

**VILLAGE OF WINDSOR
RESOLUTION 2019-09**

**A RESOLUTION AUTHORIZING EXECUTION OF PROFESSIONAL SERVICES
AGREEMENT FOR STRUCTURAL ANALYSIS OF YAHARA RIVER BRIDGE**

WHEREAS, the Village of Windsor (the "Village") received notice from the Wisconsin Department of Transportation Bureau of Structures requiring documentation of a structural review of the Yahara River Bridge B130234 (hereinafter referred to as the "Bridge"), which is jointly owned by the Village (south of centerline) and the Village of DeForest ("DeForest") (north of centerline), and

WHEREAS, the Village has notified DeForest of the structural review requirement; and

WHEREAS, the Village Director of Public Works has obtained three proposals to complete the structural review to determine the effect on strength or serviceability of the bridge as required; and

WHEREAS, the Village Director of Public Works has conferred with DeForest Director of Public Works on the proposals received; and

WHEREAS, the Village Director of Public Works recommends accepting KL Engineering Proposal; and

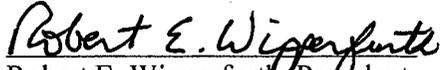
WHEREAS, the Village Director of Public Works has conferred with DeForest who concurs with accepting KL Engineering Proposal and cost sharing of the same; and

NOW, THEREFORE, BE IT RESOLVED, by the Village Board of the Village of Windsor, Dane County, Wisconsin as follows:

The Village of Windsor Board accepts the KL Engineering proposal, attached hereto, to complete the structural review to determine the effect on strength or serviceability of the bridge, and to enter into a 50/50 cost share for the proposal with DeForest.

The above and foregoing Resolution was duly adopted at a regular meeting of the Village Board of the Village of Windsor held on March 7, 2019, by a vote of 3 in favor and 0 opposed.

VILLAGE OF WINDSOR


Robert E. Wipperfurth, President

Attested by:


Christine Capstran, Clerk

INCORPORATED BY REFERENCE:

1. Wisconsin Department of Transportation Bureau of Structures Letter
2. Director of Public Works Memo
3. Proposal - Foth
4. Proposal - KL Engineering
5. Proposal - MSA

Structures Maintenance Section
Richard Marz, P.E. - Chief
richard.marz@dot.wi.gov
608-266-8195



**BUREAU OF
STRUCTURES**

Scott Walker, Governor
Dave Ross, Secretary
www.dot.wisconsin.gov

DATE: November 12, 2018
TO: Town of Windsor
FROM: Richard Marz, P.E.
SUBJECT: WisDOT Quality Assurance review for Structures with Steel H-pile/column

Dear Owner,

All owners of bridge structures that carry public traffic are tasked with ensuring the safety of the public. One key tenant of this responsibility is complying with the bridge management requirements spelled out by the Federal Highway Administration (FHWA) in the National Bridge Inspection Standards (NBIS) and the AASHTO Manual for Bridge Evaluation. In addition, WisDOT supplies owners with a Structures Inspection Manual and a Field Inspection Manual that spells out in more detail the requirements for inspections, quantification of deficiencies in elements, and other pertinent information.

As part of the Departments' quality assurance program (QA), the Bureau of Structures conducted a statewide review of a subset of bridges with substructures comprised of steel H-pile/column elements (225 and 202). These components were chosen because the Bureau noticed inconsistencies in the element data that we have on file in the Highway Structures Information System (HSI) vs. actual field conditions when we conducted a QA inspection of a few bridges this year.

Per this letter, we are informing you the Bureau QA review identified a serious structure inspection error with miscoded element conditions that need immediate attention to comply with the inspection program. The element(s) has been updated in HSI with supporting documentation.

B-13-234 Windsor Rd over Yahara River

The last routine inspection performed on 10/18/17 found the Pile/Column element condition states to be the following:

Element	CS 1	CS 2	CS 3	CS 4
	Good	Fair	Poor	Severe
202	0	0	10	0

WisDOT's investigation on 6/14/18 found the Pile/Column element condition states to be the following:

Element	CS 1	CS 2	CS 3	CS 4
	Good	Fair	Poor	Severe
225	0	0	2	

Our review concluded that eight piles on the structure had significant levels of section loss that warrant structural review.

