

March 8, 2021

Mr. Michael Brofka
Water System Superintendent
City of West Allis
6300 McGeoch Avenue
West Allis, WI 53219

***Subject: Proposal for Professional Services
America's Water Infrastructure Act (AWIA)
Emergency Response Plan
West Allis, Wisconsin
B&W Project Number 200578.31***

Dear Mr. Brofka:

Thank you for inviting Baxter & Woodman to propose professional services for this Project. This proposal responds to your request, including a description of our proposed Scope of Services and engineering fee information.

PROJECT DESCRIPTION

This Project involves updating West Allis Water Utility's Emergency Response Plan (ERP). The ERP will be updated to include the needed information from the Utility's recently completed Risk and Resilience Assessment of the City's water system.

On October 23, 2018, the America's Water Infrastructure Act (AWIA) was signed into law. This law requires all community water systems serving more than 3,300 people to complete a Risk and Resilience Assessment (RRA) on their system. Because the Utility serves a population greater than 50,000 people (but less than 100,000), West Allis was required to submit certification of completion of its AWIA Risk and Resilience Assessment by the end of December 2020.

Included in the AWIA requirements is the ERP certification of completion six months after the RRA deadline. This certification for West Allis is to be submitted to USEPA by June 30, 2021.

SCOPE OF WORK

Water System Emergency Response Plan

1. EMERGENCY RESPONSE PLAN UPDATE
 - A. REPORT - Update the City Water Utility's ERP using the USEPA ERP template. The results of the Utility's Risk and Resilience Assessment will be used in the updated ERP with the most likely response scenarios.
 - i. Meet with the City's Emergency Response Planning Team/Committee including representative emergency response personnel from the community and water staff. The purpose of this meeting is to review the Risk and Resilience Assessment and the ERP with the personnel that would be involved in the case of an emergency, and identify the proper protocols for involvement of each of the involved emergency services.
 - ii. Finalize the ERP with feedback from the City. A digital version and two hard copies of the final ERP report will be provided to the City.
 - B. SUBMIT EMERGENCY RESPONSE PLAN - Assist the Water Utility in submitting the required EPA certification for the ERP on or before June 30, 2021.

CITY RESPONSIBILITIES

City, at its expense, shall do the following in a timely manner so as not to delay the Services.

1. **Information/Reports:** Furnish the Baxter & Woodman project team with relevant project-related information, all of which Baxter & Woodman may rely upon without independent verification in performing the Services.
2. **Representative:** Designate a representative for the Project who shall have the authority to transmit instructions, receive information, interpret and define City's policies and make decisions with respect to the Services.
3. **Decisions:** Provide all criteria and full information as to City requirements for the Project, obtain (with Baxter & Woodman's assistance, if applicable) necessary approvals, 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 the Baxter & Woodman project team to perform the Services.
4. **Other Responsibilities:** Pay directly any required fees associated with the Project.

SCHEDULE

The ERP update will be completed by May 31, 2021 in advance of the Certificate of Completion submittal to USEPA by June 30, 2021.

CONSULTING SERVICES FEE

City shall pay the Engineer for the services performed or furnished as stated in the above scope of services for the lump sum amount of **\$8,000**.

If this Proposal is acceptable, **please sign, and return one copy for our files**. The same Standard Terms and Conditions that applied to the RRA Project are attached to this Proposal.

Sincerely,

BAXTER & WOODMAN, INC.
CONSULTING ENGINEERS



Derek J. Wold, P.E., BCEE
Executive Vice President



Patrick S. Planton, P.E., MBA
Project Manager

Attachment

City of West Allis, Wisconsin

ACCEPTED BY: _____

TITLE: _____

DATE: _____

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STANDARD TERMS AND CONDITIONS

Agreement - These Standard Terms and Conditions, together with the letter proposal, constitute the entire integrated agreement between the West Allis Water Utility (Owner) and Baxter & Woodman, Inc. (BW) and take precedence over any other provisions between the Parties. These terms may be amended, but only if both parties consent in writing.

Owner's Responsibility - Provide BW with all criteria and full information for the Project. BW will rely, without liability, on the accuracy and completeness of all information provided by the Owner including its consultants, contractor, specialty contractors, manufacturers, suppliers and publishers of technical standards without independently verifying that information. The Owner warrants that all known hazardous materials on or beneath the site have been identified to BW. BW and their consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, unidentified or undisclosed hazardous materials unless this service is set forth in the proposal.

