

**LAC DU FLAMBEAU BAND  
OF  
LAKE SUPERIOR CHIPPEWA INDIANS**



**REQUEST FOR PROPOSALS**

for

**POWTS MANAGEMENT AND SEPTAGE DISPOSAL  
MASTER PLAN DEVELOPMENT**

RFP NO. & IHS PROJECT NO. BE-25-N50

## 1. PURPOSE

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The Lac du Flambeau Band of Lake Superior Chippewa Indians (hereinafter referred to as the “Tribe”) is a federally recognized Indian Tribe organized under a constitution and bylaws pursuant to the Indian Reorganization Act, 48 Stat. 984, 25 U.S.C. § 476. As a Sovereign Nation, the Tribe strives to provide all necessary public services to its members and descendants residing on its reservation, including wastewater treatment. The Tribe’s Water and Sewer Department operates a wastewater treatment system that includes, as primary components, two-cell facultative lagoon, MBBR treatment, followed by a settling pond, disinfection, and subsurface discharge to seepage cells. The wastewater facility is located adjacent to the main community of Lac du Flambeau and provides services to all residences and businesses located within the service perimeter. Approximately 310 Tribal residences are situated beyond the service perimeter and must rely upon private onsite wastewater treatment systems (POWTS), which typically require periodic pumping and removal of septic waste. Unfortunately, Tribal members must currently rely upon private purveyors of septic pumping services, and consistency and reliability of such services have been long-standing issues. As a result, the Tribe would like to develop its own system to manage POWTS septage disposal in a sustainable and environmentally friendly manner.

This Request for Proposals (hereinafter referred to as the “RFP”) is issued by the Tribe to solicit bid proposals from qualified, reputable A&E firms to develop a Master Plan for management of and septage disposal for the approximately 310 private onsite wastewater treatment systems located at Tribal residences not connected to or served by the Tribe’s wastewater treatment facility. It is anticipated that the services to be provided by the successful bidder will include the following (see Section 4 for additional details):

- Phase 1: Identification of alternatives for septage disposal with a recommended alternative, including development of a draft POWTS Management Master Plan.
- Phase 2: Completion of research/analysis, costs, etc. for the agreed upon recommended alternative.
- Phase 3: Development and delivery of a Master Plan for the long-term management of the Tribe’s POWTS inventory.

The following documents are attached hereto and incorporated into this Request for Proposals as though fully set forth:

- ◆ Bid Schedule
- ◆ Section 01300 – Administrative Requirements
- ◆ Agreement between Owner and Engineer (EJCDC-500)
- ◆ Existing WWTF Record Drawing (available upon request)

It is anticipated that this RFP will result in a single contract being awarded to a firm licensed and insured and authorized to conduct business in the State of Wisconsin, with proven experience in designing and managing wastewater treatment infrastructure projects. The standard EJCDC E-500 “*Agreement between Owner and Engineer for Professional Services*,” a copy of which is attached hereto, will be used for this project. The successful Contractor will be expected and required to adhere to every term of this RFP and the contract between the parties and perform the required functions with expertise, knowledge and capability with minimal monitoring by the Tribe. All work must be performed in accordance with applicable laws, regulations, codes and standards in the industry.

This RFP does not commit the Tribe to accept any proposal submitted. The Tribe reserves the right to accept or reject any and all proposals, and to accept or reject any or all items in any proposal. The lowest bidder may not be the successful bidder. The Tribe reserves the right to select the bidder whose proposal and qualifications are most advantageous to the Tribe. The Tribe reserves the right to negotiate with any and all bidders any and all parts of the proposals received, including, but not limited to, cost, scope of work, and other relevant details and to accept the proposal most advantageous to, and in the best interest of, the Tribe. The Tribe is not responsible for any costs incurred by the respondents in the preparation of responses to this RFP. The terms “vendor”, “bidder”, “contractor”, “consultant”, “firm” and “respondent” are used interchangeably throughout this RFP and are intended to refer to a person or entity submitting, or intending to submit, a proposal in response to this RFP.

## 2. RFP ADMINISTRATIVE PROCEDURES

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### 2.1 PROJECT ADMINISTRATION.

- 2.1.1** The Tribe is the Owner of the project, and the selected bidder will contract directly with the Tribe for the services to be rendered. The Tribe's contact for contract administration for this project is:

EMERSON COY, Planning Director  
Planning Department  
P.O. Box 67  
Lac du Flambeau, WI 54538  
Office: 715-588-4252  
Email: [ecoy@ldftribe.com](mailto:ecoy@ldftribe.com)

- 2.1.2** The Indian Health Service (IHS) is the funding agency and will also serve as the Band's technical representative on this project. The IHS project manager is:

NATHAN KOHNHORST, Sr. Field Engineer  
Indian Health Service  
129 North Brown Street  
Rhineland, WI 54501  
Office: 715-365-5117  
Email: [nathan.kohnhorst@ihs.gov](mailto:nathan.kohnhorst@ihs.gov)

BRIAN BREUER, PE, District Engineer  
Indian Health Service  
129 North Brown Street  
Rhineland, WI 54501  
Office: 715-365-5103  
Email: [brian.breuer@ihs.gov](mailto:brian.breuer@ihs.gov)

- 2.1.3** Inquiries regarding the Tribe's wastewater treatment system and onsite coordination may be addressed by the Lac du Flambeau Water and Sewer Department. The contact is:

SCOTT VALLIERE, Utilities Director  
P.O. Box 67  
418 Little Pines Road  
Lac du Flambeau, WI 54538  
Office: 715-588-7887  
Cell: 715-614-6394  
Email: [svalliere@ldftribe.com](mailto:svalliere@ldftribe.com)

- 2.2 RFP TIMETABLE.** The dates set forth are subject to change, in the sole discretion of the Tribe:

<b>EVENT</b>	<b>DATE</b>
RFP Issued:	<b>On or Before March 18, 2026</b>
Proposals/Bids Due:	<b>4:00 P.M. Local Time, April 15, 2026</b>
Bid Opening:	<b>9:00 A.M. Local Time, April 16, 2026</b>
Notice of Award Issued:	<b>To Be Announced</b>
Completion Schedule:	<b>See Section 4.6</b>

- 2.3 DUTY TO EXAMINE RFP.** It is the responsibility of each bidder to examine the entire RFP, including all

addenda, seek clarification in writing (inquiries), and examine its proposal for accuracy before submitting the proposal. Lack of care in preparing a proposal shall not be grounds for modifying or withdrawing the proposal after the proposal due date and time, nor shall it give rise to any contract claim.