As a reminder, a CS 4 (Severe) condition state is defined as follows:

“The condition warrants a structural review to determine the effect on strength or serviceability of the element or bridge; OR a structural review has been completed and the defects impact strength or serviceability of the element or bridge”

Therefore, the Bureau requires documentation of a structural review. The review shall be signed and stamped by a Professional Engineer and provided to WisDOT to be loaded into the Highway Structures Inspection System (HSIS).

If the review determines that the structure should be load posted, BOS would assist you by evaluating the bridge to determine if the bridge is eligible for the new bridge strengthening program piloted in 2018. If the bridge is not eligible or you wish to post the bridge, BOS requests that you install the proper load posting signs as soon as possible. If repairs are made to strengthen the piles by your local forces, please provide calculations supporting the repair to be uploaded into HSIS.

We have sent the inspector a notification of the new element conditions and there are subject to an inspector QA process. You may wish to contact the inspector to have them provide information with respect to this situation.

We look forward to working with you to ensure this bridge is safe and serviceable for the traveling public. Please contact me if you have any questions related to this notice, or if you have specific technical questions contact Travis McDaniel (608-266-5097).

Regards,

Richard Marz, P.E.
Chief Structures Maintenance Engineer
Bureau of Structures – Maintenance Section
4822 Madison Yards Way
Madison, WI 53707



Windsor

Growing Forward

Memorandum

To: Windsor Village Board

CC: Tina Butteris, Village Administrator
Christine Capstran, Clerk

From: Davis Clark, Village Public Works Director

Date: March 6, 2019

Re: Windsor Rd/Yahara River Bridge Structural review

In November of 2018 the Village of Windsor received a letter from the Wisconsin Department of Transportation Bureau of Structures indicating that they had reviewed the H-pile/column elements of the Windsor Road Bridge that spans the Yahara River and noticed inconsistencies with the data they had on file for that bridge. They had found a serious structure inspection error which, when corrected, moved the bridge rating for the pile/columns from poor to severe.

The Village was then required to have a structural inspection done on the bridge pile/columns by a Professional Engineer and the documentation stamped and provided to WisDOT to be loaded into the Highway Structures Inspection System (HSIS).

I have received three proposals for the structural inspection of the bridge and have shared them with the Village of DeForest who has agreed to pay for half of the inspection report. Together with the Village of DeForest, I am recommending that the structural inspection and report be performed by KL Engineering for the amount of \$2,500.00.



Lincoln Center II
2514 South 102nd Street, Ste. 278
West Allis, WI 53227
(414) 336-7900
www.foth.com

February 25, 2019

Mr. Davis Clark
Director of Public Works
Village of Windsor
4084 Mueller Rd.
DeForest, WI 53532

RE: Windsor Road Bridge over the Yahara River Proposed Scope of Work –
Engineering Evaluation of Current Condition and Posting Vehicle Adequacy

Dear Mr. Davis,

Foth is pleased to submit a scope of services to assist the Village of Windsor in evaluating the current capacity of the Windsor Road Bridge over the Yahara River.

Foth will perform a site visit, review recent bridge inspections, evaluate the current structure and provide an analysis of various standard design vehicles and Wisconsin permit vehicles. From this analysis Foth will provide guidance on posting weight restrictions for the standard Wisconsin permit vehicles.

We propose to perform the above described activities for a lump sum fee of \$11,000. Upon notice to proceed from the Village, we would schedule the site visit and complete the analysis and recommendation letter within 6 weeks.

Should you have any questions about our proposed scope of services or would like further detail on our proposed tasks, please feel free to call Kevin Anderson or me at (414) 336-7900. We look forward to working with you on this project.

Sincerely,

Foth Infrastructure & Environment, LLC

A handwritten signature in black ink, appearing to read "T. Ludwig".

