

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into on the 8th day of January, 2019, between the **CITY OF SHAKOPEE**, 485 Gorman Street, Shakopee, MN 55379 ("City") and **Henning Professional Services, INC.**, PO Box 25376, Woodbury, MN 55125 ("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:

12th Avenue Regional Trail Project CIF-20-003 – Easement Acquisition

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.
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 January 8, 2019, through November 15, 2019, 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

**HENNING PROFESSIONAL
SERVICES, INC.**

By: _____
William H. Reynolds, City Administrator

Date: _____

By: Sonya Henning, President

Its: _____ Contracts Officer

Date: 12/26/2018

By: _____
Bill Mars, Mayor

Date: _____

December 18, 2018

City of Shakopee
Mr. Steve Lillehaug, PE, PTOE
Public Works Director/City Engineer
485 Gorman St.
Shakopee, MN 55379

Re: Right of Way Services Scope and Fee – 12th Avenue Trail Project

Dear Mr. Lillehaug,

I am pleased to offer right of way acquisition services to assist the City with securing the land rights for the 12th Avenue Trail Project. It is my understanding this project includes acquisition from twelve (12) different property owners and that this is a fast track project with construction anticipated in 2019. I have assembled a strong acquisition team who understands the aggressive schedule and what it takes to deliver on time and on budget.

Our team is proposing to provide the following scope of services in compliance with the MnDOT State Aid and Right of Way Manuals:

Right of Way Agent Services:

- a) Maintain and provide acquisition spread sheets for information on acquisition
- b) Attend open houses and PMT meetings
- c) Early Notification letter to owner with formal project information and property rights
- d) Contact the landowner and schedule Field Title Investigation meeting
- e) Conduct Field Title Investigation and complete Report, coordinating with Appraiser to view property
- f) Work closely with the City and designer related to landowner questions and project details
- g) Prepare offer letter and packet for each parcel
- h) Present offer of compensation
- i) Negotiate purchase of the easements
- j) Draft Administrative Settlements as appropriate
- k) Obtain signed easements and provide executed documents to City
- l) Draft and submit Pay Request for payment to owner
- m) Process appraisal reimbursements for landowners, as needed
- n) This task will also provide coordination with the City Attorney (CA) who will provide the conveyance documents and other required legal documents and lender consents. If the CA were to provide a sample document, Henning Professional Services, Inc. (HPS) could populate the documents and the CA would review and approve the final version.

- o) Provide parcel files to the City summarizing the acquisition at the end of the project

Appraisal Services:

Jason Messner, Patchin Messner Dodd and Brumm, will provide appraisal reports. See attached proposal and assumptions.

Appraisal Review Services:

Ms. Kelly Lindstrom will provide reviews of Patchin Messner Dodd and Brumm's appraisals for \$500 each.

Appraisal reviews are not required for non-federally funded projects; however, I do recommend review by an appraiser, especially for such a fast track project, and in the event the City receives any last-minute federal funding. The appraisals do have to be reviewed at a minimum by the right of way agent and it is my opinion those fees are better spent on formal appraisal reviews.

Assumptions:

- a) The City or their design consultant will provide parcel sketches, staking and survey services needed.
- b) The City or their design consultant will provide title reports.
- c) Henning Professional Services, Inc. (HPS) is not a law firm and does not provide legal services.
- d) The City will provide legal documents such as easements, consents, disclaimers, access agreements, etc., as required, or samples for HPS to populate and then submit to CA for review and approval.
- e) The City will also review title work and ensure that all interested parties are defined and listed in a title opinion prior to the agent meeting with the landowner.
- f) The City will provide review of any permits required (fence, sign, etc.) and request and issue permits, as required.
- g) The City will record all documents that they would like recorded.
- h) The City will provide all tax forms such as 1099's.
- i) No relocation is included in this estimate.
- j) The City attorney will provide all eminent domain tasks, if needed. HPS assistance would be limited to providing all information and files in HPS's possession and to strategize with CA, if requested.
- k) HPS will provide a Letter of Compliance to MnDOT, if required, for State Aid use.
- l) This also assumes that the board of the homeowner's association can sign any conveyance documents. Additional cost will be added if more than one entity needs to sign off, meaning individual unit owners in addition to the homeowner's association itself.

The project schedule is exceedingly tight and will most likely only give owners a minimum of 30 days to accept offer and execute documents prior to receiving notice of condemnation. Also, if there is a problem getting offers into the hands of the owners, the schedule may also be delayed by that same amount of time. If the City requires lender consents on parcel with mortgages, these can take a long time to obtain and will force additional parcels into condemnation. Title and possession would be a

minimum of 120 days from when the owners receive offers. A detailed schedule is to be created with city and city attorney input.

Estimated Fee:

Right of way agent services are provided on an hourly basis only for the hours required. The proposed fee is estimated for the above scope of services and is detailed in the attached spreadsheet. The estimated fee totals \$91,700.00.

Please contact me at 651-955-5594 with any questions. Thank you for the opportunity to propose on this project.

Sincerely,
Henning Professional Services, Inc.

A handwritten signature in black ink that reads "Sonya A. Henning". The signature is written in a cursive, flowing style.