Schedule for Rendering Services - The agreed upon services shall be completed within a reasonable amount of time allowing Owner to meet its key DNR project milestones as set forth in the Project Schedule summarized in the letter proposal. If BW is hindered, delayed or prevented from performing the services as a result of any act or neglect of the Owner or force majeure, BW's work shall be extended and the rates and amounts of BW's compensation shall be equitably adjusted in writing executed by all Parties.

Invoices and Payments - The fees to perform the proposed scope of services constitute BW's estimate to perform the agreed upon scope of services. Circumstances may dictate a change in scope, and if this occurs, an equitable adjustment in compensation and time shall be made by all parties. No service for which added compensation will be charged will be provided without first obtaining written authorization from the Owner.

Opinion of Probable Construction Costs - BW's opinion of probable construction costs represents its reasonable judgment as a professional engineer. Owner acknowledges that BW has no control over construction costs of contractor's methods of determining prices, or over competitive bidding, of market conditions. BW cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from BW's opinion of probable construction costs.

Standards of Performance - (1) The standard of care for all services performed or furnished by BW, will be completed with the same care and skill ordinarily used by professionals practicing under similar circumstances, at the same time and in the same locality on similar projects. (2) BW shall be responsible for the technical accuracy of its services and documents; (3) BW shall use reasonable care to comply with all applicable laws and regulations and Owner-mandated standards; (4) BW may employ such sub-consultants as BW deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objection by Owner; (5) BW shall not supervise, direct, control, or have authority over any contractor work (it is understood by the parties that sub-consultants are not considered "contractors"), nor have authority over or be responsible for the means, methods, techniques sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety of the site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work; (6) BW neither guarantees the performance of any contractor nor assumes responsibility for contractor's failure to furnish and perform the work in accordance with the contract documents; (7) BW is not responsible for the acts or omissions of any contractor, subcontractor, or supplier, or any of their agents or employees or any other person at the site or otherwise furnishing or performing any work; (8) Shop drawing and submittal review by BW shall apply to only the items in the submissions and only for the purpose of assessing if upon installation or incorporation in the Project work they are generally consistent with the construction documents. Owner agrees that the contractor is solely responsible for the submissions (regardless of the format in which provided, i.e. hard copy or electronic transmission) and for compliance with the construction documents. Owner further agrees that BW's review and action in relation to these submissions shall not constitute the provision of means, methods, techniques, sequencing or procedures of construction or extend to safety programs or precautions. BW's consideration of a component does not constitute acceptance of the assembled item; (9) BW's site observation during construction shall be at the times agreed upon in the Project scope. Through standard, reasonable means, BW will become generally familiar with observable completed work. If BW observes completed work that is inconsistent with the construction documents, that information shall be communicated to the contractor and Owner for them to address.

Insurance - BW will maintain insurance coverage with the following limits and Certificates of Insurance will be provided to the Owner upon written request:

Worker's Compensation:	Statutory Limits	Excess Umbrella Liability:	\$5 million per claim and aggregate
General Liability:	\$1 million per claim	Professional Liability:	\$5 million per claim
	\$2 million aggregate		\$5 million aggregate
Automobile Liability:	\$1 million combined single limit		

BW shall ensure the sub-consultants they employ on this Project maintain insurance coverage with similar limits to those set forth above. Any claim against BW arising out of this Agreement may be asserted by the Owner, but only against the entity and not against BW's directors, officers, shareholders or employees, none of whom shall bear any liability and may not be subject to any claim.

Indemnification and Mutual Waiver – (1) To the fullest extent permitted by law, BW shall indemnify and hold harmless the Owner, which shall include such party's officers and employees, from claims, costs, losses, and damages arising out of or relating to the Project, provided that such claims, costs, losses, or damages are attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by the indemnifying party's negligent acts or omissions (2) In the event claims, losses, damages or expenses are caused by the joint or concurrent fault of BW and Owner, they shall be borne by each party in proportion to their respective fault, as determined by a court of competent jurisdiction; (3) The Owner acknowledges that BW is a business corporation and not a professional service corporation, and further acknowledges, accepts, and agrees that BW's officers, directors, and employees shall not be subject to any personal liability for services provided under this Agreement.

