

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) is entered into by and between the City of Manitowoc (“City”) and EPLEX, LLC (DBA as E-Plan Exam) (“Consultant”). City and Consultant shall be jointly referred to as the “Parties”.

RECITALS

WHEREAS City is seeking Consultant to perform services listed in Exhibit A – Plan Review Services and Fee Schedule, (“Services”);

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, City and Consultant agree as follows:

1. SCOPE OF SERVICES

Consultant will provide the Services to the Client using qualified professionals licensed in the State of Wisconsin to perform work outlined both in this Agreement and Exhibit A.

Plan reviews shall be performed in accordance with City’s Municipal Code of Ordinances and the Department of Safety and Professional Services regulations in the Wisconsin Administrative Code.

Consultant will perform work at a level of competency in accordance with industry standards, applicable in the State and Municipality for which the Services are proposed.

It shall be up to the sole discretion of City as the Authority Having Jurisdiction as to what will be required for the ability to have any building project commence. This includes any potential additional documentation, approvals, permits, bonds, compliance with local zoning, historical review, architectural review board requirements, and/or other requirements not herein specified but otherwise required by City as the Authority Having Jurisdiction.

Due to the nature of the delegated agent/appointed agent program as set forth by the State of Wisconsin Department of Safety and Professional Services, any plan review exceeding the size thresholds for a “Certified Municipality” for Building and HVAC reviews, as well as any and all other types of reviews that rely upon the licensure of Consultant (i.e. Fire Alarm, Fire Sprinkler, Plumbing, etc.) shall be reviewed by Consultant. City retains the right, should they desire, to perform plan reviews that they have properly licensed qualified individuals to perform review services that would be able to be performed without the existence of this Agreement.

Due to the nature of the delegated agent/appointed agent program as set forth by the State of Wisconsin Department of Safety and Professional Services, City may at any point in time request that the State of Wisconsin perform any plan review in lieu of Consultant. City is not bound to accept Consultants approval or disapproval of plans and at its sole discretion may seek another entity, such as the State of Wisconsin Department of Safety and Professional Services, to perform such services. In any event, Consultant shall be entitled to full payment

for review of all plans Consultant reviewed, regardless of if City accepts the review performed.

Consultant is not obligated to perform services beyond what is required by this agreement.

2. TIMELINE FOR EXECUTION OF SERVICES

Proposed services as part of this Agreement and outlined in Exhibit A shall go into full effect at the time and date of this fully executed Agreement.

3. CHANGES TO SCOPE OF SERVICES

Any Changes to Services that are mutually agreed upon between City and Consultant shall be made in writing, which shall specifically designate any changes in compensation for the Services and be made as a signed and fully executed amendment to this Agreement.

4. FEE STRUCTURE

In consideration of the Consultant providing services, the City shall pay the Consultant for the services performed in accordance with Exhibit A – List of Plan Review Services and Fee Schedule.

5. ADMINISTRATIVE AND LOGISTICS INCIDENTAL CHARGES

While review of paper plans as well as shipping and handling of paper plans shall be acceptable, it is the underlying goal of this agreement to ensure, to the maximum extent possible, the best possible service delivery for code reviews to constituents of the City of Manitowoc. To accommodate this, the following methods shall be utilized:

1. Electronic Submission of Documents

- a. City shall allow and encourage for the submission, wherever possible, of electronic documents to be submitted via pdf format and to work with Consultant on the method acceptable for allowing such submissions. At the time of a fully executed Agreement, City shall work with Consultant as to the best method to utilize to allow for document submission.
- b. Electronic submission of documents shall be the preferred method to be utilized wherever and whenever possible.

2. Paper Submission of documents

- a. City to be responsible for any and all direct charges and expenses associated with shipping and handling charges of all documents to and from City via a designated courier and/or approved logistics vendor. At time of a fully executed Agreement, City and Consultant shall agree to desired third party vendor and make all appropriate arrangements to allow for ease of logistics to ship relevant materials and financial costs to be accounted for.
- b. Any indirect charges associated with labor, material, or other costs incurred by City for delivery of documents to approved third party courier to ship materials to Consultant shall be the responsibility of City.

