



City Council Memorandum

To: Mayor Fasbender & City Councilmembers
From: City Administrator Dan Wietecha
Date: November 6, 2023
Item: Professional Services Agreement with WSB

Council Action Requested:

Approve Professional Service Agreement with WSB, LLC with Ryan Stempski as Public Works Director/Engineer.

Background Information:

The City has contracted with Focus Engineering since 2015 for City Engineer service. This has been an “embedded” position with Ryan Stempski part of the Public Works Department’s hierarchy and operations to the point that some may not even realize that he is not actually a City employee. In October 2021, we named him as Interim Public Works Director, and appointed him as Public Works Director in March 2023. He has experience with the City and our Public Works Department, with several ongoing and major projects (PFAS, Hwy 61, WWTP), and with our partner organizations (MNDOT, Met Council, Dakota County).

Because of upcoming changes at Focus Engineering, Ryan has resigned there, and his last day at Focus was October 27. We have received 30-day notice (per contract) from Focus to end their contract with us effective November 18. Ryan has been hired by WSB & Associates and started in that position October 30. The attached contract essential continues our relationship, from Focus to WSB, with Ryan as our Public Works Director, effective October 30.

Over the past couple years, with Ryan serving in a dual role as Public Works Director and City Engineer, we have deliberately maintained budget capacity to supplement the department with contract engineering support (for example: CAD, GIS, research, and construction oversight) as needed. We have utilized services of both Focus and WSB in this manner, with separate contracts for the additional services.

Financial Impact:

Within budget

Committee Discussion:

Not applicable

Attachments:

Professional Services Agreement

PROFESSIONAL SERVICES AGREEMENT

IX-04

This Agreement ("Agreement") is made as of November 2, 2023 (Effective Date), by and between the **City of Hastings**, 101 4th Street East, Hastings, Minnesota 55033, herein referred to as ("Client") and WSB LLC, 701 Xenia Avenue South, Suite 300, Minneapolis, Minnesota 55416, herein referred to as ("Consultant") to provide professional services ("Services") by Consultant in connection with the following project ("Project"): **Public Works Director/City Engineering Services** in Hastings, Minnesota.

ARTICLE 1 - SCOPE AND DESCRIPTION OF SERVICES ("SCOPE OF SERVICES")

Please see the attached Scope of Services and Compensation ("Exhibit A").

ARTICLE 2 - PERIOD OF SERVICE

The Services described under Scope of Services shall be completed expeditiously and professionally so as to maintain the agreed upon schedule. The schedule may be modified by the parties by agreement or as a result of an excusable delay caused by Force Majeure, a Client Delay, Change in Law or unforeseen conditions at the Project site.

ARTICLE 3 - COMPENSATION

Unless otherwise stated in the Scope of Services, Consultant shall perform the work on a time and materials basis and invoice for its work monthly. If not stated in Exhibit A, fees will be according to Consultant's current fee schedule. Fee schedules are valid for the calendar year in which they are issued. Each invoice shall include details for the time and reimbursable expenses incurred the previous month. Reimbursable expenses shall include but are not limited to, travel and lodging, mileage, print and plotting charges, shipping charges, messenger delivery charges, plus all taxes (including sales taxes), fees, including but not limited to permit, application, testing, and recording fees, imposts, or stamps required by State, Federal, Municipal, or other government agencies in the providing of Services.

Client agrees to pay all invoices within thirty (30) days of receiving same. Any invoice not paid within thirty (30) days of the original invoice date shall bear interest at the lower of 1.5% per month or the highest rate permitted by applicable law on the unpaid balance.

If Client fails to pay any amount by the applicable due date, Consultant shall have the right to suspend work and withhold Instruments of Service (as defined below) until payment in full, including interest, is received. Consultant shall have no liability whatsoever to Client for any costs or damages that result from such suspension or withholding of Instruments of Service, and Consultant shall be entitled to reimbursement of all costs incurred while work is suspended. If Consultant resumes services after payment by Client, the time schedule and fees for remaining Services shall be equitably adjusted.

If Client fails to pay any amount by the applicable due date, Consultant shall have the right to commence collection efforts, and all collection costs incurred by Consultant shall become immediately due and payable to Consultant as such collection costs are incurred. Collection costs include, but are not limited to, legal fees, collection agency fees, court costs, and reasonable staff costs for Consultant's staff time spent in efforts to collect the overdue balance.

Client's failure to pay Consultant in accordance with this Agreement shall constitute a material breach of this Agreement and shall be cause for Consultant to suspend performance or terminate this Agreement.

