

RESOLUTION NO. 1452

RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH HBK ENGINEERING, LLC IN CONNECTION WITH THE LIONS FIELD CREEK RESTORATION PROJECT.

WHEREAS, the City of West Branch has previously contracted with HBK Engineering, LLC for strategic park planning and park design services, including stormwater elements; and

WHEREAS, the City Council approved resolution 1348 on June 29, 2015 to complete a stormwater best management practices (BMP) feasibility study that identified ideal locations and specific BMP's to construct in future projects; and

WHEREAS, one BMP identified was the Lions Field Creek Buffer; and

WHEREAS, the project would have vegetated filter strips and other landscaping components installed to create a visible barrier between private and public property; and

WHEREAS, stream stabilization methods may be needed in this area as well, pending the results from a stream assessment; and

WHEREAS, HBK Engineering LLC has provided an engineering services agreement that would conduct stakeholder meetings, neighborhood awareness and site visits, design plans for the design of the project, complete the bid process and provide construction management for the Lions Field Creek Restoration Project; and

WHEREAS, it is now necessary to approve said agreement.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of West Branch, Iowa that the aforementioned agreement with HBK Engineering, LLC of Iowa City, Iowa, is hereby approved. Further, the Mayor is directed to execute the agreement on behalf of the City.

Passed and approved this 2nd day of May, 2016.


Roger Laughlin, Mayor

ATTEST:


Matt Muckler, City Administrator/Clerk

**PROFESSIONAL
SERVICES
AGREEMENT**



This Agreement is made and entered into this 19th day of April, 2016, by and between the City of West Branch, 110 North Poplar Street, West Branch, Iowa 52358 ("CWB") and ("Client") and HBK Engineering, LLC., 509 S. Gilbert Street, Iowa City, Iowa 52317 ("HBK") and ("Engineer")

Recitals

Client proposes to engage Engineer to:

- [1] to perform engineering and planning consulting services
- [2] in connection with the Lions Field Creek Restoration Project (together hereinafter referred to as the "Project")
- [3] for The City of West Branch, Iowa ("Owner");

Engineer shall perform the services as requested by the Client and as agreed hereunder.

Agreement

Now Therefore: in consideration of the mutual promises and covenants set forth below, the sufficiency of which are hereby acknowledged, Client and Engineer, agree to the following.

1. Recitals.

Recitals are incorporated into this Agreement as a material part hereof.

2. Entire Agreement.

This signature page, together with *Part I – Scope of Services, Part II – Project Description/Project Limits/Payment for Services, Exhibit A and Part III – Terms and Condition* (each attached hereto), comprise the entire agreement between Client and Engineer relating to the Project.

In witness whereof the parties hereto have made and executed this Agreement:

Client: City of West Branch

Engineer: HBK Engineering, LLC

By: Roger Laughlin

By: _____

Name: ~~Matt Muckler~~ Roger Laughlin

Name: Brian A. Boelk, PE, CMS4S, CPESC

Title: Mayor

Title: Sr. Project Manager

Date: May 2, 2016

Date: _____

Part I: Scope of Services

1. STAKEHOLDER MEETINGS, NEIGHBORHOOD AWARENESS & SITE VISITS

- Meet with City staff, council, and involved stakeholders to discuss project, process, and existing information
- Conduct neighborhood awareness campaign to include mailed documents and neighborhood meetings for locally affected households
- Obtain all pertinent information including but not limited to: Soil hydrological groups, floodplain maps, and topographic conditions
- Obtain and investigate information related to future private developments
- Visit site for hydrology and streambank analysis
- Conduct field survey to obtain cross sectional data and information of the creek and adjacent land
- Coordinate with Pedersen Park design consultant for continuity and in regards to upstream design practices and intent

2. DESIGN

- Create mapping documents and preliminary plans for the design of the Project to include:
 - Property information
 - Soils, topography, sediment loading calculations
 - Structural and non-structural streambank stabilization practices
- Develop final construction plans and specifications related to design
- Generate a cost-estimate for construction
- Outline a 10-year, post-construction maintenance schedule for Public Works staff

