

Date: Tuesday, January 5, 2016
Time: 6:50 pm
Place: City Hall

FINANCE AND TAXATION COMMITTEE

- A. CALL TO ORDER & ROLL CALL
- B. CORRECTION OF MINUTES
- C. BUSINESS: OPEN
 - 1. PURCHASE AND DEVELOPMENT AGREEMENT WITH EASTLAND FEED AND GRAIN
 - Individual Requesting Item Martin Shanks
 - Expected Length of Discussion 15 Minutes

 - Documents: [2015-12-28 Eastland PDA.pdf](#)
 - 2. VIERBICHER PROPOSAL ON ECONOMIC DEVELOPMENT ACTIVITIES
 - Individual Requesting Item Martin Shanks
 - Expected Length of Discussion 15 Minutes

 - Documents: [2015-12-28 Vierbich Proposal Econ Dev Programs.pdf](#)
- D. BUSINESS BY MEMBERS
 - May make brief informative statements or bring up items to be discussed at a future meeting.
- E. ADJOURNMENT

This Committee may take any action it considers appropriate related to any item on this agenda.

Requests from persons with disabilities who need assistance to participate in this meeting, including need for an interpreter, materials in alternate formats, or other accommodations, should be made to the Office of the City Clerk at (608) 329 2564 with as much advance notice as possible so that proper arrangements can be made.

Notice is hereby given that a majority of the members of the Common Council of the City of Monroe may be present at this meeting to gather information about the matters set forth on this agenda. This notice is given pursuant to the Wisconsin Open Meetings Law.

Members: Chairperson Reid Stangel, Brooke Bauman, Louis Armstrong, and Alternate Chris Beer

Youth in Government Members: Nate Smith, Abby Yurs



CITY OF MONROE

Office of the Assistant City Administrator
Martin Shanks
(608) 329-2521
mshanks@cityofmonroe.org

1110 18th Avenue
Monroe, Wisconsin 53566
(608) 329-2500
www.cityofmonroe.org

MEMORANDUM

DATE: December 29, 2015
TO: Finance & Taxation Committee/Common Council
FROM: Martin Shanks
RE: Prospective Buyer of Honey Creek Industrial Park

Attached is a draft purchase and development agreement with Eastland Feed and Grain LLC. Eastland approached City staff and Green County Development Corporation early in November with interest in the approximate 10 acre lot directly east of Badger State Ethanol in the Honey Creek Industrial Park. After working with Eastland on the PDA, both sides feel comfortable bringing forward the draft agreement for your consideration.

Eastland currently employs a little over 40 full time employees in their core business and has annual sales of \$200 million. The site in Honey Creek Industrial Park would be utilized by Eastland to build a feed mill that runs primarily dairy feed, but would have the capability to run all species. The mill would give Eastland increased capacity and better geographic access to their markets.

The mill will employ 4 people on site with 6-10 more employees added in their transportation division. Once the mill is up and running Eastland anticipates adding a distribution warehouse and a retail store in the future.

The creation of the PDA was a highly collaborative staff effort, which included myself, Al Gerber, Ryan Lindsey, Attorney Ewald and Mike Johnson at GCDC. I commend all of these individuals for their efforts, reliability and expediency in moving this project forward.

The agreement is our standard approach with a few items to note:

- Paragraph 6 relates to language of a storm water main currently existing on the site in the NE corner. This section articulates an easement for the City.
- Paragraph 14(D) relates to the City Council offering a resolution of support to the Wisconsin Commissioner of Railroad for a rail crossing of 4th Avenue West. Eastland intends at some point to construct a rail spur.
- Paragraph 16 grants an easement on City owned property east of 4th Avenue West for a rail spur.
- Paragraph 17(A) clarifies that Eastland understands and will take care of the existing structure on the property.
- Paragraph 17(H) includes the standard stipulations for the minimum fair market value requirements. They will expire at the end of TID in 2019.
- Paragraph 21 will release Eastland from the fair market value requirements if they hit \$2,000,000 in value on January 1 of any year.

History of Eastland Feed and Grain Inc.

In the late 80's, the Coulthard family was spending time looking in southern Wisconsin and northern Illinois for a farm to buy. During one of our trips to Illinois our realtor pulled in at a feed mill that had just been listed. The thought of leaving farming was not given a lot of consideration at first but struggling to find a farm that felt right it became the decision to buy the feed mill and elevator. Besides, we all know that land was too high priced in the late 80's.....so we bought the mill and opened the doors in March of 1990. We started with a staff of four people. There were several expansions in the 90's with both the grain business and the feed business growing in tandem. More feed required more grain; more grain required more staff. More staff allowed for more feed and more grain, an endless cycle, just like farming.

In 2001, we started our own metal shop building augers and conveying equipment, repairing and fabricating equipment for the mill. We run the mill and elevator hard and downtime wasn't an option. Farmers started to bring equipment in for repair also and in 2003 Eastland Fabrication was born. A new shop was constructed near Lanark and they (my middle son Steve and a long term employee Mike) were in business on their own. They continue to grow, working on fabrication and welding repair of all farm equipment, grain trailers, etc. With a staff of six fabricator welders, if you can break it, they can probably fix it. This year they are adding a new division and will soon be breaking ground for a sales and parts center for a new business called E and S Equipment. They will handle sales, service and parts for Houle manure handling equipment.

In 2005, the decision was made to expand the feed mill. Construction lasted a long 12 months. The new mill addition gave us an extra 30 tons per hour of mixing capability while at the same time increased mixing accuracy while decreasing loading and unloading times. With the growth of the feed business, we also found the need to handle more bulk commodities, dry and wet distillers, gluten feeds, cottonseed, etc. In 2013 we added a commodity shed to help smooth out the big ingredient demand days. In 2014 we added a robot to the mill to help with the bagging chores. Our customer base includes dairies from 20 to 4,000 cows, swine operations from 6 to 6,000 sows, and a large number of cow calf and cattle feedlot operations from producers growing a couple of freezer beef to feedlot with several thousand head. We are comfortable working with producers of any size with a variety of needs. The doors open to the feed mill every morning at 4:00 a.m. and we are not done until the job is done, just like farming.

