



City of Northfield  
Minnesota

## Request for Proposals

September 5, 2018

## **Introduction**

The City of Northfield (“City”) is seeking a Consultant to provide services in developing a citywide Climate Action Plan (CAP) with the help of the Climate Action Plan Advisory Board (CAPAB). The CAP will serve as a comprehensive strategy for addressing climate change in the City of Northfield —while taking into consideration the impacts and collaboration with neighboring communities— and will identify targeted policies, programs, and projects that will both mitigate the City’s contribution to climate change—setting goals for carbon neutrality, reducing our carbon footprint—and preparing Northfield for the unavoidable impacts of climate change.

Inquiries about the engagement or the request for proposal should be addressed to:

David Bennett, P.E., Public Works Director/City Engineer  
David.Bennett@ci.northfield.mn.us  
507-645-3006

Submit 3 hard copies and one electronic copy of the proposal. The City of Northfield reserves the right to reject any and all proposals submitted.

The City of Northfield reserves the right, where it may serve the City’s best interest, to request additional information or clarification from proposers or to allow corrections of errors or omissions. At the discretion of the City, firms/individuals submitting proposals may be requested to make oral presentations as part of the evaluation process. Following a review of the proposals,

The City of Northfield reserves the right to retain all proposals submitted and to use any concepts and ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the proposing firm/individual of the conditions contained in this request for proposal, unless clearly and specifically noted in the proposal submitted and confirmed in the written contract between the City of Northfield and the firm/individual selected.

## **Tentative Project Schedule**

Phase I – Data Gathering. Start date: Immediately

Phase II – Writing Climate Action Plan. Start date: Jan. 2019

## **Project Consultant**

The City of Northfield is seeking a Consultant that demonstrates excellent understanding of climate change and climate change planning, technical expertise in urban planning and municipal climate change mitigation and adaptation, expertise in creative and effective community engagement, and knowledge of our community and region. Acknowledging that solutions will need to be implemented by, or with support from, city government, community and stakeholders, higher levels of government and outside entities, the Consultant should demonstrate expertise in zoning and municipal codes, state regulations and incentives in Minnesota, public utility regulation, and the federal policy landscape.

The Climate Action Plan Advisory Board will actively manage the development of the Climate Action Plan. The Consultant's primary role is to lead the development of the Plan by providing technical expertise, supporting stakeholder engagement, and developing innovative materials. The Consultant is expected to work closely with staff and subcommittee of the CAPAB to develop the Plan. The Consultant should be available to meet with the subcommittee at least two times in development of the CAP.

The Plan will be developed with the public participation and input from:

- Climate Action Plan Advisory Board
- Environmental Quality Commission
- Northfield City Council
- Northfield residents and stakeholders

The City has also recently joined ICLEI and is hoping to work with their ClearPath program for data analyzing and displaying. The consultant should be familiar with ICLEI and be willing to work with their resources and guidance.

## **Scope of Work**

The Consultant will focus on Phase I until budgeting for Phase II has been determined. While the envisioned scope presents a desired approach and key deliverables, the Consultant is encouraged to think creatively about how outside expertise can be used to best meet the City's need for planning integrated mitigation and adaptation solutions that provide benefits across built, social, economic, and environmental systems. In their proposal, the Consultant is encouraged to provide a detailed technical and project management approach that incorporates and expands on these tasks.

The total budget available for Phase I is \$15,000. Phase II is expected to begin on January of 2019.

## Core Areas

While the baseline studies have largely separated mitigation and adaptation, the CAP will be structured to provide integrated, actionable solutions in core areas in which the City's baseline studies have identified the greatest opportunities for resilience and emissions reductions. The CAPAB has developed six core areas and subcommittees for each of these areas. Each of these will take into account the residential, commercial, industrial, and municipal opportunities with the goal of creating a healthy community in all aspects (economic, physical, and environmental).

1. Materials and Waste
  - a. Waste Reduction
  - b. Recycling
  - c. Climate-Friendly Purchasing
  - d. Community and Individual Action
2. Energy
  - a. Energy Efficiency & Conservation
  - b. Green Building
  - c. Renewable Energy
  - d. Low-Carbon Fuels
  - e. Land Use & Community Design
3. Land
  - a. Land Use & Community Design
  - b. Open Space
  - c. Offsetting Carbon Emissions
4. Food
  - a. Waste Reduction
  - b. Climate Friendly Purchasing
  - c. Land Use & Community Design
  - d. Community and Individual Action
5. Water and Wastewater
  - a. Water and Wastewater systems
  - b. Waste Reduction
  - c. Community and Individual Action
6. Transportation
  - a. Renewable Energy & Low Carbon Fuels
  - b. Efficient Transportation
  - c. Community Design

## Tasks

### Phase I: Data Gathering

- Gather existing data on city and community emissions
- Gather baseline data of the Northfield Area's water usage and food consumption habits
- Gather baseline data of the Northfield Community's forms of transportation

Present the data to the CAP advisory board, the EQC and City Council.

- Tables and targets should be a part of the presentation

Prepare for public outreach in February 2019.

Phase II: Engagement and development of the Climate Action Plan February 2019 – September 2019

Engagement and Outreach – A creative public engagement process that can use a variety of tools to seek input on the scope of the plan Northfield and to gather input on the recommended changes to the plan.