3. BID PROCESS

- Distribute bid documents, including construction documents (plans) and specifications
- Assist with administering bids, including coordination and contacts with potential contractors
- Address and distribute addendums as needed
- Attend and conduct pre-bid meeting (if necessary)
- Develop bid tab and evaluate bids. Provide City with recommended award of project

4. CONSTRUCTION MANAGEMENT

- Attend and conduct pre-construction meeting.
- Provide construction management duties including RFI’s, change orders, and shop drawing review.
- Provide inspection on a minimum weekly basis, with additional visits as deemed necessary based on construction progress.
- Provide quantities and develop estimate of payment to the contractor.
- Assist with punchlist and final review and approval of improvements.

End Part I

Part II: Project Description/Project Limits/Payment for Services

Project Description

Create a design for the streambank stabilization of Lions Field Creek that includes stakeholder input, construction costs, and a 10-year maintenance plan.

Project Limits

The project area is with the city limits of West Branch, IA, and is defined in Exhibit A. These limits include the creek between Main Street and the southeast corner of Fox Run Golf Course.

Payment for Services

The Engineer will perform the services, enumerated in **Part 1 – Scope of Services** as listed below and at the Standard Hourly Rates (also listed below). Total for project is based on an **hourly not-to-exceed amount of Twenty Six Thousand, One Hundred Three Dollars and no cents (\$26,103.00)**.

Stakeholder Meetings, Research, Site Visits = \$5,788.00

Design = \$11,900.00

Bid Process = \$3,270.00

Construction Management = \$5,145.00

Progress billings will be made monthly based upon the actual hours expended and the reimbursable direct costs. Client agrees to each billing within 60 days of receipt. If Engineer does not receive any payment within 60 days of the invoice date, Engineer may, at Engineer's sole option, cease all Project work until Engineer receives payment in full for all unpaid balances due.

In the event Client or Owner requests Engineer perform additional services not included in the Scope of Services, unless otherwise agreed in writing, by and between Engineer and Client, such services shall be performed at the Standard Hourly Rates with authorization limits to be set at the time such services are requested.

Standard Hourly Rates -- Effective January 1st, 2016

Principal	\$165.00	Project Designer 3	\$108.00
Program Manager	\$144.00	Project Designer 2	\$98.00
Senior Licensed Professional Engineer, P.E	\$129.00	Project Designer 1	\$82.00
Structural Engineer	\$144.00	Project Designer 0	\$77.00
Licensed Professional Engineer, P.E.	\$113.00	Distribution Designer	\$88.00
Associate 3 (E.I.T.)	\$108.00	Construction Manager	\$124.00
Associate 2 (E.I.T.)	\$103.00	Construction Liaison	\$124.00
Associate 1 (E.I.T.)	\$98.00	Construction Specialist 2	\$124.00
Senior Project Manager	\$129.00	Construction Specialist 1	\$108.00
Project Manager	\$113.00	Field Administrator	\$93.00
Quality Manager	\$113.00	Professional Land Surveyor	\$129.00
Project Coordinator	\$103.00	Field Lead	\$108.00
Permitting Coordinator	\$103.00	Field Technician	\$72.00
Analyst 2	\$77.00	Locator 3	\$67.00
Analyst 1	\$67.00	Locator 2	\$57.00
Administrative	\$62.00	Locator 1	\$46.00
		Locator 0	\$36.00

