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# MASTER CONTRACT

Between the

VILLAGE OF LA GRANGE AND HEUER & ASSOCIATES, P.C.

For

Village Engineer Services and Various Task Order Projects

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## MASTER CONTRACT

Between the

Village of La Grange and Heuer & Associates, P.C.

For Village Engineer Services and Various Task Order Projects

This contract (the "*Master Contract*") is dated as of [insert date] (the "*Effective Date*") and is by and between the Village of La Grange (the "*Village*") and Heuer & Associates, P.C. (the "*Consultant*").

In consideration of the mutual covenants and promises contained herein, the parties agree as follows:

### ARTICLE 1. THE SERVICES

1.1 Intent; Conflicts. It is the intent of the parties that this Master Contract govern the relationship of the parties. Specific terms related to a project will be contained in a task order as provided in Section 1.2. In the event of a conflict between the provisions of this Master Contract and any task order, then provisions of this Master Contract will apply and control.

1.2 Task Orders. The Consultant will perform services for the Village from time to time as set forth in written task orders issued by the Village on a project-by-project basis (the "*Services*"), provided, however, that any task order in an amount exceeding \$10,000 must be approved by the Village Board. A task order will be in the form generally as provided in Attachment A attached to and by this reference incorporated into this Master Contract (a "*Task Order*") and in final form acceptable to the Village and executed by the Parties. Each Task Order will include the Services to be performed under that Task Order (collectively a "*Project*").

1.3 Project Time. Each Task Order will include a time schedule for the Project (a "*Project Schedule*") including without limitation a date for completion of the Project (the "*Project Completion Date*").

1.4 Term; Extensions. This Master Contract commences on the Effective Date and terminates on December 31, 2010 unless terminated earlier pursuant to Article 8 of this Master Contract (the "*Term*"). All terms of this Master Contract, including without limitation pricing terms, are firm during the Term, unless a change is explicitly agreed to by the Village in a Task Order. The Parties may extend this Contract for two additional one-year periods (each an "*Extended Term*"). Pricing terms may be adjusted by agreement at the beginning of an Extended Term.

1.5 No Guarantee of Work; Other Contracts. This Master Contract does not guarantee that the Consultant will be awarded Projects by the Village, and the Village has no duty or obligation to award Projects to the Consultant. Also, the Village may enter into master agreements with other consultants, pursuant to which the Village may award work from time to time at the Village's discretion.

1.6 Responsibility of Consultant to Perform. The Consultant shall provide all personnel necessary to complete the Services. The Consultant must perform the Services with its own personnel and under the management, supervision, and control of its own organization unless otherwise approved by the Village in writing. All sub-consultants and supplies used by the Consultant in the performance of Services must be acceptable to, and approved in advance by the Village. The Village's approval of any sub-consultant or supplier will not relieve the Consultant of full responsibility and liability for the provision, performance, and completion of the Services in full compliance with, and as required by or pursuant to, this Master Contract and the relevant Task Order. All Services performed by any sub-consultant or supplier are subject to all of the provisions of this Master Contract and the relevant Task Order in the same manner as if performed directly by the Consultant. If any sub-consultant or supplier fails to properly perform any Services undertaken by it in compliance with this Master Contract or the relevant Task Order, then the Consultant, immediately on notice from the Village, must remove that sub-consultant or supplier and undertake the Services itself or replace the sub-consultant or supplier with a sub-consultant or supplier acceptable to the Village. The Consultant will have no claim for damages, for compensation in excess of the Compensation, or for delay or extension of the Project Schedule as a result of any such removal or replacement.

1.7 Financial Ability to Perform. Each time when executing a Task Order, the Consultant represents and declares that it is financially solvent, has the financial resources necessary, has sufficient experience and competence, and has the necessary capital, facilities, organization, and staff necessary to provide, perform, and complete the Project set forth in the Task Order in full compliance with, and as required by or pursuant to, the Task Order and this Master Contract.

## ARTICLE 2. COMPENSATION AND PAYMENT

2.1 Pricing Schedule. As compensation for the performance of the Services ("*Compensation*"), the Village will pay the Consultant the amounts set forth in Attachment C attached to and by this reference incorporated into this Master Contract (the "*Pricing Schedule*"). The Parties may agree to different or additional pricing terms in a Task Order ("*Project-Specific Pricing*"). Except for the Compensation and any Project-Specific Pricing, the Village will have no liability for any expenses or costs incurred by the Consultant..

2.2 Monthly Payment; Invoices. The Compensation will be paid in monthly installments. The Consultant must submit to the Village, on a monthly basis unless the Parties agree in a Task Order to a different schedule, a written invoice for payment for completed work. The Village may specify the specific day of the month on or before which invoices must be filed. Each invoice must be accompanied by receipts, vouchers, and other documents as necessary to reasonably establish the Consultant's right to payment of the Compensation stated in the invoice. In addition, each invoice must include (a) employee classifications, rates per hour, and hours worked by each classification and, if the Project is to be performed in separate phases, for each phase, (b) total amount billed in the current period and total amount billed to date and, if the Project is to be performed in separate phases, for each phase, and (c) the estimated percent completion of the Project and, if the Project is to be performed in separate phases, for each phase.

