



COMMUNITY DEVELOPMENT

Planning,
Zoning,
Building Safety,
Construction Inspection Services,
Public Health,
Housing Inspections,
Code Enforcement

MEMORANDUM

To: Mayor and City Council Members

Cc: Gregg Mandsager, City Administrator
Steve Boka, Director of Community Development

From: Adam Thompson, Planning and Community Development Coordinator

Date: May 28, 2014

Re: Agreement for Engineering and/or Land Surveying Services

INTRODUCTION: The City of Muscatine continues to utilize Anderson-Bogert Engineers & Surveyors, Inc, for design and consultant services at the Muscatine Municipal Airport.

BACKGROUND: For many years, the City has entered into a professional services agreement with Anderson-Bogert for many engineering and survey activities that are required as a condition of state and federal funding. City staff also contributes to many of these activities and works closely with Anderson-Bogert to keep these fees to a minimum.

RECOMMENDATION/RATIONALE: An explanation of the proposed fees and the scope of services are included with the Agreement. It is recommended that the City Council approve the attached Agreement for Engineering and/or Land Surveying Services with Anderson-Bogert Engineers & Surveyors, Inc. for the period beginning May 1, 2014 for activities included in the 5 year CIP for the Muscatine Municipal Airport

1. Agreement
2. 5-year Airport CIP



**FIVE-YEAR AIRPORT
CAPITAL IMPROVEMENT PROGRAM
(CIP)**

Airport Name: Muscatine Municipal Airport

Telephone: 319.377.4629

Prepared By: Jayne DeCoste, Anderson Bogert

Date Approved: _____

Date Prepared: 1/23/14

Project Description	Funding Source	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Connector Road between Hangar Access Road and T-Hangars	Federal State Local Total	\$ 0 \$ 99,450 \$ 17,550 \$ 117,000	\$ \$ \$	\$ \$ \$	\$ \$ \$	\$ \$ \$
Reconstruct Runway 6/24	Federal State Local Total	\$ 3,796,940 \$ 0 \$ 421,882 \$ 4,218,822	\$ \$ \$	\$ \$ \$	\$ \$ \$	\$ \$ \$
Pavement Maintenance - Apron, Runway 12/30, and Taxiway B	Federal State Local Total	\$ \$ \$	\$ 0 \$ 85,000 \$ 15,000 \$ 100,000	\$ \$ \$	\$ \$ \$	\$ \$ \$
Update Master Plan (ALP)	Federal State Local Total	\$ \$ \$	\$ 166,500 \$ 0 \$ 18,500 \$ 185,000	\$ \$ \$	\$ \$ \$	\$ \$ \$
Taxiway A Design & Reconstruction	Federal State Local Total	\$ \$ \$	\$ \$ \$	\$ 1,910,479 \$ 0 \$ 212,275 \$ 2,122,754	\$ \$ \$	\$ \$ \$
Upgrade Fuel Facility (with submersible pump) - no self service included	Federal State Local Total	\$ \$ \$	\$ \$ \$	\$ \$ \$	\$ 0 \$ 157,250 \$ 27,750 \$ 185,000	\$ \$ \$

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Prepared By: Jayne DeCoste, Anderson Bogert

Date Approved: _____

Date Prepared: 1/23/14

Project Description	Funding Source	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Airfield Pavement Maintenance	Federal State Local Total	\$ \$ \$ \$	\$ \$ \$ \$	\$ \$ \$ \$	\$ \$ \$ \$	\$ 0 \$ 85,000 \$ 15,000 \$ 100,000
2018 & 2019 - Accrue Federal Funding for T-hangars (see LRNA FY 2021)	Federal State Local Total	\$ \$ \$ \$	\$ \$ \$ \$	\$ \$ \$ \$	\$ \$ \$ \$	\$ \$ \$ \$
	Federal State Local Total	\$ \$ \$ \$	\$ \$ \$ \$	\$ \$ \$ \$	\$ \$ \$ \$	\$ \$ \$ \$
	Federal State Local Total	\$ \$ \$ \$	\$ \$ \$ \$	\$ \$ \$ \$	\$ \$ \$ \$	\$ \$ \$ \$
	Federal State Local Total	\$ \$ \$ \$	\$ \$ \$ \$	\$ \$ \$ \$	\$ \$ \$ \$	\$ \$ \$ \$
	Federal State Local Total	\$ \$ \$ \$	\$ \$ \$ \$	\$ \$ \$ \$	\$ \$ \$ \$	\$ \$ \$ \$

