

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into on the 16th day of April 2024, between the **CITY OF SHAKOPEE**, 485 Gorman Street, Shakopee, MN 55379 ("City") and **WSB LLC**, 701 Xenia Ave. S., Ste. 300, Minneapolis, MN 55416 ("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:

Construction Services – 2024 Mill and Overlay and Bituminous Pavement Rehabilitation City Project Nos. CIF 24-011, 24-012, 24-013, 24-01, PA 24-01, 24-03, 24-005

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 April 16, 2024, through December 31, 2024, 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 claims, damages, losses, and expenses, including, but not limited to, reasonable attorney's fees, which they may suffer or for which they may be held liable, to the extent of, caused by 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 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 per claim.
 - 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

WSB LLC

By: _____
Matt Lehman, Mayor

Date: _____

By: _____
William H. Reynolds, City Administrator

Date: _____

By:  _____

Its: Director of Construction Services- Metro

Date: 4/10/2024



April 8th, 2024

Alex Jordan, PE
City Engineer
City of Shakopee
485 Gorman Street
Shakopee, MN 55379

**RE: 2024 Mill and Overlay and Bituminous Pavement Rehabilitation
City Project No CIF 24-011, 24-012, 24-013, 24-01, PA 24-01, 24-03, 24-005**

Dear Mr. Jordan:

WSB is excited about the opportunity to present this scope of work and deliverables for construction services for the City's 2024 Mill and Overlay and Bituminous Pavement Rehabilitation Project. The scope of work WSB will provide are the staff and services as necessary to meet the expected outcomes of this contract, which include the following tasks:

- Construction Observation and Inspection
- Environmental Compliance Inspections
- Construction Materials Testing

Deliverables and responsibilities provided for each of the above tasks are described in the Project Approach/Scope of Services below. The intent of the scope is to outline the major tasks required for this project and highlight areas of importance that are needed to complete the requested services. The scope does not list all responsibilities to be performed.

PROJECT UNDERSTANDING

The 2024 Mill and Overlay and Bituminous Pavement Rehabilitation Project consists of rehabilitating multiple bituminous roads throughout the City of Shakopee including Mill and Overlay, pavement removal, and Reclamation of a trail. This project work also includes storm sewer additions, trail paving, ADA improvements, partial curb and gutter replacements, parking lot rehabilitation, striping and restoration.

Construction is expected to begin in early spring, as the weather permits.

PROJECT APPROACH/SCOPE OF SERVICES

A. Construction Observation and Inspection

WSB will provide Construction Observation and Inspection services through construction of the project and final project closeout. This task will include:

- Record all construction activities daily, making a complete and accurate record of all events.
- Ensure construction practices and materials used on site are compliant with project specifications.
- Accurately measure and record contract pay items daily.
- Perform daily reviews of construction signing, detour signing, and construction traffic control maintenance.

- Communicate regularly with the Project Manager, Contractor, City, and involved stakeholders.
- Perform reviews of temporary and permanent erosion control measures on the project for compliance with applicable permits and specifications.
- Provide services required under this contract as necessary to accommodate the contractor's schedule and needs.
- Exercise the "Authority and Duties of the Inspector" as necessary.

B. Environmental Compliance Inspections

WSB will provide environmental compliance inspection services through construction of the project and project closeout of the NPDES permit. This task will include:

- Weekly NPDES Inspections for compliance with the permit requirements
- Recommendations for BMP maintenance.
- Documentation and photos of all site compliant and not compliant items.
- Post rain event inspections and documentation.

C. Construction Materials Testing

WSB will provide materials testing as required by the special provisions and Schedule of Materials control through the project. This will include:

- Grading and base items including material gradations and densities.
- Asphalt gradations, extractions, and densities.
- Concrete air, slump, and strength tests.
- Provide services required under this contract as necessary to accommodate the contractor's schedule and needs.

Depending on project sequencing and workload, as determined by the contractor, we will adjust our staffing needs accordingly.

PROPOSED FEE

The estimated cost proposal we are providing is based on the contract documents and anticipated schedule for the work. A better understanding of the level of effort needed will be realized once the contractor presets their approach to the work. WSB will provide the services as outlined in Project Approach/Scope of Services. Our budget was developed based on our understanding of the scope and experience with many similar projects. Our 2024 estimate used an assumed 14-weeks of construction, working 5 days a week, and 10 hours per day, and 9-weeks of construction, working 5 days a week, and 9 hours per day. The estimated cost of this project not to exceed is \$224,177.50. All travel time is included in the estimated fee.

The proposed scope and fee presented herein represents our complete understanding of the project based on site visits and work performed. If you have any questions or concerns, please feel free to contact me at (612) 360-1310. Once again, we appreciate the opportunity to submit this proposal and look forward to working with you and your staff.

