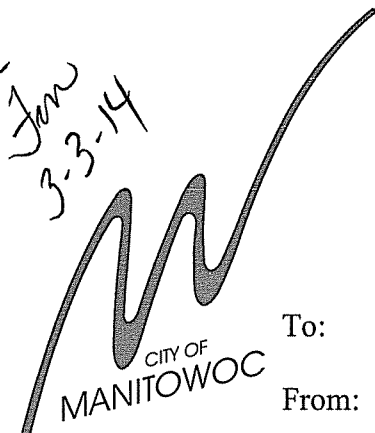


14-181

February 25, 2014



CITY OF
MANITOWOC

David Less
City Planner

To: Mayor and Common Council
From: Paul Braun, Deputy City Planner
Subject: **AECOM General Conditions of Service
Coastal Management Grant**

Dear Mayor and Common Council:

Please find attached AECOM's General Conditions of Service Agreement document related to the Sheet Wall and River Walk study along the Manitowoc River. The Agreement has been reviewed by the City Attorney's Office and their comments have been incorporated.

The Proposal Review Team selected AECOM from a pool of 5 submitted proposals based on their quality staff and prior experiences working on similar projects on the Manitowoc River. AECOM is planning on starting the project in the first week of March with the estimated project completion date being June 30, 2014 which will be in compliance with the Coastal Management Grant guidelines.



OFFICE OF CITY PLANNING,
CITY PLAN COMMISSION

I recommend to the Council that you instruct the Mayor and City Clerk to sign the agreement and reaffirm your previous Council actions that authorized the Deputy City Planner to proceed with all facets of the grant including but not limited to project coordination, public outreach and fulfilling payment requests.

Respectfully Submitted,

Paul Braun
Deputy City Planner



AECOM

General Conditions of Service

These General Conditions of Service, including any Supplemental Conditions of Service which are or may become applicable to the services described in AECOM's Proposal, are incorporated by reference into the foregoing Proposal and shall also be incorporated by reference into any Agreement under which services are to be performed by AECOM for the Client. No agreement or understanding, oral or written, which in any way modifies or waives these General Conditions of Service, shall be binding on AECOM (whether contained in the Client's purchase forms or otherwise) unless hereafter made in writing and executed by AECOM's authorized representative.

Section 1: Scope of Work

- a. The scope of work and the time schedules defined in the Proposal are based on the information provided by the Client and shall be subject to the provisions of this agreement. If this information is incomplete or inaccurate, or if site conditions are encountered which materially vary from those indicated by the Client, or if the Client directs AECOM to change the original scope of work established by the Proposal, a written amendment to the Agreement equitably adjusting the costs, performance time, and/or terms and conditions thereunder, shall be executed by the Client and AECOM as soon as practicable. AECOM, at its discretion, may suspend performance of its services until such an Amendment has been executed and, if such an Amendment is not agreed to within a reasonable time, AECOM may terminate this Agreement. In the event this Agreement is terminated pursuant to this Section, the Client shall pay AECOM for all services performed prior to termination and termination expenses as set forth in Section 15c of these General Conditions of Service.

Section 2: Billings and Payments

- a. Payments for services and reimbursable expenses will be made on the basis set forth in the attached proposal. AECOM shall periodically submit invoices for services performed and expenses incurred and not previously billed. Payment is due upon receipt. For all amounts unpaid after 30 days from the invoice date, as set forth on AECOM's invoice form, the Client agrees to pay a finance charge of one and one-half percent (1-1/2%) per month, eighteen percent (18%) annually. The fees described in this agreement may be adjusted annually on the anniversary date of the effective date of this agreement. AECOM acknowledges that costs on this project shall not exceed \$80,000.
- b. The Client shall provide AECOM with a clear written statement within fifteen (15) days after receipt of the invoice of any objections to the invoice or any portion or element thereof. Failure to provide such a written statement shall constitute a waiver of any such objections and acceptance of the invoice as submitted.
- c. The Client's obligation to pay for the services performed by AECOM under this Agreement shall not be reduced or in any way impaired by or because of the Client's inability to obtain financing, zoning, approval of governmental or regulatory agencies, or any other cause, reason, or contingency. No deduction shall be made from any invoice on account of penalty or liquidated damages nor will any other sums be withheld or set off from payments to AECOM. Client further agrees to pay AECOM any and all expenses incurred in recovering any delinquent amounts due, including, but not limited to reasonable attorney's fees, arbitration, or other dispute resolution costs, and all court costs.
- d. If any subpoena or court order is served upon AECOM and/or any of its staff, subconsultants or subcontractors requiring presentation of documents or the appearance of AECOM's staff, subconsultants or subcontractors at a trial, deposition, or for other discovery purposes arising out of AECOM's services performed under this Agreement, Client will pay AECOM's fees (if any) applicable to AECOM's compliance with the subpoena or court order. Fees will be based on actual units used at the standard rates in effect at time of service upon AECOM of the subpoena or court order. Billings shall include time and expenses incurred gathering, organizing, duplicating documents, preparing to give testimony, travel, and testifying in deposition or trial.

