



**Request for Qualifications  
Indefinite Scope Agreements -  
Professional Design and Engineering Services  
February 2023**

**INTRODUCTION**

Des Moines Water Works (DMWW) is requesting qualifications from interested consulting engineering firms (Consultant) to provide professional engineering and design services for DMWW projects. It is anticipated multiple consultants will be selected from this process and the selected consultants will aid in the planning, design, bid document development, and limited construction services for the projects less than one million dollars. Submittals in response to this Request for Qualifications (RFQ) will be used to evaluate consultants for work on a variety of DMWW projects. Successful consultants will be selected for each of the thirteen (13) categories based on their specific expertise as demonstrated in their response to this RFQ. Successful candidates will be utilized for contracts approved through 2028.

**PROJECT BACKGROUND**

Des Moines Water Works is an independently operated municipal utility providing drinking water to more than 600,000 customers in the Des Moines and surrounding metropolitan area. Over 20 central Iowa cities, rural water districts, and other entities located in Polk, Warren, Madison, and Dallas counties are served by DMWW.

DMWW owns and operates three water treatment plants: Fleur Drive Water Treatment Plant (FDWTP), L.D. McMullen Water Treatment Plant (MWTP), and Saylorville Water Treatment Plant (SWTP). The total combined treatment capacity is approximately 110 million gallons per day (MGD). The sources of supply include the Raccoon River, Des Moines River, infiltration ponds, and infiltration piping at FDWTP; Maffitt Reservoir, Crystal Lake, and several alluvial groundwater wells at MWTP; and alluvial wells at SWTP. Each treatment plant, from a regulatory perspective, is considered a surface-water treatment plant. All alluvial collection systems are considered ground water under the direct influence of surface water.

FDWTP (75 MGD) and MWTP (25 MGD) are conventional lime-softening water treatment plants. Portions of the FDWTP have been in operation for over 100 years and MWTP was commissioned in May of 2000.

SWTP (10 MGD) is a membrane filtration plant [Ultra Filtration (UF)/Reverse Osmosis (RO)] that was commissioned in 2011. The treatment process is sourced by two radial collector wells

constructed along the banks of the Des Moines River. Treatment works include a pre-treatment step to allow for proper oxidation and coagulation of iron and manganese. After pre-treatment, all water passes through UF membranes and then a percentage of flow is also directed through RO membranes to meet hardness and other treatment or regulatory goals. Aeration, fluoridation, and disinfection processes complete the treatment process.

Construction of the distribution system began in 1871 and has continued to expand over the years. The Des Moines distribution system includes approximately 900 miles of distribution piping. Consecutive systems operated by DMWW add an additional 500 miles of piping. Piping ranges in size from 4-inch to 60-inch. System storage includes the three plant clearwells, three standpipes, four elevated water storage tanks, and two ground storage tanks. Other distribution infrastructure includes multiple pumping and booster stations and three aquifer storage and recovery wells.

## PROJECT OBJECTIVE

DMWW requests qualification submittals from consultants to provide design and engineering services related to the projects less than \$1 million on their 5-year Capital Improvement Plan (CIP). It is the intent of DMWW that multiple consultants will be selected to assist them, based on consultants' individual expertise and past performance. The qualification submittals will be used as the basis for awarding design contracts through 2028.

Des Moines Water Works encourages firms and consultant teams with expertise in one or more of the specific disciplines described below to submit a response to this RFQ. Consultants may elect to submit on one or more of the categories and need to document which categories they would like to be considered for in their response.

Work covered under this RFQ includes planning, design, and construction-related work on public improvement and maintenance projects for Des Moines Water Works. The following project categories will be considered as part of this RFQ:

- **Building and Architectural** – Includes building repairs, restorations, and other building renovations and improvements.
- **Structural** – Includes foundations, concrete repairs, safety compliance, etc.
- **Non-Destructive Digging/Excavating Services** – Includes services to confirm horizontal and vertical position, size, material and condition of utility and objects.
- **Construction Testing/Geotechnical Engineering** – Includes special inspections, material testing, monitoring and geotechnical services, environmental testing, or other related testing services for construction projects.
- **Surveying** – Includes general engineering, surveying, boundary work, preparation of plats and other various work associated with public improvement projects.

- **Water Distribution Engineering** – Includes planning, replacement, repair, and improvement projects associated with DMWW's water mains, elevated and ground storage, lift stations, and pump stations.
- **Water Production Engineering** – Includes planning, replacement, repair, and improvement projects associated with DMWW's water production and treatment facilities.
- **Mechanical, Process, and Plumbing** – Includes providing mechanical, process, and plumbing design associated with miscellaneous projects.
- **Electrical and Controls** – Includes providing electrical and controls design associated with miscellaneous projects.
- **Source Water Engineering** – Includes siting, hydraulic modeling, permitting, designing, and constructing individual wells, collector wells, and well fields.
- **Cathodic Protection Design** – Includes design of cathodic protection standards for water main installation.
- **Roof Design** – Includes repairs and replacement of DMWW roofs.
- **Land Acquisition Services** – Includes acquiring property for both Right-of-Way and other properties required for DMWW projects.

Submittals received in response to this RFQ will be the basis for consultant selection for a variety of projects over a five-year period. Actual projects selected for Engineering Services will vary based on need and budget.

### **SCOPE OF SERVICES**

The information provided in this section is not intended to comprise a detailed scope of services that will be required in a final consultant contract but is intended to provide general information to firms that choose to submit qualifications. DMWW will negotiate the detailed scope of services and fee with the selected firm for each project. The Capital Improvement Plan for 2023-2027 is attached for reference in Appendix 1 to give the consultant an example of projects they may be asked to assist with.

Each contract for engineering and design services may include, but is not limited to, the following:

- Conducting a kick-off meeting with DMWW staff.
- Reviewing available information provided by DMWW.
- Surveying and field verify the project area.
- Surveying boundary work and preparation of acquisition plats, as needed.

- Property acquisition services if necessary.
- Creating a base map for use during design and project document development.
- Project team meetings (DMWW and Consultant staff) and field visits as necessary.
- Providing project plans, including estimate of construction costs, for review at approximately 30%, 60%, 90%, and 100% completion.
- Providing project manual, including specifications, at 60%, 90%, and 100% completion.
- Coordinating with private utility companies, as needed for required relocations.
- Meeting with DMWW Staff to discuss and review comments.
- Attending individual property owner meetings and public meetings.
- Providing final bid documents, including a final estimate of construction costs.
- Including bid phase services, including leading a pre-bid meeting, answering contractor questions in the form of an issued addendum to the documents, evaluation of the bids, issuing a letter recommending award of the project, and preparing conformed contract documents for the contractor.
- Providing construction phase services, including attending pre-construction meeting, answering Request for Information from both DMWW and the contractor, reviewing construction submittals from contractor, conducting a minimum of monthly sites visits during the project to review installation progress, recommending and preparing change orders as needed, attending monthly progress meetings, reviewing contractor's schedule and pay applications, reviewing record drawings from contract, issuing conformed contract documents, conducting an inspection to determine if work is substantially complete and developing a punch list, and issuing the as-built drawings to DMWW at the completion of the project.
- Providing construction inspection and administration services.