2.3 Taxes. The Compensation includes applicable Federal, State of Illinois, and local taxes of every kind and nature applicable to the services provided by the Consultant and all taxes, contributions, and premiums for unemployment insurance, old age or retirement benefits, pensions, annuities, or other similar benefits. The Consultant will never have a claim or right to claim additional compensation by reason of the payment of any such tax, contribution, premium, costs, royalties, or fees.

2.4 Final Payment. The Project, or a phase of a Project, will be considered complete on the date of final written acceptance by the Village of the Services or the relevant phase of the Services. Services related to a submission of the Consultant will be deemed accepted by the Village if the Village does not object to those Services in writing within 30 days after the submission by the Consultant of an invoice for final acceptance and payment. The Village will make final payment to the Consultant within 30 days after final acceptance of the Compensation and any Project-Specific Compensation, after deducting therefrom charges, if any, as provided in this Master Contract or the relevant Task Order ("*Final Payment*"). The acceptance by the Consultant of Final Payment will operate as a full and complete release of the Village by the Consultant of and from any and all lawsuits, claims, or demands for further payment of any kind for the Services encompassed by the Final Payment.

2.5 Deductions. Notwithstanding any other provision of this Master Contract, the Village may deduct and withhold from any payment or from Final Payment such amounts as may reasonably appear necessary to compensate the Village for any loss due to (1) Services that are defective, nonconforming, or incomplete, (2) liens or claims of lien, (3) claims against the Consultant or the Village made by any of the Consultant's sub-consultants or suppliers or by other persons about the Services, regardless of merit, (4) delay by the Consultant in the completion of the Services, (5) the cost to the Village, including without limitation reasonable attorneys' fees, of correcting any of the matters stated in this Section or exercising any one or more of the Village's remedies set forth in Section 8.3 of this Master Contract. The Village will notify the Consultant in writing given in accordance with Section 9.10 of this Master Contract of the Village's determination to deduct and withhold funds, which notice will state with specificity the amount of, and reason or reasons for, such deduction and withholding.

2.6 Use of Deducted Funds. The Village will be entitled to retain any and all amounts withheld pursuant to Section 2.5 above until the Consultant either has performed the obligations in question or has furnished security for that performance satisfactory to the Village. The Village will be entitled to apply any money withheld or any other money due to the Consultant to reimburse itself for any and all costs, expenses, losses, damages, liabilities, suits, judgments, awards, and reasonable attorneys' fees (collectively "*Costs*") incurred, suffered, or sustained by the Village and chargeable to the Consultant under this Contract.

2.7 Keeping Books and Accounts. The Consultant must keep accounts, books, and other records of all its billable charges and costs incurred in performing Services in accordance with generally accepted accounting practices, consistently applied, and in such manner as to permit verification of all entries. The Consultant must make all such material available for inspection by the Village, at the office of the Consultant during normal business hours during the

Term and for a period of three years after termination of this Master Contract. Copies of such material must be furnished to the Village at the Village's request and expense.

### ARTICLE 3. PERFORMANCE OF PROJECT AND SERVICES

3.1 Standard of Performance. The Consultant must perform the Services in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in the Chicago Metropolitan Region (the "*Standard of Performance*"). All Services must be free from defects and flaws, must conform to the requirements of this Master Contract and applicable Task Order, and must be performed in accordance with the Standard of Performance. The Consultant is fully and solely responsible for the quality, technical accuracy, completeness, and coordination of all Services, unless specifically provided otherwise in a Task Order.

3.2 Correction of Defects. The Consultant must provide, for no additional Compensation and at no separate expense to the Village, all work required to correct any defects or deficiencies in the performance of Services, regardless of whether the defect or deficiency relates to the work of the Consultant or of the Consultant's sub-consultants or suppliers.

3.3 Risk of Loss. The Consultant bears the risk of loss in providing all Services. The Consultant is responsible for any and all damages to property or persons arising from any Consultant error, omission, or negligent act and for any losses or costs to repair or remedy any work undertaken by the Village based on the Services as a result of any such error, omission, or negligent act. Notwithstanding any other provision of this Master Contract or any Task Order, the Consultant's obligations under this Section 3.3 exist without regard to, and may not be construed to be waived by, the availability or unavailability of any insurance, either of the Village or the Consultant, to indemnify, hold harmless, or reimburse the Consultant for damages, losses, or costs.

3.4 Opinions of Probable Cost. The Parties recognize that neither the Consultant nor the Village has control over the costs of labor, materials, equipment, or services furnished by others or over competitive bidding, market or negotiating conditions, or construction contractors' methods of determining their prices. Accordingly, any opinions of probable costs provided under this Master Contract or a Task Order are considered to be estimates only, made on the basis of the Consultant's experience and qualifications, and those opinions represent the Consultant's best judgment as an experienced and qualified professional, familiar with the industry. The Consultant does not guaranty that proposals, bids, or actual costs will not vary from the opinions prepared by the Consultant.

3.5 Village Responsibilities. The Village, at its sole cost and expense, will have the following responsibilities:

(a) To designate in writing a person with authority to act as the Village's representative on each Project. In the absence of a writing designation, the Village's representative will be the Village's Director of Pubic Works. The Village's representative will

have the authority to act on behalf of the Village as provided in a Task Order and except on matters that require approval of the Village's Board of Trustees.

