

**Master Agreement for Engineering Services**

**2023-2025**

**Dated November 22, 2022**

**Between**

**City of Peoria**

**and**

**Hermann & Associates, LLC.**



## Master Agreement for Professional Services

This Agreement is dated November 22, 2022 (“Agreement”) and is between the City of Peoria, an Illinois home-rule municipal corporation, located at 419 Fulton Street, Peoria, Illinois 61602 (“City”) and Hermann & Associates, LLC, a corporation, located at 4603 N. Galena Rd. Peoria Heights, IL 61616 (“Consultant”).

The City issued a request for qualifications for various engineering services to be performed in or on behalf of the City of Peoria.

Consultant submitted a response and statement of qualifications.

The City Council of the City of Peoria (“City Council”) accepted Consultant’s selection on November 8, 2022, at its regularly scheduled City Council meeting.

The parties therefore agree as follows:

### 1. Term.

- 1.1. The term of this Agreement begins on the date set forth in the introductory clause and continues through December 31, 2025.
- 1.2. The term of this Agreement may be extended as set forth in §2.3

### 2. Services to be performed by Consultant.

- 2.1. Consultant shall perform the services designated and authorized by the City in writing (“Services”). Such authorization will be referred to as a “Work Order”, and all provisions of this Agreement apply to the Work Orders with full force and effect as if appearing in full within each Work Order. Work orders will be assigned by the City Engineer or designee in the sole discretion of the City.
- 2.2. Consultant is not authorized to undertake any project without a duly executed Work Order, which will specify the Services to be performed and the time for Services to be completed. Consultant recognizes that the City may employ several different consultants to perform the Services described and that Consultant has not been employed as the exclusive agent to perform any such Services.
- 2.3. If the City and Consultant enter into a Work Order where the term of the Work Order expires on a date later than the term of this Agreement under §1.1, then the term of this Agreement will extend until the full completion of the requirements of that Work Order have been performed.
  - 2.3.1. The City’s cancellation of any remaining Services prior to the full completion of the requirements of the Work Order will cause the authorization to perform Services to expire at the same time as the termination of the outstanding Work Order. This provision applies only when the expiration of the Work Order extends beyond the expiration of this Agreement. It does not apply when a Work Order expires or is cancelled prior to the expiration of this Agreement.

- 2.3.2. The City may not enter into any Work Order after the expiration of this Agreement under §1.1 even if this Agreement is extended under §2.3.
- 2.4. Any Work Order executed under this Agreement will be incorporated into this Agreement. Any reference to “this Agreement” includes any and all Work Orders executed under this Agreement.
- 2.5. The Consultant agrees to make their best commercially reasonable effort to pursue the work contracted for by the City in the most cost-effective manner while preserving the quality of product to be delivered and subject to the provisions of § 5 herein.
- 2.6. This Agreement shall continue as an open contract and the obligations created herein shall remain in full force and effect until the completion of construction or any phase of professional services performed by others based upon Services or Service product provided by the Consultant. All obligations of the Consultant accepted under this Agreement shall cease if construction or subsequent professional Services are not commenced within 5 years after final delivery of professional Services or work product pursuant to this Agreement.
- 2.7. At any time during construction or during any phase of professional services performed by others based on Services or Service product provided by the Consultant, including after the expiration or cancellation of this Agreement, the Consultant will have a continuing obligation to confer with the City and others upon request for the purpose of interpretation or providing clarification of the Services or work product provided by the Consultant.
- 2.8. Consultant may be required to complete documents and comply with conditions required based on the funding source for the project, to be included in the Work Order.

### **3. Compensation**

- 3.1. The total fee of all projects completed under this Agreement shall not exceed \$750,000.00. The City retains the option to extend the time of this Agreement and/or increase the fee limit with City Council approval. The City is not liable for the payment for any Services performed by personnel in a job classification that is not listed on the Schedule of Hourly Charges.
- 3.2. The Consultant agrees to provide the Services and the City agrees to compensate the Consultant for these Services on a time and expense basis in accordance with the attached Schedule of Hourly Charges. The attached Schedule of Hourly Charges is subject to a maximum 3% increase on January 1 of each year of the Agreement. Reimbursable direct expenses and subcontractor services performed by another firm will be invoiced at cost. Hours in excess of 8 hours per day or 40 hours per week will only be compensated at the rates in the attached Schedule of Hourly Charges. There will be no overtime or premium hourly rate charges awarded. If the assigned engineering services are for agency sponsored or funded projects, the hourly charges may be dictated by the sponsoring or funding agency. Travel reimbursements shall not exceed those limits posted by the State of Illinois Department of Central Management Services for agencies. See the Travel Reimbursement Schedule at <https://cms.illinois.gov/employees/travel/travelreimbursement.html>.

