



## **PROFESSIONAL SERVICES AGREEMENT**

**For**

**CITY OF AURORA, ILLINOIS**

### **MASTODON LAKE DREDGING, SHORELINE RESTORATION, FINAL ENGINEERING AND CONSTRUCTION OBSERVATION**

**HR GREEN Job# 191806**

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THIS **AGREEMENT** is between City of Aurora, Illinois (hereafter “CLIENT”) and HR GREEN, INC. (hereafter "COMPANY").

## 1.0 Project Understanding

### 1.1 General Understanding

COMPANY completed the Mastodon Lake Stormwater Plan in the winter of 2019/2020. The Mastodon Lake Stormwater Plan provides management recommendations to CLIENT to address flooding, water quality, active use and aesthetic issues related to Mastodon and Little Doe Lakes.

Phillips Park is considered the jewel of the community. Mastodon Lake, which is located in Phillips Park, is used by boaters, anglers and bird watchers and admired by park visitors. However, the lake has developed an issue with excessive aquatic vegetation which is reducing the aesthetic appeal and negatively impacting the water quality of the lake. A goal set forth in the Mastodon Lake Stormwater Plan was to reduce the growth of duckweed, wolfia, coontail, sago and other aquatic vegetation, through the use of dredging and aeration.

This agreement is to develop final engineering plans for the completion of dredging approximately sixty (60) percent of the accumulated sediment from the lake using hydraulic dredging methods. The plans will also include the installation of up to six (6) aerators and directional circulators within strategic locations around the lake. The final engineering plans will also include a planting plan and restoration details for restoring the banks of the Lake.

Based on past projects completed by CLIENT in the area, Mastodon Lake is under the jurisdiction of the United States Army Corps. of Engineers (ACOE). Coordination with the ACOE and other permitting agencies will be required to complete this project.

The project will ideally be constructed in 2020. However, due to permit review schedules the project may be required to be constructed in Spring 2021.

Additional assumptions and relevant criteria concerning the project are set forth below.

### 1.2 Limitations/Assumptions

- Sediment accumulations removed from the Lake during the project will be stockpiled within one mile of the project site, on property owned by CLIENT. Discussions during the Mastodon Lake Stormwater Plan concluded that the dredged material could be used by the City on the adjacent golf course in Phillips Park. The seeking and/or acquisition of off-site disposal areas are beyond the scope of this agreement.
- It is assumed the dredged materials will not be of a hazardous or objectionable nature, and will not require special disposal methods or material handling procedures. This agreement does not include assistance with the handling or disposal of hazardous or objectionable dredging materials.
- Any reuse, resale or redistribution of dredged material – as topsoil, agricultural soil amendment, etc. – will be the prerogative and responsibility of the CLIENT. This agreement does not include assistance with handling or disposition of dredged material after initial stockpiling in on- or near-site disposal areas.

- This agreement assumes the project will be accomplished with a single construction contract procured by means of competitive public bidding process. It is understood that the dredging may be completed in two separate dredges however the project will only be bid one time with one contractor completing the entire project.
- Any additional improvements to the Mastodon Lake watershed – such as fish habitat installation, water quality wetlands, erosion control measures or new sedimentation basins, etc. – are beyond the scope of this agreement. Circulation systems are included in this project.
- This agreement assumes treatment of runoff from the dredging filter bags will be clear, and no chemical addition or treatment will be needed of decant water.
- No permanent fill will be placed within the limits of the 1% annual chance (100-year) floodplain of Mastodon Lake as currently mapped by FEMA. Therefore, hydrologic and hydraulic modeling will not be needed to demonstrate no rise in the base flood elevation. If geotextile tube dewatering is to take place within the floodplain, then it is assumed that this work will be deemed the work as temporary construction activities and no hydrologic or hydraulic modeling will be required.
- The Army Corps of Engineers (ACOE) does not regulate the dredging of a lake but they do regulate the return water and placement of removed sediment. It is assumed that the dredging portion of the project will be permitted under Nationwide Permit 16.
- It is assumed that all work will take place on CLIENT owned property. If coordination with private property owners is necessary, COMPANY can assist with exhibits, survey and meetings for an additional fee.
- It is assumed that the bathymetric data collected by Integrated Lakes Management (ILM) in August 2018 is still valid and therefore no new bathymetric data will be required to be collected prior to design.
- Shoreline restoration plans will be developed as part of this agreement. It is assumed that no earthwork will be required to restore the lakeshore. Shoreline restoration will be completed through vegetation management and/or slope toe protection.
- It is assumed that the shoreline restoration portion of the project will be covered under the ACOE Regional Permit 10 and will not need an individual permit.

