



Professional Services Agreement

This AGREEMENT (Agreement) is made today March 4, 2019 by and between CITY OF ANKENY (OWNER) and MSA PROFESSIONAL SERVICES, INC. (MSA), which agree as follows:

Project Name: SE Magazine Road Sidewalk Upgrade – Phase 3

The scope of the work authorized is: See Attached

The cost, not to exceed, for the work is: \$38,200.00

All services shall be performed in accordance with the General Terms and Conditions of MSA, which is attached and made part of this Agreement. Any attachments or exhibits referenced in this Agreement are made part of this Agreement. Payment for these services will be on a time and expense basis, with a cost not to exceed identified above.

Approval: Authorization to proceed is acknowledged by signatures of the parties to this Agreement.

CITY OF ANKENY

MSA PROFESSIONAL SERVICES, INC.

Gary Lorenz
Mayor
Date: _____

Phone: (515) 965-6400

Nichole Sungren, P.E.
Project Manager
Date: March 4, 2019

Jason Miller, P.E.
Vice President
Date: March 4, 2019
Phone: (515) 964-1920

ATTACHMENT A: RATE SCHEDULE

<u>CLASSIFICATION</u>	<u>LABOR RATE</u>
Architects	\$111 – \$170/hr.
Clerical	\$ 55 – \$110/hr.
CAD Technician	\$ 65 – \$125/hr.
Geographic Information Systems (GIS).....	\$ 94 – \$138/hr.
Housing Administration	\$ 68 – \$115/hr.
Hydrogeologists	\$114 – \$147/hr.
Planners	\$ 89 – \$160/hr.
Principals.....	\$180 – \$250/hr.
Professional Engineers	\$ 85 – \$153/hr.
Project Manager.....	\$ 85 – \$180/hr.
Professional Land Surveyors	\$ 79 – \$160/hr.
Staff Engineers.....	\$ 74 – \$144/hr.
Technicians	\$ 65 – \$125/hr.
Wastewater Treatment Plant Operator.....	\$ 72 – \$ 92/hr.

REIMBURSABLE EXPENSES

Copies/Prints.....	Rate based on volume
Fax	\$1.00/page
GPS Equipment	\$40/hour
Mailing/UPS	At cost
Mileage – Automobile (currently \$0.545/mile)	Rate set by Fed. Gov.
Mileage – MSA Truck.....	\$0.70/mile
Nuclear Density Testing	\$25.00/day + \$10/test
Organic Vapor Field Meter	\$100/day
PC/CADD Machine.....	Included in labor rates
Stakes/Lath/Rods	At cost
Total Station	Included in labor rates
Travel Expenses, Lodging, & Meals	At cost
Traffic Counting Equipment & Data Processing	At cost
Trimble Geodimeter.....	\$30/hour

* Labor rates represent an average or range for a particular job classification. These rates are in effect until January 1, 2020.

**MSA PROFESSIONAL SERVICES, INC. (MSA) –
GENERAL TERMS AND CONDITIONS OF SERVICES (PUBLIC - Iowa)**

1. **Scope and Fee.** The quoted fees and scope of services constitute the best estimate of the fees and tasks required to perform the services as defined. This agreement upon execution by both parties hereto, can be amended only by written instrument signed by both parties. For those projects involving conceptual or process development service, activities often cannot be fully defined during initial planning. As the project progresses, facts uncovered may reveal a change in direction which may alter the scope. MSA will promptly inform the OWNER in writing of such situations so that changes in this agreement can be made as required. The OWNER agrees to clarify and define project requirements and to provide such legal, accounting and insurance counseling services as may be required for the project

2. **Billing.** MSA will bill the OWNER monthly with net payment due upon receipt. Past due balances shall be subject to an interest charge at a rate of 12% per year from said thirtieth day. In addition, MSA may, after giving seven days written notice, suspend service under any agreement until the OWNER has paid in full all amounts due for services rendered and expenses incurred, including the interest charge on past due invoices.

