

Master Services Agreement

THIS IS AN AGREEMENT, effective on September 19, 2023, between the City of Spring Lake Park, MN (“City”) and Stantec Consulting Services Inc., (“Engineer”), for engineering, planning, and other professional technical services. City and Engineer agree as follows.

SECTION 1. ENGINEER'S SERVICES

1.1 General

The City intends to retain the Engineer from time to time to provide professional technical services including engineering, planning, surveying, landscape architecture, and services in the environmental sciences. Each engagement of the Engineer by the City or each construction project shall be referred to as a “Project.” The City reserves the right to retain others to perform engineering and other professional technical services for the City.

1.2 Basic Services for Construction Projects

For construction projects, the Engineer will provide the “Basic Services” described in Appendix A. Basic Services for construction projects consists of three phases:

- 1) Feasibility Study/Report
- 2) Design Engineering Phase
- 3) Construction Engineering Phase

1.3 Supplemental Service for Construction Projects

1.3.1 For construction projects, Engineer will provide “Pre-authorized Supplemental Services” identified in Appendix B, Section 1.

1.3.2 If authorized in writing by the City, the Engineer will furnish “Other Potential Supplemental Services” that are identified in Appendix B, Section 2.

1.4 Planning and Zoning Services The City may direct the Engineer to provide planning and zoning services (“Planning Services”). Although not a complete list, examples of Planning Services include: Coordinate with the City Manager and others as needed on planning and zoning reviews and tasks; Interpret the Comprehensive Plan, land use and subdivision ordinances, and related codes and policies; Complete analysis and reviews of planning and zoning applications; Review land use and subdivision ordinances and prepare amendments to ordinances, regulations, and policies as requested; Prepare Comprehensive Plan amendments as requested; Prepare public hearing notices and resolutions as requested; Meet with residents, landowners and applicants on planning and zoning issues as requested; Attend Planning Commission meetings and facilitate Commission discussions as requested; Attend City Council meetings as requested. For Planning and Zoning Services, the Engineer will not begin any work without a direct request from the City Manager.

1.5 Other Services, Investigations, Studies and Reports

The City may direct the Engineer to provide services not related to a construction project (“Other Services”). Although not a complete list, examples of Other Services include: development review; traffic studies; transportation studies; feasibility or conceptual investigations, studies and reports; sanitary sewer, water, and stormwater system master plans; comprehensive planning; market research; environmental assessments, worksheets or impact statements; and rate studies. For Other Services, the Engineer will provide the City with a written scope of services and will not begin work until authorized by the City.

SECTION 2. THE CITY'S RESPONSIBILITIES

The City is responsible for all matters described in Appendix C.

SECTION 3. COMPENSATION

3.1 Payment for Construction Project Basic Services

- 3.1.1 For Feasibility Study/Report Basic Services, the City will pay the Engineer on an hourly basis according to the rates in Appendix E as adjusted annually. As an alternative for a particular Project if agreed to by both parties, the City shall pay the Engineer on a lump sum basis where the amount is negotiated between the two parties.
- 3.1.2 For Design Engineering Basic Services, the City will pay the Engineer on an hourly basis according to the rates in Appendix E as adjusted annually. As an alternative, Design Engineering Basic Services may be provided on a percentage of construction fee as set forth in Appendix D if agreed to by both parties.
- 3.1.3 For Construction Engineering Basic Services, the City will pay the Engineer on an hourly basis according to the rates in Appendix E as adjusted annually.

3.2 Payment for Supplemental Services on Construction Projects

- 3.2.1 For the preparation of reproducible "Record Plans," the City will pay the Engineer on an hourly basis according to the rates in Appendix E as adjusted annually.
- 3.2.2 For all other Supplemental Services described in Appendix B and for other services not provided for in this Agreement, the City will pay the Engineer on an hourly basis according to the rates in Appendix E as adjusted annually.

3.3 Payment for Planning and Zoning Services

The City will pay the Engineer for these services as agreed upon by the parties – either on a lump sum basis or on an hourly basis according to the rates in Appendix E as adjusted annually.

3.4 Payment for Other Services

The City will pay the Engineer for these services as agreed upon by the parties – either on a lump sum basis or on an hourly basis according to the rates in Appendix E as adjusted annually.

3.5 Payment for Reimbursable Expenses

Unless otherwise provided, in addition to Engineer's fees, the City will pay the Engineer for Reimbursable Expenses on the basis of the Engineer's cost. Although not a complete list, examples of Reimbursable Expenses include: document reproduction; rental equipment; testing; mileage; travel and per-diem expenses of the Engineer for out-of-town trips required for the Project; long distance telephone calls and faxes as required to expedite the work; the costs for cellular phone calls/service for Engineer's field personnel on a Project; construction stakes; postage and delivery charges; any new taxes, fees or costs imposed on the Engineer's services (such as sales taxes) after the date of this Agreement; and out-of-pocket expenses incurred directly for the Project.

3.6 Progress Payments

The City will make progress payments to the Engineer in proportion to services performed, as reasonably estimated by the Engineer. The Engineer will invoice the City monthly during the progress of the work. The City shall pay each properly documented invoice of the Engineer within 45 days after the City's receipt of such invoice. The City may not reserve as retainage any portion of a payment due under this Agreement.

3.7 Objections to Invoices/No Deductions

It is important for the Engineer to be promptly informed of problems. If the City objects to any portion of an invoice, the City shall notify the Engineer in writing within 45 days of the invoice's receipt. The City agrees to pay any undisputed portions of an invoice. No deductions shall be made from the Engineer's compensation on account of penalty, liquidated damages, or other sums withheld from payment to contractors, except as may be determined by mediation, arbitration, litigation or other dispute resolution mechanism to which the Engineer is a party.