In the grain business, we can handle the grain or help you handle your grain. We understand hedging, basis, spreads, and freight. We presently have 30 delivery points that we sell grain to excluding the feed customers. We currently work with grain producers in northern Illinois, southern Wisconsin and eastern Iowa finding outlets to find to the best market available for their grain.

In 2009, we started construction of Lost River, a grain facility here in Shannon. It has been a multiyear build, but we started with a very good base and it works well. The new facility is set up with a quick dump pit and three 425,000 bushel bins. At harvest we can turn a semi on and off the property every six minutes.

Our 2011 construction included the beginning of Area 51 which is located south of Hanover on the Savanna Army depot property. Area 51 is operated as a country elevator but has nearby access to the Burlington Northern Railroad and long term we are working toward a goal of loading unit trains. Currently we have 875,000 bushels of space at Area 51 to handle wet corn, dry corn, beans and wheat.

History of Eastland Feed and Grain Inc.

In 1990 we had storage for 150,000 bushels of grain and manufactured about 30 ton of feed a day. Currently we have 2,500,000 bushels of grain storage and manufacture about 45 tons of feed an hour.

In 21 years, we have grown from a staff of 4 to a staff of over 40. Our oldest staff member is 77 and our youngest is 20. If you want to know about something, we either have someone on staff that has done it or we have someone that isn't afraid to try it and tell you how it worked out. During these years, we have grown to fill agricultures need. Eastland is a family operation where the door is opened at 4:00 a.m. by one son and closed at night by another. We are agriculture.

**HONEY CREEK INDUSTRIAL PARK
PURCHASE AND DEVELOPMENT AGREEMENT
Eastland Feed and Grain, Inc., Purchaser**

This Agreement entered into as of the ____ day of January, 2016, between Eastland Feed and Grain, Inc. [the “Purchaser”] and the City of Monroe, a municipality organized under the laws of the State of Wisconsin [the “City”].

RECITALS

Whereas the City has designated the Honey Creek Industrial Park located west of 4th Avenue West in the City as property which is suitable for commercial and industrial development [the “Honey Creek Industrial Park”], and,

Whereas pursuant to Section 66.46 [now Section 66.1105] of the Wisconsin Statutes, the City created Monroe Tax Incremental District Number 5 [the “TIF District”] in order to facilitate economic development of lands within the TIF District, and

Whereas the Purchaser wishes to acquire a parcel of land about 10.2 acres in size within the TIF District, which parcel is identified on **Figure 1** as the “Development Site” [the “Development Site”], and

Whereas Purchaser plans to construct certain improvements on the Development Site, as more particularly set forth in this Agreement for use as a processing and storage facility for feed and grain [the “Business”], and

Whereas the Monroe Common Council has found that the improvement of the Development Site as proposed by the Purchaser is in furtherance of the City’s goals for the TIF District, and

Whereas the City is willing to sell the Development Site to the Purchaser on the terms and conditions set forth in this Agreement.

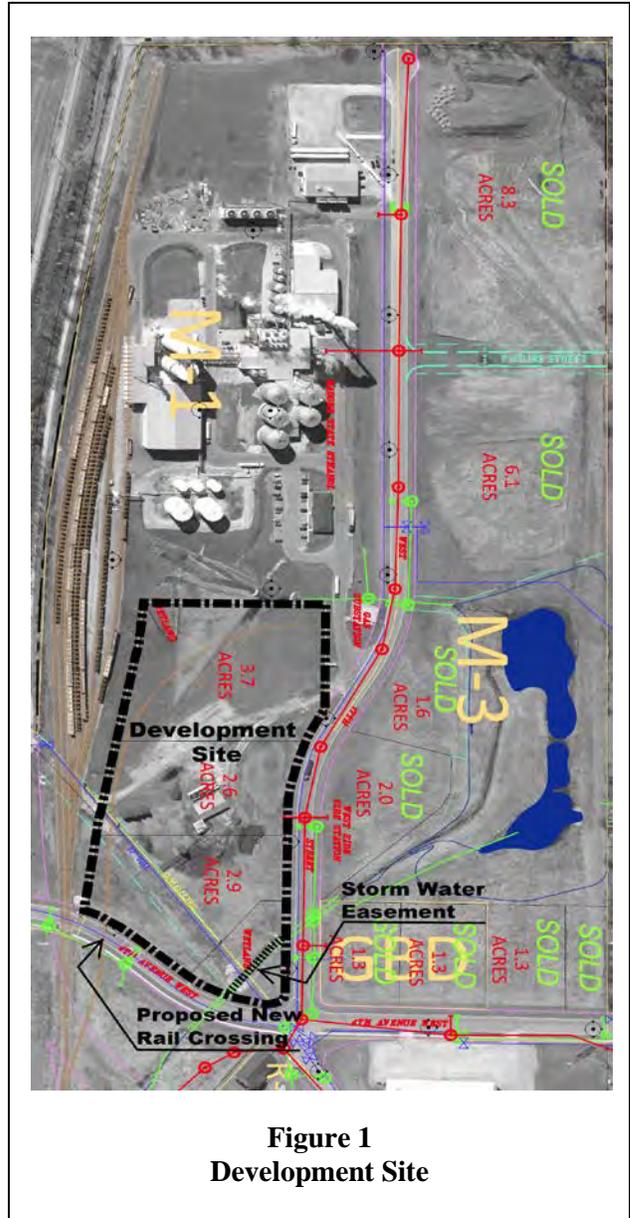
AGREEMENT

Now, Therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Purchase.** Purchaser shall purchase the Development Site for the sum of \$71,400.00 payable as follows:

A. The sum of \$10.20 shall be paid in cash at the closing.

B. The balance of the purchase price shall be paid on a date 12 months following the date of Closing. Interest shall accrue on such balance at the rate of 18 percent per annum computed from the Date of Closing to the date of payment. Notwithstanding the foregoing, as a development incentive, the obligation pursuant to this



**Figure 1
Development Site**

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subparagraph B. shall be deemed to be fully satisfied if the improvements on the Development Site required by paragraph 17 of this agreement are substantially completed when payment is due.

