

Dane County Contract Cover Sheet

Revised 01/2022

Res 199
Significant

Dept./Division	Dane County Department of Administration-Public Works Engineering		
Vendor Name	Fish Creek Restoration, LLC	MUNIS #	33185
Brief Contract Title/Description	Award of Agreement for Engineering Design Services for Stream Corridor Restoration for Black Earth Creek at Walking Iron County Park		
Contract Term	10/22-11/23		
Contract Amount	\$150,000.00		

Contract # Admin will assign	14858
Type of Contract	
<input checked="" type="checkbox"/>	Dane County Contract
<input type="checkbox"/>	Intergovernmental
<input type="checkbox"/>	County Lessee
<input type="checkbox"/>	County Lessor
<input type="checkbox"/>	Purchase of Property
<input type="checkbox"/>	Property Sale
<input type="checkbox"/>	Grant
<input type="checkbox"/>	Other

Department Contact Information		Vendor Contact Information	
Name	Ryan Shore	Name	Ben Lee
Phone #	608-445-0109	Phone #	608-977-1856
Email	shore@countyofdane.com	Email	ben@healthystreams.com
Purchasing Officer	Pete Patten		

Purchasing Authority	<input type="checkbox"/> \$11,000 or under – Best Judgment (1 quote required)	
	<input type="checkbox"/> Between \$11,000 – \$40,000 (\$0 – \$25,000 Public Works) (3 quotes required)	
	<input checked="" type="checkbox"/> Over \$40,000 (\$25,000 Public Works) (Formal RFB/RFP required)	RFB/RFP # 322033
	<input type="checkbox"/> Bid Waiver – \$40,000 or under (\$25,000 or under Public Works)	
	<input type="checkbox"/> Bid Waiver – Over \$40,000 (N/A to Public Works)	
	<input type="checkbox"/> N/A – Grants, Leases, Intergovernmental, Property Purchase/Sale, Other	

MUNIS Req.	Req # 2340	Org: CPLWRESC	Obj: 51303	Proj:	\$ 150,000.00
	Year 2022	Org:	Obj:	Proj:	
		Org:	Obj:	Proj:	

Budget Amendment	
<input type="checkbox"/>	A Budget Amendment has been requested via a Funds Transfer or Resolution. Upon addendum approval and budget amendment completion, the department shall update the requisition in MUNIS accordingly.

Resolution Required if contract exceeds \$100,000 (\$40,000 PW)	<input type="checkbox"/> Contract does not exceed \$100,000 (\$40,000 Public Works)	Res #	199
	<input checked="" type="checkbox"/> Contract exceeds \$100,000 (\$40,000 Public Works) – resolution required.		Year
	<input checked="" type="checkbox"/> A copy of the Resolution is attached to the contract cover sheet.		

CONTRACT MODIFICATIONS – Standard Terms and Conditions		
<input checked="" type="checkbox"/> No modifications.	<input type="checkbox"/> Modifications and reviewed by: _____	<input type="checkbox"/> Non-standard Contract

APPROVAL	
Dept. Head / Authorized Designee	
Draper, Todd	Digitally signed by Draper, Todd Date: 2022.09.21 09:31:50 -05'00'

APPROVAL – Contracts Exceeding \$100,000	
Director of Administration	Corporation Counsel
	

APPROVAL – Internal Contract Review – Routed Electronically – Approvals Will Be Attached			
DOA:	Date In: 10/6/22	Date Out: _____	<input checked="" type="checkbox"/> Controller, Purchasing, Corp Counsel, Risk Management

Goldade, Michelle

From: Goldade, Michelle
Sent: Thursday, October 6, 2022 9:24 AM
To: Hicklin, Charles; Patten (Purchasing), Peter; Gault, David; Lowndes, Daniel
Cc: Stavn, Stephanie; Oby, Joe
Subject: Contract #14858
Attachments: 14858.pdf

Tracking:	Recipient	Read	Response
	Hicklin, Charles	Read: 10/6/2022 9:36 AM	Approve: 10/6/2022 9:37 AM
	Patten (Purchasing), Peter		Approve: 10/6/2022 1:53 PM
	Gault, David	Read: 10/6/2022 9:58 AM	Approve: 10/13/2022 2:17 PM
	Lowndes, Daniel	Read: 10/7/2022 11:02 AM	Approve: 10/7/2022 11:01 AM
	Stavn, Stephanie	Read: 10/6/2022 10:45 AM	
	Oby, Joe		

Please review the contract and indicate using the vote button above if you approve or disapprove of this contract.

Contract #14858

Department: Public Works

Vendor: Fish Creek Restoration LLC

Contract Description: Agreement for Engineering Design Services for Stream Corridor Restoration at Black Earth Creek at Walking Iron County Park (Res 199)

Contract Term: 10/1/22 – 11/30/23

Contract Amount: \$150,000.00

Michelle Goldade

Administrative Manager

Dane County Department of Administration

Room 425, City-County Building

210 Martin Luther King, Jr. Boulevard

Madison, WI 53703

PH: 608/266-4941

Fax: 608/266-4425

TDD: Call WI Relay 711

Please Note: I currently have a modified work schedule...I am in the office Mondays and Wednesdays and working remotely Tuesdays, Thursdays and Fridays in accordance with COVID 19 response guidelines.

1
2
3 **2022 RES-199**

4 AWARD OF AGREEMENT FOR STREAM CORRIDOR RESTORATION DESIGN FOR BLACK
5 EARTH CREEK AT WALKING IRON COUNTY PARK

6 The Department of Administration-Public Works Engineering Division reports the receipt of
7 proposals for Stream Corridor Restoration Design for Black Earth Creek at Walking Iron County
8 Park, 318 Park Street, Mazomanie, WI, Proposal No. 322033.

9
10 A complete tabulation is on file at the Department of Public Works Office.

11
12 An Agreement has been negotiated with:

13
14 Fish Creek Restoration, LLC
15 4321 Upland Drive
16 Madison, WI 53705
17

18 The Public Works staff finds the amount to be reasonable and recommends the Agreement be
19 awarded to Fish Creek Restoration, LLC.

20
21 There are sufficient funds available for this project. The term of the borrowing used to support
22 this project will be 10 years.

23
24 **NOW, THEREFORE, BE IT RESOLVED** that an Agreement be awarded to Fish Creek
25 Restoration, LLC in the amount of \$150,000.00; and

26
27 **BE IT FURTHER RESOLVED** that the County Executive and the County Clerk be authorized
28 and directed to sign the Agreement; and

29
30 **BE IT FINALLY RESOLVED** that the Department of Administration-Public Works Engineering
31 Division be directed to ensure complete performance of the Agreement.

utilized in all respects as, an original, wet-inked manually executed document. Further, this Agreement and any amendment or addendum thereto, may be stored and reproduced by each party electronically, photographically, by photocopy or other similar process, and each party may at its option destroy any original document so reproduced. All parties hereto stipulate that any such legible reproduction shall be admissible in evidence as the original itself in any judicial, arbitration or administrative proceeding whether or not the original is in existence and whether or not each party made such reproduction in the regular course of business. This term does not apply to the service of notices under this Agreement.

COUNTY OF DANE
PROFESSIONAL SERVICES AGREEMENT
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1. ARTICLE 1: SCOPE OF AGREEMENT

- 1.A. This Agreement between COUNTY and the person or firm, duly licensed under the laws and in accordance with the regulations of the State of Wisconsin, hereinafter referred to as the “A/E” shall be governed by the following Terms and Conditions.
- 1.B. The A/E shall provide technical and professional services under this Agreement. The Terms and Conditions of this Agreement shall apply to modifications made to this Agreement and shall apply to both the services rendered in the creation of the design and to the additional services called for in carrying out the design.
- 1.C. The A/E shall serve as the professional technical advisor and consultant to COUNTY in matters arising out of or incidental to the performance of this Agreement and in that capacity, the A/E shall not have a contractual duty or responsibility to any other person or party or individual regarding the services under this Agreement, except as that duty may arise under the laws of the State of Wisconsin. The A/E is not an agent of the COUNTY within the meaning of s. 893.80 or 895.46, Wis. Stats.
- 1.D. Professional services performed or furnished under this Agreement shall be based on the care and skill ordinarily used by members of the profession involved, who practice under the authority of and who are governed by the license issued under the Wisconsin Statutes and the Wisconsin Administrative Code. The standard of care for architectural and engineering services under this Agreement shall include designing buildings, structures and / or related infrastructural systems that comply with all applicable building and safety codes.
- 1.E. By accepting this Agreement, the A/E represents possession of the necessary skill and other qualifications to perform work under this Agreement and is familiar with the practices in the locality where such services and work shall be performed.
- 1.F. The A/E shall review and become familiar with the current Division 00 & 01 requirements utilized by COUNTY in construction contracts and shall provide services and work, consistent with such requirements, so that the Contractor’s schedule is not negatively impacted.
- 1.G. The A/E shall be professionally responsible for work performed under this Agreement. Upon written approval of COUNTY, the A/E may subcontract work to an approved consultant under this Agreement, to the specific extent authorized by COUNTY. The authorization to subcontract shall not relieve the A/E of professional or contractual responsibility for any work performed or delivered under this Agreement. The authorization to subcontract shall not be construed to create any contractual relationship between COUNTY and such consultant.
- 1.H. Subcontracts for services under this Agreement shall provide that work performed under such subcontract, shall be subject to provisions of this Agreement and shall also provide that any professional duty or responsibility pertaining thereto shall be accomplished to the benefit of COUNTY. Upon request, an electronic copy of each such subcontract for which COUNTY approval is granted shall be furnished to COUNTY.
- 1.I. The A/E may substitute consultants or professional staff under this Agreement only to the specific extent authorized by COUNTY in writing.
- 1.J. In the performance of this Agreement, the A/E shall become familiar with and perform such services in accordance with the specifications set forth in the Request for Proposals document. The COUNTY reserves the right to update County Master Specifications Division 00 and Division 01 at any time, including after the signing date of this Agreement.