3.8 Interest/Collection Costs

The City agrees to pay the Engineer 1.5% per month interest on all invoices of the Engineer, with interest beginning to accrue 45 days after the date of the invoice. If the Minnesota Prompt Payment Act (Minn. Stat. §471.425) requires a higher rate of interest, that rate shall apply. If the City fails to pay Engineer all amounts owing pursuant to the terms of this Agreement, the City agrees to pay all costs of collection, including reasonable attorney's fees, in addition to all other amounts due under this Agreement.

SECTION 4. GENERAL CONSIDERATIONS

4.1 Standard of Care

The Engineer shall exercise the same degree of care, skill and diligence in the performance of its services as is ordinarily exercised by a members of the profession under like circumstances. Nothing in this Agreement, or otherwise prepared as a result of the Project, shall modify the foregoing standard of care, including any representations or promises that suggest that the Consultant will achieve any Leadership in Energy and Environmental Design (LEED) standards or certifications, or other energy efficiency or sustainability goals. The Engineer shall not be required to sign any documents that would result in it having to certify, guarantee or warrant the existence of conditions whose existence the Engineer cannot ascertain.

4.2 Delays

Both the Engineer and the City will put forth reasonable efforts to complete their respective duties in a timely manner. Because the Engineer's performance must be governed by sound professional practices, the Engineer is not responsible for delays occasioned by factors beyond its control or that could not reasonably have been foreseen at the time of preparation of this Agreement.

4.3 Opinions of Costs and Schedules

Since the Engineer has no control over the cost of labor and material or over competitive bidding and market conditions, the Engineer's Opinion of Probable Construction Cost and of Project schedules can only be made on the basis of experience or qualifications as a professional engineer. The Engineer does not guarantee that proposals, bids, actual Project costs or construction schedules will not vary from Engineer's opinions or estimates. If the City desires greater assurance as to the anticipated Construction Cost of the Project, the City shall employ, or instruct the Engineer to provide as a Supplemental Service, an independent cost estimator.

4.4 Insurance

4.4.1 The Engineer agrees to maintain a professional liability insurance policy for its negligent acts, errors or omissions with limits of \$3,000,000 per claim and \$3,000,000 annual aggregate, on a claims-made basis, as long as such insurance is reasonably available under standard policies at rates comparable to those currently in effect. The Engineer will not cancel the insurance until thirty days after providing the City written notice.

4.4.2 The Engineer shall maintain:

- 1) Statutory workers compensation and employers' liability insurance coverage.
- 2) Comprehensive general liability insurance coverage with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate.
- 3) Automobile liability insurance coverage with limits of \$1,000,000 combined single limit.

4.4.3 The City shall require contractors to purchase and maintain general liability and other insurance as specified in the construction contract documents and to cause the Engineer and its consultants to be listed as additional insureds, on a primary and non-contributory basis.

4.5 Use of Instruments of Service

4.5.1 Documents (including Electronic Data) prepared by the Engineer for a Project, such as reports, drawings, specifications, record drawings, and other deliverables ("Documents") are instruments of the Engineer's professional services, and not products. City shall have a non-exclusive,

irrevocable license in the Documents for the City's informational purposes in its use and maintenance of the Project. The City acknowledges that such Documents are not intended or represented to be suitable for use or reuse by the City or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation and certification of the same by a licensed Design Professional.

- 4.5.2. In the event of any use or adaptation by the City after termination of a Project whereby the Documents are verified for reuse, revised, altered, or otherwise modified by anyone other than the Engineer, City agrees to defend and indemnify the Engineer from any claims, damages, costs or expenses (including reasonable attorney's fees) arising out of any defect or deficiency in such reused or modified Documents, or in a Project constructed pursuant to them.

4.6 Electronic Data

- 4.6.1 If included in Basic Services or Supplemental Services, the Engineer will furnish the City with files in electronic media format of text, data, graphics, or other written documents ("Electronic Data") provided in hard copy form. Electronic Data is furnished only for convenience, not reliance by the City. In the event of any conflict between a hard copy document and the Electronic Data, the hard copy document governs. The Electronic Data shall be prepared in the current software in use by the Engineer and is not warranted to be compatible with other systems or software.
- 4.6.2 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the City agrees that it will perform acceptance tests or procedures within 60 days after receipt of Electronic Data from the Engineer, after which the City shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the Engineer. The Engineer makes no warranties, express or implied, regarding the fitness or suitability of the Electronic Data. The City understands that the Electronic Data is perishable and subject to undetectable alteration and the City is solely responsible for it.

4.7 Termination, Suspension or Abandonment

- 4.7.1 The City or the Engineer may terminate this Agreement for any reason upon 90 days' written notice to the other party.
- 4.7.2 The City or the Engineer may terminate or suspend this Agreement for substantial non-performance by the other party, including without limitation the failure to make payments in accordance with this Agreement. The party terminating or suspending this Agreement shall give seven days written notice to the other party. If a party seeks to terminate the Agreement for such non-performance, the other party shall have seven days to cure the non-performance to the reasonable satisfaction of the terminating party before the termination becomes effective. If Engineer properly terminates or suspends this Agreement, Engineer may retain documents otherwise deliverable to the City only in the event Engineer has not been compensated for the preparation of said documents and only during the period that such compensation remains outstanding. Neither party shall be liable for any costs or damages, whether direct or indirect, resulting from exercising its rights under this paragraph.
- 4.7.3 If the Engineer's services are suspended or abandoned for more than 90 days, the Engineer may terminate this Agreement upon seven days written notice to the City. The Engineer shall have no liability on account of a suspension or abandonment by the City. If a suspended or abandoned Project is reinstated, an equitable adjustment to the Engineer's compensation may be necessary.
- 4.7.4 In the event of termination or suspension permitted by this Agreement or abandonment of the Project by the City, the City shall compensate the Engineer for services performed prior to termination, suspension or abandonment and for services directly attributable to the termination, suspension or abandonment itself, together with Reimbursable Expenses. If the City properly terminates Engineer for cause, the City may withhold from Engineer's compensation those damages directly attributable to the cause of the termination.

