GENERAL CONDITIONS OF CITY'S SERVICE PROVIDER AGREEMENT

SECTION 1
SERVICE PROVIDER'S SERVICES

1.1. SERVICE PROVIDER'S SERVICES.

1.1.1. The Service Provider's services consist only of those Services performed by the Service Provider, Service Provider's employees and Service Provider's Service Providers as enumerated in Exhibit "A" of this Agreement (hereinafter, "Services".)

1.1.2. Service Provider will assign qualified and experienced personnel to perform the Services. Where Exhibit "A" identifies specific Service Provider personnel, these individuals will remain assigned to provide the Services throughout the term of this Agreement, in accordance with their roles and responsibilities identified in Exhibit "A," unless otherwise approved in writing by the City. However, if the City objects to the manner of performance of any Service Provider personnel (including any third party contractors or agents of Service Provider), Service Provider will promptly take all necessary actions to rectify the objection, including, if requested by the City, the prompt removal of the individual from the provision of Services to the City. If it becomes necessary to replace any personnel, Service Provider will provide as a replacement a person with equivalent or better qualifications, as approved by the City (such approval not to be unreasonably withheld).

1.1.3. Service Provider warrants to City that Service Provider has sufficient experience and financial resources to complete the Services required by this Agreement.

1.1.4. Service Provider will perform the Services in a timely manner and in accordance with any schedule set forth in Exhibit "A." The parties agree that time is of the essence with respect to Service Provider's performance.

1.1.5. Service Provider warrants that it will perform the Services in a diligent and highly professional manner, in accordance with applicable law and through experienced individuals trained to perform the Services. Service Provider will obtain all required governmental and third-party licenses, approvals and permits appropriate for the provision of Services and deliverables.

1.1.6. Service Provider warrants that all deliverables will be developed in accordance with the quality standards of the applicable industry, and will meet in all respects the requirements set forth in Exhibit "A." Service Provider further warrants that the Services and deliverables will not infringe or misappropriate the rights of any third party, and that the Service Provider has all power and authority to convey ownership of the Services and deliverables to City in accordance with this Agreement.

1.1.7. City will have a reasonable opportunity (not to exceed thirty (30) days, unless otherwise specified in Exhibit "A" to review all deliverables or Services provided to the City under this Agreement. If the City informs Service Provider of a deficiency in the deliverables or Services, Service Provider will promptly make corrections and resubmit them to the City for review and approval. Service Provider will not charge the City for the time and expense in making corrections to deliverables that fail to comply with the requirements of this Agreement. If Service Provider is not able to timely make all appropriate corrections, the Service Provider will promptly refund any amounts previously paid by the City for work not performed in accordance with this Agreement. Nothing in this clause 1.1.5. will excuse Service Provider from meeting any delivery or project schedule set forth in Exhibit "A."

1.2. ADDITIONAL SERVICES.

1.2.1. Service requested by the City which is not described on Exhibit "A" as part of the Service Provider's services shall be considered as additional services of the Service Provider for which Service Provider may request additional compensation to be paid. The Service Provider shall not perform additional services requiring additional compensation without a written order to do so signed by the Project Manager which contains a mutually agreeable amount of additional compensation for the work. Any work performed by the Service Provider for which a written order with a stated amount of compensation has not been issued shall be conclusively presumed to be part of the Service Provider's Services as set forth in Exhibit "A".

1.2.2. If Exhibit "A" contains provisions for contingent basic services, such services shall not be performed without a written order to perform the work signed by the Project Manager.

SECTION 2
CITY'S RESPONSIBILITIES

2.1. The City shall provide full information regarding requirements for the Services, including a program which shall set forth the City's objectives, schedule, constraints and criteria, including any special requirements, any previous reports or data relative to the Services, flexibility, and expendability of the Services. The City may request the assistance of the Service Provider to define the scope of information needed.

2.2. The City shall establish and update an overall budget for the Services, and the City's other costs and reasonable contingencies related to all of these costs. The City may request the assistance of the Service Provider to estimate Service costs.

2.3. The City shall designate a city representative as the "Project Manager" authorized to act on the City's behalf with respect to the Services. The City or such authorized city representative shall render decisions and inform the Service Provider of the same in a timely manner pertaining to questions or documents submitted by the Service Provider in order to avoid unreasonable delay in the orderly and sequential progress of the Service Provider's Services.

2.4. City may require and Service Provider shall execute, as part of its Services hereunder, any certificates or certifications customarily, commonly, or reasonably required by services of this type. The proposed language of any certificates or certifications requested of the Service Provider or Service Provider's Service Providers shall be submitted to the Service Provider for review and approval at least 14 days prior to execution. The City shall not request certifications beyond the scope of Service Provider's Services under this Agreement.

