



**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of June 3, 2019 ("Effective Date") between City of Ankeny, Iowa ("Owner") and JEO Consulting Group, Inc. ("Engineer").

Owner's project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

2019 PCC Reconstruction Program -- NW 9th Street – Construction Services ("Project").

JEO Project Number: 190852.00

Owner and Engineer further agree as follows:

ARTICLE 1 - SERVICES OF ENGINEER

1.01 Scope

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 - OWNER'S RESPONSIBILITIES

2.01 Owner Responsibilities

- A. Owner responsibilities are outlined in Section VI of Exhibit A and Section 3 of Exhibit B.

ARTICLE 3 - COMPENSATION

3.01 Compensation

- A. Owner shall pay Engineer as set forth in Exhibit A and per the terms in Exhibit B.
- B. The fee schedule is outlined in Exhibit A.
- C. The Standard Hourly Rates Schedule shall be adjusted annually (as of approximately January 1st) to reflect equitable changes in the compensation payable to Engineer. The current hourly rate schedule is set forth in Exhibit C.

ARTICLE 4 - EXHIBITS AND SPECIAL PROVISIONS

4.01 Exhibits

Exhibit A – Scope of Services

Exhibit B – General Conditions

Exhibit C – Standard Hourly Rate Schedule

Exhibit D – City of Ankeny Insurance Requirements for Professional Services

4.02 Total Agreement

- A. This Agreement (consisting of pages 1 to 2 inclusive, together with the Exhibits identified as included above) constitutes the entire agreement between Owner and 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.

Owner: City of Ankeny, Iowa

Engineer: JEO Consulting Group, Inc.

By: _____

By: Scott Port

Gary Lorenz

(Print Name)

Scott Port, P.E.

(Print Name)

Title: Mayor

Title: Project Manager

Date Signed: _____

Date Signed: May 29, 2019

Address for giving notices:

Address for giving notices:

City of Ankeny – Public Works

JEO Consulting Group, Inc.

220 W 1st Street

1615 SW Main Street, Suite 205

Ankeny, IA 50023

Ankeny, IA 50023-7261

JEO Consulting Group, Inc.
SCOPE OF SERVICES

I. Project Description

- A. The services in this agreement include providing construction observation, construction staking, as-built drawings, and limited construction administration for the construction of the 2019 PCC Reconstruction Program - NW 9th Street Project in Ankeny, IA. The construction will include paving, storm sewer, subdrain, storm sewer intakes, and associated work.

II. Construction Services

A. Construction Administration

- i. The Owner may periodically request the Engineer perform construction administration duties on an on-call basis throughout the project.
- ii. The City shall coordinate utility relocations with the franchise utility companies.

B. Construction Staking (Requires 48-hour notice)

- i. The Engineer shall provide all construction staking for the Project. The Construction documents state the Engineer shall provide one set of stakes for each construction operation. Any staking that is destroyed due to construction that must be replaced, will be at the Contractor's expense.

C. Resident Project Representation

- i. The Engineer will provide a Resident Project Representative to perform construction observation services for the Owner at the times and intervals appropriate to the stage of construction to observe the progress and quality of the work to determine if the results of the construction work are in general compliance with the Contract Documents. It is assumed that construction observations will be performed part time, approximately 20 hours per week, for most construction tasks unless otherwise noted herein. Paving operations shall require full time observation services.
- ii. The Resident Project Representative shall attend the preconstruction conference and subsequent on-site meetings during construction as necessary.
- iii. The Resident Project Representative will review the Contractor's work for general compliance with the plans and specifications.
- iv. The Resident Project Representative shall verify materials delivered to the site by the Contractor are in accordance with the plans and specifications.
- v. The Resident Project Representative shall spot check grading and subgrade preparation and review with the Contractor any deficiencies in the subgrade prior to paving. The Resident Project Representative shall observe moisture and density tests.
- vi. The Resident Project Representative shall observe traffic control operations to ensure general compliance with the Contract Documents.
- vii. The Resident Project Representative shall prepare a weekly report of working days.
- viii. The Resident Project Representative shall measure and keep a record of contract quantities for payment applications and observe and document testing required of the Contractor.
- ix. The Resident Project Representative shall provide full-time observation for the construction of storm sewer installation. If required, the Resident Project Representative will review televising videos of the storm sewer and provide a list of observed deficiencies.
- x. The Resident Project Representative shall be on-site full-time during roadway and sidewalk paving operations. Quality control air and slump tests shall be performed by the Resident Project Representative. Concrete cylinders shall be prepared by the