4.8 Dispute Resolution

- 4.8.1 In an effort to resolve any conflicts that arise out of the services under this Agreement, all disputes between the City and the Engineer arising out of or relating to this Agreement shall be submitted to nonbinding mediation prior to commencing arbitration or litigation subject to the terms of this section. The Mediator's fee shall be shared equally and mediation shall proceed only at a place where arbitration or litigation is proper. Mediation shall not be a condition precedent to arbitration or litigation if a party refuses to make reasonable arrangements for a mediation within 20 days of

demand by the other party. Notwithstanding the other terms of this section, either party may proceed in accordance with applicable law to comply with a lien notice or legal filing deadline prior to resolution of the matter by mediation or arbitration. However, in the event of such legal filing, the same shall not relieve the filing party of its obligation to mediate in good faith. This section survives termination of this Agreement, but no party may call for mediation after such time as the applicable law would bar initiation of legal proceedings for the same claim or dispute arising out of or relating to this Agreement.

- 4.8.2 Unless the City and the Engineer mutually agree otherwise, all claims, disputes, and other matters in question arising out of or relating to this Agreement which are not resolved by mediation and where the amount in controversy is equal to or less than \$200,000, shall be decided by binding arbitration in accordance with the then-most current Construction Industry Rules of the American Arbitration Association. The arbitrators will not have jurisdiction, power or authority to consider any claim or dispute: (a) where the amount in controversy is more than \$200,000 (exclusive of interest and costs) and the parties have not mutually agreed, in writing, to the arbitrator's jurisdiction; (b) when the demand for arbitration is made after the date when a court action would be barred by any applicable statute or period of repose or limitations; or (c) when the claim or dispute is a claim for contribution or indemnity arising out of a claim by a third party who does not consent to joinder in arbitration.
- 4.8.3 In the event of litigation or arbitration arising from or related to the services provided under this Agreement, the prevailing party is entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorney's reasonable fees and other related expenses.
- 4.8.4 If the Engineer or the City intends to assert a claim against the other as a result of a dispute with a third party, the claiming party shall notify the other party as soon as possible and, in any event, prior to resolving the dispute with the third party.
- 4.8.5 So that any claims of the City may be intelligently addressed by the Engineer, the City agrees to make no claim for professional negligence against the Engineer unless the City has first provided the Engineer a written certification signed by an independent design professional licensed in Minnesota and currently practicing in the same discipline. The certification shall specify every act or omission of the Engineer that is a violation of the applicable standard of care and the basis for the certifier's opinion(s). This certificate shall be provided no fewer than 30 days prior to instituting arbitration or suit.
- 4.8.6 Causes of action between the Engineer and the City relating to acts or failures to act shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of substantial completion of a Project.

4.9 Hazardous Substances

The Engineer's scope of services does not include any services related to hazardous, contaminated, or toxic materials, including asbestos and PCBs. If it becomes known that such materials may be present at or near a Project that may affect the Engineer's services, the Engineer may do any of the following: (a) suspend performance of its services, without liability, and assist the City to retain appropriate consultants to adequately identify and abate such materials so that Engineer's services may resume; (b) assist the City in redefining Engineer's scope of work to address and remediate such materials; (c) if necessary in Engineer's judgment, take extra and immediate measures to protect Engineer's employees and/or the public, and take other reasonable precautions to complete the Project, with City agreeing to pay the reasonable costs of such efforts taken; and/or (d) arrange for proper disposal of such materials at City's expense. Ownership of and legal responsibility and liability for hazardous or waste material shall at all times remain with City. Waste material shall include all samples and materials obtained from the work site and City will take possession of and be responsible for the proper disposal of all waste material. Nothing in this Agreement shall be construed to require the Engineer to: (a) assume the status of a generator, storer, transporter, treater, or disposal facility as those terms appear within the Resource Conservation and Recovery Act, 42 USC 6901 et seq, as amended, or within any state statute governing the generation, treatment, storage and disposal of waste; or (b) arrange for the transportation, treatment, or disposal of hazardous substances, as described in the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601, et. seq, as amended. The City agrees to defend, indemnify and hold harmless the Engineer, its employees, subcontractors and agents from all claims, losses, damages, liability and costs, including attorney's fees, relating to or arising out of hazardous or toxic materials at or near a Project.

4.10 Governing Law

This Agreement shall be governed by the laws of the State of Minnesota and the venue for any dispute or dispute resolution process shall be in Anoka County, Minnesota.

4.11 Integration

This is an integrated Agreement and it supersedes all prior negotiations or agreements between the parties. It shall be modified only by a written document signed by the party sought to be bound. The provisions of this Agreement are severable, and if any provision is found to be unenforceable, the remaining provisions continue to be valid, and the unenforceable provision shall be reformed with a valid provision that comes as near as possible to expressing the intention of the unenforceable provision.

4.12 Assignment and Waiver

Except for the Engineer's use of necessary consultants, the Engineer and the City shall not assign or delegate their respective obligations under this Agreement without the written consent of the other party, which consent shall not be unreasonably withheld. The waiver of any term or condition or breach thereof by either party shall not constitute a waiver of any other term or condition or breach thereof.

