

MASTER AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

AGREEMENT dated August 7, 2024, made between the **CITY OF SHAKOPEE**, a Minnesota municipal corporation, hereinafter called the "OWNER", and _____, hereinafter called the "CONSULTANT". OWNER intends to secure professional CONSULTING services, according to the terms of this Agreement.

1. SUPPLEMENTAL AGREEMENT.

OWNER intends to secure professional consulting engineering, architectural, planning and/or land survey services on an ongoing basis for general City services and multiple projects, according to the terms of this Agreement. OWNER and CONSULTANT shall enter into project specific Supplemental Agreements. This Master Agreement shall be deemed incorporated into the Supplemental Agreements unless a Supplemental Agreement specifically provides that it is not incorporated. If there is a conflict between the terms of the Supplemental Agreement and this Master Agreement, the terms of this Master Agreement shall control unless the Supplemental Agreement specifically provides that despite the conflict, the terms of the Supplemental Agreement apply.

2. CONSULTING SERVICES

The CONSULTANT agrees to perform the various Basic Services as assigned by the OWNER and specifically described in the Supplemental Agreement for each assignment and in connection with each proposed project (referred to as "Project" or "project") associated with that Supplemental Agreement.

Upon mutual agreement of the parties, professional services in addition to the Basic Services ("Additional Services") may be authorized.

3. OWNER'S RESPONSIBILITIES.

- 3.1 The OWNER shall promptly compensate the CONSULTANT in accordance with Section 5 of this Agreement.
- 3.2 The OWNER shall place any and all previously acquired information related to the Project in its custody at the disposal of the CONSULTANT for its use. Such information shall include, but is not limited to: boundary surveys, topographic surveys, as-builts, previous reports, preliminary sketch plan layouts, building plans,

soil surveys, abstracts, deed descriptions, tile maps and layouts, aerial photos, utility agreements, environmental reviews, and zoning limitations. The CONSULTANT may rely upon the accuracy and sufficiency of all such information in performing services unless otherwise instructed, in writing, by OWNER.

- 3.3 The OWNER will guarantee access to and make all provisions for entry upon public portions of the project and reasonable efforts to provide access to private portions and pertinent adjoining properties.
- 3.4 The OWNER will give prompt notice to the CONSULTANT whenever the OWNER observes or otherwise becomes aware of any defect in the proposed project.
- 3.5 The OWNER shall designate a liaison person to act as the OWNER'S representative with respect to services to be rendered under this Agreement. Said representative shall have the authority to transmit instructions, receive instructions, receive information, interpret and define the OWNER'S policies with respect to the project and CONSULTANT'S services.
- 3.6 The CONSULTANT'S services do not include legal, insurance counseling, accounting, independent cost estimating, financial advisory or "municipal advisor" (as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act 2010 and the municipal advisor registration rules issued by the SEC) professional services and the OWNER shall provide such services as may be required for completion of the project described in this Agreement.
- 3.7 The OWNER will obtain any and all regulatory permits required for the proper and legal execution of the Project. CONSULTANT will assist OWNER with permit preparation and documentation to the extent described in the appropriate Supplemental Agreement.
- 3.8 The OWNER may hire, at its discretion, when requested by the CONSULTANT, an independent test company to perform laboratory and material testing services, and soil investigation that can be justified for the proper design and construction of the project. The CONSULTANT shall assist the OWNER in selecting a testing company. Payment for testing services shall be made directly to the testing company by the OWNER and is not part of this Agreement. If OWNER elects not to hire an independent test company, OWNER shall provide CONSULTANT with guidance and direction on completing those aspects of design and construction that require additional testing data.

4. PERIODS OF CONSULTANT'S SERVICE.

The provisions of Section 5 of this Agreement and the various rates of compensation for the CONSULTANT'S services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the CONSULTANT's services. The CONSULTANT'S obligation to render the services hereunder will extend for a period that is

reasonably required for the CONSULTANT to complete the services set forth in this Agreement.

5. PAYMENTS TO CONSULTANT.

5.1. PAYMENT.

5.1.1. For its services, the CONSULTANT will be paid in accordance with the Supplemental Agreement between the parties.

The Supplemental Agreement shall include all services to be rendered by the CONSULTANT as part of the 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 OWNER. The amount stipulated shall be considered a "Not to Exceed" cost to the OWNER.

