

NOV 06 2006



City Clerk

**ORDINANCE NO. 2510**

**AN ORDINANCE TO AMEND ORDINANCE #2505 WHICH  
PROVIDED FOR THE EMPLOYMENT OF HOELSCHER  
ENGINEERING, P.C. OF FAIRVIEW HEIGHTS, ILLINOIS TO  
RENDER PROFESSIONAL SERVICES TO THE CITY OF  
COLUMBIA, ILLINOIS IN CONNECTION WITH THE  
CREEKSIDER SUBDIVISION PARK AND LAKE PROJECT.**

WHEREAS, The City Council of the City of Columbia, Illinois adopted Ordinance No. 2505 on October 16, 2006, and now finds it necessary to amend said ordinance to adjust the lump sum not to exceed amount of the contract;

NOW THEREFORE, BE IT ORDAINED, by the City Council of the City of Columbia, Illinois as follows:

**Section 1.** Section 2 of ordinance #2505 is hereby amended to read as follows:

**Section 2.** The City Council of the city does hereby authorize the employment of Hoelscher Engineering, P.C. to provide the professional services to the city with regard to the City's Creekside Subdivision Park and Lake project. The Mayor is hereby authorized and directed to execute and deliver to Hoelscher Engineering P.C., for and on behalf of the City, the "Preliminary Engineering Services Agreement" between the City of Columbia, Illinois and Hoelscher Engineering, P.C. for a lump sum not to exceed Thirty Six Thousand dollars (\$36,000) in the form attached hereto, which is hereby approved as to form, in as many counterparts as the Mayor shall determine and the City Clerk is hereby authorized and directed to attest the same and to affix thereto the corporate seal of the City."

**Section 2.** All ordinances, resolutions, or orders in conflict herewith, to the extent of such conflict, are hereby repealed.

Alderman Unnerstall moved the adoption of the above and foregoing Ordinance; the motion was seconded by Alderman Huch, and the roll call vote was as follows:

YEAS: Aldermen Conrad, Agne, Niemietz, Unnerstall, Row, Huch and Mayor

Hutchinson.

NAYS: Alderman Ebersohl.

ABSENT: Alderman Koesterer.

ABSTENTIONS: None.

PASSED by the City Council and APPROVED by the Mayor this 6<sup>th</sup> day of November, 2006.

  
Kevin B. Hutchinson

ATTEST:

  
WESLEY J. HOEFFKEN, City Clerk

(SEAL)

Municipality City of Columbia	 <b>Illinois Department of Transportation</b>  <b>Preliminary Engineering Services Agreement For Motor Fuel Tax Funds</b>	<b>L O C A L  A G E N C Y</b> <b>C O N S U L T A N T</b>	Name Hoelscher Engineering, P.C.
Township 1 South			Address 11 Executive Drive, Suite 12
County Monroe			City Fairview Heights
Section 16 – Creekside Park and Lake			State IL

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ between the above Local Agency (LA) and Consultant (ENGINEER) and covers certain professional engineering services in connection with the improvement of Creekside Park and Lake.

#### Section Description

Name Creekside Park and Lake Improvement Plans

Area Approx. 17 acres

Location Just West of Rueck Road and South of Wilson Hills Subdivision

Description: Development of a 17 acre park with a lake including parking and a walking trail.

#### Agreement Provisions

##### The Engineer Agrees,

1. To perform or be responsible for the performance of the following engineering services for the LA, in connection with the proposed improvements herein before described, and checked below:
  - a.  Make such detailed surveys as are necessary for the preparation of detailed plans.
  - b.  Prepare conceptual site layout for park including lake, walking trails and parking and evaluate site conflicts and project feasibility.
  - c.  Prepare an estimate of construction material quantities and prepare a construction cost estimate.
  - d.  Prepare a Letter report summarizing the above listed findings from items 1b and 1c.
  - e.  Prepare Army Corps of Engineers Permit, Department of Natural Resources-Office of Water Resources Permit, Bridge waterway sketch, and/or Channel Change sketch, Utility plan and locations, and Railroad Crossing work agreements, where appropriate.
  - f.  Prepare Preliminary Bridge design and Hydraulic Report, (including economic analysis of bridge or culvert types) and high water effects on roadway overflows and bridge approaches.
  - g.  Make complete general and detailed plans, special provisions, proposals and estimates of cost and furnish the LA with five (5) copies of the plans, special provisions, proposals and estimates. Additional copies of any or all documents, if required, shall be furnished to the LA by the ENGINEER at his actual cost for reproduction.
  - h.  Furnish the LA with survey and drafts in quadruplicate of all necessary right-of-way dedications, construction easement and borrow pit and channel change agreements including prints of the corresponding plats and staking as required.
  - i.  Assist the LA in the tabulation and interpretation of the contractors' proposals
  - j.  Prepare the necessary environmental documents in accordance with the procedures adopted by the DEPARTMENT'S Bureau of Local Roads & Streets.
  - k.  Prepare the Project Development Report when required by the DEPARTMENT.

