



Request for Qualifications

For

Professional Engineering & Land Surveying Services

Submittals Due:

**January 12, 2018
11:30 AM**

**Office of the City Engineer
4th Floor City Hall
500 Center Ave
PO Box 779
Moorhead, MN 56561
(218)299-5390**

CITY OF MOORHEAD
REQUEST FOR QUALIFICATIONS
PROFESSIONAL ENGINEERING & LAND SURVEYING SERVICES

The City of Moorhead Engineering Department is requesting qualification statements from qualified professional engineering and land surveying firms to provide service to the City for the years 2018-2022 for projects including, but not limited to:

Engineering:

1. Civil Engineering – New Development
2. Civil Engineering – Rehabilitation & Reconstruction
3. Civil Engineering – Federal and State funded projects
4. Civil Engineering – Trunk stormwater facilities
5. Civil Engineering – Trunk sanitary sewer facilities
6. Civil Engineering – Flood mitigation
7. Civil Engineering – Bridges
8. Traffic Operations and Transportation Engineering
9. Geotechnical Engineering (excludes soil boring reports and materials testing services)
10. Materials Testing

Land Surveying:

1. Topographic Surveys
2. ALTA Surveys
3. Legal Descriptions, Easements and Right-of-Way Acquisition
4. Land subdivision, including plats, certificates of survey, & parcel splits
5. Locating and setting property pins

A complete Request for Qualifications (RFQ) package is available to download by clicking the “Professional Engineering and Land Surveying Services” link on the City’s Bid Documents & Results website: <http://www.ci.moorhead.mn.us/departments/engineering/bid-documents-results>

Statements of Qualifications (SOQ) submittals must be delivered in PDF format to the Assistant City Engineer at: tom.trowbridge@ci.moorhead.mn.us

All SOQs must be received by 11:30 AM, January 12, 2018, at which time the submittals will be opened and reviewed. Late submittals will be rejected for the current solicitation.

The City reserves the right to reject any or all submittals or accept what is, in its judgment, the submittal(s) which is/are in the City's best interest. The City further reserves the right, in the best interests of the City, to waive any technical defects or irregularities in any/all submittals.

Discussions may be conducted with Offerors whose submittals may be selected for award for the purpose of classification to assure full understanding of, and responsiveness to, the solicitation requirements.

The criteria set forth in the Instructions to Offerors of Professional Services and any specific criteria listed herein may be considered in judging which submittal is in the best interest of the City. Consultants will be selected by an evaluation committee and selection will be based on the qualifications of the Offerors. A 20-minute presentation and a 10-minute interview in a question and answer format may be required at the discretion of the selection committee.

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I. Overview

The City of Moorhead Engineering Department seeks the services of qualified professional engineering and land surveying firms to assist the Engineering Department with various projects for a time period of five years, including but not limited to:

Engineering:

1. Civil Engineering –New Development
2. Civil Engineering –Rehabilitation & Reconstruction
3. Civil Engineering – Federal and State funded projects
4. Civil Engineering –Trunk stormwater facilities
5. Civil Engineering – Trunk sanitary sewer facilities
6. Civil Engineering – Flood mitigation
7. Civil Engineering – Bridges
8. Traffic Operations and Transportation Engineering
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Land Surveying:

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4. Land subdivision, including plats, certificates of survey, & parcel splits
5. Locating and setting property pins

All respondents shall identify the specific categories addressed in their SOQ to be considered for selection and shall address all the criteria listed within this RFQ so that the selection committee can judge all submittals on comparable data.

The City intends to review the submittals, select qualified consultants for each category, and enter into Master Services Agreements (MSAs) with the selected consultant(s) that will be effective through the year 2022. The proposed MSA is attached in Appendix A. The City intends to utilize the same MSA for all consultants.

II. General Scope of Work

Each year, the City of Moorhead Engineering Department designs, bids, and manages the construction of multiple capital improvement projects. On occasion, City staff requires support from consultants with specialized technical expertise or to manage workload in excess of staff capacity. The City intends to enter into MSAs with multiple consultants to allow time sensitive and specialized projects to proceed expeditiously. The following are descriptions of the types of project tasks and sub-tasks the City may utilize consultants to provide assistance.

Engineering:

1. Civil Engineering – New Development: typically this work includes primarily local (non-trunk) street and utility (sewer & water) infrastructure for distinct subdivisions that may be completed in phases or combined with some other improvements. The distinct tasks may include the following:
 - a. Preliminary Design, including local master planning and feasibility studies
 - b. Final Design, including utility design coordination, permits, addenda and solicitation of bids
 - c. Construction Engineering, including surveying, staking, inspection and project administration, record drawings and warranty inspections

2. Civil Engineering – Rehabilitation & Reconstruction: typically this work includes repairs or replacement of existing primarily local (not collector or arterial) streets, but may include utility repairs (sewer & water). The distinct tasks may include all of the tasks identified under #1 above.
3. Civil Engineering – Federal and State funded projects: typically this work consists of both new construction and rehabilitation or reconstruction of collector and arterial streets (including street lighting), and will require significant coordination with other outside agencies. The distinct tasks may include all of the tasks identified under #1 above, and may also include the tasks listed below:
 - a. Funding applications
 - b. Preparation of project environmental documentation (Project Memorandum, EAW or EIS)
 - c. Design in accordance with Federal and/or State requirements
 - d. Submittals for Agency design reviews and compliance with agency requirements for bid lettings
 - e. Review wage reports, compliance with the Schedule of Materials Control, submittal of Agency documentation
4. Civil Engineering – Trunk stormwater facilities: typically this work consists of both new construction and reconstruction of trunk stormwater facilities, including storm sewers, box culverts, drainage ditches, pumping stations, force mains and treatment facilities. Specific tasks include all of the tasks identified under #1 above, and may also include the tasks listed below.
 - a. Depending on the project scope and funding source, this task may include the additional tasks listed under #3 above.
 - b. Stormwater master planning and modeling of drainage collection and treatment systems
 - c. Structural design of box culverts
 - d. Design of pumping stations, including structural design, and controls and pumps
5. Civil Engineering – Trunk sanitary sewer facilities: typically this work consists of both new construction and reconstruction of trunk sanitary sewer collection system facilities, including sanitary sewers, pumping stations and force mains. Specific tasks include all of the tasks identified under #1 above, and may also include the tasks listed below.
 - a. Depending on the project scope and funding source, this task may include the additional tasks listed under #3 above.
 - b. Sanitary sewer collection system master planning
 - c. Design of pumping stations, including structural design, and controls and pumps
6. Civil Engineering – Flood mitigation infrastructure: typically, this work consists of projects designed to minimize risk due to flooding, such as levees, flood walls, gate structures, removable closures and pumping stations. Specific tasks include all of the tasks identified under #1 above, and may also include the tasks listed below.
 - a. Depending on the project scope and funding source, this task may include the additional tasks listed under #3 above.
 - b. Design and inspection of projects to comply with floodplain development and FEMA accreditation standards
 - c. Preparation and submittal of documentation to certify that flood mitigation infrastructure comply with FEMA accreditation standards
 - d. Inspection of accredited flood mitigation infrastructure
7. Civil Engineering – Bridges: typically, this work consists of projects for both new bridges and bridge repairs, and in-service inspection of bridges (not including box culverts). Specific tasks may include all of the tasks identified under #1 and #3 above, and may also include the tasks listed below.

- a. Perform and document the required bridge safety inspections in accordance with State and Federal requirements.
8. Traffic Operations and Transportation Engineering – typically, this work consists of the evaluation and design of geometric and intersection control improvements and operational improvements to provide for the safe and efficient flow of traffic. Specific tasks may include all of the tasks identified under #1 and #3 above, and may also include the tasks listed below.
 - a. Traffic modeling, corridor plans and traffic impact studies
 - b. Intersection control evaluation and design (traffic signals, roundabouts, etc.)
 - c. Traffic data collection
 9. Geotechnical Engineering (excludes soil boring reports and materials testing services) – typically, this work consists of the geotechnical evaluation necessary to determine appropriate safety factors and construction methods to minimize the risk of damage to public and private infrastructure. Specific tasks may include the tasks listed below.
 - a. Slope stability analysis
 - b. Long-term soil consolidation analysis
 - c. Foundation design
 - d. Vibration monitoring
 10. Materials Testing – typically, this work consists of testing of materials in the field to determine their suitability for use in the construction of infrastructure projects. Specific tasks may include the tasks listed below.
 - a. Soil borings and reports, including classification of soils and their properties
 - b. Pavement corings
 - c. Materials sampling and testing at the plant and in the field (includes standard proctor; moisture-density; concrete slump, air, beam and cylinders; bituminous extraction; etc.)

Land Surveying:

1. Topographic Surveys – typically, this work includes making Gopher One calls and surveying existing public and private infrastructure and land features as necessary to complete the design of public infrastructure projects.
2. ALTA Surveys – a detailed survey performed by a Registered Land Surveyor in accordance with the American Land Title Association standards.
3. Legal Descriptions, Easements and Right-of-Way Acquisition
4. Land subdivision, including plats, certificates of survey, & parcel splits
5. Locating and setting property pins

The exact scope of work for any task order issued under the MSA will be determined on a case-by-case, as-needed basis. Individual tasks will be identified with a defined scope. The City reserves the right to solicit proposals from a single qualified consultant for any specific project or scope of services (i.e. task order), but may also solicit proposals from multiple qualified consultants for the same project or scope of services. If proposals are solicited from multiple qualified consultants for the same project or scope of services, the City will inform the solicited consultants. In this case, the selection of a consultant will be based on qualifications. Although solicitations may include a cost component, selection will not be solely based on cost (i.e. the City will not solicit “bids” and selection will not be based on “low bid”). If an acceptable agreement cannot be reached with a selected consultant, the City will select another prequalified firm. Execution of a MSA pursuant to this RFQ does not guarantee any particular volume, level, or amount of work either in terms of the number of projects or dollar value of work, nor shall any respondent who is granted a MSA pursuant to this RFQ have an exclusive or sole right to perform any work as described in this RFQ. The City reserves the right to award work in any fashion determined to be in the City’s best interest at its sole discretion.

