

RESOLUTION 17-13

APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH HITCHCOCK DESIGN GROUP IN CONNECTION WITH THE PROPOSED PRELIMINARY DESIGN SERVICES FOR PHASE TWO OF THE SQUARE ON SECOND STREET AREA

WHEREAS the Village of Manteno, a Municipal Corporation, desires to see the continued improvement of the downtown Second Street area now known as "The Square on Second"; and

WHEREAS the Village of Manteno acting by and through its Village President and Board of Trustees find it in the public interest that a certified professional be contracted to provide preliminary design services for Phase Two (2) the Square on Second Street area; and

WHEREAS it is necessary to contract with a professional company with certified personnel skilled in providing schematic and final design services for Phase Two (2) the Square on Second Street area; and

WHEREAS Hitchcock Design Group, Naperville, IL, is a company with professional and certified personnel skilled in providing schematic and final design services for Phase Two (2) the Square on Second Street area.

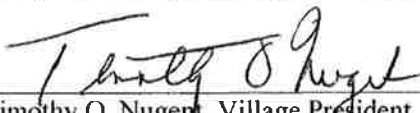
NOW THEREFORE BE IT RESOLVED by the President and Board of Trustees of the Village of Manteno, Kankakee County, Illinois as follows:

SECTION 1: That an agreement for Professional Services with Hitchcock Design Group, Naperville, IL, in connection with providing schematic design services for Phase 2 of The Square on Second area and the same is hereby approved.

SECTION 2: That the Village President is hereby authorized, empowered and directed to execute said agreement for Professional Services provided for in Section One of this resolution in the form and content of **Exhibit "A"** which is attached hereto and made a part hereof.

Passed by the Board of Trustees of the Village of Manteno, Kankakee County, Illinois at a regular meeting thereof held on 6th day of November, 2017 and approved by me as Village President on the same day.

RECORD OF THE VOTE	Yes	No	Abstain	Absent
President Timothy Nugent				
Trustee Timothy Boyce	X			
Trustee Samuel Martin	X			
Trustee Diane Dole	X			
Trustee Todd Crockett	X			
Trustee Joel Gesky	X			
Trustee Wendell Phillips	X			
TOTAL VOTES <i>or</i>				
BY OMNIBUS VOTE	X			



Timothy O. Nugent, Village President

ATTEST:



Alisa Blanchette, Village Clerk
Deputy VC



Professional Service Agreement

This agreement (Agreement) between Hitchcock Design, Inc., an Illinois corporation doing business as **Hitchcock Design Group (HDG)**, 225 West Jefferson Avenue; Naperville, Illinois 60540 and **Village of Manteno (Client)**, is entered into on August 21, 2015, and includes eight parts: Project Description, Project Team, Scope of Services, Schedule, Compensation and Payment, Client Responsibilities, Additional Conditions and Acceptance.

PART ONE: PROJECT DESCRIPTION

Construction of Phase 1 Second Street Area, now called "The Square on Second" is complete and Village leaders want to explore the potential of the remaining space. The preferred schematic design also included a water feature, play environment, and dumpster enclosure. In addition to these elements, Village leadership would like to consider unique, 4 season improvements including additional plaza space, ice rink, environmental art, elevated seating, fire pit, gathering / warming area, unique play experiences like a zipline, net climbers and trampoline, jumping pillow, etc.

PART TWO: PROJECT TEAM

Mark Underwood: Project Leader/Manager
Other members of the Urban Design Studio as needed

PART THREE: BASIC SERVICES

The attached Scope of Services is made a part of this Agreement.

PART FOUR: SCHEDULE

The Schedule is to be determined at kick-off.

PART FIVE: COMPENSATION AND PAYMENT

Fee Type and Amount

Client agrees to compensate HDG for the Authorized Scope of Services described in Part Three of this Agreement as follows:

Service Type	Fee Type	Amount
Pre-Design Services	Fixed Fee	\$15,650
Final Design Services	Optional, additional	\$TBD
Construction Services	Optional, additional	\$TBD

Authorized Additional Services

If circumstances arise during HDG's performance of its Scope of Services that require additional services, HDG will notify Client about the nature, extent and probable additional cost of the additional services, and perform only such additional services following Client's written authorization. Client agrees to compensate HDG for Authorized Additional Services in addition to the fee for the Authorized Scope of Services.

Reimbursable Expenses

Deliverables identified in the Scope of Services are included in the fee. In addition to the fees for the Authorized Scope of Services and Authorized Additional Services, Client agrees to compensate HDG

225 W. Jefferson Avenue
Naperville, Illinois 60540
630.961.1787

hitchcockdesigngroup.com



for delivery, travel, and reproduction expenses at 115% of HDG's actual cost. Mileage is calculated at the current IRS reimbursable rate.

Standard Rates

The attached Billing Rates are made a part of this Agreement.

