

Memo

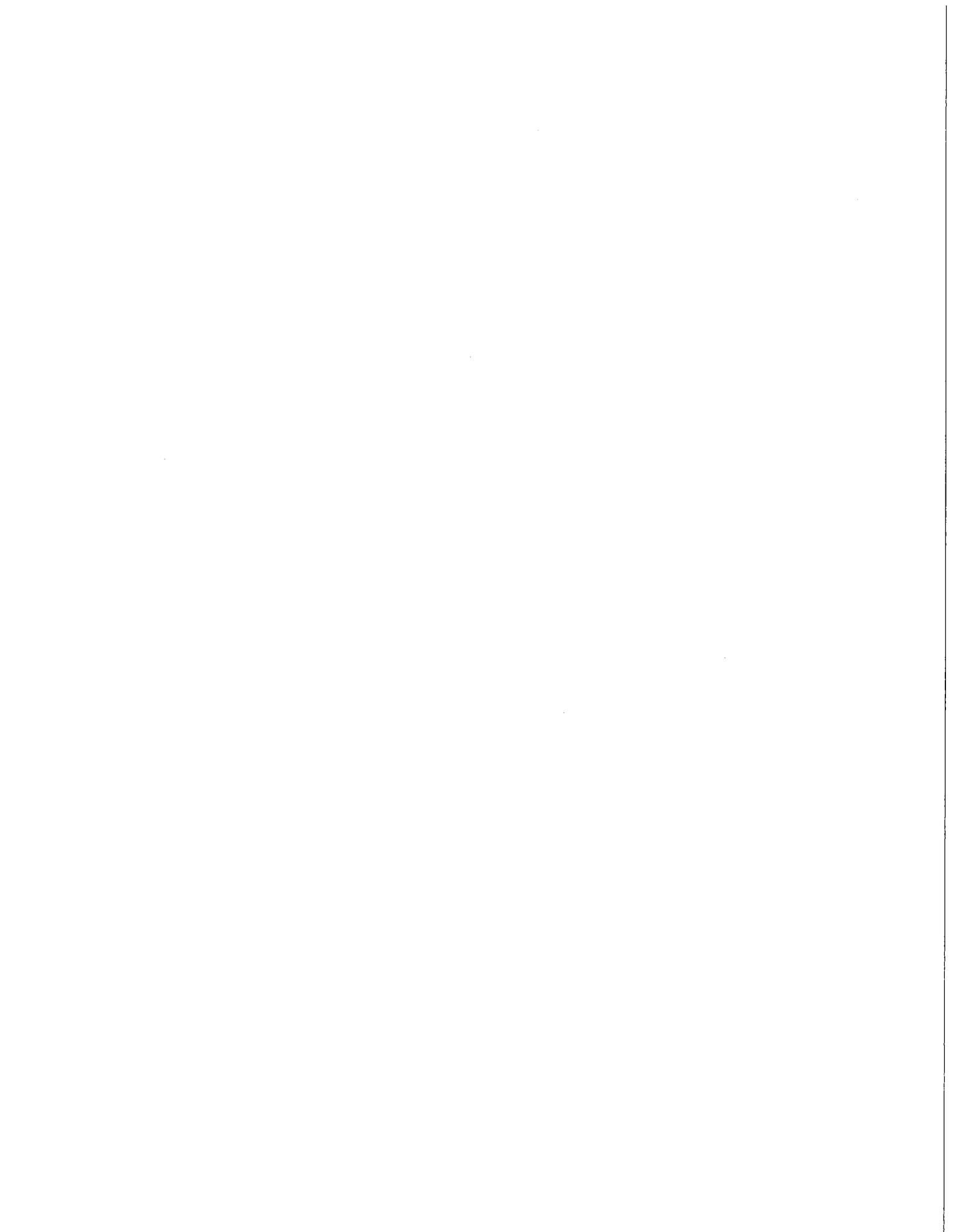
To: Honorable Mayor and City Council
From: Joe Kohlmann, City Administrator
Date: February 28, 2012
Re: WSB Contract

Attached is an Agreement for Planning and Engineering services with WSB. The agreement has been reviewed by the City Administrator, City Attorney, the City's Insurance Provider (LMNC) and WSB Staff members.

Staff is seeking approval of the agreement tonight.

Council Action Requested:

Motion to approve the Agreement between the City of Tonka Bay and WSB & Associates and allow the Mayor and City Administrator to enter into the Agreement.



WSB & ASSOCIATES, INC.
PROFESSIONAL SERVICES AGREEMENT

This Agreement is made as of the _____ day of _____, 2012, by and between the City of Tonka Bay, Minnesota, hereinafter referred to as Client, and WSB & Associates, Inc., hereinafter referred to as Engineer, with offices located at 701 Xenia Avenue South, Suite 300, Minneapolis, Minnesota 55416.

Witnesseth, that the Client and Engineer, for the consideration herein named, agree as follows:

SECTION 1 / GENERAL CONTRACT PROVISIONS

These provisions shall be as set forth in Exhibit A.

SECTION 2 / SCOPE OF WORK

The scope of work to be performed by Engineer is set forth in Exhibit C. The work and services to be performed hereunder and described in Exhibit C shall be referred to herein and in the General Contract Provisions as the Project.