Interviews are not anticipated, but may be conducted at the discretion of the City, if deemed necessary.

The City reserves the right to limit the number of consultants to be awarded an MSA in each category.

III. Evaluation

The following criteria will be evaluated and weighted as follows:

- A. **50 points** - Specialized experience or technical expertise of the company and its personnel in each category included in the SOQ.
- B. **10 points** - Capacity of the organization to perform the work within time limitations, taking into consideration the current planned workload of the firm.
- C. **40 points** - Past record of performance on contracts, including quality of work, timeliness, and cost control. The City recognizes that some consultants possess the expertise to perform the work, but have no past record with the City. In this case, the firm will be allowed three extra pages per scope of work category to convey the ability to meet these criteria.

The City reserves the right in any or all submittals to reject, to waive any technical defects or irregularities, or to accept what is, in its judgment, the submittal(s) which is/are in the City's best interest.

Discussions may be conducted with responsive Offerors whose submittals may be selected for award for the purpose of classification to assure full understanding of, and responsiveness to, the solicitation requirements.

The City of Moorhead is an Equal Opportunity Employer.

Selection Committee

The SOQs will be reviewed by a Selection Committee. The Selection Committee may include any combination of the following representatives:

Bob Zimmerman, City Engineer
Tom Trowbridge, Assistant City Engineer
Jon Atkins, Traffic Engineer
Jim Schulz, Senior Engineer
Steve Moore, Public Works Director
Kristie Leshovsky, Planning & Zoning Administrator

IV. Submission Requirements

Offerors are to submit one electronic (PDF format) copy of the SOQ. Proposals shall provide all information listed below. Late submittals will not be accepted. Failure to provide the requested information may result in disqualification.

All submittals shall conform to the following requirements:

- A total of 7 pages to address items 1 through 8 below.
- For information supporting item 9, each company will be allowed 3 pages per work category and up to 3 additional pages consisting of one-page resumes of staff that may work within that category.

- Firms with no past record with the City will be allowed an additional 2 pages per work category to demonstrate the ability to perform the work.
- Title, divider, or other similar pages that do not include substantive content and are intended solely for document clarity are not included in the maximum page counts.
- All pages must be legible when printed on letter-size paper.

Required information:

1. Company name, point of contact, mailing address, telephone number, and email address.
2. List of professional services for which the company would like to be considered corresponding to the categories listed in the General Scope of Work.
3. A description and history of the company, including year established, type of ownership and parent company, if any.
4. General statement of company's experience and qualifications.
5. Resume of primary point of contact to be assigned to City of Moorhead projects with special emphasis on recent experience relative to the type of professional services for which the company would like to be considered.
6. Description of the company's capabilities and other resources that are available and accessible.
7. Approach to project and budget management as well as client and public relations.
8. Schedule of 2018 hourly rates.
9. List five (5) projects completed in the last three (3) years that demonstrate the company's experience with the specific work category for which the company would like to be considered. Include experience with delivering services to government agencies. Provide name and contact information for the owner, name and contact information for the client (if different than the owner), description of project, role the company had with the project, and total cost of the project.

V. Questions and Answers

All questions related to this RFQ must be submitted in writing by email to:

Tom Trowbridge: tom.trowbridge@ci.moorhead.mn.us

VI. Project Timetable

The City reserves the right to modify the timeline if necessary.

RFQ Available for Viewing	December 15, 2017
Submittals Due	January 12, 2018 by 11:30 AM
Notice of Intent to Award	January 26, 2018
Master Services Agreement Due	February 2, 2018
Agreements to City Council for Approval	February 12, 2018

Discussions may be conducted with responsive Offerors whose submittals may be selected for award for the purpose of classification to assure full understanding of, and responsiveness to, the solicitation requirements.

The City reserves the right, in the City's best interest, to solicit, formally or informally, and/or accept SOQs at any time subsequent to this solicitation during the anticipated term of the MSA.

APPENDIX A

Proposed MSA

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

Related to:

ENGINEERING CONSULTATION SERVICES

BY AND BETWEEN

CITY OF MOORHEAD

and

[insert name of ENGINEERING CONSULTANT]

Dated as of _____, 2017

This instrument was drafted by:
Ohnstad Twichell, P.C.
John T. Shockley
P.O. Box 458
West Fargo, North Dakota 58078-0458

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EXHIBIT A – TASK ORDER

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

THIS MASTER AGREEMENT FOR PROFESSIONAL SERVICES (this "Agreement") is made effective this _____ day of _____, 20____ (the "Effective Date"), by and between the City of Moorhead (the "City"), a political subdivision and municipal corporation of the State of Minnesota, whose principal address is 500 Center Avenue, Moorhead, Minnesota 56561-0779; and _____ (the "Engineering Consultant"), a [*limited liability company / corporation*] of the State of _____, whose principal address is _____, (collectively, the "parties").

RECITALS

WHEREAS, the City desires to enter into a master agreement for professional services with the Engineering Consultant, commencing on the Effective Date, that establishes the conditions of service for Task Orders that will be approved for specific projects or components of projects during the life of this Agreement; and

WHEREAS, the City desires to enter into this Agreement with the Engineering Consultant to provide professional services for one (1) or more projects or components of projects; and

WHEREAS, these projects or components of projects may require professional services in addition to those provided by the City Engineer; and

WHEREAS, the City Engineer and the City Manager are authorized to oversee a project or components of a project and have authority to manage the professional services provided by the Engineering Consultant; and

WHEREAS, the City has selected the Engineering Consultant to provide the City with professional services, subject to the oversight of the City Engineer and the City Manager.

NOW THEREFORE, in consideration of the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. **EMPLOYMENT**. The City hires the Engineering Consultant, which accepts the hiring with the City pursuant to this Agreement. The Engineering Consultant is an independent contractor under this Agreement. Nothing in this Agreement shall be construed to create an employer-employee relationship between the parties.

2. **DEFINITIONS**. All capitalized terms used and not otherwise defined herein shall have the meanings given to them in this Agreement as defined in this Section, unless a different meaning clearly applies from the context:

"*Agreement*" means this Master Agreement for Professional Services by and between the City and _____ [*insert Engineering Consultant's name*].

“Best Efforts” means that the parties to this Agreement will act in Good Faith, act in accordance with generally accepted commercial practices, and use reasonable due diligence to undertake all action contemplated by this Agreement, in accordance with applicable federal and state laws, regulations, and rules; however, the obligation to use Best Efforts does not mean a duty to take action that would be in violation of the Engineering Consultant’s professional ethics and standards.

“City’s Authorized Representative” means the City Engineer and his/her representatives and the City Manager and his/her representatives.

“City of Moorhead” means the City of Moorhead and/or the Moorhead City Council, a political subdivision and municipal corporation of the State of Minnesota.

“City’s Governing Body” means the Moorhead City Council.

“Engineering Consultant” means the individual or entity with which the City has contracted for performance of the professional services as set forth in this Agreement.

“Engineering Consultant’s Representative” means the person(s) with the authority to act on behalf of the Engineering Consultant.

“Good Faith” means observance of reasonable commercial standards of fair dealing in a given trade or business.

“Person” means any natural or legal person, county, city, municipality, political subdivision, public benefit corporation, corporation, limited liability company, trust, joint venture, association, company, partnership, governmental authority, or other entity.

“Project” means the services for which a Task Order has been or will be prepared.

“Task Order” means an assignment for a specific project or scope of work.

3. **AUTHORIZATION TO PROCEED**. Execution of this Agreement will be authorization for the City Engineer to negotiate and approve Task Orders for minor work items included in the annual City Budget, and to solicit proposals for Task Orders for other projects to bring to the City Council for approval.

4. **PRIOR AGREEMENTS**. Any prior master agreements between the City and the Engineering Consultant shall, upon execution of this Agreement, be terminated and have no further force and effect. Any existing Task Order shall be governed by the agreement in effect at the time the Task Order was approved.

5. **SCOPE OF SERVICES**. The Engineering Consultant’s detailed scope of services, work schedule, and cost budget will be mutually agreed upon in writing and set forth in

Task Orders issued by the City under this Agreement. Each Task Order will specifically refer to and incorporate this Agreement by reference, and the provisions of this Agreement shall apply to all Task Orders entered into subsequent to the Effective Date of this Agreement.

6. **CHANGES TO SCOPE OF SERVICES**. The City Engineer and the City Manager may make or approve changes within the general scope of services as set forth in the applicable Task Order. The Engineering Consultant's scope of services shall be governed by Task Orders. If such changes affect the Engineering Consultant's cost of or time required for performance of the services as set out in any applicable Task Order, then an equitable adjustment will be made through an amendment to the applicable Task Order or this Agreement.

7. **RESPONSIBILITY FOR ERRORS OR DELAYS FROM INACCURATE DATA**. The Engineering Consultant and the City acknowledge that the reliability of the Engineering Consultant's services depends upon the accuracy and completeness of the data supplied to the Engineering Consultant. The City accepts sole responsibility for errors or delays in services resulting from inaccurate or incomplete data supplied to the Engineering Consultant, and the City acknowledges and agrees that any additional services thereby necessitated will result in additional fees payable by the City to the Engineering Consultant. The Engineering Consultant must promptly receive the information to deliver the services as well as the City's prompt updates to any information where there has been a material change that may affect the scope or delivery of the services, such as a change in the nature of the City's products or equipment, systems, and/or processes that are the focus of the Engineering Consultant's services.

