

**RESOLUTION 2014-049 Passed: June 23, 2014**

**AUTHORIZING THE MAYOR OF THE CITY OF DEKALB, ILLINOIS, TO ENTER INTO AN AGREEMENT WITH HOPKINS SOLUTIONS, LLC FOR ECONOMIC DEVELOPMENT SERVICES FROM JULY 1, 2014 TO APPROXIMATELY OCTOBER 1, 2014.**

**BE IT RESOLVED BY THE CITY COUNCIL** of the City of DeKalb, Illinois, as follows:

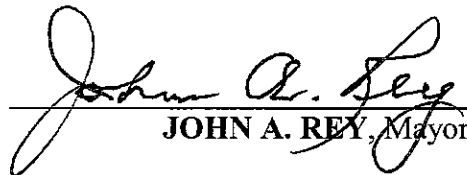
**Section 1.** That the Mayor of the City of DeKalb be authorized and directed to execute an Agreement with Hopkins Solutions in the amount of Six Thousand Four Hundred Twenty Six dollars (\$6,426) per month for economic development services from July 1, 2014 to approximately October 1, 2014, a copy of which is attached hereto and made a part hereof as Exhibit "A."

**Section 2.** That the City Clerk of the City of DeKalb be authorized and directed to attest the Mayor's signature.

**PASSED BY THE CITY COUNCIL** of the City of DeKalb, Illinois at a regular meeting held on the 23<sup>rd</sup> day of June, 2014 and approved by me as Mayor on the same day. Passed by roll call vote of 6-2. Aye: Finucane, Lash, Snow, Naylor, O'Leary, Rey. Nay: Jacobson, Baker.

**ATTEST:**

  
ELIZABETH E. PEERBOOM, City Clerk

  
JOHN A. REY, Mayor



**PROFESSIONAL SERVICE AGREEMENT (ADVISOR)**  
**CITY OF DEKALB**

THIS AGREEMENT, by and between the City of DeKalb, hereinafter referred to as the "City" and "**Hopkins Solutions, LLC**" hereinafter referred to as the "Contractor", with the City and Contractor agreeing as follows

A. Services:

Contractor agrees to furnish to the City the following services:

See attached Exhibit A

Contractor represents that it possesses the skills and knowledge necessary to provide all such services and understands that the City is relying upon such representation. Contractor further acknowledges that Exhibit A is an integral part of this Agreement and may not be modified except in accordance with a modification to the terms of this Agreement.

B. Term:

Services will be provided as needed and directed by the City beginning on the date of execution of this agreement and continuing, until terminated by either party upon 7 days written notice to the non-terminating party. Upon termination the Contractor shall be compensated for all work performed for the City prior to termination and shall provide to the City all work completed through the date of termination. The City's issuance of a notice of termination shall function as a stop work order, beyond which the Contractor shall not incur any additional costs without the City's express, written permission.

C. Compensation:

Contractor shall receive as compensation for all work and services to be performed herein, an amount based on the fee schedule attached hereto as Exhibit B. All payments will be made according to the Illinois State Prompt Payment Act.

Any payment made to the Contractor shall be strictly on the basis of quantum merit. The Contractor shall submit to the City a detailed breakdown and invoice of all charges, including detail of past payments and amounts still remaining due, accurate to the date of the invoice, with each request for payment. Any additions to or deductions from the approved total amount of the contract, and any out of scope work shall require prior, written approval from the City. Any work performed without the City's express, written consent shall be solely at the expense of the Contractor. The following optional provisions, if checked, shall apply:

- This work is to be completed on a time and materials basis in accordance with the rate schedule attached in Exhibit B.

D. Changes in Rates of Compensation:

If the Contractor seeks to impose any change in the fee schedule (whether in terms of hourly fee or lump sum fees), then the Contractor shall provide not less than ninety days written notice of its intent to change its fee schedule, and any such change in fee schedule shall require the approval of the City. The Parties acknowledge that this Agreement is for professional services and is not subject to the Illinois Prevailing Wage Act.

