

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into on the 3rd day of October, 2023, between the **CITY OF SHAKOPEE**, 485 Gorman Street, Shakopee, MN 55379 ("City") and **Advanced Engineering and Environmental Services, LLC (AE2S)**, 6901 E Fish Lake Road, Suite 184, Maple Grove, MN 55369 ("Consultant").

Preliminary Statement

The purpose of this Agreement is to set forth terms and conditions for the provision of professional services by the Consultant for the City for the following described Project:

Boiling Springs Area Drainage Improvement

The City and Consultant agree as follows:

1. **Consultant's Services.** The Consultant agrees to provide professional services as described in Exhibit A, Scope of Work and any addenda thereto. The Consultant shall serve as the City's professional consultant in the specified work and shall provide consultation and advice to the City during the performance of its services. The Consultant agrees to use the City's standard specifications in any bidding documents prepared under this Agreement. The requirements of this section may be waived by the City if the City Engineer determines that they are not necessary for the successful completion of the project. A Consultant requesting a requirement to be waived must have written authorization from the City Engineer and must be incorporated into this agreement.
2. **Time for Performance of Services.** The Consultant will endeavor to perform the services outlined in the work program within the prescribed days from the date of the contract award. Any changes in this schedule must be approved in writing by the City.
3. **Term.** The term of this Agreement will be from October 3, 2023 to December 31 2025, the date of signature by the parties notwithstanding. This Agreement may be extended upon the written mutual consent of the parties for such additional period as they deem appropriate, and upon the terms and conditions as herein stated.
4. **Compensation for Services.** City agrees to pay the Consultant for services as described in Exhibit A, attached and made a part of this Agreement, which may be amended from time to time by mutual agreement by City and Consultant. The Consultant's hourly rates must be based on the hourly rates approved by the City.

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

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

5. **Payment of Fees.** The Consultant must submit itemized bills for services provided to the City on a monthly basis. The monthly billing must summarize the progress of the project as certified by the Consultant. For work reimbursed on an hourly basis, the Consultant must indicate for each employee, his or her classification, the number of hours worked, rate of pay for each employee, a computation of amounts due for each employee, the total amount due, the original contracted amount, the current requested amount, and the total amount. Consultant must verify all statements submitted for payment in compliance with Minnesota Statutes Sections 471.38 and 471.931. For reimbursable expenses, the Consultant must provide such documentation as reasonably required by the City. Consultant bills submitted will be paid in the same manner as other claims made to the City.
6. **Audit Disclosure.** The Consultant must allow the City or its duly authorized agents reasonable access to such of the Consultant's books and records as are pertinent to all services provided under this Agreement.

Any reports, information, data, etc. given to, or prepared or assembled by the Consultant under this Agreement which the City requests to be kept confidential must not be made available to any individual or organization without the City's prior written approval. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Consultant will become the property of the City upon termination of this Agreement, but Consultant may retain copies of such documents as records of the services provided and may reuse standard portions of such documents in the normal course of its business.

7. **Termination.** Termination for Cause. This Agreement may be terminated by City by seven day's written notice to Consultant delivered to the address written above.

Upon termination under this provision, the Consultant will be paid for services rendered and reimbursable expenses until the effective date of termination.

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

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

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

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

services of the Consultant covered by this Contract, less payments or compensation previously made.

8. **Subcontractor.** The Consultant must not enter into subcontracts for any of the services provided for in this Agreement without the express written consent of the City.
9. **Independent Contractor.** At all times and for all purposes hereunder, the Consultant is an independent contractor and not an employee of the City. No statement herein shall be construed so as to find the Consultant an employee of the City.
10. **Assignment.** Neither party will assign this Agreement, nor any interest arising herein, without the written consent of the other party.
11. **Services not Provided for.** No claim for services furnished by the Consultant not specifically provided for herein will be honored by the City.
12. **Severability.** The provisions of this Agreement are severable. If any portion hereof is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision will not affect the remaining provisions of the Agreement.
13. **Entire Agreement.** The entire agreement of the parties is contained herein. This Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement will be valid only when expressed in writing and duly signed by the parties unless otherwise provided herein.
14. **Compliance with Laws and Regulations.** In providing services hereunder, the Consultant must abide by all statutes, ordinances, rules and regulations pertaining to the provision of services to be provided. Any violation will constitute a material breach of this Agreement and entitle the City to immediately terminate this Agreement.
15. **Equal Opportunity.** During the performance of this contract, the Consultant must not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, or age. The Consultant must post in places available to employees and applicants for employment, notices setting forth the

provisions of this non-discrimination clause and stating that all qualified applicants will receive consideration for employment. The Consultant must incorporate the foregoing requirements of this paragraph in all of its subcontracts for program work, and will require all of its subcontractors for such work to incorporate such requirements in all subcontracts for program work.

