

**WSB & ASSOCIATES, INC.  
PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement (the "Agreement") is made as of the \_\_\_\_\_ day of February 2022, by and between the City of Princeton with an address of 705 North 2<sup>nd</sup> Street, Princeton, Minnesota 55371 ("Client"), and WSB & Associates, Inc. dba WSB with offices located at 701 Xenia Avenue South, Suite 300, Minneapolis, Minnesota 55416 ("Consultant").

Client and Consultant, for the consideration enumerated herein, do hereby agree as follows:

**SECTION 1 / GENERAL CONTRACT TERMS AND CONDITIONS**

The General Contract Terms and Conditions shall be as set forth in Exhibit A.

**SECTION 2 / SCOPE OF WORK**

The scope of work to be performed by Consultant is set forth in Exhibit B. The work and services to be performed hereunder and described in Exhibit B shall be referred to herein and in the General Contract Provisions as the "Project".

**SECTION 3 / COMPENSATION**

The amount, method and timing for payment to the Consultant shall be in accordance with Exhibit C.

**SECTION 4 / WORK SCHEDULE**

The preliminary schedule of the work, if required, is set forth in Exhibit B.

**SECTION 5 / CLIENT RESPONSIBILITIES**

The client responsibilities are set out in Exhibit F.

**SECTION 6 / SPECIAL CONDITIONS**

Special conditions, if any, are as set forth in Exhibit G.

**SECTION 7 / EXHIBITS**

The following Exhibits are attached hereto and made a part of this Agreement:

- Exhibit A General Contract Provisions
- Exhibit B Scope of Work
- Exhibit C Compensation
- Exhibit D Insurance Schedule
- Exhibit E Rate Schedule
- Exhibit F Client Responsibilities
- ~~Exhibit G Special Conditions~~

All references to the "Agreement" in this Document and the Exhibits shall mean this Agreement and all of the Exhibits as one integrated Agreement.

**SECTION 8 / ACCEPTANCE OF AGREEMENT**

Upon written acceptance of this Agreement by Client, Consultant shall commence the work. The undersigned hereby accept the terms and conditions of this agreement and Consultant is hereby authorized to perform the services described herein.

**CLIENT: CITY OF PRINCETON**  
ADDRESS: 705 NORTH 2<sup>ND</sup> STREET  
PRINCETON, MN 55371

**CONSULTANT: WSB & ASSOCIATES, INC.**  
**dba WSB**  
ADDRESS: 701 XENIA AVENUE SOUTH  
SUITE 300  
MINNEAPOLIS, MN 55416

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

**EXHIBIT A  
GENERAL CONTRACT PROVISIONS**

**ARTICLE 1 – PERFORMANCE OF THE WORK**

Consultant shall perform the services under this Agreement in accordance with the care and skill ordinarily exercised by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with its services.

**ARTICLE 2 – ADDITIONAL SERVICES**

If the Client requests that the Consultant perform any services which are beyond the scope as set forth in the Agreement, or if changed or unforeseen conditions require the Consultant to perform services outside of the original scope, then, Consultant shall promptly notify the Client of cause and nature of the additional services required. Upon notification, Consultant shall be entitled to an equitable adjustment in both compensation and time to perform.

**ARTICLE 3 – SCHEDULE**

Unless specific periods of time or dates for providing services are specified in a separate Exhibit, Consultant's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services. The Client agrees that Consultant is not responsible for damages arising directly or indirectly from any delays for causes beyond Consultant's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions, or other natural disasters or acts of God; fires, riots, war or other emergencies; any action or failure to act in a timely manner by any government agency; actions or failure to act by the Client or the Client's contractor or consultants; or discovery of any hazardous substance or differing site conditions. If the delays outside of Consultant's control increase the cost or the time required by Consultant to perform its services in accordance with professional skill and care, then Consultant shall be entitled to a reasonable adjustment in schedule and compensation.

**ARTICLE 4 – CONSTRUCTION OBSERVATION**

If requested by Client, Consultant shall visit the project during construction to become familiar with the progress and quality of the contractors' work and to determine if the work is proceeding, in general, in accordance with plans, specifications or other contract documents prepared by Consultant for the Client. The Client has not retained the Consultant to make detailed inspections or to provide exhaustive or continuous project review and observation services.

Consultant neither guarantees the performance of any Contractor retained by Client nor assumes responsibility for any Contractor's failure to furnish and perform the work in accordance with the construction documents. Client acknowledges Consultant will not direct, supervise or control the work of contractors or their subcontractors, nor shall Consultant have authority over or responsibility for the contractors' means, methods, or procedures of construction. Consultant's services do not include review or evaluation of the Client's, contractor's or subcontractor's safety measures, or job site safety. Job Site Safety shall be the sole responsibility of the contractor who is performing the work.