### **PROFESSIONAL QUALIFICATIONS AND CERTIFICATIONS**

To be considered, Consultants must document the knowledge, skills, and abilities of the firm and team members.

### **EVALUATION AND SELECTION CRITERIA**

The selection committee will consist of staff from the Engineering Department who will review qualifications. Qualifications will be evaluated based on the following criteria:

- Demonstrated expertise and experience in the successful and timely completion of projects of similar size and complexity.
- Possession of adequate staff and resources.

- Client references and contact information.
- Professional service fees.

### **PRE-SELECTION INTERVIEWS**

The selection committee reserves the right to conduct interviews with selected individual Consultants to better assess and evaluate the qualifications of the firm(s) and their designated project team members. All such interviews will be conducted in Des Moines. Costs incurred prior to consultant contract execution are not eligible for reimbursement.

### **SUBMITTAL CONTENTS**

DMWW personnel reviewing the qualifications will be far more interested in the quality of the proposed services and project approach than in “marketing” materials enclosed with the qualifications. Experience and qualifications of each firm and its project team members will be the most significant criterion in the selection of an Engineer. The following items shall be addressed by the consultant:

- Consultant Information Form, attached in Appendix 2.
- Letter of interest.
- Resumes including qualifications and experience of project manager and other key personnel to be assigned to specific types of projects.
- Summary of recent experience with similar projects, including references. Please limit submissions for each discipline to five (5) pages.
- Current billing rates for firm personnel.

The consultant can submit qualifications for multiple disciplines but will want to give relevant project and staffing experience to show they are qualified in that area.

### **SUBMITTAL REQUIREMENTS**

**Deadline:** March 9, 2023, on or before 10:00 A.M.  
Submittals received after this time will not be considered.

**Location:** Des Moines Water Works  
Engineering Department  
2201 George Flagg Parkway  
Des Moines, IA 50321

**Engineering Department Contact:**  
Lindsey Wanderscheid, Engineering Supervisor

(515) 283-8781

**Submit:** Electronic copy should be emailed to  
[lwanderscheid@dmww.com](mailto:lwanderscheid@dmww.com)

## **QUESTIONS AND CLARIFICATIONS**

All questions and clarifications regarding this Request for Qualifications will be accepted until March 2, 2023, 10:00 A.M. Central Time by contacting Lindsey Wanderscheid.

## **STANDARD CONDITIONS FOR ENGINEERING SERVICE AGREEMENTS**

The attached draft Professional Services Agreement in Appendix 3 shall be an integral part of this Request for Qualifications. Any costs for fulfilling the terms of the Professional Services Agreement shall be included in the maximum and other fees identified during contract negotiations.

## **REJECTION**

The selection committee reserves the right to reject any or all statements of qualifications in whole or in part received in response to the RFQ.

## **COSTS**

DMWW will not pay for any information requested in the RFQ, nor is it liable for any costs incurred.

## **DISPOSITION OF QUALIFICATIONS**

All statements of qualifications submitted in response to the RFQ become the property of DMWW and will not be returned.

## **CONFIDENTIALITY**

Under Chapter 22 of the Iowa Code, "Examination of Public Records", all records of a governmental body are presumed to be public records, open to inspection by members of the public. Section 22.7 of the Iowa Code sets forth the number of exceptions to that general rule, establishing several categories of "confidential records". Under this provision, confidential records are to be kept confidential, "unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information". Among the public records that are considered confidential under the provision of the Iowa Code are the following:

3. Trade secrets which are recognized and protected as such by law.
6. Reports to governmental agencies which, if released, would give advantage to competitors, and serve no public purpose.

50. Information and records concerning physical infrastructure, cyber security, critical infrastructure, security procedures, or emergency preparedness.

DMWW, as custodian of the qualifications, will treat all proposals submitted in response to this Request for Qualifications as non-exempt from disclosure pursuant to Iowa Code § 22.7.

If a responding Proposer determines that a portion or portions of its proposal constitute a trade secret or should otherwise be kept confidential to avoid giving advantage to competitors, a confidentiality request may be submitted with the proposal identifying which portion or portions of the proposal should be kept confidential and why. The burden will be on each individual Proposer to make such confidentiality request and to justify application of a confidentiality exception to its proposal.

If a request is made by a member of the public to examine a proposal including the portion or portions thereof for which a confidentiality request has been made, DMWW will so notify the Proposer and will keep confidential that portion of the proposal covered by the confidentiality request, pending action by the Proposer requesting confidentiality to defend its request. In that notification, the Proposer requesting confidentiality will be given not more than five (5) calendar days within which to file suit in Polk County District Court seeking the entry of a declaratory order and/or injunction to protect and keep confidential such portion of its proposal. Absent such action by a Proposer requesting confidentiality, and absent the entry of a court order declaring such portion or portions of the proposal confidential, the entire proposal will be released for public examination, subject to the limitations of Iowa Code § 22.7(50). Proposer shall be responsible for all costs relating to a declaratory judgment or injunctive action, including the payment of any damages assessed and attorney fees and litigation expenses awarded.

### **SUPERIOR ENERGY PERFORMANCE**

DMWW is certified to ISO 50001 and has an energy policy that mandates that they continually endeavor to reduce energy consumption and consider energy performance in long term planning, energy design, etc. Designs should follow the provisions of Iowa Administrative Code, 661-303, State Building Code, Requirements for Energy Conservation in Construction, as applicable to each project. There are four tasks that the Consultant will need to do to manage energy considerations in design: (1) identify the facilities, equipment, systems, and processes that can have a significant impact on energy performance, (2) incorporate consideration of energy opportunities and operational control in design projects, (3) include results of energy performance evaluation in specification, design, and procurement, and (4) record the results of the design activities in a summary report.

