CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: December 7, 2020

ITEM:

Resolution - Approving Professional Services Agreement
Fiber Optic Interconnect – Orange & Pink Routes
0510-068-2020

FINANCIAL IMPACT:

The cost of the Professional Services Agreement associated with the design of this project is anticipated not to exceed $580,000.00 for Basic Services. In addition, the cost for performing Resident Consultant Services will not exceed $180,000.00. 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. 500.000.000.5250.495 with initial funding intended to come from General Obligation Bonds and ultimately reimbursed by Microsoft.

BACKGROUND:

Approval of this action authorizes the Consultant to perform the professional services necessary for design of proposed conduits for fiber optic interconnection between the existing Microsoft Mountain and Osmium data centers and the proposed Microsoft Ginger West data center. In conjunction with this work the City intends to install open access conduit to maximize efficiency. Design of this project is being expedited to serve a future tenant in the open access network that will ultimately serve The Preserve Estates. A reimbursement agreement is currently in negotiation with Microsoft and will be presented to the City Council at a future meeting.

The Engineering Services Department retains professional consultants based on their past work experience, qualifications of their staff, familiarity with the project, staffing 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 Fiber Optic Interconnect – Orange & Pink Routes.

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

STAFF REVIEWS

Department Director	Brian J. Hemesath, P.E., 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			
Recommendation	Yes	No	Split

RESOLUTION APPROVING PROFESSIONAL SERVICES AGREEMENT

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

Fiber Optic Interconnect – Orange & Pink Routes
Project No. 0510-068-2020

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 Civil Design Advantage, L.L.C. and

WHEREAS, the Engineering Services Department has obtained a written proposal from Civil Design Advantage, L.L.C. to do the work requested, which estimates the following cost to the City of West Des Moines;

Basic Services of the Consultant	**$580,000.00**
Resident Consultant Services	**$180,000.00**
Total	**$760,000.00**

therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA, that Civil Design Advantage, L.L.C. 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 Civil Design Advantage, L.L.C. for the cost indicated above as payment by the City of West Des Moines for the services indicated.

PASSED AND APPROVED this **7th** day of **December, 2020.**

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson, City Clerk

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

This Agreement is made and entered into this 7th day of December, 2020, by and between the CITY OF WEST DES MOINES, a municipal corporation, hereinafter referred to as "City", and Civil Design Advantage, LLC, (Fed. I.D. # 20-0291080), 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 Fiber Interconnect Projects – Orange/Pink (Project No. 0510-068-2020) 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	$ 580,000
II. Resident Consultant Services	$ 180,000
Total	$ 760,000

   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' 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: Civil Design Advantage, LLC
Attn: Gary L. Reed, President
Address: 3405 SE Crossroads Drive, Suite G
City, State: Grimes, IA 50111

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.

CIVIL DESIGN ADVANTAGE, LLC

BY: _____
Gary L. Reed, President

CITY OF WEST DES MOINES

BY: _____
Ryan T. Jacobson, City Clerk

ATTACHMENT 1

SCOPE OF SERVICES

Orange-Pink Fiber Interconnect Projects
WDM 0510-068-2020

I. BASIC SERVICES
(Based on attached Fiber Maps)

Design Meetings

Civil Design Advantage (CDA) shall meet with City staff and other city consultants during the design development process as necessary to communicate the progress of the fiber conduit plans.

WDM SharePoint Site Management

CDA will provide content and generally keep the main design project number updated with fiber conduit information. We will also provide construction related information to the three (3) stand-alone fiber conduit construction project numbers.

Notification/Coordination with Jurisdictions/Right-of-Way Users

The planned fiber conduit alignments appear to affect multiple jurisdictions and may impact other franchise utility or private utility providers within existing roadway right-of-way. Civil Design Advantage shall coordinate with the various jurisdictions and known right-of-way users to develop constructible fiber optic conduit routes.

Topographic Survey/Mapping

Civil Design Advantage (CDA) will proceed with topographic survey of the proposed fiber conduit interconnection alignments at specific/critical locations and/or utilize existing topographic survey information from other design consultants. We do not plan to conduct a topographic survey of the entire corridors. Specific/critical locations shall be determined based on existing constraints once the fiber alignments have been finalized. All areas not surveyed shall be mapped utilizing LIDAR technology. Survey extents shall be limited to the edge of existing roadway to the existing right-of-way line along the selected fiber alignments. Topographic survey shall include surface features within the planned area, break lines, elevation information, trees greater than 12" in diameter and other visible surface features. Iowa One-Call will be contacted in an effort to gain locates for existing utilities for survey purposes. We will ask the City to provide any and all utility mapping for the corridors at time of notice to proceed. Utility mapping will be added to the topographic survey and shown as "map location". A note will be added to the design drawings suggesting the contractor contact Iowa One-Call prior to construction and contact the engineer of record if any conflicts exist. CDA does not intend to re-establish right-of-way or property line information unless needed for permanent acquisition purposes. We plan to utilize parcel line-work from County mapping and design info from other consultants as necessary. CDA will utilize survey/design information from other consultants as necessary.

Wetland/WUS Delineation and Section 404 Permit Application

Civil Design Advantage (CDA) shall utilize sub-consultant services to perform wetland/water of the United States delineation and Section 404 Permit Application work. See attachment 4 for scope of services.

Acquisition Plat Preparation (Iowa Interstate Railroad Crossings)

Civil Design Advantage (CDA) shall prepare acquisition plats and legal descriptions for areas of the fiber conduit alignments needed for a permitted crossing. Acquisition plats shall be prepared based on industry standard procedures. For basis of this agreement, CDA assumes all the fiber conduit routes (100%) will be located within existing City or County right-of-way and no acquisition plats will be needed. Any legal verbiage documents needed for the transfer of property rights for a permitted crossing are assumed to be prepared by the City of West Des Moines or others. CDA has assumed that no temporary easements will be needed for the project and contractor shall confine their construction activities within the bounds of existing right-of-way limits. CDA also assumes fiber conduit alignments located within existing right-of-way (held by fee title or easement) is suitable for the location of the fiber conduit. As such, CDA does not intend to prepare acquisition plats for underlying title acquisition of right-of-way held by easement. For basis of this agreement, CDA has estimated a total of four (4) acquisition plats needing prepared for permitted crossings of the Iowa Interstate Railroad. No right-of-way negotiation services are included in this scope of services, but CDA will assist the right-of-way agent, if needed, as required.