3. **Costs and Schedules.** Costs and schedule commitments shall be subject to change for delays caused by the OWNER's failure to provide specified facilities or information or for delays caused by unpredictable occurrences including, without limitation, fires, floods, riots, strikes, unavailability of labor or materials, delays or defaults, by suppliers of materials or services, process shutdowns, acts of God or the public enemy, or acts of regulations of any governmental agency. Temporary delays of services caused by any of the above which result in additional costs beyond those outlined may require renegotiation of this agreement.

4. **Access to Site.** Owner shall furnish right-of-entry on the project site for MSA and, if the site is not owned by Owner, warrants that permission has been granted to make planned explorations pursuant to the scope of services. MSA will take reasonable precautions to minimize damage to the site from use of equipment, but has not included costs for restoration of damage that may result and shall not be responsible for such costs.

5. **Location of Utilities.** Consultant shall use reasonable means to identify the location of buried utilities in the areas of subsurface exploration and shall take reasonable precautions to avoid any damage to the utilities noted. However, Owner agrees to indemnify and defend Consultant in the event of damage or injury arising from damage to or interference with subsurface structures or utilities which result from inaccuracies in information of instructions which have been furnished to Consultant by others.

6. **Professional Representative.** MSA intends to serve as the OWNER's professional representative for those services as defined in this agreement, and to provide advice and consultation to the OWNER as a professional. Any opinions of probable project costs, reviews and observations, and other decisions made by MSA for the OWNER are rendered on the basis of experience and qualifications and represents the professional judgment of MSA. However, MSA cannot and does not guarantee that proposals, bid or actual project or construction costs will not vary from the opinion of probable cost prepared by it.

7. **Construction.** This agreement shall not be construed as giving MSA, the responsibility or authority to direct or supervise construction means, methods, techniques, sequence, or procedures of construction selected by the contractors or subcontractors or the safety precautions and programs incident to the work of the contractors or subcontractors.

8. **Standard of Care.** In conducting the services, MSA will apply present professional, engineering and/or scientific judgment, and use a level of effort consistent with current professional standards in the same or similar locality under similar circumstances in performing the Services. The OWNER acknowledges that "current professional standards" shall mean the standard for professional services, measured as of the time those services are rendered, and not according to later standards, if such later standards purport to impose a higher degree of care upon MSA.

MSA does not make any warranty or guarantee, expressed or implied, nor have any agreement or contract for services subject to the provisions of any uniform commercial code. Similarly, MSA will not accept those terms and conditions offered by the OWNER in its purchase order, requisition, or notice of authorization to proceed, except as set forth herein or expressly agreed to in writing. Written acknowledgement of receipt, or the actual performance of services subsequent to receipt of such purchase order, requisition, or notice of authorization to proceed is specifically deemed not to constitute acceptance of any terms or conditions contrary to those set forth herein.

9. **Construction Site Visits.** MSA shall make visits to the site at intervals appropriate to the various stages of construction as MSA deems necessary in order to observe, as an experienced and qualified design professional, the progress and quality of the various aspects of Contractor's work.

The purpose of MSA's visits to, and representation at the site, will be to enable MSA to better carry out the duties and responsibilities assigned to and undertaken by MSA during the Construction Phase, and in addition, by the exercise of MSA's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. On the other hand, MSA shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct or have control over Contractor's work nor shall MSA have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. Accordingly, MSA neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

10. **Termination.** This Agreement shall commence upon execution and shall remain in effect until terminated by either party, at such party's discretion, on not less than thirty (30) days' advance written notice. The effective date of the termination is the thirtieth day after the non-terminating party's receipt of the notice of termination. If MSA terminates the Agreement, the OWNER may, at its option, extend the terms of this Agreement to the extent necessary for MSA to complete any services that were ordered prior to the effective date of termination. If OWNER terminates this Agreement, OWNER shall pay MSA for all services performed prior to MSA's receipt of the notice of termination and for all work performed and/or expenses incurred by MSA in terminating Services begun after MSA's receipt of the termination notice. Termination hereunder shall operate to discharge only those obligations which are executory by either party on and after the effective date of termination. These General Terms and Conditions shall survive the completion of the services performed hereunder or the Termination of this Agreement for any cause.

