

**AGREEMENT FOR PROFESSIONAL CONSTRUCTION ENGINEERING SERVICES**

**NE 54<sup>TH</sup> STREET BRIDGE REPLACEMENT  
OVER BRANCH OF FOURMILE CREEK  
IDOT PROJECT NOS. BRM-SWAP-0187(642)--SD-77  
AND STBG-SWAP-0187(641)--SG-77**

**ANKENY, IOWA**

**CALHOUN-BURNS AND ASSOCIATES, INC.  
WEST DES MOINES, IOWA**

This is an Agreement effective as of February 4, 2019 (“Effective Date”) between City of Ankeny, Iowa, party of the First Part, hereinafter referred to as the “CITY” and Calhoun-Burns and Associates, Inc., West Des Moines, Iowa, doing business as a corporation incorporated under the laws of Iowa, Party of the Second Part, hereinafter referred to as the “STRUCTURAL ENGINEER”. CITY retains STRUCTURAL ENGINEER to perform professional construction engineering services, in connection with the replacement of the NE 54<sup>th</sup> Street Bridge over branch of Fourmile Creek (IDOT Project Nos. BRM-SWAP-0187(642)--SD-77 and STBG-SWAP-0187(641)--SG-77), hereinafter referred to as the “PROJECT”. These services are to be partially funded with STBG funding (IDOT Project No. STBG-SWAP-0187(641)--SG-77), and any remaining portion funded with CITY funds.

CITY and STRUCTURAL ENGINEER, in consideration of their mutual covenants as set forth herein, agree as follows:

## **ARTICLE 1 – STRUCTURAL ENGINEER’S SERVICES**

### **1.01 Scope**

- A. STRUCTURAL ENGINEER shall provide the services set forth in Exhibit A.
- B. Upon this Agreement becoming effective, STRUCTURAL ENGINEER is authorized to begin services as set forth in Exhibit A.
- C. If authorized in writing by CITY, and agreed to by STRUCTURAL ENGINEER, services beyond the scope of this Agreement will be performed by STRUCTURAL ENGINEER for additional compensation.

## **ARTICLE 2 – CITY’S RESPONSIBILITIES**

### **2.01 General**

- A. CITY shall have the responsibilities set forth herein and in Exhibit A.

## **ARTICLE 3 – TIMES FOR RENDERING SERVICES**

- 3.01** STRUCTURAL ENGINEER’s services will be performed within the time period or by the date stated in Exhibit A.
- 3.02** If STRUCTURAL ENGINEER’s services are delayed or suspended in whole or in part by CITY, STRUCTURAL ENGINEER shall be entitled to equitable adjustment of the time for performance and rates and amounts of compensation provided for elsewhere in this Agreement to reflect reasonable costs incurred by STRUCTURAL ENGINEER in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

## **ARTICLE 4 – PAYMENTS TO STRUCTURAL ENGINEER**

### **4.01 Method of Payment for Services of STRUCTURAL ENGINEER**

- A. CITY shall pay STRUCTURAL ENGINEER for services rendered under this Agreement as follows:
  - 1. Construction Engineering Services at hourly rates and actual expenses not-to-exceed \$170,000.00 without further authorization.
  - 2. Assistance with a post-construction record review conducted by the IDOT will be negotiated through an Amendment to this Agreement.
  - 3. The amount billed for STRUCTURAL ENGINEER's services will be based on the actual hours and expenses charged during the billing period.

### **4.02 Other Provisions Concerning Payment**

- A. *Compensation Amounts.*

When the compensation amounts have been stated herein and it subsequently becomes apparent to STRUCTURAL ENGINEER that a compensation amount thus established will be exceeded, STRUCTURAL ENGINEER shall give CITY written notice thereof. Promptly thereafter CITY and STRUCTURAL ENGINEER shall review the matter of services remaining to be performed and compensation for such services. CITY shall either agree to such compensation exceeding said estimated amount or CITY and STRUCTURAL ENGINEER shall agree to a reduction in the remaining services to be rendered by STRUCTURAL ENGINEER, so that total compensation for such services will not exceed said estimated amount when such services are completed.