Nothing contained within this Agreement is intended to be a waiver or estoppel of the City or its insurer to rely upon the limitations, defenses and immunities contained within Wisconsin Statutes sections 893.80 and 345.05. To the extent that indemnification is available and enforceable, the City or its insurer shall not be liable in indemnity, contribution or otherwise for an amount greater than the limits of liability for municipal claims established by Wisconsin law.

Termination - Either party may terminate this Agreement upon ten (10) business days' written notice to the other party in the event of failure by the other party to perform with the terms of the Agreement through no fault of the terminating party. A condition precedent to termination shall be an opportunity for the Parties to meet. If this Agreement is terminated, Owner shall receive reproducible copies of drawings, developed applications and other completed documents. Owner shall be liable for, and promptly pay for all services and reimbursable expenses rendered to the date of suspension/termination of services.

Use of Documents - BW documents are instruments of service and BW retains ownership and property interest (including copyright and right of reuse). Owner shall not rely on such documents unless in printed form, signed or sealed by BW or its consultant. Electronic format of BW's design documents may differ from the printed version and BW bears no liability for errors, omissions or discrepancies. Reuse of BW's design documents is prohibited and Owner shall defend and indemnify BW from all claims, damages, losses and expenses, including attorney's fees, consultant/expert fees, and costs arising out of or resulting from said reuse. Nothing herein shall restrict Owner's obligations pursuant to the Wisconsin Open Records law. BW's document retention policy will be followed upon Project closeout, and project documents will be kept for a period of 14 years after Project closeout.

Successors, Assigns, and Beneficiaries – Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or BW to any third party, including any lender, Contractor, Contractor's subcontractor, supplier, manufacturer, other individual, entity or public body, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement are for the sole and exclusive benefit of the Owner and BW and not for the benefit (intended, unintended, direct or indirect) of any other entity or person.

Dispute Resolution - All disputes between the Parties shall first be negotiated between them for a period of thirty (30) days. If unresolved, disputes shall be then submitted to mediation as a condition precedent to litigation. If mediation is unsuccessful, litigation in the county where the Project is pending shall be pursued.

Miscellaneous Provisions – (1) This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located. (2) All notices must be in writing and shall be deemed effectively served upon the other party when sent by certified mail, return receipt requested; (3) All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason; (4) Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Owner and BW, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close to expressing the intention of the stricken provision; (5) A party's non-enforcement of any provision shall not constitute a waiver of the provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement; (6) To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of substantial completion, which is the point where the Project can be utilized for the purposes for which it was intended.

**CITY OF WEST ALLIS
RESOLUTION R-2020-0524**

**RESOLUTION TO AUTHORIZE THE DIRECTOR OF PUBLIC WORKS TO SIGN A
PROPOSAL FOR PROFESSIONAL SERVICES AND ALL OTHER RELATED
DOCUMENTS FOR THE HIRING OF BAXTER & WOODMAN CONSULTING
ENGINEERS TO MEET THE REQUIRED MANDATE BY THE US
ENVIRONMENTAL PROTECTION AGENCY AS IT RELATES TO A COMPLETING
A RISK AND RESILIENCE ASSESSMENT FOR THE CITY'S WATER UTILITY IN
THE AMOUNT NOT TO EXCEED \$24,000**

WHEREAS, WHEREAS, the US Environmental Protection Agency has given a complete timeline for the requirements of the assessment in which the City of West Allis must certify the risk and resilience assessment no later than December 31, 2020; and,

WHEREAS, the City has determined that Baxter & Woodman has extensive experience with the City's water system and staff that will benefit in the completion of the study; and,

WHEREAS, a portion of the funds, \$20,000.00, was budgeted and is available in account number 501-2901-537.30-02 and \$4,000.00 will need to be transferred from the salary account 501-2710-537.11-01; and,

WHEREAS, the City Attorney's Office has reviewed and approved the agreement; and,

NOW THEREFORE, BE IT RESOLVED, by the Common Council of the City of West Allis that the Director of Public Works is authorized to execute the Baxter & Woodman proposal along with other documents related to the risk and resilience assessment in the amount not to exceed \$24,000.

