



PROFESSIONAL SERVICES AGREEMENT

For

**Downer Place, Galena Boulevard and New York Street
Downtown Two-Way Conversion (One-Way to Two-Way)**

Phase II – Contract Plans, Specifications and Estimates

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May 11, 2016

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THIS **AGREEMENT** is between THE CITY OF AURORA (hereafter "CLIENT") and HR GREEN, INC. (hereafter "COMPANY").

1.0 Project Understanding

1.1 General Understanding

CLIENT intends to convert Downer Place from one-way to two-way traffic, between Broadway Avenue and Lincoln Avenue. The project will provide for the signing and pavement marking necessary to accommodate two-way traffic along Downer Place within this segment. Associated traffic signal modifications at the intersection of Downer Place and Broadway Avenue will also be provided.

CLIENT also intends to convert both Galena Boulevard (currently one-way eastbound) and New York Street (currently one-way westbound) to two-way traffic, between Lake Street and Broadway Avenue. The project will provide for the signing and pavement marking necessary to accommodate two-way traffic along Galena Boulevard and New York Street within these segments. Associated traffic signal modifications at the following seven (7) intersections will also be provided:

- Galena Boulevard at Lake Street
- Galena Boulevard at River Street
- Galena Boulevard at Stolp Avenue
- Galena Boulevard at Broadway Avenue
- New York Street at Lake Street
- New York Street at River Street
- New York Street at Broadway Avenue

COMPANY is under contract (Purchase Order #283937, dated August 11, 2016) for the Phase II engineering services required for the conversion of Downer Place, Galena Boulevard and New York Street from one-way to two-way traffic within the segments described above. These services include, but are not limited to, the preparation of Intersection Design Studies (IDS's), contract plans, specifications and estimates. Only local funding is being utilized for the project. Since there is no State and/or Federal funding involved, the project will be on a local letting. Due to the proposed work at Lake Street and Broadway Avenue, those five (5) IDS's as well as the plans and specifications require review and approval by the Illinois Department of Transportation (IDOT). It was assumed that no Phase I studies would be required for this project.

Subsequent to the authorization of the original agreement, CLIENT requested that COMPANY include the conversion of Broadway Avenue from a four-lane to a three-lane cross-section between Benton Street and New York Street in the aforementioned plans, specifications and estimates. Due to the proposed work at the intersection of Benton Street and Broadway Avenue, CLIENT's request necessitated the preparation of one (1) additional IDS requiring IDOT review and approval.

The initial IDS's were submitted to IDOT for review on October 13, 2016. As a result of that initial review, IDOT requested updated 12-hour traffic counts and projections for the six (6) intersections involving Lake Street and Broadway Avenue. Coordination and execution of the additional traffic counts and analyses requested by IDOT was not included in the scope of the original agreement. The traffic counts used in the initial IDS

were provided by CLIENT, courtesy of their Centralized Traffic Management System (CTMS).

CLIENT has recently requested that the conversion of Downer Place from one-way to two-way traffic, between Broadway Avenue and Lincoln Avenue, be advanced as a separate, stand-alone project. CLIENT desires that this portion of the project be permitted ahead of the rest so the signing, pavement marking and traffic signal work can coincide with CLIENT's sewer construction along Downer Place during 2017. The remainder of the traffic project will be let and constructed in 2018.

In general, this supplemental agreement governs the following tasks requested by CLIENT, which were not included in the scope of the original agreement:

- Inclusion of Broadway Avenue lane reconfiguration in the plans, specifications and estimates;
- IDS for Broadway Avenue at Benton Street (due to lane reconfiguration);
- Traffic counts at six (6) intersections (due to IDOT comments), as well as subsequent coordination of revised 2040 projections with the Chicago Metropolitan Agency for Planning (CMAP) and redistribution of design traffic throughout the project street network;
- Permitting of Downer Place two-way conversion as a separate, stand-alone project; and
- Additional meetings, coordination and public outreach.

For the purposes of this supplemental agreement, it is assumed that the Phase II engineering services will conclude on or before December 31, 2017.

1.2 Design Criteria/Assumptions

The following design guidelines will apply to this project:

- A. Manual on Uniform Traffic Control Devices (MUTCD);
- B. IDOT District One, Traffic Signal Design Guidelines;
- C. City of Aurora, Standard Specifications for Improvements (as applicable);
- D. IDOT Bureau of Local Roads and Streets (BLR) Manual (as applicable); and
- E. IDOT Bureau of Design and Environment (BDE) Manual (as applicable).

