

## MEMORANDUM

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### COMMUNITY & ECONOMIC DEVELOPMENT DEPARTMENT

**TO:** Thomas Thomas, City Manager  
**SUBJECT:** Alley—between 18<sup>th</sup> & 19<sup>th</sup> St. bounded by 1<sup>st</sup> & 2<sup>nd</sup> Ave. DATE: October 28, 2013

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The Alley between 18<sup>th</sup> & 19<sup>th</sup> Streets bounded by 1<sup>st</sup> & 2<sup>nd</sup> Avenues is one which has seen its usage change as redevelopment has taken place in Downtown Rock Island. The alley is no longer just a service corridor but a highly utilized corridor by both automobile traffic and pedestrian traffic. The occupants of the redeveloped McKesson building now utilize it as a way to enter and exit their parking garage. Residents walk more to area businesses and use the alley as a shortcut. These aforementioned uses coupled with the pending redevelopment of the Star Block building will only generate additional traffic.

The area has drainage issues that are exacerbated in the winter months by a sump discharge to the alleyway that freezes into a massive area of ice. The drainage from adjacent businesses and residential units creates an unpleasant and less than desirable situation for pedestrians and motorists. The unenclosed dumpsters that serve the adjacent businesses present an unsightly and odorous situation in the alley. Some of the buildings facing the alleyway are in disrepair and there are obstacles that create limited parking.

This frequently trafficked City alley can be made a more attractive area by addressing the drainage issues and consolidating and enclosing the dumpsters. CED and Public Works will also work with adjacent property owners on the removal of concrete and structural obstacles thereby creating a more inviting and well-lit area for tenants and employees passing through or parking.

**Recommendation:**

Community and Economic Development Department Staff recommend council approve the agreement with Shive-Hattery for \$27,200 plus any reimbursable expenses up to \$300 for alley design services and authorize the City Manager to execute.

**Submitted by: Jeffery Eder, Community & Economic Development Director**

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**Approved: Thomas Thomas, City Manager**

## ***PROFESSIONAL SERVICES AGREEMENT***

**ATTN:** Mr. Jeff Eder, Community and Economic Development Director  
**CLIENT:** City of Rock Island, IL  
1528 3rd Avenue  
Rock Island, IL 61201

**PROJECT:** Rock Island Downtown Alley Design

**PROJECT LOCATION:** Rock Island, IL

**DATE OF AGREEMENT:** October 23, 2013

### **PROJECT DESCRIPTION**

Your project is to improve the alley area between 18<sup>th</sup> and 19<sup>th</sup> Streets and bounded by 1<sup>st</sup> and 2<sup>nd</sup> Avenues. The area has drainage issues that are exacerbated in the winter months by a sump discharge to the alley way that freezes in to a massive area of ice. There are businesses and residential units that are adjacent to the alleyway and the drainage issues create an unpleasant and less than desirable situation for pedestrians and the motoring public. The alley also has dumpsters that serve the businesses and they are not in an enclosure, therefore they present an unsightly and odorous situation in the alley. There are also several buildings along the alleyway that have some issues with old building walls and limited parking areas. It is the city's desire to make this alley a more attractive area by addressing the drainage issue, consolidating and enclosing the dumpsters, working with the property owners to remove concrete and structures adjacent to the alley and create a more inviting area for tenants and employees to park, and improving the lighting in the alley.

Our services will include topographic survey, developing concepts for the area, design and construction documents for the approved recommended improvements, and assistance with bidding and construction services. A detailed Scope of Services is listed below.

### **SCOPE OF SERVICES**

We will provide the following Landscape Architecture, Civil Engineering and Land Surveying services for the project:

- A. Concept Phase
  1. Topographic survey along the alley between 18<sup>th</sup> and 19<sup>th</sup> Streets gathering visible information from building face to building face and also picking up existing parking areas.
  2. Prepare a topographic survey and provide you with a signed original of the drawing.
  3. Prepare two (2) preliminary concepts for the alley reviewing drainage (piped or porous pavement), dumpster enclosures, lighting, site amenities and structure removal.
  4. Prepare a preliminary engineer's opinion of probable construction cost.
  5. Meet with the City and property owners to discuss the options. (Meeting 1)
  6. Prepare a Final Concept incorporating review comments from Meeting 1.
  7. Submit Final Concept to the City for approval.