4.13 Engineer's Services

In performing professional technical services, the Engineer is not engaged in rendering legal, insurance, or accounting services or advice. The City agrees that documents prepared by the Engineer, including reports, bidding materials, and form contracts will be reviewed by the appropriate representative of the City, such as the City's attorney, insurance counselor or other consultants, to the extent that the City deems necessary to protect its interests.

4.14 Government Agencies

The Engineer shall not be liable for damages resulting from the actions or inactions of government agencies, including without limitation permit processing, environmental impact reports, dedications, zoning matters, annexations or consolidations, use or conditional use permits, and building permits.

4.15 Monitoring Work

If required by the scope of services, the Engineer will make visits to the Project site at intervals appropriate to the various stages of construction as the Engineer deems necessary in order to observe the progress and overall quality of construction. The Engineer will not be required to make exhaustive or continuous observations on the Project site. Based on such visits, the Engineer will determine in general if the construction work is proceeding in accordance with the contract requirements, keep the City informed of the progress of the construction work, and will endeavor to guard the City against defective work. The Engineer will not supervise, direct, control, or have authority over or be responsible for the Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of the Contractor to comply with laws and regulations applicable to the work.

4.16 Americans with Disabilities Act

The Engineer shall use reasonable professional effort and judgment in interpreting and advising the City as to the necessary requirements for the Project to comply with the Americans with Disabilities Act (ADA). The Engineer shall rely on the local building department for interpretations of the ADA at the time the service is rendered. The Engineer does not warrant or guarantee that the Project will fully comply with interpretations of ADA requirements by regulatory or judicial bodies.

4.17 M.S. 471.425 Prompt Payment Act

In accordance with MN Statutes 471.425, the Engineer will pay any consultant it has hired for work on a City Project within ten days of the Engineer's receipt of payment from the City for undisputed services provided by the consultant. The Engineer will pay interest of 1.5 percent per month or any part of a month to the consultant on any undisputed amount not paid on time to the Engineer. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the Engineer shall pay the actual penalty due to the consultant. A consultant who prevails in a civil action to collect interest penalties from the Engineer must be

awarded its costs and disbursements, including attorney's fees, incurred in bringing the action. Engineer will comply with any amendments or successor laws to MN Statutes 471.425

4.18 Survival of Terms

The provisions of this Agreement which by their nature are intended to survive termination or expiration of this Agreement shall survive expiration or termination of this Agreement.

4.19 No Third Party Beneficiaries

This Agreement only confers rights or benefits on the parties to this Agreement, and no other person or entity shall be deemed a third-party beneficiary hereof.

4.20 Minnesota Government Data Practices Act

Engineer and City agree and acknowledge that City is a government entity subject to the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (the "MGDPA"). Correspondingly, all data exchanged between the parties pursuant to this Agreement is bound by the terms of the MGDPA and Engineer agrees to cooperate with the City in complying with the City's obligations under the same.

SECTION 5. LIABILITY

Having considered the potential liabilities that exist during the performance of the Engineer's services, the benefits of a Project, the Engineer's fee for its services, and the promises contained in this Agreement, the City and the Engineer agree that risks should be allocated in accordance with this section, to the fullest extent permitted by law.

5.1 Limitation of Liability

5.1.1 The Engineer and the City each agree to indemnify each other from liability for losses, damages or expenses (including but not limited to, reasonable costs and attorney's fees) except to the extent they are caused by each party's respective negligent acts, errors or omissions, or willful misconduct relating to this Agreement. In the event the losses, damages or expenses are caused by the joint or concurrent negligence of the Engineer and the City, they shall be borne by each party in proportion to its own negligence. In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceedings for professional negligence would be barred by any applicable law.

5.1.2 The Engineer and the City agree that the total amount of all claims the City may have against the Engineer in relation to any individual Project under this Agreement, or arising from the performance or non-performance of the Services called for by the Project under any theory of law, including but not limited to claims for negligence, negligent misrepresentation and breach of contract, shall be strictly limited to the greater of the limit of the applicable insurance coverage(s) required by this Agreement to be maintained for such liability or \$500,000. No claim may be brought against the Engineer in contract or tort more than two (2) years after the cause of action arose. As the City's sole and exclusive remedy under this Agreement or any Project, any claim, demand or suit shall be directed and/or asserted only against the Engineer and not against any of the Engineer's employees, officers or directors.

5.1.3 Neither the City nor the Engineer shall be liable to the other for any consequential damages incurred due to the fault of the other or their agents. Consequential damages include, but are not limited to, loss of use, loss of profit and loss of markets.

5.1.4 The City's liability related to this Agreement shall be subject to the liability limitations set forth in Minnesota Statutes Chapter 466.

5.2 Force Majeure

Any default in the performance of this Agreement or any individual Project caused by any of the following events and without fault or negligence on the part of the defaulting party shall not constitute a breach of contract: labor strikes, riots, war, epidemics, pandemics, acts of governmental authorities, unusually severe weather conditions or other natural catastrophe, or any other cause beyond the reasonable control and contemplation of either party.

5.3 Attorney's Fees

In the event of a dispute hereunder, the prevailing party is entitled to recover from the other party all reasonable costs incurred by the prevailing party in enforcing this Agreement and prosecuting the dispute, including reasonable attorney's and expert's fees, whether incurred through formal legal proceedings or otherwise.

5.4 Design without Construction-phase Services

If the Engineer's Basic Services under this Agreement include design but do not include Project observation, or review of the Contractor's performance, or any other construction phase services, then the City assumes all responsibility for interpretation of the plans and specifications and for construction observation or review and waives any claims against the Engineer that may be in any way connected thereto.

