CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: **August 5, 2019**

ITEM:

Resolution - Approving Professional Services Agreement
2019 Channel Repair Program

FINANCIAL IMPACT:

The cost of the Professional Services Agreement associated with the design of this project is anticipated not to exceed $22,750.00 for Basic Services. In addition, the cost for performing Resident Consultant Services will not exceed $27,150.00. 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 account no. 660.000.000.5250.495 with the ultimate funding intended to come from Stormwater Revenue.

BACKGROUND:

Approval of this action authorizes WHKS & Company to perform the professional services necessary as part of the ongoing channel repair program at various locations throughout the City.

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.

This agenda item was distributed to the Public Services Subcommittee by e-mail only since there was no meeting.

OUTSTANDING ISSUES: None

RECOMMENDATION:

City Council Adopt:

- Resolution Approving Professional Services Agreement for 2019 Channel Repair Program.

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

STAFF REVIEWS

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

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	Public Services		
Date Reviewed			
Recommendation	Yes	No	Split

RESOLUTION APPROVING PROFESSIONAL SERVICES AGREEMENT

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

2019 Channel Repair Program
Project No. 0510-043-2019

and,

WHEREAS, said project Plans, Specifications, Form of Contract, and Estimate of Cost need to be prepared; and,

WHEREAS, Engineering Services Department staff have recommended Plans, Specifications, Form of Contract, and Estimate of Cost be prepared by WHKS & Company, and,

WHEREAS, the Engineering Services Department has obtained a written proposal from WHKS & Company to do the work requested, which estimates the following cost to the City of West Des Moines;

Basic Services of the Consultant	**$22,750.00**
Resident Consultant Services	**$27,150.00**
Total	**$49,900.00**

therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA, that WHKS & Company is hereby directed to prepare Plans, Specifications, Form of Contract, and Estimate of Cost for the above named project.

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

PASSED AND APPROVED on this **5th** day of **August, 2019.**

Steven K. Gaer, Mayor

ATTEST:

Ryan T. Jacobson, City Clerk

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

This Agreement is made and entered into this 5th day of August, 2019, by and between the CITY OF WEST DES MOINES, a municipal corporation, hereinafter referred to as "City", and WHKS & Co., (Fed. I.D. #42-0943938), 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 for the 2019 Channel Repair Program (Project No. 0510-043-2019) 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	$ 22,750
II. Resident Consultant Services	$ 27,150
Total	$ 49,900

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.

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: WHKS & Co.
Attn: Casey V. Faber, P.E.
Address: 3737 Woodland Ave., Suite 111
City, State: West Des Moines, IA 50266

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(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 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.

WHKS & Co.	CITY OF WEST DES MOINES
BY: _____	BY: _____
Derek J. Thomas, P.E., Principal	Ryan T. Jacobson, City Clerk

ATTACHMENT 1

SCOPE OF SERVICES

A. Project Description

This project consists of the site visit, design and construction services for the City's 2019 Channel Repair Program. The City has a budget of $250,000 for this project, including engineering. The exact location(s) of the project have not been identified but will be determined as part of this agreement. Six potential sites remain from the 2018 Feasibility Report and others may be identified depending on anticipated construction costs or City priority. During the kick-off meeting the City and Consultant will review the list of potential projects and select around 8 sites. The Consultant will perform a site visit to each of the identified sites and prepare a brief feasibility report. The City and Consultant will meet to review the feasibility report and determine the project location(s) to be completed. The project could extend to more than one location depending on how it fits into the budget. If multiple sites are identified for the project they will be covered under one set of plans to be bid together as one contract.

B. Scope of Basic Services of the Consultant Provided Under This Agreement:

1. Project Management and Meetings

- Perform general project administrative duties including supervision and coordination of the project team, review of project costs and billings, prepare invoices using Consultant's standard forms, preparation of status reports, and general administrative activities.
- Hold kick-off meeting with City to discuss the project and review the scope.
- Attend two (2) meetings for the project. One to review the feasibility report and another to review check plans.
- Advise the City of the necessity of obtaining Special Engineering Services as described in Paragraph D., and act as the City's representative in connection with any such services not actually performed by WHKS.

