

January 4, 2024  
Revised February 7, 2024**Our Reference**  
OPP-1307069Tom Flick, Deputy Director  
City of Appleton Facilities & Grounds  
1819 Witzke Boulevard  
Appleton, WI 54911  
[tom.flick@appleton.org](mailto:tom.flick@appleton.org)**Proposal for Continued Engineering Services for Lutz Park Project, in Appleton, Wisconsin**

Dear Mr. Flick,

AECOM Technical Services, Inc. (AECOM) is pleased to provide this proposal to provide continued engineering support for the Lutz Park Project. This proposal describes our understanding of the project and our scope of services. **This proposal has been updated from what was previously provided on January 4, 2024. Updates are shown in red text.**

**1.1 Background**

AECOM has been supporting the Appleton Parks, Recreation and Facilities Management Department (APRFMD) develop plans for Lutz Park to improve lighting and shoreline conditions along the existing path adjacent to the Fox River as well as construct a new multi-use path along Lutz Drive. Improvements include reconstruction of a fishing pier and relocation of a kayak launch to a more accessible location. AECOM developed plans to a 90% level in 2023. We understand the APRFMD would like to bid the project in winter 2024 so the project can be constructed in the summer of 2024.

**1.2 Scope of Services****1.2.1 Permitting****1.2.1.1 WDNR Chapter 30 Permit**

The 90% plans include modifications to the shoreline and installation of rip rap along the shoreline of the Fox River. Additionally, in-water work would be conducted to relocate the kayak launch and modify the fishing platform and adjacent retaining wall. The WDNR has a riprap exemption, however since the project includes installation of more than 200 lineal feet and the rip rap will be placed below the ordinary high water mark, we do not believe the project qualifies for an exemption. Therefore, it is anticipated a WDNR Chapter 30 Individual Permit (Wetlands and Waterways) will be required for dredging, shoreline erosion control, and piers, docks, and wharves. Prior to commencement of permit preparation, AECOM will confirm permitting requirements with the WDNR. It is anticipated the permit application will include the preparation of:

- Application form – AECOM will complete the forms on the WDNR WAMs site. The forms describe application information, site information, legal description, and explanation of wetland and endangered or threatened resources review.
- Ownership documentation – AECOM will gather information from publicly available assessor websites to document ownership. Preparation of a certified survey map (CSM) is not included in our scope of services.
- Plans and Specifications – The 90% design plans prepared in 2023 will be used in permit applications. Applicable specifications as described in the proceeding sections will be included if necessary.

- Project Narrative – AECOM will draft a Storm Water Management and Erosion Control Plan (SWMECP) to be used in permit documents (both the WDNR Individual Permit and the City of Appleton Site Plan Review). This document will serve as the project narrative. The document will describe the project, purpose, and need. Information on how the project will be executed, including methods, materials, and equipment, as well as the schedule will be discussed. There will be a discussion on stormwater management and erosion control measures as well as information on disposal of materials, materials used for fill, and how waterway impacts will be minimized.
- Riparian Owners – Similar to the ownership documentation, AECOM will gather information from publicly available assessor websites to document riparian owners.
- Proof of Pre-Application Meeting – as noted above, AECOM will confirm permitting requirements with the WDNR and hold a virtual pre-application meeting if required by the WDNR. The meeting will be attended by AECOM's project manager and design engineer and is anticipated to take less than one hour. The email correspondence with the WDNR and/or meeting minutes prepared by AECOM will be included as an attachment to the application.
- Wetland Assessment Method – AECOM assumes wetland information can be pulled from the WDNR Surface Water Data Viewer and that a wetland delineation will not be required for the project.
- Endangered or Threatened Resources (ER) – AECOM's certified endangered resources personnel will conduct a review and prepare a certified ER review letter for inclusion in the permit application.
- Photographs – AECOM will prepare a photo log showing existing conditions of the project.
- Application Fee – we assume the City will submit the application fee.