Construction Drawings

Once we have topographic information and base mapping, Civil Design Advantage will proceed with design of the fiber optic conduit interconnection projects. Plans will generally show the alignment of the fiber conduit, typical section for standard bury depth, critical crossing information at specific locations, general notes and quantities. Construction drawings shall generally consist of:

Cover Sheet/Project Location Map
Typical fiber conduit configuration details (shared trench provided by City or other)
Design Details
Bid Quantities and Reference Notes
Plan & Profile sheets on aerial background
Critical crossing information
Survey Control

CDA will reference the Statewide Urban Design and Specifications (SUDAS) or WDM Specifications for all construction work. Technical specifications developed on previous fiber conduit projects shall be utilized on this project, revised for the specific conduit installation. CDA will coordinate with end user on final tie-in locations. Proposed scope/fees are based on providing the following bid packages:

Orange Route – Osmium to The Preserve Estates + Finalization of Preserve Estates Local Conduit Information (separate bid package w/ letting)

Orange Route – The Preserve Estates to IAISRR/115th + King's Grove TH to Mountain AND Pink Route – SGPP to Ginger West (separate bid package w/letting)
Pink Route – Osmium to Mountain (separate bid package w/ letting)
Orange Route – Booneville Rd./115th to King's Grove TH (plan & profile sheets/specs to be incorporated into road project bid package)
Pink Route – Grand Ave/SGPP to Ginger West (plan & profile sheets/specs to be incorporated into road project bid package)
Orange Route – 115th/IAISRR to Booneville Rd. (plan & profile sheets/specs to be incorporated into road project bid package)
Relocated Purple Route – Veterans Pkwy to SE Soteria (plan & profile sheets/specs to be incorporated into road project bid package)

We have estimated 3 separate fiber conduit bid packages and 4 segments that we will coordinate with the roadway designer and provide design data to be included in the road bid package.

The first bid package listed includes conduit system within The Preserve Estates. The City shall provide the base design, specifications and details. CDA will draft the design into plan and profile sheets suitable to include in the overall bid package and quantify bid items in the overall bid tabulation. CDA assumes electronic mapping from the subdivision construction will be provided to support the preparation of the plan and profile sheets.

Storm Water Pollution Prevention Plan (SWPPP) – if needed

Civil Design Advantage shall prepare an initial Storm Water Pollution Prevention Plan (SWPPP) for the fiber optic conduit project, if needed. CDA shall publish required notices in area newspaper, provide proof of publication to the contractor so they may obtain the NPDES permit and supply the contractor with the initial SWPPP booklet. CDA shall not be responsible for obtaining certification statements from contractors or keeping the SWPPP updated throughout the construction process. A SWPPP will only be prepared if we believe more than 1 acre of ground will be disturbed during the individual project's construction.

Engineer's Opinion of Construction Cost

CDA shall prepare an engineer's estimate of construction cost based on the plan prepared and bid quantities tabulated for each project. A final engineer's estimate shall be transmitted to the City with each of the final plan sets for the projects with individual bid lettings. CDA will provide estimated construction cost information to the road designers for the 4 segments included in the road bid packages.

Project Manual Preparation

Civil Design Advantage shall utilize the City of West Des Moines standard front end contract documents and adapt them to the fiber optic conduit interconnection projects. We assume the City of WDM will provide the most up-to-date front end contract documents in word format to CDA. Full project manuals will be prepared for the 3 separate fiber conduit bid lettings. CDA shall provide specific technical specification materials to the road design consultants for the segments that we are including fiber conduit construction within the roadway bid packages.

Permitting

The planned fiber optic route appears to cross multiple jurisdictions and may require separate permits for construction. Civil Design Advantage shall apply for construction permits to enable construction of the preferred fiber optic conduit routes. Based on previous experience this may include County, railroad or known pipelines.

Bidding Services

Civil Design Advantage shall handle bidding services for the projects including transmitting a project notice to selected contractors, maintaining a plan-holders list, issuance of any addenda (if needed), attending the bid opening, review of construction proposals, preparation of a bid tabulation and a recommendation of award for the project. CDA plans to utilize an outside plan distribution service as part of this service. CDA will provide full bidding services for the 3 fiber conduit bid lettings and aid the road design consultants during the bidding of the 4 segments included in the road bid packages.

Pre-construction Conference

At least one Civil Design Advantage representative shall attend the pre-construction conference with the City, contractor, effected utility companies and other interested parties for each of the fiber conduit projects. For the basis of this proposal, CDA has estimated up to three (3) pre-construction conferences that include organizing the meeting, preparing an agenda and generally chairing the meeting. CDA will be available to attend the pre-construction meetings for the roadway projects that have fiber conduit construction.

II. RESIDENT CONSTRUCTION SERVICES

Shop Drawing Review

Civil Design Advantage shall review shop drawings and other submissions of the contractor for general compliance with the construction contract for each project.

Construction Administration

For the 3 separate fiber conduit bid lettings, Civil Design Advantage shall make periodic visits to the site to observe, as an experienced and qualified design professional, the progress and quality of executed work, and to determine if the work is proceeding in accordance with the contract documents. CDA shall notify the City of any work which does not comply with the contract documents, make recommendations to the City for correction of the non-conforming work, and

ensure that those recommendations are implemented by the contractor. CDA shall conduct bi-monthly (every 2 weeks) construction meetings to determine progress on the project and attempt to resolve any construction related issues that may arise. CDA shall prepare and make recommendations on change orders and claims of the contractor for extra time and/or compensation. CDA shall also prepare and approve progress schedules, pay estimates, final quantities and the final payment to the contractor. CDA shall conduct intermediate walk-thrus (10,000 lineal feet increments, if necessary) to determine if the project is substantially complete, prepare a punch list of incomplete items for the contractor, determine if the punch list items have been resolved and if final acceptance of the project can be recommended to the City along with the approval of the final payment to the contractor. CDA will work with the contractor on close-out documentation including warranty/bonds, as-builts and final payments.

