Master Services Agreement
TERMS AND CONDITIONS CITY OF COUNCIL BLUFFS, IOWA

This Master Services Agreement (this "**MSA**") is dated _____ ("**Effective Date**"), and is between McClure Engineering Co., d/b/a McClure, an Iowa corporation ("**McClure**"), with mailing address of 1360 NW 121st Street, Clive, IA 50325 and City of Council Bluffs, Iowa ("**Client**"), with mailing address of 209 Pearl Street, Council Bluffs, IA 51503. Together, McClure and Client are sometimes referred to in this MSA as the "**Parties**" and each a "**Party**".

McClure is a design and consulting firm that is willing to provide to Client services specifically described in one or more Task Orders per the terms and conditions outlined in this MSA.

Client is willing to engage McClure to provide such services subject to the terms and conditions hereof.

For valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Applicability. The terms and conditions of this MSA are the only terms that govern the sale of professional consulting services described in one or more Task Orders (each, a "**Task Order**" or "**TO**") which may include, among other items, preparation of written materials and other deliverables (the "**Deliverables**"), and/or delivery and performance of other items of value, whether tangible or intangible (the "**Services**"), by McClure, to the undersigned "Client" named below on behalf of itself and any affiliate of such party identified in any Task Order governed by this MSA (any such signatory to a TO will also be included in the definition of "Client"). In this MSA, McClure and Client are sometimes each called a "party" and collectively, the "parties". Further—

    a. Any accompanying TO and this MSA (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter hereof. This Agreement prevails over any of Client's general terms and conditions of purchase regardless of whether or when Client has delivered to McClure its purchase order or such general terms and conditions.

    b. This MSA shall be incorporated into each TO executed by McClure and Client (including an affiliate of Client). Each TO will generally include a description of the Services to be performed by McClure in accordance with this MSA, specific performance items, compensation provisions, a time schedule, Deliverables, and/or such other matters consistent with this MSA as McClure and Client may agree. Client agrees that a TO (captioned as a "Task Order" or other similarly named form) may be in substantially the form attached hereto as Exhibit C. For purposes of this MSA, "affiliate" means with respect to any such person, any other person that directly or indirectly, controls, is controlled by, or is under common control with, such person.

    c. Client shall purchase the Services from McClure at the price set forth in this Agreement and any applicable TO and Client agrees to reimburse McClure for all reasonable travel and out of pocket costs and expenses incurred by McClure in connection with the performance of the Services. All such prices and reimbursable costs and expenses are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local government or governmental body or agency on any amounts payable by Client. Client shall be responsible for all such charges, costs, and taxes; provided, however, Client shall not be responsible for any taxes imposed on, or with respect

to, McClure's income, revenues, personnel, or real or personal property. Specific terms concerning a TO's reimbursable costs and expenses may be detailed in same.

2. McClure is an Independent Contractor. Any Services provided by McClure, under this Agreement are provided by McClure as an independent contractor, and nothing in this Agreement will create or imply any relationship between McClure and Client as other than that of McClure as an independent contractor to Client.

3. Intellectual Property.

   a. No Acquisition. Neither party acquires any rights to the other Party's goodwill, trademarks, service marks or other intellectual property. Each Party's data, lists, trade secrets and customer lists shall continue to be retained by such Party and nothing in this MSA, or any TO entered into pursuant to this Agreement, may affect the ownership rights of such Party in same.

   b. Deliverables/Instruments of Service. All Deliverables (including, without limitation, any surveys, designs, drawings, plans, specifications, electronic files, held data, notes, calculations, and other documents and instruments and/or other written, digital, and/or published materials prepared by McClure or otherwise delivered or created hereunder) are instruments of service, and McClure shall retain all ownership and property interest therein (including all common law, statutory, and other reserved rights, including, without limitation, all copyrights and the right of reuse at the discretion of McClure) whether or not the Services or underlying design or other project contemplated by the TO (as to each, the "Project") is completed. Client may make and retain copies of the Deliverables for information and reference in connection with the Project. Client covenants to not use the Deliverables for any purpose other than for the construction of the specific underlying Project. Any other use, reuse, or modification of the Deliverables without McClure's prior written consent is expressly prohibited. McClure grants Client a perpetual, non-exclusive, royalty-free, limited license to use the Deliverables on such Project, extensions of the Project, and for related uses of Client, subject to receipt by McClure of full payment due and owing McClure for the Services, and subject to the following limitations: (1) Client acknowledges that such Deliverables are not intended or represented to be suitable for use on the Project unless completed and signed by McClure, or for use or reuse by Client or others on extensions of the Project, on any other project, or for any other use or purpose, without express, prior written verification by McClure; (2) any such use or reuse, or any modification of the documents, without express written completion, verification and/or authorization by McClure, as appropriate for the specific purpose intended (the "Proper Authorization"), is prohibited and will be at Client's sole risk and without liability or legal exposure to McClure or to its officers, directors, members, partners, agents, employees, consultants, representatives, parents, subsidiaries, agents, or its affiliates (collectively, "McClure Parties"); (3) Client shall indemnify, defend, and hold harmless McClure and any other McClure Parties from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without Proper Authorization; and (4) any such Proper Authorization shall not extend to any other person other than the Client expressly identified in the Proper Authorization. Client shall compensate McClure at its then applicable rates for any review by McClure of any request for Proper Authorization.

