

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE CITY OF CEDAR RAPIDS  
AND  
FOR**

(Contract No.        )

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This is an agreement effective as of the        day of        ,        between the City of Cedar Rapids, Linn County, Iowa (hereinafter referred to as "CITY") and        (hereinafter referred to as "CONSULTANT").

The CITY intends to        This shall hereinafter be referred to as "PROJECT".

The CITY and CONSULTANT, in consideration of their mutual covenants herein, agree in respect of the performance or furnishing services by the CONSULTANT with respect to the PROJECT and the payment for those services by the CITY as set forth herein. Execution of this agreement by the CONSULTANT and the CITY constitutes written authorization to the CONSULTANT to proceed with the scope of services contained herein. The agreement shall become effective on the date noted above.

## SECTION 1 - GENERAL

1.1 STANDARD OF CARE - The CONSULTANT shall perform services for, and furnish deliverables to, the CITY pertaining to the PROJECT as set forth in this agreement. The CONSULTANT shall possess a degree of learning, care and skill ordinarily possessed by reputable professionals, practicing in this area under similar circumstances. The CONSULTANT shall use reasonable diligence and best judgment in the exercise of skill and application of learning.

1.2 INDEMNIFICATION - The CONSULTANT shall, and hereby agrees to, hold and save the CITY AND ITS EMPLOYEES harmless from any and all claims, settlements, and judgments, to include all reasonable investigative fees, attorneys' fees, suit and court costs for personal injury, property damage, and/or death arising out of the CONSULTANT's, or any of its agents', servants', and employees' errors, omissions or negligent acts for services under this agreement, and for all injury and/or death to any and all of the CONSULTANT's personnel, or any of its agents, servants, and employees occurring under the Worker's Compensation Act of the State of Iowa, except those arising from errors, omissions or negligent acts of the CITY AND ITS EMPLOYEES.

1.3 OWNERSHIP OF DOCUMENTS - All data, documents and electronic media (hereinafter referred as "documents") pertaining to the PROJECT collected and prepared under this agreement, including but not limited to survey notes, reports, design plans, specifications, special studies, records and other data shall become the property of the CITY upon completion or termination of the services of the CONSULTANT. The CONSULTANT may make copies of these documents for their

records. The CITY may reuse these documents for other projects at their own risk. The CONSULTANT will not be responsible for any claim, liability, or other costs arising out of any unauthorized reuse or modification to the documents from, or through, the CITY without written authorization of the CONSULTANT.

1.4 TERMINATION - The obligation to provide further services under this agreement may be terminated as noted herein. The agreement may be terminated for cause by either party upon thirty days' written notice in the event of failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. The agreement may be terminated for cause by the CONSULTANT upon seven days' written notice if the CONSULTANT is being requested by the CITY to furnish or perform services contrary to the CONSULTANT's responsibilities as a licensed professional or if the CONSULTANT is delayed for more than ninety days for reasons beyond the CONSULTANT's control.

The agreement may be terminated for convenience by the CITY effective upon the receipt of notice by the CONSULTANT.

1.5 SUCCESSORS AND ASSIGNS - The CITY and the CONSULTANT each is hereby bound and the partners, successors, executors, administrators and legal representatives of the CITY and the CONSULTANT are hereby bound to the other party to this agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this agreement.

The CONSULTANT shall not sublet, assign or otherwise dispose of any portion of the services to be provided under this agreement without authorization to do so from the CITY. Requests to sublet or assign shall be in writing and shall name the services to be performed, the organization which will perform the services and the value of the services to be performed. Subconsultants which are shown as part of this agreement shall be deemed to be approved when this agreement is executed.

1.6 CONTROLLING LAW - This agreement is to be governed by the law of the State of Iowa and the City of Cedar Rapids.

1.7 ACCESS TO RECORDS - The CONSULTANT shall maintain all documents, accounting records, and other evidence pertaining to cost incurred in performing the services under this agreement. The CITY or any duly authorized representative of the CITY shall have access to all such information for the purpose of inspection, audit and copying during normal business hours. All such information shall be retained for three years from the date of final payment under this agreement.

