

Project No.: 191211-006
 Project Name: Edmundson Park Playground Improvements
 Project Manager: Bhooshan Kamik

Agreement for Engineering Services

This Agreement, is made on the _____ day of February, 2022, by and between *McClure Engineering Company, of Clive, Iowa*, (herein referred to as "ENGINEER") and the *City of Oskaloosa, Iowa* (hereinafter referred to as "OWNER"). The ENGINEER will provide services per the terms and conditions outlined in this Agreement and in accordance with the scope and schedule presented in Exhibit 'A'. The services will be compensated for in accordance with the fees or hourly rates as presented in Exhibit 'B', for the Project described as:

Improvements to Edmundson Park Playground Area

1. The OWNER shall provide information per the OWNER's responsibilities presented in Exhibit 'C' in a timely manner so as not to delay the services provided by the ENGINEER.
2. Payment to the ENGINEER shall be made within 30 days of invoice for work completed to date. The invoice will include the percentage of work complete, an estimate to complete and, a brief project status summary.
3. Past due amounts owed shall accrue interest at 1.5% per month from the 30th day. If the OWNER fails to make monthly payments due the ENGINEER, the ENGINEER may, after giving (7) days written notice to the OWNER, suspend services under this agreement.
4. THIS AGREEMENT IS SUBJECT TO ALL THE TERMS AND CONDITIONS LISTED ON PAGE 2 OF THIS AGREEMENT.
5. This Agreement represents the entire and integrated agreement between the OWNER and the ENGINEER and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the OWNER and the ENGINEER.
6. Neither party to this AGREEMENT will be liable to the other party for unavoidable delays in performing the Scope of Services, or for the direct or indirect cost resulting from such delays, that may result from acts of God, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of either party. Each party will take reasonable steps to mitigate the impact of any force majeure. The ENGINEER will adjust the schedule and compensation under this agreement to the extent that ENGINEER's schedule and compensation are equitably adjusted by the OWNER.

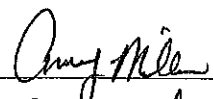
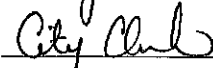
Unavoidable Delays means delays in performance resulting from acts or occurrences outside the reasonable control of the party claiming the delay in performance, including but not limited to storms, floods, excessive rain, hail, wind, hurricanes, tornadoes, fires, explosions or other casualty losses, unusual weather conditions, global medical pandemics, including but not limited to that certain global medical pandemic which has come to be known as "Coronavirus" or "Covid-19", national medical pandemics in the United States of America, strikes, boycotts, lockouts or other labor disputes, delays in transportation or delivery of material or equipment, litigation commenced by third parties, or the acts, restrictions, or prohibitions of any federal, State or local governmental unit.


7. The amount of the ENGINEER's compensation is **\$6,000.00**. The contract type is **Lumpsum**.

	Included	Not Included
Exhibit 'A' Scope and Schedule	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Exhibit 'B' 2020 Billing Rates	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Exhibit 'C' OWNERS's Responsibilities	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Exhibit 'D' Duties, Responsibilities and Limitations of Authority of the Resident Project Representative	<input type="checkbox"/>	<input checked="" type="checkbox"/>

OWNER: City of Oskaloosa, Iowa

ENGINEER: McClure Engineering Company

By: 
 Title: 

Signed: 
 Title: Vice President/Authorized Signatory

McCLURE ENGINEERING COMPANY STANDARD TERMS AND CONDITIONS

ACCESS TO SITE: The Engineer shall at all times have access to the site to complete his Work.

INFORMATION PROVIDED BY OTHERS: The Engineer shall be entitled to rely upon the accuracy and completeness of data provided by the Owner and shall not assume liability for such data. The Engineer does not practice law, insurance or financing, therefore, the Owner shall furnish all legal, accounting and insurance counseling services as may be necessary to protect themselves at any time during the Project. Owner shall hold Engineer harmless from damages that may arise as a result of inaccuracies of information or data supplied by Owner or others to Engineer.

ADDITIONAL SERVICES: As an Additional Service in connection with changes in the scope of the Engineer's work by the Owner, the Engineer shall prepare Drawings, Specifications and other documentation and data, evaluate Contractor's proposal and provide any other services made necessary by such Change Orders and Construction Change Directives. The Engineer will be entitled to additional compensation to coordinate such changes and schedules shall be adjusted accordingly.

OWNERSHIP AND REUSE OF DOCUMENTS: All documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.

Owner may make and retain copies of documents for information and reference in connection with the use of the documents on the Project. Engineer grants Owner a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the documents, and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants 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 written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

If Engineer at Owner's request verifies the suitability of the documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount agreed upon by Owner and Engineer.