- c. Any indirect charges associated with labor, material, or other costs incurred by Consultant for delivery of documents to approved third party courier to ship materials to City shall be the responsibility of the City.
- 3. Alternate Means and Methods
 - a. Nothing shall prevent City and Consultant from making alternate arrangements aside from the methods outlined above for delivery of submission to the appropriate parties.

6. INVOICE & PAYMENT STRUCTURE

Fees outlined in Exhibit A are to be collected by Consultant. Consultant shall remit the fees appropriate collected to City on a monthly basis, and provide all supporting documentation, using a format referenced as an "Invoice", and render payment as appropriate. City may request additional information before approving the invoice. When additional information is requested, City will identify specific disputed item(s) and give specific reasons for any request. If additional information is requested, the appropriate party will submit payment to the other party within thirty (30) days of resolution of the inquiry/dispute.

7. TERM

This Agreement shall be effective on the latest date on which the Agreement is fully executed by both Parties ("Effective Date"). The initial term of this Agreement shall commence on the Effective Date and be thirty-six (36) months, unless terminated earlier in accordance with paragraph 8. Unless either party provides notice in writing to the other party thirty (30) days prior to the expiration of the initial term or a renewal term, this Agreement shall automatically renew on identical terms for a period of twelve (12) months, unless terminated earlier in accordance with paragraph 8.

8. TERMINATION

Either party may terminate this Agreement, or any part of this Agreement upon thirty (30) days written notice, with or without cause at any time, including during the initial Term of the Agreement. In case of such termination, Consultant shall be entitled to receive payment for work completed up to and including the termination and within thirty (30) days after the termination.

All projects that have had plans submitted, or re-submitted, for review but are not completed at the time of termination may be returned without comments with appropriate refund in initial fees rendered based on services provided. In the event that either condition as set forth in paragraph 6 are met, fees shall be invoiced for as specified in this Agreement.

9. CITY OBLIGATIONS

City shall take necessary measures to follow procedures as set forth from the State of Wisconsin to seek approval to obtain Delegated Municipality or Appointed Agent Status as required. Consultant will assist in this process to the maximum extent possible however it shall be the primary responsibility of City to obtain final authorization to proceed.

If in the event the State of Wisconsin denies application for Delegated Municipality or Appointed Agent Status to City, this Agreement shall continue to exist until such time Delegated Municipality or Appointed Agent Status is granted.

City shall provide all data, information, plans, specifications, municipal forms, structural calculations, and all other documentation required by Consultant to perform services in an electronic pdf file format or paper submission in a timely manner.

City shall allow through ordinance, if required, the ability for electronic plan submission documents as required by the State of Wisconsin to be submitted and reviewed.

City shall maintain licensed credentialed staff of Inspectors at no cost to Consultant to the extent as required by the State of Wisconsin for the Delegated Agent / Appointed Agent plan review program.

10. PERFORMANCE STANDARDS

Consultant shall use that degree of care, skill, and professionalism ordinarily exercised under similar circumstances by members of the same profession practicing or performing the substantially same or similar services with respect to the category of services being performed. Consultant represents to the Client that it retains and will only utilize employees that possess the skills, knowledge, and ability to competently, timely, and professionally perform the Services in accordance with this Agreement.

11. INDEMNIFICATION

Each party shall indemnify, defend, protect, hold harmless, and release the other, its officers, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees and witness costs) arising from or in connection with, or caused by any act, omission, or negligence of such indemnifying party or its agents, employees, contractors, subcontractors, or invitees. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party under workers' compensation acts, disability benefit acts, or other employee benefit acts. This indemnity provision survives the Agreement.

