

PROFESSIONAL SERVICES AGREEMENT

FLEIS & VANDENBRINK ENGINEERING, INC.
2960 Lucerne Drive SE, Grand Rapids, Michigan 49546
P: 616.977.1000 F: 616.977.1005

This Professional Services Agreement ("PSA") is entered into between Fleis & VandenBrink Engineering, Inc. ("Engineer") and the **City of Manistee Downtown Development Authority, a Michigan body corporate**, whose address is **400 River Street, Manistee, MI 49660**, ("DDA") where Engineer agrees to provide services for DDA and DDA agrees to pay Engineer, all in accordance with the terms of this PSA.

DESCRIPTION OF PROJECT AND SCOPE OF SERVICES: The description of the Project ("Project") and the scope of services ("Services") provided under this PSA is as follows: *The Project is the River Street Streetscape Design and Guidebook Development, including a traffic analysis and an option to secure a parking study. The scope of services and timetable to provide services are set forth in the attached Exhibit "A" with the deliverable to be supplied in accordance with the schedule set forth in Exhibit "B".*

AGREEMENT DOCUMENTS: All obligations covered under this PSA are governed by the Agreement Documents, which specifically include this PSA and all of the following documents, which are all incorporated herein by reference:

Engineer's proposal / letter dated **June 28, 2022**.
DDA's Request for Proposal (RFP) dated **May 12, 2022**.

COMPENSATION OF ENGINEER: This contract is a Lump Sum Fee contract, billed monthly based on the percentage of Work completed. The specific maximum charges are set forth in the attached Exhibit "C".

DDA shall Pay Engineer for all Services and reimbursable expenses by the third Wednesday of the month following the month in which Engineer's Invoice is received by the DDA of presentation of the invoice. The final 15% of the Visioning Playbook task may be invoiced upon the DDA's acceptance of the final deliverables. Invoices shall incur interest at the rate of 7 % per annum if not paid as required under this paragraph.

PAYMENT. If DDA fails to make any payment when due, Engineer may suspend performance of Services hereunder until all past due amounts and accrued interest are paid. Engineer shall have no liability of any type as a result of suspension of services caused by DDA's failure to pay. The suspension of Services shall not limit any other remedy available to Engineer.

If DDA objects to any portion of an invoice, Owner shall notify Engineer in writing within seven (7) calendar days of presentation. DDA shall identify the disputed charges and shall pay when due that portion of the invoice not in dispute. If the disputed amount of the invoice is resolved in Engineer's favor and not paid by the invoice due date, interest as stated in the agreement shall be paid by DDA on the disputed amount from the original due date.

The DDA's Payment of Engineer's invoices shall not be subject to any right of setoff, and payment shall be due regardless of suspension or termination of this Agreement by either party. If any payment obligation is not paid when due, DDA agrees to pay all costs of the collection, including actual attorney's fees through all levels of appeal, whether or not a legal proceeding for collection is commenced as part of the collection process.

DDA REPRESENTATIVE. The DDA's representative for this Project shall be **Marc Miller, executive director** who shall have complete actual authority on behalf of the DDA and its governing body to make all decisions in connection with the PSA.

CHANGES/OPTION. This Agreement may not be modified without the written agreement of both parties. The DDA shall have the option to secure the services of Engineer to conduct a Parking Study for which Engineer would be paid in accordance with Exhibit "C". The decision by the DDA to exercise its option for a Parking Study must be through written notice to Engineer no later than October 1, 2023, unless otherwise agreed by the parties. The Parking Study, should it be requested, shall be completed within two (2) months of the DDA's notification to Engineer of the DDA decision to exercise the option.

DELAYS/FORCE MAJEURE. The services of Engineer shall be completed in accordance with the schedule set forth in Exhibit "A". Notwithstanding anything contained in this Agreement to the contrary, if any term or condition of this Agreement to be performed or observed by Engineer is rendered impossible of performance or observance due to any cause beyond Engineer's control, including, an act of God, war, civil disturbance, fire or casualty, governmental rule, Engineer, for so long as a condition exists, shall be excused from such performance or observance, provided it takes all appropriately reasonable steps as soon as reasonably practical in order to terminate such condition.