SECTION 3 / COMPENSATION

Compensation to Engineer for services described in this agreement shall be as designated in the attached Exhibit D and as hereinafter described.

SECTION 4 / WORK SCHEDULE

The anticipated schedule is set forth in Exhibit C.

SECTION 5 / SPECIAL CONDITIONS

Special conditions, if any, are as set forth in Exhibit G.

SECTION 6 / EXHIBITS

The following initialed Exhibits are attached to and made a part of this Agreement (check all that apply):

- Exhibit A General Contract Provisions
- Exhibit B Client Responsibilities
- Exhibit C Scope of Work
- Exhibit D Compensation
- Exhibit E Insurance Schedule
- Exhibit F Fee Schedule
- Exhibit G Special Conditions

SECTION 7 / ACCEPTANCE OF AGREEMENT

All work and services described in this agreement shall be performed by Engineer only after written acceptance of the City. The undersigned hereby accept the terms and conditions of this agreement and Engineer is hereby authorized to perform the services described herein.

CLIENT: CITY OF TONKA BAY

**ADDRESS: 4901 MANITOU ROAD
TONKA BAY, MN 55331**

BY: _____

SIGNATURE: _____

TITLE: _____

BY: _____

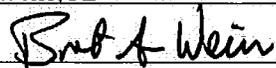
SIGNATURE: _____

TITLE: _____

ENGINEER: WSB & ASSOCIATES, INC.

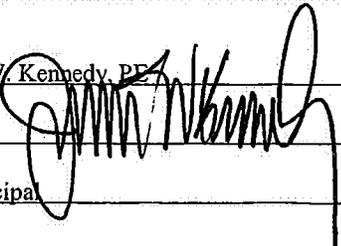
**ADDRESS: 701 XENIA AVENUE SOUTH
SUITE 300
MINNEAPOLIS, MN 55416**

BY: Bret A. Weiss, PE

SIGNATURE: 

TITLE: President

BY: James W. Kennedy, PE

SIGNATURE: 

TITLE: Principal

WSB & ASSOCIATES, INC.
EXHIBIT A
GENERAL CONTRACT PROVISIONS

ARTICLE 1 – GENERAL

These general contract provisions are incorporated in and become a part of the Agreement between WSB & Associates, Inc. (hereinafter referred to as Engineer) and the other party to the Agreement (Client) for the provision of engineering and related services, as set out in the Agreement to which this letter is attached. Either party may be hereinafter referred to as party or, collectively, parties. The starting date will commence when authorized by the Client.

As used herein the term “Agreement” means:

- (1) The agreement for engineering, surveying and planning services;
- (2) These general contract provisions;
- (3) The attached exhibits; and
- (4) The supplemental agreement(s), where applicable.

The attached exhibits shall govern over these General Contract Provisions and the Supplemental Agreement(s), where applicable, shall govern over attached exhibits and these general provisions. The Agreement constitutes the entire understanding between the Engineer and Client. The Agreement supersedes all prior written or oral understanding and may only be amended, supplemented, modified or cancelled by a duly executed written instrument.

ARTICLE 2 – STANDARD OF CARE

The standard of care for all professional engineering, planning, and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of Engineer’s profession practicing under similar circumstances at the same time and in the same locality.

ARTICLE 3 – ADDITIONAL SERVICES

If the Engineer determines that any services it has been directed or requested to perform are beyond the scope as set forth in the Agreement or that, due to changed conditions or changes in the method or manner of administration of the Project, the Engineer’s effort required to perform its services under this Agreement exceeds the estimate which formed the basis for the Engineer’s compensation, Engineer shall promptly notify the Client of that fact. Upon notification, Engineer shall be entitled to additional compensation for same, and an extension of time for completion of work absent written objection by Client.

ARTICLE 4 – LOCATION OF UNDERGROUND IMPROVEMENTS

The Engineer and/or his or her authorized subconsultant will conduct the research that in his or her professional opinion is necessary and will prepare a plan indicating the locations intended for subsurface penetrations with respect to assumed locations of underground improvements. Such services by the Engineer or his or her subconsultant will be performed in a manner consistent with the ordinary standard of care. The Client recognizes that the research may not identify all underground improvements and that the information upon which the Engineer relies may contain errors or may not be completed.

The Client agrees, to the fullest extent permitted by law, to waive all claims and causes of action against the Engineer and anyone for whom the Engineer may be legally liable, for claims by Client or its contractors of delay or additional compensation relating to the identification, removal, relocation, or restoration of utilities, or damages to underground improvements resulting from subsurface penetration locations established by the Engineer in which the Engineer has exercised reasonable care..

ARTICLE 5 – CONSTRUCTION OBSERVATION

If requested by Client, Engineer shall visit the project during construction to become familiar with the progress and quality of the contractors’ work and to determine if the work is proceeding, in general, in accordance with plans, specifications or other contract documents prepared by Engineer for the Client. The Client has not retained the Engineer to make detailed inspections or to provide exhaustive or continuous project review and observation services. Engineer does not guarantee the performance of, and shall have no responsibility for, the acts, errors or omissions of any contractor, subcontractor, supplier or any other entity furnishing materials or performing any work on the project.

