

**COMMUNITY DEVELOPMENT****MEMORANDUM**

Planning,
Zoning,
Building Safety,
Construction Inspection Services,
Public Health,
Housing Inspections,
Code Enforcement

To: Mayor and City Council Members

Cc: Gregg Mandsager, City Administrator
Steve Boka, Community Development Director

From: Adam Thompson, Planning & Community Development Coordinator

Date: December 5, 2013

Re: Agreement for CDBG Downtown Revitalization Professional Design Services

INTRODUCTION: The City of Muscatine has been conditionally awarded \$500,000 in CDBG Downtown Revitalization grant funds. HBK Engineering, LLC has been selected to assist with architectural design and construction management. Two contracts are hereby submitted to enter into professional services with HBK Engineering. The first is for architectural design services in an amount not to exceed, \$68,490.00. The second is for construction management services in an amount not to exceed, \$5,400.00.

BACKGROUND: To assist with the architectural and engineering requirements of the projects the city has gone through qualifications based selection process for professional services for the CDBG grant that the City has been conditionally awarded. HBK Engineering, LLC has been selected. HBK Engineering, LLC is a licensed, professional design firm and has partnered with licensed architects John Shaw and Doug Steinmetz. The HBK Engineering team processes the desired skills and experiences necessary at a cost budgeted for the project's design services. The CDBG Downtown Revitalization project is focused on the rehabilitation of the rear and side facades of the even numbered buildings located on the 100 & 200 blocks of East 2nd Street and 107-113 Iowa Avenue. The rehabilitation includes but is not limited to facade restoration, Window and Door repair and restoration, removal of power and communication lines and alley pavement replacement. Additional information regarding the scope of services expected under this agreement may be referred to Exhibit A, attached hereto.

RECOMMENDATION/RATIONAL: The cost of professional services is covered entirely by CDBG grant funds. The project has been discussed with City Council. It is recommended that the City Council approve the Agreement for Professional Design Services related to the CDBG Downtown Revitalization project, as attached hereto.

BACKUP INFORMATION:

1. Agreement for Professional Design Services
2. Agreement for Construction Management

"I remember Muscatine for its sunsets. I have never seen any on either side of the ocean that equaled them" — Mark Twain

CONSULTANT AGREEMENT



THIS AGREEMENT, made and entered into this 5th day of DECEMBER, 2013, by and between the City of Muscatine, a municipal corporation, hereinafter referred to as the "City", and HBK Engineering, LLC of Iowa City, Iowa, hereinafter referred to as the "Consultant."

Whereas, the City is seeking engineering and architectural design and management services for a Downtown Revitalization Project ("Project") funded through the Community Development Block Grant (CDBG) program.

Whereas, the Project consists of approximately 26 commercial buildings located on the south side of East Second Street between Cedar Street and Iowa Avenue as well as those buildings on the East side of Iowa Avenue between East Mississippi Drive and the alley – all located in downtown Muscatine, Iowa.

NOW THEREFORE, it is agreed by and between the parties hereto that the City does now contract with the Consultant to provide services as set forth herein.

I. SCOPE OF SERVICES

Consultant agrees to perform the following services for the City, and to do so in a timely and satisfactory manner.

1. Review Records, Properties and Historical Data provided by the City of Muscatine to best understand and incorporate available assets and avoid unnecessary duplication and overlapping of tasks.
2. Meet with City staff to discuss and define project details. (*includes 1 meeting*)
3. Meet with property/business owners to discuss individual sites and overall project design. Obtain property owner input and incorporate into design as best possible. Present conceptual information to property owners if necessary. Assist City staff with meetings to keep general public informed and allow for public comment period. City will handle day-to-day communications with property owners. (*includes 3 meetings*)
4. Analysis and evaluation of possible sustainable practices based on field findings
5. Evaluate and design stormwater infiltration infrastructure improvements for the 200 block of Second Street, City-owned parking lot adjacent to the 200 block of Second Street and investigate opportunities for stormwater infiltration infrastructure for the 100 block of Second Street. If additional desirable means and methods are determined during analysis and evaluation, these approaches will also be designed.
6. Research and coordination into additional potential funding sources for sustainable infrastructure and site work. City of Muscatine will provide existing grant and funding information as necessary and Consultant will investigate additional opportunities and report upon those opportunities to City staff. This item will include complete analysis, investigation, writing, review and submittal of two (2) complete grants in their entirety. If additional grant opportunities arise and City staff choose to have Consultant complete those grants, an additional Task Authorization can be drafted to include that work based on the size and scope

of that work.

7. Obtain survey to provide additional data for design as necessary. Licensed survey crew will locate existing utilities and City appurtenances to accurately represent those items on generated plan sets and include on bid documents. Date will be combined with existing City of Muscatine survey data if available, applicable and so-desired.
8. Provide project management services and revised schedules as needed.
9. Assist City of Muscatine staff with CDBG management and documentation required by Iowa Economic Development Authority.
10. Develop and submit conceptual design.
11. Meet with City of Muscatine staff to review conceptual design. *(includes 1 meeting)*
12. Develop preliminary design plans, specifications, and cost estimate. This portion of the project will be considered a 90% complete phase. Meet with City staff to discuss design, obtain review comments. *(includes 1 meeting)*
13. Revise plans and specifications to reflect the appropriate changes.
14. Develop and submit final bid documents and cost estimate to be issued for construction.
15. Attend one (1) pre-bid meeting and provide answers and clarification to contractors in attendance.
16. Create and distribute addenda as needed during the bid-process. Complete RFIs, RFCs and additional information requests as required.
17. Attend one (1) preconstruction meeting and answer contractor questions and requests. Additional clarification to be provided as necessary. Consultant will keep meeting minutes and transmit those completed minutes within three (3) days after the completion of the meeting.
18. Evaluate bids and assist with award of contract.
19. Construction coordination and submittal review. This coordination will include assisting City staff with Davis-Bacon paperwork as required. City staff will perform wage/benefit interviews. Submittal review will be completed and transmitted electronically.

II. TIME OF COMPLETION

The Consultant shall complete the Section I Scope of Services with the intention of a 2014 bid letting, and twelve (12) to eighteen (18) month total project timeline.

III. GENERAL TERMS

The City agrees to furnish to the Consultant full information as to the City's requirements including any special or extraordinary considerations for the Project or special services needed.

The City agrees to make available all pertinent existing data, including but not limited to photography, historical preservation data, mapping, utility information, CDBG paperwork, and architectural data.

Any additional services authorized by the City will be charged as extra work. This extra work will be based on the Consultant's standard hourly rates as attached. All additional required work will be defined in writing with an additional Task Authorization, mutually drafted and agreed upon by the City and Consultant prior to undertaking any such work.