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 OWNER if the CONSULTANT anticipates that the negotiated amount might be exceeded, in order to determine whether or not the OWNER is prepared to increase the compensation. This notification and approval must occur in advance of the work occurring to be considered for compensation.

5.1.2 The CONSULTANT must submit itemized bills for services provided to the OWNER 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. The 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 OWNER. CONSULTANT bills submitted will be paid in the same manner as other claims made to the OWNER.

5.2. OTHER PROVISIONS CONCERNING PAYMENTS.

5.2.1. If the OWNER fails to make any payment due the CONSULTANT for services and expenses within thirty five (35) days after receipt of CONSULTANT'S statement therefor, the amounts due the CONSULTANT will be increased at the rate of one-half percent (1/2%) per month from said thirty-fifth (35th) day, and in addition, the CONSULTANT may, after giving seven (7) days' written notice to the OWNER, suspend services under this Agreement until the CONSULTANT has been paid in full all amounts due for services, expenses and charges.

5.2.2. In the event of termination by the OWNER under paragraph 7.2 upon the completion of any phase of the services listed in section 2, progress payments due the

CONSULTANT for services rendered through such phase shall constitute total payment for such services. In the event of such termination by the OWNER during any phase of the services listed in section 2, the CONSULTANT will be paid for services actually and necessarily rendered during that phase by the CONSULTANT'S principals and employees engaged directly on the project, on the basis of the CONSULTANT'S Hourly Costs based upon the fee schedule on file with the OWNER.

In the event of any such termination, the CONSULTANT also will be reimbursed for the reasonable charges of independent professional associates and consultants employed by the CONSULTANT to render services listed in section 2, and paid for all unpaid additional services and unpaid reimbursables.

5.2.3. Records of the CONSULTANT'S time pertinent to the CONSULTANT'S compensation under this Agreement will be kept in accordance with generally accepted accounting principles. Copies will be made available to the OWNER at cost on request prior to final payment for the CONSULTANT'S services.

5.2.4. CONSULTANT shall comply with Minnesota Statute § 471.425. The CONSULTANT must pay Subcontractor for all undisputed services provided by Subcontractor within ten (10) days of the CONSULTANT'S receipt of payment from the OWNER. The CONSULTANT must pay interest of one and five-tenths percent (1.5%) per month or any part of a month to Subcontractor on any undisputed amount not paid on time to Subcontractor. The minimum monthly interest penalty payment for an unpaid balance of One Hundred Dollars (\$100) or more is Ten Dollars (\$10).

6. GENERAL.

6.1. **INDEPENDENT CONTRACTOR.** The OWNER hereby retains the CONSULTANT as an independent contractor upon the terms and conditions set forth in this Agreement. The CONSULTANT is not an employee of the OWNER and is free to contract with other entities as provided herein. The CONSULTANT shall be responsible for selecting the means and methods of performing the work. The CONSULTANT shall furnish any and all supplies, equipment, and incidentals necessary for the CONSULTANT'S performance under this Agreement. The OWNER and CONSULTANT agree that the CONSULTANT shall not at any time or in any manner represent that the CONSULTANT or any of the CONSULTANT'S agents or employees are in any manner agents or employees of the OWNER. The CONSULTANT shall be exclusively responsible under this Agreement for the CONSULTANT'S own FICA payments, workers compensation payments, unemployment compensation payments, withholding amounts, and/or self-employment taxes if any such payments, amounts, or taxes are required to be paid by law or regulation.

6.2. TERMINATION.

Termination for Cause. This Agreement and any Supplemental Agreement may be terminated by the OWNER by seven (7) day's written notice to the CONSULTANT delivered to the address written above. Upon termination under this provision, the CONSULTANT will be paid for all 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 Agreement and any Supplemental Agreement, or if the CONSULTANT shall violate any of the covenants, agreements, or stipulation of this Agreement, the OWNER shall thereupon have the right to terminate this Agreement by giving written notice to the CONSULTANT of such termination and specifying the effective date thereof, at least seven (7) 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 Agreement, which shall, at the option of the OWNER, 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.