This agreement cannot be changed or terminated orally. No waiver of compliance with any provision or condition hereof should be effective unless agreed in writing and duly executed by the parties hereto.

11. **Betterment.** If, due to MSA's error, any required or necessary item or component of the project is omitted from the construction documents, MSA's liability shall be limited to the reasonable costs of correction of the construction, less what OWNER'S cost of including the omitted item or component in the original construction would have been had the item or component not been omitted. It is intended by this provision that MSA will not be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the project.

12. **Hazardous Substances.** OWNER acknowledges and agrees that MSA has had no role in generating, treating, storing, or disposing of hazardous substances or materials which may be present at the project site, and MSA has not benefited from the processes that produced such hazardous substances or materials. Any hazardous substances or materials encountered by or associated with Services provided by MSA on the project shall at no time be or become the property of MSA. MSA shall not be deemed to possess or control any hazardous substance or material at any time; arrangements for the treatment, storage, transport, or disposal of any hazardous substances or materials, which shall be made by MSA, are made solely and exclusively on OWNER's behalf for OWNER's benefit and at OWNER's direction. Nothing contained within this Agreement shall be construed or interpreted as requiring MSA to assume the status of a generator, storer, treater, or disposal facility as defined in any federal, state, or local statute, regulation, or rule governing treatment, storage, transport, and/or disposal of hazardous substances or materials.

All samples of hazardous substances, materials or contaminants are the property and responsibility of OWNER and shall be returned to OWNER at the end of a project for proper disposal. Alternate arrangements to ship such samples directly to a licensed disposal facility may be made at OWNER's request and expense and subject to this subparagraph.

13. **Insurance.** MSA will maintain insurance coverage for: Worker's Compensation, General Liability, and Professional Liability. MSA will provide information as to specific limits upon written request. If the OWNER requires coverages or limits in addition to those in effect as of the date of the agreement, premiums for additional insurance shall be paid by the OWNER. The liability of MSA to the OWNER for any indemnity commitments, or for any damages arising in any way out of performance of this contract is limited to such insurance coverages and amount which MSA has in effect.

14. **Reuse of Documents.** Reuse of any documents and/or services pertaining to this project by the OWNER or extensions of this project or on any other project shall be at the OWNER's sole risk. The OWNER agrees to defend, indemnify, and hold harmless MSA for all claims, damages, and expenses including attorneys' fees and costs arising out of such reuse of the documents and/or services by the OWNER or by others acting through the OWNER.

15. **Indemnification.** To the fullest extent permitted by law, MSA shall indemnify and hold harmless, OWNER, and OWNER's officers, directors, members, partners, agents, consultants, and employees (hereinafter "OWNER") from claims, costs, losses, and damages arising out of or relating to the PROJECT, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of MSA or MSA's officers, directors, members, partners, agents, employees, or Consultants (hereinafter "MSA"). In no event shall this indemnity agreement apply to claims between the OWNER and MSA. This indemnity agreement applies solely to claims of third parties. This agreement does not give rise to any duty on the part of MSA to defend the OWNER on any claim arising under this agreement.

To the fullest extent permitted by law, OWNER shall indemnify and hold harmless, MSA, and MSA's officers, directors, members, partners, agents, consultants, and employees (hereinafter "MSA") from claims, costs, losses, and damages arising out of or relating to the PROJECT, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of the OWNER or the OWNER's officers, directors, members, partners, agents, employees, or Consultants (hereinafter "OWNER"). In no event shall this indemnity agreement apply to claims between MSA and the OWNER. This indemnity agreement applies solely to claims of third parties. This agreement does not give rise to any duty on the part of the OWNER to defend MSA on any claim arising under this agreement.

To the fullest extent permitted by law, MSA's total liability to OWNER and anyone claiming by, through, or under OWNER for any cost, loss or damages caused in part or by the negligence of MSA and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that MSA's negligence bears to the total negligence of OWNER, MSA, and all other negligent entities and individuals.

