



Via email (Brian.Schadt@Davenportiowa.com)

June 2, 2023

Mr. Brian Schadt
City Engineer/Deputy Director Public Works
CITY OF DAVENPORT
1200 E 46th Street
Davenport, IA 52801

**RE: AGREEMENT FOR INVESTIGATIVE SUPPORT SERVICES
324 MAIN STREET COLLAPSE INCIDENT
DAVENPORT, IA**

Dear Mr. Schadt:

Scott G. Nacheman/White Birch Group, LLC (WBG) appreciates the opportunity to submit this proposal to The City of Davenport to provide professional services in connection with the above-referenced matter.

I. PROFESSIONAL SERVICES

WBG will be retained by The City of Davenport (CLIENT) to provide professional consulting services to you in connection with the incident referenced above. We understand that we will be working directly for your agency in this matter.

II. SCOPE OF SERVICES

The professional services we currently expect to provide include the following:

- A. Review documents and evidence which are pertinent to the matter and are made available to WBG.
- B. Review any report(s) that may be issued by the parties in this matter and provide comments, assessments and opinions thereon;
- C. Perform site evaluation(s) or examination(s) as agreed upon by you;
- D. Perform a technical analysis related to the conditions encountered;
- E. Recommend additional invasive and non-invasive investigative tests, as required;

- F. Develop testing and/or analysis protocols, as required;
- G. Develop evidentiary and chain of custody protocols, as required;
- H. Develop evidentiary storage protocols, as required
- I. Assist during any discovery related to this matter, and assist in formulating initial and supplemental formal document requests necessary for WBG's evaluation, and to assist you in developing lines of questioning pertinent to the issues in the matter for use during depositions, interrogatories, and/or trial;
- J. Attend depositions to assist you with gathering evidence pertinent to your matter as you may request;
- K. Prepare exhibits relating to our evaluation performed hereunder which you deem are necessary for trial, as well as other documents that you may deem necessary for trial;
- L. Issue our findings and conclusions in oral and/or report format, whichever may be requested;
- M. Provide expert witness testimony in deposition and/or other testimony relating to our work hereunder and surrounding issues; and
- N. Provide other services related to the matter referenced above as may be requested by you, and within the scope of our expertise.

III. CLIENT RESPONSIBILITY

Our contract will be with the CLIENT, who shall be responsible to:

- A. Provide all applicable and available documentation, reports, photographs, and other media that has been produced by all parties.
- B. Facilitate access to areas required for site visit and examination.
- C. Facilitate access to evidentiary storage locations.
- D. If deemed necessary, engage the services of an independent and qualified testing agency for materials evaluation.
- E. Procure suitable evidentiary storage facilities based on WBG recommendations.

IV. FEES

Our fee for this work will be billed on an hourly basis in accordance with current hourly billing rates for the professionals engaged in the Assignment. Scott G. Nacheman will act as Project Manager and shall bill at his current rate of \$370USD per hour. Time shall be billed in one-tenth of an hour increments. Due to the unknown nature of the services required, we cannot provide you with an estimate of the total fees for this matter. However, if requested a phased budget can be prepared for various stages of WBG's work, which we will not exceed without your authorization.

- A. Please be aware that our standard hourly rates are reviewed and adjusted annually on January 1st of each year, and accordingly any rates quoted herein are applicable until the new rates become effective.
- B. Attendance at any in-person deposition, trial, or other testimony is billed at a minimum of eight hours per day.
- C. Out-of-office travel time is billed at standard hourly billing rates.
- G. In addition to the above, we shall be reimbursed for all matter-related out-of-pocket expenses at our cost.
- H. If, subsequent to our retention in this matter, we receive a subpoena for testimony or documents related to this engagement, your Client will be liable for all of our expenses and our time in responding to such subpoena, including the time to testify at deposition and/or trial, regardless of whether the subpoena is served by your Client or a third party and regardless of whether the subpoena only seeks our testimony as a fact witness. Our time will be billed at our standard rates in place at that time of our services.
- I. WBG shall invoice you on a monthly basis, and payments are due within 30 days of receipt of our invoice.