- 2.4 DUTY TO EXAMINE PROJECT SITES.** It is the responsibility of each bidder to examine project POWTS sites, the Tribe's wastewater treatment system, and any other relevant sites, for the purpose of proposal preparation, to the extent bidder deems necessary. Site visits are recommended and can be arranged through Scott Valliere, Utilities Director (715-588-7887, [svalliere@ldftribe.com](mailto:svalliere@ldftribe.com)).
- 2.5 INQUIRIES REGARDING RFP.** All inquiries concerning this RFP, including any questions related to the terms and conditions of this RFP, shall be made in writing and submitted to the Contract Administrator or IHS Project Managers at the physical addresses or email addresses noted above.
- 2.6 CONTENT OF RFP AND SUPERSEDING EFFECT.** This RFP is designed to provide prospective bidders with information necessary for the preparation of competitive proposals. Each bidder is responsible for determining all factors necessary for the submission of a comprehensive and compliant proposal. This RFP supersedes all previous RFPs and all proposals, oral and written, and all negotiations, conversations, communications and discussions heretofore had by and between the parties, related to the subject matter of this RFP.
- 2.7 AMENDMENT OF RFP.** The Tribe reserves the right to amend this RFP at any time. In the event it becomes necessary to amend, add to, or delete any part of the RFP, an amendment will be provided to all known vendors/prospective bidders who received the original RFP and posted on the Tribe's website. All submitted proposals/bids must include acknowledgment of the addenda.
- 2.8 SUBMISSION OF PROPOSAL.** ***Every proposal submitted must include an original, five (5) copies, and one electronic copy on flash drive.*** Proposals and copies must be submitted to the Lac du Flambeau Tribal Secretary, to-wit: **Jamie Allen, Tribal Secretary, William Wildcat, Sr. Community Building, 418 Little Pines Road, P.O. Box 67, Lac du Flambeau, Wisconsin.** **The Tribal Secretary must receive proposals no later than 4:00 P.M. (local time), April 15, 2026** ***Any proposal received after this deadline will not be accepted.*** Proposals may be submitted by mail or hand-delivered in an envelope. The envelope must be SEALED and include the following notation on the bottom left hand corner: "RFP FOR POWTS MANAGEMENT AND SEPTAGE DISPOSAL MASTER PLAN." Please also include firm/individual name on the outside of the envelope. Bidders mailing proposals must allow ample mail delivery time to ensure timely receipt of their proposal. It is the bidder's responsibility to ensure that the proposal is received prior to the deadline. Postmarking by the due date will not substitute for actual receipt of the proposal by the Tribe. ***Proposals sent via email or fax will NOT be accepted.***
- 2.9 REJECTION OF PROPOSALS.** Notwithstanding any other provision of this RFP, at any time prior to execution of the written Contract by and between the parties, the Tribe reserves the right to reject any or all proposals, in whole or in part, to advertise for new proposals, to abandon the need for such services, and to cancel this RFP if it is in the best interests of the Tribe.
- 2.10 COSTS OF PREPARING PROPOSALS.** The costs of preparing the proposal are the sole responsibility of the vendor. The Tribe is not responsible for any costs incurred by vendor which are related to the preparation or delivery of the proposal or any other activities carried out by the vendor related to this RFP.
- 2.11 OPENING OF PROPOSALS.** The proposals will be opened during a closed bid opening on Thursday, April 16, 2026 at 9:00 o'clock A.M. (local time), or as soon thereafter as practicable.
- 2.12 VALIDITY AND WITHDRAWAL OF PROPOSALS.** All proposals shall be valid for a period of sixty (60) business days following the date on which proposals are due, except that the proposal of the successful bidder shall remain valid until expiration or termination of any contract based upon the successful bidder's proposal, between the Tribe and the successful bidder. Bidders may withdraw at any time prior to the proposal due date.
- 2.13 PROPOSALS PROPERTY OF THE TRIBE.** All proposals become the property of the Tribe and shall not be returned to the bidder submitting a proposal. The bidder agrees that the Tribe may copy the proposal for

purposes of facilitating the evaluation of the proposal or for any other reason.

**2.14 DISPUTES.** In case of any doubt or differences of opinions as to the contents of this RFP, or interpretation of any provision of this RFP, the decision of the Tribe shall be final and binding upon all parties.

**2.15 BIDDER'S REPRESENTATIONS.**

**2.15.1** By submitting a bid, bidder certifies that bidder is authorized to conduct business in the State of Wisconsin.

**2.15.2** By submitting a bid, bidder certifies that bidder is experienced and qualified to perform the services required by this RFP, and properly staffed, organized and financed to perform such services and to commence such services immediately.

**2.15.3** By submitting a bid, bidder agrees that, if awarded a contract, bidder's work shall be completed in a workmanlike manner and shall conform to such recognized high professional standards as are prevalent in this field of endeavor.

**2.15.4** By submitting a bid, bidder certifies that bidder's bid and proposal were made and submitted without collusion or fraud and that bidder has not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer or subcontractor in connection with its bid, and that bidder has not conferred on any Tribal employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

**2.16 NATIVE AMERICAN PREFERENCE REQUIREMENTS.** The work to be performed under this proposal is subject to the Tribe's General Procurement and Property Management Policies and Procedures, and Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e (b)). Section 7(b) of the Indian Self-Determination and Education Assistance Act requires that to the greatest extent feasible: (1) preference and opportunities for training and employment shall be given to Native Americans, and (2) preference in the award of contracts and subcontracts shall be given to Native American organizations or Native American-owned economic enterprises as defined in Section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452). If claiming Native American Preference in contracting under this proposal, please indicate whether or not the firm can provide documentation that will qualify the firm as an "Economic Enterprise," (Native American ownership constituting not less than 51 percent of the enterprise), or a "Tribal Organization," (the recognized governing body of any Native American Tribe). A Tribal ID must be presented with the bid to demonstrate Native American Preference.

**2.17 PROPOSAL EVALUATION AND SOURCES OF INFORMATION.**

**2.17.1** Proposals that are timely submitted and comply with the mandatory requirements of this RFP (the Tribe reserves the right to waive any minor informalities or irregularities, in its sole discretion) will be evaluated by the RFP committee. In accordance with the Brooks Act, evaluation factors are listed below, not necessarily in order of importance:

1. Qualifications/Experience/Reputation of Vendor.
2. Bid Price.
3. Demonstrated Understanding of and Ability to Address the Tribe's Needs.
4. Conformance to Terms and Conditions.
5. Native American Preference.
6. Method of Approach.
7. Such other criteria as may be deemed appropriate in evaluating proposals, even if such criteria are not specifically addressed in this RFP.

**2.17.2** The Tribe reserves the right to request an oral interview with, and additional information from, any bidder prior to final selection and award of a contract, and the bidder shall furnish to the Tribe all such information and data as may be requested. The Tribe also reserves the right to obtain, from any and

all sources, information concerning a bidder or a bidder's services or personnel, to make such reasonable investigations as the Tribe deems proper and necessary to determine the ability of a bidder to perform the services contemplated by this RFP, and the right to consider information from other sources such as the bidder's performance of other contracts. The Tribe may use any of this information to evaluate a bidder's proposal.

