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VANDEWALLE & ASSOCIATES INC.

November 11, 2014

Agreement for Sign Code Rewrite Services

THIS AGREEMENT is made and entered into by and between the "Client" City of Manitowoc, Wisconsin, and VANDEWALLE & ASSOCIATES, INC., Madison, Wisconsin, a professional planning and design firm. For purposes of this Agreement, the "Project" is defined as providing the City of Manitowoc with Sign Code Rewrite Services.

Article I Scope of Work

- A. VANDEWALLE & ASSOCIATES agrees to provide the following "Services" as described in Attachment Two - Manitowoc Sign Code Rewrite Project Budget Summary.
- B. Additional Services, beyond those stated in Article I.A., may be provided through a "Work Order".
- C. VANDEWALLE & ASSOCIATES agrees to provide its professional Services in accordance with generally accepted standards of its profession.

Article II Client's Responsibilities

- A. Client agrees to provide VANDEWALLE & ASSOCIATES with all base maps, blueprints, aerial photos, studies, reports, and ordinances needed to complete these Services. VANDEWALLE & ASSOCIATES may reasonably rely on the accuracy and completeness of these items. Client agrees to provide these items and to render decisions in a timely manner so as not to delay the orderly and sequential progress of VANDEWALLE & ASSOCIATES Services.

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Shaping places, shaping change

- B. The administrative liaison between VANDEWALLE & ASSOCIATES and the Client will be Nicolas Sparacio.
- C. Client agrees that the following individuals are approved to authorize Additional Services via a Work Order:

Nicolas Sparacio
Name

Community Development Director
Title

Paul Braun
Name

City Planner
Title

- D. Client understands that any work product delivered in electronic form under this Agreement may require Client to use certain third-party hardware and/or software products; such as Microsoft Word and Excel, and Adobe Acrobat and Illustrator. Client shall be solely responsible for obtaining licenses to use such third-party software. VANDEWALLE & ASSOCIATES makes no warranties or representations as to the quality, capabilities, operations, performance or suitability of any third-party hardware or software including the ability to integrate with any software currently in use by the Client. Client acknowledges that the quality, capabilities, operations, performance, and suitability of any third-party hardware or software lies solely with Client and the vendor or supplier of that hardware or software.
- E. If Client makes any modifications to Deliverables, Client shall either 1) obtain the prior written consent of VANDEWALLE & ASSOCIATES; or 2) remove VANDEWALLE & ASSOCIATES name from the Deliverables. In the event that Client selects option #2, VANDEWALLE & ASSOCIATES shall not be liable or otherwise responsible for such modifications or their effect on the results of the implementation of the recommendations contained in such Deliverables.

Article III Estimated Schedule

- A. Services in this Agreement shall commence from October 7, 2014, and be in effect through June 30, 2015, unless the parties agree otherwise.
- B. VANDEWALLE & ASSOCIATES shall render its Services as expeditiously as is consistent with professional skill and care. During the course of the Project, anticipated and unanticipated events may impact the Project schedule and

VANDEWALLE & ASSOCIATES shall not be responsible for any delays caused by factors beyond its reasonable control.

Article IV Costs and Payment

- A. All work shall be completed on a time and materials basis, at the direction of the Client with the budget not to exceed \$7,225.00.
- B. Client acknowledges that significant changes to the Project schedule, budget or Project's scope may require Additional Services for which the parties may (but are not required to) enter into a separate Work Order (see Article I.B.).
- C. Invoice charges to the Client are divided into these two elements:
 - 1. Professional Fees.
Charged for all Services rendered at current billing rates as listed in Attachment One.
 - 2. Reimbursable Expenses.
 - a. Most will be invoiced at cost, including travel and all in-house charges.
 - b. Some Reimbursable Expenses will be charged at cost multiplied by 1.1. These are limited to items charged through a third party vendor. Examples of these would include: printing, reproduction, and delivery charges.
- D. VANDEWALLE & ASSOCIATES shall send Client an invoice for Professional Fees and Reimbursable Expenses once a month. Client shall pay VANDEWALLE & ASSOCIATES the amounts due under such invoice upon receipt of such invoice. A service charge of 1% per month may be charged on all amounts more than 30 days after date of invoice.