- (2) That all reports, plans, plats and special provisions to be furnished by the ENGINEER pursuant to the AGREEMENT, will be in accordance with current standard specifications and policies of the DEPARTMENT. It is being understood that all such reports, plats, plans and drafts shall, before being finally accepted, be subject to approval by the LA.
- (3) To attend conferences at any reasonable time when requested to do so by representatives of the LA.
- (4) In the event plans or surveys are found to be in error during construction of the SECTION and revisions of the plans or survey corrections are necessary, the ENGINEER agrees that he will perform such work without expense to the LA, even though final payment has been received by him. He shall give immediate attention to these changes so there will be a minimum delay to the Contractor.
- (5) That basic survey notes and sketches, charts, computations and other data prepared or obtained by the ENGINEER pursuant to this AGREEMENT will be made available, upon request, to the LA without cost.
- (6) That all plans and other documents furnished by the ENGINEER pursuant to this AGREEMENT will be endorsed by him and will show his professional seal where such is required by law.

**The LA Agrees,**

1. To pay the ENGINEER as compensation for all services performed as stipulated in paragraphs 1a, 1e, 1g, 1i, 2, 3, 4, 5 and 6 in accordance with one of the following methods indicated by a check mark:
  - a.  A sum of money equal to \_\_\_\_\_ percent of the awarded contract cost of the proposed improvement as approved by the DEPARTMENT.
  - b.  A lump sum of money based on the following schedule:

Schedule for Percentages Based on Awarded Contract Cost

Awarded Cost	Percentage Fees	(see note)
	\$35,110 (Lump Sum)	
	_____	%
	_____	%
	_____	%
	_____	%
	_____	%

Note: Not necessarily a percentage. Could use per diem, cost-plus or lump sum.

2. That payments due the ENGINEER for services rendered in accordance with this AGREEMENT will be made as soon as practicable after the services have been performed in accordance with the following schedule:
  - a. 20% of Total Fee - Topographic Survey Completed
  - b. 40% of Total Fee - Improvement Plans Submitted for Review by LA
  - c. 20% of Total Fee - Bid Documents Completed
  - d. 20% of Total Fee - Staking Completed
3. That, should the improvement be abandoned at any time after the ENGINEER has performed any part of the services provided for in paragraphs 1a, through 1h and prior to the completion of such services, the LA shall reimburse the ENGINEER for his actual costs plus 15% percent incurred up to the time he is notified in writing of such abandonment - "actual cost" being defined as in paragraph 2 of THE LA AGREES.
4. That, should the LA require changes in any of the detailed plans, specifications or estimates except for those required pursuant to paragraph 4 of THE ENGINEER AGREES, the LA will pay the ENGINEER for such changes on the basis of actual cost plus 15% percent to cover profit, overhead and readiness to serve - "actual cost" being defined as in paragraph 2 of THE LA AGREES. It is understood that "changes" as used in this paragraph shall in no way relieve the ENGINEER of his responsibility to prepare a complete and adequate set of plans and specifications.

It is Mutually Agreed,

1. That any difference between the ENGINEER and the LA concerning their interpretation of the provisions of this Agreement shall be referred to a committee of disinterested parties consisting of one member appointed by the ENGINEER, one member appointed by the LA and a third member appointed by the two other members for disposition and that the committee's decision shall be final.
2. This AGREEMENT may be terminated by the LA upon giving notice in writing to the ENGINEER at his last known post office address. Upon such termination, the ENGINEER shall cause to be delivered to the LA all surveys, permits, agreements, preliminary bridge design & hydraulic report, drawings, specifications, partial and completed estimates and data, if any from traffic studies and soil survey and subsurface investigations with the understanding that all such material becomes the property of the LA. The ENGINEER shall be paid for any services completed and any services partially completed in accordance with Section 4 of THE LA AGREES.
3. That the ENGINEER warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the ENGINEER, to solicit or secure this contract, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the ENGINEER, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of this contract. For Breach or violation of this warranty the LA shall have the right to annul this contract without liability.
4. The services and fees in this agreement include the attached Phase 1 Archaeological Study, but do not include Phase 2 or Phase 3 Archaeological Reports or Studies.
5. The services and fees in this agreement do not include any Asbestos Abatement Studies or Reports.
6. The services and fees in this agreement include the attached geotechnical studies, borings, and analyses, but do not include geotechnical observation or testing as these services are to be provided to the Village directly by a geotechnical engineer.
7. The services include one-time construction staking, but do not include construction observation, other than that required for review of pay requests.
8. The services and fees in this agreement do not include design of playground, pavilion, or other park activity structures.
9. The services and fees in this agreement do not include a new boundary survey or plat, or design of a pump station.
10. The services and fees in this agreement include only one set of bid documents.
11. The LA agrees to uncover any buried utilities required to be surveyed by the LA.
12. The ENGINEER estimates that the time to deliver the project scope items is approximately as follows:
  - a. Topographic Survey Completed: Thirty (30) days from receipt of signed agreement.
  - b. Improvement Plans Submitted to LA: One hundred (100) days from receipt of signed agreement.
  - c. Bid Documents Completed: Thirty (30) days from ENGINEER'S receipt of reviewed improvement plans by LA.
  - d. Staking: Within about seven (7) days of staking request by Contractor.
13. The LA acknowledges the ENGINEER'S construction documents, including electronic files, as instruments of professional service. Nevertheless, the final construction documents prepared under this Agreement shall become the property of the LA upon completion of the services and payment in full of all monies due to the ENGINEER. The LA shall not reuse or make any modification to the construction documents without the prior written authorization of the ENGINEER. The LA agrees, to the fullest extent permitted by law, to indemnify and hold harmless the ENGINEER, its officers, directors, employees and subconsultants (collectively, ENGINEER) against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way connected with the unauthorized reuse or modification of the construction documents by the LA or any person or entity that acquires or obtains the construction documents from or through the LA without the written authorization of the ENGINEER.