8. **TASK ORDERS**. The Engineering Consultant shall receive assignments for work under this Agreement through Task Orders authorized and provided by the City directly or through its City Engineer or City Manager. The City shall compensate the Engineering Consultant only for work contained within the Task Orders. The Engineering Consultant shall not be obligated to perform any work or services unless such services are set forth in a Task Order executed by both parties. If the Engineering Consultant engages in work beyond the scope of a Task Order, the City shall not compensate the Engineering Consultant for that work, unless agreed to in writing by the City prior to the work being completed. All amendments to Task Orders must be authorized and provided by the City in writing. The time or schedule for performing services or providing deliverables shall be stated in each Task Order. If no times are stated, then the Engineering Consultant will perform services and provide deliverables within a reasonable time. The Engineering Consultant is not responsible for any delays in execution of its services or work due to the absence of an executed Task Order or amendment to a Task Order.

9. **PERSONNEL**. All persons assigned by the Engineering Consultant to perform services as set forth in Task Orders issued under this Agreement shall be fully qualified to perform the work assigned to them. The Engineering Consultant shall devote such personnel and resources, time, attention, and energies to the City's business as are necessary to fulfill the duties and responsibilities required by the City and agreed to by the Engineering Consultant in any given Task

Order. The Engineering Consultant must endeavor to minimize turnover of personnel performing services under this Agreement. If the City is dissatisfied with any of the Engineering Consultant's personnel, the City reserves the right to require removal of those personnel from the Task Order. The City shall provide the Engineering Consultant with a written statement, including reasonable detail, outlining its reasons for desiring removal. Replacement personnel for the removed person shall be fully qualified for the position.

10. **SUBCONTRACTORS**. The Engineering Consultant may enter into agreements with subcontractors in furtherance of their services under this Agreement, as approved by the City Manager and/or the City Engineer, which approval shall not be unreasonably withheld.

11. **TERM**. Unless terminated under Section 39, this Agreement shall remain in full force and effect for a period of approximately five (5) years from the Execution Date, through the _____ day of _____, 20____. This Agreement shall take full force and effect on the Effective Date upon approval by the City Council and execution by the City. Pursuant to Section 12 of this Agreement and upon expiration of the initial term, this Agreement may be renewed by mutual agreement of the parties.

12. **EXTENSION OF TERM**. This Agreement may be extended by written amendment or renewed as set forth in Section 11 of this Agreement. If this Agreement expires before the completion of a Task Order, the Agreement shall be deemed to have been extended until the completion of services under the applicable Task Order.

13. **COMPENSATION**. For all services rendered by the Engineering Consultant, the City will pay the Engineering Consultant for the lump sum or based on the time spent by those Engineering Consultant team members working on the project and the hourly charging rates applicable to those Engineering Consultant team members, plus subcontracts with non-Engineering Consultant-affiliated companies and outside services. The Engineering Consultant shall attach a compensation rate schedule to this Agreement which consists of compensation rates for the three (3) year term of this Agreement. Thereafter, the compensation rate schedule shall be submitted annually, on or before January 1, based on the calendar year it is submitted.

The Engineering Consultant shall also attach a reimbursable expenses schedule to this Agreement which consists of reimbursable expenses for the three (3) year term of this Agreement. Thereafter, the reimbursable expenses schedule shall be submitted annually, with the compensation rate schedule, based on the calendar year it is submitted. Travel expenses will be determined based on the Minnesota Department of Transportation's travel reimbursement policy.

The City will compensate the Engineering Consultant as set forth above and in accordance with each Task Order. Work performed under this Agreement may be performed using labor from affiliated companies of the Engineering Consultant. Such labor will be billed to the City under the same billing terms applicable to the Engineering Consultant's employees.

The compensation is payable following the end of each month upon submission by the Engineering

Consultant of a monthly invoice setting forth the services performed in that month on behalf of the City. Invoices shall be sent as required in Section 14 of this Agreement. Invoices are due and payable within thirty (30) days of receipt. If a Task Order issued under this Agreement contains a not-to-exceed compensation amount, the City will only pay compensation to the Engineering Consultant for fees and/or expenses that are less than or equal to the not-to-exceed amount stated on the Task Order, unless the Task Order has been amended pursuant to Section 8 of this Agreement.

- A. Budget. Budgetary amounts, excluding taxes, will be established for each Task Order executed under this Agreement. The Engineering Consultant will make reasonable efforts to complete the work within the budget and will keep the City informed of progress toward that end so that the budget or work effort can be adjusted if found necessary. The Engineering Consultant is not obligated to incur costs beyond the indicated budgets for satisfactory performance, based on industry standards, of its obligations under this Agreement and/or any Task Order, as may be adjusted, nor is the City obligated to pay the Engineering Consultant beyond these limits. When any budget has been increased, the Engineering Consultant's costs expended prior to such increase will be allowable to the same extent as if such costs had been incurred after the approved increase.
- B. Hourly Rates. Hourly rates are those hourly rates charged for work performed on the project by the Engineering Consultant's employees of the indicated classifications. These rates include all allowances for salaries, overhead, fees, and all expenses, but do not include allowances for subcontracts or outside services allowed by this Agreement.

14. INVOICING AND PAYMENT

- A. The Engineering Consultant must submit invoices to the City on or before the fifteenth (15th) day of each month for all services provided and allowed expenses incurred during the preceding month. The Engineering Consultant's Representative must personally review each invoice before it is sent to the City to determine its accuracy and fairness, and to ensure the invoice complies with the requirements in this Agreement.
- B. The Engineering Consultant must submit each original invoice to:
 - City of Moorhead
 - Attn: City Engineer
 - 500 Center Avenue
 - Moorhead, Minnesota 56561-0779
- C. The Engineering Consultant's invoices must be detailed and precise. The Engineering Consultant's invoices must clearly indicate fees and expenses incurred for the current billing period month and include at least the following information:
 - (1) The Engineering Consultant's name and address;
 - (2) The Engineering Consultant's federal employer identification number;
 - (3) Unique invoice number;
 - (4) The City project number and project name;
 - (5) The applicable Task Order number;

- (6) The authorized budget for the project in accordance with the Task Order, along with a notation as to whether the authorized amount is Hourly-Estimated, Hourly Not-To-Exceed, Lump Sum, or some other approved method;
 - (7) Total amount of fees and costs "billed to date," including the preceding month;
 - (8) Budget remaining in accordance with the Task Order;
 - (9) Billing period;
 - (10) Daily summary generally describing services performed;
 - (11) Name, billing rate, and hours worked by each person involved in the project, in accordance with the Task Order Budgetary Breakdown;
 - (12) Preferred remittance address, if different from the address on the invoice's coversheet; and
 - (13) All of the work performed during that billing period, in accordance with the Task Order Budgetary Breakdown.
- D. The Engineering Consultant's invoice must be printed on a printed bill head and signed by the Engineering Consultant's Representative or other authorized signatory.
- E. If any Engineering Consultant invoice contains a request for expense reimbursement, the Engineering Consultant must include copies of the corresponding invoices and receipts with that invoice.
- F. After the City receives the Engineering Consultant's invoice, the City will either process the invoice for payment or give the Engineering Consultant specific reasons, in writing within fifteen (15) business days, why part or all of the City's payment is being withheld and what actions the Engineering Consultant must take to receive the withheld amount.
- G. In the event of a disputed billing, only the disputed portion will be withheld from payment, and the City shall pay the undisputed portion. The City will exercise reasonableness in disputing any bill or portion thereof. Interest at a rate of one-quarter percent (1/4%) will accrue on any disputed portion of the billing determined to be due and owing to the Engineering Consultant.
- H. Payment does not imply acceptance of services, that expenses are allowable, or that the invoice is accurate. In the event an error is identified within six (6) months of receipt of payment, the Engineering Consultant must credit any payment in error from any payment that is due or that may become due to the Engineering Consultant under this Agreement.
- I. The City will be charged interest at the rate of one-half percent (1/2%) per month, or that permitted by law if lesser, on all past-due amounts starting thirty (30) days after receipt of invoice. Payments will be first credited to interest and then to principal.
- J. If the City fails to make payment in full within thirty (30) days of the date due for any undisputed billing, the Engineering Consultant may, after giving seven (7) days' written notice to the City, suspend services under this Agreement until paid in full, including interest. In the event of suspension of services, the Engineering Consultant will have no liability to the City for delays or damages caused by the City because of such suspension.
- K. Without waiving any rights to recover payment for reimbursable taxes, fees, or other costs per the provisions of Paragraph 13 herein, the Engineering Consultant must pay in the first instance all fees, fines, taxes, or other costs of doing business related to the services.

15. **RELATIONSHIP BETWEEN PARTIES**. The Engineering Consultant is retained by the City only for the purposes and to the extent set forth in this Agreement and its Task Order(s), and its relationship to the City shall, during the period or periods of services under this Agreement, be that of an independent contractor. The Engineering Consultant shall be free to use such portion of the Engineering Consultant's entire time, energy, and skill during the course of this Agreement to meet its contractual obligation to the City. Neither the Engineering Consultant, nor its personnel, shall be considered to be employed by the City or entitled to participate in any plans, arrangements, or distributions by the City pertaining to or in connection with any benefits accorded the City's regular employees. The City shall not be financially responsible to the Engineering Consultant except for the payment of compensation specifically set forth in this Agreement, and shall not be responsible for the payment of any cost of living allowances, merit increases, medical insurance, employee's retirement, life or disability coverage, sick leave, or holiday pay or vacation pay, or any benefit of any kind not specifically set forth in this Agreement. Likewise, the City shall not be responsible for wage or salary withholding to the federal or any state government.

16. **REPRESENTATIONS**. The Engineering Consultant represents that the following statements are true:

- A. The Engineering Consultant has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise) to any representative of the City with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.
- B. The Engineering Consultant's personnel performing the work hereunder have no interest that would constitute a conflict of interest with the City during the term of the project. This does not preclude or prohibit other Engineering Consultant employees or representatives from working with other parties who may participate on the project and have potential or actual adverse interest to the City.
- C. This Agreement does not constitute a conflict of interest or default under any of the Engineering Consultant's other agreements.
- D. No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened that may adversely affect the Engineering Consultant's ability to perform under this Agreement.
- E. The Engineering Consultant is in compliance with all laws, rules, and regulations applicable to its business, including rules of professional conduct (the "Laws and Regulations").
- F. During the term of this Agreement, the Engineering Consultant must not knowingly take any action, or omit to perform any act, that may result in a representation becoming untrue. The Engineering Consultant must immediately notify the City if any representation and warranty becomes untrue.

