



*Request for Proposals*

CONTRACTED CITY ENGINEERING SERVICES

Issued November 1, 2024

**DEADLINE—Noon  
Wednesday, December 4, 2024**

CONTACT: MATTHEW YORK  
DIRECTOR OF PUBLIC WORKS AND  
UTILITIES  
100 DOWNTOWN PLAZA  
FAIRMONT, MN 56031  
(507-238-3942)  
[myork@fairmont.org](mailto:myork@fairmont.org)  
[www.fairmont.org](http://www.fairmont.org)

## **Introduction**

The City of Fairmont is soliciting proposals from firms interested in providing a wide variety of general engineering services and related technical services. The firm selected will be designated as the City Engineer. The successful applicant will provide these services to the City beginning on March 1, 2025. Services *may* include, but not be limited, to those listed in the “Scope of Services” part of this document.

The City of Fairmont shall not be liable for any costs incurred by the firm and/or assigns in responding to this Request for Proposal (RFP), or for any costs associated with discussions required for clarification of items related to this proposal, including any future interviews.

To be considered, one (1) paper copy and one (1) digital copy of a proposal must be received at City Hall 100 Downtown Plaza, Fairmont, MN 56031 by Noon on Wednesday, December 4, 2024. The City reserves the right to reject any or all proposals submitted.

Questions regarding this request should be directed to Matthew York, City of Fairmont, 100 Downtown Plaza, Fairmont, MN 56031 and 507-238-3942 or [myork@fairmont.org](mailto:myork@fairmont.org). In order to ensure a fair review and selection process, firms submitting proposals are specifically requested not to make other contacts with other City staff, Mayor or Councilmembers regarding their proposals.

During the evaluation process, the City reserves the right to request additional information or clarifications from proposers, or to allow corrections of errors or omissions.

All materials, including but not limited to paper and digital materials, that are prepared, acquired, created, or utilized to fulfill this Request for Proposal and its objectives shall become the property of the City of Fairmont, where allowed by law. Submission of a proposal indicates acceptance by the firm of the conditions contained in this request for proposals, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City and the firm selected.

The City of Fairmont reserves the right to reject any and all submittals, waive any irregularities, reissue all or part of this Request for Proposal, and not award any contract, all at their discretion and without penalty.

## **Community Profile**

The City of Fairmont, incorporated in 1878, has a mayor elected at large for a four-year term and five council member, 4 elected by Ward and one At-Large, to four-year terms. As a policy making body of the City, the City Council is responsible for the overall operation of the City. The City Administrator is responsible for carrying out the Council’s policies and for the administration of all City business.

The City of Fairmont is located at the intersection of Interstate 90 and State Highway 15 in southern Minnesota, approximately 7 miles north of the Iowa border. A popular resting point for interstate travelers, the city’s northern corridor hosts service industry commercial uses. The form of parcel arrangement and infrastructure along the Highway 15 corridor is centered around vehicle traffic. In 1902, the first City Charter was approved for Fairmont which initially developed along the shore of Lake Sisseton, the city has expanded around five lakes, known as the Chain of Lakes. Expansion of the community, especially single-family neighborhoods, has largely taken shape around these lakes with shoreland management zoning defining much of development. Downtown Plaza remains the heart of the city. What is now a one-way street stretches along one of the original platted areas as traditional brick buildings maintain zero or close to zero setbacks.

The economic history of Fairmont is one that emerged from both its place within an agricultural region and its position along a freight railroad running east and west through town. Many of Fairmont's largest industries were defined around these cornerstones and continue to be today. The community has room to expand into the plains and farmland to the south, west, north, and east, while also prioritizing redevelopment of existing or former industrial, commercial, and residential sites close to the railroad and along tertiary corridors.

## **Scope of Services**

### **A. General and Project Management**

- Serves as the City's Engineer.
- Works with City's Public Works and Utilities Director and In-House Engineering Staff to Completed Projects for the City.
- Assists in planning, coordinating, supervising and evaluating programs, plans, services, equipment and infrastructure.
- Develops and recommends policies and procedures for effective operation of the City consistent with City policies and relevant laws, rules and regulations and ensures council actions are implemented.
- Assists in evaluating public works needs and formulates short- and long-range plans to meet needs in all areas of Public Works improvements, including streets, water, sewer, storm water, streetlights, parks, and facilities.
- Assist with the Pavement Management Program including the rating of the condition of streets within the city.
- Assists in the implementation of all water resource functions.
- Assists in Capital Improvement Planning
- Provides leadership in the areas of water efficiency and conservation.
- Provides engineering services on projects and oversees project management for the construction of municipal public works projects.
- Assists in reviewing land use applications and construction plans for private developments to ensure consistency with city-adopted engineering specifications, City policies, and relevant laws, rules, and regulations and ensures council actions are implemented.
- Ensures that costs and fees are charged back to development projects; works with the City Finance Director to monitor charges and revenues associated with development projects.
- Assists in the planning, layout and design of City parks and trails, pedestrian routes, and other recreational amenities.
- Assists in City's GIS and Work Order Management System, as directed by the Public Works and Utilities Director.

### **B. Construction Services**

- Plan and review construction projects and specifications.
- Monitor the construction process for compliance with codes, regulations, standards and with approved plans; assures financial accountability of private projects as they relate to escrows and letters of credit. Provide advice to the City during performance of construction projects, and shall give consideration and advice to the City during the performance of services, and monitors project budget.
- Prepare, design and/or review construction plans.
- Review bids and/or prepare bid tabulations.
- Perform construction staking and surveying.