Section 3: Right of Access

- a. If services to be provided under this Agreement require the agents, employees, or contractors of AECOM to enter onto the Project site, Client shall provide right-of-access to the site to AECOM, its employees, agents and contractors, to conduct the planned field observations or services.
- b. If the scope of services includes, or is amended to include, the performance of exploratory borings or test pit excavations, Client will furnish to AECOM all diagrams, and other information in its possession or reasonably attainable by Client indicating the location and boundaries of the site and subsurface structures (pipes, tanks, cables, sewers, other utilities, etc.) in such detail as to permit identifying, in the field, boring/test pit locations which will avoid interferences with any subsurface structures. Client shall indemnify and hold AECOM harmless from liability on account of damages to subsurface structures or injury or loss arising from damage to subsurface structures if the damage is caused because the locations were not indicated or were incorrectly indicated by the information provided by the Client.
- c. AECOM reserves the right to deviate a reasonable distance from prescribed or selected exploratory boring or test pit locations.
- d. AECOM shall take reasonable precautions to minimize damage to the site due to its operations, but AECOM has not included in its fee, and is not responsible for, the cost of restoration for any damage resulting from its operations. At the Client's request and for additional fee, AECOM will, to the extent reasonably practicable, restore the site to conditions substantially similar to those existing prior to AECOM's operations.

Section 4: Safety

- a. It is understood and agreed that, with respect to Project site health and safety, AECOM is responsible solely for the safe performance by its field personnel of their activities in performance of the required services. It is expressly agreed that AECOM's professional services hereunder do not involve any responsibility for the protection and safety of persons on and about the Project nor is AECOM to review the adequacy of job safety on the Project. It is further understood and agreed, and not in limitation of the foregoing, that AECOM shall not be in charge of, and shall have no control or responsibility over any aspect of the erection, construction or use of any scaffolds, hoists, cranes, stays, ladders, supports, or other similar mechanical contrivances or safety devices as defined and interpreted under any structural work act or other statute, regulation, or ordinance relating in any way to Project safety.
- b. Unless otherwise specifically provided in this Agreement, Client shall provide, at its expense, facilities and labor necessary to afford AECOM field personnel access to sampling, testing, or observation locations in conformance with federal, state, and local laws, ordinances, and regulations specifically, including, but not limited to regulations set forth in OSHA 29 CFR 1926.
- c. If, in AECOM's opinion, its field personnel are unable to access required locations and perform the required services in conformance with federal, state, and local laws, ordinances and regulations due to Project site conditions or operations of other parties present on the Project site, AECOM may, at its discretion, suspend its services until such conditions or operations are brought into conformance with applicable laws, ordinances and regulations. If, within a reasonable time, operations or conditions are not in conformance with applicable laws, ordinances, and regulations, AECOM may, at its discretion, terminate this Agreement. In the event that the Agreement is terminated pursuant to this Section, the Client shall pay AECOM for services and termination expenses as set forth in Section 15 of this Agreement.
- d. Current regulations promulgated by the Occupational Safety and Health Administration (OSHA) require that a "competent person" conduct inspections of excavations and review any supporting system if workers are to enter the excavations. See OSHA 29 CFR Part 1926 (Subpart P). Under the scope of work incorporated in this Agreement, AECOM does not provide and has not assumed any duties of inspection and/or monitoring of excavations required of the "competent person" under OSHA 29 CFR Part 1926 (Subpart P). AECOM has neither been assigned nor assumed the authority required of the "competent person" under OSHA 29 CFR Part 1926 (Subpart P).

