

## DESIGN ENGINEERING SERVICES AGREEMENT

This Design Engineering Services Agreement ("Agreement") effective this April 20, 2015, is by and between the City of Manitowoc, a Wisconsin municipality ("Client"), and AECOM Technical Services, Inc., a California corporation, ("AECOM"); each also referred to individually as ("Party") and collectively as ("Parties").

In consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

### 1. SCOPE OF SERVICES

1.1 AECOM shall perform the services set forth in **EXHIBIT A** ("Services"), incorporated herein by reference.

1.2 AECOM will provide the work products ("Deliverables") in accordance with the schedule ("Project Schedule"), if applicable, as set forth in **EXHIBIT A**.

2. **TERM OF AGREEMENT** Upon execution by the Parties, this Agreement shall have the effective date set forth above. This Agreement shall remain in force until all obligations related to the Services, other than those obligations which survive termination of this Agreement under Article 22, have been fulfilled, unless this Agreement is sooner terminated as set forth herein.

3. **COMPENSATION AND PAYMENT** AECOM shall be paid for the performance of the Services in accordance with **EXHIBIT B** ("Compensation and Payment"), incorporated herein by reference.

4. **NOTICE** All notices, requests, claims, demands and other official communications herein shall be in writing. Such notices shall be given (i) by delivery in person, (ii) by a nationally recognized commercial courier service; or (iii) by United States Postal Service, registered mail, postage prepaid and return receipt requested. Notices shall be effective upon actual delivery to the other Party at the following addresses:

#### TO CLIENT:

City of Manitowoc  
900 Quay Street  
Manitowoc, WI 54220

Attn: Dan Koski, PE, Director of Public Infrastructure

#### TO AECOM:

200 Indiana Avenue  
Stevens Point, WI 54481

Attn: Joel Giraud, PG, Project Manager

Claims-related notices shall be copied to:  
Chief Counsel, Americas Design and Consulting Services  
515 South Flower Street, Suite 1050  
Los Angeles, CA 90071

or to which address the receiving Party may from time to time give notice to the other Party. Rejection or other refusal to accept, or the inability to deliver because of changed address for which no notice was given, shall be deemed to be receipt of the notice as of the date of such rejection, refusal to accept, or inability to deliver.

## **5. AECOM'S RESPONSIBILITIES**

5.1 AECOM shall perform the Services in accordance with the degree of professional skill, quality and care ordinarily exercised by members of the same profession currently practicing in the same location under comparable circumstances and as expeditiously as is consistent with professional skill and the orderly progress of the Project. The full extent of AECOM's responsibility with respect to the Services shall be to perform in accordance with the above standards and to remedy any material deficiencies or defects in the Deliverables at AECOM's own expense, provided that AECOM is notified by Client, in writing, of any such deficiency or defect within a reasonable period after discovery thereof, but in no event later than 90 days after AECOM's completion or termination of the Services. AECOM MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, INFORMATIONAL CONTENT OR OTHERWISE.

5.2 AECOM will endeavor in good faith, as needed, to obtain from the appropriate authorities their interpretation of applicable codes and standards and will apply its professional judgment in interpreting the codes and standards as they apply to the Project at the time of performance of the Services. Notwithstanding the above, the Parties agree that, as the Project progresses, such codes or standards may change or the applicability of such codes or standards may vary from AECOM's original interpretation through no fault of AECOM and that additional costs necessary to conform to such changes or interpretations during or after execution of the Services will be subject to an equitable adjustment in the Compensation and Project Schedule.

5.3 AECOM shall be responsible for its performance and that of AECOM's lower-tier subconsultants and vendors. However, AECOM shall not be responsible for health or safety programs or precautions related to Client's activities or operations or those of Client's other contractors and consultants or their respective subcontractors and vendors ("Contractors"). AECOM shall have no responsibility for (i) construction means, methods, techniques, sequences or procedures; (ii) for the direction of Contractors' personnel; (iii) selection of construction equipment; (iv) coordination of Contractors' work; (v) for placing into operation any plant or equipment; or (vi) for Contractors' failure to perform the work in accordance with any applicable construction contract. AECOM shall not be responsible for Client's pre-existing site conditions or the aggravation of those preexisting site conditions to the extent not caused by the negligence or willful misconduct of AECOM. AECOM shall not be responsible for inspecting, observing, reporting or correcting health or safety conditions or deficiencies of Client, Contractors or others at project site ("Project Site") other than AECOM's employees, subconsultants and vendors. So as not to discourage AECOM from voluntarily addressing health or safety issues while at the Project Site, in the event AECOM does identify such issues by making observations, reports, suggestions or otherwise, AECOM shall have no authority to direct the actions of others not under AECOM's responsibility and control and shall have no liability, responsibility, or affirmative duty arising on account of AECOM's actions or forbearance.

5.4 Notwithstanding anything contained in this Agreement, AECOM shall have no responsibility for the discovery, presence, handling, removal, transportation, storage or disposal of, or exposure of persons to hazardous materials in any form related to the Project.