V. TERMS AND CONDITIONS

White Birch Group, LLC Standard Terms and Conditions, which are attached hereto, are made a part of this agreement.

- A. We agree that we will keep confidential and privileged any and all information related to the matter, including any facts obtained, opinions rendered, or methodologies employed, except to the extent we are required to disclose any such information by law or by the order of a court of competent jurisdiction. You should be aware that we have similar confidentiality clauses in our engagement letters with other Clients and accordingly, you agree to advise us immediately of any attempt by any parties in this matter to obtain a court order requiring our disclosure of confidential information regarding other Clients.
- B. The working papers and other materials created by us during this engagement are the property of WBG. We may keep one archival set of our working papers from the engagement. Any documents in our possession belonging to you will be returned to you upon request at the conclusion of our engagement.
- C. During the course of our engagement in assisting you in the matter, it may be necessary for us to prepare written reports that support our conclusions. These reports are to be used only in connection with the referenced matter and may not be published or used in any other manner without the written consent of this firm. You acknowledge that no reliance shall be placed on draft reports, conclusions, or advice, whether oral or written, issued by us as the same may be subject to further work, revision, and other factors which may result in such drafts being substantially different from any final report or advice issued.
- D. You accept and acknowledge that we have not made any warranties or guarantees of any nature with respect to the results, outcome or final developments in this matter or with respect to the economic, financial or other results which you may experience as a result of the provision of our services. We have not provided any legal advice to anyone related to this matter, nor are we in control of the preparation and/or management of any legal matters. All parties to this agreement understand that our involvement is limited to such actions as may legally be undertaken by the firm in its capacity of providing services in this engagement.
- E. WBG has made a thorough search for any potential conflicts of interest with respect to this engagement, and none have been discovered. You agree, however, that we will be notified immediately in the event that parties to this dispute change in any manner, or if any new party or parties should become involved with this matter in the future.
- F. This agreement and all transactions contemplated hereby, as well as all of the rights and duties of the parties arising from or relating in any way to the subject matter of this contract, or any transaction contemplated hereby, and the entire relationship between the parties, shall be interpreted and construed in accordance with, and the enforcement hereof shall be governed by, the laws of the State of Illinois and any applicable federal laws. In any controversy and/or litigation between any parties to this agreement, venue of

any litigation and/or arbitration shall lie solely and exclusively in Cook County, Illinois, unless mandatory venue rules or laws provide that venue must lie elsewhere.

- G. Disputes arising under this agreement (including the scope, nature, and quality of services to be performed by us, our fees, and other terms of the engagement) shall be submitted to mediation. A competent and impartial third party, acceptable to both parties, shall be appointed to mediate, and each disputing party shall pay an equal percentage of the mediator's fees and expenses. A demand to mediate by either party hereto must be made in writing to the other and served via U.S. first class certified mail. A mediator must be selected within thirty (30) days after such notice is served. No suit or arbitration proceeding shall be commenced under this agreement until at least 60 days after the mediator's first meeting with the involved parties. Any mediator selected by the parties shall be governed by the Rules of Mediation of the American Arbitration Association then in effect at the time the demand for mediation is made. If the dispute requires litigation, the court shall be authorized to impose all defense costs against any non-prevailing party.

VI. TOTAL AGREEMENT

This Agreement, consisting of the pages herein and the *White Birch Group, LLC Standard Terms and Conditions* constitutes the entire Agreement between The City of Davenport and White Birch Group, LLC for this Assignment and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

We look forward to an opportunity to be of service, and to your favorable response to our proposal. If you wish to proceed with this proposal, and this letter correctly expresses the nature, extent and terms of our engagement, please sign the enclosed copy and return it along with the retainer fee to us. If you have any questions, we would be happy to discuss them with you.