AIRPORT LONG RANGE NEEDS ASSESSMENT

FFY 2020 – FFY 2024

Airport Name: Muscatine Municipal Airport

Description of Project (include estimated Fiscal Year)	Funding Source	Total Estimated Cost
FY 2021 T-Hangar Apron Expansion & T-Hangar Construction	Federal: State: Local: Total:	\$ 600,000 \$ 0 \$ 93,000 \$ 693,000
FY 2022 Airfield Pavement Maintenance	Federal: State: Local: Total:	\$ 0 \$ 85,000 \$ 15,000 \$ 100,000
FY 2023 T-Hangar Apron Pavement Replacement	Federal: State: Local: Total:	\$ 0 \$ 212,500 \$ 37,500 \$ 250,000
FY 2024 T-Hangar Reconstruction	Federal: State: Local: Total:	\$ 405,000 \$ 0 \$ 45,000 \$ 450,000
FY 2025 Airfield Pavement Maintenance	Federal: State: Local: Total:	\$ 0 \$ 85,000 \$ 15,000 \$ 100,000
FY 2026 Snow Removal Equipment Building/Municipal Hangar	Federal: State: Local: Total:	\$ 150,000 \$ 270,000 \$ 230,000 \$ 650,000

**MASTER AGREEMENT FOR ENGINEERING SERVICES
MUSCATINE MUNICIPAL AIRPORT
Muscatine, Iowa
FFY 2014 through FFY 2018**

ARTICLE I: This AGREEMENT, entered into as of this 15th day of May, 2014, by and between:

CITY OF MUSCATINE
215 Sycamore Street
Muscatine, Iowa 52761

hereinafter referring to
as the SPONSOR

AND:

ANDERSON-BOGERT,
Engineers & Surveyors, Inc.
4001 River Ridge Dr. NE
Cedar Rapids, IA 52402

hereinafter referred to
as the CONSULTANT

FOR THE PURPOSE of providing the following Engineering Services:

This Agreement shall apply to all Services
for as many Projects as SPONSOR and
CONSULTANT agree will be performed
under the terms and conditions of this
Agreement for a period of five years.
Exhibit A lists potential projects.

hereinafter referred to
as the PROJECTS

All services CONSULTANT performs for
SPONSOR hereunder shall be designated
by a Task Order. No Task Order shall be
binding or enforceable until it has been
properly approved and executed by
both SPONSOR and CONSULTANT. Each
properly executed Task Order shall
become a separate supplemental
agreement to this Agreement. After
receiving written notice to proceed from
SPONSOR, CONSULTANT shall perform the
Services described in each Task Order in
accordance with the Terms and
Conditions of this Agreement.

DO HEREBY, mutually agree as follows:

ARTICLE II: CONSULTANT'S SERVICES AND RESPONSIBILITIES

1. Employment Of The Consultant. The SPONSOR hereby agrees to engage the CONSULTANT and his specified subcontractors who in turn agree to perform the technical and professional services necessary to produce the PROJECTS. Furthermore, it is expressly understood that the Federal Aviation Administration (FAA) has the right to approve the terms and conditions of this AGREEMENT as well as the proposed scope and costs of the technical and professional services to be conducted as a part of the PROJECTS.
2. Scope Of Services. The CONSULTANT shall do, perform and carry out in a satisfactory and proper manner, as determined by the SPONSOR and the FAA, the services generally outlined below and specifically indicated in each Task Order, attached and incorporated by reference hereto.
3. Notice To Proceed. The official written notice to proceed will be issued by the SPONSOR for all or part of the proposed scope of work in each Task Order, upon receiving similar notice from the FAA.
4. Time Of Performance. The services of the CONSULTANT shall be undertaken and completed as indicated in the FAA Initiation of Work Project Schedule for each proposed project/task order. The CONSULTANT agrees to proceed with the work after receipt of written Notice to Proceed (NTP) by the SPONSOR and to employ such personnel as required to complete the Scope of Services in accordance with each Project Schedule.
5. Responsibility Of The CONSULTANT. The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of services provided by the CONSULTANT under this AGREEMENT.