5.5 AECOM shall bear no responsibility for the construction work to be performed ("Work"), including without limitation, (i) the construction means, methods, techniques, sequences, or procedures; (ii) the direction of construction personnel; (iii) selection of construction equipment; (iv) the allocation of space

where the Work is being performed ("Project Site"); (v) placing into operation any plant or equipment; or (vi) quality control of the Work. In addition, AECOM shall not be responsible for and shall have no authority to exercise any control over Owner's employees, contractors, consultant and vendors, or their respective officers, directors, employees, representatives, lower-tier subcontractors, agents or invitees ("Construction Team").

5.6 AECOM shall not be responsible for construction observation or for reporting or correcting health or safety conditions or deficiencies relating to the Work or for the conditions at the Project Site. However, so as not to discourage AECOM from voluntarily addressing health or safety issues while at the Project Site, in the event AECOM does observe potential health or safety issues, AECOM may bring such health and safety issues to the attention of Owner and, where appropriate, may bring such observations to the attention of the Construction Team. In the event that AECOM makes such observations, reports, suggestions or otherwise brings attention to the potential health and safety issue, AECOM shall have no authority to stop the performance of the Work and shall bear no liability or assume any affirmative duty relating to such health and safety issue.

5.7 In the event that the Services include construction observation or similar field services, AECOM's responsibility shall be limited to determining general conformance with AECOM's design. Visits by AECOM to the Project Site and observations made by AECOM shall not relieve the Construction Team of its obligation to conduct comprehensive inspections of the Work sufficient to ensure conformance with the intent of the construction contract documents, and shall not relieve the Construction Team of its responsibility for means, methods, techniques, sequences and procedures necessary for coordinating and completing all portions of the Work and for all safety precautions incidental thereto.

5.8 Any opinions of probable construction costs provided by AECOM represent AECOM's good faith professional judgment in light of its experience, knowledge and the information reasonably available to AECOM at the time of preparation of the opinion. However, since AECOM has no control over the market, economic conditions or the bidding procedures, AECOM, its directors, officers and employees and subconsultants do not make any guarantees or warranties whatsoever, whether express or implied, with respect to such opinions and accept no responsibility for any loss or damage arising therefrom or in any way related thereto. Third parties relying on such opinions do so at their own sole risk.

## **6. CLIENT'S RESPONSIBILITIES**

6.1 Client shall provide in writing any specific Client requirements or criteria for the Project.

6.2 Client shall furnish to AECOM all information and technical data in Client's possession or control reasonably required for the proper performance of the Services. AECOM shall be entitled to reasonably rely without independent verification upon the information and data provided by Client or obtained from generally accepted sources within the industry, except to the extent such verification by AECOM is expressly required as a defined part of the Services.

6.3 Client shall arrange for access and make all provisions necessary for AECOM to enter upon public and/or private property as required for AECOM to properly perform the Services. Client shall disclose to AECOM any known or suspected hazards at the Project Site which may pose a threat to human health, property or the environment.

6.4 If any document or inquiry requires Client to approve, comment, or to provide any decision or direction with regard to the Services, such approval, comment, decision or direction shall be provided within a reasonable time within the context of the Project Schedule, or if not identified in the Project Schedule, within a reasonable time to facilitate the timely performance of the Services.

**7. INDEPENDENT CONTRACTOR** Nothing contained in this Agreement shall be construed to create a partnership, joint venture, or create a relationship of employer/employee or principal/agent between Client or Client's Contractors and AECOM.

## **8. CONFIDENTIALITY**

8.1 AECOM shall treat as confidential information and data delivered to it by Client or developed in the performance of the Services that are specified in writing by Client to be confidential ("Confidential Information"). Confidential Information shall not be reproduced, transmitted, disclosed or used by AECOM without the consent of Client, except in the proper performance of the Services, for a period of 5 years following completion or termination of this Agreement.

8.2 Notwithstanding the above, these restrictions shall not apply to Confidential Information which (i) is already known to AECOM at the time of its disclosure; (ii) becomes publicly known through no wrongful act or omission of AECOM; (iii) is communicated to a third party with the express written consent of Client and not subject to restrictions on further use or disclosure; (iv) is independently developed by AECOM; or, (v) to the extent such Confidential Information is required by Law to be disclosed to any governmental agency or authority; provided that before making such disclosure, AECOM shall promptly provide Client with written notice of such requirement and a reasonable opportunity for Client to object to the disclosure or to take action at Client deems appropriate to maintain the confidentiality of the Confidential Information.

8.3 Upon termination of this Agreement or upon Client's written request, AECOM shall return the Confidential Information to Client or destroy the Confidential Information in AECOM's possession or control. Notwithstanding the above, AECOM shall be entitled to retain a copy of such Confidential Information relating to the Services or this Agreement for its archives, subject to AECOM's continued compliance with this Article 8.

