

Project No. 2215004-00
Project Name: Woodbury County On-Call Engineering Services
Project Manager: Teny J. Lutz, P.E.

AGREEMENT
FOR ON-CALL
CONSULTING AND ENGINEERING SERVICES

THIS IS AN AGREEMENT made as of the 3rd day of MARCH 2015 between *Woodbury County, Iowa* (hereinafter referred to as "OWNER"), and *McClure Engineering Company, Sioux City, Iowa* (hereinafter referred to as "ENGINEER"), to provide "On-Call" General Engineering and Consulting Services, at the request and approval of the OWNER.

This Agreement is subject to the terms and conditions attached to this document and the following:

1. OWNER intends to retain ENGINEER for on-call Consulting and Engineering services to represent OWNER'S interest and provide guidance in helping the OWNER construct infrastructure improvement programs consistent with the *Envision 2050 Master Plan*. ENGINEER shall provide various services at the OWNER'S request regarding engineering consultation, project development, cost sharing strategies with other entities, and project management duties.
2. Both parties understand all of the *scope of services, duties, and fees* cannot be foreseen at this time. Both parties agree to negotiate in good faith for both the scope of work and fees as specific duties arise to help both parties receive fair value for the services provided. When requested by the OWNER to provide services, the ENGINEER will log time associated with the work and bill for the work accordingly.
3. OWNER and ENGINEER in consideration of their mutual covenants herein agree in respect of the performance of professional engineering services by the ENGINEER and the payment for those services by OWNER as set forth below.
4. The OWNER shall provide information, which shall set forth the OWNER'S objectives, schedule, constraints, budget with reasonable contingencies, and other applicable criteria. (See Exhibit 'B' for OWNER'S Responsibilities).
5. The ENGINEER shall review the OWNER'S request for services, program the work required, and prepare documents for the OWNER'S approval. A listing of the types of work anticipated are included but not limited to the following:

ITEM	INCLUDED	NOT INCLUDED
A. General		
- Provide day-to-day consulting services as requested by Owner	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Meet with appropriate entities to represent Owner's interest in program development as required to complete tasks as requested	<input checked="" type="checkbox"/>	<input type="checkbox"/>
B. Public Relations		
- Present <i>Envision 2050 Master Plan</i> to interested parties as requested	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Present/discuss TIF Use Policy to interested parties as requested	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Work as extension of Owner's staff for economic development initiatives	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Attend County Board of Supervisors meetings as requested	<input checked="" type="checkbox"/>	<input type="checkbox"/>
C. Capital Investment Plan (CIP) Management		
- Provide annual review and summary of LPURA TIF finances	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Assist Owner in CIP project prioritization and management	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Modify CIP and TIF Financial Model as requested	<input checked="" type="checkbox"/>	<input type="checkbox"/>
D. TIF-Eligible Project Review		
- Represent Owner's interests in ongoing capital investment and economic development initiatives as requested	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Review existing Infrastructure Issues and provide alternatives for solutions	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Evaluate and recommend applications submitted by others for the use of Owner's TIF revenues	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Provide value engineering services for proposed capital investment projects	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Assist Owner in developing Infrastructure projects to drive economic activity	<input checked="" type="checkbox"/>	<input type="checkbox"/>
E. Liberty Park Urban Renewal Area (LPURA)/TIF District Assistance		
- Provide technical guidance regarding modifications and amendments to LPURA	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Represent Owner's interests in Join TIF/Urban Renewal area creation	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Facilitate negotiations between the Owner and other entities regarding cost sharing and TIF sharing development agreements	<input checked="" type="checkbox"/>	<input type="checkbox"/>

- Payment to the ENGINEER shall be made on a timely basis, within 30-days of invoice for work completed to date, on a time and material basis. Monthly invoices will be submitted for actual time and expenses incurred as per the rates in Exhibit 'A'. The ENGINEER and OWNER agree to negotiate an equitable adjustment to the rates in Exhibit 'A' on an annual basis subject to the approval of the OWNER.
- This Agreement represents the entire and integrated Agreement between the OWNER and ENGINEER and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the OWNER and the ENGINEER.