E. Ownership of Records and Documents / Confidential Information:

Contractor agrees to keep and maintain all books and records and other recorded information required to comply with any applicable laws. Contractor agrees to keep such information confidential and not to disclose or disseminate the information to third parties without the consent of the City. Contractor further agrees to keep as confidential any information belonging or relating to the City which is of a confidential nature, including without limitation information which is proprietary, personal, required by law to be confidential, or relates to the business, operations or accounts of the City. This confidentiality shall not apply to material or information, which would otherwise be subject to public disclosure through the freedom of information act or if already previously disclosed by a third party. Contractor acknowledges that the Freedom of Information Act, 5 ILCS 140/1 et seq. (the "Act") places an obligation on the City to produce certain records that may be in the possession of Contractor. Contractor shall comply with the record retention and documentation requirements of the Local Records Act 50 ILCS 205/1 et seq. and the Act and shall maintain all records relating to this Agreement in compliance with the Local Records Retention Act and the Act (complying in all respects as if the Contractor was, in fact, the City). Contractor shall review its records promptly and produce to the City within two business days of contact from the City the required documents responsive to a request under the Act. If additional time is necessary to comply with the request, the Contractor may request the City to extend the time do so, and the City will, if time and a basis for extension under the Act permits, consider such extensions.

F. Governing Law:

This contract shall be governed and construed in accordance with the laws of the State of Illinois. Venue and jurisdiction for any legal action arising out of or related to this Agreement shall be exclusively fixed in the DeKalb County Circuit Court, DeKalb County, Illinois.

G. Independent Contractor:

Contractor shall have sole control over the manner and means of providing the work

and services performed under this agreement. The City's relationship to the Contractor under this agreement shall be that of an independent contractor. Contractor will not be considered an employee to the City for any purpose. The parties agree that the Contractor is exclusively responsible for the determination of what work is required to complete the tasks outlined in Exhibit A, and for the means and methods of completing such work. The City's compensation to Contractor shall be limited to that described in Exhibit B, and the City shall not reimburse any expenses, provide any benefits, withhold any employment taxes or otherwise have a financial relationship with Contractor other than payment of the stated compensation. The Contractor shall be solely responsible for withholding of taxes, providing employee benefits, or otherwise complying with applicable laws relating to its employees or contractors.

Contractor shall be responsible for its' own personnel, training, instruction and related matters. Contractor shall be responsible for determining its sequence of performance for required work. Contractor's work shall be evaluated by the City based upon the end result of such work. Contractor shall be responsible for any expenses incurred by Contractor in the performance of its work, and shall not be authorized, expressly or impliedly, to obligate the City on any debt, contract or other agreement whatsoever. In the event that Contractor is compensated on an hourly basis under the terms of this Agreement, the City and Contractor agree that Contractor's compensation is usual and customary, based on the terms that Contractor offers its services to the market in general.

The Contractor acknowledges that neither it nor its personnel shall be acting as an employee or official representative of the City for purposes of being offered any protection or coverage under City insurance policies for tort immunity or other legal purposes.

#### H. Certifications:

Executing this Agreement constitutes acknowledgment, acceptance, and certification of the accuracy of the following certifications, and any other certifications required under any applicable law relating to the performance of this Agreement. The Contractor is responsible for identifying all such applicable regulations and certifications, and for compliance with the same.

*Authorized in Illinois:* The Contractor that it is authorized to lawfully transact business and perform the services contemplated herein in the State of Illinois, under all applicable Illinois laws and regulations.

*General Compliance and Certification:* The Contractor certifies that it has and will comply with all other applicable laws, regulations, ordinances or restrictions applicable to any component of the contracting process, agreement, or any services or materials provided in connection therewith. The Contractor acknowledges that it is responsible for identifying and complying with all applicable laws, ordinances, rules and regulations, and that it shall indemnify and hold harmless the City of DeKalb

from any claim, liability or damages arising out of the failure to identify or comply with any such applicable legal restriction.

