

CITY OF LAKE ELMO, MINNESOTA

CLIENT-PROFESSIONAL SERVICES AGREEMENT

This AGREEMENT is made effective on **February 20, 2018**, ("Effective Date") between the **CITY OF LAKE ELMO, MINNESOTA**, a Minnesota Municipal corporation (hereinafter referred to as the "CITY"), and **Kadrmars, Lee & Jackson, Inc.**, a corporation (hereinafter referred to as "CONSULTANT").

From time to time the CITY intends to engage CONSULTANT to provide Professional Services. This AGREEMENT sets forth the general terms and conditions which shall govern the relationship and performance of the CITY and CONSULTANT.

In consideration of the foregoing recitals and following terms and conditions contained herein, the CITY and CONSULTANT agree as follows:

ARTICLE 1: SERVICES OF THE CONSULTANT

1.1 Scope of Services:

- A. The services to be provided by CONSULTANT shall be set forth in a written communication or "Task Order" that is authorized by the City prior to the start of work.
- B. Professional Services will, in general, include studies and reports, design, preparation of working drawings and specifications; construction administration and construction observations; mapping, preparation of cost estimates; and other related tasks of a type normally associated with infrastructure improvements.
- C. This AGREEMENT is not a commitment by the CITY to CONSULTANT to request services or to issue any Task Orders.

1.2 Task Order Procedure

- A. CONSULTANT shall provide the CITY with a "Task Order" for specific services or projects when requested by the CITY. Each Task Order will indicate the specific task, scope of services, time for performance, deliverables to be provided, and the basis of compensation.
- B. Individual "Task Orders" or written communications authorizing services by the CONSULTANT shall be mutually approved by the CITY and CONSULTANT. Each duly executed Task Order shall be incorporated and made a part of this AGREEMENT and the General Considerations thereof.

ARTICLE 2: PERIOD OF SERVICE AND TIMES FOR RENDERING SERVICES

- 2.1 Term: This AGREEMENT shall be effective and applicable to each "Task Order" issued hereunder and shall apply to any service provided by CONSULTANT whether retained under a formal "Task Order" or other written action or approval by the CITY, subject, however, to termination by either party in accordance with ARTICLE 5.9.

- 2.2 The times for performing services or providing deliverables shall be as stated in each Task Order or written communication authorizing the service or deliverable.

ARTICLE 3: COMPENSATION

- 3.1 Basis for Compensation: Compensation to CONSULTANT shall be as set forth in each Task Order. When services are requested by the CITY and a Task Order is not executed, the services shall be provided on an hourly rate basis in accordance with the hourly rate sheet on file at the CITY, or as mutually agreed to in written form.
- 3.2 Payments for Services
- A. *Preparation and Submittal of Invoices:* CONSULTANT shall prepare and submit invoices to the CITY on a monthly basis, unless otherwise mutually agreed. Invoices are due and payable within 45 days of receipt.
- B. *Unpaid Invoices:* All accounts unpaid after 45 days from the date of original invoice shall be subject to a service charge of 1.0% per month, with interest beginning to accrue 45 days after the date of receipt of the invoice. Payment will be credited first to any interest and then to principal.
- C. *Disputed Invoices:* If the CITY contests an invoice, the CITY shall advise CONSULTANT of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.

ARTICLE 4: CITY'S RESPONSIBILITIES

- 4.1 The CITY shall designate a person to act as the CITY's representative with respect to services to be rendered under this AGREEMENT. Unless otherwise designated in writing, the CITY's representative shall be the CITY ENGINEER. Such persons shall have authority to transmit instructions, receive instructions, receive information, interpret and define CITY's policies with respect to CONSULTANT's services, and render decisions relative to a specific project.
- 4.2 Provide Access: The CITY shall provide access to, and make provisions for CONSULTANT to enter upon public or private property as required to perform their work.
- 4.3 Provide supporting documentation and Services: The CITY shall provide all necessary information regarding its requirements as necessary for orderly progress of the work, including records, data, instructions, and requirements for completeness. The CITY shall also provide services in regards to accounting, fiscal and bond counseling services, insurance, and legal services as may be required for the project.
- 4.4 The CITY shall be responsible for, and CONSULTANT may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by the CITY to CONSULTANT pursuant to this AGREEMENT. CONSULTANT may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this AGREEMENT.
- 4.5 Provide prompt Notice and Review: The CITY shall promptly review and examine all correspondence, reports, sketches, drawings, specifications and other documents and communications prepared and presented by CONSULTANT and render decisions pertaining thereto within a reasonable time so as not

to delay the services of CONSULTANT. The CITY shall also give prompt notice to CONSULTANT whenever CITY observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT's services or any defect in the work.

- 4.6 The CITY shall act as liaison with other agencies or involved parties to carry out necessary coordination and negotiations; obtain permits; and to obtain approvals and consents from others as may be necessary for completion of the project.

ARTICLE 5: GENERAL CONSIDERATIONS

5.1 Standards and Parameters of Performance

- A. *Standard of Care:* The standard of care for all professional services performed or furnished by CONSULTANT under this AGREEMENT will be the care and skill ordinarily used by members of the subject profession practicing under like circumstances.
- B. *Technical Accuracy:* CONSULTANT shall be responsible for the technical accuracy of its services and documents resulting therefrom, and CITY shall not be responsible for discovering deficiencies therein. CONSULTANT shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in CITY-furnished information.
- C. *Subconsultants:* CONSULTANT may employ such Subconsultants as CONSULTANT deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Compliance with Laws and Regulations, and Policies and Procedures:* CONSULTANT and CITY shall comply with applicable Laws and Regulations and CITY mandated standards.
- E. CONSULTANT shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall CONSULTANT have authority over the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing its work.
- F. CONSULTANT neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents, or for the acts or omissions of any Contractor, Subcontractor, or Supplier.

