

**AGREEMENT BETWEEN CLIENT AND HARDESTY & HANOVER, LLC  
FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2025, by and between The City of Sheboygan Department of Public Works (“the Client”) and Hardesty & Hanover, LLC, a Delaware Limited Liability Corporation (“the Consultant”).

WHEREAS, the Client requires the services of a professional engineering firm for the purposes of the inspection of the South 8<sup>th</sup> Street Movable Bridge (B-59-154) over the Sheboygan River (“the Project”): and

WHEREAS, the Client desires to engage a qualified and experienced Consultant to conduct said services as stated above, hereinafter called (the “Services): and

WHEREAS, the Consultant has represented to the Client that it is experienced and qualified to provide those services, and the Client has relied upon such representation: and

WHEREAS, the Client and the Consultant desire to set forth herein the general terms and conditions whereby the Consultant will to provide services to the Client, the particulars of this engagement being set forth as executed herein.

NOW, THEREFORE, the Client and the Consultant, in consideration of their mutual covenants herein, agree in respect of the performance of professional Consulting services by the Consultant and the payment of those services by the Client as set forth below.

In the event of any inconsistencies or conflicts between the documents that form part of this Agreement, the order of precedence shall be as follows:

1. Exhibit C – City of Sheboygan Standard Contract Terms General Services Agreement (Non-Construction)
2. Exhibit D – City of Sheboygan Insurance Requirements General Service Agreement (Non-Construction)
3. Articles 1-21 of the Agreement
4. Exhibit A – Scope of Services
5. Exhibit B – Fee

(1) SCOPE OF SERVICES. The undertaking of the Consultant to perform professional Services under this Agreement extends only to the services set forth in Exhibit A (“the Services”). However, if requested by

the Client and agreed to by the Consultant, the Consultant will perform additional services ("Additional Services") and shall be compensated as set forth below. In addition, the Consultant is authorized to perform, and will be similarly compensated therefor, Additional Services for those services the Consultant deems advisable due to emergencies, errors or other unanticipated actions by the Client's contractor(s), revised regulations governing the Consultant's services, or requirements of authorities if, in the Consultant's opinion, such Additional Services are clearly in the Client's interest, and advance authorization cannot be obtained. In the event of the performance of such Additional Services, the Consultant will notify the Client as soon as practical of the necessity, extent, and inception of the Additional Services.

(2) CLIENT'S RESPONSIBILITIES. In addition to other responsibilities described in this Agreement or imposed by law, the Client shall have the following responsibilities:

(a) Designate in writing a person to act as the Client's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define the Client's policies and decisions with respect to the Consultant's services for the Project.

(b) Provide all criteria and full information as to the Client's requirements for the Project, including objectives and constraints, space, capacity and performance requirements and expectations, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which the Client will require to be used or included in the drawings and specifications.

(c) Assist the Consultant by placing at its disposal all available information pertinent to the Project including previous reports and any other data relative to studies, design, or construction or operation of the Project.

(d) Furnish to the Consultant, as required for performance of the Consultant's Services (except to the extent provided otherwise in Exhibit A) (i) data prepared by or services of others, including without limitation borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspection of samples, materials and equipment; (ii) appropriate professional interpretations of all of the foregoing; (iii) environmental assessment and impact statements; (iv) property, boundary, easement, right-of-way, topographic and utility surveys; (v) property descriptions; (vi) zoning, deed and other land use restrictions; and (vii) other special data or consultations; all of which Consultant may use and rely upon.

(e) Provide Consultant surveys to establish reference points for construction (except to the extent provided otherwise in Exhibit A).

(f) Arrange for access to and make all provisions for the Consultant to enter upon public and private property as required for the Consultant to perform services under this Agreement.

(g) Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by the Consultant, obtain advice of an attorney, insurance counselor and other consultants as the Client deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the Consultant. The Consultant shall have no liability to the Client for delays

resulting from Client's failure to review documents promptly.

(h) Furnish approvals and permits for all government authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

(i) Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such as legal services as the Client may require or the Consultant may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by any contractor(s) employed by the Client (hereinafter the "Contractor"), such auditing services as the Client may require to ascertain how or for what purpose any Contractor has used the moneys paid to him under the construction contract, and such inspection services as the Client may require to ascertain that the Contractor is complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.

(j) If the Client designates a person to represent the Client at the site who is not the Consultant or the Consultant's agent or employee, set forth the duties, responsibilities and limitations of authority of such other person and the effect thereof on the duties and responsibilities of the Consultant, stating these matters in an exhibit that is to be identified, attached to, and made a part of this Agreement before such services begin.