2. **Date of Closing.** This transaction is to be closed at the office of Purchaser's mortgagee or at the office of the City's legal counsel on or before March 1, 2016, or at such other time and place as may be agreed in writing.

3. **Warranties and Representations of the City.** The City hereby warrants the following:

A. **Authority.** The City possesses the full power and authority to enter into this Agreement and to conclude the transaction described herein, and no contract or Agreement to which the City is a party prevents the City from concluding the transaction described herein, nor is the consent of any third party required, other than as specified herein.

B. **Flood Plain.** The Development Site is not located in a flood plain.

C. **Wetland.** The Development Site is partially located in a wetland.

D. **Zoning.** The Development Site is zoned in a manner authorizing the operation of the Business thereon, including the reconstruction of improvements thereon in case of damage by fire or other casualty.

E. **Pending Events.** The City has no notice or knowledge of any:

1) Planned or commenced public improvements which may result in special assessments or otherwise materially affect the Development Site.

2) Government agency or court order requiring repair, alteration or correction of any existing physical condition of the Development Site.

3) Underground storage tanks or any structural, mechanical, or other defects of material significance affecting the Development Site, including but not limited to the presence of any dangerous or toxic materials or conditions affecting the Development Site.

4) Wetland and shoreland regulations affecting the Development Site other than wetland regulations affecting that portion of the Development Site that has been formally designated as a wetland.

F. **Executory Contracts or Agreements.** The City is not a party to any lease or other agreement affecting the Development Site that relates to any period beyond the Date of Closing, whether written or oral.

G. **Laws, Regulations & Ordinances.** The City has complied with all laws, regulations, and ordinances applicable to the Development Site to the date of this Agreement.

H. **Litigation.** The City represents and warrants that there is no litigation or proceeding pending to the City's knowledge against or relating to the City, or the City's properties or business that may hinder or prevent consummation of the transaction contemplated by this agreement; nor does the City know or have reasonable grounds to know of any basis of any such litigation or proceeding relative to the City, or the City's properties or business, except any litigation or proceeding disclosed in writing to Purchaser within 10 days following execution of this Agreement by the City.

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Eastland Feed and Grain, Inc., Purchaser

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4. **Warranties and Representations of the Purchaser.** The Purchaser hereby warrants the following:

A. **Authority.** The Purchaser possesses the full power and authority to enter into this Agreement and to conclude the transaction described herein, and no contract or agreement to which Purchaser is a party prevents the Purchaser from concluding the transaction described herein, nor is the consent of any third party required to conclude such transaction, other than as specified herein.

B. **Litigation.** There is no litigation or proceeding pending to the Purchaser's knowledge against or relating to the Purchaser, or the Purchaser's properties or business; nor does the Purchaser know or have reasonable grounds to know of any basis of any such litigation or proceeding relative to the Purchaser, or the Purchaser's properties or business, except any litigation or proceeding disclosed in writing to the City within 10 days following execution of this Agreement by the Purchaser.

5. **Survey.** For purposes of conveyance the City shall cause a certified survey of the Development Site to be prepared and recorded at the City's sole expense.

6. **Easement for Storm Water Main.** The City may retain an easement 60 feet wide within a corridor crossing the Development Site in the approximate location graphically shown on Figure 1 as "Storm Water Easement" allowing the City to test, maintain, inspect, operate, replace, change, abandon in place, or remove an underground system for the conveyance of storm water, and associated appliances, equipment, manholes, or markers.

7. **Conveyance.** The City shall convey the Development Site by warranty deed, or other conveyance provided herein, free and clear of all liens and encumbrances, excepting: covenants of this agreement, municipal and zoning ordinances, recorded easements for public utilities serving the Development Site, recorded building and use restrictions and covenants and general taxes levied in the year of closing, provided none of the foregoing prohibit present use, and the City shall complete and execute the documents necessary to record the conveyance.

8. **Legal Possession.** Legal possession of the Development Site shall be delivered to Purchaser on Date of Closing.

9. **Occupancy.** Occupancy of the Development Site shall be given to Purchaser on the Date of Closing.

10. **Special Assessments.** Special assessments, if any, for work on site actually commenced or levied prior to date of this Agreement, shall be paid by the City. All other special assessments shall be paid by Purchaser.

11. **Title Evidence.** The City shall give evidence of title in the form of an owner's policy of title insurance in the amount of the purchase price on a current ALTA form issued by an insurer licensed to write title insurance in Wisconsin. The City shall pay all costs of providing title evidence to the Purchaser. The Purchaser shall pay all costs of providing title evidence required by the Purchaser's lender, if any. If requested by the Purchaser, the City shall provide a "gap" endorsement or equivalent gap coverage at the Purchaser's cost to provide coverage for any liens or encumbrances first filed or recorded after the effective date of the title insurance commitment and before the deed is recorded, subject to the title insurance policy exclusions and exceptions, provided the title company will issue the endorsement. If a gap endorsement or equivalent gap coverage is not available, the Purchaser may give written notice that title is not acceptable for closing.

12. **Provision of Merchantable Title.** For purposes of closing, title evidence shall be acceptable if the required title insurance commitment is delivered to the Purchaser's attorney or the Purchaser not less than 15 days prior to the Date of Closing, showing title to the Development Site as of a date no more than 15 days before delivery of such title evidence to be merchantable, subject only to liens which will be paid out of the proceeds of closing and standard title insurance requirements and exceptions, as appropriate.