## **2.18 AWARD, NOTIFICATION AND PERIOD OF PERFORMANCE.**

- 2.18.1** If the Tribe selects, it shall select the most responsive, responsible and qualified vendor based on evaluation of vendor responses to this solicitation as deemed relevant to the Tribe. Any contract resulting from this RFP will not necessarily be awarded to the vendor with the lowest price/bid. The Tribe will award the contract to the responsible vendor submitting the bid/proposal that the Tribe deems most advantageous to the Tribe, and most in line with the Tribe's project goals. The Tribe reserves the right to either award a contract without further negotiations with the successful bidder or to negotiate contract terms with the successful bidder if in the best interests of the Tribe. The Tribe may select a Consultant on the basis of proposals, including qualifications, with or without further discussions, interviews or visits. Therefore, proposals should contain the respondent's best terms from a technical, operations and monetary standpoint.
- 2.18.2** This solicitation and selection process shall in no way be deemed to create a binding contract, agreement or offer of any kind between the Tribe and any person or entity. If the Tribe selects a bidder to provide the services described in this solicitation, any legal rights and obligations between the successful bidder, if any, and the Tribe will come into existence only when an agreement is fully executed by the parties, and the legal rights and obligations of each party shall at that time be only those rights and obligations which are set forth in the agreement and any other documents specifically referred to in that agreement and incorporated therein.
- 2.18.3** Notice of award to successful bidder will be sent via U.S. mail or email. Notice may also be provided via telephone. All unsuccessful bidders that submitted a proposal will be notified in writing of the Tribe's decision to not select.
- 2.18.4** The successful bidder may be required to attend a post-award meeting with the Tribe to discuss the terms and conditions of the contract by and between the parties. Negotiation and execution of contract with the successful bidder shall be completed not more than twenty (20) days from date of award notification.
- 2.18.5** Performance will begin immediately following execution of a contract and shall continue until timely completion of the anticipated work.

## **3. QUALIFICATIONS**

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- 3.1** Bidder shall be a Registered Professional Engineer licensed in the State of Wisconsin. Bidder shall be governed by the professional ethics of said profession in its relationship with the Tribe.
- 3.2** Bidder shall have relevant experience with similar work, i.e. provision of planning and design services relative to similar projects, and shall be well-versed in the wastewater treatment business and knowledgeable of wastewater infrastructure. Bidder shall be qualified to design, manage, and handle federally funded infrastructure projects.
- 3.3** Bidder shall possess the ability to assign adequate staffing and resources to the Project, through the duration of Project, and shall be competent to ensure that the Master Plan is completed on time at the lowest possible cost and highest degree of relevance and quality.
- 3.4** Bidder shall have strong verbal, written, computer, technical communication and presentation skills and proven ability to complete projects according to outlined scope, budget and timeline.

- 3.5 Bidder shall, preferably, have experience in working with indigenous groups, tribes and/or tribal enterprises.

#### 4. SCOPE OF SERVICES

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- 4.1 **SUMMARY OF SERVICES.** The Tribe expects the selected firm to discover and evaluate feasible septage disposal options, including cost estimates, financial sustainability and environmental impact, and ultimately deliver a POWTS Management Master Plan for development of the recommended option. **Consideration of feasibility of reducing environmental impact and enhancing financial sustainability via development of a human waste fertilizer facility focusing on biosolids or dried microbes is recommended.** The selected firm shall meet with Tribal and IHS representatives to discuss preliminary alternatives prior to investigating options. The Tribe desires a phased approach to provision of the anticipated services.
- 4.2 **PHASE 1.** Identification of alternatives for septage disposal and recommended alternative and development of a draft Master Plan.
- 4.2.1 The Firm will meet with the Tribe as a “kick off” to the project, and to meet the stakeholders, obtain background information, and receive the preliminary details.
- 4.2.2 The Firm will research feasible alternatives for septage disposal options, with appropriate consideration of what other Tribal communities of similar size are doing for septage disposal. At a minimum the alternatives must include:
- 4.2.2.1 Upgrades to the existing WWTF.
- 4.2.2.2 Stand-alone septage treatment and disposal.
- 4.2.2.3 Conversion of septage to biosolids fertilizer.
- 4.2.3 The Firm shall evaluate the operation and maintenance (O&M) for each alternative, including annual cost and pros/cons, and shall complete a 30-year life cycle cost analysis for each alternative.
- 4.2.4 The Firm shall consider whether PFAS contaminants are a concern with septic tank waste and, if so, identify best current design practices for controlling it.
- 4.2.5 The Firm shall work with the Tribe’s Utility and Housing Departments to create a database of the tribally owned POWTS located on the Reservation. This database can be in spreadsheet format and will provide a measurable overview of POWTS and wastewater flows/capacities.
- 4.2.6 The Firm shall consult with the Tribe’s Natural Resources Department and ensure compliance with applicable Tribal Codes as found on the Tribe’s website.
- 4.2.7 After completing the initial work included in Phase 1, the Firm will hold a second meeting with the Tribe and the Tribe shall select a preferred alternative prior to commencement of Phase 2.
- 4.3 **PHASE 2.** Completion of research/analysis, costs, etc. for the recommended alt. **(to be awarded later).**
- 4.3.1 The Firm will conduct a thorough comprehensive analysis of the recommended alternative, to include construction cost estimate, environmental assessment, O&M estimate, applicable regulatory requirements/restrictions, and preliminary site layout.
- 4.3.2 The Firm shall incorporate funding options that may be available for consideration.
- 4.3.3 The Firm shall provide to the Tribe for review and comment an updated version of the Master Plan (including documentation of analysis and recommendations pertaining to all of the specific items requested in the Scope of Services). Master Plan shall be submitted electronically with at least three (3) paper copies provided as well.

- 4.4 PHASE 3.** Develop a Master Plan for the long-term management of the Tribe's POWTS inventory **(to be awarded later)**.
- 4.4.1** Based on Phase 2 results, discussion, and comments, the Firm shall complete a final Master Plan to include procedures and needed capital improvements.
- 4.4.2** The Firm shall provide to the Tribe an electronic (PDF format) version and 5 bound color paper copies of the final Master Plan.
- 4.5 MEETINGS WITH TRIBAL REPRESENTATIVES.** The Firm shall schedule and facilitate meetings with Tribal representatives as indicated above, and as necessary for the firm to gather population data and consult with the Tribe to accurately determine growth over the next thirty years to estimate future POWTS numbers. Meetings may be in person or remote (e.g. Zoom or TEAMS Meetings) as set forth below:
- 4.5.1** In Person: After award and prior to start of work.
- 4.5.2** Remote: Upon completion of Phase 1 activities.
- 4.5.3** Remote: Upon completion of Phase 2 activities.
- 4.5.4** In Person: After draft Master Plan has been submitted to the Tribe for review (to discuss comments).
- 4.5.5** Additional meetings to be held at discretion of the Tribe or the Firm.
- 4.6 SCHEDULE.**
- 4.6.1** The draft Master Plan shall be provided to the Tribe and IHS for review not later than July 31, 2026. This will be followed by a 15 day review period.
- 4.6.2** The final draft Master Plan shall be provided to the Tribe and IHS for review not later than September 18, 2026. This will be followed by a 15 day review period.
- 4.6.3** The completed Master Plan shall be delivered to the Tribe and IHS not later than October 30, 2026.
- 4.7 ENVIRONMENTAL REVIEWS.** IHS is required to complete an environmental review for this federally funded project. This review will cover only planning activities. If any ground disturbing work is necessary to be completed, the selected firm shall notify IHS of this as soon as possible so additional review can be completed. It is estimated that additional reviews will take up to 50 days to complete.

