



December 2, 2011

## **Agreement for Cooperative Plan Facilitation Services**

THIS AGREEMENT is made and entered into by and between the Village of New Glarus, Wisconsin (hereinafter "Village"), the Town of New Glarus, Wisconsin (hereinafter "Town"), and MDRoffers Consulting LLC, Madison, Wisconsin, a professional planning organization.

### **Article I     Scope of Work**

- A. MDRoffers Consulting LLC agrees to provide the "Services" identified as the responsibility of the Consultant in Exhibit A: Scope of Services, Town and Village of New Glarus, Cooperative Plan Facilitation Services, except as may be otherwise agreed per the provisions that follow.
- B. MDRoffers Consulting LLC may subcontract with Vandewalle & Associates, or another qualified professional provider if approved by the Town and Village in writing, to prepare maps, graphics, and presentation materials in support of the Services described in Exhibit A.
- C. MDRoffers Consulting LLC and the Town and Village may (but are not required to) enter into one or more separate Work Orders for products or services that extend beyond the Services described in Exhibit A.
- D. MDRoffers Consulting LLC agrees to provide its Services in accordance with generally accepted standards of its profession, and to ensure that all work allowed and performed under subcontract under this Agreement is similarly provided. During the term of this Agreement as described in Article III.A, neither MDRoffers Consulting LLC nor any approved sub-consultant shall separately advise or provide interpretation to either the Village or Town on matters related to the Cooperative Plan without the other party's participation in such communication, such as through a Negotiation Committee meeting. Should the need arise for either the Village or Town to independently seek professional advice or interpretation on substantive matters related to the Cooperative Plan during the term of this Agreement, MDRoffers Consulting LLC shall not provide

such advice, unless agreed in writing by the other party, approved by the Negotiation Committee, or both.

- E. MDROffers Consulting LLC warrants and represents that none of the individuals performing services under this Agreement, except for sub-consultants under Article I.B, are doing so as employees or agents of any other person or business entity. In the event any other person or entity shall make any claim against the Village, Town, or both for compensation based on such services, MDROffers Consulting LLC shall pay or otherwise resolve such claims and shall indemnify and hold harmless the Village, Town, or both for any expenses incurred as a result of such claim, including reasonable attorney fees.

## **Article II Village's and Town's Responsibilities**

- A. The Village and Town agree to provide MDROffers Consulting LLC with all base maps, blueprints, aerial photos, studies, reports, plans, and ordinances needed to complete these Services, in the requested format if available. MDROffers Consulting LLC may reasonably rely on the accuracy and completeness of these items. The Village and Town agree to provide these items and to render decisions in a timely manner so as not to delay the orderly and sequential progress of the Services provided by MDROffers Consulting LLC.
- B. The Village's and Town's designee, who shall serve as administrative liaison between MDROffers Consulting LLC and the Village and Town, is the Village Administrator.
- C. The Village Board and Town Board are solely empowered to authorize Additional Services via a Work Order.
- D. The Village and Town understand that any work product delivered in electronic form under this Agreement may require the Village or Town to use certain third-party hardware and/or software products, such as Microsoft Word and Excel, and ArcView GIS. Any work product not usable with Village- or Town-licensed software shall also be provided in paper format. The Village and Town shall be responsible for obtaining licenses to use such third-party software. MDROffers Consulting LLC makes no warranties or representations as to the quality, capabilities, operations, performance or suitability of any third-party hardware or software including the ability to integrate with any software or version currently in use by the Village or Town. The Village and Town acknowledge that the quality, capabilities, operations, performance, and suitability of any third-party hardware or software lay solely with Village and Town and the vendor or supplier of that hardware or software.
- E. If the Village, Town, or both make any modifications to a Work Product provided by MDROffers Consulting LLC under this Agreement, the entity(ies) making the

modifications shall either 1) obtain the prior written consent of MDROffers Consulting LLC; or 2) remove MDROffers Consulting LLC's name from the Work Product, if indicated. In the event that Village, Town, or both select option #2, MDROffers Consulting LLC shall not be liable or otherwise responsible for such modifications or their effect on the results of the implementation of the recommendations contained in any such deliverable.

