



AGREEMENT FOR ENGINEERING SERVICES

This Agreement is made and entered into this 4th day of February, 2019, by and between the CITY OF ANKENY, IOWA, hereinafter referred to as “**Owner**,” and Kirkham, Michael & Associates, Inc. a CONSULTING ENGINEERING corporation, hereinafter referred to as “**Engineer**,” as follows:

The Owner hereby agrees to retain the Engineer, and the Engineer hereby agrees to provide the required professional services; and to furnish the equipment, supplies, or materials necessary to complete the work for the following project:

FINAL DESIGN - Westwinds Channel Flood Repair, Ankeny, Iowa

1. STANDARD CONDITIONS

“**Kirkham, Michael & Associates, Inc., General Terms and Conditions**,” as attached hereto as Exhibit A (3 pages) and hereinafter referred to as the “Terms and Conditions”, is hereby incorporated into this Agreement, with the following exceptions.

- a. Section 7 “LIMITATION OF LIABILITY” of the Terms and Conditions is not applicable to this Agreement, and is hereby eliminated in its entirety, from this Agreement.
- b. Section 8 “INSURANCE” of the Terms and Conditions is not applicable to this Agreement, and is hereby eliminated in its entirety, from this Agreement. Section 2 “SUPPLEMENTAL CONDITIONS” of the base Agreement specifies “INSURANCE” requirements that are applicable to this Agreement, in lieu of those in Section 8 of the Terms and Conditions.
- c. Section 9 “INDEMNIFICATION” of the Terms and Conditions is not applicable to this Agreement, and is hereby eliminated in its entirety, from this Agreement. Section 2 “SUPPLEMENTAL CONDITIONS” of the base Agreement specifies “INDEMNIFICATION” requirements that are applicable to this Agreement, in lieu of those in Section 9 of the Terms and Conditions.
- d. Section 12 “GOVERNING LAW” of the Terms and Conditions is not applicable to this Agreement, and is hereby eliminated in its entirety, from this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa.
- e. Section 13 “DISPUTE RESOLUTION” of the Terms and Conditions is not applicable to this Agreement, and is hereby eliminated in its entirety, from this Agreement. Section 2 “SUPPLEMENTAL CONDITIONS” of the base Agreement specifies “DISPUTE RESOLUTION” requirements that are applicable to this Agreement, in lieu of those in Section 13 of the Terms and Conditions.
- f. Section 20 “PROPRIETARY DATA” of the Terms and Conditions is not applicable to this Agreement, and is hereby eliminated in its entirety, from this Agreement.

2. SUPPLEMENTAL CONDITIONS

INSURANCE

Engineer agrees to purchase, at its own expense, Workers’ Compensation Insurance and Comprehensive General Liability Insurance and will upon request, furnish insurance certificates to the Owner.



INDEMNIFICATION

a. Indemnification for Professional Negligence

Notwithstanding any language contained herein to the contrary, Engineer warrants and represents to the Owner that the public improvement has been designed in accordance with a generally recognized engineering or safety standard, criteria, or design theory in existence at the time of the construction or reconstruction. In the event that it is determined that the public improvement was not designed in accordance with a generally recognized engineering standard, criteria or design theory in existence at the time of the construction or reconstruction, the engineer agrees to indemnify and hold the Owner harmless from and against any and all claims, losses, damages, forfeitures, judgement, legal fees, costs, expenses, liabilities, and obligations, including, but not limited to attorney fees, that arises out of or in any way relates to the failure to design in accordance with the generally recognized engineering standard, criteria, or design theory in existence at the time of the construction or reconstruction. In the event of a conflict between this provision and any other provision of the Contract Documents the terms of this provision shall prevail.