We assume the following will not be required to be developed, and as such, preparation of these documents are excluded from our scope of services:

- Hydraulic analysis and flood study
- Wave calculations
- Historical and cultural resources review

AECOM will prepare draft documents in PDF for APRFMD review. **AECOM assumes there will be no comments from the APRFMD on the permit documents.** Final permit documents will be uploaded to the WDNR WAMs site. AECOM will assign a representative of the City as the applicant. We assume the City will provide the name of the representative, pay the permit fee, and submit the application. We assume the WDNR will forward the Chapter 30 permit to the US Army Corps of Engineers (USACE) if applicable.

Based on past experience, we assume the WDNR and USACE will not require revisions to the permit documents. If revisions are required, AECOM will discuss additional fees with the APRFMD.

### 1.2.1.2 City of Appleton Site Plan Review

AECOM will contact the Department of Public Works (DPW) and Economic Development to confirm permitting requirements. However, we anticipate the project will be required to go through the Site Plan Review application process. It is anticipated the permit application will include the preparation of:

- Application for Site Plan Review – the application form will describe property owner, application, and property information. This form will need to be signed by a representative of the APRFMD.
- Stormwater Utility Service Application – AECOM will complete the form.
- Calculations for Sanitary Sewer and Water – we assume this is not applicable for the project since changes to these utilities will not be conducted, aside from raising the rim of one sanitary sewer.
- Calculations for Storm Sewer design – we assume this is not applicable for the project since site drainage patterns will remain the same and capacity modifications to the storm sewer will not change. Although some

work such as sealing around a storm pipe in the existing retaining wall and providing rip rap protection around an outfall are proposed, these improvements should not modify the capacity of the storm sewer.

- Site Plans – the 90% plans developed in 2023 will be included in the permit application. AECOM assumes that the plans meet the requirements of the items included on the Site Plan checklist. If additional information is required, AECOM will discuss with APRFMD the additional fees needed to update the plans prior to submission.
- Architectural Plans – we assume this is not applicable.
- Permit Fee – We assume the APRFMD will be responsible for paying the permit fees.

AECOM will prepare draft documents in PDF for APRFMD review. **AECOM assumes there will be no comments from the APRFMD on the permit documents.** AECOM will submit permit documents (hard copy and electronically as required by the City). **AECOM assumes there will be no comments from the City on the permit documents.** If review comments are required to be addressed, AECOM will discuss additional fees with the APRFMD.

### 1.2.1.3 City of Appleton Stormwater Management Permit and Erosion Control Permit

We understand the Stormwater Management Permit and Erosion Control Plan and Permit are separate permitting processes from the Site Plan Review permit. AECOM will confirm permitting requirements with the City prior to development of permit documents. However, we anticipate the project will be required to go through these permit processes.

It is anticipated the Stormwater Management permit application will include the preparation of:

- Stormwater Management Permit Application – AECOM will complete the form, but the form will need to be signed by a representative of the APRFMD.
- Stormwater Management Plan – AECOM will prepare a Stormwater Management Plan that complies with the City of Appleton Ordinance and the Code of the State of Wisconsin. Because the stormwater and erosion control permitting process is separate for the City of Appleton, the SWMECP prepared for the WDNR permit will be modified to separate out the stormwater and erosion control pieces. We anticipate that stormwater management will not be required and that the project will be designed in accordance with criteria set forth in the WDNR Bureau of Watershed Management Program Guidance Runoff Management Policy Management Team Storm Water Management Program's Design Considerations for Post-Construction Performance Standards for Public Trails near Waterways or Wetlands, dated May 2017. Therefore, our scope does not include preparation of storm modeling calculations.
- Post-construction documents – as described below in Section 1.2.3, AECOM will prepare As-Built drawings. These plans will be submitted to the City along with a certification that the project was constructed in accordance with the Stormwater Management Plan. Deviations will be listed if changes were made during construction. The property limits for the project are not being modified, therefore, we assume the legal description for the project will remain unchanged and can be included in the Stormwater Management Practices Maintenance Agreement. No CSM will be performed to facilitate this requirement of the permit.
- Permit fee – We assume the APRFMD will be responsible for paying the permit fees.