The A/E shall use and conform to the most current County Master Specifications Division 00 and Division 01 available at the time of Final Review Documents and the A/E shall not be eligible for a change order based upon alterations to said County Master Specifications Division 00 and Division 01 occurring after the date of Agreement signing.

1.K. For this project the following terms will be in use:

1.K.1) Project Planning Team = Dane County staff from the Land & Water Resources Department, Public Works Engineering Division, and the engineering design team (A/E) Occasionally, others may join or provide input to this team.

2. ARTICLE 2: SCOPE OF THE SERVICES TO BE PROVIDED

2.A. General:

2.A.1) Services are to be provided by the A/E in each of the following phases:

Survey Phase
Conceptual Design Development Phase
Construction Documents Phase
Bidding Phase
Construction Phase

2.A.2) An assigned COUNTY Public Works Project Manager will be the A/E's contact in securing COUNTY direction and for arranging the necessary meetings with COUNTY or other County Departments and obtaining the approvals required by COUNTY.

2.A.3) The A/E shall create a log of all COUNTY and A/E generated design changes resulting from meetings and communications from COUNTY. Keep this log throughout the entire design process and submit it to COUNTY every two (2) months.

2.A.4) The A/E shall facilitate a site investigation, including subsurface investigations or geotechnical exploration of the subsurface conditions of the site, for the purpose of identifying conditions at the site which might adversely affect the achievement of the proposed design.

2.A.5) The term “written” or “in writing” may be either electronic or hard copy documentation, unless otherwise stated or directed by COUNTY.

2.B. Survey Phase:

2.B.1) The A/E shall obtain from COUNTY information and materials necessary to ascertain scope of the Project and shall verify with COUNTY program and functional requirements of the Project. This shall include a stream corridor survey and evaluation of the functional status of the project area using the Minnesota Stream Quantification Tool (MN SQT) <https://bwsr.state.mn.us/minnesota-stream-quantification-tool-and-debit-calculator>. Modifications to the MN SQT may be proposed to make the evaluation more applicable to Black Earth Creek.

2.B.2) The A/E shall submit to COUNTY a Summary of the Survey for use in the Conceptual Design Phase.

2.B.3) Survey Phase deliverables shall be:

2.B.3) a. Draft Survey, electronic copies of:

- (1) Word 2016 (or earlier version);
- (2) Any other files (e.g., AutoCAD 2019, Excel 2016, PowerPoint 2016, etc. (or earlier versions)) included in Study; and
- (3) Adobe Acrobat 2020 (or earlier version) (PDFs converted from Word, AutoCAD, or other programs; minimize pdf file size by converting files rather than scanning printouts).

2.C. Schematic Design Phase:

2.C.1) NOT USED.

2.D. Conceptual Design Development Phase:

- 2.D.1) The A/E shall review the program and functional requirements, plans and specifications of record, (to the extent that such documents are reasonably available), and applicable COUNTY standards and guides or other written direction by COUNTY. The A/E shall establish the limiting parameters of the design as defined by the instructions issued to it by COUNTY, to determine if the design concept is achievable within the schedule and budget proposed by COUNTY.
- 2.D.2) To the extent necessary, the A/E shall facilitate investigation of the site for existing conditions which differ from those indicated in the record drawings or which could have a detrimental impact on the achievement of the work called for under the project. The A/E shall prepare three or more conceptual designs for restoration of the project area, including a discussion of how each design would contribute to each stream functional category in the MN SQT, the approximate construction costs of each design, and how each design would interact with adjacent work on Black Earth Creek. Revise conceptual designs as needed based on discussion with Dane County staff.
- 2.D.3) The A/E and COUNTY shall schedule a meeting to review the A/E's design concepts and such other matters as are necessary to establish that at this preliminary point, the proposed design concept is consistent with the requirements of COUNTY.
- 2.D.4) The A/E shall document the results of design meetings, including design factors agreed to, with any instructions furnished by COUNTY to carry out such factors, including, but not limited to:
 - Program clarification
 - Scheduling concerns
 - Existing site conditions
 - Project cost estimates
 - Cost-value trade offs
 - Quality requirements
 - Special material requirements
 - Communications requirements
 - Engineering requirements
- 2.D.5) The A/E shall furnish a copy of the documentation produced under this Phase to each participant attending a design concept meeting.

2.D.6) In agreements which involve renovation or remodeling of or additions to existing facilities, the A/E shall evaluate the suitability of existing building elements, materials and equipment for reuse in the renovated project. Reasonably accessible areas shall also be observed by the A/E or its consultants to evaluate existing major mechanical, plumbing and electrical systems. Any of the foregoing considered to be economically reusable shall be reported to COUNTY and may be reused unless directed otherwise by COUNTY.

2.D.7) The A/E shall provide sufficient, alternative design solutions on major design features to allow COUNTY to ascertain that the recommended design achieves a practical programmatic and economic solution, within the limitations of the authorized program, schedule and budget

2.D.8) The major design features, equipment and systems that must be evaluated include, but are not limited to:

- Site & Civil related work
- Natural Stream Function
- Erosion Reduction
- Flood Mitigation
- Fish & Wildlife Habitat Improvements

2.D.9) The A/E shall provide a working analysis of each major design feature included in the selected design concept, with constraints and dependencies that is sufficiently complete to allow commencement of the Construction Documents Phase:

2.D.9) a. The A/E shall prepare preliminary drawings, specifications and other data tailored to the project that fix and describe the size and character of the entire project as to major design features and systems and such other essentials outlined by COUNTY:

- (1) The preliminary drawings shall include plans, elevations, sections and details at a scale which is sufficient to fully illustrate the design concepts, materials and finishes to be employed. Drawings shall be in format as approved by COUNTY.
- (2) The outline specifications shall include relevant specific information for Division 01 - Bidding and Contract Requirements and a list of the applicable technical divisions.

2.D.9) b. The A/E shall prepare a Design Report that includes:

- (1) A time estimate for completion of each separate phase of the work (Design, Construction Documents Construction).
- (2) A detailed estimate of project cost based on the preliminary design concept, which indicates that the project budget limitations will not be exceeded. Factors influencing the cost feasibility of each major division of the specification and related drawings shall be identified.
- (3) An analysis of the biddability and constructability of the project within the time allowed by COUNTY.
- (4) An identification of any part of the work that might require special monitoring or consideration during construction to prevent quality control problems, delays, or cost escalation. Include any long lead time equipment or materials, items which interface with difficulty,

areas of work requiring significant care, sequencing or precision in installation and full or partial User occupancy during construction.

- (5) As a safeguard against unforeseen bidding conditions, the A/E may recommend appropriate alternate bids for COUNTY's consideration. Such alternates shall be identified and developed at no additional cost to this Agreement.

2.D.10) Upon determination by the A/E that the final design is represented by the preliminary drawings and specifications, those documents along with a final Design Report shall be submitted to COUNTY for review and concurrence prior to commencement of Construction Documents.

2.D.10) a. The A/E shall provide COUNTY with up to four (4) sets and one (1) electronic file of the Design Report with appendix, preliminary drawings and outline specifications for review and coordination purposes. Electronic documents shall be in a format approved by COUNTY.

2.D.10) b. COUNTY will issue a list of recommended changes / corrections to be incorporated into the documents. Within fourteen (14) calendar days of receipt, the A/E shall transmit written replies to review comments issued by COUNTY. Directions by COUNTY shall be incorporated into the design, unless the A/E shall have explained objections to COUNTY and obtained prior written approval of noncompliance from COUNTY before proceeding with related work.

2.D.10) c. The A/E or COUNTY may call a further preliminary review meeting, when necessary to finalize the design concept. Written replies to additional COUNTY comments shall be made before proceeding to the Construction Documents Phase.

2.D.10) d. Approval of these documents by COUNTY will complete the Design Development Phase, whereupon COUNTY will issue written instruction to the A/E to proceed to the Construction Documents Phase.

2.D.11) Design Development Phase deliverables shall be:

2.D.11) a. Electronic version of all documents delivered via email or sharefile.

- (1) Drawings in AutoCAD 2019 (or earlier version);
- (2) Specifications in Word 2016 (or earlier version); and
- (3) Adobe Acrobat 2020 (or earlier version) of drawings and specifications (PDFs converted from Word, AutoCAD, or other programs; minimize pdf file size by converting files rather than scanning printouts).