For Client-observed projects, the Consultant shall be entitled to rely upon and accept representations of the Client's observer. If the Client desires more extensive project observation or full-time project representation, the Client shall request such services be provided by the Consultant as an Additional Service. Consultant and Client shall then enter into a Supplemental Agreement detailing the terms and conditions of the requested project observation.

**ARTICLE 5 – OPINIONS OF PROBABLE COST**

Opinions, if any, of probable cost, construction cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs, collectively referred to as "Cost Estimates," provided for are made or to be made on the basis of the Consultant's experience and qualifications and represent the Consultant's best judgment as an experienced and qualified professional design firm. The parties acknowledge, however, that the Consultant does not

have control over the cost of labor, material, equipment or services furnished by others or over market conditions or contractor's methods of determining their prices, and any evaluation of any facility to be constructed or acquired, or work to be performed must, of necessity, be viewed as simply preliminary. Accordingly, the Consultant and Client agree that the proposals, bids or actual costs may vary from opinions, evaluations or studies submitted by the Consultant and that Consultant assumes no responsibility for the accuracy of opinions of Cost Estimates and Client expressly waives any claims related to the accuracy of opinions of Cost Estimates. If Client wishes greater assurance as to Cost Estimates, Client shall employ an independent cost estimator as part of its Project responsibilities.

#### **ARTICLE 6 – REUSE AND DISPOSITION OF INSTRUMENTS OF SERVICE**

All documents, including reports, drawings, calculations, specifications, CADD materials, computers software or hardware or other work product prepared by Consultant pursuant to this Agreement are Consultant's Instruments of Service and Consultant retains all ownership interests in Instruments of Service, including copyrights. The Instruments of Service are not intended or represented to be suitable for reuse by the Client or others on extensions of the Project or on any other project. Copies of documents that may be relied upon by Client are limited to the printed copies (also known as hard copies) that are signed or sealed by Consultant. Files in electronic format furnished to Client are only for convenience of Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. Consultant makes no representations as to long term compatibility, usability or readability of electronic files.

If requested, at the time of completion or termination of the work, the Consultant may make available to the Client the Instruments of Service upon (i) payment of amounts due and owing for work performed and expenses incurred to the date and time of termination, and (ii) fulfillment of the Client's obligations under this Agreement. Any use or re-use of such Instruments of Service by the Client or others without written consent, verification or adaptation by the Consultant except for the specific purpose intended will be at the Client's risk and full legal responsibility and Client expressly releases all claims against Consultant arising from re-use of the Instruments of Service without Consultant's written consent, verification or adaptation.

The Client will, to the fullest extent permitted by law, indemnify and hold the Consultant harmless from any claim, liability or cost (including reasonable attorneys' fees, and defense costs) arising or allegedly arising out of any unauthorized reuse or modification of these Instruments of Service by the Client or any person or entity that acquires or obtains the reports, plans and specifications from or through the Client without the written authorization of the Consultant. Under no circumstances shall transfer of Instruments of Service be deemed a sale by Consultant, and Consultant makes no warranties, either expressed or implied, of merchantability and fitness for any particular purpose. Consultant shall be entitled to compensation for any consent, verification or adaption of the Instruments of Service for extensions of the Project or any other project.

#### **ARTICLE 7 – PAYMENTS**

Payment to Consultant shall be on a lump sum or hourly basis as set out in the Agreement. Consultant is entitled to payment of amounts due plus reimbursable expenses. Client will pay the balance stated on the invoice unless Client notifies Consultant in writing of any disputed items within fifteen (15) days from the date of invoice. In the event of any dispute, Client will pay all undisputed amounts in the ordinary course, and the Parties will endeavor to resolve all disputed items. All accounts unpaid after thirty (30) days from the date of original invoice shall be subject to a service charge of 1-1/2% per month, or the maximum amount authorized by law, whichever is less. Consultant reserves the right to retain instruments of service until all invoices are paid in full. Consultant will not be liable for any claims of loss, delay, or damage by Client for reason of withholding services or instruments of service until all invoices are paid in full. Consultant shall be entitled to recover all reasonable costs and disbursements, including reasonable attorney fees, incurred in connection with collecting amounts owed by Client. In addition, Consultant may, after giving seven (7) days' written notice to Client, suspend services under this Agreement until it receives full payment for all amounts then due for services, expenses and charges. Payment methods, expenses and rates may be more fully described in Exhibit C and Exhibit E.