## 2.0 Scope of Services

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

### 2.1 Project Administration

COMPANY will conduct project management through the duration of the project. This task will also include weekly email updates to CLIENT, scheduling, budget management, coordination with Kane County, Illinois Environmental Protection Agency (IEPA), ACOE, the Kane-DuPage Soil and Water Conservation District and the Illinois Department of Natural Resources (IDNR). COMPANY will manage project scope, schedule, budget and invoicing to CLIENT. It is assumed that one invoice will be submitted each month that work was completed.

### 2.2 Preliminary Design and Sampling

#### 2.2.1 Dewatering and Stockpile Location

COMPANY will present to CLIENT two options for sediment dewatering facilities. The two locations include location previously discussed in the Mastodon Lake Stormwater Plan. A determination of where sediment dewatering will need to be completed prior to plan preparation and permitting. The pros and cons of each location will be presented to CLIENT and CLIENT will direct COMPANY with the preferred location.

COMPANY will prepare a topographic exhibit depicting contours, regulatory floodplain and wetlands. The dewatered sediment stockpile location must be determined prior to permitting and plan preparation. COMPANY will coordinate with CLIENT to determine a location within one mile of the Lake to permanently stockpile the dewatered sediment.

### 2.2.2 Supplemental Survey

COMPANY intends to use recently topographic data collected during the Mastodon Lake LOMR project to prepare contract plans. The topographic data collected during the Mastodon Lake LOMR is aerial survey. Additional supplemental survey is anticipated to be required for portions of the shoreline that are not visible during the aerial survey. This contract includes up to two site visits to collect supplemental data.

### 2.2.3 Core Sampling and Analytical Testing

COMPANY will utilize a sub-consultant to collect three (3) sediment core samples from Mastodon Lake in locations identified for dredging. The three samples will be sent to laboratory to undergo 4-hour and 24-hour supernate analysis for hydraulic dredging, #230 sieve analysis, total suspended solids (TSS), Ammonia N, lead and zinc. The cost of core sampling and analytical testing is included in the cost of this contract.

### 2.2.4 Preliminary (60%) Dredging and Restoration Plans

COMPANY will utilize bathymetric data previously collected by ILM in 2018 to develop existing conditions exhibits for Mastodon Lake's depth to top of sediment. Additional exhibits will include proposed dewatering locations and potential temporary and permanent dewatered sediment stockpile locations. The Concept Plans will include the following information:

- Cover
- General Notes and Legend
- Existing Conditions Bathymetric
- Draft Proposed Conditions Bathymetric
- Proposed Dewatering Location
- Proposed Temporary and Permanent Stockpile Locations
- Complete technical review and recommendation of circulation aeration plan
- Shoreline restoration plan sheet
- Typical shoreline restoration sections (3)

The Preliminary Dredging and Restoration Plans will be used for the Pre-Application Meetings discussed in Task 2.3.1. COMPANY will provide the Preliminary Dredging and Restoration Plans to CLIENT. CLIENT will review and provide review comments to be address in the Final Design and Specifications Task 2.4.



## 2.2.5 Preliminary Engineer's Opinion of Probable Costs

COMPANY will prepare an Opinion of Probable Costs (EOPC) based on the Preliminary Dredging and Restoration Plans.

## 2.3 Permitting

COMPANY will complete the Joint Application form which will be used in permitting through the ACOE and the IEPA. COMPANY cannot guarantee approval of permits and cannot guarantee a schedule for the review of said permit applications.

### 2.3.1 Pre-Application Meetings

COMPANY will conduct a pre-application phone call with the IEPA and the ACOE prior to submitting to these agencies. The phone calls will be followed up with a confirmation email to document the pre-application discussion. It is assumed that the IEPA and the ACOE are the only reviewing agencies that will require a pre-application call.

### 2.3.2 State Historic Preservation Office (SHPO)

A review by SHPO is required by the IEPA and the ACOE. COMPANY will prepare a review request letter and exhibits and submit to SHPO on CLIENT's behalf. There is no review fee for this service.

