



SHAKOPEE

ENGINEERING

**REQUEST FOR
STATEMENT OF QUALIFICATIONS
TO PROVIDE
PROFESSIONAL SERVICES**

City of Shakopee

March 29, 2024

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I. INTRODUCTION

This request for Statements of Qualifications (SOQ) is issued by the City of Shakopee (City) to identify consulting firms to provide municipal engineering and specific technical/specialty consulting services to support City staff. The City desires to establish various categories of services to which professional consulting firms will be assigned. The City intends to retain up to three (3) firms for General Municipal Engineering Services and will choose to retain at least one firm, however we are expecting to retain multiple firms, for each of the Technical/Specialty Services described herein. It should be noted that firms are eligible to be retained in as many of the areas as they are qualified. The selection and retention of consultants for professional engineering services will be completed in accordance with City Policy and will be for a period of three years.

Selection and future work assignments will take into consideration the workload, expertise, costs and past performance of proposing consulting firms and their representatives.

II. STATEMENT INSTRUCTIONS/SCHEDULE

All responses, questions and correspondence should be directed to:

Alex Jordan, City Engineer
City of Shakopee
485 Gorman Street
Shakopee, MN 55379
952.233.9361
ajordan@ShakopeeMN.gov

All questions are to be submitted in writing via e-mail and must be received by 1:00 p.m. on May 17, 2024. City responses to questions will be forwarded to all firms.

All SOQs in PDF format only must be received via email to ajordan@ShakopeeMN.gov no later than 4:30 p.m., May 31, 2024.

SOQ Review Process Schedule:

Request for SOQ distributed	March 29, 2024
Deadline for Questions	May 17, 2024
SOQ's Submittal Due Date	May 31, 2024
City Review of SOQ's and Interviews as Necessary	June 2024
Consideration by City Council	July 2, 2024

The City Professional Engineering Services pool shall be effective from July 1 2024 – June 2027.

The City reserves the right to modify this schedule at the City's discretion. Notification of changes in the response due date would be provided directly to perspective consultants.

III. STATEMENT OF QUALIFICATIONS CONTENT

A. Page Length

Maximum of Eight (8) Pages Excluding Title Page, Cover Letter, References and Resumes

B. Cover Letter/Title Page

Include an explanation of the SOQ, the name of the firm, local address, telephone number, name of the contact person and e-mail address and the date.

C. Table of Contents

Includes identification of the material by section and page number listed below.

D. Consultant Profile

1. Include the consultant service area(s) the firm can provide (see Section IV).
2. Identify the basis of the firm's interest for each of the service areas for which the firm wishes to be considered.
3. Include qualifications of the firm as it relates to the service area(s) to be provided. This includes descriptions of completed projects specifically related to that service area.

E. Resumes

1. Include the qualifications and resumes of the professional staff that will be routinely assigned to various City projects.
2. Include the name(s), experience and qualifications of person(s) that will be routinely responsible for the management and administration of a contract with the City.
3. Identify the long-term availability of the identified staff.

F. References

1. Please include a list of municipal client references where related services were provided by the staff (identified in the Resumes above), and the name and telephone number of a person who may be contacted at that municipality.
2. Include a list of current municipal clients identifying projects in progress, the specific activities being performed and the name of a person who may be contacted at that municipality.
3. Include a list of previous or current professional services provided to the City and client representatives.
4. Include a list of private clients (if any) for whom work has been or is being performed within the City, the type of project, the specific activities performed and the name of a person who may be contacted at the client.

G. Fees

1. Please include a fee schedule for 2024 including hourly rates, specialty rates, multipliers, percentages, etc., for the various classifications of personnel proposed to provide professional services under a contract

with the City. Identify any reimbursable costs. Identify what services are excluded from these hourly rates (i.e., mileage, etc.).

2. Specifically state the firm's preferred method of calculating fees for different types of services provided (hourly, hourly not exceed, lump sum, etc.).

H. Quantity

Please submit one (1) digital PDF of the SOQ.

IV. **CONSULTANT SERVICE AREAS**

There are two (2) primary categories of consultant services anticipated.

- General Municipal Engineering
- Technical/Specialty Services

General Municipal Engineering

Provide technical engineering expertise in the preparation and development of site specific and/or comprehensive system plans; prepare special studies, feasibility reports and detailed plans and specifications for specific improvement projects; provide the necessary professional and technical workforce to supervise and manage improvement contracts and provide technical assistance to the City's professional staff as required.

- Feasibility Reports and Preliminary Engineering
- Plans and Specifications
- Project Management
- Capital Improvement Planning
- Construction Administration
- Construction Inspection
- Construction Staking
- Construction Cost Estimates
- Special Assessments
- Comprehensive System Plans
 - Including sanitary sewer, storm sewer, water quality, transportation and park systems' plans for the City
- Municipal State Aid (MSA) and Federal Aid Administration on Relevant Projects
- Private Utility Coordination
- Topographic Surveying
- Public Engagement Services
- Right-of-way Acquisition Services
 - including preparation of exhibits and legal descriptions
- Bidding Services
- Record Drawing Preparation
- Environmental Planning, Assessments, Worksheets.

Technical/Specialty Services

These services are for consultants who are specialized in technical or limited areas of expertise for occasional specific work programs or on-going limited services relating to their area of particular expertise (soil testing, erosion inspection, etc.).

A. Transportation Engineering

- Traffic Impact Studies/Mitigation Analysis
- Traffic Forecasting, Transportation System Modeling and Studies
- Intersection Control Evaluations/Signal and Roundabout Justification Reports
- Intersection Layout and Geometrics
- Transportation Project Delivery (Preliminary Engineering, Plans and Specifications, Construction Services, Project Management, etc.)
- Comprehensive Transportation Planning
- Temporary and Permanent Traffic Control
- Street Lighting Analysis and Design
- Circulation/Site Plan Layout and Analysis
- Site Plan Layout and Analysis
- Preliminary Layouts
- Traffic Signal System Design
- Traffic Signal Optimization and Programming
- Traffic Counts and Speed Zone Studies

B. Surface Water and Natural Resources

- Wetland Delineation and Mitigation Analysis
- Wetlands Assessment
- Wetland Conservation Act Administration
- Water Quality Analysis, Design and Construction Management of Water Quality Improvement Projects
- Hydraulic and Hydrologic Analysis
- National Pollutant Discharge Elimination System (NPDES) Permitting (Stormwater and MS4)
- Comprehensive System Plans (e.g. Storm Water, Wetlands, Wildlife Management, Urban Forest)
- Monitoring
- Lake Restoration
- Aquatic Plant Surveys and Management Plans
- Floodplain Management
- Localized Flooding Analysis
- Non-Degradation and Total Maximum Daily Load (TMDL) Review
- Erosion Control, Restoration and Stabilization
- Best Management Practices/Low Impact Development Techniques