This access shall be made available to the CITY or duly authorized agent and shall be considered incidental to the scope of services contained herein. As such, there shall be no additional compensation allowed the CONSULTANT for maintaining this information and allowing the herein described access.

1.8 NONDISCRIMINATION CLAUSE - All CONSULTANTS, subconsultants, vendors and suppliers of goods and services that engage in contracts with the

City of Cedar Rapids, Iowa, of \$50,000.00 or more annually, agree as follows:

1. The CONSULTANT, subconsultant, vendor and supplier of goods and services will not discriminate against any employee or applicant for employment because of race, creed, color, sex, religion, national origin, age, handicap or status as a disabled veteran or a veteran of the Vietnam era, except where age and sex are essential bona fide occupational requirements, or where handicap is a bona fide occupational disqualification. Such action shall include, but not be limited to the following:

- (a) Employment
- (b) Upgrading
- (c) Demotion or transfer
- (d) Recruitment and advertising
- (e) Layoff or termination
- (f) Rate of pay or other forms of compensation
- (g) Selection for training, including apprenticeship

2. The CONSULTANT, subconsultant, vendors and suppliers of goods and services further assure that managers and employees comply with both the spirit and intent of federal, state, and local legislation, government regulation, and executive orders in providing affirmative action as well as equal opportunity without regard to race, color, sex, religion, national origin, handicap, or age.

3. The CONSULTANT, subconsultant, vendor and supplier or his/her collective bargain representative will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representatives of

the contractors' commitments under this selection.

4. The CONSULTANT, subconsultant, vendor and supplier of goods and services will include, or incorporate by reference, the provisions of the nondiscrimination clause in every contract, subcontract or purchase order unless exempt by the rules, regulations or orders of the City's Affirmative Action Program and will provide in every subcontract, or purchase order that said provision will be binding upon each contractor, subcontractor or seller.

1.9 NONCOLLUSION CLAUSE - The CONSULTANT, nor anyone in the employment of the CONSULTANT has employed any person to solicit or procure this contract nor will the CONSULTANT make any payment or agreement for payment of any compensation in connection with the procurement of this contract.

Furthermore, there is no contract, agreement or arrangement, either oral or written, expressed or implied, contemplating any division of compensation for services rendered under this contract, or participation therein, directly or indirectly, by any other person, firm or corporation, except if shown by the contract another contractor jointly serving the CONSULTANT) in the same capacity.

Furthermore, the CONSULTANT nor anyone in the employment of the CONSULTANT has either directly or indirectly entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this contract.

1.10 CONTRACT AMENDMENTS - The CONSULTANT shall prepare any necessary

amendment to this agreement and submit it to the CITY for execution. Upon execution of the amendment by the CONSULTANT and the CITY, the amendment shall become part of this agreement.

During the course of performing services within the scope of services contained in this agreement, if the CONSULTANT identifies services which, in their opinion, are required for the successful completion of the PROJECT, and are not currently within the scope of services contained in this agreement, the CONSULTANT shall provide written notice to the CITY of this requirement prior to performing any services not in this agreement. The CITY shall evaluate the requirement for the additional services and prepare an amendment as noted herein if one is required.

1.11 CLOSEOUT OF AGREEMENT - Upon completion of the services included in this agreement, the consultant shall submit the following:

- All those items noted in Section 1.3
- A written report showing the actual amounts paid by the CONSULTANT for services rendered under this agreement to MBE/WBE firms.
- A FINAL invoice.

1.12 SURVIVAL - All express representations and indemnifications made in or given in this agreement will survive the completion of all services of the CONSULTANT under this agreement or the termination of this agreement for any reason.

1.13 SEVERABILITY - Any provision or part of this agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the CITY and the

CONSULTANT, who agree that the agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

## **SECTION 2 - SCOPE OF SERVICES**

The scope of services to be provided by the CONSULTANT is included in the attached Exhibit A, "SCOPE OF SERVICES".

## **SECTION 3 - SCHEDULE**

The schedule for which the scope of services contained in this agreement shall be performed is as set forth in Exhibit B, "SCHEDULE".