Sincerely,

WSB

Paul Kyle, PE,
Project Manager

Craig Alberg, PE,
Director of Construction Services Metro

Attachments

ACCEPTED BY:

City of Shakopee

By: _____
Alex Jordan, City Engineer

Date: _____



WSB

ESTIMATE OF COST - 2024 Mill and Overlay and Bituminous Pavement Rehabilitation Milling, Bituminous Overlay, Reclamation and Appurtenance Work Shakopee, Minnesota

WORK TASK <i>Description</i>	Project Lead Inspector Malek Elbatta	Environmental Compliance	Total Hours	Cost
CONSTRUCTION INSPECTION SERVICES				
Construction Inspection	1105		1105	\$153,595.00
Pre- Construction Conference	3		3	\$417.00
Monthly Pay Estimates and Final Voucher (6 estimates)	14		14	\$1,946.00
Punchlist / Final Inspection	40		40	\$5,560.00
Record Plan Measurements	8		8	\$1,112.00
ENVIRONMENTAL COMPLIANCE				
Weekly NPDES Inspections (2 hours per week, for 26 weeks)		52	52	\$6,032.00
On Site Documentation (1 hours per week, for 26 weeks)		26	26	\$3,016.00
Post Rain Event Inspections (Assume 1 rain event every other week)		26	26	\$3,016.00
Assume 14 weeks construction inspection, 5 days per week, 10 hours per day				
Assume 9 weeks construction inspection, 5 days per week, 9 hours per day				
Total Hours	1170	104	1274	\$174,694.00

Hourly Costs	139.00	116.00		
WSB SALARY COSTS	\$162,630.00	\$12,064.00		\$174,694.00
Materials Testing				\$49,483.50
TOTAL CONSTRUCTION SERVICES PROJECT COST				\$224,177.50

TOTAL PROJECT COST	\$224,177.50
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City of Shakopee

2024 Mill & Overlay and Bituminous Pavment Rehabilitation

City Projects CIF-24-011, CIF-24-012, CIF-24-013, PA-24-01, PA-24-03, BA-24-005

Construction Materials Testing Estimate of Costs (2023 SALT)

WSB Unit	Test Type/Material	Minimum Required Testing Rate	Quantity of Material	Minimum Tests	Probable Tests	Cost Per Test	Minimum Cost	Probable Cost
Gradation Testing								
3025	Aggregate Surfacing	Random Sampling: > 250 CY (CV) or 500 Tons and < 2000 CY (CV) or 4000 Tons. Material is a minimum of one lot. Test two random samples from each lot and average.	CL 2: 202 T (Small Quantity)	0	1	\$150.00	\$0.00	\$150.00
3025	Aggregate Base		CL 5: 2387 T	2	3	\$150.00	\$300.00	\$450.00
3025	Reclamation FDR		Trails: 2667 SY	0	1	\$150.00	\$0.00	\$150.00
				Total Minimum Cost for Section			\$300.00	
				Total Probable Cost for Section			\$750.00	

WSB Unit	Test Type/Material	Minimum Required Testing Rate	Major Soil Types	Minimum Tests	Probable Tests	Cost Per Test	Minimum Cost	Probable Cost
Proctor Test								
3260	Proctor Test	1 / Major soil type. Additionally, one for each granular material, if using specified density.	Subgrade Trench Backfill	1	2	\$150.00	\$150.00	\$300.00
Total Minimum Cost for Section							\$150.00	
Total Probable Cost for Section							\$300.00	

WSB Unit	Test Type/Material	Minimum Required Testing Rate	Quantity of Material	Minimum Tests	Probable Tests	Cost Per Test	Minimum Cost	Probable Cost
Compaction Testing - Nuclear Density Gauge and Dynamic Cone Penetrometer								
3500	Aggregate Base	1 DCP tests per 500 CY (CV) or 1 per 1000 Tons. If test rolled, 1 test / 1,500 CY (CV) or 3000 Tons.	CL 5: 2387 T	3	4	\$50.00	\$150.00	\$200.00
3500	Reclamation FDR	1 DCP test per 3,000 SY. If test rolled, 1 test / 10,000 SY.	Trails - 4 Sections	4	6	\$50.00	\$200.00	\$300.00
3510	Granular Materials	Sidewalks and Trails: 1 test per 500 feet.	Aggregate Base 5' Sidewalk: 3465 LF	7	9	\$20.00	\$140.00	\$180.00
3510	Non-Granular Materials	Structures and Longitudinal Trenches (Sidewalk/Trails/Watermain/Storm Sewer/Sanitary Sewer/Retaining Walls): 1 test per 500 feet of each structure length per every 2 feet of fill.	Storm: 40 LF	1	2	\$20.00	\$20.00	\$40.00
3510		Subgrade Preparation: 1 test per 25 road stations. 100% proctor density (Approx 1 / 3,000 SY)	6367 SY	3	4	\$20.00	\$60.00	\$80.00
				Total Minimum Cost for Section			\$570.00	
				Total Probable Cost for Section			\$800.00	

