

PROFESSIONAL SERVICES AGREEMENT

This **Professional Services Agreement** ("Agreement") is made this 20th day of March, 2023, by and between the **CITY OF FARMINGTON**, a Minnesota municipal corporation, whose business address is 430 3rd St, Farmington, MN 55024 (hereinafter "City") and Collins Engineers Inc., a Corporation, whose business address is 1599 Selby Avenue, Suite 206, St. Paul, MN 55104 (hereinafter "Engineer").

PRELIMINARY STATEMENT

The City has adopted a policy regarding the selection and hiring of consultants to provide a variety of professional services for City projects. That policy requires that persons, firms or corporations providing such services enter into written agreements with the City. The purpose of this Agreement is to set forth the terms and conditions for the provision of professional services by Engineer for engineering services, hereinafter referred to as the "Work", and as outlined on Exhibit "A" attached hereto.

IN CONSIDERATION OF THEIR MUTUAL COVENANTS, THE PARTIES AGREE AS FOLLOWS:

1. SCOPE OF SERVICES. The City retains Engineer to furnish the services set forth on the attached Exhibit "A". The Engineer agrees to perform the services. Engineer shall provide all personnel, supervision, services, materials, tools, equipment and supplies and do all things necessary and ancillary thereto specified on Exhibit "A". The Work to be performed under this Agreement shall be done under the review of a professional engineer licensed in the State of Minnesota, who shall attest that the Work will be performed in compliance with all applicable codes and engineering standards. The Work shall be performed in accordance with the Contract Documents, which includes this Agreement and the attached Exhibit: Exhibit "A" – Scope of Services and Fee. In the event any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the following order: (i) this Agreement; (ii) Exhibit "A".

2. REPRESENTATIVES. City has designated John Powell, Public Works Director/City Engineer (the "City Representative"), and the Engineer has designated Marc Parker, Regional Manager (the "Engineer Representative"). The City Representative and the Engineer Representative shall be available as often as is reasonably necessary for reviewing the Services and Work to be performed.

3. COMPENSATION FOR SERVICES. Engineer shall be paid by the City for the services described in Exhibit "A" on an hourly basis in accordance with the attached fee schedule, Exhibit "B", but not to exceed \$5,100 inclusive of taxes and reimbursable costs.

A. Any changes in the scope of the Work which may result in an increase to the compensation due the Engineer shall require prior written approval by the authorized representative of the City or by the City Council. The City will not pay additional compensation for services that do not have prior written authorization.

- B. Special Consultants may be utilized by the Engineer when required by the complex or specialized nature of the Project and when authorized in writing by the City.

4. COMPLETION DATE/TERM. The Engineer must complete the Services by October 31, 2023. This Agreement may be extended upon the written mutual consent of the parties for such additional period as they deem appropriate, and upon the terms and conditions as herein stated.

5. OWNERSHIP OF DOCUMENTS. All plans, diagrams, analyses, reports and information generated in connection with the performance of the Agreement ("Information") shall become the property of the City, but Engineer may retain copies of such documents as records of the services provided. The City may use the Information for its purposes and the Engineer also may use the Information for its purposes. Use of the Information for the purposes of the project contemplated by this Agreement does not relieve any liability on the part of the Engineer, but any use of the Information by the City or the Engineer beyond the scope of the Project is without liability to the other, and the party using the Information agrees to defend and indemnify the other from any claims or liability resulting therefrom.

6. COMPLIANCE WITH LAWS AND REGULATIONS. In providing services hereunder, Engineer shall abide by all statutes, ordinances, rules, and regulations pertaining to the provisions of services to be provided. Any violation of statutes, ordinances, rules, and regulations pertaining to the Services to be provided shall constitute a material breach of this Agreement and entitle the City to immediately terminate this Agreement. Engineer's books, records, documents, and accounting procedures and practices related to services provided to the City are subject to examination by the legislative auditor or the state auditor, as appropriate, for a minimum of six years.

7. STANDARD OF CARE. Engineer shall exercise the same degrees of care, skill, and diligence in the performance of the Services as is ordinarily possessed and exercised by a professional engineer under similar circumstances. Engineer shall be liable to the fullest extent permitted under applicable law, without limitation, for any injuries, loss, or damages proximately caused by Engineer's breach of this standard of care. Engineer shall put forth reasonable efforts to complete its duties in a timely manner. Engineer shall not be responsible for delays caused by factors beyond its control or that could not be reasonably foreseen at the time of execution of this Agreement. Engineer shall be responsible for costs, delays, or damages arising from unreasonable delays in the performance of its duties. No other warranty, expressed or implied, is included in this Agreement. City shall not be responsible for discovering deficiencies in the accuracy of Engineer's services.