## **SECTION 4 - CITY'S RESPONSIBILITIES**

The CITY shall be responsible for completion of the following items in a timely manner and at no cost to the CONSULTANT:

- Designate a person to act as the representative of the CITY for the PROJECT. Such person shall have a knowledge and understanding of the PROJECT, have authority to receive information, interpret the CITY's policies pertaining to the PROJECT and this agreement, and present issues to the decision making body for the CITY.
- Provide criteria and information as to the CITY's requirements pertaining to the PROJECT.
- Provide those items included in Exhibit C, "CITY'S RESPONSIBILITIES".

## **SECTION 5 - COMPENSATION**

The CITY shall compensate the CONSULTANT for services rendered under this agreement. Compensation shall be on a time and expense basis in accordance with the CONSULTANT's standard fee schedule in affect on the date of this agreement. The maximum fee, including all time and expenses, shall not exceed . Included within the maximum fee in addition to the estimated actual costs is an amount of \$ dollars for use for contingency. If at any time during the work the Consultant determines that its actual costs will exceed the estimated actual costs, thus necessitating the use of a contingency amount, it will promptly so notify the City in writing and describe what costs are causing the overrun and the reason. The CONSULTANT shall not exceed the estimated actual costs without the prior written approval of the CITY. The CITY may audit the CONSULTANT'S cost records prior to authorizing the use of the contingency amount. The CONSULTANT shall establish a procedure for comparing the actual costs incurred during the performance of the work to the estimated actual costs listed above. The fee breakdown by CIP number is as follows:

CIP	[\$ AMOUNT]
CIP	[\$ AMOUNT]
CIP	[\$ AMOUNT]

Only those services rendered on or after the date of this agreement shall be eligible for compensation.

The CONSULTANT shall submit invoices monthly. Complete invoices received on, or before, the fifth day of the month shall be paid by the twenty-fifth of the same month. Complete invoices received after the fifth day of the month shall be paid within thirty days.

A complete invoice shall, at a minimum, contain the following information:

- City project name and City contract number
- Resource utilization for the billing period in the following categories:
  - Individual Professional Staff rate and hours
  - Individual Technical Staff rate and hours
  - Individual Support Staff rate and hours
- Direct expenses (mileage, equipment, etc.)
- Contract value information including the following:
  - Total contract value by project
  - Total value of previous invoices by project
  - Total value of current payment due by project
  - Total authorized and total unauthorized contingency per project
  - Total remaining contract value following the current payment
- A statement of the services rendered during the billing period.
- A statement of the progress of the completion of the scope of services.

In no case shall the remaining contract value be less than the value of the services remaining to complete the scope of services under this agreement, as determined by the CITY.

**SECTION 6 - INSURANCE**

The CONSULTANT shall furnish the CITY with a certificate or certificates of insurance by an insurance company licensed to do business in the State of Iowa, upon which the CITY AND ITS EMPLOYEES are endorsed as additional insureds in the following limits.

General Liability	\$1,000,000
Automobile Liability	\$ 500,000
Excess Liability (Umbrella)	\$1,000,000
Worker's Compensation, Statutory Benefits Coverage B *	\$ 100,000
Professional Liability *	\$ 1,000,000

(\*- The CITY AND ITS EMPLOYEES shall not be endorsed as additional insureds on the items noted with an asterisk.)

Insurance documents shall be prepared according to the following instructions.

- A. "The City of Cedar Rapids, Iowa, its officers and employees shall be named as additional insureds" on the consultant's liability insurance policies and certificates of insurance.
- B. General liability coverage must be on a claims occurred basis.
- C. The project name and project number being covered must appear on the face of the certificate.
- D. The additional insured endorsement must be attached to the certificate of insurance. Required endorsement language follows:

**CITY OF CEDAR RAPIDS, IOWA  
 ADDITIONAL INSURED ENDORSEMENT**

The City of Cedar Rapids, Iowa, including all its elected and appointed officials, all its employees and volunteers, all its boards,

commissions and/or authorities and their board members, employees, and volunteers, are included as Additional Insureds with respect to liability arising out the Insured's work and/or services performed for the City of Cedar Rapids, Iowa. This coverage shall be primary to the Additional Insureds, and not contributing with any other insurance or similar protection available to the Additional Insureds, whether available coverage be primary, contributing or excess.