2.E. Construction Documents Phase:

2.E.1) Upon receipt of written instructions from COUNTY, the A/E shall prepare Construction Documents for bidding and construction of the project. The Construction Documents shall provide the detailed requirements for the successful construction of the entire project.

2.E.2) Construction Documents shall comply with the COUNTY Master Specifications Division 00 and Division 01.

- 2.E.3) The Construction Documents shall be internally consistent in terms of coordination between:
- 2.E.3) a. Work of the A/E and its consultants.
 - 2.E.3) b. Requirements of various divisions or trades.
 - 2.E.3) c. Drawings and specifications.
- 2.E.4) During this phase, the A/E shall develop and provide documents for the systems designed under this Agreement which will achieve a biddable and constructible project, compliant with all applicable building and safety codes and within the assumption of professional responsibility set forth in this Agreement. These services shall include, but not be limited to:
- 2.E.4) a. Coordination, to protect the integrity of the design and facilitate construction with:
 - (1) Manufacturers: Ensure that manufactured items called for in the documents are currently available and will fit, interface and perform as required to achieve design intent.
 - (2) Consultants: Ensure that information necessary to their work is provided in a timely manner and that consultants exchange information with each other and the A/E.
 - (3) Utility Companies: Determine the standard operating procedures and time requirements for obtaining the services and the cooperation of the utility companies involved in the execution of the project. Provide this information in writing to interested parties as needed.
 - 2.E.4) b. Inclusion in the Construction Documents of:
 - (1) Plans, elevations and sections at a scale which is sufficient to give a full and complete understanding of the construction, dimensions thereof, materials to be employed, location of utilities and any other pertinent data.
 - (2) Details, diagrams, schedules, photo reproductions and other graphic methods appropriate to define work required to be performed to accomplish the purposes of the project.
 - (3) Description of existing conditions of site and / or structures with sufficient clarity to permit their use without ambiguity in the bidding and construction process.
 - 2.E.4) c. Inclusion in the specifications documents of bidding and contract requirements, special provisions and / or appendices, and technical sections. Unless otherwise agreed to by COUNTY in writing, the format shall generally follow the divisions of the Construction Specifications Institute. If approved by COUNTY in writing, short form specifications for limited scope work may be included on the drawings in lieu of Construction Specifications Institute format specification sections.
 - (1) The technical sections of the specifications shall completely and concisely describe the materials and services to be employed or installed by the construction contractor(s) in the work. These specifications shall describe the work to be done and shall be arranged

by work or material in appropriate divisions with suitable cross-references for clarity and continuity

- (2) The technical sections of the specifications shall be carefully worded to allow a clear understanding of the work required by each of the construction contractors and their subcontractors, and to describe the responsibility for the work required to be performed by such contractor(s), individually and collectively, for the performance of work required to deliver the project complete, without ambiguity as to which technical sections of the specifications cover each element of work.
 - (3) The technical sections of the specifications shall clearly state the minimum grade, quality, and type of materials and workmanship required. These specifications shall not restrict competition, where it is available, but shall state a level of quality, which can be objectively determined by persons normally engaged in the type of trade or practice described.
 - (4) When two (2) or more manufacturers offer on the open market materials, equipment or devices of equal quality and usability needed for the project, each such known manufactured product shall be specified for potential use on the project.
 - (5) The professional judgment of the A/E or the direction of the COUNTY may limit competition to a brand name, process, or technique of manufacture.
 - (6) The A/E shall compile and include in the construction contract documents a summary listing of all submittals required for the project from the construction contractor(s). Included shall be shop drawings, samples, cuts, catalogs, models, mockups and other preliminary information needed from the contractors to describe how they will fulfill their responsibilities under their contracts.
- 2.E.5) Upon determination by the A/E that the final project design is represented by completed Construction Documents, those documents shall be submitted to COUNTY for review and concurrence prior to release for bidding.
- 2.E.5) a. The A/E shall provide COUNTY with review sets in a format and standard specified by the COUNTY.
- 2.E.5) b. COUNTY will issue a list of recommended changes / corrections to be incorporated into the next review set or final documents. The A/E shall within seven (7) calendar days transmit written replies from the A/E and its sub-consultants to review comments issued by COUNTY or for which clarification requests were identified or for which changes were authorized at the final design review meeting and communicated to the A/E. Directions by COUNTY shall be incorporated into the documents.
- 2.E.6) Prior to submission of the final documents, the A/E shall call for a final review meeting with COUNTY, if needed, to finalize and prepare for publication of the final bidding documents, with any conditions required by COUNTY.
- 2.E.7) At the time of delivery of the final documents, the A/E shall report to COUNTY, in writing with updated estimates of project costs and schedules.
- 2.E.8) COUNTY will print and distribute drawings and specifications for bidding purposes without cost to the A/E. The A/E shall provide the original drawings, original

specifications and an electronic copy of both the drawings and original specifications for printing by COUNTY, in a format as approved by COUNTY. If the A/E is directed by COUNTY to acquire the necessary printing services, these services shall be a reimbursable expense as provided in Article 4.C. hereof.

2.E.9) Constructions Documents Phase documents shall indicate in the drawings' title block or specifications' footer what they are (e.g., 60% CDs, 95% CDs, Issued for Bids). The deliverables shall be:

2.E.9) a. 60% Review Construction Documents:

- (1) Electronic version of all documents delivered via email or sharefile:
 - (a) Drawings in Adobe Acrobat 2020 (or earlier version; PDFs); and
 - (b) Specifications in Word 2016 (or earlier version).

2.E.9) b. 95% Review Construction Documents:

- (1) Electronic version of all documents delivered via email or sharefile:
 - (a) Drawings in Adobe Acrobat 2020 (or earlier version; PDFs); and
 - (b) Specifications in Word 2016 (or earlier version).

2.E.9) c. Final Construction Documents (Issued for Bids Set):

- (1) Electronic version of all documents delivered via email or sharefile:
 - (a) Drawings (.dwg files) in AutoCAD 2019 (or earlier version):
 1. Each drawing sheet shall be complete with x-refs or base plan sheets included and attached;
 2. All external data from non-AutoCAD programs (e.g., Excel or Word) shall be included and attached; and
 3. Include copy of Plot Style Table (ctb file) used to print drawings.
 - (b) Drawings in Adobe Acrobat 2020 (or earlier version; minimize pdf file size by converting files from AutoCAD or other programs); and
 - (c) Project Manual in Word 2016 (or earlier version).

2.F. Bidding Phase:

2.F.1) The Bidding Phase shall commence with the publication of the Invitation to Bid and shall conclude with the award of the number of contracts necessary to achieve the purposes of construction.

2.F.2) The A/E shall serve as the professional technical consultant and advisor to COUNTY during the bidding process.

2.F.3) The A/E shall answer all pre-bid questions from contractors for COUNTY to authorize, print and distribute as appropriate.

2.F.4) If the low bids submitted by qualified, responsible bidders exceed construction cost estimate approved at Construction Documents Phase by five percent (5%) or more, the A/E shall revise and change the Construction Documents for a project rebidding, as approved by and without additional cost to COUNTY that will permit a proper award of the contract(s) within the approved estimate of project cost or other funding limitation. If the low bid exceeds construction cost estimate approved at

Construction Documents Phase by less than five percent (5%), at the COUNTY's option, the A/E shall revise and change the Construction Documents for a project rebidding, as approved by COUNTY, but shall be compensated for revisions per negotiated amendment to this Professional Services Agreement.

2.F.5) In the event that there is a reduction in scope to keep the project within budget and this results in low bid(s) which total less than the construction budget, then the A/E shall, at no additional fee, prepare construction bulletin(s) to add deleted program work back into the project.

2.F.6) Upon construction contract offer, the A/E shall immediately prepare Issued for Construction / Permitting Documents that incorporate the final bidding documents, addenda issued, alternate bids accepted and negotiated contract changes. Incorporate all of which into the Issued for Construction / Permitting Documents. Remove all references to accepted or rejected alternate bids and change the drawings' title block or specifications' footer appropriately. Complete such work in a timely fashion so not to delay construction or AHJ review & approval for permitting, but no later than seven (7) calendar days.

2.F.7) Bidding Phase deliverables for each project shall be:

2.F.7) a. Issued for Construction / Permitting Documents:

(1) Electronic version of all documents delivered via email or sharefile::

(a) Drawings (.dwg files) in AutoCAD 2019 (or earlier version):

1. Each drawing sheet shall be complete with x-refs or base plan sheets included and attached;
2. All external data from non-AutoCAD programs (e.g., Excel or Word) shall be included and attached; and
3. Include copy of Plot Style Table (ctp file) used to print drawings.

(b) Drawings in Adobe Acrobat 2020 (or earlier version; minimize pdf file size by converting files from AutoCAD or other programs);

(c) Project Manual in Word 2016 (or earlier version); and

(d) Project Manual in Adobe Acrobat 2020 (or earlier version; minimize pdf file size by converting files from Word or other programs, rather than scanning printouts).

