

## PROJECT MANAGEMENT AGREEMENT

This PROJECT MANAGEMENT AGREEMENT (this "Agreement") is dated, entered into and effective \_\_\_\_\_, 2020 ("Effective Date") by and between \_\_\_\_\_, a [State of organization] [corporation / limited liability company] ("Client"), and A&B ENGINEERING SERVICES LLC, a Wisconsin limited liability company ("Service Provider").

The parties agree as follows:

1. **Services and Deliverables.** Service Provider will provide to Client project management and other services (the "Services") and deliverables described in each Statement of Work ("SOW") entered into by the parties from time to time ("SOW"). This Agreement contains the terms and conditions applicable to all Services and Deliverables that Service Provider provides to Client, and the terms and conditions in this Agreement will apply to each SOW. The terms of this Agreement prevail over any terms or conditions contained in any other documentation related to the subject matter of this Agreement and expressly exclude any of Client's terms and conditions contained in any document provided by Client. Each SOW shall be subject to the terms and conditions of this Agreement and is incorporated by reference into this Agreement. If the terms of a SOW conflict with or are inconsistent with any other terms of this Agreement, the terms of this Agreement shall control, provided however, that the non-inclusion of a provision or concept in either document shall not constitute a conflict or inconsistency for the purposes of this provision.

2. **Compensation: Timing.**

2.1 **Payment.** Client shall pay Service Provider in accordance with the price and payment schedule set forth in the applicable SOW. Client shall make all payments to Service Provider within 30 days of Service Provider's invoice date. If Client fails to make payment when due, in addition to all other remedies that may be available, Service Provider may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly. All prices are exclusive of taxes and shipping charged unless otherwise indicated in writing. If Client fails to pay Service Provider any amount due hereunder, Client shall pay all costs and expenses, including reasonable attorneys' fees, incurred by Service Provider in connection with such breach.

2.2 **Expenses.** Client shall pay Service Provider for all reasonable out of pocket expenses incurred by Service Provider and its Representatives in connection with providing the Services and Deliverables.

2.3 **Estimates.** Service Provider may provide cost estimates for Services and Deliverables. No estimates are guaranteed by Service Provider and an estimate does not change any portion of this Agreement to a fixed-fee contract. Service Provider shall make reasonable efforts to promptly notify Client if Service Provider determines that any estimate will be exceeded. Client shall pay Service Provider the full amount of Service Provider's invoice, regardless of whether such amount is above or below any estimate. Service Provider shall use reasonable efforts to meet any performance dates specified in the SOW, and any such dates shall be estimates only.

3. **Term and Termination.**

3.1 **Term.** The term of this Agreement commences on the Effective Date and continues until terminated as provided in this Agreement (the "Term").

3.2 **Service Provider's Right to Terminate.** Service Provider may terminate this Agreement:

(a) for any reason or no reason, by providing written 90 days' notice to Client, which termination shall be effective on the 90th day after the date on which the notice is received unless a later date is set in the notice;

(b) if Client fails to timely pay to Service Provider the amounts owed under an invoice (a "Payment Failure");

(c) if there has been a breach, inaccuracy in or failure to perform any representation, warranty, or obligation of Client (other than a Payment Failure), and either the breach or failure cannot be cured or, if the breach or failure can be cured, it is not cured by Client within 30 days after Client's receipt of a notice of such breach or failure; or

(d) if Client becomes insolvent or files, or has filed against it, a petition for voluntary or involuntary bankruptcy or under any other insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property, or is generally unable to pay its debts as they become due.

3.3 **Client's Right to Terminate.** Client may terminate this Agreement:

(a) for any reason or no reason, by providing written 90 days' notice to Service Provider, which shall be effective on the 90th day after the date on which the notice is received unless a later date is set in the notice;

(b) if there has been a breach, inaccuracy in or failure to perform any representation, warranty, or obligation of Service Provider, and either the breach or failure cannot be cured or, if the breach or failure can be cured, it is not cured by Service Provider within 30 days after Service Provider's receipt of a notice of such breach or failure; or

(c) if Service Provider becomes insolvent or files, or has filed against it, a petition for voluntary or involuntary bankruptcy or under any other insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property, or is generally unable to pay its debts as they become due.