**CITY OF CEDAR RAPIDS, IOWA  
GOVERNMENTAL IMMUNITIES  
ENDORSEMENT  
(for use when including the City as an  
Additional Insured)**

1. Nonwaiver of Government Immunity. The insurance carrier expressly agrees and states that the purchase of this policy and the including of the City of Cedar Rapids, Iowa as an Additional Insured does not waive any of the defenses of governmental immunity available to the City of Cedar Rapids, Iowa under Code of Iowa Section 670.4 as it now exists and as It may be amended from time to time.

2. Claims Coverage. The insurance carrier further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exists and as may be amended from time to time.

3. Assertion of Government Immunity. The City of Cedar Rapids, Iowa shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the insurance carrier. Nothing contained in this endorsement shall prevent the carrier from asserting the

defense of governmental immunity on behalf of the City of Cedar Rapids, Iowa.

4. Non-Denial of Coverage. The insurance carrier shall not deny coverage under this policy and the insurance carrier shall not deny any of the rights and benefits accruing to the City of Cedar Rapids, Iowa under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the City of Cedar Rapids, Iowa.

5. No Other Change in Policy. The insurance carrier and the City of Cedar Rapids, Iowa agree that the above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.

**CITY OF CEDAR RAPIDS, IOWA  
CANCELLATION AND MATERIAL  
CHANGES ENDORSEMENT**

Thirty (30) days Advance Written Notice of Cancellation, Non-Renewal, Reduction in insurance coverage and/or limits and ten (10) days written notice of non-payment of premium shall be sent to **[Specifier Select] Utilities Department, attention: Engineering Manager, 1111 Shaver Road NE, Cedar Rapids, IA 52402 [OR] Public Works Department, attention: Project Manager, 1201 6<sup>th</sup> Street SW, Cedar Rapids, IA 52404.** This endorsement supersedes the standard cancellation statement on the Certificate of Insurance to which this endorsement is attached.

The professional liability insurance certificate shall provide for coverage on a claims-made basis with proof of coverage for the time period of the contract provided to the CITY with each policy renewal or change. Furthermore, the certificate(s) must clearly disclose on its face that the

policy cannot be canceled or materially altered without giving the CITY written notice 30 days prior to cancellation or alteration.

The CITY AND ITS EMPLOYEES shall be an additional insured for all claims for damage to property owned or leased by the CITY.

The CITY AND ITS EMPLOYEES shall be an additional insured for all claims for bodily injury, property damage, personal injury, or advertising injury arising out of negligent acts, omissions, recklessness or intentional acts of any named insured.

CONSULTANT shall not proceed with any services contained in this agreement until the insurance certificates have been reviewed and approved by the CITY.

These certificates shall be included in Exhibit D, "INSURANCE".

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[CONSULTANT]

CITY OF CEDAR RAPIDS

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Jim Prosser  
City Manager

ATTEST:-

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City Clerk

This is **EXHIBIT A**, consisting of \_\_\_\_\_ page(s),  
referred to in the agreement between the CITY  
and \_\_\_\_\_, effective \_\_\_\_\_.

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## **SCOPE OF SERVICES**

The scope of services to be performed by the  
CONSULTANT shall be completed in accordance with  
generally accepted standards of practice and shall include  
the services and supplies to complete the following tasks:

This is **EXHIBIT B**, consisting of \_\_\_\_\_ page(s),  
referred to in the agreement between the CITY and \_\_\_\_\_  
, effective \_\_\_\_\_.

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## **SCHEDULE**

The scope of services shall be completed in accordance with the following schedule unless modified by mutual agreement or by factors beyond the control of the CONSULTANT:

This is **EXHIBIT C**, consisting of \_\_\_\_\_ page(s),  
referred to in the agreement between the CITY and \_\_\_\_\_  
, effective \_\_\_\_\_ .

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## **CITY'S RESPONSIBILITIES**

This is **EXHIBIT D**, consisting of \_\_\_\_\_ page(s),  
referred to in the agreement between the CITY and \_\_\_\_\_  
, effective \_\_\_\_\_

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## **INSURANCE**

The pertinent insurance certificates follow this page.