



Professional Services Agreement

This AGREEMENT (Agreement) is made today _____ by and between the CITY OF MANITOWOC (OWNER) and MSA PROFESSIONAL SERVICES, INC. (MSA), which agree as follows:

Project Name: City of Manitowoc CDBG RLF Housing Program

The scope of the work authorized is: See Attached Scope of Services

The schedule to perform the work is: Approximate Start Date: February 27, 2020
Approximate Completion Date: Until cancelled

The fee for the work is: As provided with the attached Scope of Services.

All services shall be performed in accordance with the General Terms and Conditions of MSA, which is attached and made part of this Agreement. Any attachments or exhibits referenced in this Agreement are made part of this Agreement.

Approval: Authorization to proceed is acknowledged by signatures of the parties to this Agreement.

CITY OF MANITOWOC

MSA PROFESSIONAL SERVICES, INC.

Adam Tegen
Community Development Director

Kari Justmann
Director of Housing

Date: _____

Date: _____

900 Quay Street
Manitowoc, WI 54220
Phone: (920) 686-6931
Fax: (920) 686-6936

201 Corporate Drive
Beaver Dam, WI 53916
Phone: (920) 392-5137
Fax: (920) 887-4250

**MSA PROFESSIONAL SERVICES, INC. (MSA) –
GENERAL TERMS AND CONDITIONS OF SERVICES (PUBLIC - Wisconsin)**

1. **Scope and Fee.** The quoted fees and scope of services constitute the best estimate of the fees and tasks required to perform the services as defined. This agreement upon execution by both parties hereto, can be amended only by written instrument signed by both parties. For those projects involving conceptual or process development service, activities often cannot be fully defined during initial planning. As the project progresses, facts uncovered may reveal a change in direction which may alter the scope. MSA will promptly inform the OWNER in writing of such situations so that changes in this agreement can be made as required. The OWNER agrees to clarify and define project requirements and to provide such legal, accounting and insurance counseling services as may be required for the project

2. **Billing.** MSA will bill the OWNER monthly with net payment due upon receipt. Past due balances shall be subject to an interest charge at a rate of 12% per year from said thirtieth day. In addition, MSA may, after giving seven days written notice, suspend service under any agreement until the OWNER has paid in full all amounts due for services rendered and expenses incurred, including the interest charge on past due invoices.

3. **Costs and Schedules.** Costs and schedule commitments shall be subject to change for delays caused by the OWNER's failure to provide specified facilities or information or for delays caused by unpredictable occurrences including, without limitation, fires, floods, riots, strikes, unavailability of labor or materials, delays or defaults, by suppliers of materials or services, process shutdowns, acts of God or the public enemy, or acts of regulations of any governmental agency. Temporary delays of services caused by any of the above which result in additional costs beyond those outlined may require renegotiation of this agreement.

4. **Access to Site.** Owner shall furnish right-of-entry on the project site for MSA and, if the site is not owned by Owner, warrants that permission has been granted to make planned explorations pursuant to the scope of services. MSA will take reasonable precautions to minimize damage to the site from use of equipment, but has not included costs for restoration of damage that may result and shall not be responsible for such costs.

5. **Location of Utilities.** Consultant shall use reasonable means to identify the location of buried utilities in the areas of subsurface exploration and shall take reasonable precautions to avoid any damage to the utilities noted. However, Owner agrees to indemnify and defend Consultant in the event of damage or injury arising from damage to or interference with subsurface structures or utilities which result from inaccuracies in information of instructions which have been furnished to Consultant by others.

6. **Professional Representative.** MSA intends to serve as the OWNER's professional representative for those services as defined in this agreement, and to provide advice and consultation to the OWNER as a professional. Any opinions of probable project costs, reviews and observations, and other decisions made by MSA for the OWNER are rendered on the basis of experience and qualifications and represents the professional judgment of MSA. However, MSA cannot and does not guarantee that proposals, bid or actual project or construction costs will not vary from the opinion of probable cost prepared by it.

7. **Construction.** This agreement shall not be construed as giving MSA, the responsibility or authority to direct or supervise construction means, methods, techniques, sequence, or procedures of construction selected by the contractors or subcontractors or the safety precautions and programs incident to the work of the contractors or subcontractors.

8. **Standard of Care.** In conducting the services, MSA will apply present professional, engineering and/or scientific judgment, and use a level of effort consistent with current professional standards in the same or similar locality under similar circumstances in performing the Services. The OWNER acknowledges that "current professional standards" shall mean the standard for professional services, measured as of the time those services are rendered, and not according to later standards, if such later standards purport to impose a higher degree of care upon MSA.