8. INDEMNIFICATION. The Engineer shall defend, indemnify and hold harmless the City, its officers, agents, and employees, of and from any and all judgments, claims, damages, demands, actions, causes of action, including costs and attorney's fees paid or incurred resulting from any breach of this Agreement by Engineer, its agents, contractors and employees, or any negligent or intentional act or omission performed, taken or not performed or taken by Engineer, its agents, contractors and employees, relative to this Agreement. City will indemnify and hold

Engineer harmless from and against any loss for injuries or damages arising out of the negligent acts of the City, its officers, agents, or employees.

9. INSURANCE.

- a. General Liability. Prior to starting the Work, Engineer shall procure, maintain, and pay for such insurance as will protect against claims or loss which may arise out of operations by Engineer or by any subcontractor or by anyone employed by any of them or by anyone for whose acts any of them may be liable. Such insurance shall include, but not be limited to, minimum coverages and limits of liability specified in this Paragraph, or required by law.
- b. Engineer shall procure and maintain the following minimum insurance coverages and limits of liability for the Work:

Worker's Compensation	Statutory Limits
Employer's Liability	\$500,000 each accident \$500,000 disease policy limit \$500,000 disease each employee
Commercial General Liability	\$2,000,000 property damage and bodily injury per occurrence \$2,000,000 general aggregate
Comprehensive Automobile Liability	\$1,000,000 combined single limit each accident (shall include coverage for all owned, hired and non-owned vehicles.)

Commercial General Liability requirements may be met through a combination of umbrella or excess liability insurance.

The City shall be named as an additional insured on the general liability and umbrella policies.

- c. Professional Liability Insurance. In addition to the coverages listed above, Engineer shall maintain a professional liability insurance policy in the amount of \$2,000,000. Said policy need not name the City as an additional insured.
- d. Engineer shall maintain "stop gap" coverage if Engineer obtains Workers' Compensation coverage from any state fund if Employer's liability coverage is not available.

- e. All policies, except the Worker's Compensation Policy, Automobile Policy, and Professional Liability Policy, shall name the "City of Farmington" as an additional insured.
- f. All policies, except the Professional Liability Policy, shall apply on a "per project" basis.
- g. All policies shall contain a waiver of subrogation in favor of the City.
- h. All policies, except for the Worker's Compensation Policy and the Professional Liability Policy, shall be primary and non-contributory.
- i. All policies, except the Worker's Compensation Policy, shall insure the defense and indemnity obligations assumed by Engineer under this Agreement.
- j. Engineer agrees to maintain all coverage required herein throughout the term of the Agreement and for a minimum of two (2) years following City's written acceptance of the Work.
- k. It shall be Engineer's responsibility to pay any retention or deductible for the coverages required herein.
- l. The Engineer's policies and Certificate of Insurance shall contain a provision that coverage afforded under the policies shall not be cancelled without at least thirty (30) days advanced written notice to the City.
- m. Engineer shall maintain in effect all insurance coverages required under this Paragraph at Engineer's sole expense and with insurance companies licensed to do business in the state in Minnesota and having a current A.M. Best rating of no less than A-, unless specifically accepted by City in writing and all insurance policies shall be on ISO forms acceptable to the City.
- n. **A copy of the Engineer's Certificate of Insurance which evidences the compliance with this Paragraph, must be filed with City prior to the start of Engineer's Work.** Upon request a copy of the Engineer's insurance declaration page, rider and/or endorsement, as applicable shall be provided. Such documents evidencing insurance shall be in a form acceptable to City and shall provide satisfactory evidence that Engineer has complied with all insurance requirements. Renewal certificates shall be provided to City prior to the expiration date of any of the required policies. City will not be obligated, however, to review such Certificate of Insurance, declaration page, rider, endorsement, certificates, or other evidence of insurance, or to advise Engineer of any deficiencies in such documents and receipt thereof shall not relieve Engineer from, nor be deemed a waiver of, City's right to enforce the terms of Engineer's obligations hereunder. City reserves the right to examine any policy provided for under this Agreement.

- o. Effect of Engineer's Failure to Provide Insurance. If Engineer fails to provide the specified insurance, then Engineer will defend, indemnify, and hold harmless the City, the City's officials, agents, and employees from any loss, claim, liability, and expense (including reasonable attorney's fees and expenses of litigation) to the extent necessary to afford the same protection as would have been provided by the specified insurance. Except to the extent prohibited by law, this indemnity applies regardless of any strict liability or negligence attributable to the City (including sole negligence) and regardless of the extent to which the underlying occurrence (i.e., the event giving rise to a claim which would have been covered by the specified insurance) is attributable to the negligent or otherwise wrongful act or omission (including breach of contract) of Engineer, its subcontractors, agents, employees or delegates. Engineer agrees that this indemnity shall be construed and applied in favor of indemnification. Engineer also agrees that if applicable law limits or precludes any aspect of this indemnity, then the indemnity will be considered limited only to the extent necessary to comply with that applicable law. The stated indemnity continues until all applicable statutes of limitation have run.