(k) If more than one prime contract is to be awarded for construction, materials, equipment and services for the Project, designate a person or organization to have authority and responsibility for coordinating the activities among the various prime contractors.

(l) Furnish to the Consultant data or estimated figures as to the Client's anticipated costs for services to be provided by others for the Client as required for the Consultant to support opinions of probable total Project costs.

(m) Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings and substantial completion inspections and final payment inspections.

(n) Give prompt written notice to the Consultant whenever the Client observes or otherwise becomes aware of any development that affects the scope or timing of Consultant's services, or any defect or nonconformance in any aspect of the Project.

(o) Bear all costs incident to compliance with the requirements of this paragraph.

(3) PERIOD OF SERVICES. The provisions of this section and the rates of compensation for the Consultant provided for elsewhere in this Agreement have been agreed to in anticipation of conditions permitting orderly and continuous progress of the Project through completion of the Consultant's Services. The Consultant shall begin work timely after receipt of a fully executed copy of this Agreement. The times for performance shall be extended as necessary for periods of suspension or delay resulting from circumstances the Consultant does not control. Such suspension or delay shall not terminate the Project or this Agreement unless the Consultant elects to terminate in accordance with other provisions of this Agreement. If such suspension or delay extends for more than six months (cumulatively), the rates of compensation in this Agreement shall be renegotiated.

(4) COMPENSATION FOR SERVICES.

The Consultant's compensation shall be computed on the basis set forth in Exhibit B ("the Fee").

(5) COMPENSATION FOR ADDITIONAL SERVICES. If upon the request of the Client, the

Consultant performs Additional Services hereunder, the Client shall pay the Consultant an amount agreed to by the parties.

(6) METHOD OF PAYMENT.

(a) Invoices will be submitted by the Consultant to the Client periodically for services performed and expenses incurred. Payment of each invoice will be due within twenty-five (25) days of receipt. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due the Consultant for services and expenses within thirty (30) days after the Consultant's transmittal of its invoice therefor, the Consultant may, after giving seven (7) days' written notice to the Client, suspend services under this Agreement until it has been paid in full all amounts due.

(b) If the Client objects to any charge on an invoice, it shall so advise the Consultant in writing giving its reasons within fourteen (14) days of receipt of the invoice or all such objections shall be waived, and the amount stated in the invoice shall conclusively be deemed due and owing.

(c) The Client acknowledges and agrees that the payment for services rendered and expenses incurred by the Consultant pursuant to this Agreement is not subject to any contingency.

(7) USE OF DOCUMENTS. All documents, including but not limited to drawings, specifications and data or programs stored electronically, prepared by the Consultant are related exclusively to the services described herein. They are not intended or represented to be suitable for partial use or reuse by the Client or others on extensions of this Project or on any other project. Any modifications made by the Client to any of the Consultant's documents, including the partial use of the Consultant's documents, or any reuse without written authorization or adaptation by the Consultant will be at the Client's sole risk and without liability or legal exposure to the Consultant. The Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting therefrom. Any such authorization or adaptation will entitle the Consultant to further compensation at rates to be agreed upon by the Client and the Consultant.

(8) OPINIONS OF COST. Since the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any and all opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and qualifications and represent its best judgment as an experienced and qualified professional, familiar with the industry. The Consultant cannot and does

not guarantee that proposals, bids or actual costs will not vary from opinions of cost prepared by it. If at any time the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator to make such determination. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services by the Client.

(9) **TERMINATION.** The obligation to provide further services under this Agreement may be terminated by either party upon seven (7) days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In the event of any termination, the Consultant will be paid for all services rendered to the effective date of termination, all expenses subject to reimbursement, and other reasonable expenses incurred by the Consultant as a result of such termination. If the Consultant's compensation hereunder is determined on an hourly basis, the amount payable to the Consultant for services so rendered shall be established on the basis of the time and authorized expenses actually incurred on the Project to the effective date of termination. If the Consultant's compensation under this Agreement is a lump sum, upon such termination the amount payable to the Consultant for services rendered will be a proportional amount of the total fee based on a ratio of the services done, as reasonably determined by the Consultant, to the total services which were to have been performed, less prior partial payments, if any.