### 2.3.3 IDNR EcoCAT

An EcoCAT consultation will be required. EcoCAT consultations are valid for two years. CLIENT has previously completed a consultation for this site in July 2017. This consultation has expired and must be revalidated. COMPANY will complete the online consultation. The consultation fee is approximately \$125. The permit fee will be the responsibility of the CLIENT.

### 2.3.4 Army Corps of Engineers (ACOE)

Based on previous projects completed by CLIENT, Mastodon Lake is under the Jurisdiction of the ACOE. It is assumed that the project will be permitted under two separate permits. One application will be submitted for dredging and the shoreline restoration. It is assumed that the project would not need an individual permit as the dredged sediments will not be placed into a wetland. The ACOE may regulate the return flow of water and therefore it is assumed that the dredging will be covered under Nationwide Permit 16 – Return Water from Upland Contained Disposal Areas. The shoreline restoration portion of the project will be permitted as a Regional Permit 10 for shoreline stabilization. COMPANY will apply for Nationwide Permit 16 and Regional Permit 10.

### 2.3.5 Illinois Environmental Protection Agency (IEPA)

COMPANY will complete the IEPA Application for Construction/Operation Permit Approval form WPC-PS-1 and associated Schedule J. These forms are required for dredging operation. The State permit would require periodic monitoring of the discharge and compliance with the effluent standards of 15mg/L TSS. Material specific settling curves developed from supernatant analysis

will be required. It is assumed that the permit review fee for the IEPA will be \$1,000. This fee is not included in the cost of this agreement and is to be paid by CLIENT.

Permitting a dredging project through the IEPA may take up to six (6) months or more. Due to the permit review times the construction may be required to start in Spring 2021.

### 2.3.6 Aurora Stormwater Permit

The City of Aurora is a certified community under the Kane County Stormwater Management Ordinance. The project will take place within and adjacent to wetlands and floodplain and will therefore require a stormwater permit. COMPANY will apply for a stormwater permit.

### 2.3.7 Kane-DuPage County Soil and Water Conservation District.

The ACOE and the City of Aurora will require the Kane-DuPage County Soil and Water Conservation District (SWCD) review the sediment and erosion control plans. The SWCD completes soil erosion and sediment control inspections for both the ACOE and the City. COMPANY will submit to the SWCD for review. CLIENT will be responsible for any review fee required by the SWCD.

### 2.4 Pre-Final (90%) and Final (100%) Design and Specifications

COMPANY will review and address comments and recommendations received from CLIENT and reviewing agencies. COMPANY will prepare final dredging plans and specifications. The final plans will include the following sheets:

- Cover
- General Notes and Legend
- Summary of Quantities
- Existing Conditions Bathymetric
- Proposed Conditions Bathymetric
- Proposed Dewatering Location
- Proposed Lake Dredging Cross Sections
- Proposed Temporary and Permanent Stockpile Locations
- Proposed Circulator & Aerator Plan
- Shoreline restoration plan sheet
- Typical shoreline restoration sections (3)
- Seed and plug species tables
- Erosion Control Plan
- Restoration Plan
- Construction Details

COMPANY will submit a pre-final set of plans to CLIENT and reviewing agencies. CLIENT will review and provide comments. COMPANY will address comments and revise plans accordingly. COMPANY will finalize plans for the bidding phase of the project. COMPANY will prepare an Opinion of Probable Costs (EOPC) based on the final design and specifications. The specifications will include special provisions and will require that the Contractor provide CLIENT with an updated bathymetric survey after dredging has been completed.



## 2.5 Bidding Services

COMPANY will provide CLIENT with the plans and special provisions for the project. CLIENT will complete all tasks associated with bidding the project. COMPANY will not be responsible for assembling the bid package, advertisement of the project, maintaining a plan holder list, issuing addendums, attending the bid opening, reviewing contractor bids, compiling a bid tabulation or preparing a letter of recommendation. COMPANY will be available to assist CLIENT with contractor questions and information necessary to issue addendums. CLIENT will prepare and issue addendums as necessary.

