

## ***PROFESSIONAL SERVICES AGREEMENT***

**ATTN:** Dylan Mulfinger, City Administrator

**CLIENT:** City of Oelwein  
20 2<sup>nd</sup> Ave SW  
Oelwein, IA 50662

**PROJECT:** City of Oelwein IA Library Leaks

**PROJECT LOCATION:** Oelwein, IA

**DATE OF AGREEMENT:** May 27, 2021

### **PROJECT DESCRIPTION**

Shive-Hattery has been requested to review the conditions at the Oelwein Library, Oelwein, IA, to view determine a potential source of heat loss causing ice damming at the perimeters of the building.

### **SCOPE OF SERVICES**

We will provide the following services for the project – **Roofing/Building Envelope Consulting**

These services will consist of the following:

1. Conduct one (1) site visit to observe and gather information.
2. Review photos, supplied design documents, and field notes.
3. Provide written letter of our observations with suspected heat loss areas.
4. Provide recommendations for repairs (no detailed drawings will be provided under this proposal).

### **CLIENT RESPONSIBILITIES**

It will be your responsibility to provide the following:

1. Identify a Project Representative with full authority to act on behalf of the Client with respect to this project. The Client Project Representative shall render decisions in a timely manner in order to avoid delays of Shive-Hattery's services.
2. Legal, accounting, and insurance counseling services or other consultants, including geotechnical, or vendors that may be necessary. The Client shall coordinate these services with those services provided by Shive-Hattery.
3. Provide to Shive-Hattery any available drawings, survey plats, testing data and reports related to the project, either hard copy or electronic media. Electronic media is preferred.
4. Unless specifically included in the Scope of Services to be provided by Shive-Hattery, the Client shall furnish tests, inspections, permits and reports required by law, regulation or code including but not limited to hazardous materials, structural, mechanical, chemical, air pollution and water pollution tests.

## SCHEDULE

We will begin our services based on your email authorizing us to proceed provided the signed Agreement is attached. We will meet with you to develop a mutually agreed-upon schedule for the Scope of Services.

## COMPENSATION

Due to the potential extent of this review, we are submitting an hourly estimate (below) however, if additional time is needed to investigate, we will need to review with you the additional time/fee to proceed.

Description	Fee Type	Expenses	Total
Roofing/Building Envelope Consulting	Hourly	Included	\$2,500
<b>ESTIMATED TOTAL</b>			<b>\$2,500</b>

Fee Types:

- Hourly - We will provide the Scope of Services on an hourly rate plus reimbursable expense basis at our Standard Hourly and Reimbursable Expense Fee Schedules in effect at the time that the services are performed.
- Included in Fee - Expenses have been included in the Fee amount. Reimbursable Expenses will be reimbursed in accordance with our Reimbursable Expense Fee Schedule in effect at the time that the expense is incurred.

### **See attached Standard Hourly and Expense Fee Schedule.**

The terms of this proposal are valid for 30 days from the date of this proposal.

## ADDITIONAL SERVICES

The following are additional services you may require for your project. We can provide these additional services on an hourly rate basis at our Standard Hourly Fee Schedule in effect at the time that the services are performed.

1. Additional site visits
2. Design of repairs
3. Material Testing services
4. Construction services

## OTHER TERMS

### **STANDARD TERMS AND CONDITIONS**

Copyright © Shive-Hattery April 2020

#### **PARTIES**

"S-H" or "Shive-Hattery" shall mean Shive-Hattery, Inc. or Shive-Hattery A/E Services, P.C. or Studio951 a Division of Shive-Hattery or EPOCH a Division of Shive-Hattery and "CLIENT" shall mean the person or entity executing this Agreement with "S-H."

#### **LIMITATION OF LIABILITY AND WAIVER OF CERTAIN DAMAGES**

The CLIENT agrees, to the fullest extent of the law, to limit the liability of S-H, its officers, directors, shareholders, employees, agents, subconsultants, affiliated companies, and any of them, to the CLIENT and any person or entity claiming by or through the CLIENT, for any and all claims, damages, liabilities, losses, costs, and expenses including reasonable attorneys' fees, experts' fees, or any other legal costs, in any way related to the Project or Agreement from any cause(s) to an amount that shall not exceed the compensation received by S-H under the agreement or fifty thousand dollars (\$50,000), whichever is greater. The parties intend that this limitation of liability apply to any and all liability or cause of action, claim, theory of recovery, or remedy however alleged or arising, including but not limited to negligence, errors or omissions, strict liability, breach of contract or warranty, express, implied or equitable indemnity and all other claims, which except for the limitation of liability above, the CLIENT waives.