- 3.3. A Work Order describing the project limits and proposed improvements shall establish the compensation terms and schedule, if hourly then the attached Schedule of Hourly Charges will be used for compensation. The compensation terms of each Work Order shall be the result of negotiations between the City and Consultant and be signed by representatives of both parties. Compensation may be negotiated as a not-to-exceed price on a per-project basis on each individual Work Order.
- 3.4. Projects to be partially or entirely paid with Motor Fuel Taxes (MFT) dispersed by the Illinois of Transportation (IDOT) will require compliance with IDOT's MFT policies. This will include using form BLR 05530, or successor forms as amended by IDOT, as the Work Order documentation. Work Orders not utilizing MFT or Federal Funds will be of a form acceptable to both parties.
- 3.5. Payment for Consultant's services under a Work Order will be due to Consultant upon the completion of the Services or phase of Services as set forth in the Work Order and upon the tender of an itemized invoice to the City. The invoice must describe the Services rendered and must reference the date of the Services, the person performing each Service, and the fee for each time Service is rendered and for each type of Service rendered.
- 3.6. The City shall render payment within 45 days after receipt, but in the event of any dispute as to any invoice, the City will pay the amount that is not in dispute and will undertake discussions and negotiations with Consultant to resolve any discrepancy or dispute in any invoice and will, upon resolution of any discrepancy or dispute, pay the agreed-upon amount as soon as reasonably possible. Consultant waives, to the extent allowed by law, the provisions of the Local Government Prompt Payment Act.

#### **4. Access and audits; public records**

- 4.1. Consultant shall maintain adequate records to justify all charges and costs incurred in performing the Services for at least three years after the completion of any Services under a Work Order. All invoices submitted are subject to audit and demand for refund of over payment up to three years following completion of all Services related to this Agreement. The City will have access to the books, record, and documents for the purpose of inspection or audit during normal business hours at Consultant's place of business.
- 4.2. If any examination or audit by the City or its agents determines misrepresentations of billable time or reimbursable expenses, then those misrepresentations will result in the recovery on any resulting overpayments. The Consultant will reimburse the City for all reasonable cost of recovery, including accounting and legal fees, court costs, and administrative expenses within thirty (30) days from receipt of City's written notice.
- 4.3. Intentional misrepresentations of billable hours and of reimbursable expenses will be referred for criminal prosecution. The City will cooperate with the prosecution of any criminal referral under this section.
- 4.4. Consultant acknowledges that certain records generated under this Agreement may be subject to disclosure under the Illinois Freedom of Information Act ("FOIA")(5 ILCS 140/). Consultant

agrees to cooperate with the City with and take all steps necessary concerning the timely disclosure of records in Consultant's possession that may be disclosable under Section 7(2) of FOIA (5 ILCS 140/7(2)). Consultant will provide documents to comply with FOIA requests at no charge to the City beyond what the City recovers from the requester.

**5. Standard of care**

- 5.1. Consultant shall exercise the same degree of care, skill, and diligence in the performance of the Services as is provided by a professional of like experience, knowledge, and resources under similar circumstances.
- 5.2. Consultant shall, at no additional cost to the City, reperform services that fail to satisfy the standard of care set forth under §5.1 or otherwise fail to meet the requirements of this Agreement.

**6. Subcontracting**

- 6.1. The parties acknowledge that this is a professional-services Agreement and that Consultant was selected based upon its qualifications, reviewed through the request-for-qualifications process. Consultant may not subcontract any Services under this Agreement or any Work Order issued under this Agreement without the prior consent of the City.
- 6.2. The City reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractor.
- 6.3. If a subcontractor fails to perform or make progress as required by this Agreement, and it is necessary to replace the subcontractor to complete the Services in a timely fashion, Consultant shall promptly do so, subject to acceptance of the new subcontractor by the City. Failure of a subcontractor to timely or properly perform its obligations will not relieve Consultant of its obligations hereunder.