(b) To provide to the Consultant all criteria and information about the requirements for a Project or Services, including, as relevant, the Village's objectives and constraints, schedule, space, capacity and performance requirements, and budgetary limitations.

(c) To provide to the Consultant existing studies, reports, and other available data relevant to a Project.

(d) To arrange for access to, and make provisions for the Consultant to enter on, public and private property as reasonably required for a Project.

(e) To provide, as relevant, surveys describing physical characteristics, legal limitations, and utility locations for a Project and the services of other consultants when the services of other consultants are requested by the Consultant and are necessary for the performance of the Services.

(f) To provide structural, mechanical, chemical, air and water tests, tests for hazardous materials, and other laboratory and environmental tests, inspections, and reports required by law to be provided by the Village in connection with a Project, except the extent such tests, inspections, or reports are part of the Services.

(g) To review reports, documents, data, and all other information presented by the Consultant as appropriate.

(h) To provide approvals from all governmental authorities having jurisdiction over a Project when requested by the Consultant, except the extent such approvals are part of the Services.

(i) To provide, except as provided under Article 5 and Article 6 of this Master Contract, all accounting, insurance, and legal services as may be necessary from time to time in the judgment of the Village to protect the Village's interests with respect to a Project.

(j) To attend Project-related meetings.

(k) To give prompt written notice to the Consultant whenever the Village observes or otherwise becomes aware of any development that affects the scope or timing of Services, except that the inability or failure of the Village to give any such a notice will not relieve the Consultant of any of its responsibilities under this Master Contract or any Task Order.

3.6 Time of the Essence. Time is of the essence for each Project and all activities with regard to the performance of a Project.

3.7 Suspension of Services, Project. The Village, at any time and for any reason, may suspend work on any or all Services or Project by issuing a written work suspension notice to the

Consultant. The Consultant must stop the performance of all Services within the scope of the suspension notice until the Village directs the Consultant in writing to resume performance.

#### ARTICLE 4. TASK CHANGE ORDERS; DELAYS

4.1 Task Change Orders. The Village, from time to time, may issue a written order modifying or otherwise changing the scope of the Services included in a Task Order (a “*Task Change Order*”) provided, however, that any Task Change Order in an amount exceeding \$10,000 must be approved by the Village Board. The Task Change Order will be generally in the form attached to and by this reference incorporated into this Master Contract as Attachment B. The Consultant may request a Task Change Order based on a material change to a Project or any Services required as part of a Project. A Task Change Order may include additions to and deletions from the Services and will include any equitable increases or decreases to the Compensation for the Project.

4.2 Revision Notices. Within 10 days after the date of a Task Change Order, and in any event before the Consultant begins work on any changed Services, the Consultant must notify the Village in writing if the Consultant desires a revision to the Task Change Order (a “*Revision Notice*”). The Revision Notice must clearly state the Consultant’s requested revisions and the reasons for the revisions. If the Village agrees to any revision, then the Village will issue a revised Task Change Order in a form acceptable to the Parties. If the Consultant does not submit a Revision Notice within the 10-day period, then the Consultant will be deemed to have accepted the Task Change Order and the Task Change Order will be final.

4.3 Disagreements over Task Change Order Terms. If the Village and the Consultant cannot agree on the proposed revisions to the Compensation or Project Schedule terms of a Task Change Order, then the Parties will apply the dispute resolution provisions of this Master Contract in order to reach agreement. In that event, the Consultant must proceed diligently with the revised Services as directed by Village pending resolution of the disagreement. The Consultant will be compensated equitably for the work the Consultant undertakes during the disagreement resolution process.

4.4 No Change in Absence of Task Change Order. No claim for an adjustment in Compensation or Project Schedule will be made or allowed unless it is embodied in a Task Change Order signed by the Village and the Consultant. If the Consultant believes it is entitled to an adjustment in the Compensation or Project Schedule terms that has not been included, or fully included, in a Task Change Order, then the Consultant may submit to the Village a written request for the issuance of, or revision of, a Task Change Order including the desired adjustment. The Consultant’s request must be submitted before the Consultant proceeds with any Services for which an adjustment is desired.

4.5 Delays. If a delay in providing Services results from one or more causes that could not be avoided or controlled by the Consultant, then the Consultant may be entitled to an extension of the Project Schedule for a period of time equal to that delay, or an adjustment in Compensation for extra costs related to the delay, or both. The Consultant must notify the Village in writing within 10 days after the start of the delay and again in writing within 10 days

after the delay has ended (the “*Delay Period*”). The first notice must state the cause or causes of the delay and the impact of the delay on providing Services. The second notice must state the cause or causes of the delay, the length of the day, the reasons why the delay disrupted performance of the Services and the Consultant’s request, if any, for a change in Compensation or Project Schedule. If the Consultant fails to submit notices as provided in this Section 4.5, then the Consultant will be deemed to have waived any right to an adjustment in Compensation for the Services.

## ARTICLE 5. INSURANCE

5.1 Insurance. The Consultant must procure and maintain, for the duration of this Master Contract, insurance as provided in this Article 5.