2.5 Notwithstanding anything to the contrary in this Article 2, the City shall be required to furnish information or services described in this Article 2 only to the extent that such information or service is both reasonably required and actually requested by Service Provider in order to perform Service Provider's Services under this Agreement.

SECTION 3
OWNERSHIP AND USE OF DOCUMENTS

3.1. All deliverables to be provided under this Agreement, and any invention, improvement, discovery, or innovation (whether or not patentable) made, conceived or actually reduced to practice by Service Provider in the performance of Services hereunder (collectively, "Work Product") will be owned exclusively by the City, including all proprietary and

intellectual property rights therein. To the extent not automatically vest in the City, Service Provider hereby assigns to the City all right, title and interest in and to the Work Product, including, without limitation, copyright, patent and trade secret rights. Upon the City's request, Service Provider will execute any additional documents necessary for the City to perfect its ownership rights.

3.2 Notwithstanding the foregoing, Service Provider will retain ownership of it pre-existing and proprietary materials and other intellectual property that may be incorporated into the Work Product.

3.3. Copies of City furnished data that may be relied upon by Service Provider are limited to the printed copies (also known as hard copies) that are delivered to the Service Provider. Files in electronic media format of text, data, graphics, or of other types that are furnished by City to Service Provider are only for convenience of Service Provider. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

SECTION 4
SERVICE PROVIDER'S CLAIMS AND ARBITRATION

4.1. If any instruction or decision by the Project Manager gives rise to a claim by the Service Provider for additional compensation or time to complete the Services, such claim shall be made in writing to the Project Manager. The claim shall state the amount of additional compensation or time requested and the reasons for the claim. The claim must be filed within ten days of the decision or instruction by the Project Manager giving rise to the claim or it shall be deemed waived by the Service Provider and shall not be subject to any arbitration or litigation.

4.2. In the case of a claim made by the Service Provider, the Project Manager shall confer with Service Provider for the purpose of resolving the claim by mutual agreement. If the parties are able to agree, the Project Manager shall reduce the agreement to writing and it must be signed by both parties to be effective. If the parties are unable to agree the Project Manager shall render a decision in writing. The Project Manager shall make their decision and provide a copy thereof to the Service Provider within ten days of the filing of the claim.

4.3. The decision of the Project Manager shall be final and binding upon the Service Provider unless the Service Provider appeals the decision of the Project Manager to the City Council. Such appeal shall be taken within seven days from the Project Manager's decision by filing with the City Clerk a request for review of the Project Manager's decision and full statement of the facts surrounding the claim and the amount of the claim. The City Council shall fix a date, time and place to hear the matter, which date shall be not less than eleven days from receipt of the request for review. If the matter is not heard within eleven days or a decision not rendered by the City Council within seven days of the hearing, the claim shall automatically be deemed denied by the City Council.

4.4. The decision of the City Council shall be final and binding upon the Service Provider unless within one month from the date of the decision of the City Council or such additional time as the City may agree upon, the City and the Service Provider agree in writing to arbitration or the Service Provider files suit in Woodbury County, Iowa District Court in Sioux City, Iowa.

4.5. All time limits herein may be extended or shortened by agreement between the City and the Service Provider.

4.6 Any other dispute not involving additional compensation or time to complete the Project shall be brought to the attention of the City or the Service Provider in writing as soon as the party becomes aware a dispute exists. The Project Manager shall confer with the Service Provider for the purpose of resolving the dispute by mutual agreement. If the parties are able to agree, the Project Manager shall reduce the agreement to writing and it must be signed by both parties to be effective. If the parties are unable to agree, the Project Manager shall render a decision in writing. The Project Manager shall make the decision and provide a copy thereof to the Service Provider within ten days of the presentation of the dispute. Thereafter, the provisions of paragraphs 4.3 and 4.4. shall apply.

4.7. All claims, disputes and other matters in question between the City and the Service Provider, arising out of or relating to this Agreement or the breach thereof, may be decided by mediation or arbitration, only if the City and the Service Provider can mutually agree in writing upon the time, places, mediators or arbitrators, and various rules of mediation or arbitration conduct, any other paragraph, law or rule to the contrary notwithstanding.

SECTION 5
TERMINATION, SUSPENSION OR ABANDONMENT

5.1. This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

5.2. If the Services are suspended by the City for more than 30 consecutive days, the Service Provider shall be compensated for Services performed prior to notice of such suspension. When the Services are resumed, the Service Provider's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Service Provider's services.