Sincerely,


WHITE BIRCH GROUP, LLC



Scott G. Nacheman, MSc.Eng., AIA
President

ACCEPTED AND AGREED TO:

CITY OF DAVENPORT



SIGNATURE

CORRIN SPECK, CITY ADMINISTRATOR

PRINTED NAME/TITLE

2 JUNE 23

DATE

White Birch Group, LLC ("WBG") Standard Terms and Conditions

1. **AGREEMENT.** These Standard Terms and Conditions ("Standard Terms") and the accompanying proposal (the "Proposal") and any other appendices thereto (together, the "Agreement"), constitute the entire agreement of the parties regarding the assignment which is the subject of the Proposal (the "Assignment") and the services to be provided by WBG in connection therewith (the "Services"), and supersede all prior negotiations, agreements and understandings with respect thereto. The parties may only amend the Agreement by a writing signed by the party sought to be bound thereby.
2. **STANDARD OF CARE.** The Services shall be provided in accordance with the professional standards of skill and care generally exercised by other professionals providing services of similar type and nature in the same locale and under similar circumstances and conditions to those presented pursuant to this Agreement (the "Standard of Care"), and without any warranty, express or implied.
 - 2.1 CLIENT understands and agrees that WBG's professional judgment must rely on the facts learned during performance of the Scope of Services, and evaluation of documentation and information provided by the CLIENT and others. WBG assumes no responsibility or liability for the accuracy or completeness of such. WBG shall have the right to rely upon all such data and information. CLIENT acknowledges that WBG's data collection is limited to the immediate area that is evaluated, tested and/or observed.
 - 2.2 Consequently, CLIENT agrees that it shall not bring a claim against WBG and agrees to defend, indemnify and hold WBG harmless from any claim or liability for injury or loss allegedly arising from errors, omissions, inaccuracies or incomplete information in reports, data, studies, plans, specifications, documents or other information provided to WBG by CLIENT or others, or based upon facts subsequently learned, regarding conditions outside of evaluation/testing locations, or which were not part of the immediate area(s) explicitly evaluated by WBG.
 - 2.3 WBG will not be responsible for any interpretations or recommendations generated or made by others, which are based, in whole or in part, on WBG's data, interpretations or recommendations. CLIENT waives any claim of liability against WBG regarding any claim for injury or loss allegedly arising from errors, omissions, or inaccuracies in documents and other information in any form provided to WBG, including such information that becomes incorporated into WBG Instruments of Service, as defined below.
3. **DOCUMENTS.** All reports, notes, drawings, specifications, data, calculations, presentations, analyses and other documents prepared or provided by WBG (the "Instruments of Service") are instruments of WBG's service that shall remain the property of WBG. WBG shall retain all common law, statutory and other rights, including copyrights, in the Instruments of Service. CLIENT shall have a limited and conditional license to use the Instruments of Service in accordance with the terms of the Agreement provided that WBG receives payment as required by the Agreement. CLIENT agrees not to use the Instruments of Service for marketing purposes or for assignments other than the Assignment without WBG's prior written permission and appropriate compensation to WBG as may be agreed by the parties. Any reuse or disbursement to third parties not in accordance herewith or

any revision, alteration or addition to the Instruments of Service by or through CLIENT without WBG's involvement and express authorization will be without liability to WBG or its consultants or any of their respective affiliates, officers, directors, owners, members, partners, principals, employees, representatives, independent professional associates and subconsultants (the "WBG Parties"). CLIENT shall, to the fullest extent permitted by law, hold harmless, defend and indemnify each of the WBG Parties from and against any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions, judgments, awards, penalties, fines, violations and damages whatsoever, including, without limitation, attorneys' fees and expenses (collectively, "Claims"), arising out of or resulting from: (i) the unauthorized reuse or disbursement of, or revision, alteration or addition to, the Instruments of Service by or through CLIENT, and (ii) WBG's right to use any CLIENT-provided information in connection with the Services, including, without limitation, claims for copyright infringement relating thereto.