Change orders will follow the City's purchasing and procurement policy and must be approved by City Council.

Consultant's Design shall follow and meet green street criteria.

IV. COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) TERMS

Consultant and Subconsultants shall meet all Federal and State CDBG contract requirements as described below.

Access and Maintenance of Records

The Consultant will maintain all required records for five years after final payments are made and all other pending matters are closed.

At any time during normal business hours and as frequently as is deemed necessary, the Consultant shall make available to the Iowa Economic Development Authority, the State Auditor, the General Accounting Office, and the Department of Housing and Urban Development, for their examination, all of its records pertaining to all matters covered by this contract and permit these agencies to audit, examine, make excerpts or transcripts from such records, contract, invoices, payrolls, personnel records, conditions of employment, and all other matters covered by this contract.

Civil Rights

The Consultant shall comply to the following laws and regulations:

- Title VI of the Civil Rights Act of 1964 (P.L. 88-352).
States that no person may be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance on the basis of race, color, or national origin.
- Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended.
- Iowa Civil Rights Act of 1965.
This Act mirrors the Federal Civil Rights Act.
- Section 109 of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5309).
Provides that no person shall be excluded from participation in, denied the benefits of, or subjected to discrimination on the basis of race, color, national origin, sex, age, or handicap under any program or activity funded in part or in whole under Title I of the Act.
- The Age Discrimination Act of 1975, as amended (42 U.S.C. 1601 et seq.).
Provides that no person on the basis of age, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- Section 504 of the Rehabilitation Act of 1973, as amended (P.L. 93-112, 29 U.S.C. 794).
Provides that no otherwise qualified individual shall solely by reason of his/her handicap be excluded from participation in, be denied the benefits of, or be discriminated against

under any program or activity receiving Federal financial assistance.

- Americans with Disabilities Act (P.L. 101-336, 42 U.S.C. 12101-12213)
Provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.
- Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).
Provides to the greatest extent feasible, that training and employment opportunities be made available to lower-income residents of project areas and that contracts be awarded to small businesses located within the project area or owned in substantial part by project area residents.
- Federal Executive Order 11246, as amended by Executive Order 11375.
Provides that no one be discriminated in employment.
- Federal Executive Order 11063, as amended by Executive Order 12259.

Termination Clause

- The City of Muscatine reserves the right to terminate this agreement if Consultant is deemed to be in breach of the terms contained herein.
- The City may terminate this Agreement upon seven (7) calendar days' written notice to the Consultant.
- Termination will be in the form of a certified letter delivered to the Consultant by City of Muscatine personnel.
- Should the City terminate this Agreement, the Consultant shall be paid for all work and services performed up to the time of termination. However, such sums shall not be greater than the "lump sum" amount listed in Section IV.

Lobbying

"The Consultant certifies, to the best of their knowledge and belief, that:

- i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee, or an employee of a Member of congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Federal Lobbying" in accordance with its instruction.

iii. The language of this certification shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure."

Lead-Safe Housing Regulations

The Consultant certifies that all requirements of the following shall be met:
24 CFR Part 35 et. al.

Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Properties and Housing Receiving Federal Assistance, Final Rule

Standards and Policies Relating to Energy Efficiency

The Consultant certifies that all requirements of the following shall be met:
Pub. L. 94-163, 89 Stat. 871

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Notice of Awarding Agency Requirements and Regulations Pertaining to Reporting

The Consultant shall provide information as necessary and as requested by the Iowa Economic Development Authority for the purpose of fulfilling all reporting requirements related to the CDBG program.

"During the performance of this contract, the Consultant agrees as follows:

- (1) The consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The consultant will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or

national origin.

- (3) The consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the consultant's commitments under Section 202 of the Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The consultant will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The consultant will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the consultant's non-compliance with the nondiscrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The consultant will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so issued that such provisions will be binding upon each subcontractor or vendor. The consultant will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the consultant may request the United States to enter into such litigation to protect the interests of the United States.

IV. COMPENSATION FOR SERVICES

The Consultant shall be compensated for the above scope of services based on hourly rates as shown in Exhibit A, "HBK Engineering Standard Hourly Rates", not to exceed **sixty eight thousand, four hundred and ninety dollars and no cents (\$68,490.00)** without prior written approval by City of Muscatine City Council and/or properly authorized City Staff.

ITEM	TOTAL (\$)
Review Records, Properties and Historical Data	1,600.00
Meetings and Coordination (City staff, business owners, general public)	4,770.00
Analysis of Sustainable Improvements & Attempt to Secure Additional Green Funding	5,000.00
Survey	2,000.00

610 Eastbury Dr, Suite 1 • Iowa City, IA 52245 • tel: 319.338.7557 • fax: 319.358.2937

921 W Van Buren St, Suite 100 • Chicago, IL 60607 • tel: 312.432.0076 • fax: 312.432.0231

705 General Washington Ave, Suite 500 • Norristown, PA 19403 • tel: 610.879.7525 • fax: 610.631.2349

Conceptual Design	2,900.00
Preliminary Design	6,800.00
Final Design	4,900.00
Bid Process (bid documents, pre-bid, addendum, pre-construction, award)	1,140.00
Project Management (cost estimates, schedule, construction coordination, submittal review)	4,280.00
Architectural Services (subconsultant)	35,100.00
TOTAL	68,490.00

*Payment shall be made as per the General Terms and Conditions on a monthly basis unless otherwise indicated in this AGREEMENT.

V. MISCELLANEOUS

This AGREEMENT may be amended only by written instrument signed by both the City and the Consultant.

It is further agreed that there are no other considerations or monies contingent upon or resulting from the execution of this AGREEMENT, that it is the entire AGREEMENT, and that no other monies or considerations have been solicited.