2.0 Scope of Services

The CLIENT agrees to employ COMPANY to perform the following services:

2.1 Downer Place Permit

A. Intersection Design Studies

COMPANY will prepare an interim IDS for the intersection of Downer Place at Broadway Avenue. The interim IDS and supporting documentation will demonstrate intersection performance with two-way traffic on both legs of Downer Place and the existing lane configuration on Broadway Avenue, plus a southbound left-turn lane. The IDS and supporting documentation will be submitted to CLIENT and IDOT for review and approval at the 90 percent and 100 percent milestones. It is assumed that only two (2) submittals will be required to obtain CLIENT and IDOT approval.

B. Design Exception Documentation

BDE 3100 (Design Exception Request Project Identification) will be completed for each design element that does not meet BDE policy.

C. Preparation of Contract Plans, Specifications and Estimates

COMPANY will prepare separate contract plans, specifications and estimates for the conversion of Downer Place from one-way to two-way traffic, between Broadway Avenue and Lincoln Avenue. The plans, specifications and estimates will be submitted to CLIENT and IDOT for review and approval at the 90 percent and 100 percent milestones. It is assumed that only two (2) submittals will be required to obtain CLIENT and IDOT approval. The plans will not be submitted to any other agency.

1. Signing and Pavement Marking Plans

The additional sheets shown below will need to be generated and developed in order to advance the Downer Place two-way conversion as a separate, stand-alone project. It is assumed that the signing and pavement marking plan sheet previously prepared for the overall project will remain intact with only minor modifications.

Item	No. of Sheets
Cover Sheet	1
General Notes	1
Summary of Quantities	1
Sign Schedule*	1
Pavement Marking Schedule*	1
Total No. of Additional Sheets	5

*Item includes the tabulation and checking of all applicable pay items. Actual schedules will not be provided for Downer Place, due to size.

It is assumed that maintenance of traffic during construction will be handled via the various traffic control and protection details within the IDOT Highway Standards. Specific maintenance of traffic plans and/or details will not be provided for this project and are not included in this agreement.

2. Traffic Signal Modification Plans

No additional traffic signal sheets will need to be generated and developed. It is assumed that the traffic signal modification plans previously prepared for this intersection for the overall project will suffice.

3. Specifications

COMPANY will prepare the following specifications (as applicable) for inclusion in the contract documents:

- a. Supplemental Specifications and Recurring Special Provisions;
- b. Project Specific Special Provisions;
- c. IDOT District One Traffic Signal Specifications;
- d. BLR Special Provisions; and
- e. BDE Special Provisions.

4. Estimates

COMPANY will prepare the following estimates for the project and submit to CLIENT for review and approval at the 90 percent and 100 percent milestones:

- a. Engineer's Opinion of Probable Cost (EOPC); and
- b. Estimate of Time (EOT) needed for construction of the proposed improvements.

5. Quality Assurance and Quality Control

COMPANY will provide Quality Assurance and Quality Control (QA/QC) in accordance with COMPANY's current Quality Manual (QM), which outlines processes for project planning, including design input, outputs, review and verification. The QM also outlines internal processes, such as standardization, internal project audits, selection and rating of subconsultants, and monitoring of deliverables.

COMPANY will perform the following QA/QC reviews prior to each of the designated milestone submittals:

- a. Quality Control Check – Project Manager;
- b. Peer Review – Senior Engineer not involved with the project on a daily basis; and
- c. Constructability Review – Construction Personnel.

2.2 Galena Boulevard and New York Street

A. Intersection Design Studies

COMPANY will revise the IDS and supporting documentation for the following seven (7) intersections: Galena Boulevard at Lake Street, Galena Boulevard at River Street, Galena Boulevard at Stolp Avenue, Galena Boulevard at Broadway Avenue, New York Street at Lake Street, New York Street at River Street and New York Street at Broadway Avenue. Each IDS and the supporting documentation will be revised per the updated traffic data and IDOT comments, then resubmitted to CLIENT and IDOT for review and approval. It is assumed that only one (1) more submittal will be required to obtain CLIENT and IDOT approval.