SECTION 6. NOTICES

Any notices required by this Agreement shall be given to the person below:

Engineer: Phil Gravel
Stantec Consulting Services Inc.
733 S. Marquette Ave, Unit 1000
Minneapolis, MN 55402
612-712-2000

City: Dan Buchholtz, Administrator
City of Spring Lake Park
1301 81st Avenue NE
Spring Lake Park, MN 55432
763-784-6491

Each party shall promptly notify the other in writing of any changes to the above. All notices required by this Agreement shall be delivered in writing by email, first-class mail, or personal delivery, and shall be effective upon receipt.

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

**ENGINEER:
STANTEC CONSULTING SERVICES INC.**

**CITY:
CITY OF SPRING LAKE PARK, MN**

By Phil Gravel Principal

By _____
Robert Nelson, Mayor

Date _____

Date September 18 2023

And By _____
Dan Buchholtz, Administrator

Date _____

Appendix A

Basic Services for Construction Projects

The Engineer's Basic Services for construction projects consist of three phases, which are described below.

1. Feasibility Study / Report Phase

Upon receipt of the City's authorization to proceed with the Feasibility Study/Report, the Engineer will:

- 1.1 After consulting with the City, perform an engineering feasibility study on the Project. The resulting report will indicate the scope of the Project and include the following elements:
 - 1) Project sketches indicating the general nature of the proposed Project improvements;
 - 2) Summary of preliminary design alternatives and recommendations;
 - 3) Engineer's preliminary opinion of probable construction cost;
 - 4) List of permits required from other governmental and administrative bodies;
 - 5) Administrative, legal, bonding and engineering cost estimates based on a percentage of the construction cost;
 - 6) Proposed funding sources.
- 1.2 Outline the anticipated permanent and temporary easements and rights-of-way needed for the construction of the Project.
- 1.3 Submit 10 copies of the Feasibility Report to the City five calendar days before review by the City Council.
- 1.4 Using maps and diagrams which depict the nature and location of the Project, present the data contained in the Report to the City Council at a public hearing.

2. Design Engineering Phase

Upon receipt of City authorization to proceed with the Final Design, the Engineer will:

- 2.1 Design and prepare detailed plans and specifications for the Project. During its work, the Engineer will periodically consult with the City's appointed representative to obtain the City's comments. Upon completion, the Engineer will submit five sets of the plans and specifications for review by the City, five calendar days prior to their review and approval by the City Council at a public meeting.
- 2.2 Prepare the Contract Documents for review by the City and its attorneys, which include:
 - 1) Construction agreement forms
 - 2) Payment and performance bond forms
 - 3) Proposal forms
 - 4) General and supplemental conditions
 - 5) Special provisions
 - 6) Specifications
 - 7) Construction drawings

The Engineer will furnish Contract Document sets in sufficient quantity to satisfy the number of anticipated bidders.

- 2.3 Advise the City about necessary services in addition to those furnished by the Engineer, such as soil borings, testing services and other information needed for a Project. If authorized by the City, the Engineer will assist the City to procure these services. The providers of these services will contract directly with the City and issue invoices directly to the City.
- 2.4 Prepare a statement of the Engineer's opinion of probable construction cost for the Project, based upon designs established to this point.

- 2.5 Upon receipt of City Council authorization to proceed, the Engineer will assist the City in obtaining and analyzing construction bids for the Project. Based on the bids, the Engineer will prepare a recommendation for award of the construction contract.

3. Construction Engineering Phase

Upon receipt of City authorization to proceed with the Construction Phase of the Project, the Engineer will:

- 3.1 Organize, attend and assist the City at the pre-construction conference with the successful bidder, and any other parties, bodies, or agencies which have an interest in the Project.
- 3.2 Provide construction survey staking.
- 3.3 Visit the Project site at appropriate intervals during construction to become generally familiar with the progress and quality of the contractor's work and to determine if the work is proceeding in general accordance with the Contract Documents. The City has not retained the Engineer to make detailed inspections or to provide exhaustive or continuous project review and observation services. Further, the Engineer does not supervise or have control over the Contractor's work, the means or methods of construction, or safety precautions in connection with the work. As a result, the Engineer does not guarantee the performance of a contractor, and has no responsibility for the acts or omissions of any contractor, subcontractor, supplier or any other entity furnishing materials or performing any work on a Project. (More extensive site representation may be agreed to as a Supplemental Service, as described in Appendix B.)
- 3.4 Review shop drawings, samples and other submissions of the Contractor solely for their general compatibility with the Engineer's design intent and conformance with information given in the Contract Documents. The Engineer shall not be responsible for any aspects of a shop drawing submission relating to the duties of the Contractor (such as the means, methods, techniques, sequences and operations of construction, safety precautions and programs incidental thereto) all of which are the Contractor's responsibility, and not the responsibility of the Engineer.
- 3.5 Review the Contractor's request for progress payments, advise the City in writing as to the Engineer's opinion of the extent of the work completed in accordance with the terms of the Construction Contract, and issue for processing by the City all requests for payment.
- 3.6 Make recommendations to the City as to all claims relating to the execution and progress of the construction work.
- 3.7 Issue such additional instructions to the Contractor as may be necessary to interpret the drawings and specifications or the illustrated changes required in the Contractor's work.
- 3.8 After consulting with the City, prepare designs and/or Change Orders for work not covered by the Contract or for substantial over-run of estimated "contract quantities" as defined in the Project's Contract Documents, for the City's approval and execution. Change Orders shall be processed as soon as practical after the City provides written approval to the Engineer. The City understands that Change Orders may be required during a Project for many reasons, including because of incompleteness, errors, or ambiguities in the Construction Documents. The Engineer shall not be liable for any type or quantity of Change Orders that are within professional standards. In no event shall the Engineer be responsible for paying the cost of a Change Order or other change to the extent that it would have been otherwise necessary to a Project or otherwise adds value or betterment to a Project.
- 3.9 Conduct construction progress reviews with the Contractor and the City related to the Contractor's date of completion.
- 3.10 Coordinate periodic field tests during the course of construction.
- 3.11 Conduct an inspection to determine if the work is substantially complete. On the basis of its on-site observations, the Engineer shall prepare a "punch list" for the Contractor, listing work left to be completed by the Contractor.
- 3.12 Conduct, in the presence of the City's Representative, a final inspection of the Project as constructed to determine whether it:
 - 1) Generally conforms with the Engineer's design concept of the Project as contained in the Contract Documents, and
 - 2) Appears to be constructed in accordance with the Contract Documents.