ARTICLE III: SPONSOR'S RESPONSIBILITIES

The SPONSOR, as a part of this AGREEMENT, shall provide the CONSULTANT with the following:

1. Arrange for access to and make all provisions for the CONSULTANT to enter upon public and private property as required for the CONSULTANT to perform his services.
2. Assist in approvals and permits from all governmental entities having jurisdiction over the project and such approvals and consents from others

as may be necessary for completion of the PROJECTS.

3. Designate a person to act as SPONSOR representative with respect to the services to be rendered under this AGREEMENT. Such person shall have authority to transmit instructions, receive information, interpret and define SPONSOR policies and decisions.
4. Give prompt notice to the CONSULTANT whenever SPONSOR observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT'S services, or any defect in the work of the contractor(s).
5. Pay publishing cost for advertisements of notices, public hearings, request for bids, and other similar items. The SPONSOR shall pay for all permits and licenses that may be required by local, state, or federal authorities; and shall secure the necessary land, easements, and rights-of-way required for the PROJECTS.
6. Provide evidence of proper engineering services selection as per the FAA Advisory Circular 150/5100-14D. This agreement is a result of the engineering services selection as published December 30, 2013.
7. One (1) copy of existing plans, reports, or other data the SPONSOR may have on file with regard to the PROJECTS.

ARTICLE IV: COMPENSATION AND METHOD OF PAYMENT

1. Compensation. It is expressly understood and agreed that the total compensation to be paid to the CONSULTANT shall be as described in each Task Order. Such sum shall constitute full and complete compensation as identified in the Task Order Cost Summary, attached and incorporated by reference hereto. In consideration of CONSULTANT'S agreement to provide the Services, SPONSOR shall pay to CONSULTANT the fees specified in each Task Order and reimburse CONSULTANT for its costs and expenses incurred in connection with the Services.
2. Method Of Payment. The SPONSOR shall pay to the CONSULTANT not more than the fixed price amount set out in number one listed above. Payments shall be at monthly intervals specifying that the CONSULTANT has performed the work and is entitled to the amount requisitioned under the terms of this AGREEMENT.

3. CONSULTANT Responsibilities For Compensation. The CONSULTANT shall prepare monthly invoices and progress reports which clearly indicate the progress to date and the amount of compensation due by virtue of that progress. All requisitions for payment shall be for work completed, unless otherwise agreed to by the SPONSOR.
4. SPONSOR Responsibilities For Compensation. The SPONSOR agrees to pay the CONSULTANT'S invoices net upon receipt. At no time will payment of requisitions exceed thirty (30) days from the date of the invoice without written notification to the CONSULTANT. It is expressly understood that the payment process outlined above builds in provisions for the CONSULTANT to carry PROJECT costs for no more than sixty (60) days to minimize interest overheads and provide more planning man-hours for each PROJECT dollar. It is also expressly understood that the SPONSOR has the right to withhold payment of any invoice, if he feels that the CONSULTANT has not performed the requisitioned work efforts in a satisfactory manner. If the SPONSOR does decide to withhold payments to the CONSULTANT for any reason, he must provide written notification and an explanation to the CONSULTANT within ten (10) days of the date of the invoice. In addition to the termination provisions in Exhibit B – Federal Provisions, if SPONSOR fails to pay CONSULTANT within ninety (90) days of an undisputed invoice, CONSULTANT, without liability to SPONSOR, may terminate this AGREEMENT and/or suspend Services until payment of all past due amounts has been received by CONSULTANT.