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13. **Title Not Acceptable for Closing.** If title is not acceptable for closing, the Purchaser shall notify the City in writing of objections to title within 10 days after delivery of the title commitment to the Purchaser or the Purchaser's attorney. In such event, the Closing Date shall be extended for 30 days and the City shall have a reasonable time, but not exceeding 5 days from the Purchaser's delivery of the notice stating title objections, to deliver notice to the Purchaser stating the City's election to remove the objections by the Date of Closing. In the event that the City is unable to remove said objections, the Purchaser may deliver to the City written notice waiving the objections, and the Date of Closing shall be extended accordingly. If the Purchaser does not waive the objections, the Purchaser shall deliver written notice of termination and this agreement shall be null and void. Providing title evidence acceptable for closing does not extinguish the City's obligations to give merchantable title to the Purchaser.

14. **Contingencies.** The obligation of the parties to close the sale of the Development Site to the Purchaser contingent upon the following:

A. **Council Resolution.** The obligation of the Purchaser to close is contingent upon the City delivering to the Purchaser a duly executed copy of its resolution authorizing the transaction described herein, which resolution shall form a part of this Agreement.

B. **Purchaser Authority.** The obligation of the City to close is contingent upon the Purchaser delivering to the City a duly executed copy of its resolution, or other document authorizing the transaction described herein, which resolution or other document shall form a part of this Agreement.

C. **Electricity and Natural Gas Utility Services.** The obligation of the Purchaser to close is contingent upon the City providing to the Purchaser documentation showing that electric and natural gas distribution lines with sufficient capacity to service connections serving Purchaser's improvements are located immediately adjacent to the Development Site.

D. **Resolution Supporting Rail Crossing of 4th Avenue West.** The obligation of the Purchaser to close is contingent upon the City providing to the Purchaser a certified copy of a resolution adopted by the City Council that supports approval by the Wisconsin Commissioner of Railroad of a new rail crossing of 4th Avenue West at the location identified as "Proposed New Rail Crossing" on Figure 1.

E. **Financing Commitment.** The obligation of the City to close is contingent upon the Purchaser delivering to the City a financing commitment or other proof that is satisfactory to the City Attorney demonstrating that the Purchaser is financially able to perform the covenants required by this Agreement.

F. **Representations and Warranties Remain Correct.** The representations and warranties made by each party herein shall be substantially correct on the Date of Closing, as though such representations and warranties had been made on the Date of Closing, except to the extent such representations and warranties are affected by transactions contemplated herein or changes occurring in the ordinary course of business.

G. **Failure of Contingency.** If any contingency provided herein shall not be met in whole or in part, then the party for whose benefit such contingency exists may declare this Agreement to be null and void.

15. **Loss/Damage.** If the Development Site, excluding existing structures, is damaged by fire or elements prior to the Date of Closing in an amount of not more than five per cent of the selling price, the City shall be obligated to repair the Development Site and restore it to the same condition that it was on the date of this Agreement. If such damage shall exceed such sum, this Agreement may be cancelled at option of Purchaser. Should Purchaser elect to carry out this Agreement despite such damage, Purchaser shall be entitled to the insurance proceeds relating to damage to the Development Site.

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16. **Easement for Rail Spur.** Contemporaneous with the closing the City shall grant to the Purchaser a non-exclusive easement allowing the purchaser to construct and use in the Business a rail spur that intersects with the existing Wisconsin & Southern Railroad Co. rail line at a point approximately 350 feet east of the east right of way for 4th Avenue West and running across land owned by the City lying east of 4th Avenue West to the location identified as “Proposed New Rail Crossing” on Figure 1. Contemporaneous with the closing the Purchaser grant to the City a non-exclusive easement allowing the City or its assignee to construct and use a rail spur that runs from the location identified as “Proposed New Rail Crossing” on Figure 1 across the Development site to a location on the west boundary of the Development Site that abuts property owned by Badger State Ethanol, LLC, the location and elevation of which enables the extension of such rail spur across West 17th Street to provide rail service to property located north of West 17th Street.

17. **Purchaser’s Obligations.** Upon closing, the Purchaser shall undertake the following:

A. **Existing Structures.** The Purchaser accepts that structures are currently located on the Development Site. If demolition of such existing structures is necessary their demolition and removal, including any poured concrete floors and below-grade foundations or footings shall be at the Purchaser’s expense.

B. **Construction of Improvements.** Prior to January 1, 2017, the Purchaser shall construct all improvements on the Development Site contemplated by this agreement.

C. **Paving of Parking Lot.** By December 31, 2017 the Purchaser shall install asphalt or concrete paving over the parking lot and the driveway associated with the Purchaser’s improvements on the Development Site.

D. **Sidewalks.** Unless a waiver is granted by the City’s Board of Public Works, the Purchaser shall within 12 months following the Date of Closing install a concrete sidewalk according to standard City specifications in the terrace area of West 17th Street and 4th Avenue West.

E. **Construction Standards.** Each of the improvements required by this subparagraph shall:

1) Be constructed with quality materials and finished in a manner that projects a quality image for the Purchaser and other potential occupants of the Honey Creek Industrial Park.

2) Be fully landscaped with plantings or other landscaping that have been approved by the City. Approval by the City of such landscaping shall not be unreasonably denied, provided however, the City may require landscaping which will be in keeping with the objective of enhancing the overall image of the Honey Creek Industrial Park.

3) Be served by a paved driveway and parking area. The Purchaser shall obtain the prior approval of the City for the location, construction and materials used for the driveway and parking area. Approval by the City shall not be unreasonably denied, provided however, the City may require construction which will be in keeping with the objective of enhancing the overall image of the Honey Creek Industrial Park.

F. **Unforeseen Circumstances.** The Purchaser shall not be in default if the construction required by this subparagraph cannot be completed within the time provided due to circumstances beyond the Purchaser’s control, including without limitation, adverse weather conditions which preclude timely completion of construction.

G. **City Right of Access to Development Site.** Purchaser shall permit representatives of the City to have access to the Development Site and any improvements constructed thereon at all reasonable times when the City deems access necessary to insure compliance with the terms and conditions of this Agreement, including

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but not limited to, access for inspection of all work being performed in connection with the construction of the improvements.