16. **Dispute Resolution.** OWNER and MSA desire to resolve any disputes or areas of disagreement involving the subject matter of this Agreement by a mechanism that facilitates resolution of disputes by negotiation rather than by litigation. OWNER and MSA also acknowledge that issues and problems may arise after execution of this Agreement which were not anticipated or are not resolved by specific provisions in this Agreement. Accordingly, both OWNER and MSA will endeavor to settle all controversies, claims, counterclaims, disputes, and other matters in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, unless OWNER and MSA mutually agree otherwise. Demand for mediation shall be filed in writing with the other party to this Agreement. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. Neither demand for mediation nor any term of this Dispute Resolution clause shall prevent the filing of a legal action where failing to do so may bar the action because of the applicable statute of limitations. If despite the good faith efforts of OWNER and MSA any controversy, claim, counterclaim, dispute, or other matter is not resolved through negotiation or mediation, OWNER and MSA agree and consent that such matter may be resolved through legal action in any state or federal court having jurisdiction.

17. **Exclusion of Special, Indirect, Consequential and Liquidated Damages.** Consultant shall not be liable, in contract or tort or otherwise, for any special, indirect, consequential, or liquidated damages including specifically, but without limitation, loss of profit or revenue, loss of capital, delay damages, loss of goodwill, claim of third parties, or similar damages arising out of or connected in any way to the project or this contract.

18. **State Law.** This agreement shall be construed and interpreted in accordance with the laws of the State of Iowa.

19. **Jurisdiction.** OWNER hereby irrevocably submits to the jurisdiction of the state courts of the State of Iowa for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement. OWNER further consents that the venue for any legal proceedings related to this Agreement shall be, at MSA's option, Sauk County, Wisconsin, or any county in which MSA has an office.

20. **Understanding.** This agreement contains the entire understanding between the parties on the subject matter hereof and no representations. Inducements, promises or agreements not embodied herein (unless agreed in writing duly executed) shall be of any force or effect, and this agreement supersedes any other prior understanding entered into between the parties on the subject matter hereto.

Scope of Services
SE Magazine Road Sidewalk Upgrade – Phase 3
SDW-00-001

Basic Engineering Services and Related Matters

MSA Professional Services, Inc. (ENGINEER) proposes to provide design phase services for the City of Ankeny, Iowa (OWNER), including submission of plans and specifications, of the following:

1) SE Magazine Road Sidewalk Upgrade – Phase 3

SDW-00-001

Design of the 8-ft sidewalk upgrade along SE Magazine Rd. from Trilein Drive to Delaware Avenue, approximately 2,500 feet in length. SUDAS Design Standards and Specifications shall be implemented, including current City of Ankeny Supplemental Specifications.

In association with completion of the above project, the following assumptions are applicable:

Survey:

Upon determination of alignment, a complete topographic survey of proposed improvement area shall be performed. Topographic survey shall include locating and identifying observable features within the improvement area, as well as research for determining existing property owners, and property lines. All One-Call locates, existing right of way and easements shall be surveyed in State Plane coordinate system (NAD83/Iowa south) and sea level elevations (NAVD88). No property acquisition services are anticipated from ENGINEER for the completion of project.

Permit Applications:

ENGINEER shall complete and submit all required forms to applicable regulatory agencies, as well as pay associated permit fees, if applicable and stated in the scope below.

Project Coordination

ENGINEER shall coordinate design of project with applicable studies and/or construction projects.

Project Manager and Principal

The ENGINEER shall assign Jason Miller, P.E. as principal in charge of project and Nichole Sungren, P.E. as the Project Manager for the project. ENGINEER shall not modify said assignments without OWNER consent.