3.4 **Effect of Termination.** Termination of this Agreement also terminates all SOWS. Termination of this Agreement will not affect any rights or obligations of the respective parties that have accrued prior thereto in connection herewith. Upon any termination of this Agreement, all amounts due to Service Provider hereunder shall be immediately due and payable.

4. **Representations and Warranties.**

4.1 **Performance.** Service Provider shall perform its obligations under this Agreement in a professional and timely manner, using reasonable skill and care.

4.2 **WARRANTY DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SERVICES AND DELIVERABLES ARE PROVIDED "AS-IS" AND NEITHER SERVICE PROVIDER NOR ANY PERSON ON BEHALF OF SERVICE PROVIDER HAS MADE OR MAKES ANY EXPRESS, IMPLIED, OR STATUTORY REPRESENTATION OR WARRANTY WHATSOEVER, INCLUDING ANY WARRANTIES OF (A) MERCHANTABILITY, (B) FITNESS FOR A PARTICULAR PURPOSE, OR (C) NON-INFRINGEMENT, WHETHER ARISING BY LAW,

COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND CLIENT ACKNOWLEDGES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT, IT HAS NOT RELIED ON ANY REPRESENTATION OR WARRANTY MADE BY SERVICE PROVIDER, OR ANY OTHER PERSON ON SERVICE PROVIDER'S BEHALF.

**5. Non-Solicitation of Employees.** Client agrees, during the Term and for a period of two years thereafter, that it will not induce or solicit any then-current employee of the Service Provider with whom Client interacted with under the scope of this Agreement or who had access to the Service Provider's Confidential Information (each a "Solicited Employee") to terminate his or her employment relationship with the Service Provider in order to work for a person or entity that is engaged in a business similar to the Service Provider's business in the same or substantially similar capacity that the Solicited Employee worked during his or her final 12 months of employment with the Service Provider. Client further agrees not to directly or indirectly encourage or induce any employee, independent contractor, former employee, or former independent contractor of the Service Provider to breach any then-current agreement with or legal duty to the Service Provider. In the event of a breach or a threatened breach by Client of this Section 5, Service Provider shall, in addition to any and all other rights and remedies that are available to it under this Agreement, be entitled to equitable relief, including a temporary restraining order, an injunction, and specific performance, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages are not an adequate remedy.

**6. Limitation of Liability.**

6.1 EXCLUSION OF SPECIAL DAMAGES. SERVICE PROVIDER WILL NOT UNDER ANY CIRCUMSTANCES, BE LIABLE TO CLIENT OR ANY REPRESENTATIVES OF CLIENT FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY DAMAGES ARISING FROM LOSS OF USE OR LOST BUSINESS, REVENUE, PROFITS, DATA OR GOODWILL) ARISING IN CONNECTION WITH THIS AGREEMENT, WHETHER IN AN ACTION IN CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR OTHER LEGAL THEORY, EVEN IF A PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

6.2 LIABILITY. SERVICE PROVIDER'S AGGREGATE LIABILITY TO CLIENT AND CLIENT'S REPRESENTATIVES FOR LIABILITIES, DAMAGES, LOSSES AND EXPENSES IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY CLIENT TO SERVICE PROVIDER UNDER THIS Agreement DURING THE 12 MONTH PERIOD PRIOR TO THE OCCURRENCE OF THE EVENT GIVING RISE TO THE LIABILITIES, DAMAGES, LOSSES OR EXPENSES.

6.3 Insurance Recoveries. All liabilities, damages, losses and expenses shall be calculated net of any insurance benefits, proceeds and offsets actually received by a party, net of the cost incurred by a party for collection and any increase in insurance premiums to a party as a result of making an insurance claim with respect to such liabilities, damages, losses and expenses ("Third Party Recoveries"). The parties agree to respond promptly to any inquiry by the other party as to the status of the receipt of any such Third Party Recoveries, and each party agrees to use commercially reasonable efforts to pursue and obtain such Third Party Recoveries.

