CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: August 24, 2015

ITEM: Motion – Approval of Professional Services Agreement – Woodland Hills Greenway Master Plan

FINANCIAL IMPACT: Expense not to exceed $30,000 from C.I.P. funds budgeted in FY 15/16 in the Woodland Hills Greenway Trails Plan account (6567.75.840.6.7920). There is $75,000 budgeted for this project with the master plan being the first step in the planning process.

BACKGROUND: Staff recommends that the Council approve an agreement with LT Leon Associates, Inc. for the assessment and development of concepts for the enhancement and restoration of the Woodland Hills Greenway. Planning will also include determination of the feasibility and potential alignments for a future trail within the greenway. The scope of services include data collection and review, field assessment, topographic survey, inventory of natural resources, concept development, preliminary cost estimates, and final report.

The proposed agreement with Tometich Engineering, Inc. is attached along with a detailed Scope of Services.

OUTSTANDING ISSUES: None

RECOMMENDATION: That the City Council approve the agreement with Tometich Engineering, Inc.

Lead Staff Member: Sally Ortgies

STAFF REVIEWS

Department Director	for Gary Scott
Appropriations/Finance	
Legal	
Agenda Acceptance	RTJ

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	Split

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

This Agreement is made and entered into this _____ day of _____, 2015, by and between the CITY OF WEST DES MOINES, a municipal corporation, hereinafter referred to as "City", and LT LEON ASSOCIATES, INC., (Fed. I.D. #26-4403901), a professional corporation incorporated and licensed under the laws of the State of Iowa, party of the second part, hereinafter referred to as "Consultant" as follows:

THE CITY HEREBY AGREES TO RETAIN THE CONSULTANT FOR THE PROJECT AS DESCRIBED IN THIS AGREEMENT AND CONSULTANT AGREES TO PERFORM THE PROFESSIONAL SERVICES AND FURNISH THE NECESSARY DOCUMENTATION FOR THE PROJECT AS GENERALLY DESCRIBED IN THIS AGREEMENT.

1. SCOPE OF SERVICES

   Services provided under this Agreement shall be as further described in Attachment 1, Scope of Services.

2. SCHEDULE

   The schedule of the professional services to be performed shall conform to the Schedule set forth in Attachment 2. Any deviations from the Schedule shall be approved by the authorized City representative. The City agrees that the Consultant is not responsible for delays arising from a change in the scope of services, a change in the scale of the Project or delays resulting from causes not directly or indirectly related to the actions of the Consultant.

3. COMPENSATION

   A. In consideration of the professional services provided herein, the City agrees to pay the Consultant the following sum NOT-TO-EXCEED, including any authorized reimbursable expenses, pursuant to the Schedule of Fees set forth in Attachment 3.

      I. Basic Services of the Consultant $ 30,000

   B. The Consultant shall invoice the City monthly for services, any reimbursable expenses and any approved amendments to this Agreement, based upon services actually completed at the time of the invoice. Final payment shall be due and payable within 30 days of the City's acceptance of Consultant's submission of final deliverables in accordance with the Scope of Services.

   C. In consideration of the compensation paid to the Consultant, the Consultant agrees to perform all professional services to the satisfaction of the City by performing the professional services in a manner consistent with that degree of care and skill ordinarily exercised by members of Consultant's profession currently practicing under similar circumstances. If the performance of this Agreement involves the services of others or the furnishing of equipment, supplies, or materials, the Consultant agrees to pay for the same in full.

4. INSURANCE

   A. Consultant understands and agrees that Consultant shall have no right of coverage under any and all existing or future City comprehensive, self or personal injury policies. Consultant shall provide insurance coverage for and on behalf of Consultant that will sufficiently protect Consultant or Consultant's representative(s) in connection with the professional services which are to be provided by Consultant pursuant to this Agreement, including protection from claims for bodily

injury, death, property damage, and lost income. Consultant shall provide worker's compensation insurance coverage for Consultant and all Consultant's personnel. Consultant shall file applicable insurance certificates with the City, and shall also provide evidence of the following additional coverage.