## 2.6 Construction Observation

COMPANY will perform construction observation services during construction of dredging activities and shoreline restoration. The labor-hours budgeted for construction observation are based on the assumption of anticipated project duration of twenty (20) weeks and that the contractor will complete the project on time in accordance with the contract plans and special provisions. Construction observation will be performed on a part time basis and consist of the following tasks:

### 2.6.1 Construction Project Administration and Coordination

Project Administration and Coordination will involve the management oversight of the project, which will include meetings and general correspondence between COMPANY, the CLIENT and contractors. Project coordination work will include:

1. Attendance at one pre-construction meeting. Within 7 days (or as per the availability of the City and contractor) of the Notice to Proceed with the qualified contractor. COMPANY will schedule and conduct a pre-construction kickoff meeting. COMPANY shall invite the Kane-DuPage County Soil and Water Conservation District to the meeting. COMPANY will prepare an agenda which shall include items pertaining to:
  - Project schedule;
  - Roles and responsibilities of the parties;
  - Points of contacts;
  - Key milestones and deliverables;
  - Communication plan;
  - Site restrictions, permit requirements, working hours
  - Other items as deemed necessary and requested by the CLIENT
2. Attendance at bi-weekly (assumed five meetings) construction status meetings to review the project status, schedule and remaining work. COMPANY will prepare a meeting agenda and sign-in sheet.
3. COMPANY will prepare/distribute meeting minutes of all meetings attended, which will detail the discussions of attendees along with the action required of the attendees.
4. General correspondence between COMPANY and CLIENT as well as the contractor.

COMPANY has allocated an average of eight (8) hours per week for twenty (20) weeks for a total of one hundred sixty (160) hours for Construction Project Administration and Coordination.

### 2.6.2 Construction Observation – Dredging



As requested by CLIENT, construction observation will be provided on an as-needed and part time basis. It is assumed that CLIENT will provide a full time construction observation using its own personnel. COMPANY has assumed that, upon request by the CLIENT, or during key milestones of the project, COMPANY will visit the site to observe construction activities. COMPANY will not direct the contractor on means and methods of construction or instruct the contractor on safety procedures and process. The following key milestones are assumed as needed for COMPANY to observe:

- Upon completion of mobilization and installation of erosion control measures and prior to any site disturbance;
- Preparation of dewatering location(s)
- During dredging operations on weekly basis until dredging operations are complete
- During site restoration
- After substantial completion, to walk the project area for developing punchlist, in coordination with the CLIENT

COMPANY will prepare and submit a field report for each visit completed along with any photographic documentation of the observation and/or deficiencies observed during the visit. COMPANY will also assist the CLIENT with review or shop drawings and for review and processing of pay request and visit the site to confirm that the work included in the pay requested has been satisfactorily completed.

Upon notice of substantial completion of the project, COMPANY will conduct a pre-final inspection of the project and preparing a list of punchlist items, to develop pre-final documentation and balancing change orders, to exchange documentation with the contractor and the CLIENT, and contract close out. A final walk-through will be held with the contractor and CLIENT representatives to obtain final acceptance and initiate warranty periods. Final project records will be completed. The records will be delivered to CLIENT in an electronic format. No as-built survey will be completed by COMPANY under this agreement. COMPANY will review the post dredging bathymetric survey provided by the contractor.

COMPANY has allocated an average of sixteen (16) hours per week for twenty (20) weeks for a total of three hundred twenty (320) hours for site visits and for preparing field reports, shop drawings review and processing pay requests during the duration of the project. It is assumed pay requests will be processed once per month followed by one final pay estimate at the project's completion. COMPANY will employ a sub-consultant (Berrini and Associates) to assist with this task. Twenty-Four (24) hours are allocated for Berrini and Associates during the course of the project, which will include visiting the site up to two (2) times during dredging and to respond to contractor questions that may arise.

A total of Three Hundred Forty Four (344) hours are budgeted for Construction Observation – Dredging activities for COMPANY and its subconsultant.

Any additional work due to an extended schedule dictated by the contractor's performance, unanticipated work due to differing site conditions or a significant change in scope of the project shall be considered out of scope work requiring an amendment to this contract.

### 2.6.3 Construction Observation – Shoreline Restoration

COMPANY will perform construction observation services during construction of shoreline restoration activities. It is assumed that the shoreline restoration activities will occur concurrently with the dredging activities and will be completed during the twenty (20) week schedule anticipated for the dredging activities. The labor-hours budgeted for construction observation are based on the assumption of anticipated project duration of twenty (20) weeks and that the contractor will complete the project on time in accordance with the contract plans and special provisions. Project Administration and Coordination needed for the shoreline restoration activities are budgeted under Task 2.6.1 and is assumed to cover the shoreline restoration work also. No additional hours are budgeted for Project Administration and Coordination for the shoreline restoration activities.