5.3. This Agreement may be terminated by the City upon not less than seven days' written notice to the Service Provider in the event that the Project is permanently abandoned. If the Project is abandoned by the City for more than 90 consecutive days, the Service Provider may terminate this Agreement by giving written notice.

5.4. Failure of the City to make payments to the Service Provider in accordance with this Agreement shall be considered substantial nonperformance and cause for termination.

5.5. This Agreement may also be terminated by the City upon seven days written notice, without regard to any fault or failure to perform by any party, and solely for the City's convenience. In the event of such termination, the Service Provider shall be paid compensation in the same manner as set out in paragraph 5.7, and City shall have no further liability for compensation expenses, or fees to Service Provider hereunder except as set out under paragraph 5.8.

5.6. If the City fails to make payment when due the Service Provider for Services, the Service Provider may, upon seven days' written notice to the City, suspend performance of Services under this Agreement. Unless payment in full is received by the Service Provider within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of Services, the Service Provider shall have no liability to the City for delay or damage caused the City because of such suspension of Services.

5.7. In the event of termination not the fault of the Service Provider, the Service Provider shall be compensated for Services performed prior to termination, together with reimbursable expenses incurred and due and termination expenses.

5.8. In the event of any termination under this Article 5, the Service Provider consents to City's selection of another Service Provider of City's choice to assist the City in any way in completing the Project. Service Provider further agrees to cooperate and provide any information requested by City in connection with the completion of the Project. Any services provided by Service Provider which are requested by City after termination shall be fairly compensated by City.

5.9. In the event of termination due to the failure of the Service Provider to abide by the provisions of this agreement, the City may at its option:

5.9.1. Compensate the Service Provider for all Services satisfactorily performed prior to date of termination plus all reimbursable expenses directly associated therewith, and proceed with the Project utilizing the services of other Service Providers, reserving unto itself the right to seek from the Service Provider any damages it may be lawfully entitled to receive.

5.10. In the event of termination, regardless of cause, the Service Provider shall deliver to the City all documents as specified in Paragraph 3.1 for which the City has compensated the Service Provider.

5.11. Termination expenses are in addition to compensation for Services, and include expenses which are directly attributable to termination. Termination expenses shall be actual out-of-pocket costs or expenses incurred by Service Provider as a result of termination not the Service Provider's fault.

SECTION 6
MISCELLANEOUS PROVISIONS

6.1. This Agreement shall be governed by the laws of the State of Iowa.

6.2. The Woodbury County, Iowa, District Court shall have jurisdiction over any litigation between the City and Service Provider over any matter arising out of this Agreement.

6.3. This is a contract for services. Therefore, City shall not be bound to the successors, executors, administrators, assigns or legal representatives of the Service Provider in respect to the covenants and obligations of this Agreement absent specific written agreement to be so bound.

6.4. Neither City nor the Service Provider shall assign or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other except to the extent that 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 paragraph shall prevent Service Provider from employing such independent Service Providers, associates and subcontractors as he may deem appropriate to assist him in the performance of services hereunder.

6.5. This Agreement represents the entire and integrated agreement between the City and Service Provider and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and Service Provider.

6.6. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either City or Service Provider.

6.7. Service Provider shall have the right to include representations of the Services, among the Service Provider's promotional and professional materials. Service Provider's materials shall not include City's confidential or proprietary information if City has previously advised the Service Provider in writing of the specific information considered by City to be confidential or proprietary. Service Provider shall not use the design materials in any way which may jeopardize City's entitlement to state or federal funds.

6.8. Service Provider agrees to assist and cooperate with City in any arbitration or litigation involving another person and arising out of services performed by Service Provider under this Agreement. City agrees to pay Service Provider for all services rendered in accordance with the provisions of Paragraph 8.2.3.3. If, however, negligence by Service Provider is found to exist by the factfinder, City shall have no obligation to reimburse Service Provider for services rendered in defending that allegation.

6.9. Neither the Project Manager nor City's review, approval or acceptance of, nor payment for, any of the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and Service Provider shall be and remain liable to City in accordance with applicable law for all damages to City caused by Service Provider's negligent performance of any of the services furnished under this Contract.

6.10. The rights and remedies of City provided for under this contract are in addition to any other rights and remedies provided by law.

6.11. Both parties shall be absolved from liability for any act, omission, or circumstances occasioned by any cause whatsoever not within the control of the party affected thereby and which such party could not, by reasonable diligence, have avoided. Such acts, omissions, or circumstances, however, shall not relieve such party of liability in the event of its failure to use reasonable diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch and to give notice and full particulars of the same in writing to the other party as soon as possible after the occurrence of the caused relied on. The requirement that any force majeure be remedied with all reasonable dispatch shall not require the settlement of strikes or labor controversies by acceding to the demands of the opposing party or parties.

