

Project No. **XXX**
 Project Name: **Marshalltown Housing Initiative**
 Project Manager: **Bethany Wilcoxon, AICP**

Housing Initiative Agreement for Professional Services

This Agreement, is made on the _____ day of February 2020 by and between **McClure Engineering Company, of Clive, Iowa** (herein referred to as "**Consultant**"); and **Marshalltown Area Chamber of Commerce** (hereinafter referred to as "**Owner**"). Services shall be performed per the fees, or hourly rates as depicted in Exhibit 'A', and the terms and conditions outlined in this Agreement and attached as Exhibit 'B'. The Project shall be described as:

Marshalltown Housing Initiative

1. The **Owner** shall provide information, which shall set forth the **Owner's** objectives, schedule, constraints, budget with reasonable contingencies and other applicable criteria. *(See Exhibit 'C' for Owner's Responsibilities).*
2. The **Consultant** shall provide the services marked "included" as follows:

ITEM	INCLUDED	NOT INCLUDED
PART I - PLANNING SERVICES		
1.1 <u>Inventory/Data Review and Housing Concept Development</u>		
1. Review existing housing studies, surveys, and associated housing data points. Specifically, the Consultant will be provided a mapped inventory of available lots (both infill and greenfield) that would be available for housing development, a mapped prioritization of these areas, and a summary of existing and past City incentives for housing development.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Meet with stakeholders, including business leaders, realtors, financial institutions, the City of Marshalltown, Marshall County, etc., to understand housing needs and level of commitment to consider housing incentives. This will be limited to one (1) day of meetings.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Meet with developers that have the potential to bring new housing or that have brought housing to the community in the last 2-3 years, including Simms Construction and Orton Homes, to: <ol style="list-style-type: none"> a) Review housing concepts (square footages, price points, bedrooms, garages, etc.) that have been brought to the community and determine if they address the identified needs. b) If the concepts do not address the identified needs, work with developers to define concepts at two (2) price points that address identified needs. c) Identify where concepts may fit within the City's prioritized development areas and estimate the cost to prepare those lots for new units; and, d) Understand end-user/buyer financing challenges for the housing concepts and financial models developed to identify the affordability "gap." 	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Present a high-level summary to Steering Committee outlining findings of Tasks 1-3 and obtain their approval.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
1.2 <u>Housing Incentive Development</u>		
1. Develop financial incentive program policies to minimize the private sector risk by using public and private funds.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Test the financial sensitivity of the proposed financial incentives and the impact these incentives may have on taxes, utility rates, TIF, etc.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Meet with City's bonding attorney, staff, etc., to ensure policy ideas are legal and financially feasible.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Prepare a draft Marshalltown housing initiative program policy statement that will include a description of financial incentives needed, the criteria required to be eligible for the funding incentives, and other policies identified to make the program fair, equitable, and consistently applied to all developers.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Identify stakeholders with the authority to commit funds to determine their willingness to fund elements of the incentive program.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Based on incentives needed and the willingness of the funding stakeholders to commit to the project, make a recommendation as to "Go" or "No-Go" to move forward with the incentive program.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Conduct a meeting with Steering Committee to share policy proposal.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Upon receiving Steering Committee approval, develop a workbook including the housing policy, funding incentives, eligibility criteria for the funds, participating funding entities with letters of commitment, financial sensitivity and the impact of funding on respective entities, a list of builders/developers who have expressed interest in the program, and other relevant information received and developed as part of the planning effort.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

ITEM	INCLUDED	NOT INCLUDED
PART II – IMPLEMENTATION		
2.1 Implementation		
1. Work with developer(s)/homebuilder(s) to educate them on the programs, incentives, market, etc., to attempt to get a company to develop the project(s).	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Connect interested developers with appropriate entities to secure incentives and build housing.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

4. Payment to the **Consultant** shall be made on a monthly basis, within 30 days of invoice for work completed to date, as per the following basis:

	T&M Estimate	Included	Not Included
Task 1.1 – Inventory/Data Review and Concept Housing Development	\$15,000	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Task 1.2 – Housing Incentive Development	\$20,000	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Task 2.1 – Implementation	\$14,400	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	\$35,000		

5. 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 **CONSULTANT**, the **CONSULTANT** may, after giving (7) days written notice to the **OWNER**, suspend services under this agreement.
6. This Agreement represents the entire and integrated agreement between the **OWNER** and the **CONSULTANT** 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 **CONSULTANT**.

	Included	Not Included
Exhibit 'A' Hourly Rate Schedule	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Exhibit 'B' Terms & Conditions	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Exhibit 'C' Owner's Responsibilities	<input checked="" type="checkbox"/>	<input type="checkbox"/>

OWNER: Marshalltown Area Chamber of Commerce

CONSULTANT: McClure Engineering Company

By: _____

Signed: _____

Title: _____

Title: _____

EXHIBIT 'A'
 McCLURE ENGINEERING COMPANY
 HOURLY RATE SCHEDULE
 (Effective through December 31, 2020)

<u>PERSONNEL</u>	<u>HOURLY RATE</u>
Administrative	\$80.00
Client Liaison	\$180.00
Engineer I	\$110.00
Engineer II	\$140.00
Engineer III	\$170.00
Engineer IV	\$210.00
Project Manager I	\$170.00
Project Manager II	\$195.00
Project Coordinator	\$90.00
Principal	\$250.00
Senior Principal	\$295.00
Community Planner I	\$135.00
Community Planner II	\$225.00
Landscape Architect I	\$100.00
Landscape Architect II	\$135.00
Engineering Tech I	\$85.00
Engineering Tech II	\$105.00
Engineering Tech III	\$125.00
Engineering Tech IV	\$160.00
Land Surveyor I	\$130.00
Land Surveyor II	\$160.00
On-Site Representative I (OSR I)	\$105.00
On-Site Representative II (OSR II)	\$145.00
Crew Chief (CC)	\$120.00
Crew Member (CM)	\$90.00
Intern	\$70.00
Survey Crew	\$200.00

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

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 interested 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 service.

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**.

(Effective 01/01/19)
(Supersedes 10/01/11)

Exhibit C: OWNER's Responsibilities

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

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 **CONSULTANT'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 **CONSULTANT** by placing at **CONSULTANT'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 **CONSULTANT** to enter upon public and private property as required for **CONSULTANT** to perform services under this Agreement.
5. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by **CONSULTANT**, 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 **CONSULTANT**.
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. Give prompt written notice to **CONSULTANT** whenever **OWNER** observes or otherwise becomes aware of any development that affects the scope or timing of **CONSULTANT'S** services, or any defect or non-conformance in the work of any Contractor.
8. Arrange for financing and pay for services as agreed to in this Agreement.