IN WITNESS WHEREOF, the parties have caused the AGREEMENT to be executed by their duly authorized officers.

Executed by the LA:

ATTEST:

By

Wesley J. Hoeffken

Wesley J. Hoeffken, City

Clerk

(Seal)

of the  
(Municipality/Township/County)

State of Illinois, acting by and through its

Kevin B. Hutchinson

By Kevin B. Hutchinson

Title Mayor

Executed by the ENGINEER:

ATTEST:

By

Michael J. Kosberg

Project Manager

Hoelscher Engineering, P.C.

11 Executive Drive, Suite 12

Fairview Heights, IL 62208

By Gary R. Hoelscher

Title President

October 31, 2006  
Project No. SG13-3870

Gary Hoelscher, P.E.  
Hoelscher Engineering, P.C.  
11 Executive Drive, Suite 12  
Fairview Heights, Illinois 62208

Subject: Proposal for Geotechnical Study and Materials Testing Services  
City Park Lake  
Columbia, Illinois

Dear Mr. Hoelscher:

Shively Geotechnical, Inc. (Shively) is pleased to submit this proposal to Hoelscher Engineering, P.C. (Hoelscher) to perform a geotechnical study and provide construction observation and materials testing services. The geotechnical study report will be used for the design and construction of a lake to be located at the proposed Creekside Park in Columbia, Illinois. Our understanding of the project is based on information provided by your office, including a Conceptual Plan prepared by Hoelscher, and a Geotechnical Report prepared by SCI Engineering, Inc.

### **Project Description**

The proposed park site is located in the flood plain along the north side of a tributary to Palmer Creek. The land is currently being used for cultivating crops. The project involves the excavation of a lake basin near the center of the park. Shively understands that the lake will have an area of approximately two acres, and the basin excavation will be approximately nine feet deep. Because the plans do not include construction of a dam, the water level in the lake could be regulated by either a small pump station or through an extension of a municipal water line. Depending on the subsurface conditions encountered at the lake site, a clay liner (possibly mixed with bentonite) may be constructed along the bottom and sides of the basin.

### **Purpose of Geotechnical Study**

The purpose of the geotechnical study will be to obtain information concerning subsurface conditions at the site to form conclusions and make engineering recommendations for the following geotechnical considerations:

- ◆ A general geologic reconnaissance of the lake site to observe for conditions that might affect the design, construction, and performance of the lake.

- ◆ A discussion regarding the suitability of the geology for successful water retention, and general recommendations for construction of a clay liner, if needed.
- ◆ Suitability of the on site materials for use as fill, and engineering criteria for the placement of fill.
- ◆ Recommendations for observation and testing programs during construction of the lake.

### **Scope of Services**

Shively proposes to provide the following services in order to achieve the preceding objectives:

- ◆ An exploration program consisting of three soil borings is recommended for the project. The borings will be drilled in the planned lake basin area to assess the composition and thickness of the soil layers. The borings will be extended to a depth of 15 feet each or auger refusal, whichever occurs first. Split spoon and Shelby tube sampling will be performed at approximately 2-foot intervals, as appropriate.
- ◆ A laboratory test program will be performed on selected samples recovered from the borings to evaluate the engineering properties of the site soil. Laboratory tests will include visual classifications, natural moisture content, density determinations, penetrometer shear strength measurements, hydraulic conductivity (one test), and Atterberg limits tests.
- ◆ A report will be prepared that will document the field and laboratory phases of the study, and present conclusions and recommendations for the geotechnical aspects of the project.
- ◆ A review of the plans and specifications to be prepared by Hoelscher will be performed by a registered Professional Engineer. Review comments will be hand-written on copies of the documents.

### **Assumptions and Clarifications**

Shively has made the following assumptions and clarifications in preparing the scope of work and the cost estimate for the geotechnical study.

1. Shively will contact J.U.L.I.E. for public utility clearance prior to drilling. Shively will adjust the boring locations as needed; however, we are not responsible for utilities that are uncharted or mislocated.
2. Shively will meet a representative of Hoelscher on site to locate the borings for the field exploration. Unless the boring locations are surveyed by Hoelscher, the approximate boring locations will be indicated on a Boring Location Plan prepared by Shively.
3. The site is accessible by a truck-mounted drill rig without the need to remove trees, fences, or other obstructions.
4. Shively will backfill the borings after completion with bentonite grout. Settlement of the grout after the geotechnical study is complete is possible, which could result in a depression at the ground surface.
5. Shively will take reasonable precautions to limit the possible disturbance to the site, but we have not included costs to repair drill rig ruts or to return the site to original condition. We have assumed that any field crops will be harvested prior to drill rig mobilization.
6. If obstructions are encountered as a result of buried rubble or other debris, the boring will be offset and redrilled. Any additional drilling required because of obstructions will be charged in accordance with Shively's unit rates in effect at the time the work is performed.
7. Shively's drilling staff is not union affiliated, and we have not included any costs for adding a union operator or laborer to our drill crew. It is rare for union issues to arise during a geotechnical drilling program.
8. Shively's scope of services is limited to the geotechnical aspects of the project. Shively is not responsible for surveying, hydraulics and hydrology, any structural design, operations and maintenance planning, or other issues not listed in the previously described scope of services.

