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Engineers • Consultants • Inspectors

AGREEMENT FOR MUNICIPAL PLAN EXAMINATION AND INSPECTION SERVICES

This Agreement for Municipal Plan Examination and Inspection Services (“**Agreement**”) is made as of _____, _____, by and between the Municipality and the Inspector.

ARTICLE 1 – FUNDAMENTAL TERMS

- 1.1 “Municipality”** shall mean Village of Cottage Grove, Dane County, Wisconsin and its agents, employees, and authorized representatives.
- 1.2 “Inspector”** shall mean General Engineering Company and its agents, employees, and authorized representatives.
- 1.3 “Work”** shall mean, collectively, the following services to be performed by the Inspector with respect to residential and, to the extent of the Municipality’s certification by the Wisconsin Department of Safety and Professional Services (“**DSPS**”), commercial building projects within the Municipality’s jurisdictional boundaries (each, a “**Building Project**”): (i) examine and process building plans as required by the applicable codes; (ii) process building permits; (iii) coordinate, perform and complete required inspections for permitted building construction; (iv) bill the Municipality the proper fees from permit applicants; (v) prepare and submit monthly permit activity reports; and (vi) complete and submit a year-end report to the Municipality after the end of each calendar year.
- 1.4 Scope.** The Inspector shall perform the Work for the Municipality pursuant to and in accordance with the terms and conditions of this Agreement.
- 1.5 Compensation.** The Municipality shall compensate the Inspector for the Work on the basis of the fee schedule attached hereto as **Exhibit A**. The Municipality acknowledges and agrees that the Inspector has the right to review fees as set forth in Exhibit A at the Commencement of each Renewal Term (as defined below), provided, however, that any change in the Inspector’s fees as set forth in Exhibit A shall not be effective until it is approved by the Municipality. The Inspector shall invoice the Municipality monthly for the Work (or other services) performed. The Municipality shall pay the Inspector within 30 days of receipt of each invoice from the Inspector.

This Agreement is subject to the terms and conditions as shown on pages 2 and 3 hereof. The Municipality and the Inspector have signed this Agreement as of the date first written above.

Village of Cottage Grove

By: _____

Print Name: _____

Date: _____

General Engineering Company

By: _____

Print Name: _____

Date: _____

ARTICLE 2 – PERFORMANCE STANDARDS

The Inspector shall use that degree of care, skill, and professionalism ordinarily exercised under similar circumstances by members of the same profession practicing or performing the substantially same or similar services with respect to the category of services being performed. The Municipality acknowledges and agrees that: (i) plan examinations to be provided as part of the Work shall be solely based on the statements, representations, and information in the application, plans and other required and related submissions, including, but not limited to, statements, information and representations as to the location, measurement and/or identification of boundary lines, easements, and elevations; and (ii) inspections to be provided as part of the Work: (a) shall be based only upon visible, observable, and accessible conditions as they exist at the time of inspection; (b) are not designed or intended to predict future conditions; and (c) do not cover any latent defects, concealed defects, or defects not reasonably observable in the course of or at the time of inspection.

ARTICLE 3 – TERM AND TERMINATION

3.1 Initial Term and Renewal. This Agreement shall become effective on January 1, 2021 (the “**Effective Date**”) and shall remain in full force and effect until terminated by either party, pursuant to Section 3.2. This Agreement shall automatically renew for successive twelve (12) month periods (each a “**Renewal Term**”) unless either party gives written notice of nonrenewal at least ninety (90) days prior to the end of the then-current term (a “**Nonrenewal Notice**”), in which case the Agreement shall terminate at the end of the then-current term.

