



Request for Proposals

The City of Bloomington is seeking Proposals from qualified Consultants to conduct a Preliminary Assessment and a Feasibility Study for the Airport South District Energy Study in the City of Bloomington. Since this is an open call for proposals, Consultants who did not directly receive this Request for Proposals (RFP) directly may submit a proposal or be part of a Consultant team. This effort will be known as the:

Airport South District Energy Study City Project Number: 2010-205

This RFP describes the services involved and the process for selecting a Consultant for this contract. Contact Schane Rudlang at 952-563-4861 or srudlang@ci.bloomington.mn.us with any questions regarding your submittal. Interested Consultants shall submit one unbound hardcopy and five bound hardcopies of their proposal no later than:

10:00 A.M., Friday, January 8, 2010 (CST).

All proposals should be delivered to Shelly Pederson, City Engineer, City of Bloomington, 1700 West 98th St, Bloomington, MN 55431. All proposals shall be clearly marked **“PROPOSAL FOR: Airport South District Energy Study, City Project Number 2010-205.”**

1. Introduction

The Airport South District is the area of Bloomington, MN, bounded by TH 77, the Minnesota River, I 494 and the Minneapolis-St. Paul International Airport (MSP). Major assets of the area include the Mall of America (MOA), Minnesota Valley National Wildlife Refuge, Hiawatha Light Rail Transit (LRT) line and proximity to the Minneapolis-St. Paul International Airport

The Airport South District is projected to account for two-thirds of Bloomington’s future development potential. In 2008, the City initiated a district planning study of this area known as the Airport South District Plan. It is the City’s intent to transform this area into an intensive mixed use area characterized by transit oriented development opportunities. Planned development densities in Airport South will approach those of a typical downtown. Significant office, hotel and retail development growth is projected. Although, the timeframe for the Airport South District Plan is 2030, development projections have been extended out to 2050. A summary of projected growth is provided in the attached Table 1. It should be noted that the development projections are estimates and can be affected by many factors.

The Airport South District Plan is scheduled to be complete in 2010. The main items that relate to District Energy have been developed and will be shared with the Consultant during the kick-off meeting. More information about the Airport South District plan is available on the City's website at www.ci.bloomington.mn.us keywords "Airport South District Plan."

For the purposes of this RFP, District Energy will be used as a term that encompasses all energy strategies that serve multiple users, including cogeneration, district heating, and district cooling.

District Energy has the potential to play an important role in building performance, energy availability, power reliability, and managing operational costs that are factors in future growth and development. District Energy would support the sustainability goals and objectives in the Airport South District Plan. The City's intent is to study District Energy as a component of a comprehensive energy strategy or initiative for the Airport South District. A project could involve the Metropolitan Airports Commission (MAC), as an implementation partner. District Energy does not currently exist in Airport South.

2. Scope of Services

The work by the selected Consultant shall be divided into two phases: a Preliminary Assessment phase and a full, Feasibility Study phase. The results of the Preliminary Assessment will determine if the Feasibility Study phase is undertaken.

2.1. Preliminary Assessment (PA)

The Consultant shall conduct a Preliminary Assessment. The intent of the Preliminary Assessment is to:

- (1) perform a screening analysis of the various operational and institutional District Energy alternatives,
- (2) establish a broad level of comfort that District Energy can be cost-effective and feasible,
- (3) identify any 'fatal flaws' or impediments that have a high probability to derail the development of a District Energy alternative,
- (4) conduct a preliminary economic assessment sufficient to compare District Energy options to conventional (non-District Energy) approaches, and
- (5) allow the City (and potentially MAC) to decide if there is a District Energy option or approach that warrants further analysis (the Feasibility Study phase).

This Preliminary Assessment will conclude with a report and presentation to the City Council and Port Authority, which will detail a recommended alternative. The City Council and Port Authority will evaluate the information presented in the Preliminary Assessment and decide whether the Feasibility Study should be undertaken. If the MAC becomes a partner or participant in the City-approved recommended alternative, the Consultant shall make similar presentations to the MAC's policy boards for their consideration and approval.

It is estimated that the Preliminary Assessment stage would use approximately 30% of the total project budget. Proposals do not need to adhere strictly to this 30% guideline.

At a minimum, the Preliminary Assessment report and presentation shall cover the items discussed in Section 4 of this RFP noted with a "PA" below the heading while focusing on the Key Guiding Principles listed in Section 3.

