



PROFESSIONAL SERVICES AGREEMENT

For

**Hamline Avenue and Shorewood Drive Improvement Project
Construction Engineering Services
PW-20-0103**

Mr. David Swearingen
Public Works Director/City Engineer
City of Arden Hills
1245 West Highway 96
Arden Hills, MN 55112

Jordan Horejsi, PE Project Manager
HR Green, Inc.
2550 University Avenue West
St. Paul, MN 55114
HR Green Project Number: 181582

5/3/2021



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THIS **AGREEMENT** is between (City of Arden Hills) (hereafter "CLIENT") and HR GREEN, INC. (hereafter "COMPANY").

1.0 Project Understanding

1.1 General Understanding

HR Green will provide Construction Engineering Service for the construction of the Hamline Avenue Crosswalk and Shorewood Drive Improvement Project.

2.0 Scope of Services

The CLIENT agrees to employ COMPANY to perform the following services:

HR Green will provide Construction Observation Services on a time and material, not-to-exceed contract amount basis. The hours provided for construction observation are based upon a contractor working schedule of 60 working days. HR Green assumes providing construction observation services for 6 hours per day for 10 working days for the Hamline Ave project and 6 hours per day for 8 working days for Shorewood Dr. Any additional work due to an extended schedule dictated by the contractor's performance or unanticipated work due to site conditions shall warrant a contract addendum.

The following is a breakdown of the various tasks associated with the construction observation which will be completed by HR Green, Inc.:

A. Start Up

HR Green will complete a preconstruction photos of the proposed construction area to document the existing conditions prior to the start of construction.

HR Green will ensure that the project details, construction timelines and any impacts that the project may create will be coordinated with the Client prior to the start of construction.

HR Green will mark, measure and document contract removal payment items prior to the contractor starting work.

The effort for marking removal extents for Hamline Avenue Crosswalk was included in the previous design contract and will be performed by Surveyor. HR Green anticipates Surveyor will be onsite for Shorewood Drive Improvements Project for approximately twenty (4) hours to complete the above noted coordination and construction preparation. A total of six (6) hours have been allotted to complete the project start up (2 hours for photos and 4 hours for removal markings at Shorewood Dr.)



B. Construction Observation

HR Green will be on-site to observe and verify that items being constructed and materials being utilized are in general conformance with the approved plans and specifications and the Minnesota Department of Transportation Standard Specifications for Construction.

HR Green will complete Inspector's Daily Reports (IDRs) and a daily diary, measure and document contract quantities, complete payment estimates, change orders, and weekly reports. HR Green will verify that all materials incorporated into this project are MnDOT approved and evidence of material inspection is in compliance with the Project Procedures Guide and Special Provisions of this contract. HR Green shall keep the Client informed as to the progress of construction.

HR Green anticipates that a Construction Technician will be onsite approximately sixty hours (100) hours during construction of the project. The previous contract included twenty (20) hours for observation for Hamline Ave and twelve (12) hours for Shorewood Dr, therefore the amendment includes forty (40) hours for Hamline Ave and twenty eight (28) hours for Shorewood Dr for a total of sixty eight (68) hours for construction observation

C. Meetings

HR Green will attend the preconstruction meeting with the contractor and subcontractors and one additional construction progress meetings. A total of four (4) hours have been allotted for the Project Manager (3 hours) and Construction Technician (1 hour) to attend the preconstruction meeting, prepare the agenda and complete the meeting minutes for the preconstruction meeting.

D. Administration/Coordination

This task will involve the oversight of the project by management, which will include the on-going review of the project execution, State Aid documentation, schedule and budget, contract file management, and general correspondence between HR Green, City of Arden Hills, the contractor, and subcontractors. HR Green has allotted eight (8) hours for the Project Manager and two (2) hours for administrative support for the project.

E. Project Close Out

HR Green anticipates approximately eleven (11) hours to complete the project closeout and final documentation for this project. This task includes the



preparation of final job records, completion of punchlist, final payment estimate and final change order.

F. Material Testing

Braun Engineering will provide the Quality Assurance Material Testing Services for this project. Quality Assurance testing for asphalt and concrete shall be completed in accordance with MnDOT State Aid requirements. This task includes six (6) hours has been allotted for coordinating with MnDOT Metro Inspection, the contractor, and Braun for testing.

