

CITY OF DES MOINES
AGREEMENT FOR PROFESSIONAL SERVICES: HOURLY
(NAME OF PROJECT)
Activity ID (Activity ID #)

WHEREAS, the City of Des Moines, Iowa, a municipal corporation organized and existing pursuant to the laws of the State of Iowa, hereinafter referred to as the "City", is desirous of obtaining professional services in connection with (Project Description); and

WHEREAS, (Consultant Company Name, President/CEO Name, Title, and Complete Address), hereinafter referred to as the "Consultant", being a corporation OR partnership organized and existing under the laws of the State of () and being duly authorized to do business in the State of Iowa; and

WHEREAS, the Consultant is desirous of performing the professional services for the City in connection with (Project Name); and (Remove ';' and 'and' if not using next 'WHEREAS', and replace with '.')

WHEREAS, (Include Whereas As Necessary To Describe Project In Greater Detail)
NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

SECTION 1 - GENERAL

- A. PERFORMANCE:** The performance of the Consultant is limited to the scope of services outlined as hereinafter set forth.
- B. CITY'S AUTHORIZED REPRESENTATIVE:** The Des Moines City Manager is the liaison officer between the Des Moines City Council and the Consultant. The City Manager has delegated the administration, general supervision, and approval authority under this agreement to the City Engineer, hereinafter City Engineer. The City Engineer is the City's representative for administration of the services to be performed under this Agreement, and shall receive all communications and information, arrange such conferences as deemed necessary, secure and obtain all comments, approvals, and notices to proceed from the City, and transmit such comments, approvals, and notices to proceed to the Consultant. The services to be performed by the Consultant under this Agreement shall at all times be subject to the general oversight and administrative approval of the City Engineer.
- C. CONFERENCES:** As the performance of this Agreement progresses, conferences shall be held from time to time at a mutually convenient location at the request of the City Engineer. The Consultant shall prepare and present such information as may be pertinent or necessary to enable the City Engineer to pass critical judgment on the features and progress of services under this Agreement. The Consultant shall make such changes, amendments, or revisions in the detail of any phase of services under this Agreement as may be required by the City Engineer. If alternates or alternatives are to be considered, the City Engineer shall have the right of selection. The Consultant shall, at the request of the City Engineer, appear personally, prepare and present such documents and explanations to the Des Moines City Council as may be requested.
- D. INSURANCE AND INDEMNIFICATION:** The Consultant shall purchase and maintain insurance in accordance with the insurance requirements set forth in Attachment 1 to protect the Consultant and City throughout the duration of this Agreement. The Consultant shall not commit any act which shall invalidate any policy of insurance. The Consultant shall defend, indemnify and hold harmless the City in accordance with the indemnification requirements set forth in Attachment 1. The Consultant shall be subject to all terms and provisions set forth in Attachment 1 and the exhibits thereto.
- E. PROGRESS REPORTS:** The Consultant shall furnish the City with monthly progress reports which shall indicate the percentage of work completed, together with a description of the work in progress under this Agreement. The Consultant shall also, upon request of the City Engineer, furnish the necessary documentation to verify the reported progress.

- F. ACCESS TO CONSULTANT'S RECORDS:** The Consultant shall maintain all books, documents, papers, accounting records and other evidence pertaining to cost incurred in performing work covered by this contract. The City Engineer shall have access to said documents and evidence for the purpose of inspection, audit and copying during normal business hours. All said documents shall be retained for three years from the date of final payment under the contract.
- G. OWNERSHIP OF DOCUMENTS:** Consultant agrees that the City shall become the sole and exclusive owner of all designs, design plans, images, drawings, models, survey notes, reports, specifications, studies, records and other data and documents, in whatever form, prepared under this Agreement ("the Design Documents"). Consultant hereby irrevocably assigns, transfers and conveys to the City all right, title and interest in and to the Design Documents and all intellectual property rights and proprietary rights arising out of the Design Documents, including copyrights, patents, trademarks, and derivative works and interests. Consultant warrants to the City that the Design Documents will be free from any claims or encumbrance of intellectual property or proprietary rights of Consultant or any third party, including any employee, agent, contractor, sub-consultant, subcontractor, subsidiary or affiliate of Consultant. Upon completion or termination of this Agreement, Consultant will immediately turn over to City all Design Documents not previously delivered to City.