SECTION 1: **ADOPTION** "R-2020-0524" of the City Of West Allis Municipal Resolutions is hereby *added* as follows:

ADOPTION

R-2020-0524(*Added*)

BE IT FURTHER RESOLVED that the appropriate City officials are directed and authorized to fund this effort by making the appropriate transfer of budgeted water utility funds to the appropriate accounts and take whatever other act
BE IT FURTHER RESOLVED that the appropriate City officials are directed and authorized to fund this effort by making the appropriate transfer of budgeted water utility funds to the appropriate accounts and take whatever other actions are required to fund the work from the West Allis Water Utility
ions are required to fund the work from the West Allis Water Utility

PASSED AND ADOPTED BY THE CITY OF WEST ALLIS COUNCIL SEPTEMBER 15, 2020.

	AYE	NAY	ABSENT	ABSTAIN
Ald. Angelito Tenorio	<u>X</u>	_____	_____	_____
Ald. Vince Vitale	<u>X</u>	_____	_____	_____
Ald. Tracy Stefanski	<u>X</u>	_____	_____	_____
Ald. Marty Weigel	<u>X</u>	_____	_____	_____
Ald. Suzzette Grisham	<u>X</u>	_____	_____	_____
Ald. Danna Kuehn	<u>X</u>	_____	_____	_____
Ald. Thomas Lajsic	<u>X</u>	_____	_____	_____
Ald. Dan Roadt	<u>X</u>	_____	_____	_____
Ald. Rosalie Reinke	<u>X</u>	_____	_____	_____
Ald. Kevin Haass	<u>X</u>	_____	_____	_____

Presiding Officer

Attest

Rebecca Grill, City Clerk, City Of West Allis

Dan Devine, Mayor City Of West Allis



August 26, 2020

Mr. Michael Brofka
Water System Superintendent
City of West Allis
6300 McGeoch Avenue
West Allis, WI 53219

***Subject: Proposal for Professional Services
America's Water Infrastructure Act (AWIA) Risk and Resilience Assessment
West Allis, Wisconsin
B&W Project Number 200578.10***

Dear Mr. Brofka:

On October 23, 2018, the America's Water Infrastructure Act (AWIA) was signed into law. This law requires all community water systems (CWS) serving more than 3,300 people perform a Risk and Resilience Assessment (RRA) on their system. These risk and resilience assessments involve assessing the risks of every part of the water system from supply to distribution including physical, cyber, and financial systems.

Water utilities, such as the City of West Allis, with a Population Served greater than 50,000 and less than 99,999 are required to submit certification of completion of its AWIA Risk and Resilience Assessment by December 31, 2020. The Emergency Response Plan (ERP) certification of completion is due six months after the Risk and Resilience Assessment deadline. Every five years, your utility must review the Risk and Resilience Assessment and resubmit a certification to the USEPA. We would like to help you and the City of West Allis (Client) with this risk and resilience assessment, and provide you with a useful document and list of recommendations. We offer this scope, schedule, and fee for your consideration.

SCOPE OF WORK

Water System Risk and Resiliency Assessment

1. PROJECT MANAGEMENT
 - A. Plan, schedule, and control activities to complete the Project. These activities include, but are not limited to, budgeting, scheduling, and monitoring the scope of services.

- B. Submit a monthly status report via email describing tasks completed the previous month and outlining goals for the subsequent month.

2. PROJECT MEETINGS

- A. ATTEND KICKOFF MEETING – Meet with your Risk and Resilience Assessment Team to establish your goals to meet the AWIA requirements and discuss components that will be necessary to complete the Project.
- B. MEETINGS – Conduct up to two (2) additional meetings with the Client staff at times during the Project to review project status, assessments, and recommendations.

3. SYSTEM ANALYSIS

- A. RESEARCH EXISTING INFORMATION – Review existing information available for the water systems and identify what additional information needs to be gathered by Client. Information requested will include Client’s previous Vulnerability Assessment.
- B. SITE VISIT AND EVALUATE EXISTING INFORMATION – Conduct a detailed physical site visit with Water Operations staff, including an analysis of water system facilities. Evaluate gathered information and determine what is relevant to the Risk and Resilience Assessment for physical, financial, and cybersecurity assessments. Evaluate gathered information and determine what is relevant to the Risk and Resilience Assessment.
- C. DETERMINE THREATS – Assess what malevolent acts or baseline threats are most likely to affect your identified critical assets, including man-made or natural disasters. Identify potential adverse consequences and the likelihoods of such threats.
- D. CYBERSECURITY RISK AND RESILIENCE ASSESSMENT – Concentric Integration LLC, a wholly owned subsidiary of Baxter & Woodman Inc., will conduct an onsite review of Client’s existing supervisory control and data acquisition (SCADA) system and related cybersecurity environment. The cybersecurity assessment will include an analysis of Client’s water billing software. After each category is reviewed, Client will be presented with an evaluation of their relative level of resiliency and risk graded as “High”,

“Medium”, or “Low” risk. Appropriate recommendations shall be provided to improve grades to “Low” risk status.