- C. Geotechnical and Environmental Services
 - Pavement Coring, Soils Exploration, Recommendations and Reports
 - R-value Determinations
 - Materials Testing
 - Density and Compaction Testing
 - Construction Density and Material Testing
 - Pavement Structural Analysis/Testing
 - Contaminated Soil Analysis and Mitigation Design/Disposal

- D. Municipal Utilities
 - Sanitary Sewer System/Combined Sewer System Modeling
 - Sanitary Sewer System Engineering
 - Storm Sewer System Engineering
 - Supervisory Control and Data Acquisition (SCADA), Telemetry, Etc.
 - Lift Station Analysis and Design
 - Comprehensive Sewer System Planning
 - Pumping/Lift Station Design and Rehabilitation
 - I/I Evaluation
 - Rate Cost of Service Studies, Rate Analysis and Design

- E. Land Surveying
 - Topographic Surveys
 - Subdivisions/Plats
 - Certificates of Survey
 - Easement Descriptions
 - Lot Corner Monumentation
 - Property Records Investigations
 - Construction Staking
 - Global Position System

- F. Structural
 - Retaining Walls
 - Bridges
 - Cell Towers
 - Parking Structures
 - Structures Maintenance
 - Reservoirs
 - Annual State Bridge Inspection
 - State Bridge Inspection Program Management

- G. Architectural Services Supporting Public Works and Parks Facilities
 - Park Shelter Buildings
 - Utility Operation Structures (lift station houses, etc.)
 - Municipal Buildings (expansions, remodeling, etc.)
 - Landscape and Streetscape Architecture

H. Communications

- Antenna
- Cellular
- Fiber Optics – Design and Management/Relocations
- RF Analysis
- Radio
- Telemetry
- Alarms
- SCADA

I. Public Works Geographic Information System (GIS)

- Asset Management
- Mapping
- Database Design
- Data Development and Creation
- GIS System Design and Maintenance
- GIS Training Services
- Software Specification
- Records Management/Retention
- GPS and GIS Applications and Assistance

J. Electrical/Mechanical

- Streetlights
- Energy Management
- Pump Efficiency and Rehabilitation
- System Rehabilitation (Arc Flash studies, wiring, etc.)
- SCADA

K. Relocation/Benefit Analysis

- Appraisals - Real Estate
- Relocation Services
- Land Rights Assistance

L. Archeological/Cultural Resources and National Historic Preservation

- Phase 1 Archeological Surveys
- Monitoring/Inadvertent Discoveries Plans
- Archeological Construction Monitoring
- Section 106 Review, Permitting and Administration

M. Landscape Design and Parks Planning

- Comprehensive System Plans (e.g. Park System, Trails)
- Parks, Trails and Recreation Facility Development, Improvement and Renovation Projects, Including:
 - Feasibility Reports
 - Plans and Specifications

- Project Management
- Construction Administration
- Construction Inspection
- Construction Staking
- Construction Cost Estimates
- Landscape and Streetscape Designs

V. STATEMENT OF QUALIFICATION EVALUATION AND FIRM SELECTION

- A. Qualification Based Selection: The City intends to select those firms evaluated to be best qualified to perform the work for the City with past experience, cost, compatibility and other performance factors also considered. The City intends to establish a pool of qualified professional service providers that provides a broad base of experience and expertise that the City can utilize as needed.
- B. Review and Recommendation Process: Based upon review of the SOQ's City staff will identify firms to be interviewed for consideration for Professional Services. City staff will conduct interviews as necessary and prepare a recommendation on firms to be retained for consideration and approval by the City Council at a July 2024 meeting.
- C. Financial Liability Limitations: The City shall not be liable for any expenses incurred by the applicant including, but not limited to, expenses associated with the preparation of the statement, attendance at interviews, preparation of a cost statement, or any future contract negotiations.
- D. Right of Review: The City reserves the right based on the qualification criteria to reject any and all SOQ's or to request additional information from any or all applicants.
- E. Qualification Evaluation Criteria: In evaluating whether a professional services consultant should be placed in the pool in one or more technical service areas, numerous factors shall be considered. Among those factors are the following:
 - 1. An evaluation of the consultant's technical qualifications.
 - 2. Work experience and reputation.
 - 3. Available personnel.
 - 4. Recommendations of past and existing clients.
 - 5. Previous experience with the City of Shakopee.
 - 6. Actual or potential conflict of interest with other private or public clients and the City, including other governmental agencies, doing business with the City.

VI. SELECTING CRITERIA FOR PROJECTS

For each project requiring consulting services, a municipal engineering consultant will be considered from the proper category of consultants approved by the City Council. The following criteria are used for considering a consultant:

- The expertise and experience of both the firm and assigned personnel with projects or activities similar to the one under consideration.
- The consultant's knowledge of particular equipment, methods, time frames and services required.
- The consultant's ability to mobilize and make sufficient time and appropriate personnel available to complete the project/activity within a specified time frame.
- The appropriateness and flexibility of the consultant's fee schedule in relationship to the industry, the City's desires and the scope of services to be provided.
- The past performance of the consultant with regard to existing or previous projects or activities with the City.
- The current workload of the consultant.

VII. CONTRACT EXECUTION

A. Negotiations and Contract Execution

1. The City reserves the right to negotiate the final terms and conditions of the contract to be executed. Should the City and consultant be unable to mutually agree upon the entire contract, the City reserves the right to discontinue negotiations, select another consultant or reject all statements. Upon completion of negotiations agreeable to the City and consultant, a contract shall be executed.
2. Contracts will be for a minimum of three (3) years assuming satisfactory service delivery and or continuity of acceptable assigned personnel.

B. Contracting Ethics

1. No elected official or employee of the City who exercises any responsibilities in the review, approval or implementation of the proposal or contract shall participate in any decision which affects his or her direct or indirect personal financial interests.
2. It is a breach of ethical standards for any person to offer, give, or agree to give any City employee or Council person, or for any City employee or Council person to solicit, demand, accept, or agree to accept from another person or firm, a gratuity or an offer of employment whenever a reasonable prudent person would conclude that such consideration was motivated by an individual, group or corporate desire to obtain special, preferential, or more favorable treatment than is normally accorded to the general public.
3. The firm shall not assign any interest in a City contract and shall not transfer any interest in the same without the prior written consent of the City.
4. To remove any potential or actual conflict of interest, a consultant representing any private party client submitting a project or activity to the City shall disclose same to City and shall not represent or review the project or activity on behalf of the City.

5. Any firm providing professional services to the City shall not accept any private client or project which, by its nature, places it in ethical conflict during its representation of the City.
6. The City requires affirmative action and therefore, the firm selected shall not discriminate under the contract against any person in accordance with federal, state and local regulations.

VIII. CITY INFORMATION

Information on the City and Capital Improvement Plan (CIP) can be obtained from the City's Website at: www.ShakopeeMN.gov.

IX. MASTER SERVICES AGREEMENT

Attached in Appendix A is the City's Template Master Services Agreement.

Appendix A

Master Services Agreement

MASTER AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

AGREEMENT dated July 2, 2024, made between the **CITY OF SHAKOPEE**, a Minnesota municipal corporation, hereinafter called the "OWNER", and _____, hereinafter called the "ENGINEER". OWNER intends to secure professional ENGINEERING services, according to the terms of this Agreement.