16. **Waiver.** Any waiver by either party of a breach of any provisions of this Agreement will not affect, in any respect, the validity of the remainder of this Agreement.
17. **Liability and Indemnity.** The Consultant must indemnify and hold harmless the City, its employees and agents, for all claims, damages, losses, and expenses, including, but not limited to, attorney's fees, which they may suffer or for which they may be held liable, as a result of, and to the extent of, the negligent or wrongful acts of the Consultant, his employees, or anyone else for whom he is legally responsible in the performance of this Agreement.

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

18. **Insurance.** During the term of this Agreement, Consultant must procure and maintain during the life of this Contract, and provide the City with a certificate of insurance showing, the following coverage for each occurrence and in aggregate:
 - A. Comprehensive General Liability Insurance, including Broad Form Property Damage, Completed Operations and Contractual Liability for limits not less than \$1,500,000 each occurrence for damages of bodily injury or death to one or more persons and \$1,500,000 each occurrence for damage to or destruction of property.
 - B. Insurance coverage for Special Hazards, including but not limited to explosion hazard, collapse hazard, underground property damage hazard, (commonly known as XCU).
 - C. Comprehensive Automobile Liability Insurance, in an amount not less than \$1,500,000 for each occurrence. Coverage shall include all owned autos, non-owned autos, and hired autos.
 - D. Errors and Omissions Insurance against errors and omissions resulting from the performance of Consultant's work under this Agreement. Said coverage shall be in an amount not less than \$2,000,000.

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

F. The City of Shakopee must be named as "ADDITIONALLY INSURED" on the insurance described in paragraphs A, B, and C, and must receive notice ten (10) days prior to the cancellation or expiration any of the specified insurance. If the deductible provisions of the Consultant's coverage or any subcontractor's coverage is questioned by the City, the Consultant shall provide the City, upon request, "Proof of Assets".

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

19. **Governing Law.** This Agreement will be controlled by the laws of the State of Minnesota.
20. **Whole Agreement.** This Agreement embodies the entire agreement between the parties including all prior understanding and agreements, and may not be modified except in writing signed by all parties.

Executed as of the day and year first written above.

CITY OF SHAKOPEE

**Advanced Engineering and
Environmental Services, LLC (AE2S)**

By: _____
Matt Lehman, Mayor

By:  _____

Date: _____

Its: _____ Operations Manager

Date: September 25, 2023

By: _____
William H. Reynolds, City Administrator

Date: _____

Exhibit A



City of Shakopee
Boiling Springs Drainage Improvement
Attachment 1 – Scope of Services
September 21, 2023

Background

AE2S completed a feasibility study for the Boiling Springs area to determine alternatives for an outlet for the land locked area. Based on the feasibility study a preferred outlet location was determined (connecting into a manhole located within the City of Savage, in the Eagles Creek development). The following details the scope of work to take the recommended improvement through final design, bidding and construction.

1. Project Management & Coordination

- a. Background: Project management and coordination is a key component of every project to monitor project budget, scope, and schedule and coordinate with the City Project Manager.
- b. AE2S Services:
 - i. Internal and external team management,
 - ii. Schedule and budget management,
 - iii. Deliverables management,
 - iv. Integration of the AE2S team with the City, and
 - v. QA/QC review of deliverable.
- c. Deliverables:
 - i. Regular project updates.
- d. Assumptions [Additional specific assumptions are in the “Description” column of Attachment 2]:
 - i. Kick-off Meeting (1) [September]
 - ii. Monthly Progress Meetings (4) through the completion of Final Design [October 2023 – January 2024]
 - iii. Supplemental Coordination Meetings (2). Additional meetings are anticipated to be needed throughout the course of the final design schedule.
 - iv. Materials will be provided to the City in advance of each scheduled meeting. General agenda items will include project progress / review, project schedule updates, and project budget updates.

2. Permitting

- a. Background:

Work within water resources is regulated by the Wetland Conservation Act, the US Army Corps of Engineers, watershed districts, Minnesota Pollution Control Agency (MPCA), and/or the Minnesota Department of Natural Resources depending on the type of water resources. There is a potential wetland area within the project limits.