FOR THE CITY

By: _____
 Name: _____
 Title: _____
 Date: _____

FOR THE CONSULTANT

By: Robert A. Decker
 Name: ROBERT A. DECKER
 Title: PROJECT MANAGER
 Date: 12/5/13



James P. Langel
 12/5/13

HBK Engineering, LLC

IOWA CITY OFFICE

EXHIBIT A

PROFESSIONAL RATES			
Senior Licensed Professional Engineer	Hourly		\$125.00
Senior Project Manager	Hourly		\$110.00
Licensed Professional Engineer	Hourly		\$100.00
Project Manager	Hourly		\$95.00
Licensed Engineering Intern (EIT)	Hourly		\$75.00
Senior Project Designer	Hourly		\$80.00
Licensed Professional Surveyor	Hourly		\$90.00
Project Designer	Hourly		\$70.00
Survey Crew Member	Hourly		\$70.00
Senior Construction Inspector	Hourly		\$90.00
Construction Inspector	Hourly		\$70.00
Project Coordinator	Hourly		\$60.00
Administrative	Hourly		\$50.00
LUMP-SUM SURVEY SERVICES			
Locate/Mark-Out Lot Pins (typical 4-pin lot)	Each		\$250.00
Boundary Survey (includes research and filing plat on typical 4-pin lot)	Each		\$700.00
Topographic Survey (point file for 1 acre or less)	Each		\$500.00
Contour Map (for 1 acre or less)	Each		\$400.00
Alta (American Land Title Association Survey - 1 acre or less)	Each		\$3,500.00
SWPPP SERVICES			
SWPPP Design (Base Price)	Each		\$1,000.00
Certified SWPPP inspections/reports (\$60 minimum/inspection)	Hourly		\$60.00
Soil Sampling & Testing (pH, lime, P, K, Organic)	Each		\$50.00
OTHER SERVICES			
Percolation Testing	Each		\$100.00
Soil Survey	Each		\$500.00
Soil Sampling & Testing (pH, lime, P, K, Organic)	Each		\$50.00
Water Sampling	Each		\$50.00

**Please request quotation for all lump-sum pricing items prior to job request. Size and scope changes will affect overall pricing.*



AN INFRASITE COMPANY

Part III: GENERAL TERMS AND CONDITIONS

A. PARTIES AND DEFINITIONS: "Agreement" as used here shall mean the attached Professional Services Agreement (PSA) together with, if any, associated Task Authorizations (TA), Exhibits, attachments and addenda. "Prime Agreement" as used here shall mean any senior agreement to which this Agreement may be subordinate. For purposes of this Part III, General Terms and Conditions, HBK Engineering, LLC shall be called "Engineer" and "Client" shall be the party or parties hiring Engineer hereunder to perform the engineering consulting services (the "Work") described in the Agreement (Engineer or Client, "party" and together "parties"). Section headings used in this Agreement are descriptive only and used for the convenience of the parties, in identification of the several provisions and shall not constitute a part the Agreement nor be considered interpretative thereof.

B. INSURANCE: Engineer is protected by Workers' Compensation insurance, Commercial General Liability insurance, Automobile Liability insurance and Professional Liability insurance coverage, and will furnish certificates of insurance upon Client's request. Where requested and where able, the policies shall name Client and Owner additional insured. If Client requires higher, project-specific limits or special insurance coverage beyond Engineer's standard coverage, Client agrees to pay an additional fee based on any additional premium cost.

C. PERMITS: Where and as specific permitting ("Permits") is included as part of the Work, or otherwise provided for by terms of this Agreement, Engineer shall assist in obtaining such Permits and/or will furnish to Client required documents and design data reasonably necessary for such Permitting. Engineer will furnish to Client such documents and design data as may be reasonably required and where applicable shall assist in obtaining permits. Client will furnish all design input required by Engineer for completion of Engineer's Work and to obtain other approvals, permits and/or consents (together, "Permissions") as may be necessary for completion of Engineer's Work on Client's subject project. In any case, *Engineer shall not be responsible for the favorable or timely receipt of Permits or Permissions where delay may be due to reasons beyond Engineer's authority or commercially reasonable control.* It is mutually understood: (i) that Client will pay

the cost of all Permits and Permissions, including, without limitation, review fees, bonding, insurance premiums, title company charges, blueprints and reproductions, if any, associated with the Work, and (ii) that such fees are *not included* in Engineer's fees for professional services unless (iii) such fees, in writing, are specifically enumerated and Engineer's payment is specifically provided for by the terms of this Agreement.

D. STANDARD OF CARE Engineer's services will be performed in accordance with generally accepted practices of engineers and/or scientists providing similar services at the same time, in the same locale, and under like circumstances. Upon written notice to the Engineer, within one (1) year following such time the services were rendered, and by mutual agreement between the parties, Engineer will correct those services within the original scope of services not meeting such a standard, without additional compensation. No warranty, express or implied, is included or intended by this Agreement.

E. INFORMATION PROVIDED BY OTHERS: Client shall assist Engineer by placing at his disposal all documents, drawings, reports or other existing information available to Client and Client's consultants and subcontractors that will assist Engineer in the performance of the basic services being provided by Engineer, and Engineer shall be entitled to rely upon the accuracy and completeness thereof. Client recognizes that it is impossible for Engineer to assure the accuracy, completeness and sufficiency of information provided by others, either because it is impossible to verify, or because of errors or omissions that may have occurred in assembling such information. Accordingly, Client agrees, to the fullest extent permitted by law, to indemnify and hold Engineer harmless from any claim, liability or cost (including reasonable attorney's fees and costs of defense) for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by Client or obtained from others, upon which Engineer shall rely while providing the scope of services contained in this Agreement. **ELECTRONIC MEDIA:** Engineer agrees, upon request, to provide materials to Client stored electronically. At Engineer's option, unless specifically agreed to the contrary, such materials will be provided in PDF format. Client recognizes that data, plans, specifications, reports, documents, or other information

recorded on or transmitted as electronic media are subject to alteration, either intentional or otherwise, due to, for example, transmission, conversion, media degradation, software error or human alteration. Accordingly, Documents provided to Client in electronic media are provided for general reference only. Engineer makes no warranties, either express or implied, regarding the fitness or suitability of electronic media. Client agrees electronic media shall not be used, in whole or in part, for any project other than that for which they were created, without the express written consent of Engineer and suitable compensation. Accordingly, Client agrees to waive any and all claims against Engineer resulting in any way from the unauthorized reuse or alteration of electronic media. Documents that may be relied upon by Client as definitive are limited to the printed copies (also known as hard copies) that are signed or sealed by Engineer.

F. OWNERSHIP OF DATA AND DOCUMENTS: Client acknowledges all documents including drawings, specifications, estimates, field notes, and other data and all processes including scientific, technological, software, and other concepts, whether or not patentable, created, prepared or furnished under this Agreement by Engineer or by Engineer's independent contractors and consultants pursuant to this Agreement, are instruments of service in respect of the project and shall remain the property of Engineer whether or not the project is completed. *In the event project plans or specifications prepared under this Agreement shall become the property of Client, completion of the Work and payment in full of all money due to Engineer shall be conditions precedent to such transfer.* In any event, Client shall not reuse or modify Project Plans or Specifications without the prior written authorization of Engineer. *Client agrees, to the fullest extent permitted by law, to indemnify and hold Engineer harmless from any claim, liability or cost (including reasonable attorney's fees and defense costs) arising or allegedly arising out of any unauthorized reuse or modification of the construction documents by the Owner or Client or any person or entity that acquires or obtains the plans and specifications from or through Client without the written authorization of Engineer.*

G. INDEMNIFICATION: Engineer agrees, to the fullest extent permitted by law, and subject to

liability limiting provisions elsewhere in this Agreement, to indemnify and hold client harmless from any damage, liability or cost (including reasonable attorney's fees) to the extent caused solely by Engineer's grossly negligent errors or omissions in the performance of professional services under this Agreement. Provided, Engineer shall not be obligated to indemnify Client, in any manner whatsoever, for Client's own negligence.