THE REPRESENTATIONS ABOVE SHALL BE IN LIEU OF ANY IMPLIED OR EXPRESS WARRANTIES AND THE ENGINEERING CONSULTANT MAKES NO WARRANTIES, EXPRESS, IMPLIED, OR OTHERWISE IN CONNECTION WITH ITS SERVICES.

17. **WORKING RELATIONSHIP.** The Engineering Consultant's Representative shall be the individual(s) that will engage with the City Council and the City's Representatives. The Engineering Consultant's Representative shall be identified on each Task Order. The Engineering Consultant shall work in close cooperation and coordinate with the City Engineer and City Manager.

18. **INDEPENDENT PROFESSIONAL JUDGMENT.** Nothing in this Agreement shall be construed to interfere with or otherwise affect the rendering of services by the Engineering Consultant in accordance with the independent professional judgment of each of its employees. The Engineering Consultant shall perform the services rendered in accordance with accepted principals of its profession. The Engineering Consultant's personnel are subject to the rules and regulations of any and all licensing and professional organizations or associations to which those personnel may from time to time belong, and the Laws and Regulations in the locale of the services performed for a project.

19. **STANDARD OF CARE.** The standard of care applicable to the Engineering Consultant's services will be the degree of skill and diligence normally employed by professional consultants or consultants performing the same or similar services at the time said services are performed. The Engineering Consultant will re-perform any services not meeting this standard without additional compensation.

20. **SUBSURFACE INVESTIGATIONS.** In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total project cost and/or execution. These conditions and cost/execution effects are not the responsibility of the Engineering Consultant.

21. **ENGINEERING CONSULTANT'S PERSONNEL AT CONSTRUCTION SITE.**

A. The Engineering Consultant and the Engineering Consultant's personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting,

noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor(s) or other entity or any other persons at the site except the Engineering Consultant's own personnel.

- B. The presence of the Engineering Consultant's personnel at a construction site is for the purpose of providing to the City a greater degree of confidence that the completed construction work will conform generally to the construction documents and that the integrity of the design concept as reflected in the construction documents has been implemented and preserved by the construction contractor(s). The Engineering Consultant neither guarantees the performance of the construction contractor(s) nor assumes responsibility for construction contractor's failure to perform work in accordance with the construction documents.
- C. The presence of the Engineering Consultant's personnel, subcontractors, or subconsultants at a construction site whether as on-site representative or otherwise do not make the Engineering Consultant or the Engineering Consultant's personnel, subcontractors, or subconsultants liable for any duties belonging to either the City or its contractor(s) except as specifically outlined in a Task Order. The Engineering Consultant shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall the Engineering Consultant have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for the safety precautions and programs incident thereto, for security or safety at any project site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.
- D. The Engineering Consultant neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform work at a project in accordance with any plans, specifications, drawings, details, or other construction or design documents prepared by the Engineering Consultant for the project.
- E. For each service or design performed or furnished, the Engineering Consultant shall be responsible only for those construction phase services that have been itemized and expressly required of the Engineering Consultant in the authorizing Task Order. With the exception of such expressly required services, the Engineering Consultant shall have no design, shop drawing review, or other obligations during construction and the City assumes all responsibility for the application and interpretation of the contract documents, contract administration, construction observation and review, and all other necessary construction phase engineering and professional services. The Engineering Consultant shall not be liable to the City for any construction phase engineering or professional services except for those services that are expressly required of the Engineering Consultant in the authorizing Task Order.

22. OPINIONS OF COST, FINANCIAL CONSIDERATIONS, AND SCHEDULES.

- A. The Engineering Consultant has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by operating personnel or third parties; and other economic and operational factors that may materially affect the ultimate project cost or schedule. Therefore, the Engineering Consultant makes no warranty that the City's actual project costs, financial aspects,

economic feasibility, or schedules will not vary from any opinions of project costs, financial analyses, economic feasibility projections, or schedules for the project included in the Engineering Consultant's services work or deliverables for the project.

- B. If the City wishes greater assurance as to any element of project cost, feasibility, or schedule, the City will employ an independent cost estimator, contractor, or other appropriate advisor.

23. **CONSTRUCTION PROGRESS PAYMENTS**

Recommendations by the Engineering Consultant to the City for periodic construction progress payments to the construction contractor(s) will be based on the Engineering Consultant's knowledge, information, and belief from selective sampling that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by the Engineering Consultant to ascertain that the construction contractor(s) have completed the work in exact accordance with the construction documents; that the final work will be acceptable in all respects; that the Engineering Consultant has made an examination to ascertain how or for what purpose the construction contractor(s) have used the moneys paid; that title to any of the work, materials, or equipment has passed to the City free and clear of liens, claims, security interests, or encumbrances; or that there are no other matters at issue between the City and the construction contractors that affect the amount that should be paid.

24. **RECORD DRAWINGS**

Record drawings, if required, will be prepared in a format as specified in the applicable Task Order, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the project was finally constructed. To the extent that the Engineering Consultant prepares, compiles, and furnishes information to be incorporated into the Record Drawings, the Engineering Consultant will be responsible for damages that are incurred by the City to the extent caused by any negligent errors or omissions by the Engineering Consultant in preparing, compiling, and furnishing such information. The Engineering Consultant is not responsible for any errors or omissions in the information from others that are incorporated into the record drawings.

25. **CONSULTANT'S INSURANCE**

The Engineering Consultant shall maintain throughout this Agreement the following insurance:

- A. The Engineering Consultant shall purchase and maintain throughout this Agreement such insurance as is required by this Agreement in the categories and amounts set forth below:
- (1) Claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 - (2) Claims for damages because of bodily injury, occupational sickness or disease, or death of the Engineering Consultant's employees;
 - (3) Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Engineering Consultant's employees;

- (4) Claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - (a) by any person as a result of an offense directly or indirectly related to the employment of such person by the Engineering Consultant, or
 - (b) by any other person for any other reason;
- (5) Claims for damages, other than to the work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
- (6) Claims for damages because of bodily injury or death of any person or property damage arising out of the Engineering Consultant's ownership, maintenance, or use of any motor vehicle.

B. The policies of insurance required by this Section will:

- (1) With respect to insurance required by above paragraphs 25(A)(3) through 25(A)(6) inclusive, be written on an occurrence basis, included as additional insureds (subject to any customary exclusion regarding Professional Liability and Workers Compensation) the City, and any other individuals or entities identified, all of whom will be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insured, and the insurance afforded to these additional insureds will provide primary coverage for all claims covered in the General Liability and Automobile Liability Policies;
 - (a) All insurance policies required under this Agreement, including the Excess or Umbrella Liability policies must be from insurers rated "A-" or better by the A.M. Best Company, Inc.
- (2) Include at least the specific coverages and be written for not less than the limits of liability specified or required by Laws or Regulations, whichever is greater;
- (3) Contain a provision or endorsement that the coverage afforded will not be canceled or renewal refused until at least thirty (30) days prior written notice has been given to the City and to each other additional insured identified to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Engineering Consultant pursuant to this Section will so provide);
- (4) Remain in effect at least until final payment and at all times thereafter when the Engineering Consultant may be correcting, removing, or replacing defective work;
- (5) Include completed operations coverage:
 - (a) Such insurance will remain in effect for two (2) years after final payment.

- (b) The Engineering Consultant will furnish the City and each other additional insured identified, to whom a certificate of insurance has been issued, evidence satisfactory to the City and any such additional insured of continuation of such insurance at final payment and one (1) year thereafter.
- (6) Not limit in any way the Engineering Consultant’s duties to defend, indemnify, and hold harmless the City and its officers, employees, agents, consultants, subcontractors, and representatives in accordance with Section 36;
- (7) Either in the policies or in endorsements, contain a “waiver of subrogation” (except for in the Professional Liability Policy and Workers Compensation policy) that waives any right to recovery any of the Engineering Consultant’s insurance companies might have against the City.
- (8) Either in the policies or in endorsements, contain a provision that the Engineering Consultant’s insolvency or bankruptcy will not release the insurers from payment under the policies, even when the Engineering Consultant’s insolvency or bankruptcy prevents the Engineering Consultant from meeting the retention limits under the policies;
- (9) Either in the policies or in endorsements, contain cross liability/severability of interests, to ensure that all additional parties are covered as if they were all separately covered (with the exception of Workers Compensation and Professional Liability policies);
- (10) Either in the policies or in endorsements, contain a provision that the legal defense provided to the City and the State of Minnesota must be free of any conflict of interest, even if retention of separate legal counsel is necessary;
- (11) Either in the policies or in endorsements, contain a provision that the Engineering Consultant’s policies will be primary and noncontributory regarding any other insurance maintained by or available to the City and that any insurance maintained by the City will be in excess of the Engineering Consultant’s insurance and will not contribute with it (except for Worker’s Compensation and Professional Liability Policies).
- C. The limits of liability for the insurance required by this Section will provide coverage for not less than the following amounts or greater where required by Laws and Regulations:
- (1) Worker’s Compensation, and related coverages under Paragraphs 25(A)(1) and 25(A)(2):
- | | |
|---|--------------|
| (a) State: | Statutory; |
| (b) Applicable Federal (e.g. Longshoreman’s): | Statutory; |
| (c) Employer’s Liability: | \$1,000,000. |
- (2) The Engineering Consultant’s General Liability under Paragraphs 25(A)(3) through 25(A)(6) which will include premises or operations coverage, completed operations and product liability coverages, and will eliminate the exclusion with respect to property under the care, custody, and control of the Engineering Consultant:
- | | |
|--|-------------|
| (a) General Aggregate: | \$2,000,000 |
| (b) Products – Completed Operations Aggregate: | \$1,000,000 |