JEO Consulting Group, Inc. SCOPE OF SERVICES

Resident Project Representative and the Owner shall hire an independent testing agency to conduct concrete cylinder breaks for strength testing. The Owner shall deliver the cylinders to the testing agency and provide the Resident Project Representative with all test results.

- xi. The Resident Project Representative shall observe sawing and sealing of joints, where applicable.
- xii. The Resident Project Representative shall periodically observe all surface restoration.

D. Monument Preservation

- i. The Engineer shall prepare a Monument Preservation Certificate in accordance with Iowa Code 355.6A. This document may include, but not be limited to, identifying the existing monuments within the project corridor and replacing any monument disturbed or removed at its preserved position. The results of this survey will be provided to the Owner for their record and recorded with the Polk County Recorder's Office. Assumes restoration of one monument.

E. Post-Construction Services

- i. The Resident Project Representative shall perform a project walkthrough with the Owner and Contractor and review the project to determine if it has been completed in substantial conformance with the plans, specifications, and other contract documents and recommend acceptance to the Owner.
- ii. The Resident Project Representative shall assist the Owner in developing a final punch list and verify completion of items for acceptance.
- iii. The Resident Project Representative shall prepare and furnish as-built record drawings and XYZ data files of the Project in accordance with the Client's Post-Construction Submittal Requirements. The Resident Project Representative shall complete Owner's ADA Sidewalk Certification forms.

III. Deliverables

- A. Construction As-Built Drawings (11" x 17")—Electronic and Hard Copy
- B. ADA Sidewalk Certification Forms

IV. Fee Schedule (Hourly Not to Exceed)

A.	Construction Administration	\$1,000.00
B.	Construction Staking	\$5,800.00
C.	Resident Project Representation	\$22,000.00
D.	Monument Preservation	\$800.00
E.	<u>Post Construction Services</u>	<u>\$1,000.00</u>
	Total	\$30,600.00

V. Timeline

- A. This is a working day contract that allows forty (40) working days for substantial completion and ten (10) working days for final completion.
- B. Construction Staking – as construction proceeds and when requested by the Contractor
- C. Construction Services – as construction proceeds and as requested by City

JEO Consulting Group, Inc.
SCOPE OF SERVICES

VI. Owner's Responsibilities

- A. Provide timely responses to the Resident Project Representative regarding construction issues that arise in the field.
- B. Arrange for safe access to and make all provisions for JEO to enter upon public and private property as required for JEO to perform services under the agreement.
- C. Provide a designated authorized project representative.

JEO CONSULTING GROUP INC ■ JEO ARCHITECTURE INC

GENERAL CONDITIONS

1. SCOPE OF SERVICES: JEO Consulting Group, Inc. (JEO) shall perform the services described in Exhibit A. JEO shall invoice the client for these services at the fee stated in Exhibit A.

2. ADDITIONAL SERVICES: JEO can perform work beyond the scope of services, as additional services, for a negotiated fee or at fee schedule rates.

3. CLIENT RESPONSIBILITIES: The client shall provide all criteria and full information as to the client's requirements for the project; designate and identify in writing a person to act with authority on the client's behalf in respect to all aspects of the project; examine and respond promptly to JEO's submissions; and give prompt written notice to JEO whenever the client observes or otherwise becomes aware of any defect in work.