It is anticipated the Erosion & Sediment Control Permit application will include the preparation of:

- Erosion & Sediment Control Permit Application – AECOM will complete the form, but the form will need to be signed by a representative of the APRFMD.
- Erosion & Sediment Control Plan – AECOM will prepare an Erosion & Sediment Control Plan that complies with the City of Appleton Municipal Code Chapter 24 and applicable State erosion control codes. Similar to above, the SWMECP prepared for the WDNR permit will be modified to separate out the stormwater and erosion control pieces. Because the project will disturb less than one acre, the Long-Term Stormwater Management Acknowledgement form will be prepared for APRFMD signature.
- Permit fee – We assume the APRFMD will be responsible for paying the permit fees.

AECOM will prepare draft documents in PDF for APRFMD review. **AECOM assumes there will be no comments from the APRFMD on the permit documents, however signed documents will be incorporated into the final permit documents.** AECOM will submit permit documents (hard copy and electronically as required by the City). **AECOM assumes there will be no comments from the City on the permit documents.** If review comments are required to be addressed, AECOM will discuss additional fees with the APRFMD.

#### 1.2.1.4 Exclusions

The 90% plans indicate a total disturbed area of 0.81 acres, therefore a Wisconsin Department of Natural Resources (WDNR) Construction Site Storm Water Notice of Intent (NOI) should not be required because site disturbance is not greater than 1 acre.

Additional permits which may be identified at a later date are not included in our scope of services to complete. We assume the contractor will be responsible for construction permits such as an electrical permit.

#### 1.2.2 Bidding

AECOM anticipates that the following items or activities will be developed for the bidding process:

- Project Manual containing:
  - Bidding and Contract Documents – AECOM assumes the City has standard contract documents that will be used for the project. AECOM will review and update the standard documents for use in the project. The 90% project plans developed in 2023 will be used for bidding.
  - Technical Specifications – AECOM's project plans will generally refer to the City of Appleton Standard Specifications as the project specifications. However, AECOM will develop specialty specifications for scope items not normally covered in the City specifications. We anticipate this will include a performance specification for the Fishing Pier reconstruction and the Kayak Launch relocation.
  - Bid Form – AECOM will develop a bid form listing bid items and quantities.
- Bidding
  - AECOM will prepare a draft bid invitation for APRFMD review. We assume the APRFMD will publish this as an advertisement for bids. Given the scope of the work, AECOM assumes a pre-bid meeting is not warranted and that prospective contractors can visit the site on their own.
  - AECOM will prepare one Addendum, if needed. For budgeting purposes, we have assumed this will include responding to up to 8 contractor questions, 20 hours of drafting time to address plan set revisions, plus internal reviews.
- AECOM will review bidding results and provide a Contractor selection recommendation via email.

Draft and final documents will be provided to the APRFMD in PDF format. We will incorporate one set of consolidated comments into the final versions. We assume the final documents will be distributed by the APRFMD to interested bidders through the City's Quest system.

#### 1.2.3 Construction Services

AECOM will incorporate comments obtained during permitting and bidding and create Issued for Construction Plans. The plans will be distributed to the contractor during a pre-construction meeting. AECOM will develop an agenda and prepare meeting minutes following the pre-construction meeting. We assume the meeting will be held at the APRFMD office.

During construction, AECOM will provide an experienced engineering technician to serve as a part-time Resident Project Representative (RPR) which generally includes the following services:

- Provide a part-time Resident Project Representative (RPR) services during construction events as project requirements dictate to evaluate and document compliance with the Construction Documents. The contractor will be responsible for developing a project schedule. However, for budgeting purposes, we have assumed the RPR

will be onsite during the activities listed below. One day is assumed to be **8-hours**, including drive time from either our Oshkosh or Green Bay office locations and completion of follow up paperwork (daily report). AECOM will make an attempt to combine site visits between different tasks where applicable to minimize project costs. Our estimate of hours assumes AECOM will be provided with 72-hours notice by the contractor of when site visits will be required. Last minute changes or cancelation in the contractor schedule may result in additional fees being incurred.