For the 4 segments included in the road design packages, CDA will assist the road design consultant during the construction phase portion. We assume the road design consultant will be the lead and prepare all change orders, pay applications, etc. CDA will provide input on the fiber conduit portion of the project to the road design consultant.

Part-time Construction Observation

For the 3 separate fiber conduit bid lettings, CDA shall observe the construction of the fiber interconnection construction for compliance with the construction drawings on a part-time basis. CDA will supply one construction observer to (1) monitor the contractor's progress and (2) determine if the results comply with the drawings and specifications and (3) tabulate payment quantities for contractor pay applications. CDA has estimated construction observation on average 50% of the time contractor is on-site. CDA will provide increased observation time during vault (not every vault, but enough to help assure construction techniques) installation, including photos of vault installations. Materials testing (density testing or other) is not included or will be the responsibility of the contractor. CDA will observe the electrical continuity and blowing of BB's/pulling mandrel through the conduits as part of the observation services. The contractor is ultimately responsible for the means and methods of construction.

For the 4 segments included in the road design packages, CDA plans to observe the fiber portion of the projects on an as-needed basis. CDA would request that the road design consultant keep us apprised of the schedule for fiber conduit construction. CDA will also observe the electrical continuity and blowing of the BB's/pulling mandrel through the conduits as part of our services. Services shall be specific to the fiber conduit improvements only.

As-built Drawings

CDA will require the contractor to provide X, Y and Z coordinates of the constructed fiber optic conduit as it is placed in the ground at intervals acceptable to the City/end user. Design plans will require the contractor to mark the ground with horizontal location and depth for the duct alignment during construction. CDA will include a bid item within the plans requiring the contractor to complete an as-built survey of the marked locations and provide to CDA. CDA will then re-draw the conduit alignment and profile based on information provided by the contractor to create as-built drawings. As-built drawings will be submitted to the City upon completion.

Additional Services

The following is a list of services not included in the current scope of services or compensation. This list is provided to further define the agreement scope. The list includes, but is not limited to:

- Environmental Services beyond what is shown in Foth Scope of Services (Attachment 4)
- Fiber Design Services (Current design is for pathways/conduit & structures only)
- Additional Topographic or Boundary Survey other than specified
- Revisions/updates to initial Storm Water Pollution Prevention Plan (SWPPP)
- Storm Sewer Design
- Street Design
- Traffic Signal Design
- Submittal/Permitting/Licensing Fees
    - Excessive fees (Hawkeye Land or other) are assumed to be paid by City or other
- Subdivision Platting
- Site Plan Preparation
- Traffic Studies
- Structural Engineering
- Technical Specification Preparation (Refer to SUDAS or WDM Spec.)
- Franchise Utility Design
- Right-of-way Services (appraisals, comp estimates, negotiations, etc.)
- Condemnation Proceedings
- Purchase price of acquired right-of-way (if needed, assumed paid by City or other)
- Color Renderings
- Re-establishment of property pins if not found/Courthouse Research
- Pavement Determination
- Public Meetings
- Full-time Construction Observation
- Additional Services identified in Foth Scope of Services (Attachment 4)

ATTACHMENT 2

PROJECT SCHEDULE

Civil Design Advantage (CDA) is prepared to start work on this project immediately upon notice to proceed.

ATTACHMENT 3

Standard Fee Schedule
2020-2021
Civil Design Advantage, LLC

Classification	Billing Rate		Unit
Principal / Senior Engineer	$185	/	hour
Principal / Senior Land Surveyor	$185	/	hour
Senior Engineer	$176	/	hour
Engineer 8	$160	/	hour
Engineer 7	$150	/	hour
Engineer 6	$140	/	hour
Engineer 5	$130	/	hour
Engineer 4	$118	/	hour
Engineer 3	$106	/	hour
Engineer 2	$95	/	hour
Engineer 1	$85	/	hour
Senior Technician	$137	/	hour
Technician 8	$125	/	hour
Technician 7	$115	/	hour
Technician 6	$106	/	hour
Technician 5	$97	/	hour
Technician 4	$86	/	hour
Technician 3	$76	/	hour
Technician 2	$65	/	hour
Technician 1	$54	/	hour
Senior Project Manager	$173	/	hour
Project Manager 8	$160	/	hour
Project Manager 7	$145	/	hour
Project Manager 6	$138	/	hour
Project Manager 5	$130	/	hour
Project Manager 4	$120	/	hour
Administrative 3	$85	/	hour
Administrative 2	$65	/	hour
Administrative 1	$45	/	hour
Mileage	Current IRS Rate	/	mile
Plots (Black & White)	$1.50	/	sheet
Plots (Color)	$30	/	sheet
Mylar Plots	$15	/	sheet
Copies (Black & White)	$0.10	/	page
Copies (Color)	$0.75	/	page

ATTACHMENT 4

8191 Birchwood Court, Suite L
Johnston, IA 50131
(515) 254-1393 • Fax: (515) 254-1642
www.foth.com

November 17, 2020

Mr. Gary Reed
Civil Design Advantage
3405 SE Crossroads Drive, Suite G
Grimes, IA 50111

Dear Mr Reed:

RE: Proposal for Wetland Services; Ginger Orange, Pink and Relocated Purple Fiber Optic Alignments, West Des Moines, Iowa

Foth Infrastructure & Environment, LLC (Foth) appreciates the opportunity to submit the attached proposal for wetland services for the above referenced site. The project understanding, scope of services, schedule and compensation are included in Exhibit A.