MSA does not make any warranty or guarantee, expressed or implied, nor have any agreement or contract for services subject to the provisions of any uniform commercial code. Similarly, MSA will not accept those terms and conditions offered by the OWNER in its purchase order, requisition, or notice of authorization to proceed, except as set forth herein or expressly agreed to in writing. Written acknowledgement of receipt, or the actual performance of services subsequent to receipt of such purchase order, requisition, or notice of authorization to proceed is specifically deemed not to constitute acceptance of any terms or conditions contrary to those set forth herein.

9. **Construction Site Visits.** MSA shall make visits to the site at intervals appropriate to the various stages of construction as MSA deems necessary in order to observe, as an experienced and qualified design professional, the progress and quality of the various aspects of Contractor's work.

The purpose of MSA's visits to, and representation at the site, will be to enable MSA to better carry out the duties and responsibilities assigned to and undertaken by MSA during the Construction Phase, and in addition, by the exercise of MSA's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. On the other hand, MSA shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct or have control over Contractor's work nor shall MSA have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. Accordingly, MSA neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

10. **Termination.** This Agreement shall commence upon execution and shall remain in effect until terminated by either party, at such party's discretion, on not less than thirty (30) days' advance written notice. The effective date of the termination is the thirtieth day after the non-terminating party's receipt of the notice of termination. If MSA terminates the Agreement, the OWNER may, at its option, extend the terms of this Agreement to the extent necessary for MSA to complete any services that were ordered prior to the effective date of termination. If OWNER terminates this Agreement, OWNER shall pay MSA for all services performed prior to MSA's receipt of the notice of termination and for all work performed and/or expenses incurred by MSA in terminating Services begun after MSA's receipt of the termination notice. Termination hereunder shall operate to discharge only those obligations which are executory by either party on and after the effective date of termination. These General Terms and Conditions shall survive the completion of the services performed hereunder or the Termination of this Agreement for any cause.

This agreement cannot be changed or terminated orally. No waiver of compliance with any provision or condition hereof should be effective unless agreed in writing and duly executed by the parties hereto.

11. **Betterment.** If, due to MSA's error, any required or necessary item or component of the project is omitted from the construction documents, MSA's liability shall be limited to the reasonable costs of correction of the construction, less what OWNER'S cost of including the omitted item or component in the original construction would have been had the item or component not been omitted. It is intended by this provision that MSA will not be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the project.

12. **Hazardous Substances.** OWNER acknowledges and agrees that MSA has had no role in generating, treating, storing, or disposing of hazardous substances or materials which may be present at the project site, and MSA has not benefited from the processes that produced such hazardous substances or materials. Any hazardous substances or materials encountered by or associated with Services provided by MSA on the project shall at no time be or become the property of MSA. MSA shall not be deemed to possess or control any hazardous substance or material at any time; arrangements for the treatment, storage, transport, or disposal of any hazardous substances or materials, which shall be made by MSA, are made solely and exclusively on OWNER's behalf for OWNER's benefit and at OWNER's direction. Nothing contained within this Agreement shall be construed or interpreted as requiring MSA to assume the status of a generator, storer, treater, or disposal facility as defined in any federal, state, or local statute, regulation, or rule governing treatment, storage, transport, and/or disposal of hazardous substances or materials.

All samples of hazardous substances, materials or contaminants are the property and responsibility of OWNER and shall be returned to OWNER at the end of a project for proper disposal. Alternate arrangements to ship such samples directly to a licensed disposal facility may be made at OWNER's request and expense and subject to this subparagraph.

13. **Insurance.** MSA will maintain insurance coverage for: Worker's Compensation, General Liability, and Professional Liability. MSA will provide information as to specific limits upon written request. If the OWNER requires coverages or limits in addition to those in effect as of the date of the agreement, premiums for additional insurance shall be paid by the OWNER. The liability of MSA to the OWNER for any indemnity commitments, or for any damages arising in any way out of performance of this contract is limited to such insurance coverages and amount which MSA has in effect.

14. **Reuse of Documents.** Reuse of any documents and/or services pertaining to this project by the OWNER or extensions of this project or on any other project shall be at the OWNER's sole risk. The OWNER agrees to defend, indemnify, and hold harmless MSA for all claims, damages, and expenses including attorneys' fees and costs arising out of such reuse of the documents and/or services by the OWNER or by others acting through the OWNER.