## **9. DATA RIGHTS**

9.1 All Deliverables set forth in **Exhibit A** shall become the property of Client upon proper payment for the Services. AECOM shall bear no liability or responsibility for Deliverables that have been modified post-delivery or used for a purpose other than that for which it was prepared under this Agreement.

9.2 Notwithstanding Section 9.1 above, AECOM's proprietary information, including without limitation, work papers, drawings, specifications, processes, procedures, software, interim or draft documents, methodologies, know-how, software and other instruments of service belonging to or licensed by AECOM and used to develop the Work Product ("AECOM Data"), shall remain the sole property of AECOM. To the extent the Deliverables contain or require the use of AECOM Data, AECOM hereby grants to Client, upon proper payment for the Services, a non-exclusive, non-transferable and royalty-free license to use such AECOM Data solely for the purposes for which the Deliverables were developed.

9.3 Nothing in this Article shall be construed to prohibit AECOM from using skills, knowledge or experience gained by AECOM in the performance of the Services for other purposes, provided that AECOM does not use Client's Confidential Information.

**10. RECORD DRAWINGS** Owner shall direct the Construction Team to provide AECOM with updated red-line documentation which accurately and completely reflects any changes between the original design and the final construction. Record drawings to be delivered by AECOM to Owner as a part of the Services ("Record Drawings") reflect the design provided by AECOM as modified by such updated information. Consistent with AECOM's defined Services, AECOM shall not have an obligation to independently validate such information related to the actual construction. AECOM makes no warranty or guarantee with regard to the accuracy or completeness of the information provided by the Construction Team and third parties and shall bear no responsibility for any errors or omissions arising from or related to any defects or deficiencies in such information.

**11. ELECTRONIC FILES**

11.1 Electronic files to be delivered under this Agreement contain information to be used for the production of contract documents for the Project and are provided solely as an accommodation to Owner. The official Contract Documents of Record ("Contract Documents") are those documents produced by AECOM which bear seals and/or signatures. Unless otherwise expressly set forth in the Services, the electronic files delivered under this Agreement are not Contract Documents.

11.2 The electronic files were created to supplement the official Contract Documents. Due to the possibility that files of this nature can be modified, either unintentionally or otherwise; or that the information contained in these files can be used in a manner for which they were not originally intended; or that electronic data may be corrupted by electronic transmission, AECOM makes no representation that the files, after delivery, will remain an accurate representation of the source data in AECOM's possession, or are suitable for any other purpose or use.

11.3 All indications of AECOM's and AECOM's subconsultants' involvement, including but not limited to seals and signatures, shall be removed from each electronic display and shall not be included in any prints produced therefrom.

11.4 Owner understands and agrees that the right to use the electronic files provided under this Agreement is specifically limited to the Project and is conditioned upon proper payment for such use.

11.5 If a third-party license is required to access or use electronic files, Owner acknowledges its responsibility at its own expense to obtain all applicable hardware and software needed to legally access the electronic files.

**12. CERTIFICATION**

12.1 For purposes of this Agreement, "certification" means to state or declare a professional opinion based on the standard of performance set forth in Section 5.1 above.

12.2 AECOM shall not be required to execute certificates that would (i) result in AECOM having to certify, guarantee or warrant the existence of conditions whose existence AECOM cannot reasonably ascertain under the existing Services; (ii) require knowledge, services or responsibilities beyond the Services; or (iii) may, in AECOM's reasonable judgment, require AECOM to make a certification that would not normally be covered by AECOM's professional or other liability insurance. In addition, Owner agrees not to make resolution of any dispute with AECOM or payment of any amount due to AECOM in any way contingent upon AECOM executing such certificates.

12.3 A professional's certification in no way relieves other parties from meeting their respective requirements imposed by contract or other means, including commonly accepted industry standards and practices. If required as a part of its Services, AECOM will provide a written report stating whether, in AECOM's professional opinion and based on periodic site visits, the construction work complies generally with the Contract Documents.

**13. CHANGED SITE CONDITIONS** - The unexpected discovery of hazardous materials, hazardous wastes, pollutants, contaminants or concealed obstructions or utilities that could not reasonably have been anticipated from information reasonably available to AECOM may constitute a changed site condition. To the extent that such changed site condition materially increases the health and safety risks associated with the Services or requires AECOM to perform services materially different or materially in excess from those set forth in the Services, AECOM may, at its sole discretion, elect to suspend and/or terminate the related Services and shall be paid for the related Services up through the date of such termination. To the extent that the changed site conditions materially impact the cost, level of effort or schedule of the Services, an equitable adjustment shall be made to the Services.

**14. MATERIALS AND SAMPLES** - Any items, substances, materials or samples removed from the site for testing, analysis, or other evaluation will be returned to the Project Site unless otherwise agreed to by the Parties in writing. Owner recognizes and agrees that AECOM is acting as a bailee and at no time assumes title to said items, substances, materials or samples.