H. JOBSITE SAFETY: Engineer will not be responsible, nor assume any liability, for any acts or errors or omissions of Contractor or any of Contractor's sub-contractors, agents or employees or any other persons (except Engineer's own employees) at the Work site or otherwise performing Contractor's work. If Engineer's scope of work includes the performance of services during the construction phase of a project, it is understood that the purpose of such services, including visits to the site, is to enable Engineer to better perform the duties and responsibilities assigned to and undertaken by it as a design professional. Neither the professional activities of Engineer, nor the presence of Engineer or its employees at the construction site, shall relieve Contractor of its obligations, duties and responsibilities included in, or necessary to complete, the Work. *In no event shall Engineer be responsible, in any way whatsoever, for construction means, methods, sequence, techniques or procedures necessary for performing, superintending or managing, in any way, construction aspects of the Work.* Engineer and its personnel shall have no authority to exercise any control over Contractor's construction, or that of Contractor's subcontractors or other entities or their employees (such individuals and entities, together, "Construction Personnel") in connection with Contractor's Work or any related health or safety programs or procedures. The Contractor agrees that Construction Personnel shall be solely responsible for jobsite safety, and warrants that this intent shall be carried out in Contractor's agreements with Construction Personnel. Contractor also agrees that Contractor, Engineer and Engineer's sub-consultants, if any, shall be indemnified by Construction Personnel and named additional insured under their policies of general liability insurance.

I. ADDITIONAL/EXCLUDED SERVICES: This Agreement is a non-exclusive contract. Engineer

may refuse additional work from Client and accept work from others. Client agrees to pay Engineer as compensation for all authorized extra or additional services not specifically covered in the Agreement's scope of services. Services resulting from significant changes in general scope of the underlying project or its design, including but not limited to, changes in size, complexity, assumptions, Client's schedule, or character of construction; and revising previously accepted studies, reports, design documents or contract documents when such revisions are due to causes beyond Engineer's control, shall be considered permitted, additional work. **EXCLUDED SERVICES** The following services, unless specifically included, are here specifically *excluded* from the Work: land title, ownership and/or tract and lien searches; structural calculations; services involved in the design of improvements lying outside of the Project Limits. Engineer shall perform excluded services only upon written request and agreement. Absent written agreement to the contrary, such additional or excluded services shall be performed on a time and material basis, at Engineer's then current Standard Hourly Rates with expenses passed through to Client at actual cost plus ten percent (10%). **Hazardous Materials** - Nothing in this Agreement shall be construed as providing any type of service relating to an assessment of the presence or absence of oil, asbestos, radioactive materials or any other hazardous material and/or environmental contaminants which may be subject to regulatory control, or for the design of systems to remove, treat, handle, or dispose of such materials.

J. TERMINATION: Client may, at any time, suspend further work by Engineer, or Client or Engineer may, with or without cause, terminate the Agreement at any time upon ten (10) working day's written notice to the other party. Client agrees to compensate Engineer for all services performed prior to the effective date of suspension or termination, together with reimbursable expenses including, if any, subcontractors, sub-consultants and vendors. No deductions shall be made from Engineer's compensation on account of sums withheld from payments to contractors, nor shall payment to Engineer be contingent upon financing arrangements or receipt of payment from any third party. Engineer shall forward specifications, drawings and documents relating to the services provided in this Agreement to

Client. If Engineer for any reason does not complete all of the services contemplated by this Agreement, Engineer cannot be responsible for the accuracy, completeness or workability of project documents prepared by Engineer if used, changed or completed by the Owner, Client or by another party. *Accordingly, Client agrees, to the fullest extent permitted by law, to indemnify and hold Engineer harmless from any claim, liability or cost (including reasonable attorney's fees and defense costs) for injury or loss arising or allegedly arising from such use, completion or any unauthorized changes made by any party to any contract documents prepared by Engineer.*

K. LIMITATION OF LIABILITY: To the maximum extent permitted by law, Client agrees to limit Engineer's liability for Engineer's acts, errors or omissions under this Agreement such that the total aggregate liability of Engineer hereunder shall not exceed the greater of Fifty Thousand Dollars (\$50,000.00) or Five (5) times Engineer's fee. Further, it is agreed and understood that this limitation of liability is the sole and exclusive remedy available to Client for any damages and/or losses arising from Engineer's services. IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY HERETO FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUE, OR COST OF CAPITAL.

MISCELLANEOUS PROVISIONS

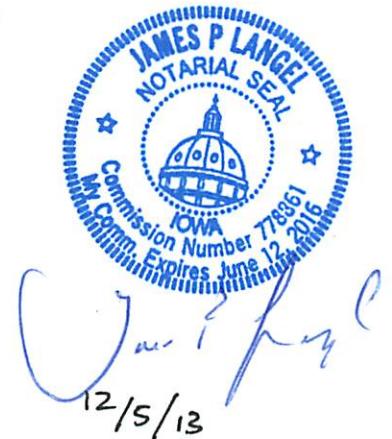
1. FORCE MAJEURE: Any delays in or failure of performance by Engineer shall not constitute a default hereunder if such delays or failures of performance are caused by occurrences beyond the reasonable control of Engineer, including but not limited to: Acts of God or the public enemy; expropriation or confiscation; compliance with any order of any governmental authority; changes in law; act of war, rebellion or sabotage or damage resulting there from; fires, floods, explosion, accidents, riots, strikes or other concerted acts of workmen, whether direct or indirect; delays in permitting; or any other causes, whether similar or dissimilar, which are