End Part II

Part III: HBK ENGINEERING, LLC

GENERAL TERMS AND CONDITIONS

A. PARTIES AND DEFINITIONS: “Agreement” as used here shall mean, as applicable, the attached Professional Services Agreement (PSA), Master Services Agreement (MSA), General Purchase Agreement (GPA) or Task Authorization (TA), together with, if any, associated, Exhibits, attachments and addenda. “Engineer”, for purposes of these General Terms and Conditions, shall mean HBK Engineering, LLC. “Client” shall be the party hiring Engineer to perform the Work hereunder. Engineer or Client may be referred to as “Party” and together as “Parties”. “Work” shall mean the professional engineering and/or engineering related services described in Engineer’s scope of services under the Agreement. “Prime Agreement” shall be used here conventionally. **Flow-Through:** Prior to Engineer’s execution of this Agreement, Client shall provide Engineer a full copy of the Prime Agreement and allow for Engineer’s timely and reasonable review. In the alternative, Client may withhold, or otherwise not provide, one or more sections of the Prime Agreement (“Withheld Provisions”). Excepting *Withheld Provisions*, Engineer shall assume obligations and responsibilities that, and as, the Prime Agreement specifically requires of lower tier design professionals, but only insofar as such provisions apply to Engineer’s limited scope of services for Work hereunder; additionally, Client grants Engineer the same rights, powers, privileges and remedies toward Client as Client is granted, directly or indirectly, toward higher tier parties under the Prime Contract or applicable law. Notwithstanding anything to the contrary above or in any Prime Agreement, *Engineer shall not be bound, in any way whatsoever, by an untimely Prime Agreement, any Withheld Provisions, or provisions directly related to or dependent upon a Withheld Provision or an untimely Prime Agreement.* **Section Headings** used in this Agreement are descriptive only, included for convenience, and shall not constitute an interpretive part the Agreement. The term “reasonable” as used in this Agreement, in all cases, shall mean “commercially reasonable”.

B. INSURANCE: Engineer is protected by Workers’ Compensation, Commercial General Liability, Automobile Liability and Professional Liability insurance coverage, and will furnish certificates of insurance upon Client’s request. If Client requires coverage beyond Engineer’s applicable standard coverage, Engineer will attempt to obtain such coverage provided Client agrees to pay additional costs of such coverage.

C. PERMITS: Where and as permitting (“Permits”) is specifically included as part of the Work, Engineer will furnish such documents and design data as may be reasonably required and Engineer will assist Client in obtaining such Permits in accordance with Engineer’s applicable scope of services for such Work. Client will furnish all design input required by Engineer for completion of the Work and, if any, ancillary approvals and/or consents (“Permissions”). In any case, ***Engineer shall not be responsible for the favorable or timely receipt of Permits or Permissions where delay may be due to reasons beyond Engineer’s scope of services, authority, or reasonable control.*** It is mutually understood: (i) Client will pay the cost of all Permits and Permissions, including, without limitation, review fees, bonding, insurance premiums, title company charges, blueprints and reproductions, if any, associated with the permitting Work, and (ii) such costs are *not included* in Engineer’s fees for professional services, unless (iii) such costs are specifically enumerated in writing and payment by Engineer is specifically stated in Engineer’s scope of services for the Work.

D. PROFESSIONAL STANDARD OF CARE: Engineer’s services will be performed in accordance with generally accepted practices of professional engineers in firms similar to Engineer’s, and providing similar services at the same time, in the same locale, and under like circumstances. No warranty or guarantee, express or implied, is included or intended by this Agreement with respect to the performance of professional services. Nothing in this Agreement shall be construed to establish a fiduciary relationship between the Parties.

E. INFORMATION PROVIDED BY OTHERS: Client shall assist Engineer by placing at his disposal all documents, drawings, reports and other existing information available to Client and Client’s consultants and subcontractors that will assist Engineer in the performance of the basic services being provided by Engineer, and Engineer shall be entitled to rely upon the accuracy and completeness thereof. Client recognizes that it is impossible for Engineer to assure the accuracy, completeness and sufficiency of information provided by others, either because, for example, it is impossible to independently verify within Engineer’s scope of work, or because of reasonably undetectable errors or omissions of others that may have occurred in assembling such information.

Accordingly, Engineer will conduct the research that in its professional opinion is necessary and will provide the requested

services in a manner consistent with Engineer's professional standard of care for same or similar projects. Client recognizes, however, that the information upon which the Engineer relies may contain errors or may be incomplete. Client agrees to waive all claims and causes of action against Engineer, and anyone for whom Engineer may be legally liable, for damages arising out of Engineer's use of such information provided by Client or obtained from others, upon which Engineer shall rely while providing the scope of services contained in this Agreement.