- Installation of erosion control, assumed 2 days.
  - Demolition (light poles, trees, fishing platform, kayak launch, topsoil stripping, and pavement removals), assumed 5 days.
  - Grading and Paving the multi-use path and sidewalks, assumed 5 days.
  - Installation of electrical conduit, light poles, and bases, assumed 3 days.
  - Reconstruction of the fishing platform and retaining wall, assumed 3 days.
  - Relocation of the kayak launch, assumed 1 day.
  - Shoreline restoration (placement of rip rap and plantings), assumed 5 days.
  - Punch list walk through (initial and final), assumed 2 days.
- Coordinate with the Contractor's survey crews to provide stakeout information and cut sheets for Contractor's use during construction.
  - Review contractor's progress schedule, schedule of submittals/submissions, and schedule of values prepared by contractor, and consult with the owner concerning their appropriateness.
  - Review contractor submittals and material samples for conformance with contract documents. For budgeting purposes we assume 8 submittals will need to be reviewed.
  - Maintain correspondence files, reports of job conferences and meetings, shop drawings and sample submissions, reproductions or original contract documents including all addenda, change orders, field orders, and additional drawings issued subsequent to the execution of the contract.
  - Maintain reports for the construction contractor activities; weather conditions when on the job site; data relative to questions of extras or deductions; list of visiting officials, representatives of manufacturers, fabricators, suppliers and distributors; daily activities; decisions; observations in general; and specific observations in more detail as in the case of observing test procedures.
  - Review applications for payment from the contractor for compliance with the established procedure for their submission, and forward with recommendations to the Owner noting, in particular, relation to the schedule of values, work completed, materials and equipment delivered at the site, but not incorporated in the work. For budgeting purposes, we have assumed 4 pay applications will need to be reviewed.
  - Provide vehicles, necessary equipment, and material for construction observation services.
  - Conduct a final walk through in the company of the Owner and contractor and prepare a final list of items to be completed or corrected.

**AECOM assumes the contractor will be responsible for collecting As-Built information. AECOM will incorporate As-Built information from the contractor in the form of marked up PDF drawings. A site specific As-Built survey is not included in our scope of services. Preparation of As-Construction drawings in AutoCAD is not included in our scope of services. AECOM will provide an As-Built Construction Documentation Report containing the drawings and other pertinent information described above.**

In development of our proposal and associated fees, we have assumed the following exclusions:

- Weekly status meetings will not be required. AECOM's representative will communicate directly with the contractor on project status and work schedule.

- We understand the City will hire a separate on-site material testing firm to document construction and compliance or noncompliance with project plans and specifications. Our scope of services does not include materials testing.
- We understand the City performs erosion control inspections of their projects. AECOM will conduct a few site visits as noted above to observe erosion control features have been installed in accordance with the plans, however weekly observations or observations after rain events have not been included in our scope.
- We understand the City performs its own electrical inspection. AECOM will conduct a few site visits as noted above related to observation of electrical installation, however detailed inspections and testing will not be performed.

AECOM has the expertise to perform these excluded services if necessary and can discuss additional fees associated with performing these services if requested by the APRFMD.

## 1.3 Schedule

We understand AECOM's proposal will need to be reviewed by the Parks Board on February 12 and will be placed on the Common Council Agenda for February 21. We understand the APRFMD would like to bid the project in winter 2024 so the project can be constructed in summer 2024. Permitting approvals may have an impact on the construction schedule. However, AECOM will work on permitting and bidding items concurrently. The following schedule assumes authorization to proceed is received by February 26, 2024.