(10) **INSURANCE.** The Consultant shall procure and maintain, at its own expense, the insurance coverages as set forth in Exhibit D, but not less than the following:

<b>Workers' Compensation</b>	Statutory
Including Longshore and Harbor Workers Act and/or Jones Act Coverage (as applicable if Services are in or around water bodies)	
<b>Employer's Liability</b>	
Bodily Injury by Accident	\$1M each accident
Bodily Injury by Disease	\$1M policy limit
Bodily Injury by Disease	\$1M each employee
<b>Commercial General Liability</b>	
Including Contractual Liability, Personal Injury, Modified Watercraft Exclusion, Bodily Injury and Property Damage Combined,	
	\$1M per Occurrence/\$2M Aggregate
<b>Automobile Liability</b>	
Bodily Injury and Property Damage Combined	\$1M CSL
<b>Professional Liability Insurance</b>	\$2M Each and Every Claim
Including errors and Omissions	\$2M Aggregate
<b>Umbrella/Excess Insurance</b>	\$5M

If Consultants present coverage is insufficient, Consultant must obtain additional coverage at no cost to Client. Consultant's insurance coverage must extend to claims made four years beyond the completion of the services and

the project, if available, and if unavailable, the Consultant agrees to obtain and maintain in effect policies which will extend such coverage during each of the four years following completion of the services and the project. Upon executing this Agreement, and during the four-year period following the completion of the services and the project, Consultant shall provide Client with a certificate(s) indicating that the above insurance coverage is in effect. Such certificate(s) shall name Client as an additional insured with waiver of subrogation under Consultant's comprehensive general liability and automobile liability, and umbrella/excess liability policies, and provide Client with a waiver of subrogation under the Professional Liability and workers' compensation policy and shall provide 30 days written notice to the certificate holder prior to cancellation or modification of coverage (ten (10) days written notice is required if cancellation is for nonpayment of premium).

Consultant shall provide to Client proof of Marine Coverage including P&I insurance from owner of boat/vessel utilized on any project hereunder.

(11) STANDARD OF CARE. In performing its professional services hereunder, the Consultant will use that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession practicing in the same or similar locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's undertaking herein or its performance of services hereunder.

(12) CERTIFICATIONS. The Consultant shall not be required to execute any certifications or other documents that in any way might, in the judgment of the Consultant, increase the Consultant's risk or affect the availability or cost of its insurance.

(13) EXPENSES OF LITIGATION. In the event litigation or arbitration in any way related to the services performed hereunder is initiated against the Consultant by the Client, its Contractor, or subcontractors, or if litigation is initiated by the Consultant against the Client to collect any unpaid invoice, or portion thereof, and such proceeding concludes with the entry of a final judgment or award favorable to the Consultant, the Client shall reimburse the Consultant for its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the litigation. Such expenses shall include, but shall not be limited to, the cost, determined at the Consultant's normal hourly billing rates, of the time devoted to such litigation by the Consultant's employees.

(14) DISPUTE RESOLUTION. If a dispute arises out of or relates to this Agreement, which cannot be resolved through good-faith negotiations, the parties agree to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Construction Industry Mediation Procedures before resorting to litigation. Mediation and litigation shall be conducted in Sheboygan County, Wisconsin. Any action must be commenced within the allowable Wisconsin statute of limitations.

(15) HAZARDOUS SUBSTANCES.

(a) Unless stated in Exhibit A ("the Services"), it is agreed that the Client does not request the Consultant to perform any services or to make any determinations involving hazardous substances or conditions, as defined by federal or state law. If such services are agreed to, Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to professional analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation.

(b) The Consultant shall notify the Client of hazardous substances or conditions not contemplated in the scope of services of which the Consultant actually becomes aware. Upon such notice by the Consultant, the Consultant will stop affected portions of its services. The parties shall decide if Consultant is to proceed with testing and evaluation and may enter into further agreements as to the additional scope, fee, and terms for such services.

(c) Except to the extent of negligence, if any, on the part of the Consultant in performing services expressly undertaken in connection with hazardous substances and conditions, the Client agrees to hold harmless, indemnify, and defend the Consultant from and against any and all claims, losses, damages, liability, and costs in any way arising out or connected with the presence, discharge, release, or escape of hazardous substances or conditions of any kind, or environmental liability of any nature, in any manner related to services of the Consultant.

(16) CONSTRUCTION PHASE SERVICES.

(a) If the Consultant's services include the preparation of documents to be used for construction and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.

(b) If the Consultant provides construction phase services, the Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

(c) The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and for its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.

(17) ASSIGNMENT AND SUBCONTRACTING. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the Client and the Consultant, and all duties and

responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Client and the Consultant and not for the benefit of any other party. Neither the Client nor the Consultant shall assign, sublet or transfer any rights under or interest in this Agreement without the written consent of the other. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent the Consultant from employing such independent professional associates, subconsultants, and suppliers as the Consultant may deem appropriate to assist in the performance of the Services.

