

CONSULTING AGREEMENT

THIS AGREEMENT, made and entered into on this 18th day of June, 2012, by and between **JACKSON COUNTY, MISSOURI**, hereinafter called the "County" and **HOEFER WYSOCKI ARCHITECTS, LLC**, 11460 Tomahawk Creek Parkway, Suite 400, Leawood, Kansas 66211, hereinafter called "Consultant".

WITNESSETH:

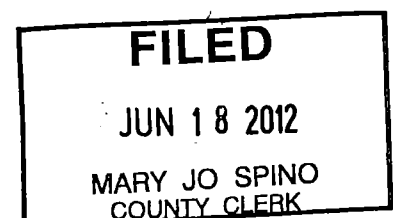
WHEREAS, by Request for Qualifications No. 55-12, the County did solicit the submission of qualification from firms interest in providing architectural and engineering facility assessment to the County; and,

WHEREAS, Consultant has agreed to perform consulting services and assistance to the County, for the facility assessment of the Linwood Shopping Center in Kansas City, Missouri, in accordance with the terms, conditions, and covenants as set forth in this Agreement, and as authorized by the County Legislature through its Resolution 17895; and,

WHEREAS, Consultant and County have agreed to be bound by the provisions hereof,

NOW, THEREFORE, in consideration of the foregoing and the terms and provisions herein contained, County and Consultant respectively promise, covenant, and agree with each other as follows:

1. Consultant shall provide a comprehensive assessment of the architectural, structural, mechanical, plumbing, and electrical systems of the Linwood Shopping Center, as is more fully described in Consultant's proposal attached hereto as Exhibit A,



and incorporated herein by reference.

2. Consultant shall work as an independent contractor and not as an employee of County. Consultant shall be subject to the direction of County only as to the result to be accomplished and not as to the means and methods for accomplishing the result. Consultant shall report all earnings received hereunder as gross income, and be responsible for its own Federal, State and City withholding taxes and all other taxes, and operate its business independent of the business of County except as required by this Agreement.

3. County shall pay Consultant for services rendered under this Agreement in an amount not to exceed \$28,000.00, payable in a lump sum due at the conclusion of this engagement. Consultant shall be entitled to reimbursement for its reasonable and necessary expenses under this Agreement in an additional amount not to exceed \$2,240.00.

4. This Agreement shall be effective as of May 14, 2012, and terminate on August 31, 2012. Timely performance of all duties provided herein is of the essence of this Agreement. Consultant shall submit a report of its findings to the County no later than June 7, 2012.

5. Consultant or County may terminate this Agreement by giving seven days written notice to the other party. Termination of this Agreement shall not constitute a waiver of the rights or obligations which County or Consultant may be entitled to receive or be obligated to perform under this Agreement. Should this Agreement terminate, all books, brochures, fliers, lists, and all other County materials must be delivered and returned by Consultant to County within three days of the demand of County.

6. Consultant promises, covenants, and agrees, in addition to all other provisions herein, that during the term of this Agreement, it shall not assign any portion or the whole of this Agreement without the prior written consent of County.

7. If any covenant or other provision of this Agreement is invalid or incapable of being enforced by reason of any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect and no covenant or provision shall be deemed dependent upon any other covenant or provision unless so expressed herein.

8. This Agreement shall be governed by the laws of the State of Missouri.

9. This Agreement incorporates the entire understanding and agreement of the parties.

(Signature page to follow)

IN WITNESS WHEREOF, the parties hereto have signed and executed this Agreement on the date first above written.