- F. MDROffers Consulting LLC shall maintain copies of all plans, maps, reports, drawings, computations or other documents generated pursuant to this Agreement, and make copies thereof available to the Village and Town upon request. Digital copies shall be provided in any format requested by the Village or Town, provided that MDROffers Consulting LLC has access to the necessary facilities to convert the data into the requested format, at MDROffers Consulting LLC's actual cost of converting and/or supplying paper or digital copies. MDROffers Consulting LLC shall not destroy its last remaining copy of any such document without first offering it to the Village and Town for safekeeping, whether or not this Agreement has been terminated, and regardless of the cause thereof.

### **Article III Estimated Schedule**

- A. Services in this Agreement shall commence from the date of execution of this Agreement, and be in effect until November 30, 2012 (or as may otherwise be extended by mutual agreement of the parties in the event the scope of work in Exhibit A is not complete by that date) or until the Cooperative Plan is approved by the Wisconsin Department of Administration, whichever comes first.
- B. MDROffers Consulting LLC shall render its Services as expeditiously as is consistent with professional skill and care. During the course of providing Services under this Agreement, anticipated and unanticipated events may impact the schedule for delivery of such Services and MDROffers Consulting LLC shall not be responsible for any delays caused by factors beyond its reasonable control.

### **Article IV Costs and Payment**

- A. All Consultant Services described in Exhibit A will be completed for a price not to exceed \$8,900, including reimbursable expenses. The Village and Town acknowledge that significant changes to the Project schedule, budget, or scope may require Additional Services for which the parties may (but are not required to) enter into a separate Work Order (see Article I.C.).
- B. Invoice charges from MDROffers Consulting LLC shall be divided into these two elements:

1. Professional Fees charged for all Services rendered at standard billing rates in effect at time of the Service (See Exhibit B).
  2. Reimbursable Expenses, including in-house charges and third-party vendor costs such as printing, reproduction, delivery, and sub-consultant charges shall be charged to the Village at MDROffers Consulting LLC's actual cost. MDROffers Consulting LLC shall not charge its mileage or any other direct travel expenses to the Village.
- C. MDROffers Consulting LLC shall send the Village an invoice for Professional Fees and Reimbursable Expenses once a month. The Village shall pay MDROffers Consulting LLC the amounts due under such invoice upon receipt of such invoice. A service charge of 1% per month may be charged on all amounts more than 30 days after date of invoice.
- D. The Village shall invoice the Town for 50% of all Professional Fees and Reimbursable Expenses invoiced by MDROffers Consulting LLC under the terms of this Agreement, and any mutually approved Work Orders thereto. The Town shall pay the Village the amount due upon receipt of such invoice(s).

#### **Article V Termination**

- A. The Village, Town, or MDROffers Consulting LLC may terminate this Agreement upon written notice to each of the other parties. Termination shall be effective on the date such notice is delivered to the last of the other parties.
- B. If terminated, Village agrees to pay MDROffers Consulting LLC the Professional Fees for all Services rendered and Reimbursable Expenses incurred, up to the date of termination.
- C. Upon written notice, MDROffers Consulting LLC may suspend the performance of its Services if Village fails to pay MDROffers Consulting LLC in full for Services rendered or Reimbursable Expenses incurred. MDROffers Consulting LLC shall have no liability because of such suspension of service or termination due to nonpayment.

#### **Article VI Dispute Resolution**

MDROffers Consulting LLC, the Village, and the Town agree to mediate claims or disputes arising out of or relating to this Agreement. The mediation shall be conducted by a mediation service acceptable to the parties. A demand for mediation shall be made within a reasonable time after a claim or dispute arises. In no event shall any demand for mediation be made after such claim or dispute would be barred by the applicable law. The mediation requirement contained in this Article shall not preclude the filing by

any party to this Agreement of a claim prior to the time such claim would become time-barred, but the filing of such claim shall not affect the duty to mediate.