The Engineer shall certify a recommendation for acceptance of the work to the City and then shall forward to the City a written approval of the Contractor's Request for Final Payment which shall be signed by the Contractor.

- 3.13 Arrange for the City to receive detailed instructions regarding the operation and maintenance of any equipment, machinery or apparatus installed as part of the Project. Such instructions shall be supplied by the Contractor and manufacturers' representatives.
- 3.14 Collect field measurements required to produce "Record Plans."

The Engineer's review of the Contractor's work (including reviewing the Contractor's shop drawings and samples, work product and requests for payments) do not increase the responsibility or duties of the Engineer beyond those explicitly described elsewhere in this Agreement. By making these review efforts, the Engineer does not guarantee the performance of the Contractor or assume responsibility for any acts or omissions of the Contractor, including any failure of the Contractor to properly perform its work or comply with its obligations, and the City's sole remedy for the Contractor's acts or omissions is from the Contractor and not the Engineer.

Appendix B

Supplemental Services for Construction Projects

1. Pre-Authorized Supplemental Services

Engineer is hereby authorized to perform or furnish, without requesting or receiving specific advance authorization from City, the Supplemental Services of the types listed below as needed for a Project.

- 1.1 Preliminary surveying.
- 1.2 Assisting the City in preparing applications necessary for approvals, permits and licenses from other entities, such as the Minnesota Department of Transportation, Minnesota Department of Health, Minnesota Pollution Control Agency, Minnesota Department of Natural Resources, U.S. Army Corps of Engineers, counties, watershed districts, railroads, and private utilities, and making any unanticipated changes resulting therefrom.
- 1.3 Making revisions in drawings, specifications or other documents when such revisions are:
 - 1.3.1 Requested by the City and are inconsistent with approvals or instructions previously given by the City;
 - 1.3.2 Required by the enactment or revisions of codes, laws or regulations subsequent to the preparation of such documents;
 - 1.3.3 Due to changes required as a result of the City's failure to render decisions in a timely manner;
or
 - 1.3.4 Due to any other causes beyond the Engineer's control.
- 1.4 Consultation regarding the replacement of all such parts of a Project as may be damaged by fire or other cause during construction and assisting the City in arranging for continuation of the work should the Contractor default for any reason.
- 1.5 Services made necessary by the default of a Contractor, by major defects or deficiencies in the work of a Contractor, or by failure of performance of either the City or a Contractor under the Contract for construction.
- 1.6 Construction dispute resolution assistance.
- 1.7 Services in connection with warranty work to be done by the Contractor.
- 1.8 Reproducible "Record Plans" of the construction Project showing those changes the Engineer considers significant which were made during the construction process, based on marked-up prints, drawings, and other data furnished by the Contractor, upon which the Engineer may rely in preparing the Record Plans.

2. Other Potential Supplemental Services

If authorized by the City, the Engineer will provide the following Supplemental Services:

- 2.1 Land surveys and the preparation of legal descriptions and exhibits, certificates or plats.
- 2.2 Environmental assessments, assessment worksheets, audits, investigations, and impact statements; and other relevant environmental studies for a Project, the site, and adjacent areas.
- 2.3 Transportation engineering and planning services, including:
 - 2.3.1 Transportation analysis which encompasses and benefits an area greater than that of a Project.
 - 2.3.2 Traffic signing and pavement marking design.
 - 2.3.3 Traffic analysis, signal justification reports, and development of signal timing associated with preparing traffic signal plans and specifications.
 - 2.3.4 Traffic analysis required for roadway and intersection geometric design.
 - 2.3.5 Project development reports (project path and design study) required for Mn/DOT-funded projects.
- 2.4 Attendance at neighborhood meetings.
- 2.5 Assistance with assessments.
- 2.6 Attendance at and assistance with assessment hearings.
- 2.7 Assistance with easements.
- 2.8 Operator training.
- 2.9 Preparation of detailed operation and maintenance manuals.

- 2.10 User rate studies.
- 2.11 Pilot testing.
- 2.12 Preparation of applications for funding assistance.
- 2.13 Hydraulic and hydrologic studies, such as:
 - 2.13.1 Hydraulic analysis benefiting an area greater than that of a Project.
 - 2.13.2 Stormwater, surface water and groundwater quality analyses.
- 2.14 Attendance at more than one public hearing per Project.
- 2.15 Assisting the City or its representative in connection with mediation, arbitration, litigation or other proceedings involving a Project, including preparing to testify and testifying as an expert witness.
- 2.16 Providing one or more full-time Resident Project Representatives (and assistant[s]) in order to provide the City with continuous representation at a Project site during the Construction Phase.
- 2.17 Providing any other service not otherwise included in Basic Services or not customarily furnished in accordance with generally accepted engineering practice.