CLIENT hereby releases S-H, its officers, directors, shareholders, employees, agents, subconsultants, affiliated companies, and any of them, and none shall be liable to the CLIENT for consequential, special, exemplary, punitive, indirect or incidental losses or damages, including but not limited to loss of use, loss of product, cost of capital, loss of

goodwill, lost revenues or loss of profit, interruption of business, down time costs, loss of data, cost of cover, or governmental penalties or fines.

#### **INDEMNIFICATION**

Subject to the limitation of liability in this Agreement, S-H agrees to the fullest extent permitted by law, to indemnify and hold harmless the CLIENT, its officers, directors, shareholders, employees, contractors, subcontractors and consultants against all claims, damages, liabilities, losses or costs, including reasonable attorneys' fees, experts' fees, or other legal costs to the extent caused by S-H's negligent performance of service under this Agreement and that of its officers, directors, shareholders, and employees.

The CLIENT agrees to the fullest extent permitted by law, to indemnify and hold harmless S-H, its officers, directors, shareholders, employees, agents, subconsultants, and affiliated companies against all damages, liabilities, losses, costs, and expenses including, reasonable attorneys' fees, expert's fees, and any other legal costs to the extent caused by the acts or omissions of the CLIENT, its employees, agents, contractors, subcontractors, consultants or anyone for whom the CLIENT is legally liable.

#### **HAZARDOUS MATERIALS - INDEMNIFICATION**

To the fullest extent permitted by law, CLIENT agrees to defend, indemnify, and hold S-H, its officers, directors, shareholders, employees, agents, consultants and affiliated companies, and any of them harmless from and against any and all claims, liabilities, losses, costs, or expenses including reasonable attorney's fees, experts' fees and any other legal costs (including without limitation damages to property, injuries or death to persons, fines, or penalties), arising out of, or resulting from the discharge, escape, release, or saturation of smoke, vapors, soot, fumes, acids, alkalies, toxic chemicals, liquids, gases, polychlorinated biphenyl, petroleum contaminants spores, biological toxins, or any other materials, irritants, contaminants, or pollutants in or into the atmosphere, or on, onto, upon, in, or into the surface or subsurface of soil, water, or watercourses, objects, or any tangible or intangible matter, whether sudden or not.

#### **STANDARD OF CARE**

Services provided by S-H under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances on projects of similar size, complexity, and geographic location as that of the Project. Nothing in this Agreement is intended to create, nor shall it be construed to create, a fiduciary duty owed by either party to the other party.

#### **BETTERMENT**

The CLIENT recognizes and expects that certain change orders may be required to be issued as the result in whole or part of imprecision, incompleteness, omissions, ambiguities, or inconsistencies in S-H's drawings, specifications, and other design, bidding or construction documentation furnished by S-H or in other professional services performed or furnished by S-H under this Agreement (herein after in this Betterment section referred to as S-H Documentation). If a required item or component of the Project is omitted from S-H's Documentation, the CLIENT is responsible for paying all costs required to add such item or component to the extent that such item or component would have been required and included in the original S-H Documentation. In no event will S-H be responsible for costs or expense that provides betterment or upgrades or enhances the value of the Project.

#### **RIGHT OF ENTRY**

The CLIENT shall provide for entry for the employees, agents and subcontractors of S-H and for all necessary equipment. While S-H shall take reasonable precautions to minimize any damage to property, it is understood by the CLIENT that in the normal course of the project some damages may occur, the cost of correction of which is not a part of this Agreement.

#### **PAYMENT**

Unless otherwise provided herein, invoices will be prepared in accordance with S-H's standard invoicing practices then in effect and will be submitted to CLIENT each month and at the completion of the work on the project. Invoices are due and payable upon receipt by the CLIENT. If the CLIENT does not make payment within thirty (30) days after the date the invoice was mailed to the CLIENT, then the amount(s) due S-H shall bear interest due from the date of mailing at the lesser interest rate of 1.5% per month compounded or the maximum interest rate allowed by law. In the event that S-H files or takes any action, or incurs any costs, for the collection of amounts due it from the client, S-H shall be entitled to recover its entire cost for attorney fees and other collection expenses related to the collection of amounts due it under this Agreement. Any failure to comply with this term shall be grounds for a default termination.

