

#### THE

### **CITY of PELLA**

#### STAFF MEMO TO COUNCIL

ITEM NO: I-2

SUBJECT: Discussion Regarding the Long-Term Facilities Plan

DATE: March 7, 2023

#### **BACKGROUND:**

The purpose of this Policy and Planning session is to provide an update on the long-term facilities plan. When Council originally approved the plan, the following goals were identified:

- *Improve the quality of life in the community.*
- Attract new citizens.
- *Increase the city's tax base.*

Staff believes it is important to keep the above goals in mind when reviewing the plan, as both the proposed indoor recreation center and the Community Center are long-term initiatives and will be key assets in the future development of Pella.

#### **Base Facility Plan Cost Estimates**

In April of 2022, the City Council approved a \$45 million base facility plan for the proposed Pella Rec Center and renovations to the existing Community Center. Listed below is a comparison between the original base plan and the latest estimated costs for the Pella Rec Center, required infrastructure, and the Community Center renovations. Please note, the current estimated costs for the Pella Rec Center include approximately \$5.6 million in alternates, which is the reason for the range in costs.

	April 2022 Council Base Plan	Current Estimates
Pella Rec Center	\$31,000,000	\$37,485,000 to \$43,080,000
Community Center	5,500,000	5,500,000
Infrastructure	6,000,000	7,612,500
Contingency	<u>2,500,000</u>	<u>2,500,000</u>
Total	<u>\$45,000,000</u>	\$53,097,500 to \$58,692,500

#### **Base Facility Plan Funding Sources**

The original base plan approved by the City Council involved the City of Pella committing \$22 million to the plan and raising \$23 million. To-date, the city has received approximately \$13.1 million in financial pledges for the proposed Pella Rec Center and renovations to the Community Center. In addition, Mayor DeWaard has formed a committee to raise additional funds for the Pella Rec Center. During this Policy and Planning session, staff will be discussing the city's financial commitment and the proposed funding sources for the various elements of the facility plan as outlined below and on the following page.

#### **City of Pella Financial Commitment**

In April of 2022, Council approved a preliminary plan committing \$22 million in funding to the city's long-term facilities plan. The preliminary plan involved using approximately \$5 million in 'surplus cash' on hand and issuing a \$17 million local option sales and services tax bond.

Listed below is an update on the proposed City of Pella financial contribution:

#### Surplus Cash on Hand - \$5.0 million

Staff estimates the city will have approximately \$5.0 million in surplus fund balance at June 30, 2023 which could be used to fund the facilities plan. Please note, this will require the City Council formally approving a resolution which transfers these funds. Staff is proposing the surplus funds be used to fund the required engineering costs for the facilities plan. Listed below is a financial summary of the associated engineering contracts:

Total	\$ <u>5,000,000</u>
Contingency	<u>309,600</u>
Community Center engineering	412,500
Sanitary Sewer engineering	118,000
University Street extension engineering	759,000
Pella Rec Alternates & Supplemental Fees	650,900
Pella Rec Center	\$2,750,000

#### Local Option Sales Tax Bond - \$17 million

The proposed funding source for the facilities plan is to issue a local option bond secured by future local option sales tax revenues. During this Policy and Planning session, staff will be discussing financing options with Council. In addition, staff plans to discuss the potential impacts of the recent rise in interest rates of government bonds and their potential impacts on the city's financing plans. Specifically, increases in interest rates could potentially reduce the size of the proposed local option bond, which would in turn require additional cash contributions by the City of Pella to reach the funding goal of \$22 million.

#### **Financial Summary**

Listed below is a summary of the financial commitments secured to-date and the estimated cost of the facilities plan:

#### **Funding Commitments**

City of Pella Local Option Bond	\$17,000,000
Surplus Cash – City of Pella	5,000,000
Private Pledges	<u>13,100,000</u>
<b>Total Funding Commitments</b>	\$35,100,000
<b>Estimated Facilities Plan Cost</b>	\$( <u>53,097,500</u> ) to \$( <u>58,692,500</u> )
Remaining Funding to be Secured	\$(17,997,500) to \$(23,592,500)

#### **Summary**

Staff plans to review the above information with Council in greater detail during this Policy and Planning session. In addition, staff feels it is important for Council to be aware that the timeline of the facility plan is contingent upon securing adequate resources to fund the plan.

ATTACHMENTS: None

REPORT PREPARED BY: City Administration

REVIEWED BY: City Administrator, City Clerk

RECOMMENDATION: Seeking Council direction



# CITY of PELLA STAFF MEMO TO COUNCIL

ITEM NO: I-3

SUBJECT: Indoor Recreation Center Schematic Design Review

DATE: March 7, 2023

#### BACKGROUND:

The purpose of this Policy and Planning session is to review the schematic design for the proposed indoor recreation center. It is important to note, Shive Hattery would like to be aware of any changes requested by Council prior to proceeding with the design development phase for the project. The reason for this request is any future changes to the layout of the facility may require additional engineering and resulting change orders for the City of Pella. Listed below is additional background on the schematic design:

#### **Proposed Pella Rec Center Design**

The proposed Pella Rec Center is approx. 78,000 square feet and includes the following components:

- Four full sized gymnasiums
- Indoor walking track
- Workout areas
- Competition swimming pool
- Recreation swimming pool
- Large atrium areas, meeting spaces, childcare facilities, and concession areas
- Bouldering wall

#### **Project Estimated Cost**

The estimated cost of the indoor recreation center is \$43,079,374 which includes the following items:

Base Engineering Fees	\$2,750,000
Alternate Design Engineering fees	400,000
Suppl. Engin. & Admin Fees	144,000
Furnishing and fixtures	1,663,073
Contingency fees	4,609,951
Construction	33,512,350
<b>Total Estimated Cost</b>	\$43.079.374

#### **Alternate Bid Items**

The proposed project includes approximately \$5.6 million in alternate bids, which are comprised of two gymnasiums and the bouldering wall. This means the city would solicit construction bids for these items, but depending on financing may not proceed with the construction of these items. The estimated design fees for the alternate bids totals \$400,000.

Listed below is the estimated cost of the base plan versus the full plan with alternates:

Base Plan (includes only two gymnasiums) \$37,485,000 Full Plan with alternate items \$43,080,000 Staff believes alternate bid items are necessary to align the project with the city's financial resources. For purposes of this review, staff prefers that Council focuses on the full plan, rather than discuss which items are alternates. The reason for this position is additional or higher cost items may need to be included as alternates. Staff plans to work with Shive Hattery over the next 30 days in developing alternates for the project. Staff will report back to Council once we have a recommendation for project alternates.

#### **Infrastructure Engineering Required**

In order to proceed with the next phase of engineering for the Pella Rec Center, the city will also need to proceed with engineering for the extension of University Street and Baseline Drive. The reason this is necessary is the site grading for the Pella Rec Center needs to align with the profile of University Street and Baseline Drive. Included as a separate Policy and Planning item is a discussion on a proposed engineering services contract for the extension of University Street and Baseline Drive.

#### **Project Timeline**

The timeline for the proposed indoor recreation center is dependent upon funding. If the city is able to finalize its financial plans in the near future, the project could be on course to solicit construction bids by this fall. If the city is able to maintain this schedule, the tentative completion date for the project is 2025.

#### **Summary**

Staff is seeking direction from Council on proceeding with engineering for the proposed recreation center as well as engineering contracts for the extension of University Street and Baseline Drive.

