

## ENGINEERING SERVICES AGREEMENT

### CITY OF INDEPENDENCE

#### Independence 812 3<sup>rd</sup> Street NW Drainage Improvements Project Agreement between Owner and Engineer for Professional Services

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between the City of Independence, Iowa, hereinafter referred to as the Owner, and Crawford Engineering & Surveying, Inc., hereinafter referred to as the Engineer.

**WITNESSETH: THAT WHEREAS**, the Owner is now contemplating construction of a Storm Water Detention Facility and related Site Grading and Storm Sewer Drainage Improvements at 812 3<sup>rd</sup> Street NW in Independence, hereinafter referred to as the Project, and

**WHEREAS**, the Owner has determined it is appropriate to proceed with Project development, engineering design and construction of the Project, and

**WHEREAS**, the Owner desires to retain the services of the Engineer to provide professional services for design and construction observation during construction of the Project, and

**NOW, THEREFORE**, it is hereby agreed by and between the Owner and Engineer that the City of Independence retains the Engineer, as set forth hereafter, for the Project. Such agreement shall be subject to the following terms and conditions, to wit:

1. **SCOPE OF PROJECT.** It is understood and agreed upon the Project shall include site grading and installation of a storm water detention and storage facility and controlled discharge structure with connection to the existing storm sewer system adjacent to the facility located at 812 3<sup>rd</sup> Street NW. Upgrades to the public storm sewer system will be limited to those modifications required to make connection from the controlled discharge structure.
  - a. **Alternative Evaluation:** Additionally, an alternative to route discharge to the Wapsipinicon River via the existing City street right-of-way shall be considered and evaluated. If elevations or other construction considerations and feasibility do not permit this option, then this alternative shall be discarded. If this alternative is pursued by the Owner; a contract amendment shall be executed for design and construction services related to this alternative.
2. **DESIGN SURVEYS.** The Engineer shall make design surveys necessary for the design of the Project as necessary for the preparation of plans and specifications. Such design surveys shall include the securing of topographic and cross-sectional data and other field information and measurements.
3. **DESIGN CONFERENCES.** The Engineer shall participate in such conferences with the Owner as may be necessary to make decisions as to the details of Project

design. At a minimum, there shall be a bi-weekly meeting, via telephone, virtually, in person, or via email, at the direction of the Owner to update the Owner on the progress of the Project design.

4. **REGULATORY REQUIREMENTS.** The design, and plans and specifications shall comply with the requirements of all applicable regulatory agencies.
5. **PLANS AND SPECIFICATIONS.** The Engineer shall prepare such detailed drawings and specifications as are reasonably necessary and desirable for construction of the Project, to the satisfaction and approval of the Owner. The plans and specifications shall set forth the details required for the construction of all Project improvements. The specifications will identify the quality standards for the materials to be used and will, in general, set forth the requirements of the City of Independence and other applicable governmental agencies as to the standards for workmanship.
6. **CERTIFICATION.** Engineer certifies that it is a licensed engineer as required under Iowa Code Chapter 26.3(2).
7. **OPINION OF PROBABLE COST.** The Engineer shall prepare an opinion of cost for the Project. The Engineer shall not be responsible if construction bids for the Project vary from the Engineers' opinion of cost. The Engineers shall advise and assist the Owner, if necessary, in adjusting the scope and extent of the Project to allow the Project to be constructed within available budget limitations.
8. **ADVERTISEMENT FOR BIDS.** The Engineer shall be primarily responsible for the preparation of bid documents, with Owner review and approval, and shall provide plans and specifications to bidders for contract letting. Publication costs shall be borne by the Owner.
9. **BID OPENING AND AWARD OF CONTRACT(S).** The Engineer shall provide services to assist in the bid letting process, shall attend the bid opening, shall prepare a tabulation of bids, and shall advise the Owner in regard to the quality and completeness of the bids, including the overall responsiveness of each bid proposal received, and make such recommendations as are appropriate regarding the award of contract(s). After award of contract(s) is/are made, the Engineer shall assist in the execution of the necessary contract documents.
10. **PRECONSTRUCTION CONFERENCE.** The Engineer shall conduct a preconstruction conference following award of the construction contract(s). Said conference to be attended by representatives of the Owner, the Engineer, Contractor, representatives of Independence Premium Foods, and utility companies impacted by the Project.