- Public outreach should focus on public opinion about the core areas that the CAPAB has developed.
- In addition to other creative public input tools, the Consultant shall plan for two public meetings. One of the meetings will be presenting the draft of the Plan, and the second meeting will be presenting the final Plan.
- After input is received, the consultant shall prepare a summary of the input. This summary will be presented to the Climate Action Plan Advisory Board (CAPAB) and Environmental Quality Commission (EQC). This will provide additional opportunity for input from these groups.
- Prepare final report Climate Action Plan. Present it to the CAPAB, the EQC, and City Council.

Drafting – Drafting and Developing the Climate Action Plan – Due in August of 2019

- Draft of document by the end of May 2019
- Share draft with the CAP advisory board June 5th, 2019.
- Share the draft with the public during June 2019
- Share reviewed draft with the CAPAB July 10<sup>th</sup>, 2019
- Share reviewed draft with the EQC July 11<sup>th</sup>, 2019
- Share the reviewed draft and the comments with the City Council on August 6, 2019
- Finalize the draft in August 2019
- City Council adopts the plan on September 17<sup>th</sup>, 2019

## **Specifications / Requirements**

The City is seeking a Consultant that has experience completing climate action plans for other municipalities and has demonstrated an ability to analyze existing information and propose tailored solutions for municipalities based on their unique conditions. The City is seeking a Consultant that is able to become familiar with Northfield during the project, and able to meet regularly in Northfield. The City intends to have a close working relationship with the Consultant and is looking for a Consultant that has technical expertise, but is also willing and able to creatively problem solve to develop a Plan that is designed specifically for Northfield's needs. The Consultant should be capable of producing both sound analysis and high-quality reporting materials.

The City of Northfield has completed some reports on their [carbon footprint](#) and has other resources for [Climate Action Planning](#) in Northfield. These reports will be used to provide the baseline for the Climate Action Plan. The City seeks a consultant whose approach is both efficient and appropriately scaled to the planning-level analysis of the CAP. The City of Northfield expects all analyses, data, original graphics, and editable copies of all written reports

to be turned over to the City at the completion of the project. No portion of the Plan will be proprietary.

## **Proposal Requirements**

Proposals must include the following:

- Written proposal of how the Consultant will complete the tasks identified in the Scope of Work
  - Proposals must include an explanation of the project management approach to executing project scope
  - Proposal should include a description of the Consultant's expertise and capabilities necessary for completing the tasks identified in the Scope of Work.
- Sample Work
  - Please include sample reports, graphical and online communication materials that demonstrate consultant capabilities. Proposals should include sample materials from the primary and sub-consultants as necessary in order to demonstrate all consultant capabilities.
- Resumes
  - Resume of all project staff from primary consultant and sub consultants must be included.

## **RFP Ranking**

The RFP will be ranked on the following criteria:

1. Consultants technical expertise related to climate action planning – 30%
2. Consultants Experience – 30%
3. Consultants past performance (reference checks) – 10%
4. Cost of the RFP – 30%

## **Submission of Proposals:**

All proposals must be sent to and received by:

David Bennett  
P.E., Public Works Director/City Engineer  
801 Washington St  
Northfield, MN, 55057

**Proposals shall be submitted no later than 2PM, CST, on September 28, 2018.**

Late proposals will not be accepted. Submit 3 hard copies and one electronic copy of the proposal. Proposals are to be sealed in mailing envelopes or packages with the responder's name and address clearly written on the outside. Each copy of the proposal must be signed by an authorized member of the firm(s).

[NOTE: This is a template. Language that is highlighted or in brackets and italics is intended to prompt inclusion of information followed by deletion of the highlighted and bracketed language. Sections of this template may be added, modified or deleted based on the circumstances and negotiations with the consultant service provider. Language highlighted in blue and bracketed is applicable to professional and technology services only and should be included in professional services contracts (engineer, architect, planning, etc.) or other contracts that involve the use of technology.]

## CONSULTANT SERVICE CONTRACT

This Contract is made this [day] day of [month], [year], by and between the CITY OF \_\_\_\_\_, a Minnesota municipal corporation, [address], (“CITY”), and [service provider], a [corporation, limited liability company, etc.] under the laws of the State of [insert state of incorporation] [address], (“CONSULTANT”), (collectively the “PARTIES”).

WHEREAS, CITY requires certain [professional] services in conjunction with [project name and/or description] (the “Project”); and

WHEREAS, CONSULTANT agrees to furnish the various [professional] services required by CITY.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

### SECTION I – CONSULTANT'S SERVICES AND RESPONSIBILITIES

- A. **Scope of Services.** CONSULTANT agrees to perform various Project services as detailed in Exhibit 1, Scope of Services, attached hereto and incorporated herein by reference.
- B. **Changes to Scope of Services/Additional Services.** Upon mutual agreement of the PARTIES hereto pursuant to Section VI, Paragraph K [this cross reference may change based on deletions later in the document] of this Contract, a change to the scope of services detailed in Exhibit 1, attached hereto, may be authorized. In the event that such a change to the scope of services detailed in Exhibit 1, attached hereto, requires additional services by CONSULTANT, CONSULTANT shall be entitled to additional compensation consistent with Section III of this Contract. CONSULTANT shall give notice to CITY of any additional services prior to furnishing such additional services. CITY may request an estimate of additional cost from CONSULTANT, and upon receipt of the request, CONSULTANT shall furnish such cost estimate, prior to CITY’s authorization of the changed scope of services.
- C. **Changed Conditions.** If CONSULTANT determines that any services it has been directed or requested to perform by CITY are beyond the scope of services detailed in