### **C. Preparation of Engineering Reports and Technical Correspondence**

- Determine the need for preliminary studies, reviews all preliminary studies for compliance with ordinances, comprehensive plans, engineering standards and financial guidelines including:
  - Feasibility reports
  - Construction inspection
  - Creates assessment rolls
  - Plat review
  - Utility studies
  - Traffic studies/signalization/signage/forecasting
  - State aid reports
  - Surface water system analysis and design
  - Wetland delineation and mitigation
  - Capital Improvement Program studies
  - Prepare comments regarding reports, plans and studies of other agencies
  - Presents feasibility studies at public meetings

### **D. City Meetings** *(including but not limited to the following)*

- Participates in internal and external meetings involving engineering questions and issues on an As-Needed Basis.
- Meets with developers and members of the public on proposed development projects to relate the processes and procedures involved with engineering and infrastructure development. Reviews development proposals for conformance with City standards.
- Acts as City liaison and representative with other communities and county, state and federal agencies in areas of responsibility.
- Attends City Council meetings, Council Work Sessions, and other City meetings, as needed. The Council meets on the 2<sup>nd</sup> and 4<sup>th</sup> Mondays of the month at 5:30 PM. (subject to change for 2025) with work sessions scheduled as needed.

### **E. Responds to Constituent Requests and Issues as Directed by Staff**

- Performs field inspections
- Addresses constituent concerns personally and in writing
- Be available to the public via phone, email or scheduled meetings during the general business hours of the City of Fairmont (Monday -Friday 8:00 am – 4:30 pm)
- Makes public presentations
- Provides recommendations to staff and City Council

### **F. Other Items**

- Work with other engineering firms as desired by the City on specific projects.
- Assist in inventory tracking of public infrastructure through the use of GIS and other means.
- Identify and assist with funding solutions for infrastructure projects such as grant and loan programs and direct legislative appropriations.
- Obtain proper approval and documentation from local, state and federal authorities prior to implementing projects.
- Write grant proposals as directed by City staff and City Council.
- Preparation of transportation, water, sewer and storm water components of Comprehensive Plan update.

## Proposal Requirements

The City of Fairmont expects that, at a minimum, firms must meet the following requirements:

- 1) Be licensed to provide engineering services in the State of Minnesota
- 2) Demonstrate experience with municipal engineering of similar size and scope of the services being requested.
- 3) Assign the City a licensed engineer who has a minimum of five years of experience with municipal engineering projects.
- 4) Be able to provide all of the services listed in the scope of services, either within the organization or by using a sub-consultant.

Interested firms are to submit a written proposal to include information directly related to each of the selection criteria outlined in the Selection Process/Criteria section. At a minimum, proposals should include the following information:

- 1) A written statement of your interest and qualifications including:
  - a. Firm name, address, telephone number and contact person.
  - b. A description of the firm, including brief history, the number of employees and their discipline, philosophy regarding client service, location, years in business, etc.
  - c. A brief description of the scope of similar client relationships,
  - d. The name of the person responsible for the management and administration of the contract and the name of the employee designated as City Engineer, if different, including address and telephone number.
- 2) Resumes of the key personnel who may be assigned to conduct various general engineering service tasks.
- 3) An organizational chart identifying team members and their areas of responsibility.
- 4) Discussion of the firm's specific abilities to provide the required professional services outlined in the Scope of Services.
- 5) Specifically note the services listed in the Scope of Services that will need to be done outside of your organization. List the names of sub-consultants proposed as project team members. Resumes of sub-consultants proposed as project team members.
- 6) Fee schedule, per staff position, which should list the current hourly rate and annual projections thereafter for 2025 through 2029. Ancillary expenses, such as overhead (often expressed as a multiple of direct labor costs), mileage, telephone, Xeroxing, markup for subcontracted services, etc.
- 7) The firm's current and projected workload and its ability to meet schedules including a 2-business day response time to emails and calls from city staff and ability to complete development plan reviews within two weeks. Describe the current workload of the person who would be designated as the City Engineer and what other communities he/she represents.
- 8) Familiarity with the City of Fairmont.
- 9) Describe the firm's approach to communicate and coordinate projects with the city council, city staff, private developers, residents and the media.
- 10) A description of the firm's philosophy regarding ethics, specifically addressing conflicts of interests. State any potential conflict(s) of interest (i.e. real estate developers, other units of government, etc.) that your firm may have in providing engineering services as outlined in this proposal.
- 11) Three examples of specific knowledge and expertise including project management skills and methodology used to monitor project budgets.

- 12) Provide at least three references from public clients, two of which are from cities of similar size for whom similar services have been performed within the past five years.
- a. Name of Owner
  - b. Project Name
  - c. Contact Person
  - d. Address
  - e. Telephone Number
  - f. Firm's key personnel assigned to the referenced project with Email Address
- 13) Completed Exercise (see below)

### **Exercise**

As an exercise to assist in the selection criteria, we would like to receive a standard and concise proposal with an estimated number of hours/rates/personnel for each of the following three phases for the hypothetical project described below:

- 1) a feasibility study
- 2) plans and specifications
- 3) field review/inspection on the following hypothetical project.