11. **GENERAL SERVICES DURING CONSTRUCTION.** The Engineer shall provide general services during construction including, but not limited to, the following:
- a. Consult with and advise Owner.
  - b. Assist in interpretation of plans and specifications.
  - c. Review drawings and data of manufacturers.
  - d. Process and certify payment requests of the Contractor to Owner.
  - e. Prepare and process necessary change orders or modifications to the construction contract(s), and make recommendations to Owner regarding same.
  - f. Make routine trips to the Project site as required, to observe the work as necessary in consultation with the Owner in order to ensure the project is built in accordance with the plans and specifications
  - g. Provide bi-weekly updates to the Owner via telephone, virtually, in person, or via e-mail, at the direction of the Owner to update the Owner on the progress of the Construction Project.
12. **RESIDENT REVIEW SERVICES.** Resident Review Services are understood to include the detailed observation and review of the work of the contractor and materials for compliance with the plans and specifications.
- The Engineer shall provide Resident Review Services as necessary to assist the Owner by assigning resident engineer and/or engineering technicians to the Project for such periods as may be reasonably required to observe and review the construction work in consultation with the Owner in order to ensure the project is built in accordance with the plans and specifications.
13. **FINAL REVIEW.** The Engineer shall make a Final Review after construction is complete to determine that construction is substantially in compliance with the plans and specifications. The Engineer shall certify to the Owner that construction has been completed in substantial compliance with the plans and specifications, or note the specific areas of construction determined to be out of substantial compliance. The Owner shall be informed of any elements of the Project construction determined to be outside the tolerances of the plans and specifications even if determined by the Engineer to be Substantially Complaint, with an explanation as to the Engineer's determination of Substantial Compliance.
14. **COMPENSATION.** The Owner shall compensate the Engineer for their services by payment of the following fees:



- a. The fee for Project development, design services, design conferences, preparation of plans and specifications, opinion of cost, bidding services, and preconstruction conference shall be hourly based on the Engineer's current fee schedule, a copy of which is included as "Appendix A". If the fee schedule changes during the course of this work, the Engineer will notify the Owner, in writing via e-mail, no less than forty-five (45) days before the change is to take effect. Estimated fee for this work is \$21,000.00.
- b. The fee for general services during construction, Resident Review Services, and Final Review of the Project shall be hourly based on the Engineer's current fee schedule, a copy of which is included as "Appendix A". If the fee schedule changes during the course of this work, the Engineer will notify the Owner, in writing via e-mail, no less than forty-five (45) days before the change is to take effect. Estimated fee for this work is \$14,000.00
- c. The fee for Alternative Evaluation identified in section 1a above shall be hourly based on the Engineer's current fee schedule, a copy of which is included as "Appendix A". If the fee schedule changes during the course of this work, the Engineer will notify the Owner, in writing via e-mail, no less than forty-five (45) days before the change is to take effect. Estimated fee for this work is \$6,000.00
- d. The maximum fee for items a., b. and c. above shall not exceed \$ \$41,000.00 without prior approval of the Owner.
- e. The fee for Construction Staking shall be hourly based on the Engineer's current fee schedule, a copy of which is included as "Appendix A". If the fee schedule changes during the course of this work, the Engineer will notify the Owner, in writing via e-mail, no less than forty-five (45) days before the change is to take effect. The Engineer will provide an estimate for Construction Staking following award of a construction contract and preconstruction meeting with the selected contractor to ascertain the contractor's methods of construction and identify the contractor's construction staking needs for the Project. The Owner retains the right to review Construction Staking costs and determine if they wish to approve or consider alternative options for said services.