Unless otherwise agreed, the client shall furnish JEO with right-of-access to the site in order to conduct the scope of services. Unless otherwise agreed, the client shall also secure all necessary permits, approvals, licenses, consents, and property descriptions necessary to the performance of the services hereunder. While JEO shall take reasonable precautions to minimize damage to the property, it is understood by the client that in the normal course of work some damage may occur, the restoration of which is not a part of this agreement.

4. TIMES FOR RENDERING SERVICES: JEO's services and compensation under this agreement have been agreed to in anticipation of the orderly and continuous progress of the project through completion. Unless specific periods of time or specific dates for providing services are specified in the scope of services, JEO's obligation to render services hereunder shall be for a period which may reasonably be required for the completion of said services.

If specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such periods of time or date are changed through no fault of JEO, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If the client has requested changes in the scope, extent, or character of the project, the time of performance of JEO's services shall be adjusted equitably.

5. INVOICES: JEO shall submit invoices to the client monthly for services provided to date and a final bill upon completion of services. Invoices are due and payable within 30 days of receipt. Invoices are considered past due after 30 days. Client agrees to pay a finance charge on past due invoices at the rate of 1.0% per month, or the maximum rate of interest permitted by law.

If the client fails to make any payment due to JEO for services and expenses within 30 days after receipt of JEO's statement, JEO may, after giving 7 days' written notice to the client, suspend services to the client under this agreement until JEO has been paid in full all amounts due for services, expenses, and charges.

6. STANDARD OF CARE: The standard of care for all services performed or furnished by JEO under the agreement shall be the care and skill ordinarily used by members of JEO's profession practicing under similar circumstances at the same time and in the same locality. JEO makes no warranties, express or implied, under this agreement or otherwise, in connection with JEO's services.

JEO shall be responsible for the technical accuracy of its services and documents resulting therefrom, and the client shall not be responsible for discovering deficiencies therein. JEO shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in client furnished information.

7. REUSE OF DOCUMENTS: Reuse of any materials (including in part plans, specifications, drawings, reports, designs, computations, computer programs, data, estimates, surveys, other work items, etc.) by the client on a future extension of this project, or any other project without JEO's written authorization shall be at the client's risk and the client agrees to indemnify and hold harmless JEO from all claims, damages, and expenses including attorney's fees arising out of such unauthorized use.

8. ELECTRONIC FILES: Copies of Documents that may be relied upon by the client are limited to the printed copies (also known as hard copies) that are signed or sealed by JEO. Files in electronic media format of text, data, graphics, or of other types that are furnished by JEO to the client are only for convenience of the client. Any conclusion or information obtained or derived from such electronic files shall be at the user's sole risk.

a. 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 shall perform acceptance tests or procedures within 30 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 30 day acceptance period shall be corrected by the party delivering the electronic files. JEO shall not be responsible to maintain documents stored in electronic media format after acceptance by the client.

b. When transferring documents in electronic media format, JEO 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 JEO at the beginning of the project.

c. The client may make and retain copies of documents for information and reference in connection with use on the project by the client.

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

e. Any verification or adaptation of the documents by JEO for extensions of the project or for any other project shall entitle JEO to further compensation at rates to be agreed upon by the client and JEO.

JEO CONSULTING GROUP INC ■ JEO ARCHITECTURE INC

GENERAL CONDITIONS

9. SUBCONSULTANTS: JEO may employ consultants as JEO deems necessary to assist in the performance of the services. JEO shall not be required to employ any consultant unacceptable to JEO.

10. INDEMNIFICATION: To the fullest extent permitted by law, JEO and the client shall indemnify and hold each other harmless and their respective officers, directors, partners, employees, and consultants from and against any and all claims, 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 dispute resolution costs) to the extent such claims, losses, damages, or expenses are caused by the indemnifying parties' negligent acts, errors, or omissions. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of JEO and the client, they shall be borne by each party in proportion to its negligence.

