCE BUDGET MEETING WILL BE TUESDAY, OCTOBER 27 <sup>TH</sup> AT 5:00 PM
11	ADJOURN
	ALD. BRIAN HOLZEM, CHAIRMAN
	POSTED AND DISTRIBUTED: 10/02/2015
	<p><b>Open Meetings Notice: If this meeting is attended by one or more members of the Common Council who are not members of this committee, their attendance may create a quorum of another city commission, board or committee under the Wisconsin Open Meetings Law; However, no formal action will be taken by any governmental body at the above stated meeting other than the body, committee, commission, or board identified in this meeting notice. Please be advised that upon reasonable notice, the City of Wisconsin Dells will furnish appropriate auxiliary aids and services to afford individuals with disabilities an equal opportunity to participate in meeting activities.</b></p>

SCHEDULE OF BILLS PAYABLE  
OCTOBER 19, 2015  
MONDAY  
COMMON COUNCIL

10	GENERAL FUND	534,655.29
13	DEBT SERVICE FUND	
14	CAPITAL PROJECTS FUND	17,580.13
52	WATER FUND	2841.36
53	SEWER FUND	49,930.86
59	ELECTRIC FUND	790,549.41
	<b>TOTAL</b>	<b>1,395,557.05</b>

## **Fire Protection Services Agreement**

This Agreement is by and between the following parties:

- City of Wisconsin Dells (hereinafter referred to as “City”);
- Town of Dell Prairie;
- Town of Lyndon;
- Town of New Haven
- Town of Newport; and
- Town of Springville (hereinafter, collectively, referred to as “Towns”).

### **Recitals:**

- A. City operates and maintains a volunteer fire department known as Kilbourn Fire Department (hereinafter referred to as “KFD”).
- B. Towns do not have fire departments and wish to contract with the City for fire protection services in the Towns.
- C. City, KFD and Towns have had prior agreements regarding fire protection services.
- D. The City and the Towns believe it is in their respective best interests to update their agreement regarding fire protection services.

### **Contract**

1. Fire Service. City agrees to provide the following fire services in the Towns:
  - a. Structural firefighting; including: external and internal.
  - b. Grass/forest fighting
  - c. General firefighting; including: vehicles and equipment, carbon monoxide calls, and calls other than structural.
  - d. Rescue; including: vehicle and equipment extraction
  - e. Fire code enforcement

- f. Hazardous materials response
- g. Disaster response

2. Limitations.

The services listed in section one (1) above are limited, as follows:

- a. **Allocation of Resources.** The parties understand the fire department officer in charge of the particular scene shall exercise judgment to determine, in consideration of all the established policies, guidelines, procedures, and practices, how best to allocate the available resources of the fire department under the circumstances of a given situation. Failure to provide fire services because of poor weather conditions or other conditions beyond the control of City shall be deemed a breach of this contract.
- b. **No Guarantee.** The parties understand and agree City will endeavor to provide the services indicated above to the best of its ability given the circumstances, but City makes no guarantees that the services it actually provides in a given situation will meet any particular criteria or standard.

3. Budget Allocation and Payment.

- a. Thee KFD budget shall be allocated between the parties based on the following factors: equalized value, calls and area (by government sections, full or partial). During the term of this contract the budget allocations are as follows:

Wisconsin Dells	39%
Dell Prairie	19%
Lyndon	10%
New Haven	10%
Newport	12%
Springville	<u>10%</u>
	100%

- b. For Town budgeting purposes, not later than October 15 prior to a service year, City shall provide each Town a written estimate of the next contemplated annual payment amount.
- c. The Towns shall pay the City, or cause to be paid, State of Wisconsin fire dues and all other payments or entitlements related to fire services

provided in the towns by the City.

- d. City shall provide each Town a written statement for the annual payment amount due not later than February 1 of the service year; and, each Town shall pay the amount owed not later than April 30 of the service year.

3. Annual Meeting.

- a. Towns and City shall hold a joint annual meeting during the term of this contract on or about September 15 to discuss the following:
  1. KFD budget and payment amount for the next year;
  2. KFD operations and practices as they affect this contract and services in the Towns ; and
  3. Such other matters or issues relevant to this contract or KFD services in the Towns.
- b. The meeting shall be held separately from any other regular Town or City meeting and shall be attended by at least a quorum of each party's governing body.

4. Service Territory.

- a. City shall provide fire services to all sections, parcels and property in the Towns of Dell Prairie, Newport and New Haven.
- b. Services in the Towns of Lyndon and Springville shall be provided to parcels and property in those sections and areas of those towns marked and delineated in the Town service area maps attached as Exhibit A. Any modifications that occur to the identified response territory boundary due to annexations or other jurisdictional changes shall be communicated to the City within sixty (60) days of its effective date.