HOEFER WYSOCKI ARCHITECTS, LLC

JACKSON COUNTY, MISSOURI

By 

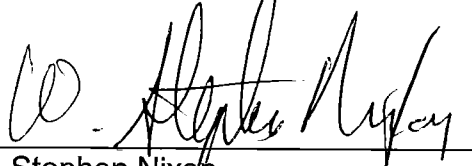
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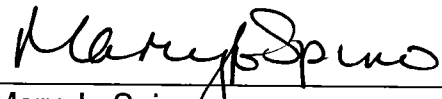
Federal I.D. No. 36-495388

Michael D. Sanders
County Executive

APPROVED TO FORM:

ATTEST:


W. Stephen Nixon
County Counselor


Mary Jo Spino
Clerk of the County

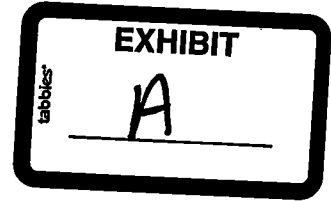
REVENUE CERTIFICATE

I hereby certify that there is a balance otherwise unencumbered to the credit of the appropriation to which this contract is chargeable, and a cash balance otherwise unencumbered in the treasury from which payment is to be made, each sufficient to meet the obligation of \$30,240.00 which is hereby authorized.

May 31, 2012
Date


Director of Finance and Purchasing
Account No. 001-5101-56080

51012012022



May 10, 2012

Barbara J. Casamento
Department of Intergovernmental Operations and Communications
415 East 12th Street, 2nd Floor
Kansas City, Missouri 64106

**Re: AE Services Letter Agreement for Facility Assessment
Linwood Shopping Center – Phase I**

Dear Barbara,

Hoefler Wysocki Architects, LLC (HWA) is pleased to provide this Letter Agreement for Architectural and Engineering Services for the Facility Assessment of the Linwood Shopping Center in Kansas City, Missouri. The comprehensive AE Services include Architectural, Structural, Mechanical, Plumbing and Electrical services. Civil, Landscape and Environmental services will not be provided for this phase of the work. The purpose of this assessment will be to determine the viability and anticipated renovation cost for facility renovations associated with building's reuse for an alternative purpose. A report will be produced that outlines required renovation work with anticipated costs for the work. Once Phase I of the work is complete, an additional proposal can be developed to implement the required renovation work.

EXISTING CONDITION

The existing facility is located at Tracks II, IV, VI and VII, MOONEY PLACE, a subdivision in Kansas City, Jackson County, Missouri, according to the record plat thereof. The approximate area of the building is 49,000 sq. ft., with a parking lot that has the capacity of approximately 300 vehicles and with service areas for deliveries.

ANTICIPATED SCOPE OF SERVICES

Our team will be responsible for field verification of the existing building and site to develop a base floor plan, roof plan, site plan and building elevations. These plans will illustrate location and capacity of existing equipment, including but not limited to HVAC units, specialty building equipment and utility service items. We will develop a facility assessment that includes the following items:

1. Building enclosure, including roofing, flashings and exterior walls and window systems.
2. Building requirements to remove existing interior build-out, in preparation of renovation.
3. Structural review to determine general deficiencies that would require repair/replacement if the building was renovated.
4. Assessment of building engineering systems to determine age, condition and capacity. Evaluation of potential future needs and recommendation for upgrades or replacement of systems to meet those needs will be provided.
5. Assessment of building utility connections to determine adequacy of services to serve future renovation needs.
6. Evaluation of site conditions to identify repair needs.

11460 Tomahawk Creek Parkway, Suite 400
Leawood, Kansas 66211

Phone: (913) 307-3700
Fax: (913) 307-3710

Hoefler Wysocki Architects, LLC



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We will meet with staff throughout the assessment process and assist with defining specific needs that must to be met for the renovation. A final report will be prepared that includes identification of renovation work and the probable costs associated with the work.

Identification and recommendations associated with hazardous materials will be completed under separate contract and will not be a part of this scope of services.

The County will provide drawings of the existing facility that illustrate both the building and site.

FEE PROPOSAL

Based upon our understanding of the Phase I work, we propose a fixed fee of \$28,000 for the project. Should this scope change for the project, the Client and the Architect shall negotiate additional fees for the change in scope.

REIMBURSABLE EXPENSES

In addition to the project fees, project expenses (reproductions, plots, LDT, copies, postage/deliveries, travel, mileage, electronic media, etc.) will be billed at cost plus 10% to cover administrative expenses. Excluding bid sets, we estimate expenses to be between 4% and 8% of the AE Fee.