ATTACHMENTS: Site Map, Schematic Design

REPORT PREPARED BY: Staff

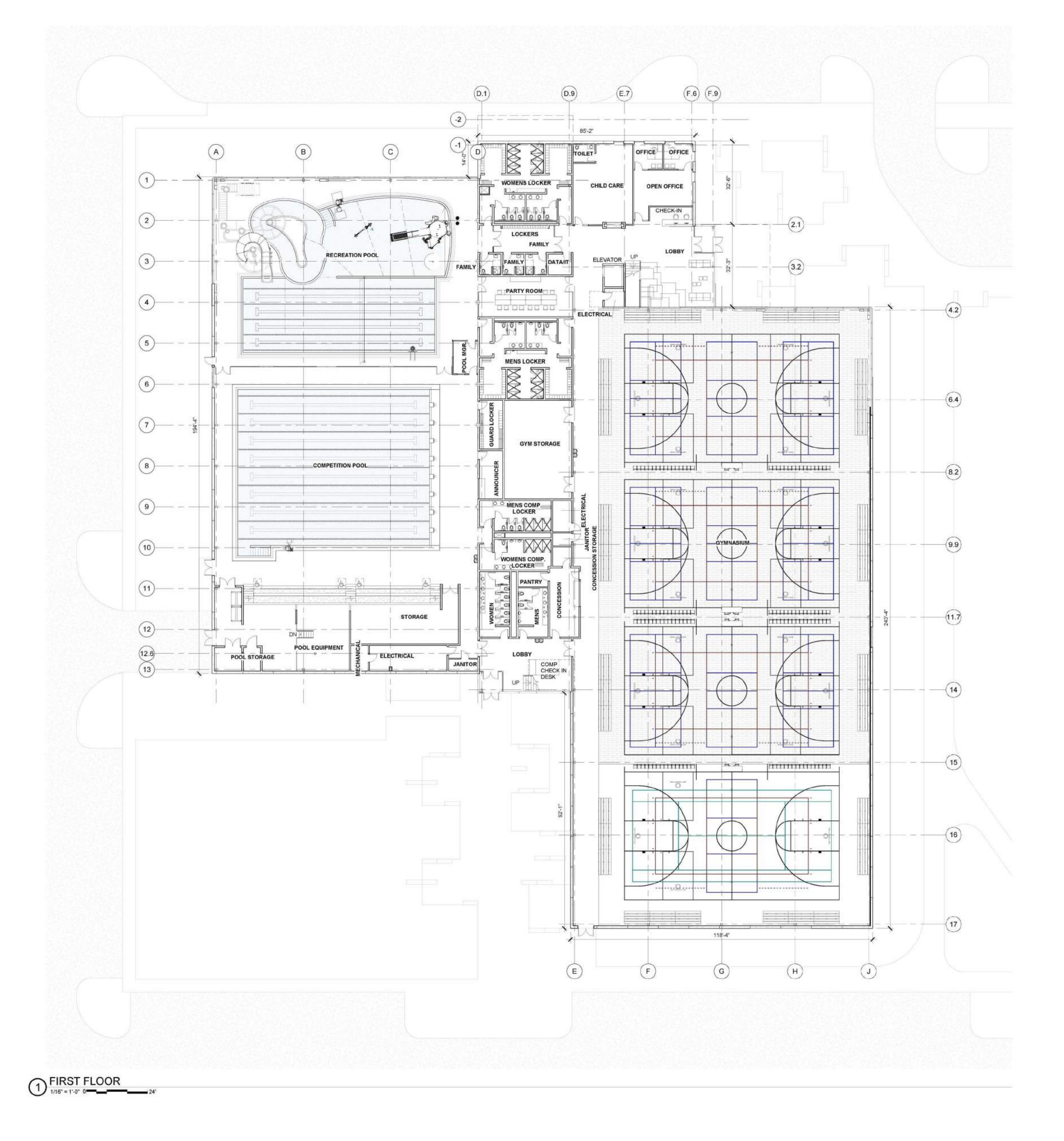
REVIEWED BY: City Administrator, City Clerk