4. **CONFIDENTIALITY.** In connection with this agreement, if the CLIENT or WBG (the "Receiving Party") comes into possession of any proprietary or confidential information of the other (the "Disclosing Party"), the receiving party shall use reasonable efforts to keep confidential all data and information which is identified as confidential in nature and furnished to the Receiving Party by the Disclosing Party. Should the documentation, data, or information be available within the public domain, was previously in the possession of the Receiving Party, or obtained from third parties outside of this Agreement without violating any of the provisions of this Agreement, such confidentiality requirements do not apply. Further, any documents required to be produced due to subpoena or court order shall not be subject to the terms of this section; however, every effort shall be undertaken to limit the scope and extent of documentation shared to only that required to be legally disclosed.
5. **HAZARDS.** The scope of the Services does not include any responsibility for detection, remediation, accidental release, or services relating to waste, oil, asbestos, lead, or other hazardous materials as defined by federal, state and local laws or regulations. Accordingly, to the fullest extent permitted by law, CLIENT shall hold harmless, defend and indemnify each of the WBG Parties from and against any and all Claims arising out of or resulting from any such hazardous materials encountered at the Assignment.
 - 5.1 If WBG personnel encounter or reasonably suspect the presence of hazardous materials or conditions, WBG will cease activity on the Assignment and notify the CLIENT. Mitigation of hazardous materials or conditions in conformance with applicable federal, state, and local laws or regulations shall be the responsibility of the CLIENT.
 - 5.2 When hazardous materials or conditions are identified by qualified third-party professionals, WBG will only perform work under conditions deemed safe by WBG personnel for their access. Costs associated with safety or security measures required by such conditions will be billed to the CLIENT. WBG is not responsible for the safety or security of other persons or property.
6. **CONSTRUCTION-PHASE SERVICES.** When construction-phase services are included in the scope of the Services, WBG's site visits shall be conducted solely to determine, in general, if the portion of the work observed is being performed in a manner indicating that, when completed, the work will be in general conformance with the designer's intent and such site visits shall not relieve any

other party from its responsibility for performing its respective portion of the work in accordance with applicable plans and specifications.

- 6.1 WBG is not a guarantor of the contractors' work; the contractors are solely responsible for the accuracy and adequacy of construction and for all other activities performed by the contractors, including the means and methods of construction; supervision of personnel and construction; temporary construction aids; safety in, on, and about the job site; and compliance with OSHA and all other applicable regulations. Unless explicitly stated in the Scope of Services, WBG's services do not include any review or observation of the adequacy of the contractor's safety measures, of safety conditions on the Assignment site, or of any means or methods of construction.
- 6.2 Review of contractor submittals, if included in the Scope of the Services, is not conducted for the purpose of determining the accuracy and completeness of details and dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the contractor, all of which remain the responsibility of the contractor performing the work to the extent required by the contract documents.
7. **COST ESTIMATES.** When required as part of the Services, WBG will review and furnish comments regarding estimates of probable cost but does not in any way guarantee that costs will not vary from any advice WBG provides. WBG does not have control over the cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices or performing the work.
8. **FORCE MAJEURE.** WBG will not be liable to CLIENT for delays in performing the Services or for direct or indirect costs resulting from such delays that may result from labor strikes, riots, war, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, acts or omissions of CLIENT or third parties, or any other cause beyond the reasonable control or contemplation of either party.
9. **RISK ALLOCATION.** To the fullest extent permitted by law, the total cumulative liability of WBG and its consultants for any and all Claims arising out of or in any way related to the Services or otherwise in connection with the Agreement or the Assignment from any cause whatsoever, including, without limitation, WBG's alleged negligence or other wrongful conduct, strict liability, breach of contract or indemnity, shall not exceed the lesser of, measured at the time any such Claims are finally settled, decided or otherwise adjudicated: (i) the payment received by WBG from CLIENT for the Services; or (ii) the available proceeds of WBG's professional liability insurance coverage. In no event shall WBG be liable to CLIENT for any indirect, incidental, special or consequential damages whatsoever (including, without limitation, lost profits or interruption of business) arising out of or related to the Services nor shall any officer, director, shareholder, partner, principal, member, owner or other representative of WBG have any personal liability under the Agreement or otherwise in connection with the Services and CLIENT hereby waives any and all claims hereunder against such parties.
10. **INDEMNITY.** CLIENT shall, to the fullest extent permitted by law, protect, indemnify, save harmless and defend each of the WBG Parties from and against all Claims arising out of or relating to any act or omission, negligent or otherwise, of CLIENT or its officers, agents, employees, contractors, consultants, or any other person or entity answering to CLIENT at any level in connection with the Assignment. WBG shall be entitled to recover from CLIENT attorneys' fees, costs, and legal expenses