2.2. Feasibility Study (FS)

Assuming the Preliminary Assessment does not identify impediments or fatal flaws, the City Council and Port Authority may approve proceeding with a Feasibility Study phase. The Feasibility Study will expand on the items discussed in the Preliminary Assessment and include the items noted with an “FS” below the heading in Section 4 of this Request for Proposals. The Feasibility Study will conclude with a report and presentation to the City Council and Port Authority (and potentially the MAC policy boards). Final recommendations from the Feasibility Study should guide the City to the implementation of a District Energy alternative. The Feasibility Study will consume the remaining project budget (approximately 70%).

3. Key Guiding Principles

The key principles of a potential District Energy system for Airport South are listed below. These key principles should be highlighted in the Consultant’s proposal and provide a focus for the analysis.

3.1. Sustainability

The Airport South District Plan is organized around sustainability. Sustainability has been defined as the process of meeting the needs of the present without compromising the ability of future generations to meet their needs. As a component of a sustainable energy portfolio, a District Energy system is an alternative that should:

- facilitate energy conservation and efficiency,
- link energy conservation and efficiency efforts to long-term economic development goals and objectives,
- allow for fuel flexibility including use of renewable sources such as biomass and solar thermal,
- stabilize and reduce fuel and equipment costs, and
- result in the reduction of greenhouse gas emissions.

3.2. Adaptability / Flexibility

The development process is complex and unpredictable. Due to economic factors, it is difficult to determine the rate and location of growth in the area. An energy strategy or initiative must be adaptive to when and where growth occurs. It may also be necessary to integrate various forms of energy systems to respond to new development opportunities and energy technologies whenever they occur. An important consideration is how a District Energy system can function in this capacity in its ability to be fuel flexible, adaptable to future technologies, and accommodate variable rates of growth.

3.3. Environmental Benefits

All aspects of sustainability have a relationship with the use of energy including how it is generated and how it is used. The environmental advantages of District Energy need to be identified. A reduction in fossil fuel use combined with improved efficiencies will result in reductions in carbon dioxide, sulfur dioxide, volatile organic compounds and particulate matter emissions.

District Energy systems based on naturally replenished fuels may be a factor in the transition to renewable energy use in Airport South. Additional environmental benefits include a reduction in stack pollution, refrigerant emissions, and elimination of architectural screening of cooling towers and/or other appurtenant rooftop equipment.

3.4. Economic Benefits

A comprehensive economic analysis of District Energy is required to determine whether or not to proceed with the development and implementation of a District Energy system. Potential increases in revenue-generating spaces combined with fuel cost savings, reduced energy use per square foot and price stabilization have been identified as benefits to building owners and tenants. It is important that District Energy be a positive economic factor to facilitate and promote development in Airport South rather than an impediment or roadblock to development. It is not expected that building owners will be required to connect to District Energy, but may consider District Energy as an option. Economic benefits need to be considered on both a short-term and long-term basis for existing and new development.

4. Study Requirements

Some items are to be covered in both the Preliminary Assessment and the Feasibility Study (as noted below the item heading). Items that span across both phases of the study should be covered concisely in the Preliminary Assessment and in greater detail in the Feasibility Study. Proposals should discuss the level of emphasis each topic would receive.

Consultants may add items to their proposal, beyond those listed below, that would better align with the key guiding principles and assist in achieving the development of a District Energy alternative.

4.1. System Alternatives (PA)

System alternatives should be developed as part of a technology assessment during the Preliminary Assessment stage of the project. The assessment would include analyses on:

- energy supplies and pricing (for these systems at a minimum)
 - traditional fossil fuels
 - solar thermal
 - gasification
 - bio-energy
- heating and cooling technologies,
- combined heat and power, and
- distribution network elements.

Innovative approaches, for example, that consider utilization of waste heat or energy that is generated by manufacturing operations, building characteristics, or other thermal sources are encouraged.

4.2. Level of City Involvement
(PA)

City staff has presented a District Energy overview to the City Council and Port Authority. They are interested in the various ways the City can be involved and/or how District Energy could be developed by the private sector. The Consultant shall present a range of options and examples to the City in the Preliminary Assessment phase. These options should highlight financing, governance, ownership, liability, and operations. The City Council and Port Authority will provide feedback to staff and the Consultant. Assuming the study proceeds to the Feasibility Study phase, this feedback will assist and act as a guide in formulating the final recommendations of the study.