Exhibit 1, attached hereto, or that, due to changed conditions or changes in the method or manner of administration of the Project, CONSULTANT's effort required to perform its services under this Contract exceeds the estimate which formed the basis for CONSULTANT's compensation, CONSULTANT shall promptly notify CITY of that fact. Upon mutual agreement of the PARTIES hereto pursuant to Section VI, Paragraph K of this Contract, additional compensation for such services, and/or an extension of time for completion thereof, may be authorized. In the absence of such a mutual agreement, amounts of compensation and time for completion shall be equitably adjusted, provided that CONSULTANT first provides notice to CITY as required by this Paragraph and CITY has not terminated this Contract pursuant to Section IV, Paragraph B.

- D. **Standard of Care.** Services provided by CONSULTANT or its subcontractors and/or sub-consultants under this Contract will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of CONSULTANT's profession or industry. CONSULTANT shall be liable to the fullest extent permitted under applicable law, without limitation, for any injuries, loss, or damages proximately caused by CONSULTANT's breach of this standard of care. CONSULTANT shall put forth reasonable efforts to complete its duties in a timely manner. CONSULTANT shall not be responsible for delays caused by factors beyond its control or that could not be reasonably foreseen at the time of execution of this Contract. CONSULTANT shall be responsible for costs, delays or damages arising from unreasonable delays in the performance of its duties.
- E. *[Optional, include as applicable: Guarantee. CONSULTANT further agrees to guarantee all materials and parts supplied under this Contract against inferiority as to specifications, such guarantee to be unconditional.]*
- F. **Insurance.** CONSULTANT shall not commence work under this Contract until CONSULTANT has obtained all insurance required herein and such insurance has been approved by CITY, nor shall CONSULTANT allow any subcontractor to commence work on a subcontract until such subcontractor has obtained like insurance covering as to worker's compensation, liability, and automobile insurance. All this insurance coverage shall be maintained throughout the life of this Contract.
1. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, statutory Workers' Compensation coverage. Except as provided below, CONSULTANT must provide Workers' Compensation insurance for all its employees. If Minnesota Statutes, section 176.041 exempts CONSULTANT from Workers' Compensation insurance or if CONSULTANT has no employees in the City, CONSULTANT must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes CONSULTANT from the Minnesota Workers' Compensation requirements. If during the course of the Contract CONSULTANT becomes eligible for Workers' Compensation, CONSULTANT must comply with the Workers' Compensation insurance requirements herein and provide CITY with a certificate of insurance.



2. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, Commercial General Liability ("CGL") and business automobile liability insurance coverages insuring CONSULTANT against claims for bodily injury or death, or for damage to property, including loss of use, which may arise out of operations by CONSULTANT or by any subcontractor or by anyone employed by any of them or by anyone for whose acts any of them may be liable (including automobile use). The following coverages shall, at a minimum, be included in the CGL insurance: Premises and Operations Bodily Injury and Property Damage, Personal and Advertising Injury, Blanket Contractual Liability, and Products and Ongoing and Completed Operations Liability. The required automobile liability coverage must include coverage for "any auto" which extends coverage to owned autos, non-owned autos, and hired autos. Such insurance shall include, but not be limited to, minimum coverages and limits of liability specified in this Paragraph, or required by law. CITY shall have additional insured status and be listed by name on an endorsement attached to such policy(ies) for the services provided under this Contract and shall provide that CONSULTANT's coverage shall be primary and noncontributory in the event of a loss.
3. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, the following insurance policies, including the minimum coverages and limits of liability specified below, or as specified in the applicable insurance certificate(s), or as required by law, whichever is greater: *[Below amounts may be changed based on risk assessment.]*

Worker's Compensation	Statutory Limits
Employer's Liability	\$500,000 bodily injury by accident \$500,000 bodily injury by disease aggregate \$500,000 bodily injury by disease per employee
Commercial General Liability	\$ <i>[\$1,000,000]</i> property damage and bodily injury per occurrence \$ <i>[\$2,000,000]</i> annual aggregate \$2,000,000 annual aggregate Products – Completed Operations
Automobile Liability	\$1,000,000 per occurrence combined single limit for Bodily Injury and Property Damage (shall include coverage for all owned, hired and non-owned vehicles)
Umbrella or Excess Liability	\$1,000,000 <i>[\$2,000,000 or Meets minimum requirements without</i>