- (c) Personal and Advertising Injury: \$1,000,000
 - (d) Each Occurrence (Bodily Injury and Property Damage): \$1,000,000
 - (e) Property damage liability insurance will provide Explosion, Collapse, and Underground coverages where applicable.
 - (f) Excess or Umbrella liability:
 - i. General Aggregate: \$4,000,000
 - ii. Each Occurrence: \$4,000,000
- (3) Automobile Liability under Paragraph 25(A)(6) (which will include coverage for any auto, including owned, non-owned, and hired):
- (a) Bodily injury:
 - i. Each person: \$1,000,000
 - ii. Each accident: \$1,000,000
 - (b) Property Damage:
 - i. Each accident: \$1,000,000
 - OR
 - (c) Combined Single
 - i. Limit of: \$1,000,000
- (4) Professional Liability coverage will provide coverage for not less than the following amounts:
- (a) Each claim made: \$2,000,000
 - (b) Annual Aggregate: \$2,000,000
- (5) The following will be included as additional insured on all of the Engineering Consultant's general liability and automobile insurance policies required under this Agreement:
- (a) City; and
 - (b) _____.
- (6) If the Engineering Consultant is domiciled outside of the State of Minnesota, the Engineering Consultant will purchase and maintain employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the Engineering Consultant's Workers' Compensation and General Liability Policies.
- D. If any required policy is written on a "claims made" form, the Engineering Consultant must maintain the coverage continuously throughout the term of this Agreement, and, without lapse, for three (3) years beyond the termination or expiration of this Agreement and the City's acceptance of all services provided under this Agreement. The retroactive date or "prior acts inclusion date" of any "claims made" policy must be no later than the date that services commence under this Agreement.
- E. Before the Engineering Consultant begins performing services, the Engineering Consultant must send the City certificates of insurance and any applicable endorsements attesting to the existence of coverage. The Engineering Consultant will not allow its policies to be cancelled, lapse, and/or terminate, or be amended to reduce coverage below the minimums called for in

this Agreement without thirty (30) days' notice to the City. The certificates of insurance issued to confirm the Engineering Consultant's compliance must reference this Agreement.

- F. If required insurance lapses during the term of this Agreement, the City is not required to process invoices after such lapse until the Engineering Consultant provides evidence of reinstatement that is effective as of the lapse date.
- G. The City shall have no specific responsibility to provide any general liability coverage or worker's compensation coverage for the benefit of the Engineering Consultant's employees during the terms of this Agreement.

26. **THIRD PARTY DESIGNERS**. The City and the Engineering Consultant acknowledge and agree that some of the design services for any specific project will be separately engaged by the City through retention of separate design professionals. Independent design professionals engaged in different aspects of a project shall use Best Efforts to cooperate in completing the project in a timely and professional manner. Notwithstanding any provision to the contrary, the Engineering Consultant shall have no responsibility for the accuracy or sufficiency of documentation prepared by those independent design professionals. The Engineering Consultant will notify the City of errors, discrepancies, and inconsistencies it may discover in such documents. If such errors, discrepancies, or inconsistencies cause an increase in cost or the time for performance, the Engineering Consultant shall be entitled to an equitable adjustment. In the event the Engineering Consultant performs constructability reviews, value engineering, or any other reviews or tasks involving the design for the work contemplated by the project, it is understood that such reviews will not render the Engineering Consultant liable in any manner for the duties of the City's separately-retained design professionals.

27. **OPEN RECORDS**. The Engineering Consultant will cooperate with the City in responding to any request for documents by any third party to the extent such documents may be required to be disclosed under Minnesota Statutes regarding open records laws.

28. **DATA FURNISHED BY THE CITY**. The City will provide to the Engineering Consultant all data in the City's possession relating to the Engineering Consultant's services on a project. The Engineering Consultant may reasonably rely upon the accuracy, timeliness, and completeness of the information provided by the City.

29. **ADVERTISEMENTS, PERMITS, AND ACCESS**. Unless otherwise agreed to in the scope of services or a Task Order, the City will obtain, arrange, and pay for all advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for the Engineering Consultant's services or project construction.

30. **TIMELY REVIEW**. The City will examine the Engineering Consultant's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as the City deems appropriate; and render in writing decisions required by the City in a timely manner.

31. **PROMPT NOTICE**. The City will give prompt written notice to the Engineering Consultant whenever the City observes or becomes aware of any development that affects the scope or timing of the Engineering Consultant's services, or of any suspected or actual defect in the work of the Engineering Consultant or their third party designers or construction contractors.

32. **ASBESTOS OR HAZARDOUS SUBSTANCES**. If asbestos or hazardous substances in any form are encountered or suspected, the Engineering Consultant will stop its own work in the affected portions of a project to permit testing and evaluation. If asbestos is suspected, the Engineering Consultant will, if requested, manage the asbestos remediation activities using a qualified subcontractor at an additional fee and contract terms to be negotiated. If hazardous substances other than asbestos are suspected, the Engineering Consultant will, if requested, conduct tests or request a qualified subcontractor to conduct tests to determine the extent of the problem and will perform the necessary studies and recommend the necessary remedial measures at an additional fee and contract terms to be negotiated. The City recognizes that the Engineering Consultant assumes no risk and/or liability for a waste or hazardous waste site originated by other than the Engineering Consultant. Under no circumstances shall the Engineering Consultant be considered to be a generator, storer, or transporter of hazardous substances or materials with regard to services provided under this Agreement or the initial Agreement.

33. **CONTRACTOR INDEMNIFICATION AND CLAIMS**.

- A. The City agrees to include in all construction contracts the provisions of Section 21, the Engineering Consultant's Personnel at Construction Site, and provisions providing contractor indemnification of the City and the Engineering Consultant for contractor's negligence.
- B. The City shall require construction contractor(s) to name the City, the Engineering Consultant, and its subcontractors as additional insureds on the contractor's general liability insurance policy.
- C. The City agrees to include the following clause in all contracts with construction contractors, and equipment or materials suppliers: "Contractors, subcontractors, and equipment and material suppliers on the project, or their sureties, shall maintain no direct action against the Engineering Consultant, the Engineering Consultant's officers, employees, affiliated corporations, and subcontractors for any claim arising out of, in connection with, or resulting

from the consulting services performed. The City will be the only beneficiary of any undertaking by the Engineering Consultant.”

34. OWNER’S INSURANCE

- A. The City will maintain property insurance on all pre-existing physical facilities associated in any way with the project.
- B. The City will provide for a waiver of subrogation as to all City-carried property damage insurance, during construction and thereafter, in favor of the Engineering Consultant, the Engineering Consultant’s officers, employees, affiliates, and subcontractors.
- C. The City is not responsible for the payment of deductibles owed under the Engineering Consultant’s insurance policies.
- D. The City will provide (or have the construction contractor(s) provide) a Builders Risk All Risk insurance policy for the full replacement value of all project work including the value of all onsite City-furnished equipment and/or materials associated with the Engineering Consultant’s services. Such policy will include coverage for loss due to defects in materials and workmanship and errors in design, and will provide a waiver of subrogation as to the Engineering Consultant and the construction contractor(s) (or the City), and their respective officers, employees, agents, affiliates, and subcontractors. The City will provide the Engineering Consultant a copy of such policy.
- E. The City reserves the right to enter into a program-wide insurance plan at its expense. The Engineering Consultant agrees to participate in such a program if named as an insured party and if commercially reasonable terms are available.

35. LITIGATION ASSISTANCE. Services required or requested of the Engineering Consultant by the City to support, prepare, document, bring, or assist in litigation undertaken or defended by the City, except for suits or claims between the parties to this Agreement, will be defined in an authorized Task Order and reimbursed as mutually agreed.

36. INDEMNIFICATION. Under the scope of this Agreement, the Engineering Consultant will defend, indemnify, and hold harmless the City and its officers, employees, agents, subcontractors, and representatives, from and against any and all claims, losses, liabilities, damages, expenses, demands, suits, fines, judgments, costs, expenses, and reasonable fees (including all fees and charges of attorneys, engineers, architects, and other professionals and all court, arbitration, mediation, or other resolution costs) arising out of or relating to claims by third parties for property damage or bodily injury, including death, to the proportionate extent caused by any negligent act or omission of the Engineering Consultant, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by the Engineering Consultant to perform any of the work, and including all costs, expenses, and fees incurred by the City in establishing and litigating the existence, scope, or any other matters relating to the Engineering Consultant’s obligations to defend, indemnify, and hold harmless. The Engineering Consultant’s obligations to

defend will be free of any conflicts of interest, even if retention of separate legal counsel is necessary. The Engineering Consultant's duties to defend, indemnify, and hold harmless include anything in excess of any minimum insurance requirements described in the contract documents, and anything in excess of any of the Engineering Consultant's insurance policy limits. The Engineering Consultant's obligations to defend, indemnify, and hold harmless will continue for a period of not less than six (6) years following completion of the project or any termination or expiration of the contract documents.

The indemnified party shall provide notice to the Engineering Consultant after obtaining knowledge of any claim that it may have pursuant to this Section. In the event the indemnified party pursues a claim pursuant to this Section, the indemnified party will also provide relevant information and assistance to the Engineering Consultant.

37. **LIMITATION OF LIABILITY**. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of the Engineering Consultant and the Engineering Consultant's officers, directors, members, partners, agents, guarantors, subconsultants, subcontractors, and employees, to the City, its members, and anyone else claiming by, through, or resulting from, or in any way related to a project or Task Order, from any negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty, express or implied, of the Engineering Consultant or the Engineering Consultant's officers, directors, members, partners, agents, subconsultants, subcontractors, or employees shall not exceed the total amount, individually, collectively, or in the aggregate of four million dollars (\$4,000,000) per Task Order unless a lesser amount is agreed to by both parties. This article takes precedence over any conflicting article of this Agreement or any document incorporated into it or referenced by it. This limitation of liability will apply whether the Engineering Consultant's liability arises under breach of contract or warranty, tort, including negligence, strict liability, statutory liability, or any other cause of action, and shall include the Engineering Consultant's officers, affiliated corporations, employees, and subcontractors. The City further agrees that its sole and exclusive remedy, and any claim, demand, or suit arising from or related to the services under this Agreement shall be directed and/or asserted only against the Engineering Consultant and not against any of the Engineering Consultant's individual employees, officers, shareholders, affiliated firms, or directors. The City knowingly waives all such claims against the Engineering Consultant's individual employees, officers, shareholders, directors in their individual capacity or any affiliated companies to the Engineering Consultant.