RECOMMENDATION: Seeking Council direction



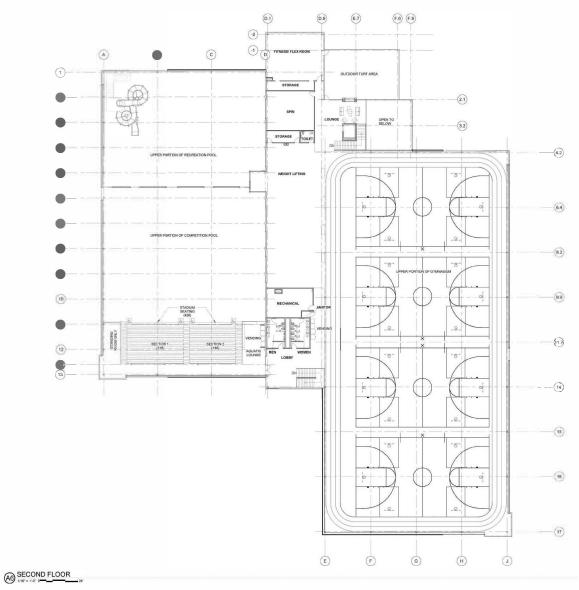
OVERALL SITE PLAN

PELLA INDOOR RECREATION AND AQUATIC CENTER



OVERALL- FIRST FLOOR PLAN

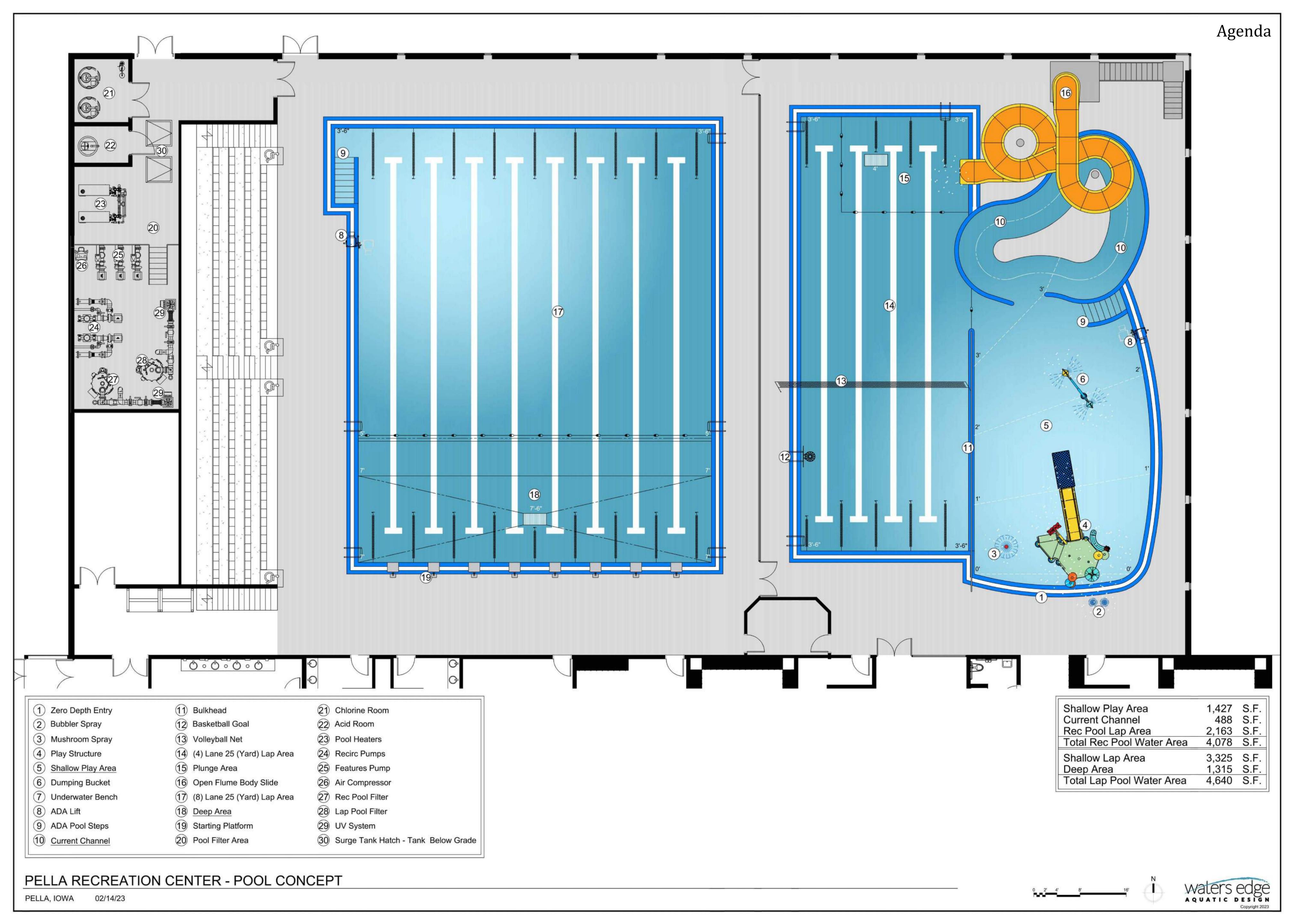


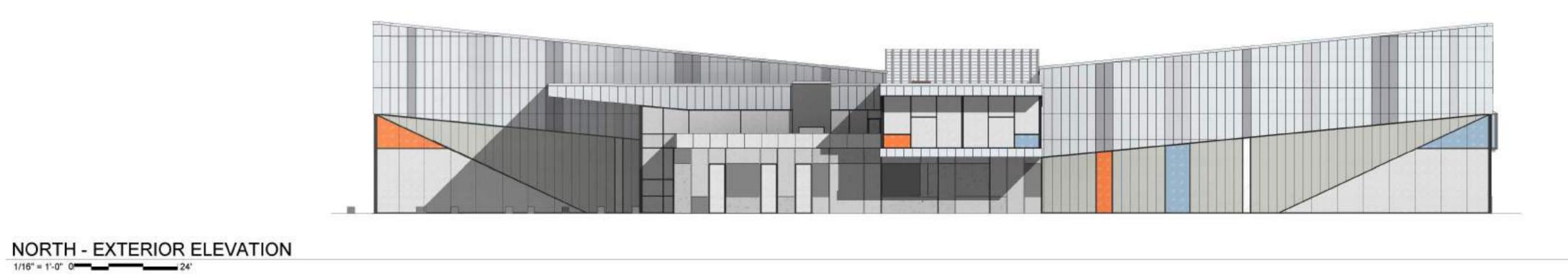


OVERALL- SECOND FLOOR PLAN

PELLA INDOOR RECREATION AND AQUATIC CENTER

A2

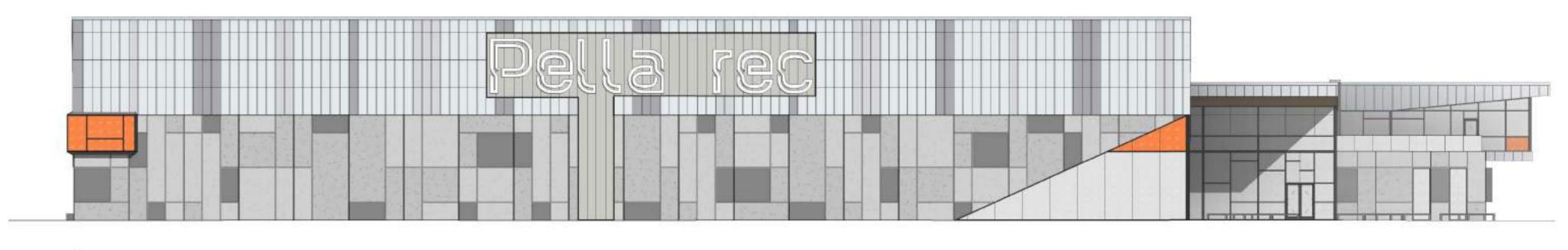




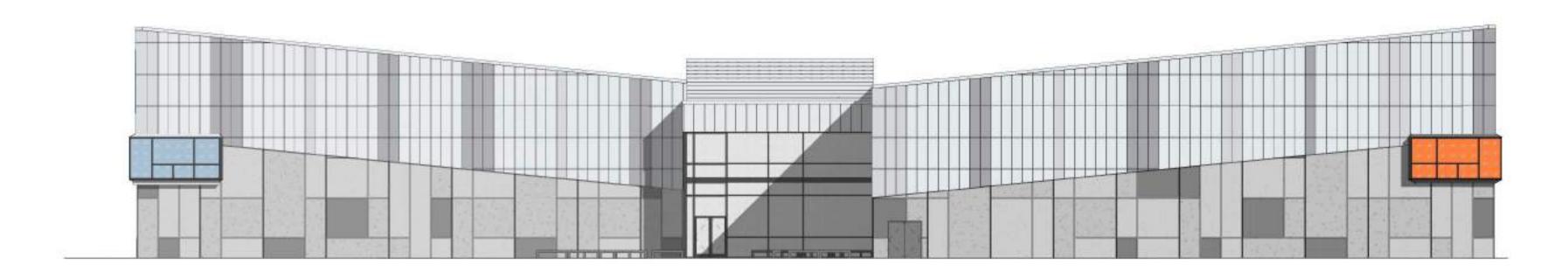
Pella rec



WEST - EXTERIOR ELEVATION



EAST - EXTERIOR ELEVATION



SOUTH - EXTERIOR ELEVATION

PELLA INDOOR RECREATION AND AQUATIC CENTER





FROM UNIVERSITY SHIVEHATTERY PELLA











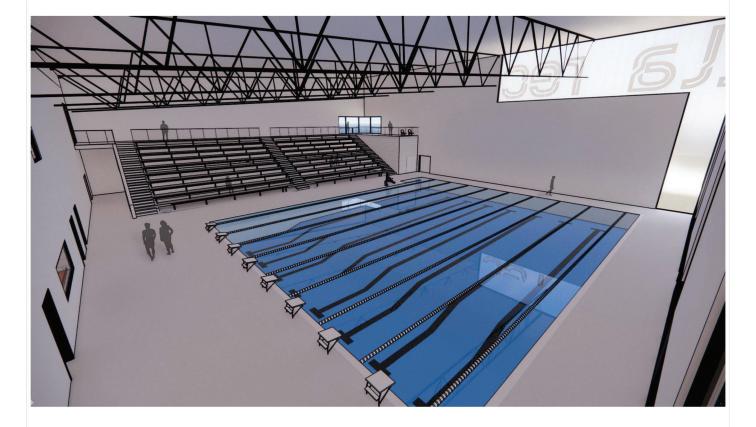
PELLA INDOOR RECREATION AND AQUATIC CENTER RECREATION COURTS A12 SHIVEHATTERY ARCHITECTURE + ENGINEERING PELLA







PELLA INDOOR RECREATION AND AQUATIC CENTER COMPETITION SWIMMING FROM SE SHIVEHATTERY ARCHITECTURE + ENGINEERING PELLA





#### ТНЕ

### **CITY of PELLA**

#### STAFF MEMO TO COUNCIL

ITEM NO: I-4

SUBJECT: Proposed Engineering Services Agreements for the University Street and Baseline Drive

Extensions and Sanitary Sewer Improvements Related to the Pella Rec Center

DATE: March 7, 2023

#### **BACKGROUND:**

The purpose of this item is to discuss proposed engineering services agreements to provide access and sanitary sewer services to the Pella Rec Center. Staff has solicited two engineering contracts which are summarized below and included as memo attachments for Council's review.

#### **Engineering Agreement: University Street and Baseline Drive Extensions**

This engineering agreement with Garden & Associates is for the University St. and Baseline Dr. extensions which total 5,320 LF and 1,435 LF, respectively. As background, these street extensions are required to access the Pella Rec Center and to provide multiple access points to the Pella Sports Park.

#### This project includes:

- New 31' back-of-curb to back-of-curb urban collector street with associated grading and storm sewer improvements.
- New 12" water main along University St. then south to the existing 8" water main on Baseline Dr.
- New 10' trail on the south side of University St. from 240th to the Pella Rec Center.
- The University St. improvements would be located in an 80' ROW to be acquired with the project.

The estimated breakdown of the not-to-exceed engineering fees based on hourly rates is listed below:

Preliminary, final design & bidding process
Construction services & project administration
Total Engineering Services \$759,500

The attached contract only includes the preliminary, final design, and bidding process at \$309,500.

The total construction cost for the above improvements is estimated to be approx. \$5,625,900.