#### **Proposal Background**

*The City Council orders a feasibility study for a street project that includes bituminous removal and replacement, replacing bituminous curb with concrete curbing, and localized water main work to repair gate valves and hydrants. The project will be partially assessed to abutting property owners, so the feasibility study must include all necessary documentation for 429 purposes. This includes an assessment roll and estimated assessments for each property. The total project cost for the improvements, including construction and overhead costs, is \$1,000,000.*

*The consultant presents the project at a Public Hearing. The project is ordered by the City Council, directs plans and specifications to be prepared and bids to be solicited.*

*The consultant prepares the plans and specifications for City staff review and addresses our comments. Plans are approved by the City Council and bids are solicited.*

*Bids are received and an excellent contractor experienced in working in Fairmont is the low bid. There are limited subcontractors and they are also excellent and experienced in working in the City. The project schedule is determined to be eight (8) weeks from start to finish. All work occurs during normal weekday hours. Inspection is generally full time, recognizing that there are days/times when it is not required. Inspection to be provided by a regular full time employee with at least four (4) years of related field experience. The project progresses well and there are no changed conditions or change orders. Partial and final pay estimates are prepared by the consultant, signed by the contractor and presented to the City for processing.*

*The project concludes and is on budget. Final paperwork is collected by the consultant and provided to the City along with the final pay estimate. A record drawing plan set is provided in both paper and electronic form for the project.*

### **General Terms and Conditions**

After the proposal submittal deadline, the City reserves the right to schedule interviews with selected respondents. These interviews may be conducted with groups of representatives from the City. The respondents to be interviewed will be contacted after proposal submittal to schedule an interview date and time.

The City reserves the right to negotiate terms and conditions with respondents. The City reserves the right to negotiate modifications to a proposal with a single respondent without obligation to negotiate similar modifications with other respondents. Unsolicited modifications without prior request of the owner will not be accepted.

The City reserves the right to contact any or all respondents for clarification regarding information presented in submitted proposals.

No respondent shall have a right to make a claim against the City in the event the City accepts a proposal or chooses not to accept any or all proposals. The City by this RFP does not promise to accept the proposal with the highest proposed investment or lowest cost to the City or any other proposal and specifically reserves the right to reject any or all proposals, to waive any or all informalities or irregularities in the proposals received, to investigate the qualifications and experience of any applicant, to reject any provisions in any proposal, to modify RFP contents, to obtain new proposals, and to negotiate the requested proposal and contract terms with any respondent.

The City reserves the right to add to, amend, withdraw, and/or cancel, in part or entirely, this RFP for any or no reason and at any time with no liability to any prospective respondent for any costs or expenses incurred in connection with this RFP or otherwise. The City further reserves the right to terminate negotiations with any party, following or prior to acceptance of any proposal, at any time. If any part of this RFP is revised, the addenda will be posted on the City's website.

The City Council retains the sole right to make any decision regarding which respondent to negotiate with or to reject all proposals. The City Council will weigh the evaluation team's recommendation, but the City Council does not need to follow the evaluation team's recommendation.

The City shall not be responsible for any costs incurred by respondents in connection with this RFP. Respondents shall bear all expenses associated to offer submission, attendance at interviews, if any, or any other activity related to the RFP or otherwise.

Information supplied by respondents to the City is subject to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 ("MGDPA"). Consequently, submitted proposals will become public unless it is otherwise classified by the MGDPA. If a respondent believes any other-than-public information will be included in a proposal, they shall identify that data and explain how and why that data falls within one of the MGDPA's exceptions. Notwithstanding the forgoing, the RFP respondents agree as a condition of submitting a proposal that the City will not be liable or accountable for any loss or damage that may result from a breach of confidentiality.

This RFP includes a template contract. The City will use this Contract as part of the final approval process.

### **Selection Process/Criteria**

Proposals will be reviewed as indicated in the included timetable. City staff will determine which firms are interviewed by the City Council following a review of the proposals submitted.

### **Schedule of Dates**

<b>Date</b>	<b>Description</b>
November 1, 2024	Advertise requests for proposals
November 19, 2024	Conduct Q & A session at 11:00 a.m. for representatives from interested firms (Fairmont City Hall)
December 4, 2024	Proposals are due to City
TBD	Council work session to conduct oral interviews with selected firms and direct staff to negotiate contract with selected firm*
January 27, 2025	City Council to approve contract with selected firm

*\*The oral interview process will consist of each firm responding to five questions that have been provided to each firm in advance of the interview. The period to respond to these five questions will be limited to 20 minutes. Following the 20-minute response to the five questions, follow-up questions, as necessary, will be asked by the City.*

### **Submission**

Submit one (1) paper copy and one (1) digital copy of the proposal indicated in the cover letter, to be entitled "RFP for General Engineering Services" on or before Noon on December 4, 2024 to:

Matthew R York  
Dir of Public Works/Utilities  
City of Fairmont  
100 Downtown Plaza  
Fairmont, MN 56031



# CONSULTANT SERVICE CONTRACT

This Contract (“Contract”) is made this \_\_\_\_\_ day of October, 2024, by and between the CITY OF FAIRMONT, a Minnesota municipal corporation, 100 Downtown Plaza, Fairmont, MN 56031 (“CITY”), and **NAME OF COMPANY**, a Corporation under the laws of the State of **STATE**, **ADDRESS** (“CONSULTANT”); (collectively the “PARTIES”).