I. Owner Responsibilities

Civil Design Advantage is responsible for the following information and activities:

- Provide a single contact source for review, comment, and decision making on all issues related to the project.
- Right of entry to conduct the field services
- Notification of any restrictions or special requirements (such as safety) regarding accessing the site
- Electronic diagram (AutoCAD or MicroStation) showing the required delineation area

II. Agreement to Proceed

Our services will be provided in accordance with the attached Agreement for Professional Services terms and conditions (Terms). Please review and return a signed copy to authorize us to begin. Should you desire to authorize our services through the use of a Purchase Order, the previously referenced Terms shall govern and replace those on the Purchase Order. Should we start services upon a verbal authorization it is with the understanding they are provided in accordance with the above referenced Terms. Should you have any questions regarding these terms and conditions, or any other matter, please

contact us. If the above Terms are not acceptable, please notify us in writing before we begin providing services.

We appreciate the opportunity to submit this proposal for your review. If you have questions, please contact me at 515-251-2524 or Eva.Moritz@Foth.com.

Sincerely,
Foth Infrastructure & Environment, LLC

Eva Moritz, P.E.
Licensed in IA
Lead Environmental Engineer

AGREEMENT FOR SERVICES

Project Title (the "Project"): Ginger Orange, Pink and Relocated Purple Fiber Optic Alignments

FOTH Project Number:

CLIENT Project Number: (If applicable)

This Agreement for Services (hereinafter "Agreement") is made and entered into this **17th** day of **November**, **2020**, by and between **FOTH INFRASTRUCTURE & ENVIRONMENT, LLC**, (hereinafter "Consultant") and ***Civil Design Advantage***, (hereinafter "Client"), for the services described under the Scope of Services (the "Services").

CLIENT: Civil Design Advantage

Address: 3405 SE Crossroads Drive, Suite G, Grimes, IA 50111

Phone No: 515-369-4400 Email Address: garyr@CDA-eng.com

Scope of Services: Client hereby agrees to retain Consultant to perform the following Services:

Scope to be in accordance with Exhibit A which is attached hereto and incorporated into the Agreement by reference herein.

Schedule: Services shall be performed according to the following schedule:

Schedule as per Exhibit A attached hereto" in this section.

Compensation: In consideration of these Services, the Client agrees to pay Consultant compensation as follows:

☐ Lump-Sum in the amount of $ .00

☒ Unit Cost/Time Charges (Standard Rates)

☐ Other as stated here:

Special Conditions (if any):

The attached Agreement for Services Standard Terms and Conditions is made a part hereof and incorporated into this Agreement.

IN WITNESS WHEREOF, this Agreement is accepted on the date last written below, subject to the terms and conditions above stated and the provisions set forth herein.

CLIENT		**CONSULTANT**	
Signed:		*Signed:*	Patrick P. Kueter
Name (printed):		Name (printed):	Patrick Kueter
Title:		Title:	Client Director
Date:		Date:	11/17/2020
		Signed:	EMo
		Name (printed):	Eva Moritz
		Title:	Lead Environmental Engineer
		Date:	11/17/2020

AGREEMENT FOR SERVICES
STANDARD TERMS AND CONDITIONS

1.0 Commencement of Services - The Services will commence consistent with the schedule referenced herein or as otherwise agreed to by the parties, upon receipt of this signed Agreement. If after commencement of the Services, the Project is delayed for any reason beyond the control of Consultant for more than sixty (60) days, the terms and conditions contained herein are subject to revision by Consultant.

1.1 Standard of Care - The standard of care for any professional Services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no other warranties, express or implied, under this Agreement or otherwise, in connection with any Services performed or furnished by Consultant. Subject to the standard of care, Consultant and its sub-consultants may use and rely upon data, reports, design elements and information ordinarily or customarily furnished by others, including, but not limited to Client, Client's other contractors or consultants, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

Consultant shall not be required to sign any document, no matter by whom requested, that would result in the Consultant having to certify, guarantee, or warrant the existence of conditions whose existence the Consultant cannot ascertain.

2.0 Client Responsibilities - Client shall provide, at Client's expense, all criteria, design, and construction standards including full information as to Client's requirements for the Project, including all document specifications. The provision or production of such data or information is not included in the Services, except where explicitly referenced in the Scope of Services. As stated in Section 1.1, Consultant shall be entitled to rely upon such data and information in the performance of the Services and shall not be liable for any incorrect advice, judgment or decision based on any inaccurate information furnished by Client, Client's agents or Clients other consultants. Such data and information shall include but not be limited to the following:

a. If not included in the Scope of Services, a complete survey of the Project site which shall include but not be limited to easements, right-of-way, encroachments, zoning and deed restrictions, subterranean structures or utilities, existing buildings and improvements.

b. If not included in the Scope of Services, soils data, laboratory tests, reports and inspections of samples, materials or other items, with appropriate professional interpretations.

c. Legal counseling services necessary for the Project including legal review of the construction contract documents.

d. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.

e. If not included in the Scope of Services, permits and approvals from any authorities having jurisdiction over the Project.

2.1 Right of Entry - Client shall provide for entry for the employees, agents and subcontractors of Consultant and for all necessary equipment.

2.2 Client Authorized Representative - Client shall designate a person authorized to act as Client's representative. Client or his representative shall receive and examine documents submitted by Consultant and shall be empowered to interpret and define Client's policies and render decisions and authorizations in writing promptly to prevent unreasonable delay in the progress of Consultant's Services. Client shall give prompt written notice to Consultant whenever Client observes or otherwise becomes aware of any defect in the Project, Services or other event which may substantially affect Consultant's performance of Services under this Agreement.

3.0 Fees and Payment

3.1 Invoice Payment Due - Client shall compensate Consultant for Services and expenses rendered under this Agreement. Consultant's fee for Services will be based on Consultant's rates currently in effect at the time the Services are done; lump sum or other schedules as identified under the Compensation section. Rates of Consultant are subject to annual revision. Payment shall be due within thirty (30) days after the date of invoice describing the Services performed and expenses incurred during the preceding invoice period.