1. SUPPLEMENTAL AGREEMENT.

OWNER intends to secure professional consulting engineering, architectural, planning and/or land survey services on an ongoing basis for general City services and multiple projects, according to the terms of this Agreement. OWNER and ENGINEER shall enter into project specific supplemental agreements. This Master Agreement shall be deemed incorporated into the supplemental agreements unless a supplemental agreement specifically provides that it is not incorporated. If there is a conflict between the terms of the supplemental agreement and this Master Agreement, the terms of this Master Agreement shall control unless the supplemental agreement specifically provides that despite the conflict, the terms of the supplemental agreement apply.

2. PUBLIC IMPROVEMENT PROJECT SERVICES OF ENGINEER.

2.1. STUDY AND REPORT PHASE / FEASIBILITY REPORT.

2.1.1. Consult with OWNER to clarify and define OWNER'S requirements for the project, review available data and attend necessary meetings and be available for general consultation.

2.1.2. Advise OWNER as to the necessity of OWNER'S providing or obtaining from others data or services of the types described in section 4 and assist OWNER in obtaining such data and services.

2.1.3. Identify and analyze requirements of governmental authorities having jurisdiction to approve the design of the project and participate in consultations with such authorities.

2.1.4. Provide analyses of OWNER'S needs, planning surveys, site evaluations and comparative studies of prospective sites and solutions.

2.1.5. Provide a general economic analysis of OWNER'S requirements applicable to various alternatives.

2.1.6. The ENGINEER shall conduct and prepare preliminary studies, layouts, sketches, preliminary field work, preliminary cost estimates, and estimates of assessment rates, and shall assist the OWNER in obtaining required subsurface investigations as required for the preparation of the Feasibility Reports. Feasibility Reports shall conform to the requirements of Minn. Stat. Chapter 429 if the cost of the project may be assessed in whole or part. Feasibility Reports shall contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate clearly the considerations involved (including applicable requirements of governmental authorities having jurisdiction as aforesaid) and the alternative solutions available to OWNER and setting forth ENGINEER'S findings and recommendations. Feasibility Reports will be accompanied by ENGINEER'S opinion of probable costs for the project, including the following which will be separately itemized: construction cost and indirect cost consisting of engineering costs and contingencies, and (on the basis of information furnished by OWNER) allowances for such other items as charges of all other professionals and consultants, for the cost of land and rights-of-way, for compensation for or damages to properties, for interest and financing charges and for other services to be provided by others for OWNER. The total of all construction and indirect costs are hereinafter called "Total Project Costs".

2.1.7. The ENGINEER shall furnish five (5) printed copies of the Feasibility Report documents and one (1) electronic file and review them in person with the OWNER.

2.1.8. The ENGINEER shall assist with presenting the Feasibility Reports to the proper reviewing agencies and to the City Council. The ENGINEER shall appear at the public hearing to present the information.

2.2. PRELIMINARY DESIGN PHASE.

2.2.1. In consultation with the OWNER and on the basis of the accepted Feasibility Report documents, determine the general scope, extent and character of the project; attend necessary meetings and be available for general consultation.

2.2.2. Prepare Preliminary Design documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of the project.

2.2.3. Advise the OWNER if additional data or services of the types described in paragraph 4.4 are necessary and assist OWNER in obtaining such data and services.

2.2.4. Based on the information contained in the Preliminary Design documents, submit a revised opinion of probable Total Project Costs.

2.2.5. Furnish preliminary legal descriptions and exhibits for all permanent and temporary easements anticipated to construct the project.

2.2.6. Furnish three (3) copies of the above Preliminary Design documents and one (1) electronic copy and present and review them in person with the OWNER.

2.3. FINAL DESIGN PHASE.

2.3.1. On the basis of the accepted Preliminary Design documents, the OWNER'S design standards, and the revised opinion of probable Total Project Costs, prepare for incorporation in the Bidding Documents final drawings to show the general scope, extent and character of the work to be furnished and performed by Contractor(s) (hereinafter called "Plans") and Specifications.

2.3.2. Provide technical criteria, written descriptions and design data for use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to approve the design of the project, and assist the OWNER in consultations with appropriate authorities. The ENGINEER shall submit all applications and permit support data to the appropriate agencies and submit copies to the OWNER.

2.3.3. Based on property information received from the OWNER in accordance with paragraph 4.4, provide legal descriptions and exhibits for all easements, property surveys or related engineering services needed for the transfer of interests in real property and field surveys for design purposes and engineering surveys and staking to enable Contractor(s) to proceed with their work.

2.3.4. Advise the OWNER of any adjustments to the latest opinion of probable Total Project Costs caused by changes in general scope, extent or character or design requirements of the project or construction costs. Furnish to the OWNER a revised opinion of probable Total Project Costs based on the Plans and Specifications.

2.3.5. Prepare for review and approval by the OWNER, its legal counsel and other advisors contract agreement forms, general conditions and supplementary conditions, technical special provisions and (where appropriate) bid forms, invitations to bid and instructions to bidders, and assist in the preparation of other related documents.

2.3.6. Attend necessary hearings and meetings and be available for general consultation.

2.3.7. Furnish three (3) printed copies and one (1) electronic copy of the listed Final Design documents, including the Plans and Specifications, and present and review them in person with the OWNER.

2.3.8. The ENGINEER shall furnish one copy of all design calculations when requested by the OWNER.

2.4. BIDDING OR NEGOTIATING PHASE.

2.4.1. The ENGINEER shall prepare and provide the Advertisement for Bids to the OWNER. The ENGINEER shall supply up to three (3) printed sets and one (1) electronic set of full-size final Plans and Specifications for use in obtaining bids and submitting for general review. The ENGINEER shall maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid meetings and receive and process deposits for Bidding Documents.

2.4.2. Prepare Contract Documents.

2.4.3. Issue addenda as appropriate to interpret, clarify or expand the Bidding Documents.

2.4.4. Consult with and advise the OWNER as to the acceptability of the prime contractor and subcontractors, suppliers, and other persons and organizations proposed by the prime contractor(s) (herein called "Contractor(s)") for the portions of the work where acceptability is required by the Bidding Documents.

2.4.5. Consult with and advise the OWNER concerning and determining the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution prior to the award of contract is allowed by the Bidding Documents.

2.4.6. Attend the bid opening, prepare bid tabulation sheets and assist the OWNER in evaluating bidder qualifications and recommendations on bids, and in assembling and awarding contracts for construction, materials, equipment and services.

2.5. CONSTRUCTION PHASE.

2.5.1. **General Administration of Construction Contract.** The ENGINEER shall consult with and advise the OWNER and act as the OWNER'S representative. All of the OWNER'S instructions to Contractor(s) will be issued through the ENGINEER who will have authority to act on behalf of the OWNER to the extent provided in the General Conditions except as otherwise provided in writing. The General Conditions shall not be modified without the written agreement of the OWNER.