ELECTRONIC MEDIA: Engineer agrees, upon request, to provide materials to Client stored electronically. At Engineer's option, unless specifically agreed to the contrary, such materials will be provided in PDF format. Client recognizes that data, plans, specifications, reports, documents, or other information recorded on or transmitted as electronic media are subject to alteration, either intentional or otherwise, due to, for example, transmission, conversion, media degradation, software error or human alteration. Engineer makes no warranties, either express or implied, regarding the fitness or suitability of electronic media. Client agrees electronic media shall not be used, in whole or in part, for any project other than that for which they were created. Client agrees to waive any and all claims against Engineer resulting in any way from the unauthorized reuse or alteration of electronic media. Documents that may be relied upon by Client as definitive are limited to those that are sealed by Engineer.

F. OWNERSHIP OF DATA AND DOCUMENTS: Client acknowledges all Work Product, including, without limitation, documents, drawings, specifications, estimates, field notes, and other data and all processes including scientific, technological, software, and other concepts, whether or not patentable, created, prepared or furnished under this Agreement by Engineer or by Engineer's independent contractors and consultants pursuant to this Agreement, are *instruments of service* in respect of the project and they are, and they shall remain, the property of Engineer whether or not the project is completed. In the event Client is or becomes entitled to any ownership and/or license rights to *project plans or specifications prepared under this Agreement, Engineer's completion of the Work and payment in full of all money due to Engineer shall be conditions precedent to such transfer. Client agrees, to the fullest extent permitted by law, to indemnify and hold Engineer harmless from any claim, liability or cost (including reasonable attorney's fees and defense costs) arising or allegedly arising out of any unauthorized reuse or modification of the Work Product by the Client or any person or entity that acquires or obtains the plans and specifications from or through Client without the written authorization of Engineer.*

G. INDEMNIFICATION: Engineer and Client agree, subject to liability limiting provisions elsewhere in this Agreement, to indemnify and hold harmless, the other, its Members, managers, directors, officers and employees, from and against legal liability for claims, losses, damages, or liability, including reasonable attorney's fees (together, "Claims") to the extent such Claims are legally determined to be caused solely by their negligent acts, errors or omissions in their performance under this Agreement. In the event such Claims are legally determined to be caused by the joint or concurrent negligence of Engineer and Client, Claims shall be born by each party in proportion to its own negligence under comparative fault principles. No duty to defend is hereby created nor any costs of defense are hereby assumed by this indemnity provision and Parties explicitly waive such duty and costs under this Agreement. Causes of action arising out of Engineer's services or this Agreement, regardless of cause or the theory of liability, including negligence, indemnity or other recovery shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of Engineer's substantial completion of services on the project. ***In all cases, Engineer's indemnification shall be limited to the extent of the liabilities specifically assumed by Engineer within this Agreement and only as respects professional services performed by Engineer.***

H. JOBSITE SAFETY: Engineer will not be responsible, nor assume any liability, for any acts or errors or omissions of Client or any of Client's sub-contractors, agents or employees or any other persons (except Engineer's own employees) at the Work site or otherwise performing Client's work. If Engineer's scope of Work includes the performance of services during the construction phase of a project, it is understood that the purpose of such services, including visits to the site, is to enable Engineer to better perform the duties and responsibilities assigned to and undertaken by it as a design professional. Neither the professional activities of Engineer, nor the presence of Engineer or its employees at the construction site, shall relieve Client of its obligations, duties and responsibilities included in, or necessary to complete, the Work. ***In no event shall Engineer be responsible, in any way whatsoever, for construction means, methods, sequence, techniques or procedures necessary for performing, superintending or managing, in any way, construction aspects of the Work.*** Engineer and its personnel shall have no authority to exercise any control over Client's construction, or that of Client's subcontractors or other entities or their employees (such individuals and entities, together, "Construction Personnel") in connection with Client's Work or any related health or safety programs or procedures. The Client agrees that Construction

Personnel shall be solely responsible for jobsite safety, and warrants that this intent shall be carried out in Client's agreements with Construction Personnel. Client also agrees that Client, Engineer and Engineer's sub-consultants, if any, shall be indemnified by Construction Personnel and named additional insured under their policies of general liability insurance.

