

City of West Allis

CITY OF WEST ALLIS AGREEMENT FOR PROFESSIONAL SERVICES

CONSULTANT: The Horton Group

DEPARTMENT: The City of West Allis, Department of Administration

PROJECT: Professional Services – Employee Benefit Consulting Services

1.01 BASIC SERVICES

- A. Basic Services of CONSULTANT to be provided under this AGREEMENT are enumerated in the City's RFP 17-007, including the Scope of Services attached hereto in Exhibit A, and made a part of this Agreement by reference.
- B. Also attached hereto, as Exhibits B and C are the CONSULTANT'S response to the City's RFP and CONSULTANT'S Express Agreement to the detailed Scope of Services.
- C. Payment for Basic Services shall be made in accordance with Section 3 of this Agreement.

2.01 SERVICES REQUIRING AUTHORIZATION IN ADVANCE

- A. Services not identified in Section 1 of this AGREEMENT may be requested by the DEPARTMENT and are considered additional services. The DEPARTMENT may request CONSULTANT at a future date to perform any or all additional services by a written authorization to proceed with the Additional Service(s). The written authorization to proceed shall become an Amendment to the Agreement.
- B. Payment for the Additional Service(s) shall be in accordance with Section 3 of this AGREEMENT.

3.01 BASIC SERVICES

DEPARTMENT shall pay CONSULTANT for Basic Services rendered under Section 1 on the basis of the agreed upon fixed rate of Forty-Eight Thousand Dollars (\$ 48,000) per year, guaranteed for two (2) years.

3.02 ADDITIONAL SERVICES

DEPARTMENT shall pay CONSULTANT for Additional Services rendered under Section 2 as follows:

For Additional Services of CONSULTANT'S principals and employees engaged directly on the Project and rendered pursuant to Section 2, on the basis of CONSULTANT'S Hourly Rate, to be agreed upon at the time the services are agreed to.

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3.03 REIMBURSABLE EXPENSES

- A. As used in this Agreement Reimbursable Expenses mean the actual expense incurred by CONSULTANT or its independent Professional Associates or Consultants, directly or indirectly in connection with the Project, such as expenses for: toll telephone calls and express mailings, reproduction of reports, drawings, specifications, bidding documents, laboratory tests and similar Project-related items in addition to those required under Section 1; and, if authorized in advance by the DEPARTMENT, overtime work requiring higher than regular rates.
- B. Any reimbursable expenses will be detailed by the CONSULTANT and paid only if authorized in advance by the DEPARTMENT.

3.04 TIME OF PAYMENT

CONSULTANT shall submit quarterly statements on or before the twentieth of the month for Basic and Additional Services rendered and for Reimbursable Expenses incurred. The DEPARTMENT shall make prompt payment on or before the twentieth of the month following the date of the CONSULTANT quarterly statement.

4.01 COMMENCEMENT OF WORK

- A. CONSULTANT shall commence the work to be performed under this Agreement upon receipt of a written Work Order or verbal authorization to proceed from the DEPARTMENT. Each Work Order or verbal authorization shall define by task(s) the scope of services to be performed. Verbal authorizations shall be followed up with written Work Orders.
- B. Additional services shall be commenced at within the time agreed to between the CONSULTANT and the DEPARTMENT at the time such services are authorized.
- C. The DEPARTMENT shall not be liable to CONSULTANT and/or any of its independent Professional Associates and Consultants and/or subcontractors for claims or damages or monetary claims of any nature caused by or arising out of delays from any cause whatsoever, including but not limited to any time which may be specified for the notice to proceed under this Agreement. The sole remedy against the DEPARTMENT for delays shall be the allowance to claimant of additional time for completion of work, the amount thereof to be reasonable as determined by the DEPARTMENT.

4.02 COMPLETION OF WORK

- A. CONSULTANT shall complete the work to be performed under this Agreement within the time specified in the Scope of Services, or if none is specified, then within a reasonable time for the type of work involved.
- B. Additional services shall be completed within the time agreed to between the CONSULTANT and the DEPARTMENT at the time such services are authorized.