(18) CONFIDENTIALITY. The Client hereby consents to the use and dissemination by the Consultant of photographs of the Project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. Notwithstanding the foregoing, with respect to any facts, data or information specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of such identified material.

(19) MISCELLANEOUS PROVISIONS. This Agreement is to be governed by the law of the State in which (“the Project”) is located which shall also be the venue for any litigation. This Agreement shall bind, and the benefits thereof shall inure to the respective parties hereto, their legal representatives, executors, administrators, successors and assigns. This Agreement contains the entire and fully integrated agreement between the parties, and supersede all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. This Agreement can be supplemented or amended only by a written document executed by both the Consultant and the Client. Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. Also, the non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

(20) DURATION OF THIS AGREEMENT. This Agreement shall be effective from the date of execution by both parties until two years after such date. This Agreement may be extended or renewed, with or without changes, by written amendment.

(21) IDEMNIFICATION & HOLD HARMLESS. The Consultant, shall indemnify, hold and save harmless the Client, their officers, agents and employees, from liability of any nature or kind, including costs and expenses (including reasonable attorney’s fees), for or on account of any or all claims or suits for damages of any character whatsoever resulting from injuries or damages sustained by any person or persons or property to the extent arising from negligent acts, errors, or omissions or misconduct of the Consultant, its employees and agents, and the Consultant’s subcontractors, and suppliers, their employees and agents.



IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

City of Sheboygan Department of Public Works

Hardesty & Hanover, LLC

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

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

Typed Name: Casey Bradley

Typed Name: Sean A. Bluni

Title: City Administrator

Title: Chief Executive Officer

## Exhibit A - Scope of Services

1. The Consultant will provide a thorough element level inspection of the structural, mechanical, and electrical components of the bridge and report findings and all applicable procedures in WisDOT's Highway Structure Information System (HSIS). The inspection of the bridge will also include the approach spans and approach pavement. The reporting in HSIS will identify current conditions of the structure, any significant findings and provide repair recommendations along with applicable photographs documenting the condition of the bridge. Field inspection work for this project must be completed by 4/30/25.
2. The Consultant will perform routine, NSTM and movable inspections in accordance with the National Bridge Inspection Standards (NBIS/SNBI), AASHTO's Manual for Bridge Evaluation (MBE), FHWA Bridge Inspector's Reference Manual (BIRM), AASHTO's Movable Bridge Inspection, Evaluation, and Maintenance Manual (2017), and Wisconsin's Structure Inspection Manual (2024) and Structure Inspection Field Manual (2024). Previous inspection reports, forms and inventory data are accessible in HSIS for referencing past conditions and planning upcoming inspection activities.
  - A. The Consultant will perform a Routine Inspection on all deck, superstructure and substructure elements above water on the flanking and bascule spans of B-59-0154.
  - B. The Consultant will perform an NSTM inspection on the bascule span of B-59-0154.
  - C. The Consultant will perform a detailed Movable Inspection on the bascule span of B-59-0154 using WisDOT forms (DT2014 through DT2017) to document components related to the moveable operation of the bridge. These forms will be updated and attached into HSIS as part of the Movable Inspection.
3. The Consultant will create an Inspection Work Plan, Safety Plan, and QA/QC Plan for inspection of the structure to be shared with the City of Sheboygan prior to beginning work. These updated plans will be included into HSIS as part of the final inspection reporting.
4. The Consultant will coordinate with the City of Sheboygan to receive proper US Coast Guard approval for any inspection activities which will cause the bridge operation to deviate from its normal schedule.
5. The Consultant will coordinate with the City of Sheboygan to ensure provisions are made to allow proper inspection of all mechanical and hydraulic components.
6. If elements are encountered during the inspection that trigger a structural review, the Consultant will follow WisDOT's Process Guide for Structural Reviews and Other inspection Actions to determine the severity of the defect.
7. The Consultant will be responsible for communicating traffic control needs a minimum of two weeks in advance of inspection activities with the City of Sheboygan.
8. The Consultant will be responsible for obtaining a vehicle for hands-on access under the bridge

9. The Consultant will begin reporting in HSIS within 1 month of field inspection work beginning. Final inspection reports with an e-signature will be completed in HSIS within 90 days of field inspection work beginning.

The inspections and related work shall conform to and be in accordance with the Wisconsin Statutes 84.17 and TRANS 212, Standards for the Inspection of the Bridges in the State of Wisconsin.