2.G. Construction Phase:

2.G.1) An assigned COUNTY Project Manager will be responsible for arranging and conducting construction-related meetings as required and act as the point of contact for the construction contractors. A COUNTY approved A/E representative shall attend, take notes, publish and distribute COUNTY approved minutes of job meetings.

2.G.2) After the award of the construction contract(s), the A/E shall become an on-site technical and professional advisor to COUNTY. In this capacity the A/E will have continuous access to the site. The A/E, through COUNTY's Project Representative, will have access to data in the construction contractor(s) files or offices pertaining to the quality or time requirements of the construction contract(s), in the same mode, manner and extent that such data would be available to COUNTY.

- 2.G.2) a. When requested and specifically contracted for by COUNTY, the A/E shall provide a full-time, on-site representative who shall be qualified in construction administration and subject to the approval of COUNTY. On projects for which COUNTY does not authorize full-time, on-site representation, the A/E shall provide, in accordance with ATTACHMENT A - CONSTRUCTION PHASE SITE VISITS AGREEMENT, a COUNTY-approved person, with suitable experience in the construction process to visit the site in order to monitor and report the progress, quality, and timely performance of the work relative to the Construction Documents, as such work is being performed by the construction contractor(s). The A/E shall keep COUNTY informed of the progress and quality of the work based on on-site observations and shall endeavor to protect COUNTY against defects and deficiencies in the work.
- 2.G.3) Immediately following the pre-construction meeting and prior to the start of construction, the A/E shall review the proposed schedule for submittals from the construction contractor(s). The A/E shall assess the timing feasibility of such submittals relative to the construction schedule and review needed, and advise COUNTY in writing accordingly.
- 2.G.3) a. The A/E shall be responsible for the professional review and approval or rejection of shop drawings, samples and other submittals from the construction contractor(s) to determine conformance with the specific portions of the Construction Documents under which the submittal was made. Deviation from the Construction Documents as noted by the contractor on submittals or otherwise observed by the A/E shall be brought to the attention of COUNTY's Project Representative and concurrence received from COUNTY before any approval is given to a contractor. Review of the submittals which have priority status as determined by COUNTY's Project Representative, must be completed within five (5) business days of receipt. Review of other submittals shall be completed within ten (10) business days of receipt, or in accordance with the submittal schedule prepared by the General Contractor and as approved by COUNTY and A/E at the start of construction. The A/E is responsible for submittal activity conducted by its consultants in the same manner as if such review were made by the A/E.
- 2.G.3) b. The A/E shall also review the results of all testing conducted during or after construction and report to COUNTY whether these results meet the design intent and the requirements of the Construction Documents.
- 2.G.4) The A/E's site representative shall observe the construction process to evaluate the adequacy and completeness of the construction contractor(s) compliance with the Construction Documents, and shall immediately report any noncompliance to the COUNTY Project Manager in writing.
- 2.G.4) a. The A/E shall be responsible for the coordination and performance of on-site services performed by consultants employed by the A/E and shall review reports and other data submitted by such consultants. The A/E and each consultant engaged under Article 1.G. and ATTACHMENT B. - A/E / CONSULTANT AGREEMENT shall visit the job site as delineated in ATTACHMENT A. - CONSTRUCTION PHASE SITE VISITS AGREEMENT. The A/E shall provide in each consultant agreement, a requirement for consultant visits to the site and a schedule for such visits

for professional evaluation of the work monitored by each consultant and a reporting system to inform COUNTY. Site visits shall coincide with crucial times of the construction for the specialty area involved.

- 2.G.4) b. Following construction site visits, the A/E shall make routine, written status reports detailing observations and activities on the project, at such intervals as is elsewhere herein established and in a format approved by COUNTY. The A/E shall submit the reports within three (3) business days of the site visit by the A/E's representative. Reporting requirements for full-time, on-site representation shall be established by each Agreement for such professional services.
- 2.G.4) c. The A/E's site representative will receive copies of reports submitted by the General Contractor and shall provide site observation to evaluate the reports. Discovered construction variances shall immediately be reported to COUNTY.
- 2.G.4) d. If it becomes necessary during construction, to interpret, construe, clarify or to otherwise determine the reasonable meaning, application or implementation of the Construction Documents, the A/E acting in good faith, based upon the facts made known to it at the time, shall recommend to COUNTY in writing, a reasonable course of conduct in connection with the issues involved. Such recommendation(s) may be considered for further contractual action by COUNTY.
- 2.G.4) e. Should the A/E become aware that the work of any contractor or subcontractor in place or underway does not conform to the work or quality required by the Construction Documents, the COUNTY Project Manager shall be immediately notified in writing. It is appropriate for the A/E to also immediately advise the contractors of substantial deficiencies, and that notification of these deficiencies will be made to COUNTY. The A/E shall furnish such data as necessary to inform COUNTY of the degree of the noncompliance with the Construction Documents, the cause thereof, the impact on schedule and cost, if known, and a recommended course of conduct. COUNTY shall be solely responsible for implementation of the A/E's recommendation. This assumption of responsibility by COUNTY shall not relieve the A/E or its consultants for negligence in the discovery of the condition, which was or should have been discovered.
- 2.G.4) f. If the A/E considers suspension of construction work appropriate, the A/E shall notify COUNTY in writing and state the reasons, which, in the professional opinion of the A/E, justify such action.
- 2.G.5) Necessary professional services or construction required to repair or overcome problems caused by errors, omissions, ambiguities or changes not authorized by COUNTY in the preparation of the documents or design shall be the responsibility of the A/E or its consultants, without additional cost to COUNTY.
- 2.G.6) The A/E shall review requests for information (RFIs) and shall respond within five (5) business days.
- 2.G.7) The A/E shall develop and issue appropriate construction bulletins (CBs) at the direction of the COUNTY Project Manager. The A/E shall then evaluate the CB proposals received from the construction contractors and provide COUNTY with a written recommendation regarding the appropriateness of the proposals. The

evaluation and recommendation shall be completed within five (5) business days of receipt, or in accordance with another schedule approved by COUNTY. The evaluation shall consider the necessity for such change, the reasonableness of the proposed change, and an analysis of the cost proposed for effecting the change.

- 2.G.8) The A/E shall assist in the preparation of applications for incentive programs, when applicable.
- 2.G.9) Upon contractor's written notification and the COUNTY Project Manager's confirmation that Substantial Completion has taken place, the A/E shall observe the construction and provide a written punchlist to the COUNTY Project Manager. The COUNTY Project Manager will schedule the punchlist inspection in conjunction with the User and contractors involved. The punchlist shall contain items found not to be complete, in need of correction, replacement or otherwise not in accordance with the Construction Documents. As part of the Substantial Completion verification, the A/E shall perform or witness and document functional testing and review the testing and balance report prepared by others for all plumbing, HVAC, fire protection and electrical systems to verify installation and operation meet the intent of their design. The A/E shall forward the results of the functional testing and provide written recommendations for corrective measures where systems do not meet the intent of their design. The A/E shall prepare and distribute the Certificate of Substantial Completion when appropriate.
- 2.G.10) COUNTY will provide a set of Construction Documents to General Contractor on which daily records of changes and deviations shall be recorded. At completion of the project, General Contractor will submit its marked-up as-built documents to the A/E who shall, based on these marked up as-built documents, revise the original documents, including the electronic files, showing changes in the work made during the construction process to produce a set of Record Documents. Electronic documents shall be in a format and on a medium required by COUNTY. This work shall be completed and submitted to COUNTY within thirty (30) calendar days of receipt of the last marked up prints. The consequences of addenda, change orders and other circumstances known by the A/E to have caused change shall be included in the production of the Record Documents. The marked-up as-built documents shall be turned over to the COUNTY at the same time as the Record Documents.

2.G.10) a. Record Documents deliverables shall be:

- (1) Electronic version of all documents delivered via email or sharefile:
 - (a) Drawings (.dwg files) in AutoCAD 2019 (or earlier version):
 1. Each drawing sheet shall be complete with x-refs or base plan sheets included and attached;
 2. All external data from non-AutoCAD programs (e.g., Excel or Word) shall be included and attached; and
 3. Include copy of Plot Style Table (ctb file) used to print drawings.
 - (b) Drawings in Adobe Acrobat 2020 (or earlier version; minimize pdf file size by converting files from AutoCAD or other programs);
 - (c) Project Manual in Word 2016 (or earlier version); and
 - (d) Project Manual in Adobe Acrobat 2020 (or earlier version; minimize pdf file size by converting files from Word or other programs, rather than scanning printouts).

2.G.11) It is not intended by this Agreement to impose upon the A/E the duty of a guarantor of the construction contractor(s). It is, however, the intent of the Agreement to impose upon the A/E the duty of the faithful fulfillment, in accordance with the standard of care ordinary to the profession, of the performance of the duties specifically enumerated herein and for the close monitoring of the work of its consultants as if the work were performed by the A/E. As such, this shall not preclude the entitlement to COUNTY of reasonable expectation that systems as designed by the A/E or their consultants will operate as anticipated by COUNTY upon faithful completion of construction.

2.H. Commissioning Phase:

2.H.1) NOT USED.