- B. *Adjustments.*

- 1. STRUCTURAL ENGINEER's compensation is conditioned on time to complete the PROJECT not exceeding the time identified in Exhibit A. Should the time to complete the PROJECT be extended beyond this period due to reasons not the fault of and beyond the control of STRUCTURAL ENGINEER, the total compensation to STRUCTURAL ENGINEER shall be appropriately adjusted.

C. *Reimbursable Expenses.*

Reimbursable expenses means the actual expenses incurred by STRUCTURAL ENGINEER directly in connection with the PROJECT. All reimbursable expenses are included in the not-to-exceed amount identified in paragraph 4.01, item A.1.

D. *For Additional Services.*

CITY shall pay STRUCTURAL ENGINEER for all services not included in the scope of this Agreement at the rates shown on Exhibit C, or on the basis agreed to in writing by the parties at the time such services are authorized by CITY.

## **ARTICLE 5 – DESIGNATED REPRESENTATIVES**

**5.01** Contemporaneous with the execution of this Agreement, STRUCTURAL ENGINEER and CITY shall each designate specific individuals as STRUCTURAL ENGINEER's and CITY's representatives with respect to the services to be performed or furnished by STRUCTURAL ENGINEER and responsibilities of CITY under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the PROJECT on behalf of their respective party.

## **ARTICLE 6 – CONTENT OF AGREEMENT**

**6.01** The following Exhibits are incorporated herein by reference:

- A. Exhibit A, "Further Description of Services, Responsibilities, Time, and Related Matters", consisting of pages A1 through A4.
- B. Exhibit B, "Standard Terms and Conditions", consisting of pages B1 through B5.
- C. Exhibit C, "Hourly Billing Rates".
- D. Exhibit D, "Fee Breakdown".
- E. Exhibit E, "City of Ankeny Insurance Requirements for Professional Services" consisting of pages E1 through E4.

## 6.02 Total Agreement

- A. This Agreement (consisting of pages 1 to 4, inclusive, together with the Exhibits identified in paragraph 6.01) constitutes the entire Agreement between CITY and STRUCTURAL ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

CITY:

STRUCTURAL ENGINEER:

\_\_\_\_\_  
Gary Lorenz  
Mayor

\_\_\_\_\_  
Jon D. Conzett, P.E.  
Vice President

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

Date: 1/25/13

Addresses for giving notice:

220 W. First Street  
Ankeny, IA 50023-1751

Addresses for giving notices:

1500 30<sup>th</sup> Street  
West Des Moines, IA 50266

Designated Representative (Paragraph 5.01): Designated Representative (Paragraph 5.01):

Matt Ahrens, P.E.  
Civil Engineer II  
Phone No.: (515) 963-3536  
Email: [MAhrens@Ankenylowa.gov](mailto:MAhrens@Ankenylowa.gov)

Jeff M. Fadden, P.E.  
Project Manager  
Phone No.: (515) 224-4344  
Email: [jfadden@calhounburns.com](mailto:jfadden@calhounburns.com)

## **EXHIBIT A**

### **FURTHER DESCRIPTION OF SERVICES, RESPONSIBILITIES, TIME, AND RELATED MATTERS**

Specific articles of the Agreement are amended and supplemented to include the following agreement of the parties:

#### **A.1.01 STRUCTURAL ENGINEER's Services**

##### **A. CONSTRUCTION ENGINEERING SERVICES:**

###### **1. Construction Administration**

- a. The STRUCTURAL ENGINEER shall arrange and conduct a preconstruction conference with the Contractor and CITY to review the contract requirements, details of construction, utility conflicts, and work schedule prior to construction.
- b. The STRUCTURAL ENGINEER shall review shop drawings and other submissions from the Contractor for general compliance with the construction contract. Shop drawings related to the water main relocation will be reviewed by Veenstra & Kimm, Inc. (V&K).
- c. The STRUCTURAL ENGINEER shall perform Wave Equation Analysis for pile driving on four bridge substructures using the three soil borings obtained for the PROJECT.
- d. The STRUCTURAL ENGINEER will arrange for continued coordination of private utility relocations including, but not limited to, the temporary removal of overhead electric lines and poles immediately adjacent to the bridge site. This work will be completed by V&K.
- e. The STRUCTURAL ENGINEER shall conduct weekly construction meetings in the field. V&K will periodically attend as requested by the STRUCTURAL ENGINEER.
- f. The STRUCTURAL ENGINEER shall prepare monthly partial payment applications and change orders, as necessary, and make recommendations to the CITY for their acceptance.
- g. The STRUCTURAL ENGINEER shall review the project to determine if it has been completed in reasonably close conformance with the Contract Documents, and recommend acceptance to the CITY by preparing and signing a Statement of Completion and Final Acceptance of Work form.
- h. The STRUCTURAL ENGINEER will administer the PROJECT utilizing the Doc Express software developed and required by the IDOT on SWAP funded projects.