5. Term. The term of this contract shall be for five (5) years commencing January 1, 2016 and ending December 31, 2020.

6. Ownership. City owns the buildings and equipment associated with the Kilbourn Fire Department and the amounts paid by the Towns do not give rise to any ownership interest in, or responsibility toward, those items.

7. City's Responsibilities. In addition to any other obligation described herein, City shall:

- a. Authorize and direct KFD to provide the fire services described herein to Towns Service Territory;
- b. Develop a detailed annual operational budget for the fire department for each year during the term of this contract by the Anniversary Date and present it to Towns along with sufficient information to explain the items included in the budget figures;
- c. Upon Towns' request, provide Towns access to financial and cost data related to the fire department;
- d. Disclose to Towns any proposed action City of the fire department intends to take that can reasonably be expected to affect the Insurance Services Office Fire Protection Grade in the Service Territory or City's ability to provide the fire services indicated above; and
- e. Promptly disclose to Towns any information City can reasonably anticipate will directly affect its ability to perform its obligations under this contract.

8. Town's Responsibilities.

- a. In addition to any other obligations described herein, Town shall:
  1. Promptly pay City the payment amount as indicated above for the year of service, or a prorated share of the payment amount for the length of service actually provided if the contract is terminated early;
  2. Levy funds as needed to pay the "payment amount"; and
  3. Promptly disclose to City any information Towns can reasonably anticipate will directly affect its ability to perform its obligations under this contract.
- b. It is understood and agreed Towns shall have no responsibility whatsoever toward the fighters or other emergency personnel including any employment related issues such as training, supervision, performance reviews, discipline, compensations, benefits, insurance coverages, compliance with any employment related federal, state and local laws and rules such as OSHA, ERISA, RLSA, FMLA or any other employment related issues. It is further agreed Town has no responsibility, beyond paying the agreed upon payment amount for acquiring, operating, maintaining, housing or replacing equipment as needed to provide the fire services described herein.

9. Liability Insurance. The City shall acquire and maintain throughout the term of

this Agreement, liability insurance covering fire services provided by KFD of the following coverage types and policy limits:

- a. Vehicle liability insurance for bodily injury and property damage with a combined single limit of \$1,000,000 per vehicle, and \$10,000,000 occurrence.
  - b. General Liability and Professional Liability Insurance for bodily injury, personal injury, and property damage with a minimum \$1,000,000 per occurrence, claim, or incident and \$2,000,000 annual aggregate.
  - c. Worker's Compensation insurance as required under Wisconsin Statutes.
10. Indemnification. Each party agrees to indemnify, defend, and hold harmless every other party and its officials, officers, and employees from and against any and all claims, damages, costs, and expenses (including reasonable attorney fees) arising out of or resulting from any alleged act or omission of the indemnifying party or its officials, officers, or employees relating to this contract and KFD services in the Towns.
  11. No Waiver. Nothing herein shall be construed to waive or limit any immunity from, or limitation on, liability available to either party.
  12. Modification. This writing contains the entire agreement between the parties and no alterations, variations, modifications or waivers of the provisions of this agreement are valid unless reduced to writing, signed by both City and Towns and attached hereto.
  13. Termination. The contract may be terminated at any time during its term by mutual agreement of the parties. Any party may terminate this agreement by personally serving 120 day written notice of termination on the other parties. This agreement shall terminate 120 days from the date of personal service of the written termination notice unless the party serving the notice withdraws the notice in writing before it is effective. If a Town fails to pay for the service according to the schedule established herein, City may terminate this agreement 60 days from the date of personal service of written termination notice. Notice to City shall be served on the City Administrator/Clerk and notice to Town shall be served on the Town clerk.
  14. Legal Relationship of the Parties. This is a service contract. The legal relationship of the parties shall be that of Independent Contractor. The employees of either party shall not be considered an agent or employee of the other party for any purpose. This is not an intergovernmental agreement under Wis. Stat. Sec. 66.0301.
  15. Choice of Law and Venue. This contract shall be governed by and construed in accordance with the laws of the State of Wisconsin. Venue for any disputes shall be the Circuit Court for Columbia County.

16. Severability. The provisions of this contract shall be deemed severable. If any part of this contract is rendered void, invalid, or otherwise unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this contract.
17. Notices. All notices provided for in this agreement shall be in writing, signed by an authorized official and sent either by registered mail or certified mail, return receipt requested on or by depositing in the U.S. Mail, postage prepaid, to the respective party as set forth below. Such notice shall be deemed received three (3) days after posting in the mail as provided above.