3.2 Failure to Pay. Client agrees that timely payment is a material term of this Agreement and that failure to make timely payment as agreed constitutes a breach hereof. In the event payment for Services rendered has not been made within thirty (30) days from the date of invoice, Consultant may, after giving seven (7) days' written notice to Client and without penalty or liability of any nature, and without waiving any claim against Client, suspend all work on all Services as set forth herein. Upon receipt of payment in full for Services rendered, plus interest charges, Consultant will continue with Services. Payment of all

compensation due Consultant pursuant to this Agreement shall be a condition precedent to Client using any of Consultant's work product and/or deliverables under this Agreement.

3.4 Interest on Late Payments - In order to defray carrying charges resulting from delayed payments, simple interest at the maximum rate allowed by law will be added to the unpaid balance of each invoice. The interest period shall commence thirty (30) days after the date of the original invoice and shall terminate upon date of payment. Payments will be first credited to interest and then to principal.

4.0 Insurance/Limitation of Consultant's Liability - Consultant will maintain the following insurance coverages:

a. Worker's compensation insurance pursuant to state law.

b. Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, non-owned, or hired vehicles, with $1,000,000 combined single limits.

c. Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of Consultant or of any of its employees, agents, or subcontractors, with $1,000,000 per occurrence and $2,000,000 in the aggregate.

d. Professional liability insurance, if applicable, of $1,000,000 per claim and in the aggregate.

4.1 Liability Limits - Notwithstanding any provision in this Agreement to the contrary, Client and Consultant each agree not to assert against the other any claim, demand or suit for consequential, incidental, indirect or special damages arising from any aspect of the performance or nonperformance of the other party or any third-party engaged by such other party under this Agreement, and each party hereto waives any such claim, demand or suit against the other in connection with this Agreement. Notwithstanding any language to the contrary, the total aggregate liability of Consultant, its employees, officers, directors, shareholders, agents, or sub-consultants, to all parties related to this agreement shall not exceed the greater of: (1) $50,000.00, or (2) the amount of Consultant's fee for the Services on any individual work order issued under this Agreement that gives rise to a claim.

4.2 Waiver of Subrogation - Both parties hereby waive, and shall cause their respective insurers to waive, all rights of subrogation against the other party, their employees, officers, directors, shareholders, agents, or sub-consultants for damages caused by risks covered by insurance, except such rights as they may have to the proceeds of the insurance.

5.0 Indemnification - Consultant, to the fullest extent permitted by law, shall indemnify and hold harmless Client and any of Client officers, directors, employees and agents from and against claims, losses, damages, liabilities, including attorney's fees and expenses, for third-party claims of bodily injury, sickness or death, and property damage or destruction to the extent caused by the negligent acts or omissions of Consultant or Consultant's separate contractors or anyone for whose acts any of them may be liable, but only to the extent of the negligence. Nothing in this Section shall obligate Consultant to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct. Notwithstanding the forgoing, Consultant has no obligation to defend or pay indemnitee defense costs incurred prior to a final determination of liability or to pay any amount that exceeds the proportionate share of Consultant's finally determined percentage of liability as determined by a court of competent jurisdiction.

6.0 Hazardous Materials - Client hereby understands and agrees that Consultant has not created nor contributed to the creation or existence of any types of hazardous or toxic wastes, materials, chemical compounds, or substances, or any other type of environmental hazard or pollution ("Hazardous Materials"), whether latent or patent, at Client's premises, or in connection with or related to the Project with respect to which Consultant has been retained to provide Services. Therefore, to the fullest extent permitted by law, except for Hazardous Materials introduced onto the site by Consultant and not required or permitted in the performance of Consultant's Services, Client agrees to indemnify, and hold Consultant, its officers, directors, shareholders, employees, and Consultants, harmless from and against any and all claims, damages, and expenses, whether direct, indirect, consequential or otherwise, including, but not limited to, attorney fees and court costs, arising out of, or resulting from the discharge, escape or release, of Hazardous Materials. Nothing contained within this Agreement shall be construed or interpreted as requiring Consultant to assume the status of a generator, transporter, or owner or operator of a treatment, storage or disposal facility, as those terms appear within the Resource Conservation and Recovery Act, 42 U.S.C.A., §6901 et seq., as amended, or within any State statute governing the generation, treatment, storage, and disposal of waste.

7.0 Design Without Construction Phase Services - Notwithstanding any provisions in this Agreement to the contrary, if this Project involves construction and Consultant is not retained to provide construction phase services including, but not limited to, observation, site visits, shop drawing review, and design clarifications, Client agrees that Consultant shall be responsible only for those construction phase services expressly required in Consultants Scope of Services. With the exception of such expressly

required Services, Consultant shall have no design, shop drawing review, or other obligations during construction, and Client assumes all responsibility for construction phase services. Client waives all claims against the Consultant that may be connected in any way to construction phase services except for those Services that are expressly required in Consultants Scope of Services.

8.0 Documents- Ownership of Work Product and Proprietary Information - The deliverables prepared under this Agreement shall become the property of the Client only upon completion of the Services and payment in full of all monies due to Consultant. In the event Client reuses or makes any modifications to the deliverables without prior written authorization of Consultant, the Client agrees, to the fullest extent permitted by law, to indemnify and hold Consultant, its consultants, agents, officers, directors, shareholders and employees harmless from any claim, liability or cost (including reasonable attorneys' fees and defense costs) arising or allegedly arising out of any unauthorized reuse or modifications of Consultant's Services, work product, and/or deliverables by the Client or any person or entity that acquires or obtains the such work product and/or deliverables from or through the Client without the written authorization of Consultant.