12. SUBCONTRACTING

Consultant is permitted to subcontract portions of services to be provided with or without notice. Consultant shall remain responsible for any and all of subcontractor's performance. Subcontractors shall be subject to the same performance, certification and professionalism criteria as expected of Consultant. Performance clauses shall be included in agreements with all subcontractors to assure quality levels and agreed upon schedules are met.

A listing of all personnel utilized in the completion of services, regardless of if they are subcontractors or not, shall be provided upon completion by Consultant including applicable license information for personnel and scope of work reviewed by subcontractor.

Unless mutually agreed to in writing prior to such work commencing, Consultant shall not be permitted to utilize individuals for services outlined in Exhibit A of this Agreement who either do not reside in the State of Wisconsin as their primary residence or do not report to a primary employment office located within the State of Wisconsin.

13. INSURANCE

- A. Consultant agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Consultant pursuant to this Agreement. Such insurance shall be in addition to any other insurance requirements imposed by law.
- B. At a minimum, the Consultant shall procure and maintain the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the Client. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
- C. At a minimum, the Consultant shall procure and maintain the minimum insurance coverages listed below for the scope of services Consultant Subcontracts to other parties. These insureds shall be covered by Consultant's insurance as named insureds for the sole purpose and scope of services rendered for this Agreement.
- D. Commercial general liability insurance with minimum combined single limits of one million dollars (\$1,000,000.00) each occurrence and two million dollars (\$2,000,000.00) general aggregate. The policy shall be applicable to all premises and operations of Consultant. The policy shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts) blanket contractual independent Consultant's products and completed operations.
- E. Professional liability insurance with minimum limits of one million dollars (\$1,000,000) each claim and two million dollars (\$2,000,000) general aggregate.
- F. Umbrella insurance coverage of five million dollars (\$5,000,000).
- G. Prior to commencement of the Services, Consultant shall submit endorsements of insurance acceptable to the Client.

14. INDEPENDENT CONTRACTOR

Consultant is an independent contractor, and neither Consultant, nor any employee or agent thereof, shall be deemed for any reason to be an employee or agent of City. As Consultant is an independent contractor, City shall have liability or responsibility for any direct payment of any salaries, wages, payroll taxes, or any and all other forms or types of compensation or benefits to any personnel performing services for City under this Agreement. Consultant shall be solely responsible for all compensation, benefits, insurance, and employment-related rights of any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with Consultant, as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment.

15. OWNERSHIP OF DOCUMENTS

City shall retain ownership of all work product and deliverables created by Consultant pursuant to this Agreement. All records, documents, notes, data and other materials required for or resulting from the performance of the Services hereunder shall not be used by Consultant for any purpose other than the performance of the Services hereunder without the express prior written consent of City. All such records, documents, notes, data and other materials shall become the exclusive property of City when the Consultant has been compensated for the same as set forth herein, and City shall thereafter retain sole and exclusive rights to receive and use such materials in such manner and for such purposes as determined by it. If this Agreement expires or is terminated for any reason, all records, documents, notes, data, and other materials maintained or stored in Consultant's secure proprietary software pertaining to City will be exported into a XLS, CSV, DOC, or PDF file and become property of City.

City shall have the right to request access to any documents, papers and records that Consultant has related to this project for the purposes of audit or examination, except for Consultant's financial records and contractual records, and may make excerpts and transcriptions of the same.

Consultant shall keep all documents and records generated in the performance of the Services under this Agreement for no less than seven (7) years after completion of the Services, and shall make them available to City at City's request. Consultant acknowledges that such records may be subject to Wisconsin's public records law.

16. SEVERABILITY

If any part of this Agreement shall be held to be invalid for any reason, the remainder of this Agreement shall be valid to the fullest extent permitted by law.

17. DISCRIMINATION & ADA COMPLIANCE

Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability, national origin, or any other protected class. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the Equal Opportunity Law.

Consultant shall comply with the appropriate provision of the Americans with Disabilities Act (the "ADA"), as enacted and as from time to time amended, and any other applicable federal and State of Wisconsin Law or regulations.