ARTICLE V: MISCELLANEOUS PROVISIONS

1. Changes to the Scope of Services. The SPONSOR may, at any time, and by written order, make changes in the services to be performed under this AGREEMENT. If such changes cause an increase or decrease in the CONSULTANT'S cost or time required to complete the contract, the contract time and/or compensation will be revised to reflect these changes.
2. Examination Of Records. The CONSULTANT agrees that duly authorized representatives of the SPONSOR, the Federal Aviation Administration, and the Comptroller General of the United States shall, until the expiration of three (3) years after final payment under this contract have access to and the right to examine any directly pertinent books, documents, papers, and records of the CONSULTANT involving transactions related to this contract.
3. Ownership Of Documents And Other Data. Original documents, such as tracings, plans, specifications, maps, basic survey notes and sketches, charts, computations, and other data prepared or obtained under the terms of this AGREEMENT or attached Authorization of Services are

instruments of service and generally should remain in the property of the CONSULTANT, unless otherwise agreed to by both parties. Reproducible copies of drawings and copies of other pertinent data shall be made available to the SPONSOR upon request.

4. **Suspension Of Work.** The SPONSOR may order the CONSULTANT, in writing, to suspend all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the SPONSOR.

If the performance of all or any part of the work is, for any unreasonable period of time, suspended or delayed by an act of the SPONSOR in the administration of this contract, or by its failure to act within the time specified in this contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in cost of performance of this contract necessarily caused by such unreasonable suspension or delay, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension or delay to the extent (1) that performance would have been suspended or delayed by any other cause, including the fault or negligence of the CONSULTANT or (2) for which an equitable adjustment is provided for or excluded under any other provision of this contract.

5. **Composition Of CONSULTANT.** If the CONSULTANT is comprised of more than one legal entity, each such entity shall be jointly and severally liable.
6. **Interests And Benefits.** The CONSULTANT covenants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. The CONSULTANT further covenants that in the performance of this contract, no person having any such interest shall be employed.
7. **Interest Of Members Of SPONSORS And Others.** No officer, member, or employee of the SPONSOR and no member of its governing body, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the services to be performed under this contract, shall participate in any decision relating to the contract which affects his personal interest or have any personal or pecuniary interest, direct or indirect, in the contract or the proceeds thereof.
8. **Sanctions For Noncompliance.** In the event of the CONSULTANT'S noncompliance with the nondiscrimination provisions of this contract, the SPONSOR shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

- a. withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies and/or
 - b. cancellation, termination, or suspension of the contract, in whole or in part.
9. Information And Reports. The CONSULTANT shall provide all information and reports required by the Regulations and 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 SPONSOR or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the SPONSOR or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
10. Incorporation Of Provision. The CONSULTANT shall include the provisions of the above paragraphs in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subcontract or procurement as the SPONSOR or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a CONSULTANT may request the SPONSOR to enter into such litigation to protect the interests of the SPONSOR and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.
11. Assignability. The CONSULTANT shall not assign any interest in this contract, and shall not transfer any interest in the same without the prior written consent of the SPONSOR thereto; provided, however, that claims for money due or to become due to the CONSULTANT from the SPONSOR under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the SPONSOR. In addition, SPONSOR shall not assign any right, or delegate any obligation, arising under this AGREEMENT without prior written consent of CONSULTANT.
12. Standard of Care; Disclaimer of Warranties; Limitation of Services.
 - a. The CONSULTANT agrees to perform the Services in accordance with the standard of care used by persons of CONSULTANT's profession practicing under similar circumstances at the same time and in the same locality. All estimates, recommendations, opinions, and decisions of

CONSULTANT will be made upon the basis of the information available to CONSULTANT and CONSULTANT's experience, technical qualifications, and professional judgment.

b. The CONSULTANT warrants that it will exercise due care in the performance of the Services subject to the limitations described in the AGREEMENT. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES WITH RESPECT TO THE SERVICES, WHETHER EXPRESSED OR IMPLIED.

c. The SPONSOR acknowledges and agrees that (i) subterranean conditions may vary at locations other than at a particular location where borings, explorations, surveys and samplings are made, and that CONSULTANT'S data interpretations and recommendations are based solely upon information available to CONSULTANT at the time of assessment; (ii) investigations may disclose the presence of existing geological conditions or other substances, the presence of which may require disclosure to appropriate governmental authorities by the SPONSOR; (iii) although necessary to perform the Services, investigation methods involve an inherent risk of contamination of previously uncontaminated air, soil and water; (iv) CONSULTANT is not responsible for data, interpretation and/or recommendations by others; (v) all data obtained during investigative phases are subject to confirmation of conditions encountered during subsequent phases of the project; and (vi) the extent and scope of Services under this AGREEMENT may be limited by SPONSOR's schedule and financial considerations and that additional services may provide more accurate information in respect to conditions at or near the site.