5.01 APPLICABLE LAW

This AGREEMENT shall be governed by the laws of the State of Wisconsin and venue for any action concerning this Agreement shall be in Milwaukee County, Wisconsin. The CONSULTANT shall at all times comply with all federal, state and local laws, ordinances and regulations in effect during the period of this AGREEMENT.

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6.01 APPROVALS OR INSPECTIONS

None of the approvals or inspections performed by the DEPARTMENT shall be construed or implied to relieve the CONSULTANT from any duty or responsibility it has for its professional performance, unless the DEPARTMENT formally assumes such responsibility through a letter from the DEPARTMENT expressly stating that the responsibility has been assumed.

7.01 DISPUTE RESOLUTION

In the event a dispute arises under this agreement, which is not resolvable through informal means, the parties agree to submit the dispute to the following resolution mechanism prior to pursuing other available legal remedies. Upon receipt of a written request by either party to utilize this provision each party shall have five working days to notify the other as to the name and address of the person designated to hear the dispute for that party. Upon designation of the dispute resolution representatives, those persons shall have ten working days to appoint a mutually acceptable third person to hear the dispute, and to agree on a time and location to hear the matter in dispute. The representatives shall jointly determine the procedure to be used for gathering information and hearing the dispute. Binding mediation or arbitration shall not be chosen as a dispute resolution method.

8.01 ASSIGNMENT

Neither this AGREEMENT nor any right or duty, in whole or in part, of the CONSULTANT under this AGREEMENT may be assigned, delegated or subcontracted without the written consent of the DEPARTMENT.

Nothing under this AGREEMENT shall be construed to give any rights or benefits in this AGREEMENT to anyone other than the DEPARTMENT and the CONSULTANT, and all duties and responsibilities undertaken pursuant to this AGREEMENT will be for the sole and exclusive benefit of the DEPARTMENT and the CONSULTANT and not for the benefit of any of any other party.

9.01 CANCELLATION; TERMINATION

- A. The DEPARTMENT reserves the right to cancel this AGREEMENT in whole or in part, without penalty, due to non-appropriation of funds or for failure of the CONSULTANT to comply with terms, conditions, or specifications of this AGREEMENT.
- B. The DEPARTMENT may terminate this AGREEMENT for any reason at any time upon not less than 10 days' written notice to the CONSULTANT.
- C. In the event of termination the DEPARTMENT shall pay the CONSULTANT for that portion of the work satisfactorily performed prior to the date of termination.
- D. If this AGREEMENT is cancelled or terminated by the DEPARTMENT for reasons other than the failure of the CONSULTANT to comply with terms, conditions or specifications of this AGREEMENT, the CONSULTANT shall also be entitled to reasonable cancellation or termination costs relating to costs incurred by the CONSULTANT for commitments, which had become firm prior to the cancellation or termination.
- E. Upon cancellation or termination under PARAGRAPH A. or B., above, the CONSULTANT shall promptly discontinue all affected work (unless the notice of termination directs otherwise), and deliver or otherwise make available to the

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DEPARTMENT all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the CONSULTANT in performing this AGREEMENT, whether completed or in progress.

- F. If any undisputed invoice shall not be paid within the payment terms of this AGREEMENT, CONSULTANT shall have the right, after giving seven (7) days written notice, to suspend all Services on the project until all accounts have been paid. If any overdue invoice shall not be paid within forty-five (45) calendar days after the date of the invoice, CONSULTANT shall have the right to terminate this AGREEMENT.

10.01 DISCLOSURE

If a city official (as defined under section 3.02(l) of the Revised Municipal Code of the City of West Allis), a member of official's immediate family, or any organization in which a city official or a member of the official's immediate family owns or controls a ten percent (10%) interest, is a party to this AGREEMENT, and if this AGREEMENT involves payment of more than three thousand dollars (\$3,000) within a twelve (12) month period, this AGREEMENT is voidable by the City unless appropriate disclosure is made according to section 3.5 of the Revised Municipal Code, before signing the AGREEMENT. Disclosures shall be made to the Ethics Board of the City of West Allis, 7525 West Greenfield Avenue, West Allis, Wisconsin 53214 (Telephone 414-302-8200).