## **ARTICLE 8 – SUBMITTALS AND PAY APPLICATIONS**

If the Scope of Work includes the Consultant reviewing and certifying the amounts due the Contractor, the Consultant's certification for payment shall constitute a representation to the Client, that to the best of the Consultant's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in general accordance with the Documents issued by the Consultant. The issuance of a Certificate for Payment shall not be a representation that the Consultant has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Client to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. Contractor shall remain exclusively responsible for its Work.

If the Scope of Work includes Consultant's review and approval of submittals from the Contractor, such review shall be for the limited purpose of checking for conformance with the information given and the design concept. The review of submittals is not intended to determine the accuracy of all components, the accuracy of the quantities or dimensions, or the safety procedures, means or methods to be used in construction, and those responsibilities remain exclusively with the Client's contractor.

## **ARTICLE 9 – HAZARDOUS MATERIALS**

Notwithstanding the Scope of Services to be provided pursuant to this Agreement, it is understood and agreed that Consultant is not a user, handler, generator, operator, treater, arranger, storer, transporter, or disposer of hazardous or toxic substances, pollutants or contaminants as any of the foregoing items are defined by Federal, State and/or local law, rules or regulations, now existing or hereafter amended, and which may be found or identified on any Project which is undertaken by Consultant.

The Client agrees to indemnify Consultant and its officers, subconsultant(s), employees and agents from and against any and all claims, losses, damages, liability and costs, including but not limited to costs of defense, arising out of or in any way connected with, the presence, discharge, release, or escape of hazardous or toxic substances, pollutants or contaminants of any kind, except that this clause shall not apply to such liability as may arise out of Consultant's sole negligence in the performance of services under this Agreement arising from or relating to hazardous or toxic substances, pollutants, or contaminants specifically identified by the Client and included within Consultant's services to be provided under this Agreement.

## **ARTICLE 10 – INSURANCE**

Consultant has procured general and professional liability insurance. On request, Consultant will furnish client with a certificate of insurance detailing the precise nature and type of insurance, along with applicable policy limits. Additional Insurance requirements are listed in Exhibit D.

## **ARTICLE 11 – TERMINATION OR SUSPENSION**

If Consultant's services are delayed or suspended in whole or in part by Client, or if Consultant's services are delayed by actions or inactions of others for more than sixty (60) days through no fault of Consultant, Consultant shall be entitled to either terminate its agreement upon seven (7) days written notice or, at its option, accept an equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect reasonable costs incurred by Consultant in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

This Agreement may be terminated by either party upon seven (7) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination. In the event of termination Consultant shall be compensated for services performed prior to termination date, including charges for expenses and equipment costs then due and all termination expenses.

This Agreement may be terminated by either party upon thirty (30) days' written notice without cause. Consultant shall upon termination only be entitled to payment for the work performed up to the Date of termination. In the event of termination, copies of plans, reports, specifications, electronic drawing/data

files (CADD), field data, notes, and other documents whether written, printed or recorded on any medium whatsoever, finished or unfinished, prepared by the Consultant pursuant to this Agreement and pertaining to the work or to the Project, (hereinafter "Instruments of Service"), shall be made available to the Client upon payment of all amounts due as of the date of termination. All provisions of this Agreement allocating responsibility or liability between the Client and Consultant shall survive the completion of the services hereunder and/or the termination of this Agreement.

#### **ARTICLE 12 – INDEMNIFICATION**

The Consultant agrees to indemnify and hold the Client harmless from any damage, liability or cost to the extent caused by the Consultant's negligence or willful misconduct.

The Client agrees to indemnify and hold the Consultant harmless from any damage, liability or cost to the extent caused by the Client's negligence or willful misconduct.

#### **ARTICLE 13 – WAIVER OF CONSEQUENTIAL DAMAGES**

The Consultant and Client waive claims against each other for consequential damages arising out of or relating to this contract. This mutual waiver includes damages incurred by the Client for rental expenses, for loss of use, loss of income, lost profit, project delays, financing, business and reputation and for loss of management or employee productivity or of the services of such persons; and (2) Damages incurred by the Consultant for principal office expenses including the compensation for personnel stationed there, for losses of financing, business and reputation and for loss of profit except anticipated profit arising directly from the Work. The Consultant and Client further agree to obtain a similar waiver from each of their contractors, subcontractors or suppliers.

#### **ARTICLE 14 – WAIVER OF CLAIMS FOR PERSONAL LIABILITY**

It is intended by the parties to this Agreement that Consultant's services shall not subject Consultant's employees, officers or directors to any personal legal exposure for the risks associated with this Agreement. Therefore, and notwithstanding anything to the contrary contained herein, the Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against Consultant, and not against any of Consultant's individual employees, officers or directors.