4. Representations.

   a. Standard of Care. McClure represents the Services 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 at the same time and in the same or similar locality. Client must report any material deficiencies in the Services to McClure in writing within thirty (30) days of Client's discovery of the deficiency. Client's exclusive remedy for any such material deficiency will be the reperformance of the Services by McClure within a commercially reasonable time, or a service credit as may be allowed in the applicable TO. The representation under this paragraph is exclusive and is in lieu of all other representations, whether express or implied, including any representations of merchantability or fitness for a particular purpose and any oral or written representations. McClure expressly disclaims any other representations or warranties. Client acknowledges and agrees that McClure is not being hired for anything beyond those Services specified in a TO and, as such, without limitation, it is Client's responsibility to engage others, including other professionals, to perform services specified outside the scope of Services. Without limitation, McClure does not practice law, accounting, or financing, or insurance; it shall be Client's responsibility to furnish all legal, accounting, financing, and insurance counseling services as may be necessary to protect itself and its affiliates with respect to any Project or otherwise. Furthermore, there may be instances where McClure provides Services in furtherance of or concerning the Client's Project financing, but Client recognizes, acknowledges, and agrees that McClure shall in no way guarantee or assume liability for the award of any Project financing.

   b. Client Representations and Covenants. Client represents and covenants it is the owner of, or holds a valid license to, all materials delivered to McClure ("**Client Materials**") in connection with McClure providing the Services and has the legal right to license all Client Materials to McClure for purposes of performing the Services and otherwise in performance of this Agreement. Client further represents and covenants that: (1) it will fully cooperate with McClure in the performance of the Services and provide such Client Materials or information as McClure may request to carry out the Services in a timely manner; and ensure that such Client Materials are complete and accurate (notwithstanding any contrary disclaimer as to completeness or accuracy set forth in a separate writing by Client) and that McClure shall be entitled to rely upon the Client Materials; (2) the Client Materials do not violate or infringe upon any third party's intellectual property; and (3) McClure shall at all times have access to the Project site. A TO may contain additional warranties by Client.

5. Construction Staking. With respect to any survey or similar Services to be delivered pursuant to a TO Client acknowledges and agrees:

   a. Given the nature and the value of the construction that may rely on the data points provided by McClure, it is expected and Client acknowledges that it shall cause that the contractor(s) or subcontractor(s) provide a review of McClure's survey data points for accuracy once they are established and before construction commences. If an erroneous data point is discovered, McClure shall be notified immediately and be given an opportunity to review the data and field markings and to make corrections if needed.
   b. McClure shall not be responsible for any construction errors as a result of a contractor's or subcontractor's failure to review the field data points prior to construction and/or failure to give McClure an opportunity to make adjustments/corrections as needed.

c. Unless otherwise expressly specified in a TO, the Client has not retained McClure to make detailed inspections or to provide exhaustive or continuous surveying to confirm that construction is consistent with project plans, specifications, or in the location(s) as depicted on the plans.

6. Opinions of Probable Costs. McClure's opinions (if any) of probable construction costs for a Project will be made on the basis of its experience, qualifications, and general familiarity with the construction industry. McClure, however, has no control over the cost of labor, materials, equipment, or services furnished by others, or over any contractor's methods of determining prices, competitive bidding or market conditions, and therefore Client acknowledges and agrees that McClure cannot and does not guarantee the accuracy of any of McClure's or any of the McClure Parties' opinions of probable construction costs (relative to proposals, bids, or actual construction cost). If Client requires any assurance as to probable construction cost, then Client agrees to obtain an independent cost estimate.

7. Contractor Submittals. If, as part of any TO, McClure reviews/approves contractor submittals or plans, such as shop drawings, product data, samples and other data, such reviews and approvals shall be only for the limited purpose of checking for conformance with the design concept as reflected in the final documents prepared by McClure (the "Design Documents"). Such review/approval shall not concern 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 Project's contractor and Client. McClure shall not be responsible for any deviations from the Design Documents (relative to the contractor submittals/submittals). McClure shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

8. Construction Observation. If, as part of a TO, McClure is providing construction observation services for a Project, McClure shall visit the Project at appropriate intervals during construction to become generally familiar with the progress and quality of the contractor's or any subconsultant's work and to determine if the work is proceeding in general accordance with the Design Documents. Neither McClure nor any other of the McClure Parties is a contractor and they therefore shall not at any time supervise, direct, control, or have authority over any of the contractor's and/or subconsultant's work or the safety of the worksite. Further—

   a. McClure shall not have authority over or be responsible for the means, methods, techniques, sequences, schedule, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for the security or safety at the site, nor for any failure of a contractor to comply with laws and regulations applicable to that contractor's furnishing and performing of its work.

   b. McClure shall not be responsible for the acts or omissions of any contractor.

   c. McClure neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the work in accordance with the construction contract documents.

   d. McClure shall not be responsible for any decision made regarding the construction contract documents, or any application, interpretation, clarification, or modification of the construction contract documents, other than those made by McClure.

   e. Client has not retained McClure to make detailed inspections or to provide exhaustive or continuous project review and observation services.