Client acknowledges Engineer will not direct, supervise or control the work of contractors or their subcontractors, nor shall Engineer have authority over or responsibility for the contractors means, methods, or procedures of construction. Engineer’s services do not include review or evaluation of the Client’s, contractor’s or subcontractor’s safety measures, or job site safety.

For Client-observed projects, the Engineer shall be entitled to rely upon and accept representations of the Client's observer. If the Client desires more extensive project observation or full-time project representation, the Client shall request such services be provided by the Engineer as an Additional Service. Engineer and Client shall then enter into a Supplemental Agreement detailing the terms and conditions of the requested project observation.

ARTICLE 6 – OPINIONS OF PROBABLE COST

Opinions, if any, of probable cost, construction cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs provided for are made or to be made on the basis of the Engineer's experience and qualifications and represent the Engineer's best judgment as an experienced and qualified professional design firm. The parties acknowledge, however, that the Engineer does not have control over the cost of labor, material, equipment or services furnished by others or over market conditions or contractor's methods of determining their prices, and any evaluation of any facility to be constructed or acquired, or work of necessity must be speculative until completion of construction or acquisition. Accordingly, the Engineer does not guarantee that proposals, bids or actual costs will not vary from opinions, evaluations or studies submitted by the Engineer and assumes no responsibility for the accuracy of opinions of Probable Construction Costs. If Client wishes greater assurance as to probable Construction Cost, Client shall employ an independent cost estimator as part of its Project responsibilities.

ARTICLE 7 – REUSE AND DISPOSITION OF INSTRUMENTS OF SERVICE

All documents, including reports, drawings, calculations, specifications, CADD materials, computers software or hardware or other work product prepared by Engineer pursuant to this Agreement are Engineer's Instruments of Service and Engineer retains all ownership interests in Instruments of Service, including copyrights. The Instruments of Service are not intended or represented to be suitable for reuse by the Client or others on extensions of the Project or on any other project. Copies of documents that may be relied upon by Client are limited to the printed copies (also known as hard copies) that are signed or sealed by Engineer. Files in electronic format furnished to Client are only for convenience of Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. Engineer makes no representations as to long term compatibility, usability or readability of electronic files.

If requested, at the time of completion or termination of the work, the Engineer may make available to the Client the Instruments of Service upon (i) payment of amounts due and owing for work performed and expenses incurred to the date and time of termination, and (ii) fulfillment of the Client's obligations under this Agreement. Any use or re-use of such Instruments of Service by the Client or others without written consent, verification or adaptation by the Engineer except for the specific purpose intended will be at the Client's risk and full legal responsibility.

The Client will, to the fullest extent permitted by law, indemnify and hold the Engineer harmless from any claim, liability or cost (including reasonable attorneys' fees, and defense costs) arising or allegedly arising out of any unauthorized reuse or modification of these Instruments of Service by the Client or any person or entity that acquires or obtains the reports, plans and specifications from or through the Client without the written authorization of the Engineer. Under no circumstances shall transfer of Instruments of Service be deemed a sale by Engineer, and Engineer makes no warranties, either expressed or implied, of merchantability and fitness for any particular purpose. Engineer shall be entitled to compensation for any consent, verification or adaptation of the Instruments of Service for extensions of the Project or any other project.

ARTICLE 8 – PAYMENTS

Payment to Engineer shall be on a lump sum or hourly basis as set out in the Agreement. Engineer is entitled to payment of amounts due plus reimbursable expenses. Client will pay the balance stated on the invoice unless Client notifies Engineer in writing of any disputed items within 30 days from the date of invoice. In the event of any dispute, Client will pay all undisputed amounts in the ordinary course, and the Parties will endeavor to resolve all disputed items. All accounts unpaid after 30 days from the date of original invoice shall be subject to a service charge of 1-1/2% per month, or the maximum amount authorized by law, whichever is less. Engineer shall be entitled to recover all reasonable costs and disbursements, including reasonable attorneys fees, incurred in connection with collecting amounts owed by Client. In addition, Engineer may, after giving seven days' written notice to Client, suspend services under this Agreement until it receives full payment for all amounts then due for services, expenses and charges.

ARTICLE 9 – HAZARDOUS MATERIALS

Notwithstanding the Scope of Services to be provided pursuant to this Agreement, it is understood and agreed that Engineer is not a user, handler, generator, operator, treater, storer, transporter or disposer of hazardous or toxic substances, pollutants or contaminants as any of the foregoing items are defined by Federal, State and/or local law, rules or regulations, now existing or hereafter

amended, and which may be found or identified on any Project which is undertaken by Engineer.

The Client agrees to hold harmless, indemnify and defend Engineer and its officers, subconsultant(s), employees and agents from and against any and all claims, losses, damages, liability and costs, including but not limited to costs of defense, arising out of or in any way connected with, the presence, discharge, release, or escape of hazardous or toxic substances, pollutants or contaminants of any kind, except that this clause shall not apply to such liability as may arise out of Engineer's negligence in the performance of services under this Agreement arising from or relating to hazardous or toxic substances, pollutants, or contaminants specifically identified by the Client and included within Engineer's services to be provided under this Agreement.

