



October 28, 2020

Brent Miller, Administrator
Sauk County
505 Broadway
Baraboo, WI 53913

Re: Agreement to Provide Environmental Review Record Preparation Consulting Services

Dear Brent,

Vierbicher Associates, Inc. (Consultant) is pleased to submit this Agreement to provide Environmental Review Record Preparation Services to Sauk County (Client). All sections included in this Agreement and the General Terms and Conditions form the basis for this Agreement.

I. PROJECT UNDERSTANDING

Sauk County is proposing to make improvements to the community park located in the unincorporated Village of Bluffview using CDBG CLOSE grant funds. The scope of this project includes preparation of an Environmental Review in compliance with the CDBG guidelines.

Consultant will conduct an environmental assessment by collecting and analyzing supporting documentation including: historic properties; floodplain management; wetland protection; water quality; endangered species; wild and scenic rivers; air quality; farmland protection; man-made hazards; thermal hazards; noise; runway clear zones; and solid waste. The base scope of services does not include an archaeological survey and historic survey. If the proposed park site has not been previously disturbed and SHPO determines an archaeological survey needs to be completed, then an archaeological and historic survey will be conducted as an additional service. However, to meet the project timeline, the archaeological survey will need to be completed either before winter, or in the spring. To keep the project on schedule, a determination regarding the survey needs to be made ASAP, so the field work can be completed this year.

Upon conclusion of the assessment, a combined Notice of Intent to Request Release of Funds and a Notice of FONSI (Finding of No Significant Impact) will be published. The Environmental Review Record shall be submitted to DEHCR Environmental Desk for review and comment. DEHCR will then issue the Authority to Use Grant Funds and a Letter of Certification.

II. SCOPE OF SERVICES

A. General

1. Consultant shall prepare the Environmental Review Record in accordance with CDBG requirements for the Bluffview Community Park. Services shall generally include the following activities:

- Determine what level of review is required,
- Initiate contracts, with Archaeologists if required,

- Complete "programmatic reviews",
- Collect data,
- Publish notices,
- Request for Release of Funds and Certification,
- Respond to Request for Information,
- Serve as Technical Liaison, and
- Prepare all Environmental Reporting.

B. Specific Services Provided by Consultant

1. Determine what level of review is required

- a) The project scope will be reviewed with the County lead, but it is anticipated that a full Environmental Review will be required, especially if the project area includes greater than 0.5 acres that has not been previously disturbed.

Note: Pursuant to the environmental review requirements, if more than 0.5 acres of the project area has not been previously disturbed, an archaeological and historical survey needs to be conducted. The archaeological survey will need to be completed before winter, or will need to wait until spring. Our proposal includes an archaeological and historic survey as an alternate additional fee. The survey can be completed before winter if the authorization to proceed is done in October.

2. Complete "Programmatic Reviews"

- a) Letters describing the project to Contacts on ER Form 4-D, (30-day waiting period).
- b) Make maps that depict site location in relation to the Historic properties, floodplain, wetland, coastal zone, water quality, endangered species, wild and scenic rivers, air quality, farmland protection, man-made hazards, thermal hazards, noise, runway clear zone, and solid waste.
- c) Contact WDNR BRRS to determine if nearby Badger Armory spills have any effect on the property.

3. Collect Data

- a) Conduct Site Visit in order to sign Field Notes Checklist,
- b) Collect Pictures of the site,
- c) Complete Part 1 ERR and Part 2 EA,
- d) Prepare project map in GIS (Paul).

4. Public Notice

- a) If no significant impact findings, Publish a Combined Notice of Findings/Notice of Intent to Request Release of Funds.

5. Request for Release of Funds and Certification

- a) After notice period, sent ER to DEHCR for an additional 15 day comment period.

6. Respond to Request for Information,

- a) If DEHCR has requests, will respond.
- 7. Serve as Technical Liaison
 - a) Field calls from notice or comment period.

C. Additional Services if Requested by Client

If requested by Client, Consultant is prepared to provide the following additional services:

- 1. Archaeological and Historical Surveys.

NOTE: These services are not part of the base scope of work, but are included as an additional service.

III. SERVICES NOT PROVIDED AS PART OF THIS PROJECT

In addition to the "Services Not Provided as Part of This Agreement" section indicated in the attached General Terms and Conditions, the following services are not included as part of this work.

- A. CDBG grant administration services beyond the environmental review, engineering design, bidding, construction phase services, or wetland delineation.

IV. INFORMATION PROVIDED BY OTHERS

In order to complete our scope of services, the following information shall be provided by others:

- A. Copy of the CDBG Grant Agreement.
- B. Documentation of previous land disturbance.