WHEREAS, CITY requires certain professional services in conjunction with **NAME OF PROJECT** (the “Project”); and

WHEREAS, CONSULTANT agrees to furnish the various professional services required by CITY.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

## SECTION I – CONSULTANT'S SERVICES AND RESPONSIBILITIES

- A. **Scope of Services.** CONSULTANT agrees to perform various Project services as detailed in Exhibit 1, Scope of Services, attached hereto and incorporated herein by reference.
- B. **Changes to Scope of Services/Additional Services.** Upon mutual agreement of the PARTIES hereto pursuant to Section VI, Paragraph K of this Contract, a change to the scope of services detailed in Exhibit 1, attached hereto, may be authorized. In the event that such a change to the scope of services detailed in Exhibit 1, attached hereto, requires additional services by CONSULTANT, CONSULTANT shall be entitled to additional compensation consistent with Section III of this Contract. CONSULTANT shall give notice to CITY of any additional services prior to furnishing such additional services. CITY may request an estimate of additional cost from CONSULTANT, and upon receipt of the request, CONSULTANT shall furnish such cost estimate, prior to CITY’s authorization of the changed scope of services.
- C. **Changed Conditions.** If CONSULTANT determines that any services it has been directed or requested to perform by CITY are beyond the scope of services detailed in Exhibit 1, attached hereto, or that, due to changed conditions or changes in the method or manner of administration of the Project, CONSULTANT’s effort required to perform its services under this Contract exceeds the estimate which formed the basis for CONSULTANT’s compensation, CONSULTANT shall promptly notify CITY of that fact. Upon mutual agreement of the PARTIES hereto pursuant to Section VI, Paragraph K of this Contract, additional compensation for such services, and/or an extension of time for completion thereof, may be authorized. In the absence of such a mutual agreement, amounts of compensation and time for completion shall be equitably adjusted, provided that CONSULTANT first provides notice to CITY as required by this Paragraph and CITY has not terminated this Contract pursuant to Section IV, Paragraph B.

- D. **Standard of Care.** Services provided by CONSULTANT or its subcontractors and/or sub-consultants under this Contract will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of CONSULTANT's profession or industry. CONSULTANT shall be liable to the fullest extent permitted under applicable law, without limitation, for any injuries, loss, or damages proximately caused by CONSULTANT's breach of this standard of care. CONSULTANT shall put forth reasonable efforts to complete its duties in a timely manner. CONSULTANT shall not be responsible for delays caused by factors beyond its control or that could not be reasonably foreseen at the time of execution of this Contract. CONSULTANT shall be responsible for costs, delays or damages arising from unreasonable delays in the performance of its duties
- E. **Insurance.** CONSULTANT shall not commence work under this Contract until CONSULTANT has obtained all insurance required herein and such insurance has been approved by CITY, nor shall CONSULTANT allow any subcontractor to commence work on a subcontract until such subcontractor has obtained like insurance covering as to worker's compensation, liability, and automobile insurance. All this insurance coverage shall be maintained throughout the life of this Contract.
1. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, statutory Workers' Compensation coverage. Except as provided below, CONSULTANT must provide Workers' Compensation insurance for all its employees. If Minnesota Statutes, section 176.041 exempts CONSULTANT from Workers' Compensation insurance or if CONSULTANT has no employees in the City, CONSULTANT must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes CONSULTANT from the Minnesota Workers' Compensation requirements. If during the course of the Contract CONSULTANT becomes eligible for Workers' Compensation, CONSULTANT must comply with the Workers' Compensation insurance requirements herein and provide CITY with a certificate of insurance.
  2. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, Commercial General Liability ("CGL") and business automobile liability insurance coverages insuring CONSULTANT against claims for bodily injury or death, or for damage to property, including loss of use, which may arise out of operations by CONSULTANT or by any subcontractor or by anyone employed by any of them or by anyone for whose acts any of them may be liable (including automobile use). The following coverages shall, at a minimum, be included in the CGL insurance: Premises and Operations Bodily Injury and Property Damage, Personal and Advertising Injury, Blanket Contractual Liability, and Products and Ongoing and Completed Operations Liability. The required automobile liability coverage must include coverage for "any auto" which extends coverage to owned autos, non-owned autos, and hired autos. Such insurance shall include, but not be limited to minimum coverages and limits of liability specified in this Paragraph, or required by law. CITY shall have additional insured status and be listed by

name on an endorsement attached to such policy(ies) for the services provided under this Contract and shall provide that CONSULTANT's coverage shall be primary and noncontributory in the event of a loss.

3. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, the following insurance policies, including the minimum coverages and limits of liability specified below, or as specified in the applicable insurance certificate(s), or as required by law, whichever is greater (coverages under umbrella or excess policies may be combined with primary policies to meet the stated requirements):

Worker's Compensation	Statutory Limits
Employer's Liability	\$500,000 bodily injury by accident \$500,000 bodily injury by disease aggregate \$500,000 bodily injury by disease per employee
Commercial General Liability	\$1,000,000 property damage and bodily injury per occurrence \$2,000,000 annual aggregate \$4,000,000 annual aggregate Products – Completed Operations
Automobile Liability	\$1,000,000 per occurrence combined single limit for Bodily Injury and Property Damage (shall include coverage for all owned, hired and non-owned vehicles)
Umbrella or Excess Liability	\$1,000,000

4. Professional/Technical (Errors and Omissions) Liability Insurance. CONSULTANT agrees to procure and maintain, at CONSULTANT's expense, Professional/Technical (Errors and Omissions) Liability Insurance. The required policy will provide coverage for all claims CONSULTANT may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to CONSULTANT's professional services required under the contract. CONSULTANT is required to carry the following minimum limits: \$2,000,000– per claim; \$4,000,000– annual aggregate; or as specified in the applicable insurance certificate(s), or as required by law, whichever is greater. Any deductible will be the sole responsibility of CONSULTANT and may not exceed \$50,000 without the written approval of CITY. If CONSULTANT desires authority from CITY to have a deductible in a higher amount, CONSULTANT shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited

financial statements so that CITY can ascertain the ability of CONSULTANT to cover the deductible from its own resources. The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract and CONSULTANT shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by CONSULTANT to fulfill this requirement.