**15. COMPLIANCE** The Parties shall comply with applicable treaties, compacts, statutes, ordinances, codes, regulations, consent decrees, orders, judgments, rules, and other requirements of governmental or judicial entities that have jurisdiction over the Services ("Law").

**16. FORCE MAJEURE** Neither Party shall be responsible for a delay in its respective performance under this Agreement, other than a delay in payment for Services already performed, if such delay is caused by extraordinary weather conditions or other natural catastrophes, war, terrorist attacks, sabotage, computer viruses, riots, strikes, lockouts or other industrial disturbances, acts of governmental agencies or authorities, discovery of Hazardous Materials or differing and unforeseeable site conditions, or other events beyond the reasonable control of the claiming Party. AECOM shall be entitled to an equitable adjustment to the Project Schedule in the foregoing circumstances.

**17. INSURANCE**

17.1 AECOM will maintain the following insurance coverages and amounts:

- 17.1.1 Workers Compensation insurance as required by Law;
- 17.1.2 Employer's Liability insurance with coverage of \$1,000,000 each accident/employee.
- 17.1.3 Commercial General Liability insurance with coverage of \$2,000,000 per occurrence/aggregate;
- 17.1.4 Automobile Liability insurance with coverage of \$1,000,000 combined single limit; and
- 17.1.5 Professional Liability insurance with coverage of \$2,000,000 per claim/aggregate.

**18. INDEMNITY**

18.1 AECOM agrees to indemnify Client, its officers, directors and employees, from loss or damage for bodily injury or property damage ("Claims"), to the extent caused by AECOM's negligence or willful misconduct.

18.2 If the Services include AECOM's performance during the construction phase of the Project, Client shall require Client's Contractors working on the Project Site to include AECOM, its directors, officers and employees in any indemnity that the Contractors are required to provide to Client relating to their work.

**19. CONSEQUENTIAL DAMAGES WAIVER** IN NO EVENT SHALL EITHER PARTY, THEIR PARENTS, AFFILIATES, SUBSIDIARIES OR THEIR RESPECTIVE DIRECTORS, OFFICERS OR EMPLOYEES BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF REVENUE, LOSS OF USE OR INTERRUPTION OF BUSINESS) ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**20. RISK ALLOCATION AND RESTRICTION OF REMEDIES** THE PARTIES HAVE EVALUATED THE RESPECTIVE RISKS AND REMEDIES UNDER THIS AGREEMENT AND AGREE TO ALLOCATE THE RISKS AND RESTRICT THE REMEDIES TO REFLECT THAT EVALUATION. CLIENT AGREES TO RESTRICT ITS REMEDIES UNDER THIS AGREEMENT AGAINST AECOM, ITS PARENTS, AFFILIATES AND SUBSIDIARIES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, SHAREHOLDERS AND EMPLOYEES, ("AECOM COVERED PARTIES"), SO THAT THE TOTAL AGGREGATE LIABILITY OF THE AECOM COVERED PARTIES SHALL NOT EXCEED THE ACTUAL PAID COMPENSATION FOR THE SERVICES. THIS RESTRICTION OF REMEDIES SHALL APPLY TO ALL SUITS, CLAIMS, ACTIONS, LOSSES, COSTS (INCLUDING ATTORNEY FEES) AND DAMAGES OF ANY NATURE ARISING FROM OR RELATED TO THIS AGREEMENT WITHOUT REGARD TO THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS IMPOSED. CLAIMS MUST BE BROUGHT WITHIN ONE

CALENDAR YEAR FROM PERFORMANCE OF THE SERVICES UNLESS A LONGER PERIOD IS REQUIRED BY LAW.

## **21. DISPUTES RESOLUTION**

21.1 Either Party may initiate a dispute resolution by providing written notice to the other Party setting forth the subject of the claim, dispute or controversy ("Claim") and the requested relief. The recipient of such notice shall respond within 5 business days with a written statement of its position and a recommended solution to the Claim.

21.2 If the Parties cannot resolve the dispute through negotiation, either Party may refer the Claim to a panel ("Panel") consisting of a designated senior representative from each Party ("Representative"), who shall have the authority to resolve such Claim. The Representatives shall not have been directly involved in the Services and shall negotiate in good faith. No written or verbal representation made by either Party in the course of any panel proceeding or other settlement negotiations shall be deemed to be a party admission. If the representatives are unable to resolve the dispute within 3 weeks, either Party may pursue its respective legal and equitable remedies.

21.3 Owner shall make no Claim for professional negligence, either directly or in a third-party claim, against AECOM unless Owner has first provided AECOM with a written certification executed by an independent design professional currently practicing in the same discipline as the Services and licensed in the state in which the Project is located. This certification shall (i) contain the name and license number of the certifier; (ii) specify each and every act or omission that the certifier contends is a violation of the standard of care set forth in Article 5; and (iii) states in detail the basis for the certifier's opinion that each such alleged act or omission constitutes a violation of Article 5 of this Agreement.

**22. GOVERNING LAW** This Agreement shall be governed by and interpreted under the laws of the State of California, excluding the conflict of law provisions.