3. ARTICLE 3: COUNTY'S RESPONSIBILITIES

- 3.A. COUNTY will determine the project scope for which the professional design services are required and will fully cooperate in achieving completion of that work.
- 3.B. COUNTY will establish an internal operating procedure for timely and proper performance of any COUNTY duty required to fulfill the needs of the project.
- 3.C. COUNTY will provide available information regarding the requirements for the project, which set forth COUNTY's objectives for program, schedule and overall budget. COUNTY will make available to the A/E data known to COUNTY or requested by the A/E, which may be needed for the fulfillment of the professional responsibility of the A/E. This data may include, but is not limited to, prints of existing buildings or record drawings and COUNTY standards and guides. Such documents will be the most recent and accurate available. The use of any such data by the A/E shall be without contractual or legal significance unless otherwise established elsewhere in this Agreement. However, providing of documents by COUNTY shall not relieve the A/E from the responsibility for conducting a field survey to verify existing conditions as specified herein.
- 3.D. COUNTY will communicate to the A/E the format of the documents required to be submitted.
- 3.E. COUNTY will examine documents submitted by the A/E and will render decisions regarding them promptly, to avoid unreasonable delay in the progress and sequence of the A/E's work. COUNTY will coordinate review comments from the User agency and COUNTY staff prior to issuance to the A/E.
- 3.F. COUNTY will distribute Construction Documents and any necessary addenda to prospective bidders, and conduct the bid opening for the project.
- 3.G. COUNTY will prepare and process the Agreements between COUNTY and A/E, and between COUNTY and construction contractor(s).
- 3.H. Unless otherwise specified in this Agreement, COUNTY will arrange for services of a testing laboratory to furnish structural, chemical, mechanical and other laboratory tests, inspections and reports as required by law or deemed necessary by COUNTY.

4. ARTICLE 4: COMPENSATION

- 4.A. A/E fees for basic services will be compensated by COUNTY in accordance with the Terms and Conditions of this Agreement as follows:

- 4.A.1) COUNTY will pay the A/E a lump sum fee of \$ 150,000.00.
- 4.A.2) No change in fee shall result from change orders to construction contracts unless such change is described as an Additional Service under Article 4.D. of this Agreement and approved by COUNTY. When the A/E's Design Report estimate indicates a revised project cost and such revision is approved by COUNTY, the amount of the lump sum fee may be renegotiated.
- 4.A.3) In the event the lowest acceptable construction bids exceed the fixed limit of construction, as shown above, plus any COUNTY increases approved before bidding, COUNTY will do one or more of the following:
- 4.A.3) a. Cooperate in revising the project scope and quality as required to reduce the project cost;
- 4.A.3) b. Authorize the rebidding of the project within a reasonable time; and / or
- 4.A.3) c. Give written approval of an increase in such fixed limit.
- 4.A.4) Compensation for any revisions of project scope & necessary rebidding based lowest acceptable construction bids exceeding the construction cost estimate approved at Construction Documents Phase shall be as described in "2.F. Bidding Phase" section above.
- 4.B. The A/E's Compensation for Additional Services, as described in Article 4.D., will be computed as follows:
- 4.B.1) Principals' time at a rate as provided for each Principal. For the purposes of this Agreement, the Principals are:
- Ben Lee, Principal PE - \$150/hr
- Marty Melchior, Principal Ecologist - \$185/hr.
- Emily Alcott, Principal Ecologist & Geomorphologist - \$185/hr
- 4.B.2) Other design staff shall be billed at these fixed rates:
- Environmental Scientist: \$150/hr
- 4.B.3) Employee's time shall be computed using the employee's basic hourly salary and include overhead costs for clerical support and mandatory and customary benefits such as statutory employee benefits, insurance, sick leave, holidays and vacations, pensions and similar benefits for persons in consultation, research and design in producing drawings, specifications and other documents pertaining to the project and for services during construction at the site.
- 4.C. Reimbursable Expenses:
- 4.C.1) Reimbursable Expenses are actual, incidental expenses incurred by the A/E, its employees or consultants, in the interest of the project and are not included in overhead costs for the Fees for Basic Services (4.A.) and Additional Services (4.D.). Reimbursable Expenses shall be incurred or contracted for only with PRIOR written approval from COUNTY. Such approval shall be based on a written proposal

delineating the nature of the services, the time involved, the estimated cost thereof, and the individuals or firms involved. Payment Requests from consultants and construction contractors providing these Reimbursable Expenses shall be reviewed by the A/E to check the accuracy of and entitlement to the sums requested. There are no markups allowed for Reimbursable Expenses. Reimbursable Expenses may include, but are not limited to, the following incidental expenses:

- 4.C.1) a. Expense of reproduction of drawings and specifications, excluding the review sets required in Article 2.
- 4.C.1) b. Expense of a site survey when needed.
- 4.C.1) c. Expense of a geotechnical investigation and soils & material testing when required.
- 4.C.1) d. Expense of State and / or City review fees when required.
- 4.C.2) Expenses not eligible for reimbursement shall include, but are not limited to, indirect project overhead costs associated with the Fees for Basic Services (4.A.) and Additional Services (4.D.) such as mileage, travel, lodging, replication of drawings for the design development meetings and subsequent design meetings, preliminary and final review document printing, handling and postage, cost of correspondence transmittals, telephone expenses, and CAD / electronic graphic services. Such expenses shall be included as part of the Lump Sum fee.

4.D. Additional Services:

- 4.D.1) The following services are in addition to but are not covered in Article 4.A. These services may be identified as part of the A/E's fee proposal and included with the lump sum fee as such. Compensation for these additional services or other services must be requested by the A/E, and subsequently approved by COUNTY prior to proceeding with the work. If the additional services are requested after the Agreement has been issued, such authorization shall be based on a written proposal delineating the nature of the services, the time involved, the estimated cost thereof, the effect on the project schedule and the individuals or firms involved. When authorized, an Agreement Change Order will be used to modify the A/E's Agreement.
 - 4.D.1) a. Revising previously approved drawings, specifications or other documents after written approval of Design Development Phase, to accomplish changes not initiated by the A/E other than record documents and revisions normally to be expected or required to correct deficiencies in the approved drawings and specifications.
 - 4.D.1) b. Preparing detailed models, perspective or renderings.
 - 4.D.1) c. Preparing documents for alternate bids or petitions for waiver when requested by COUNTY and, requiring significant additional time and expense on the part of the A/E or its consultants.
 - 4.D.1) d. Obtaining or participating in third party Value Engineering / Enhancement of the project when directed by COUNTY.
 - 4.D.1) e. Providing services other than corrective design work and record documents, after final payment to the construction contractor(s).

- 4.D.1) f. Providing services as expert witness in connection with any public hearings, arbitration proceeding, or the proceedings of a court of record except when the A/E is party thereto.
- 4.D.1) g. Providing historical preservation research or documentation.
- 4.D.1) h. Providing specialized design services, including, but not limited to Sustainability design or LEED certification, vibration, wind or acoustical analysis, energy modeling.
- 4.D.1) i. Participation in post-project evaluations.
- 4.D.1) j. Preparing multiple bid packages.

4.E. Payments to the A/E:

4.E.1) Payments of the A/E's lump sum fee will be made monthly, in proportion to services performed as confirmed by COUNTY, to increase the compensation to the following percentages of the lump sum fee at the completion of each phase of the work.

Survey Phase	15%
Conceptual Design Development Phase	45%
Construction Documents Phase	70%
Bidding Phase	90%
Construction Phase	100%

4.E.2) No more than ninety percent (90%) of the A/E's lump sum fee shall be paid out prior to substantial completion of the project. When COUNTY confirms that development of punch lists, review of Operating & Maintenance Manuals, submittal of record documents, has been satisfactorily completed by the A/E, COUNTY will determine how and when the remaining lump sum fee is disbursed.

4.E.3) Payments for COUNTY-approved Reimbursable Expenses as defined in Article 4.C. and Additional Services of the A/E as defined in Article 4.D., will be made monthly upon request.

4.E.4) An A/E whose work is found deficient or fails to conform to the requirements set forth in the Agreement, is not entitled to further payments, until corrected to the satisfaction of COUNTY.

4.E.4) a. Payments to the A/E may be withheld for damages sustained by COUNTY due to error, omission, unauthorized changes or negligence on the part of the A/E. COUNTY will notify the A/E in writing of the alleged, specific damages and amounts involved, on a timely basis.

4.E.5) Payments to the A/E will not be withheld due to disputes between construction contractor(s) and COUNTY.

4.E.6) If the project is suspended for more than three (3) months in whole or in part, the A/E will be paid fees for services performed prior to receipt of written notice from COUNTY of the suspension, together with Reimbursable Expenses then due and

reasonable expenses resulting from this suspension, as approved by COUNTY. If the project is resumed after being suspended for more than three (3) months, the A/E's compensation will be subject to renegotiation.

5. ARTICLE 5: ACCOUNTING RECORDS

- 5.A. Records of the A/E's direct personnel, consultants, and reimbursable expenses pertaining to the project shall be kept in accordance with Generally Accepted Accounting Principles (GAAP) and shall be available to COUNTY or an authorized representative throughout the term of this Agreement and for at least three (3) years after final payment to the A/E.