4.3. Metropolitan Airports Commission (MAC)
(PA and FS)

The MAC has expressed interest in partnering or participating with the City on a District Energy system. What is unknown are the parameters that could make this a symbiotic project. The Consultant shall meet with the MAC and explore options whereby the MAC and the City could partner or participate on a joint project. One option that the Consultant shall study is where the MAC uses the electrical power generated from a cogeneration facility and the City uses the waste heat for Airport South.

4.4. Mall of America (MOA) and Bloomington Central Station (BCS)
(PA and FS)

The MOA and BCS are two anchor developments in the district. The MOA has submitted draft expansion plans to the City showing a cogeneration facility in their expansion plans. BCS is an transit oriented development with future office, residential, and retail phases. Intense developments, such as these, may be compatible with a District Energy alternative for Airport South.

Both projects have received public financing for infrastructure improvements for redevelopment. The Consultant shall conduct meetings with these two key developments in Airport South to understand the energy options and opportunities that may exist.

4.5. Local Utility Providers
(PA and FS)

XCEL Energy is the local electrical power provider. Centerpoint Energy provides natural gas to the area. The Consultant shall explore opportunities with the local utilities and identify potential arrangements and possible impediments related to these existing utility providers. The City also has a number of utility franchise agreements that need to be taken into consideration.

4.6. Regulatory and Legislative
(PA and FS)

New energy legislation is being developed at all levels of government. The Consultant shall summarize existing and major pending federal, state, and local legislation and regulations related to District Energy, and provide an assessment of future benefits or challenges in the development of a District Energy alternative. The assessment shall include a review of Public Utilities Commission and Suburban Rate Authority rules and regulations that could affect the implementation of a District Energy alternative.

Since the City may have an opportunity to recommend changes to energy legislation, the Consultant shall summarize and recommend legislative modifications that would benefit the development of District Energy.

Since any District Energy facility located in or around Airport South will be in close proximity to the MSP airport, an FAA airspace review will be required to identify building height limitations and assess any smoke or steam plume issues.

4.7. Liability and Risk Assessment
(PA and FS)

The Consultant shall outline the potential financial, legal, and operational liability issues that may apply to the City or its project partners.

4.8. Energy Demand Forecasts
(PA and FS)

The City's work on the Airport South District Plan provides preliminary information on the estimated rate and intensity of development. The Consultant shall advise the City on the development density needed for a particular District Energy alternative to be feasible and the sensitivity to the rate or phasing of development that could assist or impair District Energy's success. The energy demand forecast shall estimate thermal loads (both heating and cooling) and electricity generation. Projected electricity generation capacity shall be compared to the electrical needs of the MAC, as a potential participant or partner in the development of a District Energy alternative.

4.9. Site Location Options
(PA and FS)

Siting District Energy facilities will depend on the technological approaches being considered (ie central plant, distributed generation, or combination). The Preliminary Assessment shall present options for siting District Energy infrastructure. The Feasibility Study report shall detail a phased implementation plan and map locations for District Energy infrastructure including plant locations and the distribution network.

4.10. Economic and Financial Analysis
(PA and FS)

An economic analysis is required for the City Council to decide on how much time and effort is used in exploring, or implementing District Energy. The Feasibility Study analysis should include, at a minimum:

- estimated capital costs for District Energy plants and infrastructure,
- economics from a building developer's perspective (including, deferred capital costs of HVAC equipment and leasable space savings),
- sensitivity factors,
- pro forma balance sheets,
- projected rate of return,
- projected energy rate to customers,
- carbon credits considerations,

- electricity sales revenue (or how a partnership with MAC could be done), and
- financing options including the need for public financing.

4.11. Environmental Impact Analysis

(PA and FS)

The Consultant shall report on environmental concerns and benefits of District Energy. In the Feasibility Study phase, the Consultant shall comprehensively investigate potential environmental concerns. However, the Consultant will not be required to do an EAW or EIS.

4.12. Interview / Survey of Current District Energy Users in Minneapolis and St Paul

(FS)

Minneapolis and St Paul have operational District Energy systems. Feedback from various developers and building managers offers a wide range of opinions about District Energy. The Consultant should survey existing users to find what is working well and what can be improved upon. The Consultant should also provide information on the use and development of District Energy systems in other cities.