incurred in connection with any action to enforce this indemnity obligation. CLIENT shall cause each contractor responsible for any construction of work designed or specified by WBG or otherwise responsible for any work or services relating to the Services to defend and indemnify the WBG Parties to the fullest extent permitted by law from and against all Claims relating to such contractor's work. CLIENT shall also cause each such contractor to name each of the WBG Parties as additional insureds on the contractor's commercial general liability insurance policy. These Standard Terms shall not be construed to require indemnification of WBG for its own negligence if not permitted by law, or to provide for any indemnification which would, as a result thereof, make the provisions of these Standard Terms void, or to eliminate or reduce any other indemnification or right which WBG has under applicable law.

11. **LIMIT OF LIABILITY.** CLIENT expressly agrees to limit the liability of WBG to CLIENT which arises directly or indirectly from WBG's acts, errors, or omissions, such that the total aggregate liability of WBG shall not exceed \$5,000.00 or WBG's total fee for the services rendered under this Agreement, whichever is greater. Neither WBG nor the CLIENT will be liable to the other for loss of profits or revenue, loss of use or other opportunity, loss of goodwill or other consequential, indirect or punitive damages.
12. **MISCELLANEOUS.** The laws of the state in which the Assignment is located shall govern the validity and interpretation of this Agreement. If any of provisions of this Agreement shall be finally determined to be invalid or unenforceable, in whole or in part, the remaining provisions hereof shall remain in full force and effect and be binding upon the parties. The language of the Agreement, including, without limitation, these Standard Terms, shall not be interpreted in favor or against either party as the drafter thereof. Any and all disputes arising from the Agreement or the Services shall be resolved through litigation in a court located in the City of New York, and CLIENT hereby submits to the jurisdiction of such court and waives all objections relating thereto. Any dispute involving entitlement to an amount in excess of Fifty Thousand Dollars (\$50,000) shall first be subject to non-binding mediation as a precondition to the commencement of legal proceedings. Such mediation shall be held in the City of Chicago and be conducted in accordance with the construction industry rules of the American Arbitration Association. Such mediation requirement shall not preclude WBG from timely enforcing its lien rights or delay either party from commencing litigation to preserve the right to timely assert claims. In the event litigation is commenced prior to mediation where mediation is required, the parties agree to seek a stay of the action pending the completion of mediation.
- 12.1 If WBG is called upon by CLIENT, or subpoenaed by any other person, to testify or produce records in an action at law, equity or arbitration, or in a pre-trial hearing or conference, as to any work or services performed by anyone in connection with the Assignment, CLIENT shall pay WBG for all time spent while testifying and preparing therefore and collecting, reviewing and producing such records in accordance with the rates set forth in the Agreement and for all costs and fees associated therewith.
- 12.2 Signatures to this Agreement may be signed by the CLIENT or the CLIENT's authorized representative. Signatures may be submitted by email and/or facsimile, and the signature so received shall have the same legal force as an original signature.