#### **TERMINATION**

Either party may terminate this Agreement for convenience or for default by providing written notice to the other party. If the termination is for default, the non-terminating party may cure the default before the effective date of the termination and the termination for default will not be effective. The termination for convenience and for default, if the default is not cured, shall be effective seven (7) days after receipt of written notice by the non-terminating party. In the event that this Agreement is terminated for the convenience of either party or terminated by S-H for the default of the CLIENT, then S-H shall be paid for services performed to the termination effective date, including reimbursable expenses due, and termination expenses attributable to the termination. In the event the CLIENT terminates the Agreement for the default of S-H and S-H does not cure the default, then S-H shall be paid for services performed to the termination notice date, including reimbursable expenses due, but shall not be paid for services performed after the termination notice date and shall not be paid termination expenses. Termination expenses shall include expenses reasonably incurred by S-H in connection with the termination of the Agreement or services, including, but not limited to, closing out Project records, termination of subconsultants and other persons or entities whose services were retained for the Project, and all

other expenses directly resulting from the termination.

#### **INFORMATION PROVIDED BY OTHERS**

S-H shall indicate to the CLIENT the information needed for rendering of services hereunder. The CLIENT shall provide to S-H such information, including electronic media, as is available to the CLIENT and the CLIENT's consultants and contractors, and S-H shall be entitled to rely upon the accuracy and completeness thereof. The CLIENT recognizes that it is difficult for S-H to assure the accuracy, completeness and sufficiency of such client-furnished information, either because it is provided by others or because of errors or omissions which may have occurred in assembling the information the CLIENT is providing. Accordingly, the CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless S-H, its officers, directors, shareholders, employees, agents, subconsultants and affiliated companies, and any of them, from and against any and all claims, liabilities, losses, costs, expenses (including reasonable attorneys' fees, experts' fees, and any other legal costs) for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by the CLIENT.

#### **UNDERGROUND UTILITIES**

Information for location of underground utilities may come from the CLIENT, third parties, and/or research performed by S-H or its subcontractors. S-H will use the standard of care defined in this Agreement in providing this service. The information that S-H must rely on from various utilities and other records may be inaccurate or incomplete. Therefore, the CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless S-H, its officers, directors, shareholders, employees agents, subconsultants, affiliated companies, and any of them for all claims, losses, costs and damages arising out of the location of underground utilities provided or any information related to underground utilities by S-H under this Agreement.

#### **CONTRACTOR MATTERS**

CLIENT agrees that S-H shall not be responsible for the acts or omissions of the CLIENT's contractor, or subcontractors, their employees, agents, consultants, suppliers or arising from contractor's or subcontractors' work, their employees, agents, consultants, suppliers or other entities that are responsible for performing work that is not in conformance with the construction Contract Documents, if any, prepared by S-H under this Agreement. S-H shall not have responsibility for means, methods, techniques, sequences, and progress of construction of the contractor, subcontractors, agents, employees, agents, consultants, or other entities. In addition, CLIENT agrees that S-H is not responsible for safety at the project site and that safety during construction is for the CLIENT to address in the contract between the CLIENT and contractor.

#### **SHOP DRAWING REVIEW**

If, as part of this Agreement S-H reviews and approves Contractor submittals, such as shop drawings, product data, samples and other data, as required by S-H, these reviews and approvals shall be only for the limited purpose of checking for conformance with the design concept and the information expressed in the contract documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the Contractor. S-H's review shall be conducted with reasonable promptness while allowing sufficient time in S-H's judgment to permit adequate review. Review of a specific item shall not indicate that S-H has reviewed the entire assembly of which the item is a component. S-H shall not be responsible for any deviations from the contract documents not brought to the attention of S-H in writing by the Contractor. S-H shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

#### **OPINIONS OF PROBABLE COST**

If, as part of this Agreement S-H is providing opinions of probable construction cost, the CLIENT understands that S-H has no control over costs or the price of labor, equipment or materials, or over the Contractor's method of pricing, and that S-H's opinions of probable construction costs are to be made on the basis of S-H's qualifications and experience. S-H makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.

#### **CONSTRUCTION OBSERVATION**

If, as part of this Agreement S-H is providing construction observation services, S-H shall visit the project at appropriate intervals during construction to become generally familiar with the progress and quality of the contractors' work and to determine if the work is proceeding in general accordance with the Contract Documents. Unless otherwise specified in the Agreement, the CLIENT has not retained S-H to make detailed inspections or to provide exhaustive or continuous project review and observation services. S-H does not guarantee the performance of, and shall have no responsibility for, the acts or omissions of any contractor, its subcontractors, employees, agents, consultants, suppliers or any other entities furnishing materials or performing any work on the project.

S-H shall advise the CLIENT if S-H observes that the contractor is not performing in general conformance of Contract Documents. CLIENT shall determine if work of contractor should be stopped to resolve any problems.