4.13. Public Involvement

(FS)

The Consultant shall hold one public open house in the Feasibility Study phase to gather comments from City property owners. Airport South property owners will receive an invitation, although the meeting will be advertised city-wide. Invitations to the open house will be created and distributed by the City. The Consultant shall produce and present informational story boards and an electronic presentation.

4.14. Leadership in Energy and Environmental Design (LEED)

(FS)

LEED is becoming a significant standard in sustainable development and building construction. It is probable that LEED or some other similar system will become the normative measure for future development and buildings. It is an objective of the Airport South District Plan to provide a framework for sustainable development and growth. The analysis should identify how a District Energy alternative could satisfy LEED-type measures to optimize energy efficiency and provide the transition to renewable energy resources.

4.15. Implementation

(FS)

The Feasibility Study shall detail the next steps needed to implement District Energy in Airport South.

5. Deliverables

The selected Consultant shall provide 18 hard copies and one electronic PDF of the Preliminary Assessment and Feasibility Study (assuming the Feasibility Study is undertaken).

6. Energy Efficiency and Conservation Block Grant (EECBG)

This study is funded with federal money through the EECBG program as part of the American Recovery and Reinvestment Act of 2009. Transparency of the use of these funds is monitored by the Federal Government. Consultants will be subject to all EECBG conditions and reporting requirements.

7. Budget

The maximum budget for both phases of this study is \$250,000. Consultants may propose to complete the work for less than \$250,000.

8. Project Schedule

November 25, 2009

- RFP issued through the City website

December 16, 2009 (no later than 4:00 pm)

- Consultants may ask questions about the RFP
- The City will not formally answer questions after this time.

December 23, 2009 (4:00 pm)

- Substantive Consultant questions will be posted on the City website

January 8, 2010 (10:00 am)

- Consultant Proposals due

January 22, 2010

- Consultant interviews complete – if requested by City

January 27, 2010

- Consultant recommendation prepared for City Council, verbal notification of selected Consultant
- Consultant signs agreement

February 1, 2010

- Award contract to Consultant at City Council meeting

February 15, 2010

- Kick-off meeting and collection of data from Bloomington

June 2010

- Present the Preliminary Assessment to City Council and Port Authority

December 2010 - January, 2011

- Present the Feasibility Study to City Council and Port Authority

9. City Participation and Responsibilities

At the beginning of the Preliminary Assessment, the City of Bloomington will provide aerial maps, GIS data, existing development plan data, existing infrastructure as-builts and other available information as requested. City staff will not produce any final work products for the Consultant.

The MAC will supply information on their electrical load and existing infrastructure as-builts pertinent to the potential connectivity of District Energy to MAC facilities.

Schane Rudlang will be the Project Manager and Bob Sharlin will be the Principle Project Planner. A number of other City and MAC staff will be involved during the study.

10. Meetings

The following is a list of the minimum meetings that the Consultant will be required to attend. Additional meetings should be anticipated.

Preliminary Assessment Phase

- Kick-off meeting
- Key partners, participants, or stakeholders
 - MOA, BCS, MAC (may require separate meetings)
- City Council
- Port Authority
- MAC policy boards (potentially)

Feasibility Study Phase

- Key partners, participants, or stakeholders
 - MOA, BCS, MAC (may require separate meetings)
- Open House (see Public Involvement above)
- City Council
- Port Authority
- MAC policy boards (potentially)
- Monthly progress meetings or conference calls with City staff

11. General Requirements for Proposals

The proposals shall include the following information at a minimum:

- A summary of the key elements of the proposal and an outline of why the firm should be selected.
- Consideration will be given to concise proposals and those that have shown innovative approaches.
- Describe your understanding of the project and identify your approach to fulfilling the scope of services and deliverables.
- Identify the personnel that will be assigned to the project and describe their qualifications. Include identification of the project manager.
- Identify similar projects your firm has completed and provide a reference for each. Include date the work was performed and identify key staff that worked on the project.
- Outline a project schedule, including major milestones, interim deliverables, Council, Port Authority, and MAC meetings and date of final product delivery.
- Provide a Project Budget including hours by staff type and billing rates, organized by major work plan categories and divided by phase.
- Split the project cost into the two distinct phases (the Preliminary Assessment and the Feasibility Study) to establish two Not to Exceed values to complete the work described.

