

RESOLUTION 2023-59

**RESOLUTION APPROVING AN ENGINEERING SERVICES AGREEMENT
WITH VEENSTRA & KIMM, INC. FOR CONSTRUCTION ADMINISTRATION
SERVICES FOR THE EASTSIDE WATER MAIN REPLACEMENT PROJECT
IN AN AMOUNT NOT TO EXCEED \$88,600.**

WHEREAS, the City of West Branch, Iowa desires to construct improvements on North Sixth Street, East College Street (between North Fifth and North Sixth), East Main Street (between North Fourth and North Fifth) and South First Street;

WHEREAS, the City Council has heretofore deemed it necessary and desirable to obtain professional engineering services for the design of the needed improvements; and

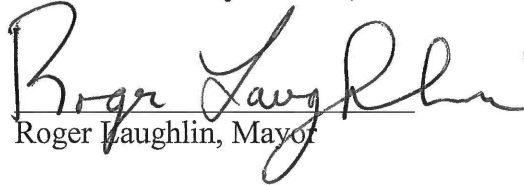
WHEREAS, the City Council understands that this agreement is for general services during the construction and final review of the project and for on-site construction review for the project (See Exhibit A); and

WHEREAS, Veenstra & Kimm, Inc. is qualified and capable of supplying said engineering services for a total fee not to exceed Eighty-Eight Thousand, Six Hundred Dollars (\$88,600); and

WHEREAS, Veenstra & Kimm, Inc. has prepared an agreement to perform the aforementioned services which has been reviewed by the city attorney and now requires the approval of the City Council.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of West Branch, Cedar County, Iowa, that the aforementioned engineering services agreement be and the same is hereby approved. Further, the Mayor and City Clerk are directed to execute said agreement on behalf of the City.

Passed and approved this 5th day of June, 2023.


Roger Laughlin, Mayor

ATTEST:



Leslie Brick, City Clerk

ENGINEERING SERVICES AGREEMENT

EAST SIDE WATER MAIN REPLACEMENT – CONSTRUCTION SERVICES WEST BRANCH, IOWA

THIS AGREEMENT, made and entered into this 5th day of June, 2023, by and between the City of West Branch, a Municipal Corporation, 110 North Poplar Street, P.O. Box 218, West Branch, IA 52358, hereinafter referred to as the "**CITY**," and Veenstra & Kimm, Inc., an Iowa Corporation, 2600 University Parkway, Suite 1, Coralville, IA 52241, hereinafter referred to as the "**CONSULTANT**."

WHEREAS, the **CITY** desires to construct improvements to the water distribution system, referred to as the "Project"; and

WHEREAS, the City Council has heretofore deemed it necessary and desirable to obtain professional engineering services for the construction of needed improvements; and

WHEREAS, the **CONSULTANT** is qualified and capable of supplying said engineering services; and

WHEREAS, accordingly, the **CITY** has agreed to engage the **CONSULTANT** as an independent contractor to assist in the construction of the Project under the terms and conditions set forth below.

NOW THEREFORE, THE CITY AND THE CONSULTANT, FOR CONSIDERATION HEREINAFTER SET FORTH, DO MUTUALLY AGREE AS FOLLOWS:

I. SCOPE OF SERVICES.

The **CONSULTANT** shall perform in a timely and satisfactory manner engineering services in connection with the Project as same are set forth in Exhibit "A" attached hereto and incorporated into this Agreement by this reference.

II. TIME OF COMPLETION.

The **CONSULTANT** shall complete the services to be rendered hereunder in accordance with the schedule set forth in Exhibit "B" attached hereto and incorporated by this reference. The **CONSULTANT** does hereby expressly acknowledge and agree that TIME IS OF THE ESSENCE of this Agreement, and, thus, any failure by the **CONSULTANT** to timely render and perform services hereunder shall constitute a material breach of this Agreement.