#### **OTHER SERVICES**

The CLIENT may direct S-H to provide other services including, but not limited to, any additional services identified in S-H's proposal. If S-H agrees to provide these services, then the schedule shall be reasonably adjusted to allow S-H to provide these services. Compensation for such services shall be at S-H's Standard Hourly Fee Schedule in effect at the time the work is performed unless there is a written Amendment to Agreement that contains an alternative compensation provision.

#### **OWNERSHIP & REUSE OF INSTRUMENTS OF SERVICE**

All reports, plans, specifications, field data and notes and other documents, including all documents on electronic media, prepared by S-H as instruments of service shall remain the property of S-H. The CLIENT shall not reuse or make any modifications to the plans and specifications without the prior written authorization of S-H. The CLIENT agrees, to the fullest extent permitted by law, to

defend, indemnify and hold harmless S-H its officers, directors, shareholders, employees, agents, subconsultants and affiliated companies, and any of them from any and all claims, losses, costs or damages of any nature whatsoever arising out of, resulting from or in any way related to any unauthorized reuse or modifications of the construction documents by the CLIENT or any person or entity that acquires or obtains the plans and specifications from or through the CLIENT without the written authorization of S-H.

#### **DISPUTE RESOLUTION**

If a dispute arises between S-H and CLIENT, the executives of the parties having authority to resolve the dispute shall meet within thirty (30) days of the notification of the dispute to resolve the dispute. If the dispute is not resolved within such thirty (30) day time period, CLIENT and S-H agree to submit to non-binding mediation prior to commencement of any litigation and that non-binding mediation is a precondition to any litigation. Any costs incurred directly for a mediator, shall be shared equally between the parties involved in the mediation.

#### **EXCUSABLE EVENTS**

S-H shall not be responsible or liable to CLIENT or CLIENT's contractors, consultants, or other agents for any of the following events or circumstances, or the resulting delay in S-H's services, additional costs and expenses in S-H's performance of its services, or other effects in S-H's services, stemming in whole or part from such events and circumstances (collectively, "Excusable Events" or, singularly, an "Excusable Event"): a change in law, building code or applicable standards; actions or inactions by a governmental authority; the presence or encounter of hazardous or toxic materials on the Project; war (declared or undeclared) or other armed conflict; terrorism; sabotage; vandalism; riot or other civil disturbance; blockade or embargos; explosion; abnormal weather; unanticipated or unknown site conditions; epidemic or pandemic (including but not limited to COVID-19), delays or other effects arising from government-mandated or government-recommended quarantines, closure of business, access, or travel; strike or labor dispute, lockout, work slowdown or stoppage; accident; act of God; failure of any governmental or other regulatory authority to act in a timely manner; acts or omissions by CLIENT or by any CLIENT's contractors, consultants or agents of any level on the project (including, without limitation, failure of the CLIENT to furnish timely information or approve or disapprove of S-H's services or work product promptly, delays in the work caused by CLIENT, CLIENT's suspension, breach or default of this Agreement, or delays caused by faulty performance by the CLIENT or by CLIENT's contractors, consultants, or agents of any level); or any delays or events outside the reasonable control of S-H. When an Excusable Event occurs, the CLIENT agrees S-H is not responsible for any actual or claimed damages incurred by CLIENT or CLIENT's contractors, consultants, or agents, S-H shall not be deemed to be in default of this Agreement, and S-H shall be entitled to a change order to equitably increase and extend S-H's time for performance of its services, as well as equitably increase the contract sum to compensate S-H for its increased labor, expenses, and other costs to perform its services, due to the Excusable Event.

#### **ASSIGNMENT**

Neither party to this Agreement shall transfer, sublet or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party.

#### **SEVERABILITY, SURVIVAL AND WAIVER**

Any provision of this Agreement later held to be unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the CLIENT and S-H shall survive the completion of the services hereunder and the termination of this Agreement. The failure of a party to insist upon strict compliance of any term hereof shall not constitute a waiver by that party of its rights to insist upon strict compliance at a subsequent date.

#### **GOVERNING LAW**

This Agreement shall be governed pursuant to the laws in the state of the locale of the S-H office address written in this Agreement.

#### **EQUAL EMPLOYMENT OPPORTUNITY**

It is the policy of S-H to provide equal employment opportunities for all. S-H enforces the following acts and amendments as presented by Federal government or State governments: Title VII of the Civil Rights Act of 1965, Age Discrimination in Employment ACT (ADEA), Americans With Disabilities Act (ADA), Iowa Civil Rights Act of 1965, and Illinois Human Rights Act [ 775ILCS 5]. S-H will not discriminate against any employee or applicant because of race, creed, color, religion, sex, national origin, gender identity, sexual orientation, marital status, ancestry, veteran status, or physical or mental handicap, unless related to performance of the job with or without accommodation.