b. General Indemnification

Engineer shall protect, indemnify, hold harmless and defend the Owner and its employees, agents, and representatives (the "Indemnitees") against any and all claims, causes of action, suits, losses, costs or damages, including attorneys' fees and expenses, resulting from the acts, failure to act, omissions, negligence, or fault of Engineer those employed by them, or their agents and representatives, whether or not said claim, cause of action, suit, loss, cost or damage is alleged to be caused in part by any act, failure to act, omission, negligence, or fault of any of the Indemnitees or their employees, and Engineer shall bear any expense which any of the Indemnitees may have by reason thereof, or on account of being charged with such claim, cause of action, suit, loss, cost or damage, unless such claim, cause of action, suit, loss, cost or damages is solely caused by the Indemnities' sole act, failure to act, omission, negligence or fault. This general indemnification obligation is in addition to, and not a limit on, the insurance or bond obligations of the Engineer. In any and all claims by an employee of Engineer, anyone directly or indirectly employed by it, or anyone for whose acts Engineer may be liable, against any of the Indemnitees, or any of their agents or employees, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages by the compensation benefits payable by or for Engineer under workers' compensation acts, disability benefits acts, or other employee benefit acts.

DISPUTE RESOLUTION

Owner and Engineer agree that as a prerequisite to the filing of a lawsuit or a demand for arbitration, they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement to informal non-binding mediation. If non-binding mediation is not successful then the Engineer, and Contractor agree that any dispute, controversy or claim arising out of or relating to this Agreement, the Project at issue, or the breach, default, and/or nonperformance thereof, may, solely at the Owner's discretion, be settled by binding arbitration administered pursuant to Iowa Code chapter 679A or in a district court of competent jurisdiction in and for Polk County, Iowa. Engineer and/or Contractor further agree that if at any time the Engineer and/or Contractor have any dispute controversy or claim arising out of or relating to this Agreement, the Project at issue, or the breach, default, and/or nonperformance thereof all such disputes, controversies or claims shall



be brought in one action and such disputes, controversies or claims shall be joined in and be bound by the same action and forum as elected and brought by the Owner in order to ensure there is no piecemeal litigation.

3. SCOPE OF SERVICES

The work to be performed by the Engineer under this Agreement shall encompass and include all work, services, materials, equipment, supplies and incidental costs necessary to perform the work outlined below and as represented by Exhibit B, Scope of Services and Exhibit C, Project Location Map, to this Agreement. In general the Engineer shall provide:

Final Design, Easement Preparation, Construction Documents Preparation, and Letting Phase Services for flood repairs in the Westwinds channel for the areas identified in Exhibit C.

4. SCHEDULE

The schedule is included in Exhibit B, Scope of Services.

5. COMPENSATION

- A. For full and complete compensation for work, materials, and services furnished for the Scope of services in this Agreement, Engineer shall be paid for direct time charged to the project at Standard Hourly Rates for each employee Classification plus reimbursable expenses up to a maximum limit of **\$39,915.00**. The Standard Hourly rates are included as part of Exhibit D to this Agreement and includes salary, additives, overhead and profit. No additional fees shall be payable for the project, unless specifically agreed to in writing by the Owner and Engineer prior to providing said services. A detailed estimate and fee is included as Exhibit D to this Agreement.
- B. Work items not addressed in the scope of work included in this Agreement shall be considered extra work, and may be completed if required, at additional cost, to be negotiated at the time the work is found necessary.
- C. The Engineer shall invoice the Owner monthly for services, and any approved amendments to this Agreement, based upon services actually completed at the time of the invoice. Final payment shall be due and payable within 30 days of the Owner's acceptance of Engineer's submission of final deliverables in accordance with the Scope of Services.
- D. In consideration of said compensation, the Engineer agrees to perform all services, work, and/or provide all materials, supplies, and equipment, and to carry out the provisions of this Agreement in a good and workmanlike manner to the satisfaction of the Owner. If the performance of this Agreement involves the services of others or the furnishing of equipment, supplies, or materials, the Engineer agrees to pay for the same in full; and at the time of payment by the Owner, to certify in writing to the Owner that said payments have been so made.



IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers or agents on the day and year first above written.

Attachment: Exhibit A – General Terms and Conditions
 Exhibit B – Scope of Services
 Exhibit C – Project Location Map
 Exhibit D – Fee Estimate and Hourly Rates

ENGINEER:

KIRKHAM, MICHAEL & ASSOCIATES, INC.