beyond the reasonable control of Engineer. 2. INTERPRETATION: The parties acknowledge and agree the terms and conditions of this Agreement, including but not limited to those relating to allocation of, releases from, exclusions against and limitation of liability, have been freely and fairly negotiated. Each party acknowledges that in executing this Agreement they have relied solely on their own judgment, belief, and knowledge, and such advice as they may have received from their own counsel, and they have not been influenced by any representation or statement made by any other party or its counsel. No provision in this Agreement is to be interpreted for or against any party because that party or its counsel drafted such provision. In the event that any portion or all of this agreement is held to be void or unenforceable, the parties agree to negotiate in good faith to amend the commercial and other terms of the Agreement in order to effect the intent of the parties as set forth in this Agreement. The parties agree to look solely to each other with respect to performance of this Agreement. The provisions of this agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of the Agreement, including but not limited to any expressed limitation of or released from liability, shall continue as valid and enforceable obligations of the parties notwithstanding any such termination, cancellation, completion or expiration. 3. ENTIRE AGREEMENT: This Agreement, and without limitation, any Exhibits, addenda, applicable Task Authorizations, Purchase Orders, Requisitions and other such similar "Work Requests", constitute the entire Agreement between Client and Engineer, superceding all prior or contemporaneous communications, representations or agreements, whether oral or written, relating to the Work hereunder. In the event of conflict and/or ambiguity between any provision of this Agreement and, without limitation, that contained in any Work Request, proposal, contract, requisition, notice to proceed, or any other Project document, this Agreement, and within this Agreement this Part III - Terms and Conditions, shall take precedence and prevail in enforcement and or clarification. No other representations of any kind, oral or otherwise, have been made. Client and Engineer each binds himself and his partners, successors, executors, administrators and assigns to the other party of this Agreement and to the parties, successors, executors, administrators and assigns

of such other part, in respect to all covenants of this Agreement; except as above, neither Client nor Engineer shall assign, sublet or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any owner, officer or agent of Engineer, Client or any public body that may be a part hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than Client or Engineer. 4. DISPUTE RESOLUTION: All claims, disputes or controversies arising out of or in relation to the interpretation, application or enforcement of this Agreement shall be submitted to arbitration pursuant to the Rules for Commercial Arbitration of the American Arbitration Association. Judgment on any interim or final award rendered by the arbitrator may be entered and enforced in any court of Illinois or the United States District Court for the Northern District of Illinois. The city and state of such arbitration shall be in Chicago, Illinois. Any legal action by either party against the other for any cause or causes, including but not limited to breach of this Agreement, negligence, misrepresentations, breach of warranty or failure to perform in accordance with the standard of care, however denominated, shall be barred two (2) years from the day after completion of Engineer's services hereunder. 5. GOVERNING LAW: This Agreement shall be governed and construed in accordance with the laws of the state of Illinois. Client hereby irrevocably consents and submits to the jurisdiction of any State Court of Illinois, or the United States District Court for the Northern District of Illinois and waives any and all objections that it may have to Cook County venue or the issuance of service of process in any such proceedings. 6. ATTORNEY FEES, COSTS AND EXPENSE: In the event either or both Engineer and/or Client, Owner or any other party adverse to Engineer shall institute any action or proceeding against the other relating to the enforcement of this Agreement, any provision hereof, or any default hereunder, the non-prevailing party shall pay the prevailing party's reasonable attorneys' fees, costs and expenses. 7. SEVERABILITY: Every paragraph, part, term or provision of this Agreement is severable from another. If any paragraph, part, term or provision of this Agreement is construed or held to be void, invalid or unenforceable by order, decree or judgment of a court of competent jurisdiction, the remaining paragraphs, parts, terms and provisions of the Agreement shall not be affected

thereby but shall remain in full force and effect. The parties further agree to reform these Terms and Conditions to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the stricken provision. 8. SURVIVAL: These terms and conditions, including, without limitation, any expressed limitation of or release from liability, shall survive the completion of Work or termination of this Agreement and shall remain in full force and effect. 9. ASSIGNMENT: Client may not assign rights, duties and liabilities under this Agreement without prior written consent of Engineer. 10. SOLICITATION OF EMPLOYMENT: Neither party shall, during the term of this Agreement or for a period of one hundred eighty (180) days thereafter, directly or indirectly for itself or on behalf of, or in conjunction with, any other person, partnership, corporation, business or organization, solicit, hire, contract with or engage the employment of an employee or any other with whom that party or its personnel have had contact during the course of providing the Services under this Agreement, unless that party has obtained the written consent of the other to such hiring and that party pays to the other a fee to be mutually agreed upon.

END PART III-GENERAL TERMS AND CONDITIONS
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CONSULTANT AGREEMENT



THIS AGREEMENT, made and entered into this 5th day of DECEMBER,
2013, by and between the City of Muscatine, a municipal corporation, hereinafter referred to as the "City", and HBK Engineering, LLC of Iowa City, Iowa, hereinafter referred to as the "Consultant."

Whereas, the City is seeking engineering and architectural design and management services for a Downtown Revitalization Project ("Project") funded through the Community Development Block Grant (CDBG) program.

Whereas, the Project consists of approximately 26 commercial buildings located on the south side of East Second Street between Cedar Street and Iowa Avenue as well as those buildings on the East side of Iowa Avenue between East Mississippi Drive and the alley – all located in downtown Muscatine, Iowa.

NOW THEREFORE, it is agreed by and between the parties hereto that the City does now contract with the Consultant to provide services as set forth herein.

I. SCOPE OF SERVICES

Consultant agrees to perform the following services for the City, and to do so in a timely and satisfactory manner.

1. Assist with construction management and provide bi-weekly on-site visits while construction is active.
2. Provide field book and photo documentation of construction progress.
3. Identify construction deficiencies and notify appropriate City of Muscatine personnel.
Provide accurate as-built information of field findings and incorporate into final CAD version to be turned over to City of Muscatine staff.

II. TIME OF COMPLETION

The Consultant shall complete the Section I Scope of Services with the intention of a 2014 bid letting, and twelve (12) to eighteen (18) month total project timeline.

III. GENERAL TERMS

The City agrees to furnish to the Consultant full information as to the City's requirements including any special or extraordinary considerations for the Project or special services needed.

The City agrees to make available all pertinent existing data, including but not limited to photography, historical preservation data, mapping, utility information, CDBG paperwork, and architectural data.

Any additional services authorized by the City will be charged as extra work. This extra work will be based on the Consultant's same hourly rate. All additional required work will be defined in writing with an additional Task Authorization, mutually drafted and agreed upon by the City and Consultant prior to undertaking any such work.

Change orders will follow the City's purchasing and procurement policy and must be approved by City Council.

Consultant's Design shall follow and meet green street criteria.

IV. COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) TERMS

Consultant and Subconsultants shall meet all Federal and State CDBG contract requirements as described below.

Access and Maintenance of Records

The Consultant will maintain all required records for five years after final payments are made and all other pending matters are closed.

At any time during normal business hours and as frequently as is deemed necessary, the Consultant shall make available to the Iowa Economic Development Authority, the State Auditor, the General Accounting Office, and the Department of Housing and Urban Development, for their examination, all of its records pertaining to all matters covered by this contract and permit these agencies to audit, examine, make excerpts or transcripts from such records, contract, invoices, payrolls, personnel records, conditions of employment, and all other matters covered by this contract.

