

## **PROFESSIONAL SERVICES AGREEMENT**

**ATTN:** Mr. Dave McKenzie, Associate Director  
**CLIENT:** Iowa City Community School District  
1137 South Riverside Drive  
Iowa City, IA 52240

**PROJECT:** 2013 Building Envelope Management Program  
Iowa City Community School District

**DATE OF AGREEMENT:** October 16, 2012

### **PROJECT DESCRIPTION**

Your project consists of continuing the building envelope management program established in 2009. The purpose of this program is to address improvements to the exterior of the District's buildings with the objective of extending their life expectancy, and updating the schedule and budget for improvements. The program may include exterior walls, windows, doors, and coping caps (everything façade related on the exterior of the buildings other than roofs, mechanical and electrical fixtures and equipment).

### **SCOPE OF SERVICES**

We will provide the following services for the project:

Needs Assessment  
Budget Development  
Architectural Design  
Construction Administration  
Construction Observation

These services will consist of the following tasks:

1. Respond to inquiries from Physical Plant personnel regarding building envelope issues.
2. Review and update the annual and five-year building envelope program and budgets. Provide budget updates through the year.
3. Review District facilities and meet with District personnel to develop a list of projects to be completed during the 2013 construction season. *Refer to the attachment which identifies these projects.*
4. Assist the District with small repair projects which are not required to be publicly bid, and which have a probable cost of construction of less than \$100,000. (*Refer to the attachment which identifies these projects.*) Tasks related to these repair projects may include (but are not limited to) the following:
  - visit the site;
  - enlist a contractor to perform the repair(s);
  - provide design or scope identification to obtain competitive quotes from up to three (3) contractors, if required by Iowa code;
  - follow up on the completion of repairs;
  - review invoices and submit to the District for payment.

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### 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 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. We will meet with you to confirm and schedule the projects to be constructed during the construction season of 2012. This contract will run from January 1, 2013 through December 31, 2013.

### COMPENSATION

Description	Fee	Fee Type	Reimbursable Expenses
2013 Building Envelope Program	\$25,000.00	Fixed Fee	Included in fee

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. Testing of building components and materials.
2. Managing other building envelope components not in the scope of this Agreement and defined in the attached 2013 Project List and Budget.
3. Design, bidding and construction services for the repair/replacement of building envelope projects that have a total project cost opinion above the \$100,000 construction cost opinion threshold. **These will be opened as separate projects with individual proposals that include fee and schedule. (Currently, the West High School Building Envelope Repairs - Masonry and Windows project is on the list for 2013, and will be developed as a separate project.)**
4. Feasibility studies or reports outside the management of the building envelope.

### AGREEMENT:

This proposal shall become the Agreement for Services when signed and dated by both parties. The standard terms and conditions below are made a part of this proposal and agreement for services.

### PARTIES

"S-H" shall mean Shive-Hattery, Inc. "CLIENT" shall mean the person or entity executing this Agreement with "S-H."

**LIMITATION OF LIABILITY**

To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of S-H (including its officers, directors, shareholders, employees, agents and S-H's consultants and affiliated companies, and any of them) to CLIENT and anyone claiming by, through or under the CLIENT, for any and all claims, losses, costs or damages of any nature whatsoever arising out of, resulting from or in any way related to the project or this Agreement from any cause or causes, including, but not limited to, negligence, professional errors or omissions, strict liability or breach of any contract or any warranty, express or implied, of S-H, as defined in parenthesis above, shall not exceed the greater of the total compensation to be received, or actually received, by S-H under this Agreement or the sum of \$50,000. In no event shall S-H be responsible for consequential damages.

**HAZARDOUS MATERIALS - INDEMNIFICATION**

CLIENT hereby understands and agrees that S-H has not created nor contributed to the creation or existence of any or all types of hazardous or toxic wastes, materials, chemical compounds, bacteria, fungi, mold, or substances, or any other type of environmental hazard or pollution, whether latent or patent, at CLIENT's premises, or in connection with or related to this project and Agreement with respect to which S-H has been retained to provide services. The compensation to be paid S-H for said services is in no way commensurate with, and has not been calculated with reference to, the potential risk of injury or loss which may be caused by the exposure of persons or property to such substances or conditions. Therefore, to the fullest extent permitted by law, CLIENT agrees to defend, indemnify, and hold S-H (including its officers, directors, shareholders, employees, agents and S-H's consultants and affiliated companies, and any of them) harmless from and against any and all claims, losses, costs or damages of any nature whatsoever, arising out of, or resulting from the discharge, escape, release, or saturation of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, gases, 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.

**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 be increased for 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, cost for attorney fees, and other collection expenses. 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.

**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 impossible for S-H to assure the accuracy, completeness and sufficiency of such information, either because it is impossible to verify, 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 S-H (including its officers, directors, shareholders, employees, agents and S-H's consultants and affiliated companies, and any of them) harmless from and against any and all claims, losses, costs or damages of any nature whatsoever for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by the CLIENT to S-H.

**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. Unfortunately, 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 for all claims, losses, costs and damages arising out of the location of underground utilities provided by S-H under this Agreement.

**CONTRACTOR MATTERS**

CLIENT agrees that S-H shall not be responsible for the acts or omissions arising from contractor work (including their subcontractors), their employees 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 contractor means, methods, techniques, sequences, and progress of construction. In addition, CLIENT agrees that S-H is not responsible for safety at the project site and that safety during construction is addressed 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, subcontractor, supplier or any other entity 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 S-H (including its officers, directors, shareholders, employees, agents and S-H's consultants and affiliated companies, and any of them) harmless 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**

Any claims or disputes between the CLIENT and S-H made during or after the providing of services under this Agreement shall be submitted to non-binding mediation. Any costs incurred directly for a mediator, shall be shared equally between the parties involved in the mediation.

**DELAYS**

S-H is not responsible for delays caused by factors beyond S-H's reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of the CLIENT to furnish timely information or approve or disapprove of S-H's services or work product promptly, or delays caused by faulty performance by the CLIENT or by contractors of any level. When such delays beyond S-H's reasonable control occur, the CLIENT agrees S-H is not responsible for damages, nor shall S-H be deemed to be in default of this Agreement.

**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 address written in this Agreement.

**EQUAL EMPLOYMENT OPPORTUNITY**

It is the policy of S-H to provide equal employment opportunities for all. S-H will not discriminate against any employee or applicant because of race, color, religion, sex, marital status, national origin, age, ancestry, veteran status, 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, feel free to contact me at 319-364-0227 or [adrahos@shive-hattery.com](mailto:adrahos@shive-hattery.com).

Sincerely,

SHIVE-HATTERY, INC.



Ann Drahos, Project Manager  
[adrahos@shive-hattery.com](mailto:adrahos@shive-hattery.com)

Copy: George Kanz, S-H  
Russ Murphy, S-H

Enclosure: Project List and Budget

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**AGREEMENT ACCEPTED AND SERVICES AUTHORIZED TO PROCEED**

**CLIENT:** Iowa City Community School District

**BY:** Marla Swesey (signature) **TITLE:** Board President

**PRINTED NAME:** Marla Swesey **DATE ACCEPTED:** 5/21/13