5.2 Scope of Coverage.

(a) Commercial General Liability. Insurance Services Office Commercial General Liability occurrence form CG 0001, on a form at least as broad as the attached sample endorsement including ISO Additional Insured Endorsement CG 2010 (Exhibit A), CG 2026(Exhibit B).

(b) Automobile Liability. Insurance Service Office Business Auto Liability coverage form number CA 0001, Symbol 01 “Any Auto.”

(c) Professional Liability. Indemnification and defense for injury or damage arising out of acts, errors, or omissions in providing professional services.

(d) Workers’ Compensation and Employers’ Liability. Workers’ Compensation as required by the Workers’ Compensation Act of the State of Illinois and Employers’ Liability insurance.

5.3 Minimum Limits of Coverage.

(a) Commercial General Liability. \$1,000,000 combined single limit per occurrence for bodily injury and for property damage and \$1,000,000 per occurrence for personal injury. The general aggregate must be twice the required occurrence limit. Minimum General Aggregate must be no less than \$2,000,000 or a project-contract specific aggregate of \$1,000,000.

(b) Business Automobile Liability. \$1,000,000 combined single limit per accident for bodily injury and property damage.

(c) Workers’ Compensation and Employers’ Liability. Workers’ Compensation Coverage with statutory limits and Employers’ Liability limits of \$500,000 per accident.

(d) Professional Liability. \$1,000,000 each claim with respect to negligent acts, errors, and omissions in connection with all professional services to be provided under this

Master Contract and any Task Order, with a deductible not-to-exceed \$150,000 without prior written approval.

5.4 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Village. At the option of the Village, either the insurer must reduce or eliminate such deductibles or self-insured retentions with respect to the Village and its officials, employees, agents, and representatives, or the Consultant must procure a bond guaranteeing payment of losses and related investigation, claim administration, and defense expenses.

5.5 Additional Requirements. The insurance policies must contain, or be endorsed to contain, the following provisions:

(a) Commercial General Liability and Automobile Liability Coverage. The Village and its officials, employees, agents, and representatives must be covered as additional insured as respects: liability arising out of the Consultant's work, including without limitation activities performed by or on behalf of the Consultant and automobiles owned, leased, hired, or borrowed by the Consultant. Coverage must contain no special limitations on the scope of protection afforded to the Village or its officials, employees, agents, and representatives.

(b) Primary Coverage. The insurance coverage must be primary with respect to the Village and its officials, employees, agents, and representatives. Any insurance or self-insurance maintained by the Village and its officials, employees, agents, and representatives will be excess of the Consultant's insurance and will not contribute with it.

(c) Reporting Failures. Any failure to comply with reporting provisions of any policy must not affect coverage provided to the Village and its officials, employees, agents, and representatives.

(d) Severability of Interests/Cross Liability. The insurance must contain a Severability of Interests/Cross Liability clause or language stating that the insurance will apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's ability.

(e) Umbrella Policies. If any commercial general liability insurance is being provided under an excess or umbrella liability policy that does not "follow form," then the Consultant must name the Village and its officials, employees, agents, and representatives as additional insureds under the umbrella policy.

(f) Occurrence Form. All general liability coverage must be provided on an occurrence policy form. Claims-made general liability policies are not acceptable.

(g) Workers' Compensation and Employers' Liability Coverage. The insurer must agree to waive all rights of subrogation against the Village and its officials, employees, agents, and representatives for losses arising from work performed by the Consultant.

(h) Professional Liability. If the policy is written on a claims-made form, the retroactive date must be equal to or preceding the effective date of this Master Contract. If the policy is cancelled, non-renewed, or switched to an occurrence form, then the Consultant must purchase supplemental extending reporting period coverage for a period of not less than three years.

(i) All Coverage. Each insurance policy required by this clause must be endorsed to state that coverage will not be suspended, voided, cancelled, or reduced in coverage or in limits except after 30 days prior written notice to the Village by certified mail, return receipt requested.

Acceptability of Insurers. Unless specifically approved in writing in advance by the Village, all insurance must be placed with insurers with a Best's rating of no less than A-, VII. All insurers must be licensed to do business in the State of Illinois

5.6 Verification of Coverage. The Consultant must furnish the Village with certificates of insurance naming the Village and its officials, employees, agents, and representatives as additional insureds and with original endorsements affecting coverage required by this Article 5. The certificates and endorsements for each insurance policy must be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements may be on forms provided by the Village and in any event must be received and approved by the Village before any work commences. Other additional-insured endorsements may be utilized, if they provide a scope of coverage at least as broad as the coverage stated on the ISO Additional Insured Endorsements CG 2010 or CG 2026. The Village reserves the right to request a full certified copy of each insurance policy and endorsement.

5.7 Sub-Consultants and Suppliers. The Consultant must include all sub-consultants as insureds under its policies or must furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors is subject to all of the requirements stated in this Article 5, except its professional liability policy.