#### **COMPLETE AGREEMENT**

This Agreement constitutes the entire and integrated agreement between the CLIENT and S-H and supersedes all prior negotiations, representations and agreements, whether oral or written. In the event the CLIENT issues a Purchase Order of which this Agreement becomes a part, or the CLIENT and S-H otherwise execute or enter into a contract into which this Agreement is incorporated, the parties expressly agree that, to the extent the terms of this Agreement conflict with or are otherwise inconsistent with such Purchase Order, or any other contract, this Agreement shall supersede and override the terms of the aforementioned documents, and this Agreement shall solely govern in those regards.

#### **ACCEPTANCE**

Wet signatures, digital signatures, electronic signatures or acceptance communicated by mail or e-mail from one party to another, are deemed acceptable for binding the parties to the Agreement. The CLIENT representative accepting this Agreement warrants that he or she is authorized to enter into this Agreement on behalf of the CLIENT.

**AGREEMENT**

This proposal shall become the Agreement for Services when accepted by both parties. Original, facsimile, electronic signatures or other electronic acceptance by the parties (and returned to Shive-Hattery) are deemed acceptable for binding the parties to the Agreement. The Client representative signing this Agreement warrants that he or she is authorized to enter into this Agreement on behalf of the Client.

Thank you for considering this proposal. We look forward to working with you. If you have any questions concerning this proposal, please contact us.

Sincerely,  
SHIVE-HATTERY, INC.



Lisa Goeman, Project Manager  
lgoeman@shive-hattery.com

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***AGREEMENT ACCEPTED AND SERVICES AUTHORIZED TO PROCEED***

**CLIENT:** Novak Design Group

**BY:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_  
(signature)

**PRINTED NAME:** \_\_\_\_\_ **DATE ACCEPTED:** \_\_\_\_\_

**CC:** Mike Mollenhauer

**STANDARD HOURLY FEE SCHEDULE**  
**Effective January 1, 2021 to December 31, 2021**

**PROFESSIONAL STAFF:**

Grade 1	\$ 92.00
Grade 2	\$111.00
Grade 3	\$124.00
Grade 4	\$138.00
Grade 5	\$153.00
Grade 6	\$166.00
Grade 7	\$180.00
Grade 8	\$198.00
Grade 9	\$215.00

**TECHNICAL STAFF:**

Grade 1	\$ 64.00
Grade 2	\$ 80.00
Grade 3	\$ 90.00
Grade 4	\$ 97.00
Grade 5	\$110.00
Grade 6	\$125.00
Grade 7	\$141.00

**ADMIN STAFF:** \$ 63.00

**SURVEY STAFF:**

One Person	\$140.00
Two Person	\$218.00
One Person with ATV	\$165.00
Two Person with ATV	\$243.00
Drone Surveyor (Video or Photogrammetry)	\$175.00
Drone Surveyor (Thermography)	\$325.00
Drone Processing	\$130.00
Hydrographic Survey Crew (Two Person)	\$284.00
Scanning Surveyor	\$180.00
Surveyor with Two Scanners	\$257.00

**REIMBURSABLE EXPENSES:**

**TRAVEL**

Mileage- Car/Truck	\$0.57/ Mile
Mileage- Survey Trucks	\$0.67/ Mile
Lodging, Meals	Cost + 10%
Airfare	Cost + 10%
Car Rental	Cost + 10%

**IN-HOUSE SERVICES**

**Prints/Plots:**

Bond	\$ .30/Sq. Ft.
Mylar	\$ .75/Sq. Ft.
Photogloss	\$ .90/Sq. Ft.
Color Bond	\$ .60/Sq. Ft.
Foam Core Mounting	\$ 13.00

**OUTSIDE SERVICES**

Aerial Photogrammetry	Cost + 10%
Professional Services	Cost + 10%
Prints/Plots/Photos	Cost + 10%
Deliveries	Cost + 10%

**Color Prints:**

Letter Size	\$ 1.00
Legal Size	\$ 2.00



## SERVICE AGREEMENT

**CLIENT:** Novak Design Group

**DATE:** April 20, 2021

**ATTN:** Jim Novak

**PROPOSAL NO.:** 0350213

**ADDRESS:** 3801 River Ridge NE  
Cedar Rapids, IA 52402

**PHONE:** 319.393.9334

**E-MAIL:** novak@novakdesigngroup.com

## PROJECT IDENTIFICATION AND PROPOSED SERVICE

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Visual Ventilation Evaluation and Report

Oelwein Public Library  
201 East Charles Street  
Oelwein, IA 50662  
Entire facility  
(Approximately 17,868 Square Feet)