3.2 Termination. Either party may terminate this Agreement for any reason or no reason upon 60 days advance written notice to the other party (a “**Termination Notice**”), which notice shall set forth the date of termination of this Agreement (the “**Termination Date**”). The Inspector may terminate this Agreement immediately and without notice if the Municipality fails to make payment of an invoice from the Inspector within 30 days of the date of such invoice. Under all circumstances, the Municipality shall remain liable to the Inspector for compensation for all Work (or other services) performed by the Inspector prior to the termination of this Agreement. If this Agreement is terminated pursuant to a Termination Notice or Nonrenewal Notice or by any other means and the Inspector has collected Inspection Fees for Work (or other services) to be performed by the Inspector, the Inspector shall: (i) retain a portion of the Inspection Fees the Inspector has collected for every Building Project with respect to which the Inspector has performed or commenced any inspection prior to the Termination Date or the end of the then present contract term, which portion of Inspection Fees retained shall be proportionate to the portion of the Work completed and Work that is expected to be completed by the Termination Date; and (ii) deliver to the Municipality the Inspection Fees the Inspector has collected for every Building Project with respect to which the Inspector has not performed or commenced any inspection prior to the Termination Date or the end of the then present contract term and the Inspection Fees not retained under (i). Upon the termination of this Agreement under this Section 3.2 or nonrenewal pursuant to a Nonrenewal Notice, the Inspector shall have no further responsibilities with respect to any ongoing Building Project.

ARTICLE 4 – ADDITIONAL SERVICES

Notwithstanding anything in Section 1.3 to the contrary, the Work shall be limited to building plan examinations and inspections necessary to administer and enforce chs. SPS 320 to 325, Uniform Dwelling Code, and chs. SPS 361 to 366, Commercial Building Code and shall not include any ancillary or related services, including, but not limited to, zoning, planning, floodplain zoning, or shoreland zoning administration. In the event the Inspector provides services beyond those set forth in Section 1.3 at the direction of the Municipality, then the Municipality shall pay the Inspector for all such services based on the Inspector's then current hourly rates as set forth in the Inspector's rate schedule, which present rate schedule is shown below in Article 11, plus expenses.

ARTICLE 5 – INSURANCE

The Inspector shall maintain: (i) commercial general liability insurance in the minimum amount of \$1,000,000.00; (ii) a professional liability policy of \$2,000,000.00; and (iii) workers' compensation insurance covering all employees or agents of the Inspector assisting or participating in any way in the rendering of Work under this Agreement and in an amount not less than that required under Wisconsin law.

ARTICLE 6 – RELATIONSHIP OF THE PARTIES

6.1 General. It is understood, agreed, and is the intent of the parties that the Inspector is at all times acting and performing as an independent contractor, not as a servant or employee of the Municipality, and the Inspector shall not hold itself out as such. The Inspector is solely responsible for the Inspector's employee benefit, tax withholding, employment taxes and workers' compensation insurance, and for complying with all other applicable laws, rules and regulations with regard to the Inspector's performance of the Work. The Inspector shall be solely liable for all Federal and State tax liability associated with any payments received from the Municipality under the terms of this Agreement. Each party shall furnish all legal, insurance and accounting services as may be reasonably necessary at any time for the services and to meet each party's needs and interests. Nothing in this Agreement shall be deemed to create an employment, partnership, or joint venture relationship between the Municipality and the Inspector or any of the Inspector's employees. Neither party shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party. Both the Municipality and the Inspector expressly acknowledge that the Municipality is not liable for unemployment compensation with regard to any services provided by the Inspector in accordance with the Agreement. The Inspector shall not receive from the Municipality any retirement or savings benefits, health insurance, or any other benefit offered to the Municipality's employees. Notwithstanding the foregoing or any other provision of this Article 6, the Inspector shall be the Municipality's "agent" as that term is specifically utilized and defined by the court in *Estate of Lyons v. CNA Ins.*, 207 Wis. 2d 446, 558 N.W.2d 658 (Ct. App. 1996) and as further explained in *Melchert et al. v. Pro Electric Contractors et al.*, 2017 WI 30, for purposes of governmental contractor immunity.

6.2 Licensing. The Inspector is responsible for, and shall keep in full force and effect, any necessary federal and/or state licensing and bonding, and shall comply with all federal and state law regarding any services to be provided pursuant to this Agreement. The Municipality warrants and represents that it is certified by SPS to perform building plan examinations and building inspection services pursuant to SPS 361.60, Wis. Admin. Code.

6.3 Facilities and Equipment. The Inspector shall maintain a separate business from the Municipality with its own office, equipment, materials, and other such facilities. The Inspector shall be responsible for providing all code books, technical manuals and inspection equipment, incurring the cost of all necessary professional organization dues and costs of on-going training and re-certification, and a properly registered and insured vehicle for use while performing services, including the costs of maintenance and fuel.