A. Notice to the Towns shall be sent as follows:

Town Clerk  
Town of Dell Prairie  
1005 Gem Court  
Wisconsin Dells, Wisconsin 53965

Town Clerk  
Town of Lyndon  
W3080 Mitchell Road  
Lyndon Station, Wisconsin 53944

Town Clerk  
Town of New Haven  
3961 County Road G  
Wisconsin Dells, Wisconsin 53965

Town Clerk  
Town of Newport  
N8438 Nevar Drive  
Wisconsin Dells, Wisconsin 53965

Town Clerk  
Town of Springville  
3143 State Highway 13  
Wisconsin Dells, Wisconsin 53965

B. Notice to City of Wisconsin Dells shall be sent as follows:

Nancy R. Holzem, City Clerk/Administrator  
300 LaCrosse Street  
Wisconsin Dells, Wisconsin 53965

18. Approval by Governing Bodies of Parties. Each of the parties hereby represents that this contract was duly approved by its governing body on or before the date stated below, in accordance with all applicable state and local laws, and that its governing body has cause its duly authorized officers to execute this contract on its behalf on the date stated after each signature.

19. Benefits. This agreement is entered into for the benefits of the parties to this agreement only and shall confer no benefits, direct or implied, to any third persons.

**CITY OF WISCONSIN DELLS**

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

By: \_\_\_\_\_  
Brian Landers, Mayor

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

By: \_\_\_\_\_  
Nancy Holzem, Clerk/Administrative Coordinator

**KILBOURN FIRE DEPARTMENT**

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

By: \_\_\_\_\_  
Scott Walsh, Chief

**TOWN OF DELL PRAIRIE**

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**TOWN OF LYNDON**

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**TOWN OF NEW HAVEN**

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**TOWN OF NEWPORT**

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**TOWN OF SPRINGVILLE**

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Item # 5

PROPOSAL

9 OCT 2015

ZEBRADOG  
DYNAMIC ENVIRONMENT DESIGN

JOB NUMBER	15-ZDP-(TBD)   City of Wisconsin Dells   Brand / Graphic Standards / Temp. Website
CONTACT	Kelli Trumble
ADDRESS	300 LaCrosse St. Wisconsin Dells, WI 53965

HISTORY:

The Dells BID committee has asked ZEBRADOG (ZD) to create a scope of services to develop the official Graphic Brand Standards and Usage Guidelines and temporary website for the Dells River Arts District. These efforts will commence following final revisions / acceptance of a logo mark.

GRAPHIC BRAND STANDARDS AND USAGE GUIDELINES

ZD will write and produce documentation showing the proper use of the Dells River Arts District (DRAD) logo graphic and defining the brand "essence" for the new district. These standards establish the voice, personality and graphic direction of the brand and govern various aspects of brand communications.

Core components of documentation:

- Brand summary / overview
- Logo use guidelines (acceptable/unacceptable)
- Letterhead and business card design
- Color palette - Primary, secondary
- Photography style specifications
- Writing style and voice
- Sample design layouts referencing common [print / digital / signage] applications

4-6 weeks from start

\$ 18,500.

TEMPORARY WEBSITE

ZEBRADOG will develop a temporary web presence - considered a "brochure site" for the DRAD as a starting place for communicating aspects of the brand, core messaging and "current events" as PR and civic efforts evolve. We consider the site (in scope and scale) as concise, and existing to provide broad-level digital message delivery. Setup and configuration recommendations will be put forth with a nod to easy and accessible updating.

While final build strategy will be determined with future communications, we envision consideration of launching a temporary site within an existing template platform (ex: SquareSpace, Wordpress) to allow quick go-live and ease of updates by various non-technical stakeholders. This approach will also be a very cost-effective means of deployment with the ability to adapt to needs efficiently and with minimal need for developer intervention.

NOTE - Required annual / monthly web hosting cost (s) not included in pricing and via third party - costs TBD.

Deliverables:

- Wireframes - Design comps - Final Wireframes - Final Page Designs
- Merge / acquire content - Setup stakeholder access - Go-live - Training

5-7 weeks from start

\$ 9,000.

JOB NUMBER	15-ZDP-(TBD)   City of Wisconsin Dells   Brand / Graphic Standards / Temp. Website
CONTACT	Kelli Trumble
ADDRESS	300 LaCrosse St. Wisconsin Dells, WI 53985

**WARRANTY & SERVICE**

Web site support for 30 days after go-live included  
Additional support via Support Agreement or as needed (cost TBD)

**SUMMARY**

GRAPHIC / BRAND STANDARDS + USAGE GUIDELINES:  
TEMPORARY WEBSITE: \$ 18,500.  
9,000.