Appendix C The City's Responsibilities

- 1 Provide full information as to its requirements for a Project. The City will adequately define the scope of a Project. Assistance by the Engineer in scoping or defining a Project will be compensated as a Supplemental Service.
- 2 Furnish to the Engineer, prior to any performance by the Engineer under this Agreement, a copy of any planning, design and construction standards of the City which the City shall require the Engineer to follow in preparation of Contract Documents for a Project.
- 3 Place at Engineer's disposal all available written data pertinent to a Project, including existing reports, plats, surveys, contour mapping, utility mapping, record plans, wetlands, land-use, and zoning maps, borings and other data affecting the design and/or construction of a Project.
- 4 Acquire all land, easements, and rights-of-way for a Project.
- 5 Provide access to Project sites and make all provisions for the Engineer to enter upon public and private lands as required by the Engineer to perform its services.
- 6 Examine all studies, reports, sketches, Opinions of Probable Construction Costs, specifications, drawings, proposals and other documents presented by the Engineer and promptly render the City's decisions pertaining to each of such documents.
- 7 Provide legal review of the Contract Documents and provide any required accounting and insurance counseling services for a Project to the extent that the City deems necessary to protect its interests. City understands that the Engineer, in performing engineering and related professional technical services, is not engaged in rendering legal, insurance, or accounting services or advice.
- 8 Designate a single person to act as the City's Representative with respect to the Engineer's services. Such person shall have complete authority to transmit instructions, receive information, and interpret and define the City's policies and decisions with respect to services covered by this Agreement, subject to City Council approval when required by law or City policy.
- 9 Give prompt written notice to the Engineer whenever the City observes or otherwise becomes aware of any defect in a Project or any development that affects the scope or timing of the Engineer's services.
- 10 Furnish, or authorize the Engineer to provide at the City's expense, "Other Potential Supplemental Services" as provided in Appendix B as they may be needed for a Project.
- 11 Furnish to the Engineer, as required by the Engineer for performance of its services, information or consultations not covered under the Engineer's Basic Services, such as core borings, probing and subsurface explorations; hydrographic surveys, laboratory tests and inspections of samples, materials and equipment; and appropriate professional interpretations of all of the foregoing; and zoning and deed restrictions.
- 12 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the work.
- 13 Act promptly on all construction Change Orders and provide authorization before Change Orders are issued to the Contractor on a Project.
- 14 Furnish, if City desires, inspection or monitoring services to verify that Contractor is complying with all laws or regulations and to verify that Contractor is taking all necessary safety precautions to protect persons and property, as the Engineer in this Agreement does not undertake to perform these services.

In performing its services, the Engineer may rely upon the accuracy and completeness of all City-provided information.

Appendix D Compensation for Design Engineering Basic Services

1. Basis of Compensation

- a. The basis of compensation for a particular Project, if agreed to by both parties, shall be on an hourly basis or a negotiated lump sum basis.

- b. As an alternative, if agreed to by both parties, compensation for a construction project may be based on a percentage of construction fee. Under this method, the compensation ("Fee") for Design Engineering Basic Services is a percentage of the "Construction Cost of the Project," which is the total cost of all work designed or specified by the Engineer for the Project. The Construction Cost of the Project is determined as follows, with precedence in the order listed:
 - 1) For completed construction, the average of the three lowest bona fide bids received from qualified bidders (including the value of all alternates designed, whether awarded or not).
 - 2) Construction work bid but not constructed, the average of the three lowest bona fide bids received from qualified bidders (including the value of all alternates designed, whether awarded or not).
 - 3) Work for which bids have not been received, the Engineer's latest Opinion of Probable Construction Cost.

"Construction Cost of the Project" does not include:

- 1) Any payments to the Engineer or its consultants.
- 2) The cost of the land or right-of-way.
- 3) Other costs for items which are the responsibility of the City as described in Appendix C that were not specified by the Engineer.

2. Compensation Determination

If used, the Design Engineering Basic Services Fee shall be determined as follows:

- a. For a Project whose construction cost the Engineer believes will be more than \$100,000, the City shall pay the Engineer a percentage of the Construction Cost of the Project as determined from the table below. The percentage amount will be based on the Construction Cost determined in accordance with Paragraph 1 above, **Basis of Compensation**.

Construction Cost	Basic Services Fee for Design Engineering Phase	
	Schedule 1	Schedule 2
\$ 100,000	11.63%	9.01%
150,000	11.00%	8.61%
200,000	10.37%	8.21%
250,000	9.75%	7.81%
300,000	9.50%	7.65%
400,000	9.01%	7.32%
500,000	8.52%	7.00%
750,000	7.90%	6.63%
1,000,000	7.53%	6.22%
2,000,000	6.82%	5.75%
4,000,000	6.36%	5.30%

For a construction cost between listed amounts, the fee will be interpolated.

Schedule 1 establishes the Fee for the following types of construction projects:

- 1) Projects involving process engineering (e.g., pumping stations, wells);
- 2) Projects which require outside funding agency approval;
- 3) Structural facilities (e.g., pumphouses, retaining walls);
- 4) Park work and landscape architecture;
- 5) Multi-agency projects;
- 6) Traffic signal projects;
- 7) Street reconstruction projects.

Schedule 2 establishes the Fee for all other types of construction projects, except for water or wastewater treatment projects and bridges. The Fee for these projects will be negotiated between the parties.

- b. For a Project whose construction cost the Engineer believes will be less than \$100,000, the City shall pay the Engineer for Basic Services on an hourly basis in accordance with Appendix E, Billing Rate Schedule. As an alternative for a particular Project if agreed to by both parties, the City shall pay the Engineer on a lump sum basis where the amount is negotiated between the two parties.

