

Dane County Contract Cover Sheet

Revised 01/2024

Res 170
significant

Dept./Division	Public Works		
Vendor Name	MSA Professional Services, Inc.	MUNIS #	5481
Brief Contract Title/Description	AWARD OF AGREEMENT FOR THE CONSTRUCTION ADMINISTRATION OF WALKING IRON TRAIL		
Contract Term	11/21/2024 through 10/01/2026		
Contract Amount	\$218,000.00		

Contract # Admin will assign	15621
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	Brandon Braithwaite	Name	John Langhans
Phone #	(608) 279-8934	Phone #	(608) 355-8895
Email	braithwaite.brandon@danecounty.gov	Email	JLanghans@msa-ps.com
Purchasing Officer	Pete Patten		

Purchasing Authority	<input type="checkbox"/> \$13,000 or under – Best Judgment (1 quote required)	
	<input type="checkbox"/> Between \$13,000 – \$44,000 (\$0 – \$25,000 Public Works) (3 quotes required)	
	<input type="checkbox"/> Over \$44,000 (\$25,000 Public Works) (Formal RFB/RFP required)	RFB/RFP # 324047
	<input type="checkbox"/> Bid Waiver – \$44,000 or under (\$25,000 or under Public Works)	
	<input checked="" type="checkbox"/> Bid Waiver – Over \$44,000 (N/A to Public Works)	
	<input type="checkbox"/> N/A – Grants, Leases, Intergovernmental, Property Purchase/Sale, Other	



MUNIS Req.	Req # 2655	Org: LEWSLUNY	Obj: 59010	Proj:	\$ 218,000.00
		Org:	Obj:	Proj:	\$
	Year 2024	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	<input type="checkbox"/> Contract does not exceed \$100,000	
	<input checked="" type="checkbox"/> Contract exceeds \$100,000 – resolution required.	Res # 170
	<input checked="" type="checkbox"/> A copy of the Resolution is attached to the contract cover sheet.	Year 2024

CONTRACT MODIFICATIONS – Standard Terms and Conditions		
<input 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: 2024.10.10 14:45:27 -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: 10/10/24	Date Out: _____	<input checked="" type="checkbox"/> Controller, Purchasing, Corp Counsel, Risk Management

Goldade, Michelle

From: Goldade, Michelle
Sent: Tuesday, October 15, 2024 2:15 PM
To: Hicklin, Charles; Gault, David; Patten (Purchasing), Peter; Cotillier, Joshua
Cc: Stavn, Stephanie; Oby, Joe
Subject: Contract #15621
Attachments: 15621.pdf

Tracking:	Recipient	Read	Response
	Hicklin, Charles	Read: 10/15/2024 3:03 PM	Approve: 10/15/2024 3:03 PM
	Gault, David	Read: 10/16/2024 9:03 AM	Approve: 10/16/2024 9:04 AM
	Patten (Purchasing), Peter		
	Cotillier, Joshua		Approve: 10/16/2024 9:26 AM
	Stavn, Stephanie	Read: 10/17/2024 8:32 AM	
	Oby, Joe		

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

Contract #15621
Department: Public Works
Vendor: MSA Professional Services
Contract Description: Construction administration of Walking Iron Trail (Res 170)
Contract Term: 11/21/24 – 10/1/26
Contract Amount: \$218,000.00

Thanks much,
Michelle

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 am currently working a modified schedule. I work in office Mondays and Wednesdays and work remotely Tuesday, Thursdays and Fridays.

Goldade, Michelle

From: Patten (Purchasing), Peter
Sent: Thursday, October 17, 2024 12:59 PM
To: Goldade, Michelle
Subject: Approve: Contract #15621

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The Department of Administration-Public Works Engineering Division reports that a bid waiver was approved for the construction administration of Dane County's portion of the Walking Iron Trail, 6715 CTH 78, Mazomanie, WI 53560; Project 324047.