B. Design Phase

1. Design of the improvements based on the approved Final Concept.
2. Update preliminary engineer's opinion of probable construction cost.
3. Meet with the City and owners at 60% complete to review the plans. (Meeting 2)
4. Prepare and submit a meeting summary documenting action items and design decisions reached at Meeting 2. This narrative and the approved design documents will be the basis for the construction documents.

C. Construction Documents Phase

1. Prepare construction documents incorporating review comments from the Meeting 2. It is understood that the front end bidding documents will be provided to Shive-Hattery in MS Word format to be edited and incorporated into the project manual for distribution to bidders.
2. Submit construction and bidding documents to you for your review and comments.
3. Finalize construction and bidding documents incorporating your review comments and submit 1 original signed set of the documents and a computer disk with pdf files for your use in printed additional sets of the documents.

D. Bidding Services

1. Facilitate a pre-bid conference. (Meeting 3)
2. Answer contractor's questions during the bidding period.
3. Prepare an addendum, if necessary.
4. Attend the bid opening.
5. Review of the bids and provide a letter of recommendation for course of action.

E. Construction Services

1. Facility a pre-construction conference. (Meeting 4)
2. Review of submittals and shop drawings per the instructions in the construction documents.
3. Attend weekly construction meetings.
4. Answer contractor's questions regarding design intent during construction.
5. Conduct weekly site visits.

### **CLIENT RESPONSIBILITIES**

It will be your responsibility to provide the following:

1. Identify a Project Representative with full authority to act on behalf of the Client with respect to this project. The Client Project Representative shall render decisions in a timely manner in order to avoid delays of Shive-Hattery's services.
2. Legal, accounting, and insurance counseling services or other consultants, including geotechnical, or vendors that may be necessary. The Client shall coordinate these services with those services provided by Shive-Hattery.

3. Provide to Shive-Hattery any available drawings, survey plats, testing data and reports related to the project, either hard copy or electronic media. Electronic media is preferred.
4. Unless specifically included in the Scope of Services to be provided by Shive-Hattery, the Client shall furnish tests, inspections, permits and reports required by law, regulation or code including but not limited to hazardous materials, structural, mechanical, chemical, air pollution and water pollution tests.

### SCHEDULE

We will begin our services upon receipt of this Agreement executed by you which will serve as a notice to proceed. The services shall be performed in accordance with the following schedule:

Concept Phase	6 weeks after Authorization to Proceed depending on meeting schedule
Design Phase	6 weeks after approval of Final Concept
Construction Document Phase	4 weeks after approval of Design Phase Documents
Bidding and Construction Services	In accordance with the City and Contractor's Schedule

### COMPENSATION

Description	Fee	Fee Type	Reimbursable Expenses
Scope of Services Items A - D	\$27,200	Fixed Fee	\$300
Scope of Services Items E		Hourly	

#### Fee Types:

- Fixed Fee - We will provide the Scope of Services for the fee amount(s) listed above.
- Hourly Fee – We will provide the Scope of Services on an hourly rate basis based on our Standard Hourly Rate Schedule in effect at the time the services are performed.

#### Reimbursable Expenses:

Estimated amount - The estimated Reimbursable Expense amount(s) above will be reimbursed in accordance with our Reimbursable Expense Fee Schedule in effect at the time that the expense is incurred. .

The terms of this proposal are valid for 30 day(s) from the date of this proposal.

### ADDITIONAL SERVICES

The following are additional services you may require for your project. We can provide these services but they are not part of this proposal at this time.