### **Fees and Schedule – Geotechnical Study**

Shively proposes to perform the previously described geotechnical services for the lump sum fee of \$3,250.00. The fee presented is based on an anticipated range of subsurface conditions at the site, which were assessed from the regional geology and experience in the general area, but does not include the cost of services required for evaluations of extensive unforeseen subsurface conditions. Should unforeseen conditions be encountered and additional services required for evaluation, your office will be contacted immediately so that you may be apprised of the conditions and approximate cost of additional study. No additional services in excess of the above fee would be performed without your prior authorization. The attached statement of Terms and Conditions is made part of this agreement.

Based on our current commitments, drilling can be initiated within approximately one to two weeks of written notice to proceed. Drilling should be completed in one day. Laboratory testing, engineering analyses, and report preparation will require about three additional weeks after completion of the fieldwork.

### **Construction Materials Testing Services**

The total cost of materials testing and documentation services is dependent upon the quantities of materials to be tested (such as earth fill, concrete, and asphalt), and the contractor's schedule to complete the work. None of this information is currently available. The work is typically performed as needed on a per-hour and per-test basis. Shively proposes to perform the work in accordance with the attached Summary of Unit Rates. After the project plans, specifications, and the contractor's schedule are available, Shively would be pleased to provide Hoelscher with an estimate for performing the materials testing services.

### **Acceptance**

If this proposal meets with your approval, please indicate your acceptance by signing one copy and returning it to us. The acceptance block is located on the first page of the Terms and Conditions. We appreciate this opportunity to be of service to Hoelscher Engineering, and would be pleased to discuss any aspect of this proposal with you at your convenience.

Sincerely,  
**Shively Geotechnical, Inc.**

*Jennifer L. Delancey*  
Jennifer L. Delancey, P.E.  
Geotechnical Engineer

*John S. Kottemann*  
John S. Kottemann, P.E.  
Chief Geotechnical Engineer

Attachments:      Summary of Unit Rates  
                         Terms and Conditions

**Summary of Unit Rates**  
**City Park Lake**  
**Columbia, Illinois**

**Personnel**

Geotechnical Technician	\$ 37.00/Hour
Geotechnical Technician, overtime	\$ 48.00/Hour
Construction Services Manager	\$ 75.00/Hour
Geotechnical Engineer	\$ 115.00/Hour

**Equipment**

Pick-up Truck	\$ 0.55/Mile
Nuclear Density Gauge (ASTM D 2922)	\$ 17.50/Half Day
Core Machine/Generator	\$ 50.00/Day
Bit Charge-Asphalt	\$ 3.20/Inch
Bit Charge-Concrete	\$ 5.00/Inch

**Laboratory-Soils**

Standard Proctor (ASTM D 698)	\$ 175.00/Test
Modified Proctor (ASTM D 1557)	\$ 195.00/Test
Atterberg Limit Test (ASTM D 4318)	\$ 70.00/Test
Relative Density (ASTM D4253 and D4254)	\$ 230.00/Test
Hydrometer (ASTM D 422)	\$ 85.00/Test
Sieve Analysis (ASTM D 422)	\$ 40.00/Test
Sieve #200 Wash (ASTM D 1140)	\$ 25.00/Test

**Laboratory-Concrete**

Compressive Strength Concrete Test Cylinder (ASTM C 39)	\$ 12.50/each
Spare Cylinder not Tested	\$ 10.00/each

**SHIVELY GEOTECHNICAL, INC.**  
**Terms & Conditions**

**I. ACCEPTANCE** The terms and conditions outlined below and the scope of services defined in the above proposal are accepted and SHIVELY GEOTECHNICAL, INC. is hereby authorized to proceed with the work:

Accepted By:

CLIENT: \_\_\_\_\_

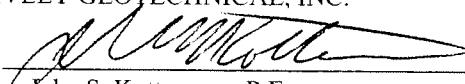
By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Submitted By:

SHIVELY GEOTECHNICAL, INC.

By: 

John S. Kottemann, P.E.

Title: Chief Geotechnical Engineer

Date: October 31, 2006

The following terms and conditions append a scope of services letter or proposal dated October 31, 2006; Shively Geotechnical, Inc. (SHIVELY), Project No. SG13-3870 and completes the agreement between Hoelscher Engineering, P.C. (herein after, CLIENT) and SHIVELY. The terms and conditions are presented alphabetically by section title. Your attention is directed specifically to the terms related to INDEMNIFICATION, LIMITATION OF LIABILITY, and INTEGRATION. Directing your attention to those terms in no way diminishes the enforceability or importance of the remaining terms.

**II. 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.

**III. ATTORNEY'S FEES** In the event of any litigation arising from or related to the services provided under this Agreement, the prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorney's fees and other related expenses.

