

PROFESSIONAL SERVICES AGREEMENT

AGREEMENT made this ___ day of _____, 2019, by and between the **CITY OF EDINA**, a Minnesota municipal corporation ("City") and _____, a corporation existing under the laws of the State of _____("Consultant").

IN CONSIDERATION OF THEIR MUTUAL COVENANTS, THE PARTIES AGREE AS FOLLOWS:

1. SCOPE OF SERVICES. The City retains Consultant to _____.

2. CONTRACT DOCUMENTS. The following documents shall be referred to as the "Contract Documents," all of which shall be taken together as a whole as the contract between the parties as if they were set verbatim and in full herein:

- A. This Professional Services Agreement
- B. Consultant's Proposal dated _____ ("Proposal")

In the event of conflict among the provisions of the Contract Documents, the order in which they are listed above shall control in resolving any such conflicts with Contract Document. Contract Document "A" has the first priority and Contract Document "B" has the last priority.

3. COMPENSATION. The City shall pay the Consultant and the Consultant shall accept as payment:

The total contract amount is inclusive of reimbursables, taxes and all other charges (the "fee"). This fee shall not be adjusted if the estimated hour to perform a task, the number of required meetings, or any other estimate or assumption is exceeded. The City shall make payments_____.

4. OWNERSHIP. All reports, plans, models, software, diagrams, analyses, and information generated in connection with performance of this Agreement shall be the property of the City. The City may use the information for its purposes. The City shall be the copyright owner.

5. CHANGE ORDERS. All change orders, regardless of amount, must be approved in advance and in writing by the City. No payment will be due or made for work done in advance of such approval.

6. COMPLIANCE WITH LAWS AND REGULATIONS. In providing services hereunder, Consultant shall abide by all statutes, ordinances, rules and regulations pertaining to the provisions of services to be provided.

7. STANDARD OF CARE. Consultant shall exercise the same degree of care, skill, and diligence in the performance of the services as is ordinarily possessed and exercised by a professional consultant under similar circumstances. No other warranty, expressed or implied, is included in this Agreement. City shall not be responsible for discovering deficiencies in the accuracy of Consultant's services.

8. INDEMNIFICATION. Consultant shall indemnify and hold harmless the City, its officers, agents, and employees, of and from any and all claims, demands, actions, causes of action, including costs and attorney's fees, arising out of or by reason of the execution or performance of the services provided for herein and further agrees to defend at its sole cost and expense any action or proceeding commenced for the purpose of asserting any claim of whatsoever character arising hereunder.

9. INSURANCE. Consultant shall secure and maintain such insurance as will protect Consultant from claims under the Worker's Compensation Acts, and from claims for bodily injury, death, or property damage which may arise from the performance of services under this Agreement. Such insurance shall be written for amounts not less than:

Commercial General Liability	\$1,000,000 each occurrence/aggregate
Professional Liability	\$1,000,000 each claim

The City shall be named as an additional insured on the general liability policy on a primary and noncontributory basis. Before commencing work the Consultant shall provide the City a certificate of insurance evidencing the required insurance coverage in a form acceptable to City.

10. INDEPENDENT CONTRACTOR. The City hereby retains Consultant as an independent contractor upon the terms and conditions set forth in this Agreement. Consultant is not an employee of the City and is free to contract with other entities as provided herein. Consultant shall be responsible for selecting the means and methods of performing the work. Consultant shall furnish any and all supplies, equipment, and incidentals necessary for Consultant's performance under this Agreement. City and Consultant agree that Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's agents or employees are in any manner agents or employees of the City. Consultant shall be exclusively responsible under this Agreement for 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.

11. SUBCONTRACTORS. Consultant shall not enter into subcontracts for services provided under this Agreement without the express written consent of the City. Consultant shall comply with Minnesota Statute § 471.425. Consultant must pay subcontractor for all undisputed services provided by subcontractor within ten days of Consultant's receipt of payment from City. Consultant must pay interest of 1.5 percent 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 \$100 or more is \$10.

12. CONTROLLING LAW/VENUE. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. In the event of litigation, the exclusive venue shall be in the District Court of the State of Minnesota for Hennepin County

13. MINNESOTA GOVERNMENT DATA PRACTICES ACT. Consultant must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to (1) all data provided by the City pursuant to this Agreement, and (2) all data, created, collected, received, stored, used, maintained, or disseminated by Consultant pursuant to this Agreement. 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 Consultant receives a request to release data, Consultant must immediately notify City. City will give Consultant instructions concerning the release of the data to the requesting party before the data is released. Consultant agrees to defend, indemnify, and hold City, its officials, officers, agents, employees, and volunteers harmless from any claims resulting from Consultant's officers', agents', city's, 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.

14. COPYRIGHT. Consultant shall defend actions or claims charging infringement of any copyright or software license by reason of the use or adoption of any software, designs, drawings or specifications supplied by it, and it shall hold harmless the City from loss or damage resulting therefrom.

15. PATENTED DEVICES, MATERIALS AND PROCESSES. If the Contract requires, or the Consultant desires, the use of any design, devise, material or process covered by letters, patent or copyright, trademark or trade name, the Consultant shall provide for such use by suitable legal agreement with the patentee or owner and a copy of said agreement shall be filed with the City. If no such agreement is made or filed as noted, the Consultant shall indemnify and hold harmless the City from any and all claims for infringement by reason of the use of any such patented designed, device, material or process, or any trademark or trade name or copyright in connection with the services agreed to be performed under the Contract, and shall indemnify and defend the City for any costs, liability, expenses and attorney's fees that result from any such infringement.

16. ASSIGNMENT. Neither party shall assign this Agreement, or any interest arising herein, without the written consent of the other party.

17. WAIVER. Any waiver by either party of a breach of any provisions of this Agreement shall not affect, in any respect, the validity of the remainder of this Agreement.

18. 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 shall be valid only when expressed in writing and duly signed by the parties, unless otherwise provided herein.

19. TERMINATION. This Agreement may be terminated by the City for any reason or for convenience upon written notice to the Consultant. In the event of termination, the City shall pay the Consultant for completed work.

Dated: _____, 2019

CITY OF EDINA

BY: _____
James Hovland, Mayor

BY: _____
Scott Neal, City Manager

Dated: _____, 2019

BY: _____
Name: _____
Title: _____