On the pages that follow are our Standard Terms and Conditions. Your signature below will allow us to begin work on this Project. If you prefer, we can use this Letter Agreement simply as a notice to proceed, and supplement/replace it with a formal AIA contract at a later date.



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Terms and Conditions to Design Services Letter Agreement by and between the Jackson County Department of Intergovernmental Operations and Communications and Hoefer Wysocki Architects LLC (HWA) for AE Design Services for the Facility Assessment of the Linwood Shopping Center.

Scope of Work: The scope of work for this Project has been defined in this Letter Agreement. If the Client requests tasks that are not normal and customary for the work contemplated, HWA will notify the Client in writing that HWA considers these tasks as additional services. The Client agrees to promptly, and in good faith, negotiate a reasonable fee for these services prior to the performance of such services. HWA shall have no liability to the Client or any third party with regard to the non-performance of such services prior to completing negotiations on the scope of work and fees. HWA will include a 10% administrative mark-up for Additional Services performed by HWA's Consultants.

Schedule: HWA is prepared to initiate these services described herein upon your execution of this Letter Agreement.

Hourly Rates: Hourly rates for HWA for the Calendar Year 2012 are as follows:

<u>HWA Personnel</u>	<u>Hourly Rate</u>
Principal	\$200.00
Sr. Project Manager	\$155.00
Project Manager / Senior Designer	\$135.00
Sr. Project Architect / Interior Design Director	\$125.00
Project Architect / Arch. Designer	\$115.00
Architect / Interior Designer (NCIDQ)	\$95.00
Architect Intern / Interiors Intern	\$85.00
Administrative	\$70.00

Adjustments to these rates are made on a calendar year basis, are rounded to the nearest whole dollar and average about 5% per year or the increase in the CPI rate, whichever is greater.

Reimbursable and Project Expenses: In addition to the project fees, project expenses (reproductions, plots, LDT, copies, postage/deliveries, travel, mileage, electronic media, etc.) will be billed at cost plus 10% to cover administrative expenses. Excluding bid sets, we estimate expenses to be between 4% and 8% of the AE Fee.

HWA will also implement a surcharge of 1% of the gross AE Fee to cover the cost of miscellaneous office supplies and media necessary to facilitate the completion of the project's instruments of service.

Access to Site: The Client agrees to provide HWA with right-of-access to the project site and improvements to conduct required investigations during the design phase.



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Permits and Approvals: Not Applicable.

Opinions of Probable Cost: The Client understands that HWA has no control over costs or the price of labor, equipment or materials, or over the Contractor's method of pricing. If requested, HWA, as an additional service, will provide opinions of probable cost using a third party estimating consultant and/or based on HWA's qualifications and experience with the building type and market factors. HWA makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs. It is specifically agreed that HWA does not guarantee construction cost estimates, construction schedules or the estimating work of any third party involved in the Project. HWA shall be compensated as an additional service for all time spent to review, redesign and incorporate revisions due to bids or actual costs exceeding the Client's budget.

Hazardous Materials: Hazardous Materials identification or abatement documentation are not a part of our services. The Client shall advise HWA of any known or suspected hazardous substances on or around the project site. If HWA or other party observes or suspects the existence of hazardous materials during the performance of its services, HWA may, as its option and without liability for consequential or any other damages, suspend services and notify the Client of the condition. If services have been suspended, they will be resumed only after the Client obtains a written report from a qualified examiner that the site is free and clear of hazardous materials in accordance with applicable laws and regulations.

Standard of Care: Services performed by HWA under this Agreement will be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the same locale. No other warranty, expressed or implied, is made or intended by the proposal for professional services or by furnishing oral or written statements or documentation.

Claims for Consequential Damages: The Architect and the Client waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with this Agreement.

Insurance: HWA carries Workers Compensation and General Liability Insurance. Certificates for such policies are available upon request. Within the limits and conditions of such policies, HWA agrees to indemnify and save Client harmless from and against loss, damage, injury or liability to the extent caused by the negligent acts of HWA, its employees, officers and agents.

HWA shall not be responsible for loss, damage, injury or liability beyond the amounts, limits and conditions of such insurance. HWA shall not be responsible for loss, damage, injury or liability arising from any acts by the Client, its staff, consultants or other third parties who are not employees of HWA.