6. ARTICLE 6: TERMINATION OF AGREEMENT

- 6.A. This Agreement may be terminated by COUNTY without cause upon ten (10) calendar days written notice to the A/E. In the event of termination, the A/E will be paid fees for services performed to termination date, reimbursable expenses then due, and termination expenses as approved by COUNTY. Work performed prior to the date of termination shall be in accordance with the terms and conditions of this Agreement. Upon termination, the results of such work shall immediately be turned over to the COUNTY Project Manager and is a condition precedent to further payment by COUNTY.
- 6.B. In the event the Agreement between the A/E and any consultant on this project is terminated, the results of work by that consultant shall immediately be turned over to the A/E.

7. ARTICLE 7: OWNERSHIP OF DOCUMENTS

- 7.A. All drawings and specifications, renderings, models, scale details, approved copies of shop drawings and other such documents prepared by the A/E or any consultant pursuant to this Agreement shall become the property of COUNTY on completion and acceptance of any of the A/E's work, or upon termination of the Agreement, and shall be delivered to COUNTY upon request.
- 7.B. Documents prepared under this Agreement may be used by COUNTY for informational purposes without additional compensation to the A/E.
- 7.C. Specifications and isolated, detail drawings inherent to the [architectural / engineering, engineering] design of the project, whether provided by the COUNTY or generated by the A/E, shall be available for future use by the parties to this Agreement and other parties, each at their own risk.

8. ARTICLE 8: LIABILITY- HOLD HARMLESS AND INDEMNIFICATION

- 8.A. A/E shall indemnify, hold harmless and defend COUNTY, its boards, commissions, agencies, officers, employees and representatives against any and all liability, loss (including, but not limited to, property damage, bodily injury and loss of life), damages, costs or expenses which COUNTY, its officers, employees, agencies, boards, commissions and representatives may sustain, incur or be required to pay by reason of A/E furnishing the services required to be provided under this Agreement, provided, however, that the provisions of this paragraph shall not apply to liabilities, losses, charges, costs, or expenses caused or resulting from the acts or omissions of COUNTY, its agencies, boards, commissions, officers, employees or representatives. The obligations of A/E under this paragraph shall survive the expiration or termination of this Agreement.

9. ARTICLE 9: PROFESSIONAL LIABILITY INSURANCE

9.A. The A/E and its consultants retained under the terms of this Agreement shall procure and maintain a professional liability insurance policy with at least \$1,000,000 in coverage that provides for payment of the insured's liability for errors, omissions or negligent acts arising out of the performance of the professional services required under this Agreement. The A/E shall provide up-to-date, accurate professional liability information on the A/E's Data Record, including amount of insurance, deductible, carrier and expiration date of coverage. Upon request by COUNTY, the A/E shall furnish COUNTY with a Certificate of Insurance showing the type, amount, deductible, effective date and date of expiration of such policy. Such certificate shall also contain substantially the following statement: "The insurance covered by this certificate shall not be canceled, the coverage changed or reduced by endorsement, by the insurance company, except after thirty (30) calendar days written notice has been received by COUNTY." The A/E shall not cancel or materially alter this coverage without prior written approval by COUNTY. The A/E shall be responsible for consultants maintaining professional liability insurance during the life of their Agreement.

10. ARTICLE 10: OTHER INSURANCE

10.A. The A/E and its consultants retained under terms of this Agreement shall:

10.A.1) Maintain Worker's Compensation Insurance:

10.A.1) a. Procure and maintain Worker's Compensation Insurance as required by State of Wisconsin Statutes for all of the A/E's and consultant's employees engaged in work associated with the project under this Agreement.

10.A.1) b. Maintain Employer's Liability Insurance with a policy limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Insurance may be met by a combination of primary and excess coverage.

10.A.2) Procure and maintain during the life of this Agreement, and until one year after the completion of this Agreement, Commercial General Liability Insurance, including Products and Completed Operations for all claims that might occur in carrying out the Agreement. Minimum coverage shall be \$1,000,000 per occurrence, \$1,000,000 general aggregate, combined single limit for bodily injury, personal injury, and property damage. Such coverage shall be of the "occurrence" type form and shall include the employees of the A/E as insureds.

10.A.3) Procure and maintain Commercial Automobile Liability Insurance for all owned, non-owned, and hired vehicles that are used in carrying out the Agreement. Minimum coverage shall be \$1,000,000 per occurrence combined single limit for bodily injury and property damage. Insurance may be met by a combination of primary and excess coverage.

10.A.4) Provide an insurance certificate indicating the above Commercial Liability Insurance and property damage coverage, countersigned by an insurer licensed to do business in Wisconsin, covering and maintained for the period of the Agreement. Upon request by COUNTY, the insurance certificate is to be presented on or before execution of the Agreement.

11. ARTICLE 11: MISCELLANEOUS PROVISIONS

11.A. A/E warrants that it has complied with all necessary requirements to do business in the State of Wisconsin, that the persons executing this Agreement on its behalf are authorized to do so.

- 11.B. Legal Relations. The A/E shall comply with and observe federal and state laws and regulations and local zoning ordinances applicable to this project and in effect on the date of this Agreement.
- 11.C. Approvals or Inspections. None of the approvals or inspections performed by COUNTY shall be construed or implied to relieve the A/E from any duty or responsibility it has for its professional performance, unless COUNTY formally assumes such responsibility in writing from COUNTY so stating that the responsibility has been assumed.
- 11.D. Successors, Subrogees and Assigns. COUNTY and A/E each bind themselves, their partners, successors, subrogees, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, subrogees, assigns and legal representatives of such other party with respect to covenants of this Agreement.
- 11.E. Claims. The A/E's project manager will meet with COUNTY's Project Manager to attempt to resolve claims, disputes and other matters in question arising out of, or relating to, this Agreement or the breach thereof. Issues not settled are to be presented in writing to the COUNTY Director of Public Works for review and resolution. The decision of the Director of Public Works shall be final. Work shall progress during the period of any dispute or claim. Unless specifically agreed between the parties, venue will be in Dane County, Wisconsin.
- 11.F. Amendment of Agreement. This Agreement may be amended in writing by both COUNTY and A/E.
- 11.G. It is expressly understood and agreed to by the parties hereto that in the event of any disagreement or controversy between the parties, Wisconsin law shall be controlling. Venue for any legal proceedings shall be in the Dane County Circuit Court.
- 11.H. This Agreement is intended to be an agreement solely between the parties hereto and for their benefit only. No part of this Agreement shall be construed to add to, supplement, amend, abridge or repeal existing duties, rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.
- 11.I. The entire agreement of the parties is contained herein and this Agreement supersedes any and all oral agreements and negotiations between the parties relating to the subject matter hereof. The parties expressly agree that this Agreement shall not be amended in any fashion except in writing, executed by both parties.

12. ARTICLE 12: NONDISCRIMINATION IN EMPLOYMENT

- 12.A. During the term of this Agreement, A/E agrees not to discriminate on the basis of age, race, ethnicity, religion, color, gender, disability, marital status, sexual orientation, national origin, cultural differences, ancestry, physical appearance, arrest record or conviction record, military participation or membership in the national guard, state defense force or any other reserve component of the military forces of the United States, or political beliefs against any person, whether a recipient of services (actual or potential) or an employee or applicant for employment. Such equal opportunity shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, training, rates of pay, and any other form of compensation or level of service(s). A/E agrees to post in conspicuous places, available to all employees, service recipients and applicants for employment and services, notices setting forth the provisions of this paragraph. The listing of prohibited bases for discrimination shall not be construed to amend in any fashion state or federal law setting forth additional bases and exceptions shall be permitted only to the extent allowable in state or federal law.

12.B. Civil Rights Compliance:

- 12.B.1) If A/E has twenty (20) or more employees and receives \$20,000 in annual contracts with COUNTY, the A/E shall submit to COUNTY a current Civil Rights Compliance Plan (CRC) for Meeting Equal Opportunity Requirements under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title VI and XVI of the Public Service Health Act, the Age Discrimination Act of 1975, the Omnibus Budget Reconciliation Act of 1981 and Americans with Disabilities Act (ADA) of 1990. A/E shall also file an Affirmative Action (AA) Plan with COUNTY in accordance with the requirements of Chapter 19 of the Dane County Code of Ordinances. A/E shall submit a copy of its discrimination complaint form with its CRC/AA Plan. The CRC/AA Plan must be submitted prior to the effective date of this Agreement and failure to do so by said date shall constitute grounds for immediate termination of this Agreement by COUNTY. If an approved plan has been received during the previous calendar year, a plan update is acceptable. The plan may cover a two-year period. If A/E has less than twenty (20) employees, but receives more than \$20,000 from the COUNTY in annual contracts, it may be required to submit a CRC Action Plan to correct any problems discovered as the result of a complaint investigation or other Civil Rights Compliance monitoring efforts set forth herein below. If A/E submits a CRC/AA Plan to a Department of Workforce Development Division or to a Department of Health and Family Services Division that covers the services purchased by COUNTY, a verification of acceptance by the State of A/E's Plan is sufficient.
- 12.B.2) A/E agrees to comply with the COUNTY's civil rights compliance policies and procedures. A/E agrees to comply with civil rights monitoring reviews performed by the COUNTY, including the examination of records and relevant files maintained by the A/E. A/E agrees to furnish all information and reports required by the COUNTY as they relate to affirmative action and non-discrimination. A/E further agrees to cooperate with COUNTY in developing, implementing, and monitoring corrective action plans that result from any reviews.
- 12.B.3) A/E shall post the Equal Opportunity Policy, the name of A/E's designated Equal Opportunity Coordinator and the discrimination complaint process in conspicuous places available to applicants and clients of services, applicants for employment and employees. The complaint process will be according to COUNTY's policies and procedures and made available in languages and formats understandable to applicants, clients and employees. A/E shall supply to COUNTY's Contract Compliance Specialist upon request a summary document of all client complaints related to perceived discrimination in service delivery. These documents shall include names of the involved persons, nature of the complaints, and a description of any attempts made to achieve complaint resolution.
- 12.B.4) A/E shall provide copies of all announcements of new employment opportunities to COUNTY's Contract Compliance Specialist when such announcements are issued.