- 5.2 Independent Contractor: CONSULTANT is an independent contractor. The manner in which the services are performed shall be controlled by CONSULTANT; however, the nature of the services and the results to be achieved shall be specified by the CITY. All services provided by the CONSULTANT pursuant to this AGREEMENT shall be provided by the CONSULTANT as an independent contractor and not as an employee of the CITY for any purpose, including but not limited to: income tax withholding, workers' compensation, unemployment compensation, FICA taxes, and eligibility for employee benefits.

5.3 Insurance

- A. CONSULTANT shall procure and maintain insurance for protection from claims against it under worker's compensation acts (statutory limits), claims for damages because of bodily injury including personal injury, and from claims against it for damages because of injury to or destruction of property including loss of use resulting therefrom.
- B. CONSULTANT shall also procure and maintain professional and commercial general liability insurance, and auto and excess insurance, for all damages arising out of the performance of services caused by an error, omission or negligent act for which CONSULTANT is legally liable.
- C. For any specific Task Order, the CITY may request that CONSULTANT provide additional insurance coverage, increased limits, or revised deductibles.
- D. Certificates of insurance will be provided to the CITY upon execution of the contract and thereafter upon request by the CITY. The CITY shall be listed as an additional insured.

5.4 Data Practices Act Compliance: Data provided by CONSULTANT or created under this AGREEMENT shall be administered in accordance with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13.

5.5 Use of Documents

- A. All Documents prepared and submitted by CONSULTANT are instruments of service, except for CITY-furnished data. CONSULTANT shall retain an ownership and property interest therein (including the right of reuse at the discretion of the CONSULTANT) whether or not the Project or Service is completed.
- B. At the time of completion or termination of this AGREEMENT or for each "Task Order," CONSULTANT shall make available to the CITY, upon request, copies of all deliverables, maps, reports, and correspondence, pertaining to the work or Project. All such documents are not intended or represented to be suitable for reuse by the CITY for any other project. Any reuse without written verification or adaptation by CONSULTANT for the specific purpose intended will be at the CITY's sole risk.
- C. In the event electronic copies of documents are made available to the CITY, the CONSULTANT makes no representations as to long-term compatibility of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.

5.6 Conflict of Interest: The CONSULTANT shall use best efforts in the performance of its services and professional obligations to avoid conflicts of interest and appearances of impropriety in representation of the CITY. In the event of a conflict, the CONSULTANT, with the consent of the CITY, shall arrange for suitable alternative engineering representation. It is the intent of the CONSULTANT to refrain from handling engineering matters for any other person or entity that may pose a conflict of interest, or may not be in the best interests of the CITY.

5.7 Termination

- A. Either party may terminate this AGREEMENT upon thirty (30) days written notice.

- B. Either party has the right to terminate any "Task Order" upon ten (10) days' written notice unless otherwise stated in the Task Oder. In addition, the CITY may at any time, reduce the scope of a "Task Order". Such reduction in scope of a Task Order shall be set forth in a written notice from the CITY to the CONSULTANT.
- C. In the event of a reduction in scope of a "Task Order," CONSULTANT shall be paid for the work performed and expenses incurred on the Task Order thus reduced and for any completed and abandoned work for which payment has not been made.
- D. In the event of termination of an "Task Order," copies of all documents prepared by CONSULTANT under the Task Order shall be made available by CONSULTANT to the CITY, pursuant to ARTICLE 5.6, and there shall be no further obligation of the CITY to CONSULTANT under the Task Order, except for payment of amounts due and owing for work performed and expenses incurred to the date and time of termination.
- E. In like manner, if the entire AGREEMENT is terminated, copies of all remaining documents on file with the CONSULTANT shall also, upon request, be made available to the CITY pursuant to ARTICLE 5.6 upon receipt of payment of amounts due and owing CONSULTANT for any authorized work.

5.8 Controlling Law: This AGREEMENT is to be governed by the laws of the State of Minnesota.

5.9 Successors, Assigns, and Beneficiaries

- A. The CITY and CONSULTANT are hereby bound and the successors, executors, administrators, assigns, and legal representatives of the CITY and CONSULTANT are hereby bound to the other party to this AGREEMENT and to the successors, executors, administrators, assigns and legal representatives of such other party, in respect of all covenants, agreements, and obligations of this AGREEMENT.
- B. Neither the CITY nor CONSULTANT may assign, sublet, or transfer any rights under or interest in this AGREEMENT, or any portion thereof, without the written consent of the other party. Nothing contained in this paragraph shall prevent CONSULTANT from employing such independent professional associates and consultants as CONSULTANT may deem appropriate to assist in the performance of services hereunder.
- C. Nothing under this AGREEMENT shall be construed to give any rights or benefits in this AGREEMENT to anyone other than the CITY and CONSULTANT.

5.10 Dispute Resolution

- A. The 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 prior to invoking other provisions of this AGREEMENT, or exercising their rights under law.

5.11 Notices: Any notice required under this AGREEMENT will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

5.12 Survival, Severability, Waiver

- A. *Survival*: All express representations, waivers, indemnifications, and limitations of liability included in this AGREEMENT will survive its completion or termination for any reason.
- B. *Severability*: Any provision or part of the AGREEMENT held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the CITY and CONSULTANT.
- C. *Waiver*: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the date first above written.

Kadrmass, Lee & Jackson, Inc.

CITY OF LAKE ELMO, MINNESOTA

By  _____

By _____
Mayor

By _____
City Clerk