**IV. BILLING AND PAYMENT** **Billing** - Invoices shall be submitted by SHIVELY on a monthly basis or at the completion of the work and are due upon presentation and shall be considered PAST DUE if not paid within thirty (30) calendar days of the invoice date. **Interest** - If payment is not received by SHIVELY within thirty (30) calendar days of the invoice date, the CLIENT shall pay as interest an additional charge of one-and-one-half (1.5) percent or the maximum allowable by law, whichever is lower of the PAST DUE amount per month. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal. **Collection Costs** - In the event legal action is necessary to enforce the payment provisions of this Agreement, the SHIVELY shall be entitled to collect from the CLIENT any judgment or settlement sums due, reasonable attorney's fees, court costs and expenses incurred by SHIVELY in connection therewith and, in addition, the reasonable value of SHIVELY's time and expenses spent in connection with such collection action, computed at SHIVELY's prevailing fee schedule and expense policies.

**Suspension of Services** - If the CLIENT fails to make payments when due or otherwise is in breach of this Agreement, SHIVELY may suspend performance of services upon five (5) calendar days' notice to the CLIENT. SHIVELY shall have no liability whatsoever to the CLIENT for any costs or damages as a result of such suspension caused by any breach of this Agreement by the CLIENT. **Termination of Services** - If the CLIENT fails to make payment to SHIVELY in accordance with the payment terms herein, this shall constitute a material breach of this Agreement and shall be cause for termination by SHIVELY. **Set-Offs, Backcharges, Discounts** - Payment of invoices is in no case subject to unilateral discounting or set-offs by the CLIENT, and payment is due regardless of suspension or termination of this Agreement by either party. If payment is not received by SHIVELY in accordance with these terms, a mechanic's lien will be placed on the property.

**V. CERTIFICATE OF MERIT** The CLIENT shall make no claim for professional negligence, either directly or in a third party claim, against SHIVELY unless the CLIENT has first provided SHIVELY with a written certification executed by an independent design professional currently practicing in the same discipline as SHIVELY and licensed in the State of Missouri or Illinois. This certification shall: a) contain the name and license number of the

certifier; b) specify each and every act or omission that the certifier contends is a violation of the standard of care expected of SHIVELY performing professional services under similar circumstances; and c) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to SHIVELY not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any mediation or judicial proceeding.

**VI. CONFIDENTIALITY** SHIVELY agrees to keep confidential and not to disclose to any person or entity, other than SHIVELY's employees, subconsultants and the general contractor and subcontractors, if appropriate, any data and information not previously known to and generated by SHIVELY or furnished to SHIVELY and marked CONFIDENTIAL by the CLIENT. These provisions shall not apply to information in whatever form that comes into the public domain, nor shall it restrict SHIVELY from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or if it is reasonably necessary for SHIVELY to defend himself or herself from any suit or claim. The CLIENT agrees that the technical methods, techniques and pricing information contained in any proposal submitted by SHIVELY pertaining to this project or in this Agreement or any addendum thereto, are to be considered confidential and proprietary, and shall not be released or otherwise made available to any third party without the express written consent of SHIVELY.

**VII. CONSEQUENTIAL DAMAGES** Notwithstanding any other provision of the Agreement, neither party shall be liable to the other for any consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by the CLIENT or SHIVELY, their employees, agents, subconsultants or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

**VIII. CORPORATE PROTECTION** It is intended by the parties to this Agreement that SHIVELY's services in connection with the project shall not subject SHIVELY's individual employees, officers or directors to any personal legal exposure for the risks associated with this project. Therefore, and notwithstanding anything to the contrary contained herein, the CLIENT agrees that as the CLIENT's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against Shively Geotechnical, Inc., a Missouri corporation, and not against any of SHIVELY's employees, officers or directors.

**IX. GOVERNING LAW** The laws of the State of Missouri will govern the validity of this Agreement, its interpretation and performance. Any litigation arising in any way from this Agreement shall be brought in the courts of that State.

**X. HAZARDOUS MATERIALS** It is acknowledged by both parties that SHIVELY's scope of services does not include any services related to asbestos or hazardous or toxic materials. In the event SHIVELY or any other party encounters asbestos or hazardous or toxic materials at the job site, or should it become known in any way that such materials may be present at the job site or any adjacent areas that may affect the performance of SHIVELY's services, SHIVELY may, at our option and without liability for consequential or any other damages, suspend performance of services on the project until the CLIENT retains appropriate specialist consultant(s) or contractor(s) to identify, abate and/or remove the asbestos or hazardous or toxic materials, and warrant that the job site is in full compliance with applicable laws and regulations.

**XI. INDEMNIFICATION** SHIVELY agrees, to the fullest extent permitted by law, to indemnify and hold the CLIENT harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by SHIVELY's negligent acts, errors or omissions in the performance of professional services under this Agreement and those of his or her subconsultants or anyone for whom SHIVELY is legally liable. The CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold SHIVELY harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the CLIENT's negligent acts, errors or omissions and those of his or her contractors, subcontractors or consultants or anyone for whom the CLIENT is legally liable, and arising from the project that is the subject of this Agreement. SHIVELY is not obligated to indemnify the CLIENT in any manner whatsoever for the CLIENT's own negligence.