## **5. CONTENT AND FORMAT OF PROPOSAL**

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- 5.1 PURPOSE.** These instructions prescribe the required format and content of the proposal and are designed to elicit information necessary to selection of the most qualified bidder, and to facilitate the submission of a proposal that is easy to understand and evaluate.
- 5.2 FORMAT.** Proposals shall be prepared on 8.5" x 11" paper, single sided. A proposal submission must include an original and five (5) copies, an example of a similar report previously prepared by the bidder and an electronic copy of the proposal on flash drive, including all attachments.
- 5.3 RESPONSE TO INQUIRIES.** Each proposal shall respond completely and accurately to the following questions and requests for information:
- 5.3.1** Please provide full name, address, telephone number(s), fax number, and email address of bidder and bidder's primary contact, and, if bidder is a business organization, identify what type of business organization and verify that bidder is authorized to conduct business in the State of Wisconsin.

- 5.3.2** Please provide a brief history and profile of your firm. Indicate the year the firm was established. Provide an organizational chart. Describe the organization, size and structure of your firm, and explain any variation in size over the last five years. State the location of the office from which the work will be done and describe the range of services provided by the local office.
- 5.3.3** Please describe bidder's experience in providing the services described in the "Scope of Services", above, and describe bidder's expertise in wastewater treatment, septage disposal and groundwater delineation. **IN BIDDER'S SOLE DISCRETION, BIDDER MAY PROVIDE A COPY OF A MASTER PLAN OR SIMILAR DOCUMENT OR REPORT PREVIOUSLY PREPARED BY BIDDER.**
- 5.3.4** Provide a list of three (3) current references for three (3) individual projects of similar size, scope, and complexity which were completed within the past seven (7) years. List shall be accompanied by the following supportive documentation:
- 5.3.4.1** Detailed project narrative description, including date of completion, project description and work performed.
- 5.3.4.2** Graphics (photographs, maps, drawings etc.), as necessary.
- 5.3.4.3** Provide a contact name, phone number, and email address for the main point of contact for each project.
- 5.3.5** Describe bidder's approach to accomplishing the Scope of Services as described in **Section 4** of this RFP, including, but not limited to, methodology to be applied and how bidder will meet the needs of the Tribe with respect to this Project. **In addition, set forth the timeline in which you will complete the required services.**
- 5.3.6** Explain how bidder meets the qualifications set forth in **Section 3** of this RFP.
- 5.3.7** Describe, in sufficient detail, the firm's affiliation or work with any federally recognized Indian Tribes.
- 5.3.8** Provide a list of sub-consultants and sub-contractors bidder will likely engage for the Project and describe in sufficient detail the services they will provide.
- 5.3.9** Describe the liability insurance coverage carried by your firm.
- 5.3.10** If any of the following has occurred with respect to bidder, please describe in detail the circumstances for each occurrence:
- 5.3.10.1** Failure to enter into a contract after having been selected as the successful bidder.
- 5.3.10.2** Withdrawal of a proposal on any project as the result of an error.
- 5.3.10.3** Termination of or failure to complete a contract.
- 5.3.10.4** Involvement in litigation, arbitration, or mediation on any contract.
- 5.3.10.5** Knowing concealment of any deficiency in the performance of a contract.
- 5.3.10.6** Submission of a fraudulent or incorrect invoice relating to a contract.
- 5.3.10.7** Violation of applicable rules, laws, or regulations relating to any contract or project.
- 5.3.10.8** Debarment from bidding or performing public works projects.
- 5.3.11** Disclose any existing or potential conflict of interest relative to the performance of services required by any contract resulting from this RFP.
- 5.3.12** The submission of additional pertinent information beyond the requirements of this RFP, is acceptable.

**5.4 BID SCHEDULES.** Attach completed Bid Schedule.

## **5.5 ACCEPTANCE OF AND EXCEPTIONS TO TERMS AND CONDITIONS.**

**5.5.1** Subject to subsection 5.5.2, next, by submitting a proposal, bidder signifies that bidder acknowledges, accepts and agrees to all terms, conditions and provisions set forth in this RFP.

**5.5.2** If the bidder objects to any term, condition or provision contained in this RFP it shall note an exception to such term(s), condition(s) or provision(s) in a clearly identified separate section of the bidder's proposal. The bidder shall clearly refer to and identify the specific sections and paragraphs excepted and/or not agreed to by the bidder. Any exceptions not clearly identified by the bidder via inclusion in such a separate section shall be without force and effect in any subsequent contract. Any and all exceptions that are contained in a proposal submitted by a bidder in response to this RFP may negatively affect the evaluation of the proposal. A proposal that takes exception to any material requirement of the RFP may be rejected.

**5.6 EVIDENCE OF INTENT TO BE BOUND.** Bidder agrees that bidder's submission of a proposal signifies the bidder's intent to be bound by the proposal submitted by the bidder and the terms of this RFP and that the information provided by bidder is true, accurate and complete.

## **6. GENERAL REQUIREMENTS.**

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**6.1 OWNER-ENGINEER AGREEMENT.** The standard EJCDC E-500 "*Agreement between Owner and Engineer for Professional Services*" will be used for this project (see attachment). Bidders shall review this document carefully in conjunction with the requirements in this Request for Proposals as it includes a detailed description of requirements that will be enforced for this project.

**6.2 DEBARMENT AND SUSPENSION.** No contract shall be made with parties listed on the General Services List of Parties Excluded from Federal Procurement or Non-procurement Programs In accordance with E.O.'s 12549 and 12689, "Debarment and Suspension." A list of excluded parties can be found at [www.sam.gov](http://www.sam.gov). 2 CFR 180, *OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement)*, governs debarment and suspension of federal grantees and sub-grantees from receiving federal grant awards. Debarment and suspension can occur if federal grantees use federal funds wastefully or fraudulently. In order to ensure federal funds do not flow to excluded parties, federal agencies and grantees are required to check for excluded parties prior to opening bids or awarding.

### **6.3 PAYMENT AND SUBMISSION OF INVOICES.**

**6.3.1** Payment for work performed/services provided by the successful bidder shall be made based on the bid prices on the attached Bid Schedule, and not exceed the bid price(s) set forth in bidder's proposal, or such other fee as shall be agreed upon by the Parties in writing.

**6.3.2** Progress payments will be made based on the approximate percentage of work completed for each bid item at the time the pay request/invoice is submitted.

**6.3.3** Invoices will not be accepted on more frequent intervals than once per month.

### **6.4 INDEMNIFICATION, HOLD HARMLESS AND ASSUMPTION OF RISK.**

**6.4.1** By submitting a Proposal, the successful bidder (Consultant) agrees that Consultant shall perform all services for the Tribe at the Consultant's own risk, and the Consultant shall take all precautions necessary to protect the Consultant's person and property, and that of Consultant's employees and agents and assigns. The Consultant shall assume all liability for personal injury to Consultant and/or employees or agents of Consultant, occurring during the performance of Consultant's services.