Sonya A. Henning, PE
President

City of Shakopee - 12th Avenue Trail Project

Henning Professional Services, Inc. - December 18, 2018
Based on Twelve Parcels

Description:	R/W Agent
R/W Agent Services (\$3,950 each, billed hourly as needed , not lump sum)	\$47,400
Project Meetings, Open House and R/W Coordination with Team	\$2,000
Total Estimated Labor Cost	\$49,400
Estimated Expenses:	
Appraisals (see itemized PMDB proposal attached, with assumptions)	\$34,500
Appraisal Reviews (an average of \$500 each)	\$6,000
Mileage	\$1,500
Certified Mail (number of parcels x \$25/each)	\$300
Total Expenses	\$42,300
Total Cost for Labor and Expenses Estimated to be	\$91,700

12th Avenue Trail Project - Easement Needs List

PID	TaxpayerName	Taxpayer Address	Physical Property Address	Status of Easement	Est.Appraisal Fees
272120021	J & A FINANCIAL LLC	14187 SHADY BEACH TRL NE PRIOR LAKE, MN 55372	4058 12TH AVE E SHAKOPEE, MN 55379	Owner provided signed easement to City, City lost paper copy, need to reach out to owner again	
273170011	MIDWAY HOSPITALITY LLC	4100 12TH AVE E SHAKOPEE, MN 55379	4100 12TH AVE E SHAKOPEE, MN 55379	Need to obtain easement	\$ 3,500.00
273170010	FURN USA LLC	140 E HINKS LN SIOUX FALLS, SD 57104	4250 12TH AVE E SHAKOPEE, MN 55379	Have - need to verify with title/oe report	
274360010	HHS LLC	140 HINKS LN E SIOUX FALLS, SD 57107	4300 12TH AVE E SHAKOPEE, MN 55379	Have copy of easement in hand	
273630010	TOKE LLC	5353 GAMBLE DR UNIT 108 ST LOUIS PARK, MN 55416	4400 12TH AVE E SHAKOPEE, MN 55379	Need to obtain easement	\$ 2,500.00
274360020	MDSC2015 LLC	7805 TELEGRAPH RD STE 215 BLOOMINGTON, MN 55438	4450 12TH AVE E SHAKOPEE, MN 55379	Have copy of easement in hand	
273630020	TOKE LLC	5353 GAMBLE DR UNIT 108 ST LOUIS PARK, MN 55416	4500 12TH AVE E SHAKOPEE, MN 55379	Need to obtain easement	\$ 2,500.00
274220020	SHRI DAHR HOTELS INC	2517 W BRENTRIDGE ST SIOUX FALLS, SD 57108	4550 12TH AVE E SHAKOPEE, MN 55379	Have copy of easement in hand	
273630030	TOKE LLC	5353 GAMBLE DR UNIT 108 ST LOUIS PARK, MN 55416	4600 12TH AVE E SHAKOPEE, MN 55379	Need to obtain easement	\$ 2,500.00
273630040	TOKE LLC	5353 GAMBLE DR UNIT 108 ST LOUIS PARK, MN 55416	4700 12TH AVE E SHAKOPEE, MN 55379	Need to obtain easement	\$ 2,500.00
272120030	NAAS DAVID R	4870 12 AVE E SHAKOPEE, MN 55379	4870 12TH AVE E SHAKOPEE, MN 55379	Need to obtain easement	\$ 3,500.00
272120040	MICI HOLDING LLC	4910 12 AVE E SHAKOPEE, MN 55379	4910 12TH AVE E SHAKOPEE, MN 55379	Landowner to provide - proposed easement in owner's hand, City waiting for signature	
272120041	AB GAGE SCHMITZ LLC	4950 12 AVE E SHAKOPEE, MN 55379	4950 12TH AVE E SHAKOPEE, MN 55379	Need to obtain easement	\$ 3,000.00
272120042	REP ALLIANCE LLC & CARMAC CORPORATION	5200 12 AVE E SHAKOPEE, MN 55379	5200 12TH AVE E SHAKOPEE, MN 55379	Need to obtain easement	\$ 3,000.00
273320010	J D CO INC & C/O WEST REAL ESTATE & MANAGE	1660 S HWY 100 # 210 ST LOUIS PARK, MN 55416	5500 12TH AVE E SHAKOPEE, MN 55379	Need to obtain easement	\$ 3,000.00
273320020	AMWEST DEVELOPMENT 1 LLC	1660 S HWY 100 # 210 SAINT LOUIS PARK, MN 55416	5700 12TH AVE E SHAKOPEE, MN 55379	Need to obtain easement	\$ 3,000.00
272190040	REALTY INCOME PROPERTIES 5 LLC	11995 EL CAMINO REAL SAN DIEGO, CA 92130	5800 12TH AVE E SHAKOPEE, MN 55379	Need to obtain easement	\$ 3,000.00
274220030	SHAKOPEE HAWKEYE LODGING LLC	2706 JAMES ST CORALVILLE, IA 52241		Have - need to verify with title/oe report	
274220040	CITY OF SHAKOPEE	485 GORMAN ST SHAKOPEE, MN 55379		Owned by City - No easement needed	\$ 2,500.00
272190042	TOKE LLC	5353 GAMBLE DR UNIT 108 ST LOUIS PARK, MN 55416		Need to obtain easement	\$ 34,500.00

Fee quote is based on the following assumptions as provided by the City of Shakopee:

1. I don't believe there is any signage that will be impacted by the project. We would be willing to relocate any signage or similar as necessary.
2. Yes, the City will include repair/adjustment of sprinkler systems into the contract of the trail project for all sprinkler systems in the project area that are impacted.
3. The retaining wall would be in the same easement. The City will assume future maintenance of the wall. Please try to make it one easement (trail) and add language allowing the retaining wall.
4. The easement was depicted the same width for continuity/ease. It could certainly be pulled back just outside the fedex parking lot. The trail is immediately adjacent to the public roadway and we would not anticipate disrupting or reconfiguring the parking lot.