If the Services are suspended by Client for more than thirty (30) calendar days, consecutive or aggregate, Consultant shall be compensated for Services performed prior to such suspension. When the Services are resumed, Consultant shall be compensated for time and expenses incurred in the interruption and resumption of Services. Consultant's fees for the remaining Services and the time schedules shall be equitably adjusted.

ARTICLE 4 – ADDITIONAL SERVICES

In the event of any changes in the Scope of Services, Client Delay, changed or unforeseen conditions, Change in Law or event of Force Majeure, Client agrees to issue an Amendment for Additional Services ("AAS") to equitably adjust Consultant's fees and the time of performance. If Consultant is caused to increase its Scope of Services and Client does not issue an AAS that is acceptable to Consultant, compensation for the expanded Scope of Services shall be on an hourly basis according to Consultant's then-current standard rate schedule ("Rate Schedule"), plus reimbursable expenses.

A "Client Delay" shall include a delay caused by the Client failing to make timely decisions, a delay in the delivery of Client ordered equipment or supplies, or a delay by a Client-hired contractor or consultant not timely completing work upon which Consultant's work is dependent. "Force Majeure" is defined below in Article 13. A "Change in Law" is a change in the applicable laws or regulations applicable to the Project when the change occurs after the date of this Agreement.

ARTICLE 5 - CLIENT'S RESPONSIBILITIES

Client agrees to provide to Consultant in a timely manner all available information, requirements, and limitations relevant to Consultant's performance of its Scope of Services, including, but not limited to, objectives, schedule, constraints and criteria, space requirements, flexibility, expandability, special equipment, systems, and site requirements. Client furnished information shall also include data (and professional interpretations thereof) prepared by or services performed by others, including where applicable, but not limited to, previous reports, core borings, sub-surface explorations, hydrographic and hydrogeologic surveys, laboratory tests and inspection of samples, materials and equipment; appropriate professional interpretations of the foregoing data; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic and utility surveys; property description; zoning, deed and other

land use restrictions; and other special data. Consultant may rely on the accuracy of the Client's supplied information and use such information in the development of Consultant's Scope of Services. The accuracy of the Client's information is the Client's responsibility. Client shall update any information it provides if Client becomes aware of any changes in circumstances. Consultant shall endeavor to verify the information provided and shall promptly notify the Client if the Consultant discovers that any information or services furnished by the Client is in error or is inadequate for its purpose. Client shall also notify the Consultant whenever the Client observes or otherwise becomes aware of any defect in construction or design.

Client shall furnish right-of-way entry and continuous unimpaired access to each site subject to a Task Order for Consultant to perform its Scope of Services. Client shall also require all Utilities with facilities in the Client's right of way to locate and mark said utilities upon request, relocate and/or protect said utilities as determined necessary to accommodate work, submit a schedule of the necessary relocation/protection activities to the Client for review and comply with agreed upon schedule.

Where appropriate, Client shall endeavor to identify, remove and/or encapsulate asbestos products or materials or pollutants located in the project area prior to accomplishment by the Consultant of any work.

Client shall render decisions in a timely manner pertaining to documents submitted by Consultant to avoid unreasonable delay in the orderly and sequential progress of the Services, including acting promptly to approve all pay requests or requests for information by Consultant. Client shall furnish the services of other consultants when such services are requested by Consultant and are reasonably required by the scope of the Project.

Client shall designate a Client Representative with authority to transmit and receive instructions and information, interpret and define the Client's policies with respect to services rendered by the Consultant, and authority to make decisions as required for Consultant to complete services.

Client shall provide such legal, accounting and insurance counseling services as may be required and bear all costs incidental to compliance with the requirements of this article.

ARTICLE 6 - INDEMNIFICATION

To the fullest extent permitted by law, subject to the limitations set forth below in this Agreement, Client and Consultant shall indemnify and hold harmless the other and its respective directors, officers, employees, and representatives from and against all legal liability for claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are legally determined to be caused by the indemnitor's negligent acts, errors, or omissions. Neither party shall have a duty to defend the other party and no duty to defend is created by this Agreement.

ARTICLE 7 - LIABILITY LIMITATION

Client and Consultant have evaluated the parties' relative risks and benefits associated with this Project, including Consultant's fee relative to the risks assumed, and agree to allocate certain of the associated risks. To the fullest extent permitted by law, the total aggregate liability of Consultant (and its employees and sub-consultants) to Client for all injuries, damages, claims, losses, or expenses (including attorney fees and expert fees) arising out of Consultant's services or this Agreement is limited to the greater of Consultant's project fee or \$50,000, and Client agrees to hold Consultant harmless for any liability more than such amount. This limitation shall apply regardless of available insurance coverage, cause(s), or the theories of liability, including, but not limited to, breach of contract, negligence, contribution, indemnity, or other remedies.