Section 5: Samples

- a. Unless otherwise specifically provided in this Agreement or amendments thereto, AECOM reserves the right to discard samples immediately after testing. Upon request, the samples will be shipped (shipping charges collected) or stored at the rate indicated in the fee schedule attached.

Section 6: Reports and Ownership of Documents

- a. AECOM shall furnish up to six (6) copies of each report to Client. Additional copies shall be furnished at the rates specified in the fee schedule. With the exception of AECOM reports to Client, all documents, including original boring logs, field data, field notes, laboratory test data, calculations, and estimates are and remain the property of AECOM. Client agrees that all reports and other work product furnished to the Client not paid for in full will be returned upon demand and will not be used for any purpose, including, but not limited to design, construction, permits, or licensing. AECOM acknowledges that all documents provided to Client will be subject to disclosure under Wisconsin's Open Records Law.

Section 7: Standard of Care

- a. AECOM represents that it will perform its services under this Agreement in conformance with the care and skill ordinarily exercised by reputable members of the professional engineering community performing the same or similar services under similar conditions at the same time in the same or similar locality.
- b. NO OTHER WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, AT COMMON LAW OR CREATED BY STATUTE, IS EXTENDED, MADE, OR INTENDED BY THE RENDITION OF CONSULTING SERVICES OR BY FURNISHING ORAL OR WRITTEN REPORTS OF THE FINDINGS MADE.
- c. Any exploration, testing, surveys, and analysis associated with the work will be performed by AECOM for the Client's sole use to fulfill the purpose of this Agreement and AECOM is not responsible for interpretation by others of the information developed. The Client recognizes that subsurface conditions beneath the Project site may vary from those encountered in borings, surveys, or explorations and the information and recommendations developed by AECOM are based solely on the information available.
- d. AECOM is not responsible for supervising, directing, controlling, or otherwise being in charge of the construction activities at the Project site; or supervising, directing, controlling or otherwise being in charge of the actual work of the contractor, its subcontractors, or other materialmen or service providers not engaged by AECOM.

Section 8: Hazardous Substances

- a. Upon entering into this Agreement, the Client shall notify AECOM of all such hazardous substances which it knows or which it reasonably suspects are or may be present at or contiguous to the Project site or which may otherwise affect the services to be provided. Thereafter, such notification to AECOM shall be required as soon as practicable after the Client discovers either the presence of hazardous substances which were not previously disclosed, increased concentrations of previously disclosed hazardous substances, or facts or information which cause the Client to reasonably suspect the presence of any such hazardous substances. Hazardous substances shall include, but not be limited to, any substance which poses or may pose a present or potential hazard to human health or the environment whether contained in a product, material, by-product, waste, or sample and whether it exists in a solid, liquid, semi-solid, or gaseous form.