## ARTICLE 6. INDEMNIFICATION

6.1 Agreement to Indemnify. To the fullest extent permitted by law, the Consultant hereby agrees to indemnify and, at the Village's request, defend the Village and its officials, employees, agents, and representatives (collectively the "*Indemnified Parties*") as follows:

(a) against all injuries, deaths, loss, damages, claims, patent claims, suits, liabilities, judgments, costs, and expenses (collectively "*Professional Liability Claims*"), that may in any way accrue against the Indemnified Parties or any one of them arising in whole, or in part, or in consequence of the negligent performance of any professional Services by the Consultant or its employees or sub-consultants or that may in any way result therefrom, except only Claims arising out of the sole legal cause of the Village; and

(b) against all injuries, deaths, loss, damages, claims, suits, liabilities, judgments, costs, and expenses (collectively "*General Liability Claims*"), that may in any way accrue against the Indemnified Parties or any one of them arising in whole, or in part, or in consequence

of the negligent act or omission of the Consultant or its employees or sub-consultants other than any professional Service or that may in any way result therefrom, except only General Liability Claims arising out of the sole legal cause of the Village.

6.2 Notice of Claim to Consultant. The Village must provide notice of a Claim to the Consultant within 10 business days after the Village acquires knowledge of that Claim.

6.3 No Limit Based on Insurance. The Consultant expressly acknowledges and agrees that any performance bond or insurance policy required by this Contract, or otherwise provided by the Consultant, will in no way limit the responsibility to indemnify and defend the Indemnified Parties or any one of them.

6.4 Withholding Payment. To the extent that any payment is due to the Consultant under this Master Contract or any Task Order, the Village may withhold that payment to protect itself against any loss until all claims, suits, or judgments have been settled or discharged and evidence to that effect has been furnished to the satisfaction of the Village.

6.5 Limit on Duty to Indemnify. The Consultant is not required to indemnify an Indemnified Party to the extent a Claim resulted primarily from the negligence or willful misconduct of the Indemnified Party.

## ARTICLE 7. INFORMAL DISPUTE RESOLUTION

7.1 Dispute Resolution Panel. Any dispute between the Village and the Consultant related to this Master Contract or a Task Order will be submitted to a dispute resolution panel comprised of two representatives of each Party who have been given the authority to agree to a resolution of the dispute. The panel may meet or may conduct its discussions by telephone or other electronic means. If the panel has failed to convene within two weeks after the request of either Party, or is unable to resolve the dispute within 30 days, then either Party may exercise any other rights it has under this Master Contract.

7.2 Communications in Nature of Settlement. All communications between the Parties in connection with the attempted resolution of a dispute will be confidential and will be deemed to have been delivered in furtherance of dispute settlement and thus will be exempt from discovery and production, and will not be admissible in evidence whether as an admission or otherwise, in any arbitration, judicial, or other proceeding for the resolution of the dispute.

7.3 Performance of Services. During the dispute resolution process, the Consultant must proceed diligently with the performance of Services.

## ARTICLE 8. TERMINATION

8.1 Master Contract is At-Will. This Master Contract is at-will and may be terminated by the Village at any time at the Village's convenience, without reason or cause. If the Village terminates this Master Agreement without reason or cause, then the Consultant will

be entitled to Compensation for all Service performed by the Consultant up to the date of termination. The Consultant is not entitled to compensation of any kind, including without limitation for lost profit, for any Services not performed by the Consultant.

8.2 Termination by Village for Breach. The Village at any time, by written notice, may terminate this Master Agreement and any Task Order on account of breach by the Consultant and failure of the Consultant to cure the breach within 10 days after that written notice or such further time as the Village may agree, in the Village's sole discretion, in response to a written notice from the Consultant seeking additional time to cure. "Breach" by the Consultant includes (a) failure of the Consultant to adhere to any terms or conditions of this Master Contract or any Task Order, (b) failure of the Consultant to properly perform Services, (c) or failure of the Consultant to maintain progress in the performance of Services so as to endanger proper performance of the Project within the Project Schedule, (d) failure of the Consultant to have or maintain adequate financial or legal capacity to properly complete a Project or any Services.

8.3 Village Remedies. If the Village terminates this Master Agreement or any Task Order for Breach by the Consultant, then the Village will have the right, at its election and without prejudice to any other remedies provided by law or equity, to pursue any one or more of the following remedies:

(a) The Village may recover from the Consultant any and all costs, including without limitation reasonable attorneys' fees, incurred by the Village as the result of any Breach or as a result of actions taken by the Village in response to any Breach.

(b) The Village may withhold any or all outstanding Compensation under any Task Order to reimburse itself or pay for any and all costs, including without limitation reasonable attorneys' fees, incurred by the Village as the result of any Breach or as a result of actions taken by the Village in response to any Breach. In that event, the Village will pay any excess funds to the Consultant, if any, after all of the Village's costs are reimbursed or paid. If the Compensation withheld by the Village is insufficient to reimburse the Village for, or pay, all costs, then the Village will have the right to recover directly from the Consultant a sum of money sufficient to reimburse itself, or pay, all remaining costs.

8.4 Termination for Convenience. If, after termination of this Master Agreement by the Village for breach, it is determined that the Consultant was not in breach or that the termination otherwise was irregular or improper, then the termination shall be deemed to have been made for the convenience of the Village under Section 8.1 of this Master Agreement.

