



October 26, 2021

Cassandra Fowler  
Sauk County Land Resources and Environment Department  
505 Broadway  
Baraboo, WI 53913

Re: Agreement to Provide Engineering Services  
Sauk County Land Resources and Environment Department

Dear Ms. Fowler:

Vierbicher Associates, Inc. (Consultant) is pleased to submit this Agreement to provide Engineering Services to Sauk County Land Resources and Environment Department (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 adopt a new Erosion Control and Stormwater Management Ordinance, but is requesting an Engineer review the document to ensure the standards and conditions listed in the ordinance strictly meet the requirements of Wisconsin State standards pursuant to Wis. Stats. §281.33 and Wis. Admin. Code NR 151 Subchapters III and IV.

## **II. SCOPE OF SERVICES**

### **A. General**

1. Consultant shall have a Professional Engineer familiar with stormwater, review the proposed Sauk County Erosion Control and Stormwater Management Ordinance, and evaluate the proposed ordinance against State standards, provide recommendations, and professional opinion.

### **B. Specific Services Provided by Consultant**

#### Sauk County Proposed Ordinance Review

1. Complete a review of Sauk County's proposed Erosion Control and Stormwater Management Ordinance.
2. Prepare a list of recommended amendments and a professional opinion on implementation of the standards.

## **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. None.

vision to reality

**IV. INFORMATION PROVIDED BY OTHERS**

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

- A. A copy of Client's proposed Erosion Control and Stormwater Management Ordinance.

**V. SCHEDULE**

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

Activity	Date
1. Authorization to Proceed.....	October 2021
2. Sauk County Proposed Ordinance Review .....	November 23, 2021

**VI. SCHEDULE OF DELIVERABLES**

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

- A. Engineering Review and list of amendments to the proposed Sauk County's Erosion Control and Stormwater Management Ordinance.

**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 Neil Pfaff, PE, PH, CST, Project Leader. Neil, 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 Neil.

The Client designates Brent Miller as their 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 as follows:

1. Sauk County Proposed Ordinance Review .....\$3,800

- 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.

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**IX. 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,



Neil Pfaff, PE, PH, CST  
Project Leader

Enclosures: 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



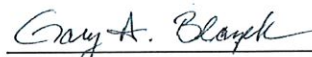
Brent Miller  
Sauk County Land Resources and Environment  
Department  
505 Broadway  
Baraboo, WI 53913

Date

11/1/2021

Witness

Consultant



Gary Blazek, PE Department Manager  
Vierbicher Associates, Inc.  
400 Viking Drive  
Reedsburg, WI 53959

October 26, 2021

Date



Witness

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**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. All certificates of insurance shall name Client as an additional insured.

##### 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. 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.

#### 11. 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.

#### 12. 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.

#### 13. 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.

#### 14. 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.



**15. 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.

**16. 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.

**17. 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.

**18. 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.

**19. 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.

**20. 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.

**21. 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.

**22. 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.

**23. 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.

**24. Effective Date.** The effective date of this Agreement shall be the date of the last signature.

**25. Survival.** The warranties, representations and covenants of this Agreement shall survive completion of the Services under this agreement or any termination of this Agreement.

**26. Waiver.** A waiver by either of the parties of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

**27. No Construction Against Either Party.** This agreement is the product of negotiations between the parties and was either reached with the advice of legal counsel or the opportunity to obtain legal counsel, and shall not be construed against either party.

**28. Multiple Originals.** This contract may be executed in multiple originals, each of which together shall constitute a single agreement.

**29. Captions.** The parties agree that in this contract, captions are used for convenience only and shall not be used in interpreting or construing this contract.

**30. Statutory Protections.** It is agreed by the parties that nothing in this contract, including but not limited to indemnification and hold harmless clauses, shall in any way constitute a waiver on the part of

the County of any immunity, liability limitation or other protection available to the County under any applicable statute or other law. To the extent that any provision of this contract is found by any court of competent jurisdiction to conflict with any such legal protection, then whichever protections, either statutory or contractual, provide a greater benefit to the County shall apply unless the County elects otherwise.

31. **Open Records Law Compliance.** Consultant understands and agrees that, because County is a party to this contract, provisions of the Wisconsin Open Records Law and other laws relating to public records may apply to records kept by Consultant and/or the County. Consultant agrees to fully comply with such laws, and to cooperate with County in its compliance with such laws. Cooperation shall include, but not be limited to, the provision of records, or copies of records to County or others upon the request of county. Compliance and cooperation of Consultant shall be at its sole cost and expense.
32. **Relationship of Parties.** Nothing in, or done pursuant to, this contract shall be construed to create the relationship of employer and employee, principal and agent, partners, or a joint venture between County and AAW. This contract does not create an employee/employer relationship between the parties. It is the parties' intention that the AAW will be an independent contractor and not the County's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the state revenue and taxation law, the state workers' compensation law and the state unemployment insurance law. This contract shall not be construed as creating any joint employment relationship between the AAW and the County, and the County will not be liable for any obligation incurred by AAW including but not limited to unpaid minimum wages, overtime premiums, unemployment insurance benefits, worker's compensation benefits, health insurance, health benefits, disability benefits, or retirement benefits. Contractor is not entitled to receive any benefits from County or to participate in any County benefit plan.
33. **Competence, Solvency.** Consultant warrants and represents that it is sufficiently experienced and competent to provide, perform and complete all services in full compliance with and as required by or pursuant to this contract. Consultant represents and warrants that it is financially solvent, and has the financial resources necessary to provide, perform and complete the duties and functions in full compliance with and as required by this contract. Consultant shall provide, perform and complete all services contemplated by this contract in an expeditious and proper.
34. **Amendment.** No amendment of this Contract shall be binding unless in writing and signed by all of the parties.
35. **Compliance with Laws.** The parties agree to comply with all applicable Federal, State and local codes, regulations, standards, ordinances, and other laws.
36. **Electronic Signing.** It is agreed by the parties that either party or both may, by email, provide the other party with a copy of this contract, in PDF form or otherwise, showing the signatures of, or on behalf of the sending party, with such signatures being as binding as original signatures, regardless of whether the other party signs in the same fashion, or by using original ink signatures. For the purposes of this section, "signatures" may be original written signatures, photocopies of signatures, or signatures added to a contract or through the addition by a signing party of a typed or electronically added signature.