2.5.2. **Visits to Site and Observation of Construction.** In connection with observations of the work of Contractor(s) while it is in progress:

2.5.2.1. The ENGINEER shall make visits to the site at intervals appropriate to the various stages of construction as the ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of Contractor(s) work. In addition, if requested by the OWNER, the ENGINEER shall provide the services of a Resident Project Representative (and assistants as agreed) at the site to assist the ENGINEER and to provide more continuous observation of such work. Based on information obtained

during such visits and on such observations, the ENGINEER shall endeavor to determine in general if the work is proceeding in accordance with the Contract Documents and the ENGINEER shall keep the OWNER informed of the progress of the work.

2.5.2.2. The Resident Project Representative (and any assistants) will be the ENGINEER'S agent or employee and under the ENGINEER'S supervision.

2.5.2.3. The purpose of the ENGINEER'S visits to and representation by the Resident Project Representative (and assistants, if any) at the site will be to enable the ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by the ENGINEER during the Construction Phase, and, in addition, by exercise of the ENGINEER'S efforts as an experienced and qualified design professional, to provide for the OWNER a greater degree of confidence that the completed work of Contractor(s) will conform to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by Contractor(s). On the other hand, the ENGINEER shall not, during such visits or as a result of such observations of Contractor(s)' work in progress, supervise, direct, or have control over Contractor(s)' work, nor shall the ENGINEER have control or charge of and shall not be responsible for the Contractor(s)' means, methods, techniques, sequences, or procedures of construction selected by Contractor(s), for safety precautions and programs incident to the work of Contractor(s) or for any failure of Contractor(s) to comply with laws, rules, regulations, ordinances, codes, or orders applicable to Contractor(s) furnishing and performing their work. Accordingly, the ENGINEER can neither guarantee the performance of the construction contracts by Contractor(s) nor assume responsibility for Contractor(s)' failure to furnish and perform their work in accordance with the Contract Documents.

2.5.2.4. If the ENGINEER observes or otherwise becomes aware of defects or deficiencies in the work, or nonconformance to the Contract Documents, the ENGINEER shall promptly give written notice thereof to the OWNER.

2.5.3. **Defective Work.** During such visits and on the basis of such observation, the ENGINEER may disapprove of or reject Contractor(s) work while it is in progress if the ENGINEER believes that such work will not produce a completed project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the Project as reflected in the Contract Documents.

2.5.4. **Interpretations and Clarifications.** The ENGINEER shall issue necessary interpretations and clarifications of the Contract Documents and in connection therewith prepare work directive changes and change orders as required for the OWNER'S approval.

2.5.5. **Shop Drawings and Submittals.** The ENGINEER shall review and approve (or take other appropriate action in respect of) Shop Drawings, submittals, samples and other data which Contractor(s) are required to submit, but only for conformance with the

design concept of the project and compliance with the information given in the Contract Documents. Such reviews and approvals or other action shall not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.

2.5.6. **Substitutes.** The ENGINEER shall evaluate and determine the acceptability of substitute materials and equipment proposed by Contractor(s).

2.5.7. **Inspections and Tests.** The ENGINEER shall have authority, as the OWNER'S representative, to require special inspection or testing of the work by Contractor, and shall receive and review all certificates of inspections, testing and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents (but only to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the Contract Documents). The ENGINEER shall be entitled to rely on the results of such tests.

2.5.8. **Claims.** The ENGINEER shall respond to all written claims submitted by Contractor in a timely fashion. The ENGINEER shall not be liable for the results of any such interpretations or decisions rendered in good faith.

2.5.9. **Applications for Payment.** Based on the ENGINEER'S on-site observations as an experienced and qualified design professional, on information provided by the Resident Project Representative and on review of applications for payment and the accompanying data and schedules:

2.5.9.1. The ENGINEER shall determine the amounts owing to Contractor(s) and recommend in writing payments to Contractor(s) in such amounts and the OWNER shall verify the amounts. Such recommendations of payment will constitute a representation to the OWNER, based on such observations and review, that the work has progressed to the point indicated, and that, to the best of the ENGINEER'S knowledge, information and belief, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation). In the case of unit price work, the ENGINEER'S recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents).

2.5.9.2. By recommending any payment the ENGINEER will not thereby be deemed to have represented that exhaustive, continuous or detailed reviews or examinations have been made by the ENGINEER to check the quality or quantity of Contractor(s)' work as it is furnished and performed beyond the responsibilities specifically assigned to the ENGINEER in this Agreement and the Contract Documents. The ENGINEER'S review of Contractor(s)' work for the purposes of recommending payment will not impose on the ENGINEER responsibility to supervise, direct or control such work or for the means, methods, techniques,

sequences or procedures of construction or safety precautions or programs incident thereto or Contractor(s)' compliance with laws, rules, regulations, ordinances, codes or orders applicable to their furnishing and performing the work. It will also not impose on the ENGINEER responsibility to make any examination to ascertain how or for what purposes any Contractor has used the money paid on account of the Contract Price, or to determine that title to any of the work, materials or equipment has passed to the OWNER free and clear of any lien, claims, security interests or encumbrances, or that there may not be other matters at issue between the OWNER and Contractor that might affect the amount that should be paid.

2.5.10. Contractor(s)' Completion Documents. The ENGINEER shall receive and review maintenance and operating instructions, schedules, guarantees, bonds and certificates of insurance, tests and approvals which are to be assembled by Contractor(s) in accordance with the Contract Documents (but such review will only be to determine that their content complies with the requirements of, and in the case of certificates on inspection, tests and approvals the results certified indicate compliance with, the Contract Documents); and shall transmit them to the OWNER with written comments.

2.5.11. Inspections. The ENGINEER shall conduct an inspection to determine if the work is substantially complete and a final inspection to determine if the completed work is acceptable so that the ENGINEER may recommend, in writing, final payment to Contractor(s) and give written notice to the OWNER and the Contractor(s) that the work is acceptable (subject to any conditions therein expressed), but any such recommendation and notice will be subject to the limitations expressed in paragraph 2.5.5.

2.5.12. Limitation of Responsibilities. The ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any subcontractor or supplier, or any of the Contractor(s)' or subcontractors' or suppliers' agents or employees of any other persons (except the ENGINEER'S own employees and agents) at the site or otherwise furnishing or performing any of the Contractor(s)' work; however, nothing contained in paragraphs 2.5.1 through 2.5.12 inclusive, shall be construed to release the ENGINEER from liability for failure to properly perform duties and responsibilities assumed by the ENGINEER in the Contract Documents.

2.6. OPERATIONAL PHASE.

2.6.1. Provide assistance in the closing of any financial or related transaction for the project.

2.6.2. Provide assistance in connection with the refining and adjusting of any equipment or system.

2.6.3. Assist the OWNER in training the OWNER'S staff to operate and maintain the project. Extensive training shall be mutually agreed upon within the Supplemental Agreement as Additional Services as defined in section 3 of this Agreement.