6.13. All Services described on Exhibit "A" under basic services shall be completed by the time specified in Exhibit "A". If additional services are requested which delay Service Provider in meeting any of these dates, Service Provider shall be entitled to more time to complete the Services specified.

6.14. Service Provider shall not be responsible for the acts or omissions of City, City’s other Service Providers, contractors, and subcontractors, any of their agents or employees, or any other persons performing any of the work other than those parties identified in Section 1.1.1. above.

6.16. It is recognized that neither the Service Provider nor the City has control over the cost of labor materials or equipment, over the Service Provider’s methods of determining bid prices, or over competitive bidding, market or negotiation conditions. Accordingly, the Service Provider cannot and does not warrant or represent that bids or negotiated prices will not vary from the project budget proposed, established or approved by the City, if any, or from any other cost estimate prepared by the Service Provider. However, if the Service

Provider's Services require the project to be designed within a set budget, Service Provider shall be required to re-design the project to bring the cost within the budget at no additional expense to the City.

6.17 In the case of a conflict between the provisions herein and any other attachment to this Agreement, the provisions set forth above will govern, unless otherwise specifically agreed to in writing.

SECTION 7
INSURANCE AND INDEMNIFICATION

7.1. The Service Provider shall procure and maintain during the term of this Agreement and subject to availability and at a comparable price for two years thereafter professional liability [errors and omissions] insurance in the amount of $1,000,000.00.

7.2. The Service Provider shall secure and maintain such insurance policies as will protect Service Provider from claims for bodily injuries, death or property damage which may arise from the performance of any work under this Agreement. The following insurance policies are required:

7.2.1 Statutory Workers' Compensation – A standard Workers Compensation policy approved for use in the State of Iowa shall be issued with the following coverages:

(a) Statutory Benefits covering all employees injured on the job by accident or disease as prescribed by Iowa Code Chapter 85.

(b) Employer's Liability Insurance with the following limits:

Bodily injury by accident each accident…….…….$500,000
Bodily injury by disease each accident…….……..$500,000
Bodily injury by disease policy limit…….....$500,000

7.2.2 Comprehensive General Liability

(a) Occurrence……..…..……..……$1,000,000
(b) Aggregate ……$2,000,000
(c) Personal and Advertising Injury Limit…….....$1,000,000
(d) Products Completed Operations Aggregate Limit …….$2,000,000
(e) Fire Damage Limit (any one fire) ……...$50,000
(f) Medical Damage Limit (any one person) …….$5,000

7.2.3 Automobile Public Liability and Property Damage

(a) Combined Single Limit …….$1,000,000

7.3. Certificates of Insurance acceptable to the City indicating insurance required by this Article in force shall be filed with the City prior to commencing any work hereunder. These certificates shall contain a provision that coverage under these policies shall not be canceled until at least thirty days' prior written notice has been given to the City. With regards to the General Liability and Automobile Liability insurance, the City shall be named an additional insured on the Certificate of Insurance.

7.4. Service Provider shall indemnify and save City harmless from all liability for alleged or actual infringement of any patent resulting from the use of apparatus or equipment designed by Service Provider or from the use of any process designed by Service Provider or effected by said apparatus or equipment, and Service Provider shall indemnify and save City harmless from and against all costs, counsel fees, expenses and liabilities incurred in or about any claim of or action for such infringement; provided, however, that City shall promptly transmit to Service Provider all papers served on City in any suit involving such

claim of infringement, and provided further, that City permits Service Provider to have entire charge and control of the defense of any such suit.

7.5. Service Provider will indemnify, hold harmless and defend the City, its elected officials, officers, employers, and agents against any and all damages, suits, actions, claims, liabilities, losses, judgments, costs and expense (including attorney fees) arising out of or relating to (i) any personal or bodily injury (including death) or property damage caused by Service Provider's or Service Provider's employee, agent, Service Provider or contractor's negligent, willful or unlawful acts or omissions or breach of Agreement or (ii) an infringement or misappropriation of any third party intellectual property or proprietary rights (including, without limitation, trademark, trade secret, copyright or patent) by the Services or Work Product.

SECTION 8
PAYMENTS TO THE SERVICE PROVIDER

8.1. REIMBURSABLE EXPENSES.

8.1.1. Reimbursable expenses are actual expenses incurred by the Service Provider and Service Provider's employees and Service Providers in the interests of the Project, as identified in Exhibit "A" or as agreed for additional services. If reimbursable expenses are not itemized on Exhibit "A", no charge for reimbursable expenses may be made by the Service Provider for basic services.