	INCLUDED	NOT INCLUDED
Exhibit 'A' Hourly Rate Schedule	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Exhibit 'B' Owner's Responsibilities	<input checked="" type="checkbox"/>	<input type="checkbox"/>

SPECIAL INSTRUCTIONS:

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the date and year first above written.

OWNER: Woodbury County, Iowa

Engineer: McClure Engineering Company
Sioux City, Iowa

By: 

Signed: 

Title: Chairman – Board of Supervisors

Title: President

McCLURE ENGINEERING COMPANY STANDARD TERMS AND CONDITIONS

ACCESS TO SITE: The Engineer shall at all times have access to the site to complete his Work.

INFORMATION PROVIDED BY OTHERS: The Engineer shall be entitled to rely upon the accuracy and completeness of data provided by the Owner and shall not assume liability for such data. The Engineer does not practice law, insurance or financing, therefore, the Owner shall furnish all legal, accounting and insurance counseling services as may be necessary to protect themselves at any time during the Project. Owner shall hold Engineer harmless from damages that may arise as a result of inaccuracies of information or data supplied by Owner or others to Engineer.

ADDITIONAL SERVICES: As an Additional Service in connection with changes in the scope of the Engineer's work by the Owner, the Engineer shall prepare Drawings, Specifications and other documentation and data, evaluate Contractor's proposal and provide any other services made necessary by such Change Orders and Construction Change Directives. The Engineer will be entitled to additional compensation to coordinate such changes and schedules shall be adjusted accordingly.

OWNERSHIP AND REUSE OF DOCUMENTS: All reports, plans, specifications, field data and other documents written and/or electronic, prepared by Engineer in doing work on the project, shall remain the property of the Engineer. The documents prepared by the Engineer for this Project are for use solely with respect to this Project. The Engineer's Drawings, Specifications or other documents shall not be used by the Owner on other projects or for additions to this Project, except by agreement in writing and with appropriate compensation to the Engineer. However, the parties acknowledge that all documents in final form become public documents once in the hands of the Owner, unless covered by a specific exemption to the Iowa Open Records Act - Chapter 22 of the Code of Iowa.

OPINIONS OF PROBABLE COSTS: It is recognized that neither the Engineer nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Engineer cannot and does not warrant or represent that bids or negotiated prices will not vary from any estimate of costs or evaluation prepared or agreed to by the Engineer.

DISPUTE RESOLUTION: Claims, disputes or other matters, involving a value less than \$200,000.00, in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to mediation unless each of the parties mutually agrees otherwise. No mediation arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement signed by the Owner, Engineer, and any other person or entity sought to be joined. In no event shall the demand for mediation be made after the date when the institution of legal or equitable proceedings based upon such claim would be barred by the applicable statute of limitations. The award rendered in the mediation shall be non-binding.

TERMINATION: This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of the Agreement through no fault of the party initiating the termination. This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Engineer.

Failure of the Owner to make payments to the Engineer in accordance with the Agreement shall be considered substantial non-performance and cause for termination. If the Owner fails to make payment when due the Engineer for services, the Engineer may, upon seven days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Engineer within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Engineer shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services.

In the event of termination not the fault of the Engineer, the Engineer shall be compensated for services performed prior to termination and all termination expenses. Termination expenses are in addition to compensation for *Basic and Additional Services*, and include expenses which are directly attributable to termination.

CONTRACTOR MATTERS: The Engineer has no control over the Contractor's means, methods, schedule, costs, quality control, workmanship, on-site storm water runoff/erosion control, or project safety measures. For this reason, the Engineer shall not be responsible for or assume liability for the same.

UNDERGROUND UTILITIES: Information for location of underground utilities may come from the Owner, third parties, and/or research performed by the Engineer or its

subcontractors. Unfortunately, the information the Engineer must rely on from various utilities and other records may be inaccurate or incomplete.