(Note: Before the execution of a contract to hire the Consultant, the City and the Consultant may modify the work tasks in the proposal and the amount of work to be completed in each phase to determine a Not to Exceed amount for the Preliminary Assessment phase. The Consultant shall not proceed with any activities detailed under the Feasibility Study phase until after the appropriate policy boards have formally acted to undertake the Feasibility Study phase and the City has given written notice to the Consultant to proceed with work on the Feasibility Study phase. Based on the results of the Preliminary Assessment phase, the City and the Consultant may collectively modify the work tasks in the Feasibility Study phase. But, the Not to Exceed amount for the total project shall remain as the upper limit for expenditures on the project.)

- The Project Budget shall reflect all costs. Costs for significant project components should be identified individually.
- Outline any proposal alternative or improvement to the scope of services, deliverables, or schedule and quantify any benefit to the City.
- The proposal shall be no more than 15 pages. Full resumes and pre-printed materials may be included in the appendix and will not count toward the 15 pages, but may not be reviewed.

12. Evaluation Criteria

Only proposals received by the due date and time will be scored. Representatives from Bloomington's Public Works Department, Bloomington's Community Development Department, and the MAC will score the proposals based on the following criteria:

Project Cost to Value (20%):	Consultant fees for proposed work compared to the value received by the City.
Project Personnel (25%):	The assignment of qualified and experienced staff who have directly relevant project experience and have demonstrated an ability to work together as a team on similar projects.
Project Understanding (40%):	The firm's understanding of the project as demonstrated in the summary and detail of the proposed project schedule as well as in the documentation of having worked on similar projects.
Project Schedule (15%):	The firm's ability to identify critical path items and undertake the project in a timely, orderly, and thoughtful manner.

The firm submitting the selected proposal will be required to sign an agreement with the City of Bloomington based on their proposal using the attached format which is provided for information and advance coordination. All parties who submit proposals will be notified by mail of the City's decision regarding selection. **All work will be awarded to one firm who may employ sub-consultants.** The City reserves the right to not award the project to any Consultant if that is determined to be in the best interest of the City of Bloomington.

No reimbursement will be made by the City of Bloomington for any cost incurred prior to a formal Notice to Proceed, should an award of contract result from this solicitation. This Request for Proposal does not

obligate the City to award a contract or complete the project. The City reserves the right to cancel the solicitation if it is considered to be in the best interest of the City.

13. Disposition of Responses

All materials submitted in response to this RFP will become the property of the City and will become public record after the evaluation process is completed and an award decision made. If the Consultant submits information in response to this RFP that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minnesota Statutes 13.37, the Consultant must:

- Clearly mark all trade secret materials in its response at the time the response is submitted; and
- Include a statement with its response justifying the trade secret designation for each item and defend any action seeking release of the materials it believes to be a trade secret, and indemnify and hold harmless the City, its agents and employees, from any judgments or damages awarded against the City in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the City's award of a contract. In submitting a response to this RFP, the Consultant agrees that this indemnification survives as long as the trade secret materials are in possession of the City. The City is required to keep all the basic documents related to its contracts, including responses to Requests for Proposals for a minimum of seven (7) years.

The City will not consider the prices submitted by the Consultant to be proprietary or trade secret materials.

Responses to this RFP will not be open for public review until the City decides to pursue a contract and that contract is awarded.

14. Other

The Consultant is reminded to notice the insurance certificate requirements listed in the attached agreement.

Airport South, Bloomington, MN - Development Projections

Table 1

	Office (million sq. ft.)	Retail (million sq. ft.)	Hotel (rooms)	Hotel (million sq. ft.)	Residential (dwellings)	Residential (million sq. ft.)
Existing	2.3	4.6	2,884	2.2	1,172	1.3
2010 to 2020	1.3	1.8	1,415	1.1	990	1.1
2020 to 2030	1.1	0.2	577	0.4	800	0.9
2030 to 2040	1.4	0.1	840	0.6	696	0.8
2040 to 2050	1.6	1.4	500	0.4	450	0.5
2050 Total	7.7	8.1	6,216	4.7	4,108	4.5
% Change	235%	78%	116%		251%	

**AGREEMENT BETWEEN THE CITY OF BLOOMINGTON
AND “CONSULTANT”**

THIS AGREEMENT is made this ____ day of _____, 2008, by and between the City of Bloomington, a Minnesota municipal corporation located at 1800 West Old Shakopee Road, Bloomington, Minnesota 55431 (hereinafter referred to as the “City”), and _____ located at _____ (hereinafter referred to as the “Consultant”).