**XII. INSTRUMENTS OF SERVICE - OWNERSHIP** All reports, plans, specifications, computer files, field data, notes and other documents and instruments prepared by SHIVELY as instruments of service shall remain the

property of SHIVELY. SHIVELY shall retain all common law, statutory and other reserved rights, including the copyright thereto.

**XIII. INSURANCE** During the term of this Agreement, SHIVELY agrees to provide evidence of insurance coverage when requested by CLIENT. In addition, SHIVELY agrees to attempt to maintain continuous professional liability coverage for the period of design and construction this project, and for a period of one (1) year following substantial completion, if such coverage is reasonably available at commercially affordable premiums. For the purposes of this Agreement, "reasonably available" and "commercially affordable" shall mean that more than half the design professions practicing in this state in this discipline are able to obtain such coverage. SHIVELY maintains the following insurance coverage: Commercial General Liability Insurance, with limits of \$1,000,000 per claim and \$2,000,000 aggregate; Worker's Compensation Insurance, as required by statute, including Employer's Liability; Automobile Liability Insurance, for scheduled autos, with limits of \$1,000,000 per occurrence, combined single limits; and Professional Liability Practice Policy, with limits of \$2,000,000 per claim and \$2,000,000 aggregate.

**XIV. INTEGRATION** This Agreement comprises the final and complete agreement between the CLIENT and SHIVELY for the scope of services set out in the proposal. It supersedes all prior or contemporaneous communications, representations, or agreements, whether oral or written, relating to the subject matter of this Agreement. Execution of this Agreement signifies that each party has read the document thoroughly, has had any questions explained by independent counsel and is satisfied. Amendments to this Agreement shall not be binding unless made in writing and signed by both the CLIENT and SHIVELY.

**XV. INTERPRETATION** Limitations on liability and indemnities in this Agreement are business understandings between the parties and shall apply to all the different theories of recovery, including breach of contract or warranty, tort (including negligence), strict or statutory liability, or any other cause of action. These limitations on liability and indemnities will not apply to any losses or damages that have been found by a trier of fact to have been caused by SHIVELY's sole or gross negligence or SHIVELY's willful misconduct. "Parties" means that CLIENT and SHIVELY, and their officers, partners, employees, agents and subconsultants. The parties also agree that the CLIENT will not seek damages in excess of the contractually agreed limitations indirectly through suits with other parties who may join SHIVELY as a third-party defendant.

**XVI. JOB SITE SAFETY** Neither the professional activities of SHIVELY, nor the presence of SHIVELY or our employees and subconsultants at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties, and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the Work of construction in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. SHIVELY's personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The CLIENT agrees that the General Contractor is solely responsible for job site safety, and warrants that this intent shall be made evident in the CLIENT's agreement with the General Contractor. The CLIENT also agrees that the CLIENT, SHIVELY and SHIVELY's consultants shall be indemnified and shall be made additional insureds under the General Contractor's general liability insurance policy.

**XVII. LIMITATION OF LIABILITY** In recognition of the relative risks and benefits of the project to both the CLIENT and SHIVELY, the risks have been allocated such that the CLIENT agrees, to the fullest extent permitted by law, to limit the liability of SHIVELY and our consultants to the CLIENT and to all construction contractors and subcontractors on the project of any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of SHIVELY and our subconsultants to all those named shall not exceed SHIVELY's total fee for services rendered on this project. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty.

**XVIII. MEDIATION** In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the CLIENT and SHIVELY agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

**XIX. NOTICES** Any notice given hereunder shall be deemed served immediately if hand-delivered in writing to an officer or other duly appointed representative of the party to whom the notice is directed, or if transmitted by facsimile to the facsimile number contained in this Agreement or listed below. Notices shall also be deemed served one (1) business day after transmittal by registered, certified, express, or regular mail or courier service to the business address identified in this Agreement.

**XX. RIGHT OF ENTRY** The CLIENT shall provide for SHIVELY's right to enter the property owned by the CLIENT and/or others in order for SHIVELY to fulfill the Scope of Services included hereunder. The CLIENT understands that use of testing or other equipment may unavoidably cause some damage, the correction of which is not part of this Agreement. The CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold SHIVELY and our subconsultants harmless from any claim, liability or cost (including reasonable attorneys' fees and costs of defense) for injury or loss arising or allegedly arising from procedures associated with testing or investigative activities or discovery of hazardous materials or suspected hazardous materials on said property.

**XXI. SAMPLES** All samples of soil and rock, which remain after testing, will be disposed of 60 days after submission of our report unless otherwise directed by the CLIENT. SHIVELY is not, and has no authority to act as, a handler, generator, operator, treater, store(r), transporter or disposer of hazardous substances, pollutants or contaminants found or generated at the job site. SHIVELY shall have no responsibility for the storage, treatment, transportation or disposal of contaminated or potentially contaminated materials of any kind whether or not directly or indirectly generated from SHIVELY's performance of the services hereunder. CLIENT shall be responsible for the proper disposal of any such waste materials and warrants and guarantees that title to such material originating at or removed from the site by SHIVELY will remain in and with the owner of the site.