#### **ARTICLE 15 – ASSIGNMENT**

Neither Party to this Agreement shall assign its interest in this agreement, any proceeds due under the Agreement nor any claims that may arise from services or payments due under the Agreement without the written consent of the other Party. Any assignment in violation of this provision shall be null and void. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Consultant or Client. This Agreement is for the exclusive benefit of Consultant and Client and there are no other intended beneficiaries of this Agreement.

#### **ARTICLE 16 – CONFLICT RESOLUTION**

In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the Client and Consultant agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation as a precondition to any formal legal proceedings.

#### **ARTICLE 17 – CONFIDENTIALITY**

The Consultant agrees to keep confidential and not to disclose to any person or entity, other than the Consultant's employees, subconsultants and the general contractor and subcontractors, if appropriate, any data and information furnished to the Consultant and marked CONFIDENTIAL by the Client. These provisions shall not apply to information in whatever form that comes into the public domain, nor shall it restrict the Consultant from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or if it is reasonably necessary for the Consultant to complete services under the Agreement or defend itself from any suit or claim.

**ARTICLE 18 – AVAILABLE INSURANCE PROCEEDS AND LIMITATION OF LIABILITY**

Consultant maintains professional liability insurance with a liability limit of not less than \$2,000,000 per claim. The Consultant's total liability to Client shall not exceed the total available insurance policy limits per claim available to Consultant under its professional liability insurance policy. Client hereby agrees that to the fullest extent permitted by law, the Consultant's total liability to Client for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to or arising from this Agreement from any cause or causes including, but not limited to, Consultant's negligence, errors, omissions, strict liability, breach of contract or breach of warranty (Client's Claims) shall not exceed the total policy limits available to Consultant under its professional liability insurance policy for settlement or satisfaction of Client's Claims under the terms and conditions of the Consultant's professional liability insurance policy applicable hereto.

Notwithstanding the language above, Client agrees that with regard to any claim arising from or relating to Consultant's provision of geotechnical engineering services, construction materials testing, special inspections, and/or environmental engineering services, including but not limited to environmental site assessments, that Consultant's liability for any claims asserted by or through Client shall be limited to \$50,000.

Client and Consultant each further agree that neither will be responsible for any incidental, indirect, or consequential damages (including loss of use or loss of profits) sustained by the other, its successors or assigns. This mutual waiver shall apply even if the damages were foreseeable and regardless of the theory of recovery plead or asserted.

**ARTICLE 19 – CONTROLLING LAW**

This Agreement is to be governed by the laws of the State of Minnesota. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, including but not limited to claims for negligence or breach of warranty, that is not settled by nonbinding mediation shall be settled by the law of the State of Minnesota.

**ARTICLE 20 – LOCATION OF UNDERGROUND IMPROVEMENTS**

Where requested by Client, Consultant will perform customary research to assist Client in locating and identifying subterranean structures or utilities. However, Consultant may reasonably rely on information from the Client and information provided by local utilities related to structures or utilities and will not be liable for damages incurred where Consultant has complied with the standard of care and acted in reliance on that information. The Client agrees to waive all claims and causes of action against the Consultant for claims by Client or its contractors relating to the identification, removal, relocation, or restoration of utilities, or damages to underground improvements resulting from subsurface penetration locations established by the Consultant.

**EXHIBIT B  
SCOPE OF WORK  
GENERAL SCOPE OF SERVICES**

**ARTICLE B.1 – GENERAL SERVICES**

The Client intends to retain the Consultant to provide general engineering and other related professional services from time to time subject to further clarification and refinement on a project-by-project basis. Typical general services (not all-inclusive) are listed below.

- B.1.1 General Engineering and Project Management. Services include capital planning, policy updates, budgeting, and assistance with short and long-range street and utility planning and Public Works maintenance issues.
- B.1.2 Reports and Correspondence. Preparation of engineering reports and technical correspondence including: determination of need, preparation, review for compliance with City ordinances and policies, minor site plan reviews, and review of reports prepared by other agencies.
- B.1.3 Meeting Attendance. Consultant as approved will attend the following meetings:
  - City Council Meetings
  - Planning Commission
  - Park Commission
  - Public Works Committee
  - Internal Staff Meetings
  - Public Meetings
  - Developer Meetings
- B.1.4 Liaison Support. Respond as liaison for engineering activities related to adjacent municipalities and regulatory agencies.
- B.1.5 Staff and Resident Support. Respond to staff and resident engineering inquiries and requests, including public presentations, evaluation of specific issues, and recommendations to staff and City Council.
- B.1.6 Construction Services. Services including monitoring of City and private projects, review of construction plans, and construction staking and surveying.
- B.1.7 Document Library. Establish and maintain a library of permits and applications, contract documents, and other items as needed.
- B.1.8 Other services as requested.