Federal ID #470365085

OWNER:

CITY OF ANKENY, IOWA

BY: _____

GREG CABALKA, VP

BY: _____

Date: _____

1/28/19

Date: _____

Exhibit A



General Terms and Conditions

1. AUTHORIZATION TO PROCEED

Signing of the accompanying agreement for engineering and related services shall be authorization by the client for Kirkham Michael & Associates, Inc. (Kirkham Michael) to proceed with the professional services described, unless otherwise stated in the agreement form.

2. DEFINITION

These mutually agreed covenants which include as a minimum the attached written proposal (Proposal) including a Scope of Services and these General Terms and Conditions constitute the "Agreement." This Agreement defines the relationship between the Client as identified in the Proposal and Kirkham Michael for the Project as defined in the Proposal. The professional services of Kirkham Michael shall include services performed by employees of Kirkham Michael, its affiliates, subsidiaries, independent professional associates, consultants and subconsultants.

3. STANDARD OF PRACTICE AND ABSENCE OF WARRANTY

Services performed by Kirkham Michael under this agreement will be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in the agreement or in any report, opinion, document, or otherwise. All estimates, recommendations, opinions, and decisions of Kirkham Michael will be made upon the basis of the information available to Kirkham Michael and Kirkham Michael's experience, technical qualifications, and professional judgment. Kirkham Michael makes no warranties, expressed or implied, under this Agreement or otherwise, in connection with Kirkham Michael's services.

Client expressly acknowledges that subsurface conditions may vary at locations other than at a particular location where borings, explorations, surveys and samplings are made, and that the data interpretations and recommendations of Kirkham Michael are based solely upon information available to Kirkham Michael. Client also acknowledges that Kirkham Michael shall not be responsible for interpretations by others of the information developed. All data obtained during investigative phases are subject to confirmation of conditions encountered during subsequent phases of the Project. Client recognizes that the scope of services under this Agreement is limited by Client's available budget and schedule and those additional services may yield more accurate and reliable information regarding conditions at or near the site.

4. PROJECT SITE AND RIGHT OF ENTRY

Client shall furnish or cause to be furnished to Kirkham Michael all documents and information known to CLIENT that relates to the identity, location, quantity, nature or characteristics of any hazardous waste at, on, or under the site. In addition, Client shall furnish and pay for such other reports, aerial photographs, data, studies, drawings, specifications, documents, and other information regarding surface and subsurface site conditions, which will be required by Kirkham Michael for performance of its services. Kirkham Michael shall be entitled to rely upon documents and information provided by Client in performing the services required under this Agreement; however, Kirkham Michael assumes no responsibility or liability for the accuracy or completeness of said documents and information. Client provided documents will remain the property of Client.

Kirkham Michael will not direct, supervise or control the work of contractors or their subcontractors. Kirkham Michael's services do not include a review or evaluation of a contractor's (subcontractor's) safety measures.

Kirkham Michael shall be responsible only for its activities and those of its employees on any site. Neither the professional activities nor the presence of Kirkham Michael, its employees, or its subconsultants on a site shall imply that Kirkham Michael controls the operations of others; nor shall this be construed to be an acceptance by Kirkham Michael of any responsibility for Project site safety.

Client shall provide right of entry for Kirkham Michael personnel, Kirkham Michael subconsultants and all equipment and vehicles necessary to perform services. Kirkham Michael will take reasonable measures to minimize damage to property; however, Client understands that some damage may occur and the cost of repair of such damage will be borne by the Client.

Client understands that Client will be responsible for designating the location of below grade structures, foundations, utilities and other subterranean obstacles. Kirkham Michael will take reasonable effort to avoid damage to these items. In the event these items cannot be located, Kirkham Michael, by Client written authorization, at Client's cost, will deploy feasible locating methods and employ specialty "dig up" crews to confirm locations. However, Client agrees to hold Kirkham Michael harmless for damages to or damages caused by any subsurface or subterranean utilities or structures which are not correctly located by Client or which Kirkham Michael could not locate using a reasonable standard of care.