CONSULTANT may suspend its services or terminate this Agreement or a Supplemental Agreement in the event of a material breach of this Agreement or a Supplemental Agreement. Failure to make any payment when due is a material breach.

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

In the event this Agreement is terminated for cause, then the OWNER may take over and complete the work, by contract or otherwise, and the CONSULTANT and its sureties shall be liable to the OWNER for any costs over the amount of this contract thereby occasioned by the OWNER. In any such case the OWNER 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 OWNER may have.

Termination Not For Cause. The OWNER may terminate this Agreement and any Supplemental Agreement 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 Agreement, which shall, at the option of the OWNER, become its property. If the Agreement is terminated by the OWNER 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 Agreement, less payments or compensation previously made.

6.3. **DOCUMENTS.** Upon payment in full for all services performed, all documents including Plans and Specifications (excluding CONSULTANT'S pre-existing intellectual property and third-party software) prepared or furnished by the CONSULTANT (and the CONSULTANT'S independent professional associates and consultants) pursuant to this Agreement are instruments of service in respect of the project and the OWNER will be provided with information and reference in connection with the use and occupancy of the project by OWNER and others; however, such documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the project or on any other project. Any reuse without written verification or adaptation by the CONSULTANT for the specific purpose intended will be at the OWNER'S sole risk. If the OWNER or CONSULTANT terminates this Agreement, copies of all files, records, and drawings in the CONSULTANT'S possession relating to service performance for the OWNER shall be turned over to the OWNER without cost to the OWNER.

6.4. **MINNESOTA GOVERNMENT DATA PRACTICES ACT.** The CONSULTANT must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to (1) all data provided by the OWNER pursuant to this Agreement, and (2) all data, created, collected, received, stored, used, maintained, or disseminated by the CONSULTANT pursuant to this Agreement. The CONSULTANT is subject to all the provisions of the Minnesota Government Data Practices Act, including but not limited to the civil remedies of Minnesota Statutes Section 13.08, as if it were a government entity. In the event the CONSULTANT receives a request to release data, the CONSULTANT must immediately notify the OWNER. The OWNER will give the CONSULTANT instructions concerning the release of the data to the requesting party before the data is released and the CONSULTANT will be reimbursed as Additional Public Improvement Services by the OWNER under paragraph 3.1 for the CONSULTANT'S reasonable costs in complying with a request to release data. The CONSULTANT agrees to defend, indemnify, and hold the OWNER, its officials, officers, agents, employees, and volunteers harmless from any 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 resulting from the CONSULTANT'S officers', agents', owners', partners', employees', volunteers', assignees' or subcontractors' unlawful disclosure and/or use of protected data. The terms of this paragraph shall survive the cancellation or termination of this Agreement.

6.5. **INSURANCE.** During the term of this Agreement, CONSULTANT must procure and maintain during the life of this Agreement and any Supplemental Agreement, and provide the OWNER with a certificate of insurance showing, the following coverage for each occurrence and in aggregate:

6.5.1. 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.

6.5.2. Insurance coverage for Special Hazards, including but not limited to explosion hazard, collapse hazard, underground property damage hazard, (commonly known as XCU).

6.5.3. 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.

6.5.4. Professional Liability 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, \$2,000,000 annual aggregate.

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

6.5.6. The City of Shakopee must be named as "ADDITIONALLY INSURED" on the insurance described in paragraphs 6.5.1, 6.5.2, and 6.5.3 must receive 30 days' written notice of cancellation in the event of cancellation of any of the specified insurance. If the deductible provisions of the CONSULTANT'S coverage or any subcontractor's coverage is questioned by the OWNER, the CONSULTANT shall provide the OWNER, upon request, "Proof of Assets".

This policy must provide, as between the OWNER 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 and any Supplemental Agreement a professional liability insurance policy with the same limits as for general liability. A certificate of insurance on the OWNER'S approved form which verifies the existence of these insurance coverages must be provided to the OWNER before work under this Agreement is begun.

CONSULTANT may meet the required insurance limits set for in 6.5.1 and 6.5.2 through a combination of primary and excess or umbrella coverage.