III. GENERAL TERMS AND PROVISIONS.

A. The **CONSULTANT** shall not commit any of the following employment practices in connection with or while rendering engineering services hereunder and does hereby expressly agree to prohibit the following practices from being committed by any subcontractors engaged by the **CONSULTANT** in connection with the Project. Upon request, the **CONSULTANT** shall provide the **CITY** with a copy of the relevant provisions of any agreement entered into by the **CONSULTANT** and subcontractor in connection with the Project to confirm to the satisfaction of the **CITY** that the requirements under this Subparagraph III(A) have been met.

1. To discharge or refuse to hire any individual because of their race, color, religion, sex, national origin, disability, age, marital status, or sexual orientation.
2. To discriminate against any individual in terms, conditions or privileges of employment because of their race, color, religion, sex, national origin, disability, age, marital status or sexual orientation.

B. The **CITY** may terminate this Agreement, with or without cause, upon no less than seven (7) calendar days' written notice. In the event that the **CITY** does so terminate this Agreement, the **CONSULTANT** shall be paid for all work and services performed up to the time of said termination upon submission to the **CITY** of a final billing statement and review and approval thereof by the West Branch City Council at the next regularly scheduled Council Meeting; provided, however, that any such sum shall not be greater than the total amount to be paid for services rendered hereunder as set forth in Article IV below; and further provided that, in the event the **CITY** terminates this Agreement with cause, the **CITY** may, in its sole discretion, elect to withhold payment of an amount sufficient to engage a third party to properly complete the Project in accordance with the terms of this Agreement.

C. This Agreement shall not be assigned or in any manner transferred by the **CONSULTANT**, without the express written consent of the West Branch City Council.

D. It is hereby acknowledged and agreed by both parties hereto that the engagement of the **CONSULTANT** by the **CITY** in connection with the Project shall be as an independent contractor and shall be exclusive; provided, however, that the Contractor may retain the services of subcontractors for the purpose of performing its obligations and responsibilities under this Agreement so long as the **CONSULTANT** has first obtained the written approval of same from the **CITY**; and further provided that, should the **CONSULTANT** so engage subcontractors under the terms of this Subparagraph III(D), the **CONSULTANT** shall solely responsible for compensating any such subcontractors.

E. The **CITY** shall make all criteria, design and construction standards, and information regarding the **CITY's** requirements for the Project available to the **CONSULTANT** upon reasonable request by the **CONSULTANT** therefor. The **CITY** shall furnish reasonable assistance to the **CONSULTANT** in the use of said information and documentation at the request of the **CONSULTANT**.

F. It is further agreed that neither party to this Agreement shall perform contrary to any federal or state law, rule or regulation, or the West Branch City Code of Ordinances.

G. At the request of the **CITY**, the **CONSULTANT** shall attend such meetings of the City Council relating to the **PROJECT** hereunder.

H. The **CONSULTANT** agrees to furnish all reports, specifications, and drawings with the seal of a professional engineer affixed thereto or such other seal as required by State law.

I. Upon termination of this Agreement and request of the **CITY**, the **CONSULTANT** shall provide the **CITY** with copies of all basic notes and sketches, charts, computations, and any other data prepared or obtained by the **CONSULTANT** pursuant to this Agreement without cost, and without restrictions or limitations as to the use thereof in connection with the **PROJECT**. It is understood, however, that the **CONSULTANT** shall not be liable for the **CITY's** use of such documents on other projects.

J. Original drawings prepared by the **CONSULTANT** under this Agreement shall become the property of the **CITY**. The **CONSULTANT** shall be allowed to keep mylar reproducible copies for the **CONSULTANT's** own filing use.

K. Fees paid in order to secure approval of authorities having jurisdiction over the Project shall be paid by the **CITY**.

L. If the **CONSULTANT** is providing Construction Administration or Supervision under this Agreement, the **CONSULTANT** shall make visits to the Project construction site at intervals appropriate to the various states of construction and as mutually agreed to by the **CONSULTANT** and **CITY** in order to observe as an experienced and qualified engineering professional the progress and quality of the various aspects of the work being performed by contractors and/or subcontractors. Based on information obtained during such visits and on such observations, the **CONSULTANT** shall endeavor to determine to the best of the **CONSULTANT's** ability if work on the Project is proceeding in accordance with the concept plan for the Project and shall keep the **CITY** informed of the progress of the work on the Project and any concerns the **CONSULTANT** may have regarding same.