**7. Authority to practice.** Consultant represents that it shall employ only persons duly licensed or registered in the appropriate category in responsible charge of all elements of the Services for which Illinois Statutes require license or registration, and further shall employ only well qualified persons in responsible charge of any elements of the Services, all subject to City approval.

**8. Compliance with laws.** In the performance of the Services, Consultant shall comply with applicable regulatory requirements, including federal, State of Illinois, special district, and local laws, rules, regulations, orders, codes, criteria, and standards in effect at the time services are rendered. Consultant must pay all required taxes and obtain all licenses, certificates, or other authorization required in connection with the performance of its obligation hereunder, and Consultant must require all subcontractors to also do so. Failure to do so may result in termination of this Agreement with Consultant. By entering into an Agreement with the City, Consultant represents that to the best of its knowledge, its employees and any subcontractor used in the performance of this Agreement meet City requirements and have not violated any City ordinance, code, state, federal, or local rules or regulations, and have not been subject to any debarment, suspension, or other

disciplinary action by any government agency. Additionally, if at any time Consultant becomes aware of such information, it must immediately disclose it to the City.

**9. Confidentiality.** Consultant shall hold confidential the business and technical information obtained or generated in performance of the services under this Agreement and all information identified in writing by the City as confidential.

**10. Documents.**

10.1. All documents generated by the Consultant as the result of this Agreement, whether produced on paper or electronically and whether stored in paper form, electronically or by any other method, will become the property of the City upon completion or termination of the Services and upon final payment to the Consultant. Consultant is liable to the City for the cost of replacement for loss or damage of any documents belonging to the City while in the possession or control of Consultant. Nothing in this §10.1 prohibits the Consultant from using standard details specifications, processes, and other design features on other projects.

10.2. Work products shall be properly sealed by a licensed professional as required by law.

10.3. All project documents shall be produced by the Consultant and delivered to the City electronically in a format compatible and acceptable with the City. All files received are required to function in the chosen software environment without need for post-processing or any adjustments. Any supporting resource files or libraries shall be noted and provided with the submission.

10.4. Consultant will not be liable for any damages, injury, or costs associated with the City's use, modification or distribution of these documents for any purpose other than the purpose anticipated under the Work Order under which the document was generated. City shall indemnify and hold harmless the Consultant as to any modifications made by the City to the documents produced by the Consultant following delivery of the documents to the City.

**11. Copyright.** Consultant waives any action against the City to enforce Consultant's Copyright on documents produced and delivered to the City pursuant to this agreement.

**12. Use of City name or logo.** Consultant may publish the fact and nature of this engagement without further permission of the City. Consultant may not use the City's name or logo in any advertisements without prior written City permission.

**13. Insurance**

13.1. During the term of this Agreement, Consultant shall, at all times and at its own cost, maintain insurance in the type and minimum amounts as follows:

13.1.1. General liability: Limits of at least \$1,000,000 per occurrence, and not less than \$2,000,000 aggregate limit. General liability insurance must include all of the following:

13.1.1.1. Products and completed operations coverage

- 13.1.1.2. Contractor's Protective coverage
- 13.1.1.3. Personal Injury Liability coverage.
- 13.1.2. Professional liability: \$1,000,000.00 for design errors and omissions per claim, \$2,000,000 aggregate limit. Consultant shall provide continuing Professional Liability Insurance to cover each project for a period of two years after the project is completed. Insurance requirements may vary depending on projects as determined by the City Engineer. The City may require Consultant to provide a higher level of coverage for a specific project and time frame.
- 13.1.3. Workers' compensation: Workers' compensation insurance as required by the laws and regulations of the State of Illinois.
- 13.1.4. Automotive insurance. Combined single limits of at least \$1,000,000 per occurrence, and not less than \$2,000,000 general aggregate limit. Auto liability must include hired and non-owned autos.
- 13.1.5. Umbrella Liability with limits of not less than \$1,000,000.00, to be in excess of all other coverages. Such coverage must be at least as broad as the primary coverages above, with any excess umbrella layers written on a strict following form basis over the primary coverage. This Section 13.1.5 does not pertain to Professional Liability insurance or Workers' compensation insurance.
- 13.2. All policies, except policies for professional liability, must be written on an occurrence basis. All policies must be written with insurance carriers who are qualified to do business in the State of Illinois and who are rated A-VII or better in the latest Best's Key Rating Guide. All policies must be written on the most current Insurance Service Office (ISO) or National Council on Compensation Insurance (NCCI) form or a manuscript form if coverage is broader than the ISO or NCCI form.
- 13.3. The City of Peoria and its officers and employees must be named as an additional insured party on the general liability policy, automobile liability policy, and umbrella policy. The City's interest as an additional insured party must be on a primary and non-contributory basis on all policies and be noted as such on the insurance certificates.
- 13.4. Upon demand, the Consultant or Service Provider must provide the City with a copy of each insurance policy maintained under §13.1. In addition, the Consultant or Service Provider must provide the City with certificates of insurance showing evidence that the insurance policies required under §13.1 are in full force and effect and endorsing notification to the City at least 30 days' notice prior to any cancellation or non-renewal. Any renewal certificate of insurance must be automatically provided to the City at least 30 days prior to the policy expiration. If a self-insured retention or a deductible is maintained on any of the policies, then the amount of the retention or deductible is subject to approval by the City. The Service Provider represents that there is no conflict in coverage as disclosed between any certificate of insurance submitted to the City and the insurance policy.