2. Site Visits and Research of Existing Conditions

- Visit up to 8 project locations as directed by the City including 6 remaining sites from the 2018 Feasibility Report.
- Collect, obtain, and review relevant information from the City.
- Take photographs and measurements necessary to document existing conditions and propose method and limit of erosion control improvements. Field measurements and LIDAR will be used for plan preparation.

3. Feasibility Report

- Prepare a feasibility report for the 2019 Channel Repair Program. The letter report will include the following:
  - i. Summary of existing conditions
  - ii. Recommendations of erosion control improvements.
  - iii. An Engineer's Opinion of Probable Construction Costs

4. **Preliminary and Final Design**
   - Prepare preliminary and final plans and specifications to show the character and scope of work to be performed by contractors on the Project. Plans will follow SUDAS standards.
   - Identify bat habitat trees that need to be downed between November 1 and March 30.
   - Prepare opinion of probable construction cost on completed plans and specifications.
   - A Storm Water Pollution Prevention Plan (SWPPP) will be prepared, if necessary.
   - Prepare and submit applicable construction permit application package to NPDES and/or USACE, if required.
   - Fee based on design and plan preparation for up to 8 sites.

5. **Bidding Services**
   - Prepare opinion of probable construction cost.
   - Prepare forms of notice for bids, contractor's proposal, construction agreement, payment bond and performance bond for approval by the City, subject to prior review and approval by City's Attorney, Bond Counsel, and/or Fiscal Agent.
   - Post notice to bidders to www.iowabiddate.com on behalf of City. City to publish notice of hearing in the newspaper.
   - Distribute bidding documents to plan rooms and potential bidders.
   - Answer contractor's questions during the bidding phase.
   - Prepare addendums to the contract documents prior to bid letting, if necessary.
   - Attend bid opening.
   - Generate final bid tabulation.

C. **Scope of Resident Consultant Services Provided Under This Agreement:**

1. **Construction Administration**
   - Provide construction administration assistance during construction. Contract administration assistance activities conducted during project construction include clarification of design details, periodic visits to the construction site to observe the progress of work, review of shop drawings, review periodic payment estimates for completed construction work and recommend payments for processing, prepare change orders when required, and prepare the final summary of construction costs.
   - Conduct a preconstruction meeting with City, Contractor and Utility Owners.
   - Prepare record drawings from Contractor provided "mark-ups" at the completion of the construction.
   - Provide construction updates to the City.

2. **Construction Observation**
   - Provide resident project observation services during the construction of the Project. Resident observation is a part time function during construction. Duties are to provide on-site evaluations of the Project progress in accordance with the plans and specifications and report said progress to the Engineer. Additionally, the observer maintains a log book recording conditions at the job site, weather, record of visitors, summary of daily activities, actions taken, observations in general and assists in recording data for eventual preparation of Record

Drawings. The observer duties do not include construction means, methods, procedures, and job-site safety.

- Fee based on observation for up to 8 sites.
- Material testing will be performed through an on-call agreement the City has with another consultant, but will be coordinated by WHKS. City will pay material testing consultant separately.

D. Special Engineering Services:

Special Engineering Services are those services not listed above, but which may be required or advisable to accomplish the Project. Special Engineering Services shall be performed when authorized by the City for additional fees, to be determined at the time authorized.