###### **2. Construction Staking**

- a. The STRUCTURAL ENGINEER shall arrange for all construction stakes for the Project. This work is to be completed by V&K. An addendum to the construction documents shall contain a provision that V&K shall provide one set of stakes for each primary construction operation. Any staking that is destroyed due to construction activities that has to be replaced, or request for additional staking, will be at the Contractor's expense.

### 3. Construction Observation

The STRUCTURAL ENGINEER shall provide a Resident Construction Observer to verify substantial compliance with the Contract Documents. Construction observation will include:

- a. The STRUCTURAL ENGINEER shall attend the preconstruction conference and subsequent field meetings during construction as necessary.
- b. The STRUCTURAL ENGINEER shall verify materials provided by the Contractor are in accordance with the Contract Documents. The STRUCTURAL ENGINEER reserves the right to reject any inappropriate or damaged materials delivered to, or observed on the site. The STRUCTURAL ENGINEER shall notify the CITY of inappropriate or damaged materials found at the site.
- c. If the STRUCTURAL ENGINEER observes, or has reason to believe, the Contractor's construction methods or materials used does not meet the specifications then the STRUCTURAL ENGINEER shall immediately notify the CITY to determine the appropriate corrective measure(s) to be taken. This may include the CITY directing the Contractor to stop work until the appropriate corrective measure(s) is determined.
- d. The STRUCTURAL ENGINEER shall prepare a weekly report of working days and provide to the CITY.
- e. The STRUCTURAL ENGINEER shall measure and keep a record of contract quantities for payment applications and observe and document testing required of the Contractor.
- f. The STRUCTURAL ENGINEER shall periodically observe the construction of intakes, utility access, and pipe culvert construction. The STRUCTURAL ENGINEER will spot check line and grade and observe all trench compaction.
- g. The STRUCTURAL ENGINEER shall arrange for periodic observation of water main construction. This work, along with oversight of pressure, chlorination, and bacteria testing by the Contractor, is to be completed by V&K.
- h. The STRUCTURAL ENGINEER shall periodically observe pile driving and vibration monitoring operations for each bridge substructure.
- i. The STRUCTURAL ENGINEER shall periodically observe the placement of reinforcing steel, and conduct a final review prior to each structural concrete and reinforced concrete pavement pour.
- j. The STRUCTURAL ENGINEER shall periodically observe grading and subgrade preparation and review with the Contractor required moisture and density testing, proof rolling operations, and any observed deficiencies in the subgrade prior to paving.
- k. The STRUCTURAL ENGINEER shall be on-site full time during structural concrete pours and paving operations. Concrete slump and air tests will be taken and recorded. Compressive strength test cylinders and/or flexural strength test beams will be cast on site and transported to an independent testing laboratory.
- l. The STRUCTURAL ENGINEER shall periodically observe sawing and sealing of pavement joints.

- m. Pavement thickness core testing will be provided by the Contractor.
- n. Construction Observation does not include observation or administration of the Storm Water Pollution Prevention Plan (SWPPP) which is the responsibility of the CITY and Contractor. STRUCTURAL ENGINEER will attend weekly SWPPP inspections with the CITY and Contractor.
- o. The STRUCTURAL ENGINEER shall assist CITY staff in developing a final punch list and verify completion of items for acceptance.
- p. STRUCTURAL ENGINEER will maintain a complete set of construction records. Upon completion, and acceptance of the project by the CITY, the STRUCTURAL ENGINEER will prepare and submit a three-ring binder(s) containing a copy of the construction records.

