**PROFESSIONAL SERVICES AGREEMENT**
**OAKLAND DRIVE REHABILITATION**
**CITY PROJECT NUMBER PW 20-15**
**CITY OF COUNCIL BLUFFS, IOWA**

## I. NAME OF PARTIES OF THE AGREEMENT

This Agreement, made and entered into this 18th day of November, 2019 by and between, The City of Council Bluffs, Iowa, a Municipal Corporation, hereinafter called "OWNER" and Snyder & Associates, Inc., a corporation, hereinafter called "ENGINEER" as follows:

## II. NAME OF PROFESSIONAL SERVICE

The OWNER shall retain the ENGINEER to complete Professional Services for the preparation of engineering surveys, preliminary design, final design, construction plans and specifications, contract documents and construction services for OAKLAND DRIVE REHABILITATION, hereinafter called the "PROJECT"

## III. SCOPE OF WORK

A. GENERAL

The ENGINEER shall provide Professional Services as required to complete the preparation and assembly of the PROJECT as named in Article II and as described hereinafter as follows:

1. The PROJECT includes, but is not limited to, design services for Oakland Drive Rehabilitation generally described as Oakland Drive from Military Avenue to Lafayette Avenue.

2. The ENGINEER will complete engineering surveys, design plans and specifications, construction documents, bid letting assistance, construction staking, administration and observation, and final project acceptance for the proposed PROJECT.

B. ENGINEERING SERVICES

The ENGINEER will provide the Engineering Services as follows. Payment shall be made as specified in Article VI of this Agreement.

1. Definition & Scope of Project

2. Survey

3. Design
   a. Preliminary
   b. Final

4. Bid Phase

5. Construction
   a. Observation
   b. Management
   c. Staking

6. Outside Consultants/Testing

7. R.O.W., Easements, Outside Permits, Assessments

## IV. RESPONSIBILITY OF THE OWNER

At its own expense, the OWNER shall have the following responsibilities regarding the execution of the Contract by the ENGINEER.

A. PROJECT OFFICER

The OWNER shall name a Project Officer to act as the OWNER's representative with respect to the work performed under this Agreement. All correspondence with OWNER relating to PROJECT shall be directed to the Project Officer and the Project Officer shall be invited to all progress meetings and other meetings called during the PROJECT.

B. PROMPT RESPONSE

To prevent an unreasonable delay in the ENGINEER's work, the OWNER will examine all reports, drawings, specifications, and other documents and will provide authorizations in writing to the ENGINEER to proceed with work within a reasonable time period.

## V. WORK SCHEDULE

The PROJECT, from design through construction completion, shall be performed by the ENGINEER in accordance with a schedule mutually developed by the OWNER and ENGINEER. Generally, the schedule for the PROJECT is described as follows:

A. (See attached preliminary schedule)

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

## VI. COMPENSATION AND TERMS OF PAYMENT

The OWNER shall pay the ENGINEER in accordance with the terms and conditions of this Agreement.

A. ENGINEERING SERVICES

As set forth in Article III (B) the engineering fee shall be on the following basis:

| SCOPE OF SERVICES | FEE BASIS |
|---|---|
| 1. Definition of Problem scope of Project | Hourly not to exceed negotiated maximum. |
| 2. Survey | Lump Sum |
| 3. Design<br>a. Preliminary<br>b. Final | Lump Sum |
| 4. Bid Phase | Lump Sum |
| 5. Construction<br>a. Observation<br>b. Management<br>c. Staking | Hourly not to exceed negotiated % of construction (average of two low bidders). |
| 6. Outside Consultants/Testing | Billed as per invoice. |
| 7. ROW, Easements, Outside permits, Assessment | Hourly |

Actual project fees will be determined at a later date and approved by a supplemental agreement.

B. ADDITIONAL SERVICES

Additional Services shall be performed as requested in writing by the OWNER and shall be in accordance with the current fiscal year Snyder & Associates, Inc. Standard Fee Schedule in affect at the time of actual performance. All services quoted on a lump sum basis shall be valid for one year from the contract date.

## VII. METHOD OF PAYMENT

A. The ENGINEER shall submit billings for Basic, Construction and Additional Services to the OWNER on a thirty (30) day basis under separate cover and shall be paid by the OWNER within fourteen (14) days after approval by the City Council. The OWNER shall pay the ENGINEER a percentage of the total fee for each phase or a cost not to exceed the amount shown in accordance with the schedule shown below.