M. **CONSULTANT** shall procure and maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury, including personal injury, sickness, disease or death of any and all employees or of any person other than such employees and from claims or damages because of injury to or destruction of property, including loss of use resulting therefrom. The **CONSULTANT** shall name the **CITY** as an additional insured party on **CONSULTANT's** general liability insurance policy. At the request of the **CITY**, the **CONSULTANT** shall give the **CITY** a certificate of insurance evidencing that the insurance required under this Agreement is in force, and the **CONSULTANT** shall immediately notify the **CITY** of any revocation or cancellation of any of the above-referenced insurance policies. The **CONSULTANT** shall take all necessary steps to preserve the **CITY's** defenses of governmental immunity under Chapter 670 of the Code of Iowa, including, without limitation, requiring that the language set forth in Exhibit "D" attached hereto and incorporated by this reference be included in the certificate of insurance to be provided to the **CITY** hereunder.

IV. **COMPENSATION FOR SERVICES.**

The **CITY** shall compensate the **CONSULTANT** for engineering services rendered under this Agreement for an estimated fee of Eighty-Eight Thousand Six Hundred Dollars (\$88,600). Said total fees shall be paid by the **CITY** to the **CONSULTANT** in accordance with the payment schedule set forth in Exhibit "C" attached hereto and incorporated by this reference; provided, however, in express acknowledgment that this Agreement is a COMPLETION DATE CONTRACT, the **CONSULTANT** does hereby acknowledge and confirm the **CONSULTANT's** understanding that TIME IS OF THE ESSENCE and that the timely completion of each phase of the Project as set forth in Exhibit "A" and the timely completion of the Project in its entirety constitutes material terms of this Agreement without which the **CITY** would not have engaged the **CONSULTANT**. Accordingly, the **CONSULTANT** also acknowledges that:

- A. No payment shall be made to the **CONSULTANT** hereunder if the Project is not proceeding on schedule unless otherwise hereafter agreed in writing by the **CITY**.
- B. Under no circumstances shall the **CITY** compensate the **CONSULTANT** for work that has not yet been completed. For purposes of this provision, work shall constitute the discrete phases of the Project as set forth in Exhibit "A" attached hereto. Accordingly, the **CONSULTANT** shall not be entitled to compensation hereunder for any phases of the work until the entire phase of work has been completed.
- C. In any event, no payment hereunder shall become due and payable until submission to the **CITY** by the **CONSULTANT** of a billing statement therefor and review and approval of the billing statement by the West Branch City Council at its next regularly scheduled meeting.

V. INDEMNIFICATION.

The **CONSULTANT** agrees to fully indemnify, defend, save and hold the **CITY**, its officers, representatives, agents, contractors, subcontractors and employees, harmless from any and all liability to third parties (including reimbursement of reasonable legal fees and costs) arising directly or indirectly from the negligent act, error or omission of the **CONSULTANT**, its officers, representatives, agents, contractors, subcontractors or employees in connection with the Project.

VI. HAZARDOUS MATERIALS.

The **CONSULTANT** hereby warrants and represents that the **CONSULTANT** (i) has not created nor contributed to the creation or existence (ii) nor will it create or contribute to the creation or existence of any type of hazardous or toxic wastes, materials, chemical compounds, or substances, or any other type of environmental hazard or pollution, whether latent or patent, at the premises of the Project, or in connection with or related to the Project. The **CONSULTANT**, notwithstanding the limit of liability contained in Provision V of this Agreement, does hereby fully indemnify, defend, save and hold harmless the **CITY**, its officers, employees and agents from and against any and all debts, claims, causes of action, administrative orders and notices, costs (including but not limited to, response and/or remedial costs), personal injuries, losses, damages, liabilities, demands, interest, fines, penalties and expenses, including reasonable legal fees and expenses, consultants' fees and expenses, court costs and all other out-of-pocket expenses, suffered or incurred by the **CITY**, its officers, representatives, agents, contractors, subcontractors, employees and grantees as a result of any breach of this Provision VI.