*umbrella or excess liability policy]*

4. **Professional/Technical (Errors and Omissions) Liability Insurance.** *[As applicable, if the services of the Consultant also include professional services to be provided by Consultant as part of this contract include the following additional language:]* CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, Professional/Technical (Errors and Omissions) Liability Insurance. The required policy will provide coverage for all claims CONSULTANT may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to CONSULTANT's professional services required under the contract. CONSULTANT is required to carry the following minimum limits: \$2,000,000 *[\$1,000,000]* – per wrongful act or occurrence; \$4,000,000 *[\$2,000,000]* – annual aggregate; or as specified in the applicable insurance certificate(s), or as required by law, whichever is greater. Any deductible will be the sole responsibility of CONSULTANT and may not exceed \$50,000 without the written approval of CITY. If CONSULTANT desires authority from CITY to have a deductible in a higher amount, CONSULTANT shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that CITY can ascertain the ability of CONSULTANT to cover the deductible from its own resources. The retroactive or prior acts date of such coverage shall not be after the effective date of this contract and CONSULTANT shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by CONSULTANT to fulfill this requirement.
5. **Technology Errors and Omissions Insurance.** *[As applicable, if the services of the Consultant also include risk of claims for the below identified matter, include the following additional language:]* CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, Technology Errors and Omissions Insurance. The required policy will provide coverage for all claims CONSULTANT may become legally obligated to pay, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, cloud computing, extortion and network security. CONSULTANT is required to carry the following minimum limits: \$ *[\$1,000,000]* – per occurrence; \$ *[\$2,000,000]* – annual aggregate; or as specified in the applicable insurance certificate(s), or as required by law, whichever is greater.
6. True, accurate and current certificates of insurance, showing evidence of the required insurance coverages, are hereby provided to CITY by CONSULTANT and are attached hereto as Exhibit 2.
7. Any insurance limits in excess of the minimum limits specified herein above shall

be available to CITY.

8. CONSULTANT's insurance policies and certificate(s) shall not be cancelled without at least thirty (30) days' advance written notice to CITY, or Ten (10) days' prior written notice to CITY for nonpayment of premium.
9. CONSULTANT's policies shall be primary insurance and noncontributory to any other valid and collectible insurance available to CITY with respect to any claim arising out of CONSULTANT's performance under this Contract.
10. CONSULTANT is responsible for payment of Contract related insurance premiums and deductibles. If CONSULTANT is self-insured, a Certificate of Self-Insurance must be attached.
11. CONSULTANT shall ensure that all subcontractors comply with the insurance provisions contained in this Contract and such insurance is maintained as specified.
12. CONSULTANT's policies shall include legal defense fees in addition to its liability policy limits, with the exception of the professional liability insurance, if applicable.
13. All policies listed above, except professional liability insurance (or other coverage not reasonably available on an occurrence basis), shall be written on a per "occurrence" basis ("claims made" and "modified occurrence" forms are not acceptable) and shall apply on a "per project" basis.
14. CONSULTANT shall obtain insurance policies from insurance companies having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota, or as approved by CITY.
15. Effect of Failure to Provide Insurance. If CONSULTANT fails to provide the specified insurance, then CONSULTANT will defend, indemnify and hold harmless CITY and CITY's officials, agents and employees from any loss, claim, liability and expense (including reasonable attorney's fees and expenses of litigation) to the extent necessary to afford the same protection as would have been provided by the specified insurance. Except to the extent prohibited by law, this indemnity applies regardless of any strict liability or negligence attributable to CITY (including sole negligence) and regardless of the extent to which the underlying occurrence (i.e., the event giving rise to a claim which would have been covered by the specified insurance) is attributable to the negligent or otherwise wrongful act or omission (including breach of contract) of CONSULTANT, its subcontractors, agents, employees or delegates. CONSULTANT agrees that this indemnity shall be construed and applied in favor of indemnification. CONSULTANT also agrees that if applicable law limits or

precludes any aspect of this indemnity, then the indemnity will be considered limited only to the extent necessary to comply with that applicable law. The stated indemnity continues until all applicable statutes of limitation have run.

If a claim arises within the scope of the stated indemnity, CITY may require CONSULTANT to:

- a. Furnish and pay for a surety bond, satisfactory to CITY, guaranteeing performance of the indemnity obligation; or
- b. Furnish a written acceptance of tender of defense and indemnity from CONSULTANT's insurance company.

CONSULTANT will take the action required by CITY within Fifteen (15) days of receiving notice from CITY.

16. Notwithstanding the foregoing, CITY reserves the right to immediately terminate this Contract if CONSULTANT is not in compliance with the insurance requirements contained herein and retains all rights to pursue any legal remedies against CONSULTANT.

## **SECTION II – CITY'S RESPONSIBILITIES**

- A. CITY shall promptly compensate CONSULTANT as services are performed to the satisfaction of the CITY's [Position, e.g. City Engineer], in accordance with Section III of this Contract.
- B. CITY shall provide access to any and all previously acquired information relevant to the scope of services detailed in Exhibit 1, attached hereto, in its custody to CONSULTANT for its use, at CONSULTANT's request.
- C. CITY will, to the fullest extent possible, grant access to and make all provisions for entry upon both public and private property as necessary for CONSULTANT's performance of the services detailed in Exhibit 1, attached hereto.
- D. [Name], CITY's [Position, e.g. City Engineer], shall serve as the liaison person to act as CITY's representative with respect to services to be rendered under this Contract. Said representative shall have the authority to transmit instructions, receive instructions, receive information, interpret and define CITY's policies with respect to the Project and CONSULTANT's services. Such person shall be the primary contact person between CITY and CONSULTANT with respect to the services from CONSULTANT under this Contract. CITY reserves the right to substitute the authorized contact person at any time and shall notify CONSULTANT thereof.

## **SECTION III – CONSIDERATION**

- A. **Fees.** CITY will compensate CONSULTANT as detailed in Exhibit 3, Compensation, which is attached hereto and incorporated herein by reference, for CONSULTANT's performance of services under this Contract.
- B. If CITY fails to make any payment due CONSULTANT for services performed to the satisfaction of the CITY's [Position, e.g. City Engineer] and expenses within thirty days after the date of CONSULTANT's invoice, CONSULTANT may, after giving seven days written notice to CITY, and without waiving any claim or right against CITY and without incurring liability whatsoever to CITY, suspend services and withhold project deliverables due under this Contract until CONSULTANT has been paid in full all amounts due for services, expenses and charges.