I. Insurance, Licensure and Intellectual Property:

The Contractor shall comply with all insurance requirements described on the attached Exhibit C. The Contractor agrees and warrants that it has procured all licenses, permits or other official permissions required by any applicable law to perform the services contemplated herein, that it will procure all additional licenses, permits or other official permissions hereafter required by law during the term of this Agreement, and that it will keep all such licenses in effect during the term of this Agreement. The Contractor shall provide a copy of any such licenses or permits upon request. All such insurance and licensure shall be provided at the Contractor's sole expense. Contractor also warrants that it has complete ownership or authorization/entitlement to any intellectual property, software, images or other such items used in the performance of its work under this Agreement, and that it shall transfer to the City, unrestricted, the ability to modify, amend, publicize or otherwise utilize any intellectual property provided to the City under this Agreement unless the City expressly preapproves in writing a limitation to these provisions.

All drawings, specifications, reports and any other project documents prepared by the Contractor in connection with any or all of the services to be furnished thereunder shall be delivered to the City for the expressed use of the City. The Contractor shall have the right to retain original documents, but shall cause to be delivered to the City such quality of documents so as to assure total reproducibility of the documents delivered. All information, worksheets, reports, design calculations, plans and specifications shall be the sole property of the City unless otherwise specified in the negotiated agreement. The Contractor agrees that basic survey notes and sketches, charts, computations and other data prepared or obtained by the Contractor pursuant to this Agreement shall be made available, upon request, to the City without cost and without restriction or limitation as to their use. All field notes, test records, and reports shall be available to the City upon request.

J. Additional Terms or Modification:

The terms of this agreement shall be further modified as provided on the attached Exhibit A, Exhibit B and Exhibit C. Except for those terms included on Exhibit A, Exhibit B and Exhibit C, no additional terms are included as a part of this agreement. All prior understandings and agreements between the parties are merged into this agreement, and this agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties. The City reserves the right by written amendment to make changes in requirements, amount of work, or time schedule adjustments. The Contractor shall negotiate appropriate adjustments acceptable to both parties to accommodate any changes. The City may, at any time by written order, require the Contractor to stop all or part of the services required by this Agreement. Upon receipt of such an order, the Contractor shall immediately

comply with its terms and take all steps to minimize the occurrence of costs allocable to the services covered by the order. If the Contractor identifies any costs associated with the suspension of services, such costs must be expressly approved by the City in writing, or they shall be the sole expense of the Contractor.

K. Notices:

All notices required to be given under the terms of this License shall be given by US mail, postage prepaid, or by e-mail, addressed to the parties as follows:

For the City:

City Manager  
City of DeKalb  
200 S. Fourth Street  
DeKalb, IL 60115  
annemarie.gaura@cityofdekalb.com

For the Contractor:

Roger Hopkins  
205 Greenwood Acres Drive  
DeKalb, IL 60115  
r.hopkins@comcast.net

Either of the parties may designate in writing from time to time substitute addresses or persons in connection with required notices.

L. Subcontractors and Third Parties:

Contractor shall not assign or subcontract for the performance of any obligation under this Agreement, except with the express, written preapproval of the City, which consent may be withheld in the City's sole and absolute discretion. Should Contractor assign any obligation arising under this Agreement with the consent of the City, the Contractor shall remain to be primarily liable to the City for the performance of the obligation in question, and further shall be liable for ensuring that the subcontractor(s) comply with all obligations arising under this Agreement as if the subcontractor(s) was/were the Contractor itself. Further, should Contractor request to assign the performance of any obligation arising hereunder to a subcontractor, Contractor expressly provides its consent to the City contracting directly with such proposed subcontractor (or another subcontractor acceptable to the City) for the performance of such work, and to the amendment of this Agreement to reduce the scope and cost accordingly.

Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall it inure to the benefit of any third party.

M. Progress Reports:

Contractor shall report to the City Manager or her designee, and shall submit written progress reports identifying, in detail, the extent of work completed, the percentage of project completion, and project status, accompanying any invoice submitted to the City. Contractor shall also provide additional written or verbal progress reports to

the City upon request, at any time, without additional charge. The Contractor shall attend conferences and visit the City at any reasonable, mutually acceptable time when requested to do so by the City.