# PROVEN.



## STATEMENT OF PURPOSE

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It is our understanding the Novak Design Group is working on an architectural project with the Oelwein Public Library. The Novak Design Group has described various project concerns including, but not limited to: poor roof ventilation, ice dams, incompetent heat tape installation, as well as snow sliding off and collecting at the base of the solar panels near the eaves. The Novak Design Group is requesting a ventilation inspection proposal from Benchmark. It is our understanding Benchmark's role will be strictly observation to determine the following: To the best of our abilities, inspect portions of the vent pathways to endeavor if they have been blocked and/or filled with insulation, if ventilation chutes/baffles have been displaced and or compressed with insulation etc. restricting ventilation pathways. All locations will not be inspected, we will be looking for general conditions. Benchmark will not endeavor to verify if the ventilation system is properly designed and or present solutions to the ventilation issues other than noted above. Benchmark anticipates one (1) trip and a maximum of eight (8) hours of on site inspection. It is to be understood that the act of accessing the attic will necessitate the displacement of the insulation to ensure the joists are visible for safely traversing the area. Benchmark will not re-level the displaced insulation; this will need to be accomplished by others.

## GENERAL ASSUMPTIONS

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Benchmark, Inc., (Benchmark) consulting services presented herein are offered under the assumption that the Novak Design Group (Client) will participate in the process as follows:

- Benchmark will provide labor, materials, tools, and equipment necessary to inspect the ventilation pathways.
- In preparation for site survey, Client will contact the project site to inform facility personnel of the services Benchmark consultants will be performing. Additionally, Benchmark will be provided contact information for use if needed in scheduling the work, in order to minimize on-site delays.
- If available, Client will furnish necessary and pertinent history, and relevant documents and drawings (examples listed below), and will assemble the information in advance and provide to Benchmark at the outset of the survey:
  - Copies of applicable roof drawings that are currently maintained on file.
  - A building floor plan marked with reported leak locations.
- Client will provide safe access to all areas to be evaluated and make Benchmark aware of any site-specific safety and security requirements. *(If equipment rental, such as ladders or man-lifts, is required for access, Client will provide both equipment and operator.)*

## SCOPE OF SERVICES

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For the fees herein established, Benchmark will provide roof management and consulting services as set forth below, provided that Client authorizes work to commence within **30** days from the date of this proposal. Please note any modifications/exclusions and initial.

PROVEN.

## I. VISUAL VENTILATION EVALUATION

As part of the field evaluation, Benchmark will provide the following services:

- A. Assemble and review any background information provided by Client including repair history, as-built drawings, and other information pertinent to analysis of the roof ventilation.
- B. Interview facility personnel for information on leaks, repairs, construction dates, etc.
- C. Thoroughly walk building interior to locate reported leak locations (both active and inactive) in order to correlate leak locations with inspection locations. The area/building manager shall walk the building with Benchmark to verify leak locations.
- D. Visually inspect ventilation components are free of blockages and other items that may restrict ventilation.
- E. Photograph existing conditions/findings for documentation and future reference.
- F. Mark deficiencies on the roof/attic plan by key work note and or action code and action code legend. In cases where deficiencies are widespread, representative locations will be marked and "typical" notations made on the roof/attic plan.
- G. Upon completion of the field evaluation and analysis, a Benchmark consultant will conduct an exit interview with the appropriate facility personnel, if available, to discuss the overall findings.

**Note:** The scope of fieldwork does not include removal of ventilation components.

## II. ANALYSIS AND REPORT

As part of the Analysis and Report, Benchmark will:

- A. Provide a scaled roof/attic plan as provided by client showing the location of deficiencies, photo locations, and any significant findings.
- B. Prepare a photographic log depicting general characteristics of the roof ventilation and any problem areas.
- C. Benchmark will present the report to Client via teleconference call to review the findings and discuss management options.

**PROVEN.**

**FEESCHEDULE**

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Under this agreement, Client will compensate Benchmark for services rendered as follows:

- I. – II. Visual Ventilation Evaluation, and Analysis and Report ..... \$5,900.00  
Lump Sum

**Note:**

*Force Majeure.* Notwithstanding any provision to the contrary, neither Party will be liable for delay in the performance of its obligations, to the extent that such Party is prevented or delayed from complying with its obligations hereunder by a Force Majeure event. Any Party failing or delaying in the performance of its obligations hereunder due to any Force Majeure event must, as soon as reasonably practicable, give the other Party written notice of such cause and the consequences, including a reasonable estimate of the anticipated delay in performance, and it will use, to the best of its ability, reasonable efforts to remedy the same. If performance of obligations is disrupted or made more difficult because of a Force Majeure event, and such disruption or difficulty could be remedied with an additional cost, the affected Party shall give notice of such Force Majeure event and estimated additional cost, and if the other Party requests that the more costly remedial action be implemented, the Parties shall negotiate a change to the Agreement concerning the remedial action and payment of the additional cost to be incurred. Force Majeure includes, specifically, but not exclusively, the following: earthquakes, tidal waves, floods, fire, hurricanes, blizzards, quarantine, blockade, governmental acts, war (declared or not), rebellion, terrorism (foreign and domestic), epidemic, pandemic, disease, or regional or national strikes or labor disputes (including walkouts, work stoppages or slowdowns).