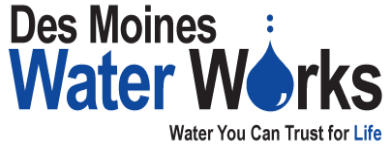
**APPENDIX 1 – DMWW CAPITAL IMPROVEMENT PLAN 2023-2027**



			TOTAL PROJECT COST					
Category	Work Plan	Project	Total 2023	Total 2024	Total 2025	Total 2026	Total 2027	2023 - 2027
<b>Plant/Raw Water Capacity</b>	<b>ASR WELLS SWTP</b>	DMWW #4 (Joint Eastside Booster)	2,614,723	-	-	-	-	2,614,723
		Expansion of Raw Water - 10 MGD Expansion	6,949,119	11,507,742	11,910,513	12,327,381	12,758,839	55,453,593
		Plant Expansion - 10 MGD Expansion	13,756,314	16,507,577	17,085,342	17,683,329	18,302,246	83,334,809
		SWTP 25 MGD Conventional Expansion	-	-	379,495	392,778	406,525	1,178,798
		SWTP Raw Water Supply for 25 MGD Expansion	-	-	-	273,254	282,818	556,072
<b>Plant/Raw Water Capacity Total</b>			<b>23,320,157</b>	<b>28,015,319</b>	<b>29,375,350</b>	<b>30,676,742</b>	<b>31,750,428</b>	<b>143,137,996</b>
<b>Transmission Capacity</b>	<b>Core Network</b>	SWTP - West Feeder Main Ph 3 Const	9,472,734	1,126,929	-	-	-	10,599,663
		Tenny to LP Moon Feeder Connection	363,803	3,388,820	-	-	-	3,752,623
<b>Transmission Capacity Total</b>			<b>9,836,537</b>	<b>4,515,749</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>14,352,285</b>
<b>Water Quality</b>	<b>FDTP</b>	Bulk PAC System	1,710,553	885,211	-	-	-	2,595,765
		CO2 Feed	2,268,481	-	-	-	-	2,268,481
		DM River Well Field	-	11,192,209	11,583,936	11,989,374	-	34,765,519
<b>Water Quality Total</b>		<b>3,979,034</b>	<b>12,077,420</b>	<b>11,583,936</b>	<b>11,989,374</b>	<b>-</b>	<b>39,629,765</b>	
<b>Water Main Replacement</b>	<b>WMR - DM</b>	Air Valves - DM	276,530	286,208	296,226	306,594	317,324	1,482,882
		PVC to DI Replacement	159,803	-	-	-	-	159,803
	<b>WMR - Pleasant Hill WMR - Polk County WMR - Windsor Heights</b>	WMR - Des Moines	11,641,538	12,048,992	12,470,706	12,907,181	13,358,932	62,427,349
		WMR - Pleasant Hill	266,092	275,406	285,045	295,021	305,347	1,426,911
		WMR - Polk County	2,091,596	2,164,802	2,240,570	2,318,990	2,400,155	11,216,114
WMR - Windsor Heights	453,272	469,136	485,556	502,550	520,140	2,430,653		
<b>Water Main Replacement Total</b>		<b>14,888,831</b>	<b>15,244,544</b>	<b>15,778,103</b>	<b>16,330,336</b>	<b>16,901,898</b>	<b>79,143,712</b>	
<b>Core Network</b>	<b>Facility Mgmt</b>	DM River Isolation Valve/Parco System	-	365,877	-	-	-	365,877
		Wilchinski Comm Bldg	-	-	74,110	-	-	74,110
	<b>FDTP</b>	Backwash Return	260,728	-	-	-	-	260,728
		Diesel Pump Fuel Containment	307,977	-	-	-	-	307,977
		FDTP Sanitary Sewer List Stn Replacement	297,045	-	-	-	-	297,045
		Filter Media Replacement (4)	-	1,312,251	6,111,807	6,325,721	-	13,749,778
		Lime Slaker Replacement	-	-	659,392	-	-	659,392
		Lime Sludge Filter Press	1,069,931	1,107,379	-	-	-	2,177,310
		SCADA Network Improve	1,086,417	1,124,442	-	-	-	2,210,859
		Treatment Basin Rechain (ongoing)	618,665	640,318	662,729	685,924	709,932	3,317,568
	WHL Pumps Rebuild #1 & #3	331,200	342,792	-	-	-	673,992	
	<b>MWTP</b>	Rehab Collector Wells	800,494	-	857,510	-	-	918,586
		Well Isolation Valves	107,560	-	-	-	-	107,560
	<b>SWTP</b>	Floor and Drain Improvements	92,393	-	-	-	-	92,393
		Rehab Collector Wells	710,977	-	-	788,273	815,862	2,315,111
RO Membrane Replacement (ongoing)		214,558	222,068	229,840	237,884	246,210	1,150,561	
UF Membrane Replacement	-	-	587,066	1,215,227	628,880	2,431,173		
<b>Core Network Total</b>		<b>5,897,946</b>	<b>5,115,126</b>	<b>9,182,454</b>	<b>9,253,029</b>	<b>3,319,470</b>	<b>32,768,025</b>	
<b>DMWW Capital</b>	<b>Facility Mgmt</b>	FDT - HVAC	-	532,831	-	-	-	532,831
		FDTP - Building Improvements	339,678	-	363,872	-	-	703,550
		FDTP - Distribution Building Modifications	203,119	630,684	-	-	-	833,802
		FDTP - North Parking Lot Repl	131,530	-	-	-	-	131,530
		FDTP Safety Showers & Tempering	150,612	155,884	-	-	-	306,496
		Fleur Drive Access Gates	-	65,151	-	-	-	65,151
		Fluoride Room Improvements	56,573	-	-	-	-	56,573
		Hazen Int/Ext Paint	967,923	-	-	-	-	967,923

Category	Work Plan	Project	Total 2023	Total 2024	Total 2025	Total 2026	Total 2027	2023 - 2027
DMWW Capital	Facility Mgmt	Lab Waterproofing	64,376	-	-	-	-	64,376
		Main Office Building Improvements	275,567	-	-	-	-	275,567
		MWTP - Trucking Scale	652,050	-	-	-	-	652,050
		MWTP Safety Showers & Tempering	-	155,884	161,340	-	-	317,224
		Roof Replace & Repairs	354,079	-	-	392,573	-	746,652
		Safety Compliance	227,183	235,134	243,364	251,881	260,697	1,218,258
		Security Cameras	81,131	-	-	89,951	-	171,082
		SEP/Bondurant PS Corrosion System	-	-	-	-	104,384	104,384
		SEP/Bondurant PS Hypo& Ammonia Storage	-	-	-	-	608,506	608,506
		Standpipe Foundation (2)	-	165,335	-	-	-	165,335
		Trimble GPS Equipment	39,568	-	-	43,869	-	83,437
		WMR - Pleasant Hill	TBD Capital Projects - Pleasant Hill	66,523	68,851	71,261	73,755	76,337
	<b>DMWW Capital Total</b>		<b>3,609,912</b>	<b>2,009,753</b>	<b>839,836</b>	<b>852,031</b>	<b>1,049,925</b>	<b>8,361,457</b>
Work for Other Entities	Remote Sites	Bondurant Feeder and Pump Station	5,857,748	6,062,769	-	-	-	11,920,516
		Xenia Booster Station Upgrade	-	3,950,427	-	-	-	3,950,427
<b>Work for Other Entities Total</b>		<b>5,857,748</b>	<b>10,013,196</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>15,870,943</b>	
<b>Grand Total</b>		<b>67,390,164</b>	<b>76,991,106</b>	<b>66,759,680</b>	<b>69,101,511</b>	<b>53,021,720</b>	<b>333,264,182</b>	