Disclaimer

HR Green shall not supervise, direct or have any control over the contractor's work. HR Green shall not have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the contractor. Also, HR Green is not responsible for the contractor's safety precautions or programs in connection with this work. These rights and responsibilities are solely those of the contractor.

HR Green shall not be responsible for any acts or omissions of the contractor, subcontractor or any entity performing any portion or the work, or any agents or employees of any of them. HR Green does not guarantee the performance of the contractor and shall not be responsible for the contractor's failure to perform its work in accordance with the contract drawings and documents.

HR Green shall be responsible to notify the Client representative of any observed construction contract failures to perform the work in accordance with contract drawings and documents, commensurate with HR Green's knowledge as an engineering professional.

3.0 Items not included in Agreement/Supplemental Services

The following items are not included as part of this AGREEMENT:

- Construction Layout
- As -Built Construction Survey

Supplemental services not included in the AGREEMENT can be provided by COMPANY under separate agreement, if desired.

4.0 Services by Others

Quality Assurance Material Testing to be provided by Braun Engineering under this contract.



5.0 Professional Services Fee

5.1 Fees

The fee for services will be based on COMPANY standard hourly rates current at the time the AGREEMENT is signed.

5.2 Invoices

Invoices for COMPANY's services shall be submitted, on a monthly basis. Invoices for COMPANY's services will be submitted, on a monthly basis

5.3 Extra Services

Any service required but not included as part of this AGREEMENT shall be considered extra services. Extra services will be billed on a Time and Material basis with prior approval of the CLIENT.

5.4 Exclusion

This fee does not include attendance at any meetings or public hearings other than those specifically listed in the Scope of Services. These service items are considered extra and are billed separately on an hourly basis.

5.5 Payment

The CLIENT AGREES to pay COMPANY on the following basis:

Time and material basis with a Not to Exceed fee of \$24,714.

See attached Cost Estimate Table for a cost breakdown.



6.0 Terms and Conditions

The following Terms and Conditions are incorporated into this AGREEMENT and made a part of it.

6.1 Standard of Care

Services provided by COMPANY under this AGREEMENT will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing at the same time and in the same or similar locality.

6.2 Entire Agreement

This AGREEMENT and its attachments constitute the entire understanding between CLIENT and COMPANY relating to COMPANY's services. Any prior or contemporaneous agreements, promises, negotiations, or representations not expressly set forth herein are of no effect. Subsequent modifications or amendments to this AGREEMENT shall be in writing and signed by the parties to this AGREEMENT.

6.3 Time Limit and Commencement of Services

This AGREEMENT must be executed within ninety (90) days to be accepted under the terms set forth herein. The services will be commenced immediately upon receipt of this signed AGREEMENT.

6.4 Suspension of Services

If the COMPANY'S services are suspended for more than ninety (90) days, consecutive or in the aggregate, the COMPANY may terminate this AGREEMENT upon giving not less than five (5) calendar days' written notice to the CLIENT.

6.5 Books and Accounts

COMPANY will maintain books and accounts of payroll costs, travel, subsistence, field, and incidental expenses for a period of five (5) years. Said books and accounts will be available at all reasonable times for examination by CLIENT at the corporate office of COMPANY during that time.

6.6 Insurance

COMPANY will maintain insurance for claims under the Worker's Compensation Laws, and from General Liability and Automobile claims for bodily injury, death, or property damage, and Professional Liability insurance caused by the negligent performance by COMPANY's employees of the functions and services required under this AGREEMENT.

6.7 Waiver

COMPANY's waiver of any term, condition, or covenant or breach of any term, condition, or covenant, shall not constitute a waiver of any other term, condition, or covenant, or the breach thereof.

6.8 Severability

If any provision of this AGREEMENT is declared invalid, illegal, or incapable of being enforced by any Court of competent jurisdiction, all of the remaining provisions of this AGREEMENT shall nevertheless continue in full force and effect, and no provision shall be deemed dependent upon any other provision unless so expressed herein.

6.9 Successors and Assigns

All of the terms, conditions, and provisions hereof shall inure to the benefit of and are binding upon the parties hereto, and their respective successors and assigns, provided, however, that no assignment of this AGREEMENT shall be made without written consent of the parties to this AGREEMENT.