INVESTMENT \$ 27,500.

**ADDITIONAL (OPTIONAL) SERVICES:**

ANNUAL SUPPORT AGREEMENT (TBD)  
WEB HOSTING / CMS HOSTING (TBD)

**PAYMENT TERMS**

A 25% down-payment will be charged at project inception. Remaining fees will be billed monthly as incurred. Final project fees are not-to-exceed amounts based on a clearly defined and agreed upon project scope. Changes to scope will result in adjustment of fees through a change order issued.

**Sales tax not included (if applicable).** ALL INVOICES ARE NET 30 DAYS FROM DATE ISSUED.

Reimbursable Expenses related to the performance and delivery of basic services will be billed in addition to the fees for basic services. Reimbursable expenses will be invoiced at actual cost and will include costs associated with printing of project documentation, courier, postage, stock material, software, travel costs and lodging.

SUBMITTED: Mark Schmitz - ZEBRADOG 9 OCT. 2015

ACCEPTED (please sign): \_\_\_\_\_ date

JOB NUMBER	15-ZDP-(TBD)   City of Wisconsin Dells   Brand / Graphic Standards / Temp. Website
CONTACT	Kelli Trumble
ADDRESS	300 LaCrosse St. Wisconsin Dells, WI 53965

### MEDIA DESIGN & DEPLOYMENT DETAIL

ZEBRADOG (ZD) designs and implements custom, integrated media solutions based on project-specific performance criteria. As a part of this media program ZD has made certain assumptions based on current understanding of project parameters. The scope(s) of services described in this document reflect our understanding of current client requests for performance, programming and cost.

We have assumed the following:

- All digital content is English-language ONLY
- Scope does not include programming for self-voicing, screen reader integration or integration of any other assistive devices
- Integration of information, software or systems from outside the described content scope will be addressed with an additional scope of services for development.
- ZD assumes all photography, copy, photos, video production and other media will be proofed and provided in requested resolutions and file formats. Digital content requiring format conversion, rendering, or additional authoring will be addressed via an additional scope of services. Client to add all media to provided Content Management Systems (CMS) - if provided
- System functionality not specifically described or addressed in this document will not be included in final provided product.

Client will be responsible for the following:

- Providing open access to all needed content and assign a point person to ZD
  - Providing access to full and accurate architectural plan sets, elevations and 3D models
  - Providing open access to facilities as needed for ZD and our related consultants.
  - Providing demo unit or software / hardware needed for content creation.
  - Agree to final approval and sign-off process.
- Client will be required to perform the following in preparation of project installation
- Document and Perform any changes / adjustments required for electrical / data
  - Document and Perform any changes / adjustments required for general construction and/or site modifications
  - Document and Perform any changes / adjustments required for proper audio / video routing

### OWNERSHIP

When final payment is received, ZEBRADOG grants The City of Wisconsin Dells and associated entities ("client") a nonexclusive, fully paid, worldwide, royalty-free license to install, use and copy the software we have created for you (as described / scoped in this proposal and as contained in the final files we deliver to you), and all related documentation, in accordance with the terms and conditions of this proposal. ZEBRADOG will retain all copyright, patent, trade secret and other intellectual property rights in the work that we create for you. Client promises that client will not remove, alter or cover any copyright notice, trademark or other proprietary rights notice that ZEBRADOG includes with the software.

**CENTRAL APPLICATION** - ZEBRADOG authorizes client a license to operate the application, update/revise/republish the application where intended, and advertise or promote the application.

### RIGHTS TO BACKGROUND TECHNOLOGY

ZEBRADOG may incorporate into the software we create for client various pre-existing development tools, routines, subroutines, programs, data or materials (Background Technology). Client agrees that ZEBRADOG retain all rights, title and interest, including all copyright, patent, and trade secret rights to that Background Technology. ZEBRADOG agrees that after full payment is received, client will receive a nonexclusive, perpetual, worldwide license to use the Background Technology in the software ZEBRADOG has created for you under this proposal. However, client shall not reset or make use of that Background Technology in any other manner other than in connection with the software client receives under this proposal.

### RIGHT TO MAKE CHANGES

Once final payment is received, client may make any changes or additions to the software ZEBRADOG creates for client under this proposal, which client may consider necessary, and client may engage others to make any such changes or additions, without further payments to ZEBRADOG. Client agrees that any changes, adjustments or modifications to the application or its content are not the responsibility or liability of ZEBRADOG. Client agrees that if ZEBRADOG is asked to make changes or additions to the software after client approves the final files, ZEBRADOG and client will negotiate a separate additional payment for time to make such changes.