B. Design Exception Documentation

Each BDE 3100 (Design Exception Request Project Identification) will be updated for each design element that does not meet BDE policy.

C. Preparation of Contract Plans, Specifications and Estimates

As a result of the comments provided by IDOT, COMPANY will revise the signing and pavement marking plans, traffic signal modification plans, specifications, EOPC and EOT. COMPANY will continue to provide QA/QC in accordance with COMPANY's current QM as defined above in Section 2.1(C)(5).

2.3 Meetings and General Coordination

A. Two (2) persons from COMPANY will attend the following meetings:

1. One (1) public information meeting;
2. Two (2) meetings with CLIENT at the Aurora City Hall to discuss the plan in progress and/or any CLIENT review comments; and
3. One (1) meeting at IDOT to discuss the plan in progress and/or any IDOT review comments.
4. Two (2) total meetings with either Hollywood Casino and/or Paramount Theatre to discuss event traffic flow and valet operations.

This item also includes meeting preparation, the composition of meeting minutes for distribution to meeting attendees, and travel time to and from the meetings.

B. COMPANY will conduct general coordination throughout the duration of the project with CLIENT. This item includes, but is not limited to: letters, telephone, e-mail correspondence, and filing of information.

C. COMPANY will prepare exhibits for the public information meeting, which will consist of an aerial image depicting the proposed lane configurations on New York Street, Galena Boulevard, Broadway Avenue and Downer Place.

2.4 Administration

COMPANY will conduct general project administration throughout the **extended** duration of the project, including management and oversight of the project team; periodic review of the project execution; document control; scope, schedule and budget monitoring; billing and invoicing; contract file management; and preparation of monthly progress reports. At the time the original agreement was executed, it was anticipated that the project would be complete in March 2017.

COMPANY will also conduct general administrative tasks associated with the development and execution of this supplemental agreement.

2.5 Broadway Avenue Lane Reconfiguration

A. Intersection Design Studies

COMPANY will prepare an IDS for the intersection of Benton Street at Broadway Avenue. The IDS and supporting documentation will be submitted to CLIENT and IDOT for review and approval at the 90 percent and 100 percent milestones. It is

assumed that only two (2) submittals will be required to obtain CLIENT and IDOT approval. IDS preparation will include the following:

1. Utilizing existing traffic count information provided by CLIENT, COMPANY will solicit 2040 average daily traffic (ADT) projections from CMAP. Based on the 2040 ADT projections provided by CMAP, COMPANY will determine the anticipated 2040 design hour volumes (DHV's), including turning movements for the intersection.
2. Using the 2040 DHV's, COMPANY will complete existing and 2040 capacity analyses for both the AM and PM peak periods. The capacity analyses will be completed using the Highway Capacity Software (HCS).
3. Based on the results of the capacity analyses, COMPANY will develop proposed revisions to the existing intersection channelization to accommodate the conversion from one-way to two-way traffic.
4. COMPANY will prepare IDS exhibits depicting the existing intersection geometry, proposed channelization, capacity analysis results and general design considerations using the standard IDOT format. Autoturn simulations of design vehicle (single-unit truck) turning movements will be included with the IDS. Vertical profile information for the existing roadways will not be included.
5. BDE 3100 (Design Exception Request Project Identification) will be completed for each design element that does not meet BDE policy.

B. Preparation of Contract Plans, Specifications and Estimates

COMPANY will prepare contract plans, specifications and estimates for the conversion of Broadway Avenue from a four-lane to a three-lane cross-section, between Benton Street and New York Street. The plans, specifications and estimates will be submitted to CLIENT and IDOT for review and approval at the 90 percent and 100 percent milestones. It is assumed that only two (2) submittals will be required to obtain CLIENT and IDOT approval. The plans will not be submitted to any other agency.

1. Signing and Pavement Marking Plans

COMPANY will prepare signing and pavement marking plans to ensure proper traffic operations along Broadway Avenue. The following will be provided as part of the signing and pavement marking plans:

Item	No. of Sheets
Cover Sheet	0
Index of Sheets / List of Highway Standards	0
General Notes	0
Summary of Quantities	0

Sign Schedule*	0
Pavement Marking Schedule*	0
Signing and Pavement Marking Plans	1
Miscellaneous Details	0
Total No. of Sheets	1

*Item includes the tabulation and checking of all applicable pay items.