Article V Termination

- A. Either Client or VANDEWALLE & ASSOCIATES may terminate this Agreement upon seven days written notice.
- B. If terminated, Client agrees to pay VANDEWALLE & ASSOCIATES the hourly rates for all Services rendered and Reimbursable Expenses incurred, up to the date of termination.

- C. Upon not less than seven days' written notice, VANDEWALLE & ASSOCIATES may suspend the performance of its Services if Client fails to pay VANDEWALLE & ASSOCIATES in full for Services rendered or Reimbursable Expenses incurred. VANDEWALLE & ASSOCIATES shall have no liability because of such suspension of service or termination due to nonpayment.

Article VI Dispute Resolution

VANDEWALLE & ASSOCIATES and Client agree to mediate claims or disputes arising out of or relating to the Agreement. The mediation shall be conducted by a mediation service acceptable to the parties. A demand for mediation shall be made within a reasonable time after a claim or dispute arises. In no event shall any demand for mediation be made after such claim or dispute would be barred by the applicable law.

Article VII Intellectual Property; Confidentiality

- A. Except as otherwise provided by law: upon payment in full by Client to VANDEWALLE & ASSOCIATES for Services rendered and Reimbursable Expenses incurred pursuant to this Agreement, VANDEWALLE & ASSOCIATES shall grant Client a non-transferable, non-exclusive, perpetual license to use any and all Work Product developed or produced by VANDEWALLE & ASSOCIATES pursuant to this Agreement. As used in this Agreement, "Work Product" means all inventions, processes, data, documents, drawings, records, and works of authorship, whether or not copyrightable or patentable, that are originated or prepared by VANDEWALLE & ASSOCIATES in the course of rendering the Services under this Agreement. Until Client pays VANDEWALLE & ASSOCIATES in full for Services rendered and expenses incurred pursuant to this Agreement, Client may not use any Work Product to complete the Project with others unless VANDEWALLE & ASSOCIATES is in material breach of this Agreement. Upon termination of this Agreement, by either party, Client agrees to pay in full for Services rendered and expenses incurred up to the date of termination; VANDEWALLE & ASSOCIATES shall then provide to Client all Work Product developed or produced by VANDEWALLE & ASSOCIATES, pursuant to this Agreement, up to date of termination.
- B. Except as otherwise provided by law: Client shall not communicate, publish, or otherwise disclose to a third party, other than those parties designated by Client or VANDEWALLE & ASSOCIATES as being involved in activities related

to this Agreement, or authorize or induce anyone else to use, communicate, publish, or otherwise disclose, any nonpublic information pertaining to VANDEWALLE & ASSOCIATES, including, without limitation, any information relating to pricing, products, or ideas of VANDEWALLE & ASSOCIATES. Until VANDEWALLE & ASSOCIATES is paid in full by Client for Services rendered and expenses incurred pursuant to this Agreement, Client shall not communicate, publish, or otherwise disclose to any third party, any information pertaining to or summaries of the Work Product.