Notwithstanding the foregoing Consultant's liability to Client for any computer programs, software products, or related data furnished hereunder is limited solely to the correction of residual errors, minor maintenance, or update(s) as agreed. CONSULTANT MAKES NO WARRANTIES OF ANY KIND, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, or against infringement, with respect to computer programs, software products, related data, technical information, or technical assistance provided by Consultant under this agreement. The Consultant will take reasonable precautions to prevent the transmission of any electronic virus, or other contamination with the exchange of electronic media, but Consultant makes no assurances that those precautions are adequate to assure a contamination free transmission.
Consultant retains title and interest in all of its standard details, plans, specifications, methodologies, tools, and computation documents, whether in written or electronic form, which have been incorporated into the documents and instruments of service, but which were developed by Consultant independent of this Agreement.

9.0 Injury to Workers on Project Consultant has no responsibility for site safety or for the means and methods employed by Client's construction contractor(s). Client agrees that Consultant will be named as an additional insured on construction contractor's insurance policy for Commercial General Liability and Builders All Risk Liability, and Client agrees to insert into all contracts for construction between Client and construction contractor(s) arising out of these Services a provision requiring the construction contractor(s) to defend, indemnify, and hold harmless both Client and Consultant from any and all actions arising out of the construction Project, including, but not limited to, injury to or death of any worker on the job site, not caused by the sole negligence of Client or Consultant,. Client will be responsible for any damages caused by Client's failure to comply with the above requirements.

10.0 Probable Construction Costs Opinions - Any opinion of the construction cost prepared by Consultant represents his judgment and is supplied for the general guidance of the Client. Since Consultant has no control over the cost of labor and material, or over competitive bidding or market conditions, Consultant does not guarantee that bids or actual construction costs to the Client will not vary from Consultant's opinions of probable cost. If the Client desires greater assurance as to construction costs, Client shall employ an independent cost estimator.

11.0 Site Visits - Visits to the construction site and observations made by Consultant as part of Services during construction under this Agreement shall not make Consultant responsible for the obligation to conduct, comprehensive monitoring of the work of the contractor(s) sufficient to ensure conformance with the intent of the construction contract documents, and shall not make Consultant responsible for, nor relieve the construction contractor(s) of the full responsibility for, constructions means, methods, techniques, sequences, and procedures necessary for coordinating and completing portions of the contractor(s) work under the construction contract documents, and for all safety precautions incidental thereto. Such visits by Consultant are not to be construed as part of the observation duties of the on-site observation personnel defined below.

12.0 On-Site Observation - When Consultant provides on-site observation personnel as part of Services during construction under this Agreement, the on-site observation personnel will make reasonable efforts to advise Client of observed defects and deficiencies in the work of the contractor(s), and to help determine if the provisions of the construction contract documents are being fulfilled. Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of any construction work and Consultant's obligations are limited to becoming generally familiar with the progress of the construction. Consultant's observation will not cause Consultant to be responsible for those duties and responsibilities which belong to the construction contractor(s), including, but not limited to, full responsibility for the means, methods, techniques, sequences, and progress of construction, and the safety precautions incidental thereto, and for performing the construction work in accordance with the construction contract documents.

13.0 Termination or Abandonment - If any portion of the Services or Project is terminated or abandoned by Client, the provisions of these Terms and Conditions in regard to compensation and payment shall apply insofar as possible to that portion

of the work not terminated or abandoned. If said termination occurs prior to completion of any phase of the Project, the fee for Services performed during such phase shall be based on Consultant's reasonable estimate of the portion of such phase completed prior to said termination, plus a reasonable amount to reimburse Consultant for termination costs.

This Agreement may be terminated by either party if the other party fails to fulfill its obligations under this Agreement through no fault of the terminating party. No such termination may be effected unless the other party is given not less than ten calendar days written notice of intent to terminate and an opportunity for correcting the default (plus such additional time as is reasonably necessary to correct the default, other than any payment default) and for consultation with the terminating party before termination. Consultant shall be paid for Services performed to the termination date including reimbursable expenses due plus termination expenses.

14.0 Jurisdiction - This Agreement shall be governed by the laws of the State of the Project.

15.0 Dispute Resolution - The parties will use good faith efforts to resolve any dispute, controversy or claim arising out of or relating to this Agreement or the relationship between the parties (a "Dispute") through negotiation. To invoke the dispute resolution procedures in this section, one party must give the other party a written notice of its intent to negotiate. The notice will include a detailed description of the Dispute and a proposed resolution. Within five (5) business days after delivery of the notice, each party will designate a senior executive with authority to resolve the Dispute. The designated executives will engage in discussions in an effort to resolve the Dispute. If the designated executives do not agree on a resolution within twenty (20) days after the dispute notice has been delivered, the parties may agree to submit the Dispute to non- binding mediation by any mutually agreed-upon mediator, rules and location. Any mediation fees and expenses will be allocated and paid by the parties equally. If the parties do not reach a resolution through negotiation or mediation, either party may pursue all remedies available under this Agreement, at law or in equity in a court of competent jurisdiction. Each party hereby irrevocably waives its rights to trial by jury in any Dispute or proceeding arising out of this agreement or the transactions relating to its subject matter.

16.0 Waiver - Consultant's waiver of any term, condition, or covenant or breach of any term, condition, or covenant, shall not constitute a waiver of any other term, condition, or covenant, or the breach thereof.

17.0 Successors and Assigns - All of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns, provided, however, that no assignment of this Agreement shall be made without written consent of the parties to this Agreement.

18.0 Severability - If any provision of this Agreement is declared invalid, illegal, or incapable of being enforced by any Court of competent jurisdiction, all of the remaining provisions of this Agreement shall nevertheless continue in full force and effect, and no provision shall be deemed dependent upon any other provision unless so expressed herein.