**ARTICLE B.2 - PRELIMINARY REPORT/STUDY PHASE**

Subject to further clarification and refinement on a project-by-project basis, the Consultant shall in proper time and sequence:

- B.2.1 Consult with the Client representative to determine the requirements of the project, review available data, attend necessary conferences, and be available for general consultation.
- B.2.2 Advise the Client as to the necessity of the Client's providing or obtaining from others, data or services and assist the Client in obtaining such data and services.
- B.2.3 Identify and analyze requirements of governmental authorities having jurisdiction to

approve the design of the project and participate in consultations with such authorities.

- B.2.4 Make such preliminary studies, layouts, or field surveys to verify and supplement existing elevation and topographic information and preliminary cost estimates to clearly identify potential construction or financing problems.
- B.2.5 Assist the Client in obtaining all required subsurface investigations as required for the preparation of the feasibility report.
- B.2.6 Prepare a feasibility report on the preliminary engineering study of the project in sufficient detail to indicate the problems involved.
- B.2.7 The report shall include the desired phased program, if required, and the appropriate alternate solutions. The report will also include schematic layouts, sketches, conceptual design criteria with appropriate exhibits to indicate the considerations involved (including applicable requirements of governmental authorities having jurisdiction over the project), preliminary estimate of project cost, typical examples of proposed assessments preliminary identification of right-of-way and easement requirements, and the Consultant's conclusions and recommendations.
- B.2.8 Furnish copies of the feasibility report documents and review the feasibility report with Client staff.
- B.2.9 If required, the Consultant shall present the feasibility report to the proper reviewing agencies and to the City Council. The Consultant shall attend the public hearing for the project.

### **ARTICLE B.3 – FINAL DESIGN PHASE**

Subject to further clarification and refinement on a project-by-project basis, the Consultant shall, in proper time and sequence:

- B.3.1 On the basis of the accepted preliminary design documents and the current opinion of probable cost, prepare contract documents consisting of final drawings and specifications to show and describe the scope, extent, and character of the work to be furnished and performed by Contractor(s) including Advertisement for Bids, Instructions to Bidders, Bid Form, Form of Agreement, Performance and Payment Bond Form, General Conditions, Special Conditions, and Technical Specifications.
- B.3.2 Provide technical criteria, written descriptions and design data for use in filing applications for routine permits or obtaining approvals of such governmental authorities as have jurisdiction to approve the design of the project and assist the Client in consultations with appropriate authorities. The Consultant shall prepare and submit all permit applications to the appropriate agencies. The Client shall be responsible for all permit fees.
- B.3.3 Advise the Client of any adjustments to the latest opinion of probable cost caused by changes in extent or design requirements of the project and furnish a current opinion of probable cost based on the drawings and specifications.
- B.3.4 Prepare for review and approval by the Client, its legal counsel and other advisors contract agreement forms, general conditions, supplementary conditions, bid forms, advertisement for bid and instructions to bidders, and assist in the preparation of other related documents.
- B.3.5 Attend necessary conferences and be available for general consultation.
- B.3.6 Furnish three (3) copies of the above documents and of the drawings and specifications



and present and review them in person with the Client, along with completing a plans-in-hand site inspection. Make minor revisions and adjustments as required following review by the Client.

#### **ARTICLE B.4 – BIDDING PHASE**

Subject to further clarification and refinement on a project-by-project basis, the Consultant shall in proper time and sequence:

- B.4.1 Furnish plans and specifications for agency review and furnish copies to the Client for bidding and construction purposes as a part of this Contract.
- B.4.2 Issue addenda as appropriate to interpret, clarify, or expand the bidding documents.
- B.4.3 Assist the Client in obtaining and evaluating bids and awarding contracts for the construction of the project.
- B.4.4 Consult with and advise the Client as to the acceptability of subcontractors, suppliers, and other persons and organizations proposed by the prime contractor(s) (herein called "Contractor(s)") for the portions of the work as to which such acceptability is required by the bidding documents.
- B.4.5 Consult with and advise the Client concerning and determining the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution prior to the award of contracts is allowed by the bidding documents.
- B.4.6 Attend bid opening and prepare bid tabulation sheets.

#### **ARTICLE B.5 – CONSTRUCTION PHASE**

Subject to further clarification and refinement on a project-by-project basis, the Consultant shall:

- B.5.1 Consult with and advise the Client and act as the Client's representative as provided in the contract documents, which may not be modified to affect Consultant's responsibilities except by written agreement signed by the Client and the Consultant.
- B.5.2 Conduct pre-construction conference to be attended by the Contractor, Client, and others as may be requested by the Client.
- B.5.3 Make visits to the site at intervals appropriate to the various stages of construction to observe as an experienced and qualified design professional the progress and quality of the executed work of the Contractor(s), and to determine if such work is proceeding in accordance with the contract documents. During such visits and on the basis of the on-site observations, the Consultant will keep the Client informed of the progress of the work and will endeavor to identify for the Client defects and deficiencies in the work of the Contractor(s). This agreement does not require the Consultant to evaluate contractor's safety methods. It is agreed that safety matters are Contractor's responsibility, and that the Consultant shall be responsible only for the acts or omissions of its own employees. The Consultant may disapprove work as failing to conform to the contract documents. The Consultant shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work. The Consultant shall be obligated, however, to disclose known dangerous circumstances to the Client.