5. True, accurate and current certificates of insurance, showing evidence of the required insurance coverages, are hereby provided to CITY by CONSULTANT and are attached hereto as Exhibit 2.
6. Any insurance limits in excess of the minimum limits specified herein above shall be available to CITY.
7. CONSULTANT's insurance policies and certificate(s) shall not be cancelled without at least thirty (30) days' advance written notice to CITY or Ten (10) days' prior written notice to CITY for nonpayment of premium.
8. CONSULTANT's policies shall be primary insurance and noncontributory to any other valid and collectible insurance available to CITY with respect to any claim arising out of CONSULTANT's performance under this Contract., except for professional liability and workers compensation/employer's liability.
9. CONSULTANT is responsible for payment of Contract related insurance premiums and deductibles. If CONSULTANT is self-insured, a Certificate of Self-Insurance must be attached.
10. CONSULTANT shall ensure that all subcontractors comply with the insurance provisions contained in this Contract and such insurance is maintained as specified.
11. CONSULTANT's policies shall include legal defense fees in addition to its liability policy limits, with the exception of the professional liability insurance, if applicable.
12. All policies listed above, except professional liability insurance (or other coverage not reasonably available on an occurrence basis), shall be written on a per "occurrence" basis ("claims made" and "modified occurrence" forms are not acceptable), and General Liability and Excess coverages shall apply on a "per project" basis.
13. CONSULTANT shall obtain insurance policies from insurance companies having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota, or as approved by CITY.

14. Effect of Failure to Provide Insurance. If CONSULTANT fails to provide the specified insurance, then CONSULTANT will defend, indemnify and hold harmless CITY and CITY's officials, agents and employees from any loss, claim, liability and expense (including reasonable attorney's fees and expenses of litigation) to the extent necessary to afford the same protection as would have been provided by the specified insurance. Except to the extent prohibited by law, this indemnity applies regardless of any strict liability or negligence attributable to CITY (including sole negligence) and regardless of the extent to which the underlying occurrence (i.e., the event giving rise to a claim which would have been covered by the specified insurance) is attributable to the negligent or otherwise wrongful act or omission (including breach of contract) of CONSULTANT, its subcontractors, agents, employees or delegates. CONSULTANT agrees that this indemnity shall be construed and applied in favor of indemnification. CONSULTANT also agrees that if applicable law limits or precludes any aspect of this indemnity, then the indemnity will be considered limited only to the extent necessary to comply with that applicable law. The stated indemnity continues until all applicable statutes of limitation have run.

If a claim arises within the scope of the stated indemnity, CITY may require CONSULTANT to:

- a. Furnish and pay for a surety bond, satisfactory to CITY, guaranteeing performance of the indemnity obligation; or
- b. Furnish a written acceptance of tender of defense and indemnity from CONSULTANT's insurance company.

CONSULTANT will take the action required by CITY within Fifteen (15) days of receiving notice from CITY.

15. Notwithstanding the foregoing, CITY reserves the right to immediately terminate this Contract if CONSULTANT is not in compliance with the insurance requirements contained herein and retains all rights to pursue any legal remedies against CONSULTANT.

## **SECTION II – CITY'S RESPONSIBILITIES**

- A. CITY shall promptly compensate CONSULTANT as services are performed to the satisfaction of the CITY's Engineer, in accordance with Section III of this Contract.
- B. CITY shall provide access to any and all previously acquired information relevant to the scope of services detailed in Exhibit 1, attached hereto, in its custody to CONSULTANT for its use, at CONSULTANT's request.
- C. CITY will, to the fullest extent possible, grant access to and make all provisions for entry

upon both public and private property as necessary for CONSULTANT's performance of the services detailed in Exhibit 1, attached hereto.

- D. **NAME OF CONTACT**, CITY's **TITLE**, shall serve as the liaison person to act as CITY's representative with respect to services to be rendered under this Contract. Said representative shall have the authority to transmit instructions, receive instructions, receive information, interpret and define CITY's policies with respect to the Project and CONSULTANT's services. Such person shall be the primary contact person between CITY and CONSULTANT with respect to the services from CONSULTANT under this Contract. CITY reserves the right to substitute the authorized contact person at any time and shall notify CONSULTANT thereof.

### SECTION III – CONSIDERATION

- A. **Fees.** CITY will compensate CONSULTANT as detailed in Exhibit 3, Compensation, which is attached hereto and incorporated herein by reference, for CONSULTANT's performance of services under this Contract.
- B. If CITY fails to make any payment due CONSULTANT for services performed to the satisfaction of the CITY's Engineer and expenses within thirty days after the date of CONSULTANT's invoice, CONSULTANT may, after giving seven days written notice to CITY, and without waiving any claim or right against CITY and without incurring liability whatsoever to CITY, suspend services and withhold project deliverables due under this Contract until CONSULTANT has been paid in full all amounts due for services, expenses and charges.