**RIGHT TO MARKET** - ZEBRADOG reserves the right to use still photography and/or video footage of finished project for purposes of marketing and self-promotion. ZEBRADOG agrees to never show confidential client material, information or trade secrets.



**PROFESSIONAL SERVICES**

More ideas. Better solutions.

# Task Order

**To:** City of Wisconsin Dells  
Brian Landers  
300 La Crosse Street  
Wisconsin Dells, WI 53965

**Date of Issuance:** 10/15/15

**MSA Project No.:** 00085049

This task order will acknowledge that MSA Professional Services, Inc. (MSA) is authorized to begin work on the following project:

**Project Name:** City of Wisconsin Dells –River Arts District Final Implementation Plan and Budgets

**The scope of the work authorized is:** Preparation of a 3-4 year implementation plan (Capital Improvement Plan) and associated budget items for the River Arts District. Identify all potential projects, their components, associated schedules and budgets. Meet with City Stakeholders to review and finalize the plan (2 meetings). Final deliverable shall include a detailed schedule and budget breakdown per respective project. Deliverable shall be in digital .pdf format.

**The schedule to perform the work is:** approximate start: 10/19/2015  
Approximate completion: 1/31/16

**The lump sum fee for the work is: \$5,000**

This authorization for the work described above shall serve as the Agreement between MSA and OWNER. All services shall be performed in accordance with the Master Professional Services Agreement currently in force. Any attachments or exhibits referenced in this Agreement are made part of this Agreement. Payment for these services will be on a lump sum basis.

**Approval:** MSA shall commence work on this project in accordance with your written authorization. This authorization is acknowledged by signature of the authorized representatives of the parties to this Agreement. A copy of this Agreement signed by the authorized representatives shall be returned for our files. If a signed copy of this Authorization is not received by MSA within seven days from the date of issuance, MSA may stop work on the project.

## CITY OF WISCONSIN DELLS

## MSA PROFESSIONAL SERVICES, INC.

\_\_\_\_\_  
Brian Landers  
Mayor  
Date: \_\_\_\_\_

  
\_\_\_\_\_  
John M. Langhans, P.E.  
Team Leader  
Date: 10/15/2015

300 La Crosse Street  
Wisconsin Dells, WI 53965  
Phone: (608) 254-2012

1230 South Boulevard  
Baraboo, Wisconsin 53913  
Phone: (608) 355-8895



# Task Order

**To:** City of Wisconsin Dells  
Brian Landers  
300 La Crosse Street  
Wisconsin Dells, WI 53965

**Date of Issuance:** October 15, 2015  
**MSA Project No.:** 00085058

This task order will acknowledge that MSA Professional Services, Inc. (MSA) is authorized to begin work on the following project:

**Project Name:** Dells Downtown Revitalization – CDI Grant Application (Implementation Grant)

**The scope of the work authorized is:** Coordination, preparation, and submission of a 2015 WEDC Community Development Investment Grant (Implementation) application on behalf of the City of Wisconsin Dells for an amount up to \$250,000. Coordinate and meet with WEDC and City Stakeholders to identify fundable alternatives. Prepare and submit grant application. Perform post-submittal follow up correspondence with WEDC.

**The schedule to perform the work is:** approximate start: 10/19/2015  
Approximate completion: 11/13/2015

**The lump sum fee for the work is: \$5,000**

This authorization for the work described above shall serve as the Agreement between MSA and OWNER. All services shall be performed in accordance with the Master Professional Services Agreement currently in force. Any attachments or exhibits referenced in this Agreement are made part of this Agreement. Payment for these services will be on a lump sum basis.

**Approval:** MSA shall commence work on this project in accordance with your written authorization. This authorization is acknowledged by signature of the authorized representatives of the parties to this Agreement. A copy of this Agreement signed by the authorized representatives shall be returned for our files. If a signed copy of this Authorization is not received by MSA within seven days from the date of issuance, MSA may stop work on the project.

**CITY OF WISCONSIN DELLS**

**MSA PROFESSIONAL SERVICES, INC.**

\_\_\_\_\_  
Brian Landers  
Mayor  
Date: \_\_\_\_\_

  
\_\_\_\_\_  
John M. Langhans, P.E.  
Team Leader  
Date: 10/15/2015

300 La Crosse Street  
Wisconsin Dells, WI 53965  
Phone: (608) 254-2012

1230 South Boulevard  
Baraboo, Wisconsin 53913  
Phone: (608) 355-8895  
Fax: (608) 356-2770



# Professional Services Agreement

**PROFESSIONAL SERVICES**

More ideas. Better solutions.