B. The Consultant shall provide evidence of comprehensive general liability coverage and contractual liability insurance by an insurance company licensed to do business in the State of Iowa in the limits of at least $1,000,000 each personal injury accident and/or death; $1,000,000 general aggregate personal injury and/or death; and $1,000,000 for each property damage accident. The evidence shall designate the City as an additional insured, and that it cannot be canceled or materially altered without giving the City at least thirty (30) days written notice by registered mail, return receipt requested.

C. The Consultant shall also provide evidence of automobile liability coverage in the limits of at least $1,000,000 bodily injury and property damage combined. The evidence shall designate the City as an additional insured, and that it cannot be cancelled or materially altered without giving the City at least thirty (30) days written notice by registered mail, return receipt requested.

D. The Consultant shall provide evidence of professional liability insurance, by an insurance company licensed to do business in the State of Iowa, in the limit of $1,000,000 for claims arising out of the professional liability of the Consultant. Consultant shall provide City written notice within five (5) days by registered mail, return receipt requested of the cancellation or material alteration of the professional liability policy.

E. Failure of Consultant to maintain any of the insurance coverage set forth above shall constitute a material breach of this Agreement.

5. NOTICE

Any notice to the parties required under this agreement shall be in writing, delivered to the person designated below, by United States mail or in hand delivery, at the indicated address unless otherwise designated in writing.

FOR THE CITY:

Name: City of West Des Moines
Attn: Ryan T. Jacobson, City Clerk
Address: 4200 Mills Civic Parkway
City, State: West Des Moines, IA 50265-0320

FOR THE CONSULTANT:

Name: LT Leon Associates, Inc.
Attn: Luis Leon, President
Address: 500 East Locust Street, Suite 400
City, State: Des Moines, IA 50309

6. GENERAL COMPLIANCE

In the conduct of the professional services contemplated hereunder, the Consultant shall comply with applicable state, federal, and local law, rules, and regulations, technical standards, or specifications issued by the City. Consultant must qualify for and obtain any required licenses prior to commencement of work, including any professional licenses necessary to perform work within the State of Iowa.

7. STANDARD OF CARE

Services provided by the Consultant under this Agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

8. INDEPENDENT CONTRACTOR

Consultant understands and agrees that the Consultant and Consultant's employees and representatives are not City employees. Consultant shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits, or any other form of compensation or benefit to Consultant or Consultant's employees, representatives or other personnel performing the professional services specified herein, whether it be of a direct or indirect nature. Further, it is expressly understood and agreed that for such purposes neither Consultant nor Consultant's employees, representatives or other personnel shall be entitled to any City payroll, insurance, unemployment, worker's compensation, retirement, or any other benefits whatsoever.

9. NON-DISCRIMINATION

Consultant will not discriminate against any employee of applicant for employment because of race, color, sex, national origin, religion, age, handicap, or veteran status. Consultant will, where appropriate or required, take affirmative action to ensure that applicants are employed, and that employees are treated, during employment, without regard to their race, color, sex, or national origin, religion, age, handicap, or veteran status. Consultant will cooperate with the City in using Consultant's best efforts to ensure that Disadvantaged Business Enterprises are afforded the maximum opportunity to compete for subcontracts of work under this Agreement.

10. HOLD HARMLESS

Consultant agrees to indemnify and hold harmless the City, its officers, agents, and employees from any and all claims, settlements and judgments, to include all reasonable investigative fees, attorney's fees, and court costs for any damage or loss which is due to or arises from a breach of this Agreement, or from negligent acts, errors or omissions in the performance of professional services under this Agreement and those of its sub consultants or anyone for whom Consultant is legally liable.

11. ASSIGNMENT

Consultant shall not assign or otherwise transfer this Agreement or any right or obligations therein without first receiving prior written consent of the City.