- B.5.4 Review samples, schedules, shop drawings, the result of tests and inspections, and other data which the Contractor is required to submit, but only for the conformance with the design concept of the project and compliance with the information given in the contract documents, (but such review shall not extend to means, methods, sequences, techniques, or procedures of construction or to safety precautions and programs incidental thereto). The Consultant shall receive and review (for general content as required by the specification), maintenance and operating instructions, schedules, guarantees, bonds, and certificates of inspection which are to be assembled by the Contractor in accordance with the contract documents.
- B.5.5 Issue all instructions of the Client to Contractor; issue necessary interpretations and clarifications of the contract documents and in connection therewith prepare change orders as required for the Client's approval and have authority, as the Client's representative, to require special inspection or testing of the work.
- B.5.6 Review the Contractor's application for payment, determine the amount owing the Contractor and make recommendations to the Client regarding the payment thereof.

The Consultant's recommendations are based on on-site observations as an experienced and qualified design professional. The recommendations by the Consultant constitute a representation to the Client that to the best of their knowledge, information and belief, the work has progressed to the point indicated on said application and the quality of work is in accordance with the contract documents, subject to the results of any subsequent test called for by the contract documents and any qualifications stated in his recommendations.

- B.5.7 Conduct, in the presence of the designated representative, a site visit to determine if the project is substantially complete and conduct a final site visit to determine if the work has been completed in accordance with the contract documents. Such site visits may include representatives from the Client and/or other involved governmental agencies. If the Contractor has fulfilled all of his obligations, the Consultant shall give written notice to the Client and the Contractor that the work is acceptable for final payment.
- B.5.8 The Consultant shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work. The Consultant shall be obligated, however, to disclose known dangerous circumstances to the Client.
- B.5.9 The Consultant shall furnish the Client with a list detailing final quantities and costs in a letter stating to the best knowledge of the Consultant that the work is in compliance with the plans, specifications and change orders.

#### **ARTICLE B.6 – SCOPE OF SERVICES FOR PRIVATE DEVELOPMENT RELATED PROJECTS**

Subject to further clarification and refinement on a project-by-project basis, the Consultant shall:

- B.6.1 Following written notice from the City Administrator or their designee, review the platting, concept, design, plans and specifications for each Development Project to determine that they comply with those written City Standards that have been approved by the City Council for such projects. Require the developer or their Consultant to submit the plans to appropriate utility companies and other concerned agencies for their review, concurrence and issuance of permits as required. Upon completion of the review, submit a written report to the City Administrator or their designee to assist City staff and the City Council in approving or disapproving the proposed Development Project.
- B.6.2 Submit a written progress report to the City Administrator or their designee for each Development Project under construction. The report should include schedule and progress information.

- B.6.3 Submit a written report to assist the City Administrator or their designee in determining that the project has been satisfactorily completed in accordance with written City Standards.

**ARTICLE B.7 – SCOPE OF ADDITIONAL SERVICES**

If authorized in writing by the Client, the Consultant shall furnish additional services of the following type:

- B.7.1 Providing services of professional subconsultants as required for a particular project.
- B.7.2 Providing the type of surveying or related engineering services necessary for preparation of permanent and/or temporary easements, boundary surveys, or plat documents.
- B.7.3 Review of developer's plats and concept plans. Provide assistance to the developer in preparing a plat for improvement projects.
- B.7.4 Additional services in connection with the project not otherwise provided for in this Agreement.

**EXHIBIT C  
COMPENSATION**

The Client shall pay the Consultant for Basic Services, rendered on the basis of a negotiated lump sum fee, on an hourly basis, or as a percentage of the construction cost, as mutually agreed to and deemed fair and reasonable for the particular work to be performed. The method of payment will be determined at the start of the project.

Consultant's current fee schedule with hourly rates is attached to this contract as Exhibit E. The rate schedule is for 2022; and will remain in effect for services rendered through December 31, 2022.

The fee schedule will be evaluated on an annual basis by the Consultant and adjusted to account for inflation and other factors. The Consultant will submit a revised fee schedule prior to December 31 on an annual basis.