It is assumed that maintenance of traffic during construction will be handled via the various traffic control and protection details within the IDOT Highway Standards. Specific maintenance of traffic plans and/or details will not be provided for this project and are not included in this agreement.

2. Traffic Signal Modification Plans

COMPANY will prepare traffic signal modification plans for the intersection of Benton Street and Broadway Avenue. In general, the modifications will consist of phasing changes and the relocation or replacement of traffic signal heads and their cables. It is assumed that the mast arm foundations will not need to be moved. It is also assumed that modifications to the pedestrian equipment will not be required. Neither an interconnect plan nor an interconnect schematic will be provided. System re-optimization will be provided by CLIENT through its CTMS. Temporary traffic signal plans will also not be provided. The following will be provided as part of the traffic signal modification plans:

Item	No. of Sheets
Standard Traffic Signal Design Details (District One)	0
Traffic Signal Modification Plans	1
Cable Plans, Phase Designation Diagrams and Schedules of Quantities*	1
Miscellaneous Details	0
Total No. of Sheets	2

*Item includes the tabulation and checking of all applicable pay items.

3. Specifications

COMPANY will prepare the following specifications (as applicable) for inclusion in the contract documents:

- a. Supplemental Specifications and Recurring Special Provisions;

- b. Project Specific Special Provisions;
- c. IDOT District One Traffic Signal Specifications;
- d. BLR Special Provisions; and
- e. BDE Special Provisions.

4. Estimates

COMPANY will prepare the following estimates for the project and submit to CLIENT for review and approval at the 90 percent and 100 percent milestones:

- a. EOPC; and
- b. EOT needed for construction of the proposed improvements.

5. Quality Assurance and Quality Control

COMPANY will provide Quality Assurance and Quality Control (QA/QC) in accordance with COMPANY's current Quality Manual (QM), which outlines processes for project planning, including design input, outputs, review and verification. The QM also outlines internal processes, such as standardization, internal project audits, selection and rating of subconsultants, and monitoring of deliverables.

COMPANY will perform the following QA/QC reviews prior to each of the designated milestone submittals:

- a. Quality Control Check – Project Manager;
- b. Peer Review – Senior Engineer not involved with the project on a daily basis; and
- c. Constructability Review – Construction Personnel.

2.6 Traffic Counts and Analyses

A. COMPANY will obtain current 12-hour traffic counts with turning movements at the following six (6) intersections under IDOT jurisdiction:

- New York Street at Lake Street;
- New York Street at Broadway Avenue;
- Galena Boulevard at Lake Street;
- Galena Boulevard at Broadway Avenue;
- Downer Place at Broadway Avenue; and
- Benton Street at Broadway Avenue.

B. Utilizing the new traffic count information, COMPANY will solicit updated 2040 ADT projections from CMAP.

C. Based on the updated 2040 ADT projections provided by CMAP, COMPANY will update the anticipated 2040 DHV's, including turning movements for each intersection.

3.0 Deliverables Included in this Contract

The following deliverables will be generated for this project and are included in this agreement:

- A. New traffic counts at six (6) IDOT intersections (12-hours with turning movements);
- B. Interim IDS, HCS and BDE 3100 for Downer Place at Broadway Avenue;
- C. Separate, stand-alone plans, specifications and estimates for Downer Place two-way conversion;
- D. Revised IDS, HCS and BDE 3100 for all nine (9) project intersections;
- E. Revised plans, specifications and estimates for New York Street two-way conversion, Galena Boulevard two-way conversion and Broadway Avenue lane reconfiguration; and
- F. Aerial exhibits for the public information meeting.

4.0 Items not included in Agreement/Supplemental Services

The following items are not included as part of this agreement:

- A. Plat of Highways;
- B. Traffic signal modifications other than those required to accommodate the improvements defined herein;
- C. New traffic signal installations;
- D. Temporary traffic signal plans;
- E. Interconnect plans and/or schematics;
- F. Suggested maintenance of traffic plans;
- G. Utility company coordination;
- H. Accident analyses;
- I. Phase I reports and/or environmental coordination;
- J. Preparation of contractor bid documents and/or contractor bid review; and
- K. Construction layout and/or construction observation.

Supplemental services not included in the agreement can be provided by COMPANY under separate agreement, if desired.