12. APPROPRIATION OF FUNDS

The funds appropriated for this Agreement are equal to or exceed the compensation to be paid to Consultant. The City's continuing obligations under this Agreement may be subject to appropriation of funding by the City Council. In the event that sufficient funding is not appropriated in whole or in part for continued performance of the City's obligations under this Agreement, or if appropriated funding is not expended due to City spending limitations, the City may terminate this Agreement without further compensation to the Consultant. To the greatest extent allowed by law, the City shall compensate Consultant as provided in Section 18(B) of this Agreement.

13. AUTHORIZED AMENDMENTS TO AGREEMENT

A. The Consultant and the City acknowledge and agree that no amendment to this Agreement or other form, order or directive may be issued by the City which requires additional compensable work to be performed if such work causes the aggregate amount payable under the amendment, order or directive to exceed the amount appropriated for this Agreement as listed in Section 3, above, unless the Consultant has been given a written assurance by the City that lawful appropriation to cover the costs of the additional work has been made.

B. The Consultant and the City further acknowledge and agree that no amendment to this Agreement or other form, order or directive which requires additional compensable work to be performed under this Agreement shall be issued by the City unless funds are available to pay such additional costs, and the Consultant shall not be entitled to any additional compensation for any additional compensable work performed under this Agreement. The Consultant expressly waives any right to additional compensation, whether in law or equity, unless prior to commencing the additional work the Consultant was given a written amendment, order or directive describing the additional compensable work to be performed and setting forth the amount of compensation to be paid, such amendment, order or directive to be signed by the authorized City representative. It is the Consultant's sole responsibility to know, determine, and ascertain the authority of the City representative signing any amendment, directive or order.

14. OWNERSHIP OF CONSULTING DOCUMENTS

All sketches, tracings, plans, specifications, reports, and other data prepared under this Agreement shall become the property of the City; a reproducible set shall be delivered to the City at no additional cost to the City upon completion of the plans or termination of the services of the Consultant. All drawings and data shall be transmitted in a durable material, with electronic files provided when feasible to do so. The Consultant's liability for use of the sketches, tracings, plans, specifications, reports, and other data prepared under this Agreement shall be limited to the Project.

15. INTERPRETATION

No amendment or modification of this Agreement shall be valid unless expressed in writing and executed by the parties hereto in the same manner as the execution of the Agreement. This is a completely integrated Agreement and contains the entire agreement of the parties; any prior written or oral agreements shall be of no force or effect and shall not be binding upon either party. The laws of the State of Iowa shall govern and any judicial action under the terms of this Agreement shall be exclusively within the jurisdiction of the district court for Polk County, Iowa.

16. COMPLIANCE WITH FEDERAL LAW

To the extent any federal appropriation has or will be provided for the Project, or any federal requirement is imposed on the Project, Consultant agrees that Consultant will comply with all relevant laws, rules and regulations imposed on City and/or Consultant necessary for receipt of the federal appropriation. Consultant shall provide appropriate certification regarding Consultant's compliance.

17. SOLICITATION AND PERFORMANCE

A. The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, and that the Consultant has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or contingent fee.

B. The Consultant shall not engage the services of any person or persons in the employ of the City at the time of commencing such services without the written consent of the City.

18. SUSPENSION AND TERMINATION OF AGREEMENT

A. The right is reserved by the City to suspend this Agreement at any time. Such suspension may be affected by the City giving written notice to the Consultant, and shall be effective as of the date established in the suspension notice. Payment for Consultant's services shall be made by the City for services performed to the date established in the suspension notice. Should the City reinstate the work after notice of suspension, such reinstatement may be accomplished by thirty

(30) days written notice within a period of six (6) months after such suspension, unless this period is extended by written consent of the Consultant.

B. Upon ten (10) days written notice to the Consultant, the City may terminate the Agreement at any time if it is found that reasons beyond the control of either the City or Consultant make it impossible or against the City's interest to complete the Agreement. In such case, the Consultant shall have no claims against the City except for the value of the work performed up to the date the Agreement is terminated.