18. PROHIBITION AGAINST EMPLOYING ILLEGAL ALIENS

Consultant shall not knowingly employ or contract with an illegal alien to perform work under Agreement and will verify immigration status to confirm employment eligibility.

Consultant shall not enter into an agreement with a subcontractor that fails to certify to the Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Consultant is prohibited from using the program or the Department program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

19. NOTICES

Any Notice under this Agreement shall be in writing and shall be deemed sufficient when directly present or sent pre-paid, first-class United States Mail, addressed as follows:

If to City:	If to the Consultant:
City Clerk 900 Quay Street Manitowoc, WI 54220	David Adam (DA) Mattox 12605 W North Ave., #189 Brookfield, WI 53005

20. DISPUTE RESOLUTION

In the event a dispute arises out of or related to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties shall discuss the opportunity to have good faith negotiations through mediation before resorting to litigation.

21. GOVERNING LAW

This Agreement shall be construed under and governed by the Laws of the State of Wisconsin and all services to be provided will be provided in accordance with applicable federal, local state, and local municipal law. This Agreement constitutes the complete, entire and final agreement of the parties hereto with respect to the subject matter hereof, and shall supersede all previous communications, representations, whether oral or written, with respect to the subject matter hereof.

22. COUNTERPARTS

This Agreement and any amendments may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. For the purposes of executing this Agreement, scanned signatures shall be as valid as the original.

This Agreement, along with attached exhibits, constitutes the complete, entire and final agreement of the parties hereto with respect to the subject matter hereof, and shall supersede any and all previous communications, representations, whether oral or written, with respect to the subject matter hereof. Invalidation of any of the provisions of this Agreement or any paragraph, sentence, clause, phrase, or word herein or in the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

IN WITNESS HEREOF, the undersigned have caused this Agreement to be executed in their respective names on the dates hereinafter enumerated.

City: _____

Consultant: _____

Authorized
Signature: _____

Authorized
Signature: _____

Printed
Name: _____

Printed
Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A – Plan Review Services

1. PLAN REVIEW SERVICES

Plan review is limited to Structural, Building, Mechanical, Plumbing, Fire Alarm, and Fire Sprinkler trades/disciplines.

Each discipline will be reviewed by a plan examiner holding certifications as required by the local jurisdiction and/or licensed Architect and/or Professional Engineer holding licensure in the State of Wisconsin.

- ✓ Disciplines are defined as follows:
 - Building (architectural / structural)
 - Mechanical (HVAC)
 - Plumbing
 - Fire (Sprinkler, Fire Alarm, etc.)
- ✓ Post final comprehensive conditional plan approval – required if requested by Jurisdiction of Authority.
 - Delegated Component Submittal(s)
 - Shop Drawings

2. PLAN REVIEW FEE:

- Building, HVAC, Plumbing, Fire Alarm and Fire Sprinkler Plan Review Fees shall be based upon the fee schedule adopted by City.
- Plan Review Fees will be split with City.
 - 90% of plan review fees are retained by Consultant and 10% are retained by City.
 - Out of Consultant’s retained fees, Consultant shall be responsible for fees due to the State of Wisconsin as applicable for plan reviews Consultant perform as specified in Wisconsin Administrative Code.

COMMERCIAL PLAN REVIEW FEE SCHEDULE – BUILDING/HVAC/FIRE ALARM/FIRE SUPPRESSION				
1. New construction, additions, alterations and parking lots fees are computed per this table.				
2. New construction and additions are calculated based on total gross floor area of the structure.				
3. A separate plan review fee is charged for each type of plan review.				
Area (Square Feet)	Building Plans	HVAC Plans	Fire Alarm System Plans	Fire Suppression System Plans
500 sf or less	\$100	\$100	\$100	\$100
501 - 2,500	\$300	\$300	\$300	\$300
2,500 - 5,000	\$350	\$200	\$100	\$100
5,001 - 10,000	\$600	\$300	\$150	\$150

