



AGREEMENT FOR ENGINEERING SERVICES

Aspen Business Park | 414 South 17th Street, Suite 107 | Ames, Iowa 50010

September 11, 2017

Don Clark, P.E.

Municipal Utilities Director
City of Ankeny
220 West 1st Street
Ankeny, IA 50023

RE: Proposal/Agreement for Engineering Services
2018 – SE Magazine Road Water Main Improvements, Ankeny
FOX Ref. No. 3379-17A

Dear Mr. Clark:

Thank you for contacting FOX Engineering Associates, Inc. regarding your need for engineering services related to the extension of water main(s) generally located along SE Magazine Road between S Ankeny Blvd and SE Trilein Drive, Ankeny, hereafter referred to as the project. In response to your request, we are pleased to submit this proposal/agreement for your consideration.

Scope of Services

Our Basic Services will consist generally of the following work items:

FOX's engineering services will include an evaluation of four (alternatives) for the placement of the water main. These alternates are generally described as follows:

ALTERNATE 1A - The water main will be placed along SE Magazine Road (from the 16-inch connection point near S Ankeny Blvd to SE Trilein) either on the north or south side of the right of way.

ALTERNATE 1B – Same as ALTERNATE 1A, except water main will traverse a different route to the same connection points, possibly requiring easements. This alignment is assumed to follow the abandoned railroad right of way to the south of SE Magazine Road and the east through private development to the tower site.

ALTERNATE 2A & 2B - The water main will extend from the west side of S Ankeny Blvd in two different alignments to water mains provided as part of ALTERNATE 1A/1B to evaluate cost of design and construction for possible future extensions in this area.

It is anticipated that the project will be let for bid in late Winter of 2017/2018 and construction completed by the end of 2018.

1. Preliminary Design Phase Services:

- a) Topographic Survey – FOX will prepare a topographic survey of the SE Magazine Road Corridor (S Ankeny Blvd to SE Trilein). The coordinates for the survey will be based on State Plane coordinates. FOX utilize aerials and lidar to evaluate Alternate 1B.
- b) Utility Coordination – FOX will contact individual utility companies to obtain maps that indicate utility placement along the roadway alignments. The Iowa Code now requires a utility coordination meeting prior to the start of design. FOX will coordinate this meeting.
- c) Geotechnical Report – Geotechnical investigations will be performed by others under this contract.
- d) Staging Plan – FOX will investigate construction staging plans. This plan will evaluate parking, emergency access, and local access during construction as well as help determine material storage and contractor staging needs that will need to be addressed during final design.
- e) Communication/Meetings – FOX will consult with City Staff during design and will provide Preliminary Design documents and schematics, as necessary, to describe the preliminary alternatives/options. FOX will attend a Council Meeting (or staff meeting) to present the results of the preliminary design and cost estimate to Council (or staff).
- f) Preliminary Design Memo – FOX will prepare a memo that summarized the evaluation of the four (4) water main alignments along with Opinion of Probable Cost. FOX's services under the Preliminary Design Phase will be considered complete on the date when the memo has been delivered to the Owner.

2. Final Design Phase Services:

- a) Construction Plans for bidding with specifications as per SUDAS and any Ankeny supplemental specifications. Furnish three (3) paper review copies and an electronic PDF of the construction plans, specifications and Opinion of Cost at 50%, 75% and 100% design milestones.
- b) Permits: FOX shall prepare the IDNR Water Construction Permit Applications, IDNR Storm Water Discharge Permit and IDOT Utility Accommodation Permit Applications (as necessary). Permit forms to be executed and submitted by the Owner.
- c) Our Scope of Services has been prepared based upon one (1) prime construction contract.
- d) Meetings
 - i) Staff Meetings (1)
 - ii) Utility coordination meeting (1)
 - iii) Neighborhood Meetings (1)
 - iv) Presentation of final design to Council (or Staff) at Public Hearing (1)

3. Bidding Phase Services:

- a) FOX will prepare Notice of Public Hearing and Invitation to Bid for publication by the Owner.
- b) FOX will prepare and distribute signatory copies of the Notice of Award and Contract Documents.
- c) FOX will prepare and distribute signatory copies of the Notice to Proceed.
- d) A Pre-Bid Conference will not be required for this project.
- e) Bidding Documents - FOX shall prepare and distribute a sufficient number of paper copies of project documents (including drawings, specifications and addenda) to prospective bidders, subcontractor bidders, suppliers, contractor plan room services, and will post on Quest CDN.
- f) FOX will attend the public hearing. Staff will attend the Council Meeting for the consideration of the award of the contract.
- g) FOX will attend the bid opening, review and tabulate the bids, and write a recommendation of award.