5.0 Services by Others

The field work associated with the traffic counts will be provided by Terra Engineering, LTD of Chicago, Illinois.

6.0 Client Responsibilities

No additional CLIENT responsibilities beyond those already listed above have been included in this agreement.

7.0 Professional Services Fee

7.1 Fees

The fee for services will be based on COMPANY standard hourly rates current at the time the agreement is signed. These standard hourly rates are subject to change upon 30 days' written notice. Non salary expenses directly attributable to the project such as: (2) identifiable communication expenses; (3) identifiable reproduction costs applicable to the work; and (4) outside services will be charged in accordance with the rates current at the time the service is done.

7.2 Invoices

Invoices for COMPANY's services shall be submitted, on a monthly basis. Invoices shall be due and payable within 45 days after approval by the City Council, and in accordance with the Illinois Prompt Payment Act. Retainer, if applicable, shall be credited on the final invoice.

7.3 Extra Services

Any service required but not included as part of this contract shall be considered extra services. Extra services will be billed on a Time and Material basis with prior approval of the CLIENT.

7.4 Exclusion

This fee does not include attendance at any meetings or public hearings other than those specifically listed in the Scope of Services. These service items are considered extra and are billed separately on an hourly basis.

7.5 Payment

The CLIENT AGREES to pay COMPANY on the following basis:

Time and Materials Not to Exceed, as detailed in Exhibit A.

8.0 Terms and Conditions

The following Terms and Conditions are incorporated into this AGREEMENT and made a part of it.

8.1 Standard of Care

Services provided by COMPANY under this AGREEMENT will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing at the same time and in the same or similar locality and in accordance with applicable federal, state and local laws and the rules and regulations of the Illinois Environmental Protection Agency in force at time of this agreement.

8.2 Entire Agreement

This Agreement, and its attachments, constitutes the entire understanding between CLIENT and COMPANY relating to professional engineering services. Any prior or contemporaneous agreements, promises, negotiations, or representations not expressly set forth herein are of no effect. Subsequent modifications or amendments to this Agreement shall be in writing and signed by the parties to this Agreement.

8.3 Time Limit and Commencement of Work

This AGREEMENT must be executed within ninety (90) days to be accepted under the terms set forth herein. The work will be commenced immediately upon receipt of this signed Agreement.

8.4 Suspension of Services

If the Project or the COMPANY'S services are suspended by the CLIENT for more than thirty (30) calendar days, consecutive or in the aggregate, over the term of this Agreement, the COMPANY shall be compensated for all services performed and reimbursable expenses incurred prior to the receipt of notice of suspension. In addition, upon resumption of services, the CLIENT shall compensate the COMPANY for expenses incurred as a result of the suspension and resumption of its services, and the COMPANY'S schedule and fees for the remainder of the Project shall be equitably adjusted.

If the COMPANY'S services are suspended for more than ninety (90) days, consecutive or in the aggregate, the COMPANY may terminate this Agreement upon giving not less than five (5) calendar days' written notice to the CLIENT.

If the CLIENT is in breach of this Agreement, the COMPANY may suspend performance of services upon five (5) calendar days' notice to the CLIENT. The COMPANY shall have no liability to the CLIENT, and the CLIENT agrees to make no claim for any delay or damage as a result of such suspension caused by any breach of this Agreement by the CLIENT.

8.5 Book of Account

COMPANY will maintain books and accounts of payroll costs, travel, subsistence, field, and incidental expenses for a period of five (5) years. Said books and accounts will be available at all reasonable times for examination by CLIENT at the corporate office of COMPANY during that time.

8.6 Insurance

CLIENT reserves the right to review and adjust the insurance carried by COMPANY conditioned upon a mutual determination of changes in risk exposures.

8.7 Termination or Abandonment

Either party has the option to terminate this Agreement. In the event of failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, then the obligation to provide further services under this Agreement may be terminated upon seven days written notice. If any portion of the work is terminated or abandoned by CLIENT, the provisions of this Schedule of Fees and Conditions in regard to compensation and payment shall apply insofar as possible to that portion of the work not terminated or abandoned.

8.8 Waiver

Either party's waiver of any term, condition, or covenant or breach of any term, condition, or covenant, shall not constitute a waiver of any other term, condition, or covenant, or the breach thereof.