OPINIONS OF PROBABLE COSTS: Engineer's opinions (if any) of probable construction costs are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by Engineer. If Owner requires greater assurance as to probable construction cost, then Owner agrees to obtain an independent cost estimate.

BETTERMENT: If a required item or component of the Owner's project should be omitted from Engineer's construction documents, Engineer shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event will Engineer be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Owner's project.

SHOP DRAWING REVIEW: If, as part of this Agreement Engineer reviews Contractor submittals, such as shop drawings, product data, samples and other data, as required by Engineer, 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. Engineer shall not be responsible for any deviations from the contract documents not brought to the attention of Engineer in writing by the contractor. Engineer shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

CONSTRUCTION OBSERVATION: If, as part of this Agreement, Engineer is providing construction observation services, Engineer shall visit the project at appropriate intervals during construction to become generally familiar with the progress and quality of the Contractor's work and to determine if the work is proceeding in general accordance with the Contract Documents. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer 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. Engineer shall not be responsible for the acts or omissions of any contractor.

Engineer 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.

Engineer 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 the Engineer or its consultants.

Unless otherwise specified in this Agreement, the Owner has not retained the Engineer to make detailed inspections or to provide exhaustive or continuous project review and observation services.

DESIGN WITHOUT CONSTRUCTION PHASE SERVICES: If Engineer is not retained for construction observation and/or on-site resident observation services, Engineer shall have no

design, shop drawing review, or other obligations during construction, and Owner 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, and professional services. Owner waives all claims against the Engineer that may be connected in any way to construction phase administrative, engineering, or professional services.

UNDERGROUND UTILITIES: Information for location of underground utilities may come from the Owner, third parties, and/or research performed by the Engineer or its subcontractors. Unfortunately, the information the Engineer must rely on from various utilities and other records may be inaccurate or incomplete. Therefore, the Owner agrees to indemnify and hold harmless the Engineer for all claims, losses, costs and damages arising out of the location of underground utilities provided by the Engineer under this Agreement.

SUBSURFACE CONDITIONS: The Engineer may advise the Owner to conduct soil and/or subsurface testing and analysis to provide information to the Owner, Engineer, and contractor(s) as to the subsurface conditions that may generally be encountered during subsurface construction.

The Engineer cannot warrant or guarantee that the information provided is reflective of all subsurface conditions that may be encountered, or to the extent that subsurface conditions such as soil properties, groundwater, rock, etc., 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 and/or schedule, and the Engineer shall be held harmless from issues arising out of these unseen subsurface conditions.

HAZARDOUS MATERIALS – INDEMNIFICATION: The Engineer is not in the business of making environmental site assessments for purposes of determining the presence of any toxic, hazardous or other environmental damaging substances. The purpose of this provision is to be certain that the Owner is aware of the potential liability if toxic, hazardous or environmental damaging substances are found on or under the property. Engineer makes no representations regarding an environmental site assessment, relies upon Owner to have fully investigated the need and/or scope of such assessment and assumes no responsibility for the determination to make an environmental site assessment on the subject property.

DISPUTE RESOLUTION: Claims, disputes or other matters, involving a value less than \$200,000.00, in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to mediation unless each of the parties mutually agrees otherwise. No mediation arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement signed by the Owner, Engineer, and any other person or entity sought to be joined. In no event shall the demand for mediation be made after the date when the institution of legal or equitable proceedings based upon such claim would be barred by the applicable statute of limitations. The award rendered in the mediation shall be non-binding.

TERMINATION: This Agreement may be terminated by either party upon not less than seven days written notice should the other party fail substantially to perform in accordance with the terms of the Agreement through no fault of the party initiating the termination. This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Engineer in the event the Project is permanently abandoned.

Failure of the Owner to make payments to the Engineer in accordance with the Agreement shall be considered substantial non-performance and cause for termination. If the Owner fails to make payment when due the Engineer for services, the Engineer may, upon seven days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Engineer within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Engineer shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services.

In the event of termination not the fault of the Engineer, the Engineer shall be compensated for services performed prior to termination and all termination expenses. Termination expenses are in addition to compensation for Basic and Additional Services, and include expenses which are directly attributable to termination.

LIMITATION OF LIABILITY: The Engineer's liability shall be limited to \$50,000.00 or the fee for the work performed, whichever is greater, or as specifically agreed to by separate agreement.

PAYMENT: Amounts unpaid 30 days after invoice date shall bear interest from the date payment is due at a rate of 1.5% per month compounded and shall include costs for attorney fees and other collection fees related to collecting fees for services.

WAIVERS: The Owner and the Engineer waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, but only to the extent covered by property insurance during construction. The Owner and Engineer each shall require similar waivers from their contractors, consultants and agents.

ASSIGNMENT: The Owner and Engineer, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Engineer shall assign this Agreement without the written consent of the other.