If a claim arises within the scope of the stated indemnity in section p, the City may require Engineer to:

- i. Furnish and pay for a surety bond, satisfactory to the City, guaranteeing performance of the indemnity obligation; or
- ii. Furnish a written acceptance of tender of defense and indemnity from Engineer's insurance company.

Engineer will take the action required by the City within fifteen (15) days of receiving notice from the City.

10. INDEPENDENT CONTRACTOR. The City hereby retains the Engineer as an independent contractor upon the terms and conditions set forth in this Agreement. The Engineer is not an employee of the City and is free to contract with other entities as provided herein. Engineer shall be responsible for selecting the means and methods of performing the work. Engineer shall furnish any and all supplies, equipment, and incidentals necessary for Engineer's performance under this Agreement. City and Engineer agree that Engineer shall not at any time or in any manner represent that Engineer or any of Engineer's agents or employees are in any manner agents or employees of the City. Engineer shall be exclusively responsible under this Agreement for Engineer's own FICA payments, workers compensation payments, unemployment compensation payments, withholding amounts, and/or self-employment taxes if any such payments, amounts, or taxes are required to be paid by law or regulation.

11. SUBCONTRACTORS. Engineer shall not enter into subcontracts for services provided under this Agreement without the express written consent of the City. Engineer shall comply with Minnesota Statute § 471.425. Engineer must pay subcontractor for all undisputed services provided by subcontractor within ten (10) days of Engineer's receipt of payment from City. Engineer must pay interest of 1.5 percent per month or any part of a month to subcontractor on any undisputed amount not paid on time to subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10.

12. ASSIGNMENT AND THIRD PARTIES. Neither party shall assign this Agreement, nor any interest arising herein, without the written consent of the other party. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the City and Engineer, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the City and Engineer and not for the benefit of any other party.

13. WAIVER. Any waiver by either party of a breach of any provisions of this Agreement shall not affect, in any respect, the validity of the remainder of this Agreement.

14. ENTIRE AGREEMENT. The entire agreement of the parties is contained herein. This Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties, unless otherwise provided herein.

15. CONTROLLING LAW AND VENUE. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. All proceedings related to this contract shall be venued in the Dakota County District Court.

16. COPYRIGHT. Engineer shall defend actions or claims charging infringement of any copyright or patent by reason of the use or adoption of any designs, drawings, or specifications supplied by it, and it shall hold harmless the City from loss or damage resulting therefrom.

17. RECORDS. The Engineer shall maintain complete and accurate records of time and expense involved in the performance of services.

18. MINNESOTA GOVERNMENT DATA PRACTICES ACT. Engineer must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to (1) all data provided by the City pursuant to this Agreement, and (2) all data, created, collected, received, stored, used, maintained, or disseminated by the Engineer pursuant to this Agreement. Engineer is subject to all the provisions of the Minnesota Government Data Practices Act, including but not limited to the civil remedies of Minnesota Statutes Section 13.08, as if it were a government entity. In the event Engineer receives a request to release data, Engineer must immediately notify City. City will give Engineer instructions concerning the release of the data to the requesting party before the data is released. Engineer agrees to defend, indemnify, and hold City, its officials, officers, agents, employees, and volunteers harmless from any claims resulting from Engineer's officers', agents', partners', employees', volunteers', assignees', or subcontractors' unlawful disclosure and/or use of protected data. The terms of this paragraph shall survive the cancellation or termination of this Agreement.

19. TERMINATION. This Agreement may be terminated by City on thirty (30) days' written notice delivered to Engineer at the address on file with the City. Upon termination under this provision if there is no fault of the Engineer, the Engineer shall be paid for services rendered

and reimbursable expenses until the effective date of termination. If the City terminates the Agreement because the Engineer has failed to perform in accordance with this Agreement, no further payment shall be made to the Engineer, and the City may retain another engineer to undertake or complete the work identified in Paragraph 1.

20. NON-DISCRIMINATION. During the performance of this Agreement, the Engineer shall not discriminate against any employee or applicants for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation or age. The Engineer shall post in places available to employees and applicants for employment, notices setting forth the provision of this non-discrimination clause and stating that all qualified applicants will receive consideration for employment. The Engineer shall incorporate the foregoing requirements of this paragraph in all of its subcontracts for program work, and will require all of its subcontractors for such work to incorporate such requirements in all subcontracts for program work. The Engineer further agrees to comply with all aspects of the Minnesota Human Rights Act, Minnesota Statutes 363.01, et. seq., Title VI of the Civil Rights Act of 1964, and the Americans with Disabilities Act of 1990.