V. SCHEDULE

- A. This Agreement is based upon the following anticipated schedule:

<u>Activity</u>	<u>Date</u>
1. Authorization to Proceed.....	October 28, 2020
2. Complete Programmatic Review.....	November 30, 2020
3. Public Notice and Request for Release of Funds	December 31, 2020
4. Environmental Certification	January 15, 2020
*If an Archaeological Survey and Historical Survey are required the date of completion listed above will be adjusted accordingly.	

VI. SCHEDULE OF DELIVERABLES

The following deliverables shall be provided to the Client throughout the course of the project:

- A. Environmental Review.

VII. DESIGNATION OF RESPONSIBLE PARTIES

The designated responsible parties representing the Client and Consultant, respectively, shall have authority to transmit instructions, receive information, and render decisions relative to the project on behalf of each respective party.

Overall coordination and project supervision for Consultant is the responsibility of Kurt R. Muchow, Project Leader. He, along with other personnel, shall provide the services required for the various aspects of the project. Please direct all communications that have a substantive impact on the project to Kurt R. Muchow

The Client designates Brent Miller as its representative. Consultant shall direct all communications that have a substantive impact on the project to that individual, and that individual's responses shall be binding on the Client.

VIII. FEES

A. The fixed fee to provide the scope of services described herein is:

- | | | |
|----|---|------------|
| 1. | Environmental Review | \$3,600.00 |
| 2. | Archaeological Survey - MVAC (Alternate Service if Required) | \$3,763.43 |
| 3. | Historical Survey - Mead & Hunt (Alternate Service if Required) | \$9,000.00 |

B. These fees assume that the work will be completed within the time frame set forth herein. If significant delays to the project occur, which are not due to the negligence of the Consultant including, by way of example and not limitation, decisions of the Client, regulatory approvals, deferrals to the next construction season or calendar year, etc., the Consultant reserves the right to negotiate and adjust an appropriate change to the fees.

C. Reimbursable expenses are included in the above stated fees.

IX. EQUAL OPPORTUNITY/AFFIRMATIVE ACTION

In connection with the performance of work under contract, Consultant agrees to comply with: **Title VI of the Civil Rights Act of 1964 (P.L. 88-352)**, which provides that no person shall be excluded from participation, denied the benefits, or subjected to discrimination on the basis of race, color, or national origin under any program or activity receiving federal financial assistance.

Section 109 of the Housing and Urban Development Act of 1974, as amended, which provided that no person shall be excluded from participation (including employment), denied benefits or subjected to discrimination on the basis of race, color, national origin, or sex, under any program or activity, funded in whole or in part under Title I (Community Development) of the Act.

Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual shall solely by reason of his or her handicap, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funds.

Age Discrimination Act of 1975, as amended, which provides that no person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of age, under any program or activity receiving federal funds.

Executive Order 11246, as amended, which provides that no person shall be discriminated

against, on the basis of race, color, religion, sex or national origin in any place of employment during the performance of federally-assisted construction contracts in excess of \$2,000.

Section 3 of the Housing and Urban Development Act of 1968, as amended, which provides that to the greatest extent feasible, opportunities for training and employment shall be given to lower-income residents of the project area, and that contracts, in connection with the project, be awarded to business concerns located in, or owned in substantial part, by residents of the project area.

X. GENERAL TERMS AND CONDITIONS

The General Terms and Conditions dated 11-6-18 and attached hereto are incorporated herein by reference.

We appreciate the opportunity to work with you on this project. If this Agreement is acceptable to you, please sign the Authorization below and return one copy to our Reedsburg office. Should you have any questions or require any additional information, please feel free to contact me.

Sincerely,



Kurt R. Muchow
Project Leader

Enclosure: General Terms and Conditions

AUTHORIZATION TO PROCEED

In witness whereof, the parties have made and executed this Agreement as of the day and year written below.

Client



Brent Miller, Administrator
Sauk County
505 Broadway
Baraboo, WI 53913

Date

12-10-2020


Witness

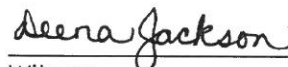
Consultant



Kurt R. Muchow, Principal
Vierbicher Associates, Inc.
400 Viking Drive
Reedsburg, WI 53959

October 28, 2020

Date



Witness

© 2020 Vierbicher Associates, Inc.