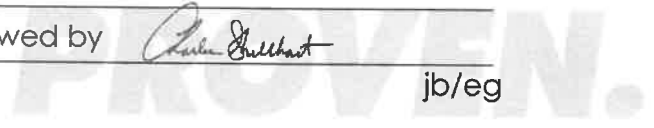
**AUTHORIZATION TO PROCEED**

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Benchmark, Inc., is hereby authorized to proceed with services described in this proposal subject to the attached Terms and Conditions, Exhibit A, of this Services Agreement.

Novak Design Group Client	Benchmark, Inc.
Signature	Signature <i>Chad Kaminski</i>
Name	Name Chad Kaminski, RRO
Title	Title Vice President
Date	Date April 20, 2021
	Reviewed by <i>Chad Kaminski</i>

jb/eg



**EXHIBIT A**  
**ROOF CONSULTING TERMS AND CONDITIONS**

This AGREEMENT (which includes the attached Services Agreement and these Terms and Conditions) represents the entire and integrated AGREEMENT between the CLIENT and the CONSULTANT and supersedes all prior written or oral negotiations, representations, or AGREEMENTS. This AGREEMENT may be amended only by written instrument signed by both the CLIENT and the CONSULTANT.

1. Benchmark, Inc. (CONSULTANT) will be provided immediate access to the building, roof area, and other areas within the scope of the work, for inspection at all times during regular business hours.
2. CONSULTANT represents, and CLIENT agrees, that:
  - a. CONSULTANT intends to render services under this AGREEMENT in accordance with the generally accepted roof consulting practices, for the intended use of the PROJECT. CONSULTANT will not be a guarantor of the project to which its services are directed, and its responsibility shall be limited to work specifically performed by CONSULTANT for the CLIENT. CONSULTANT shall not be responsible for acts or omissions of the CLIENT, Contractors, subcontractors, or other third parties;
  - b. CONSULTANT's Investigative and Roof Survey Reports will be suitable to provide CLIENT with accurate information as to the existing make-up and condition of the present roof system;
  - c. CONSULTANT's recommendations and specifications for repair of an existing roof system will be in accordance with the current "state-of-the-art" standards. No representation is made as to the efficacy or duration of repairs to existing roofing systems;
  - d. CONSULTANT's roofing system recommendations and specifications are based upon current published standards and practices accepted in the trade, or published standards and practices of roofing system manufacturers, and are subject to final confirmation by the manufacturer of the roofing system selected, as to unpublished or new specifications or requirements; and assume installation by an experienced, licensed contractor in strict accordance with the specifications of CONSULTANT and the manufacturer's specifications;
  - e. Any opinion of the construction cost prepared by the CONSULTANT represents CONSULTANT's judgment and is supplied for the general guidance of the CLIENT. It is recognized that the CONSULTANT has no control over the cost of labor and material or over competitive bidding or market conditions, and the CONSULTANT does not guarantee the accuracy of such opinions as compared to contractor bids or actual cost to the CLIENT;
  - f. If in the event that any on-site observation of Contractors' work shall be included as a part of the work under the AGREEMENT and a specific schedule of observations is agreed to, then the CONSULTANT shall comply with the schedule. If on-site observation of Contractors' work is included as a part of the work under the AGREEMENT but no specific schedule is agreed to, then the CONSULTANT shall visit the site at intervals appropriate to the stage of Contractor's progress on the PROJECT. However, CONSULTANT shall not be required to make exhaustive or continuous on-site observations to check the quality or quantity of the work. CONSULTANT shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work since these are solely the Contractor's rights and responsibilities. CONSULTANT does not guarantee or warrant the performance of the Contractor, subcontractors, or other third parties;
  - g. CONSULTANT shall have no responsibility for unauthorized changes in the work or design by the contractor or CLIENT, unless notification of proposed changes is given to and approved in writing by CONSULTANT, prior to the changes being made;
  - h. CONSULTANT makes no representations as to the structural adequacy of the building to support the roofing repairs or replacement recommended except upon the basis of written opinion of an independent structural engineer, provided by the CLIENT;
  - i. No other representations or warranties, expressed or implied, are given. No action arising from this AGREEMENT or the services performed thereunder, including those based on latent defects, may be maintained by either party unless commenced within one year from the date of substantial completion of services rendered by CONSULTANT under this AGREEMENT;
  - j. CONSULTANT and CLIENT waive consequential damages for claims, disputes, or other matters arising out of or relating to this AGREEMENT, or termination of this AGREEMENT.
3. The CLIENT agrees to limit the CONSULTANT's liability to the CLIENT for each Project, and to limit CONSULTANT's liability by appropriate written agreement to all Contractors and Subcontractors on each project, due to the CONSULTANT's professional negligent acts, errors, or omissions, such that the total aggregate liability of the CONSULTANT to all those named shall not exceed \$25,000.00 for each Project.
4. The CLIENT shall require any Contractor or Subcontractor performing work in connection with drawings and specifications produced under this AGREEMENT to hold harmless, indemnify and defend the CLIENT and the CONSULTANT and each of their officers, agents and employees from any and all liability claims, losses, or damage arising out of or alleged to arise from the Contractor's (or subcontractor's or other third party's) negligence in the performance of the work described in the construction contract documents, but not