Thomas J. Ludwig, P.E.
Principle in Charge



5400 King James Way I Suite 200
Madison, WI 53719
608.663.1218
Toll Free: 800.810.4012
www.klengineering.com

February 13, 2019

Davis Clark
Director of Public Works
Village of Windsor
4084 Mueller Road
DeForest, WI 53532

RE: Proposal for Bridge Inspection and Engineering Services
Windsor Road Bridge over Yahara River
B-13-0234
Dane County

Dear Davis,

In response to your request, we are submitting this proposal for bridge inspection and rating services for the structure referenced above. KL Engineering will provide structure inspection, HSI documentation, and bridge ratings based on the deteriorated condition of the piling for structure B-13-0234. If warranted by the results of the inspection and substructure rating calculations, rating for the superstructure and/or coordination with WisDOT Bureau of Structures Strengthening Program for Local Load-Posted Structure team for strengthening recommendations could be provided as extra services.

Total compensation for our services will be billed on a lump sum cost of \$2,500. If additional services are requested, they can be performed in accordance with the attached KL Engineering Standard Billing Rate Schedule. The Village of Windsor will reimburse KL Engineering, Inc. within 30 days from the date of the invoice.

This work shall be completed in accordance with the attached General Terms and Conditions, which shall be considered a part of this contract upon the written approval indicated below. Our professional services will be performed, our findings obtained, and our recommendations prepared in accordance with generally accepted engineering principles and practices. No other warranty, either expressed or implied is made.

Chad Halverson will be the primary contact for all aspects of this proposal. You can reach him directly at (608) 663-1218 or chalverson@klengineering.com. We appreciate the opportunity to submit this proposal and look forward to working with you on this project. Please contact me if you have questions or require additional information.

Sincerely,
KL Engineering, Inc.

Aaron Steger, P.E.

Aaron Steger, P.E.
Vice President Engineering Services
asteger@klengineering.com

Approved By: *Robert E. Wipperfurth*
Title: *Village President*
Date: *3-7-19*



STANDARD BILLING RATE SCHEDULE
EFFECTIVE JANUARY 1, 2019

Standard Billing Rates

Administration	\$65.00
Limited Term Employee	\$45.00
Engineering Technician I	\$67.00
Engineering Technician II	\$77.00
Senior Engineering Technician	\$90.00
Surveyor	\$70.00
Registered Land Surveyor	\$105.00
Environmental Specialist	\$110.00
Electrical Designer/Inspector	\$110.00
Transportation Planner	\$110.00
GIS Specialist	\$110.00
Registered Landscape Architect	\$130.00
Engineer I	\$83.00
Engineer II	\$94.00
Project Engineer	\$105.00
Senior Project Engineer	\$125.00
Project Manager	\$130.00
Senior Project Manager	\$140.00
Principal	\$155.00

Expenses

Out-of-pocket direct job expenses (reproductions, sub-consultants, equipment rental, etc)	at cost
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Travel Expenses

Company or Personal Car Mileage	IRS rate
Lodging and Subsistence	at cost

Billing and Payment

Travel time is charged for work required to be performed out-of-office.

Invoicing is on a monthly basis for work performed. Payment for services is due within 30 days from the date of the invoice. An interest charge of 1.5% per month is made on the unpaid balance starting 30 days after the date of the invoice.

This schedule of billing rates is effective January 1, 2019 and will remain in effect until December 31, 2019 unless unforeseen increases in operational costs are encountered. We reserve the right to change rates to reflect such increases.

Rev. 01/01/19

KL ENGINEERING, INC.