11.01 ENTIRE AGREEMENT; AMENDMENTS

This AGREEMENT, together with the specifications in the proposal and referenced parts and attachments, shall constitute the entire agreement between the parties and previous communications or agreements pertaining to the subject matter of this AGREEMENT are hereby superseded. Any contractual revisions including cost adjustments and time extensions may be made only by a written amendment to this AGREEMENT, signed by both parties prior to the ending date of this AGREEMENT.

12.01 FORCE MAJEURE

No party shall be responsible to the other party for any resulting losses and it shall not be a default of this Agreement if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, unusual adverse weather conditions, or by any other cause not within the control of the party whose performance was interfered with and which by the exercise of reasonable diligence such party is unable to prevent, whether of the class of enumerate causes or not, and the time for performance shall be extended by the period of delay occasioned by any such cause. Upon the occurrence of a force majeure, written notice to the other party shall be given as herein provided. If the period of non-performance exceeds thirty (30) days from the receipt of the notice, the party whose ability to perform has not been so affected may, by written notice, terminate this Agreement.

13.01 INDEMNIFICATION; LIABILITY

- A. To the fullest extent allowable by law, Consultant hereby indemnifies and shall defend and hold harmless the City of West Allis, its elected and appointed officials, officers, employees or authorized representatives or volunteers and each of them from and against any and all suits, actions, legal or administrative proceedings, claims, demands,

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damages, liabilities, interest, attorneys' fees, costs, and expenses of whatsoever kind or nature whether arising before, during, or after completion of the work hereunder and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, by reason of any professional negligence, whether active or passive of Consultant or of anyone acting under its discretion or control or on its behalf in connection with or incident to the performance of this Agreement. Consultant's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the fault, negligence, or willful misconduct of the City of West Allis, or its elected and appointed officials, officers, employees or authorized representatives or volunteers. This indemnity provision shall survive the termination or expiration of this Agreement.

In any and all claims against the City of West Allis, its elected and appointed officials, officers, employees or authorized representatives or volunteers by an employee of Consultant, any subcontractor, or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Consultant or any subcontractor under worker's compensation, disability benefit, or other employee benefit laws.

No provision of this indemnification clause shall give rise to any duties not otherwise provided for by this Agreement or by operation of law. No provision of this indemnity clause shall be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to the City of West Allis, its elected and appointed officials, officers, employees or authorized representatives or volunteers under this or any other contract. This clause is to be read in conjunction with all other indemnity provisions contained in this Agreement. Any conflict or ambiguity arising between any indemnity provisions in this Agreement shall be construed in favor of indemnified parties except when such interpretation would violate the laws of the state in which the job site is located.

Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any received by the City of West Allis, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

- B. DEPARTMENT agrees to indemnify, defend and hold harmless CONSULTANT and its subcontractors, consultants, agents, directors, and employees from and against all claims, suits, damages, and losses, including, but not limited to, those claims, suits, damages, or losses caused or arising out of, relating to, or based upon: 1) the acts, omissions, or other conduct of DEPARTMENT; and [2) the actual or threatened dispersal, discharge, escape, release, or saturation of smoke, vapors, soot, fumes acids, alkalis, toxic chemicals, liquids, gases, or any other materials, irritants, contaminants, or pollutants in or into the atmosphere or on, onto, upon, in or into the surface or subsurface of soil, water or water course, objects, or any tangible or intangible matter, whether abated or not; except to the extent that such damage or loss is caused by the negligent acts or willful misconduct of CONSULTANT or its agents, officers, directors, or employees.] [For environmental services only.]

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14.01 INDEPENDENT CONTRACTOR

The DEPARTMENT agrees that the CONSULTANT shall have sole control of the method, hours worked, and time and manner of any performance under this AGREEMENT other than as specifically provided herein. The DEPARTMENT reserves the right only to inspect the job site or premises for the purpose of insuring that the performance is progressing or has been completed in compliance with the AGREEMENT. The DEPARTMENT takes no responsibility for supervision or direction of the performance of the AGREEMENT to be performed by the CONSULTANT or the CONSULTANT'S employees or agents. The DEPARTMENT further agrees that it will exercise no control over the selection and dismissal of the CONSULTANT'S employees or agents.