INDEMNITY. DDA shall indemnify and hold harmless Engineer and its officers, directors, partners, agents, employees and consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of Engineer, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to or resulting from any and all environmental contamination on the Project.

Engineer, to the extent covered by insurance, indemnifies, defends and holds harmless DDA and its agents and employees, from and against any claim, injury, damage, cost, expense or liability, arising out of or relating to the Services provided by Engineer for the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property other than the work itself, but only to the extent caused solely by any negligent act or omission of Engineer or Engineer's officers, directors, partners, employees or consultants.

To the fullest extent permitted by law, a party's total liability to the other party under the terms and conditions of this PSA including any indemnity, as well as to anyone claiming by, through or under the other party, for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party, and any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of all of the responsible parties.

PERFORMANCE STANDARDS. The Engineer shall perform its services consistent with the professional skill and care ordinarily provided by other engineers performing similar services in the same or similar locality under the same or similar circumstances. The Engineer shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Project.

MUNICIPAL ADVISOR. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising DDA, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.

Affidavit of Compliance. Engineer shall cause the execution of and compliance with the Affidavit of Compliance – Iran Economic Sanctions Act attached as Exhibit "D".

LIMITATION OF LIABILITY. Engineer shall not be liable for any claim, damage, cost, expense or other liability not caused by negligent acts, errors or omissions of Engineer. The total liability of Engineer under any legal theory whatsoever, in the aggregate, as well as any claimed liability of Engineer's officers, directors, employees, or agents or consultants, for any claims arising out of the PSA, shall not exceed the total amount of available insurance proceeds in response to DDA's claim. Engineer currently maintains an annual per claim Liability policy in the amount of \$5.0 million dollars and an aggregate insurance policy for Professional Errors and Omissions in the amount of 7.0 million dollars.

INSURANCE. Upon DDA's request, Engineer will furnish DDA with a written statement of insurance coverage. No oral representations regarding insurance shall be binding.

ADA AND CODE COMPLIANCE. The Americans with Disabilities Act ("ADA") provides that alterations to a facility must be made in such a manner that, to the maximum extent feasible, the altered portions of the facility are accessible to persons with disabilities. The DDA acknowledges that the requirements of the ADA will be subject to various and possibly contradictory interpretations. To the extent applicable, the Engineer will use its reasonable professional efforts and judgment to interpret applicable ADA requirements and other federal, state and local laws, rules, codes, ordinances and regulations as they may apply to the Project.

WAIVER. No delay on the part of any party hereto in the exercise of any right or remedy shall operate as a waiver of such right or remedy and a waiver on any one (1) occasion shall not be construed as a bar to or a waiver of any subsequent breach of the same or any other provision of the agreement on a future occasion. No waiver by Engineer of any breach by DDA of a provision of this PSA shall be deemed a waiver of any other provision hereof or of any subsequent breach by DDA of such provision. No waiver by DDA of any breach by Engineer of a provision of this PSA shall be deemed a waiver of any other provision hereof or of any subsequent breach by Engineer of such provision.

ENFORCEABILITY. This agreement shall be binding upon the parties hereto and their respective successors and assigns.

SEVERABILITY. In the event that any one (1) or more provisions contained in the agreement shall be declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of the agreement shall not be affected or impaired.

OWNERSHIP OF INSTRUMENTS OF SERVICE. Engineer's documents prepared pursuant to this PSA, including those in electronic format, are instruments of service. All reports, plans, specifications, computer files, field data, notes and other documents prepared by Engineer as instruments of service shall remain the property of Engineer. Engineer shall retain all common law, statutory and other reserved rights, including the copyright thereto and all other intellectual property rights. DDA shall not use or permit the use of said documents on any other project. DDA fully indemnifies Engineer against any and all claims for unauthorized use. Notwithstanding anything contained herein to the contrary, DDA shall have the right to receive and retain the deliverables required pursuant to the parties' agreement, including that which is available in electronic format.