5. INVOICING AND PAYMENT

The Client, recognizing that timely payment is a material part of the consideration of this agreement, shall promptly pay Kirkham Michael for services performed in accordance with the rates and charges set forth herein. Invoices will be submitted by Kirkham Michael on a monthly basis and shall be due and payable upon receipt. The Client shall pay an additional charge of one and one half percent (1.5%) (or the maximum percentage allowed by law, whichever is lower,) of the invoiced amount per month for any payment received by Kirkham Michael more than thirty (30) calendar days from the invoice date. Payment thereafter shall first be applied to accrued interest and then to principal unpaid amount.

If the Client for any reason fails to pay the undisputed portion of Kirkham Michael's invoices within thirty calendar days from the invoice date, Kirkham Michael may cease work on the project and the Client shall waive any claim against Kirkham Michael and shall defend and indemnify Kirkham Michael from and against any claims for injury or loss stemming from Kirkham Michael's cessation of services. Client shall also pay Kirkham Michael the cost associated with premature project demobilization. In the event the project is remobilized, Client shall also pay the cost of remobilization and shall renegotiate appropriate contract terms and conditions such as those associated with the budget, schedule or scope of services.

Unless the specific provisions of Proposal provide otherwise or the Current Year Schedule of Fees is not incorporated, then payment under this Agreement is based upon cost reimbursement (e.g., hourly rate, time and materials, direct personnel expense or per diem), and the provisions of the following sub-paragraphs shall apply:

a. The minimum time segment for billing field work is four (4) hours. The minimum time segment for billing work performed at an office is one-half (1/2) hour.

b. Project subcontracts (e.g. drilling, trenching, special testing, surveying, etc.) will be billed at cost plus 15% for handling and administration.

c. Other direct costs, excluding travel and subsistence, are payable at actual documented cost plus 10% for handling and administration. This shall include such items as shipping, communication, printing and reproduction, computer services, supplies and equipment, and equipment items rented from commercial sources. Travel and subsistence expenses of personnel when on business connected with the Project are reimbursable at cost plus 10%. The use of reusable field and support equipment owned by Kirkham Michael will be billed at negotiated rates. In the event that equipment does not have a current rate, a daily rate of 2% of purchase price of equipment will be used.

d. When applicable, rental charges will be applied to cover the cost of pilot-scale facilities or equipment, apparatus, instrumentation, or other technical machinery. When such charges are applicable, Client will be advised at the start of an assignment, task or phase. Analyses performed in Kirkham Michael or Kirkham Michael's subconsultants' laboratories will be billed on a unit-cost-per-analysis basis, unless specified otherwise in the accompanying Proposal (Scope of Services).

Exhibit A



General Terms and Conditions

e. Invoices based upon cost reimbursement will be submitted showing labor (hours worked) and total expense, but not actual documentation. If requested by Client, documentation will be supplied at the cost of providing such documentation, including labor and copying costs.

6. CHANGES OR DELAYS

Unless the accompanying Proposal provides otherwise, the proposed fees constitute Kirkham Michael's estimate to perform the services required to complete the Project as Kirkham Michael understands it to be defined. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning. In any event, as the Project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. Kirkham Michael will inform CLIENT of such situations so that negotiation and compensation can be accomplished as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for performance of the services, whether or not changed by any order, an equitable adjustment shall be made, and the Agreement modified accordingly. Neither party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of either party's obligations results from any cause beyond either party's reasonable control and without either party's negligence.

7. LIMITATION OF LIABILITY

Kirkham Michael's liability is limited to amount of Kirkham Michael's compensation or the amount of fifty thousand dollars (\$50,000) whichever is less. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Kirkham Michael and Kirkham Michael's directors, officers, principals, managers, employees, agents and Kirkham Michael's consultants and subconsultants, and any of them, to Client and anyone claiming, by, through, or under Client for any claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Kirkham Michael or Kirkham Michael's directors, officers, principals, managers, employees, agents and Kirkham Michael's consultants and subconsultants, or any of them, shall not exceed the total compensation received by Kirkham Michael under this Agreement.

8. INSURANCE

Kirkham Michael agrees to purchase, at its own expense, Workers' Compensation Insurance and Comprehensive General Liability Insurance and will upon request, furnish insurance certificates to Client. Kirkham Michael agrees to indemnify Client for the claims covered by Kirkham Michael's insurance subject to the limitation of liability contained in Section 7. Kirkham Michael agrees to purchase additional insurance if requested by Client (presuming such insurance is reasonably available from carriers acceptable to Kirkham Michael), provided the costs for additional insurance are reimbursed by Client.