#### 4. Laboratory Testing

The STRUCTURAL ENGINEER shall arrange for all on-site and laboratory testing required of the Contract Documents including compressive and/or flexural strength tests. This work will be completed by an independent testing company selected by the STRUCTURAL ENGINEER. Following review, completed test reports will be forwarded to the CITY.

Assurance sampling, testing, and source inspection is not included.

If deficient soils or unsuitable soil conditions are encountered on-site that were not identified in the Contract Documents then the STRUCTURAL ENGINEER shall provide up to two (2) soil remediation methods along with costs to the CITY for consideration. These services include, as necessary: a site visit by the geotechnical engineer, soils testing and analyses, written recommendations, and cost opinion. These services shall only be used at the discretion of the CITY.

#### 5. Record Drawings

- a. The STRUCTURAL ENGINEER shall furnish reproducible record drawings for the Project according to CITY requirements (Post-Construction Submittal Requirements Effective 10/23/2017). V&K will assist with this work as it pertains to changes on their portion of the plan set. Such record drawings may contain a waiver of liability phrase in regard to unknown changes made by the Contractor without CITY / STRUCTURAL ENGINEER approval.

#### 6. Work Schedule

CONSTRUCTION ENGINEERING SERVICES as outlined in Items 1. through 5. above shall be completed following all construction activities (planned five day work week within 100 working days). Construction activities are anticipated to commence on or before May 13, 2019, and be fully completed by October 18, 2019, depending upon weather conditions. If changes are made to this schedule, the STRUCTURAL ENGINEER shall submit changes to the CITY for approval.



**B. POST-CONSTRUCTION RECORD REVIEW SERVICES:**

Services to be completed by the STRUCTURAL ENGINEER following acceptance of the completed project by the CITY may include:

1. Assist the CITY with a post-construction record review conducted by the IDOT.

The above services, and any other requested or required services by the CITY or any of the other required review agencies, are to be negotiated through an Amendment to this Agreement.

**A.2.01 CITY's Responsibilities**

- A. CITY shall do the following in a timely manner, so as not to delay the services of the STRUCTURAL ENGINEER:
  1. Provide a suitable meeting space for the preconstruction conference.
  2. Provide all on-site observation and administration related to the project SWPPP and NPDES permit.
  3. Provide a representative at the weekly construction meetings.
- B. STRUCTURAL ENGINEER shall be entitled to use and rely upon all such information and services provided by the CITY or others in performing STRUCTURAL ENGINEER's services under this Agreement.
- C. CITY shall bear all costs incident to compliance with its responsibilities pursuant to this paragraph A.2.01.

**A.3.01 Times for Rendering Services**

- A. Work under this Agreement shall begin no later than 30 days after being notified by the CITY with a written or verbal notice to proceed. Upon execution of this Agreement, the STRUCTURAL ENGINEER and the CITY may establish a schedule of work completion. The intent is to have all Construction Engineering Services completed by December 31, 2019, in accordance with Paragraph A.1.01.A.6. Failure of the STRUCTURAL ENGINEER to maintain progress in accordance with this schedule may be cause for termination of the Agreement.
- B. STRUCTURAL ENGINEER's services under this Agreement will be considered complete when all deliverables set forth in Paragraph A.1.01. A. are submitted to CITY, and when compensation for the services set forth in Paragraph 4.01.A.1 is received by STRUCTURAL ENGINEER.

## **EXHIBIT B**

### **STANDARD TERMS AND CONDITIONS**

Article 6 of the Agreement is amended and supplemented to include the following agreement of the parties:

#### **B.6.01.B Standard Terms and Conditions**

1. Standard of Care

The standard of care for all professional services performed or furnished by STRUCTURAL ENGINEER under this Agreement will be the care and skill ordinarily used by members of STRUCTURAL ENGINEER's profession practicing under similar circumstances at the same time and in the same locality. STRUCTURAL ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with STRUCTURAL ENGINEER's services.

2. Independent Contractor

All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of CITY and STRUCTURAL ENGINEER and not for the benefit of any other party. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either CITY or STRUCTURAL ENGINEER. STRUCTURAL ENGINEER's services under this Agreement are being performed solely for CITY's benefit, and no other entity shall have any claim against STRUCTURAL ENGINEER because of this Agreement or the performance or nonperformance of services hereunder.