All work must be performed under the direct supervision of a WisDOT-qualified bridge inspection team leader on site for the duration of the inspection, with credentials for Team Leader, NSTM inspection, Movable Bridge Inspection, and all required refresher training listed in the WisDOT HSIS system.

This Team Leader must have training from the National Highway Institute's Safety Inspection of Highway Structures. The Lead Movable Structural Inspector, Lead Mechanical Inspector, Lead Hydraulic Inspector and Lead Electrical Inspector must all meet the requirements of the current WisDOT Structure Inspection Manual and the AASHTO Movable Bridge Inspection, Evaluation and Maintenance Manual.

#### RESPONSIBILITIES OF OWNER

The City of Sheboygan will provide traffic control during the bridge inspection.

The City of Sheboygan will provide a bridge operator to operate the bridge during the movable inspection. Consultant to provide City of a Sheboygan a minimum two-week notice of when the bridge will need to be operated.

Owner shall give authorization to WisDOT for Consultant to access the HSIS system to process the new inspection reports.

## Exhibit B - Fee

H&H proposes a total lump sum cost of \$39,500.00 for the inspection of the South 8th Street Bascule Bridge (B-59-0154) in accordance with NBI and WisDOT procedures and requirements. This cost includes H&H's project management, inspection preparation, routine inspection, NSTM inspection, structural movable inspection, mechanical movable inspection, hydraulic movable inspection, electrical movable inspection, and inspection report entry into WisDOT's HSI System. This cost includes all labor and direct expenses, assuming WisDOT's reach-all vehicle is available for our use during the one-day routine/NSTM portion of the inspection. This cost also includes one one-hour follow-up conference call with the City of Sheboygan to discuss the most significant findings of the inspection.

## Exhibit C

### **CITY OF SHEBOYGAN STANDARD CONTRACT TERMS GENERAL SERVICE AGREEMENT (NON-CONSTRUCTION)**

1. **STANDARD OF CARE.** Contracting Party agrees that the performance of services pursuant to the terms and conditions of this Agreement shall be performed in a manner consistent with the degree and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances providing like services. Upon notice to Contracting Party, Contracting Party will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care. Contracting Party agrees to follow all applicable federal, state, and local laws, regulations, and ordinances, and all provisions of this Agreement.
2. **FULLY QUALIFIED.** Contracting Party represents that all personnel engaged in the performance of the services set forth in this Agreement shall be fully qualified and shall be authorized or permitted under state and local law to perform the services.
3. **SCOPE OF WORK.** Contracting Party agrees to provide all labor, materials, equipment, transportation, appliances, and services necessary to complete all work identified or reasonably inferred from the Scope of Work document attached and/or incorporated into the Agreement. Contracting Party shall be responsible for obtaining all applicable permits and paying applicable permit fees prior to commencement. The scope of work set forth in this Agreement is based on facts known at the time of Agreement execution. As the project progresses, if facts are discovered that suggest a change of scope is warranted, the parties shall provide a written amendment to the Agreement before such change is recognized.
4. **MEANS AND METHODS.** Contracting Party shall be solely responsible for all means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under this Agreement. Contracting Party must employ, as much as possible, such methods and means in carrying out the work as will minimize disruption to City operations. Unless specifically included as a service to be provided under this Agreement, the City specifically disclaims any authority or responsibility for general job site safety, or the safety of persons or property.
5. **APPROPRIATION OF FUNDS.** Notwithstanding any other provision of the Agreement and pursuant to Wis. Stat. § 65.06(1), if funds for the continued fulfillment of this Agreement by the City are at any time not forthcoming or are insufficient, through failure of any entity, including the City itself, to appropriate funds or otherwise, then the City shall have the right to terminate this Agreement without penalty. The City agrees that it will make its best effort to obtain sufficient funds for the Agreement to meet its obligations hereunder in full.
6. **SCHEDULE OF PAYMENTS.** The City shall remit payment to Contractor within not less than thirty (30) days of itemized invoice receipt. Such itemization shall include labor costs, the Contracting Party's direct expenses, including subcontractor costs, the hours worked by Contracting Party's staff and the amount of work completed as a percentage of the work to be performed. The City shall not make payment for any unauthorized work or expenses. The City may withhold payment, in whole or in part, to the extent necessary to protect itself from a loss on account of defective work; evidence indicating the probable filing of claims by other parties against Contract that may adversely affect the City; failure of Contractor to make payments due to subcontractors, material supplies, or employees; damage to the City or a third party from acts arising out of this Contract. The submission of any request for payment shall be deemed a waiver and release by Contractor of all liens and claims with respect to the work and period to which such payment request pertains except as specifically reserved and noted on such request.  
  