VII. INTERPRETATION.

This Agreement shall be construed in accordance with the generally accepted standards of the Engineering Profession; provided, however, that it is expressly understood and agreed by both parties that to the extent, if at all, the explicit terms and conditions of this Agreement are in conflict with said generally accepted standards of the Engineering Profession, said explicit terms and conditions of this Agreement shall control in the event of a dispute between the parties hereto.

VIII. SURVIVAL.

All express representations, indemnifications or limitations of liability made in or given in this Agreement shall survive the completion of the engineering services to be rendered by the **CONSULTANT** hereunder or the termination of this Agreement for any reason.

IX. CONTROLLING LAW.

This Agreement is to be governed by the laws of the State of Iowa. The parties hereto agree that any action, suit or proceeding based upon any matter, claim or controversy arising under this Agreement shall be brought solely in the state courts located in Cedar County, Iowa or the federal courts located in Linn County, Iowa. The parties hereto hereby irrevocably waive objection to the venue of the above-mentioned courts, including any claim that such action, suit or proceeding has been brought in an inconvenient forum. Both parties hereto expressly acknowledge and agree that nothing contained in this Agreement shall be construed to require the parties to submit to mandatory arbitration or mediation in the event of a breach or dispute hereunder.

X. HEADINGS.

The headings of sections of this Agreement are for convenient reference only and shall not be deemed to limit, construe, affect, modify or alter the meaning of such sections.

XI. SEVERABILITY.

If any section, subsection, term or provision of this Agreement or the application thereof to the **CONSULTANT**, the **CITY** or a particular circumstance shall, to any extent, be invalid or unenforceable, the remainder of said section, subsection, term or provision of this Agreement or the application of same to the **CONSULTANT**, the **CITY** or particular circumstances other than for which it was held invalid or unenforceable, shall not be affected thereby and each remaining section, subsection, term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

XII. AUTHORITY.

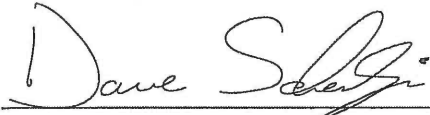
The persons signing this Agreement warrant and represent that they have the authority to sign as, or on behalf of, the party for whom they are signing.

XIII. FINAL AGREEMENT.

Both the **CONSULTANT** and the **CITY** hereby expressly acknowledge and agree that this Agreement is intended to set forth the entire agreement between the parties regarding the engineering services to be rendered by the **CONSULTANT** to the **CITY** in connection with the **PROJECT**, that there are no other considerations or monies contingent upon or resulting from the execution of this Agreement, and that no other monies or considerations have been solicited. No waiver, change, modification or amendment of this Agreement shall be binding upon either party hereto unless in writing and signed by both the **CONSULTANT** and the **CITY**. The waiver by either party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that provision or of any other provision or condition in this Agreement.

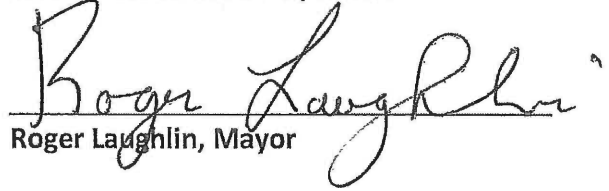
ACCEPTED & AGREED:

VEENSTRA & KIMM, INC.