15. **Indemnification.** To the fullest extent permitted by law, MSA shall indemnify and hold harmless, OWNER, and OWNER's officers, directors, members, partners, agents, consultants, and employees (hereinafter "OWNER") from reasonable claims, costs, losses, and damages arising out of or relating to the PROJECT, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of MSA or MSA's officers, directors, members, partners, agents, employees, or Consultants (hereinafter "MSA"). In no event shall this indemnity agreement apply to claims between the OWNER and MSA. This indemnity agreement applies solely to claims of third parties. Furthermore, in no event shall this indemnity agreement apply to claims that MSA is responsible for attorneys' fees. This agreement does not give rise to any duty on the part of MSA to defend the OWNER on any claim arising under this agreement.

To the fullest extent permitted by law, OWNER shall indemnify and hold harmless, MSA, and MSA's officers, directors, members, partners, agents, consultants, and employees (hereinafter "MSA") from reasonable claims, costs, losses, and damages arising out of or relating to the PROJECT, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of the OWNER or the OWNER's officers, directors, members, partners, agents, employees, or Consultants (hereinafter "OWNER"). In no event shall this indemnity agreement apply to claims between MSA and the OWNER. This indemnity agreement applies solely to claims of third parties. Furthermore, in no event shall this indemnity agreement apply to claims that the OWNER is responsible for attorneys' fees. This agreement does not give rise to any duty on the part of the OWNER to defend MSA on any claim arising under this agreement.

To the fullest extent permitted by law, MSA's total liability to OWNER and anyone claiming by, through, or under OWNER for any cost, loss or damages caused in part or by the negligence of MSA and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that MSA's negligence bears to the total negligence of OWNER, MSA, and all other negligent entities and individuals.

16. **Dispute Resolution.** OWNER and MSA desire to resolve any disputes or areas of disagreement involving the subject matter of this Agreement by a mechanism that facilitates resolution of disputes by negotiation rather than by litigation. OWNER and MSA also acknowledge that issues and problems may arise after execution of this Agreement which were not anticipated or are not resolved by specific provisions in this Agreement. Accordingly, both OWNER and MSA will endeavor to settle all controversies, claims, counterclaims, disputes, and other matters in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, unless OWNER and MSA mutually agree otherwise. Demand for mediation shall be filed in writing with the other party to this Agreement. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. Neither demand for mediation nor any term of this Dispute Resolution clause shall prevent the filing of a legal action where failing to do so may bar the action because of the applicable statute of limitations. If despite the good faith efforts of OWNER and MSA any controversy, claim, counterclaim, dispute, or other matter is not resolved through negotiation or mediation, OWNER and MSA agree and consent that such matter may be resolved through legal action in any state or federal court having jurisdiction.

17. **Exclusion of Special, Indirect, Consequential and Liquidated Damages.** Consultant shall not be liable, in contract or tort or otherwise, for any special, indirect, consequential, or liquidated damages including specifically, but without limitation, loss of profit or revenue, loss of capital, delay damages, loss of goodwill, claim of third parties, or similar damages arising out of or connected in any way to the project or this contract.

18. **State Law.** This agreement shall be construed and interpreted in accordance with the laws of the State of Wisconsin.

19. **Jurisdiction.** OWNER hereby irrevocably submits to the jurisdiction of the state courts of the State of Wisconsin for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement. OWNER further consents that the venue for any legal proceedings related to this Agreement shall be, at MSA's option, Sauk County, Wisconsin, or any county in which MSA has an office.

20. **Understanding.** This agreement contains the entire understanding between the parties on the subject matter hereof and no representations, inducements, promises or agreements not embodied herein (unless agreed in writing duly executed) shall be of any force or effect, and this agreement supersedes any other prior understanding entered into between the parties on the subject matter hereto.

Attachment A:

CDBG HOUSING PROGRAM REVOLVING LOAN FUND

SECTION 1 - BASIC SERVICES OF MSA

- 1.1 Administrative Services. MSA agrees to provide administrative services to the OWNER in the performance of the Revolving Loan Funds for the CDBG Housing Program administrative duties as required of the OWNER, including but not limited to: Liaison with the Department of Administration, annual Revolving Loan Fund reports, labor standards compliance (if applicable), equal opportunity compliance, individual project compliance, and maintenance of records.

MSA will coordinate maintenance of financial records with OWNER's staff. MSA will provide administrative services to OWNER so that the necessary measures are taken to comply with State regulations. MSA will make decisions on eligible households and determine the extent of work to be accomplished. As the Housing Program Administrator, MSA will make determinations regarding homeowner/contractor conflicts and report said conflict resolutions to the OWNER.