**VIERBICHER ASSOCIATES, INC. (CONSULTANT)
GENERAL TERMS AND CONDITIONS OF SERVICES**

1. Services Not Provided as Part of This Agreement

Environmental studies, resident construction observation services, archaeological investigations, soil borings, flood plain analysis, wetland delineations, public hearing representation, easements, property descriptions or surveys, negotiations for property rights acquisitions, and other detailed studies or investigations, unless specifically identified in this Agreement for Services, are not included as part of this work.

2. Hazardous Environmental Conditions

Unless specifically identified in this Agreement for Services, it is acknowledged by both parties that Consultant's scope of services does not include any services related to the discovery, identification, presence, handling, removal, transportation, or remediation at the site, or the inspection and testing of hazardous materials, such as asbestos, mold, lead paint, PCBs, petroleum, hazardous waste, or radioactive materials. Client acknowledges that Consultant is performing professional services for Client, and Consultant is not and shall not be required to become an "arranger," "operator," "generator" or "transporter" of hazardous substances as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA). If Client is the owner of the project site, Client shall defend, indemnify and hold Consultant harmless from and against any CERCLA-based claims.

3. Additional Services

The Scope of Services in this Agreement is intended to cover services normally required for this type of project. However, occasionally events occur beyond the control of the Consultant or the Client that create a need for additional services beyond those required for a standard agreement.

The Consultant and/or Client shall promptly and in a timely manner bring to the attention of the other the potential need to change the Scope of Services set forth above, necessitated by a change in the Scope of Project, Scope of Services, or the Schedule. When a change in the Scope of Services, Schedule, or Fees is agreed to by the Consultant and Client, it shall be initiated by written authorization of both parties.

4. Client's Responsibility

- A. Provide Consultant with all criteria and full information as to Client's requirements for the project, including design objectives and constraints, capacity and performance requirements, flexibility, expandability, and any budgetary limitations; furnish previous plans, studies and other information relevant to the project; furnish copies of all design and construction standards which Client will require to be included in the drawings and specifications; and furnish copies of Client's standard forms, and conditions, including insurance requirements and related documents for Consultant to include in the bidding documents, or otherwise when applicable.
- B. Furnish to Consultant any other information pertinent to the project including reports and data relative to previous designs, or investigations at or adjacent to the site, including hazardous environmental conditions and other data such as reports, investigations, actions or citations.
- C. Consultant shall be entitled to rely, without liability, on the accuracy and completeness of any and all information provided by Client, Client's Consultants and Contractors, and information from public records, without the need for independent verification.
- D. Arrange for safe access to and make all provisions for Consultant to enter upon public and private property as required for Consultant to perform services under this Agreement.

- E. Examine all alternate solutions, studies, reports, sketches, drawings, specifications, proposals, and other documents presented by Consultant and render timely decisions pertaining thereto.
- F. For projects involving construction, attend any pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and substantial completion and final payment inspections.
- G. For projects involving construction, if more than one prime contract is to be awarded for the work designed or specified by Consultant, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime contractors, and define and set forth in writing the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Consultant.
- H. For projects involving construction, if Client designates a Construction Manager or an individual or entity other than, or in addition to, Consultant to represent Client at the site, the Client shall define and set forth in writing the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Consultant and make a part of this Agreement.
- I. Provide information relative to all concealed conditions, subsurface conditions, soil conditions, as-built information, and other site boundary conditions. Consultant shall be entitled to rely upon the accuracy and completeness of such information.

5. General Considerations (for projects involving construction)

- A. Consultant shall not at any time supervise, direct, or have control over any contractor's work, nor shall Consultant have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.
- B. Consultant neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.
- C. Consultant shall not be responsible for the acts or omissions of any contractor, subcontractor or supplier, or of any contractor's agents or employees or any other persons (except Consultant's own employees) at the project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Consultant.

6. Fees

- A. The fees set forth in this Agreement are based on the assumption that the work will be completed within the time frame set forth herein. If significant delays to the project occur, which are not due to the negligence of the Consultant, e.g. decisions of the Client, regulatory approvals, deferrals to the next construction season or calendar year, etc., the Consultant reserves the right to negotiate and adjust an appropriate change to the fees.
- B. Consultant may submit invoices monthly for work completed to date. Fixed fees will be submitted on the basis of percent of the Scope of Services completed. Estimated fees will be submitted on the basis of time and expense incurred in accordance with Consultant's fee schedule in effect at the time the costs are incurred.