- 12.3 In the event this Agreement is not fully executed by both parties and WBG has commenced work at CLIENT'S authorization, CLIENT's authorization of work shall constitute consent to the terms of this Agreement and shall have the same binding effect as if signed by the parties.
- 12.4 All sections of this Agreement that may reasonably be interpreted or construed to survive termination of this Agreement, will survive termination, including, without limitation, Limit of Professional Liability, Payment Terms, Indemnification, Termination of Services, Disputes and Controlling Law, Data and Information, Evidence, Ownership of Instruments of Service.
- 12.5 Each of the parties has had an opportunity to negotiate the terms and conditions expressed herein; therefore, this Agreement will not be construed more strictly against either party as the drafter.
13. **COMPENSATION AND PAYMENT.** Unless otherwise noted in the Agreement, WBG shall bill the client on an hourly basis in one-tenth of an hour increments. WBG shall submit monthly invoices to CLIENT. CLIENT shall pay each invoice within thirty (30) calendar days of the date of the invoice. All invoices shall be paid in US Dollars with any applicable taxes applied. The CLIENT recognizes that time is of the essence with respect to payment of WBG's invoices, and that timely payment is a material part of the consideration of this AGREEMENT. CLIENT shall pay an additional charge of one percent (1%) of the amount of the invoice per month or the maximum percentage allowed by law, whichever is the lesser, for any payment received by WBG more than thirty (30) calendar days from date of invoice. If CLIENT reasonably objects to any sum charged, CLIENT shall notify WBG within fourteen (14) calendar days of invoice date and pay the remaining undisputed portion of the balance when due. The parties will negotiate in good faith as to any charges to which CLIENT so objects. In the event of a legal action brought by WBG against CLIENT for invoice amounts not paid, reasonable attorneys' fees, court costs, and other reasonable related expenses shall be paid to the prevailing party by the other party.
- 13.1 If payment of WBG's invoices by CLIENT is not maintained current, WBG may, upon fourteen (14) days' written notice to CLIENT, suspend performance of the Services until payments are brought current. If a suspension exceeds ninety (90) days, WBG may terminate the Agreement upon seven (7) days' written notice to CLIENT. WBG shall not have any responsibility or liability for any delays resulting from a suspension of the Services hereunder and all affected schedules shall be equitably adjusted upon any resumption of the Services.
- 13.2 CLIENT or WBG may terminate this Agreement should the other party breach a material term of the Agreement, including, without limitation, CLIENT's failure to pay for the Services in accordance with the terms of the Agreement. Such termination shall be effective upon fourteen (14) days' written notice to the breaching party unless the breaching party cures the breach within said notice period.
- 13.3 CLIENT may, upon fourteen (14) days' written notice, suspend or terminate the Services. In such event, CLIENT shall promptly pay WBG for all Services rendered and expenses incurred through and including the effective date of the termination, prior authorized commitments made by WBG on CLIENT's behalf, and shall reimburse WBG for costs it reasonably incurs as a result of the termination and close-out of the Assignment. Fees for such work will not exceed ten (10) percent of total fees incurred through the date of termination.

- 13.4 With the approval of CLIENT, which shall not be unreasonably withheld, WBG may employ suitably trained and skilled persons or firms under subcontract to perform any part of the said duties and obligations. These affiliated specialized consultants or other professionals retained as independent contractors shall be billed to CLIENT at rates consistent with other professionals of similar education and professional experience.
- 13.5 Subcontracted costs for requested and authorized third-party services such as materials testing, surveys, equipment rental, evidence storage facilities, etc., will be charged at cost plus 15%.
- 13.6 Reasonable and customary travel expenses including, but not limited to public transportation, mileage (at current IRS rate), tolls, airfare, hotel, car rental, fuel, daily MI&E per-diem, etc. shall be billed to the client at cost. Air travel under five (5) hours will be in coach class service, unless project conditions require WBG personnel to utilize premium seating due to availability or timing needs. Vehicle rental shall be billed at Full Size vehicle rates, unless conditions or availability require use of a different class of vehicle.
- 13.7 Other project expenses which are charged directly may include (but are not necessarily limited to) communications charges, consumable materials, outside laboratory fees, outside computer analytics charges, media reproduction, mailing and shipping charges, force protection, and special insurance. In addition, specialized equipment, used either in-house or in the field, is charged at an hourly rate. WBG will seek written approval from CLIENT before incurring these other direct project expenses.

END OF DOCUMENT