- 13.5. The Consultant waives the right to limit its liability to the City to the amount of the workers compensation benefits paid to an injured employee of the Consultant under the Illinois Worker's Compensation Act, and shall include in the General Liability or the Workers' Compensation insurance an Illinois Amendatory endorsement limiting policy exclusions, with language similar to the following:

This exclusion also does not apply to your liability to a third party by reason of a claim or suit against you by that third party for contribution under the Illinois Joint Tortfeasor Contribution Act for damages claimed against such third party as a result of injury to your employee if such liability is otherwise covered under this Part Two of the policy, and you have that liability because you have waived, in a written contract, your right to limit such liability to the amount of the workers compensation benefits paid for that injured employee under the Illinois Workers Compensation Act. This exception only applies to bodily injury by accident that occurs after that contract was made and to bodily injury by disease caused or aggravated by conditions to which the injured employee's last day of exposure occurs after that contract was made.

- 13.6. Nothing in this §13 will be construed as a limitation of liability for Consultant or any other Service Provider.

#### **14. Indemnification**

- 14.1. Indemnification for Professional Liability Claims: For liability arising out of professional services, the Consultant shall indemnify but shall have no duty to defend the City and the City's officers, elected officials, appointees and employees against liability for damages for which they may be liable to the extent such damages are actually caused by the negligent acts, errors or omissions of Consultant, or any of its employees or subconsultants negligent acts or omissions under this Agreement.
- 14.2. Indemnification for All Other Claims: The Consultant shall hold harmless, defend, and indemnify, for damages arising out of bodily injury, death and property damage, the City, and the City's officers elected officials, appointees and employees against claims, demands, actions and suits (including reasonable post-tender attorney's fees and costs) brought against any of them arising from the Consultant's work or any of its subconsultant's work under this Agreement other than professional services.

#### **15. Termination**

- 15.1. Consultant may terminate this Agreement upon 30 days prior written notice to the City in the event of substantial failure by the City to perform in accordance with the term of this Agreement through no fault of Consultant.



- 15.2. The City may terminate this Agreement with or without cause immediately upon written notice to Consultant.
- 15.3. Unless Consultant is in material breach of this Agreement or of any Work Order, the City will pay Consultant for services rendered to the City's satisfaction through the date of termination.
- 15.4. Upon receipt of a termination notice, and except as otherwise directed by the City, Consultant shall:
  - 15.4.1. Stop work on the date and to the extent specified.
  - 15.4.2. Terminate and settle all orders and subcontracts related to the performance of the terminated Services.
  - 15.4.3. Transfer all Services in process, competed Services, and other material related to the terminated Services to the City, to include, but not limited to, investigations, preliminary designs, reports, studies, surveys, drawings, estimates and data.
  - 15.4.4. Continue and complete all parts of the Services that have not been terminated.
- 15.5. Consultant is responsible for all costs incurred by the City to enforce any provision of this Agreement or to remedy any material breach by Consultant of this Agreement, including all reasonable court costs and reasonable attorneys' fees.

**16. Binding Agreement.** The City and the Consultant each binds itself, its partners, successors, executors, administrators and assignees to each other party hereto in respect to all the covenants and Agreements herein and, except as above, neither the City nor the Consultant shall assign, sublet or transfer any part of his interest in this Agreement without the written consent of the other party hereto.