## **23. TERMINATION**

23.1 This Agreement may be terminated for convenience by either Party upon 30 days advance written notice. On termination, AECOM will be paid for all Services performed up through the termination date.

23.2 This Agreement may be terminated for cause by the non-defaulting Party if the defaulting Party fails substantially to perform its obligations under this Agreement and does not commence correction of such non-performance within 5 business days of receipt of written notice and then diligently complete such correction thereafter. The respective rights and obligations of the Parties predating such termination shall survive termination of this Agreement.

## **24. ASSIGNMENT**

24.1 Neither Party may assign this Agreement without the written consent of the other Party.

24.2 Notwithstanding Section 24.1 above, the Parties recognize that AECOM has affiliated companies who have specialized expertise, necessary certifications/registrations or other capabilities that may make use of such affiliates more suitable for the performance of all or part of the Services. AECOM shall be entitled without additional consent to assign this Agreement or performance of the Services, in whole or in part, to any of AECOM's subsidiaries or affiliates upon written notice to Client; provided, however, that AECOM shall remain liable for the performance, obligations and responsibilities of such Affiliates under this Agreement.

**25. PARTIES IN INTEREST** Nothing in this Agreement, expressed or implied, is intended to confer on any person or entity other than the Parties any right or remedy under or by reason of this Agreement. The provisions of this Agreement shall bind and inure solely to the benefit of the Parties and their respective successors and permitted assigns.

**26. WAIVER** Either Party may in writing waive any provisions of this Agreement to the extent such provision is for the benefit of the waiving Party. No waiver by any Party of a breach of any provision of this Agreement shall be construed to be a waiver of any subsequent or different breach.

**27. SEVERABILITY AND SURVIVAL** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions, and this Agreement shall be construed in all respects as if any invalid or unenforceable provision were omitted. Articles 4 (Notice), 5 (AECOM's Responsibilities), 6.2 (Reliance on Data), 8 (Confidentiality), 9 (Data Rights), 10 (Record Drawings), 11 (Electronic Records), 12 (Certifications), 14 (Materials and Samples), 17 (Insurance), 18 (Indemnity), 19 (Consequential Damages Waiver), 20 (Risk Allocation), 21 (Disputes Resolution), 22 (Governing Law), 24 (Assignment), 25 (Parties in Interest) and 27 (Survival) shall survive termination of this Agreement.

**28. PREPARATION OF AGREEMENT** Each Party has had the opportunity to avail itself of legal advice and counsel. Neither Party shall be deemed to be the drafter or author of this Agreement. In the event this Agreement is subject to interpretation or construction by a court of law or panel of arbitration, such court or panel shall not construe this Agreement, or any portion hereof, against either Party as the drafter of this Agreement.

**29. SIGNATURES** Each person executing this Agreement warrants that he/she has the necessary authority to do so on behalf of the respective Party. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement.

**30. ORDER OF PRECEDENCE**

<b>EXHIBIT C</b>	Change Orders
<b>Consulting Services Agreement</b>	Article 31
<b>Consulting Services Agreement</b>	Articles 1 through 30 and 32
<b>EXHIBIT B</b>	Compensation and Payment
<b>EXHIBIT A</b>	Services
<b>Other contract documents</b>	

**31. SPECIAL TERMS AND**

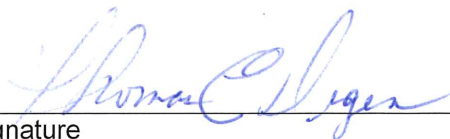
None
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**32. ENTIRE AGREEMENT** This Agreement contains all of the promises, representations and understandings of the Parties and supersedes any previous understandings, commitments, proposals or agreements, whether oral or written. This Agreement shall not be altered, changed, or amended except as set forth in a written amendment to this Agreement, duly executed by both Parties. The attached **EXHIBIT C** ("Change Order"), incorporated herein by reference, is the preferred form for such use.



**AECOM Technical Services, Inc.**

**CLIENT: City of Manitowoc**

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Thomas E. Degen, PE  
\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

Water Department Manager  
\_\_\_\_\_  
Printed Title

\_\_\_\_\_  
Printed Title

Address  
AECOM  
200 Indiana Avenue  
Stevens Point, WI 54481

Address  
City of Manitowoc  
900 Quay Street  
Manitowoc, WI 54220

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## EXHIBIT A

### SERVICES

#### Services:

The Lincoln Park Zoo currently obtains the majority of its water supplies from the Manitowoc Public Utilities. There is an existing well on site that is used to supply water to a fish rearing pond. Other pools on-site are currently supplied using municipal potable water. The Client would like to develop a high capacity well to supply non-potable water to the pools to ensure that the pools do not freeze during winter months.

Support to the Client for engineering SERVICES will include the following phases:

Phase 1 of this Project will involve siting the well. Phase 2 will include well design, obtaining regulatory approval, and bidding the well construction. Phase 3 will include constructing and testing the well. Phase 4 will include design of the well pump, controls, pump station, and transmission main.