38. **BREACH AND REMEDIES**.

A. A breach exists under this Agreement if either party:

- (1) Makes a material misrepresentation in writing; or
- (2) Fails or is unable to meet or perform any material promise in this Agreement, and
 - (a) Is incapable of curing the failure, or
 - (b) Does not cure the failure within twenty (20) days following notice (or within a longer period if specified in the notice).

- B. The Engineering Consultant must give the City notice immediately if the Engineering Consultant breaches, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a breach under this Agreement.
- C. The parties will use their Best Efforts to resolve amicably any dispute, including use of alternative dispute resolution options. Mediation, an alternative dispute resolution option, is further described below in Section 58.
- D. All remedies provided for in this Agreement may be exercised individually or in combination with any other available remedy.

39. TERMINATION

- A. Either party may terminate this Agreement, in whole or in part, for cause if either party fails substantially to perform through no fault of the other and does not commence correction of such nonperformance within twenty (20) days of written notice and diligently completes the correction thereafter.
- B. The City may terminate this Agreement, in whole or in part, or modify or limit the Engineering Consultant's services, and proportionately, the Engineering Consultant's compensation, if:
 - (1) The City determines that having the Engineering Consultant provide services has become infeasible due to changes in applicable laws or regulations, or
 - (2) Expected or actual funding to compensate the Engineering Consultant is withdrawn, reduced, or limited.
- C. Either party may terminate this Agreement, in whole or in part, for any or no reason upon thirty (30) days' written notice to the other party.
- D. On termination, the Engineering Consultant will be paid for all authorized services performed up to the termination date plus termination expenses, such as, but not limited to, reassignment of personnel, subcontract termination costs, and related closeout costs.
- E. In the event a federal or state tax or employment agency concludes that an independent contractor relationship does not exist, either the Engineering Consultant or the City may terminate this Agreement immediately upon written notice.
- F. Upon receipt of any termination notice from the City related to any specific Task Order, the Engineering Consultant must promptly discontinue all affected services under the Task Order unless the parties mutually agree otherwise.
- G. Upon the end date of the Agreement, which is the date when this Agreement as a whole, along with any pending Task Orders, expires or are terminated pursuant to their terms:
 - (1) The City will be released from compensating the Engineering Consultant for services other than those the Engineering Consultant satisfactorily performed, pursuant to industry standard, prior to the end date.

- (2) The Engineering Consultant must submit the Engineering Consultant’s final invoice for payment within sixty (60) days of the end date. The City will not pay any Engineering Consultant invoice received after this period.
 - (3) The Engineering Consultant will be released from performing services, except for services in any non-terminated portion of this Agreement.
- H. All rights and duties with respect to services performed prior to the expiration or termination of this Agreement, and continuing obligations specified in this Agreement to be performed following expiration or termination of this Agreement, will survive the expiration or termination of this Agreement.
- I. In the event of termination, expiration, or removal/withdrawal, the Engineering Consultant must terminate its services as soon as it is reasonably possible to do so without (1) prejudice to the City’s interests (or the interest of any person represented on the City’s behalf) or (2) violation of the Engineering Consultant’s statutory or ethical duties. The Engineering Consultant must notify the City of any further services, prior to withdrawal or substitution, which the Engineering Consultant believes are necessary to avoid prejudice to the City’s interests (or the interest of any person represented on the City’s behalf), and obtain the City’s consent prior to performing such services.

40. **ADDITIONAL PAYMENT**. Nothing contained in this Agreement shall obligate the City to make any payment for services rendered in any period after the termination of the Engineering Consultant’s retention by the City.

41. **SUSPENSION, DELAY, OR INTERRUPTION OF WORK**. The City may suspend, delay, or interrupt the services of the Engineering Consultant for the convenience of the City. In such event, the Engineering Consultant’s contract price and schedule shall be equitably adjusted.

42. **NOTICE**. Any notice or election required or permitted to be given or served by any party to this Agreement upon any other will be deemed given or served in accordance with the provisions of this Agreement if said notice or election is (1) delivered personally, or (2) mailed by United States certified mail, return receipt requested, postage prepaid and in any case properly addressed as follows:

If to Engineering Consultant: Attn: _____

If to City: Attn: City Engineer
 500 Center Avenue

Each such mailed notice or communication will be deemed to have been given on the date that is three (3) days after the same is deposited in the United States mail. Each such delivered notice or communication will be deemed to have been given upon the delivery. Any party may change its address for service of notice in the manner specified in this Agreement.

43. **PROHIBITION AGAINST ASSIGNMENT**. This is a bilateral professional services agreement. Neither party shall have the power to or will assign any of the duties or rights or any claim arising out of or related to this Agreement, whether arising in tort, contract, or otherwise, without the written consent of the other party. Any unauthorized assignment is void and unenforceable.

44. **NO THIRD PARTY BENEFICIARIES**. This Agreement gives no rights or benefits to anyone other than the City and the Engineering Consultant and has no third-party beneficiaries.

45. **CONSEQUENTIAL DAMAGES**. To the maximum extent permitted by law, the Engineering Consultant and the Engineering Consultant's affiliated corporations, officers, employees, and subcontractors shall not be liable for the City's special, indirect, or consequential damages, whether such damages arise out of breach of contract or warranty, tort including negligence, strict or statutory liability, or any other cause of action. In order to protect the Engineering Consultant against indirect liability or third-party proceedings, the City will indemnify the Engineering Consultant for any such damages.

46. **MATERIALS AND SAMPLES**. Any items, substances, materials, or samples removed from a project site for testing, analysis, or other evaluation will be returned to the project site within sixty (60) days of project close-out unless agreed to otherwise. The City recognizes and agrees that the Engineering Consultant is acting as a bailee and at no time assumes title to said items, substances, materials, or samples.

47. **ENGINEERING CONSULTANT'S DELIVERABLES**. A party may rely on data or information that the party receives from the other party by hard copy or electronic media. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents. The Engineering Consultant's deliverables are for the City or others' convenience. Any conclusions or information derived or obtained from these files will be at user's sole risk.

48. ACCESS TO ENGINEERING CONSULTANT'S ACCOUNTING RECORDS / AUDIT RIGHTS.

- A. The Engineering Consultant must allow the City and its designees to review and audit the Engineering Consultant's financial documents and records relating to this Agreement. The Engineering Consultant will maintain accounting records, in accordance with generally accepted accounting principles. These records will be available to the City for a period of one (1) year after the Engineering Consultant's final invoice for examination to the extent required to verify the direct costs (excluding established or standard allowances and rates) incurred hereunder. The City may only audit accounting records applicable to a cost-reimbursable type compensation. Upon finalization of the audit, the City will submit to the Engineering Consultant a Notice of Audit Results and a copy of the audit report, which may supplement or modify any tentative findings verbally communicated to the Engineering Consultant at the completion of an audit.

- B. Within one hundred eighty (180) days after the date of the Notice of Audit Results, the Engineering Consultant will respond, in writing, to the City indicating (a) whether it concurs with the audit report, (b) clearly explaining the nature and basis for any disagreement as to a disallowed item of expense, and (c) providing a written explanation as to any questioned or no opinion expressed item of expense (the "Response"). The Response will be clearly stated and will provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, the Engineering Consultant may supply appropriate excerpts and make alternate arrangements to conveniently and reasonably make that documentation available for review by the City. The Response will refer to and apply the language of this Agreement. The Engineering Consultant agrees that failure to submit a Response within the one hundred eighty (180) day period constitutes agreement with any disallowance of an item or expense and authorizes the City to finally disallow any items of questioned or no opinion expressed cost.

- C. The City will make its decision with regard to any Notice of Audit Results and Response within one hundred twenty (120) days after the date of the Notice of Audit Results. If it is determined by a court of competent jurisdiction or by mutual agreement that an overpayment has been made to the Engineering Consultant, the Engineering Consultant will repay the amount to the City or reach an agreement with the City on a repayment schedule within thirty (30) days after the date of an invoice from the City. If the Engineering Consultant fails to repay the overpayment or reach an agreement with the City on a repayment schedule within the thirty (30) day period, the Engineering Consultant agrees that the City will deduct all or a portion of the overpayment from any funds then or thereafter payable by the City to the Engineering Consultant for this project. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be the interest rate on judgments in Minnesota as calculated by the Minnesota State Court Administrator pursuant to Minnesota law. The rate of interest will be reviewed annually by the City and adjusted as necessary. The Engineering Consultant expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit to contest the City's decision.