1. Attendance at additional meetings.
2. Development of additional concepts.
3. Revisions to the design construction documents after the design has been approved.
4. Contract Administration and/or construction observation.
5. Coordinate the services of a geotechnical engineer should this be deemed necessary. At this time we do not anticipate needing these services.

## **OTHER TERMS**

### **STANDARD TERMS AND CONDITIONS**

Copyright © Shive-Hattery July 2013

### **PARTIES**

"S-H" shall mean Shive-Hattery, Inc., Shive-Hattery A/E Services, P.C., or Design Organization, a Division of Shive-Hattery, Inc. "CLIENT" shall mean the person or entity executing this Agreement with "S-H."

### **LIMITATION OF LIABILITY AND WAIVER OF CERTAIN DAMAGES**

The CLIENT agrees, except cases of gross negligence or willful misconduct, the liability of any party shall be limited to the direct actual damages and reasonable attorney's fees incurred in pursuing a claim for damages. Under no circumstances, except for cases of gross negligence or willful misconduct, shall any Party or its directors, officers, employees, and agents whether in tort, contract or other basis in law or in equity be liable for any special, indirect, punitive, exemplary or consequential damages, including lost profits and lost revenues.

~~to the fullest extent of the law, to limit the liability of S-H, its officers, directors, shareholders, employees, agents, subconsultants, affiliated companies, and any of them, to the CLIENT and any person or entity claiming by or through the CLIENT, for any and all claims, damages, liabilities, losses, costs, and expenses including reasonable attorneys' fees, experts' fees, or any other legal costs, in any way related to the Project or Agreement from any cause(s) to an amount that shall not exceed the compensation received by S-H under the agreement or fifty thousand dollars (\$50,000), whichever is greater. The parties intend that this limitation of liability apply to any and all liability or cause of action, claim, theory of recovery, or remedy however alleged or arising, including but not limited to negligence, errors or omissions, strict liability, breach of contract or warranty, express, implied or equitable indemnity and all other claims, which except for the limitation of liability above, the CLIENT waives.~~

~~CLIENT hereby releases S-H, its officers, directors, shareholders, employees, agents, subconsultants, affiliated companies, and any of them, and none shall be liable to the CLIENT for consequential, special, exemplary, punitive, indirect or incidental losses or damages, including but not limited to loss of use, loss of product, cost of capital, loss of goodwill, lost revenues or loss of profit, interruption of business, down time costs, loss of data, cost of cover, or governmental penalties or fines.~~

### **INDEMNIFICATION**

Subject to the limitation of liability in this Agreement, S-H agrees to the fullest extent permitted by law, to indemnify and hold harmless the CLIENT, its officers, directors, shareholders, employees, contractors, subcontractors and consultants against all claims, damages, liabilities, losses or costs, including reasonable attorneys' fees, experts' fees, or other legal costs to the extent caused by S-H's negligent performance of service under this Agreement and that of its officers, directors, shareholders, and employees.

The CLIENT agrees to the fullest extent permitted by law, to indemnify and hold harmless S-H, its officers, directors, shareholders, employees, agents,, subconsultants, and affiliated companies against all damages, liabilities, losses, costs, and expenses including, reasonable attorneys' fees, expert's fees, and any other legal costs to the extent caused by the acts or omissions of the CLIENT, its employees, agents, contractors, subcontractors, consultants or anyone for whom the CLIENT is legally liable.

### **HAZARDOUS MATERIALS - INDEMNIFICATION**

To the fullest extent permitted by law, CLIENT agrees to defend, indemnify, and hold S-H, its officers, directors, shareholders, employees, agents, consultants and affiliated companies, and any of them harmless from and against any and all claims, liabilities, losses, costs, or expenses including reasonable attorney's fees, experts' fees and any other legal costs (including without limitation damages to property, injuries or death to persons, fines, or penalties), arising out of, or resulting from the discharge, escape, release, or saturation of smoke, vapors, soot, fumes, acids, alkalies, toxic chemicals, liquids, gases, polychlorinated biphenyl, petroleum contaminants spores, biological toxins, or any other materials, irritants, contaminants, or pollutants in or into the atmosphere, or on, onto, upon, in, or into the surface or subsurface of soil, water, or watercourses, objects, or any tangible or intangible matter, whether sudden or not.