Following are the proposed tasks to be performed during each phase of the project:

#### **Phase 1 - Well Siting**

1. Review aerial photos and identify regional lineaments (evidence of bedrock fracturing, if any) in the vicinity of the Lincoln Park Zoo.
2. Review well construction records for wells constructed in the vicinity of the Lincoln Park Zoo, noting well depths, depth to bedrock, yields, and specific capacities. Discuss well construction and potential yields with local drillers.
3. Provide an opinion to the Client about the preferred well site and the estimated yield of a well constructed at the Lincoln Park Zoo site.
4. Visit the site and identify a preferred location and an alternate location for the proposed well. The well site will be selected on the basis of hydrogeological considerations, location of surface waters and sensitive lands, location of the existing well, separation distances from structures, flood plains, and potential and existing contamination sources, as specified in Wisconsin Administrative Code Chapter NR812 and proximity to power supply and the points of use.

#### **Phase 2 – Well Design, Regulatory Approval and Bidding**

1. Design the well in accordance with the requirements of WAC Chapter 812.
2. Prepare the High Capacity, School or Wastewater Treatment Plant Well Approval Application (DNR Form 3300-256) and submit to the Wisconsin Department of Natural Resources (DNR) for approval of the high capacity well system (since there is an existing well on the property).
3. Coordinate with the DNR for site and well approval.
4. Prepare a request for proposal (RFP) describing the scope of the proposed well construction and testing for use in soliciting proposals (bids) from drilling contractors.
5. Review proposals received and provide a recommendation to the Client about the preferred drilling contractor.

**Phase 3 – Construction Related Services**

1. Coordinate and schedule the activities of the drilling contractor.
2. Review submittals.
3. Analyze plumbness and alignment test results and confirm conformance to RFP requirements.
4. Review the Contractor's pay applications and provide a recommendation to the Client about payment.

**Phase 4 – Pump, Pumping Station, and Transmission Main Design**

*Phase 4 will not be initiated until the completion of Phase 3 and only after the Client's approval. A proposal describing Scope of Services and costs for Phase 4 will be provided to the Client for review and approval following the completion of Phase 3.*

Client's Responsibilities:

Client, at its expense, shall do the following in a timely manner so as not to delay the services:

**Information/Reports**

Furnish AECOM the following information, all of which AECOM may rely upon without independent verification in performing the Services:

1. Water demands and required well capacity.
2. Reports of subsurface investigations at the Lincoln Park Zoo property.
3. A copy of the well construction and testing report for the existing well, if available.
4. Mapping that shows locations of existing sanitary and storm sewer piping, other buried piping and electrical lines on the Client's property.
5. Correspondence pertaining to the project received from DNR and other regulatory agencies.
6. City of Manitowoc insurance requirements for use in the RFP.

**Permits/Approvals**

1. Execute all documents that may be provided to Client for permits/approvals.
2. During Phase 2, pay the \$500 fee for the High Capacity Well application directly to the DNR.
3. During Phase 2, coordinate with the local newspaper or other media, and pay advertising costs that may be needed to advertise the project per public bidding requirements.

**Well Construction and Testing**

1. During Phase 3, contract directly with and pay a drilling firm for constructing and testing the proposed well.
2. Client will develop and execute contract documents with well drilling contractor and/or others (e.g. contract, purchase order, etc.).

**Representative**

1. Designate a representative for the Project who shall have the authority to transmit instructions, receive information, interpret, and define Client's policies, and make decisions with respect to the Services.

**Decisions**

1. Provide all criteria and full information as to Client requirements for the Project, attend Project-related meetings, provide interim reviews on an agreed-upon schedule, make decisions on Project alternatives, and generally participate in the Project to the extent necessary to allow AECOM to perform the Services.

Assumptions:**Phase 1**

1. One site visit will be made for observing site conditions and identifying potential well locations.
2. At the present time, it is planned that a test well will not be constructed at the site. Depending on the findings of the well siting study Phase 1, a recommendation may be made to construct a temporary, small diameter test well to confirm subsurface conditions and yield. If the results of testing the small diameter test well are favorable, then a large diameter permanent supply well will need to be constructed at the test well site.
3. It is assumed that the City of Manitowoc well abandonment ordinance, well head protection ordinance, and/or zoning codes do not preclude construction of non-municipal wells in the City of Manitowoc.

**Phase 3**

1. Construction staking, staking of the well site, and surveying are not included in the AECOM Scope of Services.
2. No site visits will be made by AECOM during the construction of the proposed well. It is assumed that the Client will visit the site at select times during well construction, including visits to verify casing mill markings and installation, grouting, plumbness and alignment testing, and performance testing.

**Phase 4**

1. Prior to design, AECOM will discuss with the Client the pros and cons of pump types (submersible and line shaft), well head terminations (pitless adapter and above ground in a pumping station), piping, valves, metering and controls.