To the extent any of Consultant's rights in the Design Documents are not subject to assignment or transfer hereunder, including any moral rights and any rights of attribution and of integrity, Consultant hereby irrevocably and unconditionally waives such rights and enforcement thereof and agrees not to challenge the City's right in and to the Design Documents.

The City agrees not to re-use the Design Documents developed and provided by the Consultant for this project in the construction of another project without the prior approval of the Consultant, except that the City may re-use such design specifications without the prior approval of the Consultant, as long as the City shall indemnify the Consultant against any claim for negligent design relating to its re-use of said Design Documents.

- H. (NOT USED) OR FEDERAL OR OTHER REQUIREMENTS:** ***NOTE: Most of the time, (NOT USED) will be the appropriate entry, delete everything else. When specific attachments are required by the Federal or State agency, then include the following:*** The (Name of Federal/State agency) requires that Attachment No. () be made a part of the Agreement. Consultant agrees to comply with all requirements set forth in the attachment.
- I. TERMINATION:** If the City should desire to suspend or terminate the services of the Consultant under this Agreement, such suspension or termination may be effected by the City giving the Consultant written notice. Payment shall be made by the City for services rendered by the Consultant to date of termination.
- J. CHANGES IN SCOPE OF SERVICES:**
1. Extra Work: Authorization for extra work shall be evidenced by the City in writing, in the form of a Supplemental Agreement. At the discretion of the City, work not called out in the Agreement or which is considered to be beyond the extent of a reasonable exploration of alternates and/or "trial and error" solutions in design procedure may be classed as extra work. Extra work will usually be of limited extent and may consist of, but is not necessarily limited to:
 - a. The introduction of new items of work beyond the stated or implied scope of the Agreement.
 - b. Redesign and/or detailing based on change of concept after prior approval and authorization to proceed and causing appreciable loss of work accomplished. This item consists of work required to revise plans and/or documents to the state of completion obtained prior to the order for change.

At the option of the City, payment for extra work may be made on a fixed price; a cost plus a fixed fee; time and materials; or other mutually-agreed basis. If the Consultant is of the opinion that any work the Consultant has been directed to perform is beyond the scope of this Agreement and constitutes extra work, the Consultant shall promptly notify the City in writing of that fact. In the event the City determines that such work does constitute extra work, the City shall provide extra

compensation to the Consultant as provided for above. No extra work shall be performed by the Consultant without receiving a written agreement from the City in advance.

2. Deletion of Work: Authorization for deletion of work shall be evidenced by the City in writing. At the discretion of the City, work items listed in Section 2 - Scope of Services, or parts thereof, may be deleted from the project. Reduction to the Consultant's compensation as a result of deletion of work shall be based on the cost estimate of the work deleted. In the event that the Consultant had performed authorized work on the items deleted prior to deletion, the cost of such work shall be retained in the Consultant's compensation.

K. NONDISCRIMINATION: The Consultant hereby acknowledges and agrees:

1. To comply with the Equal Employment Opportunity Program included in the City of Des Moines Contract Compliance Program, which is available at <http://www.dmgov.org/Departments/Engineering/Pages/Documents.aspx> or from the City Engineer's Office.
2. To comply with any and all applicable provisions of the Des Moines Human Rights Ordinance, Chapter 62 of the Des Moines Municipal Code.
3. Not to discriminate against any employees or applicants for employment on the basis of age, race, religion, creed, color, sex, sexual orientation, national origin, ancestry or disability.
4. To include this provision in all subcontracts for this project.