15. **PAYMENT.** Fees shall be due and payable as follows:

- a. For Project development, design, preparation of plans and specifications, opinion of cost, bidding services, and preconstruction conference, the fee shall be due and payable based on monthly invoices that detail the hours worked on each task as outlined in this Engineering Services Agreement.
- b. For general services during construction, Resident Review Services, and Final Review, the fee shall be due and payable based on monthly invoices

that detail the hours worked on each task as outlined in this Engineering Services Agreement.

16. **LEGAL SERVICES.** The Owner shall provide the services of their attorney in legal matters pertaining to the Project. In the event the Engineer deems it necessary or appropriate to contact the Owner's attorney, Engineer shall first contact the Owner to discuss the necessity for the desired contact and obtain Owner's permission except in cases of emergency or exigency. Owner shall be copied on all correspondence. The Engineer shall cooperate with said attorney and shall comply with attorney's recommendations and/or requirements as to the form and content of contract documents and procedures related thereto.
17. **SERVICES NOT INCLUDED.** Any services not included in the above Section 14 – Compensation, require prior approval of the Owner. Additionally, any services authorized by the Owner under this section are required to be accounted for separately on invoices submitted to the City with clear identification that they are not part of the overall not to exceed amount identified in Section 14 d. The fees included in the above Section 14 – Compensation do not include compensation for the following items:
  - a. Services related to or regarding arbitration or litigation of the construction contract(s) between the construction contractor and the Owner regarding any part of the Project.
  - b. Services related to the negotiation of right-of-way and easement acquisition, whether permanent or temporary, and condemnation proceedings.
  - c. Services related to underground utility replacements and repairs (water main and sanitary sewers and services).
  - d. Services related to legal surveys and property surveys, or other surveys necessary for preparation of easement documents.
  - e. Services related to the special assessment process including but not limited to the preparation of preliminary and final assessment plats and schedules.
  - f. Services relating to the televising of underground utilities or other means to assess the conditions of existing utilities in the Project area.
  - g. Fees due others related to materials testing during construction.
  - h. Services associated with right-of-way acquisition and/or right-of-way easements, not including the giving of direction and advice regarding right of way acquisition or easements that are necessary for the Project, and services beyond those included in the design of the Project.

- i. Subsurface investigations or geotechnical analysis of the Project area.

18. **DISPUTE RESOLUTION.**

- a. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of thirty (30) days from the date of notice prior to pursuing other remedies provided for herein or under applicable law.
- b. Owner and Engineer agree to participate in, and share equally in the costs of non-binding mediation to pursue the resolution of disputes not resolved through the negotiation process described in Paragraph (a) above. In the event the Parties cannot agree on a Mediator, each Party shall choose a Mediator, and pay their fees without cost share, who will work together to choose a third Mediator to work with the Parties, such third Mediator's fees to be shared equally among the Parties.
- c. In the event of any litigation arising from or related to this Agreement or the services provided under this Agreement, each party shall pay their own legal expenses, including staff time, court costs, attorney's fees and all other related expenses in such litigation. Jurisdiction of any litigation shall be the Buchanan County District Court.

19. **OWNERSHIP.** All records, plans, specifications, field notes, electronic drawings or other work shall remain the property of the Engineer and the Owner shall have access to those records. At the completion of the project, the Engineer shall deliver to the Owner a full set of plans, specifications, and electronic drawings including an "As-Built" set for record keeping purposes.

20. **THE OWNER'S RESPONSIBILITIES.** During the design phase of the Project, the Owner shall provide full information regarding requirements for the Project, which shall set forth the Owner's design objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, special equipment and systems and site requirements. If the Owner provides a budget for the Project, it shall include contingencies for bidding, changes in the work during construction, and other costs which are the responsibility of the Owner. The Owner shall, at the request of the Engineer, provide a statement of funds available for the Project, and their source, however Owner retains the right to make modifications to the budget for the Project as they see fit throughout the Project.

The Owner shall designate, when necessary, a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall examine the documents submitted by the Engineer and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Engineer's services.