ARTICLE 10 – INSURANCE

Engineer has procured general and professional liability insurance. On request, Engineer will furnish client with a certificate of insurance detailing the precise nature and type of insurance, along with applicable policy limits. The Engineer will maintain insurance coverage in the minimum amounts listed in Exhibit E. The Engineer shall list the Client as an additional insured to the Engineer's general liability insurance.

The retroactive or prior acts date of the professional liability coverage shall not be after the effective date of this Agreement and Engineer shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by Engineer to fulfill the requirement.

ARTICLE 11 – TERMINATION

This Agreement may be terminated by either party upon thirty days' written notice without cause. In the event of termination, copies of plans, reports, specifications, electronic drawing/data files (CADD), field data, notes, and other documents whether written, printed or recorded on any medium whatsoever, finished or unfinished, prepared by the Engineer pursuant to this Agreement and pertaining to the work or to the Project, (hereinafter "Instruments of Service"), shall be made available to the Client within 30 days of termination pursuant to Article 7. All provisions of this Agreement allocating responsibility or liability between the Client and Engineer shall survive the completion of the services hereunder and/or the termination of this Agreement.

ARTICLE 12 – INDEMNIFICATION

The Engineer agrees, to the fullest extent permitted by law, to defend, indemnify and hold the Client harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the Engineer's negligent acts, errors or omissions and those of his or her subconsultants or anyone for whom the Engineer is legally liable.

The Client agrees to the fullest extent permitted by law, to indemnify and hold the Engineer harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the Client's negligent acts, errors or omissions and those of his or her contractors, subcontractors or consultants or anyone for whom the Client is legally liable, and arising from the project that is the subject of this Agreement.

ARTICLE 13 – ASSIGNMENT

Neither Party to this Agreement shall assign its interest in this agreement, any proceeds due under the Agreement nor any claims that may arise from services or payments due under the Agreement without the written consent of the other Party. Any assignment in violation of this provision shall be null and void.

ARTICLE 14 – CONTROLLING LAW

This Agreement is to be governed by the laws of the State of Minnesota.

ARTICLE 15 – CONFLICT RESOLUTION

In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the Client and Engineer agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation as a precondition to any formal legal proceedings.

ARTICLE 16 – CONFIDENTIALITY

The Engineer agrees to keep confidential and not to disclose to any person or entity, other than the Engineer's employees, subconsultants and the general contractor and subcontractors, if appropriate, any data and information furnished to the Engineer and marked CONFIDENTIAL by the Client. These provisions shall not apply to information in whatever form that comes into the public domain, nor shall it restrict the Engineer from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or if it is reasonably necessary for the Engineer to complete services under the Agreement or defend itself from any suit or claim.

**ARTICLE 17 – DATA PRACTICES
COMPLIANCE**

Engineer will have access to data collected or maintained by the Client to the extent necessary to perform Engineer's obligation under this contract. Engineer acknowledges that, pursuant to Minn. Stat. § 13.05, subdivision 11, all of the data created, collected, received, stored, used, maintained or disseminated by Contract in performing the contract are subject to the requirements of the Minnesota Government Data Practices Act (the Act), Minnesota Statutes chapter 13. Engineer is required to comply with the requirements of the Act as if it were a government entity. Engineer acknowledges that the remedies provided in Minn. Stat. § 13.08 apply to Engineer with respect to such data. Engineer will notify the Client of all requests for data that Engineer receives. Engineer agrees to defend and indemnify the Client from any claim, liability, or damage that results from Engineer's violation of the Act or this section of the contract. Upon termination of this contract, Engineer agrees to return data to the Client as requested by the Client. The obligations of this section of the contract, including the obligation to defend and indemnify the Client, shall survive the termination of this Contract and shall continue so long as the data exists.

WSB & ASSOCIATES, INC.
EXHIBIT B
CLIENT RESPONSIBILITIES

The Client's responsibilities related to the services to be provided by Engineer are generally as set out below. These responsibilities can be modified through Supplemental Agreements.

In order to permit the Engineer to perform the services required under this Agreement, the Client shall, in proper time and sequence and where appropriate to the Project, at no expense to the Engineer:

1. Provide available information as to its requirements for the Project, including copies of any design and construction standards and comprehensive plans which the Client desires Engineer to follow or incorporate into its work.
2. Guarantee access to and make all provisions for the Engineer to enter upon public and private lands to enable the Engineer to perform its work under this Agreement.
3. Provide such legal, accounting and insurance counseling services as may be required for this Project.
4. Notify the Engineer whenever the Client observes or otherwise becomes aware of any defect in the Project construction or design.
5. Designate a Client Representative with authority to transmit and receive instructions and information, interpret and define the Client's policies with respect to services rendered by the Engineer, and authority to make decisions as required for Engineer to complete services required under this Agreement.
6. Act promptly to approve all pay requests, Supplemental Agreements, or request for information by Engineer as set out below.
7. Furnish data (and professional interpretations thereof) prepared by or services performed by others, including where applicable, but not limited to, previous reports, core borings, sub-surface explorations, hydrographic and hydrogeologic surveys, laboratory tests and inspection of samples, materials and equipment; appropriate professional interpretations of the foregoing data; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic and utility surveys; property description; zoning, deed and other land use restrictions; and other special data.
8. Review all reports, sketches, drawings, specifications and other documents prepared and presented by the Engineer, obtain advice of legal, accounting and insurance counselors or others as Client deems necessary for such examinations and render in writing decisions pertaining thereto.