ATTACHMENT B

PROFESSIONAL SERVICES AGREEMENT

FISH CREEK RESTORATION LLC / CONSULTANT AGREEMENT

Date: _____

Project No.: 322033

Agreement No.: _____

THIS AGREEMENT is between Fish Creek Restoration LLC, hereinafter called "A/E", executing this Agreement, and Inter-Fluve hereinafter called the "Consultant".

WITNESSETH

WHEREAS, the A/E has entered into an Agreement with COUNTY to furnish professional services with a project, hereinafter named "Project", which is described as follows:

Engineering Design Services - Stream Corridor Restoration for Black Earth Creek

WHEREAS, the A/E deems it advisable to engage the services of a Consultant to furnish professional services in connection with this project, and

WHEREAS, the A/E and Consultant agree that the terms of the Agreement between COUNTY and the A/E also apply to this Agreement as though fully set forth and binding upon the Consultant, and

WHEREAS, the Consultant agrees that in the event of conflict between the A/E's Agreement with COUNTY and the A/E's Agreement with the Consultant, the A/E's Agreement with COUNTY shall take precedence, and

WHEREAS, the Consultant has signified willingness to furnish services for the A/E;

NOW, THEREFORE, in consideration of the premises and to their mutual and dependent agreements, the parties hereto agree as set forth in the Agreement between COUNTY and the A/E which are annexed hereto and made a part hereof.

IN WITNESS WHEREOF, the A/E and the Consultant have executed this Agreement.

Inter-Fluve

Fish Creek Restoration LLC

 _____
Signature Date

 _____
Signature Date

Jonathon Kusa

Printed Name

Benjamin Lee

Printed Name

President & CEO

Title

Manager/Water Resources Engineer

Title

Providing the following services:

See Subcontract Statement of Work

**SUBCONTRACT FOR PROFESSIONAL SERVICES
FISH CREEK RESTORATION, LLC – PRIMARY
PROJECT: BLACK EARTH CREEK AT WALKING IRON COUNTY PARK,
DANE COUNTY, WISCONSIN**

This agreement (“Subcontract”) is by and between Fish Creek Restoration, LLC, a Wisconsin company at 4321 Upland Drive, Madison, WI 53705 (“FCR”) and Inter-Fluve, Inc., 501 Portway Avenue, Suite 101, Hood River, Oregon 97031 (“Subconsultant”). In consideration of the following terms and provisions, the sufficiency of which are acknowledged, FCR and Subconsultant agree as follows. The Effective Date of this Subcontract is the effective date of the Prime Contract between FCR and Dane County. If the Prime Contract is not accepted and signed by FCR and Dane County, this Subcontract is void.

1. Subconsultant’s Services.

1.1 FCR has entered into an agreement with a client (the “Prime Contract”) to provide certain services for the client’s project (the “Project”) described in the Statement of Work attached hereto (“SOW”). Subconsultant agrees to provide services to FCR and to the Project according to the provisions of this Subcontract as described in the SOW attached hereto and incorporated herein.

1.2 This Subcontract and the attached SOW incorporate the Prime Contract between FCR and its client (“Client”) and a copy of the Prime Contract is attached to the SOW. Subconsultant has reviewed the Prime Contract and shall perform the services described in the SOW in compliance with the terms and conditions of the Prime Contract as further provided in Attachment B attached hereto and incorporated herein.

1.3 Subconsultant shall not commence providing the services until FCR provides a notice to proceed.

2. Relationship of Parties. FCR is the prime professional and is responsible for coordinating Subconsultant’s services on the Project together with any other subcontractor’s services FCR commissions for work on the Project. Subconsultant is an independent subcontractor and is responsible for the tools and methods used to perform its services under this Subcontract. Neither Subconsultant nor any of its employees or agents shall be considered an employee, partner or joint-venturer of FCR.

3. Performance Standards.

3.1 Subconsultant’s services under this Subcontract will be performed in a manner consistent with the level of skill and care ordinarily exercised by others in its profession performing similar work under similar circumstances. Subconsultant shall promptly repair or replace work that does not conform to this standard or the Client’s specifications. No compensation shall be owed to Subconsultant for services required to correct Subconsultant’s failure to comply with this standard of care. Subconsultant’s services as described in the SOW shall be carried out expeditiously to meet agreed upon Project deadlines.

3.2 Subconsultant shall at its own expense obtain the information, business permits, and licenses necessary for Subconsultant to perform its services hereunder. Subconsultant shall perform its services and produce its work product including any documents complying with

applicable federal, state and local laws, rules, regulations, ordinances, codes, orders and special requirements of the Project site. Subconsultant's communications to or with the Client or any federal, state or local agency specifically about the Project, shall be made through FCR or with the prior consent of FCR. If Subconsultant's services require providing notice to any party, Subconsultant shall prepare and provide the notice after first providing the notice to FCR for approval.

4. FCR's Obligations. FCR shall make available to Subconsultant the information, research, drawings, specifications and data which are available to FCR which would or could assist Subconsultant in performing its services described in the SOW. FCR shall have access to and be permitted to inspect Subconsultant's work at all reasonable times. FCR shall give prompt written notice to Subconsultant if FCR observes or otherwise becomes aware of any defect in Subconsultant's services.

5. Payment. Subconsultant shall invoice FCR as provided in the attached SOW. FCR shall pay Subconsultant as provided in the attached SOW. In the event of a payment dispute with the Client, Subconsultant and FCR will work together to resolve the dispute. Subconsultant's fees as listed in the SOW will be deemed to include all taxes and other government charges. Subconsultant shall maintain sufficient records to fully support each of its invoices and make those records available for inspection by FCR during normal business hours upon FCR's request.

6. Ownership of Work Produced. Subconsultant's deliverables resulting from providing the services for the Project described in the SOW including but not limited to reports, maps, drawings, test results, estimates, or databases shall be owned by the Client as the Client's "work made for hire," and shall be delivered to FCR for delivery to the Client.

7. Changes.

7.1 Promptly upon learning the new information, Subconsultant shall notify FCR in writing of any development or new directive or information that Subconsultant expects could change the scope or nature of any of the services to be provided by Subconsultant as described in the SOW or according to the Prime Contract. To propose a change in the services, FCR or Subconsultant shall provide written notice to the other describing the nature of the change and the reasons for the change. No change shall apply or be implemented unless FCR has approved the change in writing (a "Change Order"). For any proposed change that could affect the amount to be paid to Subconsultant or to FCR from the Client, Subconsultant shall provide a written estimate of the items of cost increase. If requested by FCR, Subconsultant will participate in negotiations with the Client related to any proposed change.

7.2 If FCR requests in writing, Subconsultant shall suspend, delay or terminate performing certain services or all services (as stated in the request) within three (3) days of receipt of FCR's request. If this Subcontract is terminated other than for Subconsultant's breach or failure to perform before Subconsultant has performed all of the services described in the SOW, Subconsultant shall be paid based on the services it performed through the date of such termination, provided, Subconsultant promptly delivers to FCR the work product from its services performed. No payment shall be made to Subconsultant for anticipated profit, lost opportunity or services not yet performed.

8. Risk Allocation and Safety.

8.1 Subconsultant shall indemnify, defend and hold harmless FCR and the Client and their officers, directors and employees from and against all claims, suits, damages, or losses to the extent the same arise out of Subconsultant's or its employee's, subcontractor's, agent's or assign's negligent acts, errors or omissions related to the Project, and for any infringement of copyright, patent, trademark or service mark rights of others arising out of or related to the services Subconsultant provided. If FCR's indemnity obligations to the Client under the Prime Contract are more extensive, Subconsultant shall have the same indemnification duty to FCR and the Client as stated in the Prime Contract.

8.2 FCR shall indemnify, defend and hold harmless Subconsultant from and against all claims, suits, damages or losses to the extent the same arise out of FCR's negligent acts, errors or omissions related to the Project.