L. DISADVANTAGED BUSINESS ENTERPRISE/TARGETED SMALL BUSINESS (DBE/TSB) PROGRAM: It is the policy of the City of Des Moines that Disadvantaged Business Enterprises (DBEs) or Targeted Small Businesses (TSBs), as defined in the City Contract Compliance Program, shall have the maximum opportunity to participate in the performance of City funded contracts and procurements. This Professional Services Agreement does not include any DBE or TSB goal; however, the Consultant is encouraged to solicit DBE or TSB participation, and whenever possible, include DBE or TSB Subconsultants for a portion of the work.

M. SUBLETTING OR ASSIGNMENT: The Consultant shall not sublet, assign, or otherwise dispose of any portion of the services to be provided by this Agreement without a written permission to sublet signed by the City Engineer. Requests for permission to sublet shall be in writing, and shall name the organization which will perform the work, the work to be performed, and the dollar amount of the work to be performed. When requested by the City Engineer, the Consultant shall provide a written report showing that the organization which will perform the work is particularly experienced and equipped for such work. Consent by the City for the Consultant to sublet, assign or otherwise dispose of any portion of this Agreement, shall not relieve the Consultant of any responsibility for fulfillment of this Agreement, nor shall it in any way create a contractual relationship between the City and the Subconsultant. The Consultant agrees to include in and make a part of all subagreements all portions of this Agreement which relate to the Subconsultants' work including the Nondiscrimination portions of this Agreement. The following listed Subconsultants shall be deemed to be approved when this Agreement is executed: (Enter Name or None).

N. CLOSE-OUT OF AGREEMENT: Upon completion or termination of Services under this Agreement, the Consultant shall provide the City the following documents:

1. Documents as stated in Section 1.G of the Agreement.
2. Statement of Final Invoice.
3. Written report showing the actual amounts paid by the Consultant for services under this Contract to DBE/TSB if a goal is established.

O. LAWS, REGULATIONS AND CODES: The Consultant hereby agrees that:

1. All work done as part of this Agreement is subject to current Federal, State, or Local Laws, Regulations and/or Codes and shall comply with such applicable Laws, Regulations and/or Codes.
2. All design and survey work under this Agreement shall be performed under the direction and control of an engineer, surveyor, or architect licensed in Iowa. Engineering, architectural, and land surveying documents, including plans, specifications, and reports, shall be sealed by an engineer, surveyor, or architect licensed in Iowa.

- P. ATTORNEYS' FEES:** In the event the City is required to enforce the provisions of this Agreement due to a dispute between the Consultant and the City or to collect damages for the breach of this Agreement and if the dispute results in the filing of a legal action and/or demand for arbitration, mediation, or other form of alternative dispute resolution, or if the City is required to protect or defend itself, and the City prevails in whole or in part, the City shall be entitled to reasonable attorney's fees, costs and expenses, including but not limited to out-of-pocket expenses, expert witness fees and costs, depositions, and other expenses of the proceedings, including expenses of collection of any judgments or awards rendered there under.
- Q. DEFENSE COOPERATION:** In the event that the City has to defend any claim or legal action relating to or resulting from goods or services pursuant to this Agreement, including but not limited to plans, specifications, or any other service provided under this Agreement, the Consultant shall cooperate fully with the City in defending such claim or action, including but not limited to, timely response to all requests by the City.
- R. CITY POLICY AND PROCEDURES:** The Consultant hereby agrees to conform to City policy and procedures as they relate to this Agreement. Such policy and procedure shall include but is not limited to the following:
1. Invoice and billings for service.
 2. City adopted Design Standards and specifications.
 3. The Des Moines Engineering Department standard format for reports, plans, and/or specifications includes:
 - a. Plan Sheets: 11"x 17" preferred and 24"x36" maximum size in Bentley Microstation digital format preferred or alternate AutoCad format.
 - b. Reports and/or specifications: 8.5"x11" in Microsoft Word digital format.
 - c. Other formats only upon special approval of the City Engineer.
 4. Plan-review process including site-plan and review by Boards and Commissions.
 5. Include City Activity ID on all documents related to this Agreement.
- S. NOTICE TO PROCEED:** The Consultant shall not begin work until a written notice to proceed is issued by the City Engineering Department. If Section 2 of this Agreement provides for the work to be completed in phases, a notice to proceed shall be issued for each phase.

