CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

4(k)

DATE: **May 15, 2017**

ITEM:

Resolution - Approving Professional Services Agreement
Fox Creek Trunk Sewer Extension - Annual Tree Monitoring

FINANCIAL IMPACT:

The cost of the Professional Services Agreement associated with the Annual Tree Monitoring is anticipated not to exceed $16,200.00 for Basic Services. Should the cost for the professional services be projected to exceed the amounts set forth in the contract, staff would not authorize such expenditures without further approval by the City Council. All work will be billed on an hourly basis using the established hourly fee structure as set forth in the contract. All costs for these services can be paid from budgeted account no. 640.000.000.5250.495 with the ultimate funding intended to come from Sewer Fee Revenue.

BACKGROUND:

Veensta & Kimm assisted the City of West Des Moines with a joint application that was submitted to the U.S. Army Corps of Engineers (USACE) on July 6, 2016 for work associated with construction of the Fox Creek Trunk Sewer Extension along Fox Creek. A Wetland & Waters of the U.S. (WUS) Delineation Report was prepared by Foth and submitted to the USACE on September 15, 2016. A Wetland Restoration Plan was prepared by Foth and submitted to the USACE on April 12, 2017. The USACE issued a permit for the project on April 27, 2017 with special conditions for repairing the forested wetlands that were impacted as part of the project. Special conditions included replanting a minimum of 36 trees evenly throughout the impacted forested wetlands area with annual monitoring for a minimum of three (3) years after replanting. 100% survival of the trees will be required with submittal of annual reports to the USACE documenting the success of the tree plantings.

The Engineering Services Department retains professional consultants based on their past work experience, qualifications of their staff, familiarity with the project, manpower availability, and past performance. Once a firm has been selected based on the above criteria, City staff then negotiates a fee with the consultant for performing the desired scope of services. City staff attempts, whenever feasible, to distribute professional services work on an equitable basis to qualified firms maintaining local metropolitan area offices who have expressed interest in working for the City of West Des Moines.

OUTSTANDING ISSUES: None

RECOMMENDATION:

City Council Adopt:

- Resolution Approving Professional Services Agreement for Fox Creek Trunk Sewer Extension - Annual Tree Monitoring.

Lead Staff Member: **Brian J. Hemesath, P.E., Interim City Engineer** BJH

STAFF REVIEWS

Department Director	Brian J. Hemesath, P.E., Interim City Engineer
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard Scieszinski, City Attorney
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	Public Services		
Date Reviewed	May 8, 2017		
Recommendation	Yes	No	Split

RESOLUTION APPROVING PROFESSIONAL SERVICES AGREEMENT

WHEREAS, funding is available for the following described public project:

Fox Creek Trunk Sewer Extension - Annual Tree Monitoring
Project No. 0510-005-2015

and,

WHEREAS, a joint application was submitted to the U.S. Army Corps of Engineers (USACE) on July 6, 2016 for work associated with construction of the Fox Creek Trunk Sewer Extension along Fox Creek; and,

WHEREAS, a Wetland & Waters of the U.S. (WUS) Delineation Report was required by the USACE and prepared by Foth with submittal on September 15, 2016; and,

WHEREAS, a Wetland Restoration Plan was required by the USACE and prepared by Foth with submittal on April 12, 2017; and,

WHEREAS, a permit from the USACE was issued for the project on April 27, 2017 with special conditions for repairing and monitoring the forested wetlands that were impacted as part of the project; and,

WHEREAS, the Engineering Services Department has obtained a written proposal from Foth Infrastructure & Environment, LLC to do the work requested as part of the Annual Tree Monitoring, which estimates the following cost to the City of West Des Moines;

Basic Services of the Consultant $16,200.00

therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA, that Foth Infrastructure & Environment, LLC, is hereby directed to conduct the Annual Tree Monitoring for the above named project.

BE IT FURTHER RESOLVED, that the City Clerk is authorized and directed to enter into an agreement with Foth Infrastructure & Environment, LLC, for the cost indicated above as payment by the City of West Des Moines for the services indicated.

PASSED AND APPROVED on this **15th** day of **May, 2017.**

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson, City Clerk

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES
Fox Creek Trunk Sewer Annual Tree Monitoring
WDM Project No. 0510-005-2015

This Agreement is made and entered into this _____ day of May, 2017, by and between the CITY OF WEST DES MOINES, a municipal corporation, hereinafter referred to as "City", and FOTH INFRASTRUCTURE & ENVIRONMENT, LLC (Fed. I.D. #20-5814224), 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	
Tree Planting Coordination	$4,000
First Annual Monitoring	$2,400
Second Annual Monitoring	$2,500
Third Annual Monitoring	$2,600
Coordination of Tree Replanting, if needed	$4,700
Total	$16,200

   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' 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 coverages set forth above shall constitute a material breach of this Agreement.