49. **OWNERSHIP**. Ownership of work product and inventions created by the Engineering Consultant shall be as follows:

- A. **Pre-Existing Consultant Materials**. The City acknowledges and agrees that in the performance of the services, the Engineering Consultant will utilize its proprietary data, concepts, methods, techniques, processes, protocols, ideas, inventions, know-how, trade secrets, algorithm, software, works of authorship, software and hardware architecture, databases, tools, other background technologies and standards of judgment that developed or licensed from third parties prior to the effective date of this Agreement (the "Pre-Existing Consultant Materials") and that the Engineering Consultant shall retain all right, title, and interest, including intellectual property rights in the Pre-existing Consultant Materials. Subject to the terms and conditions of this Agreement, the Engineering Consultant hereby grants to the City a non-exclusive, non-transferable, royalty-free license, fully assignable to the City, to utilize the Pre-Existing Consultant Materials for the purpose of the City's Task Order or project.
- B. **Derivative Consultant Materials**. The City acknowledges and agrees that in the performance of the services, the Engineering Consultant will utilize and develop customization, enhancements, improvements, modifications, and adaptations of and to the Pre-Existing Consultant Materials (the "Derivative Consultant Materials"). The Engineering Consultant shall retain all right, title, and interest, including intellectual property rights in the Derivative Consultant Materials. Subject to the terms and conditions of this Agreement, the Engineering Consultant hereby grants to the City a non-exclusive, non-transferable, royalty-free license, fully assignable to the City, to utilize the Derivative Consultant Materials.
- C. **New Consultant Materials**. The City acknowledges and agrees that in the performance of the services, the Engineering Consultant may utilize and develop new software, hardware, and other technology or processes that do not utilize or incorporate, or are not based upon, the Pre-Existing Consultant Materials ("New Consultant Materials"). Between the parties, subject to the license grant-back set forth below, the City will retain rights, title, and interest, including without limitation intellectual property rights, in and to the New Consultant Materials. The City and the Engineering Consultant shall have ownership of such New Consultant Materials without any limitation or restriction.
- D. **License Grant Back**. Subject to the terms and conditions of this Agreement, the City hereby grants to the Engineering Consultant a non-exclusive, transferable, royalty-free license to utilize the concepts, methods, techniques, processes, protocols, ideas, inventions, know-how, trade secrets, algorithm, software and hardware architecture, and other background technologies that are newly developed by the Engineering Consultant under this Agreement and assigned to the City under this Agreement, to make, have made, use, reproduce, license, display, perform, distribute, sell, offer for sale, service, support, import, and otherwise disposed of any products, technologies, and services and for any purposes without restriction.
- E. **License Restrictions**. Except as otherwise permitted above, the City shall not, and shall not allow any third party to: (i) modify or otherwise create derivative works of the Pre-Existing Consultant Materials; (ii) use the Pre-Existing Consultant Materials for any other purpose, other than the City's Task Order or project; (iii) make, have made, use, reproduce, license, display, perform, distribute, sell, offer for sale, service, support, or import any product that

incorporates, embodies and/or is based upon the Pre-Existing Consultant Materials; (iv) sublicense, distribute or otherwise transfer to a third party any of the Pre-Existing Consultant Materials by itself or as incorporated in the services; or (v) reverse engineer, disassemble, decompile or attempt to derive the source code or underlying ideas or algorithms of the Pre-Existing Consultant Materials. Any additional use of the Pre-Existing Consultant Materials shall require a separate written license agreement.

- F. Miscellaneous. Nothing contained in this Agreement shall be construed as conferring to the City or any third party any license or right by implication, estoppel, or otherwise to any intellectual property rights of the Engineering Consultant, other than the rights expressly granted under this Agreement. The City may use said work products for the specific purpose for which the work product was intended. Any other use or reuse, without written verification or adaptation by the Engineering Consultant will be at the user's sole risk.
- G. City Material. As between the parties, the City is the exclusive owner of all material the Engineering Consultant collects from the City in connection with the services under this Agreement, including copyrights. Within thirty (30) days of the end date of this Agreement, or upon the City's notice at any time, the Engineering Consultant must give all materials collected to the City (or to another party at the City's direction). Unless the City specifies otherwise, all files must be saved in the appropriate formats (Microsoft Word and Excel, CAD, PDF, GIS data files, etc.), as applicable. The Engineering Consultant must maintain the Engineering Consultant's records relating to services under this Agreement and the Engineering Consultant's invoices, and all other materials, in an accessible location and condition for a period of not less than one (1) year after the later of:
- (1) The date when the Engineering Consultant receives final payment under this Agreement; or
 - (2) The date when the City resolves with the Engineering Consultant the findings of any final audit.

The Engineering Consultant may retain copies of any original documents the Engineering Consultant provides to the City and a copy of any material collected from the City in the Engineering Consultant's confidential files for the purpose of complying with applicable laws or established company procedure regarding the preservation of business records.

50. **REUSE OF PROJECT DOCUMENTS**. Services and deliverables are for the exclusive use of the City and are not to be relied upon by third parties. All reports, drawings, specifications, documents, and other deliverables of the Engineering Consultant, whether in hard copy or in electronic form, are instruments of service for a Task Order, whether the Task Order is completed or not. Upon full payment for services due under this Agreement, the Engineering Consultant agrees to grant to the City an irrevocable license to the instruments of service, the City agrees to indemnify the Engineering Consultant and the Engineering Consultant's officers, employees, subcontractors, and affiliated corporations from all claims, damages, losses, and costs, including, but not limited to, litigation expenses and attorney's fees arising out of or related to the City's related entities' unauthorized reuse, change, or alteration of these Task Order or project documents. Nothing in this Agreement shall constitute a waiver of the statutory limits of liability set forth in Minn. Stat. § 466.04 or a waiver of any available immunities or defenses.

51. **MODIFICATION**. This Agreement, including its attachments, schedules, and Task Orders, constitutes the entire Agreement, supersedes all prior written or oral understandings, and may only be changed by a written amendment approved by the City and executed by the Engineering Consultant and the City's Representative on behalf of the City. It may be modified as to terms and conditions from time to time upon the mutual consent of the parties; however, such modification shall be reduced to writing, signed by the parties, and the document appended to and made a part of this Agreement.

52. **FORCE MAJEURE**. The Engineering Consultant is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the Engineering Consultant. In any such event, the Engineering Consultant's contract price and schedule shall be equitably adjusted.

53. **WAIVER**. A party's waiver of enforcement of any of this Agreement's terms or conditions will be effective only if it is in writing. A party's specific waiver will not constitute a waiver by that party of any earlier, concurrent, or later breach or default.

The City waives all claims against the Engineering Consultant, including those for latent defects, which are not brought within six (6) years of substantial completion of the facility designed or final payment to the Engineering Consultant, whichever is earlier.

54. **BINDING EFFECT**. This Agreement shall be binding upon and inure to the benefit of the City, its successors and assigns, and any such successor shall be deemed substituted for the City under the terms of this Agreement. This Agreement shall likewise be binding upon the Engineering Consultant, its successors and assigns. As used in this Agreement, the term "successor" shall include any person, firm, corporation or other business entity which at any time whether by merger, purchase or otherwise acquires all or substantially all of the assets or business of the corporation.

55. **NEGOTIATED AGREEMENT**. This Agreement has been arrived at through negotiation between the parties.

56. **SEVERABILITY AND SURVIVAL**. If any court of competent jurisdiction declares, for any reason, any provision or part of this Agreement to be invalid, illegal, or unenforceable, all remaining terms and provisions of this Agreement will remain binding and enforceable. Limitations of liability, indemnities, and other express representations shall survive termination of this Agreement for any cause.

57. **WAIVER OF JURY TRIAL**. THE PARTIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THAT THEY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, PROCEEDING, COUNTERCLAIM, OR DEFENSE BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER, OR IN ANY CONNECTION WITH THIS AGREEMENT, OR WITH RESPECT TO ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF ANY PARTY HERETO RELATING TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ALL PARTIES ENTERING INTO THIS AGREEMENT. THIS PROVISION APPLIES ONLY TO SUITS BETWEEN THE PARTIES ARISING OUT OF OR RELATED TO THIS AGREEMENT AND DOES NOT APPLY TO THIRD PARTY CLAIMS OR SUITS BY OR ON BEHALF OF THE PARTIES FOR PROJECT PROPERTY ACQUISITION AND/OR CONSTRUCTION CONTRACT CLAIMS AND DEFENSES.

58. **DISPUTE RESOLUTION**. The City and the Engineering Consultant shall endeavor to resolve claims, disputes, and other matters in question between them by non-binding mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for non-mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of non-binding dispute resolution proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the City, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

If the parties do not resolve a dispute through non-binding mediation pursuant to this Section, then the method of binding dispute resolution shall be via formal claims filed in a court of competent jurisdiction.

59. **CONTROLLING LAW AND VENUE**. This Agreement, its interpretation and performance, and any other claims related to it shall be controlled by the laws of the State of Minnesota. Any action brought as a result of any claim, demand, or cause of action arising under the terms of this Agreement shall be brought in a court of competent jurisdiction within the State of Minnesota.

IN WITNESS WHEREOF, this Agreement is executed the day and year above noted.

[Signatures appear on the following pages.]

DRAFT

CITY:

City of Moorhead, Minnesota

By: _____
Del Rae Williams, Mayor

By: _____
Christina M. Volkers, City Manager

STATE OF MINNESOTA)
)ss.
COUNTY OF CLAY)

On this _____ day of _____, 20____, before me personally appeared Del Rae Williams and Christina M. Volkers known to me to be the Mayor and City Manager, respectively, of the City of Moorhead, a political subdivision and municipal corporation of the State of Minnesota that is described herein, and who executed the within and foregoing instrument and acknowledged to me that they executed the same on behalf of said city.

Notary Public, Clay County, MN

(SEAL)

ENGINEERING CONSULTANT:

[insert name of Engineering Consultant]

By: _____

Its: _____

STATE OF _____)
)ss.
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally appeared _____ known to me to be the person who executed the within and foregoing instrument and acknowledged to me that he/she executed the same on behalf of _____.

Notary Public

(SEAL)

Task Order

In accordance with paragraph 5 of the Master Agreement for Professional Services between Owner and Engineer for Engineering Consultation Services, dated [date] ("Agreement"), Owner and Engineer agree as follows:

1. **Specific Project Data**

A. Title: [Project Name], Eng. No. XX-XX-XX

B. Description: This Task Order is for [general 1-2 sentence description].

2. **Services of Engineer**

Services to be completed by the Engineer are as specified in the proposal submitted by [consultant] dated [date] included as Attachment A of this Task Order.

3. **Owner's Responsibilities**

Owner shall have those responsibilities set forth in the Agreement.