ARTICLE 8 - STANDARD OF CARE

Consultant will perform the Services in a manner consistent with the level of care and skill ordinarily exercised by members of Consultant's profession currently practicing under similar conditions in the same locale. EXCEPT AS SPECIFICALLY STATED HEREIN, CONSULTANT MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONSULTANT'S SERVICES, AND CONSULTANT DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 9 - CONSEQUENTIAL DAMAGES

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOSS OF PROFITS OR REVENUE; LOSS OF USE OR OPPORTUNITY; LOSS OF GOOD WILL; COST OF SUBSTITUTE FACILITIES, GOODS, OR SERVICES; COST OF CAPITAL; OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES.

ARTICLE 10 - DISPUTE RESOLUTION

If a claim or dispute arises out of or relates to Consultant's Services or this Agreement, the parties shall attempt in good faith to settle such claim or dispute through direct discussions.

Any claim or dispute arising out of or related to Consultant's Services or this Agreement (except for collection procedures employed by Consultant and those waived or barred as provided elsewhere in this Agreement) that is not resolved by direct discussions shall be submitted to mediation as a condition precedent to the institution of legal or equitable proceedings by either party. Either party may file a request for mediation. Mediation shall be pursuant to the Construction Industry Mediation Rules of the American Arbitration Association. The Mediator shall be selected by the parties within fifteen (15) days of the request for mediation. Mediation shall proceed in advance of

legal or equitable proceedings, which shall be stayed pending the conclusion of mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or by court order. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Minneapolis, Minnesota.

Notwithstanding the foregoing, if a claim or dispute between the parties involves, relates to, or is the subject of a mechanic's lien or construction lien arising out of Consultant's Services, Consultant may proceed in accordance with applicable law to comply with all statutory requirements, including those related to lien notice and filing deadlines, prior to the commencement or conclusion of mediation or other form of alternative dispute resolution agreed to by the parties.

ARTICLE 11 - TERMINATION

Either party may terminate this Agreement for convenience and without cause upon twenty-one (21) calendar days written notice.

Either party may terminate this Agreement for cause upon ten (10) calendar days written notice for one or more of the following reasons:

1. The other party's material breach of this Agreement;
2. Assignment of this Agreement without the written consent of the other party;
3. Suspension of the Project or Consultant's Services for more than thirty (30) calendar days, consecutive or aggregate; or
4. Material changes in the conditions under which this Agreement was executed, the Scope of Services, the nature of the Project, or the failure of the parties to reach an agreement on compensation and/or scheduling adjustments necessitated by such changes.

In the event of termination of this Agreement by either party, regardless of the reason for termination, Client shall, within fifteen (15) days of termination, pay Consultant in full for all services rendered and costs incurred by Consultant up to the date of termination. Additionally, and notwithstanding any language in this Agreement to the contrary, within sixty (60) days of termination, Client shall reimburse Consultant for all expenses incurred by Consultant in connection with the orderly termination of this Agreement, including, but not limited to, demobilization, reassignment of personnel, associated overhead costs, and all other expenses resulting from the termination.

ARTICLE 12 - INSURANCE

Consultant shall carry the following insurance:

Workers Compensation	Statutory
Employers Liability	\$1,000,000
General Liability	\$1,500,000 Each Occurrence/ \$1,500,000 Aggregate
Automobile Liability	\$1,000,000 Combined Single Limit
Professional Liability	\$3,000,000 Per Claim/ \$3,000,000 Annual Aggregate

General Liability shall name the Client as an additional insured. The insurer agrees to give thirty (30) days written notice in the event of cancellation by the insurer.

ARTICLE 13 - MISCELLANEOUS

A. WORK PRODUCT / DOCUMENT OWNERSHIP

Except as otherwise provided in Exhibit B (if applicable), the following shall apply to the ownership of documents and work product:

Unless Client requests otherwise, Consultant will provide its documents and materials both in a hard copy and in an electronic format. Because electronic documents may be modified intentionally or inadvertently, Client agrees that Consultant will not be liable for any losses or damages resulting from any change in an electronic document after Consultant transmits it to Client. All documents, including reports, drawings, calculations, specifications, CADD materials, computers software or hardware or other work product prepared by Consultant pursuant to this Agreement are Consultant's Instruments of Services for use solely with respect to this Project and, unless otherwise provided, Consultant shall be deemed the owner of these Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyright. If Client has paid Consultant in full for its Services, Client shall be permitted to retain copies, including reproducible copies, of Consultant's Instruments of Service for Client's information, reference and use in connection with the Project. Consultant's Instruments of Service shall not be used by the Client or others on other projects, for additions for this Project or for completion of this Project by others, except with Consultant's agreement in writing and with appropriate compensation to Consultant. In consideration of Client's use of Consultant's Instruments of Service, Client shall, to the fullest extent permitted by law, indemnify and hold harmless Consultant, its directors, officers, agents, and employees from all claims arising out of the reuse or misuse of such Instruments of Service. Under no circumstances shall transfer of the Consultant's Instruments of Service be deemed a sale by the Consultant, and the Consultant makes no warranties, either express or implied, of merchantability and fitness for any particular purpose.