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Defects in Service: The Client shall promptly report to HWA any defects or suspected defects in HWA's work or service of which the Client becomes aware, so that HWA may take measures to minimize the consequences of such a defect. The Client agrees to require a similar notification requirement on all Project Contractors and shall require all subcontracts at any level to contain a like requirement. If prompt notice by any of the above parties should have been but was not provided, HWA shall not be liable for the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given.

Limitation of Liability: If the Client becomes aware of errors or omissions in the Contract Documents, then the Client shall promptly notify HWA in writing. To the extent the errors or omissions are those of HWA or its consultants, HWA agrees to provide necessary design and/or construction administration services to address the errors or omissions with said services provided at no additional charge to the Client.

If any necessary item or component of the Project is omitted from the Contract Documents provided by HWA, and that omitted item or component is due to an HWA error or omission, Client agrees that HWA's liability shall be limited to the increased cost (premium) of adding the omitted item or component as compared to the cost had the item or component been included in the Contract Documents at the time of the bid. Client agrees that HWA will not be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the Project.

If any item or component of the Project is constructed and is later found to have been designed or constructed due to errors or omissions by HWA or its consultants, then HWA shall determine whether the item or component needs to be modified, changed or removed to assure no loss of quality to the Client. If Architect determines that the item or component needs to be modified, changed or removed, then HWA's liability shall be limited to the net increase in costs incurred by Client in tearing out or removing the item or component and replacing same with a new item or component redesigned by HWA.

To the full extent permitted by law, and notwithstanding any other provisions of this Agreement, the Architect shall be liable only for such losses, costs, expenditures or damages caused by the errors, omissions, fault, or breaches of contract by the Architect or the Architect's Consultants which exceed a cumulative total of one percent (1%) of the Project construction costs. The total liability, in the aggregate, of the Architect and its officers, members, directors, partners, employees, and Consultants, and any of them, to the Client and anyone claiming by or through the Client, for any and all claims, losses, costs or damages whatsoever resulting from the Architect's Services under this Agreement shall not exceed the Architect's fee for this Project. Furthermore, Client agrees that it is intended that this limitation of liability apply to any and all liability or causes of action.

Information Provided by Others: HWA shall indicate to the Client the information needed for rendering of services hereunder. The Client shall provide to HWA such information as is available to the Client and the Client's consultants and contractors and HWA shall be entitled to rely upon the accuracy and completeness thereof. The Client recognizes that it is not within the HWA's scope of services to assure the accuracy, completeness and sufficiency of such information. Accordingly, the Client agrees to indemnify



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and hold HWA and HWA's subconsultants harmless from any claim, liability or cost for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by the Client to HWA.

Value Engineering: Value Engineering or Value Management services are not included in the services provided under this Agreement. If the Client retains the services of a Value Engineer (VE) or allows the Construction Manager or General Contractor or any of his subcontractors to function as a VE to review the Design or Construction Documents prepared by HWA for this project, it shall be at the Client's sole expense and shall be performed in a timely manner so as not to delay the orderly progress of HWA's services. All recommendations of the VE shall be given to HWA for its review and adequate time shall be provided for HWA to respond to these recommendations. HWA shall be compensated as an additional service for all time spent involved in VE activities including generation of VE ideas, meetings, review of VE recommendations presented by others, organizing/documenting VE information and incorporating those VE ideas accepted by the Client into the documents. If HWA objects to any recommendation of the VE, HWA shall so state in writing to the Client along with the reasons for objecting. If the Client insists on incorporating into the Design or Construction Documents any changes to which HWA has objected to in writing, the Client agrees to indemnify and hold HWA harmless from any damage, liability or cost which arise in connection with or as a result of the incorporation of such design changes insisted upon by the Client.

Unauthorized Changes: In the event the Client consents to, allows, authorizes or approves of changes to the Construction Documents, and these changes are not approved of by HWA in writing, the Client agrees that such changes and the results thereof are not the responsibility of HWA. Accordingly, the Client agrees to release HWA from any liability arising from the construction, use or result of such changes. In addition, the Client agrees to indemnify and hold HWA harmless from any damage, liability or cost arising from such changes, except only those damages, liabilities and costs arising from the sole negligence or willful misconduct of HWA.