3. Payments to STRUCTURAL ENGINEER

Invoices will be prepared in accordance with STRUCTURAL ENGINEER's standard invoicing practices and will be submitted to CITY by STRUCTURAL ENGINEER monthly, on the CITY's standard payment form, unless otherwise agreed. Upon acceptance by the CITY, payment will be made promptly. Final payment will be made upon submittal of deliverables described in Exhibit A.

4. Insurance

STRUCTURAL ENGINEER will maintain insurance coverage in accordance with Exhibit E and will provide certificates of insurance to CITY upon request.

5. Indemnification and Allocation of Risk

a. To the fullest extent permitted by law, STRUCTURAL ENGINEER shall indemnify and hold harmless CITY, CITY's officers, directors, partners, and employees from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of STRUCTURAL ENGINEER or STRUCTURAL ENGINEER's officers, directors, partners and employees in the performance of STRUCTURAL ENGINEER's services under this Agreement.

b. To the fullest extent permitted by law, CITY shall indemnify and hold harmless STRUCTURAL ENGINEER, STRUCTURAL ENGINEER's officers, directors, partners, employees, and consultants from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of CITY or CITY's officers, directors, partners, employees and consultants with respect to this Agreement.

c. To the fullest extent permitted by law, STRUCTURAL ENGINEER's total liability to CITY and anyone claiming by, through, or under CITY for any injuries, losses, damages and expenses caused in part by the negligence of STRUCTURAL ENGINEER and in part by the negligence of CITY or any other negligent entity or individual, shall not exceed the percentage share that STRUCTURAL ENGINEER's negligence bears to the total negligence of CITY, STRUCTURAL ENGINEER, and all other negligent entities and individuals.

d. In addition to the indemnity provided under paragraph B.6.01.B.5.b. of this Exhibit, and to the fullest extent permitted by law, CITY shall indemnify and hold harmless STRUCTURAL ENGINEER and STRUCTURAL ENGINEER's officers, directors, partners, employees, and consultants from and against injuries, losses, damages and expenses (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other disputes resolution costs) caused by, arising out of, or resulting from Hazardous Environmental Condition, provided that (i) any such injuries, losses, damages and expenses are attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, and (ii) nothing in this paragraph B.6.01.B.5.d shall obligate CITY to indemnify any individual or entity to the extent of that individual or entity's own negligence or willful misconduct.

#### 6. Dispute Resolution

a. CITY and STRUCTURAL ENGINEER agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("disputes") to mediation.

b. If a party alleges a dispute or controversy with the other party arising out of or relating to the performance of services under this Agreement, then either party shall have the right to request mediation within 30 days after the claiming party has provided the other party with written notice describing the dispute and the claiming party's position with reference to the resolution of the dispute.

c. Except as otherwise agreed, mediation will proceed pursuant to the Construction Industry Mediation Rules of the American Arbitration Association in effect on the Effective Date of the Agreement. A mediator will be appointed within 30 days of receipt of a written request. The mediator will endeavor to complete the mediation within 30 days thereafter.

d. No performance obligation under or related to this Agreement shall be interrupted or delayed during any mediation proceeding except upon written agreement of both parties.

e. The mediator shall not be a witness in any legal proceedings related to this Agreement.

7. Termination of Contract

Either party may at any time, upon seven days prior written notice to the other party, terminate this Agreement. Upon such termination, CITY shall pay to STRUCTURAL ENGINEER all amounts owing to STRUCTURAL ENGINEER under this Agreement, for all work performed up to the effective date of termination, plus reasonable termination costs.

8. Access

CITY shall arrange for safe access to and make provisions for STRUCTURAL ENGINEER to enter upon public and private property as required for STRUCTURAL ENGINEER to perform services under this Agreement.

9. Hazardous Environmental Conditions

It is acknowledged by both parties that STRUCTURAL ENGINEER's scope of services does not include any services related to a "Hazardous Environmental Condition", i.e. the presence at the site of asbestos, PCBs, petroleum, hazardous waste, or radioactive materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the PROJECT. In the event STRUCTURAL ENGINEER or any other party encounters a Hazardous Environmental Condition, STRUCTURAL ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the PROJECT affected thereby until CITY: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the site is in full compliance with applicable laws and regulations. CITY acknowledges that STRUCTURAL ENGINEER is performing professional services for CITY and that STRUCTURAL ENGINEER is not and shall not be required to become an "arranger", "operator", "generator", or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the site in connection with STRUCTURAL ENGINEER's activities under this Agreement.