WITNESSETH

WHEREAS, the City has a need for a Consultant on the _____ Project (hereinafter referred to as the “Project”).

WHEREAS, the Consultant is a (engineering/consulting) firm and it represents that it has the professional expertise and capabilities to perform it’s duties on this Project; and

NOW, THEREFORE, in consideration of the terms and conditions expressed herein, the parties agree as follows:

I. TERM OF AGREEMENT

The term of this Agreement shall commence on the date an executed Agreement is received by the Consultant and expire upon completion of all the terms and conditions of this Agreement, subject to termination as provided in Subdivision V.

II. DUTIES OF CONSULTANT

A. The Consultant agrees to provide the services in accordance with the Consultant’s Proposal which is attached hereto and incorporated by reference herein as

(Exhibit A). All work will be performed consistent with the guidelines set forth in the Proposal.

B. The Consultant shall provide the above-mentioned services on a lump sum, not to exceed fee basis per the attached fee schedule located in Exhibit A. The total amount of work authorized by this Agreement including reimbursable expenses shall not exceed \$ _____ without written authorization from the City.

C. The Consultant shall defend, indemnify and hold harmless the City of Bloomington, its officials, employees and agents, from any and all claims, causes of action, lawsuits, damages, losses, or expenses, including attorney fees, arising out of or resulting from the Consultant (including its officials, agents or employees) performance of the duties required under this Agreement, provided that any such claim, damages, loss or expense is attributable to bodily injury, sickness, diseases or death or to injury to or destruction of property including the loss of use resulting therefrom and is caused in whole or in part by any negligent act or omission or willful misconduct of Consultant.

D. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting the Consultant staff as the agents, representatives or employees of the City for any purpose in any manner whatsoever. The Consultant and its staff are to be and shall remain an independent Consultant with respect to all services performed under this Agreement. The Consultant represents that it has, or will secure at its own expense, all personnel required in performing services under this Agreement. Any and all personnel of the Consultant or other persons, while engaged in the performance of any work or services required by the Consultant under this Agreement

shall not be considered employees of the City, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of said personnel or other persons while so engaged, and any and all claims whatsoever on behalf of any such person or personnel arising out of employment or alleged employment including, without limitation, claims of discrimination against the Consultant, its officers, agents, Consultant or employees shall in no way be the responsibility of the City; and the Consultant shall defend, indemnify and hold the City, its officers, agents and employees harmless from any and all such claims regardless of any determination of any pertinent tribunal, agency, board, commission or court. Such personnel or other persons shall not be required nor be entitled to any compensation, rights or benefits of any kind whatsoever from the City, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Unemployment Compensation, disability, severance pay and PERA.

E. During the performance of services, the Consultant shall maintain the following minimum insurance coverage:

Bodily injury in the amount of at least \$1,500,000.00 per individual and \$1,500,000.00 per occurrence for injuries or death arising out of each occurrence. Property damage liability in the amount of \$1,500,000.00 per occurrence.

\$500,000.00 per individual and \$1,500,000.00 per occurrence for any injuries, including death, arising out of each occurrence and property damage coverage of \$1,500,000.00 for each occurrence.

The Consultant shall carry Workers' Compensation Insurance as required by Minnesota Statute, Section 176.181, subdivision 2.

The Consultant agrees to maintain professional liability insurance in the amount of \$1,000,000 annual aggregate during the term of this Agreement.

Certificates of insurance must be filed with the City and shall include a provision that states the insurance company shall give the City at least thirty (30) days written notice prior to cancellation, non-renewal or any material change in the policy. The City shall be named as an additional insured on the general liability insurance policy.

F. The books, records, documents, and accounting procedures of the Consultant, relevant to this Agreement, are subject to examination by the City, and either the legislative or state auditor as appropriate, pursuant to Minnesota Statutes, Section 16C.05, Subdivision 5.

G. The parties agree to comply with all applicable local, state and federal laws, rules and regulations in the performance of the duties of this Agreement in effect at the time of the Agreement.