Special Engineering Services include:

1. Land surveying and platting
2. Easement research, plats or descriptions
3. Negotiation for easements or land acquisition
4. Special assessment assistance
5. Quality control testing and construction materials testing
6. Permits other than those identified above
7. Funding assistance, including grant and/or loan applications
8. Wetland Delineations or mitigation plans
9. Floodplain and hydraulic/hydrologic modeling
10. Water and/or sanitary sewer rate studies
11. Geotechnical design/recommendations
12. Cultural resource survey or other studies or documentation that may be required by regulatory agencies that are not specifically listed in the scope of services
13. National Environmental Policy Act (NEPA) compliance, including historical and archeological investigations
14. Structural evaluation and/or design
15. Attendance at additional meetings (other than those listed above)
16. Construction staking

ATTACHMENT 2

PROJECT SCHEDULE

Kick-off Meeting – August 2019
Site Visits and Revised Feasibility Study submittal – September 2019
Feasibility Study Meeting and Site Selection – October 2019
Check Plan submittal – December 2019
Check Plan Meeting – December 2019
Final Plan submittal – January 2020
Bid Letting – February 2020

ATTACHMENT 3

SCHEDULE OF FEES

WHKS & Co. 2019 Fee Schedule and Method of Payment

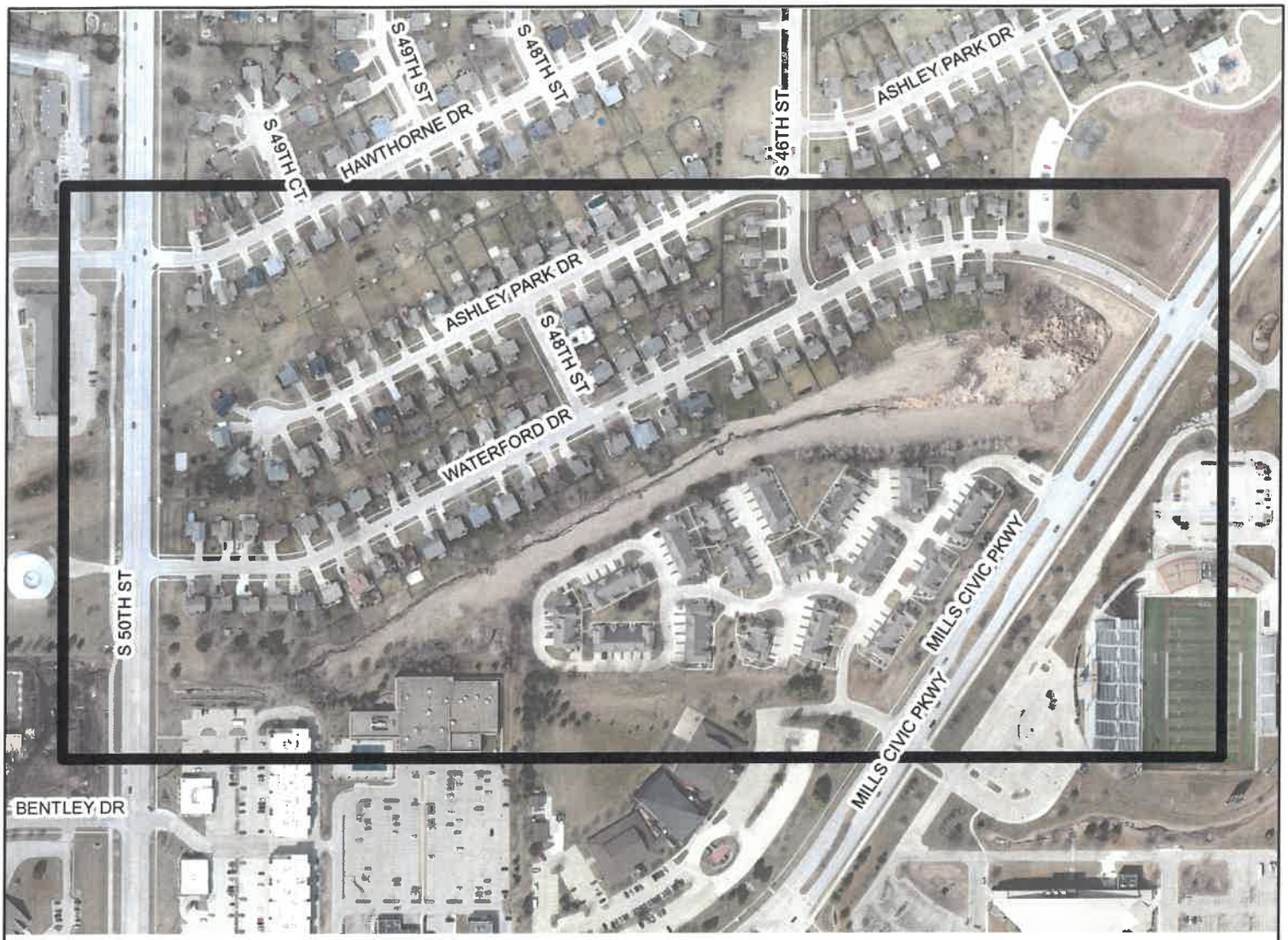
City of West Des Moines

Schedule of Hourly Billing Rates – Effective January 1, 2019

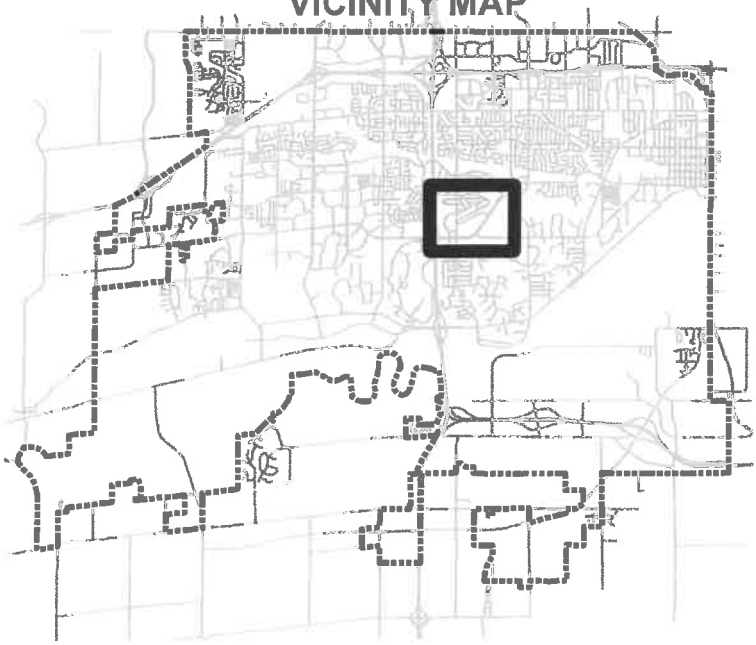
Principal	$ 218.00
Project Manager	$ 156.00
Project Engineer	$ 144.00
Design Engineer III	$ 132.00
Design Engineer II	$ 120.00
Design Engineer I	$ 108.00
Land Surveyor	$ 146.00
Construction Manager	$ 115.00
*Survey Crew Chief	$ 102.00
*Survey Crew Technician	$ 83.00
*Engineering Tech IV	$ 123.00
*Engineering Tech III	$ 97.00
*Engineering Tech II	$ 85.00
*Engineering Tech I	$ 76.00
*Construction Observer II	$ 98.00
*Construction Observer I	$ 80.00
*Clerical	$ 72.00

Reimbursable expenses include mileage at the current IRS mileage rate; actual cost of reproduction and printing; and actual out-of-pocket expenses such as field supplies, cost of recording documents, permit fees, etc.

**NOTE*: *Time and a half pay applies for overtime, if applicable*



VICINITY MAP



LEGEND

PROJECT LOCATION

N
W E
S

THE CITY OF WEST DES MOINES

PROJECT:

2019 Channel Repair Program

LOCATION: **Exhibit "A"**

DRAWN BY: JDR	DATE: 7/25/2019	PROJECT NUMBER/NAME: 0510-043-2019	SHT. 1 of 1