An Agreement has been negotiated with:

MSA Professional Services, Inc.
1702 Pankratz St
Madison, WI 53704

Total: \$218,000.00

The Public Works staff finds the amount to be reasonable and recommends the Agreement be awarded to MSA Professional Services, Inc.

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

NOW, THEREFORE, BE IT RESOLVED that an Agreement be awarded to MSA Professional Services, Inc., in the amount of \$218,000; and

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

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

COUNTY OF DANE
PROFESSIONAL SERVICES AGREEMENT
SIGNATURE PAGE

Date: 10/07/2024
Project No.: 324047
Agreement No.: 15621

THIS AGREEMENT is between the County of Dane, by its Department of Administration, hereinafter referred to as "COUNTY", and MSA Professional Services, Inc, 1702 Pankratz St, Madison, WI 53704, hereinafter called the ENGINEER.

WITNESSETH

WHEREAS, COUNTY proposes securing engineering services for a project described as follows:

Walking Iron Trail Construction Administration

WHEREAS, COUNTY deems it advisable to engage the services of the ENGINEER to furnish professional services in connection with this project, and

WHEREAS, COUNTY has authority to engage such services, and

WHEREAS, the ENGINEER represents that it is in compliance with the applicable Wisconsin Statutes relating to the registration of architects and professional engineers and designers, and has agreed to furnish professional services for COUNTY,

NOW, THEREFORE, in consideration of the premises and to their mutual and dependent agreements, the parties hereto agree as set forth in the following pages, which are annexed hereto and made a part hereof.

IN WITNESS WHEREOF, COUNTY and the ENGINEER have executed this Agreement as of the above date.

MSA Professional Services, Inc.

COUNTY OF DANE

 10/8/2024
Signature Date

Jamie Kuhn, County Executive Date

JOHN M. LANGHANS
Printed Name

Scott McDonell, County Clerk Date

VICE PRESIDENT
Title

39-1016174
Federal Employer Identification Number (FEIN)

This Agreement, and any amendment or addendum relating to it, may be executed and transmitted to any other party by legible facsimile reproduction or by scanned legible electronic PDF copy, and 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 “ENGINEER” shall be governed by the following Terms and Conditions.
- 1.B. The ENGINEER 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 ENGINEER 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 ENGINEER 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 ENGINEER 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 ENGINEER 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 be professionally responsible for work performed under this Agreement. Upon written approval of COUNTY, the ENGINEER 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 ENGINEER 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.G. 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.H. The ENGINEER may substitute consultants or professional staff under this Agreement only to the specific extent authorized by COUNTY in writing.

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

2.A. General:

- 2.A.1) The ENGINEER shall provide services in each of the following phases:

Construction Phase

- 2.A.2) An assigned COUNTY Public Works Project Manager will be the ENGINEER'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 term "written" or "in writing" may be either electronic or hard copy documentation, unless otherwise stated or directed by COUNTY.
- 2.B. Study Phase: NOT USED
- 2.C. Schematic Design Phase: NOT USED
- 2.D. Design Development Phase: NOT USED
- 2.E. Construction Documents Phase: NOT USED
- 2.F. Bidding Phase: NOT USED
- 2.G. Construction Phase:
 - 2.G.1) An assigned COUNTY Public Works 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 ENGINEER 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 ENGINEER shall become an on-site technical and professional advisor to COUNTY. In this capacity the ENGINEER will have continuous access to the site. The ENGINEER, 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 ENGINEER 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 ENGINEER 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 ENGINEER 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 ENGINEER shall review the proposed schedule for submittals from the construction contractor(s). The ENGINEER 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 ENGINEER 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 ENGINEER 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 ENGINEER at the start of construction. The ENGINEER is responsible for submittal activity conducted by its consultants in the same manner as if such review were made by the ENGINEER.
- 2.G.3) b. The ENGINEER 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 ENGINEER'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 Public Works Project Manager in writing.
- 2.G.4) a. The ENGINEER shall be responsible for the coordination and performance of on-site services performed by consultants employed by the ENGINEER and shall review reports and other data submitted by such consultants. The ENGINEER and each consultant engaged under Article 1.G. and ATTACHMENT B. - ENGINEER / CONSULTANT AGREEMENT shall visit the job site as delineated in ATTACHMENT A. - CONSTRUCTION PHASE SITE VISITS AGREEMENT. The ENGINEER 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 ENGINEER shall make routine, written status, or field reports detailing observations and activities on the Project, at such intervals as is elsewhere herein established and in a format approved by COUNTY. The ENGINEER shall submit the reports within three (3) business days of the site visit by the ENGINEER'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 ENGINEER'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 ENGINEER 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 ENGINEER 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 Public Works Project Manager shall be immediately notified in writing. It is appropriate for the ENGINEER to also immediately advise the contractors of substantial deficiencies, and that notification of these deficiencies will be made to COUNTY. The ENGINEER 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 Construction Budget, if known, and a recommended course of conduct. COUNTY shall be solely responsible for implementation of the ENGINEER's recommendation. This assumption of responsibility by COUNTY shall not relieve ENGINEER or its consultants for negligence in the discovery of the condition, which was or should have been reasonably discovered in accordance with ENGINEER's standard of care and practice.