9. Design Without Construction Phase Services. If McClure is not retained for construction observation and/or on-site resident observation services under a TO for a particular Project, McClure shall have no design, shop drawing review, or other obligations during construction, and Client assumes all responsibility for the application and interpretation of construction contract documents, review and response to contractor claims, construction contract administration, processing of change orders and submittals, revisions to the construction contract documents during construction, construction observation and review, review of contractor's payment applications, and all other necessary construction phase administrative, engineering, surveying and professional services. Client waives all claims against McClure that may be connected in any way to construction phase administrative, engineering, surveying or professional services.

10. Underground Utilities. Information for location of underground utilities may come from the Client, third parties, and/or research performed by the Client or its contractors/subcontractors. The information the Client must rely on from various utilities and other records may be inaccurate or incomplete. Client agrees to indemnify, defend, and hold harmless McClure for all claims, losses, costs and damages arising out of the location of underground utilities with respect to any Project.

11. Subsurface Conditions. Client is advised to commission a third party to conduct soil and/or subsurface testing and analysis to provide information to the Client and contractor(s) as to the subsurface conditions that may generally be encountered during subsurface construction. McClure cannot and does not warrant or guarantee that the testing or other information provided in any case is reflective of all subsurface conditions that may be encountered, or the extent to which subsurface conditions such as soil properties, groundwater, rock, and other variations thereof, may vary from location to location throughout subsurface construction. Any unexpected change or unforeseen subsurface conditions (including those that may be caused by weather conditions) will be addressed when encountered and may result in a change in construction price, schedule, and the TO, and McClure shall be held harmless from issues arising out of any unseen and/or actual subsurface conditions.

12. Hazardous Materials—Indemnification. McClure does not provide environmental site assessments for purposes of determining the presence of any toxic, hazardous or other environmentally damaging substances. Client is aware of the potential liability if toxic, hazardous or environmentally damaging substances are found on, in or under real property. McClure makes no representations regarding an environmental site assessment and relies upon Client to have fully investigated the need and/or scope of such assessment and assumes no responsibility for the determination of whether to make an environmental site assessment on the subject property.

13. Permits and Approvals. As part of a TO, McClure may assist the Client in applying for those permits and approvals required by law for projects similar to the Project for which McClure's services are being engaged under the TO. If so, specified as part of the TO, such assistance may consist of completing and submitting forms to the appropriate regulatory agencies having jurisdiction with respect to the Project. Any assistance beyond the foregoing (including, without limitation, special studies, special research, attendance at meetings with public authorities, special testing or special documentation not usually and customarily required for the Project type) shall only be provided if so expressly identified in the TO and such assistance shall be limited to that TO.

14. Code Compliance. If as party of the TO McClure agrees to conduct code compliance, McClure shall exercise usual and customary professional care in its efforts to comply with applicable laws, codes and regulations in effect as of the date the TO is executed. Any design or other changes made

necessary by newly enacted laws, codes and regulations after the TO execution date entitle McClure to a reasonable adjustment in the schedule and additional compensation.

15. General.

a. Additional Services. If either party wishes to change the scope or performance of the Services set forth in a particular TO, it shall submit details of the requested change to the other party in writing. McClure shall, within a reasonable time after such request, and based on the information known to McClure at the time, provide a written estimate to Client of: (1) the time required to implement the change; (2) any necessary variations to the fees and other charges for the Services arising from the change; (3) the effect of the change on the Services; and (4) any other impact the change might have on the performance of this Agreement. Promptly after delivery of the written estimate to Client, the parties shall negotiate and agree in writing on the terms of such change in the scope of performance of the Services and fees and related expense due McClure (a "Change Order"). Neither party shall be bound by any Change Order unless mutually agreed upon in writing. In addition, any Deliverables or other Services not specifically set forth in a TO (or its corresponding Change Order), requested by Client from time to time, or that may be required during construction or otherwise which were not contemplated when the original scope of work was agreed to when the TO was signed (which McClure, in its discretion, agrees to provide) shall be billed by McClure to Client, and paid by Client, on a time and materials basis, based on those prices and rates then in effect at the time the Services are provided. In such case, Client recognizes that Project schedules may need to be adjusted accordingly, at Client's cost and expense and that McClure may be required to prepare or install additional field data points, drawings, specifications and other documents required to address the changes in the scope of works as necessary to satisfactorily complete the Project.

b. Indemnification. Client will indemnify, defend, and hold harmless McClure and all other McClure Parties from any and all liabilities, losses, damages, costs or expenses, including, but not limited to, attorneys' fees and legal costs and expenses incurred by the McClure Parties, which arise from: (1) a breach of representation, warranty, covenant or other breach of this Agreement by Client; (2) Client's or any one or more of its officer's, director's, member's, partner's, agent's, employee's, consultant's, representative's, parent's, subsidiary's, agents, or its other affiliate's negligence, gross negligence, willful misconduct, or violation of applicable law; and/or (3) the use of the Client Materials.