19.0 Force Majeure - Neither party to this Agreement will be liable to the other party for delays in performing the Services, or for the direct or indirect cost resulting from such delays, that may result from a Force Majeure condition. Each party will take reasonable steps to mitigate the impact of any force majeure. If Consultant is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Consultant is responsible, the Contract Time(s) for performance as well as the Contract Price shall be reasonably extended by Change Order. By way of example, events that will entitle Consultant to an extension of the Contract Time(s) include acts or omissions of Client or anyone under Client's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, wars, floods, labor disputes, unusual delay in transportation, epidemics, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God (Force Majeure Condition). For clarity purposes, labor shortages or supply chain disruptions resultant from epidemic or pandemic events are specifically to be considered grounds constituting a Force Majeure Condition. Labor shortages and inefficiencies, delays, escalation, or cost impacts resulting from labor shortages or supply chain disruptions associated with such an event shall be considered grounds for a Force Majeure Condition event and shall afford Consultant the opportunity for schedule and cost relief associated with such an event.

20.0 Entire Agreement - This Agreement, and its attachments, constitutes the entire understanding between Client and Consultant relating to Services to be provided by Consultant and, excepting only confidentiality agreements between the parties pertaining to the Project, supersede any prior or contemporaneous agreements, promises, negotiations, or representations not expressly set forth herein. Subsequent modifications or amendments to this Agreement must be in writing and signed by the parties to this Agreement. The foregoing notwithstanding, if the Client, its officers, agents, or employees request Consultant to perform extra work or Services pursuant to this Agreement, Client will pay for the additional Services even though an additional written Agreement is not issued or signed. The obligations of Consultant under this Agreement shall survive in accordance with applicable State statutes.

Exhibit A
Ginger Orange, Pink and Relocated Purple Fiber Optic Alignments
West Des Moines, Iowa

I. Project Understanding

Civil Design Advantage (CDA) and the City of West Des Moines are preparing plans for the proposed Ginger Orange, Pink and Relocated Purple Fiber Optic Alignments projects in West Des Moines, Iowa. A majority of the fiber optics lines overlap areas that were previously delineated; those areas will not be re-evaluated for this permit submittal. The following areas will be evaluated for this project:

- Orange Route west of South 88th Street (delineated in 2013): identify current limits of wetlands and WUS (~0.3 miles)
- Orange Route south of Raccoon River Drive from 115th Street to South Grand Prairie Parkway (~0.85 miles)
- Pink Route from 115th Street east along the railroad ROW and north to the Microsoft site (~2.75 miles)
- Pink Route from the intersection of South Grand Prairie Parkway and Grand Avenue to the eastern boundary of the Ginger West Microsoft site (~0.25 miles)
- Relocated Purple Route from Maffitt Lake Road southwest along the Great Western Trail (0.25 mile)

The scope of this proposal assumes that the portions of fiber optics routes within the Microsoft Ginger East and Ginger West project boundaries will be delineated by others.

Tributaries, creeks, wetlands, or ponds identified on the site may be considered Waters of the United States (WUS) under the jurisdiction of the U.S. Army Corps of Engineers (USACE). Proposed impacts to a jurisdictional waterbody, including draining, filling, crossing, relocating, or discharging into the waterbody may require a Section 404 Permit from the USACE and a Section 401 Water Quality Certification from Iowa Department of Natural Resources (IDNR). Please note that only the USACE can make the final determination on the jurisdictional status of WUS, and on the need for permit processing and compensatory mitigation.

II. Scope of Services

A. Wetland and WUS Delineation

Foth will perform a wetland and WUS delineation of the project area. The delineation will use mandatory technical criteria, field indicators, and other sources of information to assess whether the project area has jurisdictional wetlands or WUS. The classification will be performed by an experienced biologist, environmental scientist, or engineer. If wetlands are present, the upper boundaries within the project area will be identified. WUS will also be identified and mapped during the delineation.

The methods Foth will use in the delineation generally follow the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Midwest Region (2010) and the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (1987). Under normal circumstances, wetlands generally have three essential characteristics: hydrophytic vegetation, hydric soils, and wetland hydrology.

Our proposed Scope of Work includes the following:

- Assemble application information (i.e., aerial maps, soil classifications, site hydrology, vegetation type, etc.).
- Perform on-site visit to gather data pertaining to the hydrophytic vegetation community, surface hydrology, and hydric soil characteristics. The following items will be performed at discrete data point locations within suspect wetland areas on-site.
    - Assess each stratum of vegetation (i.e., trees, saplings/shrubs, herbs, and woody vines). Vegetation will be classified by Genus species and dominance will be assessed.
    - Classify soil types and evaluate hydric soil indicators using shallow soil probes or spade holes.
    - Observe site characteristics for wetland hydrology indicators.
- Utilize a hand-held GPS unit (sub-meter accuracy) to map the location and boundaries of delineated wetlands and WUS. If heavy tree cover is present, a non-GPS survey may be needed to identify wetland boundaries. Fees for standard surveying have not been included in this proposal.
- Prepare maps showing the delineated wetland and WUS area(s).
- Submit a Wetland and Waters of the U.S. Delineation Report for each of the three routes containing the applicable data, wetland jurisdictional rationale, and proposed project information.

The scope of this proposal includes one site visit to conduct a baseline delineation. The fees in this proposal do not include additional meetings or data collection/evaluation that may be requested by the USACE.

B. Section 404 Permit Application

If wetland or WUS impacts are proposed, Foth will prepare and submit a Section 404 Permit Application for each of the three routes containing the applicable data, wetland jurisdictional rationale, and proposed project information to the USACE, Iowa Department of Natural Resources (IDNR) Flood Plain Section, and IDNR Sovereign Lands Section.

The proposed utility project would likely be covered under Nationwide Permit (NWP) 12 for Utility Line Activities. Under NWP 12, mitigation is generally not required for temporary WUS or emergent wetland impacts if the ground surface is restored to pre-construction elevations upon completion of the project.

This proposal does not include fees for preparing a Mitigation Plan if the impacted wetlands or WUS cannot be returned to pre-construction elevations or if forested wetland impacts are proposed. If wetland or WUS mitigation is necessary, budget estimates for additional services will be provided as the project scope evolves.