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

ENGINEER 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, ENGINEER 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.

- 2.G.4) f. If the ENGINEER considers suspension of construction work appropriate, the ENGINEER shall notify COUNTY in writing and state the reasons, which, in the professional opinion of the ENGINEER, justify such action.
- 2.G.5) Necessary professional services or construction required to repair or overcome problems caused by design errors, omissions, or changes not authorized by

COUNTY in the preparation of the documents or design shall be the responsibility of the ENGINEER or its consultants, without additional cost to COUNTY.

Betterment. If, due to ENGINEER's error, any required or necessary item or component of the Project is omitted from the construction documents, ENGINEER'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 ENGINEER will not be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the Project.

- 2.G.6) The ENGINEER shall review requests for information (RFIs) and shall respond within five (5) business days.
- 2.G.7) The ENGINEER shall develop and issue appropriate construction bulletins (CBs) at the direction of the COUNTY Public Works Project Manager. The ENGINEER 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 ENGINEER shall review & if determined appropriate, approve by signature, all change order proposals submitted by General Contractor. ENGINEER shall determine if scope of work is warranted & estimate of submitted costs are in line with current market conditions. ENGINEER shall work with COUNTY Public Works Project Manager & General Contractor to come to an agreement if there are differences of opinion on scope or costs.
- 2.G.9) The ENGINEER shall review & if determined appropriate, approve by signature, all invoices or pay applications submitted by General Contractor. ENGINEER shall work with COUNTY Public Works Project Manager to review each item in the schedule of values listing & work out any differences between billed work & actual completed work.
- 2.G.10) Upon contractor's written notification and the COUNTY Public Works Project Manager's confirmation that Substantial Completion has taken place, the ENGINEER shall observe the construction and provide a written punchlist to the COUNTY Public Works Project Manager. The COUNTY Public Works 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 ENGINEER shall perform or witness and document functional testing. The ENGINEER 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 ENGINEER shall prepare and distribute the Certificate of Substantial Completion when appropriate.
- 2.G.11) ENGINEER, or others, 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 ENGINEER 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 ENGINEER 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.11) a. Record Documents deliverables shall be:

(1) Electronic version of all documents:

(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.12) It is not intended by this Agreement to impose upon the ENGINEER the duty of a guarantor of the construction contractor(s). It is, however, the intent of the Agreement to impose upon the ENGINEER 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 ENGINEER. As such, this shall not preclude the entitlement to COUNTY of reasonable expectation that systems as designed by the ENGINEER or their consultants will operate as anticipated by COUNTY upon faithful completion of construction in accordance with the Standard of Care as defined previously in this agreement.