c. Limitation of Liability. McClure will not be liable with respect to the corresponding TO for punitive, special, indirect, incidental or consequential damages incurred or suffered by Client or arising from any of the McClure Parties' performance under this Agreement (including any TO) even if such Party was advised of or could have foreseen the possibility of such damages. In no event will McClure's aggregate liability arising out of or related to a TO governed by or otherwise arising out of or related to this Agreement, whether arising out of or related to breach of contract, tort (including negligence), indemnity or otherwise, exceed: (1) $50,000; or (2) the total of the fees paid to McClure by Client under the applicable TO, if any, within the past six (6) months, whichever is greater.

d. Betterment. If during construction of a Project or otherwise in connection with the delivery of Services it is discovered that one or more components or data points are required or desired that were not in McClure's original Deliverables, Services or TO, McClure shall not be responsible for paying the cost required to add such components or data points. In no

event shall McClure be responsible for any cost or expense that provides betterment or that upgrades or enhances the value of the Project or Client (beyond what is expressly contemplated under the subject TO).

e. Mediation of Disputes; Process if Mediation Not Successful. In the event a dispute arising out of or relating to this Agreement is not resolved by informal negotiations within thirty (30) days (or any mutually agreed extension of time) after either Party requests such negotiations, then the matter in controversy, at the written request a Party, delivered to the other, will be subject to non-binding mediation in Des Moines, Iowa. The Parties will mutually determine the mediator by selecting from the list of mediators obtained from the American Arbitration Association (AAA). If the Parties are not able to agree on the mediator, the AAA will select the mediator. Each Party will bear its own costs and expenses with respect to the mediation, including one-half of the fees and expenses of the mediator. This paragraph will not be read to constitute an agreement to agree, nor does it impose an obligation to negotiate in good faith upon either Party. In the event that the Parties do not resolve any dispute through mediation, Client irrevocably submits to the jurisdiction of the state or federal courts sitting in Des Moines, Iowa in any action or proceeding arising out of or relating to this Agreement, and submits to the personal jurisdiction of such courts, and agrees that all claims in respect of such action or proceeding may be heard and determined in such courts. Client irrevocably waives any objection, which it may now, or in the future, have to the bringing of any such action or proceedings in such courts. Notwithstanding the foregoing, this Section shall not delay McClure's ability to immediately pursue formal collection of fees, expenses, and other amounts due and owing hereunder.

f. Governing Law. This Agreement is made in the State of Iowa and will be governed in accordance with the laws of the State of Iowa without reference to conflict of law principles.

g. Waiver of Jury Trial. Each of the Parties hereto irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

h. Assignment. Neither Party may assign this Agreement in whole or in part, without the prior written consent of the other Party. This Agreement will inure to the benefit of, and be binding upon, the Parties to this Agreement, together with their representatives, successors and assigns. Notwithstanding the foregoing, McClure may subcontract any portion of the Services under this Agreement (including any TO) without the prior written consent of the Client. Furthermore, McClure may assign its rights hereunder to a successor in interest, including any person who acquires all or substantially all of its assets or otherwise acquires its business as a going concern, upon written notice to Client. No assignment or delegation (including any subcontracting of Services) relieves the Client or McClure of any obligations under this Agreement.

i. Severability. If any term of this Agreement is found to be unenforceable or contrary to law, it will be modified to the least extent necessary to make it enforceable, and the remaining portions of this Agreement will remain in full force and effect.

j. Term of this Agreement. This Agreement begins on the Effective Date and shall be for two (2)-year period ("Initial Term"). This Agreement (and its terms and conditions) shall automatically extend for additional one (1)-year periods (each, a "Renewal Term") unless either party notifies the other party in writing of such party's intent not to renew the Agreement at least thirty days prior to the expiration of the then current term. The period

beginning on the Effective Date through expiration or earlier termination of the Initial Term and each Renewal Term, if any, is referred to as the "Term."

k. Payment Terms. Client agrees to pay each invoice for Services and/or costs incurred thirty (30) days from the date of the invoice. McClure reserves the right to cease work and to stop providing Services if any amounts are not paid when due. Any late payment will be subject to any costs of collection (including reasonable attorneys' fees) and will bear interest at the rate of one and a half percent (1.5%) per month or any fraction of a month until all outstanding amounts are paid. In addition to all other remedies available under this Agreement or at law (which McClure does not waive by the exercise of any rights hereunder), McClure shall be entitled to terminate the applicable TO, terminate this Agreement in its entirety and/or suspend the delivery of any Deliverables or performance of any Services if Client fails to pay any amounts when due hereunder and such failure continues for seven days following written notice thereof. Written notice shall be provided consistent with Section 15(q) of this MSA. Any subsequent failure to timely pay any amounts when due hereunder within a successive 12-month period following the delinquency shall entitle McClure to immediately terminate the applicable TO or this Agreement or suspend any further delivery of Deliverables or performance of any Services hereunder. Client shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with McClure, whether relating to McClure's breach, bankruptcy or otherwise.