10. Patents

STRUCTURAL ENGINEER shall not conduct patent searches in connection with its services under this Agreement and assumes no responsibility for any patent or copyright infringement arising therefrom. Nothing in this Agreement shall be construed as a warranty or representation that anything made, used, or sold arising out of the services performed under this Agreement will be free from infringement of patents or copyrights.

11. Ownership and Reuse of Documents

All documents prepared or furnished by STRUCTURAL ENGINEER pursuant to this Agreement are instruments of service, and STRUCTURAL ENGINEER shall retain an ownership and property interest therein. Reuse of any such documents by CITY shall be at CITY's sole risk; and CITY agrees to indemnify, and hold STRUCTURAL ENGINEER harmless from all claims, damages, and expenses including attorney's fees arising out of such reuse of documents by CITY or by others acting through CITY.

12. Use of Electronic Media

a. 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 the STRUCTURAL ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by STRUCTURAL ENGINEER to CITY are only for convenience of CITY. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

b. When transferring documents in electronic media format, STRUCTURAL ENGINEER makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by STRUCTURAL ENGINEER at the beginning of this PROJECT.

c. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

d. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. STRUCTURAL ENGINEER shall not be responsible to maintain documents stored in electronic media format after acceptance by CITY.

13. Force Majeure

STRUCTURAL ENGINEER shall not be liable for any loss or damage due to failure or delay in rendering any service called for under this Agreement resulting from any cause beyond STRUCTURAL ENGINEER's reasonable control.

14. Assignment

Neither party shall assign its rights, interests or obligations under this Agreement without the express written consent of the other party.

15. Binding Effect

This Agreement shall bind, and the benefits thereof shall inure to the respective parties hereto, their legal representatives, executors, administrators, successors, and assigns.

16. Severability and Waiver of Provisions

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 CITY and STRUCTURAL ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or the remainder of this Agreement.

17. Survival

All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

18. Headings

The headings used in this Agreement are for general reference only and do not have special significance.

19. Controlling Law

This Agreement is to be governed by the law of the state of Iowa.

20. Notices

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



# CALHOUN-BURNS AND ASSOCIATES, INC.

BRIDGES ♦ STRUCTURES ♦ TRANSPORTATION

## EXHIBIT C

### HOURLY BILLING RATES (EFFECTIVE JULY, 2018)

PRINCIPAL OF FIRM IV	\$ 204.00 / HOUR
PRINCIPAL OF FIRM III	\$ 196.00 / HOUR
PRINCIPAL OF FIRM II	\$ 188.00 / HOUR
PRINCIPAL OF FIRM I	\$ 180.00 / HOUR
SENIOR PROJECT MANAGER IV	\$ 165.00 / HOUR
SENIOR PROJECT MANAGER III	\$ 159.00 / HOUR
SENIOR PROJECT MANAGER II	\$ 153.00 / HOUR
SENIOR PROJECT MANAGER I	\$ 147.00 / HOUR
PROJECT MANAGER IV	\$ 154.00 / HOUR
PROJECT MANAGER III	\$ 145.00 / HOUR
PROJECT MANAGER II	\$ 137.00 / HOUR
PROJECT MANAGER I	\$ 128.00 / HOUR
SENIOR PROJECT ENGINEER IV	\$ 143.00 / HOUR
SENIOR PROJECT ENGINEER III	\$ 134.00 / HOUR
SENIOR PROJECT ENGINEER II	\$ 126.00 / HOUR
SENIOR PROJECT ENGINEER I	\$ 117.00 / HOUR
PROJECT ENGINEER IV	\$ 130.00 / HOUR
PROJECT ENGINEER III	\$ 122.00 / HOUR
PROJECT ENGINEER II	\$ 115.00 / HOUR
PROJECT ENGINEER I	\$ 107.00 / HOUR
SENIOR DESIGN ENGINEER IV	\$ 118.00 / HOUR
SENIOR DESIGN ENGINEER III	\$ 110.00 / HOUR
SENIOR DESIGN ENGINEER II	\$ 101.00 / HOUR
SENIOR DESIGN ENGINEER I	\$ 93.00 / HOUR
DESIGN ENGINEER IV	\$ 110.00 / HOUR
DESIGN ENGINEER III	\$ 100.00 / HOUR
DESIGN ENGINEER II	\$ 90.00 / HOUR
DESIGN ENGINEER I	\$ 80.00 / HOUR
ENGINEER INTERN	\$ 78.00 / HOUR
SENIOR TECHNICIAN IV	\$ 120.00 / HOUR
SENIOR TECHNICIAN III	\$ 115.00 / HOUR
SENIOR TECHNICIAN II	\$ 109.00 / HOUR
SENIOR TECHNICIAN I	\$ 104.00 / HOUR
TECHNICIAN IV	\$ 105.00 / HOUR
TECHNICIAN III	\$ 101.00 / HOUR
TECHNICIAN II	\$ 97.00 / HOUR
TECHNICIAN I	\$ 93.00 / HOUR
OFFICE MANAGER	\$ 132.00 / HOUR
ADMINISTRATIVE ASSISTANT IV	\$ 90.00 / HOUR
ADMINISTRATIVE ASSISTANT III	\$ 85.00 / HOUR
ADMINISTRATIVE ASSISTANT II	\$ 78.00 / HOUR
ADMINISTRATIVE ASSISTANT I	\$ 75.00 / HOUR