TERMINATION: This PSA may be terminated by DDA party upon seven (7) calendar days' written notice. Upon termination, Engineer shall be paid by DDA for Services performed up to the notice of termination as required under the terms of the PSA.

DISPUTE RESOLUTION: In the event of a dispute arising out of or relating to this Agreement or the services to be rendered hereunder, the DDA and the Engineer agree to attempt to resolve such disputes in the following manner: First, the parties agree to attempt to resolve such disputes through direct negotiations between the appropriate representatives of each party. Second, if such negotiations are not fully successful, the parties agree to attempt to resolve any remaining dispute through mediation using a mediator agreed upon between both parties. DDA and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis and shall be completed within 120 days. If such mediation is unsuccessful the dispute shall be subject to resolution in the courts of Manistee County, Michigan.

NO THIRD PARTY BENEFICIARIES. There are no third party beneficiaries to this PSA and the Services provided herein are exclusively for the direct benefit of the DDA indicated above. DDA shall ensure that all other agreements relating to this project reflect that there are no third party beneficiaries to this PSA.

AUTHORITY. The individuals executing this agreement represent and warrant that they have the legal authority, on behalf of their respective organizations, to execute the same.

ASSIGNMENT. This is a professional services contract and is non-assignable without the express written consent of Engineer.

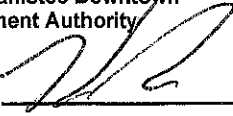
MISCELLANEOUS. No additional or contrary terms, whether contained in an order, acknowledgment, or other document from DDA, shall be binding upon Engineer unless agreed to in writing signed by an authorized representative of Engineer, and Engineer expressly rejects all such additional or contrary terms as may be contained in DDA's documents. The terms in this PSA will have precedence over any other terms expressed by the DDA's authorization process such as a purchase order. Engineer's performance is conditioned on DDA's unmodified consent exclusively to this PSA. Engineer shall have the right to correct any errors, whether clerical or mathematical, which are contained in this PSA. Unless otherwise specifically indicated in writing or otherwise required by law and paid for by Owner, there are no Performance or Payment bonds required on this Project. This PSA shall be binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns. This PSA shall be governed by the laws of the State of Michigan. This contract sets forth the entire agreement between Engineer and DDA. This is a fully integrated contract.

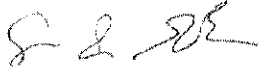
ELECTRONIC/FACSIMILE SIGNATURES. The signatures on this PSA shall be deemed to be original signatures when transmitted electronically or by facsimile machine or by any other medium. No party shall be required to produce a PSA with an original signature in order to enforce any provision of this PSA.

The parties hereto have made and entered into this PSA. To be valid, this PSA must be signed by an authorized representative of Fleis & VandenBrink Engineering, Inc.

DDA
City of Manistee Downtown
Development Authority

ENGINEER
FLEIS & VANDENBRINK ENGINEERING, INC.

By:  _____

By:  2-7-2023 _____

Kyle Mosher

Craig Shumaker, PE

Title: Board Chair

Title: Sr. Vice President

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

1. Orientation & Discovery – March 2023.
2. Engagement event #1 (Needs & Desires, Goals & Objectives) – April 2023.
3. Traffic Analysis – June – end of July 2023 (US-31 Bridge reconstruct to start by July 29, 2023).
4. Engagement event #2 (Investigate various street design elements & Gateway treatments) – July 2023.
5. Developing the Vision (Applying elements from Public Event #2 to survey & traffic data) – August – September 2023.
6. Engagement event #3 (celebrate the preferred vision for River Street and the improved connections to the riverfront) – October 2023.
7. Visioning Playbook (Refine data from Public Events 2 & 3) – November 2023.
8. Meet with Boards and Commission (Draft copy of Visioning Playbook) Early November 2023
9. City comments due to consultant: Late-November 2023.
10. Final Deliverables: Mid December 2023.