8.5 Termination by Consultant for Breach. The Consultant at any time, by written notice, terminate this Master Agreement on account of failure by the Village to properly pay the Consultant and failure of the Village to cure the breach within 10 days after that written notice or such further time as the Consultant may agree, in the Consultant's sole discretion, in response to a written notice from the Village seeking additional time to cure.

8.6 Termination by Consultant without Cause. The Consultant may terminate this Master Agreement without cause on 30 days written notice to the Village, except that no such termination will become effective until after the Consultant has completed, and the Village has approved and accepted, all Projects for which Task Orders have been issued and all Services related to those Projects.

## ARTICLE 9. LEGAL RELATIONSHIPS AND GENERAL REQUIREMENTS

9.1 Consultant as Independent Consultant. For purposes of this Contract, the Consultant is an independent consultant and is not, and may not be construed or deemed to be an employee, agent, or joint venturer of the Village.

9.2 Compliance with Laws; Communications with Regulators. The Consultant must comply with all statutes, ordinances, codes, and regulations applicable to the Services. Except to the extent expressly set forth in this Master Contract or a Task Order, the Consultant may not communicate directly with applicable governmental regulatory agencies with regard to Services without prior express authorization from the Village. The Consultant must direct inquiries from governmental regulatory agencies to the Village for appropriate response.

9.3 Consultant Payments; Waivers of Liens. The Consultant must pay promptly for all services, labor, materials, and equipment used or employed by the Consultant in the performance of any Services and must not cause any materials, equipment, structures, buildings, premises, and property of the Village to be impressed with any mechanic's lien or other liens. The Consultant, if requested, must provide the Village with reasonable evidence that all services, labor, materials, and equipment have been paid in full and with waivers of lien as appropriate.

9.4 Permits and Licenses. Unless otherwise provided in a Task Order, the Consultant must obtain and pay for all permits and licenses, registrations, qualifications, and other governmental authorizations required by law that are associated with the Consultant's performance of Services.

### 9.5 Safety; Hazardous Materials.

(a) Protection of Health, Environment. The Consultant's personnel must be experienced and properly trained to perform the Services and must take adequate precautions to protect human health and the environment in the performance of Services.

(b) Notice of Hazardous Conditions. If the Consultant observes a potentially hazardous condition relating to the Services, the Consultant must bring that condition to the attention of the Village.

(c) Hazardous Materials. The Consultant acknowledges that there may be hazardous substances, wastes, or materials as defined by applicable Law ("Hazardous Materials") at a Project site or otherwise associated with Services, and the Consultant under those circumstances must take appropriate precautions to protect its employees, sub-consultants, and suppliers.

9.6 Intellectual Property. The Consultant may not infringe on any intellectual property (including but not limited to patents, trademarks, or copyrights) (collectively “*Intellectual Property*”) in the performance of Services. If ever the Consultant is alleged to have infringed on any Intellectual Property, then, in addition to the Consultant’s obligations to indemnify Indemnified Parties under this Master Contract, the Consultant also, at the sole discretion of the Village and at the Consultant’s sole expense (a) procure for the Village the right to continue using the infringing subject matter, or (b) replace or modify the infringing subject matter so that it becomes non-infringing but still complies with the requirements of this Master Contract and the relevant Task Order, or (c) reimburse the Village for all payments made to the Consultant relating to or impacted by the infringing material and all costs incurred by Village resulting from such infringement.

9.7 Confidential Information. All information and data disclosed by the Village and developed or obtained under this Master Contract must be treated by the Consultant as proprietary and confidential information (“*Confidential Information*”). The Consultant must not disclose Confidential Information without the Village’s prior written consent. No person may use Confidential Information for any purpose other than for the proper performance of Services. The obligations under this Section 9.7 does not apply to Confidential Information that is (i) in the public domain without breach of this Contract, (ii) developed by the Consultant independently from this Master Contract, (iii) received by the Consultant on a non-confidential basis from others who had a right to disclose the information, or (iv) required by law to be disclosed, but only after prior written notice has been received by Village and Village has had a reasonable opportunity to protect disclosure of the Confidential Information. The Consultant must ensure that the foregoing obligations of confidentiality and use extend to and bind the Consultant’s sub-consultants and suppliers.

9.8 Ownership of Data and Documents. All data and information, regardless of its format, developed or obtained under this Master Contract (collectively “*Data*”), other than the Consultant’s confidential information, will be and remain the sole property of the Village. The Consultant must promptly deliver all Data to the Village at the Village’s request. The Consultant is responsible for the care and protection of the Data until that delivery. The Consultant may retain one copy of the Data for the Consultant’s records subject to the Consultant’s continued compliance with the provisions of this Article.

9.9 Copyrights and Patents. The Consultant agrees not to assert, or to allow persons performing under the Consultant’s control to assert, any rights to Data or establish any claim under design, patent, or copyright laws. It is expressly agreed that all copyrightable or patentable Data produced as part of Services has been specifically commissioned by the Village and is considered “work for hire,” and that all copyrightable and other proprietary rights in that Data will vest solely in the Village. Further, the Consultant agrees that all rights under copyright and patent laws under this Master Contract belong to the Village. The Consultant hereby assigns any and all rights, title, and interests under copyright, trademark, and patent law to the Village and agrees to assist the Village in perfecting the same at the Village’s expense.