Dispute Resolution: In the event the parties to this Agreement are unable to reach a settlement of any claim or dispute arising out of the services under this Agreement, such disputes or claims shall, as a condition precedent to litigation, be submitted to non-binding mediation. The Client agrees to require a similar mediation agreement with all Project Contractors and shall require all subcontracts and suppliers at any level to contain a like requirement providing for mediation as the primary method for dispute resolution between the parties.

Termination: This Agreement may be terminated by the Client or HWA should the other party materially fail to perform its obligations hereunder. In the event of termination for any reason whatsoever, the Client agrees to pay HWA for services provided and reimbursable expenses incurred by HWA up to the time notice is either sent by HWA or received by HWA plus reasonable termination expenses incurred as a result of termination.



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TERMS AND CONDITIONS FOR THE COLLECTION OF PROFESSIONAL SERVICE FEES

Invoices and Payments: Professional services and reimbursable expenses will be invoiced monthly. Payment is due upon receipt of the invoice. Payments not received within 30 calendar days of the invoice date are considered past due. Payment is not dependent on the success or failure of the project, project approvals or denials, or project feasibility.

Interest: If payment is not received by HWA within 30 calendar days of the invoice date, the Client shall pay interest as 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 balance.

Suspension of Services: If the Client fails to make payments within 28 calendar days of the invoice date or otherwise is in breach of this Agreement, HWA may, at its option, suspend performance of services upon five (5) calendar days' notice to the Client. HWA shall have no liability whatsoever to the Client or any third party for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client. Resumption of services will occur when payment in full is made for (1) professional services provided up to the time notice was given, (2) for all reimbursable expenses through time of notice, (3) interest due in accordance with these terms and conditions and (4) any other breach of this Agreement so noted is cured.

Collection Costs: In the event legal action is necessary to enforce the payment provisions of this Agreement, HWA shall be entitled to collect from the Client any judgment or settlement sums due, reasonable attorney's fees, court costs and expenses incurred by HWA in connection therewith and, in addition, the reasonable value of HWA's time and expenses spent in connection with such collection action, computed at HWA's prevailing fee schedule and expense policies.

EXTENT OF AGREEMENT

Entire Agreement: This document represents the entire Agreement between the Client and Hoefler Wysocki Architects, LLC (HWA) and takes precedence and supercedes any previous proposal, contract, purchase order, requisition, notice to proceed or other like document and any verbal discussions conversation regarding HWA's services.

HWA: The use of "HWA" within this document shall include HWA's consultants for the Project.

Severability: If any of the provisions contained in these terms and conditions are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired.



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Assigns: Neither the Client nor HWA may delegate, assign, subwrite or transfer its duties or interest in this Agreement without the written consent of the other party.

Notice to Proceed: HWA cannot commence work on this project without a signed Agreement between the Client and HWA in place.

Best regards,
Hoefer Wysocki Architects, LLC
Intergovernmental

A handwritten signature in cursive script, appearing to read 'Ken Henton'.

Ken Henton AIA, LEED AP
Principal

Agreed,
Jackson County – Department of
Operations and Communications



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STATEMENT OF INTENT

If it is the desire of the Client to use HWA and work needs to commence prior to having a signed Agreement in place, your signature below may be used to release HWA to start on the Project. Therefore, it is the intent of the Client to come to agreement with HWA to perform the scope of services as described in this document. Accordingly, the Client agrees to pay HWA for their services on the project at HWA's and HWA's consultants standard hourly rates and under the terms and conditions contained in this proposal until such time as a final agreement is in place or until HWA is notified that its services are no longer needed. Invoices will be billed on a bi-monthly basis and all payments shall be received no later than 14 days after the invoice date.

I have read the Agreement and the Statement of Intent and accept these terms and conditions stated herein pending a final agreement with HWA:

Agreed,
Jackson County – Department of Intergovernmental Operations and Communications

Client
Title

Date