The Owner shall furnish all legal, accounting, and insurance counseling services as may be necessary at any time for the Project, including such auditing services as the Owner may require to verify the contractor's applications for payment or to ascertain how or for what purposes the contractor uses the moneys paid by or on behalf of the Owner.

If the Owner observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with the contract documents, prompt written notice thereof shall be furnished by the Owner to the Engineer.

The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Engineer's services and of the work.

21. **CHANGES.** The Owner, from time to time, may require changes in the scope of services of the Engineer to be performed hereunder. Such changes, which are mutually agreed upon by and between the Owner and Engineer shall be incorporated by way of written amendments to this agreement.
22. **TERMINATION.** Should the Owner abandon the Project before the Engineer has completed their work, the Engineer shall be paid for the work and services performed until the date of termination.
23. **ASSISTANTS AND CONSULTANTS.** It is understood and agreed that the employment of the Engineer by the Owner for the purposes aforesaid shall be exclusive, but the Engineer shall have the right to employ such assistants and consultants as they deem proper in the performance of the work. Any fees for such assistants or consultants intended to be charged to the Owner shall be discussed and approved by the Owner before work is performed.
24. **ASSIGNMENT.** This Agreement and each and every portion thereof shall be binding upon the successors and assigns of the parties hereto.
25. **GENERAL TERMS:**
  - a. During the performance of this contract, the Engineer agrees to not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Engineer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin.
  - b. Retention of Engineer by the Owner shall be as an independent contractor and shall be exclusive, but the Engineer shall have the right to employ or contract with such others as deemed necessary and appropriate by the Engineer to perform its obligations under this Agreement.

c. No Party to this Agreement shall perform contrary to any local, state, or federal law/regulation or ordinance.

26. **INSURANCE.** It is hereby agreed that the Engineer is an independent contractor. The Engineer is responsible for providing the Owner with Certificates of Insurance by insurance companies licensed to do business in the State of Iowa with the following limits:

Commercial General Liability Coverage:	
Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products-Completed Operations Aggregate Limit	\$2,000,000
Personal & Advertising Injury Limit	\$1,000,000
Professional Liability	\$250,000
Workman's Compensation	Statutory

Engineer further agrees to defend and indemnify the Owner for any and all causes of actions commenced against the Owner wherein it is alleged that the Engineer, its' employees, agents, or contractors were negligent in the pursuit of their duties and/or obligations under this Agreement.

The undersigned do hereby covenant and state that this Agreement is executed in duplicate as though each were an original and that there are no oral agreements that have not been reduced to writing in this instrument.

It is further covenanted and agreed that there are no other considerations or monies contingent upon or resulting from the execution of this Agreement, nor have any of the above been implied by or for any party to this Agreement.

**IN WITNESS WHEREOF**, the parties have hereunto subscribed their names on the date first written above.

**CITY OF INDEPENDENCE, IOWA**

**ATTEST:**

By: \_\_\_\_\_

By: \_\_\_\_\_

**CRAWFORD ENGINEERING & SURVEYING, INC.**

By:  \_\_\_\_\_



## APPENDIX A

CRAWFORD ENGINEERING & SURVEYING, INC.  
118 Third Avenue N.E.  
P.O. Box 793  
Independence, Iowa 50644

April, 2023

### HOURLY FEE SCHEDULE

	<u>Rate Per Hour</u>
Engineer I -----	\$110.00
Land Surveyor I -----	\$110.00
Engineer II -----	\$ 85.00
Land Surveyor II -----	\$ 85.00
Construction Representative -----	\$ 55.00
Engineering Technician / Survey Technician -----	\$ 50.00
Clerical -----	\$ 48.00

### MATERIALS AND EQUIPMENT

CADD Equipment and Software -----	\$15.00/hour
GPS Field Survey Equipment -----	\$35.00/hour
Survey Stakes (Hubs and Lath) -----	1.00 each
Property Markers (Iron Pins) -----	3.75 each
(Fiberglass Post) -----	3.00 each
Vehicle Mileage -----	0.58/mile
Printing: Copies -----	0.35/page
11"x17" Copies -----	0.75/page