

**AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES RELATED TO  
THE UNIVERSITY BOULEVARD FLOOD MITIGATION: PROJECT SCOPING PLAN**

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_ by and between the City of Clive, Iowa (“City”) and \_\_\_\_\_, an \_\_\_\_\_ company (“Consultant”).

**WITNESSETH**

**WHEREAS**, the City desires to engage the Consultant to render certain agreed upon professional consulting services for the University Boulevard Flood Mitigation: Project Scoping Plan (“Project”), and the Consultant is willing to provide such services, all upon the terms set forth below.

**NOW THEREFORE**, in consideration of these premises, the parties hereto agree as follows:

1. **Scope of Services:** The Consultant will undertake all of the work assigned by the City relating to the attached Exhibit A: Scope of Services.
2. **Schedule:** The Consultant’s services shall commence upon execution of this Agreement by both parties. Once approved by the City, the Consultant shall complete the tasks within the generally provided schedule identified in the Scope of Services and in no event later than \_\_\_\_\_. City agrees that the Consultant is not responsible for delays arising from a change in the Scope of Services or delays resulting from causes not directly related to the actions of the Consultant.

The City agrees to be responsible for the timely delivery of data and support information requested by the Consultant in a manner that will allow the Consultant the ability to perform its services within the time frame noted above.

3. **Compensation:** The Consultant shall be compensated a lump sum fee not-to-exceed \$ \_\_\_\_\_, including any authorized reimbursable expenses. Consultant will bill on a monthly basis hours of work completed, up to the maximum fee stated above. Consultant will not exceed the maximum fees stated above without written authorization from the City.

In consideration of the compensation to be paid, the Consultant will exercise reasonable skill, care and diligence in the performance of its services, and will carry out its responsibilities in accordance with the customarily accepted practices in the Consultant’s professional community.

The City agrees to pay the submitted monthly invoice amount within 30 days after receipt of Consultant’s invoice. If the invoice is not paid within 30 days, the Consultant may suspend services upon written notice to the City. If a portion of the Consultant’s statement is disputed, the City shall pay the undisputed portion by the due date. Interests on amounts due and unpaid shall accrue at the rate of 1.5% per month from date due until paid. In any

action to recover payment due, Consultant shall be entitled to recover its attorney's fees cost. The City shall advise the Consultant in writing of the basis for any disputed portions of the statement within 7 days of receipt of invoice. Undisputed portions of the invoice shall be timely paid by City notwithstanding such disputed portions.

4. **Time and Expense Records:** The Consultant shall keep and maintain time and expense records relating to the scope of services described above, together with supporting receipts, vouchers, and appropriate documentation. As necessary, these records and other appropriate documentation may be required to support invoices submitted to the City. The City shall have the right to examine such records as it deems necessary upon reasonable notice to the Consultant.
5. **Authorization of Changes:** Any changes or additional work required for the performance of this Agreement and any compensation due for the provision of additional services shall only be authorized by the City in writing, and the Consultant shall first request such changes in writing prior to initiating any additional work. The Consultant shall be compensated for any additional work so approved and authorized, based upon a fee determined by the Consultant and City for such additional professional services.
6. **Notice:** Any notice to the parties required under this Agreement shall be in writing, delivered to the person designated below, by United States mail or in hand delivery, at the address designated below.

FOR THE CITY:

Name: City of Clive, Iowa

Attn: Matt McQuillen, City Manager

Address: 1900 NW 114<sup>th</sup> Street

City, State: Clive, Iowa 50325

FOR THE CONSULTANT:

Name: \_\_\_\_\_

Attn: \_\_\_\_\_

Address: \_\_\_\_\_

City, State: \_\_\_\_\_

7. **Liability:** The City agrees to indemnify and hold harmless the Consultant, its staff and employees and affiliates from any and all losses of whatever kind to the extent caused by City's negligent acts, errors or omissions in the performance of this Agreement. The Consultant agrees to indemnify and hold harmless the City, its employees, officials, agents and representatives, from any and all losses of whatever kind to the extent caused by Consultant's negligent acts, errors or omissions in the performance of the professional services under this Agreement and those of its sub-consultants or anyone for whom Consultant is legally liable.
8. **Insurance:** Consultant understands and agrees that Consultant shall have no right of coverage under any and all existing or future City comprehensive, self or personal injury policies. Consultant shall provide insurance coverage for and on behalf of Consultant that will sufficiently protect Consultant or Consultant's representative(s) in connection with the professional services which are to be provided by Consultant pursuant to the Agreement, including protection from claims for bodily injury, death, property damage, and lost income. Consultant agrees that failure to maintain any of the insurance coverage's set forth

shall constitute a material breach of this Agreement. Consultant shall maintain, at its own expense, the following insurance:

- (a) Professional Liability coverage, provided by an insurance company licensed to do business in the State of Iowa, in the amount of \$1,000,000 for claims arising out of the professional liability of the Consultant. Consultant shall provide City written notice within 5 days of the cancellation or material alteration of the professional liability policy.
  - (b) Comprehensive General Liability coverage and contractual liability coverage by an insurance company licensed to do business in the State of Iowa in the limits of at least \$1,000,000 each personal injury accident and/or death; \$1,000,000 general aggregate personal injury and/or death; and \$1,000,000 for each property damage accident. The evidence shall designate the City as an additional insured, and that it cannot be canceled or materially altered without giving the City at least 30 days written notice.
  - (c) Comprehensive Automobile coverage, including owned, hired and non-owned vehicles, if any, in the amount of \$1,000,000. The evidence shall designate the City as an additional insured, and that it cannot be canceled or materially altered without giving the City at least 30 days written notice.
9. **Termination:** Each party may terminate this Agreement with ten (10) days' written notice to the other party. In the event of such termination, provided the Consultant is not then in default under this Agreement, the City shall pay the Consultant its compensation and expenses to and through the actual date of termination, upon documentation of those costs by written invoice to the City. In the event of termination by either party, the Consultant agrees that the City may take possession of any work and may complete the Project by whatever means the City may select.
10. **Ownership of Documents:** Upon receipt of final payment by Consultant, all original final documents, studies or graphic materials, drawings, plans and digital files prepared by the Consultant shall be deemed property of the City except as to confidential matters or trade secrets of the Consultant (if identified as such in writing by the Consultant), but only after the final payment by the City for the same. The Consultant shall be permitted to retain copies, including reproducible copies, of the Consultant's drawings, specifications and other documents.

All final documents, studies or graphic materials, drawings, plans and digital files prepared by the Consultant are intended to provide planning concepts for future implementation, and the Consultant agrees that all such documents owned by the City can be used freely for planning purposes. The City shall prohibit any future third-party from utilizing the Consultant's drawings, specifications or other documents on other projects not authorized by the City. In the case of any future reuse of the documents by the City without Consultant's direct professional involvement, the Consultant's and Consultants' sub-consultants' names and seals shall be removed from all such documents and the Consultant shall not be liable to the City in any manner whatsoever for their reuse.

11. **Confidentiality of Findings:** Any reports, information, data or intellectual property whatsoever given or prepared as assembled by the Consultant under this Agreement shall not be made available to any individual or organization by the Consultant without the prior written approval of the City.
12. **Public Relations:** Consultant shall have the right to retain and utilize copies of all work it produces on the Project for citation and dissemination in the Consultant's resume, brochures and other generally recognized forms of professional public relations.
13. **Severability:** Should any of the provisions of this Agreement be determined to violate any state law or City ordinance, that shall not affect the validity of the other terms of this Agreement and there shall be added to this Agreement a legal, valid or enforceable term or provision as similar as possible to the stricken provision.
14. **Applicable Law:** Parties agree that Iowa law is controlling in interpreting this Agreement.
15. **Assignment:** Consultant shall not assign this Agreement or any part hereof, or the right to any payments be received hereunder, without prior written consent of City. However, Consultant may subcontract portions of the services to sub-consultants approved by the City without violating this provision.
16. **Independent Contractor:** Consultant understands and agrees that the Consultant and Consultant's employees and representatives are not City employees. Consultant shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits, or any other form of compensation or benefit to Consultant or Consultant's employees, representatives or other personnel performing the professional services specified in this Agreement.
17. **General Compliance:** In the conduct of the professional services contemplated thereunder, the Consultant shall comply with applicable state, federal and local laws, rules and regulations, technical standards, or specifications issued by the City. Consultant must qualify for and obtain any required licenses prior to commencement of work, including any professional licenses necessary to perform work within the State of Iowa.
18. **Government Mandated Provisions:** Because this project activity is funded in whole or in part by the Federal Government, or an Agency thereof, Federal Law requires that the Applicant's (ie: City) contracts relating to the project include certain provisions. Depending upon the type of work or services provided and the dollar value of the resultant contract, some of the provisions set forth in this Section may not apply to the Consultant or to the work or services to be provided hereunder; however, the provisions are nonetheless set forth to cause this Contract to comply with Federal Law. Parenthetical comments in the following paragraphs are taken from 2 CFR part 200 appendix II and 200.325.
  - A. Remedies. If the Consultant defaults in the performance or observance of any covenant, agreement or obligation set forth in this Agreement, and if such default remains uncured for a period of 30 days after notice of default has been given by Applicant to Consultant, then Applicant may take any one or more of the following steps, at its option:

- i. by mandamus or other suit, action or proceeding at law or in equity, require Consultant to perform its obligations and covenants hereunder, or enjoin any acts or things which may be unlawful or in violation of the rights of the Applicant hereunder, or obtain damages caused to the Applicant by any such default;
- ii. have access to and inspect, examine and make copies of all books and records of Consultant which pertain to the project;
- iii. make no further disbursements, and demand immediate repayment from Proposer of any funds previously disbursed under this Agreement;
- iv. terminate this Agreement by delivering to Consultant a written notice of termination; and/or
- v. take whatever other action at law or in equity may be necessary or desirable to enforce the obligations and covenants of Consultant hereunder, including but not limited to the recovery of funds.

No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage, or waive the right of Applicant to enforce the same or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times. If Applicant prevails against Consultant in a suit or other enforcement action hereunder, Consultant agrees to pay the reasonable attorneys' fees and expenses incurred by Applicant.

- B. Termination for Cause. Applicant may terminate this contract as set out in the foregoing Section A.
- C. Termination for Convenience. Applicant may terminate this Agreement at its convenience at any time. Delivery of written notice may be made by mail, fax or email.
- D. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- E. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). *Davis-Bacon Act is not applicable to this Project.*
- F. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is

compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- G. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- H. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- I. Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- J. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Consultants that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

- K. Procurement of recovered materials (2 C.F.R. Part 200, appendix 11(J) and 2 C.F.R. § 200.322). In the performance of this contract, Consultant shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired 1) Competitively within a timeframe providing for compliance with the contract schedule or 2) Meeting contract performance requirements or 3) at a reasonable price.
- L. Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has decided that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows [CFR 200.325]:
- i. A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
  - ii. Prior to, or at contract execution, Contractor must provide a performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
  - iii. Prior to, or at contract execution, Contractor must provide a payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.
- M. Domestic Preferences for Procurement (§200.322). As appropriate and to the extent consistent with law, Consultant shall to the greatest extent practicable, purchase, acquire, or use goods, products, or materials produced in the United States.
- N. DHS Seal, Logo, and Flags. Consultant agrees that it shall not use the Department of Homeland Security (“DHS”) seal, logo, crest, flags, or likeness of DHS agency officials without specific FEMA preapproval.
- O. Compliance With Federal Law. Consultant agrees to comply with all applicable Federal laws, regulations, executive orders, FEMA policies, procedures and directives.
- P. No Obligation by Federal Government. Consultant agrees that the Federal Government is not party to this agreement and is not subject to any obligations or liabilities to the City, contractor, or any other party pertaining to this contract.
- Q. Program Fraud. Consultant acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the

Consultant's activities pertaining to this contract for the purpose of making audits, examinations, excerpts, and transcriptions.

R. Access To Records. Consultant agrees to provide City, State of Iowa, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, records, of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

19. **Extent of Agreement:** This Agreement represents the entire and integrated agreement between the City and Consultant and supersedes all prior negotiations, representations or agreement, either written or oral. This Agreement may be amended only by written instrument signed by both the City and Consultant.

20. **Counterparts:** This agreement may be executed in any number of counterparts, each of which shall constitute an original document, no other counterpart needing to be produced, and all of which when taken together shall constitute the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first written above,

FOR:  
**CITY OF CLIVE**

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: Mayor \_\_\_\_\_

Date: \_\_\_\_\_



FOR:  
**CONSULTANT**

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_