I. ADDITIONAL/EXCLUDED SERVICES: This Agreement is a non-exclusive contract. Engineer may refuse additional work from Client and accept work from others. Client agrees to pay Engineer as compensation for all authorized extra or additional services not specifically covered in the Agreement's scope of services. Services resulting from significant changes in general scope of the underlying project or its design shall be considered permitted, additional Work, including but not limited to: changes in size, complexity, assumptions, Client's schedule, or character of construction, and revising previously accepted studies, reports, design documents or contract documents when any such revisions are due to causes beyond Engineer's control. **EXCLUDED SERVICES** The following services, unless specifically included, are here specifically *excluded* from the Work: land title, ownership and/or tract and lien searches; structural calculations; services involved in the design of improvements lying outside of the Project Limits. Engineer shall perform excluded services only upon written request and agreement. Absent written agreement to the contrary, such additional or excluded services shall be performed on a time and material basis, at Engineer's then current Standard Hourly Rates with expenses passed through to Client at actual cost plus ten percent (10%). **Hazardous Materials** - *Nothing in this Agreement shall be construed as providing any type of service relating to an assessment of the presence or absence of oil, asbestos, radioactive materials or any other hazardous material and/or environmental contaminants which may be subject to regulatory control, or for the design of systems to remove, treat, handle, or dispose of such materials.*

J. TERMINATION: Client may, at any time, suspend further work by Engineer, or Client or Engineer may, with or without cause, terminate the Agreement at any time upon ten (10) working day's written notice to the other party. Client agrees to compensate Engineer for all services performed prior to the effective date of suspension or termination, together with reimbursable expenses including, if any, sub-contractors, sub-consultants and vendors. No deductions or Client offsets shall be made from Engineer's compensation unless by prior written agreement between Client and Engineer, nor shall payment to Engineer be contingent upon financing arrangements or receipt of payment from any third party. Engineer shall forward specifications, drawings and documents relating to the services provided in this Agreement to Client upon payment in full of all monies due Engineer under this Agreement. If Engineer for any reason does not complete all of the services contemplated by this Agreement, Engineer cannot be responsible for the accuracy, completeness or workability of project documents prepared by Engineer if used, changed or completed by the Owner, Client or by another party. *Accordingly, Client agrees, to the fullest extent permitted by law, to indemnify and hold Engineer harmless from any claim, liability or cost (including reasonable attorney's fees and defense costs) for injury or loss arising or allegedly arising from such use, completion or any unauthorized changes made by any party to any contract documents prepared by Engineer.*

K. LIMITATION OF LIABILITY: To the maximum extent permitted by law, Client agrees to limit Engineer's liability for Engineer's acts, errors or omissions under this Agreement such that the total aggregate liability of Engineer hereunder shall not exceed One Hundred Thousand Dollars (\$100,000.00) in total. Further, it is agreed and understood that this limitation of liability is the sole and exclusive remedy available to Client for any damages and/or losses arising from Engineer's services. IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY HERETO FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUE, OR COST OF CAPITAL.

L. MISCELLANEOUS PROVISIONS:

1. FORCE MAJEURE: Any delays in or failure of performance by Engineer shall not constitute a default hereunder if such delays or failures of performance are caused by occurrences beyond the reasonable control of Engineer, including but not limited to: Acts of God or the public enemy; compliance with any order of any governmental authority; changes in law; act of war, sabotage or damage resulting there from; fires, floods, explosion, accidents, riots, strikes or other concerted acts of workmen, whether direct or indirect; *delays in permitting*; or any other causes which are beyond the reasonable control of Engineer. **2. INTERPRETATION:** The parties acknowledge and agree the terms and conditions of this Agreement, including but not limited to those relating to allocation of, releases from, exclusions against and limitation of liability, have been freely and fairly negotiated. Each party acknowledges that in executing this Agreement they have relied solely on their own

judgment, belief and knowledge, and such advice as they chose to receive from their own legal counsel, and they have not been influenced by any representation or statement made by any other party or its legal counsel. *No provision in this Agreement is to be interpreted for or against any party because that party or its counsel drafted such provision.* In the event that any portion or all of this agreement is held to be void or unenforceable, the parties agree to negotiate in good faith to amend the commercial and other terms of the Agreement in order to effect the intent of the parties as set forth in this Agreement. The parties agree to look solely to each other with respect to performance of this Agreement. The provisions of this agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of the Agreement, including but not limited to any expressed limitation of or released from liability, shall continue as valid and enforceable obligations of the parties notwithstanding any such termination, cancellation, completion or expiration.