## **Article VII Intellectual Property; Confidentiality**

- A. Except as otherwise provided by law: upon payment in full by Village to MDROffers Consulting LLC for Services rendered and Reimbursable Expenses incurred pursuant to this Agreement, MDROffers Consulting LLC shall grant the Village and Town a non-transferable, non-exclusive, perpetual license to use any and all Work Product developed or produced by MDROffers Consulting LLC or its subcontractor pursuant to this Agreement. As used in this Agreement, "Work Product" means all inventions, processes, data, documents, drawings, maps, graphics, records, and works of authorship, whether or not copyrightable or patentable, that are originated or prepared by MDROffers Consulting LLC in the course of rendering the Services under this Agreement. Until the Village pays MDROffers Consulting LLC in full for Services rendered and expenses incurred pursuant to this Agreement, except for any non-payment which is reasonably disputed, the Village and Town may not use any Work Product to complete the associated Services or project with others unless MDROffers Consulting LLC is in material breach of this Agreement.
- B. Except as otherwise provided by law, or to the extent reasonably necessary to prosecute or defend any legal claim by or against the Village, Town, or both, the Village and Town shall not communicate, publish, or otherwise disclose to a third party or authorize or induce anyone else to use, communicate, publish, or otherwise disclose, any nonpublic information pertaining to MDROffers Consulting LLC, including, without limitation, any confidential information relating to pricing, products, or ideas of MDROffers Consulting LLC. Nonpublic information does not include any information subject to public disclosure under the Wisconsin Open Meetings Law or Public Records Law.

## **Article VIII Miscellaneous Provisions**

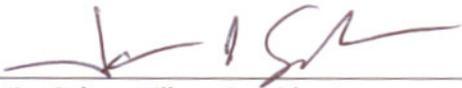
- A. Wisconsin law governs this Agreement (without regard to its conflict of law principles or rules of construction concerning the draftsman hereof).
- B. This Agreement is the entire and integrated agreement between the Village, Town, and MDROffers Consulting LLC related to this Project, and supersedes all prior negotiations, statements or agreements, either written or oral, with regard to its subject matter. This Agreement may be amended only by written instrument signed by the Village, the Town, and MDROffers Consulting LLC. No party may assign this Agreement without the other parties' prior written permission.

- C. Notwithstanding any other term in this Agreement, MDROffers Consulting LLC shall not control or be responsible for another party's means, methods, techniques, schedules, sequences or procedures, or for construction safety or any other related programs.
- D. In the event any claim for which the Village, the Town, or both may be liable hereunder shall be made against MDROffers Consulting LLC, MDROffers Consulting LLC shall promptly notify the Village and Town, tender the defense of such claim to the Village and Town or each's designated representative or insurer and shall fully cooperate in the defense thereof. The Village and Town shall have the right to defend such claim independently or collectively and may compromise and or settle such claim on terms either or both deems appropriate in their discretion. In any action brought by an entity not party to this Agreement, the Village and Town shall each have the right to assert and prosecute any defense to such claim which may be available to MDROffers Consulting LLC, the Village, or the Town, including comparative or contributory negligence, waiver, estoppel, statutory or common law immunities and/or limitations or liability, assumption of risk, statutes of limitations, or any other defense which may be available by statute or at common law. Nothing in this Agreement shall be construed to prohibit any claim by the Village or Town against any person, firm, corporation or other entity for contribution, indemnification, subrogation, or otherwise in connection with any such claim.
- E. MDROffers Consulting LLC reserves the right to include representations of the Services and Work Products under this Agreement in its promotional and professional materials.

IN WITNESS WHEREOF, the parties hereto entered into this Agreement as of the latest date noted, below.

Village of New Glarus

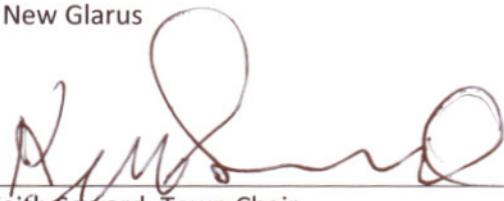
By:

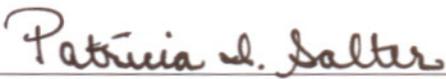
  
\_\_\_\_\_  
Jim Salter, Village President 12-6-11  
Date

  
\_\_\_\_\_  
Lynne Erb, Village Clerk/Treasurer 12-7-11  
Date

Town of New Glarus

By:

  
\_\_\_\_\_  
Keith Seward, Town Chair 12/13/11  
Date

  
\_\_\_\_\_  
Patricia Salter, Town Clerk 12/13/11  
Date

MDRoffers Consulting LLC

By:

\_\_\_\_\_  
Mark Roffers, Member Date

**Exhibit A**  
**Scope of Services**  
**Town and Village of New Glarus**  
**Cooperative Plan Facilitation Services**

**Task 1. Joint Town-Village Negotiation Committee Meetings**

The Consultant will prepare for, attend, and facilitate up to four Negotiation Committee meetings. The meetings are intended to work through the 9/7/11 intergovernmental agreement proposal, develop consensus on remaining issues and potential approaches, review drafts of the Cooperative Plan, resolve issues, and obtain public input. The Consultant will deliver one digital copy of any necessary meeting materials in advance of each meeting.