### Permitting

- **Week of February 26, 2024** – discuss permitting requirements with regulatory agencies. Hold pre-application meetings if required.
- **March 4 to 29, 2024** – prepare permit application materials.
- **Week of April 1, 2024** – APRFMD review of permit documents.
- **Week of April 8, 2024** – submittal of permit documents
  - WDNR Chapter 30 Permit – this process typically takes 135 days for the WDNR to review. The Army Corps of Engineers review is typically performed concurrent with the WDNR review, and may take several months. For planning purposes, the project team may want to assume permit approvals may not be received until **September 2024** or later. Because this permit is specific to shoreline items, AECOM recommends the contractor phases the work so upland trail construction is completed first and shoreline restoration, reconstruction of the fishing platform, and reconstruction of the kayak launch be performed in the second phase of the project.
  - City Site Plan Review Permit – we understand site plan application materials are due to the City by noon on Tuesdays for incorporation into the following week's Site Plan Meeting held on Wednesday's. **AECOM's proposal assumes the permits will be approved upon initial submission, however, for planning purposes, the project team may want to assume permit approvals will be received by the end of June 2024.**
  - Storm Water Permit and Erosion Control Permit – **AECOM's proposal assumes the permits will be approved upon initial submission, however, for planning purposes, the project team may want to assume permit approvals will be received by the end of June 2024.**

### Bidding

- **Week of February 26, 2024** – Receive City standard contract documents.
- **February 26 to March 15, 2024** – prepare bid documents.
- **Week of March 18, 2024** – APRFMD review of bid documents.
- **Week of March 25, 2024** – Finalize bid documents and post on Quest
- **April 5, 2024** – Receive bidder questions

- **April 12, 2024** – Provide Addendum 1 addressing bidder questions
- **April 19, 2024** – Receive final bids
- **Week of April 22, 2024** – Review bids and provide contractor selection recommendations.
- **May 2024** – Contractor onboarding (assumed to be performed by the APRFMD).

## Construction

- **Mid-June 2024** – Hold pre-construction meeting. Date is flexible depending on contractor, APRFMD, and AECOM availability.
- **End of June 2024** – Assume upland related permitting work is approved.
- **Early July 2024** – Start upland work. Date is flexible depending on contractor.
- **Early September 2024** – Assume shoreline related permitting work is approved.
- **October 2024** (tentative, based on contractor schedule) – Substantial completion.
- **November 2024** (tentative, based on contractor schedule) – Submit As-Built drawings to the City of Appleton to close out the stormwater permit. Provide Construction Documentation Report to APRFMD.

## 1.4 Fees

The services to be performed upon acceptance of this proposal are described in the preceding scope of services section and are based on our understanding of the project. AECOM proposes to perform the scope of services on a time and materials basis for an estimated fee of **\$88,400**. Actual invoice amounts may vary due to many factors including, but not limited to, changes in project requirements or alterations to the scope of services. We will not, however, change our scope of services or exceed the above amount without your prior approval.

Invoice amounts will be based on actual units used and will include travel costs and other expenses incurred by AECOM in rendering the services described. Invoicing will be conducted monthly.

## 1.5 Terms and Conditions

AECOM recommends performing the services described in this proposal using the enclosed previously approved terms and conditions dated October 21, 2019.

We appreciate this opportunity to present this proposal. If you have questions related to the scope of services described in this proposal, please contact Shannon Allen at 262-719-9746 or [Shannon.Allen2@aecom.com](mailto:Shannon.Allen2@aecom.com).

Yours sincerely,

AECOM Technical Services, Inc.



Shannon Allen, P.E. (WI)  
Civil Engineer / Project Manager  
AECOM



Dave Lowry, P.E. (IL, MO)  
Associate Vice President  
AECOM

Encl. Previously Negotiated Consulting Services Agreement



## CONSULTING SERVICES AGREEMENT

This Consulting Services Agreement ("Agreement") effective this 21 day of October, 2019, is by and between the City of Appleton, 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 Appleton  
Parks, Recreation and Facilities Management  
1819 East Witzke Boulevard  
Appleton, WI 54914  
Attn: Tom Flick

Claims-related notices shall be copied to:  
City of Appleton  
Legal Services Department  
100 North Appleton Street  
Appleton, WI 54911-4799

#### TO AECOM:

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, AND 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 s 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.