General Terms and Conditions of the Engineering Services

1. KL Engineering, Inc. will begin engineering services upon written authorization to proceed. Receipt of a signed contract will be considered written authorization. For projects requiring phased services a written authorization of approval of the prior phase and notice to proceed on the subsequent phase must be received prior to commencement of services. Phases, when applicable, shall be divided into study and report phase, preliminary design phase, final design phase and construction phase.
2. KL Engineering, Inc. will bill the Owner monthly with net payment due in thirty (30) days. Past due balances shall be subject to an interest charge at a rate of 1½% per month. In addition, KL Engineering, Inc., may after, giving seven (7) 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. The quoted fees and scope of engineering services constitute the 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. KL Engineering, Inc., will promptly inform the Owner in writing of such situations so that changes in this agreement can be made as required.
4. 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 or 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. KL Engineering, Inc., will maintain insurance coverage for: Worker's Compensation, General Liability, Auto Liability, and Professional Liability. KL Engineering, Inc., 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 KL Engineering, Inc., 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 amounts which KL Engineering, Inc., has in effect.
6. Owner shall indemnify and hold harmless KL Engineering, Inc. from and against all judgments, losses, damages, and expenses (including attorney fees and defense costs) to the extent such judgments, losses, damages, or expenses are caused by any negligent act, error, or omission of Owner or any person or organization for which Owner is legally liable. Upon completion of all Services, obligations, and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive.
7. In the event of a dispute between KL Engineering, Inc. and Owner arising out of or related to this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. If the parties cannot thereafter resolve the dispute, each party shall nominate a senior officer of its management to meet to resolve the dispute by direct negotiation or mediation. Should such negotiation fail to resolve the dispute, KL Engineering, Inc. and Owner agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation unless the parties mutually agree otherwise. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder.
8. Termination of this agreement by the Owner or KL Engineering, Inc., shall be effective upon seven (7) days' written notice to the other party. The written notice shall include the reasons and details for termination. KL Engineering, Inc., will prepare a final invoice showing all charges incurred through the date of termination; payment is due as stated in paragraph 2. If the Owner violates the agreements entered into between KL Engineering, Inc., and the Owner or if the Owner fails to carry out any of the duties contained in these terms and conditions, KL Engineering, Inc., may upon seven (7) days' written notice, suspend services without further obligation or liability to the Owner unless, within such seven (7) day period, the Owner remedies such violation to the reasonable satisfaction of KL Engineering, Inc.
9. Reuse of any documents and/or engineering 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 KL Engineering, Inc., from all claims, damages, and expenses including attorneys' fees and costs arising out of such reuse of the documents and/or engineering services by the Owner or by others acting through the Owner.
10. KL Engineering, Inc., will provide engineering services in accordance with generally accepted professional practices. KL Engineering, Inc., 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, KL Engineering, Inc., 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.
11. KL Engineering, Inc., 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 KL Engineering, Inc., for the Owner are rendered on the basis of experience and qualifications and represents the professional judgment of KL Engineering, Inc. However, KL Engineering, Inc., cannot and does not guarantee that proposals, bids or actual project or construction costs will not vary from the opinion of probable cost prepared by it. Owner agrees to hold KL Engineering, Inc., harmless for any claim arising out of or related in anyway to project or construction costs.
12. This agreement shall not be construed as giving KL Engineering, Inc., 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.
13. This agreement shall be construed and interpreted in accordance with the laws of the State of Wisconsin.
14. 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, duly executed by the parties hereto.
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 hereof.

EXHIBIT A
SCOPE OF SERVICES

Structure B-13-234 carrying Windsor Road over the Yahara River is in need of a structural review. The scope of services is as follows:

A. Site Visit/Field Measurements, Structural Analysis, Memo

- A site visit by a WisDOT-certified bridge inspector is included for Structure B-13-234. The inspector will obtain the measurements necessary for performing the structural analysis. A formal WisDOT inspection report is not required.
- A load rating is included for the steel piles only. Analysis of the superstructure, deck, or substructure elements that are not in Condition State 4 is not included. The load rating will include documentation required for entry into the WISDOT HSIS system.
- The deliverable will include a memo to the Village indicating a recommended load posting or repairs, if any. Repair plans are not included.

B. Structural repair detail drawings and new load rating (if authorized)

- Provide repair plans if they are recommended for the structure.
- A load rating is included for the repaired structure based on the planned repair details. The load rating will include documentation required for entry into the WISDOT HSIS system.

EXHIBIT B

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15. **Indemnification.** To the fullest extent permitted by law, MSA shall indemnify and hold harmless, OWNER, and OWNER's officers, directors; members, partners, agents, consultants, and employees (hereinafter "OWNER") from reasonable claims, costs, losses, and damages 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.