8.9 Severability

If any provision of this Agreement is declared invalid, illegal, or incapable of being enforced by any Court of competent jurisdiction, all of the remaining provisions of this Agreement shall nevertheless continue in full force and effect, and no provision shall be deemed dependent upon any other provision unless so expressed herein.

8.10 Successors and Assigns

All of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns, provided, however, that no assignment of this Agreement shall be made without written consent of the parties to this Agreement.

8.11 Third-Party Beneficiaries

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the CLIENT or the COMPANY. The COMPANY'S services under this Agreement are being performed solely for the CLIENT'S benefit, and no other party or entity shall have any claim against the COMPANY because of this Agreement or the performance or nonperformance of services hereunder. The CLIENT and COMPANY agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this project to carry out the intent of this provision.

8.12 Governing Law and Jurisdiction

The CLIENT and the COMPANY agree that this Agreement and any legal actions concerning its validity, interpretation and performance shall be governed by the laws of the State of Illinois without regard to any conflict of laws provisions, which may apply the laws of other jurisdictions.

It is further agreed that any legal action between the CLIENT and the COMPANY arising out of this Agreement or the performance of the services shall be brought in a court of competent jurisdiction in Kane County Circuit Court.

8.13 Dispute Resolution

In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the CLIENT and COMPANY agree that all disputes between them arising out of or relating to this Agreement shall first be attempted to be resolved with a meeting of the managers in charge of the project.

8.14 Ownership of Instruments of Service

All reports, plans, specifications, field data, field notes, laboratory test data, calculations, estimates and other documents including all documents on electronic media prepared by COMPANY as instruments of service shall be the property of CLIENT. COMPANY shall retain these records for a period of five (5) years following completion/submission of the records, during which period they will be made available to the CLIENT at all reasonable times.

8.15 Reuse of Documents

All project documents including, but not limited to, plans and specifications furnished by COMPANY under this project are intended for use on this project only. Any reuse, without specific written verification or adoption by COMPANY, shall be at the CLIENT's sole risk, and CLIENT shall defend, indemnify and hold harmless COMPANY from all claims, damages and expenses arising out of or resulting therefrom.

Under no circumstances shall delivery of electronic files for use by the CLIENT be deemed a sale by the COMPANY, and the COMPANY makes no warranties, either express or implied, of merchantability and fitness for any particular purpose in the event they are altered in any manner by the CLIENT. In no event shall the COMPANY be liable for indirect or consequential damages as a result of the CLIENT's use or reuse of the electronic files.

8.16 Failure to Abide by Design Documents or To Obtain Guidance

The CLIENT agrees that it would be unfair to hold COMPANY liable for problems that might occur should COMPANY'S plans, specifications or design intents not be followed, or for problems resulting from others' failure to obtain and/or follow COMPANY'S guidance with respect to any errors, omissions, inconsistencies, ambiguities or conflicts which are detected or alleged to exist in or as a consequence of implementing COMPANY'S plans, specifications or other instruments of service. Accordingly, the CLIENT waives any claim against COMPANY, and agrees to defend, indemnify and hold COMPANY harmless from any claim for injury or losses that results from failure to follow COMPANY'S plans, specifications or design intent, or for failure to obtain and/or follow COMPANY'S guidance with respect to any alleged errors, omissions, inconsistencies, ambiguities or conflicts contained within or arising as a result of implementing COMPANY'S plans, specifications or other instruments of services. The CLIENT also agrees to compensate COMPANY for any time spent and expenses incurred remedying CLIENT's failures according to COMPANY'S prevailing fee schedule and expense reimbursement policy.

8.17 Opinion of Probable Construction Cost

COMPANY shall submit to the CLIENT an opinion of probable cost required to construct work recommended, designed, or specified by COMPANY, if required by CLIENT. COMPANY is not a construction cost estimator or construction contractor, nor should COMPANY'S rendering an opinion of probable construction costs be considered equivalent to the nature and extent of service a construction cost estimator or construction contractor would provide. This requires COMPANY to make a number of assumptions as to actual conditions that will be encountered on site; the specific decisions of other design professionals engaged; the means and methods of construction the contractor will employ; the cost and extent of labor, equipment and materials the contractor will employ; contractor's techniques in determining prices and market conditions at the time, and other factors over which COMPANY has no control. Given the assumptions which must be made, COMPANY

cannot guarantee the accuracy of his or her opinions of cost, and in recognition of that fact, the CLIENT waives any claim against COMPANY relative to the accuracy of COMPANY'S opinion of probable construction cost.