9. Provide the foregoing in a manner sufficiently timely so as not to delay the performance by the Engineer of the services in accordance with the Contract Documents.
10. Engineer shall be entitled to rely on the accuracy and completeness of information or services furnished by the Client or others employed by the Client. Engineer shall endeavor to verify the information provided and shall promptly notify the Client if the Engineer discovers that any information or services furnished by the Client is in error or is inadequate for its purpose.
11. Client shall bear all costs incidental to compliance with the requirements of this article.

WSB & ASSOCIATES, INC.
EXHIBIT C
SCOPE OF WORK

GENERAL SCOPE OF SERVICES FOR IMPROVEMENT PROJECTS

C.1 SCOPE OF GENERAL CITY ENGINEERING SERVICES

C.1.1 GENERAL CITY ENGINEERING SERVICES

- C.1.1.1 Attend City Council meetings as needed.
- C.1.1.2 Attend City staff meetings as required.
- C.1.1.3 Capital plan updating and implementation.
- C.1.1.4 Infrastructure planning and maintenance reviews.
- C.1.1.5 Other agency technical report review.
- C.1.1.6 Preliminary meetings with land use applicants and potential developers.
- C.1.1.7 Review building permits as needed.
- C.1.1.8 Respond to constituent requests and issues as directed by staff.
- C.1.1.9 Compile data annually related to sewer and water rates.
- C.1.1.10 Coordinate charge back costs related to land use and developer projects.
- C.1.1.11 Act as the City's liaison with other agencies.
- C.1.1.12 Develop policies and procedures for engineering matters in the Public Works Department.
- C.1.1.13 Identification of grant and funding opportunities for local improvements.

C.1.2 SCOPE OF ADDITIONAL SERVICES AS THE ENGINEER

If authorized in writing by the City, the Engineer shall furnish additional services of the following type:

- C.1.2.1 Providing services of professional subconsultants as required for a particular project.

WSB & ASSOCIATES, INC.
EXHIBIT C
SCOPE OF WORK

- C.1.2.2 Stormwater management and MS4 NPDES requirements.
- C.1.2.3 Providing the type of surveying or related engineering services necessary for preparation of permanent and/or temporary easements, boundary surveys, or plat documents.
- C.1.2.4 GIS/asset management and rating of City infrastructure.
- C.1.2.5 Providing services for preparation of preliminary and final assessment rolls.
- C.1.2.6 Providing construction inspection and construction administration services.
- C.1.2.7 Review of developer's plats and concept plans. Provide assistance to the developer in preparing a plat for improvement projects.
- C.1.2.8 Easement acquisitions
- C.1.2.9 Wetland delineations
- C.1.2.10 Tree inventories
- C.1.2.11 Additional engineering services as directed by the City Council and Administrator not otherwise provided for in this Agreement.

C.2 PROJECTS

C.2.1 PRELIMINARY REPORT/STUDY PHASE

Subject to further clarification and refinement on a project-by-project basis, the Engineer shall in proper time and sequence:

- C.2.1.1 Consult with the City representative to determine the requirements of the project, review available data, attend necessary conferences, and be available for general consultation.
- C.2.1.2 Advise the City as to the necessity of the City's providing or obtaining from others data or services and assist the City in obtaining such data and services.
- C.2.1.3 Identify and analyze requirements of governmental authorities having jurisdiction to approve the design of the project and participate in consultations with such authorities.

WSB & ASSOCIATES, INC.
EXHIBIT C
SCOPE OF WORK

- C.2.1.4 Make such preliminary studies, layouts, or field surveys to verify and supplement existing elevation and topographic information and preliminary cost estimates.
- C.2.1.5 Assist the City in obtaining reasonable subsurface investigations as required for the preparation of the feasibility report.
- C.2.1.6 Prepare a feasibility report in sufficient detail to assist the City with decision making. The report will include schematic layouts, sketches, conceptual design criteria with appropriate exhibits to indicate the considerations involved (including applicable requirements of governmental authorities having jurisdiction over the project), preliminary estimate of project cost, estimated assessments, preliminary identification of right-of-way and easement requirements, and the Engineer's conclusions and recommendations.
- C.2.1.7 Furnish copies of the feasibility report documents and review the feasibility report with City staff.
- C.2.1.8 If required, the Engineer shall present the feasibility report to the proper reviewing agencies and to the City Council. The Engineer shall attend the public hearing for the project.