COMPANY will provide construction oversight for the shoreline restoration. The anticipated project timeframe will be concurrent with the dredging work. Portion of the shoreline restoration work will be observed concurrently with dredging activities on days shoreline restoration is occurring while Company is on site for the dredging operations. However, it is anticipated that shoreline restoration will also occur continuously and full time for an eight (8) week period. For this eight (8) week period, Company staff will be present an additional three (3) days per week during shoreline restoration construction activities. As a result, COMPANY will have a full time presence on the site during the assumed eight (8) weeks of restoration work (2 days per week dredging plus 3 days per week shoreline restoration).

COMPANY has allocated an average of twenty-four (24) hours per week for eight (8) weeks for a total of one hundred ninety two (192) hours for site visits and for preparing field reports, shop drawing review and processing pay requests during the duration of the project. It is assumed that the pay requests will be processed once per month concurrent with the dredging activities portion of the work followed by one final pay estimate at the project's completion.

Shoreline Restoration construction observation will include observation of the following work:

- Installation of shoreline erosion control measures
- Site preparation (herbiciding & soil preparation for native seeding)
- Earthwork (stone outcropping and stone toe protection)
- Coir roll installation
- Ecological restoration (native seeding/planting & tree planting)
- Site stabilization

Documentation will be kept in electronic format and will include photos of soil preparation, native seeding/planting, vegetation planting, stone toe and outcroppings, and erosion control. COMPANY will also verify and document, prior to placement, all native seed mixes and native plants. Copies of all seed tickets and pictures of all plant materials will be documented.

Construction Observation will not extend into the 3-Year Management period that is required for the project. Any additional work due to an extended schedule dictated by the contractor's performance, unanticipated work due to differing site conditions or a significant change in scope of the project shall be considered out of scope work requiring an amendment to this contract.

### 2.6.4 Project Close Out



Upon notice of substantial completion of the project, COMPANY will conduct a pre-final inspection of the project and preparing a list of punchlist items, to develop pre-final documentation and balancing change orders, to exchange documentation with the contractor and the Village, and contract close out. A final walk-through will be held with the contractor and CLIENT representatives to obtain final acceptance and initiate warranty periods. Final project records will be completed. The records will be boxed, indexed and delivered to the client.

COMPANY has allocated a total of forty (40) hours for Project Close Out.

### 3.0 Deliverables and Schedules Included in this Agreement

#### 3.1 Deliverables:

COMPANY will provide CLIENT with digital copies of each permit submittal and the preliminary, pre-final and final plans and specifications.

#### 3.2 Schedule:

- |  |                  |
|--|------------------|
| • Contract Signed                            | March 2020       |
| • Sediment Core Collection and Analytics     | March 2020*      |
| • Supplemental Survey                        | March/April 2020 |
| • Preliminary Dredging and Restoration Plans | May, 2020        |
| • Pre-Application Meetings                   | May 2020         |
| • Permitting                                 | June 2020**      |
| • Pre-Final Dredging and Restoration Plans   | July 2020        |
| • Final Dredging Plans                       | August 2020      |
| • Bidding Phase                              | September 2020   |

\*It is assumed that Mastodon Lake will be thawed and will be accessible by boat to collect the sediment core samples. If the Lake is accessible before the data above then sampling may take place sooner.

\*\*Submittal to the IEPA and ACOE will take place after the sediment core analysis and preliminary dredging plans are completed. EcoCAT and SHPO applications will be submitted prior to starting the Pre-Application Meetings.

This schedule was prepared to include reasonable allowances for review and approval times required by the CLIENT and public authorities having jurisdiction over the project. This schedule shall be equitably adjusted as the project progresses, allowing for changes in the scope of the project requested by the CLIENT or for delays or other causes beyond the control of COMPANY.

Hydraulic dredging construction is anticipated to take approximately 18 weeks to complete with one week to mobilize and then additional dewatering site restoration time. Hydraulic dredging cannot take place during the winter months.