Copies of documents that may be relied upon by Client are limited to the printed copies (also known as hard copies) that are signed or sealed by Consultant. Files in electronic format furnished to Client are only for convenience of Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. Consultant makes no representations as to long term compatibility, usability or readability of electronic files.

The Consultant agrees to abide by the applicable provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13.

B. HAZARDOUS MATERIALS

Client represents to Consultant that no hazardous materials exist at the Project site. If there are hazardous materials at the Project site, the Client must inform Consultant of the type, quantity, and location of such hazardous materials. If hazardous materials are discovered at the Project site then Consultant will notify the Client and, to the extent required by law, notify the appropriate governmental authority. If Consultant or any other entity encounters hazardous materials at the Project site then Consultant may without any liability to Client or any other entity suspend services until such time as Client retains the appropriate entities to identify and (as appropriate) abate, remediate, or remove the hazardous material. Client agrees that Consultant has been retained to perform professional services and shall not be required to become an arranger, operator, generator, or transporter of hazardous material (as defined by law). Client hereby agrees to indemnify and hold harmless Consultant for all claims losses and damages arising out of the existence of hazardous materials on the Project site.

C. UNDERGROUND UTILITY AND STRUCTURE CLEARANCE

Where requested by Client, Consultant will perform customary research to assist Client in locating and identifying subterranean structures or utilities. However, Consultant may reasonably rely on information from the Client and information provided by local utilities related to structures or utilities and will not be liable for damages incurred where Consultant has complied with the standard of care and acted in reliance on that information. The Client agrees to waive all claims and causes of action against the Consultant for claims by Client or its contractors relating to the identification, removal, relocation, or restoration of utilities, or damages to underground improvements resulting from subsurface penetration locations established by the Consultant.

D. THIRD-PARTY RELIANCE

All Services provided by Consultant are for Client's and Consultant's sole benefit and exclusive use with no third-party beneficiaries intended. Reliance upon the Services and any work product is limited to Client and is not intended to benefit any third party.

E. CONSTRUCTION SERVICES

If requested by Client in the Scope of Services or AAS, Consultant shall visit the project during construction to become familiar with the progress and quality of the contractors' work and to determine if the work is proceeding, in general, in accordance with plans, specifications or other contract documents prepared by Consultant for the Client. The Client has not retained the Consultant to make detailed inspections or to provide exhaustive or continuous project review and observation services. Consultant does not guarantee the performance of, and shall have no responsibility for, the acts, errors or omissions of any contractor, subcontractor, supplier or any other entity furnishing materials or performing any work on the project.

Client acknowledges Consultant will not direct, supervise or control the work of contractors or their subcontractors, nor shall Consultant have authority over or responsibility for the contractors' means, methods, or procedures of construction. Consultant's services do not include review or evaluation of the Client's, contractor's or subcontractor's safety measures, or job site safety. Job site safety shall be the sole responsibility of the contractor who is performing the work.

For Client-observed projects, the Consultant shall be entitled to rely upon and accept representations of the Client's observer. If the Client desires more extensive project observation or full-time project representation, the Client shall request such services be provided by the Consultant as an additional service. Consultant and Client shall then enter into an AAS detailing the terms and conditions of the requested project observation.

F. SUBMITTALS AND PAY APPLICATIONS

If the Scope of Services includes the Consultant reviewing and certifying the amounts due the contractor, the Consultant's certification for payment shall constitute a representation to the Client, that to the best of the Consultant's knowledge, information and belief, the contractor's work has progressed to the point indicated and that the quality of the work is in general accordance with the documents issued by the Consultant. The issuance of a certificate for payment shall not be a representation that the Consultant has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from subcontractors and material suppliers and other data requested by the Client to substantiate the contractor's right to payment, or (4) ascertained how or for what purpose the contractor has used money previously paid on account of the contract sum. Contractor shall remain exclusively responsible for its work.