6.4 Non-Conforming Services and Deliverables. If a Deliverable or Service does not conform to the warranties provided in this Agreement, Client must alert Service Provider in writing of that fact within 60 days of Service Provider providing Client with such Deliverable or Service, and Client's failure

to provide such written notice within the 60-day time requirement shall preclude Client from making a claim against Service Provider with respect to such non-conforming Service or Deliverable.

7. **Representatives.** Service Provider Representatives working on Client matters under this Agreement may work on other matters for other Service Provider clients during the Term. Service Provider will make reasonable efforts to honor specific requests of the Client regarding assignment of Service Provider Representatives, provided however that Service Provider reserves the sole right to make and change all such assignments. “Representatives” means a party’s affiliates, and the officers, directors, shareholders, members, managers, employees, agents, of the party and that party’s affiliates.

8. **Miscellaneous.**

8.1 **Publicity.** Service Provider may desire to use Client’s name and logo for business marketing purposes on a case by case basis, but Service Provider will not do so without first obtaining Client’s permission.

8.2 **Amendment.** No amendment to this Agreement is effective unless it is in writing, identified as an amendment to this Agreement and signed by an authorized representative of each party.

8.3 **Waiver.** No waiver under this Agreement is effective unless it is in writing, identified as a waiver to this Agreement and signed by an authorized representative of the party waiving its right. Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion. None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege or condition arising from this Agreement: (a) any failure or delay in exercising any right, remedy, power or privilege or in enforcing any condition under this Agreement; or (b) any act, omission or course of dealing between the parties.

8.4 **Notices.** All communications that are required or permitted to be given to the parties under this Agreement must be given in writing and delivered by: (a) hand delivery; (b) facsimile or email with confirmation copy sent by certified mail; (c) nationally recognized private overnight courier; or (d) by registered or certified mail, postage prepaid, return receipt requested, sent to the addresses set forth on the signature page of this Agreement or to such other addresses as may be designated in advance by a party giving written notice to the other party. If hand delivered, then such communication shall be deemed delivered and received upon actual receipt; if sent by facsimile or email transmission (with confirmation copy sent by certified mail), then such communication shall be deemed delivered and received the day of the transmission; if sent by overnight courier, then such communication shall be deemed delivered and received upon receipt; and if sent by registered or certified mail, postage prepaid, return receipt requested, then such communication shall be deemed delivered and received three days after placing such communication in the mail.

8.5 **Third-Party Beneficiaries.** This Agreement benefits solely the parties to this Agreement and their respective permitted successors and permitted assigns and nothing in this Agreement, express or implied, confers on any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

8.6 **Counterparts; Electronic Signatures.** This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Signatures sent via e-mail or other electronic method, and signatures stored in PDF or other electronic format, will be considered effective and original. Each party agrees and consents to transact business using electronic communications, to receive notices and disclosures electronically, and to use electronic signatures in lieu of using paper documents. Neither party is required to receive notices and disclosures or

sign documents electronically. If a party prefers not to do so, such party may request to receive paper copies and withdraw its consent to transact business electronically at any time. Documents between the Service Provider and Client may be electronically signed, and the parties agree that the electronic signatures are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

8.7 Governing Law; Jurisdiction; Venue. This Agreement and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the State of Wisconsin, without regard to the conflict of law provisions thereof to the extent these principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Wisconsin. Any dispute or disagreement between the parties as to the interpretation of any provision of, or the performance of obligations under, this Agreement will be commenced and exclusively conducted in its entirety in the state court located in and federal courts located in Wisconsin. Each party consents to personal and subject matter jurisdiction and venue in such courts and waives and relinquishes all right to object to the suitability or convenience of such venue or forum.

8.8 Independent Contractor; Consultant Relationship. Nothing in this Agreement creates any agency, joint venture, partnership or other form of joint enterprise, franchise, business opportunity, employment or fiduciary relationship between the parties or an employee/employer relationship. Service Provider's status under this Agreement is that of an independent contractor of Client. No personnel provided to Client by Service Provider in connection with the Services or Deliverables shall be deemed an employee, agent, partner or joint venturer of Client for any purpose whatsoever.