This AGREEMENT (Agreement) is made today 10/15/15 by and between CITY OF WISCONSIN DELLS (OWNER) and MSA PROFESSIONAL SERVICES, INC. (MSA), which agree as follows:

**Project Name:** City of Wisconsin Dells - 200 & 500 Block Cafe Zones Design and Construction – MSA Project #00085056

**The scope of the work authorized is:** See attached Exhibit A

**The schedule to perform the work is:** Approximate Start Date: 10/19/2015  
Approximate Completion Date: 6/15/2016

**The estimated fee for the work is:** \$85,600

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.

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

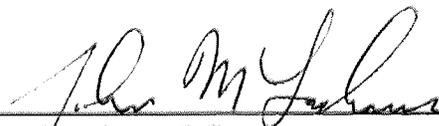
**CITY OF WISCONSIN DELLS**

**MSA PROFESSIONAL SERVICES, INC.**

\_\_\_\_\_  
Brian Landers  
Mayor  
Date: \_\_\_\_\_

  
\_\_\_\_\_  
Chuck Bongard, P.E.  
Program Manager  
Date: 10/16/2015

Attest: City/Township/Village Clerk (WI Only)  
  
\_\_\_\_\_  
Clerk Name: Nancy Holzem  
Date: \_\_\_\_\_

  
\_\_\_\_\_  
John Langhans, P.E.  
Team Leader  
Date: 10/16/2015

300 LaCrosse St.  
Wisconsin Dells, WI 53965  
Phone: 608-254-2012

1230 South Boulevard  
Baraboo, WI 53913  
Phone: 608-355-8895

## **Exhibit A - Scope of Services for City of Wisconsin Dells 200 and 500 Block Café Zone Design and Construction**

### Project Understanding and Assumptions:

The proposed project envisions the design, bidding, and construction of Café Zones along the North and South Sides of the 200 Block of Broadway and the development of one (1) Café Zone on the 500 block to serve as a "pilot" for this area. All Café Zones will follow a repeatable and consistent design style. Café Zone design elements included in the design include: Decorative barrier wall with potential decorative railing, landscape beds, sidewalk expansions and new curb and gutter, decorative concrete treatments, and potential accent lighting along the café zones. This proposal does not include the selection of any external furniture or any additional street lighting or terrace trees. Construction is assumed to have a duration of 8 weeks.

### **Phase 100 – Meetings** **Estimated Fee = \$4,500**

- Attend one project kick off meeting with City Stakeholders
- Attend two (2) design review meetings with City Stakeholders at the design development (60%), and final review stages (90%)
- Attend and facilitate one (1) Public Information Meeting at the 60% design stage.

### **Phase 200 – Design** **Estimated Fee = \$52,050**

- Perform site visit to review current conditions and verify topographic survey on the 200 block
- Perform topographic survey of the north side of the 500 Block
- Develop a project photo log of existing conditions
- Review Current Traffic Study findings to determine intersection needs.
- Develop conceptual, design development, and final roadway design and specifications to address the required sidewalk expansions
- Develop conceptual, design development, and final streetscape designs and specifications to address the required decorative wall, planting beds, and other streetscape elements
- Develop preliminary hand renderings and final computer generated renderings for Café Zones
- Develop preliminary and final Engineer Estimates of Probable Costs
- Drafting and Preliminary/Final Plan Development
- Coordinate and review design intent with ZEBRADO. Incorporate brand elements as necessary.
- Utility Coordination
- Project Management, QA/QC, and correspondence

### **Phase 300 – Permits** **Estimated Fee = \$2,600**

- Coordination and correspondence with WisDOT
- Prepare and submit a WisDOT work in right of way permit application
- Prepare and submit a Prevailing Wage Rate Determination Application
- Regulatory agency coordination
- Project Management, QA/QC, and correspondence

**Phase 400 – Bidding** **Estimated Fee = \$2,100**

- Prepare and Publish Advertisement for Bid
- Solicit project bidders
- Prepare Bidding Documents
- Attend and Facilitate one public bid opening
- Analyze bid, issue recommendation of award, and prepare contract documents
- Project Management, QA/QC, and correspondence

**Phase 500 – Construction Administration** **Estimated Fee = \$5,850**

- Attend and facilitate one (1) preconstruction conference and issue minutes to all attendees
- Attend construction progress meetings as necessary (3 meetings assumed)
- Review project submittals
- Review Contractor Applications for Payments
- Review change order requests
- Project Management, QA/QC, and correspondence

**Phase 600 – Construction Services** **Estimated Fee = \$18,500**

- Perform part-time construction observation services (estimated 124 hours)
- Provide one-time construction staking for:
  - Curb and Gutter
  - Removal Limits
  - Streetscape Elements
- Measure and confirm payment quantities
- Project Management, QA/QC, and correspondence

**Total Estimated Fee = \$85,600.**



# Professional Services Agreement

**PROFESSIONAL SERVICES**

More ideas. Better solutions.