### **STANDARD OF CARE**

Services provided by S-H under this Agreement 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 on projects of similar size, complexity, and geographic location as that of the Project. Nothing in this Agreement is intended to create, nor shall it be construed to create, a fiduciary duty owed by either party to the other party.

### **RIGHT OF ENTRY**

The CLIENT shall provide for entry for the employees, agents and subcontractors of S-H and for all necessary equipment. While

S-H shall take reasonable precautions to minimize any damage to property, it is understood by the CLIENT that in the normal course of the project some damages may occur, the cost of correction of which is not a part of this Agreement.

#### **PAYMENT**

Unless otherwise provided herein, invoices will be prepared in accordance with S-H's standard invoicing practices then in effect and will be submitted to CLIENT each month and at the completion of the work on the project. Invoices are due and payable upon receipt by the CLIENT. If the CLIENT does not make payment within thirty (30) days after the date the invoice was mailed to the CLIENT, then the amount(s) due S-H shall bear interest due from the date of mailing at the lesser interest rate of 1.5% per month compounded or the maximum interest rate allowed by law. In the event that S-H files or takes any action, or incurs any costs, for the collection of amounts due it from the client, S-H shall be entitled to recover its entire cost for attorney fees and other collection expenses related to the collection of amounts due it under this Agreement. Any failure to comply with this term shall be grounds for a default termination.

#### **TERMINATION**

Either party may terminate this Agreement for convenience or for default by providing written notice to the other party. If the termination is for default, the non-terminating party may cure the default before the effective date of the termination and the termination for default will not be effective. The termination for convenience and for default, if the default is not cured, shall be effective seven (7) days after receipt of written notice by the non-terminating party. In the event that this Agreement is terminated for the convenience of either party or terminated by S-H for the default of the CLIENT, then S-H shall be paid for services performed to the termination effective date, including reimbursable expenses due, and termination expenses attributable to the termination. In the event the CLIENT terminates the Agreement for the default of S-H and S-H does not cure the default, then S-H shall be paid for services performed to the termination notice date, including reimbursable expenses due, but shall not be paid for services performed after the termination notice date and shall not be paid termination expenses. Termination expenses shall include expenses reasonably incurred by S-H in connection with the termination of the Agreement or services, including, but not limited to, closing out Project records, termination of subconsultants and other persons or entities whose services were retained for the Project, and all other expenses directly resulting from the termination.

#### **INFORMATION PROVIDED BY OTHERS**

S-H shall indicate to the CLIENT the information needed for rendering of services hereunder. The CLIENT shall provide to S-H such information, including electronic media, as is available to the CLIENT and the CLIENT's consultants and contractors, and S-H shall be entitled to rely upon the accuracy and completeness thereof. The CLIENT recognizes that it is difficult for S-H to assure the accuracy, completeness and sufficiency of such client-furnished information, either because it is provided by others or because of errors or omissions which may have occurred in assembling the information the CLIENT is providing. Accordingly, the CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless S-H, its officers, directors, shareholders, employees, agents, subconsultants and affiliated companies, and any of them, from and against any and all claims, liabilities, losses, costs, expenses (including reasonable attorneys' fees, experts' fees, and any other legal costs) for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by the CLIENT.

#### **UNDERGROUND UTILITIES**

Information for location of underground utilities may come from the CLIENT, third parties, and/or research performed by S-H or its subcontractors. S-H will use the standard of care defined in this Agreement in providing this service. The information that S-H must rely on from various utilities and other records may be inaccurate or incomplete. Therefore, the CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless S-H, its officers, directors, shareholders, employees agents, subconsultants, affiliated companies, and any of them for all claims, losses, costs and damages arising out of the location of underground utilities provided or any information related to underground utilities by S-H under this Agreement.