### SECTION IV – TERM AND TERMINATION

- A. **Term.** This Contract shall be in effect until such time as the Project is completed, **COMPLETION DATE**, or as otherwise provided in this Contract, whichever comes first.
- B. **Termination.** Notwithstanding the foregoing, this Contract may be terminated by either PARTY for any reason or for convenience by either PARTY upon Thirty (30) days written notice. In the event of termination, CITY shall be obligated to CONSULTANT for payment of amounts due and owing including payment for services performed or furnished to the date and time of termination, computed in accordance with Section III of this Contract.
- C. **Default.** If CONSULTANT fails to satisfy any of the provisions of this Contract, or so fails to perform and/or administer the services detailed in Exhibit 1, attached hereto, pursuant to the requirements of Section I of this Contract, in such a manner as to endanger the performance of the Contract or the services provided hereunder, this shall constitute default. Unless CONSULTANT's default is excused by CITY, CITY may, upon written notice, immediately cancel this Contract or exercise any other rights or remedies available to CITY under this Contract or law. In the event of CONSULTANT's default, CONSULTANT shall be liable to CITY for any and all costs, disbursements,

attorneys and consultant fees reasonably incurred by CITY in enforcing this Contract.

- D. **Suspension of Work.** If any work performed by CONSULTANT is abandoned or suspended in whole or in part by CITY, CONSULTANT shall be paid for any services performed to the satisfaction of the CITY's Engineer prior to CONSULTANT's receipt of written notice from CITY of such abandonment or suspension, but in no event shall the total of CITY's payments to CONSULTANT under this Contract be required to exceed a percentage of the total contract price (calculated by either the Contract price or the maximum price set forth in Exhibit 3, attached hereto) equivalent to the percentage of the scope of services completed by CONSULTANT to the satisfaction of the CITY's Engineer as determined by CITY.

## SECTION V – INDEMNIFICATION

- A. CONSULTANT shall indemnify, protect, save, and hold harmless CITY, and its respective officers, directors, employees and members and agents, from and against any claims, liability, damages, costs, judgments, or expenses, including reasonable attorney's fees, to the extent attributable to or caused by the negligent or otherwise wrongful acts or omissions, including breach of a specific contractual duty, of CONSULTANT or CONSULTANT's independent contractors, subcontractors, agents, employees, vendors or delegates with respect to this Contract or the Project. CONSULTANT shall defend CITY against the foregoing, or litigation in connection with the foregoing, at CONSULTANT's expense, with counsel reasonably acceptable to CITY, except that for professional liability claims, CONSULTANT shall have no upfront duty to defend CITY, but shall reimburse defense costs to CITY to the same extent of CONSUTANT'S indemnity obligation herein. CITY, at its expense, shall have the right to participate in the defense of any claims or litigation and shall have the right to approve any settlement, which approval shall not be unreasonably withheld. The indemnification provision of this Section shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of CITY. All indemnification obligations shall survive termination, expiration or cancellation of this Contract. CONSULTANT agrees, that in order to protect itself and CITY under the indemnity provisions set forth above, it will at all times during the term of this Contract keep in force policies of insurances required in the Paragraph entitled, "Insurance." Nothing in this Contract shall be construed to waive any immunities or limitations to which CITY is entitled under Minn. Stat. Chapter 466 or otherwise.
- B. CITY shall indemnify protect, save, and hold harmless CONSULTANT, and its respective officers, directors, employees and members and agents, from and against any claims, liability, damages, costs, judgments, or expenses, including reasonable attorney's fees, to the extent attributable to or caused by the negligent or otherwise wrongful acts or omissions of CITY or its agents, employees, contractors or subcontractors with respect to CITY's performance of its obligations under this Contract. CITY shall defend CONSULTANT against the foregoing, or litigation in connection with the foregoing, at CITY's expense. CONSULTANT, at its expense, shall have the right to participate in the defense of any Claims or litigation. The indemnification provision of this Section shall

not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of CONSULTANT. All indemnification obligations shall survive termination, expiration or cancellation of this Contract.

- C. Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against CITY or CONSULTANT. CONSULTANT's services under this Contract are being performed solely for CITY's benefit, and no other entity shall have any claim against CONSULTANT because of this Contract or the performance or nonperformance of services provided hereunder.

## SECTION VI – GENERAL TERMS

- A. **Voluntary and Knowing Action.** The PARTIES, by executing this Contract, state that they have carefully read this Contract and understand fully the contents hereof; that in executing this Contract they voluntarily accept all terms described in this Contract without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound hereby.
- B. **Authorized Signatories.** The PARTIES each represent and warrant to the other that (1) the persons signing this Contract are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Contract against it; each PARTY indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
- C. **Notices.** All notices and other communications required or permitted under this Contract shall be in writing, and hand delivered or sent by registered or certified mail, return-receipt requested, postage prepaid, or by overnight delivery service and shall be effective upon receipt at the following addresses or as either PARTY shall have notified the other PARTY. The PARTIES' representatives for notification for all purposes are:

**CITY:**  
**PRIMARY CONTACT**  
**TITLE**  
100 Downtown Plaza  
Fairmont, MN 56031  
Phone: **PHONE**  
Email: **EMAIL**

**CONSULTANT: COMPANY NAME**  
**PM NAME**  
**TITLE**  
**ADDRESS**  
**PHONE**  
**EMAIL**

- D. **Dispute Resolution.** CITY and CONSULTANT agree to negotiate all disputes between



them in good faith for a period of Thirty (30) days from the date of notice of dispute prior to proceeding to formal dispute resolution or exercising their rights under law.