SHOP DRAWING REVIEW: If, as part of this Agreement Engineer reviews Contractor submittals, such as shop drawings, product data, samples and other data, as required by Engineer, these reviews and approvals shall be only for the limited purpose of checking for conformance with the design concept and the information expressed in the contract documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the Contractor. Engineer shall not be responsible for any deviations from the contract documents not brought to the attention of Engineer in writing by the contractor. Engineer shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

CONSTRUCTION OBSERVATION: If, as part of this Agreement, Engineer is providing construction observation services, Engineer shall visit the project at appropriate intervals during construction to become generally familiar with the progress and quality of the Contractor's work and to determine if the work is proceeding in general accordance with the Contract Documents. Unless otherwise specified in this Agreement, the Owner has not retained the Engineer to make detailed inspections or to provide exhaustive or continuous project review and observation services. Engineer does not guarantee the performance of, and shall have no responsibility for, the acts or omissions of any contractor, subcontractor, supplier or any other entity furnishing materials or performing any work on the project.

HAZARDOUS MATERIALS: The Engineer is not in the business of making environmental site assessments for purposes of determining the presence of any toxic, hazardous or other environmental damaging substances. The purpose of this provision is to be certain that the Owner is aware of the potential liability if toxic, hazardous or environmental damaging substances are found on or under the property. Engineer makes no representations regarding an environmental site assessment, relies upon Owner to have fully investigated the need and/or scope of such assessment and assumes no responsibility for the determination to make an environmental site assessment on the subject property.

PAYMENT: Amounts unpaid 30 days after invoice date shall bear interest from the date payment is due at a rate of 1.5% per month compounded and shall include costs for attorney fees and other collection fees related to collecting fees for service.

WAIVERS: The Owner and the Engineer waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, but only to the extent covered by property insurance during construction. The Owner and Engineer each shall require similar waivers from their contractors, consultants and agents.

ASSIGNMENT: The Owner and Engineer, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Engineer shall assign this Agreement without the written consent of the other.

GOVERNING LAW: Unless otherwise provided, the Agreement shall be governed by the law of the principal place of business of the Engineer.

COMPLETE AGREEMENT: This Agreement represents the entire and integrated agreement between the Owner and Engineer and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Engineer. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Engineer.

(Effective 10/01/11)
(Supersedes 11/01/08)

EXHIBIT 'B'

OWNER'S RESPONSIBILITIES

OWNER shall do the following in a timely manner so as not to delay the services of the ENGINEER.

1. Designate in writing a person to act as OWNER'S representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER'S policies and decisions with respect to ENGINEER'S services for the project.
2. Provide all criteria and full information as to OWNER'S requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expendability, and any budgetary limitations; and furnish copies of all design and construction standards, which OWNER will require to be included in the drawings and specifications.
3. Assist ENGINEER by placing at ENGINEER'S disposal all available information pertinent to the Project, including previous reports and any other data relative to design or construction of the Project.
4. Arrange for access to make all provisions for the ENGINEER to enter upon public and private property as required for the ENGINEER to perform services under this Agreement.
5. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by the ENGINEER, obtain advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the ENGINEER.
6. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary completion of the Project.
7. Give prompt written notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any development that affects the scope or timing of the ENGINEER'S services, or any defect or non-conformance in the work of any Contractor.
8. Arrange for financing and pay for services as agreed to in this Agreement.

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(Effective 10/01/11)
(Supersedes 11/01/08)

EXHIBIT 'A'

McCLURE ENGINEERING COMPANY
 HOURLY RATE SCHEDULE
 (Effective through December 31, 2015)

<u>PERSONNEL</u>	<u>HOURLY RATE</u>
Administrative	\$60.00
Senior Administrative.....	\$75.00
Staff Engineer.....	\$98.00
Project Engineer	\$115.00
Senior Project Engineer.....	\$158.00
Project Manager.....	\$145.00
Principal.....	\$175.00
Senior Principal	\$195.00
Engineering Technician (ET).....	\$90.00
Registered Land Surveyor.....	\$145.00
On-Site Representative (OSR).....	\$80.00
Senior On-Site Representative (OSR)	\$90.00
Crew Chief (CC).....	\$85.00
Crew Member (CM).....	\$70.00
Intern Crew Member	\$55.00

MISCELLANEOUS EXPENSES

Survey Vehicle Mileage	\$0.75/Mile
Automobile Mileage	\$0.55/Mile
Plans	\$0.12/Sq. Ft.
Vellums.....	\$0.50/Sq. Ft.
Out-of-Pocket Expenses (Meals, Hotels, etc.)	At Cost + 10%
Large Format Color Prints.....	\$5.00/Sq. Ft