Fees and Schedule: The fees for the Project shall be as follows:

Phase	(Hourly/Lump Sum)	Amount
Preliminary Design Phase Services	Lump Sum	\$21,500
Geotechnical Report	Hourly	\$6,000 (estimated)
Final Design Phase Services	Lump Sum	\$33,500
Bidding Phase Services	Lump Sum	\$7,500
Bidding Documents	\$50 Each	\$500 (estimated)

- The total of lump sum fees..... \$62,500
- The total estimated standard hourly fees \$6,500
- The total estimated fees (lump sum + hourly est). \$69,000

Notes:

1. Iowa Law requires that sufficient paper copies of bidding documents be provided at no cost to bidders, suppliers, and subcontractors who request such paper documents. All costs associated with the reproduction and distribution of paper and electronic bidding documents are to be paid by the Owner. Engineer will invoice Owner for all such document costs as a reimbursable expense (Bidding Documents stated above).
2. Amounts listed above that are based on Standard Hourly Rates and Reimbursable Expenses are estimates only; actual fees and charges for those items may differ from the estimated amounts, but will not exceed the estimated amount without prior written approval by the Owner.

We will be able to start work on the Project within 10 days of our receipt of a signed agreement from you. We anticipate completion of the preliminary design by October 2017, final design by December 2017 and bidding by January 2018.

If there are protracted delays for reasons beyond our control, we would expect to negotiate with you an equitable adjustment of the fees and schedule, taking into consideration the impact of such delay.

Special Notes

1. If you have special contact or communication requirements, you will need to advise us accordingly. Unless otherwise directed, the City of Ankeny's contact shall be Don Clark.
2. You will need to make available to us all pertinent existing data as well as full information as to your requirements, including any special or extraordinary services.
3. It is necessary that you advise us in writing at an early date if you have budgetary limitations for the project. If we accept any such limitations as being realistic, we will endeavor to work within those limitations. If you request, we will submit to you at milestones in the project, our opinion as to the probability of completing the project within your budget, and, where appropriate, request an adjustment in the budget or a revision in the extent of the project.
4. FOX Engineering will also provide such additional services that you may request to be billed at our standard hourly rate plus reimbursable expenses.

This Agreement and the accompanying General Terms and Conditions consisting of two (2) pages represent the entire understanding between the City of Ankeny and FOX Engineering Associates, Inc. in respect to the Project, and may only be modified in writing signed by both parties. If this Agreement satisfactorily sets forth your understanding of the Project, our services, and your responsibilities, please execute each of two (2) copies in the space provided below and return one (1) copy to us as notice to proceed.

Respectfully submitted,
FOX Engineering Associates, Inc.



John Gade, P.E.
Principal

Attachment: General Terms and Conditions (2 pages)

Accepted this _____ day of _____, 2017,

For the City of Ankeny:

By authorized contracting official:
(signature)

(printed name & title)

(This Proposal is open for acceptance for 30 days from the date of issuance, unless extended in writing by us.)

GENERAL TERMS AND CONDITIONS

Attached to and made a part of the letter agreement dated September 11, 2017, between the City of Ankeny (CLIENT) and FOX Engineering Associates, Inc. (CONSULTANT) in respect of the work described as therein.

1.0 CLIENT'S RESPONSIBILITIES

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

1.2 CLIENT shall also do the following and pay all costs incident thereto:

- a. Furnish to CONSULTANT all pertinent information, which may include but not be limited to borings, probings, and subsurface explorations, laboratory tests and inspections of samples, materials, and equipment; appropriate professional interpretations of all of the foregoing, environmental assessment and impact statements, property and utility surveys; property descriptions, zoning and deed restrictions; all of which CONSULTANT may rely upon in performing services.
- b. Guarantee access to and make all provisions for CONSULTANT to enter upon public and private property where required to perform services under this agreement.
- c. Provide such legal, accounting, independent cost estimating, inspection, auditing and insurance counseling services as may be required for the Project.
- d. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project.

2.0 STANDARD OF CARE

Services provided by the CONSULTANT under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession practicing contemporaneously under similar circumstances and in the same locality. CONSULTANT makes no warranties, expressed or implied, under this Agreement or otherwise, in connection with CONSULTANT'S services.

3.0 OWNERSHIP OF INSTRUMENTS OF SERVICE: All reports, plans, specifications, computer files, field data, notes and other documents prepared by the CONSULTANT as instruments of service shall remain the property of the CONSULTANT. The CONSULTANT shall

retain all common law, statutory and other reserved rights, including the copyright thereto and the rights of reuse. CLIENT may make and retain copies for information and reference in connection with the use and occupancy of the Project by CLIENT and others; however, such documents are not intended or represented to be suitable for reuse by CLIENT and others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by CONSULTANT for the specific purpose intended will be at CLIENT'S sole risk and without liability to CONSULTANT.