10,001 - 20,000	\$800	\$400	\$150	\$150
20,001 - 30,000	\$1,200	\$500	\$200	\$200
30,001 - 40,000	\$1,600	\$800	\$350	\$350
40,001 - 50,000	\$2,100	\$1,100	\$500	\$500
50,001 - 75,000	\$2,900	\$1,400	\$700	\$700
75,001 - 100,000	\$3,600	\$2,000	\$1,000	\$1,000
100,001 - 200,000	\$6,000	\$2,600	\$1,200	\$1,200
200,001 - 300,000	\$10,500	\$6,100	\$3,000	\$3,000
300,001 - 400,000	\$15,500	\$8,800	\$4,400	\$4,400
400,001 - 500,000	\$18,500	\$10,800	\$5,600	\$5,600
Over 500,000	\$20,000	\$12,100	\$6,400	\$6,400
Note:	<p>1. A Plan Entry Fee of \$100.00 shall be submitted with each submittal of plans in addition to the plan review and inspection fees.</p> <p>2. At the sole discretion of the City of Manitowoc and Plans Examiner, fees may be modified, reduced or waived based on scope of services, project type, or other relevant factors.</p>			
Determination of Area	The area of a floor is the area bounded by the exterior surface of the building walls or the outside face of columns where there is no wall. Area includes all floor levels such as subbasements, basements, ground floors, mezzanines, balconies, lofts, all stories, and all roofed areas including porches and garages, except for cantilevered canopies on the building wall. Use the roof area for free standing canopies.			
Structural Plans and other Component Submittals	When submitted separately from the general building plans, the review fee for structural plans, precast concrete, laminate wood, beams, cladding elements, other facade features or other structural elements, is \$250.00 per plan with an additional \$100.00 plan entry fee per each plan set.			
Accessory Buildings	The plan review fee for accessory buildings less than 500 square feet shall be \$125.00 with the plan entry fee waived.			
Early Start	The plan review fee for permission to start construction shall be \$75.00 for all structures less than 2,500 sf. All other structures shall be \$150.00. The square footage shall be computed as the first floor of the building or structure.			
Plan Examination Extensions	The fee for the extension of an approved plan review shall be 50% of the original plan review fee, not to exceed \$3,000.00.			

Resubmittals & revisions to approved plans	When deemed by the reviewer to be a minor revision from previously reviewed and/or approved plans, the review fee shall be \$75.00. Any significant changes or alterations beyond minor amendments as determined by the Plans Examiner and Community Development Department may result in additional charges as appropriate.
Submittal of plans after construction	Where plans are submitted after construction, the standard late submittal fee of \$250.00 will be assessed per each review type that occurred after construction. This is in addition to any other plan entry fees, structural components and base fees applied to a project.
Expedited Priority Plan Review	The fee for a priority plan review, which expedites completion of the plan review in less than the normal processing time when the plan is considered ready for review, shall be 200% of the fees specified in these provisions.

COMMERCIAL PLAN REVIEW FEE SCHEDULE – PLUMBING				
1. New construction, alterations and remodeling fees are computed per the following table				
2. New construction fee is calculated based on square footage of the area constructed.				
3. Alterations and remodeling fee is based on the number of plumbing fixtures.				
Area (Square Feet) (New Construction & Additions)	Plumbing Plan Review Fee		Number of Fixtures (Alteration, Remodeling, and Site Work – Site Work for Laterals is based on building Fixture Counts)	Plumbing Plan Review Fee
Less than 3,000	\$300		<15	\$200
3,001 - 4,000	\$400		16-25	\$300
4,001 - 5,000	\$550		26-35	\$450
5,001 – 6,000	\$650		36-50	\$550
6,001 – 7,500	\$700		51-75	\$800
7,501 – 10,000	\$850		76-100	\$900
10,001 – 15,000	\$900		101-125	\$1,050
15,001 – 20,000	\$950		126-150	\$1,150
20,001 – 30,000	\$1,100		>151	\$1,150
30,001 – 40,000	\$1,250		Plus \$160 for each additional 25 fixtures (rounded up) beyond 150 Fixtures	
40,001 – 50,000	\$1,550			
50,001 – 75,000	\$2,100			
Over 75,000	\$2,500			
Plus \$0.0072 per each additional sq. ft. over 75,000 sq. ft.				
Note:	1. A Plan Entry Fee of \$100.00 shall be submitted with each submittal of plans in addition to the plan review and inspection fees.			