## SECTION IV – TERM AND TERMINATION

- A. **Term.** This Contract shall be in effect until such time as the Project is completed,  
\_\_\_\_\_, 20\_\_\_\_, or as otherwise provided in this Contract, whichever comes first.
- B. **Termination.** This Contract may be terminated by either PARTY for any reason or for convenience by either PARTY upon Seven (7) [a longer period such as 30 days could also be used] days written notice. In the event of termination, CITY shall be obligated to CONSULTANT for payment of amounts due and owing including payment for services performed or furnished to the date and time of termination, computed in accordance with Section III of this Contract.
- C. **Default.** If CONSULTANT fails to satisfy any of the provisions of this Contract, or so fails to perform and/or administer the services detailed in Exhibit 1, attached hereto, pursuant to the requirements of Section I of this Contract, in such a manner as to endanger the performance of the Contract or the services provided hereunder, this shall constitute default. Unless CONSULTANT's default is excused by CITY, CITY may, upon written notice, immediately cancel this Contract or exercise any other rights or remedies available to CITY under this Contract or law. In the event of CONSULTANT's default, CONSULTANT shall be liable to CITY for any and all costs, disbursements, attorneys and consultant fees reasonably incurred by CITY in enforcing this Contract.
- D. **Suspension of Work.** If any work performed by CONSULTANT is abandoned or suspended in whole or in part by CITY, CONSULTANT shall be paid for any services performed to the satisfaction of the CITY's [Position, e.g. City Engineer] \_\_\_\_\_ prior to CONSULTANT's receipt of written notice from CITY of such abandonment or suspension, but in no event shall the total of CITY's payments to CONSULTANT under this Contract be required to exceed a percentage of the total contract price (calculated by either the Contract price or the maximum price set forth in Exhibit 3, attached hereto) equivalent to the percentage of the scope of services completed by CONSULTANT to the satisfaction of the CITY's [Position, e.g. City Engineer] \_\_\_\_\_ as determined by CITY.

## SECTION V – INDEMNIFICATION

- A. CONSULTANT shall indemnify, protect, save, and hold harmless CITY, and its respective officers, directors, employees and members and agents, from and against any claims, liability, damages, costs, judgments, or expenses, including reasonable attorney's fees, to the extent attributable to or caused by the negligent or otherwise wrongful acts or omissions, including breach of a specific contractual duty, of CONSULTANT or CONSULTANT's independent contractors, subcontractors, agents, employees, vendors or delegates with respect to this Contract or the Project. CONSULTANT shall defend CITY against the foregoing, or litigation in connection with the foregoing, at CONSULTANT's expense, with counsel reasonably acceptable to CITY, except that for professional liability claims, CONSULTANT shall have no upfront duty to defend CITY, but shall reimburse defense costs to CITY to the same extent of CONSULTANT'S indemnity obligation herein. CITY, at its expense, shall have the right to participate in the defense of any claims or litigation and shall have the right to approve any settlement, which approval shall not be unreasonably withheld. The indemnification provision of this Section shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of CITY. All indemnification obligations shall survive termination, expiration or cancellation of this Contract. CONSULTANT agrees, that in order to protect itself and CITY under the indemnity provisions set forth above, it will at all times during the term of this Contract keep in force policies of insurances required in the Paragraph entitled, "Insurance." Nothing in this Contract shall be construed to waive any immunities or limitations to which CITY is entitled under Minn. Stat. Chapter 466 or otherwise.
- B. CITY shall indemnify protect, save, and hold harmless CONSULTANT, and its respective officers, directors, employees and members and agents, from and against any claims, liability, damages, costs, judgments, or expenses, including reasonable attorney's fees, to the extent attributable to or caused by the negligent or otherwise wrongful acts or omissions of CITY or its agents, employees, contractors or subcontractors with respect to CITY's performance of its obligations under this Contract. CITY shall defend CONSULTANT against the foregoing, or litigation in connection with the foregoing, at CITY's expense. CONSULTANT, at its expense, shall have the right to participate in the defense of any Claims or litigation. The indemnification provision of this Section shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of CONSULTANT. All indemnification obligations shall survive termination, expiration or cancellation of this Contract.
- C. Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against CITY or CONSULTANT. CONSULTANT's services under this Contract are being performed solely for CITY's benefit, and no other entity shall have any claim against CONSULTANT because of this Contract or the performance or nonperformance of services provided hereunder.