d. SPONSOR acknowledges and agrees that CONSULTANT is not a generator, storer, transporter, arranger for transport, or disposer of hazardous or toxic substances, pollutants or contaminants found or identified at the project site. CONSULTANT's Services do not include any services regarding the presence or discovery at the site of asbestos, PCBs, petroleum, hazardous waste, radioactive materials or any other hazardous material or toxic substance. SPONSOR shall undertake or arrange for the handling, removal, treatment, storage, transportation, and disposal of hazardous substances or constituents found or identified at the site. CONSULTANT is only responsible for providing the Services described in the Agreement.

13. Information; Third parties; Access to Site.

a. SPONSOR represents and warrants that it has or will timely (i) furnish or cause to be furnished to CONSULTANT all documents and information known to SPONSOR that relates to the identity, location, quantity, nature or

characteristics of any hazardous waste at, on, or under the site; and (ii) furnish and pay for such other reports, aerial photographs, data, studies, drawings, specifications, documents, and other information regarding surface and subsurface site conditions which will be required by CONSULTANT for performance of its services. CONSULTANT shall be entitled to rely upon documents and information provided by SPONSOR in performing the Services. CONSULTANT assumes no responsibility or liability for the accuracy or completeness of said documents and information. SPONSOR provided documents will remain the property of SPONSOR.

b. SPONSOR acknowledges and agrees that CONSULTANT may engage the services of independent contractors to perform the work necessary to complete the services. SPONSOR agrees that such independent contractors are not agents or employees of CONSULTANT. CONSULTANT will not direct, supervise, or control the work of contractors or their subcontractors. CONSULTANT's Services do not include a review or evaluation of a contractor's (subcontractor's) safety measures. CONSULTANT shall be responsible only for its employees on any site. CONSULTANT shall not be responsible for the operations of others or safety at the site.

c. SPONSOR shall provide right of entry for CONSULTANT personnel, CONSULTANT subconsultants, and all equipment and vehicles necessary to perform services. CONSULTANT will take reasonable measures to minimize damage to property; however, SPONSOR understands that some damage may occur, and the cost of repair of such damage shall solely be the responsibility and obligation of SPONSOR. CONSULTANT, upon SPONSOR's written authorization, and at SPONSOR's cost, will engage feasible locating methods and employ persons to confirm locations of below grade structures, foundations, utilities, and other subterranean obstacles. CONSULTANT will take reasonable effort to avoid damage to these items. SPONSOR agrees to hold CONSULTANT harmless for damages to or damages caused by any subsurface or subterranean utilities or structures which are not correctly located by the owner of the utility or which CONSULTANT could not locate using a reasonable standard of care.

14. Limitation of Liability. To the fullest extent permitted by law, and notwithstanding any other provision of this AGREEMENT, CONSULTANT and CONSULTANT's directors, officers, principals, managers, employees, agents and CONSULTANT's consultants and subconsultants, and any of them, total liability to SPONSOR and anyone claiming, by, through, or under SPONSOR for any claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Services or the AGREEMENT from any cause or causes, including but not limited to the negligence,

professional errors or omissions, strict liability or breach of contract, or warranty express or implied of CONSULTANT or CONSULTANT's directors, officers, principals, managers, employees, agents and CONSULTANT's consultants and subconsultants, or any of them, shall not exceed the total compensation received by CONSULTANT under this AGREEMENT.