1. 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: Foth Infrastructure & Environment, LLC
Attn: Patrick P. Kueter, P. E.
Address: 8191 Birchwood Court, Suite L
City, State: Johnston, IA 50131

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 age, color, creed, disability, gender identity, national origin, race, religion, sex, sexual orientation, 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 age, color, creed, disability, gender identity, national origin, race, religion, sex, sexual orientation, 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(8) 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 effected 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:_____
Patrick P. Kueter, P.E., Director

CITY OF WEST DES MOINES

BY:_____
Ryan T. Jacobson, City Clerk

WITNESS: _____
Douglas J. Ernst, P.E., Director

ATTACHMENT 1

SCOPE OF SERVICES

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.

A. Environmental Services

The Fox Creek Trunk Sewer Annual Tree Monitoring Services scope includes coordination the planting of trees within the wetland restoration areas and annual tree monitoring, as described below. The scope of services shall be completed in accordance with generally accepted standards of practice

Task 1 – Tree Planting Coordination

The Consultant will coordinate with the tree supplier regarding the proposed planting locations. The fees assume that the Consultant's personnel will perform up to four site visits, approximately three hours per visit, to coordinate and observe the tree planting. Following the completion of planting, the Consultant will GPS the tree for use in future annual monitoring events. Fees assume that Veenstra & Kimm will obtain bids and provide contracting services with the tree supplier.

Task 2 through 4 – Annual Tree Monitoring

The Section 404 Permit required that the 36 planted trees be monitored annually for three years. A 100% survival rate is required to meet the conditions of the permit. Foth will visit the wetland restoration areas annually to document the mortality of the planted trees. A letter report will be prepared for submittal to the USACE prior to December 31 of each year. Annual monitoring will begin in 2018 and will continue through 2020.

Task 5 – Coordination of Tree Replanting, if needed

If the survival rate of the planted trees falls below 36, the Consultant will assist the City in obtaining bids from local contractors for tree replanting. Once the City selects a tree planting contractor, the Consultant will provide up to two site visits, approximately three hours per visit, to identify the proposed planting locations and to document the completed planting. A letter report will be prepared to document the tree replanting to the USACE. Fees assume that the City will provide contracting services with the tree supplier.

ADDITIONAL SERVICES NOT INCLUDED IN THIS CONTRACT

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:

1.) Bidding and contracting services for the tree planting contractor.
2.) Contracting services for the tree replanting contractor, if needed.

ATTACHMENT 2

PROJECT SCHEDULE

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

I. Basic Services of the Consultant

A. Tree Planting Coordination	Spring/Fall 2017
B. Annual Tree Monitoring	2018 through 2020
C. Coordination of Tree Replanting	If needed, 2018 through 2020