8.18 Design Information in Electronic Form

Because electronic file information can be easily altered, corrupted, or modified by other parties, either intentionally or inadvertently, without notice or indication, COMPANY reserves the right to remove itself from of its ownership and/or involvement in the material from each electronic medium not held in its possession. CLIENT shall retain copies of the work performed by COMPANY in electronic form only for information and use by CLIENT for the specific purpose for which COMPANY was engaged. Said material shall not be used by CLIENT or transferred to any other party, for use in other projects, additions to this project, or any other purpose for which the material was not strictly intended by COMPANY without COMPANY's expressed written permission. Any unauthorized use or reuse or modifications of this material shall be at CLIENT'S sole risk. Furthermore, the CLIENT agrees to defend, indemnify, and hold COMPANY harmless from all claims, injuries, direct damages, losses, and expenses arising out of the modification or reuse of these materials.

The CLIENT recognizes that designs, plans, and data stored on electronic media including, but not limited to computer disk, magnetic tape, or files transferred via email, may be subject to undetectable alteration and/or uncontrollable deterioration. The CLIENT, therefore, agrees that COMPANY shall not be liable for the completeness or accuracy of any materials provided on electronic media after a 30 day inspection period, during which time COMPANY shall correct any errors detected by the CLIENT to complete the design in accordance with the intent of the contract and specifications. After 40 days, at the request of the CLIENT, COMPANY shall submit a final set of sealed drawings, and any additional services to be performed by COMPANY relative to the submitted electronic materials shall be subject to separate AGREEMENT. The CLIENT is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by the COMPANY and electronic files, the signed or sealed hard-copy construction documents shall govern.

8.19 Information Provided by Others

The CLIENT shall furnish, at the CLIENT's expense, all information, requirements, reports, data, surveys and instructions required by this AGREEMENT. The COMPANY may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. The COMPANY shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the CLIENT and/or the CLIENT's consultants and contractors.

COMPANY is not responsible for accuracy of any plans, surveys or information of any type including electronic media prepared by any other consultants, etc. provided to COMPANY for use in preparation of plans. The CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless the COMPANY from any damages, liabilities, or costs, including reasonable attorneys' fees and defense costs, arising out of or connected in any way with the services performed by other consultants engaged by the CLIENT.

COMPANY is not responsible for accuracy of topographic surveys provided by others. A field check of a topographic survey provided by others will not be done under this contract unless indicated in the Scope of Work.

8.20 Force Majeure

Parties agree that neither party is responsible for damages arising directly or indirectly from any delays for causes beyond their control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters or acts of God; fires, riots, war or other emergencies; failure of any government agency to act in timely manner; failure of performance by the CLIENT or the CLIENT's contractors or consultants; or discovery of any hazardous substances or differing site conditions. Severe weather disruptions include but are not limited to extensive rain, high winds, snow greater than two (2) inches and ice. In addition, if the delays resulting from any such causes increase the cost or time required by the COMPANY to perform its services in an orderly and efficient manner, the parties shall negotiate reasonable adjustment in schedule and compensation.

8.21 Job Site Visits and Safety

Neither the professional activities of COMPANY, nor the presence of COMPANY'S employees and subconsultants at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. COMPANY and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The CLIENT agrees that the General Contractor is solely responsible for job site safety, and warrants that this intent shall be made evident in the CLIENT's AGREEMENT with the General Contractor. The CLIENT also agrees that the CLIENT, COMPANY and COMPANY'S consultants shall be indemnified and shall be made additional insureds on the General Contractor's and all subcontractor's general liability policies on a primary and non-contributory basis.

8.22 Hazardous Materials

CLIENT hereby understands and agrees that COMPANY has not created nor contributed to the creation or existence of any or all types of hazardous or toxic wastes, materials, chemical compounds, or substances, or any other type of environmental hazard or pollution, whether latent or patent, at CLIENT's premises, or in connection with or related to this project with respect to which COMPANY has been retained to provide professional engineering services. The compensation to be paid COMPANY for said professional engineering services is in no way commensurate with, and has not been calculated with reference to, the potential risk of injury or loss which may be caused by the exposure of persons or property to such substances or conditions. Therefore, to the fullest extent permitted by law, CLIENT agrees to defend, indemnify, and hold COMPANY, its officers, directors, employees, and consultants, harmless from and against any and all claims, direct damages, and expenses arising out of, or resulting from the discharge, escape, release, or saturation of smoke, vapors, soot, fumes, acid, alkalies, toxic chemicals, liquids gases, or any other materials, irritants, contaminants, or pollutants in or into the atmosphere, or on, onto, upon, in, or into the surface or subsurface of soil, water, or watercourses, objects, or any tangible or intangible matter, whether sudden or not.