## **SECTION VI – GENERAL TERMS**

- A. **Voluntary and Knowing Action.** The PARTIES, by executing this Contract, state that they have carefully read this Contract and understand fully the contents hereof; that in executing this Contract they voluntarily accept all terms described in this Contract without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound hereby.
- B. **Authorized Signatories.** The PARTIES each represent and warrant to the other that (1) the persons signing this Contract are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Contract against it; each PARTY indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
- C. **Notices.** All notices and other communications required or permitted under this Contract shall be in writing, and hand delivered or sent by registered or certified mail, return-receipt requested, postage prepaid, or by overnight delivery service and shall be effective upon receipt at the following addresses or as either PARTY shall have notified the other PARTY. The PARTIES' representatives for notification for all purposes are:

**CITY:**

[Name] \_\_\_\_\_

[Position] \_\_\_\_\_

[Address] \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**CONSULTANT:**

[Name] \_\_\_\_\_

[Position] \_\_\_\_\_

[Address] \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

- D. **Dispute Resolution.** CITY and CONSULTANT agree to negotiate all disputes between them in good faith for a period of Thirty (30) days from the date of notice of dispute prior to proceeding to formal dispute resolution or exercising their rights under law. *[Include following language if mandatory mediation is desired: Any claims or disputes unresolved after good faith negotiations shall first be submitted to mediation utilizing the Minnesota District Court Rule 114 Roster. CONSULTANT and CITY agree to require an equivalent dispute resolution process governing all contractors, subcontractors, subconsultants, suppliers, consultants, and fabricators concerned with the Project.]*
- E. **Electronic/Digital Data.** Because of the potential instability of electronic/digital data and susceptibility to unauthorized changes, copies of documents that may be relied upon by CITY are limited to the printed copies (also known as hard copies) that are signed or



sealed by CONSULTANT. Except for electronic/digital data which is specifically identified as a Project deliverable by this Contract or except as otherwise explicitly provided in this Contract, all electronic/digital data developed by CONSULTANT as part of the Project is acknowledged to be an internal working document for CONSULTANT's purposes solely and any such information provided to CITY shall be on an "as is" basis strictly for the convenience of CITY without any warranties of any kind. In the event of any conflict between a hard copy document and the electronic/digital data, the hard copy document governs. The electronic/digital data shall be prepared in the current software in use by CONSULTANT and is not warranted to be compatible with other systems or software.

- F. **[Optional-include as applicable: Opinions or Estimates of Construction Cost.** Where provided by CONSULTANT as part of Exhibit 1 or otherwise, opinions or estimates of construction cost will generally be based upon public construction cost information. Since CONSULTANT has no control over the cost of labor, materials, competitive bidding process, weather conditions and other factors affecting the cost of construction, all cost estimates are opinions for general information of CITY and CONSULTANT does not warrant or guarantee the accuracy of construction cost opinions or estimates. CITY acknowledges that costs for project financing should be based upon contracted construction costs with appropriate contingencies.]
- G. **Independent Contractor Status.** CONSULTANT, at all times and for all purposes hereunder, shall be an independent contractor and is not an employee of CITY for any purpose. No statement contained in this Contract shall be construed so as to find CONSULTANT to be an employee of CITY, and CONSULTANT shall not be entitled to any of the rights, privileges, or benefits of employees of CITY, including but not limited to, workers' compensation, health/death benefits, and indemnification for third-party personal injury/property damage claims. CONSULTANT acknowledges that no withholding or deduction for State or Federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due CONSULTANT, and that it is CONSULTANT's sole obligation to comply with the applicable provisions of all Federal and State tax laws. CONSULTANT shall at all times be free to exercise initiative, judgment and discretion as to how to best perform or provide services identified herein. CONSULTANT is responsible for hiring sufficient workers to perform the services/duties required by this Contract, withholding their taxes and paying all other employment tax obligations on their behalf.
- H. **[Optional-include as applicable: Acceptance of Deliverables.** Each deliverable shall be subject to a verification of acceptability by CITY to ensure such deliverable satisfies stated requirements. The acceptability of any deliverable will be based on CITY's satisfaction or non-satisfaction with the deliverable based on requirements of this Contract. If any deliverable is not acceptable, CITY will notify CONSULTANT specifying reasons in reasonable detail, and CONSULTANT will, at no additional cost, conform the deliverable to stated requirements of this Contract.]
- I. **Subcontracting.** CONSULTANT shall not enter into any subcontract for performance



of any services contemplated under this Contract without the prior written approval of CITY. CONSULTANT shall be responsible for the performance of all subcontractors and/or sub-consultants. As required by Minn. Stat. § 471.425, CONSULTANT must pay all subcontractors, less any retainage, within Ten (10) calendar days of CONSULTANT's receipt of payment from CITY for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

- J. **Assignment.** This Contract may not be assigned by either PARTY without the written consent of the other PARTY.
- K. **Modifications/Amendment.** Any alterations, variations, modifications, amendments or waivers of the provisions of this Contract shall only be valid when they have been reduced to writing, and signed by authorized representative of CITY and CONSULTANT.
- L. **Records—Availability and Retention.** Pursuant to Minn. Stat. § 16C.05, subd. 5, CONSULTANT agrees that CITY, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of CONSULTANT and involve transactions relating to this Contract. CONSULTANT agrees to maintain these records for a period of six years from the date of termination of this Contract.
- M. **Force Majeure.** The PARTIES shall each be excused from performance under this Contract while and to the extent that either of them are unable to perform, for any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, total or partial failure of transportation or delivery facilities, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either PARTY is rendered unable wholly or in part by force majeure to carry out its obligations under this Contract then the PARTY affected by force majeure shall give written notice with explanation to the other PARTY immediately.
- N. **Compliance with Laws.** CONSULTANT shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Contract or to the facilities, programs and staff for which CONSULTANT is responsible.
- O. **Covenant Against Contingent Fee.** CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting

from award or making of this Contract.