C. The City may also terminate this Agreement at any time if it is found that the Consultant has violated any material term or condition of this Agreement or that Consultant has failed to maintain workers' compensation insurance or other insurance provided for in this Agreement. In the event of such default by the Consultant, the City may give ten (10) days written notice to the Consultant of the City's intent to terminate the Agreement. Consultant shall have ten (10) days from notification to remedy the conditions constituting the default.

D. In the event that this Agreement is terminated in accordance with paragraph C of this section, the City may take possession of any work and may complete any work by whatever means the City may select. The cost of completing said work shall be deducted from the balance which would have been due to the Consultant had the Agreement not been terminated and work completed in accordance with contract documents.

E. The Consultant may terminate this Agreement if it is found that the City has violated any material term or condition of this Agreement. In the event of such default by the City, the Consultant shall give ten (10) days written notice to the City of the Consultant's intent to terminate the Agreement. City shall have ten (10) days from notification to remedy the conditions constituting the default.

19. TAXES

The Consultant shall pay all sales and use taxes required to be paid to the State of Iowa on the work covered by this Agreement. The Consultant shall execute and deliver and shall cause any sub-consultant or subcontractor to execute and deliver to the City certificates as required to permit the City to make application for refunds of said sales and use taxes as applicable. The City is a municipal corporation and not subject to state and local tax, use tax, or federal excise taxes.

20. SEVERABILITY

If any portion of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Agreement shall continue in full force and effect.

21. MISCELLANEOUS HEADINGS

Title to articles, paragraphs, and subparagraphs are for information purposes only and shall not be considered a substantive part of this Agreement.

22. FURTHER ASSURANCES

Each party hereby agrees to execute and deliver such additional instruments and documents and to take all such other action as the other party may reasonably request from time to time in order to effect the provisions and purposes of this Agreement.

23. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall constitute an original document, no other counterpart needing to be produced, and all of which when taken together shall constitute the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers or agents on the day and year first above written.

CONSULTANT

BY:_____
Luis T. Leon, President

CITY OF WEST DES MOINES

BY:_____
Ryan T. Jacobson, City Clerk

ATTACHMENT 1

SCOPE OF SERVICES

Woodland Hills Greenway Master Plan
PR-06-2015

The proposed project includes assessment and development of concepts for the enhancement and restoration of the Woodland Hills Greenway in West Des Moines. See Exhibit A for project location. The linear greenway parkland includes a tributary stream that drains into Sugar Creek. The feasibility and potential alignments for a future multi-use trail along the greenway will be evaluated. Results from the assessment and concepts will be summarized in a master plan report.

I. BASIC SERVICES OF THE CONSULTANT

The Consultant shall consult on a regular basis with the City to clarify and define the City's requirements for the Project and review available data. The City agrees to furnish to the Consultant full information with respect to the City's requirements, including any special or extraordinary considerations for the Project or special services needed, and also to make available pertinent existing data. The Consultant shall provide the following basic services in regard to the Project:

A. Data Collection and Review

Background information will be gathered from the City and reviewed. This information may include stormwater management plans, engineering plans, previous studies and reports, park and trail master plans, GIS and other mapping data, and tree inventories.

B. Field Assessment – Surveying and Inventory of Natural Resources

Field surveys will be conducted to obtain the topographic data, ground elevations, longitudinal bed profile (including riffles, pools, glides, and runs), water's edge, top of bank, and alignment of thalweg. Cross sections will be surveyed at areas that appear less stable and areas that appear most stable within the project area. Streambanks that may be major erosion sources will be identified and bank heights will be recorded. Bankfull indicators will be determined in the field. Visual assessment of bed materials will be observed and recorded. This task also consists of incorporating the topographic features, profiles, and cross sections into the base mapping for the project.

The various utility companies will be contacted to collect available information on underground utility locations and incorporate such available utility information into the base mapping of the project. Utilities to be researched include sanitary sewer, storm sewer, electric, gas, water, telephone, cable vision, and fiber optic lines.