2.6.4. Assist the OWNER in developing systems and procedures for control of the operation and maintenance of and record keeping for the project.

2.6.5. Within sixty (60) days after completion of a project, prepare a set of reproducible record prints of Drawings and an Adobe PDF electronic version that satisfy the OWNER'S Record Drawing requirements, showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished by Contractor(s) to the ENGINEER and which the ENGINEER considered significant. The ENGINEER will not be responsible for any errors or omissions in the information provided by Contractor that is incorporated in the record drawings and record documents. Final payment will be made only after record drawings are received by the OWNER.

2.6.6. In company with the OWNER, visit the project to observe any apparent defects in the completed construction, assist the OWNER in consultations and discussions with Contractor(s) concerning correction of such deficiencies, and make recommendations as to replacement or correction of defective work.

2.6.7. Assist the OWNER in preparation of assessment roll for OWNER improvement projects, and attend assessment hearings.

3. ADDITIONAL PUBLIC IMPROVEMENT PROJECT SERVICES OF ENGINEER.

3.1. SERVICES REQUIRING ADVANCE AUTHORIZATION.

If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others additional services of the types listed in paragraphs 3.1.1 to 3.1.12, inclusive. These services are not included as part of the services listed in section 2 except to the extent provided otherwise by attached Supplemental Agreement or Work Order and will be paid by the OWNER as indicated in section 6.

3.1.1. Preparation of applications and supporting documents (in addition to those furnished under the services listed in section 2) for private or governmental grants, loans or advances in connection with the project; preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the design requirements of the project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the project.

3.1.2. Field Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished to the OWNER by others, including surveys to verify location or improve accuracy of record information provided by Contractor under paragraph 2.6.5.

3.1.3. Services resulting from significant changes in the general scope, extent or character of the project or its design including, but not limited to, changes in size, complexity, the OWNER'S schedule, character of construction or method of financing; and revising

previously accepted studies, reports, design documents or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to any other causes beyond the ENGINEER'S control.

3.1.4. Providing renderings or models for the OWNER'S use.

3.1.5. Preparing documents for alternate bids requested by the OWNER for Contractor(s)' work which is not executed or documents for out-of-sequence work.

3.1.6. Investigations and studies involving, but not limited to, detailed consideration of operations, maintenance and overhead expenses; providing value engineering during the course of design; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the project; evaluating processes available for licensing; assisting the OWNER in obtaining process licensing; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by the OWNER.

3.1.7. Furnishing services of independent professional associates and consultants for other than basic services (which include, but are not limited to, customary civil, structural, mechanical and electrical engineering and customary architectural design incidental thereto); and providing data or services of the types described in paragraph 4.4 when the OWNER employs the ENGINEER to provide such data or services in lieu of furnishing the same in accordance with paragraph 4.4.

3.1.8. Services during out-of-town travel required of the ENGINEER other than visits to the site or the OWNER'S office.

3.1.9. Assistance in connection with bid protests, rebidding or renegotiating contracts for construction, materials, equipment or services, except when such assistance is required to complete services called for in paragraph 2.4.

3.1.10. Preparation of operating, maintenance and staffing manuals to supplement the services listed under paragraph 2.5.10.

3.1.11. Preparing to serve or serving as a consultant or witness for the OWNER in any litigation, arbitration or other legal or administrative proceeding involving the project unless the ENGINEER is a defendant (except for assistance in consultations which is included in the services listed in section 2).

3.1.12. Additional services in connection with the project, including services which are to be furnished by the OWNER in accordance with section 4, and services not otherwise provided for in this Agreement.

3.2. SERVICES NOT REQUIRING ADVANCE AUTHORIZATION.

When required by the Contract Documents in circumstances beyond ENGINEER'S control, ENGINEER shall furnish or obtain from others, as circumstances require during construction and without waiting for specific authorization from OWNER, additional services listed in paragraphs 3.2.1 to 3.2.5, inclusive. These services are not included as part of the services listed in section 2 except to the extent provided otherwise by attached Supplemental Agreement. The ENGINEER shall advise OWNER promptly after starting any such additional services which will be paid by OWNER.

3.2.1. Services in connection with work directive changes and change orders to reflect changes requested by OWNER if the resulting change in compensation for services listed in section 2 is not commensurate with the additional services rendered.

3.2.2. Services in revising Plans and Specifications by the acceptance of substitutions proposed by Contractor(s); and services after the award to each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by Contractor.

3.2.3. Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

3.2.4. Additional or extended services during construction made necessary by: (a) work damaged by fire or other cause during construction, (b) significant amount of defective or neglected work of any Contractor, (c) acceleration of the progress schedule involving services beyond normal working hours, and (d) default by any Contractor.

3.2.5. Services (other than services listed in section 2 during the Operational Phase) in connection with any partial use of any part of the project by OWNER prior to Substantial Completion.

4. OWNER'S PUBLIC IMPROVEMENT PROJECT RESPONSIBILITIES.

OWNER shall do the following:

4.1. Designate in writing a person to act as the OWNER'S representative with respect to the services to be rendered under this Agreement and any Supplemental Agreement. Such person shall have complete authority to transmit instructions, receive information, and interpret and define the OWNER'S policies and decisions with respect to the ENGINEER'S services for the project.

4.2. Provide criteria and information as to the OWNER'S requirements for the project, including design objectives, constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of design and construction standards the OWNER will require to be included in the Plans and Specifications.

4.3. Assist the ENGINEER by placing at the ENGINEER'S disposal all available information pertinent to the project, including previous reports and any other data relative to design or construction of the project.

4.4. Furnish to ENGINEER as required for performance of ENGINEER'S services listed in section 2, except to the extent provided otherwise by attached amendment:

4.4.1. Data prepared by or services of others, including without limitation, borings, and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment.

4.4.2. Appropriate professional interpretations of all the foregoing.

4.4.3. Environmental assessment and impact statements, if needed.

4.4.4. Property, boundary, easement, right-of-way, topographic and utility surveys.

4.4.5. Property descriptions.

4.4.6. Zoning, deed and other land use restrictions.

All of which the ENGINEER may use and rely upon in performing services under this Agreement.

4.5. Provide engineering surveys or authorize the ENGINEER to establish reference points for construction to enable Contractor(s) to proceed with the layout of the work.

4.6. Arrange for access to and make all provisions for the ENGINEER to enter upon public and private property as required for the ENGINEER to perform services under this Agreement.

4.7. Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by the ENGINEER. Obtain advice of an attorney, insurance counselor and other consultants as the OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the ENGINEER.

4.8. Prepare applications and provide support for approvals and permits from all governmental authorities having jurisdiction over the project and such approvals and consents from others as may be necessary for completion of the project.

4.9. Provide accounting, independent cost estimating and insurance counseling services as may be required for the project, such legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to the project

including any that may be raised by Contractor(s), such auditing service as OWNER may require to ascertain how or for what purpose any Contractor has used the monies paid under the construction contract, and such inspection services as OWNER may require to ascertain that Contractor(s) are complying with any law, rule, regulations, ordinance, code or order applicable to their furnishing and performing the work.