This AGREEMENT (Agreement) is made today 10/15/15 by and between CITY OF WISCONSIN DELLS (OWNER) and MSA PROFESSIONAL SERVICES, INC. (MSA), which agree as follows:

**Project Name:** City of Wisconsin Dells – Public Plaza Conceptual and Schematic Design

MSA Project #00085060

**The scope of the work authorized is:** See attached Exhibit A

**The schedule to perform the work is:** Approximate Start Date: 10/19/2015  
Approximate Completion Date: 4/1/2016

**The estimated fee for the work is:** \$40,000

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

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

**CITY OF WISCONSIN DELLS**

**MSA PROFESSIONAL SERVICES, INC.**

\_\_\_\_\_  
Brian Landers  
Mayor  
Date: \_\_\_\_\_

  
\_\_\_\_\_  
Chuck Bongard, P.E.  
Program Manager  
Date: 10/16/2015

Attest: City/Township/Village Clerk (WI Only)

\_\_\_\_\_  
Clerk Name:  
Date: \_\_\_\_\_

  
\_\_\_\_\_  
John Langhans, P.E.  
Team Leader  
Date: 10/16/2015

300 LaCrosse St.  
Wisconsin Dells, WI 53965  
Phone: 608-254-2012

1230 South Boulevard  
Baraboo, WI 53913  
Phone: 608-355-8895

## **Exhibit A - Scope of Services for City of Wisconsin Dells Conceptual/Schematic Plaza Design**

### **Project Understanding and Assumptions:**

The proposed project envisions the conceptual and schematic design of a “temporary” plaza arrangement on Eddy Street and the development of a “prototype” preliminary design of a permanent plaza arrangement (with splash pad/water feature) that would work on either the Eddy Street location or the Oak Street location within the current available public right of way. The preliminary concepts will have two alternatives: 1) A linear arrangement to accommodate one lane of vehicle traffic and 2) An arrangement that assumes a full road closure. Coordination and design review with ZEBRADOG will occur during this process to ensure consistency with all River Arts District themes.

### **Phase 100 – Conceptual/Schematic Design**

- Attend one project kick off meeting with City Stakeholders
- Perform site visit to review current conditions
- Perform topographic survey of the Eddy Street and Oak Street Sites
- Develop a project photo log of existing conditions
- Review Utility Conflicts
- Attend three (3) design review meetings with City Stakeholders
- Develop one (1) design alternative for a temporary plaza arrangement on Eddy St.
- Develop two (2) “prototype” design alternatives for a permanent plaza arrangement for either the Eddy Street or Oak Street locations. These alternatives will include a “linear” plaza to accommodate one lane of traffic and a plaza arrangement that assumes full road closures
- Develop preliminary cost estimates for the permanent plaza options
- Develop preliminary hand sketches of design alternatives and a final rendering of the “prototype” design
- Coordination with ZEBRADOG and creative review by ZEBRADOG
- Project Management, QA/QC, and correspondence
- Deliverables shall include: plan view layouts of the temporary plaza option and “prototype” plaza options, illustrative treatment/product examples, as well as renderings of the final “prototype” options
  - Plan view layout for temporary Eddy Street plaza layout
  - Plan view layout alternatives for permanent Oak Street plaza layout and final plan view rendering (based on single prototype)
  - Plan view layouts alternatives for permanent Eddy Street plaza layout and final plan view rendering (based on single prototype)
  - Up to 4 Support graphics (Sections, Elevations and/or perspectives) as needed to convey design intent

**Total Estimated Fee = \$40,000**

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

1. **Scope and Fee.** The quoted fees and scope of services constitute the best estimate of the fees and tasks required to perform the services as defined. This agreement upon execution by both parties hereto, can be amended only by written instrument signed by both parties. For those projects involving conceptual or process development service, activities often cannot be fully defined during initial planning. As the project progresses, facts uncovered may reveal a change in direction which may alter the scope. MSA will promptly inform the OWNER in writing of such situations so that changes in this agreement can be made as required. The OWNER agrees to clarify and define project requirements and to provide such legal, accounting and insurance counseling services as may be required for the project

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

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

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

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

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

7. **Construction.** This agreement shall not be construed as giving MSA, the responsibility or authority to direct or supervise construction means, methods, techniques, sequence, or procedures of construction selected by the contractors or subcontractors or the safety precautions and programs incident to the work of the contractors or subcontractors.