6.6. **INDEMNIFICATION.** The CONSULTANT shall defend, indemnify and hold harmless the OWNER, its officers, agents, and employees, of and from any and all claims, demands, damages, losses, actions, causes of action, expenses including, but not limited to, reasonable attorney's fees, arising out of or by reason of the execution or performance of the work or services provided for herein to the comparative extent they are caused by the CONSULTANT'S negligent acts or omissions or those negligent acts or omissions of persons for whom the CONSULTANT is legally responsible in the performance of this Agreement.

The CONSULTANT assumes full responsibility for relations with its subcontractors and must hold the OWNER harmless and must defend and indemnify the OWNER, its employees and agents, for any claims, damages, losses, and expenses in any manner

caused by the acts or omissions of such subcontractors, arising out of or connected with this Agreement or any Supplemental Agreement.

6.7. PROFESSIONAL STANDARDS. The CONSULTANT shall exercise the same degrees of care, skill, and diligence in the performance of the services as is ordinarily possessed and exercised by a consultant under similar circumstances in the same locality. No other warranty, expressed or implied, is included in this Agreement. The CONSULTANT shall comply with applicable laws, statutes, ordinances, and regulations and the OWNER's mandated standards that the OWNER has provided the CONSULTANT in writing. The OWNER shall not be responsible for discovering deficiencies in the accuracy of the CONSULTANT'S services.

6.8. NO THIRD-PARTY BENEFICIARIES. Nothing in this Agreement shall be construed to give any rights to anyone other than the OWNER and CONSULTANT.

6.9. CONTROLLING LAW/VENUE; DISPUTE RESOLUTION. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota, without giving effect to the principles of conflict of laws. All proceedings related to this contract shall be venued in the Scott County District Court.

Any dispute between the OWNER and CONSULTANT arising out of or relating to this Agreement or the Services (except for unpaid invoices) shall be submitted to mediation as a precondition to litigation unless the parties mutually agree otherwise. The mediator shall be selected by mutual agreement of the parties. Any dispute not settled through mediation shall be settled through litigation.

6.10. SUCCESSORS AND ASSIGNS.

6.10.1. The OWNER and CONSULTANT each is hereby bound and the partners, successors, executors, administrators and legal representatives of the OWNER and CONSULTANT are hereby bound to the other party, to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

6.10.2. Neither the OWNER nor CONSULTANT shall assign, sublet or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent the CONSULTANT from employing such independent professional associates and consultants as the CONSULTANT may deem appropriate to assist in the performance of services hereunder.

6.10.3. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the OWNER and CONSULTANT, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the OWNER and CONSULTANT and not for the benefit of any other party.

6.11. **PROMPT PAYMENT TO SUBCONTRACTORS.** Pursuant to Minn. Stat. §471.25, Subd. 4a, the Contractor must pay any subcontractor within ten (10) days of the Contractor's receipt of payment from the City for undisputed services provided by the subcontractor. The Contractor must pay interest of 1½ percent per month or any part of the month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, the Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from the contractor shall be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

6.12. **COPYRIGHT/PATENT INFRINGEMENT.** The CONSULTANT shall defend actions or claims charging infringement of any copyright or patent by reason of the use or adoption of any designs, Drawings or Specifications supplied by it, and it shall hold harmless the OWNER from loss or damage resulting therefrom.

6.13. **NOTICES.** Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

6.14. **SURVIVAL.** All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

6.15. **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.

6.16. **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.

6.17. **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.

6.18. **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 any Supplemental Agreement and entitle the OWNER to immediately terminate this Agreement.

6.19 **LIMITATION OF LIABILITY.** Neither party hereto shall be responsible or held liable to the other for punitive, indirect, incidental, or consequential damages, or liability for loss of use, loss of business opportunity, loss of profit or revenue, loss of product or output, or business interruption.

7. PRIOR AGREEMENT.

This Agreement supersedes all prior written and oral contracts and agreements except for the following:

8. TERM.

The term of this Agreement will be from August 7, 2024, through June 30, 2027, 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.

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

OWNER:

CITY OF SHAKOPEE

CONSULTANT:

COMPANY XYZ, INC.

By: _____
William H. Reynolds, City Administrator

Date: _____

By: _____

Its: _____

Date: _____

By: _____
Matt Lehman, Mayor

Date: _____