B. Billings shall include sufficient documentation to explain the charges. All billing shall be accompanied by a Billings Information Report on a form provided to the ENGINEER by the OWNER.

## VIII. TERMINATION OF AGREEMENT

The ENGINEER or OWNER may, after giving seven (7) days written notice to the other party, terminate this agreement and the ENGINEER shall be paid for services provided to the termination notice date, including reimbursable expenses due, plus termination expenses. Termination expenses are defined as reimbursable expenses directly attributed to the termination.

## IX. CONFLICT OF INTEREST

No elected official or employee of the OWNER who exercises any responsibilities in review, approval, or carrying out of this Agreement shall participate in any decision relating to this Agreement which affects his or her direct or indirect personal or financial interest.

## X. ASSIGNABILITY

The ENGINEER shall not assign any interest in this Agreement and shall not transfer any interest in the same without the prior written consent of the OWNER.

## XI. TITLE TRANSFER

All drawings, specifications and other work products of the PROJECT are instruments of services for this PROJECT only and shall remain the property of the ENGINEER. The ENGINEER may deliver to the OWNER, at the OWNER's request, paper or electronic media copies of documents prepared in accordance with this Agreement. The OWNER may make hard copies or electronic copies of these documents for purposes supporting the intended use of the project. Any reuse or modification of the documents supplied by ENGINEER for purposes of the PROJECT, including electronic media will be at the recipient's risk and responsibility. Electronic media will be provided as is without warranty, and it shall be the OWNER'S responsibility to reconcile this electronic data with the paper plans, and that the paper plans shall be regarded as legal documents for this PROJECT.

## XII. CONFIDENTIALITY

No reports, information, and/or data given to or prepared or assembled by the ENGINEER under this Agreement shall be made available to any individual or organization by the ENGINEER without prior written approval of the OWNER.

## XIII. INDEMNIFICATION

The ENGINEER agrees to indemnify and save harmless the City, its officers, agents, and employees from and against any and all claims including reasonable attorneys' fees and defense costs arising out of the negligent acts, errors, or omissions of the ENGINEER, its officers, agents, and employees in the execution of the services specified in this Agreement.

In recognition of the relative risks and benefits of the project to both the City and ENGINEER, the risks have been allocated such that the City agrees, to the fullest extent permitted by law, to limit the liability of the ENGINEER and their sub-consultants to the OWNER and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of the ENGINEER and their sub-consultants to all those named shall not exceed $2,000,000.00. Such claims and causes include negligence, professional errors or omissions, strict liability, breach of contract or warranty.

## XIV. INSURANCE

The ENGINEER shall maintain insurance to protect the ENGINEER from claims under Workmen's Compensation Acts; claims due to personal injury or death of any employee or any other person; claims due to injury or destruction of property; and claims arising out of errors, omissions, or negligent acts for which the ENGINEER is legally liable. The amounts and extent of such insurance is as follows:

| | |
|---|---|
| 1. Professional Liability - | $ 2,000,000 each claim; 2,000,000 aggregate |
| 2. Vehicle Coverage - Bodily Injury | $ 1,000,000 combined single limit (each accident) |
| 3. Worker's Compensation - | $ 100,000 each accident |
| 4. General Liability - | $ 1,000,000 each occurrence and 2,000,000 aggregate |

## XV. ARBITRATION

Any controversy or claim arising out of this Agreement may, if both parties agree, be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association.
The cost of the arbitration, if any, will be divided equally between the OWNER and the ENGINEER.

## XVI. ENGINEER'S RESPONSIBILITY

The ENGINEER shall be responsible for the professional quality and technical accuracy of all services furnished by the ENGINEER under this Agreement, except for that work provided by OWNER. The ENGINEER shall, without additional compensation, correct or revise any error or deficiencies in his work. Approval of the OWNER of any such work shall not in any way relieve the ENGINEER of responsibility for the technical accuracy and adequacy of said services. The OWNER's review, approval or acceptance of, or payment for any of the services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

## XVII. COMPLETENESS OF THE AGREEMENT

This document contains all terms and conditions of this Agreement and any alteration shall be invalid unless made in writing, signed by both parties and incorporated as an amendment to this Agreement. There are no understandings, representations, or agreements, written or oral, other than those incorporated herein.

## XVIII. ENGINEER'S CERTIFICATION OF REPORT

The ENGINEER shall place his certification on the Contract Documents, all in conformity with Chapter 114, Code of Iowa.