l. Termination of This Agreement.

i. For Convenience. This MSA may be terminated at any time, and without cause, by McClure providing Client with written notice at least thirty (30) calendar days prior to the intended termination date.

ii. For Breach. Either Party may terminate this MSA if the other Party has materially breached the requirements of this Agreement and the breach is not cured within ten (10) business days after receipt of written notice of the breach from the Party alleging the breach. The notice must set out the specific breach and the steps required to cure the breach. The non-breaching Party may, at its option, terminate this Agreement by written notice of termination to the breaching Party after the expiration of the ten (10)-day period specifying the date of termination (which shall be immediate) if the breaching Party has not timely cured.

iii. Payment of Fees Upon Termination. All fees, expenses and other sums due McClure shall be paid in full by Client within thirty (30) days of the termination date specified in any notice of termination. McClure may withhold any Deliverables or other Services due to Client until such time as all fees, expenses and other sums due McClure have been paid by Client.

iv. Material Modification, Termination of a TO. Any material modification to the obligations of McClure under a TO will require a written amendment executed by an authorized representative of each Party. Except in the event of nonpayment of invoices, which is governed by Section 15(k) of this MSA, no TO or termination thereof shall terminate this MSA. In the event this MSA is duly terminated, any TO created pursuant to this MSA shall terminate. In no event will a TO created pursuant to this MSA exist past the Term.

m. Survival of Certain Portions of this Agreement. In the event of a termination, the Parties will carry out all provisions of this Agreement which require continued performance or survive termination, including, but not limited to, indemnification, fulfilling warranty or confidentiality obligations, and obligations to complete, and to pay for, work performed through and until the date of termination. Termination also will not affect any liability or obligation arising prior to termination, including, but not limited to, any loss or damage caused by a breach of this Agreement.

n. Compliance with Laws. Each Party covenants to comply with all applicable local, state, and federal laws, regulations and orders in the performance of its obligations under this Agreement.

o. Modification and Waiver. No modification of this Agreement is effective unless signed by McClure and Client, and no waiver of any breach of this Agreement will be effective unless in writing and signed by an authorized representative of the non-breaching Party. No waiver of any breach of this Agreement and no course of dealing between the Parties will be construed as a waiver of any subsequent breach of this Agreement.

p. Force Majeure. McClure shall not be liable or responsible to Client, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of McClure, including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, pandemic, lockouts, strikes or other labor
disputes (whether or not relating to either Party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

q. Notices. All notices will be in writing and deemed given when personally delivered or one (1) business day after being sent to the recipient Party by an overnight courier, or three (3) business days after being sent postage prepaid by certified or registered mail, return receipt requested. All notices should be sent to the recipient Party's designated mailing address set forth above (or such alternative mailing address designated in writing under any TO or otherwise designated in a notice duly delivered to the recipient Party).

r. Counterparts. This MSA (together with any corresponding TO) may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A signature transmitted by facsimile or other electronic means shall be binding and enforceable for all purposes.

s. Authority. Client represents and warrants that the person or persons signing this MSA on behalf of Client has authority to bind Client and all actions have been taken to authorize such person or persons executing this Agreement to do so.

t. Complete Agreement. This Agreement (inclusive of with any TO governed hereunder) is the exclusive and entire agreement negotiated between the Parties with respect to its subject matter and supersedes all prior or contemporaneous agreements, negotiations, representations and proposals, written or oral, relating to its subject matter. Neither Party

will be bound or liable to the other Party for any representation, promise or inducement made by any agent or person in the other's employ that is not embodied in this Agreement. The provisions of this MSA will control over any conflicting provisions in a TO, except to the extent that a provision of this MSA specifically states that a TO may provide different terms. A TO may contain additional terms, provided that such additional terms do not conflict with the provisions of this Agreement.

u. Agreement Negotiated. Each Party has had opportunity to participate in negotiating and drafting this Agreement, so if an ambiguity or a question of intent or interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against a Party because it was responsible for drafting one or more of provisions of this Agreement.

v. Lien Rights. McClure expressly reserves all rights to pursue mechanic's or design professional lien rights and nothing herein or hereafter executed shall modify, reduce or obviate same or delay enforcement of same unless McClure expressly and specifically duly waives any such rights in writing.

w. Promotional Use. Notwithstanding anything herein to the contrary, the Parties agree that McClure may use Client's name, logo, examples of materials delivered or proposed and web screen shots in McClure's promotional materials. Client shall provide professional credit for McClure in Client's promotional materials for any Project.

x. Third-Party Beneficiaries. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against McClure or any other of the McClure Parties. McClure's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against McClure or any other of the McClure Parties because of this Agreement or the performance or nonperformance of services hereunder.

y. Exhibits. The exhibit(s) attached hereto are incorporated by reference herein.