An Authorized Representative

CITY OF WEST BRANCH, IOWA



Roger Laughlin, Mayor

ATTEST:



An Authorized Representative

ATTEST:



City Clerk

ENGINEERING SERVICES AGREEMENT

EAST SIDE WATER MAIN REPLACEMENT – CONSTRUCTION SERVICES WEST BRANCH, IOWA

EXHIBIT "A"

SCOPE OF SERVICES:

The **CONSULTANT** shall perform in a timely and satisfactory manner engineering services in connection with the **PROJECT** as set forth as follows:

1. General construction administration services.
 - a. Consult with and advise Owner.
 - b. Coordinate work of testing laboratories.
 - c. Assist in interpretation of plans and specifications.
 - d. Review drawings and data of manufacturers.
 - e. Process and certify payment estimates of the Contractor to Owner.
 - f. Prepare and process necessary change orders or modifications to the construction contract.
 - g. Make routine and special trips to the Project site as required.
 - h. Make final reviews after construction contracts are completed to determine that the construction complies with the plans and specifications and certify that the reviews were made and that to the best of the knowledge and belief of the Engineers, the work on the contracts has been substantially completed.
2. Construction observation services.
 - a. Resident review services are understood to include the detailed observation and review of the work of the contractor and materials for substantial compliance with the plans and specifications.
 - b. The Engineers shall provide resident review services by assigning resident engineers and/or engineering technicians to the Project for such periods as may be reasonably required to observe and review the construction work. The personnel assigned and the period of such assignment shall be subject to the agreement of the parties hereto.

ENGINEERING SERVICES AGREEMENT

**EAST SIDE WATER MAIN REPLACEMENT – CONSTRUCTION SERVICES
WEST BRANCH, IOWA**

EXHIBIT "B"

TIME OF COMPLETION:

The **CONSULTANT** shall complete the services to be rendered hereunder in accordance with the schedule set forth below. The **CONSULTANT** does hereby expressly acknowledge and agree that TIME IS OF THE ESSENCE of this Agreement, and, thus, any failure by the **CONSULTANT** to timely render and perform services hereunder shall constitute a material breach of this Agreement. The schedule milestones for this project are as follows:

1. Construction of improvements scheduled to be completed by November 17, 2023.

The **CONSULTANT** shall not be responsible for delays in approval, securing easements, or other actions by governmental agencies which may delay the time of completion for services.

ENGINEERING SERVICES AGREEMENT

EAST SIDE WATER MAIN REPLACEMENT – CONSTRUCTION SERVICES WEST BRANCH, IOWA

EXHIBIT "C"

COMPENSATION FOR SERVICES:

The **CITY** shall compensate the **CONSULTANT** for engineering services rendered under this Agreement based on the following:

1. For **GENERAL SERVICES**, the estimated fee for general services during construction and final review of the project shall be Twenty Thousand Six Hundred Dollars (\$20,600);
2. For **ONSITE CONSTRUCTION REVIEW**, The estimated fee for construction review for the Project shall be based on the standard hourly fees for the time the Engineers' personnel are actually engaged in the performance of the work, plus direct out-of-pocket costs incurred by personnel who are actually engaged in the work. The fee for resident review services shall be Sixty-Eight Thousand Dollars (\$68,000);

Said total fees shall be paid by the **CITY** to the **CONSULTANT** and shall become due and payable upon submission to the **CITY** by the **CONSULTANT** of a billing statement therefor and review and approval thereof by the West Branch City Council at the next regularly scheduled Council Meeting.

ENGINEERING SERVICES AGREEMENT

**EAST SIDE WATER MAIN REPLACEMENT – CONSTRUCTION SERVICES
WEST BRANCH, IOWA**

EXHIBIT "D"

"The Companies affording coverage and the Additional Insured, City of West Branch, Cedar County, Iowa, expressly agree and state that the purchase of this policy of insurance by the insured and the listings of the City of West Branch as an Additional Insured hereunder do not waive any of the defenses of governmental immunity available to the Additional Insured under Iowa Code Section 670.4 as it now exists and as it may be amended from time to time.

The Companies and Additional Insured further agree that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under Iowa Code Section 670.4 as it now exists and as it may be amended from time to time.

The Additional Insured shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the Companies.

The Companies shall not deny coverage under this policy and the Companies shall not deny any of the rights and benefits accruing to the Insured or the Additional Insured under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the Additional Insured."