- including liability that is due to the sole negligence of the CLIENT, the CONSULTANT, or their officers, agents and employees.
5. All drawings, specifications and other work product of the CONSULTANT for this project are instruments of service for this project only, and the CONSULTANT shall retain ownership and property interest therein whether the project is completed or not. Reuse of any of the instruments of service of the CONSULTANT by the CLIENT on extensions of this project or on any other project without the written permission of the CONSULTANT shall be at the CLIENT's risk, and the CLIENT agrees to defend, indemnify and hold harmless the CONSULTANT from all claims, damages, and expenses including attorney's fees arising out of such unauthorized reuse of the CONSULTANT's instruments of service by the CLIENT or by others acting through the CLIENT.
  6. Copies of documents that may be relied upon by CLIENT are limited to the printed copies (also known as hard copies) that are signed by CONSULTANT, files in electronic media format or text, data, graphic or other types that are furnished by CONSULTANT 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, CONSULTANT 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 CONSULTANT at the beginning of this assignment.
  7. Neither the CLIENT nor the CONSULTANT shall delegate, assign, or otherwise transfer his duties under this AGREEMENT without the written consent of the other. In the event any provisions of this AGREEMENT shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties.
  8. Execution of this AGREEMENT by CLIENT, or issuance of a purchase order by CLIENT, will constitute acceptance of each and every term and condition of this AGREEMENT. Any additional terms or conditions stated in CLIENT's purchase order, or other written communication accepting this AGREEMENT, or contained in any general or special conditions issued by CLIENT, or by alteration by CLIENT of this contract form, shall not be valid under any circumstances unless specifically adopted or approved by written response of CONSULTANT. Failure to respond by CONSULTANT shall be deemed a denial of any additional terms or conditions stated in CLIENT's acceptance or counter-proposal of CLIENT.
  9. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.
  10. Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, walkouts, accidents, government acts, or other events beyond the control of the other or the other's employees and agents.
  11. CLIENT agrees that the balance of all sums due under this AGREEMENT shall be immediately due and payable for services completed by CONSULTANT. CONSULTANT may charge interest at the rate of 1% per month, or the legal rate (whichever is higher) upon any sum due under this AGREEMENT, which is not paid within 30 days of its due date. CLIENT agrees to pay CONSULTANT's reasonable attorney fees and costs incurred in collecting overdue accounts or incurred otherwise enforcing the terms of this AGREEMENT. If CLIENT fails to make payments to CONSULTANT in accordance with this AGREEMENT such failure shall be considered substantial nonperformance and cause for termination or suspension of services under this AGREEMENT.
  12. The CONSULTANT shall have no responsibility for the discovery, presence, handling, removal, or disposal of or exposure of persons to hazardous materials or toxic substances, including but not limited to asbestos or asbestos products, in any form.
  13. Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of a third party against either the CLIENT or CONSULTANT.
  14. The duties and obligations imposed upon the parties under this AGREEMENT, and the rights and remedies available hereunder are specific, and are limited to the duties, obligations and remedies specifically set forth in this AGREEMENT. The parties hereto do not intend to create any duties, obligations or remedies not specifically set forth herein.
  15. Unless otherwise specified within this AGREEMENT, this AGREEMENT shall be governed by the laws of the State of Iowa.
  16. Any claim, dispute or other matter in question arising out of or relating to this AGREEMENT shall be subject to arbitration pursuant to the Construction Industry Arbitration Rules of the American Arbitration Association. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.