If the Scope of Services includes Consultant's review and approval of submittals from the contractor, such review shall be for the limited purpose of checking for conformance with the information given and the design concept. The review of submittals is not intended to determine the accuracy of all components, the accuracy of the quantities or dimensions, or the safety procedures, means or methods to be used in construction, and those responsibilities remain exclusively with the Client's contractor.

G. JOB SITE SAFETY

Neither the Services of Consultant, nor the presence of Consultant at the construction/Project site, shall relieve Client, general contractor(s), or subcontractor(s) of any of their responsibilities or duties to perform the work in strict accordance with the contract documents and to comply with all health and safety precautions required by any regulatory agency. Consultant does not have

authority or responsibility to control any construction contractor or its employees in connection with their work or any health or safety programs or procedures. Client agrees that contractors and subcontractors are solely responsible for job site safety and warrants that this intent shall be carried out in Client's contracts with contractors. Client also agrees that Client and its contractor(s), jointly and severally and to the fullest extent permitted by law, shall indemnify and hold harmless Consultant and its employees against any liability related to health, injury, or job site safety.

H. OPINIONS OF PROBABLE COST

Opinions, if any, of probable cost, construction cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs provided for are made or to be made on the basis of the Consultant's experience and qualifications and represent the Consultant's best judgment as an experienced and qualified professional design firm. The parties acknowledge, however, that the Consultant does not have control over the cost of labor, material, equipment or services furnished by others or over market conditions or contractor's methods of determining their prices, and any evaluation of any facility to be constructed or acquired, or work to be performed must, of necessity, be viewed as simply preliminary. Accordingly, the Consultant and Client agree that that proposals, bids or actual costs may vary from opinions, evaluations or studies submitted by the Consultant and that Consultant assumes no responsibility for the accuracy of opinions of probable construction costs and Client expressly waives any claims related to the accuracy of opinions of probable construction costs. If Client wishes greater assurance as to probable construction cost, Client shall employ an independent cost estimator as part of its Project responsibilities.

I. FORCE MAJEURE

To the extent any time for performance applies, the affected party shall not be responsible for any delays due to federal, state or municipal actions or regulations, acts of foreign governments, strikes or other labor shortages, equipment or material delays or shortages, delays in issuing applicable permits, acts or omissions of the other party, inclement weather, pandemic, acts of the public enemy, fires, floods, riots, embargos, other acts of God, government shutdown, unforeseen site conditions or any other events or causes beyond the control of Consultant.

J. HEADINGS

The headings used in this Agreement are for convenience only and shall in no way define, limit, or describe the scope or intent of this Agreement or any part hereof.

K. ASSIGNMENT

Client may not assign this Agreement without the written consent of Consultant.

L. ENTIRE AGREEMENT

This Agreement represents and contains the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and supersedes all prior oral and written agreements and understandings.

M. GOVERNING LAW

The Agreement shall be construed, interpreted, and enforced in accordance with the laws of the state in which the Project is located.

N. MODIFICATIONS

This Agreement may be modified only by a written instrument executed by both parties.

O. WAIVER

No delay or failure by either party to exercise any right or remedy under this Agreement, and no partial or single exercise of a right or remedy, will waive that or any other right or remedy.

P. SEVERABILITY

Any invalidity or unenforceability of all or part of a provision of this Agreement shall be severable and shall not affect the validity or enforceability of the remaining part of that provision or other provisions.

Q. EXECUTION

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and together which shall constitute one and the same agreement. Signatures on this Agreement that are transmitted by fax, email or other electronic means shall be valid and binding.

R. NO PERSONAL LIABILITY

It is intended by the parties to this Agreement that Consultant's services shall not subject Consultant's employees, officers or directors to any personal legal exposure for the risks associated with this Agreement. Therefore, and notwithstanding anything to the contrary contained herein, the Client agrees that as the Client's sole and exclusive remedy for any claim, demand or suit shall be directed and/or asserted only against Consultant, and not against any of Consultant's individual employees, officers or directors.

S. LIEN NOTICE – APPLICABLE TO PRIVATE PROJECTS IN MINNESOTA

ANY PERSON OR COMPANY SUPPLYING LABOR OR MATERIALS FOR THIS IMPROVEMENT TO YOUR PROPERTY MAY FILE A LIEN AGAINST YOUR PROPERTY IF THAT PERSON OR COMPANY IS NOT PAID FOR THE CONTRIBUTIONS.