- b. AE2S Services:
 - i. Wetland Delineation
 - 1. A wetland delineation will be completed for the project area to identify all jurisdictional aquatic resources. All wetland boundaries will be surveyed for use during the project design.
 - ii. WCA Exemption or No Loss Approval
 - 1. It is anticipated that all work within wetlands would qualify for a no loss or utility exemption due to the nature of the work. A Joint Application will be prepared and submitted to the City as WCA LGU.
 - iii. USACE Section 404 Permit
 - 1. It is anticipated that all work within wetlands would qualify for a nationwide permit due to the nature of the work. A Joint Application will be prepared and submitted to the USACE.
 - iv. LMRWD Permit
 - 1. The project is serving a land-locked area; therefore, it is anticipated a LMRWD permit will be required for the outlet.
 - 2. The project is located within a high value resource area (HVRA) and anticipated to disturb more than 5,000 square feet therefore an erosion control permit is needed.
 - v. NPDES Permit
 - 1. The project is anticipated to disturb less than 1.0 acres therefore no permitting scope of work is included for the NPDES Permit.
- c. Deliverables:
 - i. For the purposes of this scope, the following environmental approvals and permits were assumed to be needed.
 - 1. Wetland Delineation Approval Application
 - 2. A WCA No Loss or Exemption Application
 - 3. LMWRD Permit for Erosion Control, Floodplain and Drainage Alternation.
- d. Assumptions [Additional specific assumptions are located in the "Description" column of Attachment 2]:
 - i. Threatened & Endangered Species or Historical Resources surveys are not anticipated to be needed and therefore have not been included in the scope of work.

- ii. Agency Permitting Fees will be paid for by the City.
- iii. The scope assumes one combined coordination meeting with the USACE, DNR, and other agencies needed to permit the project.
- iv. The scope assumes the above permits will be required for this project, if additional permits or “larger” permits (i.e. a WCA replacement plan, USACE LOP, or IP permits) are required, then additional time and fee will be necessary to prepare and assist with those permits.

3. Final Design Phase

- a. Background: A design plan will be developed for the recommended alternative of extending a storm sewer pipe from the low area on Boiling Springs Lane to the existing manhole located in the rear yard of the Eagle Creek development (located in the City of Savage).
- b. AE2S Services:
 - i. Final Design Documents and Opinion of Probable Costs will be provided for 50%, 95% and 100% submittals.
 - ii. The Bid Package will include final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
 - 1. Drawings will be to City CADD Standards.
 - 2. Procurement documents will follow City Standards.
 - 3. Technical Standards will follow City, CEAM and MnDOT Standards.
 - iii. Visit the Site(s) as needed to verify details in preparing the final Drawings and Specifications.
 - iv. Perform Topographic Survey of the site for Final Design plan preparation. Topographic survey shall include, but is not limited to, collection of elevation data (including site contours), planimetric data, and structure data (including subsurface data) of site utilities. Survey will also include contact of the Gopher One Call System to request utility locates for design purposes. Property boundary information will be collected to support the Certificate of Surveys needed for temporary and permanent construction easements. A tree inventory will be collected as part of the survey as well.
 - v. Assist with coordinating a geotechnical investigation at the site. AE2S will support the City in procuring a geotechnical firm to complete a soil boring at the site. The Geotechnical firm will be contracted directly with the City for the work to be performed.
 - vi. The preferred alignment is not known at this time relative to the property boundary of 9177 Boiling Springs Lane. The pipe alignment could either extend along the north or south property lines. As a result, a 50% pipe Plan and Profile will be prepared for each potential alignment (2

alignments) and the subsequent construction limits for each to aid in the easement acquisition process with the property owner.

- vii. Update hydraulic model based on the preliminary alternatives as well as the 95% design. Findings will be provided during design review meetings. A tech memo will be developed summarizing the findings.
 - viii. Advise Owner of any recommended adjustments to the Opinion of probable Construction Cost.
 - ix. Prepare the Project Manual for bidding.
 - x. Furnish for review by Owner electronic copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, Project Manual and any other Final Design Phase deliverables and review them with Owner. Within 14 days of receipt, Owner shall submit to AE2S any comments regarding the furnished items, and any instructions for revisions. AE2S will provide final Drawings and Opinion of Probable Construction Costs for improvements at the 50%, 95% and 100% stages of design.
 - 1. Revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents, and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner.
 - 2. Meetings to review comments for each plan review stage are expected to take place during the Monthly coordination meetings outlined under Task 1 – Project Management and Coordination.
 - xi. Services under the Final Design Phase will be considered complete on the date when AE2S has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, quote-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.
 - xii. Private Utility Coordination Meeting
 - 1. AE2S will provide meeting minutes from the Utility Coordination meeting and update the plans per comments for the utility companies.
 - xiii. Easement Development. It is anticipated that easements will be needed for two parcels based on the improvement. It is not known at this time if the pipe will be located along the north or south property boundary of 9177 Boiling Springs Lane. A certificate of survey will be prepared for each parcel (two parcels) based on the recommended alignment.
 - xiv. Assist with procurement of a geotechnical firm to complete soil borings for the project area.
- c. Deliverables:

- i. 50%, 95% and 100% Final Design Plans
 - ii. Opinion of Probable Costs at each plan submittal (50%, 95% and 100%)
 - iii. Specifications & Bid Documents (95% and 100% submittals)
 - iv. Private Utility Meeting Minutes
 - v. Certificates of Survey (2)
 - 1. Two parcels are included.
 - 2. Anticipated temporary construction easement and permanent construction easement.
 - vi. Technical Memorandum – Hydraulic Findings
- d. Assumptions [Additional specific assumptions are located in the "Description" column of Attachment 2]:
 - i. Analysis of the storm sewer system located in the City of Savage is not required.
 - ii. AE2S will conduct one (1) utility coordination meeting, after the 60% plans have been submitted to the City, to discuss potential impacts based on the preliminary improvements proposed at each site.
 - iii. A SWPPP is not needed for the project.
 - iv. Temporary Traffic Control Plans are the responsibility of the Contractor and will be provided as part of the submittal process.
 - v. Easements are not needed for any work located within the City of Savage.

4. Bidding Phase

- a. Background: After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bid documents and the most recent Opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, AE2S shall assist the City with Quoting each Design Package to one prime bidder.
- b. AE2S Services:
 - i. Assist the Owner during the bidding phase by answering contractor questions.
 - ii. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.
 - iii. Consult with Owner as to the qualifications of prospective contractors.
 - iv. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
 - v. If the issued documents require, AE2S shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or

other construction procurement documents) prior to award of contracts for the Work.

- vi. The Bidding Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors.
- c. Deliverables:
 - i. Bid Documents (Plans, Specs, Opinion of Probable Costs)
 - ii. Addenda (as needed)
- d. Assumptions [Additional specific assumptions are located in the "Description" column of Attachment 2]:
 - i. The project will be bid one time and awarded to one prime bidder.
 - ii. No more than two (2) addenda will be needed for the project.
 - iii. City is responsible for advertising fees, executing the contract, preparing the notice of award and preparing staff reports (as needed) for Council action.

5. Construction Phase

- a. Background: Upon successful completion of the Bidding Phase, and upon written authorization from Owner, AE2S will assist the City during the Construction Phase.
- b. AE2S Services:
 - i. General Administration of Construction Contract: Consult with Owner and act as Owner's representative as provided in the Construction Contract. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
 - ii. Construction Staking: Provide construction surveys and staking to enable the Contractor to perform its work during construction activities.
 - iii. Resident Project Representative (RPR): Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. The Owner will take primary RPR duties in the field with AE2S supporting by answering questions, making site visits as items come up during construction.

- iv. Selection of Independent Testing Laboratory: Assist Owner in the selection of an independent testing laboratory to perform the services.
- v. Pre-Construction Conference: Participate in a pre-construction conference prior to commencement of Work at the Site (as needed).
- vi. Electronic Transmittal Protocols: If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
- vii. Original Documents: If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
- viii. Visits to Site and Observation of Construction: In connection with observations of Contractor's Work while it is in progress:
 - 1. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

2. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.
- ix. Defective Work: Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
- x. Compatibility with Design Concept: If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
- xi. Clarifications and Interpretations: Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the

Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.

- xii. Non-reviewable Matters: If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
- xiii. Field Orders: Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
- xiv. Change Orders and Work Change Directives: Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
- xv. Differing Site Conditions: Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.
- xvi. Shop Drawings, Samples, and Other Submittals: Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
- xvii. Substitutes and "Or-equal": Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor.
- xviii. Inspections and Tests (by independent materials testing firm, hired directly by the City):

1. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
 2. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
 3. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- xix. Disagreements between Owner and Contractor. Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Construction Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
- xx. Applications for Payment: Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
1. The project will be bid based on a unit price contract. The Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).
 2. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically

assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

- xxi. Contractor's Completion Documents: Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.
- xxii. Substantial Completion: Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
- xxiii. Final Notice of Acceptability of the Work: Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also

provide a notice (Notice of Acceptability of Work) that the Work is acceptable to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.