**6.4.2** The successful bidder (Consultant), on behalf of Consultant and Consultant's agents, employees, heirs, assigns, personal representative and estate, shall agree to indemnify, defend, and hold

harmless the Tribe and the Tribe's elected and appointed officials, employees, agents, representatives and volunteers, from and against any and all claims, demands, expenses, losses, liabilities, causes of action, and the like, which are or may be asserted in any action by anyone, based upon any alleged personal injury, death or damage that may occur, or may be alleged to have occurred, as a result of, relating to, arising out of, or in any way associated with, any act or omission of the Consultant, or any failure of the same to comply with any obligations set forth in this RFP and/or any contract by and between the Tribe and the Consultant. Consultant shall, at its own cost and expense, pay all costs incurred by the Tribe in connection therewith. If any judgment shall be rendered against the Tribe in any such action, the Consultant shall satisfy and discharge the same without cost or expense to the Tribe. The foregoing indemnity shall include injury, death or disability of any employee of the Consultant and shall not be limited in any way by an amount or type of damage, compensation, or benefits payable under any applicable workers compensation, disability benefits or other similar employees benefit act. However, this indemnity shall not apply to loss or damage which was caused by the sole negligence or willful misconduct of the Tribe.

## **6.5 INSURANCE.**

**6.5.1** By signing and submitting a bid/proposal under this RFP, the bidder certifies that if awarded a contract, it will have insurance coverage as specified below at the time the contract is awarded:

**6.5.1.1** Professional Liability Insurance: \$1,000,000.00 per claim.

**6.5.1.2** Comprehensive General Liability Coverage: Minimum of \$1,000,000 per occurrence and \$2,000,000 in aggregate for property damage and personal injury.

**6.5.1.3** Automobile Liability: Automobile Liability covering all owned, hired and non-owned vehicles; \$1,000,000 per occurrence for bodily injury and property damage.

**6.5.1.4** Excess/Umbrella Liability Coverage: \$1,000,000.

**6.5.1.5** Worker's Compensation: Statutory limits and benefits. If any owner, partner, executive, officer, member or employee is excluded from Worker's Compensation coverage or if the Worker's Compensation policy is for certificate purposes only, it must be stated on the certificate.

**6.5.2** The bidder further certifies that it will maintain this insurance coverage during the entire term of the contract and that all insurance coverage will be provided by reputable insurance companies acceptable to the Tribe.

**6.5.3** The bidder will furnish to the Tribe's Contract Administrator certificates of insurance prior to commencement of work and, upon request, at any time during contract performance.

**6.5.4** The bidder will give the Tribe 10-days written notice prior to modifying any insurance obtained and/or maintained as required by the contract and this provision. The Tribe may object to the modification within 10 days of receiving the notice.

**6.6 INDEPENDENT CONTRACTOR.** The successful bidder (Consultant) shall, in all matters relating to any contract awarded pursuant to this RFP, be acting as an independent contractor. Neither the Consultant nor any of the Consultant's owners, officers, members, employees or agents will be an agent, joint venturer, partner or employee of the Tribe for any purpose, including, but not limited to, the application of the Federal Insurance Contribution Act, the Social Security Act, the Federal Employment Tax Act, the provisions of the Internal Revenue Code and the State Revenue and Taxation Code relating to income tax withholding at the source of income, Workers' Compensation, Unemployment Compensation, employment-related benefits, and third party liability claims. Nothing contained in the contract shall be construed or interpreted as establishing an employer-employee relationship between the Tribe and the Consultant or any of the Consultant's owners, officers, members, employees or agents. In that the Consultant will be an independent contractor, neither the Consultant nor any of the Consultant's owners, officers, members, or employees shall have any right or claim against the Tribe for vacation pay, sick leave, retirement benefits, social security, workers'

compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. Further, the Tribe shall not be responsible for withholding taxes with respect to the Consultant's compensation for services performed under a contract awarded pursuant to this RFP. The Consultant shall be individually and solely responsible for the timely payment of any and all state, federal, social security and other self-employment taxes that may be owing on amounts paid to the Consultant under said contract. The Consultant will have no authority, actual, apparent, or implied, to bind the Tribe in or to any contract, agreement or indebtedness, and shall not represent itself as the legal representative of the Tribe. The Consultant shall perform all services under the contract at the Consultant's own risk, and the Consultant shall take all precautions necessary to protect the Consultant's person and property. The Consultant shall assume all liability for personal injury to employees or agents of the Consultant, occurring during the performance of the Consultant/construction management services.

- 6.7 ASSIGNMENT OF CONTRACT AND SUBCONTRACTING.** No contract between the Consultant and the Tribe may be assigned by either party without the prior written consent of the other party, which consent may be given, withheld, or conditioned in the sole and absolute discretion of the party whose consent is sought. Further, the Consultant shall not subcontract any of the work, duties or obligations under the contract by and between the parties without the written consent of the Tribe, which consent may be given, withheld, or conditioned in the sole and absolute discretion of the Tribe. Any assignment, subcontract or delegation in derogation of this provision shall be deemed void. In the event that the Consultant desires to subcontract some part of the work specified herein, the Consultant shall furnish to the Tribe the names, qualifications and experience of its proposed subcontractor(s). The Consultant shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.
- 6.8 COMPLIANCE WITH LAWS.** The successful bidder (Consultant) will agree to abide by and comply with all applicable laws, rules, ordinances, regulations and administrative rulings of the Lac du Flambeau Band of Lake Superior Chippewa Indians, the United States, and the State of Wisconsin.
- 6.9 PROPRIETARY INFORMATION CONFIDENTIALITY AGREEMENT.** The Consultant and each of its owners, officers, employees, assignees, subcontractors and agents agree, and shall, if requested by the Tribe, execute a Confidentiality Agreement memorializing said agreement, to maintain as confidential, and not to disclose to any third party without the prior consent of the Tribal Administrator, any information of a proprietary nature which the Consultant learns as part of the necessary process of performing its services and obligations under this RFP and any contract between the Consultant firm and the Tribe, other than information (1) which was already public knowledge at the time it was learned by the Consultant, or which subsequently came into the public domain through no fault of the Consultant; or (2) which is necessary or appropriate to disclose in order to enable the Consultant to comply with its obligations under the contract between the Consultant and the Tribe. The Consultant shall expressly agree and warrant that, during the term of the contract, and following expiration of the contract or termination of the contract for any reason or for no reason, the Consultant and all of its owners, officers, directors, representatives, employees, assignees, subcontractors and agents will continue to hold confidential all proprietary and confidential information with respect to the Tribe and its members, employees, independent contractors, enterprises and business operations, and shall not (unless permitted in writing by the Tribal Administrator) use, divulge, or disclose to any other person, firm, agent, business or organization any Confidential Information, including, but not limited to, any information concerning the Tribe or any entity of the Tribe, including information pertaining to the services to be performed by the Consultant; any contract related to the Project; Tribal business operations, government, employees, protocols and policies, financial data, and business and operational data plans and strategies of the Tribe and/or its subsidiaries, information related to staff, patients, or business operations, acquired by the Consultant or any representative thereof during the term of the contract between the Consultant and the Tribe. Furthermore, any information relating to the Tribe which was collected, recorded, analyzed or otherwise obtained or used by the Consultant during the term of the said contract shall be construed as exclusively the proprietary property of the Tribe and subject to the provisions herein unless exempted by the express written permission of the Tribal Administrator.
- 6.10 MARKETING PROHIBITION.** The successful bidder/Consultant shall not use the name or logo of, or refer to, the Lac du Flambeau Band of Lake Superior Chippewa Indians or any subsidiary or entity thereof, in any marketing activity, nor will the Consultant use said names or references thereto in any endorsement of its

firm, company, product, or service, without the written consent of the Tribal President or Tribal HHS Administrator.