**XXII. SEVERABILITY AND SURVIVAL** 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 SHIVELY shall survive the completion of the services hereunder and the termination of this Agreement.

**XXIII. STANDARD OF CARE** Services provided by SHIVELY 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. No other representations to CLIENT, expressed or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document or otherwise.

**XXIV. TIME BAR TO LEGAL ACTION** All legal actions by either party against the other arising out of or in any way connected with the services to be performed hereunder shall be barred and under no circumstances shall any such claim be initiated by either party after one (1) year has passed from the date of issuance of the report, unless SHIVELY's services shall be terminated earlier, in which case the date of termination of this Agreement shall be used.

**XXV. TERMINATION** Either the CLIENT or SHIVELY may terminate this Agreement at any time with or without cause upon giving the other party thirty (30) calendar days prior written notice. The CLIENT shall within thirty (30) calendar days of termination pay SHIVELY for all services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of this contract.

**XXVI. THIRD PARTY BENEFICIARIES** 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 CLIENT or SHIVELY. SHIVELY's services under this Agreement are being performed solely for the CLIENT's benefit, and no other entity shall have any claim against SHIVELY because of this Agreement or the performance or nonperformance of services hereunder. The CLIENT agrees to include a provision in all contracts with contractors and other entities involved in this project to carry out the intent of this paragraph.

October 30, 2006

**Mr. Brian Martindale**  
Hoelscher Engineering, P.C.  
2501 Chatham Road, Suite 120  
Springfield, Illinois 62704

*RE: Professional Service Proposal  
Phase I Cultural Resource Survey and Report  
Approximate 17-acre Development near Rueck Road  
Columbia, Monroe County, Illinois*

Dear Mr. Martindale:

Per your request, Environmental Compliance Consultants, Incorporated is pleased to submit this Professional Services Proposal for the above referenced project in Monroe County, Illinois. The total cost to complete the cultural resource survey and report would be \$1,560.

We would be able to initiate these field investigations within 15 business days (weather permitting) following the client's notice to proceed. It is our assumption that field conditions are such (*plowed and disced agricultural use fields with greater than 30 percent of the grounds surface visible to surveyors*) that a pedestrian reconnaissance will be implemented. We anticipate that these field investigations will require at least one day. A final report will be submitted to the client within 10 business days following the field investigations if no archaeological, historical or structural sites are identified. If archaeological sites are identified, then the report will be submitted to the client following assignment of Illinois Archaeological Survey site numbers by the Illinois State Museum.

Please find attached a copy of the Professional Services Agreement for the above referenced project. Upon your review and approval, please sign and return one copy to our office for our files.

Please feel free to contact me if you have any questions at 217-544-4881.

Best Regards,

Environmental Compliance Consultants, Inc.

**Susan B. Vorreyer**

Susan B. Vorreyer  
Archaeologist

**ENVIRONMENTAL COMPLIANCE CONSULTANTS, INCORPORATED**

**PROFESSIONAL SERVICES AGREEMENT**

This agreement is made this 30<sup>th</sup> day of October, 2006 between Hoelscher Engineering, PC subsequently referred to as "**CLIENT**," and Environmental Compliance Consultants, Incorporated, subsequently referred to as "**ECC**."

By joining in this agreement, **CLIENT** retains **ECC** to provide professional services in connection with the proposed 17-acre development located in Columbia, Illinois, subsequently referred to as the "Project."

By this agreement, the scope of **ECC**'s services on the Project is limited to that described in Attachment A.

The attached General Conditions are incorporated into and made part of this Agreement.

The **CLIENT** agrees to compensate **ECC** for providing the above-described services in the manner described in Attachment B.

The **CLIENT** and **ECC** hereby agree to and accept the terms and conditions stated above, including the terms and conditions stated in the attached General Conditions and Attachments A and B, the receipt of which are acknowledged.

**Environmental Compliance  
Consultants, Incorporated**

By: Susan B. Vorreyer  
Title: Archaeologist  
Date: October 30, 2006

**Hoelscher Engineering, P.C.**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**ATTACHMENT A**  
**SCOPE OF SERVICES**  
**PROFESSIONAL SERVICES AGREEMENT**

Agreement Date: October 30, 2006  
Project: 17-acre Development near Rueck Road  
Columbia, Monroe County, Illinois

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**SERVICES:**

The scope of services to be provided is limited to the following:

**Task 1: Cultural Resource Survey**

A Phase I Cultural Resource Survey of the parcel will be conducted by Environmental Compliance Consultants' archaeologists. This survey is divided into the following sub-tasks: Pre-Field Investigations Coordination and Literature Review, and Archaeological Field and Laboratory Methods.

**Pre-Field Investigations Coordination and Literature Review**

Field investigations and reporting requirements will be coordinated with the Illinois Historic Preservation Agency. In addition, a literature review of previous research conducted within or near the project area will be made prior to beginning fieldwork. Pre-field investigations will have three objectives: 1) to summarize the geomorphological, environmental and culture history of the area as they pertain to the evaluation of resources; 2) to summarize previous archaeological investigations; and 3) to provide a context within which the potential significance of historic or prehistoric sites (if any) can be accurately assessed.