H. Minimum Fair Market Value of Land and Improvements. The Purchasers shall achieve and maintain the fair market value of the improved Development Site at the following minimum levels as of January 1 of the year indicated [the “Minimum Fair Market Value”]:

Year	Minimum Fair Market Value	Year	Minimum Fair Market Value
2017	\$920,000.00	2019	\$920,000.00
2018	\$920,000.00		

I. Non-performance Penalty. If the Purchasers shall fail to achieve the required Minimum Fair Market Value for any year, then the City may impose a Non-performance Penalty.

1) **Maximum Non-performance Penalty.** As used in this Agreement the Maximum Non-performance Penalty for any year shall be the following [the “Maximum Penalty”]:

Year	Maximum Penalty	Year	Maximum Penalty
2017	\$24,472.00	2019	\$24,472.00
2018	\$24,472.00		

2) **Computation of Non-performance Penalty.** The Non-performance penalty imposed for any year shall be determined by the following formula:

$$\text{Maximum Penalty X (1 - (Actual Fair Market Value / Minimum Fair Market Value))}$$

3) **Notice of Non-performance Penalty.** If a Non-performance Penalty shall be due for any year, the City may provide Purchasers with a Notice of Non-performance Penalty setting forth a calculation of the amount of the Non-performance Penalty [the “Notice of Non-performance Penalty”].

4) **Payment of Non-performance Penalty.** Commencing with the 2017 calendar year, and for each year thereafter until termination of this agreement, the Purchasers shall pay to the City the amount of any Non-performance Penalty for which the City has provided the Purchasers with a Notice of Non-performance Penalty. Payment of the Non-performance Penalty shall be in a single installment due on or before a date 15 days following delivery of the Notice of Non-performance Penalty. Purchasers’ payments shall be made to a segregated fund maintained by the City for property originally located in the TIF District.

5) **Interest on Unpaid Non-performance Penalty.** If the City has delivered the Notice of Non-performance Penalty, then in addition to the principal amount of the Non-performance Penalty, the Purchasers shall pay the City interest at the rate of 18.0% per annum, computed on the principal amount of the Non-performance Penalty, from a date 15 days following delivery of the Notice of Non-performance Penalty.

6) **Security for Performance.** To secure performance of the covenants of this agreement the Purchasers shall deliver to the City at the closing a State Bar of Wisconsin Form 6-L Mortgage, properly executed and in a form suitable for recording [the “Mortgage”]. The Mortgage shall secure payment of the

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HONEY CREEK INDUSTRIAL PARK - PURCHASE AND DEVELOPMENT AGREEMENT

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unpaid amount of any Non-performance Penalty or any other amount due the City pursuant to this agreement and any interest and costs charged to Purchasers pursuant to this Agreement. Upon demand, the City shall from time to time subordinate the lien of the Mortgage to the lien of a mortgage or other security given or to be given to a commercial lender who either has extended financing to Purchasers or proposes to extend financing to Purchasers for purposes which are directly related to construction of improvements on the Development Site or operation of the Business. Notwithstanding the foregoing, the City shall not be required to subordinate the lien of the Mortgage in any amount which leaves less than 20% of the fair market value of the Development Site and any improvements placed thereon by the Purchasers reachable by the lien of the mortgage.

7) **Release of Mortgage.** Upon termination of this agreement the City shall satisfy the Mortgage, provided that all Non-performance Penalties or other sums due pursuant to this agreement, including interest have been paid in full.

8) **Costs and Reasonable Fees.** If Purchasers shall fail to pay any Non-performance Penalty within 15 days following delivery of the Notice of Non-performance Penalty, or fail to perform any other covenant of this agreement within 90 days following delivery of a notice of such non-performance from the City, then the City may commence proceedings to foreclose the Mortgage and the Purchasers agree to pay, in addition to all other sums due the City, all costs and expenses of any legal proceeding, plus a reasonable sum as attorney's fees for foreclosure of the Mortgage.

9) **No Waiver.** Failure of the City to provide Purchasers with any notice required by this agreement or otherwise enforce payment in one or more years shall not be deemed a waiver of the right to enforce payment at a later time, together with interest and any costs or attorney's fees due pursuant to this agreement.

18. **No Arms Length Transaction.** The Purchaser and the City each acknowledges that Purchaser's acquisition of the Development Site is not the product of an arms-length transaction and the Purchase Price for the Development Site does not reflect the actual fair market value for the Development Site. Neither the Purchaser nor the City shall use the Purchase Price as evidence of fair market value in any judicial or quasi-judicial proceeding where the fair market value of the Development Site is at issue.

19. **Notices.** Notices required by this Agreement shall be sent to the respective parties at the addresses set forth below. The place of notice may be changed by appropriate registered or certified mailing to the parties at the following addresses:

Notice to Purchaser:

Roger K. Coulthard
Eastland Feed and Grain, Inc.
210 N. Stanton Street
Shannon, Illinois 61078

Notice to City:

Carol J. Stamm
City Clerk
City of Monroe
1110 18th Avenue
Monroe, Wisconsin 53566

20. **Assignment.** This agreement may be assigned by either party, but only if the assignee executes an instrument expressly assuming liability for the covenants of the assignor pursuant to this agreement. The assignment shall not release the assignor from liability for performance of the covenants of this agreement.

21. **Termination.** This Agreement shall terminate upon the occurrence of any one or more of the following events:

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HONEY CREEK INDUSTRIAL PARK - PURCHASE AND DEVELOPMENT AGREEMENT

Eastland Feed and Grain, Inc., Purchaser

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A. If the fair market value of the improved Development Site is equal to or greater than \$2,000,000 on January 1 of any year.

B. Upon dissolution of the TIF District.

C. On December 31, 2021.

22. **Choice of Law.** This Agreement shall be governed by and construed under the laws of the State of Wisconsin.

23. **Paragraph Headings.** The various paragraph headings are inserted for convenience of reference only, and shall not affect the meaning or interpretation of the Agreement or any section thereof.

24. **Severability.** If any provision of this Agreement is held to be unenforceable, in whole or in part, by a court of competent jurisdiction, the remaining provisions, or portions thereof, shall not be affected thereby and effect shall be given to the intent manifested by the provisions, or portions thereof, held to be enforceable.