City and County records will be researched to establish locations of property lines, right-of-way lines, and property ownership for the properties affected by the project. This data will be incorporated into the base mapping of the project.

Vegetation and their composition, structure and function can have a significant impact on how natural and engineered waterways function. Our team will conduct a field investigation of the project area to better understand the components of vegetation at the site and determine the role existing vegetation plays in the function of water resources features at the site.

C. Greenway Assessment Technical Memorandum

Findings from the field assessment and the review of background data will be summarized into a technical memorandum. The memo will include hydrology (land use, existing stormwater management facilities, design flows), characterization of stream stability and stream channel evolution, existing vegetation and natural resources, and the feasibility of a future multi-use trail. The memo will be submitted to the City for review and comment.

D. Meeting with City of West Des Moines

Our team will attend a meeting with City staff to discuss the project area, goals and priorities, and general design principals. We will share information regarding findings of the field assessment including stream stability, vegetation, and feasibility of trails. Stream restoration techniques that may be applicable based on assessment will be generally discussed. We will provide context for the role vegetation currently plays in the function of the stream corridor, as well as potential role and benefits of vegetation management as it relates to the future desired condition. Meeting minutes will be prepared and submitted to the City.

E. Concept Development

Concepts for stream restoration will be evaluated for each segment of the greenway based on the field assessment, hydrology, and input from City staff. Conceptual plans and typical details will be prepared for the feasible restoration strategies. The conceptual plans will include alignment for future trails, where feasible. Preliminary cost estimates will be developed for the conceptual improvements.

F. Draft Report

The greenway assessment technical memo, information gathered from discussions with City staff, and concept development will be used to develop a draft report. The report will provide recommendations to help the City achieve the future desired condition and sustainable functionality of the greenway, including stream restoration strategies, vegetation management, and trail alignment for each distinct greenway segment. The report will include conceptual plans, typical details, and preliminary cost estimates. The report will be submitted to the City for review and comment.

G. Meeting with City of West Des Moines

The conceptual plans and draft report findings will be presented to City staff. Our team will answer questions and record comments from City staff. Meeting minutes will be prepared and submitted to the City.

H. Final Report

Based on comments received from City staff, conceptual plans, cost estimates and the report will be revised and finalized. The final report will be submitted to the City.

II. ADDITIONAL SERVICES

Additional Services not included as part of this Scope. If authorized, under a supplemental agreement, the Consultant shall furnish or obtain from others the following services:

- Coordination of Funding Opportunities
- Public Involvement, Stakeholder Meetings, Neighborhood Meetings
- Presentation of final findings to advisory committee or similar group

- Regulatory Permitting Assistance
- Wetland Delineation
- Threatened and Endangered Species Survey

ATTACHMENT 2

PROJECT SCHEDULE

Woodland Hills Greenway Master Plan
PR-06-2015

The time of completion of the services under this Agreement shall be as follows:

I. Basic Services of the Consultant

A. Data Collection and Review ..... September 2015
B. Field Assessment ..... October 2015
C. Greenway Assessment Technical Memorandum ..... November 2015
D. Meeting with City ..... November 2015
E. Concept Development ..... February 2016
F. Draft Report ..... February 2016
G. Meeting with City ..... February 2016
H. Final Report ..... March 2016

ATTACHMENT 3

SCHEDULE OF FEES

Woodland Hills Greenway Master Plan
PR-06-2015

LT LEON ASSOCIATES, INC.

Billing Rate Schedule

Effective January 1, 2015

Professional Services	Billing Rate
Principal Engineer	$115
Project Engineer	$95
Engineer-in-Training	$80
Engineering Technician	$75
Administrative	$45