- 6.11 GOVERNING LAW AND VENUE.** The successful bidder/Consultant shall consent and agree that any and all questions arising in connection with this RFP and/or any contract arising therefrom shall be governed first by the laws and ordinances of the Lac du Flambeau Band of Lake Superior Chippewa Indians and second by federal and Wisconsin laws, if applicable. The Consultant shall further consent and agree to the jurisdiction of the Lac du Flambeau Band of Lake Superior Chippewa Tribal Court and that the venue for any legal proceeding relating to this RFP and/or any contract by and between the Consultant and the Tribe shall be the Lac du Flambeau Band of Lake Superior Chippewa Tribal Court.
- 6.12 SOVEREIGN IMMUNITY.** The successful bidder/Consultant acknowledges that the Lac du Flambeau Band of Lake Superior Chippewa Indians does not waive its Sovereign Immunity.

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BID SCHEDULE

Lac du Flambeau Band of Lake Superior Chippewa Indians  
Professional Engineering Services for POWTS Management and Septage Disposal Master Plan  
IHS Project Number BE-25-N50

SCHEDULE A - Professional Engineering Services

ITEM	DESCRIPTION	EST QTY	UNIT	UNIT PRICE	TOTAL PRICE
1.	Phase 1: Identify Alternatives for Septage Disposal and draft POWTS Management Master Plan	1	LS	\$ _____	\$ _____
2.	TBD: <i>Phase 2: Completion of Research and Analysis for Recommended Alternative and Updated Master Plan</i>	1	LS	\$ N/A	\$ N/A
3.	TBD: <i>Phase 3: Final Draft of Master Plan</i>	1	LS	\$ N/A	\$ N/A
				Total Sch A	\$ _____

\_\_\_\_\_  
Name (Printed and Signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Position and Company

NOTE TO OFFERORS:

- Line item cost shall reflect the services required as described in RFP.
- In no event shall the total value of the work performed exceed the total contract amount without prior written approval of the Band.
- Award to be made on Item #1. Items #2 and #3 will be awarded (if at all) after completion of Phase 1.

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**SECTION 01300  
ADMINISTRATIVE REQUIREMENTS**

**PART 1 - GENERAL**

1.01 SUMMARY

- A. Section includes the administrative notes and requirements for this contract.

1.02 For All Contracts:

- A. The Indian Health Service (IHS) is the engineer for this project; however, this is not a federal contract. IHS reserves the right to inspect the work performed by the Contractor or any of its Subcontractors. IHS does not represent the Tribe and the Tribe does not represent IHS regarding any matter related to administration of this Contract.

B. Indian Preference

1. IHS Indian preference requirements apply to the solicitation and award of this contract. Indian Preference will be used in selecting the contractor for this Work. If Bidder is eligible for Indian preference, documentation of tribal affiliation and ownership of the bidding enterprise must be provided with Bid.

Contractor agrees that, to the greatest extent feasible, preferences and opportunities for training and employment in connection with this Agreement shall be given to Indians; and, as reasonable, preference in the award of any subcontracts in connection with this Agreement shall be given to Indian organizations and to Indian-owned economic enterprises as defined in Section 3 of the Indian Financing Act of 1974 (88 Stat. 77).

2. If the Tribe has enacted an Indian preference ordinance, it may apply in lieu of the IHS requirements.

C. Suspension and Termination of Work

1. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension. Any change proposal seeking such adjustments shall be submitted no later than 30 days after the date fixed for resumption of Work.

2. If the Contractor fails to perform the work in accordance with the Contract Documents, Owner may declare the Contractor to be in default and give Contractor notice that the Contract is terminated. The termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor.
  3. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for completed and acceptable work executed in accordance with the Contract Documents prior to the effective date of termination. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.
- D. Contractor shall comply with 41 CFR 60-1.4(b) in accordance with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity.
- E. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR part 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- F. Contractor is required to perform thirty-three and one-third percent of the total amount of the Work using its own employees and equipment. Copies of subcontract agreements may be requested to verify the amount of Work performed.
- G. Contractor is hereby notified that state lien laws do not apply on Federal trust land.
- H. Dispute Resolution: This agreement shall be construed in accordance with and governed by the laws of the Tribe. In the absence of Tribal law on point, Federal law shall apply and, in the absence of Federal law, the laws of the State of Wisconsin shall govern.

1.03 For Contracts Exceeding \$2,000:

- A. The Contractor shall comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR part 3). The Act provides that each Contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

1.04 For Contracts Exceeding \$10,000:

- A. Contractor shall comply with the requirements of 41 CFR 60-4 regarding required notices and procedures to be followed in soliciting for federally assisted construction contracts (including subcontracts). Compliance with Executive Order 11246 and 41 CFR part 60-4 shall be based on implementation of the Equal Opportunity Clause, specific affirmative active obligations required by the Standard Federal Equal Employment Opportunity Construction Contract Specifications, as set forth in 41 CFR Part 60-4.3(a) and efforts to meet the goals established for the geographical area where the Contract is to be performed.

1.05 For Contracts Exceeding \$100,000:

- A. The Contractor shall comply with the provisions of the Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Under 40 U.S.C. 3702 of the Act, each Contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.
- B. The Contractor shall comply with the provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), certifying that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award.

1.06 Priority Order for Resolving Discrepancies:

- A. In the event of conflicts of discrepancies among the Contract Documents, interpretations will be based on the following priority order:

1. Modifications/Change Orders
2. The Agreement
3. Addenda, with those of later date having precedence over those of earlier date
4. The Supplementary Conditions
5. The Standard General Conditions of the Construction Contract
6. Technical Specifications
7. Construction Drawings/Plan Set
8. Other documents specifically enumerated in the Agreement as part of the Contract Documents

**PART 2 – PRODUCTS (N/A)**

**PART 3 – EXECUTION (N/A)**

**END OF SECTION**

# AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

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2. the presence at the Site of any Constituent of Concern; or
3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

### ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

#### 3.01 *Commencement*

- A. Engineer is authorized to begin rendering services as of the Effective Date.