Payment

Invoices

Each month, or at other appropriate intervals, HDG will provide an invoice that describes the invoice period, the services rendered, fees and expenses due, payment due date, billing history and other appropriate information. Invoices for fixed fees will describe the percentage of the services completed. Invoices for hourly fees will describe the tasks, hours and hourly rates for the services completed.

Statements

Each month, HDG will issue a statement of Client's account describing the outstanding invoices and balances for each contract, the aggregate outstanding balance, and the aggregate credit limit.

Progress Payments

Client agrees to promptly review HDG invoices and make full payment for Authorized Scope of Services, Authorized Additional Services and Reimbursable Expenses. Payment of each invoice is due upon receipt, and will be past due if not paid in full within 30 days of the invoice date. If Client objects to any portion of the invoice, Client agrees to notify HDG, in writing, within 7 days of receipt regarding the Client's objection and pay the undisputed invoice amount in accordance with this Agreement.

Interest and Collection Costs

Client agrees to pay a finance charge of 1½% per month on unpaid account balances that are past due. In the event that HDG must retain an attorney to enforce Client's payment obligations, Client agrees to pay HDG's reasonable attorneys' fees and costs, regardless of whether suit is filed.

PART SIX: CLIENT RESPONSIBILITIES

Representation

Client agrees to designate a representative authorized to act on its behalf. HDG will direct communications to Client through its designated representative. Client agrees to communicate with HDG's project manager in a timely manner in order to expediently advance HDG services.

Program Requirements

Client agrees to provide customary program requirements for the project, including objectives, standards and criteria, schedule, process, communications and budget.

Existing Conditions

Client agrees to provide current information regarding the existing conditions for the project area, including: boundary, legal description, ownership, easements and restrictions; topography and benchmark; soils, utilities, hydrology/wetlands, vegetation, land uses, archeology, traffic. HDG is entitled to rely on the accuracy and completeness of the information provided.

Access

Client agrees to provide HDG and its sub consultants access to the property for observation.



Specialized Consultation

Client agrees to provide the services of specialized consultants, not identified on the Project Team, if/when they are needed to meet Client's project program requirements.

Changed Conditions

Client agrees to promptly notify HDG in writing of any condition, event or circumstance that may affect the performance of our services.

Financing

Client agrees to compensate HDG regardless of Client's ability to secure loans, mortgages, additional equity, grants or other supplementary financing for the project. If requested, Client agrees to provide evidence that Client is capable of paying for the services described in this Agreement.

Permits

Unless specifically described in HDG's Basic Services, Client agrees to obtain and pay for all necessary permits from authorities with jurisdiction over the Project.

Delay

Client agrees to comply with Part Six of this Agreement and to render decisions in a timely manner so as not to delay the orderly and sequential progress of our services.

Client Expense

Client agrees to comply with Part Six of this Agreement at its own expense.

PART SEVEN: ADDITIONAL CONDITIONS

Standard of Care

HDG will perform the Authorized Scope of Services and Authorized Additional Services in accordance with generally accepted standards of ordinary and reasonable skill exercised by landscape architects and planners at the time and location such services are rendered.

Suspension of Services

If Client has not paid HDG's invoice within 90 days of the invoice date, or if Client has an open aggregate account balance of more than \$10,000, whichever is less, HDG may suspend services under this Agreement by providing 7 days written notice to Client. HDG shall have no liability because of such suspension of services. If either party to this Agreement suspends services for more than 30 consecutive days, Client agrees to compensate HDG for services performed prior to notice of such suspension, and when the Project is resumed, compensate HDG for costs incurred during the interruption and resumption of services. Client further agrees to equitably adjust HDG's schedule and fees for the remaining services.

Termination of Services

Either party may terminate this Agreement upon not less than seven days written notice should the other party fail to substantially perform in accordance with the terms of this Agreement through no fault of the terminating party. Client may terminate this agreement for its convenience and without cause by providing not less than seven days written notice. If Client terminates this Agreement for its convenience and without cause, Client agrees to compensate HDG for services performed prior to the termination, together with Reimbursable Expenses and Authorized Additional services.

Ownership of Documents

HDG retains the ownership of documents prepared by us as Instruments of service. Upon payment of outstanding invoices related to this Agreement, Client is granted a non-exclusive, non-revocable



license to use the documents, or copies of the documents, created during the performance of HDG's services for reference, marketing and operation of the project. However, HDG retains the exclusive copyright to the plans, designs and information contained on the documents and all other use of the documents is expressly prohibited except when granted, in writing, by HDG. Client agrees to defend and hold HDG harmless from any claim arising from the alleged damages as a consequence of re-use or unauthorized use of the documents. If HDG provides any documents in digital format, at Client's direction, HDG cannot and does not represent, warrant or take any responsibility for the proper operation, compatibility or use of any third party software products or the media on which the documents are transmitted, including but not limited to software, memory devices or transmission by electronic mail.

Credit

Client agrees to give HDG proper credit for its professional services in Client's official communications, published articles, and temporary project identification signage.