Reimbursable Expenses

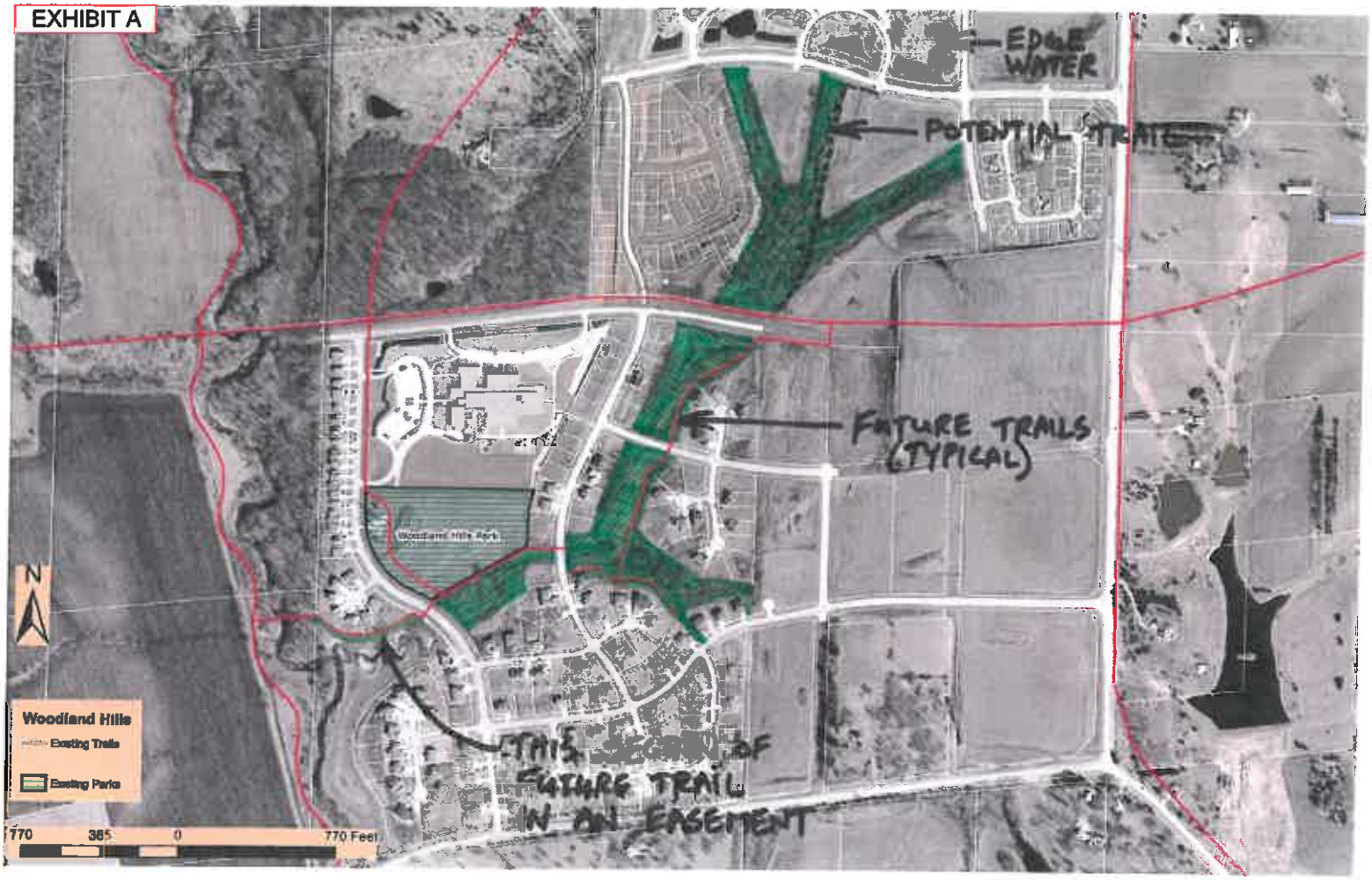
1. All materials and supplies used in the performance of work on this project will be billed at cost.

2. Auto mileage will be reimbursed per the standard mileage reimbursement rate established by the Internal Revenue Service.

3. Charges for sub-consultants will be billed at their invoice cost plus 10%.

4. All other direct expenses will be invoiced at cost.

EXHIBIT A


EDGE WATER
POTENTIAL TRAIL
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