- b. If all or any part of the scope of work is to be performed in the general vicinity of a facility or in an area where asbestos, dust, fumes, gas, noise, vibrations, or other particulate or nonparticulate matter is in the atmosphere where it raises a potential health hazard or nuisance to those working in the area of such conditions, Client shall immediately notify AECOM of such conditions, potential health hazard, or nuisance which it knows, should know, or reasonably suspects exists and, thereafter, AECOM is authorized by the Client to take all reasonable measures AECOM deems necessary to protect its employees against such possible health hazards or nuisance. The reasonable direct cost of such measures shall be borne by the Client.
- c. Following any disclosure as set forth in the preceding paragraphs, or if any hazardous substances or conditions are discovered or reasonably suspected by AECOM after its services are undertaken, AECOM may, at its discretion, suspend its services until reasonable measures have been taken at the Client's expense to protect AECOM's employees from such hazardous substances or conditions. Whether or not AECOM suspends its services in whole or in part, the Client and AECOM agree that the scope of services, terms, and conditions, schedule, and the estimated fee or budget shall be adjusted in accordance with the disclosed information or condition, or AECOM may, at its discretion, terminate the Agreement. In the event that this Agreement is terminated pursuant to this Section, the Client shall pay AECOM for all services rendered prior to termination and all termination expenses as set forth in Section 15 of these General Conditions of Service.
- d. In the event that services under this Agreement may involve or relate to hazardous substances, or constituents, including hazardous waste (as defined by federal, state, or local statutes, regulations or ordinances), whether or not involvement or relationship was contemplated at the time this Agreement was made or when services by AECOM began under this Agreement, the following conditions shall also be incorporated into the Agreement and be made applicable thereto:
 - d.1. In the event that samples collected by or received by AECOM on behalf of the Client contain hazardous substances or constituents, including hazardous waste, AECOM will, after completion of testing and, at Client's expense, (1) return such samples to Client, or (2) upon written request and using a manifest signed by the Client as generator, release such samples to a carrier selected by the Client to be transported to a location selected by the Client for final disposal. The Client agrees to pay all costs associated with the storage, transport, and disposal of samples. The Client recognizes and agrees that AECOM is acting as a bailee and at no time assumes title to said samples or substances.
 - d.2. All laboratory and field equipment contaminated in performing services under this Agreement which cannot be reasonably decontaminated shall become the property and responsibility of the Client. All such equipment shall be delivered to the Client or disposed of in a manner similar to that indicated for hazardous samples above. The Client agrees to pay the fair market value of any such equipment which cannot reasonably be decontaminated and all other costs associated with the storage, transport, and disposal of such equipment.

Section 9: Construction Monitoring Services

- a. "Construction Monitoring Services" is defined as services, furnished by AECOM to the Client, which are performed for the purpose of evaluating and/or documenting general conformance of construction operations or completed work with Project specifications, plans, and/or specific reports of the Project. Such services may include taking of tests or collecting samples of natural or manmade materials at various locations on a project site, and making visual observations related to earthwork, foundations, and/or materials. If the services to be provided by AECOM under this agreement include or are amended to include Construction Monitoring Services, the provisions of this Section 9 shall be an integral part of this agreement and applicable thereto.
- b. The presence of AECOM field personnel will be for the purpose of providing the client with a professional service based on observations and testing of the work which is performed by a contractor, subcontractor, or other materialmen or service provider. Such services will only be those specifically requested by the Client and agreed to by AECOM. Discrepancies between construction operations or completed work and project requirements which are noted by AECOM field personnel will be referred to the Client, or the Client's representative, as designated prior to AECOM's involvement in the project.
- c. It is understood and agreed by the Client that the observation and testing of natural and/or man-made materials by AECOM in no way implies a guarantee or warranty of the work of the contractor, subcontractor, or other materialmen or service providers, and the services rendered by AECOM will in no way excuse such contractor, subcontractor, or other materialmen or service providers from liability in the event of subsequently discovered defects, omissions, errors or other deficiencies in their work. The presence or absence of AECOM on the Project site will not affect any obligation of any contractor, subcontractor, or other materialmen or service providers to perform in accordance with the specifications and plans of the Project. The Client further understands that AECOM is not a quality assurance representative for any contractor, subcontractor, or other materialman or service provider on the Project.
- d. The Client agrees to supply AECOM with specifications, plans, and other necessary material for the Project pertinent to providing its services.
- e. Due to the nature of its services, observing and field testing the work of contractors, subcontractors, or materialmen or service providers on the Project, AECOM cannot always be responsible for the schedule or length of time its field personnel remain on the Project site. The time AECOM's field personnel spend on the Project site is dependent upon the schedule of the contractor, subcontractor or materialman, or service provider whose work they are observing and/or testing. AECOM shall make reasonable effort to utilize its time on the Project site judiciously, but the Client understands and agrees that any delays, cancellations, rescheduling, overtime or other construction activities that may alter the anticipated number of hours and the anticipated costs of AECOM on the Project site and that are beyond the control of AECOM field personnel are legitimate and chargeable time and will be invoiced at the rates designated in the attached fee schedules.f. Part-time work is defined as Construction Monitoring Services provided by AECOM where its field personnel are on the Project less than five (5) working days per week or less than forty (40) hours per week, or both. It is agreed that the Client will furnish AECOM with a minimum of one working day's notice, or twenty-four (24) hours notice, whichever is greater, on any part-time work of AECOM if field personnel are requested. AECOM shall make reasonable effort to provide field personnel on all