2.G.13) In order to respond to the Federal Redistribution opportunity, the COUNTY has requested the assistance of the ENGINEER for real estate services. These services have been satisfactorily provided and shall be reimbursed per this agreement.

2.G.14) COUNTY has requested that ENGINEER provide Grant Administration/Wage Monitoring for the Transportation Alternatives Program (TAP) funds associated with Bridge 428E and the connecting trail.

2.H. Commissioning Phase: NOT USED

3. ARTICLE 3: COUNTY'S RESPONSIBILITIES

3.A. COUNTY will determine the Project scope for which the professional 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 Project Budget. COUNTY will make available to the ENGINEER data known to COUNTY or requested by the ENGINEER, which may be needed for the fulfillment of the professional responsibility of the ENGINEER. 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 ENGINEER shall be without contractual or legal significance unless otherwise established elsewhere in this Agreement. However, providing of documents by COUNTY shall not relieve the ENGINEER from the responsibility for conducting a field survey to verify existing conditions as specified herein.
- 3.D. COUNTY will communicate to the ENGINEER the format of the documents required to be submitted.
- 3.E. COUNTY will examine documents submitted by the ENGINEER and will render decisions regarding them promptly, to avoid unreasonable delay in the progress and sequence of the ENGINEER's work. COUNTY will coordinate review comments from the User Agency and COUNTY staff prior to issuance to the ENGINEER.
- 3.F. COUNTY will prepare and process the Agreements between COUNTY and ENGINEER, and between COUNTY and construction contractor(s).
- 3.G. 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 ENGINEER a lump sum fee of: \$218,000
 - 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 ENGINEER's Design Report Construction Opinion of Probable Cost indicates a revised Construction Budget 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 Construction Budget, 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's Construction Budget;
 - 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.B. The ENGINEER's Compensation for Additional Services, as described in Article 4.D., will be computed as follows:

4.B.1) Principals' time at a fixed rate of \$300 per hour, unless separate amounts are provided for each Principal. For the purposes of this Agreement, the Principals are:

John M. Langhans, P.E, Aaron Palmer, P.E., Andrew Knutson, P.E.

JML

4.B.2) Other design staff shall be billed at these fixed rates:

Senior design engineer: \$225 per hour

Junior design engineer: \$165 per hour

Senior Construction Engineer/Technician \$175 per hour

Staff Construction Engineer/Technician \$150 per hour

Junior Technician/Drafting \$125 per hour

Clerical: \$100 per hour

JML

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 ENGINEER, 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 ENGINEER 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. Compensation for these additional services or other services must be requested by the ENGINEER, 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 ENGINEER's Agreement.

4.D.1) a. Providing planning surveys, program revision, site feasibility, or comparative studies of prospective sites.

4.D.1) b. 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) c. Preparing detailed models, perspective or renderings.

4.D.1) d. 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 ENGINEER or its consultants.

4.D.1) e. Obtaining or participating in third party Value Engineering / Enhancement of the Project when directed by COUNTY.

4.D.1) f. Providing services other than corrective design work and record documents, after final payment to the construction contractor(s).

4.D.1) g. 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) h. Providing historical preservation research or documentation.

4.D.1) i. Providing specialized design services, including, but not limited to sustainability design or LEED certification, vibration, wind or acoustical analysis, energy modeling.

4.D.1) j. Participation in post-project evaluations.

4.D.1) k. Preparing multiple bid packages.

4.E. Payments to the ENGINEER:

- 4.E.1) Payments of the ENGINEER's lump sum and / or percentage of Construction Budget fee will be made monthly, in proportion to services performed.
- 4.E.2) No more than ninety five percent (95%) of the ENGINEER'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 ENGINEER, 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 ENGINEER as defined in Article 4.D., will be made monthly upon request.
- 4.E.4) An ENGINEER 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.5) Payments to the ENGINEER 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 ENGINEER 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 ENGINEER's compensation will be subject to renegotiation.

5. ARTICLE 5: ACCOUNTING RECORDS

- 5.A. Records of the ENGINEER'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 ENGINEER.