MILEAGE:  
EXPENSES:

CURRENT IRS STANDARD RATE  
ACTUAL COST

**HOURLY RATES SHALL BE ADJUSTED ANNUALLY IN ACCORDANCE WITH CONSULTING ENGINEERS' NORMAL BUSINESS PRACTICE.**

**EXHIBIT D**  
**FEE BREAKDOWN**

AGREEMENT FOR PROFESSIONAL CONSTRUCTION ENGINEERING SERVICES  
NE 54<sup>TH</sup> STREET BRIDGE REPLACEMENT  
OVER BRANCH OF FOURMILE CREEK  
IDOT PROJECT NOS. BRM-SWAP-0187(642)--SD-77  
AND STBG-SWAP-0187(641)--SG-77

Construction Administration (CB&A, V&K)	\$	53,500.00
Construction Staking (V&K)	\$	12,000.00
Construction Observation (CB&A, V&K)	\$	95,800.00
Laboratory Testing	\$	5,000.00
Record Drawings (CB&A, V&K)	\$	3,700.00
<hr/>		
TOTAL ESTIMATED CONSTRUCTION ENGINEERING SERVICES	\$	170,000.00



## EXHIBIT E

### City of Ankeny Insurance Requirements for Professional Services

1. \_\_\_\_\_ shall furnish a signed Certificate of Insurance to the City of Ankeny, Iowa for the coverage required in Exhibit A prior to commencing work and at the end of the project if the term of work is longer than 60 days. Providers presenting annual certificate shall present a Certificate at the end of each project with the final billing. Each Certificate shall be prepared on the most current ACORD form approved by the Iowa Department of Insurance or an equivalent. Each Certificate shall include a statement under Description of Operations as to why issued. Eg: Project # \_\_\_\_\_ or Lease of premises at \_\_\_\_\_ or construction of \_\_\_\_\_.
2. All policies of insurance required hereunder shall be with a carrier authorized to do business in Iowa and all carriers shall have a rating of A or better in the current A.M. Best's Rating Guide.
3. Each Certificate shall be furnished to the contracting department of the City of Ankeny.
4. Failure to provide minimum coverage shall not be deemed a waiver of these requirements by the City of Ankeny. Failure to obtain or maintain the required insurance shall be considered a material breach of this agreement.
5. Subcontractors and sub subcontractor performing work or service shall provide a Certificate of Insurance in accord with Exhibit A.
6. All required endorsements to various policies shall be attached to Certificate of Insurance.
7. Whenever a specific ISO form is listed, an equivalent form may be substituted subject to the provider identifying and listing in writing all deviations and exclusions that differ from the ISO form.
8. Provider shall be required to carry the minimum coverage / limits, or greater if required by law or other legal agreement, in Exhibit A.
9. Whenever an ISO form is referenced the current edition of the form must be used.
10. By requiring such insurance, the City of Ankeny shall not be deemed or construed to have assessed the risk that may be applicable to the Contractor its agents, representatives, employees, or sub-consultants under this Contract. The insurance requirements herein for this Contract in no way limit the indemnity covenants contained in the Contract.
11. The City of Ankeny in no way warrants that the limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees, or subcontractors. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverages. The Contractor is not relieved of any liability or other obligations assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