projects, but reserves the right to schedule its field personnel as it deems appropriate, including the scheduling of different field personnel from day to day on any given part-time project of AECOM. The Client agrees to inform AECOM of the anticipated services required by AECOM field personnel on any day, including but not restricted to the kind and number of tests to be required and the anticipated amount of time the field personnel will be required on the Project site.

- g. The Client agrees that AECOM shall charge a minimum of four (4) hours for any part-time Construction Monitoring Services, regardless of the actual number of hours utilized. All field personnel charges will be made on a portal-to-portal basis. Mileage to and from the Project site will be billed at the rate designated in the attached fee schedules as will any office engineering time needed to review, evaluate or analyze the field data. All calls made by the Client or the Client's representative to cancel requested part-time AECOM field personnel must be received by AECOM in time for AECOM to notify field personnel before they leave for the Project site. AECOM will make reasonable effort to contact its field personnel as quickly as possible, but reserves the right to bill the Client the four-hour minimum charge in the event AECOM received a cancellation call too late for it to intercept the field personnel enroute to the Project site.

Section 10: Opinions of Cost

- a. AECOM's opinions of probable total Project costs and Project construction costs, if any, provided as part of the services under this Agreement are made on the basis of AECOM's knowledge, experience, and qualifications and represent AECOM's judgment as an experienced and qualified professional engineer, familiar with the construction industry; but AECOM cannot and does not guarantee that proposals, bids, or actual total Project costs or Project construction costs will not vary from opinions of probable cost provided by AECOM.

Section 11: Shop Drawings

- a. In the event that the scope of services includes review and approval of Shop Drawings or other data which contractor(s) are required to submit, AECOM's review and approval will be only for conformance with the design concept of the Project and for compliance with the information given in the Project plans and specifications and shall not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
- b. AECOM's review and approval of Shop Drawings or other data shall not relieve the contractor(s) from responsibility for any variation from the requirements of the plans and specifications unless the contractor(s) has, in writing, called AECOM's attention to each such variation at the time of submission and AECOM has given written approval of each such variation by a specific written notation incorporated into or accompanying the Shop Drawing or other data. Approval by AECOM will not relieve the contractor(s) from responsibility for errors or omissions in the Shop Drawings or other data.
- c. AECOM will accept Shop Drawings or other data submittals only from the contractor(s) required by the Project contract documents to furnish the Shop Drawings or data. AECOM will reasonably promptly review and approve, or take other appropriate action in regard to, Shop Drawings or data properly submitted to AECOM.

Section 12: Allocation of Risk

- a. **CLIENT agrees that AECOM'S liability for the negligent act, error or omission in its performance of services under this Agreement shall in no event exceed the amount of the total compensation received by AECOM. It is intended by the parties to this Agreement that AECOM'S services in connection with the project anticipated herein shall not subject AECOM'S individual employees, officers, or directors to any personal legal exposure for the risks associated with this project**
- b. It is understood and agreed that the documents, reports, drawings and other work product of AECOM are created for the specific purposes anticipated herein. Any use, reuse or modification of AECOM's work product provided hereunder for purposes other than anticipated herein shall be at the CLIENT'S sole risk and with no liability to AECOM whatsoever..
- c. Under no circumstances shall AECOM be liable for extra work or other consequences due to changed conditions or for costs related to failure of the construction contractor or materialmen or service providers to install work in accordance with the plans and specifications.
- d. If any claim, suit, or legal proceeding, including but not limited to arbitration or meditation, (collectively "claim") arising out of the services under this Agreement is asserted against AECOM by a person or entity who is not a party to this Agreement, Client agrees, at its sole cost and expense, to defend AECOM from and against any such claim, suit or legal proceeding. The Client's obligation hereunder includes, but is not limited to, the payment of attorney's fees, court costs, and expert and consulting expenses required for the proper and vigorous defense of AECOM. This provision should not entitle AECOM to defense by the Client against Claims brought by AECOM's lower tier consultants and subcontractors, if any, unless such claims arise from and are caused by the Client's breach of this Agreement (e.g. failure to pay AECOM as provided herein