SECTION 2 - SCOPE OF SERVICES

- A. SERVICES PROVIDED BY CONSULTANT:** Detailed Scope of Services shall be as stipulated in Attachment No. 2, "Scope of Services," to Agreement. (If Agreement has Phases, Provide Detailed Scope by Phase, Otherwise Leave Blank)
- B. OBLIGATION OF CITY TO CONSULTANT:** The City shall:
1. Provide available information, such as topography, site plans, building plans, mapping, and other information that mutually is agreed upon as pertinent to the project.
 2. Designate a liaison officer from the City who will work directly with the Consultant to coordinate the collection of City-supplied data, arrange for meetings, and be responsible for the general coordination between the City and the Consultant.
 3. (List Other Detailed Items as Required, if None Delete #3.)

SECTION 3 - COMPENSATION: The Consultant shall be compensated by the City as follows:

- A. HOURLY:** Compensation to the Consultant for all services under this Agreement shall be on the basis of hourly labor rates, and reimbursable costs as shown in the current Consultant's Standard Fee Schedule as shown in Attachment No. 3. The total compensation for the project services shall not exceed \$() without prior approval of the City.

The Consultant shall bill services based on the Consultant's current standard fee schedule at the time

services are rendered, subject to the fee schedule being approved by the City Engineer in writing. Any adjustment or change in the standard fee schedule will not affect the maximum fee set forth above.

B. TERMINATION: In the event of termination under Section 1.I of this Agreement, compensation to the Consultant shall be as follows:

1. If this Agreement is terminated at the completion of any phase of service, compensation shall be the sum of fees for each phase completed.
2. In the event of termination during any phase of service, compensation shall be the sum of fees for each phase completed plus compensation for services rendered during that phase of work not completed. Compensation for services rendered shall include the Consultant's standard hourly rates plus compensation due subconsultants for services rendered during that phase of work not completed plus reimbursable expenses related to that phase of service not completed, plus termination expenses.

C. DEFINITIONS: The following definitions shall be used:

1. Salary costs used as a basis for payment mean salaries and wages (basic and incentive) paid to all Consultant's personnel engaged directly on the project, including, but not limited to, engineers, architects, surveyors, designers, technicians, specification writers, estimators, other technical and business personnel; plus the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay and other group benefits.
2. Reimbursable expenses mean the direct non-salary expenses incurred by the Consultant which are directly attributable and properly allocable to the project. Such costs are not included in the overhead expense pool and may include: travel and subsistence, reproductions, computer charges, materials and supplies.
3. Termination expenses mean salary costs and reimbursable expenses directly attributable to termination.

SECTION 4 - COMPLETION OF WORK: The Consultant shall complete all services outlined in this Agreement on or before (Date) providing no unforeseen delays are experienced beyond the control of the Consultant.

SECTION 5 – PRIMARY CONTACTS FOR THIS AGREEMENT: The City Engineer has designated the primary contact person for the City of Des Moines as (Give Name of Project Engineer, Phone Number, E-Mail, Etc.). Please address any correspondence directly to (City Contact Person's Name).

The primary contact person for (Consultant's Company Name), shall be (Give Name of Company Contact Person, Title, Address, Phone Number, E-Mail, Etc.). Any future correspondence from the City of Des Moines, such as payments, contracts, etc., shall be directed to (Company Contact Person).

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, in triplicate, as of this () day of (), 20().

CITY OF DES MOINES, IOWA

(CONSULTANT COMPANY NAME)

T.M. Franklin Cownie, Mayor

(Name & Title)

FORM APPROVED:

ATTEST:

Kathleen Vanderpool, Deputy City Attorney

Diane Rauh, City Clerk