- xxiv. Standards for Certain Construction-Phase Decisions: Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Claims, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- xxv. Duration of Construction Phase: The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. The construction phase is anticipated to be completed within one construction season, approximately 12 weeks, but actual duration is dependent on the Contractors schedule.
- xxvi. Resident Project Representative
 - 1. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.
 - 2. Through RPR's observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including

RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.

3. The duties and responsibilities of the RPR are as follows:
 - a. General: RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 - b. Schedules: Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
 - c. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
 - d. Safety Compliance: Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
 - e. Liaison:
 - i. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
 - ii. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - iii. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
 - f. Clarifications and Interpretations: Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents

(sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor.

- g. Shop Drawings and Samples:
 - i. Record date of receipt of Samples and Contractor-approved Shop Drawings.
 - ii. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - iii. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
- h. Proposed Modifications: Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
- i. Review of Work; Defective Work:
 - i. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
 - ii. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning

- whole, and provide recommendations to Engineer for addressing such Work. ; and
- iii. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.
 - j. Inspections, Tests, Traffic Changes and System Start-ups:
 - i. Consult with Engineer in advance of scheduled inspections, tests, traffic changes and systems start-ups.
 - ii. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
 - iii. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
 - iv. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
 - v. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.
 - k. Records:
 - i. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.
 - ii. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site,

Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, 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.

- iii. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.
 - iv. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
 - v. Maintain records for use in preparing Project documentation.
 - vi. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.
- I. Reports:
- i. 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.
 - ii. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
 - iii. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
 - iv. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.
- m. Payment Requests: 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 Site but not incorporated in the Work.

- n. 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 Contract Documents 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 Owner prior to payment for that part of the Work.
- o. Completion:
 - i. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.
 - ii. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
 - iii. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

xxvii. Resident Project Representative shall not:

- 1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
- 2. Exceed limitations of Engineer's authority as set forth in this Supplemental Agreement or the Master Agreement.
- 3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
- 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or

procedures of the Work, by Contractor or any other Constructor.

5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner 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 Owner to occupy the Project in whole or in part.

xxviii. Post-Construction Phase

1. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:
 - a. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
 - b. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
 2. The Post-Construction Phase services may commence during the Construction Phase will terminate twelve months after the commencement of the Construction Contract's correction period.
- c. Deliverables [as requested by the Owner]:
- i. Minutes from each weekly construction meeting.
 - ii. Contractor Payments
 - iii. Change Orders
 - iv. Notice of Substantially Complete
 - v. Construction Plan Record Documents [as-built plan]
 - vi. Construction Staking

- d. Assumptions [Additional specific assumptions are located in the "Description" column of Attachment 2]:
 - i. Construction Staking – two trips to the site. Storm sewer alignment, structures, site control, work limits/easement boundaries and removals to be staked.
 - ii. See Attachment 2 – Task Hour Budget Detailed Fee for assumptions included within Construction Phase services.

Performance Schedule

AE2S proposes to complete the proposed Scope of Services in accordance with the following schedule:

- | | |
|------------------------|-------------------------------|
| • Final Design | October 2023 – February 2024 |
| ○ 20 weeks | |
| • Permitting | November 2023 – March 2024 |
| ○ 20 weeks | |
| • Easement Acquisition | November 2023 – November 2024 |
| ○ 52 weeks | |
| • Bidding | January 2025 |
| ○ 3 weeks | |
| • Construction | 2025 (TBD) |
| ○ 8 weeks | |

Professional Fees

AE2S proposes to provide the professional services consistent with the Scope of Services outlined above as shown in **Table 1**.

Table 1. Fee Summary

Project Phase	Professional Fee ¹	Notes
Final Design ²	\$35,754	Based on an Hourly, not to Exceed Amount
Bidding ²	\$1,570	Based on an Hourly, not to Exceed Amount
Construction Administration ³	\$8,684	Based on Hourly Rates
Total	\$46,008	

¹ See Attachment 2 – Task Hour Budget for detailed hours included with each task. Professional Fees include expenses.

² Hourly, not to exceed fee.

³ The Professional Fee needed to complete the scope of work has been estimated and will be billed hourly for the actual work performed based on the Contractors schedule.