#### **Engineering Agreement: Sanitary Sewer Improvements**

This engineering agreement with Veenstra & Kimm is for the necessary sanitary sewer improvements to serve the Pella Rec Center. This project includes 900 LF of 8" gravity sewer from the Pella Rec Center south to the area near the existing Pella Sports Park sand filter/septic system. The project would include a new lift station at that location and 1,200 LF of 6" force main constructed south to Old Highway 163 where it will intercept the existing 6" force main constructed with the Lely project. This new sewer system and lift station will replace the existing sand filter/septic system and serve the Pella Sports Park.

The estimated breakdown of the not-to-exceed engineering fees based on hourly rates is listed below:

Preliminary, final design & bidding process

Construction services & project administration

Total Engineering Services

\$60,000

58,000

\$118.000

The attached contract includes the construction phase if the city goes forward with construction.

The total construction cost for the sanitary sewer improvements is estimated to be approx. \$835,475.

#### **Summary**

In summary, staff is seeking Council direction regarding the drafted engineering services agreements for the University Street and Baseline Drive extensions as well as the sanitary sewer improvements which are necessary to serve the Pella Rec Center.

ATTACHMENTS: Garden & Associates Agreement, Veenstra & Kimm Agreement

REPORT PREPARED BY: Public Works Department

REVIEWED BY: City Administrator, City Clerk

RECOMMENDATION: Seeking Council direction

# AGREEMENT BETWEEN OWNER (CITY OF PELLA, IOWA) AND ENGINEER (GARDEN & ASSOCIATES, LTD.) FOR PROFESSIONAL SERVICES

## UNIVERSITY STREET & BASELINE DRIVE EXTENSIONS PELLA, IOWA

Prepared by



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## AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of **November 1, 2022** ("Effective Date") between **The City of Pella, Iowa** ("Owner") and **Garden & Associates, Ltd.** ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows: **University Street & Baseline Drive Extensions** 

Other terms of this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows:

Preliminary and Final Design Phase, Bid Phase, Easement and Acquisition Plats for street extension shown on attached Figure 1 including water main on University from 240<sup>th</sup> to Baseline and from University to current end of Baseline, and 10' wide trail from 240<sup>th</sup> to Sports Complex.

Owner and Engineer further agree as follows:

#### ARTICLE 1 – SERVICES OF ENGINEER

- 1.01 Scope
  - A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

#### ARTICLE 2 - OWNER'S RESPONSIBILITIES

- 2.01 General
  - A. Owner shall have the responsibilities set forth herein and in Exhibit B.
  - B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
  - C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and reasonably rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
  - D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
    - 1. any development that affects the scope or time of performance of Engineer's services;
    - 2. the presence at the Site of any Constituent of Concern; or

 any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

#### ARTICLE 3 - SCHEDULE FOR RENDERING SERVICES

#### 3.01 Commencement

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

#### 3.02 Time for Completion

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

#### **ARTICLE 4 - INVOICES AND PAYMENTS**

#### 4.01 Invoices

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

#### 4.02 Payments

- A. Application to Interest and Principal: Payment will be credited first to any interest owed to Engineer and then to principal.
- B. Failure to Pay: If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
  - 1. Amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

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

#### ARTICLE 5 - OPINIONS OF COST

#### 5.01 Opinions of Probable Construction Cost

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

#### 5.02 Designing to Construction Cost Limit

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

#### 5.03 Opinions of Total Project Costs

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

#### **ARTICLE 6 – GENERAL CONSIDERATIONS**

#### 6.01 Standards of Performance

A. Standard of Care: The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar

- circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. Consultants: Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. Reliance on Others: Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. Compliance with Laws and Regulations, and Policies and Procedures:
  - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
  - Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
  - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
    - a. changes after the Effective Date to Laws and Regulations;
    - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
    - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.

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

#### 6.02 Design Without Construction Phase Services

A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

#### 6.03 Use of Documents

- A. The Owner acknowledges the Engineer's drawings, specifications and other documents and instruments prepared by Engineer for the Project ("Documents") as instruments of professional services. Nevertheless, the final documents prepared under this Agreement shall become the property of the Owner upon completion of the services or termination of this Agreement if payment in full of all monies then contractually due to the Engineer prior to completion or termination have been made by the Owner. The Owner shall notify the Engineer in writing prior to Owner's modifications and/or reuse of the instruments of service for the Project. The Owner's or its retained agent's or representative's modifications and/or reuse of the Instruments of Service for the Project without written authorization of the Engineer will be at the Owner's and/or other retained entities' sole risk and without liability or legal exposure to the Engineer.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version and one digital version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

#### 6.04 Electronic Transmittals

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall may jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

#### 6.05 Insurance

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.

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

#### 6.06 Suspension and Termination

#### A. Suspension:

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

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

#### 1. For cause,

a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

#### b. by Engineer:

- upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
- 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
- 3) Engineer shall have no liability to Owner on account of such termination.
- c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
- 2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.
- C. Effective Date of Termination: The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. Payments Upon Termination:
  - In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.

#### 6.07 Controlling Law

A. This Agreement is to be governed by the Laws and Regulations of the State of Iowa.

#### 6.08 Successors, Assigns, and Beneficiaries

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
  - Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
  - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
  - 3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

#### 6.09 Dispute Resolution

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

#### 6.10 Environmental Condition of Site

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and Owner shall notify appropriate governmental

- officials if Owner reasonably concludes that doing so is required by applicable Laws or Regulations; and (2) Engineer shall may notify appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

#### 6.11 Indemnification and Mutual Waiver

- A. Indemnification by Engineer: The Engineer agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Owner against all damages or liabilities, including reasonable attorney's fees, to the extent caused by the Engineer's negligent error or omission in the performance of professional services required for the Project including any plan or specification within the responsibility of the Engineer or to any breach of duty or obligation assumed by or required under this Agreement and that of its subconsultants or anyone for whom the Engineer is legally liable. If a suit, action, arbitration or other legal proceeding is instituted in connection with or arising out of this Agreement or to interpret or enforce any rights under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all attorney fees, costs, expert witness fees and litigation expenses incurred by the prevailing party, including those incurred on appeal.
- B. Indemnification by Owner: Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, "Limitations of Liability."
- C. Environmental Indemnification: To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members,

partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. Percentage Share of Negligence: To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- F. *Mutual Waiver*: To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

#### 6.12 Records Retention

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

#### 6.13 Miscellaneous Provisions

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. Severability: Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

- D. Waiver: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. Accrual of Claims: To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

#### **ARTICLE 7 – DEFINITIONS**

#### 7.01 Defined Terms

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
  - Addenda—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
  - Additional Services—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
  - Agreement—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
  - 4. Application for Payment—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
  - 5. Basic Services—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
  - 6. Change Order—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
  - 7. Change Proposal—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
  - 8. Constituent of Concern—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material

of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq.; (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

- 9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
- 10. *Construction Contract Documents*—Those items designated as "Contract Documents" in the Construction Contract, and which together comprise the Construction Contract.
- 11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
- 12. Construction Contract Times—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
- 13. Construction Cost—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
- 14. Constructor—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
- 15. Consultants—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
- 16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
- 17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables,

- whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
- 18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
- 19. Effective Date—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
- 20. Engineer—The individual or entity named as such in this Agreement.
- 21. Field Order—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
- 22. Laws and Regulations; Laws or Regulations—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
- 23. Owner—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
- 24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
- 25. Record Drawings—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
- 26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
- 27. Resident Project Representative—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
- 28. Samples—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.

