APPENDIX F

Sample Professional Services Contract

CONTRACT NO. _____

PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF MILWAUKEE
AND
[*name of consultant*]

THIS AGREEMENT is made and entered into this _____day of _____, 20_____, by and between the City of Milwaukee, a municipal corporation organized under the laws of the State of Wisconsin (the "City"), and _____, a [*corporation, limited liability corporation, partnership, etc.*] organized under the laws of the State of Wisconsin (the "Consultant").

WHEREAS, [*discuss background information pertaining to related project, etc*];

WHEREAS, ;

WHEREAS, the City issued a Request for Proposals (the "RFP") on [*month date*], 20_____ requesting proposals for professional services for the Project;

WHEREAS, pursuant to the RFP, such professional engineering services includes, without limitation, preliminary design, design development, preparation of plans and project manual for bidding and construction, and preparation of a detailed estimate based upon final design;

WHEREAS, after reviewing the proposals submitted by prospective consultants, the City selected the Consultant as the vendor to perform such professional services;

WHEREAS, the Consultant desires to provide the professional services to the City upon the terms and conditions hereinafter set forth;

WHEREAS, the Consultant represents itself as being capable, experienced, and qualified to undertake and perform those certain services as hereinafter set forth as are required in accomplishing fulfillment of the obligation under the terms and conditions of this Agreement as an independent Consultant and not as an employee of the City;

WHEREAS, the Common Council of the City of Milwaukee adopted Resolution File No. _____ on [*month date*], 20____, which authorizes the Commissioner of Public Works (the "Commissioner") to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the City and the Consultant promise and agree as follows:

ARTICLE I
Retention of Services

The City hereby agrees to engage the Consultant and the Consultant hereby agrees to personally perform, as an independent consultant and not as an employee of the City, the services hereinafter set forth, all in accordance with the terms and conditions of this Agreement, the [*Scope and Fees, Hourly Rates of Service, Schematic Plan, Terms and Conditions, RFP, Scope of Work,* or *Consultant's Proposal dated _____, 20____*], (Exhibit _____) (collectively, the "Contract Documents").

ARTICLE II
Term of Agreement and Early Termination

2.1 Term of Agreement. The term of this Agreement shall commence on the date hereof, and shall end upon the earlier of: (i) _____, 20_____ or (ii) completion of the construction phase of the Project. In addition to all other remedies inuring to the City should this Agreement not be completed by the dates specified in this section 2.1, in accordance with all the terms, requirements, and conditions set forth in the Contract Documents, the Consultant shall continue to be obligated thereafter to fulfill the Consultant's responsibility to complete the scope of services and to execute any necessary amendments to this Agreement.

2.2 Option to Renew. The City, at its sole option, may extend the term of this Agreement for an additional thirty (30) day period. Such option shall be exercised by the City by delivering written notice to the Consultant no later than ten (10) days prior to the expiration of the term set forth in section 2.1 above.

2.3 Termination for Cause. If, through any cause, the Consultant shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Consultant of such termination and specifying the effective date, at least ten (10) days before the effective date of such termination. In such event, all

finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other materials related to the services performed by the Consultant under this Agreement for which compensation has been made or may be agreed to be made shall, at the option of the City, become the property of the City. Notwithstanding the foregoing, the Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Consultant, and the City may withhold any payments to the Consultant for the purpose of setoff until such time as the exact amount of the damages due to the City from the Consultant is determined.

2.4 Termination for Convenience. The City may terminate this Agreement at any time and for any reason by giving written notice to the Consultant of such termination and specifying the effective date, at least seven (7) days before the effective date of such termination. If this Agreement is terminated by the City pursuant to this section 2.4, the Consultant will be paid an amount which bears the same ratio to the total compensation as the services actually and satisfactorily performed bear to the total services of the Consultant covered by this Agreement, less payments for such services as were previously made. The value of the services rendered and delivered by the Consultant will be determined by the City.

ARTICLE III
Scope of Services

The Consultant is required to perform, do and carryout in a satisfactory, timely, and professional manner the services set forth in the Contract Documents. The Consultant is required to furnish all services and labor necessary as indicated herein, including without limitation, materials, equipment, supplies, and incidentals. The scope of services to be performed hereunder shall include, without limitation, those services set forth in Exhibit ____ attached hereto. The City may, from time to time, request the Consultant to perform additional services which are not set forth in the Contract Documents. In the event that such a request is made, the performance of such services shall be subject to the terms, conditions and contingencies set forth in this Agreement.