#### **CONTRACTOR MATTERS**

CLIENT agrees that S-H shall not be responsible for the acts or omissions of the CLIENT's contractor, or subcontractors, their employees, agents, consultants, suppliers or arising from contractor's or subcontractors' work, their employees, agents, consultants, suppliers or other entities that are responsible for performing work that is not in conformance with the construction Contract Documents, if any, prepared by S-H under this Agreement. S-H shall not have responsibility for means, methods, techniques, sequences, and progress of construction of the contractor, subcontractors, agents, employees, agents, consultants, or other entities. In addition, CLIENT agrees that S-H is not responsible for safety at the project site and that safety during construction is for the CLIENT to address in the contract between the CLIENT and contractor.

#### **SHOP DRAWING REVIEW**

If, as part of this Agreement S-H reviews and approves Contractor submittals, such as shop drawings, product data, samples and other data, as required by S-H, 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. S-H's review shall be conducted with reasonable promptness while allowing sufficient time in S-H's judgment to permit adequate review. Review of a specific item shall not indicate that S-H has reviewed the entire assembly of which the item is a component. S-H shall not be responsible for any deviations from the contract documents not brought to the attention of S-H in

writing by the Contractor. S-H shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

#### **OPINIONS OF PROBABLE COST**

If, as part of this Agreement S-H is providing opinions of probable construction cost, the CLIENT understands that S-H has no control over costs or the price of labor, equipment or materials, or over the Contractor's method of pricing, and that S-H's opinions of probable construction costs are to be made on the basis of S-H's qualifications and experience. S-H makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.

#### **CONSTRUCTION OBSERVATION**

If, as part of this Agreement S-H is providing construction observation services, S-H shall visit the project at appropriate intervals during construction to become generally familiar with the progress and quality of the contractors' work and to determine if the work is proceeding in general accordance with the Contract Documents. Unless otherwise specified in the Agreement, the CLIENT has not retained S-H to make detailed inspections or to provide exhaustive or continuous project review and observation services. S-H does not guarantee the performance of, and shall have no responsibility for, the acts or omissions of any contractor, its subcontractors, employees, agents, consultants, suppliers or any other entities furnishing materials or performing any work on the project.

S-H shall advise the CLIENT if S-H observes that the contractor is not performing in general conformance of Contract Documents. CLIENT shall determine if work of contractor should be stopped to resolve any problems.

#### **OTHER SERVICES**

The CLIENT may direct S-H to provide other services including, but not limited to, any additional services identified in S-H's proposal. If S-H agrees to provide these services, then the schedule shall be reasonably adjusted to allow S-H to provide these services. Compensation for such services shall be at S-H's Standard Hourly Fee Schedule in effect at the time the work is performed unless there is a written Amendment to Agreement that contains an alternative compensation provision.

#### **OWNERSHIP & REUSE OF INSTRUMENTS OF SERVICE**

All reports, plans, specifications, field data and notes and other documents, including all documents on electronic media, prepared by S-H as instruments of service shall remain the property of S-H. The CLIENT shall not reuse or make any modifications to the plans and specifications without the prior written authorization of S-H. The CLIENT agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless S-H its officers, directors, shareholders, employees, agents, subconsultants and affiliated companies, and any of them from any and all claims, losses, costs or damages of any nature whatsoever arising out of, resulting from or in any way related to any unauthorized reuse or modifications of the construction documents by the CLIENT or any person or entity that acquires or obtains the plans and specifications from or through the CLIENT without the written authorization of S-H.

#### **DISPUTE RESOLUTION**

If a dispute arises between S-H and CLIENT, the executives of the parties having authority to resolve the dispute shall meet within thirty (30) days of the notification of the dispute to resolve the dispute. If the dispute is not resolved within such thirty (30) day time period, CLIENT and S-H agree to submit to non-binding mediation prior to commencement of any litigation and that non-binding mediation is a precondition to any litigation. Any costs incurred directly for a mediator, shall be shared equally between the parties involved in the mediation.

