

August 13, 2015

RE: **Proposal for Professional Surveying Services
Rain Garden – City Hall
Windsor Heights, Iowa**

Brett Klein
City Administrator
1145 66th Street Suite 1
Windsor Heights, Iowa 50324

Kirkham Michael is pleased to present this proposal for professional surveying and design services for the above-mentioned project.

Project Intent

The proposed Rain Garden will be located next to Windsor Heights City Hall along 66th Street. The proposed Rain Garden would catch water from the existing roof drain, and water would outlet through a tile after being filtered through the rain garden. The project would also provide positive drainage away from the building where water has ponded currently. A flag pole and light will also be incorporated into the rain garden feature. A retaining wall is not desired, and will not be considered in the design.

Scope of Services

- Complete topographical survey of the proposed location at Windsor Height City Hall.
- Provide preliminary design plan for City review.
- Complete final design plan based off of preliminary design and comments received from City.

Assumptions

- Plans will be completed to a level that would allow City staff to complete the construction.
- Full Construction plans will not be necessary.

Exclusions

- No Construction Services are included in this proposal.
- No legal property surveys are included in this proposal.
- No Specifications or Letting Assistance is included as work will be completed by City staff.

Fee Proposal

For completion of the services listed above, we request lump sum fee of \$2,000

We will invoice for these fees on a monthly basis. We will invoice the percentage of services completed, to be payable within 30 days. Per our normal procedures, invoices over 30 days are subject to a one and one half percent service charge per month.

Schedule

Work will begin upon acceptance of this proposal. The Preliminary Design to be completed within 4 weeks of notice to proceed and Final Design will be completed within 2 weeks of final comments from City.

In submitting our proposal, we pledge the commitment of Kirkham Michael's resources to the timely delivery of



quality surveying & design services. Unless you prefer a different form of agreement, we propose that this document and the attached Exhibit A (Kirkham Michael Terms and Conditions) serve as our contractual agreement.

On behalf of Kirkham Michael, we are pleased to have the opportunity to work together with you on this project. Should you have any questions or require additional information, please contact us at your earliest convenience. Thank you and we look forward to working with you on this project.

Sincerely yours

A handwritten signature in blue ink, appearing to read 'Greg Cabalka'. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Greg D. Cabalka, Vice-President
KIRKHAM MICHAEL

GDC/del/crs

Enclosure: Exhibit A (KM Terms and Conditions)

ACCEPTANCE OF PROPOSAL AND AUTHORIZATION TO PROCEED:

City of Windsor Heights Authorized Representative

Date: _____

Exhibit A



General Terms and Conditions

1. AUTHORIZATION TO PROCEED

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

2. STANDARD OF PRACTICE

Services performed by Kirkham Michael under this agreement will be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in the agreement or in any report, opinion, document, or otherwise.

3. INVOICING AND PAYMENT

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

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

If the client objects to all or a portion of the invoice, the client shall so notify Kirkham Michael in writing within ten calendar days of the date of the invoice in question, and shall pay that portion of the invoice not in dispute. In the event any bill or portion thereof is disputed by the client, client shall notify Kirkham Michael within ten (10) calendar days of the date of the invoice in question. Client and Kirkham Michael shall work together to resolve the matter within sixty (60) calendar days of its being called to Kirkham Michael's attention. If resolution of the matter is not attained within sixty (60) calendar days, either party may terminate this agreement.

4. ADDITIONAL SERVICES

Any services beyond those specified in the agreement will be provided for separately under an additional agreement or a supplemental agreement.

5. CONSTRUCTION COST ESTIMATES

Construction cost estimates provided by Kirkham Michael are prepared from experience and judgment. Kirkham Michael has no control over market conditions or construction procedures and does not warrant that proposals, bids or actual construction costs will not vary from Kirkham Michael estimates.

6. LIMITATION OF LIABILITY

In order for the client to obtain the benefits of a fee which includes a lesser allowance for risk funding, the client agrees to limit Kirkham Michael's liability arising from Kirkham Michael's professional acts, errors or omissions, such that the total aggregate liability of Kirkham Michael shall not exceed Kirkham Michael's total fee for the services rendered on this project, or the amount of fifty thousand dollars (\$50,000), whichever is less.

7. CONSEQUENTIAL DAMAGES

The client shall not be liable to Kirkham Michael and Kirkham Michael shall not be liable to the client for any consequential damages incurred by either party due to the fault of the other, regardless of the nature of this fault or whether it was committed by the client or Kirkham Michael, their employees, agents, or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

8. INDEMNIFICATION

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

9. OWNERSHIP OF DOCUMENTS

All plans, drawings, reports, notes, calculations, estimates and other documents prepared by Kirkham Michael as instruments of service shall remain the property of Kirkham Michael, and copies will be provided at the request of the client.

10. TERMINATION

In the event termination becomes necessary, the party (client or Kirkham Michael) effecting the termination shall so notify the other party and termination will become effective fourteen (14) calendar days after receipt of the termination notice. Irrespective of which party shall effect termination or the cause of termination, the client shall within thirty (30) calendar days of termination remunerate Kirkham Michael for services rendered and costs incurred up to the effective time of termination, in accordance with Kirkham Michael's prevailing fee schedule and expense reimbursement policy.

11. GOVERNING LAW

This agreement is to be governed by and construed in accordance with the law of the principal place of business of Kirkham Michael.

12. CONTROLLING AGREEMENT

The agreement and these terms and conditions express the entire agreement between the parties. These terms and conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, notice to proceed, or like document regarding Kirkham Michael's services. If any one or more of the provisions contained in this agreement shall be held unenforceable, the enforceability of the remaining provisions shall not be impaired.