EXHIBIT "B"

DELIVERABLES

VISIONING PLAYBOOK

- Summarize the public engagement and document the process of the formation of the Vision and overall goals – Engagement event #1.
- Establish design element standards from streetscape components that would set the tone and be used as a basis for all final design materials and elements Engagement event #2 & #3.
- Develop an overall framework plan to show how the waterfront and River Street come together and will include enhanced connections to Riverwalk.
- Recommend Non-Profit, State and Federal Funding Sources to implement strategies.
- Incorporate recommendation from traffic study.
- Guidebook to include prioritized goals matrix document that includes the following elements: Short, medium and long term implementation strategies with cost estimates and estimated annual maintenance costs.
- Outline a clear Action Plan on how this Visioning Playbook would serve as a tool as defining the role of the DDA, City council, City staff, others.
- Outline a process to update this Visioning Playbook periodically.
- Provide electronic copy of Visioning Playbook to DDA and City for reproduction which will include Photoshop and Lumion color graphics.

TRAFFIC ANALYSIS

The report data will outline the following:

- Weekday peak period turning movement counts.
- Calculate the vehicle delays, LOS, and vehicle queues at the study intersections.
- Calculate the future background traffic volume.
- Perform a crash analysis at the study intersections.
- Review conversion of River Street from One-way to Two-way traffic flow.
- Identify improvements (if any) for the study area street network. Submit draft report o City for comments.
- Complete a technical memorandum consistent with standards documented by ITE, FHWA, and MDOT.
- Complete a technical report that will follow accepted traffic engineering practice and the standards documented by ITE, AASHTO, and the MMUTCD and the Michigan Vehicle Code. Provide mitigation measures, if any, to accommodate the projected parking demand within the study area.

PARKING STUDY

The report data will outline the following:

- Calculate projected parking generation for land uses.
- Provide a summary of the following parking occupancy:
 - Existing and proposed parking supply with existing land uses.
 - Existing and proposed parking supply with future buildout land uses.
 - Submit draft report to City for comments.
- Complete a technical report that will follow accepted traffic engineering practice and the standards documented by ITE, AASHTO, and the MMUTCD and the Michigan Vehicle Code. Provide mitigation measures, if any, to accommodate the projected parking demand within the study area.

EXHIBIT "C"

Task 1: Visioning Playbook

City of Manistee		FLEIS & VANDENBRINK		dpn		MKSK		Planning Urban Design Landscape Architecture				
Downtown Streetscape Plan		P18194_08/22/22.RWS										
Role:	Proj Man	Facilitator	Planner	Proj Eng	Traffic	Project LA	EIT	CAD Tech.	Admin Asst	Survey	QA/QC	Expenses
Person Assigned:	Rick S	Andy K.	Brad S.	Bruce P.	Julie K.	James G.	Rob L.	Andrew	TBD	Kevin C. & Crew	Brian R.	
Billing Rate per Hour:	\$150	\$225	\$225	\$185	\$215	\$155	\$125	\$89	\$65	\$185	\$185	
Task 1 - Streetscape Plan & Guidebook												
Orientation and review of existing data/reports	4	8	4									\$1,500
Public input sessions (max of 3)	8	12	12	4	4	18						\$2,500
Developing the Vision and Goals		16	8			49			4			
Investigate various street design elements (Complete Streets and Streetscape Elements)		8	8			24						
Gateway Treatments and Wayfinding		8				20						
Opportunities to increase accessibility, public areas, access to businesses and enhance public space(s)		12	8			20			4			
General infrastructure recommendations	8	2		16		12	16	4	4			\$250
Maintenance annual checklist, snow removal, Adoption to EV's (2)	8	2				4		4				\$100
Other development recommendations (see zoning changes, new public space, parking/parking lots)		8	8			8				12		1
Downtown Historic Playbook - Summary of Process, Outcomes/Recommendations and Action Plan with Timeline		16	16			24				24		
Total Hours	20	92	84	20	4	184	16	8	52	0	1	
Labor Services	\$4,200	\$22,770	\$15,840	\$3,300	\$880	\$31,372	\$2,000	\$712	\$3,380	\$0	\$185	
Total Labor Services	\$4,200	\$22,770	\$15,840	\$3,300	\$880	\$31,372	\$2,000	\$712	\$3,380	\$0	\$185	
Expenses plus 10%	\$300											
Total Task	\$4,950											