9. INDEMNIFICATION

Client and Kirkham Michael each agree to indemnify and hold the other harmless, and their respective officers, employees, agents and representatives, from and against liability for all claims, losses, damages and expenses, including reasonable attorneys' fees, to the extent such claims, losses damages, or expenses are caused by the indemnifying party's negligent acts, errors or omissions. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of Client and Kirkham Michael, they shall be borne by each party in proportion to its negligence.

10. CONSEQUENTIAL DAMAGES

The Client shall not be liable to Kirkham Michael and Kirkham Michael shall not be liable to the Client for any consequential damages incurred by either party due to the fault of the other, regardless of the nature of

this fault or whether it was committed by the Client or Kirkham Michael, their employees, agents, or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

11. TERMINATION

Either party may terminate the Agreement, in whole or in part, fourteen (14) days after giving written notice, if the other party substantially fails to fulfill its obligations under the Agreement through no fault of the terminating party. Where method of payment is "lump sum," the final invoice will include all services and expenses associated with the Project up to the effective date of termination. Where method of payment is based upon cost reimbursement, the final invoice will include all services and expenses associated with the Project up to the effective date of termination. In any event, an equitable adjustment shall be made to provide for termination settlement costs Kirkham Michael incurs relating to commitments that had become firm before termination, and for a reasonable profit for services performed.

12. GOVERNING LAW

This Agreement is to be governed by and construed in accordance with the laws of the State of Nebraska, unless mutually agreed in writing by Client and Kirkham Michael to be in accordance with the laws of the state where the Project is located.

13. DISPUTE RESOLUTION

Client and Kirkham Michael agree that as a prerequisite to the filing of a lawsuit or a demand for arbitration, they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement to mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association, effective as of the date of this Agreement.

14. HAZARDOUS ENVIRONMENTAL CONDITIONS AND DISPOSAL OF CONTAMINATED MATERIAL

It is understood and agreed that Kirkham Michael is not, and has no responsibility as a handler, generator, treater, or storer, transporter, or disposer of hazardous or toxic substances found or identified at the Project site. It is acknowledged by both parties that Kirkham Michael's scope of services does not include any services related to the presence or discovery at the site of asbestos, PCBs, petroleum, hazardous waste, radioactive materials or any other hazardous material or toxic substance. Client acknowledges that Kirkham Michael is performing professional services for Client and Kirkham Michael is not and shall not be required to become an "arranger," "operator," "generator" or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA). CLIENT shall undertake or arrange for the handling, removal, treatment, storage, transportation, and disposal of hazardous substances or constituents found or identified at the Project site.

15. CONFIDENTIALITY

Kirkham Michael shall maintain as confidential and not disclose to others without Client's prior written consent all information obtained from Client that was not otherwise previously known to Kirkham Michael or in the public domain and is expressly designated by Client in writing to be "CONFIDENTIAL." The provisions of this paragraph shall not apply to information in whatever form that (1) is published or comes into the public domain through no fault of Kirkham Michael, (2) is furnished by or obtained from a third party who is under no obligation to keep the information confidential, or (3) is required to be disclosed by law on order of a court, administrative agency, or other authority with proper jurisdiction.

Client agrees that Kirkham Michael may use and publish Client's name and a general description of Kirkham Michael's services with respect to the Project in describing Kirkham Michael's experience and qualifications to other Clients or potential Clients.

Exhibit A



General Terms and Conditions

16. OWNERSHIP OF DOCUMENTS, RE-USE OF DOCUMENTS AND USE OF ELECTRONIC MEDIA

All documents including drawings and specifications prepared or furnished by Kirkham Michael (and Kirkham Michael's affiliates, subsidiaries, independent professional associates, consultants, and subconsultants) pursuant to this Agreement are instruments of service in respect of the Project, and Kirkham Michael shall retain an ownership and property interest therein, whether or not the Project is completed. Client may make and retain copies for information and reference in connection with the Project; however, such documents are not intended or represented to be suitable for re-use by Client or others as extensions of the Project or on any other project. Any Client re-use without written verification or adaptation by Kirkham Michael for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Kirkham Michael or Kirkham Michael's affiliates, subsidiaries, independent professional associates, consultants, and subconsultants with respect to any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions, and damages whatsoever arising out of or resulting there from. Any such verification or adaptation will entitle Kirkham Michael to further compensation at rates to be agreed upon by Client and Kirkham Michael.