H. The City and Consultant agree to submit all claims, disputes and other matters in question between the parties arising out of or relating to this Agreement, to mediation. The mediation shall be conducted through the Mediation Center, 1536 Hewitt Avenue, St. Paul, Minnesota. The parties hereto shall decide whether mediation shall be binding or non-binding. If the parties cannot reach agreement, mediation shall be non-binding. In the event mediation is unsuccessful, either party may exercise its legal or

equitable remedies and may commence such action prior to the expiration of the applicable statute of limitations.

I. The Consultant agrees to comply with the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973 and not discriminate on the basis of disability in the admission or access to, or treatment of employment in its services, programs or activities. The Consultant agrees to hold harmless and indemnify the City from costs, including but not limited to damages, attorney's fees and staff time, in any action or proceeding brought alleging a violation of ADA and/or Section 504 caused by the Consultant. Upon request, accommodation will be provided to allow individuals with disabilities to participate in all services, programs and activities. The City has designated coordinators to facilitate compliance with the Americans with Disabilities Act of 1990, as required by Section 35.107 of the U.S. Department of Justice regulations, and to coordinate compliance with Section 504 of the Rehabilitation Act of 1973, as mandated by Section 8.53 of the U.S. Department of Housing and Urban Development regulations.

J. The Consultant agrees that the City will have the right to use, reproduce, and modify, as it desires any data, reports, analyses, and materials which are collected or developed by the Consultant as a result of this Agreement. Any reuse shall be at the City's sole risk and the City shall defend, indemnify, and hold harmless Consultant from any and all claims arising therefrom.

K. Consultant shall use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of its profession practicing in the same locality.

L. Any delays in or failure of performance by City or Consultant, other than payment of money, shall not constitute default hereunder if and to the extent such delays or failures of performance are caused by occurrences beyond the control of City or Consultant, as the case may be, including but not limited to: act of war; rebellion or sabotage or damage resulting therefrom; fires, floods, explosion, accidents; or any causes, whether or not of the same class of kind as those specifically above named, which are not within the control of City or Consultant, respectively, and which by the exercise of reasonable diligence, City or Consultant are unable to prevent.

M. Consultant shall retain its rights in its standard drawing details, designs, specifications, databases, computer software and any other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the services shall remain the property of the Consultant. Consultant has no objection to the City reusing the drawings and documents in its possession from the Consultant with the limitations specified in Paragraph J of this Agreement.

N. Since the Consultant has no control over the cost of labor, materials, or equipment furnished by others, or over the resources provided by others to meet project schedules, Consultant's opinion of probable costs and of project schedules shall be made on the basis of experience and qualifications as a professional engineering consultant. Consultant does not guarantee that the quotes, bids, or actual costs will not vary from Consultant cost estimates or that actual schedules will not vary from the Consultant's projected schedules.

O. The Consultant agrees, as a condition of being awarded this Contract, to require each of its agents, officers and employees to abide by the City of Bloomington's

policies prohibiting sexual harassment, firearms and smoking, as well as all other reasonable work rules, safety rules or policies regulating the conduct of persons on City property at all times while performing duties pursuant to this Contract. The Consultant agrees and understands that a violation of any of these policies or rules constitutes a breach of the Contract and sufficient grounds for immediate termination of the Contract by the City.

III. DUTIES OF THE CITY

The City agrees to pay the Consultant for the Consultant's services on a lump sum, not to exceed fee cost basis per the attached schedule Exhibit A. The total amount of work authorized by this Agreement shall not exceed \$_____ without written authorization from the City.

The City shall pay the Consultant within thirty (30) days of receiving the Consultant's monthly invoices outlining the costs and expenses of the Consultant, with a final payment due at the completion of the Project and after the City has accepted the Consultant's services.

IV. MISCELLANEOUS

This Agreement represents the entire Agreement between the Consultant and the City and supersedes and cancels any and all prior agreements or quotes, written or oral, between the parties relating to the subject matter hereof; and amendments, addenda, alterations, or modifications to the terms and conditions of this Agreement shall be in writing and signed by both parties.

V. TERMINATION

This Agreement may be terminated by the City with or without cause at any time upon written notice to the Consultant. In the event that such termination should take place at a time other than the completion of the work to be performed under this Agreement, the Consultant shall be paid for the work performed to the date of termination.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF BLOOMINGTON

DATED: _____

By: _____

City Manager

Reviewed and approved by the City Attorney.

City Attorney

(CONSULTANT)

DATED: _____

By: _____