UNDER MINNESOTA LAW, YOU HAVE THE RIGHT TO PAY PERSONS WHO SUPPLIED LABOR OR MATERIALS FOR THIS IMPROVEMENT DIRECTLY AND DEDUCT THIS AMOUNT FROM OUR CONTRACT PRICE OR WITHHOLD THE AMOUNTS DUE THEM FROM US UNTIL 120 DAYS AFTER COMPLETION OF THE IMPROVEMENT UNLESS WE GIVE YOU A LIEN WAIVER SIGNED BY PERSONS WHO SUPPLIED ANY LABOR OR MATERIAL FOR THE IMPROVEMENT AND WHO GAVE YOU TIMELY NOTICE.

T. GENERAL LIEN NOTICE - APPLICABLE TO PRIVATE PROJECTS IN LOCATIONS OTHER THAN MINNESOTA TO THE EXTENT PERMITTED BY APPLICABLE LAW, AS A PARTY SUPPLYING LABOR OR MATERIALS FOR IMPROVEMENT TO PROPERTY, WE MAY FILE A LIEN AGAINST YOUR PROPERTY IF WE ARE NOT PAID IN ACCORDANCE WITH THIS AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have made and executed the Agreement as of the day and year first above written.

CITY OF HASTINGS

WSB LLC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

By: _____

Name: _____

Title: _____

Exhibit A

I. Understanding

The Client intends to retain the Consultant as the designated Public Works Director/City Engineer and to provide general engineering and other related professional services. Typical general services (not all-inclusive) are listed below.

II. Scope of Services

1. BASIC SCOPE OF SERVICES AS PUBLIC WORKS DIRECTOR/CITY ENGINEER

- A. General Engineering and Project Management. Services include capital planning, policy updates, budgeting, and assistance with short and long-range street and utility planning and Public Works maintenance issues.
- B. Reports and Correspondence. Preparation of engineering reports and technical correspondence including: determination of need, preparation, review for compliance with City ordinances and policies, minor site plan reviews, and review of reports prepared by other agencies that are not included as part of a public improvement project or escrowed private development.
- C. Meeting Attendance. The Public Works Director/City Engineer or other Consultant staff members as approved will attend the following meetings:
 - 1) City Council Meetings
 - 2) City Council Workshops
 - 3) Committee Meetings
 - 4) Internal Meetings (Client Leadership Team and Supervisor Meetings, etc.)
 - 5) External Meetings (Agency Meetings, Project Meetings, etc.)
- D. Liaison Support. Respond as liaison for engineering activities related to adjacent municipalities and regulatory agencies.
- E. Staff and Resident Support. Respond to staff and resident engineering inquiries and requests, including public presentations, evaluation of specific issues, and recommendations to staff and City Council.
- F. Construction Services. Services including monitoring of City and private projects, review of construction plans, and construction staking and surveying that are not included as part of a public improvement project or escrowed private development as identified in a separate proposal for services by Consultant.
- G. Document Library. Establish and maintain a library of permits and applications, contract documents, and other items as needed.
- H. Other services as requested.

2. PRELIMINARY REPORT/STUDY PHASE.

- A. Subject to further clarification and refinement on a project-by-project basis, the Consultant shall in proper time and sequence:
 - 1) Consult with the Client representative to determine the requirements of the project, review available data, attend necessary conferences, and be available for general consultation.
 - 2) Advise the Client as to the necessity of the Client's providing or obtaining from others, data or services and assist the Client in obtaining such data and services.
 - 3) Identify and analyze requirements of governmental authorities having jurisdiction to approve the design of the project and participate in consultations with such authorities.
 - 4) Make such preliminary studies, layouts, or field surveys to verify and supplement existing elevation and topographic information and preliminary cost estimates to clearly identify potential construction or financing problems.
 - 5) Assist the Client in obtaining all required subsurface investigations as required for the preparation of the feasibility report.
 - 6) Prepare a feasibility report on the preliminary engineering study of the project in sufficient detail to indicate the problems involved.

The report shall include the desired phased program, if required, and the appropriate alternate solutions. The report will also include schematic layouts, sketches, conceptual design criteria with appropriate exhibits to indicate the considerations involved (including applicable requirements of governmental authorities having jurisdiction over the project), preliminary estimate of project cost, typical examples of proposed assessments preliminary identification of right-of-way and easement requirements, and the Consultant's conclusions and recommendations.

- 7) Furnish copies of the feasibility report documents and review the feasibility report with Client staff.

- 8) If required, the Consultant shall present the feasibility report to the proper reviewing agencies and to the City Council. The Consultant shall attend the public hearing for the project.