## Exhibit A

### A) COMMERCIAL GENERAL LIABILITY

General Aggregate Limit	\$ 2,000,000
Products-Completed Operations Aggregate Limit	\$ 1,000,000
Personal and Advertising Injury Limit	\$ 1,000,000
Each Occurrence	\$ 1,000,000
Fire Damage Limit (any one occurrence)	\$ 50,000
Medical Payments	\$ 5,000

- a) Coverage shall be written on an occurrence, not claims made, form. All deviations from the standard ISO commercial general liability form CG 0001, or Business owners form BP 0002, shall be clearly identified.
- b) Include ISO endorsement form CG 25 04 "Designated Location(s) General Aggregate Limit" or CG 25 03 "Designated Construction Project (s) General Aggregate Limit" as appropriate.
- c) Include endorsement indicating that coverage is primary and non-contributory.
- d) Include endorsement to preserve Governmental Immunity. (Sample attached).
- e) Include an endorsement that deletes any fellow employee exclusion.
- f) Include additional insured endorsement for:  
The City of Ankeny, including all its elected and appointed officials, all its employees and volunteers, all its boards, commissions and/or authorities and their board members, employees and volunteers. Use ISO form CG 2026.

### B) AUTOMOBILE LIABILITY \$ 1,000,000 (Combined Single Limit)

### C) WORKERS' COMPENSATION & EMPLOYERS LIABILITY

Statutory benefits covering all employees injured on the job by accident or disease as prescribed by Iowa Code Chapter 85 as amended.

Coverage A	Statutory – State of Iowa
Coverage B	Employers Liability

Each Accident	\$100,000
Each Employee-Disease	\$100,000
Policy Limit-Disease	\$500,000

Policy shall include an endorsement providing a waiver of subrogation to the City of Ankeny. Coverage B limits shall be greater if required by Umbrella Carrier.

### D) UMBRELLA LIABILITY \$ 2,000,000

Umbrella liability coverage must be at least following form with the underlying policies included herein.

**E) PROFESSIONAL LIABILITY**

**\$ 2,000,000**

- The Contractor shall maintain Errors and Omissions Liability covering negligent acts, errors and/or omissions, including design errors of the Contractor for damage sustained by reason of or in the course of operations under this Contract. ~~The policy/coverages shall be amended to include the following:~~

~~Amendment of any Contractual Liability Exclusion to state: "This exclusion does not apply to any liability of others which you assume under a written contract provided such liability is caused by your negligent acts."~~

- In the event that any professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Contract is completed.
- Policy shall contain a waiver of subrogation against the City of Ankeny.

**F) CONTRACTOR'S ENVIRONMENTAL LIABILITY**

**\$ 2,000,000**

- Applicable if Professional Services performed includes Environmental activities included but not limited to: use or application of hazardous materials, environmental testing, monitoring, assessment or cleanup, transportation of hazardous materials, pesticide spraying and certain recycling and waste reduction activities.

## **Preservation of Governmental Immunities Endorsement**

1. Nonwaiver of Governmental Immunity. The insurance carrier expressly agrees and states that the purchase of this policy and the including of the City of Ankeny, Iowa as an Additional Insured does not waive any of the defenses of governmental immunity available to the City of Ankeny, Iowa under Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
2. Claims Coverage. The insurance carrier further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time. Those claims not subject to Code of Iowa Section 670.4 shall be covered by the terms and conditions of this insurance policy.
3. Assertion of Governmental Immunity. The City of Ankeny, Iowa shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the insurance carrier.
4. Non-Denial of Coverage. The insurance carrier shall not deny coverage under this policy and the insurance carrier shall not deny any of the rights and benefits accruing to the City of Ankeny, Iowa under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the City of Ankeny, Iowa.
5. No Other Change in Policy. The above preservation of governmental immunities shall not otherwise change or alter the coverage available under this policy.