BASIC ENGINEERING SERVICES

1. *SURVEY AND MAPPING* \$7,900.00
 - a. Perform topographic and boundary survey of project site. ENGINEER shall establish horizontal and vertical control by State Plane Coordinates (NAD83/Iowa South) and sea level elevations (NAVD88), for the Project area. Topographic surveys are anticipated to be limited to those areas requiring detailed elevation information for proper construction installation of agreed upon alignment.
 - b. ENGINEER shall determine the location of utilities within the existing right-of-way for the project. Underground utilities will be incorporated into the project through map requests to the utility companies, One-Call Design locate and survey, and shall be drawn into the design file.
 - c. Topographic survey shall be limited to:
 - i. Surface features, elevation shots and utilities along the south back of curb to a few feet behind the south ROW line except as noted below.
 1. Includes existing PCC joints at intersections for removal and replacement limits
 - ii. Gutter flange & gutter flow line survey in areas where a curb ramp is indicated on Attachment D.
 - iii. Northwest corner of the intersection of SE Karen Drive & SE Magazine Road to realign existing curb ramp
 - iv. All four corners of the intersection of SE Delaware Ave & SE Magazine Road including gutter line survey and approximately 50' in each direction of sidewalk.
 - v. Existing sidewalk ramp at NE corner of SE Waywin Circle, NW Corner of SE Wanda Drive and NW corner of SE Hayes Drive to line up the crosswalk.
2. *PRELIMINARY DESIGN PHASE* \$10,200.00
 - a. Review existing information provided by OWNER.
 - b. Conduct field exam of project corridor after project survey has occurred to review site.
 - c. Evaluate existing utility locations with respect to the proposed trail alignment.
 - d. Evaluate grades at sidewalk ramps for compliance with respect to existing road grades.
 - e. Evaluate existing curb ramps along corridor for removal or replacement based on ADA requirements and City recommendations.
 - f. Evaluate trees within ROW for constructability and clear zone – both horizontal and vertical.
 - g. 8-ft sidewalk is assumed to be installed at the same location and grade as the existing sidewalk (back of walk).
 - h. It is assumed that crosswalks will not be painted across SE Magazine Rd.
 - i. Prepare preliminary concept and cost estimates for Base A and Alternative B below. The City will review and determine, based on budgetary constraints, if they will proceed with Alternative B. Refer to Attachment D for map.
 - i. Base A – Sidewalk from Trilein Dr. to Delaware Ave., including curb ramps #1-12
 - ii. Alternative B - Curb ramps #13-16 at the intersection at Magazine and Delaware, including pedestrian push button upgrades for the existing signals.
 - j. Coordination with franchise utility companies within project corridor.
 - k. Conduct an internal QA/QC review of plan set.
 - l. ENGINEER shall provide a preliminary design phase (50% complete) plan set to the OWNER for review and comment.
 - m. Meet with OWNER to review Preliminary Design phase drawings and incorporate comments.
3. *FINAL DESIGN PHASE – BASE A* \$14,400.00
 - a. **The Final Design Phase design fee does not include Alternative B design. If the OWNER chooses to proceed with Alternative B in Part 2i, a contract amendment will be enacted.**
 - b. Plan set revisions per comments from preliminary set comments from OWNER.
 - c. ENGINEER shall develop Erosion control plan and Pollution Prevention Plan.

Scope of Services

SE Magazine Road Sidewalk Upgrade – Phase 3 (SDW-00-001)