**17. Waivers**

- 17.1. The parties may waive any provision in this Agreement only by a writing executed by the party against whom the waiver is sought to be enforced.
- 17.2. No failure or delay in exercising any right or remedy or in requiring the satisfaction of any condition under this Agreement, operates as a waiver of any right, remedy, or condition.
- 17.3. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver, once given, is not to be construed as a waiver on any future occasion or against any other person.

**18. Time for performance.** Time is of the essence in this Agreement. If any date specified in this Agreement as a date for taking action falls on a day that is not a Business Day, then that action may be taken on the next Business Day. Consultant will begin work under the Agreement upon receipt of a fully executed copy of the applicable Work Order. City and Consultant are aware that many factors outside Consultant's control may affect its ability to complete the services to be provided

under the Work Order and/or Agreement. Consultant will perform these services with reasonable diligence and expediency consistent with sound professional practices.

**19. Force majeure**

- 19.1. Neither the City nor Consultant will be considered to be in default of this Agreement if delays in or failure of performance is due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the nonperforming party could not avoid. “Uncontrollable Forces” means any event that results in the prevention or delay of performance by a party of its obligations under this Agreement and that is beyond the reasonable control of the nonperforming party. It includes flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions. It does not include labor disturbances or material shortages.
- 19.2. Neither party will, however, be excused from performance if nonperformance is due to forces that are preventable, removable, or remediable and that the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed or remedied with reasonable dispatch.
- 19.3. The nonperforming party will, within a reasonable time of being prevented or delayed from performance by an Uncontrollable Force, give written notice to the other party describing the circumstances and Uncontrollable Forces preventing continued performance of the obligations of this Agreement.

**20. Choice of law; jurisdiction**

- 20.1. This Agreement will be governed by and construed in accordance with the laws of the State of Illinois.
- 20.2. Any litigation filed by Consultant or the City against the other party and involving this Agreement must be filed in the Circuit Court of Peoria County, Illinois.

**21. Status as independent contractor**

- 21.1. Consultant undertakes performance of the Services as an independent contractor and will be wholly responsible for the methods of performance.
- 21.2. The City will have no right to supervise the methods used, but the City has the right to observe that performance.
- 21.3. Consultant shall not pledge the City’s credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. Consultant has no authority to speak for or bind the City in any manner.

**22. Conflict of Interest.** The Consultant represents that, to the best of its knowledge, (1) no City employee or agent is interested in the business of the Consultant or this Agreement; (2) as of the date of this Agreement neither the Consultant nor any person employed or associated with the Consultant has any interest that would conflict in any manner or degree with the performance of

the obligations under this Agreement; and (3) neither the Consultant nor any person employed by or associated with the Consultant shall at any time during the term of this Agreement obtain or acquire any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement.

**23. Equal Employment Opportunity.** Consultant shall comply with all applicable equal employment opportunity statutes, regulations, and ordinances including but not limited to the City's ordinances prohibiting discrimination in employment (Sec. 17-116, et seq.) and rules and regulations of the City's Fair Employment Commission (Sec. 17-26, et seq.); the Illinois Human Rights Act (775 ILCS 5/101 et seq.), the Illinois Department of Human Rights (IDHR) Rules and Regulations for Government Contracts (44 Ill. Admin. Code, Chapter X, Section 750), the Discrimination in Public Contracts Act (775 ILCS 10/0.01 et seq.), Title VII of the Civil Rights Act of 1964, as amended (§ 7, 42 U.S.C. § 2000e et seq.); the Age Discrimination in Employment Act of 1967, as amended (29 USC §.621 et seq.); Title I of the Americans with Disabilities Act of 1990, as amended (42 USC 12111-12117); the Equal Pay Act of 1963, as amended; and the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (38 USC §§ 4301-4335).