	2. At the sole discretion of the City of Manitowoc and Plans Examiner, fees may be modified, reduced or waived based on scope of services, project type, or other relevant factors.
Determination of Area	The area of a floor is the area bounded by the exterior surface of the building walls or the outside face of columns where there is no wall. Area includes all floor levels such as subbasements, basements, ground floors, mezzanines, balconies, lofts, all stories, and all roofed areas including porches and garages, except for cantilevered canopies on the building wall. Use the roof area for free standing canopies.
Resubmittals & revisions to approved plans	When deemed by the reviewer to be a minor revision from previously reviewed and/or approved plans, the review fee shall be \$75.00. Any significant changes or alterations beyond minor amendments as determined by the Plans Examiner and Community Development Department may result in additional charges as appropriate.
Submittal of plans after construction	Where plans are submitted after construction, the standard late submittal fee of \$250.00 will be assessed per each review type that occurred after construction. This is in addition to any other plan entry fees and base fees applied to a project.
Expedited Priority Plan Review	The fee for a priority plan review, which expedites completion of the plan review in less than the normal processing time when the plan is considered ready for review, shall be 200% of the fees specified in these provisions.

3. Supplemental Services as required by municipality:

- Hourly rate for services beyond what is specified in this Agreement shall be rendered at \$200.00 per hour. This shall only be assessed when prior written consent is provided by City to Consultant and agreed to by the Consultant in writing.
 - This hourly rate is not intended for plan review services, but rather for incidental supplemental “on call” professional engineering services as required beyond the scope as outlined in services defined throughout the balance of Exhibit A.

4. PLAN REVIEW FEE – includes the following services:

- ✓ One optional remote code consultation meeting after conclusion of the first review
- ✓ Consultation via phone during duration of project regarding reviews performed.
- ✓ Three (3) reviews of all disciplines to verify that all comments have been addressed.
 - Subsequent reviews may result in resubmittal plan examination fees to be assessed.
- ✓ Changes to plans after conditional approval is granted may result in resubmittal plan examination fees to be assessed.
- ✓ Free code consultation with all inspectors/municipal staff, both employed directly and under contract, serving the City of Manitowoc for entirety of duration of any project reviewed by E-Plan Exam, regardless of any contract in place with that entity and the City of Manitowoc. This free consultation period shall extend prior to any formal submission of any plan documents to the conclusion of any project reviewed or termination of this agreement (whichever occurs first).

5. TIME OF PERFORMANCE

- ✓ Plan review turnaround time shall be fifteen (15) business days after full receipt by Consultant of all required documents as required by the Department of Safety and Professional Services as well as the City of Manitowoc Municipal Code.
 - Plan Review turnaround time is defined as the timeframe from date of full receipt of plans to conclusion of plan review. Conclusion of plan review date will be determined by date that plans are listed as one of the following as dictated by best practices with the State of Wisconsin Department of Safety and Professional Services:
 - Conditionally Approved
 - Hold – Request for Additional Information
 - Denied

6. CONSULTANT CONTACT

Consultant will provide a qualified professional to oversee this project. They are available by phone and email using the contact information listed below.

Plan Review Management Contact

David Adam Mattox, P.E.

414-736-4721

damattox@eplanexam.com

Plan Review Management Contact

John Cunningham

414-336-4470

Johncunningham@eplanexam.com