Copies of documents that may be relied upon by Client are limited to the printed copies (also known as hard copies) that are signed or sealed by Kirkham Michael. Files in electronic media format or text, data, graphic or other types that are furnished by Kirkham Michael to Client are only for convenience of Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. When transferring documents in electronic media format, Kirkham Michael makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems or computer hardware differing from those in use by Kirkham Michael at the time electronic files were furnished to the Client.

17. CONTROLLING AGREEMENT

These General Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice-to-proceed, or like document regarding Kirkham Michael's services. If any of these General Terms and Conditions are determined to be invalid or unenforceable in whole or part by a court of competent jurisdiction, the remaining provisions hereof shall remain in full force and effect and be binding upon the parties hereto. The parties agree to reform this Agreement to replace any such invalid or unenforceable provision with a valid and enforceable provision that as closely as possible expresses the intention of the stricken provision.

These General Terms and Conditions shall survive the completion of the services under this Agreement and the termination of this Agreement for any cause. This Agreement between Client and Kirkham Michael shall pertain only to the benefit of the parties hereto, and no third party shall have rights hereunder.

18. OPINIONS OF PROBABLE COST

Opinions of probable cost, cost estimates, and construction cost estimates provided herein are made based upon Kirkham Michael's experience and qualifications as professional engineers. However, since Kirkham Michael has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or other market conditions, any opinions of cost shall be accepted by Client subject to Paragraph 3 of these General Terms and Conditions.

In the event Client desires a level of accuracy of an estimate which establishes cost ceilings or detailed cost component analyses, Kirkham Michael will upon written authorization from Client secure the services of a specialized cost estimating and analyzing firm acceptable to Client. The Client shall agree to the payment of additional compensation as required.

19. CONSTRUCTION PHASE SERVICES

If this Agreement provides for any construction phase services by Kirkham Michael, it is understood that the Contractor, not Kirkham Michael is responsible for the construction of the project, and that Kirkham Michael is not responsible for the acts or omissions of any contractor, subcontractor or material supplier; for safety precautions, programs or enforcement; or for construction means, methods, techniques, sequences and procedures employed by the Contractor.

Kirkham Michael understands that the Client has sole right to decide whether to engage Kirkham Michael for Construction Phase Services. In the event the Client chooses to not include Kirkham Michael in Construction Phase Services, the Client shall be solely responsible for interpreting the Contract Documents and observing the Work of the Contractor to discover, correct or mitigate errors, inconsistencies or omissions. If the Client authorizes deviations, recorded or unrecorded, from the documents prepared by Kirkham Michael, the Client shall not bring any claim against Kirkham Michael and shall indemnify and hold Kirkham Michael, its agents and employees harmless from and against any claims, losses, damages and expenses, including but limited to defense costs and time of Kirkham Michael professionals, to the extent such claim, loss, damage or expense arises out such deviations.

20. PROPRIETARY DATA

The technical and pricing information contained in the accompanying Proposal or this Agreement is to be considered Confidential and Proprietary, and is not to be disclosed or otherwise made available to third parties without the express written consent of Kirkham Michael.

Exhibit B

SCOPE OF SERVICES

Project Scope

The Owner is interested in proceeding with the recommended flood repair options for three specific areas within the Westwinds channel. The Engineer will provide final design, construction documents preparation, and letting phase services for the recommended repairs identified in the concept design memorandum. Upon completion of the following scope of services, and if desired by the Owner construction phase services can be added to this contract through amendment.