Civil Rights

The Consultant shall comply to the following laws and regulations:

- Title VI of the Civil Rights Act of 1964 (P.L. 88-352).
States that no person may be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance on the basis of race, color, or national origin.
- Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended.
- Iowa Civil Rights Act of 1965.
This Act mirrors the Federal Civil Rights Act.
- Section 109 of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5309).
Provides that no person shall be excluded from participation in, denied the benefits of, or subjected to discrimination on the basis of race, color, national origin, sex, age, or handicap under any program or activity funded in part or in whole under Title I of the Act.
- The Age Discrimination Act of 1975, as amended (42 U.S.C. 1601 et seq.).
Provides that no person on the basis of age, be excluded from participation in, be denied

the benefits of or be subjected to discrimination under any program or activity receiving Federal financial assistance.

- Section 504 of the Rehabilitation Act of 1973, as amended (P.L. 93-112, 29 U.S.C. 794).
Provides that no otherwise qualified individual shall solely by reason of his/her handicap be excluded from participation in, be denied the benefits of, or be discriminated against under any program or activity receiving Federal financial assistance.
- Americans with Disabilities Act (P.L. 101-336, 42 U.S.C. 12101-12213)
Provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.
- Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).
Provides to the greatest extent feasible, that training and employment opportunities be made available to lower-income residents of project areas and that contracts be awarded to small businesses located within the project area or owned in substantial part by project area residents.
- Federal Executive Order 11246, as amended by Executive Order 11375.
Provides that no one be discriminated in employment.
- Federal Executive Order 11063, as amended by Executive Order 12259.

Termination Clause

- The City of Muscatine reserves the right to terminate this agreement if Consultant is deemed to be in breach of the terms contained herein.
- The City may terminate this Agreement upon seven (7) calendar days' written notice to the Consultant.
- Termination will be in the form of a certified letter delivered to the Consultant by City of Muscatine personnel.
- Should the City terminate this Agreement, the Consultant shall be paid for all work and services performed up to the time of termination. However, such sums shall not be greater than the "lump sum" amount listed in Section IV.

Lobbying

"The Consultant certifies, to the best of their knowledge and belief, that:

- i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee, or an employee of a

Member of congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Federal Lobbying" in accordance with its instruction.

iii. The language of this certification shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure."

Lead-Safe Housing Regulations

**The Consultant certifies that all requirements of the following shall be met:
24 CFR Part 35 et. al.**

Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Properties and Housing Receiving Federal Assistance, Final Rule

Standards and Policies Relating to Energy Efficiency

**The Consultant certifies that all requirements of the following shall be met:
Pub. L. 94-163, 89 Stat. 871**

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Notice of Awarding Agency Requirements and Regulations Pertaining to Reporting

The Consultant shall provide information as necessary and as requested by the Iowa Economic Development Authority for the purpose of fulfilling all reporting requirements related to the CDBG program.

"During the performance of this contract, the Consultant agrees as follows:

(1) The consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices

to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- (2) The consultant will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) The consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the consultant's commitments under Section 202 of the Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The consultant will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The consultant will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the consultant's non-compliance with the nondiscrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The consultant will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so issued that such provisions will be binding upon each subcontractor or vendor. The consultant will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the consultant may request the United States to enter into such litigation to protect the interests of the United States.

IV. COMPENSATION FOR SERVICES

The Consultant shall be compensated for the above scope of services based on the hourly rate as shown in the table below, and not to exceed **five thousand four hundred dollars and no cents (\$5,400.00)** without prior written approval by City of Muscatine City Council and/or properly authorized City Staff.

610 Eastbury Dr, Suite 1 • Iowa City, IA 52245 • tel: 319.338.7557 • fax: 319.358.2937

921 W Van Buren St, Suite 100 • Chicago, IL 60607 • tel: 312.432.0076 • fax: 312.432.0231

705 General Washington Ave, Suite 500 • Norristown, PA 19403 • tel: 610.879.7525 • fax: 610.631.2349

POSITION	TIME-FRAME	TOTAL (\$)
Construction Inspection	May – November (30 weeks)	5,400 (90/hour rate)

*Payment shall be made as per the General Terms and Conditions on a monthly basis unless otherwise indicated in this AGREEMENT.

V. MISCELLANEOUS

This AGREEMENT may be amended only by written instrument signed by both the City and the Consultant.

It is further agreed that there are no other considerations or monies contingent upon or resulting from the execution of this AGREEMENT, that it is the entire AGREEMENT, and that no other monies or considerations have been solicited.

FOR THE CITY

By: _____

Name: _____

Title: _____

Date: _____

FOR THE CONSULTANT

By: Robert A. Decker

Name: ROBERT A. DECKER

Title: Project Manager

Date: 12/5/13



James P. Langel

12/5/13

Part III: GENERAL TERMS AND CONDITIONS

A. PARTIES AND DEFINITIONS: "Agreement" as used here shall mean the attached Professional Services Agreement (PSA) together with, if any, associated Task Authorizations (TA), Exhibits, attachments and addenda. "Prime Agreement" as used here shall mean any senior agreement to which this Agreement may be subordinate. For purposes of this Part III, General Terms and Conditions, HBK Engineering, LLC shall be called "Engineer" and "Client" shall be the party or parties hiring Engineer hereunder to perform the engineering consulting services (the "Work") described in the Agreement (Engineer or Client, "party" and together "parties"). Section headings used in this Agreement are descriptive only and used for the convenience of the parties, in identification of the several provisions and shall not constitute a part the Agreement nor be considered interpretative thereof.

B. INSURANCE: Engineer is protected by Workers' Compensation insurance, Commercial General Liability insurance, Automobile Liability insurance and Professional Liability insurance coverage, and will furnish certificates of insurance upon Client's request. Where requested and where able, the policies shall name Client and Owner additional insured. If Client requires higher, project-specific limits or special insurance coverage beyond Engineer's standard coverage, Client agrees to pay an additional fee based on any additional premium cost.

C. PERMITS: Where and as specific permitting ("Permits") is included as part of the Work, or otherwise provided for by terms of this Agreement, Engineer shall assist in obtaining such Permits and/or will furnish to Client required documents and design data reasonably necessary for such Permitting. Engineer will furnish to Client such documents and design data as may be reasonably required and where applicable shall assist in obtaining permits. Client will furnish all design input required by Engineer for completion of Engineer's Work and to obtain other approvals, permits and/or consents (together, "Permissions") as may be necessary for completion of Engineer's Work on Client's subject project. In any case, *Engineer shall not be responsible for the favorable or timely receipt of Permits or Permissions where delay may be due to reasons beyond Engineer's authority or commercially reasonable control.* It is mutually understood: (i) that Client will pay

the cost of all Permits and Permissions, including, without limitation, review fees, bonding, insurance premiums, title company charges, blueprints and reproductions, if any, associated with the Work, and (ii) that such fees are *not included* in Engineer's fees for professional services unless (iii) such fees, in writing, are specifically enumerated and Engineer's payment is specifically provided for by the terms of this Agreement.