**APPENDIX 2 – CONSULTANT INFORMATION FORM**



**CONSULTANT INFORMATION FORM**

**Project Title:**

**Date:**

**FIRM INFORMATION**

**Firm Name:**

**Responsible Engineer to Contact:**

Name:

Title:

Phone:

Email:

**Location Working on Project:** (Complete address and phone number)

**Location of Other Offices that will be involved in project:** (Complete address and phone number of any offices that personnel assigned to this project will be based)

**Year Firm Was Established:**

**Years in Business under Present Name:**

**Previous Business Name(s) and Time Period(s):**

**Personnel:** (Number of people by trade, job classification or discipline)

**Services Provided by Firm:**

**Potential Sub-Consultants and discipline that will be involved in project:** (Complete address and phone number)

**Project Categories (check all that your firm has included Project Approach and Reference documentation):**

- Building and Architectural
- Structural
- Non-Destructive Digging/Excavation Services
- Construction Testing/Geotechnical Engineering
- Surveying
- Water Distribution Engineering
- Water Production Engineering
- Mechanical, Process, and Plumbing
- Electrical & Controls
- Source Water Engineering
- Cathodic Protection Design
- Roof Design
- Land Acquisition Services

**APPENDIX 3 – DRAFT AGREEMENT**

## AGREEMENT BETWEEN OWNER AND CONSULTANT

### **Discipline**

Indefinite Scope for Professional Services  
Board of Water Works Trustees, City of Des Moines

This agreement (“Agreement”) made by and between the Board of Water Works Trustees of the City of Des Moines, Iowa (“Owner”, “Des Moines Water Works”, “Water Works” or “DMWW”) and the Consultant **[Firm Name and Address]**, hereinafter called the Consultant.

### RECITALS

1. Owner intends to undertake projects for Des Moines Water Works with an anticipated total cost of less than \$1,000,000.00 utilizing services of the Consultant on an as-needed basis as outlined herein.
2. The Consultant shall provide the professional **discipline** services for the project in the study, design and construction phase sequence provided in this Agreement and to the extent authorized by the Owner and be solely responsible for such professional services. The Consultant’s services shall be performed in accordance with this Agreement and follow the Project Scope of Work.
3. The Owner shall compensate the Consultant for providing their professional services for the Project in accordance with the conditions of this Agreement.

### AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the Owner and Consultant agree as follows:

1. The Consultant shall provide professional services, technical staff, and support personnel for Owner’s projects on an as-needed basis at various locations as defined by DMWW, from time to time and as further defined in Article II of the DMWW Terms and Conditions. Services provided under this Agreement will be limited to projects that have an anticipated total project costs less than one million dollars (\$1,000,000.00).
2. This Agreement is for Services for an unspecified number of DMWW Projects, as the term “Projects” is defined in Article I of the DMWW Terms and Conditions. The scope of work for each assigned project will be defined by the Owner and sent to the Consultant. The Services required for each of these assigned projects requested by the Owner may include any or all the tasks included in Article 2 of this Agreement and may include any or all the following tasks: design, planning, and engineering, preparation of agreement documents, bidding, construction administration, and record documents.
3. The Services shall be performed in accordance with the Agreement, and any documents incorporated by reference.



4. Services by the Consultant will be provided on an “as-needed basis” with no guarantee of work. Consultant will only be entitled to compensation for Services approved in writing by the Owner, and if Consultant accepts DMWW’s request to provide Services.
5. This Agreement does not warrant or imply the Consultant will have any entitlement to perform any Services during the term of this Agreement. DMWW has sole discretion to decide whether to retain Consultant for Services for a particular Project, and DMWW will exercise such discretion solely in DMWW’s best interests.
6. This Agreement will remain in effect for five (5) years from the date this Agreement is executed by the Owner, but may be unilaterally terminated by the Owner at any time, for cause or its convenience, by written notification to the Consultant. The Consultant may request an increase of the existing hourly billing rates on an annual basis. All rate changes must be approved in writing by the Owner.
7. The Agreement will be referenced on all Indefinite Scope Release Forms. The Consultant is not to provide any Services or incur expenses until individual DMWW Projects are assigned to this Agreement in writing.
8. In addition to the terms identified above, Consultant agrees to be bound by the DMWW Terms and Conditions, which are incorporated with this reference. The Consultant’s Proposal, including fee schedule, certificate of insurance and other required documents are attached as the Exhibits listed below, and expressly incorporated with this reference:

- Exhibit A: Proposal
- Exhibit B: Hourly Rates by Classification
- Exhibit C: Certificate of Insurance
- Exhibit D: Reimbursable Expenses

This Agreement becomes effective the day and year signed by the Owner below:

**Consultant:**  
**[Firm Name]**

By: \_\_\_\_\_

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

**Owner:**  
Des Moines Water Works  
CEO and General Manager

By: \_\_\_\_\_

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

## DMWW TERMS AND CONDITIONS

### ARTICLE 1 GENERAL PROVISIONS

The Owner and Consultant agree as set forth below:

- 1.1 **STANDARD OF CARE** Consultant shall furnish or provide the architectural and engineering services necessary to design the Project in accordance with the Owner's requirements, as outlined in the Proposal letter attached as Exhibit A. The architectural and engineering services shall include Basic Services plus Additional Services as may be authorized by Owner. Services shall be performed in accordance with the standard of professional skill and care required for a Project of similar size, scope, and complexity. Any modification or change of the Proposal after it has been accepted by Owner must be agreed to in writing by both Consultant and Owner.
- 1.2 **RELATIONSHIP OF PARTIES** The Consultant accepts a relationship of trust and confidence with the Owner for this Agreement and will cooperate and exercise the skill and judgment required above in furthering the interests of the Owner. The Consultant represents that it possesses the skill, expertise, and licensing to perform the Services. The Owner and Consultant agree to work together based on mutual trust, good faith, and fair dealing, and shall take actions reasonably necessary to enable each other to perform this Agreement in a timely, efficiently, and economical manner. The Owner and Consultant shall endeavor to promote harmony and cooperation among all Project participants.
- 1.3 **DEFINITIONS**
  - 1.3.1 "Addendum" is a written or graphic document issued by the Consultant before execution of the Agreement that modifies or interprets the Construction Documents by additions, deletions, clarifications, or corrections.
  - 1.3.2 "Construction Documents" are written, and graphic documents prepared or assembled by the Consultant for communicating the design of the Project and administering the agreement for its construction.
  - 1.3.3 "Constructor" means the person or entity retained by the Owner to perform Work for the Project.
  - 1.3.4 "Consultant" is the person or entity engaged in providing Services
  - 1.3.5 "Drawings" are the graphic portions of the Construction Documents, showing the

design, location, and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

1.3.6 “Owner” is the person or entity identified in the Agreement and includes the Owner’s Representative.

1.3.7 The “Project” is the building, facility, or other improvements to be designed by the Consultant for which the Constructor is to perform.

1.3.8 “Services” are defined in Article 2.

1.3.9 “Specifications” are the portion of the Construction Documents consisting of the written requirements for materials equipment, construction systems, standards and workmanship for the Work, and performance of related services.

1.3.10 “Sub-Consultants” are entities or individuals retained by Consultant to provide any part of the Services as defined in Article 2 for the Project. Consultant is solely responsible for paying all fees and costs associated due and owing to Sub-Consultants. Consultant may not require Owner to pay any Sub-Consultant.

1.3.11 “Work” refers to the specific tasks being performed to provide the Services and complete the Project.

## **ARTICLE 2 CONSULTANT’S SERVICES**

### **2.1 GENERAL RESPONSIBILITIES**

2.1.1 The Consultant shall conduct a preliminary evaluation of the information provided by the Owner to determine the Project requirements. The Consultant shall confirm its understanding of such requirements with the Owner.

2.1.2 The Consultant shall have reasonable access to the worksite for the Project.

2.1.3 The Consultant shall assist the Owner with filing required documents with governmental authorities having jurisdiction over the Project, including filing documents required to obtain permits necessary for construction of the Project.

2.1.4 Services to be provided by the Consultant shall be rendered in a timely manner.

2.2 **BASIC SERVICES** The Consultant’s Basic Services shall include any Services provided pursuant to Sections 2.2 and 2.3 if agreed to by the Owner and Consultant. Design services furnished by a Party other than the Consultant shall be obtained from licensed Sub-Consultants, who shall affix their signature and seal on all Drawings, Specifications, calculations, and submittals prepared by them, and the Consultant shall be entitled to rely upon the adequacy, accuracy, and completeness of such design services.

- 2.2.1 **MODIFICATIONS** The Consultant shall make all modifications to the Construction Documents necessitated by errors, omissions, or inadequacies identified in reviews by Owner Representative during all phases of Services.
- 2.2.2 **COST ESTIMATES** The Consultant shall prepare for the Owner's review and approval estimates of the "Cost of Construction" at the completion of Schematic Design Documents, Design Development Documents and Construction Documents.
- 2.2.3 **PROJECT SCHEDULE** The Consultant shall prepare for the Owner's review and approval a preliminary "Project Schedule" that shall show the timing and sequencing of the design and construction required. The Project schedule shall be updated at the completion of Schematic Design Documents, Design Development Documents, and Construction Documents.
- 2.2.4 **SCHEMATIC DESIGN DOCUMENTS** The Consultant shall prepare "Schematic Design Documents" consisting of drawings and outlines. Specifications and other documents illustrating the Project's basic elements. Schematic Design Documents shall include conceptual plans of the site and structures, preliminary sections and elevations, and preliminary selections of materials and systems.
- 2.2.5 **DESIGN DEVELOPMENT DOCUMENTS** The "Design Development Documents" shall further refine the Project, including Drawings and outline Specifications describing the Project size, character, and site relationships, and other appropriate elements describing the structural, architectural, mechanical, and electrical systems. They shall include plans, sections, and elevations; criteria and sizing of major components; equipment sizes and capacities and approximate layouts, including required spaces and clearances; typical details; and materials selections.
- 2.2.6 **CONSTRUCTION DOCUMENTS** Based on the approved Design Development Documents and updated estimate of the Cost of Construction and Project Schedule, the Consultant shall prepare, for the Owner's review and approval and approval of governmental authorities, Construction Documents setting forth in detail the quality levels of and the requirements for the construction of the Project and consisting of Drawings and Specifications that comply with applicable laws. The Consultant shall place their individual information blocks with certifications, seals, signatures, and dates on the original title page of the Construction Documents. The information block shall include the numbers of pages or sheets, covered by the certification.
- 2.2.7 **BIDDING ASSISTANCE** The Consultant shall assist the Owner in obtaining bids from Constructor by providing the electronic files of Drawings, Specifications, and any Addenda, attending pre-bid or pre-award meetings, and clarifying the scope and intent of the Construction Documents. The Consultant shall issue any addenda or clarifications promptly in writing.

2.2.8 CONSTRUCTION PHASE SERVICES The Construction Phase will commence upon the issuance of a written Notice to Proceed from the Owner to Constructor. The Consultant shall (a) review and advise the Owner as to the sufficiency of the schedule of values submitted by the Constructor for the Work, (b) review and advise on the Project Schedule, (c) prepare design documents in connection with change orders, and (d) respond to Constructor requests for information (RFI). The Consultant shall furnish to the Owner interpretations and clarifications of the Drawings and Specifications, by means of additional Drawings, Addenda, and as necessary for the proper execution and progress of the Work.

2.2.8.1 The Consultant shall review the Constructor's submittals, including shop drawings, product data, and samples, and make approvals or recommendations within 10 Business Days of receiving the submittals. The Consultant shall check for conformance with the Construction Documents.

2.2.8.2 The Consultant shall assist the Owner in the evaluation and processing of requests for changes in the Work.

2.2.8.3 The Consultant shall visit the Project worksite at appropriate intervals to become generally familiar with the quality of the Work and to determine if the Work is proceeding in accordance with the Construction Documents.

2.2.8.4 The Consultant shall assist the Owner in processing the Constructor's applications for payment.

2.2.8.5 The Consultant shall attend meetings with the Owner and the Constructor upon reasonable request of the Owner. The Consultant shall keep meeting minutes, prepare a report of each meeting, and distribute copies to Owner and Constructor.