4.10. If the OWNER designates a person to represent the OWNER at the site who is not the ENGINEER or the ENGINEER'S agent or employee, the duties, responsibilities and limitations of authority of such other person and the affect thereof on the duties and responsibilities of the ENGINEER and the Resident Project Representative (and any assistants) will be set forth in a supplemental agreement.

4.11. If more than one prime contract is to be awarded for construction, materials, equipment and services for the entire project, designate a person or organization to have authority and responsibility for coordinating the activities among the various prime contractors.

4.12. Furnish to the ENGINEER data or estimated figures as to the OWNER'S anticipated costs for services to be provided by others for the OWNER so that the ENGINEER may make the necessary findings to support opinions of probable Total Project Costs.

4.13. Attend the pre-bid meeting, bid opening, pre-construction meetings, construction progress and other job-related meetings, and substantial completion and final payment inspections.

4.14. Give prompt written notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any development that affects the scope of timing of the ENGINEER'S services, or any defect or nonconformance in the work of any Contractor.

4.15. Furnish, or direct the ENGINEER to provide additional services as stipulated in paragraph 3.1 of this Agreement or other services as required.

4.16. Require all Private Utilities with facilities in the OWNER'S rights-of-way to:

- (a) Locate and mark said utilities upon request;
- (b) Relocate and/or protect said utilities as determined necessary to accommodate the proposed Work;
- (c) Submit a schedule of the necessary relocation/protection activities to the OWNER for review.

4.17. Bear all costs incidental to compliance with the requirements of this section 4.

5. PERIODS OF PROJECT SERVICE.

5.1. The provisions of section 6 and the various rates of compensation for the ENGINEER'S services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the project through completion of the Construction Phase. The ENGINEER'S obligation to render services hereunder will extend for a period which may reasonably be required for the design, award of contracts, construction and initial operation of the project including extra work and required extensions thereto.

5.2. The services called for in the Study and Report Phase will be completed and the Report submitted within the agreed period after written authorization to proceed with that phase of services which will be given by the OWNER.

5.3. After acceptance by OWNER of the Study and Report Phase documents indicating any specific modifications or changes in the general scope, extent or character of the project desired by OWNER, and upon written authorization from OWNER, the ENGINEER shall proceed with the performance of the services called for in the Preliminary Design Phase, and shall submit preliminary design documents and a revised opinion of probable Total Project Costs within the agreed period.

5.4. After acceptance by the OWNER of the Preliminary Design Phase documents and revised opinion of probable Total Project Costs, indicating any specific modifications or changes in the general scope, extent or character of the project desired by the OWNER, and upon written authorization from the OWNER, the ENGINEER shall proceed with the performance of the services called for in the Final Design Phase; and shall deliver Contract Documents and a revised opinion of probable Total Project Costs for all work of Contractor(s) on the project within the agreed period.

5.5. The ENGINEER'S services under the Study and Report Phase, Preliminary Design Phase and Final Design Phase shall each be considered complete when the submissions for that phase have been accepted by the OWNER.

5.6. After acceptance by the OWNER of the ENGINEER'S Plans, Specifications and other Final Design Phase documentation including the most recent opinion of probable Total Project Costs and upon written authorization to proceed, the ENGINEER shall proceed with performance of the services called for in the Bidding or Negotiating phase. This Phase shall terminate and the services to be rendered thereunder shall be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractor(s).

5.7. The Construction Phase will commence with the execution of the first prime contract to be executed for the work of the project or any part thereof, and will terminate upon written recommendation by the ENGINEER of final payment on the last prime contract to be completed. Construction Phase services may be rendered at different times in respect of separate prime contracts if the project involves more than one prime contract.

5.8. The Operational Phase will commence during the Construction Phase and will terminate upon the last of the following events: (a) one year after the date of Substantial Completion, as defined in the Contract Documents, if the last prime contract for construction, materials and equipment on which substantial completion is achieved; (b) after final payment to the Contractor(s); (c) after all known issues have been satisfactorily resolved.

5.9. If OWNER requests significant modifications or changes in the general scope, extent or character of the project, the time of performance of ENGINEER'S services shall be adjusted equitably.

5.10. The OWNER shall give prompt authorization to proceed or not proceed with any phase of services after completion of the immediately preceding phase.

5.11. In the event that the work designed or specified by the ENGINEER is to be furnished or performed under more than one prime contract, or if the ENGINEER'S services are to be separately sequenced with the work of one or more prime contractors (such as in the case of fast-tracking), the OWNER and ENGINEER shall, prior to commencement of the Final Design Phase, develop a schedule for performance of the ENGINEER'S services during the Final Design, Bidding or Negotiating and Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate contracts.

6. PAYMENTS TO ENGINEER.

6.1. PAYMENT.

6.1.1. For project services, the ENGINEER will be paid in accordance with the supplemental agreement between the parties for the project.

The Supplemental Agreement amount shall include all services to be rendered by the ENGINEER as part of the Agreement (including all travel, living and overhead expenses incurred by the ENGINEER in connection with performing the services herein) except for special services authorized in writing by the OWNER. The amount stipulated shall be considered a "Not to Exceed" cost to the OWNER.

The ENGINEER must keep track of the costs billable under this contract at all times; any work in excess of the negotiated amount shall not be eligible for payment unless preapproved. The ENGINEER must notify the OWNER if the ENGINEER anticipates that the negotiated amount might be exceeded, in order to determine whether or not the OWNER is prepared to increase the compensation. This notification and approval must occur in advance of the work occurring to be considered for compensation.

6.1.2 The ENGINEER must submit itemized bills for services provided to the OWNER on a monthly basis. The monthly billing must summarize the progress of the project as certified by the ENGINEER. For work reimbursed on an hourly basis, the ENGINEER must indicate for each employee, his or her classification, the number of

hours worked, rate of pay for each employee, a computation of amounts due for each employee, the total amount due, the original contracted amount, the current requested amount, and the total amount. The ENGINEER must verify all statements submitted for payment in compliance with Minnesota Statutes Sections 471.38 and 471.931. For reimbursable expenses, the ENGINEER must provide such documentation as reasonably required by the OWNER. ENGINEER bills submitted will be paid in the same manner as other claims made to the OWNER.

6.2. OTHER PROVISIONS CONCERNING PAYMENTS.

6.2.1. If the OWNER fails to make any payment due the ENGINEER for services and expenses within thirty five (35) days after receipt of ENGINEER'S statement therefor, the amounts due the ENGINEER will be increased at the rate of one-half percent (1/2%) per month from said thirty-fifth (35th) day, and in addition, the ENGINEER may, after giving seven (7) days' written notice to the OWNER, suspend services under this Agreement until the ENGINEER has been paid in full all amounts due for services, expenses and charges.