D. STANDARD OF CARE Engineer's services will be performed in accordance with generally accepted practices of engineers and/or scientists providing similar services at the same time, in the same locale, and under like circumstances. Upon written notice to the Engineer, within one (1) year following such time the services were rendered, and by mutual agreement between the parties, Engineer will correct those services within the original scope of services not meeting such a standard, without additional compensation. No warranty, express or implied, is included or intended by this Agreement.

E. INFORMATION PROVIDED BY OTHERS: Client shall assist Engineer by placing at his disposal all documents, drawings, reports or other existing information available to Client and Client's consultants and subcontractors that will assist Engineer in the performance of the basic services being provided by Engineer, and Engineer shall be entitled to rely upon the accuracy and completeness thereof. Client recognizes that it is impossible for Engineer to assure the accuracy, completeness and sufficiency of information provided by others, either because it is impossible to verify, or because of errors or omissions that may have occurred in assembling such information. Accordingly, Client agrees, to the fullest extent permitted by law, to indemnify and hold Engineer harmless from any claim, liability or cost (including reasonable attorney's fees and costs of defense) for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by Client or obtained from others, upon which Engineer shall rely while providing the scope of services contained in this Agreement. **ELECTRONIC MEDIA:** Engineer agrees, upon request, to provide materials to Client stored electronically. At Engineer's option, unless specifically agreed to the contrary, such materials will be provided in PDF format. Client recognizes that data, plans, specifications, reports, documents, or other information

recorded on or transmitted as electronic media are subject to alteration, either intentional or otherwise, due to, for example, transmission, conversion, media degradation, software error or human alteration. Accordingly, Documents provided to Client in electronic media are provided for general reference only. Engineer makes no warranties, either express or implied, regarding the fitness or suitability of electronic media. Client agrees electronic media shall not be used, in whole or in part, for any project other than that for which they were created, without the express written consent of Engineer and suitable compensation. Accordingly, Client agrees to waive any and all claims against Engineer resulting in any way from the unauthorized reuse or alteration of electronic media. Documents that may be relied upon by Client as definitive are limited to the printed copies (also known as hard copies) that are signed or sealed by Engineer.

F. OWNERSHIP OF DATA AND DOCUMENTS: Client acknowledges all documents including drawings, specifications, estimates, field notes, and other data and all processes including scientific, technological, software, and other concepts, whether or not patentable, created, prepared or furnished under this Agreement by Engineer or by Engineer's independent contractors and consultants pursuant to this Agreement, are instruments of service in respect of the project and shall remain the property of Engineer whether or not the project is completed. *In the event project plans or specifications prepared under this Agreement shall become the property of Client, completion of the Work and payment in full of all money due to Engineer shall be conditions precedent to such transfer.* In any event, Client shall not reuse or modify Project Plans or Specifications without the prior written authorization of Engineer. *Client agrees, to the fullest extent permitted by law, to indemnify and hold Engineer harmless from any claim, liability or cost (including reasonable attorney's fees and defense costs) arising or allegedly arising out of any unauthorized reuse or modification of the construction documents by the Owner or Client or any person or entity that acquires or obtains the plans and specifications from or through Client without the written authorization of Engineer.*

G. INDEMNIFICATION: Engineer agrees, to the fullest extent permitted by law, and subject to

liability limiting provisions elsewhere in this Agreement, to indemnify and hold client harmless from any damage, liability or cost (including reasonable attorney's fees) to the extent caused solely by Engineer's grossly negligent errors or omissions in the performance of professional services under this Agreement. Provided, Engineer shall not be obligated to indemnify Client, in any manner whatsoever, for Client's own negligence.

H. JOBSITE SAFETY: Engineer will not be responsible, nor assume any liability, for any acts or errors or omissions of Contractor or any of Contractor's sub-contractors, agents or employees or any other persons (except Engineer's own employees) at the Work site or otherwise performing Contractor's work. If Engineer's scope of work includes the performance of services during the construction phase of a project, it is understood that the purpose of such services, including visits to the site, is to enable Engineer to better perform the duties and responsibilities assigned to and undertaken by it as a design professional. Neither the professional activities of Engineer, nor the presence of Engineer or its employees at the construction site, shall relieve Contractor of its obligations, duties and responsibilities included in, or necessary to complete, the Work. *In no event shall Engineer be responsible, in any way whatsoever, for construction means, methods, sequence, techniques or procedures necessary for performing, superintending or managing, in any way, construction aspects of the Work.* Engineer and its personnel shall have no authority to exercise any control over Contractor's construction, or that of Contractor's subcontractors or other entities or their employees (such individuals and entities, together, "Construction Personnel") in connection with Contractor's Work or any related health or safety programs or procedures. The Contractor agrees that Construction Personnel shall be solely responsible for jobsite safety, and warrants that this intent shall be carried out in Contractor's agreements with Construction Personnel. Contractor also agrees that Contractor, Engineer and Engineer's sub-consultants, if any, shall be indemnified by Construction Personnel and named additional insured under their policies of general liability insurance.

I. ADDITIONAL/EXCLUDED SERVICES: This Agreement is a non-exclusive contract. Engineer

may refuse additional work from Client and accept work from others. Client agrees to pay Engineer as compensation for all authorized extra or additional services not specifically covered in the Agreement's scope of services. Services resulting from significant changes in general scope of the underlying project or its design, including but not limited to, changes in size, complexity, assumptions, Client's schedule, or character of construction; and revising previously accepted studies, reports, design documents or contract documents when such revisions are due to causes beyond Engineer's control, shall be considered permitted, additional work. **EXCLUDED SERVICES** The following services, unless specifically included, are here specifically *excluded* from the Work: land title, ownership and/or tract and lien searches; structural calculations; services involved in the design of improvements lying outside of the Project Limits. Engineer shall perform excluded services only upon written request and agreement. Absent written agreement to the contrary, such additional or excluded services shall be performed on a time and material basis, at Engineer's then current Standard Hourly Rates with expenses passed through to Client at actual cost plus ten percent (10%). **Hazardous Materials** - Nothing in this Agreement shall be construed as providing any type of service relating to an assessment of the presence or absence of oil, asbestos, radioactive materials or any other hazardous material and/or environmental contaminants which may be subject to regulatory control, or for the design of systems to remove, treat, handle, or dispose of such materials.