Pursuant to IDHR's Rules and Regulations and the City's ordinances, the Consultant shall comply with the following terms and conditions during the performance of this Agreement:

- (a) Consultant will not discriminate against any employee, including apprentices, or applicant for employment, including training programs, because of race, color religion, sex, sexual orientation, gender identity, marital status, order of protection status, status as a survivor of domestic violence or human trafficking, national origin or ancestry, citizenship status, age, physical or mental disability unrelated to ability, military status, or unfavorable discharge from military service; and, further, that Consultant will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any underutilization.
- (b) If Consultant hires additional employees in order to perform this Agreement or any portion of this Agreement, Consultant will determine the availability (in accordance with Section 750) of minorities and women in the areas from which Consultant may reasonably recruit and will make a reasonable effort to hire for each job classification for which employees are hired in a way that minorities and women are not underutilized.
- (c) In all solicitations and advertisements for employees placed by Consultant on its behalf, Consultant will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, sexual orientation, gender identity, marital status, order of protection status, status as a survivor of domestic violence or human trafficking, national origin or ancestry, citizenship status, age, physical or mental disability unrelated to ability, military status, or an unfavorable discharge from military service.
- (d) Consultant will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising the labor organization or representative of the Consultant's obligations under the Illinois Human Rights Act and Section 750 of the Illinois Department of Human Rights Rules and Regulations. If any labor organization or representative fails or refuses to cooperate with the Consultant in its efforts to comply with the Act and Part 750, Consultant will promptly notify the Illinois Department of Human Rights and the City and

will recruit employees from other sources when necessary to fulfill its obligations under the Agreement.

- (e) Consultant will submit reports as required by Part 750, furnish all relevant information that may be requested by the Illinois Department of Human Rights or the City, and in all respects comply with the Act, the Department's Rules and Regulations, and the City's ordinances.
- (f) Consultant will permit access to all relevant books, records, accounts, and work sites by personnel of the City and the Illinois Department of Human Rights for purposes of investigation to ascertain compliance with the Act, IDHR's Rules and Regulations, and City ordinances.
- (g) Consultant will include verbatim or by reference the Equal Employment Opportunity Clause (44 Ill. Admin. Code, Chapter X, Appendix A) in every agreement under which any portion of the Agreement obligations are undertaken or assumed, so that the provisions will be binding upon the subcontractor. In the same manner as with other provisions of this Agreement, Consultant will be liable for compliance with applicable provisions of this clause by subcontractors. Further, Consultant will promptly notify the City and the Illinois Department of Human Rights if any subcontractor fails or refuses to comply with the provisions of sections (a) through (f) of this paragraph. Consultant shall not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.
- (h) The Consultant represents that it has a written sexual harassment policy in full compliance with Section 2-105(A)(4) of the Illinois Human Rights Act, 775 ILCS 512-105(A)(4).
- (i) The Consultant shall obtain and maintain an EEO certification from the City.

**24. Non-solicitation.** The Consultant represents that it has not employed or retained any company or person other than bona fide employee working solely for the Consultant to solicit or secure the Consultant, and that it has not paid or agreed to pay any company or person other than a bona fide employee working solely for the Consultant any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of the Agreement. For breach or violation of its representation, the City shall have the right to annul the Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee. The Consultant represents that it has no public or private interest and shall not acquire directly or indirectly any such interest which would conflict in any manner with the performance of their Services under the Agreement.

**25. Employee/employment restrictions.** The Consultant agrees, as a condition of accepting this Agreement with the City, that, for a period of one (1) year following completion of this Agreement, it shall be prohibited from hiring, directly or indirectly, any City employee or official who was involved, directly or indirectly in: (1) the selection and/or recommendation to select the Consultant for performance of this Agreement; (2) coordinating the efforts of the Consultant in the consummation or completion of this Agreement; or (3) monitoring or determining the performance of the Consultant. (Sec. 2-342.) The Consultant further acknowledges and agrees that, upon the City's determination that a violation of this provision has occurred, the penalty imposed, at the sole

discretion of the City, may include one or more of the following: (1) cancellation of any other Agreement(s) between the City and the Consultant; (2) disqualification of the Consultant from bidding or being awarded future Agreements with the City for a period of two (2) years; and/or (3) payment of liquidated damages to the City in the amount of TWENTY FIVE THOUSANDS DOLLARS (\$25,000.00). This section shall not apply to any City Employee involved in the 2020-2021 reduction in force, furlough or early retirement incentive offered by the city within 2020-2021.