- 29. Shop Drawings—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
- 30. Site—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
- 31. Specifications—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
- 32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
- 33. Substantial Completion—The time at which the Work has progressed to the point where, in the opinion of Engineer, the Work is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
- 34. Supplier—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
- 35. Total Project Costs—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
- 36. Work—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
- 37. Work Change Directive—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

- B. Day:
  - 1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

#### ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

#### 8.01 Exhibits Included:

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative. **Not Used**
- E. Exhibit E, Notice of Acceptability of Work. Not Used
- F. Exhibit F, Construction Cost Limit. Not used.
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability. **Not used.**
- J. Exhibit J, Special Provisions.
- K. Exhibit K, Amendment to Owner-Engineer Agreement. **Not used.**

#### 8.02 Total Agreement

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

#### 8.03 Designated Representatives

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

#### 8.04 Engineer's Certifications

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

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

Owner: City of Pella, Iowa	Engineer: Garden & Associates, Ltd.	
By: Print name: Don DeWaard	By: Jack Pope, P.E. Title: Vice President	
Title: Mayor		
Date Signed:	Date Signed: 10 - 19 - 2022	
Address for Owner's receipt of notices:	Address for Engineer's receipt of notices:	
100 Truman Road, P.O. Box 88	P.O. Box 451	
Pella, Iowa 50219	Oskaloosa, Iowa 52577	
Designated Representative (Paragraph 8.03.A):	Designated Representative (Paragraph 8.03.A):	
Denny Buyert	Jack Pope, P.E.	
Title: Public Works Director	Title: Vice President	
Phone Number: (641) 628-1601	Phone Number: (641) 672-2526	
E-Mail Address: dbuyert@cityofpella.com	E-Mail Address: jpope@gardenassociates.net	

This is **EXHIBIT A**, consisting of **16** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **November 1**, **2022**.

# **Engineer's Services**

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

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

### PART 1 - BASIC SERVICES

# A1.01 Study and Report Phase (Not included as part of this Agreement)

# A. Engineer shall:

- Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.
  - a. If Owner has already identified one or more potential solutions to meet its Project requirements, then proceed with the study and evaluation of such potential solutions.
  - b. If Owner has not identified specific potential solutions for study and evaluation, then assist Owner in determining whether Owner's requirements, and available data, reports, plans, and evaluations, point to a single potential solution for Engineer's study and evaluation, or are such that it will be necessary for Engineer to identify, study, and evaluate multiple potential solutions.
  - c. If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.
- 2. Identify potential solution(s) to meet Owner's Project requirements, as needed.
- 3. Study and evaluate the potential solution(s) to meet Owner's Project requirements.
- 4. Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.
- 5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.

- After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.
- Identify, consult with, and analyze requirements of governmental authorities having
  jurisdiction to approve the portions of the Project to be designed or specified by
  Engineer, including but not limited to mitigating measures identified in an environmental
  assessment for the Project.
- 8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs.
- 9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.
- 10. When mutually agreed, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."
- 11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.
- 12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.
- 13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.
- 14. Perform or provide the following other Study and Report Phase tasks or deliverables:
- **15.** Furnish 3 review copies of the Report and any other Study and Report Phase deliverables to Owner within [ ] days of the Effective Date and review it with Owner. Within [ ] days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
- 16. Revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and furnish 3 copies of the revised Report and any

other Study and Report Phase deliverables to the Owner within [ ] days of receipt of Owner's comments.

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

# A1.02 Preliminary Design Phase

- A. After acceptance by Owner of the Report and any other Study and Report Phase deliverables; selection by Owner of a recommended solution; issuance by Owner of any instructions of for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design; and indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, (1) Engineer and Owner shall discuss and resolve any necessary revisions to Engineer's compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer's services, resulting from the selected solution, related Project Strategies, Technologies, or Techniques, sustainable design instructions, or specific modifications to the Project, and (2) upon written authorization from Owner, Engineer shall:
  - 1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
  - In preparing the Preliminary Design Phase documents, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.
  - 3. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.
  - 4. Visit the Site as needed to prepare the Preliminary Design Phase documents.
  - Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
  - 6. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
  - 7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.

- 8. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.
- Perform or provide the following other Preliminary Design Phase tasks or deliverables: None.
- 10. Furnish two (2) review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner within sixty (60) days of authorization to proceed with this phase, and review them with Owner. Within ten (10) days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
- 11. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner two (2) copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within five (5) days after receipt of Owner's comments.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

#### A1.03 Final Design Phase

- A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other Preliminary Design Phase deliverables, subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
  - 1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
  - 2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
  - Provide technical criteria, written descriptions, and design data for Owner's use in filing
    applications for permits from or approvals of governmental authorities having
    jurisdiction to review or approve the final design; assist Owner in consultations with such

- authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.
- 4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
- 5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.
- Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
- In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
- Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurementrelated instructions and forms, text, or content received from Owner.
- 9. Perform or provide the following other Final Design Phase tasks or deliverables: None.
- 10. Furnish for review by Owner, its legal counsel, and other advisors, three (3) copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, within thirty (30) days of authorization to proceed with the Final Design Phase, and review them with Owner. Within ten (10) days of receipt, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.
- 11. Revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit three (3) final copies of such documents to Owner within ten (10) days after receipt of Owner's comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.

- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is one (1). If more prime contracts are awarded, Engineer may be entitled to an equitable increase in its compensation under this Agreement.

# A1.04 Bidding or Negotiating Phase

- A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
  - Assist Owner in advertising for and obtaining bids or proposals for the Work, assist
    Owner in issuing assembled design, contract, and bidding-related documents (or
    requests for proposals or other construction procurement documents) to prospective
    contractors, and, where applicable, maintain a record of prospective contractors to
    which documents have been issued, attend pre-bid conferences, if any, and receive and
    process contractor deposits or charges for the issued documents.
  - 2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.
  - 3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
  - 4. Consult with Owner as to the qualifications of prospective contractors.
  - 5. Consult with Owner as to the qualifications of sub-contractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
  - 6. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.

- 7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
- 8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
- Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables: None.
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

# A1.05 Construction Phase (Not included as part of this Agreement)

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
  - 1. General Administration of Construction Contract: Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, as amended, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
  - 2. Resident Project Representative (RPR): Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
  - 3. Selection of Independent Testing Laboratory: Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.
  - 4. *Pre-Construction Conference:* Participate in a pre-construction conference prior to commencement of Work at the Site.
  - 5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data,

- drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor **may** jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
- 6. Original Documents: If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
- 7. Schedules: Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
- 8. Baselines and Benchmarks: As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
- 9. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
  - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
  - b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority

over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.

- 10. Defective Work: Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
- 11. Compatibility with Design Concept: If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
- 12. Clarifications and Interpretations: Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
- 13. Non-reviewable Matters: If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
- 14. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
- 15. Change Orders and Work Change Directives: Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
- 16. Differing Site Conditions: Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.

- 17. Shop Drawings, Samples, and Other Submittals: Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
- 18. Substitutes and "Or-equal": Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.

# 19. Inspections and Tests:

- a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
- b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
- c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- 20. Change Proposals and Claims: (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.
- 21. Applications for Payment: Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
  - a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information

and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).

- By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
- 22. Contractor's Completion Documents: Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.
- 23. Substantial Completion: Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.

- 24. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables: None.
- 25. Final Notice of Acceptability of the Work: Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.
- 26. Standards for Certain Construction-Phase Decisions: Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- B. Duration of Construction Phase: The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer may be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

# A1.06 Post-Construction Phase (Not included as part of this Agreement)

- A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:
  - Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
  - Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
  - 3. Perform or provide the following other Post-Construction Phase tasks or deliverables: None.

B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

# **PART 2 – ADDITIONAL SERVICES**

- A2.01 Additional Services Requiring Owner's Written Authorization
  - C. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit C.
    - Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
    - Services to make measured drawings of existing conditions or facilities, to conduct tests
      or investigations of existing conditions or facilities, or to verify the accuracy of drawings
      or other information furnished by Owner or others.
    - 3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
    - 4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2.
    - 5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
    - 6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
    - 7. Undertaking investigations and studies including, but not limited to:
      - a. detailed consideration of operations, maintenance, and overhead expenses;
      - the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering

- and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
- c. preparation of appraisals;
- d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
- e. detailed quantity surveys of materials, equipment, and labor; and
- f. audits or inventories required in connection with construction performed or furnished by Owner.
- 8. Furnishing services of Consultants for other than Basic Services.
- 9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
- 10. Providing the following services:
  - a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
  - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
- 11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).
- 12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
- 13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
- 14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.
- 15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
- 16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total

- quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
- 17. Preparing Record Drawings, and furnishing such Record Drawings to Owner.
- 18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
- 19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
- 20. Preparation of operation, maintenance, and staffing manuals.
- 21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
- 22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
- 23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
- 24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
- 25. Overtime work requiring higher than regular rates.
- 26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
- 27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
- 28. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
- 29. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.
- 30. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.