## XIX. COMPLIANCE & REGULATIONS

During the performance of the contract, the engineer, for itself, its assignees and successors in interest (hereinafter referred to as the "Engineer") agrees as follows:

1. Compliance with Regulations: The Engineer shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by referenced and made a part of this contract.

2. Nondiscrimination: The Engineer, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Engineer shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix "B" of the Regulations.

3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment:
In all solicitations either by competitive bidding or negotiation made by the Engineer for work to be performed under a subcontract, including procurement of materials or leases or equipment, each potential subcontractor or supplier shall be notified by the Engineer of the Engineer's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.

4. Information and Reports: The Engineer shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City of Council Bluffs, The Iowa Department of Transportation or Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, order and instructions. Where any information required of an engineer is in the exclusive possession of another who fails or refuses to furnish this information, the Engineer shall so certify to the City of Council Bluffs, the Iowa Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the Engineer's noncompliance with the nondiscrimination provisions of this contract, the City of Council Bluffs shall impose such contract sanctions as it, the Iowa Department of Transportation or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

a. withholding of payments to the Engineer under the contract until the Engineer complies; and/or,
b. cancellation, termination or suspension of the contract, in whole or in part.

6. Incorporation of Provisions: The Engineer shall include the provisions of Paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Engineer shall take such action with respect to any subcontract or procurement as the City of Council Bluffs, the Iowa Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that, in the event an engineer becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Engineer may request the City of Council Bluffs or the Iowa Department of Transportation to enter into such litigation to protect the interest of the City of Council Bluffs or the Iowa Department of Transportation; and , in addition, the Engineer may request the United States to enter into such litigation to protect the interests of the United States.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the day and the year first above written.

ATTEST:

_____
Jodi Quakenbush, City Clerk

OWNER

By_____
Matthew J. Walsh, Mayor

ATTEST:

_____
Andrea Yeoman

ENGINEER
SNYDER & ASSOCIATES, INC.

By_____
Michael G. Geier, Regional Manager

Preliminary Schedule
City of Council Bluffs
Oakland Drive Rehabilitation
City Project Number PW 20-15
Process & Schedule

| | | |
|---|---|---|
| 1. | 11/8/19 | Prepare "Agreement to Provide Services" (Council Approval 11/18/19) |
| | | 5 days after council approval |
| 2. | TBD | Meet with staff to discuss project scope |
| | | 10 days |
| 3. | TBD | Submit "Project Scoping" proposal (Hourly NTE) |
| | | 5 days after approval of scoping proposal |
| 4. | TBD | Submit "Project Scope & Estimate of Construction Costs" |
| | | 5 days after approval of scope & costs |
| 5. | TBD | Submit "Proposal for Services & Fees" |
| 6. | TBD | 35% Concept Preliminary Design |
| 7. | TBD | 60% Progress Submittal |
| 8. | TBD | 95-98% Plans – Set Public Hearing. |
| 9. | TBD | 100% Plans – Hold Public Hearing |
| 10. | TBD | Letting |
| 11. | TBD | Award |

# SNYDER & ASSOCIATES, INC.
# 2019-20
# STANDARD FEE SCHEDULE

| Billing Classification/Level | Billing Rate | |
|---|---|---|
| **Professional** | | |
| *Engineer, Landscape Architect, Land Surveyor, Legal, GIS, Environmental Scientist Project Manager, Planner, Right-of-Way Agent, Graphic Designer* | | |
| Principal II | $208.00 | /hour |
| Principal I | $197.00 | /hour |
| Senior | $177.00 | /hour |
| VIII | $163.00 | /hour |
| VII | $155.00 | /hour |
| VI | $148.00 | /hour |
| V | $138.00 | /hour |
| IV | $128.00 | /hour |
| III | $116.00 | /hour |
| II | $106.00 | /hour |
| I | $93.00 | /hour |
| **Technical** | | |
| *Technicians--CADD, Survey, Construction Observation* | | |
| Lead | $125.00 | /hour |
| Senior | $119.00 | /hour |
| VIII | $111.00 | /hour |
| VII | $103.00 | /hour |
| VI | $92.00 | /hour |
| V | $82.00 | /hour |
| IV | $76.00 | /hour |
| III | $64.00 | /hour |
| II | $56.00 | /hour |
| I | $48.00 | /hour |
| **Administrative** | | |
| II | $64.00 | /hour |
| I | $52.00 | /hour |
| **Reimbursables** | | |
| Mileage | *current IRS standard rate* | |
| Outside Services | *As Invoiced* | |