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 ENGINEER. In the event of termination, the ENGINEER 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 Public Works Project Manager and is a condition precedent to further payment by COUNTY.
- 6.B. In the event the Agreement between the ENGINEER and any consultant on this project is terminated, the results of work by that consultant shall immediately be turned over to the ENGINEER.

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 ENGINEER or any consultant pursuant to this Agreement shall become the property of COUNTY on completion and acceptance of any of the ENGINEER's work, or upon termination of the Agreement, and shall be delivered to COUNTY upon request.
- 7.B. COUNTY may use documents prepared under this Agreement for informational purposes without additional compensation to the ENGINEER. If COUNTY uses or modifies documents without involvement or written consent of the ENGINEER or its sub-consultant(s), COUNTY shall remove name and signatures of the ENGINEER or its sub-consultant(s) from documents prior to such use or modification. Any such use or modification shall be at sole risk of COUNTY and without liability for the ENGINEER or its sub-consultant(s).

8. ARTICLE 8: LIABILITY - HOLD HARMLESS AND INDEMNIFICATION

- 8.A. ENGINEER shall indemnify and hold harmless 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 the ENGINEER furnishing the services required to be provided under this Agreement, but only to extent caused or resulting from intentional or negligent acts of the ENGINEER or its sub-consultant(s) and 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 the ENGINEER under this paragraph shall survive the expiration or termination of this Agreement.

9. ARTICLE 9: PROFESSIONAL LIABILITY INSURANCE

- 9.A. The ENGINEER 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 ENGINEER shall provide up-to-date, accurate professional liability information on the ENGINEER's Data Record, including amount of insurance, deductible, carrier and expiration date of coverage. Upon request by COUNTY, the ENGINEER 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 ENGINEER shall not cancel or materially alter this coverage without prior written approval by COUNTY. The ENGINEER shall be responsible for consultants maintaining professional liability insurance during the life of their Agreement.

10. ARTICLE 10: OTHER INSURANCE

- 10.A. The ENGINEER 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 ENGINEER'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 ENGINEER 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. ENGINEER 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 ENGINEER 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 ENGINEER 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 ENGINEER 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. The ENGINEER's project manager will meet with COUNTY's Public Works 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. Work shall progress during the period of any dispute or claim. Unless specifically agreed between the parties, venue will be in Dane County, Wisconsin. If an acceptable resolution cannot be met within thirty (30) days of the initial written notice to the COUNTY Director of Public Works,

the dispute shall be determined to be at an impasse. Upon reaching an impasse, any party may proceed with dispute resolution as follows:

Dispute Resolution. OWNER and ENGINEER 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 ENGINEER 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 ENGINEER will endeavor to settle all controversies, claims, counterclaims, disputes, and other matters through mediation with a mutually agreed upon mediator. Demand for mediation shall be filed in writing with the other party to this Agreement no later than ninety (90) days from impasse. 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. The parties shall agree on a mediator, but if a mediator is not selected within thirty (30) days of the demand, the obligation to mediate shall cease, and other legal action may ensue. The mediation session shall be held within forty-five (45) days of the retention of the mediator, and last for at least one full mediation day, before any party has the option to withdraw from the process. The parties may agree to continue the mediation process beyond one day, until there is a settlement agreement, or one party [or the mediator] states that there is no reason to continue because of an impasse that cannot be overcome and sends a "notice of termination of mediation." All reasonable efforts will be made to complete the mediation within 30 days of the first mediation session. If despite the good faith efforts of OWNER and ENGINEER any controversy, claim, counterclaim, dispute, or other matter is not resolved through negotiation or mediation, OWNER and ENGINEER agree and consent that such matter may be resolved through legal action in the court having jurisdiction as specified in this Agreement. Amendment of Agreement. This Agreement may be amended in writing by both COUNTY and ENGINEER.