25. **Binding Effect.** This Agreement shall bind and inure to the benefit of the successors, assigns, personal representatives, heirs and legatees of the parties hereto.

In Witness Whereof, the parties have hereunto set their hands and seals as of the date first above written.

CITY OF MONROE

By: _____ [Seal]
William M. Ross Jr., Mayor

By: _____ [Seal]
Philip Rath, City Administrator

Countersigned: _____ [Seal]
Bridget Schuchart, Comptroller

EASTLAND FEED AND GRAIN, INC.

By: _____ [Seal]
Roger K. Coulthard, President

By: _____ [Seal]
Kathy K. Coulthard, Secretary

Draft - December 28, 2015



CITY OF MONROE

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MEMORANDUM

DATE: December 28, 2015
TO: Finance & Taxation Committee
FROM: Martin Shanks
RE: Consideration of Economic Development Programs

In late summer and fall the Finance & Taxation Committee considered a proposal from Vierbicher on the creation of two new programs: a housing improvement program and a locally funded revolving loan fund for businesses. The proposal also included the creation a Community Development Authority to oversee these programs. At the time the committee chose to place the proposal in the 2016 Budget for consideration. The funding was eventually approved in the budget.

Before moving forward with executing the proposal I want to confirm with the committee that it wants to undertake these programs. As discussed previously the funding of these programs will likely be through existing fund balance. This is timely for the committee to consider as it intends to consider usage of the fund balance. The committee should think about how much funding it may be willing to commit from this balance before moving forward. Because of the nature of these programs the funding will eventually come back to the City, but the funds will be tied up until paid back.

Full Text of September 28th and August 14th Memo to Committee Below

Back in mid-August the Finance & Taxation Committee met to discuss preliminary ideas of economic development programs. This included a housing improvement program and a local revolving loan fund for business. During the committee meeting there was a lot of positive comments about the ideas and to continue with the ideas further. Gary Becker of Vierbicher was present to answer a number of questions and provide advice. Administrator Rath asked Vierbicher to provide an expanded proposal to develop the programs as well as investigate a community development authority.

Vierbicher has provided an updated proposal (see packet). Pricing for the proposal includes: CDA creation for \$6,000, local RLF design for \$4,500 and \$8,000 for housing program design. Please see the proposal for additional details. Further context from my August 14th memo is below.

Costs for program development could be placed in the 2016 operating budget or used from existing fund balance.

August 14th Memo to Committee Below

Over the last several months there has been ongoing informal discussion with various staff members and the City's economic development partners about different types of economic development programs the City could develop. Out of these discussions has born two consistent themes: improving the existing housing stock and having a more flexible business loan program.

Housing Improvement Program

This idea was brought to a head earlier this year at the Green County Development Corporation dinner. The guest speaker was the Mayor of Monona who shared ideas and projects that Monona has undertaken to foster economic development. One of the ideas that seemed to resonate with staff and our development partners was a housing improvement program called "Renew Monona."

Earlier this week at the economic development focus group for the comprehensive plan the issue with housing was identified by business leaders and the Monona program was referenced as a potential solution. Monona's program offers 0% interest loans to homeowners to make upgrades to their homes. The policy identifies eligibility requirements, allowable uses of the loan, and terms and conditions (see packet attachment). Monona utilized the consulting services of Vierbicher to help develop their program – a proposal is attached for reference.

Local Revolving Loan Fund

Sometime ago Administrator Rath suggested the idea of developing a locally controlled revolving loan fund (RLF) as an alternative to the current federally implemented RLF. The current CDBG funded RLF program has progressively become more and more restrictive in its use. It has also become more labor intensive as far as reporting and recordkeeping and the implementation of a regional program has appeared to stall at the State level. Additionally, the program is becoming less and less attractive as an economic development financing tool due to the Federal mandates placed on applicants and the municipalities.

A locally controlled revolving loan fund could be developed in whatever manner the City finds appropriate. The program could create greater flexibility in its use and requirements. The CDBG funded RLF policy could be used as a template to draft a local version of the program, which has been successful prior to the recent enforcement practices.

Possible Funding Mechanism

In order to fund these programs one suggestion is to draw down the threshold of the City's "rainy day" fund which is currently set at 25% of the City's annual expenditures. At times there has been some talk amongst Council members about lowering that percentage. If such a move were considered, it would be advisable to spend that money on something important - as once that money is used it will not come back. Reducing that threshold for these programs, however, should be viewed by the Committee as an investment in the community that could have returns time and again – not only in the direct impact of a "revolving fund" program, but also in the indirect impact of growing the assessed value of the City.

Developing these programs will take time and resources. It will also require funding, which could be done through modifications to the City's financial policies (or other ideas). Before staff and its partners move forward with pursuing the development of these programs over the coming months I am looking for general consent to move forward with dedicating that time.



September 4, 2015

Martin Shanks, Director of Community Development
City of Monroe
1110 18th Ave.
Monroe, WI 53566

Re: Revised Proposal to Design a Housing Improvement Program with Additional Services

Dear Mr. Shanks:

Vierbicher Associates, Inc. (Consultant) is pleased to submit this proposal to provide professional planning services to the City of Monroe (Client).

I. PROJECT UNDERSTANDING

The Client is considering the establishment of a locally-funded program intended to improve the quality of housing within the community. Client requires assistance to design a housing improvement program that is targeted to the community's specific needs and resources.

II. SCOPE OF SERVICES

A. General

Consultant will provide services related to the design and implementation of a locally-funded housing stock improvement program.

B. Specific Services Provided By Consultant

1. Attend a City Council meeting to discuss the concept of a locally-funded housing improvement program and structuring options. Completion of the remaining scope of services will depend upon the City Council authorizing staff and Consultant to proceed.
2. Meet with staff to discuss housing needs, project area boundaries, program elements, eligibility, application process, evaluation criteria and program performance expectations.
3. Design, prepare and facilitate a public workshop to discuss housing needs and how a housing program can best meet those needs. Prepare a summary of the workshop results.
4. Conduct four to six focus groups on a single day in Monroe. The focus groups should include individuals from various stakeholder groups impacted by the condition of housing. Categories of focus group participants to consider include employers, rental property owners, tenants, home owners, lenders, realtors/brokers, non-profits and social welfare organizations. Prepare a summary of focus group discussions.