d.1 In no event shall continuation of Client's obligation to defend AECOM, as stated above, be conditional upon AECOM's contributing any sums of money toward settlement of any claim. In the event AECOM is held liable for a greater than pro rata share of any common liability for damage or injury to person(s) or property by operation of law, Client agrees to indemnify AECOM for those damages awarded in excess of its pro rata share.

d.2 In the event it is adjudicated that the event and/or damages giving rise to the claim were caused in whole or in part by the negligence of AECOM, Client's obligation to indemnify AECOM for costs of defense shall be reduced by an amount proportionately equal to the share of damages attributable to AECOM's negligence. AECOM shall reimburse Client for such proportionate defense costs incurred by client in defending AECOM as required by this paragraph 12.d.

e. Notwithstanding any other provision of this Agreement, it is further agreed that to the fullest extent permitted by law the Client shall indemnify and hold harmless AECOM and its employees, agents, contractors and consultants from and against all claims, damages, losses and expenses, direct and indirect, or consequential damages, including but not limited to attorneys' fees and all Court, arbitration or other dispute resolution costs, arising out of, resulting from, or related to the presence and/or involvement of hazardous substances or constituents, including hazardous waste, at or contiguous to the Project site or contained in samples collected by or received by AECOM from the Project site. The indemnification set forth in this paragraph 12.e. extends to claims against AECOM which arise out of, are related to, or are based upon, the dispersal, discharge, escape, release, spillage or saturation of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, gases or any other material, irritant, contaminant or pollution in or into the atmosphere, or on, onto, upon, in or into the surface or subsurface (a) soil, (b) water or watercourses, (c) objects, or (d) any tangible or intangible matter, whether such event or circumstances is sudden or not. Nothing in this Paragraph 12.e. is intended to indemnify, or shall be construed as indemnifying, AECOM with respect to claims, losses, expenses or damages to the extent caused by AECOM's own negligent acts or omissions.

Section 13: Liability Insurance

a. Prior to commencing work hereunder, AECOM shall provide Client, for approval by the City Attorney, a Certificate of Insurance showing proof of General Liability Insurance in amounts not less \$1,000,000.00 per occurrence, \$2,000,000.00 in the aggregate; property damage limits of not less than \$500,000.00 per occurrence, and shall carry the statutory amounts for worker's compensation insurance. AECOM shall include with the Certificate of Insurance two endorsements, one endorsement naming the Foundation and the City of Manitowoc as an additional insured, and a second endorsement giving the Foundation thirty (30) days prior notice of non-renewal, modification or cancellation.

Section 14: Dispute Resolution

a. All claims, disputes, controversies or matters in question arising out of, or relating to this Agreement or any breach thereof, including but not limited to disputes arising out of alleged design defects, breaches of contract, errors, omissions, or acts of professional negligence, (collectively "disputes") shall be submitted to mediation before and as a condition precedent to any other remedy. Upon written request by either party to this Agreement for mediation of any dispute, Client and AECOM shall select by mutual agreement a neutral mediator. Such selection shall be made within ten (10) calendar days of the date of receipt by the other party of the written request for mediation.

b. Notwithstanding any other provisions of this Section 14, in no event shall a demand for mediation be made more than two (2) years from the date the party making demand knew or should have known of the dispute or six (6) years from the date of substantial completion of AECOM's participation in the Project, whichever date shall occur earlier.

c. All mediation shall take place in Manitowoc, WI. The fees of the mediator or arbitrator(s) and the costs of transcription and other costs incurred by the mediator or arbitrator(s) shall be apportioned equally between the parties.