8.2. METHOD OF PAYMENTS FOR SERVICES AND EXPENSES OF SERVICE PROVIDER.

8.2.1. City shall pay Service Provider for basic services performed as described on Exhibit "A", a maximum amount as set forth on Exhibit "A". Exhibit "A", "Service Provider's Project Budget" attached hereto, which is a part of this Agreement, sets forth the costs of services, special Service Providers, a reimbursable expenses budget, and a grand total. Billings for services shall be on the basis of the charges set forth therein. The absolute maximum amount payable to the Service Provider for the basic services contemplated by the Agreement is the total sum stated on Exhibit "A". Service Provider assumes complete responsibility for the accuracy of the budget. City is entitled to any savings in the budgeted figures realized during the course of the Project.

8.2.2. City shall pay Service Provider for contingent basic services performed as described on Exhibit "A", under the heading of "Description of Contingent Basic Services", if any, a maximum amount as set forth on Exhibit "A". Exhibit "A", "Service Provider's Project Budget" under the heading "Contingent Basic Services Fee" attached hereto, which is a part of this Agreement, and which sets forth the costs of services, special Service Providers, a reimbursable expenses budget and a grand total. If reimbursable expenses are not itemized on Exhibit "A" no charge for reimbursable expenses may be made by the Service Provider for contingent basic services. Billings for services shall be on the basis of the charges set forth therein. The absolute maximum amount payable to the Service Provider for the contingent basic services contemplated by the Agreement is the total sum stated on Exhibit "A". Service Provider assumes complete responsibility for the accuracy of the budget. City is entitled to any savings in the budgeted figures realized during the course of the Project.

8.2.3. Additional Services. In the event additional services are desired by the City, the same shall be requested by written order which shall specify the additional services and maximum charge therefore including any special Service Providers and reimbursable expenses and shall be signed by the Service Provider and Project Manager. City shall pay Service Provider for additional services rendered under Section 1 as follows:

8.2.3.1. For additional services rendered by Service Provider, the charges set forth in Exhibit "B" for basic services shall be the basis for determining the charges for additional services plus agreed upon reimbursable expenses.

8.2.3.2. For additional services and reimbursable expenses of a special Service Provider employed by Service Provider as part of additional services, the amount billed to Service Provider therefor.

8.2.3.3. For the services rendered by principals and employees as Service Providers or witnesses in any litigation, hearing or proceedings in accordance with Paragraph 6.8, at a rate to be negotiated.

8.3. Service Provider shall submit monthly statements for basic and additional services rendered and for allowable reimbursable expenses incurred to the Project Manager based upon actual work completed during the billing period. City shall make prompt monthly payments in response to Service Provider's monthly statements.

8.4. If City fails to make any payment due Service Provider for services and expenses within thirty days after receipt of Service Provider's bill therefor, the amounts due Service Provider shall include a charge at the rate of 1% per month from said thirtieth day, and in addition, Service Provider may, after giving seven days' written notice to City, suspend services under this Agreement until he has been paid in full all amounts due the Service Provider for services and expenses.

SECTION 9
HAZARDOUS ENVIRONMENT

9.1. The City has disclosed to the best of its knowledge to the Service Provider the existence of all asbestos, PCBs, petroleum, hazardous waste, or radioactive material located at, on, or near the site, including type, quantity and location. No additional compensation to perform the services shall be allowed to the Service Provider based upon all disclosed hazardous materials. Service Provider warrants that the Service Provider has given due consideration to the disclosure in preparing Exhibit “B”.

9.2. If there has been no disclosure prior to the date of this agreement, the City represents to the Service Provider that to the best of its knowledge a hazardous environmental condition does not exist.

9.3. If a hazardous environmental condition is encountered or alleged, Service Provider shall have the obligation to notify City and, to the extent of applicable Laws and Regulations, appropriate governmental officials.

9.4. If there has been no disclosure of a known hazardous environmental condition, the Service Provider’s scope of service does not include any services related to a hazardous environmental condition. In the event Service Provider or any other party encounters a hazardous environmental condition, Service Provider may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until City: (i) retains appropriate specialist Service Provider(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the hazardous environmental condition; and (ii) warrants that the site is in full compliance with applicable laws and regulations.

9.5. If Service Provider’s services under this agreement can not be performed because of a hazard environmental condition, the existence of the condition shall justify Service Provider

terminating this agreement for cause on 30 days notice. The provisions of paragraph 5.7 shall apply.