6.10 Third-Party Beneficiaries

Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of a third party against either the CLIENT or the COMPANY. The COMPANY's services under this AGREEMENT are being performed solely for the CLIENT's benefit, and no other party or entity shall have any claim against the COMPANY because of this AGREEMENT or the performance or nonperformance of services hereunder. The CLIENT and COMPANY agree to require a similar provision in all contracts with contractors, subcontractors, sub-consultants, vendors and other entities involved in this project to carry out the intent of this provision.



6.11 Governing Law and Jurisdiction

The CLIENT and the COMPANY agree that this AGREEMENT and any legal actions concerning its validity, interpretation and performance shall be governed by the laws of the State of Minnesota without regard to any conflict of law provisions, which may apply the laws of other jurisdictions.

It is further agreed that any legal action between the CLIENT and the COMPANY arising out of this AGREEMENT or the performance of the services shall be brought in a court of competent jurisdiction in the State of Illinois.

6.12 Attorney's Fees

If litigation arises relating to this AGREEMENT, the Court in such litigation shall award reasonable costs and expenses, including attorney fees, to the prevailing party.

6.13 Ownership of Instruments of Service

All reports, plans, specifications, field data, field notes, laboratory test data, calculations, estimates and other documents including all documents on electronic media prepared by COMPANY as instruments of service shall remain the property of COMPANY. COMPANY shall retain these records for a period of five (5) years following completion/submission of the records, during which period they will be made available to the CLIENT at all reasonable times.

6.14 Reuse of Documents

All project documents including, but not limited to, plans and specifications furnished by COMPANY under this project are intended for use on this project only. Any reuse, without specific written verification or adoption by COMPANY, shall be at the CLIENT's sole risk, and CLIENT shall defend, indemnify and hold harmless COMPANY from all claims, damages and expenses including attorneys' fees arising out of or resulting therefrom.

Under no circumstances shall delivery of electronic files for use by the CLIENT be deemed a sale by the COMPANY, and the COMPANY makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall the COMPANY be liable for indirect or consequential damages as a result of the CLIENT's use or reuse of the electronic files.

6.15 Failure to Abide by Design Documents or To Obtain Guidance

The CLIENT agrees that it would be unfair to hold COMPANY liable for problems that might occur should COMPANY'S plans or specifications not be followed, or for problems resulting from others' failure to obtain and/or follow COMPANY'S guidance with respect to any errors, omissions, inconsistencies, ambiguities or conflicts which are detected or alleged to exist in or as a consequence of implementing COMPANY'S plans, specifications or other instruments of service. Accordingly, the CLIENT waives any claim against COMPANY, and agrees to defend, indemnify and hold COMPANY harmless from any claim for injury or losses that results from failure to follow COMPANY'S plans or specifications.

6.16 Opinion of Probable Construction Cost

As part of the Deliverables, COMPANY may submit to the CLIENT an opinion of probable cost required to construct work recommended, designed, or specified by COMPANY, if required by CLIENT. COMPANY is not a construction cost estimator or construction contractor, nor should COMPANY'S rendering an opinion of probable construction costs be considered equivalent to the nature and extent of service a construction cost estimator or construction contractor would provide. This requires COMPANY to make a number of assumptions as to actual conditions that will be encountered on site; the specific decisions of other design professionals engaged; the means and methods of construction the contractor will employ; the cost and extent of labor, equipment and materials the contractor will employ; contractor's techniques in determining prices and market conditions at the time, and other factors over which COMPANY has no control. Given the assumptions which must be made, COMPANY cannot guarantee the accuracy of its opinions of cost, and in recognition of that fact, the CLIENT waives any claim against COMPANY relative to the accuracy of COMPANY'S opinion of probable construction cost.

6.17 Design Information in Electronic Form

Because electronic file information can be easily altered, corrupted, or modified by other parties, either intentionally or inadvertently, without notice or indication, COMPANY reserves the right to remove itself from its ownership and/or involvement in the material from each electronic medium not held in its possession. CLIENT

shall retain copies of the work performed by COMPANY in electronic form only for information and use by CLIENT for the specific purpose for which COMPANY was engaged. Said material shall not be used by CLIENT or transferred to any other party, for use in other projects, additions to this project, or any other purpose for which the material was not strictly intended by COMPANY without COMPANY's express written permission. Any unauthorized use or reuse or modifications of this material shall be at CLIENT'S sole risk. Furthermore, the CLIENT agrees to defend, indemnify, and hold COMPANY harmless from all claims, injuries, damages, losses, expenses, and attorneys' fees arising out of the modification or reuse of these materials.

