

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

**THIS AGREEMENT** for Professional Services (hereinafter "Agreement") is made by and between 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" and (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. This Agreement is not valid until signed by the City representative set out below.

WHEREAS, the City is desirous of obtaining professional services in connection with (Project Description) (hereinafter the "Project"); 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. CONSULTANT'S REPRESENTATIONS:** The Consultant represents and agrees that:
1. Consultant is an experienced licensed architectural and/or engineering firm having the ability and skill necessary to perform all the services required of it under this Agreement in connection with the design of the Project having the scope and complexity of the Project contemplated herein; and
  2. Consultant has the capabilities and resources necessary to perform its obligations hereunder; and
  3. Consultant is familiar with all current local, state and federal laws, rules and regulations which are applicable to the design and construction of the Project (including but not limited to city ordinances and building codes of city, state and federal authorities that are applicable to the Project) and that all drawings, plans, specifications and other documents prepared by the Consultant must be prepared in accordance with, and comply with all applicable laws, rules and regulations; and
  4. All plans, drawings, specifications and other documents prepared pursuant to this Agreement must be complete and functional for the purposes intended, and that the Project will be structurally sound and a complete and properly functioning facility suitable for the purposes for which it is intended; and
  5. That all services provided by the Consultant shall be performed in a timely manner and shall be performed with that degree of care, skill, and diligence ordinarily exercised under similar conditions and in the performance of projects of a similar nature to the services contemplated by this Agreement by competent members of the architectural and engineering professions. Consultant represents that it has the experience and expertise necessary to provide design and engineering services to result in a functional, operating Project. Consultant shall be responsible for all services provided under this Agreement regardless of whether such services are provided by Consultant or by any subconsultant hired by Consultant.
  6. The Consultant is responsible for the professional quality, technical accuracy, timely completion and the coordination of all plans, studies, designs, drawings, specifications, reports, documents and other services furnished by Consultant for the City under this Agreement regardless of whether prepared by the Consultant or by the Consultant's subconsultant's. The Consultant is responsible for coordination and internal checking of all documents and for the accuracy of all information contained therein, as fully as if each document were prepared by the Consultant. The Consultant shall, without additional

compensation, correct or revise any errors, omissions, or other deficiencies in its plans, studies, designs, drawings, specifications, reports, or other services.

- C. 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.
- D. 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.
- E. 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.
- F. PROGRESS REPORTS:** The Consultant shall furnish the City with written 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.
- G. 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.
- H. 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 and whatever stage of design, 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 therein or related thereto. 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 and Consultant will indemnify the City for any such claims or encumbrances pursuant to Attachment 1. 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 owns the Design Documents, but 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 Documents, 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.

**I. TERMINATION:** If the City, in its sole discretion, 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 as provided in Section 3, B.

**J. CHANGES IN SCOPE OF SERVICES:**

1. Extra Work: Authorization for extra work shall be evidenced by the City and Consultant 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 <https://dsm.city/ContractComplianceProgram> 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, gender identity, familial status, or disability.
4. To include this provision in all subcontracts for this Project.
5. **INCLUDE IN TRANSPORTATION PROJECTS:** Consultants shall comply with Attachment 1A. The Consultant shall be subject to all terms and provisions set forth in Attachment 1A.