C.2.2 FINAL DESIGN PHASE

Subject to further clarification and refinement on a project-by-project basis, the Engineer shall, in proper time and sequence:

- C.2.2.1 On the basis of the accepted preliminary design documents and the current opinion of probable cost, prepare contract documents consisting of final drawings and specifications to show and describe the scope, extent, and character of the work to be furnished and performed by Contractor(s) including Advertisement for Bids, Instructions to Bidders, Bid Form, Form of Agreement, Performance and Payment Bond Form, General Conditions, Special Conditions, and Technical Specifications.
- C.2.2.2 Provide technical criteria, written descriptions and design data for use in filing applications for routine permits or obtaining approvals of such governmental authorities as have jurisdiction to approve the design of the project, and assist the City in consultations with appropriate authorities. The Engineer shall prepare and submit all permit applications to the appropriate agencies. The City shall be responsible for all permit fees.

WSB & ASSOCIATES, INC.
EXHIBIT C
SCOPE OF WORK

- C.2.2.3 Advise the City of any adjustments to the latest opinion of probable cost caused by changes in extent or design requirements of the project and furnish a current opinion of probable cost based on the drawings and specifications.
- C.2.2.4 Prepare for review and approval by the City, its legal counsel and other advisors contract agreement forms, general conditions, supplementary conditions, bid forms, advertisement for bid and instructions to bidders, and assist in the preparation of other related documents.
- C.2.2.5 Furnish copies of the above documents and of the drawings and specifications and present and review them with the City. Make revisions and adjustments as required following review by the City.

C.2.3 BIDDING PHASE

Subject to further clarification and refinement on a project-by-project basis, the Engineer shall in proper time and sequence:

- C.2.3.1 Furnish plans and specifications for agency review and furnish copies to the City for bidding and construction purposes as a part of this Contract.
- C.2.3.2 Issue addenda as appropriate to interpret, clarify, or expand the bidding documents.
- C.2.3.3 Assist the City in obtaining and evaluating bids and awarding contracts for the construction of the project.
- C.2.3.4 Consult with and advise the City as to the acceptability of subcontractors, suppliers, and other persons and organizations proposed by the prime contractor(s) (herein called "Contractor(s)") for the portions of the work as to which such acceptability is required by the bidding documents.
- C.2.3.5 Consult with and advise the City concerning and determining the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution prior to the award of contracts is allowed by the bidding documents.
- C.2.3.6 Attend bid opening and prepare bid tabulation sheets.

WSB & ASSOCIATES, INC.
EXHIBIT C
SCOPE OF WORK

C.2.4 CONSTRUCTION PHASE

Subject to further clarification and refinement on a project-by-project basis, the Engineer shall:

- C.2.4.1 Consult with and advise the City and act as the City's representative as provided in the contract documents, which may not be modified to affect Engineer's responsibilities except by written agreement signed by the City and the Engineer.
- C.2.4.2 Conduct pre-construction conference to be attended by the Contractor, City, and others as may be requested by the City.
- C.2.4.3 Make visits to the site at intervals appropriate to the various stages of construction to observe as an experienced and qualified design professional the progress and quality of the executed work of the Contractor(s), and to determine if such work is proceeding in accordance with the contract documents. During such visits and on the basis of the on-site observations, the Engineer will keep the City informed of the progress of the work and will endeavor to identify for the City defects and deficiencies in the work of the Contractor(s). This agreement does not require the Engineer to evaluate contractor's safety methods. It is agreed that safety matters are Contractor's responsibility and that the Engineer shall be responsible only for the acts or omissions of its own employees. The Engineer may disapprove work as failing to conform to the contract documents. The Engineer shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work. The Engineer shall be obligated, however, to disclose known dangerous circumstances to the City.
- C.2.4.4 Review samples, schedules, shop drawings, the result of tests and inspections, and other data which the Contractor is required to submit, but only for the conformance with the design concept of the project and compliance with the information given in the contract documents, (but such review shall not extend to means, methods, sequences, techniques, or procedures of construction or to safety precautions and programs incidental thereto). The Engineer shall receive and review (for general content as required by the specification), maintenance and operating instructions, schedules, guarantees, bonds, and certificates of inspection which are to be assembled by the Contractor in accordance with the contract documents.

WSB & ASSOCIATES, INC.
EXHIBIT C
SCOPE OF WORK

- C.2.4.5 Issue all instructions of the City to Contractor; issue necessary interpretations and clarifications of the contract documents and in connection therewith prepare change orders as required for the City's approval and have authority, as the City's representative, to require special inspection or testing of the work.
- C.2.4.6 Review the Contractor's application for payment, determine the amount owing the Contractor and make recommendations to the City regarding the payment thereof. The Engineer's recommendations are based on on-site observations as an experienced and qualified design professional. The recommendations by the Engineer constitute a representation to the City that to the best of their knowledge, information and belief, the work has progressed to the point indicated on said application and the quality of work is in accordance with the contract documents, subject to the results of any subsequent test called for by the contract documents and any qualifications stated in his recommendations.
- C.2.4.7 Conduct, in the presence of the designated representative, a site visit to determine if the project is substantially complete and conduct a final site visit to determine if the work has been completed in accordance with the contract documents. Such site visits may include representatives from the City and/or other involved governmental agencies. If the Contractor has fulfilled all of his obligations, the Engineer shall give written notice to the City and the Contractor that the work is acceptable for final payment.
- C.2.4.8 The Engineer shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work. The Engineer shall be obligated, however, to disclose known dangerous circumstances to the City.
- C.2.4.9 The Engineer shall furnish the City with a list detailing final quantities and costs in a letter stating to the best knowledge of the Engineer that the work is in compliance with the plans, specifications and change orders.