GOVERNING LAW: Unless otherwise provided, the Agreement shall be governed by the laws of the State of Iowa.

COMPLETE AGREEMENT: This Agreement represents the entire and integrated agreement between the Owner and Engineer and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Engineer. 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 Owner or Engineer.

EXHIBIT A

EDMUNDSON PARK PLAYGROUND IMPROVEMENTS SCOPE OF SERVICES

INTRODUCTION

The City of Oskaloosa (City) has engaged McClure Engineering to provide surveying, grading plan preparation and preparing bid documents for the proposed playground improvements at Edmundson Park in Oskaloosa, Iowa. The general site location is shown in Figure 1 below.



MAJOR ASSUMPTIONS

The scope of services and estimated costs are based on the following assumptions.

- McClure will provide one site visit for performing a topographical survey and one site visit for construction staking.
- Construction observation, management, contractor coordination, answering contractor questions during construction is not part of the scope of services.
- McClure will provide the bidding document to the City. McClure is not scoped to provide bidding services, bid award recommendations or other notices.

- Scope of services does not include drainage design.
- Scope of services does not include applying for any permits, including any stormwater permits.
- Scope of services assumes that contractor will provide site requirements in CAD format to enable ease of reference while preparing grading plans.

SCOPE OF SERVICES

Task 1: SURVEY

McClure will provide one site visit for topographic survey. Effort includes processing the survey data to prepare contour files as needed to prepare site grading plan.

Deliverable: Processed contour files.

Task 2: SITE GRADING

Upon receipt of the approved playground plans from the City, McClure will prepare a site grading plan based on the contours from the topographical survey. Task includes preparing a grading plan that includes subgrade preparation depths. Site will be graded for positive drainage per discussion with City. Site grading plans will be delivered within 2 weeks of receipt of playground plans from the City in CAD format.

Deliverable: Site grading plan, 2 sheets, PDF format

Task 3: CONSTRUCTION STAKING

Task includes one site visit for construction staking upon notification from the City. A minimum notice period of two weeks is requested from the City to enable McClure to schedule resources for the staking effort.

Deliverable: Staking in the field with appropriate elevations and depths marked on the stakes.

Task 4: BIDDING SERVICES

Effort includes preparing a bidding document and notice to bidder and notice of public hearing for the City. One round comment review is included in the effort. One addendum, if needed is included in the effort.

Deliverable: Bidding document with site location plan, Notice to Bidder and Notice of Public Hearing

Task 4: PROJECT MANAGEMENT

Task includes contract preparation, setting up project in McClure financial systems and client invoicing and client meetings. Effort includes 2 client calls. McClure will invoice City in three equal invoices. One at submission of bid documents. One at submission of site grading plans and a final invoice at end of construction staking.

END OF SCOPE DOCUMENT

EXHIBIT B
 McCLURE ENGINEERING COMPANY
 HOURLY RATE SCHEDULE
 (Effective through December 31, 2022*)

<u>PERSONNEL</u>	<u>HOURLY RATE</u>
Principal	\$270 - \$295
Project Manager	\$185 - \$230
Senior Professional	\$185 - \$285
Professional	\$155 - \$185
Junior Professional	\$125 - \$155
Senior Technician	\$135 - \$175
Technician	\$115 - \$135
Landscape Architect	\$120 - \$155
On-Site Representative	\$115 - \$155
Client/Project Liaison	\$135 - \$185
Administrative	\$65 - \$85
3 Member Survey Crew	\$270
2 Member Survey Crew	\$200
1 Member Survey Crew	\$135

EQUIPMENT

3D Scanner per Scan	\$30.00
UAV per Flight	\$125.00
Sonar Boat	\$125.00

MISCELLANEOUS EXPENSES

Survey Vehicle Mileage	\$0.70/Mile
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 change based on billing rates for future years



Exhibit C: OWNER's Responsibilities

OWNER shall do the following in a timely manner so as not to delay the services of the **ENGINEER**:

1. Designate in writing a person to act, as **OWNER'S** representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define **OWNER'S** policies and decisions with respect to **ENGINEER'S** services for the Project.
2. Provide all criteria and full information as to **OWNER'S** requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expendability, and any budgetary limitations; and furnish copies of all design and construction standards, which **OWNER** will require to be included in the drawings and specifications.
3. Assist **ENGINEER** by placing at **ENGINEER'S** disposal 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 **ENGINEER** to enter upon public and private property as required for **ENGINEER** to perform services under this Agreement.
5. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by **ENGINEER**, obtain advice of an attorney, insurance counselor and other consultants as **OWNER** deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of **ENGINEER**.
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 **ENGINEER** whenever **OWNER** observes or otherwise becomes aware of any development that affects the scope or timing of **ENGINEER'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 Agreement.