Risk Allocation and Indemnity

HDG is responsible only for the Scope of Services authorized in this Agreement. Client may choose to modify HDG's deliverables at Client's risk. Client agrees to defend, indemnify and hold HDG harmless for damages, which may occur as a result of modifications made to our deliverables by others without our authorization, or for damages, which may occur because of the improper or negligent work of others.

Client agrees to indemnify and hold HDG harmless for any delay in the performance or progress of the project, or for any costs or damages sustained by Client resulting from such delay caused by any act or neglect by Client or Client's representatives, or by any third party acting on Client's behalf, or by changes ordered in the project as a result of any regulatory authority, or riot or civil commotion, or by any other cause beyond HDG's control. In the event of such delay, HDG will proceed with due diligence to alleviate the delay and continue the performance of its obligations under this contract. Client further agrees to indemnify and hold HDG harmless from delays or losses experienced by Client or others resulting from the discovery of concealed conditions, which require additional professional services, disposal, mitigation, or other remedial action. Client also agrees to indemnify and hold HDG harmless from delays or losses experienced by Client or others, which result from the discovery of hazardous wastes, and contaminants or pollutants, which require remedial design, mitigation, or other remedial action. When such discovery warrants the need for additional professional services by HDG, those services will be considered additional services.

HDG agrees to indemnify and hold harmless the Client against damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the negligent performance of HDG and its sub consultants.

Limitation of Liability

Client agrees to limit any claim made against HDG to the amount of compensation actually paid to HDG under this Agreement, or \$25,000, whichever is less. This limitation of liability applies to all claims including, breach of contract, torts or any other theory.

Insurance

HDG maintains General Liability, Worker's Compensation, Automobile Liability and Professional Liability Insurance at all times. Certificates of Insurance are available on request.

Waiver of Subrogation

Both parties to this Agreement waive the right of subrogation for damages covered by property insurance.



Quantity and Cost Opinion

HDG has no control over the cost of labor, materials, and equipment or the services of others. HDG provides quantity summaries and opinions of probable cost based on its professional judgment, familiarity with the construction industry, and on recent, comparable bidding results. Consequently, HDG does not guarantee the accuracy or thoroughness of its quantity summaries or opinions of probable cost. HDG approximates certain quantities and/or costs for Client's convenience. The Contractor is responsible for determining actual quantities and providing sufficient labor, services, equipment, and materials to complete the work as drawn and specified.

Construction Phase Limitations

HDG will not supervise, direct, or control the Contractor's work. HDG has no authority or responsibility for the methods, techniques, or sequencing of construction, or for the safety or welfare of the Contractor's forces. Accordingly, HDG does not guarantee the performance of the Contractor. HDG will provide Certification or other opinions of the Contractor's work based on HDG's observations and data supplied to us by the Contractor. Client acknowledges that HDG will not make continuous or exhaustive observations of the work and that HDG's recommendations for preliminary acceptance of partially or substantially completed work do not assure the final acceptance of work that may, subsequently, found to be defective.

Third Party Approvals

HDG will work diligently to help Client secure approvals from the appropriate regulatory authorities related to the services specified in this Agreement. However, HDG cannot guarantee the approval of the project by any regulatory agency or third party. Client agrees to compensate HDG for our professional services regardless of the outcome of Client's applications for approval by others.

Dispute Resolution

Both parties agree to submit disputes arising out of this Agreement or relating to the services outlined in the Agreement to non-binding mediation with a mutually agreed upon mediator before initiating any litigation. Demand for mediation shall be made by written request to the other party. A party shall make a demand for mediation within a reasonable time after a claim or dispute arises, and both parties agree to mediate in good faith. Mediation fees shall be shared equally.

In the event that mediation does not resolve the dispute(s) within 90 days of demand, either party may pursue its rights through litigation in a court of appropriate jurisdiction. In any proceeding following unsuccessful mediation, the substantially prevailing party shall be entitled as part of any money judgment, in addition to such other relief as may be granted, to a reasonable sum for reimbursement of attorneys' fees and costs.

Choice of Law

This Agreement is governed by the laws of the County of DuPage and the State of Illinois.

Authorization

If HDG is authorized to commence and/or continue providing services, either orally or in writing, prior to the execution of this Agreement, such authorization will be deemed an acceptance of this Agreement. If so authorized, Client agrees to compensate HDG for such services in accordance with these terms and conditions as though this Agreement were fully executed by both parties.

Extent

This contract constitutes the entire agreement between HDG and Client. It supersedes all previous written or oral understandings. It can be supplemented, or amended, only by the execution of a new written agreement.



November 2, 2017
Village of Manteno - The Square on Second, Phase 2
Page 6

PART EIGHT: ACCEPTANCE

Please sign and return this Agreement. A countersigned agreement will be returned to you.

Accepted: 
Chris LaRocque, Village Administrator
Village of Manteno, Illinois

Accepted: 
Mark E Underwood, Principal
Hitchcock Design Group