SECTION 2 - OWNER'S RESPONSIBILITIES

The OWNER will:

- 2.1 Review Documents. Examine all studies, reports, sketches, estimates, proposals and other documents presented by MSA.
- 2.2 Other Services. Provide such legal and auditing services as may be required for the project. Provide for general office supply expenses incurred by the OWNER for which the OWNER is not being reimbursed by administrative funds.
- 2.3 OWNER'S Authorized Representative. Designate in writing a person to act as the OWNER'S RLF representative with respect to the work to be performed under this Agreement; and such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER'S policies and decisions with respect to materials, equipment elements and systems pertinent to the work covered by this Agreement.
- 2.4 Advertisement. Advertise for and make arrangements for all public meetings and notices.
- 2.5 Committee. The Committee will participate in the resolution of questions, concerns and matters relevant to the programs stemming from State, the OWNER, and/or citizens as appropriate.
- 2.6 Financial Involvement. Issue payments as necessary.

SECTION 3 - PAYMENTS TO THE MSA

- 3.1 Revolving Loan Fund. The OWNER will pay MSA 16% of the Revolving Loan Funds received in repayment of past CDBG Housing program loans and expended for new housing rehabilitation projects.

MSA will submit a bill for 8% of the funds when a revolving loan fund deposit is made and for the remaining 8% (housing only) as the “new” RLF project funds are spent.

- 3.2 Inspection Services. MSA will also perform inspection services. The payment for these services will be made from “project” funds. The fees for the initial program inspection, interim inspections and final project inspection services are included with each new homeowner, homebuyer or rental loan. The fees for the risk assessment and clearance testing are granted to the applicant and are not included in their loan.

The fee for the inspection services are listed as follows and apply only to those services required. Not all projects require a risk assessment and/or clearance testing.

Initial Program Inspection	\$ <u>275.00</u>
Risk Assessment, Lab Fees and 2 Copies of the Report	\$ <u>475.00</u>
All Interim Inspections and the Final Project Inspection	\$ <u>250.00</u>
Clearance Testing, Required Notifications & Laboratory Fees	\$ <u>250.00</u>

- 3.3 OWNER requested services beyond the Scope of this Agreement shall be billed at MSA’s Standard Hourly and Reimbursable Rate Schedule.
- 3.4 Times of Payments. MSA shall submit an invoice not more than once per month.

SECTION 4 - GENERAL CONSIDERATIONS

- 4.1 Equal Opportunity Compliance. MSA shall comply with the Civil Rights Act of 1964 and Section 109 of the Housing and Community Development Act of 1974, described as follows:

4.1.1 Civil Rights Act of 1964. Under Title VI and Title VIII of the Civil Rights Act of 1964, no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits, or be subjected to discrimination under any program or activity receiving federal financial assistance.

4.1.2 Civil Rights Act of 1968. Under Title VIII of the Civil Rights Act of 1968, as amended including the Fair Housing Amendments Act of 1988, discrimination in housing is prohibited on the basis of race, color, religion, sex, handicap, familial status, or national origin.

- 4.1.3 Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall, on the grounds of race, color, national origin, sex, age or handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.
- 4.1.4 Section 504 of the Rehabilitation Act of 1973, as amended. No person otherwise qualified shall, solely, by reason of his or her handicap, be excluded from participation (including employment), denied program benefits, or subjected to discrimination, on the basis of age, under any program or activity receiving federal funds.
- 4.1.5 Age Discrimination Act of 1975, as amended. No person shall be excluded from participation, denied program benefits or subjected to discrimination, on the basis of age, under any program or activity receiving federal funds.
- 4.1.6 Executive Order 11063. Provides that no person shall, on the basis of race, color, religion, sex or national origin, be discriminated against in housing (and related facilities) provided with federal assistance or lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the federal government.
- 4.1.7 Executive Order 11246. The bid and contract language required under E.O. 11246 depends on the dollar amount of the contract. Certain language is required for contracts/subcontracts of \$10,000 or less. Other language is required if the contract/subcontract exceeds \$10,000. Note especially the Notice of Requirements for Affirmative Action which must be included and which requires the insertion of minority and female goals. The female goal applies nationwide while the minority goal is specifically determined for each county. As amended this order provides that no person shall be discriminated against, on the basis of race, color, religion, sex or national origin in any place of employment during the performance of federally-assisted construction contracts.
- 4.1.8 Section 3 of the Housing and Urban Development Act of 1968, as amended 1992, which provides that employment and other economic opportunities generated by Federal assistance for housing community development programs shall, to the greatest extent feasible, be directed to low and very low income persons.
- 4.1.9 Access to Records. MSA agrees to provide to the OWNER, the Department of Commerce, Department of Housing and Urban Development, the Comptroller General of the United States, or any of their fully authorized representatives, access to any books, documents, papers and records of MSA which are directly pertinent to this specific contract, for the purpose of making audit, examination, excerpts and transcriptions.