

RESOLUTION NO. 1354

RESOLUTION APPROVING AN ENGINEERING SERVICES AGREEMENT BETWEEN CALHOUN-BURNS AND ASSOCIATES, INC. AND THE CITY OF WEST BRANCH, IOWA FOR THE 2015 BRIDGE INSPECTION AND LOAD RATING.

WHEREAS, The City of West Branch, Iowa has its four bridges inspected every twenty-four months to ensure the safety of its residents and visitors to the City; and

WHEREAS, Calhoun-Burns and Associates, Inc. has completed many of the tasks associated with bridge inspections in past years to the City of West Branch's satisfaction; and

WHEREAS, the services necessary to provide an adequate inspection include a routine inspection of four bridges, upper-deck inspection via ladder, update of the load rating calculations if necessary, update of the scour evaluation if necessary; and

WHEREAS, these services should be completed in accordance with Iowa Department of Transportation and Federal Highway Administration guidelines and requirements; and

WHEREAS, Calhoun-Burns and Associates, Inc. has prepared an agreement to perform the aforementioned services which has been reviewed by the city attorney and now requires the approval of the City Council.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of West Branch, Cedar County, Iowa, that the aforementioned engineering services agreement be and the same is hereby approved. Further, the Mayor Pro Tem and City Clerk are directed to execute said agreement on behalf of the City.

Passed and approved this 29th day of June, 2015.

  
Colton Miller, Mayor Pro Tem

ATTEST:

  
Matt Muckler, City Administrator/Clerk

# AGREEMENT

THIS IS AN AGREEMENT effective as of June 29, 2015 ("Effective Date") between the City of West Branch, Iowa ("City") and Calhoun-Burns and Associates, Inc., West Des Moines, Iowa ("Engineer"). Engineer agrees to provide the services described below to City for 2015 bridge inspection and load rating in the City of West Branch, Iowa ("Assignment").

## Description of Engineer's Services:

- Routine inspection of four (4) bridges - Attachment A
- Under-deck inspection via ladder
- Includes update of the load rating calculations if necessary
- Includes update of the scour evaluation if necessary; does not include level C scour
- Work will be in accordance with Iowa Department of Transportation and Federal Highway Administration guidelines and requirements.

City and Engineer further agree as follows:

### 1.01 Basic Agreement

A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement, and City shall pay Engineer for such Services as set forth in Paragraph 9.01.

### 2.01 Payment Procedures

A. *Preparation of Invoices.* Engineer will prepare a monthly invoice in accordance with Engineer's standard invoicing practices and submit the invoice to City.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If City fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, Engineer may, without liability, after giving seven days written notice to City, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges.

### 3.01 Additional Services

A. If authorized by City, or if required because of changes in the Assignment, Engineer shall furnish services in addition to those set forth above.

B. City shall pay Engineer for such additional services as follows: For additional services of Engineer's employees engaged directly on the Assignment an amount equal to the cumulative hours charged to the Assignment by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any.

#### **4.01 Termination**

A. The obligation to provide further services under this Agreement may be terminated:

1. For cause,

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

b. By Engineer:

1) upon seven days written notice if Engineer believes that Engineer is being requested by City to furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

2) upon seven days written notice if the Engineer's services for the Assignment are delayed or suspended for more than 90 days for reasons beyond Engineer's control.

3) Engineer shall have no liability to City on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 4.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by City effective upon the receipt of notice by Engineer.

B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Assignment materials in orderly files.

#### **5.01 Controlling Law**

A. This Agreement is to be governed by the law of the State of Iowa.

#### **6.01 Successors, Assigns, and Beneficiaries**

A. City and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of City and Engineer (and to the extent permitted by paragraph 6.01.B the assigns of City and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal

representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither City nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

### **7.01 General Considerations**

A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Engineer and its Citys may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

B. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents.

C. To the fullest extent permitted by law, City and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and Citys, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Assignment, and (2) agree that Engineer's total liability to City under this Agreement shall be limited to \$10,000.00 or the total amount of compensation received by Engineer, whichever is greater.

D. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Assignment affected thereby until City: (i) retains appropriate specialist Citys or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

### **8.01 Total Agreement**

A. This Agreement (consisting of pages 1 to 4 inclusive together with any expressly incorporated appendix), constitutes the entire agreement between City and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

**9.01 Payment**

A. Using the procedures set forth in paragraph 2.01, City shall pay Engineer as follows:

- 1. General Inspection: Lump Sum = \$ 800.00
- 2. Load Rating Computations: If Necessary, Requires Authorization
- 3. Update Level A or B Scour Evaluations: If Necessary, Requires Authorization

B. The Engineer's compensation is conditioned on the time to complete the Assignment not exceeding six (6) months. Should the time to complete the assignment be extended beyond this period, total compensation to Engineer shall be appropriately adjusted.

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

CITY: \_\_\_\_\_  
By: Colton Mills  
Title: Mayor Pro Tem  
Date: 06/29/15

ENGINEER: \_\_\_\_\_  
By: Michael A. Vander Wert  
Michael A. Vander Wert, P.E.  
Title: President  
Date: 06/04/2015

ATTESTED BY:  
MMSMuel  
Signature  
Title: City Administrator/Clerk  
Date: 06/30/15

(Seal)