**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 TO SUBCONSULTANT:** The Consultant shall not sublet, assign, or otherwise dispose of or transfer any portion of the services to be provided by this Agreement without a prior written approval of the City Engineer or City Council. Requests for approval to sublet, assign or otherwise dispose of or transfer any portion of the services shall be in writing, and shall name the individual or organization Consultant is requesting approval to perform the work, the work to be performed, and the dollar amount of services to be performed. When requested by the City Engineer, the Consultant shall provide a written report showing that the individual or entity is particularly experienced and equipped to perform such services. Consent by the City for the Consultant to sublet, assign or otherwise dispose of or transfer 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 individual or entity performing the services. The Consultant agrees to include in and make a part of all subagreements all portions of this Agreement which relate to the services being performed by the individual or entity including the Nondiscrimination portions of this Agreement. Consultant agrees to include in all subagreements that the City is an intended beneficiary of the subagreement. 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.H 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.
  3. Consultant shall design all Project elements to comply with all applicable Federal, State and local laws, regulations and building codes, including but not limited to the Americans with Disabilities Act (ADA) as amended.
- 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 the Design Documents, 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.
- T. INDEPENDENT CONTRACTOR STATUS:** It is expressly understood that Consultant is an independent contractor and not the agent or employee of the City. Consultant is not entitled to tax withholding, workers' compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Consultant shall not have the authority to enter into any contract to bind the City and shall not represent to anyone that Consultant has such authority.
- U. USE OF CITY NAME AND INTELLECTUAL PROPERTY:** Consultant agrees it will not use the City name, logos, trademarks or any intellectual property of the City in any manner, including commercial advertising, portfolio or other business reference, without the express prior written consent of the City.
- V. CONFIDENTIALITY:** Consultant agrees to hold in trust and confidence any confidential and proprietary information, record, documents or data relating to City business that is identified by the City as confidential and proprietary ("Confidential Information"). If Consultant receives a request for disclosure of Confidential Information, Consultant shall immediately notify the City and cooperate with the City on a response to the requestor of such information.
- W. LAWS OF IOWA:** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Iowa. Consultant, on behalf of itself and insurers, agrees and consents that any causes of action arising out of this Agreement shall be brought in the appropriate court of jurisdiction in Polk County, Iowa and consents, on behalf of itself and insurers, to the jurisdiction of either the United States District Court, Southern District of Iowa or the Iowa District Court in and for Polk County, Iowa.

## 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. LUMP SUM:** Compensation to the Consultant for all services under this Agreement shall be a lump sum

of \$( ), plus reimbursable costs, to be paid out in partial payments in accordance with percent complete, as determined by the City, of the individual lump sum task amounts shown in Attachment 3.

- B. TERMINATION:** In the event of termination under Section 1.I of this Agreement, compensation to the Consultant shall be as follows:
  1. Sum of fees and reimbursable expenses incurred for completed portion of work to date of termination.
  2. For incomplete portions of work, compensation for Consultant’s services rendered to date of termination based upon the Consultant's standard hourly rates
  3. Compensation due subconsultants for services rendered to the date of termination, plus reimbursable expenses incurred for services.
  
- 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.
  
- D. TAX LIABILITY:** Consultant agrees that Consultant is solely responsible for payment of income, social security, and other employment taxes due to the proper taxing authorities, and that the City will not deduct such taxes from payment to Consultant.
  
- E. PAYROLL RECORDS:** The City may request Consultant provide verifiable payroll records of the Consultant and its subconsultants to the Engineer on this project, which shall not include the full social security numbers of the employees. The Consultant will notify each subconsultant of this provision.

**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 and without the fault or negligence 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.). All communications directed to the City must be in writing 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.). All communications directed to the Consultant must be in writing, such as payments, contracts, etc., directed to (Company Contact Person).

Any notice required by this Agreement shall be in writing and may be personally delivered or sent by ordinary mail to the addresses hereafter provided. Mailed notices shall be deemed to be received by the party to whom directed when they are postmarked. Such notices and invoices shall be delivered or mailed to the following persons at the addresses listed below:

- To City:                   Project Engineer Name  
                                   Street Address of Project Engineer  
                                   Project Engr - City, State and Zip Code
  
- To Consultant:         Consultant Contact Name  
                                   Consultant Street Address  
                                   Consultant City, State and Zip Code

**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)**

\_\_\_\_\_  
Connie S. Boesen, Mayor

\_\_\_\_\_  
(Name & Title)

FORM APPROVED:

ATTEST:

\_\_\_\_\_  
Kathleen Vanderpool, Deputy City Attorney

\_\_\_\_\_  
Laura Baumgartner, City Clerk