### 4.0 Items not included in Agreement/Supplemental Services

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

- Bathymetric Surveying services
- Geotechnical services

- Permitting Application Fees
- Funding applications
- Archeological and/or Cultural Surveys
- Right-of-Way Plats and/or Plats of Easement
- Appraisals and Negotiations
- ALTA/NSPS Land Title Surveys
- Plat of Highways
- Plat of Dedication

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

## **5.0 Services by Others**

COMPANY intends to employ Berrini & Associates to assist with design, permitting and responding to contractor questions. COMPANY intends to employ Hey and Associates to complete a wetland delineation of Mastodon Lake and the proposed dewatering area.

## **6.0 Client Responsibilities**

The following services are expected to be provided by the CLIENT

- Provide requested signatures and information for completing permit application forms.
- Active participant in meetings including review of supporting documents provided ahead of meetings.
- Timely review of submitted information.
- Provide information related to final dredged material stockpiling location and dewatering location.
- Coordinate with adjacent property owners if necessary
- Provide assistance in obtaining GIS data from ILM 2018 bathymetric survey



**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: identifiable reproduction costs applicable to the work; and 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 Agreement 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:

| <b>TASK</b>              | <b>Description</b>            | <b>Labor Costs</b>  | <b>Direct Costs</b> | <b>Sub Consultant</b> | <b>Total Costs</b>  |
|--------------------------|-------------------------------|---------------------|---------------------|-----------------------|---------------------|
| Task 1                   | Project Management            | \$ 3,870.00         | \$ 37.00            | -                     | \$ 3,907.00         |
| Task 2                   | Preliminary Design & Sampling | \$17,002.00         | \$ 122.00           | \$12,300.00           | \$ 29,424.00        |
| Task 3                   | Permitting                    | \$10,322.00         | \$ 37.00            | \$ 1,000.00           | \$ 11,359.00        |
| Task 4                   | Final Design & Specs          | \$19,196.00         | \$ 37.00            | \$ 3,500.00           | \$ 22,733.00        |
| Task 5                   | Construction Observation      | \$99,680.00         | \$4,215.00          | \$ 5,000.00           | \$108,895.00        |
| <b>TOTAL FOR PROJECT</b> |                               | <b>\$150,070.00</b> | <b>\$4,448.00</b>   | <b>\$21,800.00</b>    | <b>\$176,318.00</b> |

**Time and Material Not to Exceed Fee of \$176,318.00**



## 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 Attorney's Fees

If litigation arises for purposes of collecting fees or expenses due under this Agreement, the Court in such litigation shall award reasonable costs and expenses, including attorney fees, to the party justly entitled thereto. In awarding attorney fees, the Court shall not be bound by any Court fee schedule, but shall, in the interest of justice, award the full amount of costs, expenses, and attorney fees paid or incurred in good faith.

8.15 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.

8.16 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 COMPANY shall not be responsible for any loss, damage or liability arising from any acts by CLIENT, its agents, staff, consultants employed by others, or other third parties who are not employees of the COMPANY.

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.



8.17 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 that COMPANY shall not be responsible for 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.

8.18 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.

8.19 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, COMPANY shall not be responsible for any loss, damage or liability 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.

8.20 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 waive claims for any damages, liabilities, or costs, arising out of or connected 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.

#### 8.21 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.

#### 8.22 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.

#### 8.23 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 waive any and all claims against COMPANY, its officers, directors, employees, and consultants, for 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.

#### 8.24 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.

#### 8.25 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 by the CLIENT that the COMPANY shall not be responsible for 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.

#### 8.26 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. Services will not begin until COMPANY receives a signed agreement. COMPANY’s services shall be limited to those expressly set forth in this Agreement and COMPANY shall have no other obligations or responsibilities for the Project except as agreed to in writing. The effective date of the Agreement shall be the last date entered below.

Sincerely,

HR GREEN, INC.

  
\_\_\_\_\_  
Date: March 10, 2020  
Logan Gilbertsen, PE, CFM  
Lead Engineer/Project Manager

Approved by:   
Printed/Typed Name: Ajay Jain, PE, CFM

Title: Vice President, Practice Leader Date: March 31, 2020

CITY OF AURORA, IL

Accepted by: \_\_\_\_\_  
Printed/Typed Name: \_\_\_\_\_  
Title: \_\_\_\_\_ Date: \_\_\_\_\_