Partial payment made under this Agreement is not evidence of the proper performance by Contractor either in whole or in part, and no payment made by the City shall be construed to be an acceptance of defective or improper work.
7. **TAXES, SOCIAL SECURITY, INSURANCE, AND GOVERNMENT REPORTING.** Personal income tax payments, social security contributions, insurance, and all other governmental reporting and contributions required as a consequence of the Contracting Party receiving payment under this Agreement shall be the Contracting Party's sole responsibility. The City is a tax-exempt entity and as such, shall not be required to pay sales tax by execution of a contract.
8. **INSURANCE.** Contracting Party shall, at its sole expense, obtain and maintain in effect at all times during this Agreement, insurance coverage, as applicable, consistent with that set forth in Exhibit A.
9. **INDEMNIFICATION & HOLD HARMLESS.** To the extent authorized by law, Contractor hereby agrees to indemnify, defend, and hold harmless the City of Sheboygan, its elected and appointed officials, officers, employees, agents, representatives, and

authorized volunteers from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, defense costs, attorneys' fees, costs, and expenses of whatsoever kind or nature in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part or claimed or alleged to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive of Contractor or its agents or anyone acting under its direction or control or on its behalf arising out of, or in connection with, or relating to this Agreement. Contractor's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the willful misconduct of the City of Sheboygan, its elected and appointed officials, officers, employees, agents, representatives, or authorized volunteers. Nothing in this Agreement shall be construed as the City of Sheboygan waiving its statutory limitation and/or immunities as set forth in the applicable Wisconsin Statutes or other applicable law. This indemnity provision shall survive the termination or expiration of this Agreement.

10. **TERMINATION FOR CAUSE.** If, through any cause, the Contracting Party shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contracting Party shall violate any of the covenants, agreements, or stipulations of this Agreement, the City of Sheboygan shall thereupon have the right to terminate this Agreement by giving written notice to the Contracting Party of such termination and specifying the effective date, at least ten (10) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other material related to the services performed by the Contracting Party under this Agreement for which compensation has been made or may be agreed to be made shall, at the option of the City, become the property of the City. Notwithstanding the foregoing, the Contracting Party shall not be relieved of liability to the City for damages sustained by the City by virtue of this Agreement by the Contracting Party, and the City may withhold any payments to the Contracting Party for the purpose of setoff until such time as the exact amount of damages due to the City from the Contracting Party is determined.
11. **TERMINATION FOR CONVENIENCE.** The City may terminate this Agreement at any time and for any reason by giving written notice to the Contracting Party of such termination and specifying the effective date, at least ten (10) days before the effective date of such termination. If this Agreement is terminated by the City pursuant to this provision, Contracting Party will be paid an amount which bears the same ratio to the total compensation as the services actually and satisfactorily performed bear to the total services of the Contracting Party covered by this Agreement, less payments for such services as were previously made. The value of the services rendered and delivered by Contracting Party will be determined by the City.
12. **USE OF CITY PROPERTY.** Any property belonging to the City being provided for use by the Contracting Party shall be used in a responsible manner and only for the purposes provided in this Agreement. No changes, alterations, or additions shall be made to the property unless otherwise authorized by this Agreement.
13. **INDEPENDENT CONTRACTOR.** The parties, their employees, agents, volunteers, and representative shall be deemed independent contractors of each other and shall in no way be deemed as a result of this Agreement to be employees of the other. The parties, their employees, agents, volunteers, and representatives are not entitled to any of the benefits that the other provides for its employees. The parties shall not be considered joint agents, joint ventures, or partners.
14. **JURY TRIAL WAIVER.** The parties hereby waive their respective rights to a jury trial on any claim or cause of action based upon or arising from or otherwise related to this Agreement. This waiver of right to trial by jury is given knowingly and voluntarily by the parties and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. Each party is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver by the other party.
15. **SEVERABILITY.** The provisions of this Agreement are severable. If any provision or part of this Agreement or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.
16. **ASSIGNMENT, SUBLET, AND TRANSFER.** Contracting Party shall not assign, sublet, or transfer its interests or obligations under the provisions of this Agreement without the prior written consent of the City. This Agreement shall be binding on the heirs, successors, and assigns of each party hereto. Contracting Party shall provide not less than forty-five (45) days advance written notice of any intended assignment, sublet or transfer.
17. **NO WAIVER.** The failure of any party to insist, in any one or more instance, upon performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver, or relinquishment of the future performance of any such term, covenant, or condition by any other party hereto but the obligation of such other party with respect to such future performance shall continue in full force and effect.