ARTICLE IV
Responsibilities of the City

During the term of this Agreement, the City shall assist the Consultant in the performance of the services set forth in the Contract Documents by: [(i) *furnishing necessary existing plans for the Consultant to review*; (ii) *providing assistance as noted in Exhibit ___*; (iii) *providing administration of the bidding process and contract*; (iv) *providing reproductions of final construction document drawings and the project manual*; and (v) *conducting daily inspections of construction*.]

ARTICLE V
Standards of Performance

The Consultant agrees that the performance of the services, pursuant to the terms, conditions and agreements of this Agreement, shall be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances providing like services. The Consultant agrees to abide by all federal, state and local laws, regulations, and ordinances, and all provisions of this Agreement.

ARTICLE VI
Compensation and Terms of Payment

6.1 Compensation. The Consultant will be compensated by the City for the services provided under this Agreement on a time-and-expenses basis, subject to the terms, conditions and contingencies set forth herein.

6.2 Not to Exceed. Notwithstanding the foregoing section 6.1, total compensation to the Consultant under this Agreement shall not exceed $_____.

6.3 Invoicing and Payments. Payments to the Consultant for services rendered under this Agreement will be based on itemized invoices submitted on a monthly basis by the Consultant to the City. These invoices must be itemized to include labor costs and the Consultant's direct expenses, including subcontractor costs. In addition, such invoices shall show hours worked by the Consultant's staff, the amount of work completed as a percentage of the work to be performed, and shall be computed on the rates as itemized in the Consultant's proposal (Exhibits _____). Invoices shall be reviewed and approved by the Commissioner or his designee. The final five percent (5%) of the contract amount shall be retained. The final payment of the balance due the Consultant for the completed services shall be made upon completion and acceptance by the City of the services performed by the Consultant under this Agreement. All payments made under this Agreement shall be subject to the City' prompt policy set forth in section 6.4, below.

6.4 Prompt Payment Policy. The City, as a matter of policy, shall strive to pay all timely and properly completed invoices within thirty (30) days of submission. Payment to the Consultant will be deemed timely if the payment is mailed, delivered, or transferred within sixty (60) days after receipt of a properly completed and undisputed invoice or receipt and acceptance of the service under this Agreement, whichever is later. If the City does not make payment by the 60th calendar day, the City shall pay simple interest beginning with the 31st calendar day at the rate of one percent (1%) per month, unless the City disputes the amount of the invoice.

6.5 Reimbursable Expenses. The following items will be charged at cost plus 10% and are, for purposes of this Agreement, deemed reimbursable expenses: (i) postage and handling; (ii) long distance telephone calls; (iii) out of town travel; (iv) permits and approval fees; and (v) printing of contract drawings and construction documents.

6.6 Additional Fringe or Employee Benefits. The Consultant shall not receive nor be eligible for any fringe benefits or any other benefits to which City employees are entitled to or are receiving.

6.7 Taxes, Social Security, Insurance, and Government Reporting. Personal income tax payments, social security contributions, insurance, and all other governmental reporting and contributions required as a consequence of the Consultant receiving payment under this Agreement shall be the sole responsibility of the Consultant.

6.8 Withholding of Salaries. If in the performance of this Agreement, there is an underpayment of salaries by the Consultant or by any subcontractor thereunder, the City shall withhold from the Consultant out of payments due to it an amount sufficient to pay employees underpaid the difference between the salaries required hereby to be paid and the salaries actually paid such employees for the total number of hours worked. The amounts withheld shall be disbursed by the City for and on account of the Consultant or subcontractor, if any, to the respective employees to whom they are due.

ARTICLE VII
Personnel, Qualifications, Subcontracting

7.1 Required Personnel. The Consultant represents that it has or will secure at its own expense all personnel required to perform the services set forth in the Contract Documents. These personnel shall not be employees of or have any contractual relationship to the City.

7.2 Fully Qualified. The Consultant represents that all personnel engaged in the performance of the services set forth in the Contract Documents shall be fully qualified and shall be authorized or permitted under state and local law to perform the services.

7.3 Subcontracting. None of the services to be performed under the Contract Documents shall be subcontracted without the prior written approval of the City. If any of the services are subcontracted, the performance of such services shall be specified by written contract and shall be subject to each provision of this Agreement. The Consultant shall be as fully responsible to the City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them, as it is for acts and omissions of persons directly employed by it.