2.2.8.6 The Consultant shall assist the Owner in conducting inspections to determine substantial completion. This shall include compiling a list of items to be completed or corrected ("Punch List").

2.2.8.7 The Consultant shall assist with the implementation of formal commissioning including the start-up and/or operation of systems that are part of the Work.

2.2.8.8 The Consultant will interpret the Construction Documents and attempt to reconcile the performance thereunder by both the Owner and the Constructor for claims, disputes, and other matters in question between the Constructor and the Owner relating to execution or progress of the Work.

2.2.8.9 Within 30 days after acceptance of the Agreement, the Consultant shall furnish the Owner with record documents.

- 2.3 **ADDITIONAL SERVICES** The following Services shall be provided by the Consultant and paid as Additional Services if they are authorized in writing signed by the Owner prior to Consultant or Sub-Consultant performing the Services:
- 2.3.1 surveys, site evaluations; and aerial photographs.
  - 2.3.2 soils, subsurface, and environmental studies, reports, and investigations required for submission to governmental authorities or others having Jurisdiction over the Project.
  - 2.3.3 artistic renderings, models, and mockups of the Project.
  - 2.3.4 out-of-town travel by the Consultant in connection with Services, except between Consultant's office, the Owner's office, and the worksite.
  - 2.3.5 services requested by the Owner that are not normally parts of generally accepted design and construction practice and not otherwise required by this Agreement.
  - 2.3.6 other additional services as agreed to by the Parties.
- 2.4 **QUALIFICATIONS** The Consultant warrants and presents that they and any Sub-Consultants are duly qualified, licensed, registered, and authorized by law to perform the Services under this Agreement.

### **ARTICLE 3 OWNER'S RESPONSIBILITIES**

#### **3.1 INFORMATION AND SERVICES PROVIDED BY OWNER**

3.1.1 To the extent the Owner has obtained the information and services identified below, the Owner shall provide them to the Consultant in a timely manner:

3.1.1.1 information describing the physical characteristics of the worksite, including surveys, existing conditions, subsurface and environmental studies, reports, and investigations.

3.1.1.2 unless otherwise provided by this Agreement, necessary approvals, rezoning, easements and assessments, and changes required for use.

3.1.2 The Owner shall promptly report to the Consultant errors, inconsistencies, and omissions it discovers; however, nothing in this subsection shall relieve the Consultant of responsibility for identifying and correcting its own errors, inconsistencies, and omissions. Services required to correct design errors, omissions, or deficiencies that become apparent during construction or after completion of the Project shall be provided by the Consultant at no additional compensation.

3.2 **OWNER'S REPRESENTATIVE** The Owner's representative shall be fully acquainted with the Project and agrees to furnish the information and services in a timely matter and

shall have authority to bind the Owner in all matters requiring Owner's approval, authorization, or written notice.

3.2.1 The Owner's Representative shall meet and confer with the Consultant as necessary to ensure complete understanding and communication relative to the needs and requirements of the Project.

#### **ARTICLE 4 TIME**

4.1 **TIME FOR SERVICES** The Consultant shall provide the Services required by this Agreement in conformance with the most recent Project Schedule approved by the Owner. Consultant will notify Owner after a reasonable time of any Owner obligation that is preventing Consultant from continuing to perform the Services.

4.2 **DELAYS BY CONSULTANT** If the progress or completion of Project is delayed by reason of any error, inconsistency, or omission of the Consultant which violates its standard of care, the Consultant shall compensate the Owner for and indemnify it against all damages that may accrue due to such delay. In addition, the Consultant shall provide Services at its own cost, including overtime, required to make up time lost to the Owner because of such delay. The Owner shall provide prompt written notice to the Consultant of such delay after the Owner first recognizes the delay.

4.3 **DELAYS BY OWNER** If the Consultant is delayed in its performance of its Services by any act or omission of the Owner, then the time allotted in the Project Schedule for the Services shall be extended for the period of such delay, or the Owner shall authorize the Consultant to work overtime to make up such lost time, and the Consultant's compensation shall be equitably adjusted. The Consultant shall provide prompt written notice to the Owner of such delay after the Consultant first recognizes the delay.

#### **ARTICLE 5 PAYMENTS**

##### **5.1 PAYMENTS**

5.1.1 The Consultant shall submit to the Owner for its approval monthly applications for payment for Basic and Additional Services and Reimbursable Expenses with reasonable supporting detail. Payments shall not exceed the amounts identified in Article 10 at the completion of each Phase of the Consultant's Services.

5.1.2 Should the Consultant or its Sub-Consultant cause damage to the Project or fail to perform or otherwise be in default under the terms of this Agreement, the Owner shall have the right to withhold any payment due. Payment of amount withheld shall be made when the grounds for the withholding have been removed.

5.1.3 In the event the Owner decides for any reason to terminate the Project, the Consultant shall be paid for services satisfactorily performed.



5.1.4 If Owner delays or defers action on the Project for more than one year from the date Owner accepts Consultant's Proposal, the Consultant's compensation shall be subject to renegotiation for the uncompleted portion of the Project.

## **ARTICLE 6 INDEMNITY AND INSURANCE**

6.1 **GENERAL** The Consultant shall purchase and maintain insurance to protect the Consultant and the Owner throughout the duration of the Agreement. All certificates of insurance shall be written by companies which hold an A.M. Best A-VIII rating or higher and are licensed to do business in the state of Iowa. The selected companies must be satisfactory to the Owner.

Each certificate of insurance shall state that thirty (30) days written notice will be given to the Owner before the policy is canceled or changed. All certificates of insurance shall be delivered to the Owner prior to start of work.

6.2 **REQUIRED COVERAGE** The Consultant shall purchase and maintain insurance which will protect them from the following type of claims:

6.2.1 Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees.

6.2.2 Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees.

6.2.3 Claims for damages, insured by usual personal injury liability coverage, which are sustained (a) by any person as a result of an offense directly or indirectly related to the employment of such person by the Consultant, or (b) by any other person.

6.2.4 Claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom.

6.2.5 Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle.

6.2.6 Claims under workers' compensation, disability benefit, and other similar employee benefit acts.

6.2.7 Claims arising out of the Consultant and any Sub-Consultant's professional services provided as part of this Agreement.

6.2.8 Protection shall be provided whether the claim results from operations of the Consultant, their Sub-Consultants, employees of any of them, or anyone for whose acts any of them may be liable.

6.3 **LIMITS OF LIABILITY** Policies for the insurance required for worker's compensation,

disability benefit, and other similar employee benefit acts shall be written for the limits of liability specified as follows:

6.3.1 GENERAL LIABILITY (including consultant, independent sub-consultants, broad form property damage, personal injury underground explosion and collapse hazards):

6.3.1.1 Listing Owner as Additional Insured on a primary and non-contributory basis.

6.3.1.2 \$1,000,000 Combined Single Limit Per Occurrence.