[Signature Page Follows]

AGREED TO AND ACKNOWLEDGED BY:

McClure Engineering Co., d/b/a McClure	City of Council Bluffs, Iowa
Cody Forch, PE	Matt Walsh
Full name (printed)	Full name (printed)
Team Leader	Mayor
Title	Title
Signature	Signature
Date	Date

Master Services Agreement
TERMS AND CONDITIONS CITY OF COUNCIL BLUFFS, IOWA

MSA Exhibit A
Contract Provisions

The following provisions are incorporated into the Master Services Agreement between McClure Engineering Co., and the City of Council Bluffs, Iowa and, to the extent that they are contrary to any provisions contained therein, shall supersede such provisions of the Agreement.

1. Indemnification

McClure agrees to indemnify and save harmless the Client, its officers, agents, and employees from and against any and all claims including reasonable attorneys' fees and defense costs arising out of the negligent acts, errors, or omissions of McClure, its officers, agents, and employees in the execution of the services specified in this Agreement.

In recognition of the relative risks and benefits of the project to both the Client and McClure, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of McClure and their sub-consultants to the Client and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of McClure and their sub-consultants to all those named shall not exceed $2,000,000.00. Such claims and causes include negligence, professional errors or omissions, strict liability, breach of contract or warranty.

2. Insurance

McClure shall maintain insurance to protect McClure from claims under Worker's Compensation Acts; claims due to personal injury or death of any employees or any other person; claims due to injury or destruction of property; and claims arising out of errors, omissions, or negligent acts for McClure is legally liable. The amounts and extent of such insurance is as follows:

a.	Professional Liability -	$2,000,000 each claim; $2,000,000 aggregate
b.	Vehicle Coverage Bodily Injury -	$1,000,000 combined single limit (each accident)
c.	Worker's Compensation -	$100,000 each accident
d.	General Liability -	$1,000,000 each occurrence and $2,000,000 aggregate

3. Arbitration

Any controversy or claim arising out of this Agreement may, if both parties agree, be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association.

The cost of the arbitration, if any, will be divided equally between the Client and the McClure.

4. McClure's responsibility

The McClure shall be responsible for the professional quality and technical accuracy of all services furnished by the McClure under this Agreement, except for that work provided by Client. McClure shall, without additional compensation, correct or revise any error or deficiencies in his work. Approval of the Client of any such work shall not in any way relieve McClure of responsibility for the technical accuracy and adequacy of said services. The Client's review, approval or acceptance of, or payment for any of the services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

Master Services Agreement
TERMS AND CONDITIONS CITY OF COUNCIL BLUFFS, IOWA

MSA Exhibit B
Title VI Assurances

During the performance of this contract, the engineer, for itself, its assignees and successors in interest (hereinafter referred to as the "Engineer") agrees as follows:

1. Compliance with Regulations: The Engineer shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination: The Engineer, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Engineer shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix "B" of the Regulations.

3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Engineer for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Engineer of the Engineer 's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.

4. Information and Reports: The Engineer shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City of Council Bluffs, the Iowa Department of Transportation or Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of an engineer is in the exclusive possession of another who fails or refuses to furnish this information, the Engineer shall so certify to the City of Council Bluffs, the Iowa Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the Engineer's noncompliance with the nondiscrimination provisions of this contract, the City of Council Bluffs shall impose such contract sanctions as it, the Iowa Department of Transportation or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

    a. withholding of payments to the Engineer under the contract until the Engineer complies; and/or,
    b. cancellation, termination or suspension of the contract, in whole or in part.

6. Incorporation of Provisions: The Engineer shall include the provisions of Paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Engineer shall take such action with respect to any subcontract or procurement as the City of Council Bluffs, the Iowa Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non compliance; provided, however, that, in the event an engineer becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Engineer

may request the City of Council Bluffs or the Iowa Department of Transportation to enter into such litigation to protect the interests of the City of Council Bluffs or the Iowa Department of Transportation; and, in addition, the Engineer may request the United States to enter into such litigation to protect the interests of the United States.

Master Services Agreement
TERMS AND CONDITIONS CITY OF COUNCIL BLUFFS, IOWA

MSA Exhibit C
Task Order Scope of Work

McClure Engineering Co.
Project Name: Avenue B Reconstruction
Project Number: #PW25-13
Project Manager: Cody Forch, PE

This Task Order (this "**TO**") adopts and incorporates by reference the terms and conditions of the Master Services Agreement terms and conditions, which was entered into on _____ between McClure Engineering Co., an Iowa corporation ("**McClure**"), and the undersigned Client or its affiliate, City of Council Bluffs, Iowa (hereinafter referred to as "**Client**"), as it may be amended from time to time (the "**MSA**"), and the attached Exhibits. A capitalized term not defined in this TO shall have the meaning ascribed such term in the MSA. This Task Order is effective beginning on the date fully signed below (the "**Effective Date**") and will remain in effect until terminated in accordance with the MSA. All Services performed under this TO will be subject to the terms and conditions of this TO and the MSA.