9.10 Notices. Any notice or communication required by this Master Contract will be deemed sufficiently given if in writing and when delivered personally or upon receipt of

registered or certified mail, postage prepaid, with the U.S. Postal Service and addressed as follows:

If to the Village:

Village of La Grange  
Public Works Department  
320 East Avenue  
La Grange, Illinois 60525  
Attn: Public Works Director

with a copy to:

Village of La Grange  
53 South La Grange Road  
La Grange, Illinois 60525  
Attn: Assistant Village Manager

If to the Consultant:

Heuer & Associates, P.C.  
2315 Enterprise Drive, Suite 102  
Westchester, Illinois 60154-5811  
Attn: Mr. Thomas Heuer

or to such other address as the party to whom notice is to be given has furnished in writing.

9.11 No Waiver by Village. No act, order, approval, acceptance, or payment by the Village, nor any delay by the Village in exercising any right under this Master Contract, will constitute or be deemed to be an acceptance of any defective, damaged, flawed, unsuitable, nonconforming, or incomplete Services or operate to waive any requirement or provision of this Master Contract or any remedy, power, or right of the Village.

9.12 No Third-Party Beneficiaries. This Master Contract is for the benefit of the Village and the Consultant only and there can be no valid claim made or held against the Village or the Consultant by any third party to be a beneficiary under this Master Contract.

9.13 Survival of Terms. The following sections will survive the termination of this Master Contract: 2.7, 3.2, 6.1, 8.4, 9.7, 9.8, and 9.9.

9.14 Assignments. The Consultant may not assign or transfer any term, obligation, right, or other aspect of this Master Contract without the prior express written consent of the Village. If any aspect of this Master Contract is assigned or transferred, then the Consultant will remain responsible to the Village for the proper performance of the Consultant's obligations under this Master Contract. The terms and conditions of any agreement by the Consultant to assign or transfer this Master Contract must include terms requiring the assignee or transferee to fully comply with this Master Contract unless otherwise authorized in writing by the Village.

9.15 Amendments. This Master Contract may be amended only in writing executed by the Village and the Consultant.

9.16 Governing Law. The validity, construction, and performance of this Master Contract and all disputes between the parties arising out of or related to this Contract will be

governed by the laws of the State of Illinois without regard to choice or conflict of law rules or regulations.

9.17 Compliance with Laws, Grant Regulations. All Services must be provided, performed, and completed in accordance with all required governmental permits, licenses, or other approvals and authorizations, and with applicable statutes, ordinances, rules, and regulations. The Consultant also must comply with applicable conditions of any federal, state, or local grant received by the Village with respect to this Master Contract or any Task Order. The Consultant will be solely responsible for any fines or penalties that may be imposed or incurred by a governmental agency with jurisdiction over the Services as a result of the Consultant's improper performance of, or failure to properly perform, any Services.

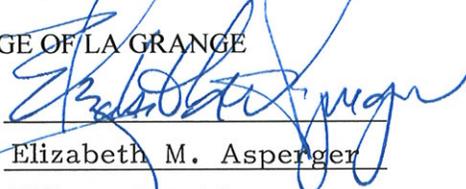
9.18 Representation of No Conflicts. The Consultant represents that (1) no Village employee or agent is interested in the business of the Consultant or this Master Contract, (2) as of the Effective Date neither the Consultant nor any person employed or associated with the Consultant has any interest that would conflict in any manner or degree with the performance of the obligations under this Master Contract, and (3) neither the Consultant nor any person employed by or associated with the Consultant may at any time during the Term obtain or acquire any interest that would conflict in any manner or degree with the performance of the obligations under this Master Contract.

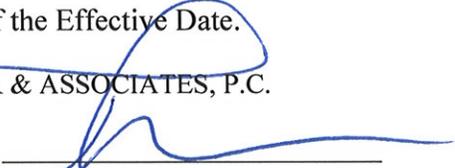
9.19 No Collusion. The Consultant represents that the Consultant is not barred from contracting with a unit of state or local government as a result of (1) a delinquency in the payment of any tax administered by the Illinois Department of Revenue unless the Consultant is properly contesting its liability for the tax or the amount of the tax or (2) a violation of either Section 33E-3 or Section 33E-4 or Article 33E of the Criminal Code of 1961, 720 ILCS 5/22E-1 *et seq.* The Consultant represents that the only persons, firms, or corporations interested in this Agreement as principals are those disclosed to the Village prior to the execution of this Master Contract and that this Master Contract is made without collusion with any other person, firm, or corporation.

WHEREFORE, the Village and the Consultant have caused this Master Contract to be executed by their duly authorized representatives as of the Effective Date.

VILLAGE OF LA GRANGE

HEUER & ASSOCIATES, P.C.

By: 

By: 

Name: Elizabeth M. Asperger

Name: Thomas A Heuer, P.E.