6.4 Means of Performing Work. The Inspector shall control the means of providing services under this Agreement, and the Municipality will not control the details of the Work. The Municipality shall have no control or supervision over the Inspector, other than accepting or rejecting the Work. Inspector is not required to work any set number of hours per week, any schedule or any routine. The Municipality has no right to compel the Inspector to work at a certain time, to travel to any particular location, to canvass a certain territory, or to work at specific places or at specific times. Any and all agreed upon office hours between the Municipality and the Inspector are subject to change depending on the

availability of the Inspector. In addition, the Inspector has a right to alter any agreed upon office hours during times of the year when permit applications have decreased when approved by the Village. The Municipality cannot compel the Inspector to enter into any structure that the Inspector deems unsafe or which may cause said Inspector bodily harm until said building is deemed to be safe for entry.

- 6.5 General Engineering will provide the Village with four (4) total office hours per week divided between two (2) business days.
- 6.6 **Municipality's Property.** The Inspector has no right to, and shall not, use the Municipality's name, symbol, or logo in the promotion of the Inspector's business or other activities, unless preapproved in writing by Municipality.

ARTICLE 7 – DOCUMENTS AND RECORDS

7.1 **Municipality's Obligations.** The Municipality shall timely provide all data, information, plans, specifications, records and other documentation required by Inspector to perform the Work. Notwithstanding anything to the contrary in this Agreement, the Municipality acknowledges and agrees that the Inspector shall be entitled to rely upon the adequacy, accuracy and completeness of any and all data, information, plans, specifications, records and other documentation that the Municipality provides to the Inspector relative to the Work.

7.2 **Inspector's Obligations.** The Inspector shall maintain copies of all data, information, plans, specifications, records and other documentation utilized or created on behalf of the Municipality in the performance of the Work for a period of time not less than 7 years from the date of creation or last utilization thereof. All original data, information, plans, specifications, records and other documentation relating to the Work performed shall be housed at the offices of the Municipality. The Inspector shall assist the Municipality in answering or responding to requests for open records but shall not be considered the records custodian for purposes of determining whether or not records should be provided in response to a request.

ARTICLE 8 – THIRD PARTY RELIANCE

This Agreement is intended for the mutual benefit of the parties hereto and no third party rights are intended or implied except with respect to permit applicants and, if a permit applicant is not the owner(s) of the real property to be improved pursuant to the applied for permit, the owner of the real property to be improved pursuant to the applied for permit (collectively, the "Third Parties"). The parties acknowledge and agree that: (i) the approval or conditional approval of a building plan shall not be construed as an assumption of any responsibility on the part of the Municipality or Inspector for the design or construction of the permitted improvement; (ii) the issuance of a building permit creates no legal liability, express or implied, on the Municipality or Inspector; (iii) the Third Parties are responsible for complying with all applicable codes, statutes, ordinances relative to the permitted improvements and the conditions of the building plan approval or building permit; (iv) no examination or inspection made by Inspector at any time relieves the Third Parties of responsibility for complying with all applicable codes, statutes, ordinances relative to the permitted improvements or the conditions of the building plan approval and/or permit; (v) Inspector and Municipality are released and discharged from any and all liability, claims, demands or causes of action that the Third Parties may hereafter have for injury, death or other damages arising out of or related to the permitted improvements, including, but not limited to, negligence claims, warranty claims and/or breach of contract claims; and (vi) the approvals, inspections, permits, reports and findings issued after the examinations, reviews or inspections are not intended as, nor are they to be construed as, a guarantee. In furtherance of the foregoing, the following disclaimer shall be included on all reviews or inspections: *The review of applications and/or the findings of inspection contained herein are intended to report conditions of noncompliance with applicable codes, statutes, and ordinances relative to the permitted improvements that are readily apparent at the time of review or inspection. The review or inspection does not involve a detailed examination of the property lines or surveys, mechanical systems or the closed structural and nonstructural elements of the building and premises. No warranty of the operation, use or durability of equipment, materials, products, or improvements is expressed or implied.*

ARTICLE 9 – NOTICES

All notices, demands, and communications provided for under this Agreement shall be delivered or mailed first class with postage prepaid, addressed in each case as follows, until some other address shall have been designated in a written notice given in like manner, and shall be deemed to have been given or made when so delivered or mailed: (i) if to the Inspector, General Engineering Company, c/o Brad Boettcher, PO Box 340, 916 Silver Lake Drive, Portage, WI 53901; and (ii) if to the Municipality, Village of Cottage Grove, c/o Matthew Giese, 221 East Cottage Grove Road, Cottage Grove, WI 53527.