6.2.2. In the event of termination by the OWNER under paragraph 8.2 upon the completion of any phase of the services listed in section 2, progress payments due the ENGINEER for services rendered through such phase shall constitute total payment for such services. In the event of such termination by the OWNER during any phase of the services listed in section 2, the ENGINEER will be paid for services actually and necessarily rendered during that phase by the ENGINEER'S principals and employees engaged directly on the project, on the basis of the ENGINEER'S Hourly Costs based upon the fee schedule on file with the OWNER.

In the event of any such termination, the ENGINEER also will be reimbursed for the reasonable charges of independent professional associates and consultants employed by the ENGINEER to render services listed in section 2, and paid for all unpaid additional services and unpaid reimbursables.

6.2.4. Records of the ENGINEER'S time pertinent to the ENGINEER'S compensation under this Agreement will be kept in accordance with generally accepted accounting principles. Copies will be made available to the OWNER at cost on request prior to final payment for the ENGINEER'S services.

6.2.5. ENGINEER shall comply with Minnesota Statute § 471.425. The ENGINEER must pay Subcontractor for all undisputed services provided by Subcontractor within ten (10) days of the ENGINEER'S receipt of payment from the OWNER. The ENGINEER must pay interest of one and five-tenths percent (1.5%) per month or any part of a month to Subcontractor on any undisputed amount not paid on time to Subcontractor. The minimum monthly interest penalty payment for an unpaid balance of One Hundred Dollars (\$100) or more is Ten Dollars (\$10).

7. CONSTRUCTION COST AND OPINIONS OF COST.

7.1. **CONSTRUCTION COST.** The construction cost of the entire project (herein referred to as "Construction Cost") means the total cost to the OWNER of those portions of the entire project designed and specified by the ENGINEER, but it will not include indirect costs such as the ENGINEER'S compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to, properties unless this Agreement so specifies, nor will it include the OWNER'S legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the project or the cost of other services to be provided by others to the OWNER pursuant to paragraph 4.4. (Construction Cost is one of the items comprising Total Project Cost as defined in paragraph 2.1.6).

7.2. **OPINIONS OF COST.** Since the ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s) methods of determining prices, or over competitive bidding or market conditions, the ENGINEER'S opinions of probable Total Project Costs and Construction Cost provided for herein are to be made on the basis of the ENGINEER'S experience and qualifications and represent the ENGINEER'S best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but the ENGINEER cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from opinions of probable cost prepared by the ENGINEER.

8. GENERAL.

8.1. **INDEPENDENT CONTRACTOR.** The OWNER hereby retains the ENGINEER as an independent contractor upon the terms and conditions set forth in this Agreement. The ENGINEER is not an employee of the OWNER and is free to contract with other entities as provided herein. The ENGINEER shall be responsible for selecting the means and methods of performing the work. The ENGINEER shall furnish any and all supplies, equipment, and incidentals necessary for the ENGINEER'S performance under this Agreement. The OWNER and ENGINEER agree that the ENGINEER shall not at any time or in any manner represent that the ENGINEER or any of the ENGINEER'S agents or employees are in any manner agents or employees of the OWNER. The ENGINEER shall be exclusively responsible under this Agreement for the ENGINEER'S own FICA payments, workers compensation payments, unemployment compensation payments, withholding amounts, and/or self-employment taxes if any such payments, amounts, or taxes are required to be paid by law or regulation.

8.2. TERMINATION.

Termination for Cause. This Agreement and any Supplemental Agreement may be terminated by the OWNER by seven day's written notice to the ENGINEER delivered to the address written above. Upon termination under this provision, the ENGINEER will be paid for services rendered and reimbursable expenses until the effective date of termination.

If, through any cause (except those reasonably beyond ENGINEER'S control), the ENGINEER shall fail to fulfill in timely and proper manner its obligations under this Agreement and any Supplemental Agreement, or if the ENGINEER shall violate any of the covenants, agreements, or stipulation of this Agreement, the OWNER shall thereupon have the right to terminate this Agreement by giving written notice to the ENGINEER of such termination and specifying the effective date thereof, at least five (5) days before the effective date of termination. In that event the ENGINEER shall have sixty (60) days to furnish all finished or unfinished documents, computer programs, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the ENGINEER under this Agreement, which shall, at the option of the OWNER, become its property, and the ENGINEER shall be entitled to receive just, equitable compensation for any satisfactory work completed on such documents and other materials prior to the effective date of termination.

Notwithstanding the above, the ENGINEER shall not be relieved of liability to the OWNER for damages sustained by the OWNER by virtue of any breach of the Contract by the ENGINEER, and the OWNER may withhold any payments to the ENGINEER for the purpose of setoff until such time as the exact amount of damages due the OWNER from the ENGINEER is determined.

In the event this Agreement is terminated for cause, then the OWNER may take over and complete the work, by contract or otherwise, and the ENGINEER and its sureties shall be liable to the OWNER for any costs over the amount of this contract thereby occasioned by the OWNER. In any such case the OWNER may take possession of, and utilize in completing the work, such materials, appliances and structures as may be on the work site and are necessary for completion of the work. The foregoing provisions are in addition to, and not in limitation of, any other rights which the OWNER may have.

Termination Not For Cause. The OWNER may terminate this Agreement and any Supplemental Agreement at any time, with or without cause, by giving written notice to the ENGINEER of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination. In that event, the ENGINEER shall have sixty (60) days to furnish all finished or unfinished documents, computer programs, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the ENGINEER under this Agreement, which shall, at the option of the OWNER, become its property. If the Agreement is terminated by the OWNER as provided in this paragraph, the ENGINEER will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the ENGINEER covered by this Agreement, less payments or compensation previously made.

8.3. DOCUMENTS. All documents including Plans and Specifications prepared or furnished by the ENGINEER (and the ENGINEER'S independent professional associates and consultants) pursuant to this Agreement are instruments of service in respect of the project and the OWNER will be provided with information and reference in connection with the use and occupancy of the project by OWNER and others; however, such documents

are not intended or represented to be suitable for reuse by OWNER or others on extensions of the project or on any other project. Any reuse without written verification or adaptation by the ENGINEER for the specific purpose intended will be at the OWNER'S sole risk. If the OWNER or ENGINEER terminates this Agreement, copies of all files, records, and drawings in the ENGINEER'S possession relating to service performance for the OWNER shall be turned over to the OWNER without cost to the OWNER.

8.4. MINNESOTA GOVERNMENT DATA PRACTICES ACT. The ENGINEER must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to (1) all data provided by the OWNER pursuant to this Agreement, and (2) all data, created, collected, received, stored, used, maintained, or disseminated by the ENGINEER pursuant to this Agreement. The ENGINEER is subject to all the provisions of the Minnesota Government Data Practices Act, including but not limited to the civil remedies of Minnesota Statutes Section 13.08, as if it were a government entity. In the event the ENGINEER receives a request to release data, the ENGINEER must immediately notify the OWNER. The OWNER will give the ENGINEER instructions concerning the release of the data to the requesting party before the data is released and the ENGINEER will be reimbursed as Additional Public Improvement Services by the OWNER under paragraph 3.1 for the ENGINEER'S reasonable costs in complying with a request to release data. The ENGINEER agrees to defend, indemnify, and hold the OWNER, its officials, officers, agents, employees, and volunteers harmless from any claims, damages, losses, and expenses, including, but not limited to attorney's fees, which they may suffer or for which they may be held liable resulting from the ENGINEER'S officers', agents', owners', partners', employees', volunteers', assignees' or subcontractors' unlawful disclosure and/or use of protected data. The terms of this paragraph shall survive the cancellation or termination of this Agreement.