Article VIII Miscellaneous Provisions

- A. Wisconsin law governs this Agreement (without regard to its conflict of law principles or rules of construction concerning the draftsman hereof).
- B. This Agreement is the entire and integrated agreement between the Client and VANDEWALLE & ASSOCIATES, and supersedes all prior negotiations, statements or agreements, either written or oral, with regard to its subject matter. This Agreement may be amended only by written instrument signed by both Client and VANDEWALLE & ASSOCIATES. Neither party can assign this Agreement without the other party's prior written permission.
- C. Notwithstanding any other term in this Agreement, VANDEWALLE & ASSOCIATES shall not control or be responsible for another party's means, methods, techniques, schedules, sequences or procedures, or for construction safety or any other related programs.
- D. Client agrees to indemnify, defend and hold VANDEWALLE & ASSOCIATES, its agents and employees harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses (including reasonable attorneys' fees) to property or persons, including injury or death, or economic losses, arising out of the Project and/or the performance or non-performance of obligations under this Agreement, except to the extent such damages or losses are directly caused by VANDEWALLE & ASSOCIATES' gross negligence or willful misconduct.
- E. In the event that any suit or action is instituted to enforce any provision in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party all fees (including legal and accounting fees), costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including without limitation, all costs of appeals. For purposes of this provision, "prevailing party" shall include a

party that dismisses an action in exchange for payment of the sum allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action or proceeding.

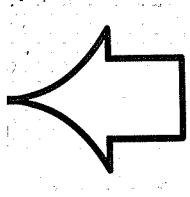
- F. VANDEWALLE & ASSOCIATES reserves the right to include representations of the Project in its promotional and professional materials.
- G. All Services performed pursuant to the Agreement are performed on an "as is" basis, and VANDEWALLE & ASSOCIATES hereby disclaims all warranties, express or implied, including, but not limited to, fitness for a particular purpose and non-infringement. In no event shall VANDEWALLE & ASSOCIATES be liable to Client or any third party for any losses, lost profits, lost data, consequential, special, incidental, or punitive damages, delays, or interruptions arising out of or related to this Agreement regardless of the basis of the claim. VANDEWALLE & ASSOCIATES' aggregate liability (including attorneys' fees) to Client and Client's exclusive remedy, if any, shall not exceed the lesser of the (i) amount of fees actually paid to VANDEWALLE & ASSOCIATES by Client with regard to the Services or the Work Order for which liability has been asserted, or (ii) amount of fees actually paid to VANDEWALLE & ASSOCIATES by Client in the previous two months prior to the claim being made.

VANDEWALLE & ASSOCIATES
October 9, 2014

City of Manitowoc / *Sign Code Rewrite*

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IN WITNESS WHEREOF, the parties hereto entered into this Agreement as of the latest date noted, below.



City of Manitowoc

By:

Signature of Authorized Representative
Justin M. Nickels, Mayor

Date

Printed Name
Jennifer Hudon, City Clerk

Title

VANDEWALLE & ASSOCIATES

By:

Nonna Anderson

Nonna Anderson, Business Manager

Date

ATTACHMENT ONE
FEE SCHEDULE

	<u>Hourly Rates</u>
Company President	\$220 to \$250
Principal	\$150 to \$220
Associate	\$70 to \$120
Assistant	\$60 to \$85
Cartographer	\$60 to \$80
Communications Specialist	\$60 to \$95
Project Assistant	\$40 to \$60

**ATTACHMENT TWO
 MANITOWOC SIGN CODE REWRITE PROJECT TASKS AND BUDGET**

Manitowoc Sign Code Rewrite Project Budget		Team Members and Billing Rates				Materials & Expenses	Total
		\$150	\$70	\$95	\$55		
		Mike Slavney Principal-in-Charge	Jackie Mich Assistant Planner	Elona Bartrick Associate Designer	Nicole Anderson Administration		
Task 1	General Discussion with Staff	1	1				\$220
Task 2	Provide Model Sign Code		1				\$70
Task 3	Draft #1 of Sign Code (and review by staff)	3	8	3			\$1,295
Task 4	Draft #2 of Sign Code	2	6	2	2		\$1,020
Task 5	Committee Meeting to Review Draft #2	8	8	1		\$ 180	\$2,035
Task 6	Final Draft of Sign Code	1	5	2	1	\$ 50	\$795
Task 7	Plan Commission Public Hearing and Consideration of Sign Code	8	2			\$ 200	\$1,540
Task 8	Final, Adopted Sign Code		2		2		\$250
Total Hours and Cost		23	33	8	5	\$ 430	\$7,225