5. Prepare a draft housing improvement program that will include a program description, eligibility criteria, application form, evaluation criteria and scoring matrix.
6. Meet with staff to review the draft program. Edit the draft program.
7. Present the proposed program to the City Council for discussion.
8. Revise the program consistent with direction provided by the City Council. Provide the final program documents to staff.

C. Additional Services if Requested by Client

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

1. Advisory Services to Merge RDA and Housing Authority into a Community Development Authority

Advise Client on merging the Redevelopment Authority (RDA) and Housing Authority (HA) into a Community Development Authority (CDA). Consultant will provide the following services:

- a. Review background information on the activities, funding, assets, liabilities, budget, staffing and operations of the RDA and HA. Discuss Client's objectives for housing, redevelopment and economic development activities. Consultant will meet with the Client to review background information and develop a detailed approach for moving forward with remaining activities.
- b. Prepare a detailed schedule of activities in consultation with Client.
- c. Assist Client in preparing a case for change. This scope anticipates Client's staff doing the majority of the work in collecting and analyzing information and in preparing appropriate reports or memos with advice and review from Consultant. Client may request that Consultant prepare material, attend meetings or make presentations as additional activities under this contract. Such requests will result in additional fees beyond the estimate provided.
- d. Advise Client prepare a plan for the transition from separate housing and redevelopment entities to a single community development entity. The plan will describe the issues to be addressed for a smooth transition and for effective implementation of the new organization. Client may request that Consultant prepare material, attend meetings or make presentations as additional activities under this scope of services. Such requests will result in additional fees beyond the estimate provided.
- e. Assist the Client prepare educational and informational material regarding the transition plan for presentation to the public, elected officials and staff.
- f. Attend a City Council meeting to present information about the proposed merger and approval process. The estimated fee for this scope of services

anticipates Consultant attending one meeting with the City Council during the approval process.

Fee estimate: \$6,000

Client: Initial here to indicate approval of this additional service: _____

2. Design a Locally-Funded Economic Development Revolving Loan Fund

Consultant shall assist Client in planning for the establishment of a locally-funded economic development revolving loan fund (RLF).

- a. Meet with Client and local economic development organizations to fully understand Client objectives and business needs and constraints in designing a RLF.
- b. Facilitate a stakeholder focus group to discover needs and issues associated with a RLF. It is expected that focus group participants will be lenders, businesses, Client and area economic developers. A summary of the results of the focus group will be prepared.
- c. Investigate options for structuring and administering a RLF given Client objectives and constraints and the needs of the stakeholders. This will include a summary of the RLFs currently operating within Client's region to assist with positioning Client's RLF. Prepare a summary of options and provide recommendations for structuring the RLF.
- d. Attend a meeting to present the results of this study.
- e. Prepare program brochure and application materials.

Fee estimate: \$4,500

Client: Initial here to indicate approval of this additional service: _____

III. SERVICES NOT PROVIDED AS PART OF THIS PROJECT

- A. In addition to the "Services Not Provided as Part of This Contract" section indicated in the attached General Terms and Conditions, the following services are not included as part of this work.
 1. Analysis of housing needs or conditions.
 2. Cost estimates for specific housing improvement measures.
 3. Services related to implementation of projects including administration, financing, development agreements, design, permitting, and other related implementation activities.

IV. INFORMATION PROVIDED BY OTHERS & CLIENT RESPONSIBILITY

- A. The Client will solicit public input and will work with Consultant to develop an appropriate housing improvement program.
- B. The Client will schedule and publicize meetings in a timely manner and provide refreshments for the public workshop and focus group meetings.

- C. The Client will suggest names for the focus groups and invite those individuals to a focus group meeting.
- D. The Client will provide planning studies and data in its control that relate to housing within the City.
- E. The Client will pay for all newspaper publications costs.
- F. The Client will provide an appropriate logo and any document design requirements to be consistent with any desired branding.

V. SCHEDULE

Consultant anticipates completion of the scope of services within three months of authorization to proceed.

VI. SCHEDULE OF DELIVERABLES

- A. Participation in up to two City Council meetings.
- B. Participation in up to two staff-level meetings.
- C. Facilitation of a public workshop and up to six focus groups.
- D. Two (2) hard copies of the final housing improvement program material for the Client, along with an electronic copy suitable for reproduction.

VII. DESIGNATION OF RESPONSIBLE PARTIES

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

Overall coordination and project supervision for Consultant is the responsibility of Gary Becker, CEcD, Project Manager. He, along with other personnel, will provide the services required for the various aspects of the project. Please direct all communications that have a substantive impact on the project to Gary.

The Client designates _____, as its representative. Consultant will direct all communications that have a substantive impact on the project to _____.

VIII. FEES

The estimated fee to provide the primary scope of services described herein is: **\$8,000**. Consultant will not bill beyond this estimate without authorization from the Client. Consultant will promptly notify the Client if additional effort is required beyond that anticipated by the described scope of services. The fee for any additional services will be as indicated in Section II.C.

The above fee includes six meetings in the City of Monroe. Reimbursable expenses are included in the above stated fees. Fees associated with this contract may be eligible for recovery from one or more tax increment districts.

Preliminary discussions indicate there is general community consensus that the greatest housing need to be addressed by this program is the condition of housing. Additional research to document the housing needs of the community may be provided for an additional fee, estimated at \$4,000.

IX. GENERAL TERMS AND CONDITIONS

The General Terms and Conditions dated 7/1/14 and attached hereto are incorporated herein by reference.