1. The Services that McClure will provide under this TO are described in the attached **Exhibit A** (the "**Task Order Scope of Work**").
2. The Services that McClure will provide under this TO will be compensated for in accordance with the fees or hourly rates as presented in **Exhibit B** and the MSA.
3. All other Exhibits identified as "Included" below are incorporated into this TO.
4. This TO represents the entire and integrated agreement between **Client** and **McClure** and supersedes all prior negotiations, representations, or agreements, either written or oral regarding the subject matter of this TO. This TO may be amended only by written instrument signed by both **Client** and **McClure**.

Attached Exhibits		Included	Not Included
Exhibit 'A'	Task Order Scope of Work	☒	☐
Exhibit 'B'	Fees/Hourly Rates	☒	☐
Exhibit 'C'	Subconsultant(s) Contract	☐	☒
Exhibit 'D'	Client's Additional Responsibilities to McClure	☒	☐
Exhibit 'E'	Duties and Responsibilities of RPR	☒	☐
Exhibit 'F'	Drawing Depicting the Project	☐	☒
Exhibit 'G'	Construction Item List Cost Estimate	☐	☒
Exhibit 'H'	Regulatory Requirements	☐	☒

In Witness Whereof, the parties have executed this TO as of the date below.

CLIENT: City of Council Bluffs, Iowa

By: _____

Title: _____

Date: _____

McClure Engineering Co.

Signed: _____

Title: Vice President/Authorized Signatory

Date: _____

Master Services Agreement
TERMS AND CONDITIONS CITY OF COUNCIL BLUFFS, IOWA

TO Exhibit A
Task Order Scope of Work

1. Project Description
    a. The PROJECT includes Preliminary Design, Final Design, Advertising, Bidding, Contract Award, Construction Administration, Onsite Project Representation, Project Survey, Project Closeout, and Project Management for the Avenue B Reconstruction project.
    b. Project limits extend from the west edge of the southbound lane on 8th Street to the west return of 13th Street.

2. Basic Services

McClure will provide the Engineering Services as follows:

a. Preliminary Design
b. Final Design
    i. Applications for Permits/Approvals
c. Construction Administration
d. Advertising, Bidding, and Contract Award
e. Onsite Project Representative
f. Survey Services
g. Project Closeout
h. Project Management and Coordination
i. Subconsultants

Master Services Agreement
TERMS AND CONDITIONS CITY OF COUNCIL BLUFFS, IOWA

TO Exhibit B
Fees/Hourly Rates

McClure Engineering Co.
Hourly Rate Schedule
(Effective 1/1/2024 through 12/31/2024)

Personnel	Hourly Rate*
Principal	$270 - $295
Project Manager	$185 - $230
Senior Professional	$185 - $285
Professional	$155 - $185
Junior Professional	$125 - $155
Senior Technician	$155 - $175
Technician	$115 - $135
Landscape Architect	$125 - $160
On-Site Representative	$115 - $155
Client/Project Liaison	$135 - $185
Administrative	$65 - $85
Public Relations	$115 - $150
3 Member Survey Crew	$280
2 Member Survey Crew	$210
1 Member Survey Crew	$135

Equipment	
3D Scanner per Scan	$30.00
Photogrammetry Drone per Flight	$125.00
Sonar Boat	$125.00
LiDAR Drone per Flight	$250.00

Miscellaneous expenses	
Survey Vehicle Mileage	$0.75/Mile + $0.15 fuel surcharge
Automobile Mileage (at current IRS rate)	Current IRS Rate
Printing	Per Contract
Survey Supplies (Hubs, Lath, Paint, Nails, etc.)	Per Contract
Out-of-Pocket Expenses (Meals, Hotels, etc.)	Per Contract

*Rates are subject to annual adjustment (based on McClure's billing rate adjustments for future years)

Master Services Agreement
TERMS AND CONDITIONS CITY OF COUNCIL BLUFFS, IOWA

TO Exhibit C

Subconsultant(s) Contract

Master Services Agreement
TERMS AND CONDITIONS CITY OF COUNCIL BLUFFS, IOWA

TO Exhibit D
Client's Additional Responsibilities to McClure

CLIENT shall do the following in a timely manner so as not to delay the Services of McClure:

1. Designate in writing a person to act as Client's representative with respect to the Services to be rendered under this Task Order. Such person shall have complete authority to transmit instructions, receive information, interpret and define Client's decisions with respect to McClure's Services for the Project.

2. Provide to McClure all criteria and full information as to Client's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expendability, and any budgetary limitations; and furnish to McClure copies of all design and construction standards which Client will require in the drawings and specifications.

3. Assist McClure by delivering to McClure all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.

4. Arrange for access to make all provisions for McClure to enter upon public and private property as required for McClure to perform services under this Agreement.

5. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by McClure, obtain advice of an attorney, accountant, insurance counselor and other consultants as Client deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of McClure.

6. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

7. Attend the prebid conference, bid opening, preconstruction conferences, construction progress and other job-related meetings and substantial completion inspection and final payment inspection.