The Village and Town will be responsible for arranging all public meetings for this Project, notifying Committee and Board members and the public, setting and posting agendas for all public meetings, taking and providing meeting minutes, and completing all printing and document distribution for all materials described under this Exhibit A.

**Task 2. Municipal Planner and Attorney Coordination**

The Consultant will arrange and conduct a joint meeting or teleconference with the Town Attorney, Town Planner, and Village Attorney prior to significant Cooperative Plan drafting. The purpose is to discuss the process, share pertinent information, and arrange for subsequent attorney review. The Consultant may also contact these individuals later during the course of the Project for information necessary for its successful and efficient completion, and shall share drafts of the Cooperative Plan with the respective attorneys for legal review prior to the required public hearing under Section 66.0307, Wisconsin Statutes.

Expenses of the Town Attorney, Town Planner, Village Attorney, and Village Planner that is not MDROffers Consulting LLC are not covered under this Agreement, and if incurred are not the responsibility of MDROffers Consulting LLC. Such expenses shall be the responsibility of the Village or Town as each may incur same. The Town shall not be responsible for expenses incurred by MDROffers Consulting LLC that are billed to the Village for Village Planner services outside the scope of Article I.D.

Task 3. Communications and Project Management

Throughout the Project, the Consultant will coordinate with and respond to community staff and officials and complete project management assignments necessary to complete the Project successfully. Prior to public review of the Cooperative Plan draft, the Consultant will also prepare a simple summary of the Cooperative Plan.

Task 4. Drafting Cooperative Plan

Based on the 9/7/11 intergovernmental agreement proposal and subsequent clarifications and adjustments directed or agreed by the Negotiation Committee, the Consultant will prepare up to three drafts of a Town-Village Cooperative Plan meeting all textual and mapping requirements of Section 66.0307, Wisconsin Statutes. Exceptions to the services that the Consultant will provide under this task are as follows: legal review (which must be separately conducted), any required legal descriptions of municipal boundary adjustment areas, attests by affidavit that resolutions authorizing Town and Village participation in the Cooperative Plan have been distributed, final Cooperative Plan approval resolutions (but Consultant will provide tested models), and any required Town or Village comprehensive plan amendments that may be required to make the Cooperative Plan and comprehensive plans consistent with one another.

Task 5. Processing Cooperative Plan

The Consultant will attend and present at the required joint public hearing between the Village Board and Town Board near the conclusion of the process, and collaborate with the municipal attorneys and clerks on the required steps for the public hearing and local Cooperative Plan adoption. The Consultant will also conduct one meeting with Wisconsin Department of Administration staff to present and explain the Cooperative Plan prior to local adoption, and respond to questions from such staff during the required 90-day review period following local adoption.

**Exhibit B**  
**Fee Schedule**

Hourly Rates

Mark Roffers	\$110
Dana Jensen Roffers	\$90
Administrative Support <sup>1</sup>	\$60
Cartographer <sup>2</sup>	\$65 to \$85
Other Planner, Designer, or other Professional <sup>2</sup>	\$70 to \$120
Intern	\$30
Travel time	½ of normal hourly rate for the associated person or position listed above

**NOTES:**

- <sup>1</sup> When either Mark Roffers or Dana Jensen Roffers operates in an administrative capacity, including record keeping, data entry, dictation, and related assignments, their time will be charged under the "administrative support" rate.
- <sup>2</sup> MDRoffers Consulting LLC may contract with 3<sup>rd</sup> party vendors for support services under the provisions in Article I.B. Hourly rates shall be based on the professional qualifications of those vendors, and shall be approved in advance by the Negotiation Committee.