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

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

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

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

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

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

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

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

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

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

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

15. **Indemnification.** To the fullest extent permitted by law, MSA shall indemnify and hold harmless, OWNER, and OWNER's officers, directors, members, partners, agents, consultants, and employees (hereinafter "OWNER") from reasonable claims, costs, losses, and damages arising out of or relating to the PROJECT, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of MSA or MSA's officers, directors, members, partners, agents, employees, or Consultants (hereinafter "MSA"). In no event shall this indemnity agreement apply to claims between the OWNER and MSA. This indemnity agreement applies solely to claims of third parties. 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, agents, 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, agents, 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.

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

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

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

19. **Jurisdiction.** OWNER hereby irrevocably submits to the jurisdiction of the state courts of the State of Wisconsin for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement. OWNER further consents that the venue for any legal proceedings related to this Agreement shall be, at MSA's option, Sauk County, Wisconsin, or any county in which MSA has an office.

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

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

1. **Scope and Fee.** The quoted fees and scope of services constitute the best estimate of the fees and tasks required to perform the services as defined. This agreement upon execution by both parties hereto, can be amended only by written instrument signed by both parties. For those projects involving conceptual or process development service, activities often cannot be fully defined during initial planning. As the project progresses, facts uncovered may reveal a change in direction which may alter the scope. MSA will promptly inform the OWNER in writing of such situations so that changes in this agreement can be made as required. The OWNER agrees to clarify and define project requirements and to provide such legal, accounting and insurance counseling services as may be required for the project

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

7. **Construction.** This agreement shall not be construed as giving MSA, the responsibility or authority to direct or supervise construction means, methods, techniques, sequence, or procedures of construction selected by the contractors or subcontractors or the safety precautions and programs incident to the work of the contractors or subcontractors.

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

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

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

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

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

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

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

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

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

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

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

15. **Indemnification.** To the fullest extent permitted by law, MSA shall indemnify and hold harmless, OWNER, and OWNER's officers, directors, members, partners, agents, consultants, and employees (hereinafter "OWNER") from reasonable claims, costs, losses, and damages arising out of or relating to the PROJECT, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of MSA or MSA's officers, directors, members, partners, agents, employees, or Consultants (hereinafter "MSA"). In no event shall this indemnity agreement apply to claims between the OWNER and MSA. This indemnity agreement applies solely to claims of third parties. 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, agents, 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, agents, 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.

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

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

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

19. **Jurisdiction.** OWNER hereby irrevocably submits to the jurisdiction of the state courts of the State of Wisconsin for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement. OWNER further consents that the venue for any legal proceedings related to this Agreement shall be, at MSA's option, Sauk County, Wisconsin, or any county in which MSA has an office.

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

## MSA PROFESSIONAL SERVICES, INC. (MSA) – GENERAL TERMS AND CONDITIONS OF SERVICES

1. The quoted fees and scope of services constitute the best estimate of the fees and tasks required to perform the services as defined. This agreement upon execution by both parties hereto, can be amended only by written instrument signed by both parties. For those projects involving conceptual or process development service, activities often cannot be fully defined during initial planning. As the project progresses, facts uncovered may reveal a change in direction which may alter the scope. MSA will promptly inform the OWNER in writing of such situations so that changes in this agreement can be made as required.

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

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

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

5. This agreement shall not be construed as giving MSA, the responsibility or authority to direct or supervise construction means, methods, techniques, sequence, or procedures of construction selected by the contractors or subcontractors or the safety precautions and programs incident to the work of the contractors or subcontractors.

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

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

7. 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.

8. The OWNER agrees to clarify and define project requirements and to provide such legal, accounting and insurance counseling services as may be required for the project.

9. 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.

10. 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.

11. To the fullest extent permitted by law, MSA shall indemnify and hold harmless, OWNER, and OWNER's officers, directors, members, partners, agents, consultants, and employees (hereinafter "OWNER") from reasonable claims, costs, losses, and damages arising out of or relating to the PROJECT, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of MSA or MSA's officers, directors, members, partners, agents, employees, or Consultants (hereinafter "MSA"). In no event shall this indemnity agreement apply to claims between the OWNER and MSA. This indemnity agreement applies solely to claims of third parties. 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, agents, 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, agents, 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.

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

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

14. 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, at MSA's option, Sauk County, Wisconsin, or any county in which MSA has an office.

15. 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.