The CLIENT recognizes that designs, plans, and data stored on electronic media including, but not limited to computer disk, magnetic tape, or files transferred via email, may be subject to undetectable alteration and/or uncontrollable deterioration. The CLIENT, therefore, agrees that COMPANY shall not be liable for the completeness or accuracy of any materials provided on electronic media after a 30-day inspection period, during which time COMPANY shall correct any errors detected by the CLIENT to complete the design in accordance with the intent of the contract and specifications. After 40 days, at the request of the CLIENT, COMPANY shall submit a final set of sealed drawings, and any additional services to be performed by COMPANY relative to the submitted electronic materials shall be subject to separate agreement. The CLIENT is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by the COMPANY and electronic files, the signed or sealed hard-copy construction documents shall govern.

6.18 Information Provided by Others

The CLIENT shall furnish, at the CLIENT's expense, all information, requirements, reports, data, surveys and instructions required by this AGREEMENT. The COMPANY may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. The COMPANY shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the CLIENT and/or the CLIENT's consultants and contractors.

COMPANY is not responsible for accuracy of any plans, surveys or information of any type including electronic media prepared by any other consultants, etc. provided to COMPANY for use in preparation of plans. The CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless the COMPANY from any damages, liabilities, or costs, including reasonable attorneys' fees and defense costs, arising out of or connected in any way with the services performed by other consultants engaged by the CLIENT.

COMPANY is not responsible for accuracy of topographic surveys provided by others. A field check of a topographic survey provided by others will not be done under this AGREEMENT unless indicated in the Scope of Services.

6.19 Force Majeure

The CLIENT agrees that the COMPANY is not responsible for damages arising directly or indirectly from any delays for causes beyond the COMPANY's control. CLIENT agrees to defend, indemnify, and hold COMPANY, its consultants, agents, and employees harmless from any and all liability, other than that caused by the negligent acts, errors, or omissions of COMPANY, arising out of or resulting from the same. For purposes of this AGREEMENT, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters or acts of God; fires, riots, war or other emergencies; disease epidemic or pandemic; failure of any government agency to act in a timely manner; failure of performance by the CLIENT or the CLIENT'S contractors or consultants; or discovery of any hazardous substances or differing site conditions. Severe weather disruptions include but are not limited to extensive rain, high winds, snow greater than two (2) inches and ice. In addition, if the delays resulting from any such causes increase the cost or time required by the COMPANY to perform its services in an orderly and efficient manner, the COMPANY shall be entitled to a reasonable adjustment in schedule and compensation.

6.20 Job Site Visits and Safety

Neither the professional activities of COMPANY, nor the presence of COMPANY'S employees and sub-consultants at a construction site, shall relieve the general contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. COMPANY and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions.



The CLIENT also agrees that the CLIENT, COMPANY and COMPANY'S consultants shall be indemnified and shall be made additional insureds on the general contractor's and all subcontractor's general liability policies on a primary and non-contributory basis.

6.21 Hazardous Materials

CLIENT hereby understands and agrees that COMPANY has not created nor contributed to the creation or existence of any or all types of hazardous or toxic wastes, materials, chemical compounds, or substances, or any other type of environmental hazard or pollution, whether latent or patent, at CLIENT's premises, or in connection with or related to this project with respect to which COMPANY has been retained to provide professional services. The compensation to be paid COMPANY for said professional services is in no way commensurate with, and has not been calculated with reference to, the potential risk of injury or loss which may be caused by the exposure of persons or property to such substances or conditions.

It is acknowledged by both parties that COMPANY'S Scope of Services does not include any services related to asbestos or hazardous or toxic materials. In the event COMPANY or any other party encounters asbestos or hazardous or toxic materials at the job site, or should it become known in any way that such materials may be present at the job site or any adjacent areas that may affect the performance of COMPANY'S services, COMPANY may, at its option and without liability for consequential or any other damages, suspend performance of services on the project until the CLIENT retains appropriate specialist consultant(s) or contractor(s) to identify, abate and/or remove the asbestos or hazardous or toxic materials, and warrants that the job site is in full compliance with applicable laws and regulations.