15.01 REPORT AND DOCUMENTATION REQUIREMENTS

- A. The CONSULTANT'S invoices will be reduced by the sums set forth below for each week that the CONSULTANT fails to submit a report or document required under this AGREEMENT'S time schedule unless the DEPARTMENT determines that such delay is attributable to a force majeure as defined in SECTION 8., above. These reductions shall accrue in the amount of 5% of the Work Order for the first week and 10% of the Work Order for each week thereafter, for each report or document, which is overdue.
- B. Assessment of reductions under this SECTION does not preclude the DEPARTMENT from pursuing any other remedies or sanctions because of the CONSULTANT'S failure to comply with any of the terms of this AGREEMENT, including a suit to enforce the terms of this AGREEMENT.
- C. With respect to any individual failure to submit a report or document required under this AGREEMENT'S time schedule, the DEPARTMENT may at its sole discretion, in whole or in part, waive its right to penalties otherwise due under this SECTION.

16.01 NO WAIVER OF CONDITIONS

The failure of either party to insist on strict performance of this AGREEMENT does not constitute a waiver of any of the provisions of this AGREEMENT or a waiver of any default of the other party.

17.01 OWNERSHIP OF DOCUMENTS

- A. Upon completion of the services provided for in this AGREEMENT, or upon payment for services as provided for in SECTION 5., all reports, specifications, charts, sketches, drawings and other documents, whether finished or not, shall become the property of the DEPARTMENT.
- B. CONSULTANT shall retain one copy of all documents for its file. Any documents generated by CONSULTANT used by the DEPARTMENT beyond the intended purpose shall be at the sole risk of the DEPARTMENT, unless otherwise agreed upon by CONSULTANT in writing. To the fullest extent permitted by law, DEPARTMENT shall indemnify, defend and hold harmless CONSULTANT, its subcontractors, consultants, officers, directors, employees and agents, for any loss or damages arising out of the unauthorized use of such documents by the DEPARTMENT.

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18.01 OWNERSHIP OF WASTES [Environmental Contract Only]

The DEPARTMENT acknowledges that the CONSULTANT is not, by virtue of this AGREEMENT, the owner or generator of any waste materials generated as a result of the services performed by the CONSULTANT under this AGREEMENT.

19.01 PERIOD OF AGREEMENT

This AGREEMENT shall commence upon its signing by both parties and shall follow the schedule developed herein, during which period all performance as described in this AGREEMENT shall be fully completed to the satisfaction of the DEPARTMENT.

20.01 RELEASE OF INFORMATION

The CONSULTANT may not issue press releases or provide information to any third party regarding the Project without the prior written approval of the DEPARTMENT, except as required by Federal or State regulations, or court order.

21.01 SAFETY

The CONSULTANT shall initiate, maintain and provide supervision of safety precautions and programs for CONSULTANT'S own employees, and shall require its subcontractors or sub-consultants to comply with state and local safety laws and regulations in connection with its services. However, the CONSULTANT is not responsible for the elimination or abatement of safety hazards created or otherwise resulting from work at the project site carried on by other persons or firms directly employed by the DEPARTMENT as separate consultants or contractors. The DEPARTMENT agrees to require any such separate consultants or contractors to comply with federal, state and local safety laws and regulations and to comply with all reasonable requests and directions of the CONSULTANT for the elimination or abatement of any safety hazards at the project site.

22.01 SITE ACCESS; DATA

- A. Unless the Scope of Work provides otherwise, the DEPARTMENT shall obtain or provide reasonable access for the CONSULTANT to the project site when necessary and at any reasonable time requested.
- B. The DEPARTMENT shall attempt to provide the CONSULTANT with all relevant data and information in its possession regarding the project site. However, in providing such data and information, the DEPARTMENT or the CONSULTANT assumes no responsibility for its accuracy, reliability or completeness.