3. ENTIRE AGREEMENT: This Agreement, and without limitation, any Exhibits, addenda, applicable Task Authorizations, Purchase Orders, Requisitions and other such similar “Work Requests”, constitute the entire Agreement between Client and Engineer, superceding all prior or contemporaneous communications, representations or agreements, whether oral or written, relating to the Work hereunder. In the event of conflict and/or ambiguity between any provision of this Agreement and, without limitation, that contained in any Work Request, proposal, contract, requisition, notice to proceed, or any other Project document, this Agreement, and within this Agreement –these General Terms and Conditions, shall take precedence and prevail in enforcement and or clarification. No other representations of any kind, oral or otherwise, have been made. Client and Engineer bind themselves and their partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other part, in respect to all covenants of this Agreement; except as above, neither Client nor Engineer shall assign, sublet or transfer his interest in this Agreement without the written consent of the other. *Nothing herein shall be construed as creating any personal liability on the part of any owner, officer, employee, or agent of Engineer or Client that may be a part hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than Client or Engineer.*

4. DISPUTE RESOLUTION: All claims, disputes or controversies arising out of or in relation to the interpretation, application or enforcement of this Agreement shall be submitted to arbitration pursuant to the Rules for Commercial Arbitration of the American Arbitration Association. Judgment on any interim or final award rendered by the arbitrator may be entered and enforced in any court of Illinois or the United States District Court for the Northern District of Illinois. The city and state of such arbitration shall be in Chicago, Illinois. Any legal action by either party against the other for any cause or causes, including but not limited to breach of this Agreement, negligence, misrepresentations, breach of warranty or failure to perform in accordance with the standard of care, however denominated, shall be barred two (2) years from the day after completion of Engineer’s services hereunder. **5. GOVERNING LAW:** This Agreement shall be governed and construed in accordance with the laws of the state of Illinois. Client hereby irrevocably consents and submits to the jurisdiction of any State Court of Illinois, or the United States District Court for the Northern District of Illinois and waives any and all objections that it may have to Cook County venue or the issuance of service of process in any such proceedings.

6. ATTORNEY FEES, COSTS AND EXPENSE: In the event either or both Engineer and/or Client, Owner or any other party adverse to Engineer shall institute any action or proceeding against the other relating to the enforcement of this Agreement, any provision hereof, or any default hereunder, the non-prevailing party shall pay the prevailing party’s reasonable attorneys’ fees, costs and expenses. **7. SEVERABILITY:** Every paragraph, part, term or provision of this Agreement is severable from another. If any paragraph, part, term or provision of this Agreement is construed or held to be void, invalid or unenforceable by order, decree or judgment of a court of competent jurisdiction, the remaining paragraphs, parts, terms and provisions of the Agreement shall not be affected thereby but shall remain in full force and effect. The parties further agree to reform these Terms and Conditions to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the stricken provision. **8. SURVIVAL:** These terms and conditions, including, without limitation, any expressed limitation of or release from liability, shall survive the completion of Work or termination of this Agreement and shall remain in full force and effect. **9. ASSIGNMENT:** Client may not assign rights, duties and liabilities under this Agreement without prior written consent of Engineer. **10. SOLICITATION OF EMPLOYMENT:** Neither party shall, during the term of this Agreement or for a period of one hundred eighty (180) days thereafter, directly or indirectly for itself or on behalf of, or in conjunction with, any other person, partnership, corporation, business or organization, solicit, hire, contract with or engage the employment of an employee of the other, unless that party has obtained the written consent of the other to such hiring and that party pays to the other reasonable compensation for disruption to the other’s business and the other’s cost to replace the lost employee.

END GENERAL TERMS AND CONDITIONS
US1153221

Exhibit A
Project Limits