8.5. INSURANCE. During the term of this Agreement, ENGINEER must procure and maintain during the life of this Agreement and any Supplemental Agreement, and provide the OWNER with a certificate of insurance showing, the following coverage for each occurrence and in aggregate:

8.5.1. Comprehensive General Liability Insurance, including Broad Form Property Damage, Completed Operations and Contractual Liability for limits not less than \$1,500,000 each occurrence for damages of bodily injury or death to one or more persons and \$1,500,000 each occurrence for damage to or destruction of property.

8.5.2. Insurance coverage for Special Hazards, including but not limited to explosion hazard, collapse hazard, underground property damage hazard, (commonly known as XCU).

8.5.3. Comprehensive Automobile Liability Insurance, in an amount not less than \$1,500,000 for each occurrence. Coverage shall include all owned autos, non-owned autos, and hired autos.

8.5.4. Errors and Omissions Insurance against errors and omissions resulting from the performance of ENGINEER'S work under this Agreement. Said

coverage shall be in an amount not less than \$2,000,000 per claim, \$2,000,000 annual aggregate.

8.5.5. Workmen's Compensation insurance for all its employees as required by the Minnesota Worker's Compensation Act.

8.5.6. The City of Shakopee must be named as "ADDITIONALLY INSURED" on the insurance described in paragraphs A, B, and C, and must receive 30 day written notice in the event of cancellation of any of the specified insurance. If the deductible provisions of the ENGINEER'S coverage or any subcontractor's coverage is questioned by the OWNER, the ENGINEER shall provide the OWNER, upon request, "Proof of Assets".

This policy must provide, as between the OWNER and the ENGINEER, that the ENGINEER'S coverage shall be the primary coverage in the event of a loss. If the ENGINEER is providing either architectural or engineering services, the ENGINEER must also maintain during the term of this Agreement and any Supplemental Agreement a professional liability insurance policy with the same limits as for general liability. A certificate of insurance on the OWNER'S approved form which verifies the existence of these insurance coverages must be provided to the OWNER before work under this Agreement is begun.

8.6. **INDEMNIFICATION.** The ENGINEER shall defend, indemnify and hold harmless the OWNER, its officers, agents, and employees, of and from any and all claims, demands, damages, losses, actions, causes of action, expenses including, but not limited to, attorney's fees, arising out of or by reason of the execution or performance of the work or services provided for herein to the comparative extent they are caused by the ENGINEER'S negligent acts or omissions or those negligent acts or omissions of persons for whom the ENGINEER is legally responsible.

The ENGINEER assumes full responsibility for relations with its subcontractors and must hold the OWNER harmless and must defend and indemnify the OWNER, its employees and agents, for any claims, damages, losses, and expenses in any manner caused by such subcontractors, arising out of or connected with this Agreement or any Supplemental Agreement.

8.7. **PROFESSIONAL STANDARDS.** The ENGINEER shall exercise the same degrees of care, skill, and diligence in the performance of the services as is ordinarily possessed and exercised by a professional engineer under similar circumstances. No other warranty, expressed or implied, is included in this Agreement. The ENGINEER shall comply with applicable laws, statutes, ordinances, and regulations and the OWNER'S mandated standards that the OWNER has provided the ENGINEER in writing. The OWNER shall not be responsible for discovering deficiencies in the accuracy of the ENGINEER'S services.

8.8. **NO THIRD-PARTY BENEFICIARIES.** Nothing in this Agreement shall be construed to give any rights to anyone other than the OWNER and ENGINEER.

8.9. **CONTROLLING LAW/VENUE.** This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota, without giving effect to the principles of conflict of laws. All proceedings related to this contract shall be venued in the Dakota County District Court.

8.10. **SUCCESSORS AND ASSIGNS.**

8.10.1. The OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of the OWNER and ENGINEER 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.

8.10.2. Neither the OWNER nor ENGINEER shall assign, sublet or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent the ENGINEER from employing such independent professional associates and consultants as the ENGINEER may deem appropriate to assist in the performance of services hereunder.

8.10.3. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the OWNER and ENGINEER, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the OWNER and ENGINEER and not for the benefit of any other party.

8.11. **PROMPT PAYMENT TO SUBCONTRACTORS.** Pursuant to Minn. Stat. §471.25, Subd. 4a, the Contractor must pay any subcontractor within ten (10) days of the Contractor's receipt of payment from the City for undisputed services provided by the subcontractor. The Contractor must pay interest of 1½ percent per month or any part of the month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, the Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from the contractor shall be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

8.12. **COPYRIGHT/PATENT INFRINGEMENT.** The ENGINEER shall defend actions or claims charging infringement of any copyright or patent by reason of the use or

adoption of any designs, Drawings or Specifications supplied by it, and it shall hold harmless the OWNER from loss or damage resulting therefrom.

8.13. **NOTICES.** Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

8.14. **SURVIVAL.** All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

8.15. **SEVERABILITY.** The provisions of this Agreement are severable. If any portion hereof is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision will not affect the remaining provisions of the Agreement.

8.16. **EQUAL OPPORTUNITY.** During the performance of this contract, the ENGINEER must not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, or age. The ENGINEER must post in places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause and stating that all qualified applicants will receive consideration for employment. The ENGINEER must incorporate the foregoing requirements of this paragraph in all of its subcontracts for program work and will require all of its subcontractors for such work to incorporate such requirements in all subcontracts for program work.

8.17. **WAIVER.** Any waiver by either party of a breach of any provisions of this Agreement will not affect, in any respect, the validity of the remainder of this Agreement.

8.18. **COMPLIANCE WITH LAWS AND REGULATIONS.** In providing services hereunder, the ENGINEER must abide by all statutes, ordinances, rules and regulations pertaining to the provision of services to be provided. Any violation will constitute a material breach of this Agreement and any Supplemental Agreement and entitle the OWNER to immediately terminate this Agreement.

9. PRIOR AGREEMENT.

This Agreement supersedes all prior written and oral contracts and agreements except for the following:

10. TERM.

The term of this Agreement will be from July 2, 2024, through June 30, 2027, the date of signature by the parties notwithstanding. This Agreement may be extended upon the written mutual consent of the parties for such additional period as they deem appropriate, and upon the terms and conditions as herein stated.

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

OWNER:

ENGINEER:

CITY OF SHAKOPEE

COMPANY XYZ, INC.

By: _____
William H. Reynolds, City Administrator

By: _____

Date: _____

Its: _____

Date: _____

By: _____
Matt Lehman, Mayor

Date: _____