The following represents the compensation terms:

**ARTICLE C.1 – CITY COUNCIL AND COMMISSION MEETINGS**

Consultant will be compensated for the City Engineer's attendance \$100 per City Council or Commission meeting. City Engineer's attendance at City Council or Commission for project or development related activities will generally be billed against those items. Additional staff attendance at City Council or Commission meetings will be incorporated into project budgets or be billed on an hourly basis in accordance with the current fee schedule should the Client request this.

**ARTICLE C.2 – MINNESOTA POLLUTION CONTROL AGENCY (MPCA) REPORTING**

Consultant will be compensated for the annual preparation and submittal of reporting requirements to the MPCA for the City's Wastewater Treatment Plant per the current fee schedule at the time of service.

**ARTICLE C.3 – DATALINK SERVICE**

Consultant will be compensated \$3,600 annually for DataLink hosting and maintenance.

**ARTICLE C.4 – PROJECTS**

Compensation for specific studies or the design and construction of improvements will be determined on a project-by-project basis. The proposed compensation will be detailed within a written letter proposal submitted by the Consultant to the Client prior to beginning work. If the scope of the project changes after it is authorized, the Consultant will discuss it with the Client and determine an appropriate fee modification. Typically, project fees are billed either as lump sum, hourly, or a percentage of the construction cost.

**ARTICLE C.5 – DEVELOPMENT/APPLICATION REVIEW**

Services related to development review or review of other applications, will be completed by the Consultant on an hourly basis as needed. For items such as traffic studies, environmental reviews, and other more-defined items related to development review, the Consultant will establish a scope and fees for ease of tracking against escrow account balances.

**ARTICLE C.6 – INDEPENDENT CONSULTANTS**

The cost of services performed by independent consultants or agencies for environmental evaluation, soil testing, laboratory services, or other services will be billed to the Client at the Consultant's cost with no markup.

**ARTICLE C.7 – PAYMENT FOR REVISIONS OR OTHER WORK**

If the Client directs that revisions be made to the plans and specifications following approval of the plans and specifications by the Client or if the City Council directs Consultant to perform other work, the Consultant shall be compensated for the cost of such revisions at the hourly fee. The Consultant shall be given additional compensation when additions consist of enlargement or extension of the project. Additional compensation will be on the same basis as agreed to for the original plans and specifications.

#### **ARTICLE C.8 – RECEIPT OF PAYMENT**

In order to receive payment for services, the Consultant shall submit monthly invoices describing in detail the services performed in accordance with this contract. Separate statements shall be submitted for each project or a detailed breakdown shall be furnished showing the distribution of charges to each project. The Client shall pay Consultant upon receipt of each monthly invoice. For hourly and percentage of construction cost contracts, the personnel who worked on the project shall be included. Construction services shall include daily reports detailing the time for each day that the individual was working on the project. All invoices will include the Client representative who authorized the work.

#### **ARTICLE C.9 – EXPENSES**

Consultant shall be reimbursed for reasonable expenses related to the scope of services of this contract and/or individual projects. The Consultant shall be reimbursed for the actual cost of the expenses, without markup. Typical expenses include, but are not limited to, the following:

- Permit fees
- Plan and specification reproduction fees
- Costs related to the development of project photos

The following shall not be considered reimbursable expenses:

- Mileage
- Mobile phone usage
- Computer equipment time
- Preparation and reproduction of common correspondence
- Mailing

**WSB & ASSOCIATES, INC.**

**EXHIBIT D  
INSURANCE SCHEDULE**

**GENERAL LIABILITY**

Broker:	Marsh & McLennan Agency, LLC	
Type of Insurance:	Commercial General Liability	
Coverage:	General Aggregate	\$4,000,000
	Products-Comp/Ops Aggregate	\$2,000,000
	Personal & Advertising Injury	\$2,000,000
	Each Occurrence	\$2,000,000
	Damage to Rented Premises	\$100,000
	Medical Expenses (Any one person)	\$25,000

**AUTOMOBILE LIABILITY**

Broker:	Marsh & McLennan Agency, LLC	
Type of Insurance:	Any Auto	
Coverage:	Combined Single Limit	\$2,000,000

**UMBRELLA**

Broker:	Marsh & McLennan Agency, LLC	
Coverage:	Each Occurrence/Aggregate	\$10,000,000

**WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY**

Broker:	Marsh & McLennan Agency, LLC	
Coverage:	<u>Statutory</u>	
	Each Accident	\$ 1,000,000
	Disease-Policy Limit	\$ 1,000,000
	Disease-Each Employee	\$ 1,000,000

**PROFESSIONAL LIABILITY**

Broker:	H. Robert Anderson and Associates, Inc.	
Coverage:	Each Claim	\$ 5,000,000
	Annual Aggregate	\$ 10,000,000

Certificates of Insurance will be provided upon request.