Task 2: Traffic Study

Role:	Proj Man	Proj Eng	Traffic	EIT	CAD Tech.	Admin Asst	Survey	QA/QC	Expenses
Person Assigned:	Rick S		Julie K.	Jacob S.				Brian R.	
Billing Rate per Hour:	\$150		\$180	\$145		\$65		\$185	
Task 2 - Traffic Analysis									
Data Collection			12	24				1	\$120
Calculations and Modeling			12	24					\$120
Traffic Study Recommendations Report			22	12		8			\$180
Total Hours	0	0	46	60	0	8	0	1	
Labor Services	\$0	\$0	\$8,280	\$8,700	\$0	\$520	\$0	\$185	
Total Labor Services	\$17,604								
Expenses plus 10%	\$396								
Total Task	\$18,000								

Task 3 (Optional): Parking Study

Role:	Proj Man	Proj Eng	Traffic	EIT	CAD Tech.	Admin Asst	Survey	QA/QC	Expenses
Person Assigned:	Rick S		Julie K.	Jacob S.	Andrew	TBD		Brian R.	
Billing Rate per Hour:	\$150		\$180	\$145	\$89	\$65		\$185	
Task C - Parking Study									
Data Collection & Calculation of land uses			8	10	16				\$120
Existing and future parking occupancy	8		12	16					\$120
Parking Study Recommendations Report	8		12			4		1	\$120
Total Hours	16	0	32	28	16	4	0	1	
Labor Services	\$2,400	\$0	\$5,760	\$3,770	\$1,424	\$280	\$0	\$185	
Total Labor Services	\$13,804								
Expenses plus 10%	\$396								
Total Task	\$14,200								

Exhibit "D"

AFFIDAVIT OF COMPLIANCE – IRAN ECONOMIC SANCTIONS ACT
Michigan Public Act No. 517 of 2012

The undersigned owner or authorized officer of the below-named company (the "Engineer"), hereby certifies, represents and warrants that the Engineer, including its officers, directors and employees, is not an "Iran Linked Business" within the meaning of the Iran Economic Sanctions Act, Michigan Public Act No. 517 of 2012 (the "Act"), and that in the event Engineer is awarded a contract as a result of the RFP of the City of Manistee Downtown Development Authority (the "DDA"), the Engineer will not become an "Iran Linked Business" at any time during the course of performing any services under the contract.

The Act defines an Iran Linked Business as an individual or an entity, including all successors, parent companies, subsidiaries and companies under common control, engaged in investment activities of \$20,000,000.00 or more with the energy sector of Iran, including providing of products used to construct or maintain oil or liquefied natural gas pipelines. The Engineer further acknowledges that any person who is found to have submitted a false certification is responsible for a civil penalty of not more than \$250,000.00 or 2 times the amount of the contract or proposed contract for which the false certification was made, whichever is greater, the cost of the DDA's investigation, and reasonable attorney fees, in addition to the fine. Moreover, any person who submitted a false certification shall be ineligible to bid on a Request for Proposal for three (3) years from the date the City determined that a false certification was submitted.

ENGINEER:

Feist VandenBrinte
Name of Engineer

By: [Signature]
Its: S.O.P., Craig L. Shumaker

Date: 2-8-2023

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

This instrument was acknowledged before me on the 8th day of February, 2023, by Craig L. Shumaker, who indicated that this document was signed as her/his free act and deed.

[Signature]
Notary Public
OAKLAND County, MI
My Commission Expires: November 17, 2024
Acting in the County of: KENT

LORI A. HANSEN
Notary Public
Oakland County, MI
My Commission Expires 11/17/24