Additional Services:

It is difficult at this time to define the nature and scope of additional Services that may be required for this Project. However, additional Services may include:

1. Attendance at meetings or public hearings to present Project information.
2. Property surveys, staking, site-specific investigations (on-site inspections), water sampling and testing.
3. Preparation of additional exhibits or reports for purposes such as public information or meetings.

4. Designing and coordinating the approval, bidding, construction, and testing of a test well.

Schedule:

AECOM will begin this project upon execution of the contract. It is anticipated that Phases 1 through 2 could take up to 3 to 4 months (DNR has up to 65 days to review applications for high capacity wells). Well construction and testing will depend on the size and depth of the well, but is estimated to range from 1 to 2 months after DNR approval is received. If a test well is needed, it is assumed that construction and testing of the test well could add 2 to 3 weeks to the schedule. The RFP will request that the drilling contractor state in their proposal when the well construction will begin (number of days) after they receive the notice to proceed with construction. AECOM will proceed with each phase upon Client's review and authorization.

Deliverables:

1. Well siting opinion.
2. Completed High-Capacity Well Approval Application (DNR Form 3300-256).
3. RFP for constructing and testing of water supply well.
4. Analysis of plumbness and alignment test results.

AECOM Project Manager

Joel Giraud, PG, Project Manager

Client Project Manager

Dan Koski, PE, Director of Public Infrastructure

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**EXHIBIT B**

**COMPENSATION AND PAYMENT**

**1. COMPENSATION** The Services set forth in **EXHIBIT A** will be compensated on the following basis:

Time and Materials basis with a Not-to-Exceed amount of \$14,800. Reimbursable expenses are included in the overall Not-to-Exceed cap. A breakdown of the fee is summarized below:

Phase 1 - Well Siting	\$ 4,400
Phase 2 - Well Design, Regulatory Approval and Providing RFP to Well Drillers	\$ 7,000
Phase 3 - Construction Related Services	\$ 3,400
 TOTAL	 \$ 14,800

Note: Cost estimate for Phase 4 - Pump, Pumping Station, and Transmission Main Design and Construction will be provided after Phase 3 has been completed

**2. RATE SCHEDULE** Compensation shall be based on the following Hourly Labor Rate Schedule:

**2.1 HOURLY LABOR RATE SCHEDULE**

Not used
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**2.2 OTHER HOURLY LABOR RATES** If additional services are authorized during the performance of this Agreement, compensation will be based on the Schedule of Fees in effect at the time the Services are authorized.

**2.3 ANNUAL HOURLY LABOR RATE ADJUSTMENTS** The Hourly Labor Rate Schedule is adjusted each calendar year to reflect updated labor cost categories. Labor cost of Services authorized in subsequent calendar years will be based on the applicable Hourly Labor Rate Schedule for those years.

**3. REIMBURSEABLE EXPENSES** Reimbursable expenses are expenditures made by AECOM for goods, travel expenses and vendor services in support of the performance of the Services. Such expenditures will be billed at the actual cost to AECOM .

**4. CHANGE ORDERS** The Parties may at any time and by written agreement make changes in the Services, Project Schedule, Deliverables, Compensation or other terms and conditions in this Agreement. The Parties shall effect such change through the use of a written Change Order. **EXHIBIT C** is the preferred form for such use.

**5. DELAY** To the extent not the fault of AECOM, if the Project Schedule is extended or delayed, or if the orderly and continuous progress of the Services is impaired, then an equitable adjustment shall be made to this Agreement.

**6. INVOICING** AECOM will invoice Client on a monthly basis unless otherwise set forth herein. If Client disagrees with any portion of an invoice, it shall notify AECOM in writing of the amount in dispute and the specific reason for Client's objection within 10 days of receipt of invoice. Client shall pay the undisputed portion of the invoice as set forth below. Documentation supporting the invoice will be made available upon request.

**7. PAYMENT**

7.1 If payment is based on Time and Materials with a NTE, once AECOM reaches the NTE, AECOM will stop further Services pending a Change Order to adjust the budget and schedule for the continued performance of the Services.

7.2 Timely payment is a material term of this Agreement. Client shall pay all undisputed portions of AECOM's invoices within 30 days of receipt without holdback or retention. Amounts remaining unpaid 30 days after the invoice date shall bear interest at the rate of 1.5% per month on the unpaid balance and AECOM may suspend the Services pending receipt of such payment. In addition, AECOM retains its unrestricted rights under Article 18 (Termination) of the Agreement.

7.3 If the Project is suspended by Client for more than 30 days, AECOM shall be paid for all Services performed prior to the effective date of suspension within 30 days of such suspension. Upon resumption of the Project, AECOM shall be entitled to an equitable adjustment in cost and schedule to compensate AECOM for expenses incurred as a result of the interruption and resumption of the Services.

7.4 To the extent that completion of the Services is delayed beyond the original scheduled completion date and such delay is not the fault of AECOM, an equitable adjustment shall be made to AECOM's Compensation and Project Schedule.