- 31. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
- 32. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
- 33. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
- 34. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
- 35. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
- 36. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
- 37. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by Federal, State, or Local safety authorities for similar construction sites.

This is **EXHIBIT B**, consisting of **4** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**dated **November 1, 2022**.

# **Owner's Responsibilities**

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

- B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:
  - A. Provide Engineer with all reasonable criteria and information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
  - Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
  - C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.

- D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
  - 1. Property descriptions.
  - 2. Zoning, deed, and other land use restrictions.
  - 3. Utility and topographic mapping and surveys.
  - Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
  - 5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
  - Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
  - 7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
  - Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
  - 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
  - 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.

- G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- P. Place and pay for advertisement for Bids in appropriate publications.

- Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
- S. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as reasonably required.
- T. Perform or provide the following: **None.**

This is **EXHIBIT C**, consisting of **3** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**dated **November 1, 2022**.

# Payments to Engineer for Services and Reimbursable Expenses COMPENSATION PACKET BC-2: Basic Services – Standard Hourly Rates

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

# **ARTICLE 2 – OWNER'S RESPONSIBILITIES**

C2.01 Compensation For Basic Services – Standard Hourly Rates Method of Payment

Study and Report Phase

- A. Owner shall pay Engineer for Basic Services, Construction Phase Services and additional services as follows:
  - An amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer's Consultants' charges, if any.
  - 2. The Standard Hourly Rates charged by Engineer constitute full and complete compensation for Engineer's services, including labor costs, overhead, and profit; the Standard Hourly Rates do not include Reimbursable Expenses or Engineer's Consultants' charges.
  - 3. Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2.
  - 4. The total compensation for services under Paragraph C2.01 is estimated to be \$309,500 based on the following estimated distribution of compensation in the event the Engineer believes their compensation will exceed \$309,500 estimated they will seek approval of the Owner before authorizing additional expenditures:

N/A

٠	otaa, ana noportri naso	,
b.	Preliminary Design, Final Design and Bidding or Negotiating Phase	\$300,000
C.	Construction Phase (Observation, Staking, & Administration)	N/A
d.	Post-Construction Phase	N/A
e.	Additional Services (Permits & Acquisition Plats)	\$9,500

- 5. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner. See also C2.03.C.2 below. The total estimated compensation listed above is based on a Construction Contract Time of 60 working days.
- The total estimated compensation for Engineer's services included in the breakdown by phases as noted in Paragraph C2.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses, and Engineer's Consultants' charges.
- 7. The amounts billed for Engineer's services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultants' charges.
- The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of March 1st) to reflect equitable changes in the compensation payable to Engineer.

#### C2.02 Compensation For Reimbursable Expenses

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.
- Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.00.

#### C2.03 Other Provisions Concerning Payment

- Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.00.
- Factors: The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
- C. Estimated Compensation Amounts:

- 1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
- 2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend the Engineer's services during the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.
- D. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

This is **Appendix 1 to EXHIBIT C**, consisting of **1** page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**Dated **November 1, 2022**.

# Standard Hourly Rates and Reimbursable Expenses Schedule

Standard Hourly Rates and Reimbursable Expenses are subject to review and adjustment per Exhibit C. Hourly Rates and charges for Reimbursable Expenses as of the date of the Agreement are:

# GARDEN & ASSOCIATES, LTD. 2022 RATE SCHEDULE

CLASSIFICATION	Hourly <u>Rate</u>
Principal Engineer	\$ 160.00
Project Manager	\$ 154.00
Engineer 1	\$ 142.00
Engineer 2	\$ 129.00
Engineer 3	\$ 120.00
Engineer 4	\$ 110.00
Engineer 5	\$ 103.00
Surveyor 1	\$ 130.00
Surveyor 2	\$ 125.00
Surveyor 3	\$ 107.00
Technician 1	\$ 119.00
Technician 2	\$ 102.00
Technician 3	\$ 97.00
Technician 4	\$ 89.00
Technician 5	\$ 78.00
Technician 6	\$ 63.00
REIMBURSABLE EXPENSES	
Mileage, Per Mile	\$ 0.59
Printing, Per Square Foot	\$ 0.25
Printing - Color, Per Square Foot	\$ 2.00
Copying, Per Sheet	\$ 0.25
Copying - Color, Per Sheet	\$ 1.50
GPS Survey Equipment, Per Hour	\$ 47.00
Robotic Total Station Equipment, Per Hour	\$ 47.00
ATV GPS Mapping, Per Hour	\$ 125.00
Laser Scanning, Per Hour	\$ 155.00
GIS, Mapping Equipment, Per Hour	\$ 10.00

# **OTHER REIMBURSABLE EXPENSES**

- 1 Charges for outside services such as soils and materials testing, fiscal, and legal will be billed at their invoice cost.
- 2 All other direct expenses will be invoiced at cost.

# **ADJUSTMENTS TO FEE SCHEDULE**

1 Rate Schedule effective March 1, 2022 through February 28, 2023. The Rate Schedule shall be subject to change each March 1st of each year.

This is **EXHIBIT G**, consisting of **2** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**dated **November 1, 2022**.

# Insurance

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

# G6.05 Insurance

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

a. Workers' Compensation: Statut
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b. Employer's Liability --

1)	Bodily injury, each accident:	\$1,000,000
2)	Bodily injury by disease, each employee:	\$1,000,000
3)	Bodily injury/disease, aggregate:	\$1,000,000

c. General Liability --

1)	Each Occurrence (Bodily Injury and	
	Property Damage):	\$1,000,000

2) General Aggregate: \$2,000,000

d. Excess or Umbrella Liability --

1)	Per Occurrence:	\$5,000,000
2)	General Aggregate:	\$5,000,000

e. Automobile Liability --Combined Single

Limit (Bodily Injury and Property Damage): \$1,000,000

f. Professional Liability –

1)	Each Claim Made	\$2,000,000
2)	Annual Aggregate	\$2,000,000

g. Other (specify): N/A

2. By Owner:

a. Workers' Compensation: Statutory

	b.	Emp	ployer's Liability	
		1) 2) 3)	Bodily injury, Each Accident Bodily injury by Disease, Each Employee Bodily injury/Disease, Aggregate	\$1,000,000 \$1,000,000 \$1,000,000
	C.	Ger	neral Liability	
		1) 2)	General Aggregate: Each Occurrence (Bodily Injury and Property Damage):	No Aggregate \$ 500,000
	d.	Exce	ess Umbrella Liability	
		1) 2)	Per Occurrence: General Aggregate:	\$2,000,000 \$2,000,000
	e.		omobile Liability – Combined Single it (Bodily Injury and Property Damage):	\$ 500,000
	f.	Oth	er (specify):	N/A
B. Ada	lition	<del>al Ins</del>	<del>ureds:</del>	
<del>1.</del>			owing individuals or entities are to be listed on need as additional insureds:	on Owner's general liability policies
	<del>a.</del>			
			Engineer	
	<del>b.</del>			
			Engineer's Consultant	
	<del>c.</del>		Facility of Const. Have	_
	<del>d.</del>		Engineer's Consultant	
			<del>[other]</del>	
<del>2.</del>	<del>Con</del>	_	the term of this Agreement the Engineer nt to be listed as an additional insured on (e.	
<del>3.</del>			ner shall be listed on Engineer's genera oh 6.05.A.	al liability policy as provided in

This is **EXHIBIT H**, consisting of **1** page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **November 1, 2022**.

# **Dispute Resolution**

Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

H6.08 Dispute Resolution

A. *Mediation*: Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by <u>mediator agreed upon by both parties to this Agreement.</u> Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

This is **EXHIBIT J**, consisting of **2** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**dated **November 1, 2022**.

# **Special Provisions**

The following Articles and Exhibits of the Agreement are amended to include the following agreements of the parties:

# <u>ARTICLE 6 – GENERAL CONSIDERATIONS</u>

In paragraph 6.01 B., add the following sentence:

"Engineer shall not be responsible for discovering the deficiencies in the technical accuracy of Owner-furnished information."