23.01 STANDARD OF PERFORMANCE

The CONSULTANT'S services shall be performed with the usual thoroughness, skill and competence of the consulting profession, in accordance with the standard for professional services prevailing at the time those services are rendered.

24.01 SURVIVAL

These General Terms and Conditions shall survive the completion of the services under this AGREEMENT and the termination of this AGREEMENT for any cause.

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25.01 SUCCESSORS AND ASSIGNS

The DEPARTMENT and the CONSULTANT each bind themselves, their partners, successors, assigns and legal representatives to the other party to this AGREEMENT and to the partners, successors, assigns and legal representatives of the other party with respect to all covenants of this AGREEMENT.

26.01 TITLES

The headings or titles of SECTIONS of this AGREEMENT are used for convenience and ease of reference and are not intended to limit the scope or intent of the SECTIONS.

27.01 ACCESS TO RECORDS

- A. The CONSULTANT and subcontractors to the CONSULTANT if any, agree to maintain for inspection by the DEPARTMENT all books, documents, papers, accounting records and other evidence pertaining to all costs incurred under this AGREEMENT and to make such materials available at their respective offices at all reasonable times during the life of the AGREEMENT and for three (3) years from the date of final payment under the AGREEMENT, and to furnish copies thereof if requested.
- B. If more than a nominal number of copies are requested, the additional copies shall be furnished at the expense of the DEPARTMENT.

28.01 ERRORS AND OMISSIONS

The CONSULTANT shall be responsible for the accuracy of the work performed by the CONSULTANT under the AGREEMENT, and shall promptly make necessary revisions or corrections resulting from its negligent acts, errors or omissions without additional compensation.

29.01 CONFLICT OF INTEREST

- A. The CONSULTANT warrants it has no public or private interest, and shall not knowingly acquire directly or indirectly any such interest, which would conflict in any manner with the performance of the work under the AGREEMENT.
- B. The CONSULTANT shall not employ any person employed by the DEPARTMENT for any work included under the provisions of the AGREEMENT.

30.01 INSURANCE REQUIREMENTS FOR CONSULTANTS

A. INSURANCE REQUIRED

Consultants shall purchase and maintain for the duration of the contract as required by the City or by Law, insurance indemnifying against claims, suits, personal injury, bodily injury to persons, or damage to property which arises from, or in connection with the performance of the work hereunder by the Consultant. Some contracts may require Completed Operations, Professional Liability or other insurance beyond the contract term.

Any deductibles or self-insured retentions shall be identified to the City; those which exceed \$10,000 must be declared to and approved by the City. The City may require a review of the latest audited financial statements of the Consultant. At the option of the

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City, the insurer shall not reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, agents and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defenses expenses.

All required insurance under this Contract is to be placed with insurers with a Best's rating of no less than A-VII. Said carriers to be admitted status with the State of Wisconsin, unless otherwise approved in advance by the City. The City reserves the right to approve non-admitted carriers with a Best's rating of no less than AX.

Work shall not be commenced under the Contract until all insurance required under this paragraph has been obtained and evidence thereof in the form of certificates, with original endorsements effecting coverage, are filed with and approved by the City. The City reserves the right to require complete, certified copies of all required insurance policies upon the filing of a claim or lawsuit where the insurer denies coverage.

The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms approved by the City. For Workers' Compensation-related risks, only forms approved by the Insurance Commissioner are to be used.

Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages shall be subject to all of the insurance requirements that are applicable to the Consultant. No subcontractor shall be permitted to commence work until all required coverages have been obtained and certificates and endorsements thereof are filed with the City.

If any part of a loss is not covered because of the application of a deductible or retention, said loss shall be borne by the general Consultant and not the City. Failure to maintain the required insurance may result in termination of this Contract at the option of the City.