4. **Times for Rendering Services**

<u>Phase</u>	<u>Completion Date</u>
<u>[Phase 1, if appropriate & description]</u>	<u>[date]</u> _____
<u>[Phase 2, if appropriate & description]</u>	<u>[date]</u> _____
<u>[Phase 3, if appropriate & description]</u>	<u>[date]</u> _____

5. **Payments to Engineer**

A. Owner shall pay Engineer for services rendered as follows:

<i>Category of Services</i>	<i>Compensation Method</i>	<i>Lump Sum, or Estimate of Compensation for Services</i>
<i>Phase or description or deliverable</i>	<i>XXXXXX</i>	<i>\$XXXXXX</i>
<i>Phase or description or deliverable</i>	<i>XXXXXX</i>	<i>\$XXXXXX</i>
<i>Phase or description or deliverable</i>	<i>XXXXXX</i>	<i>\$XXXXXX</i>

B. The terms of payment are set forth in paragraph 14 of the Agreement and in Attachment A.

6. **Consultants:** *[List, if appropriate]*

7. **Other Modifications to Agreement:** *[Supplement or modify Agreement and Exhibits, if appropriate]*

8. **Attachments:**

Attachment A – Proposal submitted by *[consultant]* on *[date]*

Attachment B – [other, if appropriate]

9. **Documents Incorporated By Reference:** *[list, if appropriate]*

Terms and Conditions: Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement as modified above, which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is [date].

OWNER:

ENGINEER:

By: _____

By: _____

Name: Del Rae Williams

Name: [XXXX]

Title: Mayor

Title: [XXXX]

By: _____

Name: Christina M. Volkers

Title: City Manager

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: [XXXX]

Name: [XXXX]

Title: [XXXX]

Title: [XXXX]

Address: [XXXX]

Address: [XXXX]

E-Mail Address: [XXXX]

E-Mail Address: [XXXX]

Phone: [XXXX]

Phone: [XXXX]

APPENDIX B

Instructions to Offerors of Professional Services

INSTRUCTIONS TO OFFERORS OF PROFESSIONAL SERVICES

1. The City of Moorhead invites consultants to submit sealed Statements of Qualifications (SOQs) as more fully described in the Request for Qualifications (RFQ). These instructions are to assist Offerors in the preparation of SOQs.
2. Before submitting a SOQ, all Offerors shall examine the RFQ. The RFQ consists of the following documents:
 - A. Request for Qualifications & Notice.
 - B. Master Services Agreement.
 - C. Instructions to Offerors of Professional Services.
 - D. Addenda, if any.
3. Information contained in the RFQ shall be the basis for the SOQs and nothing shall be deemed to change or supplement this basis except for Addenda issued by the City of Moorhead.
4. The City of Moorhead reserves the right to reject any or all SOQs or accept what is, in its judgment, the best SOQ(s). The City further reserves the right to waive any technical defects or irregularities in any and all SOQs submitted, and to negotiate contract terms with the successful Offeror(s). The City reserves the right to disregard all nonconforming, non-responsive or conditional SOQs. Discrepancies between words and figures will be resolved in favor of words. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. The City Engineer or designees may waive minor informalities that do not affect responsiveness, are merely a matter of form or format, do not change the relative standing or otherwise prejudice other offers, do not change the scope or meaning of the RFQ, and are insignificant, negligible, or immaterial in nature, or do not reflect a material change in the work. The City reserves the right to reject a SOQ of an Offeror determined to be unresponsive, and further reserves the right to refuse to make an award if it determines it to be in its best interests.
5. The cost of SOQ preparation shall be borne solely by the persons or entities submitting the SOQ.
6. Offerors must disclose any instances where the firm or any individuals working on the SOQ have a possible conflict of interest and, if so, the nature of that conflict. The City reserves the right to cancel the award if any interest disclosed from any source could give the appearance of a conflict or cause speculation as to the objectivity of the Offeror's SOQ.
7. By signature on the SOQ, Offeror certifies it is in compliance with the laws of the State of Minnesota, all applicable local, state and federal laws, applicable portions of the Civil Rights Act of 1964, the Equal Employment Opportunity Act and regulations, the Americans with Disabilities Act and regulations, and that the SOQ was independently developed without collusion.
8. The following procedures or steps shall be followed after the issuance or publication of the RFQ:
 - A. Refer to the RFQ notice to determine how complete RFQ packages may be obtained.
 - B. Before submitting a SOQ, each Offeror must (a) examine the RFQ thoroughly, (b) visit the site, if any, to familiarize her/himself with local conditions that may in any manner affect cost,

progress or performance of the work, (c) familiarize her/himself with federal, state and local laws, and ordinances, rules and regulations that may in any manner affect costs, progress or performance of the work; (d) familiarize her/himself with the unique weather conditions of the City of Moorhead and surrounding area that may affect costs, progress or performance of work; and (e) study and carefully correlate Offeror's observations with the SOQ.

- C. Refer to the RFQ to determine the place, date, and time for delivering sealed SOQs.
- D. SOQs shall be received at the time and place indicated in the RFQ and in the manner specified in the RFQ. If required, hardcopy SOQs shall be in a sealed envelope, clearly marked with the project title and name and address of the Offeror and as specified in the RFQ. SOQs will not be publicly read. If the SOQ is sent through the mail or other delivery system the sealed envelope shall be enclosed in a separate envelope with the notation "SOQ ENCLOSED" on the face thereof. Offerors assume the risk of the method of dispatch selected. Postmarking by the due date will not substitute for actual SOQ receipt. SOQs received after the deadline will be rejected. SOQs submitted orally, by facsimile machine (FAX), or other telecommunication or electronic means will not be accepted or considered except as specified in the RFQ.
- E. Refer to the RFQ for any SOQ Forms that may be required to be completed as part of the SOQ. SOQ Forms, if any are required, must be completed in ink or by a printer/typewriter. SOQs by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature. SOQs by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.
- F. SOQs may be modified or withdrawn by an appropriate document duly executed (in the manner that a SOQ must be executed) and delivered to the place where SOQs are to be submitted at any time prior to the SOQ deadline. If, within twenty four (24) hours after SOQs are due, any Offeror files a duly signed written notice with the City of Moorhead and promptly thereafter demonstrates to the reasonable satisfaction of the City of Moorhead that there was a material and substantial mistake in the preparation of her/his SOQ, the Offeror may withdraw her/his SOQ.
- G. The City shall evaluate each SOQ in the best interests of the City of Moorhead. The SOQs shall be evaluated to determine which are the most advantageous to the City of Moorhead taking into consideration any factors set forth in the RFQ and SOQ.
- H. The City may decide to interview one or more Offerors.
- I. To demonstrate qualifications to perform the Work, each Offeror must be prepared to submit, within five (5) days of a request, financial data, previous experience, or evidence of authority to conduct business in the State of Minnesota.
- J. Upon determining the Successful Offeror(s), the City of Moorhead shall send to the Successful Offeror(s) a Notice of Intent to Award notifying the recipient of the City's acceptance of the Offeror's SOQ, subject to the City Council approval of the Master Services Agreement. The Notice

of Intent to Award to the presumptive Successful Offeror(s) shall include three (3) unexecuted copies of the Master Services Agreement with instructions to execute and return the same to the City within ten (10) days or risk having their SOQ declared abandoned. The City Council shall consider approval of the Master Services Agreement and authorize the Mayor and City Manager to execute the same.

K. Upon receipt of all documents required by the Notice of Intent to Award and upon approval of the Master Services Agreement by the City Council the Successful Offeror shall be sent copy of the Agreement duly executed by the City of Moorhead.

9. All SOQs and other material submitted become the property of the City and may be returned only at the City's discretion. All SOQs and related information, including detailed cost information, are exempt records and will be held in confidence until an award is made, in accordance with Minnesota Laws.

Offerors may make a written request that trade secrets and other proprietary data contained in the SOQ be held confidential. Material considered confidential by the Offeror must be clearly identified, and the Offeror must include a brief statement that sets forth the reason for the confidentiality. After award, SOQs will be subject to the Minnesota Laws.

10. There are specific indemnity and insurance requirements which the Successful Offeror(s) must comply with prior to the start of work for any project. These requirements are set forth in detail in the Master Services Agreement. Objections to any of the provisions of the Indemnification and Insurance Requirements must be made in writing by the time and date set for receipt of questions or at least 10 days prior to the SOQ submission deadline, whichever is earlier. The Successful Offeror(s) must obtain the required insurance coverage and provide proof of coverage as a condition of the Master Services Agreement. Failure to provide evidence of required insurance coverage is a material breach and grounds for withdrawal.

11. The submission of a SOQ constitutes an incontrovertible representation by the Offeror that s/he has complied with every requirement of these instructions and that the Master Services Agreement is sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the work.

12. Refer to the RFQ for the identity of the City of Moorhead project manager(s) who will coordinate all aspects of the selection process. All questions about the meaning or intent of the RFQ shall be submitted to the project manager(s) in writing. As deemed appropriate by the City, Addenda may be posted on the same website as the RFQ package. Offerors shall bear the responsibility for checking the website for Addenda. Failure to do so may result in the Offeror not receiving all clarifications necessary to present a responsive SOQ. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

13. In order to determine if a SOQ is acceptable for award, communication by the project manager is permitted with an Offeror to clarify uncertainties or eliminate confusion concerning the contents of the SOQ and determine responsiveness to the RFQ. Clarifications may not result in a material or substantive change to the SOQ. After receipt of SOQs, if there is a need for any substantial clarification or material change in the RFQ, an Addendum will be issued. The Addendum will incorporate the clarification or change, and a new date and time established for new or amended SOQs.

14. After completion of evaluations, the City Engineer or designee will issue a written Notice of Intent to Award and send copies to all Offerors. The Notice of Intent to Award will set out the names and addresses of all other Offerors and identify the Offerors selected for award. The scores and placement of other Offerors will not be part of the Notice of Intent to Award.
15. Successful Offerors may not assign, in whole or in part, the Master Services Agreement without the written consent of the City of Moorhead.