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

Sincerely,



Gary Becker, CEcD
Project Manager

Enclosure: General Terms and Conditions

AUTHORIZATION TO PROCEED

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

Client

By: _____
Phillip Rath
City Administrator
City of Monroe
1110 18th Ave.
Monroe, WI 53566

Consultant



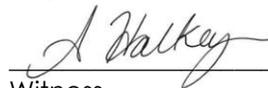
Gary Becker, CEcD
Project Manager
Vierbicher Associates, Inc.
999 Fourier Drive, Suite 201
Madison, WI 53717

Date

September 4, 2015

Date

Witness



Witness

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

1. Services Not Provided as Part of This Contract

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

2. Hazardous Environmental Conditions

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

3. Additional Services

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

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

4. Client's Responsibility

- A. Provide Consultant with all criteria and full information as to Client's requirements for the project, including design objectives and constraints, capacity and performance requirements, flexibility, expandability, and any budgetary limitations; furnish previous plans, studies and other information relevant to the project; furnish copies of all design and construction standards which Client will require to be included in the drawings and specifications; and furnish copies of Client's standard forms, and conditions, including insurance requirements and related documents for Consultant to include in the bidding documents, or otherwise when applicable.
- B. Furnish to Consultant any other information pertinent to the project including reports and data relative to previous designs, or investigations at or adjacent to the site, including hazardous environmental conditions and other data such as reports, investigations, actions or citations.
- C. Arrange for safe access to and make all provisions for Consultant to enter upon public and private property as required for Consultant to perform services under this Agreement.
- D. Examine all alternate solutions, studies, reports, sketches, drawings, specifications, proposals, and other documents presented by Consultant and render timely decisions pertaining thereto.

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

5. General Considerations (for projects involving construction)

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

6. Fees

- A. The fees set forth in this Agreement are based on the assumption that the work will be completed within the time frame set forth herein. If significant delays to the project occur, which are not due to the negligence of the Consultant, e.g. decisions of the Client, regulatory approvals, deferrals to the next construction season or calendar year, etc., the Consultant reserves the right to negotiate and adjust an appropriate change to the fees.
- B. Consultant may submit invoices monthly for work completed to date. Fixed fees will be submitted on the basis of percent of the Scope of Services completed. Estimated fees will be submitted on the basis of time and expense incurred in accordance with Consultant's fee schedule in effect at the time the costs are incurred.
- C. Invoices are due upon receipt. For invoices not paid after 30 days, interest will accrue at the rate of 1 ½% per month. Payments will be credited first to interest and then to principal. In the event any portion of the account remains unpaid after 90

days after the billing, Consultant may initiate collection action and the Client shall be responsible for all costs of collection, including reasonable attorneys' fees. As a matter of business practice, Consultant would intend to file lien rights against the property if payment is not received before lien rights would expire. Consultant shall have the right to suspend its services without any liability arising out of or related to such suspension in the event invoices are not paid within 30 days of receipt.

- D. When estimates of fees or expenses are quoted, they are simply that, estimates. Actual costs invoiced may be higher or lower due to actual fees or expenses incurred. When fees or expenses are anticipated to be higher or lower than estimated, Consultant will make every effort to inform you in a timely manner, even prior to incurring the costs, if possible.
- E. Consultant will bill additional services, if requested, in accordance with the fee schedule in effect at the time the work is performed or as otherwise negotiated.

7. Dispute Resolution

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

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

8. Insurance

A. Consultant

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

B. Client

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

C. Contractor

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

9. Limitations of Liability/Indemnity

- A. In recognition of the relative risks, rewards and benefits of the project to both the Client and Consultant, the risks have been allocated such that the Client agrees that, to the fullest extent permitted by law, the Consultant's total aggregate liability to the Client for any and all injuries, damages, claims, losses or

expenses arising out of this Agreement from any cause or causes, shall not exceed the net fee received by Consultant, not including reimbursable subconsultant fees and expenses. Such causes include, but are not limited to, Consultant's negligence, errors, omissions, strict liability, breach of contract or breach of express or implied warranty.

- B. Client and Consultant each agree to indemnify and hold the other harmless, and their respective officers and employees from and against liability for losses, damages and expenses, including reasonable attorneys' fees, to the extent they are caused by the indemnifying party's negligent acts, errors or omissions. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of Client and Consultant, they shall be borne by each party in proportion to its negligence.
- C. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Client or Consultant to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee or any of them.

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

10. Use of Documents

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

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

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

12. Use of Electronic Media

Copies of documents that may be relied upon by Client are limited to the printed copies (also known as hard copies) that are signed or sealed by Consultant except for electronic copies of documents available for printing by Contractors during bidding and/or construction from QuestCDN.com or as specified in this Agreement for Services or as specifically indicated in writing by Consultant. Files in electronic formats, or other types of information furnished by Consultant to Client such as text, data or graphics, are only for convenience of Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. When transferring documents in electronic formats, Consultant makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems or computer hardware differing from those in use by Consultant at the beginning of the project.

13. Opinions of Cost

When included in Consultant's scope of services, opinions or estimates of probable construction cost are prepared on the basis of Consultant's experience and qualifications and represent Consultant's judgment as a professional generally familiar with the

industry. However, since Consultant has no control over the cost of labor, materials, equipment or services furnished by others, over contractor's methods of determining prices, or over competitive bidding or market conditions, Consultant cannot and does not guarantee that proposals, bids, or the actual construction cost will not vary from Consultant's opinions or estimates of probable construction cost.

14. Standard of Care

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

15. Termination

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

A. For Cause

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

B. To Discontinue Project

By Client effective upon the receipt of notice by Consultant.

C. Reimbursement for Services

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

16. Force Majeure

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

17. Successors Assigns and Beneficiaries

- A. Client and Consultant each is hereby bound and the partners, successors, executors, administrators and legal representatives of Client and Consultant are hereby bound to the other party by this Agreement and to the partners, successors, executors administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.
- B. Neither Client nor Consultant may assign, sublet, or transfer any rights under or interest (including, but without limitation,

moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty of responsibility under this Agreement.

18. Municipal Financial Advisor Services

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

19. Controlling Laws

This Agreement is to be governed by the laws of the state in which the project is located.