8. Give prompt written notice to McClure whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of McClure's services, or any defect or non-conformance in the work of any Contractor.

9. Arrange for financing and pay for Services as agreed to in this Task Order or Agreement.

Master Services Agreement
TERMS AND CONDITIONS CITY OF COUNCIL BLUFFS, IOWA

TO Exhibit E

Client's Additional Responsibilities to McClure

McClure shall furnish a Resident Project Representative (RPR), assistants and other field staff to assist Client in observing performance of the Services with respect to the Project.

Through on-site observations of the Project in progress and field checks of materials and equipment by the RPR and assistants, McClure shall endeavor to provide further protection for Client against defects and deficiencies in the Project; but, the furnishing of such Services will not make McClure responsible for or give McClure control over construction means, methods, techniques, sequences, procedures, storm water runoff, erosion control, or for safety precautions or programs, or responsibility for contractor's failure to perform the Work in accordance with the Contract Documents.

The duties and responsibilities of the RPR are limited to those of McClure in McClure's agreement with the Client and in the construction Contract Documents, and are further limited and described as follows:

1. General
   RPR is Client's agent at the Project site, will act as directed by and under the direction of Client, and will confer with Client regarding RPR's actions. RPR's dealings in matters pertaining to the on- site work shall in general be with Client and contractor keeping Client advised as necessary. RPR's dealings with sub-contractors shall only be through or with the full knowledge and approval of contractor.

2. Duties and Responsibilities of RPR
   a. Conferences and Meetings: Attend meetings with contractor, such as pre-construction conferences, progress meetings, job conferences and other project- related meetings.

      i. Liaison:
         1. Serve as Client's liaison with contractor, working principally through contractor's superintendent and assist in understanding the intent of the Contract Documents; and assist Client in serving as Client's liaison with contractor when contractor's operations affect Client's on-site operations.
         2. Assist in obtaining from Client additional details or information, when required for proper execution of the Work.

   b. Shop Drawings and Samples:
      i. Receive samples that are furnished at the site by contractor and notify Client of availability of samples for examination.
      ii. Advise Client and contractor of the commencement of any Work requiring a Shop Drawing or sample if the submittal has not been approved by Client.

   c. Review of Work, Rejection of Defective Work, Inspections and Tests:
      i. Conduct on-site observations of the Work in progress to assist Client in determining if the work is in general proceeding in accordance with the Contract Documents.
      ii. Report to Client whenever RPR believes that any Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Client of Work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

iii. Verify that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel and that contractor maintains adequate records thereof; and observe, record and report to Client appropriate details relative to the test procedures and startups.

iv. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to Client.

d. Interpretation of Contract Documents: Report to Client when clarifications and interpretations of the Contract Documents are needed and transmit to Client clarifications and interpretations as issued by Client.

e. Modifications: Consider and evaluate contractor's suggestions for modifications in Drawing or Specifications and report with RPR's recommendations to Client. Transmit to contractor decisions as issued by Client.

f. Records:

i. Maintain at the job site orderly files for correspondence, reports of job conferences. Shop Drawings and samples, reproductions of original Contract Documents including all Work Directive Changes, Addenda, Change Orders, Field Orders, and additional Drawings issued subsequent to the execution of the Contract. Client's clarifications and interpretations of the Contract Documents, progress reports, and other Project related documents.

ii. Keep a diary or log book, recording contractor hours on the job site, weather conditions, data relative to questions of Work Directive Changes, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general and specific observations in more detail as in the case of observing test procedures; and send copies to Client.

iii. Record names, addresses and telephone numbers of all contractors, subcontractors and major suppliers of materials and equipment.

g. Reports:

i. Furnish Client periodic reports as required of progress of the Work and of contractor's compliance with the progress schedule and schedule of Shop Drawing and sample submittals.

ii. Consult with Client in advance of scheduled major tests, inspections or start of important phases of the Work.

iii. Draft proposed Change Orders and Work Directive Changes, obtaining backup material from contractor and recommend to McClure Change Orders, Work Directive Changes and Field Orders.

iv. Report immediately to Client upon occurrence of any accident.

h. Payment Requests: Review applications for payment with contractor for compliance with the established procedure for their submission and forward with recommendations to McClure, noting particularly the relationship of the payment requested to the schedule of values. Work completed, and materials and equipment delivered at the site but not incorporated in the Work.

i. Certificates, Maintenance and Operation Manuals: During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to Client for review and forwarding to Client prior to final payment for the Work.

3. LIMITATIONS OF AUTHORITY
   a. Resident Project Representative:
      i. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by Client.

      ii. Shall not exceed limitations of Client's authority as set forth in the Contract Documents.

      iii. Shall not undertake any of the responsibilities of contractor, subcontractors or contractor's superintendent.

      iv. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences, storm water management, erosion control or other procedures of construction.

      v. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.

      vi. Shall not accept Shop Drawings or sample submittals from anyone other than contractor.

      vii. Shall not authorize Client to occupy the Project in whole or in part.

      viii. Shall not participate in specialized field or laboratory tests or inspections conducted by other except as specifically authorized by Client.