#### 3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

### ARTICLE 4 – INVOICES AND PAYMENTS

#### 4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. **Invoices must include a breakdown of services provided.** Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

#### 4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:

1. Amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
  2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

## **ARTICLE 5 – OPINIONS OF COST**

### **5.01 *Opinions of Probable Construction Cost***

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

### **5.02 *Designing to Construction Cost Limit***

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.

### **5.03 *Opinions of Total Project Costs***

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

## ARTICLE 6 – GENERAL CONSIDERATIONS

### 6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
  - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
  - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
  - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
    - a. changes after the Effective Date to Laws and Regulations;
    - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
    - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make

resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.

- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 “Standard General Conditions of the Construction Contract” (2018 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.

**Exhibit J is not included.**

- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor’s work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor’s furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor’s, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer’s services do not include providing legal advice or representation.
- M. Engineer’s services do not include (1) serving as a “municipal advisor” for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of

the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

### 6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

### 6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.

- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer **may** jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

#### 6.05 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.

- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

## 6.06 *Suspension and Termination*

### A. *Suspension:*

1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

### B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

1. For cause,
  - a. 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.
  - b. by Engineer:
    - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
    - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
    - 3) Engineer shall have no liability to Owner on account of such termination.
  - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same,

then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination:*
  1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
  2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

#### 6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of **the Lac du Flambeau Band of Lake Superior Chippewa. Absence of Tribal law on point will defer the matter to the laws of the state in which the Project is located.**

#### 6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the 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 Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated 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 or responsibility under this Agreement.

- C. Unless expressly provided otherwise in this Agreement:
  - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
  - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
  - 3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

#### 6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

**Exhibit H is not included.**

#### 6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the

option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.

- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

#### 6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants.
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations.
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

#### 6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

#### 6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

### **ARTICLE 7 – DEFINITIONS**

#### 7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
  - 1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.

2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
3. *Agreement*— This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
4. *Application for Payment*— The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.

12. *Construction Contract Times*—The number of days or the dates by which Contractor shall:  
(a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes

for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
  35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
  36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
  37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.
- B. *Day*:
1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

## ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

### 8.01 *Exhibits Included*:

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Owner’s Responsibilities.
- C. Exhibit C, Payments to Engineer and Resident Project Representative for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative. - **NOT USED** -
- E. Exhibit E, Notice of Acceptability of Work. - **NOT USED** -
- F. Exhibit F, Construction Cost Limit. - **NOT USED** -

- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution. - NOT USED -
- I. Exhibit I, Limitations of Liability. - NOT USED -
- J. Exhibit J, Special Provisions. - NOT USED -
- K. Exhibit K, Amendment to Owner-Engineer Agreement.
- L. Lac du Flambeau Band of Lake Superior Chippewa – Request for Proposal IHS Project No. BE-25-N50

#### 8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

#### 8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

#### 8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
  1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
  3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

**IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.**

Owner: Lac du Flambeau Band of Lake Superior  
Chippewa

Engineer:

By: \_\_\_\_\_  
Print name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

By: \_\_\_\_\_  
Print name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

Engineer License or Firm's Certificate No. (if required):

State of: \_\_\_\_\_

Address for Owner's receipt of notices:

Address for Engineer's receipt of notices:

\_\_\_\_\_

\_\_\_\_\_

Designated Representative (Paragraph 8.03.A):

Designated Representative (Paragraph 8.03.A):

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

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

Phone Number: \_\_\_\_\_

Phone Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

This is **EXHIBIT A**, consisting of **7** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated

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## **Engineer's Services**

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Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

### **PART 1 – BASIC SERVICES**

#### *A1.01 Study and Report Phase*

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.
  - a. If Owner has already identified one or more potential solutions to meet its Project requirements, then proceed with the study and evaluation of such potential solutions:
    - 1) **Develop septage disposal alternatives to include (at a minimum) the following options listed below. Engineer shall complete all necessary investigations necessary for potential construction/implementation of alternatives. Engineer shall include other alternatives not mentioned.**
      - **Upgrades to the existing WWTF.**
      - **Stand-alone septage treatment and disposal.**
      - **Conversion of septage to biosolids fertilizer.**
    - 2) **Gather all data necessary to determine (accurately) the future growth of the community and associated flows.**
  - b. In addition, Engineer must identify, study, and evaluate multiple potential alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree with Agency concurrence that only one feasible solution exists. The number of alternative solutions should be appropriate to the specific project as concurred in by the Agency.
2. Identify potential solution(s) to meet Owner's Project requirements, as needed.
3. Study and evaluate the potential solution(s) to meet Owner's Project requirements.
4. Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.

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**Exhibit A – Engineer's Services**

**EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.**

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5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.
6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.
7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project.
8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs.

**The Report mentioned in paragraph 1.01.A.8 of Exhibit A to the Agreement is the Master Plan as defined in RFP.**

9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.
10. When mutually agreed, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."
11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.
12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.
13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.
14. **Perform or provide the following other Study and Report Phase tasks or deliverables:**
  - a. **Construction cost estimates for each alternative**

- b. Life cycle cost analysis for each alternative
  - c. Evaluation of operation and maintenance for each alternative including costs and pros/cons.
  - d. Schedule, facilitate, and attend in-person and/or remote meetings as noted below to discuss with Owner and IHS.
    - 1) In Person: After award and prior to start of work
    - 2) Remote: Upon completion of Phase 1 activities
    - 3) Remote: Upon completion of Phase 2 activities
    - 4) In Person: After draft Master Plan is out for review to discuss final comments
15. **Initial Draft:** Furnish five (5) review hardcopies copies and one (1) electronic copy of the Report and any other Study and Report Phase deliverables to Owner by July 31, 2026 and review it with Owner. Within 15 days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
16. **Phase 2: Final Draft:** Furnish five (5) review hardcopies copies and one (1) electronic copy of the Report and any other Study and Report Phase deliverables to Owner by September 18, 2026 and review it with Owner. Within 15 days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
17. **Phase 3: Completed Draft:** Finalize and furnish five (5) written copies and one (1) electronic copy of the Report and any other Study and Report Phase deliverables to the Owner by October 30, 2026

*Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.*

A1.02 *Preliminary Design Phase - DELETED*

A1.03 *Final Design Phase - DELETED*

A1.04 *Bidding and Negotiating Phase - DELETED*

A1.05 *Engineering Construction Phase and Resident Project Representative - DELETED*

A1.06 *Post Construction Phase - DELETED*

## **PART 2 – ADDITIONAL SERVICES**

A2.01 *Additional Services Requiring Owner's Written Authorization*

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit C.
  - 1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection

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Exhibit A – Engineer's Services

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
4. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
5. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
6. Undertaking investigations and studies including, but not limited to:
  - a. detailed consideration of operations, maintenance, and overhead expenses;
  - b. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
  - c. preparation of appraisals;
  - d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
  - e. detailed quantity surveys of materials, equipment, and labor; and
  - f. audits or inventories required in connection with construction performed or furnished by Owner.
7. Furnishing services of Consultants for other than Basic Services.
8. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
9. Providing the following services:

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**Exhibit A – Engineer's Services**

**EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.**

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- a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
  - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
10. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).
  11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
  12. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
  13. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.
  14. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
  15. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
  16. Preparing Record Drawings, and furnishing such Record Drawings to Owner.
  17. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
  18. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
  19. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
  20. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.