Section 15: Termination

a. This Agreement may be terminated by either party upon at least 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. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. The only exceptions to this seven-day written notice condition are AECOM's rights to terminate this Agreement as set forth in Sections 1, 4 and 8 of the Agreement.

b. In addition, AECOM may terminate this Agreement if the Client suspends AECOM's services for more than sixty (60) consecutive days through no fault of AECOM.

c. If this Agreement is terminated, AECOM shall be paid for services performed prior to the termination date set forth in the notice plus termination expenses. Termination expenses shall include personnel and equipment rescheduling and re-assignment adjustments and all other related costs incurred directly attributable to termination.

Section 16: Independent Contractor

a. The relationship between the Client and AECOM created under this Agreement is that of principal and independent contractor. Neither the terms of this Agreement nor the performance thereof is intended to directly or indirectly benefit any person or entity not a party hereto and no such person or entity is intended to be or shall be construed as being, a third-party beneficiary of this Agreement unless specified by name herein or in an Amendment hereto, executed by AECOM's authorized representative.

Section 17: Severability

- a. In the event that any provision herein shall be deemed invalid or unenforceable, the other provisions hereof shall remain in full force and effect, and binding upon the parties hereto.

Section 18: Section Headings

- a. The heading or title of a section is provided for convenience and information and shall not serve to alter or affect the provisions included herein.

Section 19: Survival

- a. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the Client and AECOM shall survive the completion of services and the termination of this Agreement.

Section 20: Assigns

- a. Neither the Client nor AECOM may delegate, assign, sublet or transfer its duties, responsibilities or interests in this Agreement without the written consent of the other party.

Section 21: Choice Of Law

- a. This Agreement shall be governed by the law of the State of Wisconsin. Any litigation arising out of this agreement shall be in Manitowoc County, Wisconsin.

Section 22: Written Notice

- a. Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

Effective January 1, 2014

SCOPE OF SERVICES - AECOM, referred to herein as "AECOM", will perform the services described in its proposal, or, in the absence of a proposal, as defined in writing and approved by AECOM and Client, referred to herein as "Services" in accordance with the following "Commercial Terms". These services shall be performed on a Time and Materials basis.

BILLING RATES

STAFF - Charges for all professional, technical and administrative personnel directly charging time to the project will be calculated and billed on the basis of the following staff category hourly "Billing Rates". Billing Rates are in U.S. dollars, net of all applicable taxes, duties, fees and related charges, and include fringe benefits, burden and fee.

STAFF CATEGORY	RATE/HOUR
Technician I, Data Administrator I, Project Administrator I	\$55.00
Technician II, Construction Mgmt I	\$70.00
Project Controls I, Scientist I, Technician III, Project Administrator II	\$80.00
Scientist II, Engineer I, Data Administrator II, Construction Mgmt II	\$90.00
Project Controls II, Scientist III, Engineer II, Technician IV, Data Administrator III, Project Administrator III	\$100.00
Project Manager I, Scientist IV, Engineer III, Construction Mgmt III	\$110.00
Scientist V, Engineer IV	\$125.00
Project Director I, Project Manager II, Construction Mgmt IV	\$145.00
Project Director II, Engineer V	\$175.00
Project Director III, Project Director IV	\$190.00

AECOM may revise these rates annually. All staff personnel have been classified in the above staff categories based on discipline skills, education and experience level.

All travel, to a maximum of eight hours per day, will be charged at the Billing Rates. Billing Rates are based on a forty-hour work week. Overtime hours for exempt employees (non-hourly) will be charged at the standard Billing Rates. Overtime hours of non-exempt (hourly-non-supervisory) employees are charged at 130% of the Billing Rates.

LITIGATION SUPPORT - In the event that AECOM's employees are requested by Client or compelled by subpoena or otherwise by any party to give expert or witness testimony or otherwise participate in a judicial or administrative proceeding involving the Client at any time, Client shall compensate AECOM at the Billing Rate, including preparation time, and shall reimburse AECOM for all out of pocket costs as provided herein.

RETAINER – AECOM may require advance deposit of funds on specific projects based upon project cost estimates. In those instances, AECOM and the Client will mutually provide terms for the deposit of advance payments and provisions for crediting such advances against invoices for Services completed.