- C. Invoices are due upon receipt. For invoices not paid after 30 days, interest will accrue at the rate of 1 ½% per month. Payments will be credited first to interest and then to principal. In the event any portion of the account remains unpaid after 90 days after the billing, Consultant may initiate collection action and the Client shall be responsible for all costs of collection, including reasonable attorneys' fees. As a matter of business practice, Consultant would intend to file lien rights against the property if payment is not received before lien rights would expire. Consultant shall have the right to suspend its services without any liability arising out of or related to such suspension in the event invoices are not paid within 30 days of receipt.
- D. When estimates of fees or expenses are quoted, they are simply that, estimates. Actual costs invoiced may be higher or lower due to actual fees or expenses incurred. When fees or expenses are anticipated to be higher or lower than estimated, Consultant shall make every effort to inform you in a timely manner, even prior to incurring the costs, if possible.
- E. Consultant will bill additional services, if requested, in accordance with the fee schedule in effect at the time the work is performed or as otherwise negotiated.

7. Sales Tax for Landscape Design Services

State and local sales tax will be applied to projects for Landscape Design Services, where applicable. The sales tax will be reflected on regular Client invoices. Should sales tax be imposed, they shall be in addition to Consultant's agreed upon compensation.

Those services subject to the sales tax will be identified in the Agreement and on invoices sent to the Client.

Applicable sales tax will not be applied to projects for Landscape Design Services if the Client provides a Tax Exempt Certificate.

8. Dispute Resolution

In the event a dispute shall develop between the Client and the Consultant arising out of or related to this Agreement, the Client and Consultant agree to use the following process to resolve the dispute:

- A. The Client and Consultant agree to first negotiate all disputes between them in good faith for a period of at least 30 days from notice first being served in writing to the Client or Consultant of the dispute.
- B. If the Client and Consultant are unable to resolve the dispute by negotiation as described above, the Client and Consultant agree to submit the dispute to non-binding mediation. Such mediation shall be conducted in accordance with Construction Industry Dispute Resolution procedures of the American Arbitration Association.
- C. If the Client and Consultant are unable to resolve the dispute by negotiation or by mediation, they are free to utilize whatever other legal remedies are available to settle the dispute.

9. Insurance

A. Consultant

Consultant maintains general liability and property insurance; vehicle liability; and workers' compensation coverage meeting state and federal mandates. Consultant also carries professional liability insurance. Certificates of Insurance will be provided upon written request.

B. Client

The Client shall procure and maintain, at its expense, general liability, property insurance and, if appropriate, workers' compensation and builders risk insurance. Client waives all claims against the Consultant arising out of losses or damages to the extent such losses or damages are covered by the foregoing insurance policies maintained by the Client.

C. Contractor

The Consultant shall procure from the Contractor, as directed by the Client and/or as provided in the Scope of Services, Certificates of Insurance for the type and amounts as directed by the Client, and shall require the Contractor to name the Consultant as an additional insured under the Contractor's general and auto liability policies.

10. Limitations of Liability/Indemnity

- A. In recognition of the relative risks, rewards and benefits of the project to both the Client and Consultant, the risks have been allocated such that the Client agrees that, to the fullest extent permitted by law, the Consultant's total aggregate liability to the Client for any and all injuries, damages, claims, losses or expenses arising out of this Agreement from any cause or causes, shall not exceed the net fee received by Consultant, not including reimbursable subconsultant fees and expenses. Such causes include, but are not limited to, Consultant's negligence, errors, omissions, strict liability, breach of Agreement or breach of express or implied warranty.
- B. Client and Consultant each agree to indemnify and hold the other harmless, and their respective officers and employees from and against liability for losses, damages and expenses, including reasonable attorneys' fees recoverable under applicable law, to the extent they are caused by the indemnifying party's negligent acts, errors or omissions. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of Client and Consultant, they shall be borne by each party in proportion to its negligence.
- C. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Client or Consultant to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee or any of them.

All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Consultant and not for the benefit of any other party.

11. Use of Documents

All documents prepared or furnished by Consultant pursuant to this Agreement are instruments of Consultant's professional service, and Consultant shall retain an ownership and property interest therein, including all copyrights. Consultant grants Client a license to use instruments of Consultant's professional service for the purpose of planning, constructing, occupying or maintaining the project or as otherwise intended. Reuse or modification of any such documents by Client, without Consultant's written permission and professional involvement in the applicable reuse or modification, shall be at Client's sole risk, and Client agrees to waive all claims against and defend, indemnify and hold Consultant harmless from all claims, damages and expenses, including attorneys' fees, arising out of such reuse by Client or by others acting through Client.