N. Conflicts:

Contractor may continue to represent or undertake to represent existing or new clients in those matters that are not substantially related to Contractor's work for the City, even if the interests of such clients in those matters are directly adverse to City. Contractor agrees however that the City's prospective consent to conflicting representation contained in this paragraph shall not apply in any instance where, as a result of Contractor's representation of the City, Contractor has obtained sensitive proprietary or other confidential information of a non-public nature that, if known to any such other client of Contractor, could be used in any such other matter by such client to the material disadvantage of the City. Contractor and the City covenant to work in good faith to identify any current or prospective conflicts, and to negotiate in good faith to resolve or waive such conflicts, or to limit or terminate services under this Agreement so as to avoid such conflicts.

O. Email Usage:

The City and Contractor have mutually determined that it would be necessary, convenient and in furtherance of the obligations arising under that agreement for the City to provide Contractor with a City e-mail address, ending in " @cityofdekalb.com." Notwithstanding the foregoing, the City and Contractor agree and acknowledge that Contractor remains an independent contractor, and the provision of this email address does not change the nature or scope of its services, but rather simply provides an alternative method of contact for Contractor, as a convenience to the City and Contractor. Contractor shall be responsible for ensuring compliance with all applicable laws, rules and regulations pertaining to use of the email address, and acknowledges that as the City controls the email servers through which emails on this account may be received or sent, the City shall have access to the email account at such times as it shall determine. Further, Contractor agrees and acknowledges that his use of the email account: 1) shall be solely permitted for activities undertaken in furtherance of Contractor's obligations under the consulting agreement referenced above; and, 2) shall be in a professional fashion that does not reflect adversely upon the City. Under the terms of Contractor's consulting agreement, Contractor acknowledges that it does not have the authority to bind the City to any contract or agreement, or create any obligation for the City without its express consent; the provision of this email address and account shall not be deemed an act that provides Contractor with any additional authority, and it shall be restricted to the duties and authorizations contemplated by the underlying consulting agreement.

Agreed to this 24 day of June, 2014

City of DeKalb

Contractor

John A. Fey  
City Mayor/Manager

R. M. Hopkins  
for Hopkins Solutions LLC

Elizabeth E. Peerboom  
City Clerk





**Exhibit A:**

**Description of Work**

Professional consultation to perform and coordinate various economic development, planning, zoning and community development services and projects for the City of DeKalb.

**Exhibit B:**

**Fee Schedule**

\$6,426 per month.

Any reimbursable expenses shall be reimbursed at actual cost, and shall be subject to prior approval by the City.

## **Exhibit C:**

### **Insurance Requirements:**

#### **1. All Contractors and All Contracts.**

Contractor shall provide any and all insurance required under any applicable law, regulation, statute or ordinance, including but not limited to workers' compensation insurance, unemployment insurance, automobile liability insurance and other legally required insurance. Contractor shall produce a certificate evidencing current coverage, upon request from the City. Contractor shall indemnify and hold harmless the City from any and all liability, damage, cost or expense which the City may incur or be liable to pay as a result of any and all accidental injuries or damages suffered by the Consultant or its employees (in addition to any other required indemnification or insurance from Consultant).

#### **2. Professional Liability Insurance Coverage / Errors & Omissions Insurance Coverage:**

Professional Liability / Malpractice: Contractor shall also be required to provide the City with a Certificate of Insurance, in a form and from an issuer acceptable to the City, indicating that the Contractor has obtained and maintains professional liability or malpractice insurance with policy limits of not less than One Million Dollars (\$1,000,000.00) per person / per occurrence. Said policy need not identify the City as additional primary insured.

#### **3. Indemnification.**

The policy limits, availability or inavailability of insurance coverage or the applicability of claims, defenses or limitations based upon applicable law (including but not limited to the Illinois Worker's Compensation Act or similar laws or statutes) shall in no way limit the Contractor's obligation to indemnify and hold harmless the City from any claims for damage, liabilities or other costs arising out of or relating to the Contractor's work or this Agreement.