- P. **Covenant Against Vendor Interest.** CONSULTANT warrants that it is not employed by any vendor of equipment or service provider that could result in a commission, percentage, brokerage, or contingent fee as a result of CONSULTANT's association with CITY.
- Q. **Non-Discrimination.** The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Contract as if fully set forth herein.
- R. **Interest by City Officials.** No elected official, officer, or employee of CITY shall during his or her tenure or employment and for one year thereafter, have any interest, direct or indirect, in this Contract or the proceeds thereof.
- S. **Work Product.** All materials such as reports, exhibits, models, graphics, computer files, maps, charts, and supporting documentation produced under work authorized by this Contract ("Materials") shall become the property of CITY upon completion of the work. CITY may use the information for the Project for which they were prepared. Such use by CITY shall not relieve any liability on the part of CONSULTANT. Notwithstanding any of the foregoing to the contrary; (a) CONSULTANT may reuse standard details of its Materials in the normal course of its business; and (b) CITY understands that the Materials have been prepared for a specific project, and are not intended to be reused for other purposes. If CITY reuses the Materials for any other purpose, CITY waives any claims against CONSULTANT arising from such reuse and agrees to defend and indemnify CONSULTANT from any claims arising from such reuse.
- T. **Governing Law.** This Contract shall be deemed to have been made and accepted in [REDACTED] County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Contract without regard to its choice of law or conflict of laws principles.
- U. **Data Practices.** The PARTIES acknowledge that this Contract is subject to the requirements of Minnesota's Government Data Practices Act (Act), Minnesota Statutes, Section 13.01 *et seq.* CONSULTANT agrees to abide by the applicable provisions of the Act, HIPAA requirements and all other applicable state or federal rules, regulations or orders pertaining to privacy or confidentiality. CONSULTANT understands that all of the data created, collected, received, stored, used, maintained or disseminated by CONSULTANT in performing those functions that the CITY would perform is subject to the requirements of the Act, and CONSULTANT must comply with those requirements as if it were a government entity. This does not create a duty on the part of CONSULTANT to provide the public with access to public data if the public data is available from the CITY, except as required by the terms of this Contract.
- V. **No Waiver.** Any PARTY's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Contract or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of

that PARTY's right to assert or rely upon the terms and conditions of this Contract. Any express waiver of a term of this Contract shall not be binding and effective unless made in writing and properly executed by the waiving PARTY.

- W. **[Optional, include as applicable: Special Conditions.** To the extent not inconsistent with this Contract, including Exhibits 1-3, this Contract is subject to such special conditions as are set forth in Exhibit 4, Special Conditions Supplement, which is attached hereto and made a part hereof.]
- X. **Data Disclosure.** Under Minn. Stat. § 270C.65, Subd. 3 and other applicable law, CONSULTANT consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to CITY, to federal and state agencies and state personnel involved in the payment of CITY obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring CONSULTANT to file state tax returns, pay delinquent state tax liabilities, if any, or pay other CITY liabilities.
- Y. **Patented Devices, Materials and Processes.** If this Contract requires, or CONSULTANT desires, the use of any design, device, material or process covered by letters, patent or copyright, trademark or trade name, CONSULTANT shall provide for such use by suitable legal agreement with the patentee or owner and a copy of said agreement shall be filed with CITY. If no such agreement is made or filed as noted, CONSULTANT shall indemnify and hold harmless CITY from any and all claims for infringement by reason of the use of any such patented designed, device, material or process, or any trademark or trade name or copyright in connection with the services agreed to be performed under the Contract, and shall indemnify and defend CITY for any costs, liability, expenses and attorney's fees that result from any such infringement.
- Z. **Mechanic's Liens.** CONSULTANT hereby covenants and agrees that CONSULTANT will not permit or allow any mechanic's or materialman's liens to be placed on CITY's interest in the Property that is the subject of the Project during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on CITY's interest, CONSULTANT shall take all steps necessary to see that it is removed within thirty (30) days of its being filed; provided, however, that CONSULTANT may contest any such lien provided CONSULTANT first posts a surety bond, in favor of and insuring CITY, in an amount equal to 125% of the amount of any such lien.
- AA. **[Optional, include as applicable: Construction Observation.** CONSULTANT shall visit the project at appropriate intervals during construction to become familiar with the progress and quality of the contractors' work and to determine if the work is proceeding in general accordance with the Project plans and specifications, and shall be responsible for notifying CITY of any errors or omissions in contractor's work or any deviations in the contractor's work from the Project plans and specifications developed by CONSULTANT.]

- BB. **Severability.** The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Contract to the extent of its invalidity or unenforceability, and this Contract shall be construed and enforced as if the Contract did not contain that particular provision to the extent of its invalidity or unenforceability.
- CC. **Entire Contract.** These terms and conditions constitute the entire Contract between the PARTIES regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Contract.
- DD. **Headings and Captions.** Headings and captions contained in this Contract are for convenience only and are not intended to alter any of the provisions of this Contract and shall not be used for the interpretation of the validity of the Contract or any provision hereof.
- EE. **Survivability.** All covenants, indemnities, guarantees, releases, representations and warranties by any PARTY or PARTIES, and any undischarged obligations of CITY and CONSULTANT arising prior to the expiration of this Contract (whether by completion or earlier termination), shall survive such expiration.
- FF. **Execution.** This Contract may be executed simultaneously in two or more counterparts that, when taken together, shall be deemed an original and constitute one and the same document. The signature of any PARTY to the counterpart shall be deemed a signature to the Contract, and may be appended to, any other counterpart. Facsimile and email transmissions of executed signature pages shall be deemed as originals and sufficient to bind the executing PARTY.