Appendix E
2023 – STANDARD RATE TABLE

STANTEC STANDARD RATE TABLE

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LABOR RATES

Staff Level	Billing Level	Hourly Rate
CAD Technician, Civil Designer, Inspector, Planner, Project Technician, Scientist	3	\$98
	4	\$104
	5	\$115
	6	\$119
	7	\$127
Civil Technician, Designer, Engineer, Field Supervisor, GIS Analyst, Inspector, Land Surveyor, Landscape Architect, Project Manager, Scientist, Senior CAD Designer, Senior Civil Technician	8	\$133
	9	\$142
	10	\$149
	11	\$157
	12	\$161
Engineer, Field Supervisor, Principal, Project Manager, Senior Engineer, Senior Landscape Architect, Senior Planner, Senior Principal, Specialist	13	\$172
	14	\$183
	15	\$202
	16	\$225
Specialist, Vice President	17	\$237
	18	\$242
Survey Crew	1-Person Crew	\$165
	2-Person Crew	\$240

These rates are adjusted annually in accordance with the normal review procedures of Stantec.

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Appendix F
Duties, Responsibilities, and Limitations of Authority
of
Resident Project Representative

- A. Engineer shall furnish one or more Resident Project Representatives (“RPR”), assistants, and other field staff to assist Engineer in observing progress and quality of the Work. The RPR, assistants, and other field staff under this Appendix F may provide full time representation or may provide representation to a lesser degree. In addition, Engineer may appoint individual(s) to act as Engineer’s representative with respect to the services to be performed or furnished by Engineer under this Agreement. Such individual(s) shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the Engineer.
- B. Through such additional observations of Contractor’s work in progress and field checks of materials and equipment by the RPR and assistants, Engineer shall endeavor to provide further protection for City against defects and deficiencies in the Work, pursuant to the standard of care as provided in section 4.1 of the Professional Services Agreement. However, Engineer shall not, during such visits or as a result of such observations of Contractor’s work in progress, supervise, direct, or have control over the Contractor’s Work nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected by Contractor, for safety precautions and programs incident to the Contractor’s work in progress, for any failure of Contractor to comply with laws and regulations applicable to Contractor’s performing and furnishing the Work, or responsibility of construction for Contractor’s failure to furnish and perform the Work in accordance with the Contract Documents.
- C. The duties and responsibilities of the RPR are limited to those of Engineer in this Agreement with the City and in the Contract Documents, and are further limited and described as follows:
1. General. RPR is Engineer’s agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR’s actions. RPR’s dealings in matters pertaining to the Contractor’s work in progress shall in general be with Engineer and Contractor, keeping City advised as necessary. RPR’s dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with City with the knowledge of and under the direction of Engineer.
 2. Rules. Review the progress schedule, schedule of Shop Drawing and sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.
 3. Conferences and Meetings. Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
 4. Liaison
 - a. Serve as Engineer’s liaison with Contractor, working principally through Contractor’s superintendent and assist in understanding the intent of the Contract Documents.
 - b. Assist Engineer in serving as City’s liaison with Contractor when Contractor’s operations affect City’s on-site operations.
 - c. Assist in obtaining from City additional details or information, when required for proper execution of the Work.
 5. Interpretation of Contract Documents. Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
 6. Shop Drawings and Samples
 - a. Record date of receipt of samples and approved Shop Drawings.
 - b. Receive samples which are furnished at the Project site by Contractor, and notify Engineer of availability of samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a

Shop Drawing or sample submittal for which RPR believes that the submittal has not been approved by Engineer.

7. Modifications. Consider and evaluate Contractor's suggestions for modifications in drawings or specifications and report with RPR's recommendations to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.

8. Review of Work and Rejection of Defective Work

- a. Conduct on-site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
- b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

9. Inspections, Tests, and System Startups

- a. Consult with Engineer in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate City's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems startups.
- d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.

10. Records

- a. Maintain at the Project site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, field orders, work change directives, addenda, additional drawings issued subsequent to the execution of the Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and sample submittals received from and delivered to Contractor, and other Project related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Project site, weather conditions, data relative to questions of Change Orders, field orders, work change directives, or changed conditions, site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Record names, addresses and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- d. Maintain records for use in preparing Project documentation.
- e. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

11. Reports

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and sample submittals.
- b. Draft and recommend to Engineer proposed Change Orders, work change directives, and field orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and City copies of all inspection, test, and system startup reports.
- d. Report immediately to Engineer the occurrence of any Project site accidents, any hazardous environmental conditions, emergencies, or acts of God endangering the Work, and property damaged by fire or other causes.

12. Payment Requests. Prepare and review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Project site but not incorporated in the Work.

Certificates, Operation and Maintenance Manuals. During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to City prior to payment for that part of the Work.

Completion

- a. Before Engineer issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
- b. Observe whether Contractor has arranged for inspections required by laws and regulations, including but not limited to those to be performed by public agencies having jurisdiction over the Work.
- c. Participate in a final inspection in the company of Engineer, City, and Contractor and prepare a final list of items to be completed or corrected.
- d. Observe whether all items on final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

D. Resident Project Representative shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Engineer's authority as set forth in the Agreement or the Contract Documents.
3. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
4. Advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
5. Advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the activities or operations of City or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or sample submittals from anyone other than Contractor.
8. Authorize City to occupy the Project in whole or in part.
9. The Resident Project Representative shall be bound by all terms of this Agreement as an agent of Engineer including, without limitation, the Engineer's Standard of Care obligations. All insurance maintained by Engineer covering the services rendered by Engineer pursuant to this Agreement shall also cover the actions and omissions of the Resident Project Representative. Nothing in this Agreement shall be interpreted to make the Resident Project Representative an employee of City and the same shall remain at all times exclusively an agent of Engineer."