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**Exhibit A – Engineer's Services**

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21. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
22. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
23. Overtime work requiring higher than regular rates.
24. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
25. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
26. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
27. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

**A2.02 Additional Services Not Requiring Owner's Written Authorization**

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.
  1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
  2. ~~Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.~~
  3. ~~Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.~~
  4. ~~Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.~~

5. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
6. ~~Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.~~
7. ~~Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.~~
8. ~~Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.~~
9. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

## **Owner's Responsibilities**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
  - 1. Property descriptions.
  - 2. Zoning, deed, and other land use restrictions.
  - 3. Utility and topographic mapping and surveys.

4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
  5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
  6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
  7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
  2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
  3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- ~~G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.~~
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

- I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- ~~K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.~~
- ~~L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.~~
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- ~~P. Place and pay for advertisement for Bids in appropriate publications.~~
- Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- ~~R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.~~
- S. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.
- T. Perform or provide the following: **No additional responsibilities are added.**

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Exhibit B – Owner's Responsibilities

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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This is **EXHIBIT C**, consisting of 1 page, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated

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**Payments to Engineer for Services and Reimbursable Expenses**  
**COMPENSATION PACKET BC-1: Basic Services – Lump Sum**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties:

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

**C2.01 Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment**

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:
1. A Lump Sum (Sch. A – BE-25-N50) amount of \$XXXXX.XX based on the following estimated distribution of compensation:
    - a. Phase 1 \$
    - b. Phase 2 \$ N/A
    - c. Phase 3 \$ N/A
  2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.
  3. The Lump Sum includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, expenses (other than any expressly allowed Reimbursable Expenses), and Consultant charges.
  4. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following Reimbursable Expenses (see Appendix 1 for rates or charges): **None**.
  5. The portion of the Lump Sum amount billed for Engineer’s services will be based upon Engineer’s estimate of the percentage of the total services actually completed during the billing period. If any Reimbursable Expenses are expressly allowed, Engineer may also bill for any such Reimbursable Expenses incurred during the billing period.
- B. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding **twenty-four (24) months**. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted **with concurrence of the Owner**.

This is **EXHIBIT E**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated \_\_\_\_\_

**NOTICE OF ACCEPTABILITY OF WORK**

Owner: Menominee Indian Tribe of Wisconsin  
Engineer:  
Contractor:  
Project:  
Contract Name:  
Notice Date:

Owner's Project No.:  
Engineer's Project No.:  
Contractor's Project No.:

Effective Date of the Construction Contract:

The Engineer hereby gives notice to the Owner and Contractor that Engineer recommends final payment to Contractor, and that the Work furnished and performed by Contractor under the Construction Contract is acceptable, expressly subject to the provisions of the Construction Contract's Contract Documents ("Contract Documents") and of the Agreement between Owner and Engineer for Professional Services dated XXXXX ("E-500"). This Notice of Acceptability of Work (Notice) is made expressly subject to the following terms and conditions to which all who receive and rely on said Notice agree:

1. This Notice has been prepared with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice has been prepared to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's Work) under the Owner-Engineer Agreement, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Owner-Engineer Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents, or to otherwise comply with the Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

Engineer  
By (signature): \_\_\_\_\_

Name (printed): \_\_\_\_\_ Title: \_\_\_\_\_

This is **EXHIBIT G**, consisting of **2** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated

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## Insurance

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Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

### G6.05 Insurance

A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By Engineer:

- a. Workers' Compensation: Statutory
- b. Employer's Liability --
  - 1) Bodily injury, each accident: \$500,000
  - 2) Bodily injury by disease, each employee: \$500,000
  - 3) Bodily injury/disease, aggregate: \$1,000,000
- c. General Liability --
  - 1) Each Occurrence (Bodily Injury and Property Damage): \$1,000,000
  - 2) General Aggregate: \$2,000,000
- d. Excess or Umbrella Liability --
  - 1) Per Occurrence: \$2,000,000
  - 2) General Aggregate: \$2,000,000
- e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):  
\$1,000,000
- f. Professional Liability --
  - 1) Each Claim Made \$1,000,000
  - 2) Annual Aggregate \$1,000,000
- g. Other (specify): **None**

2. By Owner:

- a. Workers' Compensation: 1,000,000
- b. Employer's Liability --
  - 1) Bodily injury, Each Accident \$500,000

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Exhibit G – Insurance.

- 2) Bodily injury by Disease, Each Employee \$500,000
- 3) Bodily injury/Disease, Aggregate \$1,000,000

c. General Liability --

- 1) General Aggregate: \$2,000,000
- 2) Each Occurrence (Bodily Injury and Property Damage): \$1,000,000

d. Excess Umbrella Liability

- 1) Per Occurrence: \$2,000,000
- 2) General Aggregate: \$2,000,000

e. Automobile Liability – Combined Single Limit (Bodily Injury and Property Damage):

\$1,000,000

f. Other (specify): **None**

B. *Additional Insureds:*

2. The following individuals or entities are to be listed on Owner’s general liability policies of insurance as additional insureds:

a. [ ]  
 \_\_\_\_\_  
 Engineer

b. [ ]  
 \_\_\_\_\_  
 Engineer’s Consultant

c. [ ]  
 \_\_\_\_\_  
 Engineer’s Consultant

d. [ ]  
 \_\_\_\_\_  
 [other]

3. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner’s general liability policies of insurance.

4. The Owner shall be listed on Engineer’s general liability policy as provided in Paragraph 6.05.A.

This is **EXHIBIT K**, consisting of **2** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated \_\_\_\_\_

**AMENDMENT TO OWNER-ENGINEER AGREEMENT**  
**Amendment No. \_\_\_\_\_**

The Effective Date of this Amendment is: \_\_\_\_\_.

Background Data

Effective Date of Owner-Engineer Agreement:

Owner:

Engineer:

Project:

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- \_\_\_\_ Additional Services to be performed by Engineer
- \_\_\_\_ Modifications to services of Engineer
- \_\_\_\_ Modifications to responsibilities of Owner
- \_\_\_\_ Modifications of payment to Engineer
- \_\_\_\_ Modifications to time(s) for rendering services
- \_\_\_\_ Modifications to other terms and conditions of the Agreement

Description of Modifications:

***Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary.***

Agreement Summary:

Original agreement amount:	\$ _____
Net change for prior amendments:	\$ _____
This amendment amount:	\$ _____
Adjusted Agreement amount:	\$ _____

Change in time for services (days or date, as applicable): \_\_\_\_\_

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNER:

Lac du Flambeau Band of Lake Superior Chippewa

ENGINEER:

\_\_\_\_\_

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

Print \_\_\_\_\_

name: \_\_\_\_\_

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

Date Signed: \_\_\_\_\_

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

Print \_\_\_\_\_

name: \_\_\_\_\_

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

Date Signed: \_\_\_\_\_