18. **GOOD STANDING.** Contracting Party affirms that it is a company duly formed and validly existing and in good standing under the laws of the State of Wisconsin and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. Contracting Party is duly licensed or qualified to do business and is in good standing in the State of Wisconsin and in all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.
19. **CONFLICTS OF INTEREST.** Contracting Party covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contracting Party further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. Any interest on the part of Contracting Party or its employee must be disclosed to the City.
20. **IMPLEMENTATION SCHEDULE AND TIME OF THE ESSENCE.** Any and all phases and schedules which are the subject of approvals, or as set forth herein, shall be governed by the principle that time is of the essence, and modification or deviation from such schedules shall occur only upon approval of the City. The City Administrator, or in their absence, the Council President, shall have the ability to postpone any deadline listed herein, up to a maximum of ninety (90) days.
21. **ACCESS TO RECORDS & OPEN RECORDS LAWS.** Contracting Party, at its sole expense, shall maintain books, records, documents and other evidence pertinent to this Agreement in accordance with accepted applicable professional practices. The City, or any of its duly authorized representatives, shall have access, at no cost to the City, to such books, records, documents, papers or any records, including electronic records, of Contracting Party which are pertinent to this Agreement, for the purpose of making audits, examinations, excerpts and transcriptions. Contracting Party understands that the City is bound by the Wisconsin Public Records Law and, as such, this Agreement is subject to that law. Contractor acknowledges that it is obligated to assist the City in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of the contract, and that Contractor must defend and hold the City harmless from liability under that law. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of Final Payment under the Agreement.
22. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, all of which shall be considered but one and the same agreements and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.
23. **SURVIVAL.** All express representations, indemnifications and limitations of liability included in this Agreement will survive its completion or termination for any reason.

## Exhibit D - Insurance Requirements

### **CITY OF SHEBOYGAN INSURANCE REQUIREMENTS GENERAL SERVICE AGREEMENT (NON-CONSTRUCTION)**

The Service Provider shall not commence work until proof of insurance required has been provided in writing to the applicable department before the contract or purchase order is considered for approval by the City of Sheboygan.

It is hereby agreed and understood that the insurance required by the City of Sheboygan is primary and non-contributing coverage and that any insurance or self-insurance maintained by the City of Sheboygan, its officers, council members, agents, employees or authorized volunteers will not contribute to coverage of any loss. All insurance shall be in full force prior to commencing work and remain in force until the entire job is completed and the length of time that is specified, if any, in the contract or listed below whichever is longer.

**1. COMMERCIAL GENERAL LIABILITY INSURANCE**

Commercial General Liability coverage at least as broad as Insurance Services Office Commercial General Liability Form CG 00 01, including coverage for Products Liability, Completed Operations, Contractual Liability, and Explosion, Collapse, Underground coverage with the following minimum limits and coverage:

Each Occurrence limit	
\$1,000,000	
Personal and Advertising Injury limit	\$1,000,000
General aggregate limit (other than Products-Completed Operations) <b>per project</b>	
\$2,000,000	
Products-Completed Operations aggregate	\$2,000,000
Fire Damage limit — any one fire	\$50,000
Medical Expense limit — any one person	\$5,000

**2. BUSINESS AUTOMOBILE COVERAGE.** Automobile Liability coverage at least as broad as Insurance Services Office Business Automobile Form, with minimum limits of \$1,000,000 combined single limit per accident for Bodily Injury and Property Damage, provided on a Symbol #1- “Any Auto” basis.

**3. WORKERS COMPENSATION AND EMPLOYERS LIABILITY** – as required by Wisconsin State Statute or any Workers Compensation Statutes of a different state. Also, if applicable to the work coverage must include Maritime (Jones Act) or Longshore & Harbor Worker’s Compensation Act coverage.

Must carry coverage for Statutory Workers Compensation and an Employers Liability with limits of:

- \$100,000 Each Accident
- \$500,000 Disease Policy Limit
- \$100,000 Disease – Each Employee

Employer’s Liability limits must be sufficient to meet umbrella liability insurance requirements

**4. UMBRELLA LIABILITY** providing coverage at least as broad as all the underlying liability policies with a minimum limit of \$2,000,000 each occurrence and \$2,000,000 aggregate, and a maximum self-insured retention of \$25,000. The umbrella must be primary and non-contributory to any insurance or self-insurance carried by City of Sheboygan.