In paragraph 6.01.E.2, amend by adding the following in bold text:

"2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing prior to the effective date of this Agreement, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements."

In paragraph 6.04 B., amend by adding the following in bold text and removing the stricken:

"B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall may jointly develop such protocols."

In paragraph 6.05.A, delete the second sentence.

In paragraph 6.05.B, delete the second sentence.

Delete paragraph 6.05.D.

In paragraph 6.10.B, amend by adding the following in bold text and removing the stricken:

"B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and Owner shall notify appropriate governmental officials if Owner reasonably concludes that doing so is required by applicable Laws or Regulations; and (2) Engineer shall may notify appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations."

In paragraph 6.11.A, amend by adding the following to the end:

"This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."

In paragraph 6.11.B, amend by adding the following to the end:

"and to the extent (if any) required in Exhibit I, "Limitations of Liability."

# Exhibit A – Engineer's Services

Delete Section A1.01 Study and Report Phase in its entirety.

Delete Section A1.06 Post-Construction Phase, in its entirety.

Amend paragraph A2.01 A. by adding the following sentence:

"Listing of an Additional Service in Exhibit C approved by the Owner also serves as written authorization for Engineer to provide Service."

Amend paragraph A2.02 A. by adding the following subparagraphs:

- "9. Perform or provide the following additional services or deliverables:
  - a. Payment for publication of Legal Notices
  - b. Payment of permit application fees
  - c. Land survey for property acquisition
  - d. Reproduction and distribution of Plans, Specifications, and Addenda
  - e. Preparing Record Drawings, and furnishing such Record Drawings to Owner"

# Exhibit B – Owner's Responsibilities

Delete paragraphs B2.01 D.3 and B2.01 D.4.

UNIVERISTY STREET AND BASELINE DRIVE EXTENSIONS PELLA, IOWA

SHEET TITLE FIGURE

DATE

SEPT. 14, 2022

PROJECT NO.: 5022224

SHEET NO

FIG. 1

#### AGREEMENT FOR PROFESSIONAL SERVICES

# CITY OF PELLA, IOWA INDOOR RECREATION CENTER SANITARY SEWER IMPROVEMENTS

THIS AGREEMENT, made this	day of	, 2023 by and bet	ween the CITY OF
PELLA, IOWA, hereinafter referred to	o as the <b>City</b> , party of	the first part, and \	/EENSTRA &
KIMM, INC. of West Des Moines, low	a, a corporation orga	anized and existing	under the laws of
the State of Iowa, hereinafter referre	ed to as the <b>Engineer</b>	s. ·	

**WITNESSETH: THAT WHEREAS**, the City is planning to construct an Indoor Recreation Center located south of University Street extended in the northern portion of the City owned recreation complex property, and

WHEREAS, the new Indoor Recreation Center requires sanitary sewer service, and

**WHEREAS**, the City's sanitary sewer system cannot provide gravity sewer service to the Indoor Recreation Complex, and

**WHEREAS**, the City has evaluated alternatives to provide sanitary sewer service to the Indoor Recreation Center area, and

**WHEREAS**, the City has determined preferred method of providing sanitary sewer service involves the construction of a lift station, force main and sanitary sewer with the lift station located at a site near the new indoor recreation center.

WHEREAS, the City has determined it appropriate to move forward with the design and construction of the extension of the sanitary sewer improvements to serve the Indoor Recreation Center and surrounding areas, with said project to be referred to as the Indoor Recreation Center Sanitary Sewer Improvements or the Project, and

**WHEREAS**, the City desires to retain the Engineers to provide engineering services for the Project.

**NOW, THEREFORE**, it is agreed by and between the parties hereto the City retains the Engineers to provide professional engineering services for the Project subject to the following terms, conditions and stipulations, to wit:

- **1. SCOPE OF PROJECT.** It is understood and agreed the Project shall consist of the following:
  - a. A sanitary lift station located at a site near the indoor recreation center.
  - b. Force main extending from the lift station south to connect to the existing force main along Oskaloosa Street.
  - c. Sanitary sewer extending from the lift station to the new indoor recreation center.

It is understood and agreed the exact scope of the Project can be adjusted and modified by mutual agreement during the performance of the services to best meet the goals and objectives of the Project.

- **2. DESIGN SURVEYS.** The Engineers shall make topographic and other surveys as may be required for design of the Project and for preparation of plans and specifications.
- **3. DESIGN CONFERENCES**. The Engineers shall attend such design conferences with the City as may be necessary to make decisions as to details of design of the Project.
- 4. PLANS AND SPECIFICATIONS. The Engineers shall prepare such detailed plans and specifications as are necessary for competitive bidding and construction of the Project. The specifications shall describe, in detail, the work to be done, materials to be used and the construction methods to be followed. Five (5) sets of final plans and specifications shall be submitted to the City.
- CONSTRUCTION PERMITS. The Engineers shall be responsible to assist the City in obtaining a construction permit from The Iowa Department of Natural Resources for construction of the project.
- 6. COST ESTIMATE. The Engineers shall prepare an estimated cost for the Project based upon the design developed. If the Engineers anticipate that the actual Project cost will exceed the estimated Project cost, the Engineers shall immediately notify the City. The Engineers shall not be responsible to the City for any variation between the estimated Project cost and the actual cost of the construction contract based on competitive bids.
- PROGRESS REPORTS. During the design phase the Engineers shall confer with the City every thirty (30) days to report Project status. A progress report shall be submitted every thirty (30) days. Such progress reports shall be in a form suitable for use by the City as an informational item.

- **8. EASEMENTS.** The Engineers shall determine the extent of permanent and temporary easements necessary construction of the Project. The Engineers shall prepare appropriate descriptions and plats for both permanent easements and temporary construction easements. The Scope of Services does not include the actual work associated the with acquisition of property interests.
- **9. COORDINATION.** During the design of the project the Engineer shall coordinate with the City's consultants working on the design of the indoor recreation center.
- PLANS AND SPECIFICATIONS FOR BIDDERS. The Engineers shall provide and distribute plans and specifications for bidders. In accordance with the provisions of the Code of lowa the plans and specifications are to be provided and distributed to the bidders at no cost. In accordance with the provisions of the Code of lowa the City shall reimburse the Engineers the actual cost for the plans and specifications and distribution thereof. The cost of plans and specifications and distribution of plans and specifications shall be in addition to the fees set forth herein for enumerated services.
- 10. BID OPENING AND AWARD OF CONTRACT. The Engineers shall have a representative present when bids and proposals are opened and shall prepare a tabulation of bids for the City and shall advise the City in making the award. After the award is made, the Engineers shall assist in the preparation of necessary contract documents, transmit them to the contractor for execution and deliver them to the City.
- **11. GENERAL SERVICES DURING CONSTRUCTION**. The general services portion of the construction management services shall include the following:
  - a. Attend and conduct preconstruction conference.
  - b. Attend conferences with the City, contractor and utility companies.
  - c. Assist in interpretation of plans and specifications.
  - d. Process and certify payment estimates of the contractor to the City.
  - e. Provide written monthly progress reports to the City showing construction progress on the Project.
  - f. Review shop drawings and data of manufacturers.
  - g. Make routine and special trips to the Project site as required.
  - h. Coordinate work of testing laboratories.

- i. Consult with and advise the City and prepare routine change orders as required.
- j. Make final review after construction is completed to determine if the construction complies with the plans and specifications, and certify that the reviews were made and that, to the best of the knowledge and belief of the Engineers, the work under the contract has been substantially completed in accordance with the plans and specifications.
- k. Provide the City with one (1) reproducible set of plans and three (3) sets of blueline prints showing the final as-built construction.
- **12. RESIDENT REVIEW**. Resident review services are understood to include the detailed observation and review of the work of the contractor and materials to assure compliance with the plans and specifications for the Project.

If requested to do so by the City, the Engineers shall provide resident review by assigning personnel to the Project for such periods as are reasonably required to ensure proper review of construction work. The personnel assigned shall be subject to the agreement of the parties hereto.