Nothing contained within this AGREEMENT shall be construed or interpreted as requiring COMPANY to assume the status of a generator, storer, transporter, treater, or disposal facility as those terms appear within the Resource Conservation and Recovery Act, 42 U.S.C.A., §6901 et seq., as amended, or within any State statute governing the generation, treatment, storage, and disposal of waste.

6.22 Limitation of Liability; Third Party Liability

Unless otherwise specifically provided for in this Agreement, in no event shall the parties be liable for special, incidental or consequential damages (including without limitation loss of use, time or data, inconvenience, commercial loss, lost profits or savings) to the full extent such may be disclaimed by law. Neither this Agreement nor any subcontract is intended to give rise to recognize any third-party beneficiary to this Agreement.

6.26 Construction Observation

COMPANY shall visit the project at appropriate intervals (as described in the scope of services) during construction to become generally familiar with the progress and quality of the contractors' work and to determine if the work is proceeding in general accordance with the Contract Documents. The CLIENT has not retained COMPANY to make detailed inspections or to provide exhaustive or continuous project review and observation services. COMPANY does not guarantee the performance of, and shall have no responsibility for, the acts or omissions of any contractor, subcontractor, supplier or any other entity furnishing materials or performing any work on the project.

If the CLIENT desires more extensive project observation or full-time project representation, the CLIENT shall request in writing such services be provided by COMPANY as Additional Services in accordance with the terms of the AGREEMENT.



This AGREEMENT is approved and accepted by the CLIENT and COMPANY upon both parties signing and dating the AGREEMENT. Services will not begin until COMPANY receives a signed agreement. COMPANY's services shall be limited to those expressly set forth in this AGREEMENT and COMPANY shall have no other obligations or responsibilities for the Project except as agreed to in writing. The effective date of the AGREEMENT shall be the last date entered below.

Sincerely,

HR GREEN, INC.

Jordan Horejsi, P.E.

Approved by:

Printed/Typed Name: David Dougherty, PE

Title: President Transportation Date: May 3, 2021

City of Arden Hills

Accepted by: _____

Printed/Typed Name: David Grant

Title: City of Arden Hills Mayor Date: May 3, 2021



HR Green COST PROPOSAL

City of Arden Hills

Hamline Avenue and Shorewood Drive Improvement Project

May 3, 2021

Total Project Summary

Design and Construction Contract and Amendments	Total Estimated Hours	Total Estimated Cost
Design Contract - 2/25/2019	328	\$ 40,977
Construction Services - 2/25/2019	57	\$ 7,234
Amendment for Design - 2/21/2020	39	\$ 4,785
Proposed Amendment for Construction Services	133	\$ 17,536
PROJECT TOTAL	557	\$ 70,532

Hours by HR Green Team Role					
Task	Project Manager	Project Engineer/ Sr. Tech.	Staff Engineer/ Survey	Admin.	TOTAL
Original Design Contract ^②		4	53		57
Hourly Rate	\$245	\$158	\$116	\$94	
Subtotal Labor by Role		\$632	\$6,174		\$6,806
Direct Expenses (Mileage, Equipment)					\$428
Subtotal Cost					\$7,234
Project Management ^①		18		6	24
Construction Observation (Task B)			68		68
Construction Administration (Task A, C - F)	2	11	28		41
Hourly Rate	\$245	\$158	\$122	\$94	
Subtotal Labor by Role	\$490	\$4,582	\$11,712	\$564	\$17,348
Direct Expenses (Mileage, Equipment)					\$188
Subtotal Cost					\$17,536
Total Hours	2	33	149	6	190
Hourly Rate	\$245	\$158	\$120	\$94	
Total Labor by Role	\$490	\$5,214	\$17,829	\$564	
Total Labor - Project					\$24,097
Direct Expenses (Mileage, Equipment)					\$616
Project Total Cost					\$24,714

① Includes 8 hours for coordination with MnDOT State Aid to finalize design plan set and receive signatures from State Aid and Ramsey County

② Original Construction Services contract for Hamline Ave and Shorewood Dr