Title: Village President

Title: President

**ATTACHMENT A**

**TASK ORDER**

In accordance with Section 1.2 of the Master Contract dated \_\_\_\_\_ between the Village of La Grange (the "Village") and Heuer & Associates, P.C. (the "Consultant"), the Parties agree to the following Task Number \_\_\_\_\_:

**1. Contracted Services:**

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**2. Project Schedule** (attach schedule if appropriate):

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**3. Project Completion Date:**

All Contracted Services must be completed on or before \_\_\_\_\_.

**4. Project Specific Pricing** (if applicable):

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**5. Additional Changes to the Master Contract** (if applicable):

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All other terms and conditions remain unchanged.

**[signature page follows]**

**VILLAGE:**

**CONSULTANT:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Director of Public Works

\_\_\_\_\_  
Name (Printed or Typed)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

If greater than, \$2,000, the Village Manager's signature is required.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Village Manager

\_\_\_\_\_  
Date

If greater than \$10,000, the Village Board must approve the Task Order in advance and the Village President's signature is required.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Village President

\_\_\_\_\_  
Date

**ATTACHMENT B**

**TASK CHANGE ORDER FOR TASK NUMBER \_\_**

In accordance with Section 4.1 of the Master Contract dated \_\_\_\_\_ between the Village of La Grange (the "Village") and Heuer & Associates, P.C. (the "Consultant"), the Parties agree to the following Task Change Order for Task Number \_\_\_\_\_:

**1. Change in Contracted Services:**

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**2. Change in Project Schedule (attach schedule if appropriate):**

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**3. Change in Project Completion Date:**

All Contracted Services must be completed on or before \_\_\_\_\_.

**4. Change in Compensation:**

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**5. Change in Project Specific Pricing (if applicable).**

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**ALL OTHER TERMS AND CONDITIONS  
OF THE CONTRACT REMAIN UNCHANGED.**

**[signature page follows]**

**VILLAGE:**

**CONSULTANT:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Director of Public Works

\_\_\_\_\_  
Name (Printed or Typed)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

If compensation increase greater than \$2,000, then the Village Manager's signature is required.

\_\_\_\_\_  
Village Manager

\_\_\_\_\_  
Date

If compensation greater than \$10,000, then the Village's Board of Trustees must approve the Task Change Order in advance and the Village President's signature is required.

\_\_\_\_\_  
Village President

\_\_\_\_\_  
Date

### ATTACHMENT C - PRICING SCHEDULE

MASTER CONTRACT ~ VILLAGE ENGINEER AND TASK ORDER SERVICES  
 VILLAGE OF LA GRANGE (Village) ~ HEUER & ASSOCIATES, P.C. (Consultant)  
 MAY 1, 2009

#### Consultant's Hourly Rate Schedule for Salaried Employees

Labor Classification	Project Position Description	Current Range of Values						Current Applied Values				Employee Name
		Direct Labor Range		Indirect Labor Range		Hourly Billing Range		Direct Labor	Indirect Labor	Profit Factor	Billing Rate	
		From:	To:	From:	To:	From:	To:					
Engineer V	Principal Engineer	\$35.00	\$60.00	\$44.65	\$76.54	\$91.32	\$156.55	\$45.01	\$57.41	\$15.01	\$117.44	T.Heuer
Engineer IV	Senior Engineer	\$30.00	\$45.00	\$38.27	\$57.40	\$78.27	\$117.41	\$34.62	\$44.16	\$11.55	\$90.33	P.Harring
Engineer III	Resident Engineer	\$30.00	\$45.00	\$38.27	\$57.40	\$78.27	\$117.41	\$36.06	\$46.00	\$12.03	\$94.08	M.Golan
Engineer II	Project Engineer	\$18.00	\$35.00	\$22.96	\$44.65	\$46.96	\$91.32	\$29.24	\$37.30	\$9.75	\$76.29	P.Haavig
Engineer II	Project Engineer	\$18.00	\$30.00	\$22.96	\$38.27	\$46.96	\$78.27	\$28.60	\$36.48	\$9.54	\$74.62	D.Corcoran
Engineer II	Project Engineer	\$18.00	\$30.00	\$22.96	\$38.27	\$46.96	\$78.27	\$27.35	\$34.89	\$9.12	\$71.36	D.Piwowar
Technician	Engineering Assist.	\$10.00	\$30.00	\$12.76	\$38.27	\$26.09	\$78.27	\$24.40	\$31.12	\$8.14	\$63.66	K.Oden

**NOTES:**

1. The labor classifications reflect consultant's currently defined employee labor categories.
2. The direct labor rate (DL) for salaried employees based upon conventional 2080 hours/year.
3. The indirect labor rate (IL) for salaried employees based upon IDOT approved overhead.
4. The profit factor (PF) conforms to IDOT CPFF 3 with a complexity factor (CF) of 0.000, where  
 $PF = 0.1450 \times [(2.3 + CF) \times (DL)]$ .
5. The billing rate is the sum of direct labor, indirect labor, and profit factor, where  $BR = DL + IL + PF$ .

**Consultant's Business Financials**

*(rates shown as a percentage of direct labor cost)*

Payroll Burden & Fringe Rate:	83.62%
Overhead & Indirect Cost Rate:	43.94%
Total Indirect Labor Rate:	127.56%

IDOT Project Complexity Factor (CF):	0.000
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