

MEMORANDUM

COMMUNITY & ECONOMIC DEVELOPMENT DEPARTMENT

TO: Thomas Thomas, City Manager

SUBJECT: Plaza Stage Replacement

DATE: October 28, 2013

Time and the elements have taken their toll on the District Plaza Stage since the time of original construction and the uses of it have diversified. The following improvements are necessary at this time:

- Replacement of canopy
- Create handicapped access to stage area
- Level the uneven surface
- Change stage layout (not conducive to current uses)
- Electrical must be upgraded to code (not conducive to current lighting and sound system uses)

Improvements to the current stage would only be a band-aid and would not be cost effective or address the functionality issues. A new replacement stage with a non-permeable roof structure and the ability to support lighting and sound systems would be much more appropriate.

Downtown TIF funds can be used to cover not only Shive-Hattery's design costs but the construction of the new stage since this is a public structure. The proposal from Shive-Hattery covers design, production of construction documents, bidding and construction services. Both CED and Public Works staff will be involved in the entire process and will seek participation from downtown businesses as well as the Parks Department to ensure that all intended users have a chance to comment during the design phase.

Recommendation:

Community and Economic Development Department Staff recommend council approve the agreement with Shive-Hattery for \$51,800 plus any reimbursable expenses up to \$500 for plaza stage replacement. Staff further recommends that Council allow minor attorney modifications to the submitted proposal and authorize the City Manager to execute.

Submitted by: Jeffery Eder, Community & Economic Development Director

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 District Stage Design

PROJECT LOCATION: Rock Island, IL

DATE OF AGREEMENT: October 23, 2013

PROJECT DESCRIPTION

Your project is the demolition of the existing stage and structure located on the plaza in the District area of Rock Island, IL. Construction of a new performance area including a stage structure platform, rigging apparatus for lighting and audio equipment, acoustic design, back of house / front of house related equipment, performance related equipment and site design. Our services will include development of two concepts, design and preparation of construction documents for the improvements, assistance with bidding and construction services. A detailed scope of services is listed below.

SCOPE OF SERVICES

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

These services will consist of the following tasks:

A. Concept Phase

1. Conduct a project kickoff meeting at or near project site to review client expectations including current issues and potential remedies. (Meeting 1)
 - a. Site issues to be addressed include:
 - 1) Drainage, near stage electrical/lighting and other site utilities.
 - 2) Paving types.
 - 3) Access and movement of pedestrians and vehicles.
 - 4) Others based on your knowledge of the issues.
2. Performance area issues can include:
 - a. Infrastructure placement and needs for electrical, lighting, audio and other equipment.
 - b. Acoustic issues.
 - c. Performer access issues.
 - d. Others relating to venue needs, logistics and your knowledge of the venue.
3. Review and research of existing venues in the Midwest of similar size and scope. We anticipate no travel costs to be billed for this effort but will consider collectively as a team, venues to consider.
4. Conduct a topographic survey of the project area.



5. Develop two concept plans including the following:
 - a. Create an analysis plan. This will be a combination of a plan, photos and descriptive text that identifies issues, items to be removed, salvaged and/or replace and our recommendations.
 - b. Prepare a preliminary overall color rendered conceptual site plan that shows improvements, identifies key structures, materials, dimensions and notes.
 - c. Prepare a preliminary overall electrical and equipment plan to address needs of performers and surrounding lighting.
 - d. Prepare lighting, audio, and stage floor/equipment schematics and determine electrical power requirements for these improvements.
 - e. Provide catalog sheets of proposed primary equipment components.
 - f. Prepare one three-dimensional color rendered drawings and two elevations to illustrate the performance area in relation to the surrounding use and proposed features.
 - g. Prepare a rough order of magnitude opinion of probable construction cost estimates for the proposed improvements.
 6. Meet with City representatives to review the concepts and analysis plan (meeting 2).
 7. Prepare and submit a meeting summary documenting action items and design decisions reached at meeting 2.
 8. Create a Final Concept incorporating review comments.
 9. Submit Final Concept to the City for approval.
- B. Design Development Phase
1. Coordinate geotechnical services to obtain soil borings and report for project area.
 2. Upon approval of the Final Concept complete design which will include:
 - a. Overall site plan. These plans will address additional key dimensions, notes, materials and dimensions in addition to the 30% submittal.
 - b. Site utilities plans and associated preliminary details. These plans will address drainage, changes in existing paving caused by new design, electrical and mechanical needs for a functional design.
 - c. Lighting, audio, and stage floor/equipment schematics and electrical power requirements.
 - d. Structure elevations, plans and preliminary details that further address materials, fit, finish, color and other important information.
 - e. Foundation design for the stage structure and equipment.
 - f. Outline specifications to include equipment catalog cut sheets.
 3. Update the rough order of magnitude opinion of construction cost estimates for proposed improvements. This will be a more refined version of the estimate provided for the concepts.
 4. Submit design drawings to you for your review and comments.
 5. Meet with you to review the design documents (meeting 3).
 6. Prepare and submit a design narrative and meeting summary documenting action items and design decisions reached. This narrative and the approved design documents will be the basis for the construction documents.

B. Construction Documents Phase

1. Prepare construction documents incorporating review comments from the meeting 3. It is understood that the 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 for distributing to bidders.

C. Bidding Services

1. Facilitate a pre-bid conference (meeting 4).
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.

D. Construction Services

1. Facilitate a pre-construction conference (meeting 5).
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.
6. Complete a final site visit when the construction is substantially complete and prepare a punch list documenting findings and submit to the City and contractor.

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.
5. Contract with a geotechnical engineer for soil borings and report.

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	6 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	\$51,800	Fixed Fee	\$500
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 construction documents after the design has been approved.
4. Contract administration.

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 will full 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, alkalis, 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 others 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

AGREEMENT ACCEPTED AND SERVICES AUTHORIZED TO PROCEED

CLIENT: City of Rock Island, IL

BY: _____ **TITLE:** _____
(signature)

PRINTED NAME: _____ **DATE ACCEPTED:** _____