- **13. COMPLETION**. The preliminary and final design for the utility improvements shall be completed as follows:
  - a. Design and preparation of plans and specifications: August 15, 2023.
  - b. Construction services: To be determined based on schedule of construction contract.
- **14. COMPENSATION**. The City shall compensate the Engineers for services under this Agreement as follows:
  - a. The fee for services for design, preparation of plans and specifications, permitting and bidding services shall be on the basis of the Engineers standard hourly fees with a maximum not to exceed fee of Sixty Thousand and 00/100 Dollars (\$60,000.00).
  - b. The fee for general services during construction, resident review and final review shall be on the basis of the Engineers standard hourly fees with a maximum not to exceed fee of Fifty-eight Thousand and 00/100 (\$58,000.00).
- **15. METHOD OF PAYMENT**. The Engineers shall submit monthly invoices for the actual costs for Project services completed to the end of the invoice period. The monthly invoices of the Engineers shall show the total fees due, the amounts paid to date and the balance of the amount of the contract.

Invoices shall be due and payable upon receipt and shall be paid by the City within thirty

- (30) days of the date of receipt of an approvable invoice.
- **16. NOTICE TO PROCEED.** Approval of this Agreement by the City shall constitute Notice to Proceed.
- 17. TERMINATION OF AGREEMENT. If, through any cause, the Engineers shall fail to fulfill in a timely and proper manner the obligations under this Agreement, the City shall have the right to terminate this Agreement by specifying the date of termination in a written notice to the Engineers at least ten (10) working days before the termination date. In this event, the Engineers shall be entitled to just and equitable compensation for any satisfactory work completed.
- **18. ASSIGNABILITY**. The Engineers shall not assign any interest in this Agreement and shall not transfer any interest in the same without prior written consent of the City.
- 19. TITLE TRANSFER. The products of this Agreement shall be the property of the City. Nothing in this Agreement shall be construed as restricting the right of the Engineers to retain in their possession copies of the products of this Agreement.
  - The Engineers' reuse of the exact design developed under this Agreement is prohibited unless authorized by the City. The City may reuse the design, but in doing so, shall assume all liability for the design.
- 20. CONFIDENTIALITY. No reports, information and/or data given to or prepared or assembled by the Engineers under this Agreement shall be made available to any individual or organization by the Engineers without the prior written approval of the City. The Engineers shall have the right to communicate directly with IDNR during the progress of the Agreement to achieve a timely review and approval of the Project.

- 21. INDEMNIFICATION. The Engineers shall indemnify and hold the City harmless from and against all liabilities, claims, debts, taxes, obligations, costs and expenses (including reasonable attorney's fees, court costs and costs of appeal) that the City may incur or sustain as a result of any breach of this Agreement or negligent or other wrongful conduct in the performance of this Agreement by the Engineers. If a suit, action, arbitration or other proceeding is instituted by the City in connection with any controversy arising out of this Agreement or to interpret or enforce any rights under this Agreement, the City, as the prevailing party, shall be entitled to recover from the non-prevailing party all attorney fees, costs, expert witness fees, and litigation expenses incurred by the City, including those incurred on appeal.
- **22. INSURANCE**. The Engineer shall furnish the City with certificates of insurance by insurance companies licensed to do business in the State of Iowa, upon which the Owner is endorsed as an additional named insured, in the following limits. Except as noted, the coverage is on an occurrence basis.

General Liability*	\$1,000,000/\$2,000,000
Automobile Liability	\$1,000,000
Excess Liability (Umbrella)*	\$8,000,000/\$8,000,000
Workers' Compensation, Statutory Benefits Coverage B	\$1,000,000
Professional Liability**,***	\$3,000,000/\$3,000,000

<sup>\*</sup>Occurrence/Aggregate

- 24. ERRORS OR DEFICIENCIES. The Engineers shall, without additional compensation, revise any materials prepared under this Agreement if it is determined that the Engineers are responsible for any errors or deficiencies. This provision shall not apply to changes in the Project or Project materials which may result from causes or information which the Engineers could not have reasonably ascertained during the Project design, such as hidden or latent defects or conditions.
- 25. MODIFICATIONS TO AGREEMENT. This Agreement may be modified upon written agreement by the City and the Engineers. In the event that any additional services are required of the Engineers that are over and above those described in this Agreement, the services shall not be done without express prior written agreement between the City and the Engineers. The scope of additional services, and fees to be charged, shall be specified in any such written authorization. Additional services to be provided by the Engineers after completion of the work set forth under this Agreement may include general services during construction, resident review, start-up services, preparation of an instruction and/or operation and maintenance manual, supervision of operation or other services that may be mutually agreed upon by the City and Engineers.

<sup>\*\*</sup>The Owner is not to be named as an additional insured

<sup>\*\*\*</sup>Claims made basis

- **26. LEGAL SERVICES**. The City shall provide the services of an attorney experienced in legal matters pertaining to this type of project. The Engineers shall cooperate with said attorney and shall comply with his requirements as to form of contract documents and procedures relative to them.
- **27. COMPLETENESS OF CONTRACT.** This document contains all terms and conditions of this Agreement. Any alterations shall be invalid unless made in writing, signed by both parties and incorporated as an amendment to this Agreement.
- 28. GENERAL COMPLIANCE. In the conduct of the professional services contemplated hereunder, the Engineers shall comply with applicable state, federal, and local law, rules, and regulations, technical standards, or specifications issued by the City and other governmental authorities with jurisdiction over the work. The Engineers must qualify for and obtain any required licenses prior to commencement of work, including any professional licenses necessary to perform work within the State of Iowa.
- **29. STANDARD OF CARE.** Services provided by the Engineers under this Agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.
- **30. GOVERNING LAW.** This Agreement shall be governed by and construed pursuant to the laws of the State of Iowa and any claim or dispute which may arise out of this Agreement shall be heard in a court of competent jurisdiction in Marion County, Iowa, unless otherwise agreed by the parties.

The undersigned do hereby covenant and state that this Agreement is executed in duplicate as though each were an original and that there are no oral agreements that have not been reduced to writing in this instrument.

It is further covenanted and stated that there are no other considerations or monies contingent upon or resulting from the execution of this Agreement nor have any of the above been implied by or for any party to this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have hereunto subscribed their names on the date first written above.

CITY OF PELLA, IOWA	ATTEST:
ByMayor	ByCity Clerk
VEENSTRA & KIMM, INC.	ATTEST:
By Elle Jen 2	By Path, last-Roth

# VEENSTRA & KIMM, INC. HOURLY RATES BY EMPLOYEE CLASSIFICATION 2022 - 2023

	ċ400.00
Management I	
Management II	
Process Engineer I	
Client Services I	
Client Services II	
Client Services III	100.00
Client Services IV	
Client Services V	75.00
IT I	165.00
IT II	110.00
IT III	75.00
Funding Specialist I	118.00
Funding Specialist II	
Engineer I-A	
Engineer I-B	
Engineer I-C	
Engineer I-D.	
Engineer II-A	
Engineer II-B	
Engineer III-A	
Engineer III-B	
Engineer III-C	
Engineer IV	
Engineer V	
Engineer VI	
Engineer VII	
Engineer VIII	
Engineer IX	
Engineer X	
Engineer XI	
Engineer XII	
Design Technician I	
Design Technician II	
Design Technician III	
Architect I	
Architect II	
Architect III	
Planner I	
Planner II	
Planner III	
Drafter IA	
Drafter IB	
Drafter II	
Drafter III	
Drafter IV	85.00

Drafter V 75.00	
Drafter VI	
Drafter VII	
Clerical I	
Clerical II	
Clerical III	
Clerical IV	
Clerical V	
Construction Engineer I	
Construction Engineer II	
Construction Engineer III	
Construction Engineer IV	
Surveyor I	
Surveyor II	
Surveyor II	
Technician I	
Technician II	
Technician III	
Technician IV	
Technician V	
Technician VI	
Technician VII	
Technician VIII	
Technician IX	
Building Inspector I	
Building Inspector I-A	
Building Inspector II	
Building Inspector III	
Accounting I	
Accounting II	
Accounting III	
Accounting IV	
Accounting V 75.00	
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