## 2022 Rate Schedule



	Billing Rate/Hour
PRINCIPAL   ASSOCIATE	\$162 - \$206
SR. PROJECT MANAGER   SR. PROJECT ENGINEER	\$162 - \$206
PROJECT MANAGER	\$143 - \$159
PROJECT ENGINEER   GRADUATE ENGINEER	\$97 - \$158
ENGINEERING TECHNICIAN   ENGINEERING SPECIALIST	\$62 - \$154
LANDSCAPE ARCHITECT   SR. LANDSCAPE ARCHITECT	\$73 - \$154
ENVIRONMENTAL SCIENTIST   SR. ENVIRONMENTAL SCIENTIST	\$60 - \$151
PLANNER   SR. PLANNER	\$75 - \$159
GIS SPECIALIST   SR. GIS SPECIALIST	\$72 - \$159
CONSTRUCTION OBSERVER	\$98 - \$128
SURVEY	
One-Person Crew	\$159
Two-Person Crew	\$207
OFFICE TECHNICIAN	\$56 - \$97

Costs associated with word processing, cell phones, reproduction of common correspondence, and mailing are included in the above hourly rates. Vehicle mileage is included in our billing rates [excluding geotechnical and construction materials testing (CMT) service rates]. Mileage can be charged separately, if specifically outlined by contract. | Reimbursable expenses include costs associated with plan, specification, and report reproduction; permit fees; delivery costs; etc. | Multiple rates illustrate the varying levels of experience within each category. | Rate Schedule is adjusted annually.

**EXHIBIT F  
CLIENT RESPONSIBILITIES**

The Client's responsibilities related to the services to be provided by Consultant are generally as set out below. These responsibilities can be modified through Supplemental Agreements.

In order to permit the Consultant to perform the services required under this Agreement, the Client shall, in proper time and sequence and where appropriate to the Project, at no expense to the Consultant:

**ARTICLE F.1**

Provide available information as to its requirements for the Project, including copies of any design and construction standards and comprehensive plans which the Client desires Consultant to follow or incorporate into its work.

**ARTICLE F.2**

Guarantee access to and make all provisions for the Consultant to enter upon public and private lands to enable the Consultant to perform its work under this Agreement.

**ARTICLE F.3**

Provide such legal, accounting and insurance counseling services as may be required for this Project.

**ARTICLE F.4**

Notify the Consultant whenever the Client observes or otherwise becomes aware of any defect in the Project construction or design.

**ARTICLE F.5**

Designate a Client Representative with authority to transmit and receive instructions and information, interpret and define the Client's policies with respect to services rendered by the Consultant, and authority to make decisions as required for Consultant to complete services required under this Agreement.

**ARTICLE F.6**

Act promptly to approve all pay requests, Supplemental Agreements, or request for information by Consultant as set out below.

**ARTICLE F.7**

Furnish data (and professional interpretations thereof) prepared by or services performed by others, including where applicable, but not limited to, previous reports, core borings, sub-surface explorations, hydrographic and hydrogeologic surveys, laboratory tests and inspection of samples, materials and equipment; appropriate professional interpretations of the foregoing data; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic and utility surveys; property description; zoning, deed and other land use restrictions; and other special data.

**ARTICLE F.8**

Require all Utilities with facilities in the Client's Right of Way to Locate and mark said utilities upon request, Relocate and/or protect said utilities as determined necessary to accommodate work of the Project, submit a schedule of the necessary relocation/protection activities to the Client for review and comply with agreed upon schedule.

**ARTICLE F.9**

Review all reports, sketches, drawings, specifications and other documents prepared and presented by the Consultant, obtain advice of legal, accounting and insurance counselors or others as Client deems necessary for such examinations and render in writing decisions pertaining thereto.



**ARTICLE F.10**

Where appropriate, endeavor to identify, remove and/or encapsulate asbestos products or materials or pollutants located in the project area prior to accomplishment by the Consultant of any work on the Project.

**ARTICLE F.11**

Provide record drawings and specifications for all existing physical plants of facilities which are pertinent to the Project.

**ARTICLE F.12**

Provide the foregoing in a manner sufficiently timely so as not to delay the performance by the Consultant of the services in accordance with the Contract Documents.

**ARTICLE F.13**

Consultant shall be entitled to rely on the accuracy and completeness of information or services furnished by the Client or others employed by the Client. Consultant shall endeavor to verify the information provided and shall promptly notify the Client if the Consultant discovers that any information or services furnished by the Client is in error or is inadequate for its purpose.

**ARTICLE F.14**

Client shall bear all costs incidental to compliance with the requirements of this article.