Engineering Services to be Provided

The scope of services to be performed shall be completed in accordance with generally accepted standards of practice and shall include the services and supplies to complete the following tasks:

I. PROJECT MANAGEMENT

This task will be ongoing throughout the project period. Greg Cabalka will serve as the Consultant Project Manager. The Consultant Project Manager will serve as primary point of contact, manage project schedule and budget, and be responsible for coordinating work of design team members. The Consultant Project Manager will provide continuous project administration, management and coordination of tasks and activities, preparation of monthly progress reports, issuing of monthly invoices and billings, ensuring appropriate quality assurance/quality control and other project management related activities deemed necessary to ensure efficient and timely project completion.

II. FINAL DESIGN

The Engineer will provide final design services for the three identified repair areas including construction documents preparation. The areas are identified on the attached Exhibit C, and the repairs will be completed based on the recommended repairs in the concept design memorandum.

A. Final Design – Engineer to provide final design of the three specified areas based on the following recommended repairs:

- a. **Area 1** – Tree removal and suitable fill placement utilizing benching to secure the fill in place on the slope. Drain tile will be placed within the benching for subsurface drainage. Appropriate matting and seeding will be specified to stabilize and protect the slope.
- b. **Area 2** – Tree removal and suitable fill placement utilizing benching to secure the fill in place on the slope. Drain tile will be placed within the benching for subsurface drainage. Appropriate matting and seeding will be specified to stabilize and protect the slope.
- c. **Area 3** – Construction of an additional sheet pile weir, reshaping of the channel to design specifications and grades, salvage and placement of rip-rap, and partial grouting of rip-rap.

B. Easement Acquisition – Engineer will prepare temporary easement acquisition plats for the necessary properties. There is a total of four parcels anticipated. The Owner will provide all necessary easement



documents to accompany the plats. The engineer will contract with a sub-consultant to provide compensation valuation, negotiation, and acquisition services based on the prepared plats for the four anticipated parcels. Services for condemnation support are not included in this scope of services if they become necessary.

- C. Construction Documents Preparation** – Engineer will prepare construction plans, specifications, final cost opinion, and SWPPP for a local letting. Construction plans will include both the public and the private property portions of the recommended repairs, and the private property portions will be included as an “add alternate” within the plans. The plans will be prepared and submitted for review at the following levels of completion. Updated cost estimates will accompany each review submittal.
- a. 60% Plans – Plans will be developed to a level that provides confidence in the limits of construction, so that easement plats and a cost opinion can be prepared. 60% plans will not include final detailing, tabulations, and notes. The SWPPP will not be provided with the 60% plan review. These plans will be reviewed by the Owner and comments will be incorporated into an approved 60% plan set.
 - b. 100% Plans – A final plan set, specifications, cost opinion, and SWPPP will be prepared for City review based on the approved 60% plan set. Comments from the Owner will be incorporated into final approved construction plans, specifications, and SWPPP.

III. LETTING PHASE SERVICES

- A.** The project will be let by the Owner and the Engineer shall supply the necessary documents for this process using Owner templates for the front ends and the SWPPP. The Engineer will complete the Quest CDN process for the formal letting.
- B.** The Engineer shall answer questions from potential contractors, subcontractors, and suppliers, and coordinate with the Owner during this phase of services.
- C.** The Engineer shall attend the meeting at which bids are received, tabulate the bids, and make recommendations to the Owner regarding the awarding of the construction contract to the lowest qualified bidder.

IV. CONSTRUCTION PHASE SERVICES

The Engineer will perform construction administration / observation services during construction if requested by the Owner. These construction phase services would be contracted through an amendment to this agreement.



Project Schedule

Assumed notice to proceed with final design services: March 1, 2019

(Based on property owner meetings)

60% Plan Submittal: April 15, 2019

Approved 60% Plan Submittal: May 1, 2019

Final Plan Submittal (Including all contract documents): June 1, 2019

Approved Final Plans, Specifications, and SWPPP: June 12, 2019 (Public Hearing/Bid Date set June 17, 2019)

Letting: July 9, 2019 (Award of contract July 15, 2019)



Westwinds Erosion Repairs
and Channel Stabilization
Exhibit C: Project Location Map

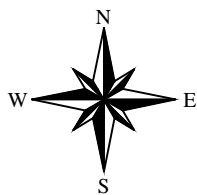


Exhibit D
FEE ESTIMATE

- A. For full and complete compensation for work, materials, and services furnished for the Scope of Services in this Supplemental Agreement, the Engineer shall be paid the following fees, including any authorized reimbursable expenses. The Owner shall pay fees associated with required permits.