J. TERMINATION: Client may, at any time, suspend further work by Engineer, or Client or Engineer may, with or without cause, terminate the Agreement at any time upon ten (10) working day's written notice to the other party. Client agrees to compensate Engineer for all services performed prior to the effective date of suspension or termination, together with reimbursable expenses including, if any, subcontractors, sub-consultants and vendors. No deductions shall be made from Engineer's compensation on account of sums withheld from payments to contractors, nor shall payment to Engineer be contingent upon financing arrangements or receipt of payment from any third party. Engineer shall forward specifications, drawings and documents relating to the services provided in this Agreement to

Client. If Engineer for any reason does not complete all of the services contemplated by this Agreement, Engineer cannot be responsible for the accuracy, completeness or workability of project documents prepared by Engineer if used, changed or completed by the Owner, Client or by another party. *Accordingly, Client agrees, to the fullest extent permitted by law, to indemnify and hold Engineer harmless from any claim, liability or cost (including reasonable attorney's fees and defense costs) for injury or loss arising or allegedly arising from such use, completion or any unauthorized changes made by any party to any contract documents prepared by Engineer.*

K. LIMITATION OF LIABILITY: To the maximum extent permitted by law, Client agrees to limit Engineer's liability for Engineer's acts, errors or omissions under this Agreement such that the total aggregate liability of Engineer hereunder shall not exceed the greater of Fifty Thousand Dollars (\$50,000.00) or Five (5) times Engineer's fee. Further, it is agreed and understood that this limitation of liability is the sole and exclusive remedy available to Client for any damages and/or losses arising from Engineer's services. IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY HERETO FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUE, OR COST OF CAPITAL.

MISCELLANEOUS PROVISIONS

1. FORCE MAJEURE: Any delays in or failure of performance by Engineer shall not constitute a default hereunder if such delays or failures of performance are caused by occurrences beyond the reasonable control of Engineer, including but not limited to: Acts of God or the public enemy; expropriation or confiscation; compliance with any order of any governmental authority; changes in law; act of war, rebellion or sabotage or damage resulting there from; fires, floods, explosion, accidents, riots, strikes or other concerted acts of workmen, whether direct or indirect; delays in permitting; or any other causes, whether similar or dissimilar, which are

beyond the reasonable control of Engineer. 2. INTERPRETATION: The parties acknowledge and agree the terms and conditions of this Agreement, including but not limited to those relating to allocation of, releases from, exclusions against and limitation of liability, have been freely and fairly negotiated. Each party acknowledges that in executing this Agreement they have relied solely on their own judgment, belief, and knowledge, and such advice as they may have received from their own counsel, and they have not been influenced by any representation or statement made by any other party or its counsel. No provision in this Agreement is to be interpreted for or against any party because that party or its counsel drafted such provision. In the event that any portion or all of this agreement is held to be void or unenforceable, the parties agree to negotiate in good faith to amend the commercial and other terms of the Agreement in order to effect the intent of the parties as set forth in this Agreement. The parties agree to look solely to each other with respect to performance of this Agreement. The provisions of this agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of the Agreement, including but not limited to any expressed limitation of or released from liability, shall continue as valid and enforceable obligations of the parties notwithstanding any such termination, cancellation, completion or expiration. 3. ENTIRE AGREEMENT: This Agreement, and without limitation, any Exhibits, addenda, applicable Task Authorizations, Purchase Orders, Requisitions and other such similar "Work Requests", constitute the entire Agreement between Client and Engineer, superceding all prior or contemporaneous communications, representations or agreements, whether oral or written, relating to the Work hereunder. In the event of conflict and/or ambiguity between any provision of this Agreement and, without limitation, that contained in any Work Request, proposal, contract, requisition, notice to proceed, or any other Project document, this Agreement, and within this Agreement this Part III - Terms and Conditions, shall take precedence and prevail in enforcement and or clarification. No other representations of any kind, oral or otherwise, have been made. Client and Engineer each binds himself and his partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns

of such other part, in respect to all covenants of this Agreement; except as above, neither Client nor Engineer shall assign, sublet or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any owner, officer or agent of Engineer, Client or any public body that may be a part hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than Client or Engineer. 4. DISPUTE RESOLUTION: All claims, disputes or controversies arising out of or in relation to the interpretation, application or enforcement of this Agreement shall be submitted to arbitration pursuant to the Rules for Commercial Arbitration of the American Arbitration Association. Judgment on any interim or final award rendered by the arbitrator may be entered and enforced in any court of Illinois or the United States District Court for the Northern District of Illinois. The city and state of such arbitration shall be in Chicago, Illinois. Any legal action by either party against the other for any cause or causes, including but not limited to breach of this Agreement, negligence, misrepresentations, breach of warranty or failure to perform in accordance with the standard of care, however denominated, shall be barred two (2) years from the day after completion of Engineer's services hereunder. 5. GOVERNING LAW: This Agreement shall be governed and construed in accordance with the laws of the state of Illinois. Client hereby irrevocably consents and submits to the jurisdiction of any State Court of Illinois, or the United States District Court for the Northern District of Illinois and waives any and all objections that it may have to Cook County venue or the issuance of service of process in any such proceedings. 6. ATTORNEY FEES, COSTS AND EXPENSE: In the event either or both Engineer and/or Client, Owner or any other party adverse to Engineer shall institute any action or proceeding against the other relating to the enforcement of this Agreement, any provision hereof, or any default hereunder, the non-prevailing party shall pay the prevailing party's reasonable attorneys' fees, costs and expenses. 7. SEVERABILITY: Every paragraph, part, term or provision of this Agreement is severable from another. If any paragraph, part, term or provision of this Agreement is construed or held to be void, invalid or unenforceable by order, decree or judgment of a court of competent jurisdiction, the remaining paragraphs, parts, terms and provisions of the Agreement shall not be affected

thereby but shall remain in full force and effect. The parties further agree to reform these Terms and Conditions to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the stricken provision. 8. SURVIVAL: These terms and conditions, including, without limitation, any expressed limitation of or release from liability, shall survive the completion of Work or termination of this Agreement and shall remain in full force and effect. 9. ASSIGNMENT: Client may not assign rights, duties and liabilities under this Agreement without prior written consent of Engineer. 10. SOLICITATION OF EMPLOYMENT: Neither party shall, during the term of this Agreement or for a period of one hundred eighty (180) days thereafter, directly or indirectly for itself or on behalf of, or in conjunction with, any other person, partnership, corporation, business or organization, solicit, hire, contract with or engage the employment of an employee or any other with whom that party or its personnel have had contact during the course of providing the Services under this Agreement, unless that party has obtained the written consent of the other to such hiring and that party pays to the other a fee to be mutually agreed upon.

END PART III-GENERAL TERMS AND CONDITIONS
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James P. Lange
12/5/2013

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