ARTICLE VIII
Indemnification and Defense of Suits

In case any action in court, claim, or proceeding before and administrative agency is brought against the City or any of its officers, agents, or employees for the failure, omission, or neglect of the Consultant, in whole or in part, to perform any of the covenants, acts, matters, or things by this Agreement undertaken, or for injury or damage caused by the negligence of the Consultant, its officer, agents and employees, the Consultant shall defend, indemnify, and save harmless the City and its officers, agents, and employees from all losses, damages, costs, expenses, judgments, or decrees arising out of such action. Provided, however, that in no event shall consultant's total liability for loss (indemnity or defense) exceed consultant's prorata share of all fault causing any injury or loss. The City shall tender the defense of any claim or action at law or in equity to the Consultant or the Consultant's insurer, and upon such tender, it shall be the duty of the Consultant or the Consultant's insurer to defend such claim or action without cost or expense to the City or its officers, agents, or employees. The Consultant shall be solely responsible for the conduct and performance of the services required under the terms and conditions of this Agreement and for the results therefrom. This clause is not intended to have the consultant be responsible for the negligent errors or acts of the City, its officers, agents and employees or anyone else or whom they are responsible.

ARTICLE IX
Insurance

The Consultant shall be solely responsible to meet the Consultant's insurance needs as required by the City, including public and professional liability and property damage, during the term of this Agreement or any extension thereof. A Certificate of Insurance shall be provided to the City as evidence thereof naming the City as an additional insured for public liability and property damage, and providing for a thirty (30) day notice to the City prior to termination or cancellation of the policy. The City reserves the right to require review and approval of the actual policy of insurance before it executes this Agreement. The minimum limits of insurance required by the City under this Agreement are set forth in Exhibit ____ attached hereto.

ARTICLE X
Conflicts of Interest

10.1 The City; Governing Body. No officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement. No member of the governing body of the locality and no other public official

of such locality who exercises any functions or responsibilities in the review or approval of the carrying out of this Agreement shall have any personal interest, direct or indirect, in this Agreement.

10.2 Consultant. The Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Consultant further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. An interest on the part of the Consultant or its employee must be disclosed to the City.

ARTICLE XI
Non-Discrimination and Equal Employment

11.1 Discrimination. Pursuant to law, it is unlawful and the Consultant agrees not to willfully refuse to employ, to discharge, or to discriminate any person otherwise qualified because of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed, or familial status; to discriminate for the same reason in regard to tenure, terms, or conditions of employment; not to deny promotion or increase in compensation solely for these reasons; not to adopt or enforce any rule or employment policy which discriminates between employees on account of race, color, religion, sex, creed, age, disability, national origin or ancestry, lawful source of income, marital status, or familial status; not to seek such information as to any employee as a condition of employment; not to penalize any employee or discriminate in the selection of personnel for training, solely for training, solely on the basis of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed, or familial status.

11.2 Subcontracts. The Consultant shall include or cause to be included in each subcontract covering any of the services to be performed under this Agreement a provision similar to the above paragraph, together with a clause requiring such insertion in further subcontracts that may in turn be made.

ARTICLE XII
Addresses and Notices

Unless otherwise provided in this Agreement, any notice, communication, request, reply or advice (herein severally and collectively, for convenience, called "notice"), herein provided or permitted to be given, made or accepted by one party to the other must be in writing and may be given or be served by depositing the same in the United States mail, postage paid and certified and addressed to the party to be notified, with return receipt requested. Notice deposited in the mail in the manner described above shall be conclusively deemed to be effective, unless otherwise stated in this Agreement, from and after the expiration of three days after it is deposited. Notice given in any other manner should be effective only if and when received by the party to be notified. For the purpose of notice, the address of the parties shall be as follows:

If to the City, to:
Commissioner of Public Works
City of Milwaukee
Municipal Building
841 North Broadway, Room 516
Attn: [*responsible staff person*]
Milwaukee, WI 53202

If to the Consultant, to:
[*name of consultant*]
[*street address of consultant*]
Attn: [*designated principal representative*]
[*city, state zip code of consultant*]

ARTICLE XIII
Records, Audits, Confidentiality

13.1 Access to Records. The Consultant shall maintain books, records, documents and other evidence directly pertinent to performance under this Agreement in accordance with accepted applicable professional practices. The City, or any of its duly authorized representatives, shall have access to such books, records, documents, papers, or any records of the Consultant which are directly pertinent to this Agreement, for the purpose of making audits, examinations, excerpts and transcriptions.