7.5 Except as otherwise specifically provided herein, Client shall pay or reimburse AECOM, as appropriate, for all categories of taxes other than income tax, including without limitation, sales, consumer, use, value added, gross receipts, privilege, and local license taxes related to the Services.

7.6 Client shall make payments to AECOM using one of the following methods:

7.6.1 AECOM LOCKBOX:

AECOM Technical Services, Inc.  
1178 Paysphere Circle  
Chicago, IL 60674

7.6.2 ELECTRONIC FUNDS TRANSFER/ACH PAYMENT:

Account Name: AECOM Technical Services, Inc.  
Bank Name: Bank of America  
Address1: Building D  
Address2: 2000 Clayton Road  
City/State/Zip: Concord, CA 94520-2425  
Account Number: 5800937020  
ABA Routing Number: 071000039

7.6.3 WIRE TRANSFER:

Account Name: AECOM Technical Services, Inc.  
Bank Name: Bank of America  
Address: 100 West 33rd St  
City/State/Zip: New York, NY 10001  
Account Number: 5800937020  
ABA Routing Number: 026009593  
SWIFT Code: BOFAUS3N

7.6.4 Questions related to payment can be sent to:

AECOM Cash Applications Supervisor by phone at (804) 515-8490 or by email at [cashappsremittance@aecom.com](mailto:cashappsremittance@aecom.com)

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AECOM Project Name: \_\_\_\_\_  
 AECOM Project No.: \_\_\_\_\_  
 Change Order No.: \_\_\_\_\_

**INTERNAL NOTE TO CONTRACT PREPARER: ALL ITEMS IN RED ARE INTERNAL INSTRUCTIONS, PLEASE READ THE INSTRUCTIONS, MAKE THE APPROPRIATE INSERTIONS, AND THEN DELETE THE INSTRUCTIONS BEFORE ISSUING THIS DOCUMENT. MAKE SURE THE FONT AND SIZE ARE ADJUSTED AFTER YOU HAVE DELETED THE INSTRUCTIONS. THE BLANK CHANGE ORDER FORM CAN BE ACCESSED ON THE U.S. CONTRACTS LIBRARY.**

**EXHIBIT C**

**CHANGE ORDER FORM**

In accordance with the Design Engineering Services Agreement dated *Insert the effective date of the Agreement*, 20\_\_ between *Insert the name of the Client's legal entity* \_\_\_\_\_ ("Client"), and *AECOM Technical Services, Inc. is listed because it is the primary AECOM legal entity used within the USA. However, a different AECOM legal entity may be required in certain states to meet registration requirements. Check with the Legal team to confirm the applicable AECOM legal entity. If a different AECOM legal entity is used, you need to replace AECOM Technical Services, Inc. with that other AECOM legal entity here, on the signature page, and in any Change Orders.* AECOM Technical Services, Inc., a California corporation, ("AECOM"), this Change Order, with an effective date of \_\_\_\_\_, 20\_\_\_\_ modifies that Agreement \_\_\_\_\_ as follows:

**1. Changes to the Services:**


**2. Change to Deliverables:**

--

**3. Change in Project Schedule (attach schedule if appropriate):**

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**4. Change in Consultant's Compensation:**

The Services set forth in this Change Order will be performed on the following basis:

**CHOOSE ONE OF THE FOLLOWING TYPES OF COMPENSATION BY MARKING THE APPROPRIATE [ ]**

No change to Compensation

Time & Material (See **Exhibit B** for the Hourly Labor Rate Schedule)

Time and Materials with a Not- to-Exceed amount of (\$ *Numerical Amount*). The Hourly Labor Rate Schedule is set forth in **EXHIBIT B** (if applicable). Reimbursable expenses are included in the overall Not to Exceed cap.

Lump Sum [\$ *Numerical Amount*]

Milestone/Deliverable & Date	Payment Amount
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\_\_\_\_\_ \$ \_\_\_\_\_

[ ] **Cost Plus Fixed Fee:** [Cost \$ *Numerical Amount* and Fee \$ *Numerical Amount*]

Therefore, the total authorized Compensation, inclusive of the Change Order is \$ *Numerical Amount*.

5. **Project Impact:** *Insert any anticipated additional impact of the Change on the Project in addition to the direct changes in the cost, schedule or scope contained in the Change Order (e.g., the Change will cause other activities to be delayed; Change will require re-sequencing of the other work on the Project; etc.). If there is no additional impact, insert "NONE".*

\_\_\_\_\_

6. **Other Changes** (including terms and conditions): *Changes to the terms and conditions of this Agreement require Contract Reviewer/Analyst's approval. If there are no changes, insert "NONE" in the box below.*

\_\_\_\_\_

7. All other terms and conditions of the Agreement remain unchanged.

8. Each Party represents that the person executing this Change Order has the necessary legal authority to do so on behalf of the respective Party.

**AECOM Technical Services, Inc.**

*Insert Client Legal Name*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Title

\_\_\_\_\_  
Printed Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

[End of Agreement]