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

22. SERVICES NOT PROVIDED FOR. Claims for services furnished by the Engineer not specifically provided for herein shall not be honored by the City.

23. SEVERABILITY. The provisions of this Agreement are severable. If any portion hereof is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision shall not affect the remaining provisions of this Agreement.

24. CONFLICTS. No officer or salaried employee of the City and no member of the Council of the City shall have a financial interest, direct or indirect, in this Agreement. The violation of this provision renders the Agreement void.

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

26. WAIVER. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

27. COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be considered an original.

Dated: March 20, 2023

CITY: CITY OF FARMINGTON

By: _____

Joshua Hoyt
Mayor

By: _____

Lynn Gorski
City Administrator

Dated: _____, 20__

ENGINEER:

By: _____

_____ [print name]

Its

_____ [title]

EXHIBIT “A”

SCOPE OF SERVICES AND FEE



March 3, 2023

Mr. John Powell, P.E.
Public Works Director / City Engineer
City of Farmington
430 Third St.
Farmington, MN 55024

Dear Mr. Powell:

On behalf of Collins Engineers, Inc. (Collins) I am pleased to submit this proposal to provide professional engineering services as they relate to bridge inspections in the City of Farmington. The following bridge and culverts are due for inspection in 2023:

Due September 2023

- 19558 Prestressed Beam Three Span
- 19J37 PCB
- 19J49 PCB
- 19J50 PCB
- 96585 PCB
- 96586 PCB
- 96802 PCB
- 96803 PCB

CMP = Corrugated Metal Pipe Culvert

CBC = CIP Concrete Box Culvert

CPA = Precast Concrete Pipe Arch

PCB = Precast Concrete Box Culvert

Collins is proposing to provide the following scope of services:

- Perform bridge inspections and submit inspection reports to MnDOT for the one bridge and seven culverts listed above and attached. The inspection fieldwork will be completed in September.
- A qualified Professional Engineer certified as a Bridge Safety Inspector Team Leader will perform the inspections, as required by MnDOT.



- The inspections will be performed in accordance with current MnDOT and FHWA inspection procedures.
- All bridges will have inspection reports entered and completed in the MnDOT Structure Information Management System (SIMS).
- An Inspection Summary Report for all the Bridges inspected will be provided. This report will summarize the conditions of the bridges and provide maintenance items and priorities for replacement or rehabilitation.

Collins will complete the above tasks for \$900 per bridge and \$600 per culvert. The total cost will be \$5,100.00.

Thank you for the opportunity to continue to be of service to you. We genuinely appreciate the work and look forward to working with you. Please do not hesitate to contact me at (651) 204-9101 with any questions or comments.

Sincerely,

Collins Engineers, Inc.

A handwritten signature in black ink, appearing to read "Marc Parker", is written over a light green grid background.

Marc Parker, PE
Regional Manager

MINNESOTA DEPARTMENT OF TRANSPORTATION
03/03/2023
BRIDGE INSPECTIONS DUE BY FEB 15, 2024
CITY OF FARMINGTON

SORTED BY INSPECTION DATE

AGCY			ROUTE	REF POINT	ROADWAY NAME	FEATURE INTERSECTED	YEAR	SUFF	DEF	LAST	INSP	NEXT INSP
BR NO	BR NO	TOWNSHIP	(TIS)	(TIS)			BUILT	RATE	STATU	INSP DATE	FREQ	DUE DATE
19J37			MSAS 112000+00.437		AKIN RD	MIDDLE CREEK	2001	95.0	ADEQ	09/09/2021	24	09/09/2023
19J49			MUN 389 000+00.418		DYLAN DR	LAKE JULIA OUTLET	2005	100.0	ADEQ	09/09/2021	24	09/09/2023
96585			MSAS 101001+00.605		FLAGSTAFF AVE	STREAM	1990	98.3	ADEQ	09/09/2021	24	09/09/2023
96586			MSAS 101002+00.849		FLAGSTAFF AVE (MSA:	STREAM	1990	86.7	ADEQ	09/09/2021	24	09/09/2023
96802			MUN 73 000+00.120		FLAGSTAFF AVE	N LK VIL B	1989	100.0	ADEQ	09/09/2021	24	09/09/2023
19558			CSAH 107002+00.013		SPRUCE ST	VERMILLION RIVER	2006	94.5	ADEQ	09/10/2021	24	09/10/2023
19J50												
96803												

8 6 BRIDGE INSPECTIONS DUE BY FEB 15, 2024