13.2 Public Records Law. The City and the Consultant shall comply with the Public Records Law of Wisconsin and the Consultant will assist the City in conforming to the law. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of the final payment under this Agreement.

ARTICLE XIV
Minority, Woman, and Small Business Enterprise (MWSBE) Program

14.1 Policy and Goal. MWSBE In accordance with Chapter 370 of the Milwaukee Code of Ordinances, Minority, Woman and Small Business Enterprise Ordinance requirement, it is the City's policy to accomplish Minority, Woman and Small Business Enterprise (MWSBE) participation in all contracting activities in the City's Department of Public Works. The City has

established for itself an overall goal of 18% MWSBE participation for professional service contracts. In an effort to meet these overall goals, the Commissioner, as contracting officer for the City, expects the Consultant to use its best efforts to enable MWSBEs to be considered fairly as subconsultants under all professional service contracts. The goal for this Agreement is _____% MWSBE participation.

14.2 Forms and Reports. The Consultant shall prepare and submit accurate and timely MWSBE utilization forms and reports to the City. The reports shall include, but not be limited to, Project Participation (MWSBE Form A), Monthly Utilization (MWSBE Form D), and MWSBE Subcontractor Payment Certification (Form E) forms as directed. Failure to submit the required forms and reports to the City may result in disqualification of future bids, delay of payments, or other appropriate sanctions. Final contract payments will not be made until final MWSBE utilization reports and MWSBE subconsultant payment certification forms are on file with the City.

14.3 Compliance Reviews. During the performance of this Agreement, the Commissioner reserves the right to conduct compliance reviews. If the Consultant is not in compliance with the specifications, the Commissioner will notify the Consultant in writing of the corrective action that will bring the Consultant into compliance. If the Consultant fails or refuses to take corrective action as directed, the Commissioner may take one or more of the following actions: (I) terminate or cancel this Agreement, in whole or in part; (ii) remove the Consultant from the list of qualified firms and refuse to accept future proposals for a period not to exceed three (3) years; or (iii) impose other appropriate sanctions.

ARTICLE XV
Additional Provisions

15.1 Captions. The captions appearing at the first of each numbered section of this Agreement are inserted and included solely for convenience but shall never be considered or given any effect in construing this Agreement with the duties, obligations or liabilities of the respective hereto or in ascertaining intent, if any questions of intent should arise.

15.2 Severability. The provisions of this Agreement are severable. If any provision or part of this Agreement or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

15.3 Entire Agreement. This Agreement, and the Exhibits attached hereto, constitute the entire agreement between the parties hereto relating to the subject matter hereof, and all prior agreements, correspondence, discussions and understandings of the parties (whether oral or written) are merged herein and made a part hereof, it being the intention of the parties hereto that this Agreement shall serve as the complete and exclusive statement of their agreement together.

15.4 No Additional Waiver Implied. The failure of any party to insist, in any one or more instance, upon performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition by any other party hereto but the obligation of such other party with respect to such future performance shall continue in full force and effect.

15.5 Amendment. This Agreement shall be amended only by formal written supplementary amendment. No oral amendment of this Agreement shall be given any effect. All amendments to this Agreement shall be in writing executed by both parties.

15.6 Applicable Law and Venue. This Agreement and all questions arising in connection herewith shall be governed by and construed in accordance with the internal laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in the City of Milwaukee for matters arising under state law and in Federal District Court for matters arising under federal jurisdiction.

15.7 Independent Consultant. In performing its obligations under this Agreement, the Consultant shall act as an independent Consultant solely for its own account and not as an agent, representative or employee of the City.

15.8 Assignment. This Agreement shall be binding on the heirs, successors, and assigns of each party hereto. The employment by the City of the Consultant to perform the services set forth in this Agreement is a personal contract and the Consultant shall not assign, sublet or transfer the Consultant's interest or obligations under the provisions of this Agreement without the prior written consent of the City. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the City.

15.9 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered but one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day, month and year set forth above.

[*name of consultant]*

By: _____

Its: _____

CITY OF MILWAUKEE

By: _____
Commissioner of Public Works

COUNTERSIGNED

By: _____
Comptroller

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