ATTACHMENT 3

SCHEDULE OF FEES

FOTH INFRASTRUCTURE AND ENVIRONMENT, L.L.C

2017 STANDARD HOURLY RATE SCHEDULE

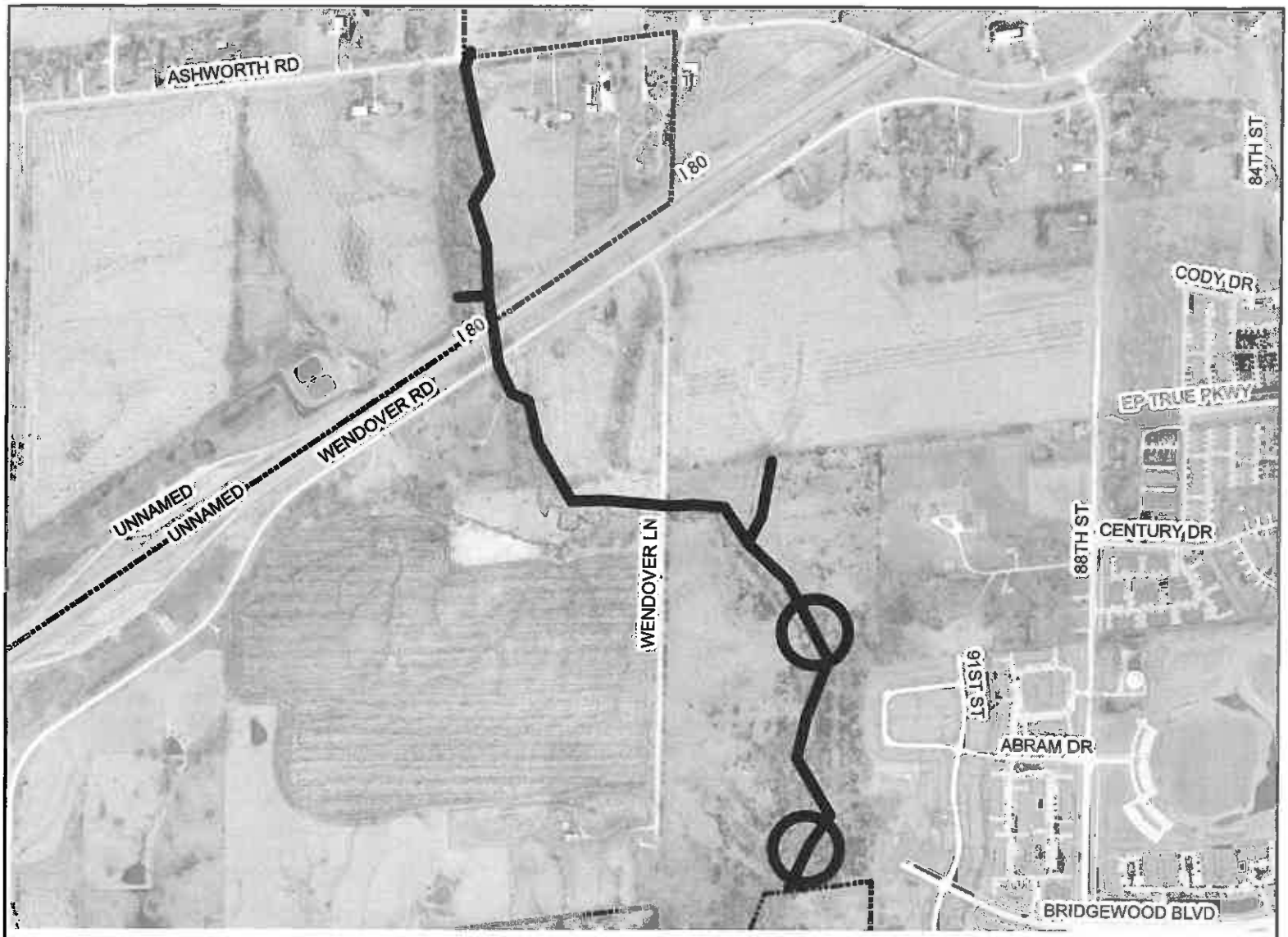
CLASSIFICATION	HOURLY RATE
Project Director	$186.00
Project Manager	$158.00-$181.00
Project Scientist	$168.00
Project Advisor	$169.00
Technical Director	$186.00
Lead Technical Engineer	$172.00
Project Engineer	$130.00-$158.00
Staff Engineer	$106.00-$128.00
Lead Technician	$130.00
Engineering Technician	$98.00-$123.00
CAD Technician	$85.00
Construction Manager	$149.00
Lead Field Technician	$123.00
Field Technician	$71.00-$106.00
Land Surveyor	$153.00
Project Administrator	$75.00-$95.00
Administrative Assistant	$60.00

REIMBURSABLE EXPENSES

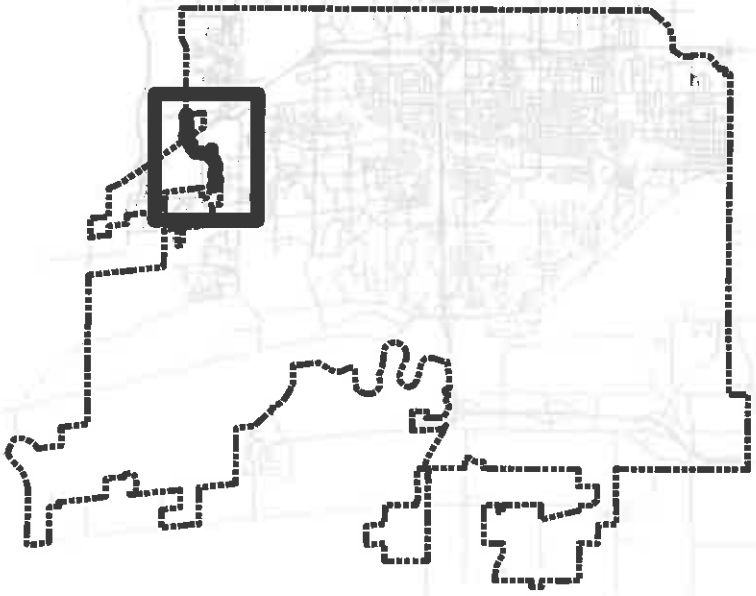
1. All materials and supplies used in the performance of work on this project will be billed at cost plus 10%.
2. Auto mileage will be reimbursed per the standard mileage reimbursement established by the Internal Revenue Service. Service vehicle mileage will be reimbursed on the basis of $0.88 per mile.
3. Charges for outside services such as soils and materials testing, fiscal, legal will be billed at their invoice cost plus 15%.
4. All other direct expenses will be invoiced at cost plus 10%.

ADJUSTMENTS TO FEE SCHEDULE

1. Fee schedule effective January 1, 2017. Rates subject to change annually on January 1.



VICINITY MAP



LEGEND

PROJECT LOCATION

TREE MONITORING LOCATION

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W E
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THE CITY OF WEST DES MOINES

PROJECT: **Fox Creek Trunk Sewer Extension, Annual Tree Monitoring**

LOCATION: **Wendover Lane - South of I-80 to Ashworth Road**

DRAWN BY: JDR	DATE: 5/3/2017	PROJECT: 0510-005-2015	SHT. 1 of 1