- E. **Electronic/Digital Data.** Because of the potential instability of electronic/digital data and susceptibility to unauthorized changes, copies of documents that may be relied upon by CITY are limited to the printed copies (also known as hard copies) that are signed or sealed by CONSULTANT. Except for electronic/digital data which is specifically identified as a Project deliverable by this Contract or except as otherwise explicitly provided in this Contract, all electronic/digital data developed by CONSULTANT as part of the Project is acknowledged to be an internal working document for CONSULTANT's purposes solely and any such information provided to CITY shall be on an "as is" basis strictly for the convenience of CITY without any warranties of any kind. In the event of any conflict between a hard copy document and the electronic/digital data, the hard copy document governs. The electronic/digital data shall be prepared in the current software in use by CONSULTANT and is not warranted to be compatible with other systems or software.
  
- F. **Opinions or Estimates of Construction Cost.** Where provided by CONSULTANT as part of Exhibit 1 or otherwise, opinions or estimates of construction cost will generally be based upon public construction cost information. Since CONSULTANT has no control over the cost of labor, materials, competitive bidding process, weather conditions and other factors affecting the cost of construction, all cost estimates are opinions for general information of CITY and CONSULTANT does not warrant or guarantee the accuracy of construction cost opinions or estimates. CITY acknowledges that costs for project financing should be based upon contracted construction costs with appropriate contingencies.
  
- G. **Independent Contractor Status.** CONSULTANT, at all times and for all purposes hereunder, shall be an independent contractor and is not an employee of CITY for any purpose. No statement contained in this Contract shall be construed so as to find CONSULTANT to be an employee of CITY, and CONSULTANT shall not be entitled to any of the rights, privileges, or benefits of employees of CITY, including but not limited to, workers' compensation, health/death benefits, and indemnification for third-party personal injury/property damage claims. CONSULTANT acknowledges that no withholding or deduction for State or Federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due CONSULTANT, and that it is CONSULTANT's sole obligation to comply with the applicable provisions of all Federal and State tax laws. CONSULTANT shall at all times be free to exercise initiative, judgment and discretion as to how to best perform or provide services identified herein. CONSULTANT is responsible for hiring sufficient workers to perform the services/duties required by this Contract, withholding their taxes and paying all other employment tax obligations on their behalf.
  
- H. **Acceptance of Deliverables.** Each deliverable shall be subject to a verification of acceptability by CITY to ensure such deliverable satisfies stated requirements. The acceptability of any deliverable will be based on CITY's satisfaction or non-satisfaction

with the deliverable based on requirements of this Contract. If any deliverable is not acceptable, CITY will notify CONSULTANT specifying reasons in reasonable detail, and CONSULTANT will, at no additional cost, conform the deliverable to stated requirements of this Contract.

- I. **Subcontracting.** CONSULTANT shall not enter into any subcontract for performance of any services contemplated under this Contract without the prior written approval of CITY. CONSULTANT shall be responsible for the performance of all subcontractors and/or sub-consultants. As required by Minn. Stat. § 471.425, CONSULTANT must pay all subcontractors, less any retainage, within Ten (10) calendar days of CONSULTANT's receipt of payment from CITY for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).
- J. **Assignment.** This Contract may not be assigned by either PARTY without the written consent of the other PARTY.
- K. **Modifications/Amendment.** Any alterations, variations, modifications, amendments or waivers of the provisions of this Contract shall only be valid when they have been reduced to writing, and signed by authorized representative of CITY and CONSULTANT.
- L. **Records—Availability and Retention.** Pursuant to Minn. Stat. § 16C.05, subd. 5, CONSULTANT agrees that CITY, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of CONSULTANT and involve transactions relating to this Contract. CONSULTANT agrees to maintain these records for a period of six years from the date of termination of this Contract.
- M. **Force Majeure.** The PARTIES shall each be excused from performance under this Contract while and to the extent that either of them are unable to perform, for any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, total or partial failure of transportation or delivery facilities, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either PARTY is rendered unable wholly or in part by force majeure to carry out its obligations under this Contract then the PARTY affected by force majeure shall give written notice with explanation to the other PARTY immediately.
- N. **Compliance with Laws.** CONSULTANT shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Contract or to the facilities, programs and staff for which CONSULTANT is responsible.

- O. **Covenant Against Contingent Fee.** CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from award or making of this Contract.
- P. **Covenant Against Vendor Interest.** CONSULTANT warrants that it is not employed by any vendor of equipment or service provider that could result in a commission, percentage, brokerage, or contingent fee as a result of CONSULTANT's association with CITY.
- Q. **Non-Discrimination.** The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Contract as if fully set forth herein.
- R. **Interest by City Officials.** No elected official, officer, or employee of CITY shall during his or her tenure or employment and for one year thereafter, have any interest, direct or indirect, in this Contract or the proceeds thereof.
- S. **Work Product.** All materials such as reports, exhibits, models, graphics, computer files, maps, charts, and supporting documentation produced under work authorized by this Contract (“Materials”) shall become the property of CITY upon completion of the work. CITY may use the information for the Project for which they were prepared. Such use by CITY shall not relieve any liability on the part of CONSULTANT. Notwithstanding any of the foregoing to the contrary; (a) CONSULTANT may reuse standard details of its Materials in the normal course of its business; and (b) CITY understands that the Materials have been prepared for a specific project, and are not intended to be reused for other purposes. If CITY reuses the Materials for any other purpose, CITY waives any claims against CONSULTANT arising from such reuse and agrees to defend and indemnify CONSULTANT from any claims arising from such reuse.
- T. **Governing Law.** This Contract shall be deemed to have been made and accepted in Martin County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Contract without regard to its choice of law or conflict of laws principles.
- U. **Data Practices.** The PARTIES acknowledge that this Contract is subject to the requirements of Minnesota’s Government Data Practices Act (Act), Minnesota Statutes, Section 13.01 *et seq.* CONSULTANT agrees to abide by the applicable provisions of the Act, HIPAA requirements and all other applicable state or federal rules, regulations or orders pertaining to privacy or confidentiality. CONSULTANT understands that all of the data created, collected, received, stored, used, maintained or disseminated by CONSULTANT in performing those functions that the CITY would perform is subject to the requirements of the Act, and CONSULTANT must comply with those requirements as if it were a government entity. This does not create a duty on the part of CONSULTANT to provide the public with access to public data if the public data is