B. GENERAL ENDORSEMENTS

The protection afforded by the required insurance policies under this Contract shall include, but shall not be limited to, the following:

1. Occurrence Based Policies. All required Liability insurance under this Contract shall be written on an "occurrence" form, except separately approved Professional Liability Policies.
2. Representation of Coverage Adequacy. By requiring insurance for this Contract, the City does not represent or warrant that coverage and limits will be adequate to protect the Consultant, subcontractor, their agents or any project engineer.
3. Cross-Liability Coverage. If the Consultant's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.
4. Cancellation. The policy shall not be suspended, voided, canceled, reduced in coverage or in limits except after at least thirty (30) days prior written notice has been given to the City.

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5. Additional Insureds. The City, its officers (elected and appointed), employees, agents and volunteers must be named as additional insureds as their interests may appear on the Consultant's **general** liability insurance policies, which insure the City up to the required limits. Additional insured status shall be endorsed onto the respective insurance policy by the appropriate ISO Endorsement Form approved by the City and executed by duly authorized agents of said carrier.
6. Primary Insurance. Consultant's insurance shall provide primary insurance to the City, to the exclusion of any other insurance or self-insurance programs the City may carry. Any insurance or self-insurance maintained by the City shall be excess of the Consultant's insurance and shall not contribute to it.
7. Waiver of Subrogation. Consultant waives all rights against the City, its officers, employees, agents and volunteers for recovery of damages to the extent these damages are covered by the insurance the Consultant is required to carry pursuant to this Contract.
8. Reporting. Failure to comply with any insurance policy reporting provisions shall not affect coverage provided to the City.
9. Cross Liability. The required insurance coverages shall apply separately to each insured against whom claim is made or suit brought, except with respect to the limits of the insurer's liability.

C. MINIMUM LIMITS AND OTHER PROVISIONS

1. WORKER'S COMPENSATION INSURANCE.

Wisconsin statutory limits for all employees of the bidder to whom the award is made.

All subcontractors and material men shall furnish to the Consultant and the City certificates of similar insurance for all of their respective employees, unless such employees are covered by the protection afforded by the Consultant.

2. GENERAL LIABILITY INSURANCE.

Contractor shall maintain, and a Certificate of Insurance shall be furnished for Worker's Compensation, Comprehensive General Liability, including Contractual Liability, and Automobile Liability insurance for any claims that may arise from operations under this contract in the following amounts:

Bodily Injury	\$1,000,000	each occurrence
	1,000,000	aggregate
Property Damage	500,000	each occurrence
	500,000	aggregate
Automobile Liability	1,000,000	each accident
Worker's compensation		per State Statute

Certificates of insurance, in a form satisfactory to the City Attorney, shall be filed with the City and shall provide 30 days' notice of cancellation.

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3. BUSINESS AUTOMOBILE LIABILITY INSURANCE.

- a. Coverage. Coverage must be as broad as CA 00 01 Ed. 1992) - Occurrence Form Code No. 1, "any auto".

Comprehensive Coverage for all Owned, Non-Owned or Hired Motor Vehicles driven by the employees of the Consultant or Subcontractors, including vehicles and equipment owned by the City if used exclusively for the project.

Uninsured or Underinsured Motorists Liability Coverage at full policy limits.

- b. Minimum Limits of Liability:
Minimum Limits are the same as specifications for General Liability Insurance.

4. PROFESSIONAL LIABILITY/ERRORS AND OMISSIONS COVERAGE

- a. Coverage. Standard form; coverage provided on a claims-made basis with at least one year extended reporting period; to include all liability assumed by the Consultant for the Project.

- b. Minimum Limits of Liability:
Minimum \$1 Million (project specific).

City of West Allis
7525 W. Greenfield Ave.
West Allis, WI 53214

The Horton Group
N19W24101 North Riverwood Drive
Waukesha, WI 53188

By: Rebecca Grill
Rebecca Grill, City Administrator

By: Raelene Beaudry

Date: 9/12/17

Title: Executive Vice President

Date: 9/20/17

Countersigned this 12th day
of September, 2017.

Peggy Steeno
Peggy Steeno, Finance Director

Approved as to form this 12 day
of September, 2017.

Scott E. Post
Scott E. Post, City Attorney