- d. ENGINEER shall develop phasing and traffic control plans; as necessary.
 - e. Prepare sidewalk “S” sheets for curb ramp design.
 - f. Prepare Plans and Specifications, including OWNER provided standard front ends.
 - g. Refine opinion of probable cost for check plan phase.
 - h. Perform QA/QC review of check plan set.
 - i. ENGINEER shall provide a check plan set (90% Complete) to the OWNER for review and comment.
 - j. Meet with OWNER to review Check Plan Phase drawings and incorporate comments.
 - k. Refine Opinion of Probable Cost based upon Completed Plans and Specifications.
 - l. Perform QA/QC review of final plan set.
 - m. ENGINEER shall provide a Final design phase (100% complete) plan set to the OWNER for review and comment.
 - n. Provide OWNER with final PDF of final plans and specifications.
 - o. Provide OWNER with (2) paper copies of final plans and specifications.
 - p. Provide OWNER with all submittals listed in the City of Ankeny's Pre-Construction and Post-Construction Submittals document under Projects for Public Government (CIP) Projects.
4. **BIDDING PHASE** \$1,900.00
- a. Printing of bidding Documents (up to 10 sets of plans and specifications).
 - b. Uploading plans and specifications to QuestCDN for bidding purposes from final PDF.
 - c. Assist OWNER with Bidding Documents, as necessary.
 - d. Email Notice to Bidders.
 - e. Respond to Contractor questions during bidding process.
 - f. Attend Bid Opening.
 - g. Tabulate Bids and distribute to OWNER.
 - h. Assist the OWNER in evaluating bidders and make a recommendation for award.
 - i. Preparation of construction contract for signature and distribute signed contracts.
 - j. Review completed contract, bonds, and insurance and issue Notice to Proceed.
5. **PROJECT ADMINISTRATION** \$3,800.00
- a. Project Design Administration
 - i. Perform internal quality review to assure compliance with OWNER's intent.
 - ii. Coordinate internal Staff to assure compliance with OWNER's intent.
 - iii. Prepare Project Correspondence.
 - iv. Prepare and submit invoices. Invoices shall be submitted monthly and are payable within 30 days of receipt.
 - b. Project Design Meetings
 - i. Conduct design review meeting with City Staff at Preliminary (50%) and Check Plan (90%) completion.

Items Not Included in Basic Services

1. Additional Meetings

Attendance at any such meetings that are not specially address above shall be considered above and beyond the scope of services as identified herein.

2. NPDES Permit Preparation and Submittal

It is assumed that the OWNER will prepare, publish and file NPDES permit. It is also assume that the OWNER will pay all associated permit fees with the permit application.

3. Easements and Land Acquisition Services

Scope of Services

SE Magazine Road Sidewalk Upgrade – Phase 3
(SDW-00-001)

It has been assumed under this agreement that no services are required in association with temporary and permanent easements or fee title land acquisition in relation to the construction identified. As such, any work in relation to temporary or permanent easements or fee title land acquisition shall be considered out of scope of this agreement.

4. Construction Administration and Inspection

It has been assumed under this agreement that no services are required in association with Construction Administration and Inspection (Resident Project Representative). As such, any work in relation to Construction administration and Inspection shall be considered out of scope of this agreement and can be added by amendment, if requested.

PROJECT SCHEDULE

SE Magazine Road Trail Connection – Phase 3 (SDW-00-001)

The project from Design, through bidding services shall be performed by ENGINEER in accordance with a schedule generally described as follows:

MILESTONE	DATE
• Project Authorization from City	March 4, 2019
• Begin Survey *	March 5-March 25, 2019
• Begin Preliminary Design	April 1, 2019
• Preliminary Plan Submittal	April 29, 2019
• City Preliminary Plan Review	April 29-May 10, 2019
• Check Plan Submittal	May 20, 2019
• City Check Plan Review	May 20-31, 2019
• Final Plan Submittal	June 10, 2018
• City Final Plan Review	June 10-14, 2019
• Final Plans to Clerk for July 9 th Letting	June 17, 2019
• Bid Letting	July 9, 2019
• Award of Contract	July 15, 2019
• Project Construction	August-September 2019

ENGINEER shall not be responsible for delays in schedule which are beyond the ENGINEER's control.

* Survey schedule is weather dependent as survey is best suited when snow is not on the ground. MSA surveyors will be on-call to begin when there is a break in the weather.

SE Magazine Road Trail Connection - Phase 3 (SE Trilien - SE Delaware) Prelim Concept 1-24-2019



DEPARTMENT OF PUBLIC WORKS

DIVISION OF ENGINEERING

1 in = 200 ft

Date: 1/24/2019

N

W

E

S

prop. crossing

prop. new ramps

Field Verification Required for Design.

Map is for Locational Purposes Only

city of Ankeny

bringing it all together