8.9 Assignment. The parties shall not assign any of their rights and obligations under this Agreement without the prior written consent of the other party, provided that (a) if Service Provider sells all or substantially all of its assets, Service Provider may assign its rights and obligations under this Agreement to such buyer without the consent of Client, and (b) provided further that Service Provider may, without the consent of Client, engage independent contractors and subcontractors in connection with providing the Services and Deliverables under this Agreement so long as Service Provider remains responsible for the performance of such independent contractors and subcontractors as if Service Provider's employees had been engaged. The parties shall not unreasonably withhold, condition or delay any consent to assignment. This Agreement will be binding upon and inure to the benefit of the parties and their permitted successors and assigns. Any attempted assignment or transfer in violation of this section shall be null and void.

8.10 Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": (a) acts of God; (b) flood, fire, earthquake, epidemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances; (i) shortage of adequate power or transportation facilities; and (j) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within 10 days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of 90 consecutive days following written

notice given by it under this Section 12.10, either party may terminate this Agreement immediately upon written notice.

8.11 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction or under any circumstance, the invalidity, illegality or unenforceability does not affect any other term or provision of this Agreement or invalidate or render unenforceable the term or provision in any other jurisdiction or other circumstance. On a determination that any term or provision is invalid, illegal or unenforceable, the parties shall negotiate in good faith to modify this Agreement to effect the parties' original intent as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

8.12 Interpretation. In this Agreement: (a) section headings are for convenience of reference only and do not affect the interpretation of this Agreement; and (b) unless otherwise specified, "days" means calendar days. This Agreement was collaboratively created by all the parties hereto and shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an agreement or causing any agreement to be drafted.

8.13 Survival. Any terms of this Agreement that would, by their nature, survive the Term will survive the Term indefinitely, including, without limitation, Sections 1, 2, 3.4, 5, 6, 7, 8, 10, 11, and 12.

8.14 Injunctive Relief. Each party acknowledges and agrees that (a) a breach or threatened breach of Section 5 would give rise to irreparable harm to the other party for which monetary damages would not be an adequate remedy and (b). Each party agrees that it will not oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this section.

8.15 Entire Agreement. This Agreement contains the entire understanding of the parties with respect to the matters therein contained and supersedes all previous agreements and undertakings with respect thereto. The sole and exclusive remedy for any and all liabilities, damages, losses and expenses and other matters arising under, out of or related to this Agreement or the transactions contemplated hereby shall be the remedies expressly set forth in this Agreement, and no person or entity, including any party and their respective Representatives, will have any other entitlement, remedy or recourse, whether in contract, tort, strict liability, equitable remedy or otherwise, it being agreed that all of such other remedies, entitlements and recourse are expressly waived and released to the fullest extent permitted by law.

[SIGNATURES ON NEXT PAGE]

The parties are entering into this Agreement on the Effective Date.

**CLIENT:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address (for Notice):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SERVICE PROVIDER:**

A&B ENGINEERING SERVICES LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address (for Notice):

A&B Engineering Services LLC

Attn: \_\_\_\_\_ 124

N. Columbus Street Randolph,

WI 53956

E-mail: \_\_\_\_\_

*[Signature Page to Project Management Agreement]*

**STATEMENT OF WORK**

This Statement of Work (“SOW” or “Statement of Work”), dated as of \_\_\_\_\_, 20\_\_\_\_, is entered into in connection with the Project Management Agreement (the “Agreement”) entered into by and between \_\_\_\_\_, a [State of organization] [corporation / limited liability company / limited partnership / limited liability partnership] (“Client”) and A&B ENGINEERING SERVICES LLC, a Wisconsin limited liability company (“Service Provider”). This SOW is subject to the terms and conditions of the Agreement, and if the terms of this SOW conflict with or are inconsistent with any terms of the Agreement, the terms of the Agreement shall control, provided however, that the non-inclusion of a provision or concept in either document shall not constitute a conflict or inconsistency for the purposes of this provision. Capitalized terms used and not defined in this SOW have the respective meanings given them in the Agreement.

- 1. **Description of Services/Deliverables.**
  
- 2. **Performance Dates.**
  
- 3. **Price and Payment Schedule.**
  
- 4. **Expenses.**
  
- 5. **Other.**

[INSERT CLIENT NAME]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

A&B ENGINEERING SERVICES LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_