WSB & ASSOCIATES, INC.
EXHIBIT C
SCOPE OF WORK

C.3 SCOPE OF SERVICES FOR DEVELOPMENT/APPLICATION REVIEW

Subject to further clarification and refinement on a project-by-project basis, the Engineer shall:

- C.3.1 Following notice from the City Administrator or City Council, review the platting, concept, design, plans and specifications for Development Projects to determine that they comply with those written City Standards that have been approved by the City Council for such projects. Upon completion of the review, submit a written report to the City Council to assist the applicant and the City Council in making decisions regarding the proposed Project.
- C.3.2 Inform the City of the progress of each Development Project under construction. The report should include budget, schedule and progress information.
- C.3.3 Submit a written report to assist the City Council in determining that the project has been completed according to the approved plans. The Engineer shall acquire from the developer or the developer's engineer plans of the work that have been revised to show "as constructed" conditions, said plans to be submitted to the City within 90 days following completion of the project.

C.4 GENERAL SCOPE OF SERVICES AS CITY PLANNER

As Planner for the City, the Planner shall perform the following duties:

- C.4.1 Answer questions from residents, businesses, developers, and City staff related to planning issues.
- C.4.2 Conduct site inspections to ensure compliance with zoning standards and permit conditions.
- C.4.3 Provide interpretation and guidance to City staff related to zoning code enforcement matters.
- C.4.4 Hold pre-application meetings with applicants to review their proposal and identify the proper submittal guidelines and provide a clear understanding of what is required for a complete application.
- C.4.5 Organize the application process to provide critical information to applicants so they can gain an understanding of the procedures they must follow and the information they must provide with land use applications.

WSB & ASSOCIATES, INC.
EXHIBIT C
SCOPE OF WORK

- C.4.6 Review, research, and make recommendations on all development applications including, but not limited to, site plans, preliminary and final plats, conditional use permits, variances, interim use permits, subdivisions, ordinance amendments, and comprehensive plan amendments, for consistency with the City's adopted zoning, comprehensive plan, design and development standards, the City's policies and relevant laws, rules and regulations.
- C.4.7 Participate in internal and external meetings involving planning questions and issues.
- C.4.8 Attend and make presentations at all City Council meetings where planning actions are being considered.
- C.4.9 Track appropriate costs and fees so that they can be charged back to development projects by working with the City staff to monitor charges and revenues associated with development projects.
- C.4.10 Act, as needed, as a City liaison and representative with other communities and county, state, and federal agencies in areas of planning responsibility.
- C.4.11 Advise the City in a proactive manner of issues, opportunities, or trends that may require updates to ordinances, policies, or procedures. The object is to advise the City regarding issues it may confront that current practices may not adequately address.
- C.4.12 Write and/or update the City's comprehensive plan, zoning ordinances, subdivision regulations, and other City codes and policies as requested.
- C.4.13 Suggest the need for updates to land use, zoning, and other maps and records.
- C.4.14 Evaluate and recommend policies and procedures for effective operation of the City consistent with City policies and relevant laws, rules, and regulations and assist, as needed, in implementing Council actions.
- C.4.15 Establish and maintain a library of permits and applications, contract documents, and other items as needed.
- C.4.16 Identify grant opportunities.
- C.4.17 Perform other duties as assigned from time to time by the City Council.

WSB & ASSOCIATES, INC.
EXHIBIT C
SCOPE OF WORK

C.5 SCOPE OF ADDITIONAL SERVICES AS CITY PLANNER

If authorized in writing by the City, the Planner shall furnish additional services of the following type:

C.5.1 Write grant proposals as directed by City staff and the City Council.

C.5.2 Additional services in connection with projects not otherwise provided for in this Agreement.

WSB & ASSOCIATES, INC.
EXHIBIT D
COMPENSATION

D.1 The City shall pay the Engineer and Planner for Basic Services rendered on the basis of a negotiated lump sum fee, on an hourly basis, or as a percentage of the construction cost, as mutually agreed to and deemed fair and reasonable for the particular work to be performed. The method of payment will be determined at the start of the project.

Engineer's current fee schedule with hourly rates is attached to this contract as Exhibit F. The rate schedule is for 2012, and will remain in effect for services rendered through December 31, 2012.

The fee schedule will be evaluated on an annual basis by the Engineer and Planner, and adjusted to account for inflation and other factors. The Engineer and Planner will submit a revised fee schedule prior to December 31 on an annual basis.

The following represents the compensation terms:

D.1.1 City Council, Planning Commission, Public Works Committee, and Park Commission Meetings

Engineer will be compensated at a lump sum rate of \$80 per meeting for City Council and Public Works Committee meetings. Engineer will be compensated for attendance at Planning Commission and Park Commission meetings at our standard hourly rates.

Planner will be compensated for attendance at Planning Commission, City Council, and other meetings requested by the City at our standard hourly rates.