5. **AIRCRAFT LIABILITY**, if the project work includes the use of, or operation of any aircraft or helicopter, then Aircraft Liability insurance must be in force with a limit of \$5,000,000 per occurrence for Bodily Injury and Property Damage including Passenger liability and including liability for any slung cargo.
6. **UNMANNED AIRCRAFT LIABILITY** – if the project work includes the use of, or operation of any unmanned aircraft then unmanned aircraft liability insurance must be carried with a limit of \$1,000,000 per occurrence for bodily injury liability, property damage liability and invasion of privacy liability.
7. **WATERCRAFT LIABILITY** – if the project work includes the use or operation of any watercraft, watercraft liability insurance must be carried with a limit of \$1,000,000 per occurrence for bodily injury liability and property damage liability .
8. **SERVICE PROVIDER'S EQUIPMENT OR PROPERTY** – The Service Provider is responsible for loss and coverage for these exposures. The City of Sheboygan will not assume responsibility for loss, including loss of use, for damage to property, materials, tools, equipment, and items of a similar nature which are being either used in the work being performed by the Service Provider or are to be built, installed, or erected by the Service Provider. This includes but not limited to property owned, leased, rented, borrowed, or otherwise in the care, custody or control of the Service Provider.
9. **PRODUCTS - COMPLETED OPERATIONS LIABILITY** - Products – Completed Operations coverage must be carried for a minimum of three years after acceptance of completed work
10. **LIQUOR LIABILITY** – If the services rendered involve providing alcohol for consumption by others, liquor liability insurance must be carried with a limit of \$1,000,000 per occurrence.

#### **INSURANCE REQUIREMENTS FOR ALL SUBSERVICE PROVIDERS**

All subservice providers shall be required to obtain the above coverages as applicable. This insurance shall be as broad and with the same limits and coverages (including waivers of subrogation) as those required per Contractor requirements.

#### **APPLICABLE REQUIREMENTS AND PROVISIONS FOR LIABILITY INSURANCE OF SERVICE PROVIDER & SUBSERVICE PROVIDERS**

- A. **Primary and Non-contributory requirement** – all insurance must be primary and non-contributory to any insurance or self-insurance carried by the City of Sheboygan.
- B. **Acceptability of Insurers** – Insurance is to be placed with insurers who have an *A.M. Best* rating of no less than A- and a Financial Size Category of no less than Class VII, and who are authorized as an admitted insurance company in the state of Wisconsin.
- C. **Additional Insured Requirements** – The following must be named as additional insureds on all Liability Policies for liability arising out of service work- the City of Sheboygan, and its officers, council members, agents, employees and authorized volunteers. On the Commercial General Liability Policy, the additional insured coverage must be as broad as ISO form CG 20 26 07 04 and also include Products – Completed Operations additional insured coverage as broad as ISO form CG 20 37 07 04 or their equivalents for a minimum of 3 years after acceptance of work. This does not apply to Workers Compensation Policies and Professional Liability Policies.
- D. **Waivers of Subrogation** - All contractor and subcontractor liability, workers compensation, and property policies, as required herein, must be endorsed with a waiver of subrogation in favor of the City of Sheboygan, its officers, council members, agents, employees, and authorized volunteers.
- E. **Deductibles and Self-Insured Retentions** – Any deductible or self-insured retention in the contractor's policy must be declared to the City of Sheboygan and satisfied by the contractor.
- F. **Evidence of Insurance** – Prior to execution of the agreement, the Service Provider shall file with the City of Sheboygan a certificate of insurance (Acord Form or equivalent for all coverages) signed by the insurer's representative evidencing the coverage required by this agreement. In addition, form CG 20 10 07 04 for ongoing work exposure and form CG 20 37 07 04 for products-completed operations exposure must also be provided or its equivalent on the Commercial General Liability coverage.

- G. Limits and Coverage- The insurance requirements under this Agreement shall be the greater of the minimum limits and coverage specified herein, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits. No representation is made that the minimum insurance requirements stated hereinabove are sufficient to cover the obligations of Contractor under this Agreement.
- H. Claims Made Coverage – If any coverage is maintained on a claims-made basis, the following shall apply:
- I. The retroactive date must be shown and must be before the date of the contract or the beginning of the contract services.
  - II. Insurance must be maintained, and evidence of insurance must be provided for a minimum of three years after completion of the contract services.
  - III. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the contract, Contractor must purchase an extended reporting period for a minimum of three years after completion of the contracted services.
- I. Cancellation/Non-Renewal – No policy of insurance required to be maintained hereunder shall be cancelled, non-renewed, or voided without 30 days prior written notice to the City of Sheboygan except where cancelation is due to the non-payment of premiums, in which event, 10-days prior written notice shall be provided.