- E. **PRIORITIZE RISK** – Identify potential adverse consequences for critical asset-threat pairs, and provide a financial cost impact range for specific assets. Develop a prioritized plan for risk reduction.
- F. **PREPARE ASSET AND THREAT INVENTORY** – Prepare a summary of critical assets, threats, vulnerabilities, existing countermeasures, and potential remediation for Client’s review. This analysis will be prepared in our own template that meets the standards established by the AWWA J100 Standard.

4. **RISK AND RESILIENCE ASSESSMENT REPORT**

- A. **REPORT** – Provide a draft report that includes a summary of asset assessments and recommended schedule of improvements necessary to address vulnerabilities identified as part of the assessment. The final report will include Client’s comments from the draft report.
- B. **SUBMIT RISK AND RESILIENCE PLAN CERTIFICATION** – Assist Client with necessary steps for submittal of Risk and Resilience Assessment certification of completion to the USEPA by the deadline.

CLIENT RESPONSIBILITIES

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

- 1. **Information/Reports:** Furnish the Baxter & Woodman project team with relevant project-related information, all of which Baxter & Woodman may rely upon without independent verification in performing the Services.
- 2. **Representative:** 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.
- 3. **Decisions:** Provide all criteria and full information as to Client requirements for the Project, obtain (with Baxter & Woodman’s assistance, if applicable) necessary approvals, 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 the Baxter & Woodman project team to perform the Services.

4. **Other Responsibilities:** Pay directly any required fees associated with the Project.

SCHEDULE

The Risk and Resilience Assessment will be completed by November 30, 2020 in advance of the Certificate of Completion submittal to USEPA by December 31, 2020.

CONSULTING SERVICES FEE

Client shall pay the Engineer for the services performed or furnished as stated in the above scope of services for the lump sum amount of **\$24,000**.

If this Proposal is acceptable, **please sign, and return one copy for our files**. The attached Standard Terms and Conditions apply to this Proposal.

Sincerely,

BAXTER & WOODMAN, INC.
CONSULTING ENGINEERS



Derek J. Wold, P.E., BCEE
Executive Vice President



Patrick S. Planton, P.E., MBA
Project Manager

Attachment

City of West Allis, Wisconsin

ACCEPTED BY: David Weyhing

TITLE: Director

DATE: 10/1/20

STANDARD TERMS AND CONDITIONS

Agreement - These Standard Terms and Conditions, together with the letter proposal, constitute the entire integrated agreement between the West Allis Water Utility (Owner) and Baxter & Woodman, Inc. (BW) and take precedence over any other provisions between the Parties. These terms may be amended, but only if both parties consent in writing.

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Schedule for Rendering Services - The agreed upon services shall be completed within a reasonable amount of time allowing Owner to meet its key DNR project milestones as set forth in the Project Schedule summarized in the letter proposal. If BW is hindered, delayed or prevented from performing the services as a result of any act or neglect of the Owner or force majeure, BW's work shall be extended and the rates and amounts of BW's compensation shall be equitably adjusted in writing executed by all Parties.

Invoices and Payments - The fees to perform the proposed scope of services constitute BW's estimate to perform the agreed upon scope of services. Circumstances may dictate a change in scope, and if this occurs, an equitable adjustment in compensation and time shall be made by all parties. No service for which added compensation will be charged will be provided without first obtaining written authorization from the Owner.