available from the CITY, except as required by the terms of this Contract.

- V. **No Waiver.** Any PARTY's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Contract or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that PARTY's right to assert or rely upon the terms and conditions of this Contract. Any express waiver of a term of this Contract shall not be binding and effective unless made in writing and properly executed by the waiving PARTY.
- W. **Data Disclosure.** Under Minn. Stat. § 270C.65, Subd. 3 and other applicable law, CONSULTANT consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to CITY, to federal and state agencies and state personnel involved in the payment of CITY obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring CONSULTANT to file state tax returns, pay delinquent state tax liabilities, if any, or pay other CITY liabilities.
- X. **Patented Devices, Materials and Processes.** If this Contract requires, or CONSULTANT desires, the use of any design, device, material or process covered by letters, patent or copyright, trademark or trade name, CONSULTANT shall provide for such use by suitable legal agreement with the patentee or owner and a copy of said agreement shall be filed with CITY. If no such agreement is made or filed as noted, CONSULTANT shall indemnify and hold harmless CITY from any and all claims for infringement by reason of the use of any such patented designed, device, material or process, or any trademark or trade name or copyright in connection with the services agreed to be performed under the Contract, and shall indemnify and defend CITY for any costs, liability, expenses and attorney's fees that result from any such infringement.
- Y. **Mechanic's Liens.** CONSULTANT hereby covenants and agrees that CONSULTANT will not permit or allow any mechanic's or materialman's liens to be placed on CITY's interest in the Property that is the subject of the Project during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on CITY's interest, CONSULTANT shall take all steps necessary to see that it is removed within thirty (30) days of its being filed; provided, however, that CONSULTANT may contest any such lien provided CONSULTANT first posts a surety bond, in favor of and insuring CITY, in an amount equal to 125% of the amount of any such lien.
- Z. **Severability.** The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Contract to the extent of its invalidity or unenforceability, and this Contract shall be construed and enforced as if the Contract did not contain that particular provision to the extent of its invalidity or unenforceability.
- AA. **Entire Contract.** These terms and conditions constitute the entire Contract between the

PARTIES regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Contract.

- BB. **Headings and Captions.** Headings and captions contained in this Contract are for convenience only and are not intended to alter any of the provisions of this Contract and shall not be used for the interpretation of the validity of the Contract or any provision hereof.
- CC. **Survivability.** All covenants, indemnities, guarantees, releases, representations and warranties by any PARTY or PARTIES, and any undischarged obligations of CITY and CONSULTANT arising prior to the expiration of this Contract (whether by completion or earlier termination), shall survive such expiration.
- DD. **Execution.** This Contract may be executed simultaneously in two or more counterparts that, when taken together, shall be deemed an original and constitute one and the same document. The signature of any PARTY to the counterpart shall be deemed a signature to the Contract, and may be appended to, any other counterpart. Facsimile and email transmissions of executed signature pages shall be deemed as originals and sufficient to bind the executing PARTY.

*Remainder of page intentionally left blank.*

**SECTION VII –SIGNATURES**

IN WITNESS WHEREOF, the PARTIES have hereunto executed this document the day and year first above written.

**CONSULTANT:** COMPANY NAME

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)

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

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

**CITY OF FAIRMONT:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Lee Baarts, Its Mayor

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Betsy Steuber, Its City Clerk

**EXHIBIT 1**

**SCOPE OF SERVICES**

Subject to the terms of this Contract, CONSULTANT shall perform the following services:





**EXHIBIT 2**

**CERTIFICATES OF REQUIRED INSURANCE COVERAGES**

*[Certificates of Insurance attached hereto]*

### **EXHIBIT 3**

#### **COMPENSATION**

Subject to the limitations set forth in this Exhibit, CITY will compensate CONSULTANT in accordance with the schedule of fees below for the time spent in performance of services under this Contract, provided that under no circumstances shall CONSULTANT's total charges to CITY, including expenses, exceed \$xxxxxx ("maximum price"), unless such charges in excess of the maximum price are authorized in writing by the CITY'S Engineer before they are incurred by CITY.

CITY will make periodic payment to CONSULTANT upon billing at intervals not more often than monthly at the rates specified in the schedule of fees included herein, provided that no bill/invoice submitted to CITY shall exceed a percentage of the maximum price equivalent to the percentage of the scope of services completed by CONSULTANT to the satisfaction of the CITY'S Engineer as determined by CITY.

CITY shall be entitled to withhold five percent (5%) of the maximum price until such time as CONSULTANT has fully performed the scope of services detailed in Exhibit 1 to the satisfaction of the CITY'S **REPRESENTATIVE**.

**Schedule of Fees**