ARTICLE 10 – MISCELLANEOUS

10.1 **Integration and Amendment.** This Agreement may be amended, modified, or superseded only by a written instrument executed by all of the parties to this Agreement. This Agreement, including the exhibits hereto, constitutes the entire agreement between the parties hereto pertaining to the subject matters hereof and supersedes all negotiations, preliminary agreements and all prior or contemporaneous discussions and understandings of the parties hereto in connection with the subject matters hereof.

10.2 **Waiver.** The failure of any party at any time or times to require performance of any provision of this Agreement shall in no manner affect the right at a later time to enforce that provision. No waiver by any party of any breach of any term contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such breach or a waiver of any other term contained in this Agreement.

10.3 **Severability.** If any covenant, term or provision of this Agreement is held to be invalid or unenforceable for any reason, it is agreed that such invalidity or unenforceability shall not affect any other covenant, term or provision of this Agreement, and that the remaining covenants, terms, and provisions, or portions thereof, shall remain in full force and effect.

10.4 **Counterparts and Copies.** This Agreement may be fully executed in separate counterparts by each of the parties hereto, such counterparts when combined constituting but one and the same instrument. Such counterparts may be exchanged electronically via e-mail or facsimile transmission, which shall be deemed an original. A copy of this Agreement shall have the same full force and effect as the original.

10.5 **Successors and Assigns.** Neither party may assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the other party. This Agreement shall inure to the benefit of and be binding upon each of the parties hereto and their respective successors and allowed assigns.

10.6 **Jurisdiction and Governing Law.** All actions or proceedings in any manner relating to or arising out of this Agreement may be brought only in courts of the State of Wisconsin located in Dane County, and the Parties hereby consents to the jurisdiction of such court. The Parties hereby waive any objection to the venue of such court. This Agreement shall be governed by the laws (excluding conflicts of laws rules) of the State of Wisconsin. To the extent of any conflict between the terms of this Agreement and the Municipality's codes or ordinances, this Agreement shall control.

ARTICLE 11 – CURRENT HOURLY RATES

Hourly rates for Additional Services are as follows:

Expert Witness	\$300/hr	Registered Land Surveyor	\$100/hr
Principal	\$130/hr - \$155/hr	Field Crew Chief (1 person Total Station)	\$72.50/hr
Project Engineer or Project Manager	\$90/hr - \$115/hr	Field Crew Chief (1 person GPS)	\$145/hr
Staff Engineer	\$85 - \$105/hr	Land Survey Crew	\$145/hr
Technician	\$60 - \$90/hr	Grant & Funding Staff	\$55 - \$75/hr
GIS Staff	\$60 - \$80/hr	Administration and Support Staff	\$45/hr
Zoning Administration	\$140/hr		

Miscellaneous Services Requested by the Municipality

- | | |
|---|---------------------------------------|
| 1. Property Maintenance | \$85.00 / hour + Mileage/Expenses |
| 2. Grant Inspections | This List is Not All Inclusive. Any |
| 3. Building Code Review | service requested by the Municipality |
| 4. Habitability Issues | outside of the normal permitted |
| 5. Liquor License Inspections | inspections will incur the hourly |
| 6. Inspections or Follow-Up Issues for Administrative Permits | charge plus expenses. |

Meeting Attendance per Request by Municipality

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|-------------------------------|------------------------------------|
| 1. Field Inspector | \$85.00 / hour + Mileage/Expenses |
| 2. Inspection Department Head | \$125.00 / hour + Mileage/Expenses |
| 3. Engineering Staff | \$130.00 / hour + Mileage/Expenses |