3. FINAL DESIGN PHASE

- A. Subject to further clarification and refinement on a project-by-project basis, the Consultant shall, in proper time and sequence:
- 1) On the basis of the accepted preliminary design documents and the current opinion of probable cost, prepare contract documents consisting of final drawings and specifications to show and describe the scope, extent, and character of the work to be furnished and performed by Contractor(s) including Advertisement for Bids, Instructions to Bidders, Bid Form, Form of Agreement, Performance and Payment Bond Form, General Conditions, Special Conditions, and Technical Specifications.
 - 2) Provide technical criteria, written descriptions and design data for use in filing applications for routine permits or obtaining approvals of such governmental authorities as have jurisdiction to approve the design of the project and assist the Client in consultations with appropriate authorities. The Consultant shall prepare and submit all permit applications to the appropriate agencies. The Client shall be responsible for all permit fees.
 - 3) Advise the Client of any adjustments to the latest opinion of probable cost caused by changes in extent or design requirements of the project and furnish a current opinion of probable cost based on the drawings and specifications.
 - 4) Prepare for review and approval by the Client, its legal counsel and other advisors contract agreement forms, general conditions, supplementary conditions, bid forms, advertisement for bid and instructions to bidders, and assist in the preparation of other related documents.
 - 5) Attend necessary conferences and be available for general consultation.
 - 6) Furnish three (3) copies of the above documents and of the drawings and specifications and present and review them in person with the Client, along with completing a plans-in-hand site inspection. Make minor revisions and adjustments as required following review by the Client.

4. BIDDING PHASE

- A. Subject to further clarification and refinement on a project-by-project basis, the Consultant shall in proper time and sequence:
- 1) Furnish plans and specifications for agency review and furnish copies to the Client for bidding and construction purposes as a part of this Contract.
 - 2) Issue addenda as appropriate to interpret, clarify, or expand the bidding documents.
 - 3) Assist the Client in obtaining and evaluating bids and awarding contracts for the construction of the project.
 - 4) Consult with and advise the Client as to the acceptability of subcontractors, suppliers, and other persons and organizations proposed by the prime contractor(s) (herein called "Contractor(s)") for the portions of the work as to which such acceptability is required by the bidding documents.
 - 5) Consult with and advise the Client concerning and determining the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution prior to the award of contracts is allowed by the bidding documents.
 - 6) Attend bid opening and prepare bid tabulation sheets.

5. CONSTRUCTION PHASE

- A. Subject to further clarification and refinement on a project-by-project basis, the Consultant shall:
- 1) Consult with and advise the Client and act as the Client's representative as provided in the contract documents, which may not be modified to affect Consultant's responsibilities except by written agreement signed by the Client and the Consultant.
 - 2) Conduct pre-construction conference to be attended by the Contractor, Client, and others as may be requested by the Client.
 - 3) Make visits to the site at intervals appropriate to the various stages of construction to observe as an experienced and qualified design professional the progress and quality of the executed work of the Contractor(s), and to determine if such work is proceeding in accordance with the contract documents. During such visits and on the basis of the on-site observations, the Consultant will keep the Client informed of the progress of the work and will endeavor to identify for the Client defects and deficiencies in the work of the Contractor(s). This agreement does not require the Consultant to evaluate contractor's safety methods. It is agreed that safety matters are Contractor's responsibility,

and that the Consultant shall be responsible only for the acts or omissions of its own employees. The Consultant may disapprove work as failing to conform to the contract documents. The Consultant shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work. The Consultant shall be obligated, however, to disclose known dangerous circumstances to the Client.

- 4) Review samples, schedules, shop drawings, the result of tests and inspections, and other data which the Contractor is required to submit, but only for the conformance with the design concept of the project and compliance with the information given in the contract documents, (but such review shall not extend to means, methods, sequences, techniques, or procedures of construction or to safety precautions and programs incidental thereto). The Consultant shall receive and review (for general content as required by the specification), maintenance and operating instructions, schedules, guarantees, bonds, and certificates of inspection which are to be assembled by the Contractor in accordance with the contract documents.
- 5) Issue all instructions of the Client to Contractor; issue necessary interpretations and clarifications of the contract documents and in connection therewith prepare change orders as required for the Client's approval and have authority, as the Client's representative, to require special inspection or testing of the work.
- 6) Review the Contractor's application for payment, determine the amount owing the Contractor and make recommendations to the Client regarding the payment thereof.

The Consultant's recommendations are based on on-site observations as an experienced and qualified design professional. The recommendations by the Consultant constitute a representation to the Client that to the best of their knowledge, information and belief, the work has progressed to the point indicated on said application and the quality of work is in accordance with the contract documents, subject to the results of any subsequent test called for by the contract documents and any qualifications stated in his recommendations.