OTHER DIRECT COSTS - "Other Direct Costs" are all costs and expenses incurred by AECOM directly attributable to the performance of Services together with a ten percent (10%) fee. Other Direct Costs include subcontracts, materials, shipping charges, special fees, permits, special insurance and licenses, outside computer time, and miscellaneous costs. Travel and travel-related expenses and equipment purchased for a project with advance authorization are computed on the basis of actual cost plus a five percent (5%) fee.

INVOICING AND PAYMENT - Invoices will be issued monthly or twice per month at AECOM's option. Invoices will include a listing of staff categories, hours worked, rates, and the Other Direct Costs. Invoices may be sent electronically at AECOM's discretion. Any variance from this invoice format will be completed at the client's expense. Payments can be made by electronic funds transfers to the routing number listed on the invoice or manually to the address appearing on the invoice due upon receipt. Invoices not paid within thirty (30) days are subject to interest from the 31st day at the rate of 1-1/2% per month (18% per annum) but not to exceed the maximum interest allowed by law. In addition, AECOM may, after giving seven (7) days written notice to Client, suspend Services without liability until the Client has paid in full all amounts due AECOM on account of Services rendered and expenses incurred including interest on past due invoices or terminate Services without liability. If there is a disputed amount on an invoice, Client agrees to pay all undisputed amounts in the thirty (30) day period. In the event that AECOM places Client's account in the hands of an attorney for collection, Client agrees to pay AECOM all fees and expenses, including attorneys' fees and expert fees, necessitated thereby.

SECURITY INTEREST – Client hereby grants AECOM a security interest in and to any and all machinery, equipment, other rights, assets, and property, tangible and intangible, wherever located, now owned or hereafter acquired by Client from AECOM, and any and all proceeds, additions or accessions to any and all of the foregoing, to secure the payment and performance by Client of any and all direct or indirect obligations, indebtedness and claims, whether contingent or fixed, now existing or hereafter arising, from Client to AECOM.

ESTIMATES OF COSTS AND SCHEDULES - AECOM's estimates of costs and schedules are for Client's budget and planning assistance only. Cost and schedule estimates are based on AECOM's best judgment of the requirements known at the time of the proposal and can be influenced favorably or adversely by Client needs and other circumstances. AECOM will endeavor to perform the Services and accomplish

the objectives within the estimated costs and schedule, but in no event shall AECOM's estimate be interpreted as a not-to-exceed or fixed price. In the event AECOM is required to exceed its original estimate for any reason, the Client may wish to (1) redefine the scope of Services in order to accomplish Client's budget objectives, or (2) terminate Services at a specific expenditure level. If option (2) is chosen, AECOM will turn over all information to the extent completed at the authorized level without further obligation or liability to either party except payment for Services performed. Notwithstanding any other terms to the contrary, AECOM shall be entitled to a change order for additional compensation or additional time to perform its work, in the event that work outside the Services is requested or required to be performed by AECOM, or in the event that the assumptions underlying AECOM's proposal prove to be different from the facts actually encountered by AECOM during the performance of the Services.

AGREEMENT - These Commercial Terms Form 103B (01/11) and the attached General Conditions Form 102 (01/09) govern the performance of the Services and rights and obligations of the parties.



AECOM
558 North Main Street
Oshkosh, Wisconsin 54901

920.235.0270 tel
920.235.0321 fax

Authorization

February 24, 2014

I hereby authorize AECOM to proceed with the scope of work for the Preliminary Design and Engineering Study for Sheet wall and Riverwalk of the East Bank of the Manitowoc River in Manitowoc, Wisconsin as described in AECOM's proposal OPP-229721 dated December 19, 2013, with a budget authorization of \$80,000 under the general terms and conditions specified in the proposal.

Signature _____ Date _____
Justin M. Nickels
Print Name
City of Manitowoc Mayor
Title/Organization

Signature _____ Date _____
Jennifer Hudon
Print Name
City of Manitowoc City Clerk
Title/Organization

I agree to accept invoices from AECOM via e-mail and not postal mail:

Yes

Signature: _____

E-mail address: PBRAUN@MANITOWOC.ORG

Recipient Mr/Ms: PAUL BRAUN

Return to:

Name: Andrew Mott

Address: 558 North Main Street
Oshkosh, Wisconsin 54901

Fax: 920.235.0321

Phone: 920.236.6713