D.1.2 General City Engineering and Planning Duties

Engineer and Planner will be compensated for these services based on the hourly rates listed in the fee schedule. Engineer and Planner recognize that it is important for the City to maximize the ability to assign time during regular office hours to projects or escrow accounts as much as possible, and Engineer and Planner will strive to meet this goal.

D.1.3 Projects

Compensation for specific studies or the design and construction of City improvements will be determined on a project-by-project basis. The proposed compensation will be detailed within a written letter proposal submitted by the Engineer and / or Planner to the City prior to beginning work. If the scope of the project changes after it is authorized, the Engineer or Planner will discuss it with the City and determine an appropriate fee modification. Typically, project fees are billed either as lump sum, hourly not-to-exceed, or a percentage of the construction cost.

D.1.4 Development/Application Review

Services related to development review or review of other applications, will be completed by the Engineer and Planner on an hourly basis as needed. For items such as traffic studies, environmental reviews, and other more-defined items related to development review, the Engineer will establish a scope and fees for ease of tracking against escrow account balances.

D.1.5 Independent Consultants

The cost of services performed by independent consultants or agencies for environmental evaluation, soil testing, laboratory services, or other services will be billed to the City at the Engineer's cost with no markup.

D.1.6 Payment for Revisions or Other Work

If the City directs that revisions be made to the plans and specifications following approval of the plans and specifications by the City or if the City Council directs Engineer and / or Planner to perform other work, the Engineer and Planner shall be compensated for the cost of such revisions at the hourly fee. The Engineer and Planner shall be given additional compensation when additions consist of enlargement or extension of the project. Additional compensation will be on the same basis as agreed to for the original plans and specifications.

D.1.7 Receipt of Payment

In order to receive payment for services, the Engineer and Planner shall submit monthly invoices describing in detail the services performed in accordance with this contract. Separate statements shall be submitted for each project or a detailed breakdown shall be furnished showing the distribution of charges to each project. The City shall pay Engineer and Planner upon receipt of each monthly invoice. For hourly and percentage of construction cost contracts, the personnel who worked on the project shall be included. Construction services shall include daily reports detailing the time for each day that the individual was working on the project. All invoices will include the City representative who authorized the work.

D.1.8 Expenses

Engineer and Planner shall be reimbursed for reasonable expenses related to the scope of services of this contract and/or individual projects. The Engineer and Planner shall be reimbursed for the actual cost of the expenses, without markup. Typical expenses include, but are not limited to, the following:

- Permit fees
- Plan and specification reproduction fees
- Costs related to the development of project photos

The following shall not be considered reimbursable expenses:

- Mileage
- Mobile phone usage
- Computer equipment time
- Preparation and reproduction of common correspondence
- Mailing

WSB & ASSOCIATES, INC.
EXHIBIT E
INSURANCE SCHEDULE

GENERAL LIABILITY

Carrier:	The Travelers Indemnity Company	
Type of Insurance:	Commercial General Liability	
Coverage:	General Aggregate	\$2,000,000
	Products-Comp/Ops Aggregate	\$2,000,000
	Personal & Advertising Injury	\$1,000,000
	Each Occurrence	\$1,000,000

AUTOMOBILE LIABILITY

Carrier:	The Travelers Indemnity Company	
Type of Insurance:	Hired Autos Non-Owned Autos	
Coverage:	Combined Single Limit	\$1,000,000

WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY

Carrier:	The Hartford Insurance Company	
Coverage	<u>Statutory</u> Each Accident	\$ 1,000,000
	Disease-Policy Limit	\$ 1,000,000
	Disease-Each Employee	\$ 1,000,000

PROFESSIONAL LIABILITY (ERRORS AND OMISSIONS)

Carrier:	XL Specialty Insurance Company
Coverage:	\$5,000,000 each claim/\$10,000,000 annual aggregate

Certificates of Insurance will be provided upon request.



2012 Rate Schedule

2012 RATE SCHEDULE

EXHIBIT F

	Billing Rate/Hour
Principal	\$137
Associate	\$128
Project Manager	\$107 \$114 \$121
Project Engineer	\$94 \$99 \$107 \$114 \$121
Graduate Engineer	\$79 \$84 \$89
Planner	\$72
Engineering Specialist	\$89 \$99 \$107 \$114
Engineering Technician	\$49 \$56 \$62 \$68 \$79
Scientist	\$56 \$62 \$68
Construction Observer	\$79 \$84 \$89 \$94 \$99
Coring Crew	
One-Person Crew	\$145
Two-Person Crew	\$220
Survey Crew	
One-Person Crew	\$110
Two-Person Crew	\$144
Three-Person Crew	\$168
Office Technician	\$33 \$62 \$72

Costs associated with word processing, cell phones, reproduction of common correspondence and mailing are included in the above hourly rates. Vehicle mileage is normally included in our billing rates, but can be charged separately if specifically outlined by contract.

Reimbursable expenses include costs associated with plan, specification and report reproduction, permit fee, delivery cost, etc.

Rate Schedule is adjusted annually.

Each staff person is assigned one billing rate that is commensurate with their experience and expertise. Multiple rates illustrate the varying levels of experience within each category.