It is acknowledged by both parties that COMPANY'S scope of services does not include any services related to asbestos or hazardous or toxic materials. In the event COMPANY or any other party encounters asbestos or hazardous or toxic materials at the job site, or should it become known in any way that such materials may be present at the job site or any adjacent areas that may affect the performance of COMPANY'S services, COMPANY will notify CLIENT and may, at its option and without liability for consequential or any other damages, suspend performance of services on the project until the CLIENT retains appropriate specialist consultant(s) or contractor(s) to identify, abate and/or remove the asbestos or hazardous or toxic materials, and warrants that the job site is in full compliance with applicable laws and regulations.

Nothing contained within this Agreement shall be construed or interpreted as requiring COMPANY to assume the status of a generator, storer, transporter, treater, or disposal facility as those terms appear within the Resource Conservation and Recovery Act, 42 U.S.C.A., §6901 et seq., as amended, or within any State statute governing the generation, treatment, storage, and disposal of waste.

8.23 Limitation of Liability

The CLIENT agrees, to the fullest extent permitted by law, to limit the liability of COMPANY and COMPANY'S officers, directors, partners, employees, shareholders, owners and subconsultants to the CLIENT for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert witness fees and costs, so that the total aggregate liability of COMPANY and its officers, directors, partners, employees, shareholders, owners and subconsultants to all those named shall not exceed COMPANY'S total fee received for services rendered on this project or \$1,000,000.00, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

8.24 Design Without Construction Observation

To the extent COMPANY provides design services without construction observation services under this agreement, it is agreed that the professional services of COMPANY do not extend to or include the review or site observation of the contractor's work or performance and the CLIENT assumes all responsibility for interpretation of the contract documents and for construction observation. It is further agreed that the CLIENT

will defend, indemnify and hold harmless COMPANY from any claim or suit whatsoever, including but not limited to all payments, expenses or costs involved, arising from the contractor's performance or the failure of the contractor's work to conform to the design intent and the contract documents. COMPANY agrees to be responsible for its employees negligent acts, errors or omissions.

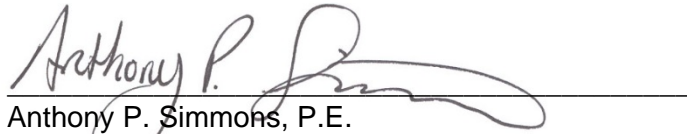
8.25 Municipal Advisor

The COMPANY is not a Municipal Advisor registered with the Security and Exchange Commission (SEC) as defined in the Dodd-Frank Wall Street Reform and Consumer Protection Act. When the CLIENT is a municipal entity as defined by said Act, and the CLIENT requires project financing information for the services performed under this AGREEMENT, the CLIENT will provide the COMPANY with a letter detailing who their independent registered municipal advisor is and that the CLIENT will rely on the advice of such advisor. A sample letter can be provided to the CLIENT upon request.

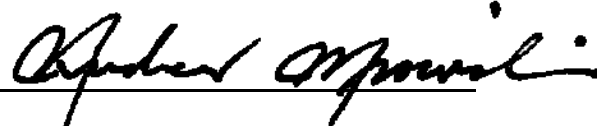
This AGREEMENT is approved and accepted by the CLIENT and COMPANY upon both parties signing and dating the AGREEMENT. Work cannot begin until COMPANY receives a signed agreement. The effective date of the AGREEMENT shall be the last date entered below.

Sincerely,

HR GREEN, INC.



Anthony P. Simmons, P.E.
Senior Project Manager – Transportation

Approved by: 

Printed/Typed Name: Andrew Mrowicki, PE

Title: Vice President Date: May 11, 2017

CITY OF AURORA

Accepted by: _____

Printed/Typed Name: _____

Title: _____ Date: _____