8.3 Subconsultant shall be solely responsible for the health, safety and welfare of its employees, subcontractors, invitees and agents. Subconsultant and its employees and agents shall comply with all applicable provisions of federal, state and local safety laws to prevent accidents or injuries to persons on, about or adjacent to the Project site. Subconsultant shall examine the site and site requirements and develop a health and safety plan to protect its employees, agents and the public.

8.4 The treatment of injuries sustained by Subconsultant's employees and agents shall be Subconsultant's responsibility. Subconsultant shall immediately notify FCR of any injury sustained by the public at the Project site during the period services under the Prime Contract are being performed, as well as any injury to Subconsultant's employee, subcontractor or agent during the performance of the services.

9. Insurance. Subconsultant shall maintain during any time it is performing services pursuant to this Subcontract, the following insurance coverages. Before commencing performing services on the Project, Subconsultant shall provide FCR with one or more certificates of insurance evidencing to FCR's satisfaction, that the following coverages are in force and effect with an insurance company or companies in good standing and authorized to do business in the state where the Project site is located:

<u>Type of Coverage</u>	<u>Limits of Liability</u>
Workers Compensation	As required by statute
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 general aggregate \$2,000,000 products/completed operations \$1,000,000 personal and advertising injury
Vehicle Liability, Bodily Injury and Property Damage	\$1,000,000 combined single, regardless of who owns the vehicle
Professional Liability	\$1,000,000 per claim and \$2,000,000 in the aggregate
Pollution Liability	\$2,000,000 if the services include invasive work.

Subconsultant's commercial general liability coverage shall include coverage for contractual liability including Subconsultant's obligations under or arising under provisions of this Subcontract. Subconsultant's insurance coverage will be primary with regard to Subconsultant's operations. Subconsultant's vehicle and commercial general liability policies shall designate FCR and the Client as additional insureds. Commercial General Liability policies shall contain a waiver of subrogation in favor of FCR and Client. Subconsultant shall provide thirty (30) days written notice to FCR in the event of cancellation of any of these coverages, except for non-payment of premium which notice shall be 10 days prior notice. These amounts are minimums and coverages shall be maintained for the life of this Subcontract plus five years.

10. Confidential Information. If FCR discloses to Subconsultant any confidential or proprietary information of the Client or FCR, Subconsultant shall not disclose such information to any other party without FCR's advance, written authorization. Subconsultant shall not release any information to the public or make any public statements about the Project without the prior written consent of FCR.

11. Other Terms.

11.1 This Subcontract shall be interpreted and enforced according to the laws of the State of Wisconsin. The parties agree that the federal and state courts located in Wisconsin are an appropriate venue for any dispute between the parties, and both parties hereby submit to the jurisdiction of the courts of Wisconsin.

11.2 If any provision in the preceding paragraphs conflicts with the provisions of the SOW, the provisions of the SOW shall control.

11.3 Neither Subconsultant nor FCR shall assign any rights under or in this Subcontract without the written consent of the other party, which consent shall not be unreasonably withheld.

11.4 Any waiver or failure to enforce any provision of this Subcontract by either party, will not be deemed a waiver of any other provision or of that provision on any other occasion. No waiver will be enforceable unless in writing and signed.

11.5 If any provision of this Subcontract is determined by a court of competent jurisdiction to be unenforceable, the parties agree to modify the provision to accomplish the original intent of the parties, and, in any event, the remaining provisions of this Subcontract will continue in full force and effect.

11.6 This Subcontract including the SOW contains the entire agreement and understanding between the parties with respect to the Project and supersedes all prior and contemporaneous oral or written understandings, representations or agreements. This Subcontract may not be modified or amended other than by a writing signed by an authorized representative of each party.

11.7 Subconsultant may not without the prior written consent of FCR, use FCR's name or a description of the Project as a reference for other prospective clients.

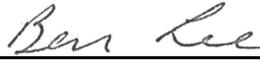
11.8 Subconsultant shall retain all documents, cost records and calculations related to the Project for 10 years following completion of services under the SOW unless a longer time is required by the Prime Contract or law.

Each party's authorized representative has signed this Subcontract below in acceptance of the terms and conditions it contains.

SUBCONSULTANT: INTER-FLUVE, INC.

FISH CREEK RESTORATION LLC

By: 

By: 

Name: Jonathon Kusa

Benjamin Lee, Manager

4321 Upland Drive

Madison, WI 53705

Phone: 608-977-1856

ben@healthystreams.com

Title: President & CEO

Phone: 541-490-8230

Email: jkusa@interfluve.com

SUBCONTRACT STATEMENT OF WORK

This Statement of Work is part of the Subcontract between Fish Creek Restoration LLC and Inter-Fluve, Inc. as Subconsultant.

CLIENT: County of Dane, Wisconsin, U.S.A.

PROJECT SITE: Black Earth Creek at Walking Iron County Park.

DESCRIPTION OF SERVICES SUBCONSULTANT WILL PROVIDE:

Inter-Fluve will assist Fish Creek Restoration LLC (FCR) in the following tasks.

1.0 Survey Phase

- 1.1 **Background Data Review** – Review existing reports and data on the project site.
- 1.2 **Stream Survey** – Assist in the data collection for characterizing the topography/bathymetry of the project site. Provide site reconnaissance to understand channel forms and processes.
- 1.3 **Stream Quantification Tool** – Using the Minnesota Stream Quantification Tool (SQT) as a basis, help complete the tool and adapt it for the project site.

Deliverables

- Provide up to 64 hours of assistance.

Conditions

- The field survey can be completed without snow and ice cover during low flow conditions.
- Surveying services will not include the development of a certified survey map or establishing property corners.
- Site access will be provided by Dane County.

2.0 Conceptual Design Development Phase

- 2.1 **Channel Design** – Assist in developing the proposed channel design including channel and floodplain geometry, stabilization treatments, and habitat elements.
- 2.2 **Conceptual Design Sketches** – Create 3 plan view and 2 cross section conceptual design sketches that represent proposed alternatives. The sketches will include a la carte items to be selected for final design.
- 2.3 **Concept Design Report** – Assist in writing the concept design report, specifications, and estimating costs.
- 2.4 **Concept Review Meeting** – Attend one concept design review meeting with Dane County.

Deliverables

- 3 plan view and 2 cross section concept sketches
- Provide up to 75 hours of assistance.

Conditions

- FCR will provide the hydrologic analyses and hydraulic modeling for design analysis.

- FCR will be responsible for completing the concept design report, specifications, and cost estimates.

3.0 Construction Documents Phase

- 3.1 **Channel Design** – Assist in developing the design channel and floodplain grading, stabilization treatments, and habitat enhancement components. Provide a vegetation community plan based on soils, hydroperiods, and geomorphic location.
- 3.2 **Design Plans** – Provide computer-aided drafting, design analyses and review, report writing, specifications writing, and cost estimating assistance. Provide input on the SQT for proposed conditions.
- 3.3 **Final Design Review Meeting** – Attend a final design review meeting with Dane County.

Deliverables

- Provide up to 114 hours of assistance.

Conditions

- FCR will be responsible for the submitted 60%, 95%, and 100% design plans, including design drawings, specifications, reports, and cost estimates.

4.0 Bidding Phase

- 4.1 **Bidding Services** – Assist in answering contractor questions, revising construction documents, attending a pre-bid meeting, and reviewing bids.

Deliverables

- Provide up to 24 hours of assistance.

Conditions

- None

5.0 Construction Observation

- 5.1 **Meetings and Review** – Attend a pre-construction meeting, assist in reviewing submittals, responding to requests for information, issuing construction bulletins, and developing a punch list.
- 5.2 **Construction Observation** – Provide up to 100 hours of on-site construction observation.
- 5.3 **Record Documents** – Assist in developing the record documents

Deliverables

- Provide up to 125 hours of assistance.

Conditions

- FCR will lead coordination during construction.

DUE DATE(S) FOR COMPLETION OF SERVICES:

October 31, 2023

SUBCONSULTANT WILL BE PAID THE FOLLOWING COMPENSATION:

Task	Budget
1.0 Survey Phase	\$10,265
2.0 Conceptual Design Development Phase	\$13,280
3.0 Construction Documents Phase	\$19,025
4.0 Bidding Phase	\$4,160
5.0 Construction Observation	\$20,885
Total	\$67,615

PAYMENT(S) WILL BE DUE:

Subconsultant will deliver an invoice monthly to FCR with the charges for Subconsultant's services to the Project performed in the preceding month and listing any out-of-pocket disbursements incurred by Subconsultant. FCR will pay Subconsultant within 10 calendar days after FCR receives payment from the Client for the same month covered by Subconsultant's invoice. Although the expectation is Subconsultant will perform services which earn the "Total" stated above, monthly payment amounts will be in proportion to the payment schedule in Section 4.E. of the Prime Contract.

OTHER: Attachment B Professional Services Agreement applies and is part of this Subcontract.

SUBCONSULTANT INTER-FLUVE, INC. ACCEPTS:

By: 

Name & Title: Jonathon Kusa, President & CEO

Contact for questions about invoices or payment:

Name: David Reeves

Phone: 541-386-9003

Email: dreeves@interfluve.com