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Standards of Performance - (1) The standard of care for all services performed or furnished by BW, will be completed with the same care and skill ordinarily used by professionals practicing under similar circumstances, at the same time and in the same locality on similar projects. (2) BW shall be responsible for the technical accuracy of its services and documents; (3) BW shall use reasonable care to comply with all applicable laws and regulations and Owner-mandated standards; (4) BW may employ such sub-consultants as BW deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objection by Owner; (5) BW shall not supervise, direct, control, or have authority over any contractor work (it is understood by the parties that sub-consultants are not considered "contractors"), nor have authority over or be responsible for the means, methods, techniques sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety of the site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work; (6) BW neither guarantees the performance of any contractor nor assumes responsibility for contractor's failure to furnish and perform the work in accordance with the contract documents; (7) BW is not responsible for the acts or omissions of any contractor, subcontractor, or supplier, or any of their agents or employees or any other person at the site or otherwise furnishing or performing any work; (8) Shop drawing and submittal review by BW shall apply to only the items in the submissions and only for the purpose of assessing if upon installation or incorporation in the Project work they are generally consistent with the construction documents. Owner agrees that the contractor is solely responsible for the submissions (regardless of the format in which provided, i.e. hard copy or electronic transmission) and for compliance with the construction documents. Owner further agrees that BW's review and action in relation to these submissions shall not constitute the provision of means, methods, techniques, sequencing or procedures of construction or extend to safety programs or precautions. BW's consideration of a component does not constitute acceptance of the assembled item; (9) BW's site observation during construction shall be at the times agreed upon in the Project scope. Through standard, reasonable means, BW will become generally familiar with observable completed work. If BW observes completed work that is inconsistent with the construction documents, that information shall be communicated to the contractor and Owner for them to address.

Insurance - BW will maintain insurance coverage with the following limits and Certificates of Insurance will be provided to the Owner upon written request:

Worker's Compensation:	Statutory Limits	Excess Umbrella Liability:	\$5 million per claim and aggregate
General Liability:	\$1 million per claim	Professional Liability:	\$5 million per claim
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Automobile Liability:	\$1 million combined single limit		

BW shall ensure the sub-consultants they employ on this Project maintain insurance coverage with similar limits to those set forth above. Any claim against BW arising out of this Agreement may be asserted by the Owner, but only against the entity and not against BW's directors, officers, shareholders or employees, none of whom shall bear any liability and may not be subject to any claim.

Indemnification and Mutual Waiver – (1) To the fullest extent permitted by law, BW shall indemnify and hold harmless the Owner, which shall include such party's officers and employees, from claims, costs, losses, and damages arising out of or relating to the Project, provided that such claims, costs, losses, or damages are attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by the indemnifying party's negligent acts or omissions (2) In the event claims, losses, damages or expenses are caused by the joint or concurrent fault of BW and Owner, they shall be borne by each party in proportion to their respective fault, as determined by a court of competent jurisdiction; (3) The Owner acknowledges that BW is a business corporation and not a professional service corporation, and further acknowledges, accepts, and agrees that BW's officers, directors, and employees shall not be subject to any personal liability for services provided under this Agreement.

Nothing contained within this Agreement is intended to be a waiver or estoppel of the City or its insurer to rely upon the limitations, defenses and immunities contained within Wisconsin Statutes sections 893.80 and 345.05. To the extent that indemnification is available and enforceable, the City or its insurer shall not be liable in indemnity, contribution or otherwise for an amount greater than the limits of liability for municipal claims established by Wisconsin law.

Termination - Either party may terminate this Agreement upon ten (10) business days' written notice to the other party in the event of failure by the other party to perform with the terms of the Agreement through no fault of the terminating party. A condition precedent to termination shall be an opportunity for the Parties to meet. If this Agreement is terminated, Owner shall receive reproducible copies of drawings, developed applications and other completed documents. Owner shall be liable for, and promptly pay for all services and reimbursable expenses rendered to the date of suspension/termination of services.

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Successors, Assigns, and Beneficiaries - Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or BW to any third party, including any lender, Contractor, Contractor's subcontractor, supplier, manufacturer, other individual, entity or public body, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement are for the sole and exclusive benefit of the Owner and BW and not for the benefit (intended, unintended, direct or indirect) of any other entity or person.

Dispute Resolution - All disputes between the Parties shall first be negotiated between them for a period of thirty (30) days. If unresolved, disputes shall be then submitted to mediation as a condition precedent to litigation. If mediation is unsuccessful, litigation in the county where the Project is pending shall be pursued.

Miscellaneous Provisions - (1) This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located. (2) All notices must be in writing and shall be deemed effectively served upon the other party when sent by certified mail, return receipt requested; (3) All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason; (4) Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Owner and BW, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close to expressing the intention of the stricken provision; (5) A party's non-enforcement of any provision shall not constitute a waiver of the provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement; (6) To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of substantial completion, which is the point where the Project can be utilized for the purposes for which it was intended.