I. PROJECT MANAGEMENT:

| | | |
|----------------------------|------------------|------------|
| General Project Management | Estimated Cost = | \$2,660.00 |
|----------------------------|------------------|------------|

II. FINAL DESIGN:

| | | |
|--------------|--|-------------|
| Final Design | | \$ 6,720.00 |
|--------------|--|-------------|

| | | |
|----------------------|--|-------------|
| Easement Acquisition | | \$ 5,400.00 |
|----------------------|--|-------------|

| | | |
|------------------------------------|--|--------------|
| Construction Documents Preparation | | \$ 11,760.00 |
|------------------------------------|--|--------------|

| | |
|------------------|--------------|
| Estimated Cost = | \$ 23,880.00 |
|------------------|--------------|

III. LETTING PHASE SERVICES:

| | | |
|------------------------|------------------|-------------|
| Letting Phase Services | Estimated Cost = | \$ 1,280.00 |
|------------------------|------------------|-------------|

IV. CONSTRUCTION PHASE SERVICES:

| | |
|-----------------------------------|----------------------------------|
| Construction Admin. / Observation | Not Included with this Agreement |
|-----------------------------------|----------------------------------|

SUBCONSULTANT WORK:

| | |
|--|-------------|
| Easement Acquisition (JCG Land Services) | \$12,095.00 |
|--|-------------|

| | |
|--------------------------|--------------|
| Project Total (Engineer) | \$ 27,820.00 |
|--------------------------|--------------|

| | |
|--------------------------------|--------------|
| Project Total (Subconsultants) | \$ 12,095.00 |
|--------------------------------|--------------|

| | |
|--------------------------|--------------|
| Total Not to Exceed Cost | \$ 39,915.00 |
|--------------------------|--------------|

- B. Work items not addressed in the Scope of Services included in this Supplemental Agreement shall be considered extra work, and may be completed if required, at additional cost, to be negotiated at the time the work is found necessary.
- C. The Engineer shall invoice the Owner monthly for services, and any approved amendments to this Agreement, based upon services actually completed at the time of the invoice. Final payment shall be due and payable within 30 days of the Owner's acceptance of Engineer's submission of final deliverables in accordance with the Scope of Services.
- D. In consideration of said compensation, the Engineer agrees to perform all services, work, and/or provide all materials, supplies, and equipment, and to carry out the provisions of this Agreement in a good and workmanlike manner to the satisfaction of the Owner. If the performance of this Agreement involves the services of others or the furnishing of equipment, supplies, or materials, the Engineer agrees to pay for the same in full; and at the time of payment by the Owner, to certify in writing to the Owner that said payments have been so made.

| Kirkham Michael Iowa 2018 Billing Rate Schedule by Classification | |
|---|-------------------|
| KM Classification | 2018 Billing Rate |
| Principal / Operations Manager | \$190.00 |
| Engineering Manager | \$180.00 |
| Principal Engineer | \$175.00 |
| Senior Scientist / NEPA Specialist | \$150.00 |
| Senior Engineer | \$145.00 |
| Associate Engineer | \$130.00 |
| Engineering Intern 1 | \$100.00 |
| Engineering Intern 2 | \$110.00 |
| Engineering Intern 3 | \$115.00 |
| Design Manager | \$135.00 |
| Design Technician | \$85.00 |
| CADD Technician | \$80.00 |
| Licensed Surveyor | \$200.00 |
| Senior Project Surveyor | \$130.00 |
| Project Surveyor | \$115.00 |
| Survey Crew Chief | \$95.00 |
| Construction Engineer | \$145.00 |
| Construction Manager | \$115.00 |
| Senior Construction Observer | \$95.00 |
| Assistant Construction Observer / Technician | \$80.00 |
| Administrative | \$80.00 |

Rates are subject to increase on January 1, 2019