6.3.1.3 \$2,000,000 Aggregate Per Project, endorsement to be included.

6.3.2 AUTOMOBILE LIABILITY INSURANCE (including all owned, non-owned, and hired automobiles):

6.3.2.1 Listing Owner as Additional Insured.

6.3.2.2 \$1,000,000 Combined Single Limit.

6.3.3 WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE Coverage B – Statutory Benefits is required with at least the following limits of liability:

6.3.3.1 \$500,000/\$500,000/\$500,000.

6.3.4 UMBRELLA OR EXCESS LIABILITY INSURANCE of no less than \$5,000,000 per occurrence providing excess of the General Liability, Automobile Liability and Employers Liability. Insurance coverage must follow form of the underlying or primary coverage.

6.3.5 PROFESSIONAL LIABILITY INSURANCE:

6.3.5.1 \$2,000,000 each occurrence and aggregate.

#### 6.4 CONSULTANT'S LIABILITY INSURANCE

6.4.1 Consultant's liability insurance shall provide broad form coverage, with usual and customary exclusions, and shall include at a minimum full coverage for Consultant's indemnity obligations as provided herein and shall be in a form satisfactory to the Owner.

6.4.2 Additional insured endorsement shall apply to all liability policies except Workers' Compensation insurance.

- 6.4.3 Additional insured endorsement shall be provided with the Certificate of Insurance naming the Owner, their employees, and their representatives as additional insureds.
- 6.5 **CONSULTANT’S INSURANCE FOR OTHER LOSSES** The Consultant shall maintain insurance to cover all loss or damage to any tools, machinery, equipment, or motor vehicles, used for the work of this Agreement, by the Consultant, Sub-Consultants, material persons or employees of any of them.
- 6.6 **NOTIFICATION** The Consultant shall immediately notify the Owner, in writing, upon the occurrence of any event covered by this Section. This notice shall describe the event, give the cause, as far as it can be determined, provide an estimate of loss or damage, list the witnesses, if any, and state the amount of any claim.
- 6.7 **CANCELLATION** Thirty (30) days advance written notice of cancellation, non-renewal, reduction in insurance coverage and/or limits and ten (10) days written notice of non-payment of premium shall be sent to:
- Des Moines Water Works  
Engineering Department  
2201 George Flagg Parkway  
Des Moines, Iowa 50321-1190
- This endorsement supersedes the standard cancellation statement on the certificate of insurance to which this endorsement is attached.
- 6.8 **PROOF OF INSURANCE** The Consultant shall provide to DMWW a Certificate(s) of Insurance evidencing all required insurance coverage above utilizing the latest version of the ACORD form.
- 6.9 **WAIVER OF SUBROGATION** Consultant waives all rights of subrogation on behalf of Consultant and Consultant’s insurance carriers.
- 6.10 **INDEMNITY**
- 6.10.1 To the fullest extent permitted by law, Consultant agrees to defend, pay on behalf of, indemnify, and hold harmless the Owner, and Owner’s officers, employees, trustees, agents, and successors, against any and all claims, demands, suits, or loss, including any and all outlay and expense connected therewith, and for any damages or attorneys’ fees which may be asserted, claimed or recovered against or from the Owner by reason of personal injury, including bodily injury or death, and property damages, including loss of use or damages to the Work or Services and Owner’s property, which arises out of or results from Consultant’s or Sub-Consultant’s intentional acts, negligent acts, errors or omissions occurring in the course of Consultant’s performance of the Agreement. It is the intention of the parties that the Owner shall not be liable or in any way responsible for injury, damage, liability, loss, attorneys’ fees, or expense incurred by Consultant its officers,

employees, Sub-Consultants, and others affiliated with Consultant due to accidents, mishaps, misconduct, negligence, or injuries either in person or property resulting from the work performed by, or the intentional acts, negligent acts, errors or omissions of Consultant.

6.10.2 Consultant will assume full responsibility for all damage or injuries which may result to any person or property by reason of Consultant's intentional acts, negligent acts, errors, or omissions in connection with the Work and/or Services provided under this Agreement by Consultant to the Owner pursuant to this Agreement and agrees to pay the Owner for all damages caused to the Owners' premises resulting from the negligent acts, errors, or omissions of Consultant.

6.10.3 Consultant represents that its activities, and activities of any Sub-Consultant, pursuant to the provisions of this Agreement will be performed and supervised by adequately trained and qualified personnel, and Consultant will observe, and cause its officers, employees, Sub-Consultants, and others affiliated with Consultant to observe all applicable safety rules.

6.10.4 Consultant will indemnify and hold harmless Owner and Owner's officers, employees, trustees, agents, and successors, against any and all claims, demands, suits, or loss, including any and all outlay and expense connected therewith, and for any damages or attorneys' fees which may be asserted, claimed or recovered against or from the Owner by reason of any alleged copyright, trade secret, or intellectual property infringement brought by any third party related in any way to the Work or Services provided under this Agreement.

6.10.5 The requirement of any party to this Agreement to indemnify another party shall not include the obligation to indemnify, hold harmless, or defend any other party to the agreement, including the indemnitee's employees, consultants, agents, or others for whom the indemnitee is responsible, against liability, claims, damages, losses, or expenses, including attorney fees, to the extent caused by or resulting from the negligent act or omission of the indemnitee or of the indemnitee's employees, consultants, agents, or others for whom the indemnitee is responsible. This limitation does not apply to an insurer's obligation to its insureds under any insurance policy or agreement, or any obligation of strict liability otherwise imposed by law.

6.10.6 Owner retains the right to defend any claim brought against Owner and retain Owner's own counsel to defend. If the claims brought against Owner are covered by the indemnification provisions of this Agreement, then Consultant shall reimburse Owner for all of Owner's attorneys' fees incurred by Owner in defense of the indemnified claim.

6.10.7 Owner's failure to promptly notify Consultant of any claim covered by the indemnification provision of this Agreement does not alter or eliminate Consultant's indemnification obligations.

6.10.8 Consultant agrees to obtain Owner's approval, which Owner shall not unreasonably

withhold, prior to settling any claims with a third party if such claims are covered by the indemnification provisions of this Agreement.

- 6.11 **LIMITATIONS OF LIABILITY** Consultant's liability under this Agreement shall be the applicable insurance limit plus the compensation paid for the particular Project where Consultant's liability arose. In no event will Owner or Consultant be liable to the other for loss of revenue or profit, or any consequential, incidental, indirect, exemplary, special, or punitive damages, regardless of whether such damages were foreseeable.