4.0 USE OF ELECTRONIC MEDIA

The CLIENT agrees not to reuse electronic files, in whole or in part, for any purpose other than for the Project. The CLIENT agrees not to transfer to others any electronic files provided by the CONSULTANT without the prior written consent of the CONSULTANT. Electronic data files provided by the CONSULTANT to the CLIENT are subject to an acceptance period of 30-days during which time the CLIENT may perform appropriate acceptance reviews. After the acceptance period, the electronic files shall be deemed to be accepted and Consultant shall have no obligation to correct errors or maintain the electronic files. Because data and/or drawings stored on electronic media can deteriorate undetected or be modified without the CONSULTANT'S knowledge, the CLIENT agrees that the CONSULTANT shall not be held liable for the completeness or correctness of electronic data once the electronic media have left the possession of the CONSULTANT.

5.0 PAYMENTS

If CLIENT fails to make any payment due CONSULTANT for services and expenses within thirty days after receipt of CONSULTANT'S statement therefore, the amounts due CONSULTANT will be increased at the rate of 1.5% per month from said thirtieth day, and in addition, CONSULTANT may, after giving seven days written notice to CLIENT, suspend services under this Agreement until CONSULTANT has been paid in full all amounts due for services, expenses, and charges.

6.0 TERMINATION

The obligation to provide further services under this Agreement may be terminated by either party upon seven days written notice. In the event of any termination, CONSULTANT will be paid for all services performed to the date of termination and all Reimbursable Expenses. CONSULTANT shall have no liability to CLIENT on account of termination.

7.0 CONFIDENTIALITY

The CONSULTANT shall hold confidential and not disclose to any person or entity, other than the CONSULTANT'S employees, subconsultants, and suppliers if necessary for performance of services under this Agreement, any business

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or technical information not previously known to and generated by the CONSULTANT or furnished to the CONSULTANT and marked CONFIDENTIAL by the CLIENT. These provisions shall not apply to information in whatever form that is in the public domain, nor shall it restrict the CONSULTANT from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other legitimate authority, or if disclosure is reasonably necessary for the CONSULTANT to defend itself from any legal action or claim.

8.0 ALLOCATION OF RISKS

8.1. INDEMNIFICATION. CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless the CONSULTANT, its officers, directors, employees and subconsultants against all damages, **liabilities or costs, including reasonable attorneys' fees** and defense costs, arising out of or in any way connected with this Project or the performance of the services under this Agreement by any of the parties named above, excepting only those damages, liabilities or costs attributable to the negligent acts or negligent failure to act by the CONSULTANT.

8.2 LIMITATION OF LIABILITY. To the fullest extent permitted by law, and not withstanding any other provision of this Agreement, the total liability, in the aggregate, of the CONSULTANT and the CONSULTANT'S officers, directors, employees and subconsultants, and any of them, to the CLIENT and anyone claiming by or through the CLIENT, for any and all claims, losses, costs or damages, including attorneys' fees and costs and expert-witness fees and costs of any nature whatsoever or claims expenses resulting from or in any way related to the Project or the Agreement from any cause or causes shall not exceed the total compensation received by the CONSULTANT under this Agreement or the amount of \$2,000,000, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

9.0 CORPORATE PROTECTION

It is intended by the parties to this Agreement that the CONSULTANT'S services in connection with the project shall not subject the CONSULTANT'S individual employees, officers, or directors to any personal legal exposure for the risks associated with this project. Therefore, and notwithstanding anything to the contrary contained herein, and CLIENT agrees that as the CLIENT'S sole and exclusive remedy, any claim, demand or suit shall be directed and or asserted only against CONSULTANT, an Iowa corporation, and not against any of the CONSULTANT'S employees, officers, or directors.

10.0 EFFECT OF PURCHASE ORDERS

In the event that CLIENT issues to CONSULTANT a

purchase order, order acknowledgement, order confirmation, or similar document, none of the terms or conditions stated or referred to thereon shall alter or add to any of the terms of this Agreement. Such document, whether or not signed by the CONSULTANT, shall be considered only as a document for CLIENT'S internal management of its operations.

11.0 SUCCESSORS AND ASSIGNS

Neither CLIENT nor CONSULTANT shall assign, sublet or transfer any rights under or interest in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this provision shall prevent CONSULTANT from employing such independent professional associates and consultants as CONSULTANT may deem appropriate to assist in the performance of services hereunder.

Nothing under this Agreement shall be construed to give any rights or benefits in the Agreement to anyone other than CLIENT and CONSULTANT, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of CLIENT and CONSULTANT and not for the benefit of any other party.

12.0 OTHER

The titles used in this instrument are for general reference only and are not part of the Agreement.

Any provisions of this Agreement later held to be unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect.

All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the CLIENT and the CONSULTANT shall survive the completion of the services hereunder and the termination of this Agreement.

This Agreement is to be governed by the law of the state in which the Project is located.

End of General Terms and Conditions