## 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. 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").

**11. 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.

## **12. INSURANCE**

12.1 AECOM will maintain the following insurance coverages and amounts and as further detailed in Attachment A:

- 12.1.1 Workers Compensation insurance as required by Law;
- 12.1.2 Employer's Liability insurance with coverage of \$1,000,000 each accident/employee;
- 12.1.3 Commercial General Liability insurance with coverage of \$2,000,000 per occurrence/aggregate;
- 12.1.4 Automobile Liability insurance with coverage of \$1,000,000 combined single limit; and
- 12.1.5 Professional Liability insurance with coverage of \$2,000,000 per claim/aggregate.

## **13. INDEMNITY**

13.1 AECOM agrees to indemnify, defend and hold harmless Client, its officers, officials, directors and employees, from and against any and all liability, loss, expenses, costs or damage for bodily injury or property damage ("Claims"), including reasonable attorney's fees, arising out of the activities and services provided as described herein, to the extent caused by any negligent act or omission by AECOM, anyone directly or indirectly employed by AECOM, or anyone for whom AECOM may be legally liable, except where caused by the negligence or willful misconduct of the Client.

13.2 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 Client requires such Contractors to provide to the Client.

**14. CONSEQUENTIAL DAMAGES WAIVER** IN NO EVENT SHALL EITHER PARTY, THEIR PARENTS, AFFILIATES AND 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.

**15. 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.

**16. DISPUTES RESOLUTION**

16.1 Either Party may initiate mediation as 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.

16.2 If the Parties cannot resolve the dispute through negotiation or mediation, 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.

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

**18. TERMINATION**

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

18.2 This Agreement may be terminated for cause by either Party if the other Party materially fails to perform its obligations under this Agreement, does not commence correction of such non-performance within 10 business days of receipt of written notice and/or fails to diligently complete such correction thereafter. The respective rights and obligations of the Parties predating such termination shall survive termination of this Agreement.

**19. ASSIGNMENT**

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

19.2 Notwithstanding Section 19.1 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.

**20. 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.

**21. 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.

**22. 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), 12 (Insurance), 13 (Indemnity), 14 (Consequential Damages Waiver), 15 (Risk Allocation), 16 (Disputes Resolution), 17 (Governing Law), 19 (Assignment), 20 (Parties in Interest) or 22 (Survival) shall survive termination of this Agreement.

**23. 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.

**24. 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.

**25. ORDER OF PRECEDENCE**

<b>EXHIBIT C</b>	Change Orders
<b>Consulting Services Agreement</b>	Article 26
<b>Consulting Services Agreement</b>	Articles 1 through 25 and 27
<b>EXHIBIT B</b>	Compensation and Payment
<b>EXHIBIT A</b>	Services
<b>Other contract documents</b>	

**26. SPECIAL TERMS AND CONDITIONS**

None

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**27. 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., Consultant:**

Witness: *Amy S. Kistner*  
Printed Name: Amy S. Kistner

By: *Thomas J. Holtan*  
Printed Name: Thomas J. Holtan, P.E.  
Title: Associate Vice President

Witness: *Amy S. Kistner*  
Printed Name: Amy S. Kistner

By: *Terrance A. Peterson*  
Printed Name: Terrance A. Peterson, P.E.  
Title: Senior Project Manager

**City of Appleton, Client:**

Witness: *James M. Giesbach*  
Printed Name: James M. Giesbach

By: *Timothy M. Hanna*  
Printed Name: Timothy M. Hanna, Mayor

Witness: *Kami Lynch*  
Printed Name: Kami Lynch

By: *Kami Lynch*  
Printed Name: Kami Lynch, City Clerk

Provision has been made to pay the liability that will accrue under this contract.

*Anthony D. Saucerman*  
Anthony D. Saucerman, Finance Director

Approved as to form:  
*James P. Walsh*  
James P. Walsh, City Attorney

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