WSB Unit	Test Type/Material	Minimum Required Testing Rate	Quantity of Material	Minimum Tests	Probable Tests	Cost Per Test	Minimum Cost	Probable Cost
Moisture Content Test								
3250	Aggregate Base	1 / 1,000 CY up to 10 maximum. For Quality Compaction: Test as directed by Engineer.	2387 T ~ 1313 CY	2	2	\$15.00	\$30.00	\$30.00
3250	Aggregate Surfacing	1 / 1,000 CY up to 10 maximum. For Quality Compaction: Test as directed by Engineer.	CL2: 202 T ~ 111 CY (Small)	0	1	\$15.00	\$0.00	\$15.00
3250	Walks	1 / 1,000 CY up to 10 maximum. For Quality Compaction: Test as directed by Engineer.	4" Agg Base: 214 CY (Small)	0	1	\$15.00	\$0.00	\$15.00
3250	Full Depth Reclamation (FDR)	1 / 20,000 SY	Trails - 4 Sections 2667 SY	1	4	\$15.00	\$15.00	\$60.00
3250	Subgrade Preparation	1 per 25 Road Stations (Approx 1 / 3000 SY) For Quality Compaction: Test as directed by Engineer.	6367 SY	3	4	\$15.00	\$45.00	\$60.00
Total Minimum Cost for Section							\$90.00	
Total Probable Cost for Section							\$180.00	

WSB Unit	Test Type/Material	Minimum Required Testing Rate	Sources	Minimum Tests	Probable Tests	Cost Per Test	Minimum Cost	Probable Cost
Aggregate Quality								
4030	Aggregate Base Recycled/Salvaged/Reclaimed Bitumen content	At the discretion of the Engineer.	Imported and Reclaimed	0	2	\$165.00	\$0.00	\$330.00
Total Minimum Cost for Section							\$0.00	
Total Probable Cost for Section							\$330.00	

WSB Unit	Test Type/Material	Minimum Required Testing Rate	Quantity of Material	Minimum Tests	Probable Tests	Cost Per Test	Minimum Cost	Probable Cost
Concrete Testing								
2040	Concrete Testing	1 / 100 CY / mix type / day (1 set of 4 cylinders) *Field Cure Cylinders = Additional. Casted Upon Request*	4" Walk: 24 CY 6" Walk: 286 CY Curb & Gutter: 489 CY 7" Pavement: 1090 CY 8" Pavement: 89 CY	21	40	\$120.00	\$2,520.00	\$4,800.00
Total Minimum Cost for Section							\$2,520.00	
Total Probable Cost for Section							\$4,800.00	

WSB Unit	Test Type/Material	Minimum Required Testing Rate	Quantity of Material	Minimum Tests	Probable Tests	Cost Per Test	Minimum Cost	Probable Cost
Bituminous Testing								
4090	Verification Testing - MnDOT Gyrotory Mix Properties	1 / mix type / day	9.5W(2,C): 11,854 T 9.5W(3,C): 9529 T	20	26	\$600.00	\$12,000.00	\$15,600.00
4080	Compaction / Density Testing	Per Project Special Provisions: Roadways: Max Density (No LJD) Lots/Trails: Ordinary Compaction	Trails 3." 9.5W(2,C): 469 T	57	59	\$55.00	\$3,135.00	\$3,245.00
Total Minimum Cost for Section							\$15,135.00	
Total Probable Cost for Section							\$18,845.00	

WSB Unit	Test Type/Material	Minimum Required Testing Rate	Number of Sources	Minimum Tests	Probable Tests	Cost Per Test	Minimum Cost	Probable Cost
Miscellaneous Testing								
3253	Topsoil Material - Gradation, Hydrometer, Organic Content, pH	As directed by the Engineer	Common Topsoil Borrow 318 CY	0	1	\$300.00	\$0.00	\$300.00
Total Minimum Cost for Section							\$0.00	
Total Probable Cost for Section							\$300.00	

WSB Unit	Project Charges	Rate (\$)	Quantity	Subtotal
CMT02	Field Technician Time	100	98	\$9,800.00
2120	Trip Charge	20	110	\$2,200.00
CMT01	Sample Pick-Up Time	79	91.5	\$7,228.50
CMT90	Project Administration	90	2	\$180.00
CMT70	Project Assistant	111	24	\$2,664.00
CMT80	Project Engineer	158	7	\$1,106.00
Field and Overhead Subtotal				\$23,178.50
Testing Subtotal (minimum-probable)				\$18,765.00 - \$26,305.00

Total Estimated Minimum Cost	\$41,943.50
Total Estimated Probable Cost	\$49,483.50

ASSUMPTIONS
Testing schedule will follow the most recent 2023 MnDOT SALT SMC.
Bituminous for parking lots and trails will be placed using Ordinary Compaction methods.
Testing for small quantity items will only be tested upon request.