15. **Insurance.** CONSULTANT agrees to purchase workers' compensation insurance and comprehensive general liability insurance. CONSULTANT agrees to purchase additional insurance, if requested by SPONSOR (presuming such insurance is reasonably available from carriers acceptable to CONSULTANT), provided the costs for additional insurance are reimbursed by SPONSOR.
16. **Indemnification.**
 - a. SPONSOR hereby agrees to indemnify and hold harmless, CONSULTANT and its officers, employees, agents and representatives, from and against liability for all claims, losses, damages and expenses, including reasonable attorneys' fees, brought by any third party against CONSULTANT which arise directly or indirectly out of this AGREEMENT or the performance of CONSULTANT'S Services hereunder, except arising solely from the gross negligence or willful misconduct of CONSULTANT.
 - b. CONSULTANT and SPONSOR each agree to indemnify and hold the other harmless from and against liability for all claims, losses, damages and expenses, including reasonable attorney's fees to the extent such claims, losses damages, or expenses are caused by the indemnifying party's negligent or wrongful acts, or omissions to act.
17. **Confidentiality.** CONSULTANT agrees to maintain as confidential and not disclose to others without SPONSOR's prior consent all information obtained from SPONSOR that was not otherwise previously known to CONSULTANT or in the public domain and is expressly designated by SPONSOR in writing to be "CONFIDENTIAL." Notwithstanding the foregoing, this paragraph shall not apply to information that (1) is published or comes into the public domain through no fault of CONSULTANT, (2) is furnished by or obtained from a third party who is under no obligation to keep the information confidential, or (3) is required to be disclosed by law or order of a court, administrative agency, or other authority with proper jurisdiction.
18. **Governing Law.** This AGREEMENT is to be governed by and construed in accordance with the laws of the State of Iowa.

19. **Severability.** If any provision of this AGREEMENT is determined to be invalid, the offending provision shall be deemed severed from this AGREEMENT and the determination shall not affect the validity of any other clause or provision of this AGREEMENT.
20. **Independent Contractor.** CONSULTANT at all times during the term of this AGREEMENT shall be considered an independent contractor. CONSULTANT shall not, for any purpose, be deemed an agent, employee, partner or legal representative of SPONSOR.
21. **Binding Effect.** This AGREEMENT shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, representatives, agents and permanent assigns.
22. **Force Majeure.** CONSULTANT will not be liable to SPONSOR for CONSULTANT'S failure to fulfill its obligations under this AGREEMENT due to causes beyond CONSULTANT'S reasonable control and without its fault or negligence including, but not limited to, governmental laws and regulations, acts of God or the public, war or other violence, civil commotion, blockades, embargoes, calamities, floods, fires, earthquakes, explosions, accidents, storms, strikes, lockouts, work stoppages, labor disputes, or unavailability of labor, raw materials, power or supplies. SPONSOR shall pay any additional costs incurred by CONSULTANT in connection with the performance of services under this AGREEMENT that are related to any labor disputes between the SPONSOR and any unions representing the employees of the SPONSOR.
23. **Entire Agreement; Modifications.** Except for forthcoming associated Task Orders, this AGREEMENT contains all the terms and conditions between the parties and supersedes all prior and contemporaneous negotiations, representations, understandings and other agreements, oral or otherwise, that may have been entered into by the parties. All other statements, conditions, covenants, representations, and warranties are merged herein. Any modifications of this AGREEMENT shall be in writing and duly executed by the parties.
24. **No Implied Waiver.** Any delay or failure of either party at any time to require performance by the other party of any provision of this AGREEMENT shall not in any way affect the right of such party to require performance. No waiver by either party of any breach of any provision of this AGREEMENT shall be enforceable against such party, unless such waiver is in writing, and no waiver shall be construed to be a waiver of any subsequent breach or of any other right or remedy under this AGREEMENT.

25. Dispute Resolution. SPONSOR and CONSULTANT agree that as a prerequisite to the filing of a lawsuit or a demand for arbitration, they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this AGREEMENT to mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association, effective as of the date of this AGREEMENT.
26. Incorporation of Exhibits/Task Orders. All Exhibits and Task Orders attached hereto are incorporated herein by reference and made a part hereof for all purposes as if fully set forth herein.

IN WITNESS WHEREOF, the SPONSOR and the CONSULTANT have executed this AGREEMENT as of the date first written.

FOR THE CONSULTANT

FOR THE SPONSOR
CITY OF MUSCATINE

William W. Bogert, P.E., President

Attached and Incorporated by Reference:

Exhibit A – Projects
Exhibit B – Federal Provisions