- 26. Third parties.** Nothing in this Agreement is intended to confer any right or remedy on any person other than the City and Consultant, nor is anything in this Agreement intended to affect or discharge any obligation or liability of any third persons to the City or to Consultant, nor to give any such third person any right of action or subrogation against the City or Consultant.
- 27. No personal liability.** No Representative of the City is personally liable to Consultant for any obligation under the terms of this Agreement. No Consultant's individual employees, officers or directors shall be personally liable to City for any obligation under the terms of this Agreement.
- 28. Amendments.** This Agreement may be amended only by a written agreement of the City and Consultant that identifies itself as an amendment to this Agreement.
- 29. Notices.** All notices, demands, requests, consents, approvals or other instruments required or permitted by this Agreement must be in writing and must be executed by the party or an officer, agent or attorney of the party, and shall be deemed to have been effective as of the date of actual delivery, if delivered personally, by overnight courier, or by electronic mail, or as of the third day from and including the date of posting, if mailed by registered or certified mail, return receipt requested, with postage prepaid, addressed as set forth in the introductory clause or as otherwise instructed by a party in writing.

**In lieu of other direction, notice to the City shall be provided to:**

**City Manager  
419 Fulton Street  
Peoria, IL 61602**

**30. Authorized representative**

- 30.1. From time to time, Consultant shall designate an authorized representative who is responsible for communicating with the City on behalf of Consultant and who, unless applicable laws require action by the board of directors, members, or manager of Consultant, has the authority to make or grant requests, demands, approvals, consents, agreements, and other action required or described in this Agreement for and on behalf of Consultant.
- 30.2. The City Manager shall, from time to time, designate an authorized representative who is responsible for communicating with Consultant on behalf of the City. The City Manager, or his or her designee, has the authority to make or grant requests, demands, approvals, consents, agreements, and other action required or described in this Agreement for and on behalf of the City. Any amendment must be approved by the City Council.

### **31. Drafting conventions**

- 31.1. The words “include,” “includes,” and “including” are to be read as if they were followed by the phrase “without limitation.”
- 31.2. The headings in this Agreement are provided for convenience only and do not affect its meaning.
- 31.3. Any reference to an agreement means that agreement as amended or supplemented, subject to any restrictions on amendment contained in that agreement.
- 31.4. Unless specified otherwise, any reference to a statute, ordinance, or regulation means that statute, ordinance, or regulation as amended or supplemented from time to time and any corresponding provisions of successor statutes, ordinances, or regulations.
- 31.5. All references to a time of day are references to the time in Peoria, Illinois.
- 31.6. The words “party” and “parties” refer only to a party to this Agreement named in the introductory clause.
- 31.7. Each party has participated in negotiating and drafting this Agreement, so if any ambiguity or a question of intent or interpretation arises, this Agreement is to be construed as if the parties had drafted it jointly, as opposed to being constructed against a party because it was responsible for drafting one or more provisions of this Agreement.

**32. Severability.** If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, then the remaining provisions remain in full force and effect if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

**33. Surviving provisions.** Any term of this Agreement that, by its nature, extends after the end of the agreement, whether by expiration or termination, remains in effect until fulfilled. All duties to indemnify under this agreement survive the expiration or termination of this agreement and remain effective until the resolution or expiration of any actual or potential claims or losses subject to the duty to indemnify.

**34. Final agreement.** This Agreement constitutes the final agreement between the parties. It is the complete and exclusive expression of the parties’ agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. The provisions of this Agreement may not be explained, supplemented, or qualified through evidence of prior trade usage or a prior course of dealing. In entering into this Agreement, neither party has relied upon any statement, representation, warranty, or agreement of the other party except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement other than those expressly stated in this Agreement.

**35. Counterparts.** This Agreement may be executed in two or more counterparts, each of which together will be deemed an original, but all of which, together, constitute the same instrument. If any signature is delivered by facsimile or by email of a “.pdf” format data file, then that signature

creates a valid and binding obligation of that party with the same force and effect as if the facsimile or “.pdf” signature page were an original.

[Remainder of page intentionally blank]

**Signature Page**

The Parties are signing this Agreement as of the date set forth in the introductory clause.

CONSULTANT

DocuSigned by:  
*Alicia Hermann*  
By: \_\_\_\_\_  
[Name] Alicia Hermann  
[Title] Principal Member

CITY OF PEORIA

DocuSigned by:  
*Patrick Ulrich*  
By: \_\_\_\_\_  
Patrick Ulrich  
City Manager of the City of Peoria

Attest:

DocuSigned by:  
*Stephanie Tarr*  
By: \_\_\_\_\_  
Stephanie Tarr  
City Clerk

Approved as to form:

DocuSigned by:  
*Patrick Hayes*  
By: \_\_\_\_\_  
Patrick Hayes  
Corporation Counsel