~~**11. INSURANCE:** JEO shall procure and maintain the following insurance during the performance of services under this agreement:~~

~~a. Workers' Compensation: Statutory~~

~~b. Employer's Liability~~

~~i. Each Accident: \$500,000~~

~~ii. Disease, Policy Limit: \$500,000~~

~~iii. Disease, Each Employee: \$500,000~~

~~c. General Liability~~

~~i. Each Occurrence (Bodily Injury and Property Damage):~~

~~\$1,000,000~~

~~ii. General Aggregate: \$2,000,000~~

~~d. Auto Liability~~

~~i. Combined Single: \$1,000,000~~

~~e. Excess or Umbrella Liability~~

~~i. Each Occurrence: \$1,000,000~~

~~ii. General Aggregate: \$2,000,000~~

~~f. Professional Liability:~~

~~i. Each Occurrence: \$1,000,000~~

~~ii. General Aggregate: \$2,000,000~~

~~g. All policies of property insurance shall contain provisions to the effect that JEO and JEO's consultants' interests are covered and that in the event of payment of any loss or damage the insurers shall have no rights of recovery against any of the insureds or additional insureds thereunder.~~

~~h. The client shall require the contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause JEO and JEO's consultants to be listed as additional insured with respect to such liability and other insurance purchased and maintained by the contractor for the project.~~

12. TERMINATION: This agreement may be terminated by either party upon 7 days prior written notice. In the event of termination, JEO shall be compensated by client for all services performed up to and including the termination date. The effective date of termination may be set up to thirty (30) days later than otherwise provided to allow JEO to demobilize personnel and equipment from the site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble project materials in orderly files.

13. GOVERNING LAW: This agreement is to be governed by the law of the state in which the project is located.

14. SUCCESSORS, ASSIGNS, AND BENEFICIARIES: The client and JEO each is hereby bound and the partners, successors, executors, administrators and legal representatives of the client and JEO are hereby bound to the other party to this agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, with respect to all covenants, agreements and obligations of this agreement.

a. Neither the client nor JEO may assign, sublet, or transfer any rights under or interest (including, but without limitation, monies that are due or may become due) in this agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge the assignor from any duty or responsibility under this agreement.

b. Unless expressly provided otherwise in this agreement: Nothing in this agreement shall be construed to create, impose, or give rise to any duty owed by the client or JEO to any contractor, contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.

c. All duties and responsibilities undertaken pursuant to this agreement shall be for the sole and exclusive benefit of the client and JEO and not for the benefit of any other party.

15. PRECEDENCE: These standards, terms, and conditions shall take precedence over any inconsistent or contradictory language contained in any proposal, contract, purchase order, requisition, notice to proceed, or like document regarding JEO's services.

16. SEVERABILITY: Any provision or part of the agreement held to be void or unenforceable shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the client and JEO, 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.

17. E-VERIFY: JEO shall register with and use the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986, to determine the work eligibility status of new employees physically performing services within the state where the work shall be performed. Engineer shall require the same of each consultant.

Standard Hourly Rates Schedule



JANUARY 1, 2019

**JEO CONSULTING GROUP INC.
CURRENT HOURLY RATE SCHEDULE RANGE**

ACTUAL HOUR BASIS

Project Managers:	\$150.00	-	\$250.00
Project Engineers/Architects:	\$115.00	-	\$200.00
Project Engineers (E.I.):	\$96.00	-	\$115.00
Engineering/Surveying/ Architectural/Planning/GIS Technicians:	\$70.00	-	\$155.00
Office/Administrative:	\$85.00	-	\$102.00
Principals:	\$200.00	-	\$250.00

NOTE: Cost of telephone calls, copying, postage, travel expenses, mileage, meals, lodging, etc. are included in our hourly rates and fees, and not charged separately.

City of Ankeny Insurance Requirements for Professional Services

1. _____ JEO _____ shall furnish a signed Certificate of Insurance to the City of Ankeny, Iowa for the coverage required in Exhibit D 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 D.
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 D.
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 D

A) COMMERCIAL GENERAL LIABILITY

General Aggregate Limit	\$ 2,000,000
Products-Completed Operations Aggregate Limit	\$ 2,000,000
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.