- 11.F. 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.G. 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.H. 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, ENGINEER 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). ENGINEER 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 ENGINEER has twenty (20) or more employees and receives \$20,000 in annual contracts with COUNTY, the ENGINEER 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. ENGINEER 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. ENGINEER 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 ENGINEER 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 ENGINEER 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 ENGINEER's Plan is sufficient.
- 12.B.2) ENGINEER agrees to comply with the COUNTY's civil rights compliance policies and procedures. ENGINEER agrees to comply with civil rights monitoring reviews performed by the COUNTY, including the examination of records and relevant files maintained by the ENGINEER. ENGINEER 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) ENGINEER shall post the Equal Opportunity Policy, the name of ENGINEER'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. ENGINEER 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) ENGINEER shall provide copies of all announcements of new employment opportunities to COUNTY's Contract Compliance Specialist when such announcements are issued.

ATTACHMENT A
PROFESSIONAL SERVICES AGREEMENT
CONSTRUCTION PHASE SITE VISITS AGREEMENT

Project No.: 324047

Agreement No.: _____

Project Name: Walking Iron Trail Construction Administration

Either the ENGINEER or its Consultants shall provide construction phase services, for the Project referenced above, as follows and in compliance with Article 2.G.:

1. The ENGINEER shall visit site as dictated below; attend pre-construction meeting, weekly progress meetings for duration of construction and final inspection to determine if completed work is according to plans and specifications. Conduct site visits at essential times during the construction phase. Site visit is close-up observation of current building elements in process of being constructed. Additional site visits necessitated by ENGINEER error, omission, unauthorized changes or negligence, shall be accomplished without additional cost to COUNTY. Additional site visits necessitated by significant failure on part of lead or other prime construction contractors to perform, will be given consideration as additional services, reimbursable by the responsible construction contractor(s) through COUNTY. "In-house" staff or outside Consultants performing specialty work shall visit site as indicated below.
2. Per the ENGINEER's proposal dated August 19, 2024, the rehabilitation of Bridge 428E will have an expected construction duration of four (4) months, of which, full-time construction observation is recommended, as needed, by the ENGINEER. Weekly construction progress meetings are also assumed by the ENGINEER and COUNTY. Additional construction administration and observation will be negotiated based on updated forecasted time and material basis, per the contractor's schedule, contractor performance, and per the hourly rates in Section 4.B.2.
3. The trail connection construction scope is not assumed to require full-time construction observation. ENGINEER shall visit the site minimum of 12 times during Construction Phase.

ATTACHMENT B
PROFESSIONAL SERVICES AGREEMENT
ENGINEER / CONSULTANT AGREEMENT

Date: 10/07/2024
Project No.: 324047
Agreement No.: _____

THIS AGREEMENT is between MSA Professional Services, Inc, hereinafter called "ENGINEER", executing this Agreement, and Westbrook Associated Engineers, Inc. hereinafter called the "CONSULTANT".

WITNESSETH

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

Walking Iron Trail Construction Administration

WHEREAS, the ENGINEER deems it advisable to engage the services of a CONSULTANT to furnish professional services in connection with this project, and

WHEREAS, the ENGINEER and CONSULTANT agree that the terms of the Agreement between COUNTY and the ENGINEER 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 ENGINEER's Agreement with COUNTY and the ENGINEER's Agreement with the CONSULTANT, the ENGINEER's Agreement with COUNTY shall take precedence, and

WHEREAS, the CONSULTANT has signified willingness to furnish services for the ENGINEER;

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 ENGINEER which are annexed hereto and made a part hereof.

IN WITNESS WHEREOF, the ENGINEER and the CONSULTANT have executed this Agreement.

Westbrook Associated Engineers, Inc.

MSA Professional Services, Inc.

Aaron Palmer 10/08/2024
Signature Date

John M. Langhans 10/08/2024
Signature Date

Aaron Palmer
Printed Name

JOHN M. LANGHANS
Printed Name

Vice President
Title

VICE PRESIDENT
Title

Providing the following services:

Bridge/structural construction services and construction phase administration and/or observation