**Archaeological Field and Laboratory Methods**

The proposed scope of the Phase I Cultural Resource Investigations conforms to the Phase I Cultural Resource Survey methods and procedures recommended by the Illinois Historic Preservation Agency.

**Pedestrian Survey.** In areas where plowing or disking has occurred, a pedestrian survey at 5-meter intervals will be employed. Surface artifacts will be collected. The objective of the pedestrian survey is to pinpoint areas of high debris concentrations, which may indicate the location of subsurface features.

**Screened Shovel Probes.** In areas where the ground surface visibility conditions are unfavorable for pedestrian surveying, screened shovel probes will be conducted. Shovel probes will consist of the excavation of systematically placed holes at 15-meter intervals. Holes will measure about 30 centimeters in diameter. Soil will be passed through ¼-inch mesh screen.

If archaeological material is recovered during investigations and greater in age than 50 years, they will be washed, sorted, and labeled. The objectives of cultural material analysis are: 1) to provide a tabulation and description of the artifacts; 2) to interpret these materials as indicators of activities conducted at the site by prehistoric and historic inhabitants; and 3) to provide a general chronological framework for site occupation.

#### Report of Investigations

The results of the Cultural Resource Survey will be submitted to the client in an Illinois Historic Preservation Agency's *Archaeological Survey Short Report* format. Following client approval, the Archaeological Survey Short Report will be submitted to the IHPA for review and comment.

**ATTACHMENT B  
CHARGES FOR SERVICES  
PROFESSIONAL SERVICES AGREEMENT**

Agreement Date: October 30, 2006  
Project: 17-acre Development near Rueck Road  
Columbia, Monroe County, Illinois

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**BASIS OF CHARGES:**

Charges for professional services performed by Environmental Compliance Consultants, Incorporated, for all services listed in the SCOPE OF SERVICES will be made according to the fixed fee cost indicated below. The fixed fee costs includes labor cost and direct expense charges.

**ESTIMATE OF COST**

The amount of effort necessary to complete the required scope of services will depend upon several factors including ground surface visibility, weather conditions, and accessibility. Services provided by Environmental Compliance Consultants, Incorporated, will be held to that minimum necessary to complete the project.

It is estimated that the total cost to accomplish the scope of services for the proposed 17-acre parcel would be \$1,560. The total project cost will not exceed \$1,560 without prior approval of the CLIENT.

## GENERAL CONDITIONS PROFESSIONAL SERVICES AGREEMENT

Agreement Date: October 30, 2006  
Project: 17-acre Development near Rueck Road  
Columbia, Monroe County, Illinois

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1. **INVOICES:** Charges for services will be billed at least as frequently as monthly, and at the completion of the Project. There will be an additional charge of 1½ percent per month compounded on amounts outstanding more than 30 days.
2. **TERMINATION:** This Agreement may be terminated by either party upon written notice. Any termination shall only be for good cause such as legal, unavailability of adequate financing or major changes in the scope of services. In the event of any termination, ECC will be paid for all services and expenses rendered to the date of termination on a basis of payroll cost times a multiplier of 2.0 (if not previously provided for) plus reimbursable expenses, plus reasonable termination expenses, including the cost of completing analyses, records, and reports necessary to document job status at the time of termination.
3. **REUSE OF DOCUMENTS:** All documents including drawings, specifications, and electronic media furnished by ECC pursuant to this Agreement are instruments of its services. They are not intended or represented to be suitable for reuse by client or others on extensions of this project, or on any other project. Any reuse without specific written verification or adaptation by ECC will be at CLIENT's sole risk, and without liability to ECC, and CLIENT shall indemnify and hold harmless ECC from all claims, damages, losses and expenses including court costs or attorney's fees arising out of or resulting therefrom. Any such verification or adaptation will entitle ECC to further compensation at rates to be agreed upon by CLIENT and ECC.
4. **STANDARD OF CARE:** Services performed by ECC under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. No other representation expressed or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document or otherwise.
5. **GENERAL LIABILITY INSURANCE AND LIMITATION:** ECC is covered by general liability insurance for bodily injury and property damage arising directly from its negligent acts or omissions, with limits which ECC considers reasonable. Certificates of insurance shall be provided to CLIENT upon request in writing. Within the limits and conditions of such insurance, ECC agrees to indemnify and save CLIENT harmless from any loss, damage or liability arising directly from any negligent act or omission by ECC. ECC shall not be responsible for any loss, damage, or liability beyond the amounts, limits and conditions of such insurance. ECC shall not be responsible for any loss, damage or liability arising from any act or omission by CLIENT, its agents, staff, other consultants, independent contractors, third parties or others working on the Project over which ECC has no supervision or control.
6. **MODIFICATION TO THE AGREEMENT:** CLIENT or ECC may, from time to time, request modifications or changes in the scope of services to be performed hereunder. Such changes, including any increase or decrease in the amount of ECC's compensation, to which CLIENT and ECC mutually agree shall be incorporated in this Agreement by a written amendment to the Agreement.
7. **GOVERNING LAW:** This Agreement shall be governed by and interpreted pursuant to the laws of the State of Illinois.
8. **RIGHT OF ENTRY:** CLIENT shall provide for ECC's right to enter property owned by CLIENT and/or others in order for ECC to fulfill the scope of services for this Project.