#### **EXCUSABLE EVENTS**

S-H shall not be responsible for any event or circumstance that is beyond the reasonable control of S-H that has a demonstrable and adverse effect on S-H's ability to perform its obligations under this Agreement or S-H's cost and expense of performing its obligations under this Agreement (an "Excusable Event"), including without limitation, a change in law or applicable standards, actions or inactions by a governmental authority, the presence or encounter of hazardous or toxic materials on the Project, war (declared or undeclared) or other armed conflict, terrorism, sabotage, vandalism, riot or other civil disturbance, blockade or embargos, explosion, epidemic, quarantine, strike, lockout, work slowdown or stoppage, accident, act of God, failure of any governmental or other regulatory authority to act in a timely manner, unexcused act or omission by CLIENT or contractors of any level (including, without limitation, failure of the CLIENT to furnish timely information or approve or disapprove of S-H's services or work product promptly, delays in the work caused by CLIENT, CLIENT's suspension, breach or default of this Agreement, or delays caused by faulty performance by the CLIENT or by contractors of any level). When an Excusable Event occurs, the CLIENT agrees S-H is not responsible for damages, nor shall S-H be deemed to be in default of this Agreement, and S-H shall be entitled to a change order to equitably adjust for S-H's increased time and/or cost to perform its services due to the Excusable Event.

#### **ASSIGNMENT**

Neither party to this Agreement shall transfer, sublet or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party.

#### **SEVERABILITY, SURVIVAL AND WAIVER**

Any provision of this Agreement later held to be unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect. All obligations arising prior to the termination of this Agreement and all provisions of this

Agreement allocating responsibility or liability between the CLIENT and S-H shall survive the completion of the services hereunder and the termination of this Agreement. The failure of a party to insist upon strict compliance of any term hereof shall not constitute a waiver by that party of its rights to insist upon strict compliance at a subsequent date.

**GOVERNING LAW**

This Agreement shall be governed pursuant to the laws in the state of the locale of the S-H office address written in this Agreement.

**EQUAL EMPLOYMENT OPPORTUNITY**

It is the policy of S-H to provide equal employment opportunities for all. S-H enforces the following acts and amendments as presented by Federal government or State governments: Title VII of the Civil Rights Act of 1965, Age Discrimination in Employment ACT (ADEA), Americans With Disabilities Act (ADA), Iowa Civil Rights Act of 1965, and Illinois Human Rights Act [ 775ILCS 5]. S-H will not discriminate against any employee or applicant because of race, creed, color, religion, sex, national origin, gender identity, sexual orientation, marital status, ancestry, veteran status, or physical or mental handicap, unless related to performance of the job with or without accommodation.

**COMPLETE AGREEMENT**

This Agreement constitutes the entire and integrated agreement between the CLIENT and S-H and supersedes all prior negotiations, representations and agreements, whether oral or written. If the CLIENT issues a Purchase Order of which this Agreement becomes a part, the terms of this Agreement shall take precedence in the event of a conflict of terms.

**AGREEMENT**

This proposal shall become the Agreement for Services when accepted by both parties. Original, facsimile, electronic signatures or other electronic acceptance by the parties (and returned to Shive-Hattery) are deemed acceptable for binding the parties to the Agreement. The Client representative signing this Agreement warrants that he or she is authorized to enter into this Agreement on behalf of the Client.

Thank you for considering this proposal. We look forward to working with you. If you have any questions concerning this proposal, please contact us.

Sincerely,

SHIVE-HATTERY, INC.

Marti Ahlgren, PMP  
mahlgren@shive-hattery.com

Daniel C. Solchenberger, P.E.  
dsolchenberger@shive-hattery.com

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**AGREEMENT ACCEPTED AND SERVICES AUTHORIZED TO PROCEED**

**CLIENT:** City of Rock Island, IL

**BY:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_  
(signature)

**PRINTED NAME:** \_\_\_\_\_ **DATE ACCEPTED:** \_\_\_\_\_