## **ARTICLE 7 TERMINATION**

- 7.1 Should either Party be in material breach of this Agreement, the other Party may give written notice to the breaching Part that it intends to terminate this Agreement for default absent appropriate corrective action upon seven (7) days of receipt. Upon such time and absent appropriate corrective action, the non-breaching party may terminate this Agreement in writing.
- 7.2 Upon written notice, the Owner may, without cause, terminate this Agreement or Consultant's work on any Project. In the event of termination for convenience, Owner will pay Consultant for all Work or Services performed through the date of termination
- 7.3 If this Agreement or a Project is terminated, Consultant will deliver to Owner a copy of the work product for all Work and Services created through the date of termination. This includes all Schematic Design Documents, Design Development Documents and Construction Documents, regardless of whether such documents are final.

## **ARTICLE 8 DISPUTE MITIGATION AND RESOLUTION**

- 8.1 **CONTINUANCE OF SERVICES AND PAYMENT** Unless otherwise agreed in writing, the Consultant shall continue to perform its Services during any dispute mitigation or resolution proceeding. If the Consultant continues to perform, the Owner will continue to make payments in accordance with this Agreement for amounts not in dispute.
- 8.2 **DIRECT DISCUSSIONS** Any dispute between the Consultant and the Owner regarding, but not limited to Project budget, Project scope, Project layout, or types and quality of materials, shall be submitted in writing within twenty-one (21) days after occurrence of the event. The Parties shall endeavor to reach resolution through good faith direct discussions. If not resolved by Owner's Representative within ten (10) days of receipt of the written notice by Consultant, the Consultant may submit in writing the issues in dispute to Owner's Director of Engineering for interpretation and resolution. Consultant must comply with the dispute resolution procedure in this Article prior to seeking any other remedies.

## **ARTICLE 9 MISCELLANEOUS**

- 9.1 **RIGHT TO USE** Owner shall receive Ownership and have unlimited rights to copy and use all data and reports provided by the Consultant distributed to the Owner. The Owner

shall own all copyrights to the work product that are provided by the Consultant in the course of performing the Services and Work for the Project. All work product provided by the Consultant to the Owner shall be considered work for hire under the United States Copyright Act and, at all stages of development, shall be and remain the sole and exclusive property of the Owner.

- 9.1.1 The parties agree that Owner shall not use the work on another or unrelated Project without the Consultant's written permission. Owner will indemnify Consultant (including employees, and Sub-Consultants) from claims resulting from such reuse without Consultant's written permission.
- 9.1.2 Consultant represent and warrant that none of the Construction Documents, Design Development Documents, and Schematic Documents will infringe any intellectual property rights of any third parties.
- 9.2 INDEPENDENT CONSULTANT Nothing in this Agreement should be construed to create between Consultant, any Sub-Consultant, and Owner any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship, and neither shall have authority to agreement for or bind the other party in any manner whatsoever.
- 9.3 COOPERATION Consultant will execute any documents and take any actions necessary to give full effect to this Agreement.
- 9.4 ONLY AGREEMENT This Agreement, together with all Exhibits and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.
- 9.5 NO ASSIGNMENT Consultant may not assign, delegate, or transfer any of Consultant's rights or obligations under this Agreement without the prior written consent of Owner, which consent shall not be unreasonably withheld.
- 9.6 AMENDMENTS/MODIFICATIONS This Agreement may only be modified or amended in a writing executed by both Consultant and Owner. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- 9.7 INVALIDITY If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable

such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to affect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

- 9.8 **CONSENT TO JURISDICTION** This Agreement will be construed according to the laws of the State of Iowa. Venue for any dispute related to this Agreement, the Work, Services, or the Project, shall be in the state or federal court having jurisdiction over Polk County, Iowa.
- 9.9 **ATTORNEYS' FEES** In any dispute related to this Agreement, the Work, Services, or Project, Owner shall be entitled to recover reasonable attorneys' fees and costs from Consultant in any action in which Owner is the prevailing party.
- 9.10 **VALID EXISTENCE** Each party represents and warrants to the other party that:
- 9.10.1 is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization, or chartering.
  - 9.10.2 it has the full right, power, and authority to enter into this Agreement, to grant the rights and licenses granted hereunder, and to perform its obligations hereunder.
  - 9.10.3 the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the party; and
  - 9.10.4 when executed and delivered by such party, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.
- 9.11 **NO THIRD PARTY BENEFICIARY** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement.
- 9.12 **RIGHT TO APPROVE SUB-CONSULTANTS** Consultant must notify Owner when Consultant uses a Sub-Consultant to perform any of the Services. Owner has the right to require Consultant to discontinue use of a Sub-Consultant for the Services of a Project.
- 9.13 **CONFLICTS** In the event of a conflict between the DMWW Terms and Conditions and any of the Exhibits, including Consultant's Proposal, the terms of the DMWW Terms and Conditions will govern.

**ARTICLE 10 SPECIFIC PROVISIONS**

10.1 MONTHLY PROGRESS REPORT The Consultant shall provide a monthly progress report summarizing the activities of the previous month and outstanding issues or activities planned for the next month. This report shall coincide with the Consultant’s invoice for Payment.

10.2 COMPENSATION AND PAYMENTS The Owner shall compensate the Consultant in accordance with this Agreement.

10.2.1 Payment to Consultant shall be made monthly upon submittal of the Consultant’s invoice.

10.2.2 Any required backup documentation shall be included with the Consultant’s invoice.

10.2.3 During the Project, payments to the Consultant shall not exceed the following percentages of the total compensation due under the Agreement listed on the Indefinite Scope Release Form.

	<b>Percentage</b>
Study and Report	10
Preliminary/Schematic Design	25
Design Development	40
Construction Document	75
Bidding	80
Construction	98
Record Documents	100

10.3 DOCUMENT SUBMITTAL SCHEDULE The Consultant shall provide to the Owner the quantity of hardcopies (HC) and the electronic files (E) of the documents identified below.

	Study And Report Phase	Schematic Design Review	Design Development Review	Construction Documents Review
Study Report	E			
Drawings		E	E	E
Project Manuals		E	E	E
Probable Construction Cost	E	E	E	E
Monthly Progress			E	E



#### 10.4 DOCUMENT FORMAT

10.4.1 Text based documents shall be submitted in searchable .pdf and Microsoft Word format (.doc).

10.4.2 Contract Drawings shall be submitted in .pdf and .dgn formats. PDF drawings shall be collated into single electronic file with pages to match the drawing sheet name.

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