- 7) Conduct, in the presence of the designated representative, a site visit to determine if the project is substantially complete and conduct a final site visit to determine if the work has been completed in accordance with the contract documents. Such site visits may include representatives from the Client and/or other involved governmental agencies. If the Contractor has fulfilled all of his obligations, the Consultant shall give written notice to the Client and the Contractor that the work is acceptable for final payment.
- 8) The Consultant shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work. The Consultant shall be obligated, however, to disclose known dangerous circumstances to the Client.
- 9) The Consultant shall furnish the Client with a list detailing final quantities and costs in a letter stating to the best knowledge of the Consultant that the work is in compliance with the plans, specifications and change orders.

6. SCOPE OF SERVICES FOR PRIVATE DEVELOPMENT RELATED PROJECTS

- A. Subject to further clarification and refinement on a project-by-project basis, the Consultant shall:
 - 1) Following written notice from the City Administrator or their designee, review the platting, concept, design, plans and specifications for each Development Project to determine that they comply with those written City Standards that have been approved by the City Council for such projects. Require the developer or their Consultant to submit the plans to appropriate utility companies and other concerned agencies for their review, concurrence and issuance of permits as required. Upon completion of the review, submit a written report to the City Administrator or their designee to assist City staff and the City Council in approving or disapproving the proposed Development Project.
 - 2) Submit a written progress report to the City Administrator or their designee for each Development Project under construction. The report should include schedule and progress information.
 - 3) Submit a written report to assist the City Administrator or their designee in determining that the project has been satisfactorily completed in accordance with written City Standards.

7. SCOPE OF ADDITIONAL SERVICES

- A. If authorized in writing by the Client, the Consultant shall furnish additional services of the following type:
 - 1) GIS Support. Provide GIS support services to be billed hourly as requested.
 - 2) MS4 Services. MS4 services to be billed hourly as requested.
 - 3) Construction Services. Services including monitoring of City and private projects, review of construction plans, and construction staking and surveying that are not included as part of a public improvement project or escrowed private development.

- 4) Document Library. Establish and maintain a library of permits and applications, contract documents, and other items as needed.
- 5) Subconsultant Services. Providing services of professional subconsultants as required for a particular project.
- 6) Surveying Services. Providing the type of surveying or related engineering services necessary for preparation of permanent and/or temporary easements, boundary surveys, or plat documents.
- 7) Plan Review. Review of developer's plats and concept plans. Provide assistance to the developer in preparing a plat for improvement projects.
- 8) Additional services in connection with the project not otherwise provided for in this Agreement.

III. Compensation

- 1. The Client shall pay the Consultant for Ryan Stempski to serve as the Public Works Director/City Engineer at a fee of \$120/hour for services rendered through December 31, 2024. Following December 31, 2024, the Consultant shall evaluate this fee on an annual basis and adjust it to account for inflation and other factors.
- 2. All other services will be provided in accordance with Consultant's current fee schedule. Consultant's current fee schedule with hourly rates is attached to this Agreement. The rate schedule is for 2023; and will remain in effect for services rendered through December 31, 2023.
- 3. The fee schedule will be evaluated on an annual basis by the Consultant and adjusted to account for inflation and other factors. The Consultant will submit a revised fee schedule prior to December 31 on an annual basis.

2023 Rate Schedule



	Billing Rate/Hour
SR. PRINCIPAL SR. ASSOCIATE	\$235
PRINCIPAL ASSOCIATE	\$173 – \$223
SR. PROJECT MANAGER SR. PROJECT ENGINEER	\$173 – \$223
PROJECT MANAGER	\$152 – \$170
PROJECT ENGINEER GRADUATE ENGINEER	\$102 – \$169
ENGINEERING TECHNICIAN ENGINEERING SPECIALIST	\$68 – \$167
LANDSCAPE ARCHITECT SR. LANDSCAPE ARCHITECT	\$78 – \$162
ENVIRONMENTAL SCIENTIST SR. ENVIRONMENTAL SCIENTIST	\$68 – \$160
PLANNER SR. PLANNER	\$80 – \$167
GIS SPECIALIST SR. GIS SPECIALIST	\$78 – \$167
CONSTRUCTION OBSERVER	\$104 – \$135
SURVEY	
One-Person Crew	\$175
Two-Person Crew	\$235
OFFICE TECHNICIAN	\$60 – \$102

Costs associated with word processing, cell phones and reproduction of common correspondence are included in the above hourly rates. Vehicle mileage is included in our billing rates [excluding geotechnical and construction materials testing (CMT) service rates]. Mileage can be charged separately, if specifically outlined by contract. | Reimbursable expenses include costs associated with plan, specification, and report reproduction; permit fees; delivery costs; etc. | Multiple rates illustrate the varying levels of experience within each category. | Rate Schedule is adjusted annually.