12. Survey Stakes for Construction (for projects involving construction)

Stakes placed by Consultant for use by the Contractor shall only be used for the specific purpose indicated. Any use of stakes by the Client for purposes other than indicated and/or communicated by the Consultant, without Consultant's written permission, shall be at Client's sole risk, and Client agrees to indemnify and hold Consultant harmless for all claims, damages and expense, including attorneys' fees, arising out of such unauthorized use by Client or others acting through Client.

13. Use of Electronic Media

Copies of documents that may be relied upon by Client are limited to the printed copies (also known as hard copies) that are signed or sealed by Consultant except for electronic copies of documents available for printing by Contractors during bidding and/or construction from QuestCDN.com or as specified in this Agreement

for Services or as specifically indicated in writing by Consultant. Files in electronic formats, or other types of information furnished by Consultant to Client such as text, data or graphics, are only for convenience of Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. When transferring documents in electronic formats, Consultant makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems or computer hardware differing from those in use by Consultant at the beginning of the project.

14. Opinions of Cost

When included in Consultant's scope of services, opinions or estimates of probable construction cost are prepared on the basis of Consultant's experience and qualifications and represent Consultant's judgment as a professional generally familiar with the industry. However, since Consultant has no control over the cost of labor, materials, equipment or services furnished by others, over contractor's methods of determining prices, or over competitive bidding or market conditions, Consultant cannot and does not guarantee that proposals, bids, or the actual construction cost will not vary from Consultant's opinions or estimates of probable construction cost.

15. Approvals

Client acknowledges that the approval process necessary to estimate or maintain a project timeline is both unpredictable and outside the Consultant's control. Consultant does not guarantee reviews or approvals by any governing authority or outside agency, nor the ability to achieve or maintain any project timeline.

16. Certifications

Consultant shall not be required to sign any documents, no matter by whom requested, that would result in Consultant's having to certify, quantify, or warrant the existence of conditions that Consultant cannot ascertain.

17. Third Parties

Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Client or Consultant. Consultant's services hereunder are being performed solely for the benefit of the Client, and no other entity shall have any claims against Consultant because of this Agreement or Consultant's performance of services hereunder.

18. Consequential Damages Waiver

Neither the Client nor the Consultant shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action including negligence, strict liability, breach of Agreement and breach of warranty.

19. Standard of Care

The Standard of Care for all professional services performed or furnished by Consultant under this Agreement shall be the skill and care used by members of Consultant's profession practicing under similar circumstances or similar scope of services at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with Consultant's services.

20. Termination

The obligation to provide further services under this Agreement may be terminated:

A. For Cause

1. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, through no fault of the terminating party. The failing party shall have the right, within 30 days, to correct or remedy the cited failures.
2. By Consultant
 - a. Upon seven days written notice if Consultant believes that he is being requested by Client to furnish or perform services contrary to Consultant's responsibilities as a licensed professional. Consultant shall have no liability to Client on account of such termination.
 - b. Upon seven days written notice if the Consultant's services for the project are delayed or suspended for more than 90 days for reasons beyond Consultant's control.
 - c. Upon seven days written notice if the Client has failed to pay for previous services rendered and/or if his account is more than 60 days past due.

B. To Discontinue Project

By Client effective upon the receipt of notice by Consultant.

C. Reimbursement for Services

Consultant shall be reimbursed for all services and expenses rightfully incurred prior to termination.

21. Force Majeure

Neither party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations results from any cause beyond its reasonable control and without its negligence. This shall include mass illness caused by a pandemic and potential government pronouncement of the pandemic.

22. Successors, Assigns and Beneficiaries

- A. Client and Consultant each is hereby bound and the partners, successors, executors, administrators and legal representatives of Client and Consultant are hereby bound to the other party by this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.
- B. Neither Client nor Consultant may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty of responsibility under this Agreement.

23. Municipal Financial Advisor Services

The Consultant is not registered with the Securities and Exchange Commission as a municipal advisor. Consultant does not perform municipal advisory services (as covered under the Dodd-Frank Wall Street Reform and Consumer Protection Act, signed into law on July 21, 2010, as it relates to financial products and services). In the event Client desires such services, it is the Client's responsibility to retain an independent registered advisor for that purpose.

24. Controlling Laws

This Agreement is to be governed by the laws of the state in which the project is located and in force at the time of completion of deliverables.

25. Entire Agreement

These General Terms and Conditions and the accompanying Agreement constitute the full and complete Agreement between Client and Consultant and may be changed, amended, added to, superseded, or waived only if Client and Consultant specifically agree in writing to such amendment of the Agreement. In the event of any inconsistency between these General Terms and Conditions, the proposal, Agreement, purchase order, requisition, notice to proceed, or like document, these General Term and Conditions shall govern.