*Remainder of page intentionally left blank.*

## SECTION VII –SIGNATURES

IN WITNESS WHEREOF, the PARTIES have hereunto executed this document the day and year first above written.

**CONSULTANT:** [Name]

By: \_\_\_\_\_  
(Signature)

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY OF**                     :

By: \_\_\_\_\_  
\_\_\_\_\_, Its Mayor

Date: \_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, Its City Clerk

Date: \_\_\_\_\_

## **EXHIBIT 1**

### **SCOPE OF SERVICES**

Subject to the terms of this Contract, CONSULTANT shall perform the following services:

[Insert detailed description of scope of services here]

**EXHIBIT 2**

**CERTIFICATES OF REQUIRED INSURANCE COVERAGES**

*[Certificates of Insurance attached hereto]*

### **EXHIBIT 3**

#### **COMPENSATION**

Subject to the limitations set forth in this Exhibit, CITY will compensate CONSULTANT in accordance with the schedule of fees below for the time spent in performance of services under this Contract, provided that under no circumstances shall CONSULTANT's total charges to CITY, including expenses, exceed \$\_\_\_\_\_ ("maximum price"), unless such charges in excess of the maximum price are authorized in writing by the [Position, e.g. City Engineer] before they are incurred by CITY.

[CITY will make periodic payment to CONSULTANT upon billing at intervals not more often than monthly at the rates specified in the schedule of fees included herein, provided that no bill/invoice submitted to CITY shall exceed a percentage of the maximum price equivalent to the percentage of the scope of services completed by CONSULTANT to the satisfaction of the [Position, e.g. City Engineer] as determined by CITY.]\*

CITY shall be entitled to withhold five percent (5%) of the maximum price until such time as CONSULTANT has fully performed the scope of services detailed in Exhibit 1 to the satisfaction of the [Position, e.g. City Engineer].

[In no event shall the total of CITY's payments to CONSULTANT under this Contract be required to exceed a percentage of the maximum price equivalent to the percentage of the scope of services completed by CONSULTANT to the satisfaction of the [Position, e.g. City Engineer].]\*

\* *[NOTE TO DRAFTER: The above asterisked language may not be workable in many circumstances, as it may simply be impractical to determine the percentage of the scope of services that has been completed at a given moment (or even an approximation thereof). An alternative would be to negotiate a 'tiered' or 'phased' scope of services and compensation structure that would divide the project into several logical steps and require CITY authorization before the Consultant begins work on the next step. Such a tiered or phased scope of services would have to be drafted on a case-by-case basis.]*

#### **Schedule of Fees**

##### Classification

##### Hourly Rate

<u>[Position, e.g. Sr. Project Manager -Sr. Principal Engineer/Surveyor]</u>	\$_____/Hour
<u>[Position, e.g. Sr. Project Manager -Principal Engineer/Surveyor]</u>	\$_____/Hour
<u>[Position, e.g. Project Manager]</u>	\$_____/Hour
<u>[Position, e.g. Project/Design Engineer/Planner]</u>	\$_____/Hour
<u>[Position, e.g. Senior Technician (Inc. Survey)]</u>	\$_____/Hour
<u>[Position, e.g. Technician (Inc. Survey)]</u>	\$_____/Hour
<u>[Position, e.g. Administrative Support &amp; Clerical]</u>	\$_____/Hour
<u>[Position, e.g. Field Sampling and Testing]</u>	\$_____/Hour



[Service, e.g. Laboratory Soils Testing]	\$ _____	Per service
[Service, e.g. Specialty Pipe Materials Testing]	\$ _____	Per service
[Service, e.g. GPS/Robotic Survey Equipment]	\$ _____	Per service
[Service, e.g. CAD/Computer Usage]	\$ _____	Per service
[Service, e.g. Routine Office Supplies]	\$ _____	Per service
[Service, e.g. Routine Photo Copying/Reproduction]	\$ _____	Per service
[Service, e.g. Field Supplies/Survey Stakes & Equipment]	\$ _____	Per service

**[OR]**

Subject to the limitations set forth in this Exhibit, CITY will pay CONSULTANT a flat fee of \$ \_\_\_\_\_ (“Contract price”) for CONSULTANT’s services, including expenses, under this Contract.

CITY will make periodic payment to CONSULTANT upon billing at intervals not more often than monthly at the rates specified in the following schedule of fees, provided that no bill submitted to CITY shall exceed a percentage of the Contract price equivalent to the percentage of the scope of services completed by CONSULTANT to the satisfaction of the [Position, e.g. City Engineer] \_\_\_\_\_.

[CITY will make periodic payment to CONSULTANT upon billing at intervals not more often than monthly at the rates specified in the schedule of fees included herein, provided that no bill/invoice submitted to CITY shall exceed a percentage of the Contract price equivalent to the percentage of the scope of services completed by CONSULTANT to the satisfaction of the [Position, e.g. City Engineer] \_\_\_\_\_ as determined by CITY.]\*

CITY shall be entitled to withhold five percent (5%) of the Contract price until such time as CONSULTANT has fully performed the scope of services detailed in Exhibit 1 to the satisfaction of the [Position, e.g. City Engineer] \_\_\_\_\_.

**EXHIBIT 4**

**SPECIAL CONDITIONS SUPPLEMENT**