C. Phase I Cultural Resource Survey, if needed

If requested by the USACE, Foth will retain a subcontractor to perform a limited/cursory archeological survey for review by the State Historical Preservation Office (SHPO) during the permitting process. The Phase I investigation will consist of the project areas as described in Section I. The task does not include Phase I Cultural Resource surveys if an off-site mitigation site is selected or Phase II archeological investigations at the project site.

III. Schedule

Foth proposes to complete the project according to the following, unless circumstances beyond our control require modification of the schedule. For classification, the wetland delineation should be performed when vegetation is actively growing (generally May-October). If the wetland delineation will be performed outside of the growing season, surveying of any identified wetlands will be conservative. A follow-up visit may be necessary in the vegetative growing season to confirm plant species. Please note that the wetland delineation cannot be performed when the ground is covered in snow or when frozen ground conditions exist. We anticipate performing the site visit within 10 to 20 business days after notice to proceed, if the timing is within the growing season and weather conditions permit. The delineation report will be completed four to six weeks following the field visit or receipt of surveyed wetland. This schedule assumes that Foth's ability to complete the field work is not slowed by inclement weather conditions.

The schedule for the Section 404 Permit and Phase I Cultural Resource Survey, if needed, will be determined following completion of the wetland delineation and evaluation of potential wetland and WUS impacts.

IV. Compensation

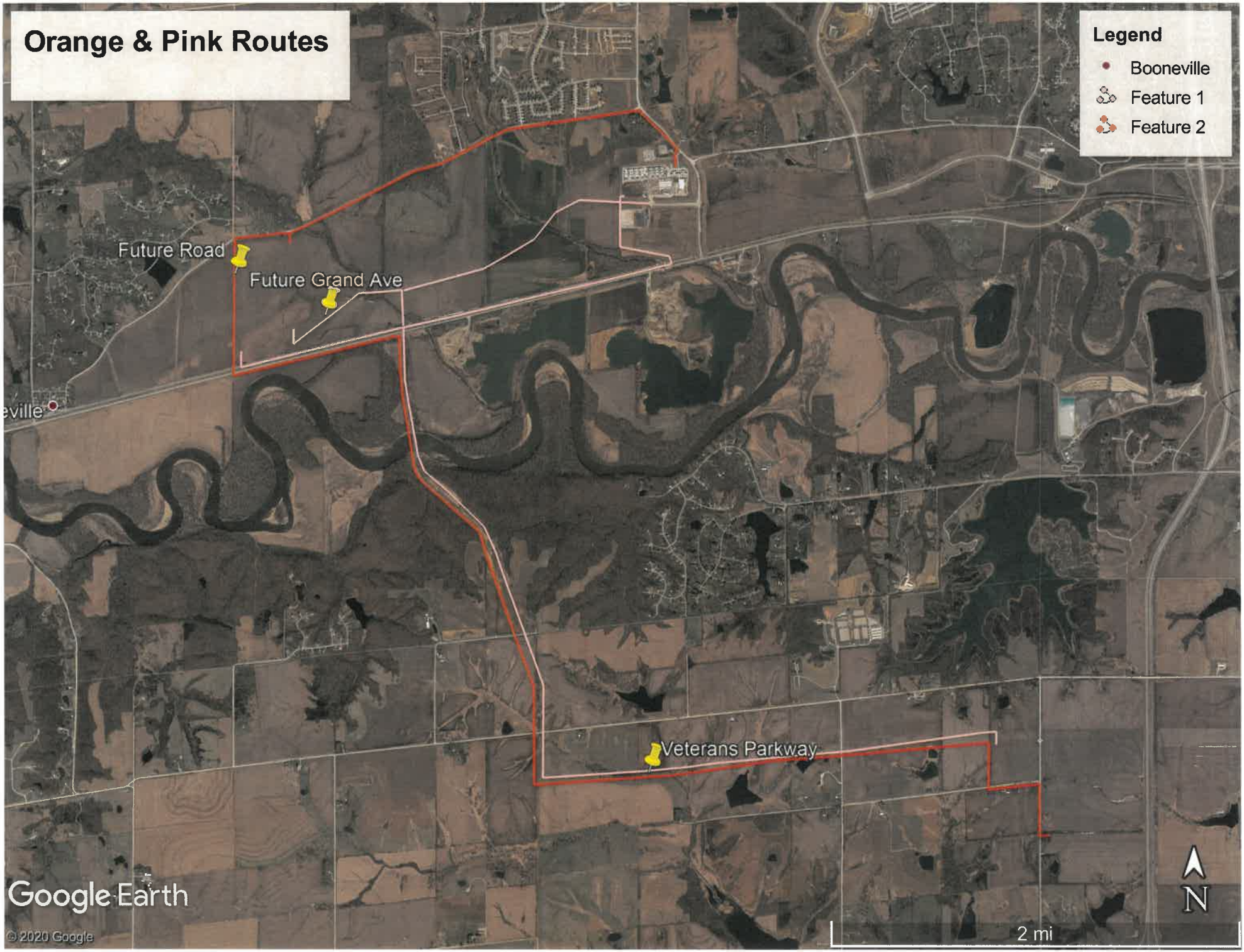
Based on the proposed Scope of Work, our proposed unit price fees are listed below:

Item	Fee
Wetland and WUS Delineation	
Orange Route	$4,700
Pink Route	$5,700
Relocated Purple Route	$3,700
Section 404 Permit Application	
Orange Route	$1,800
Pink Route	$1,800
Relocated Purple Route	$1,800
Phase I Cultural Resource Survey, if needed	
Orange Route	$1,500
Pink Route	$8,700
Relocated Purple Route	$2,400
Total	**$32,100**

The fees presented are based on performing only the services discussed in this proposal. Any changes beyond the Scope of Work of this proposal will be charged in accordance with our current unit fee schedule.

V. Special Conditions

In light of recent global events, labor shortages or supply chain disruptions resultant from epidemic or pandemic events (e.g. the Covid-19 outbreak) are specifically to be considered grounds constituting a force majeure condition. Labor shortages and inefficiencies, delays, escalation, or cost impacts resulting from labor shortages or supply chain disruptions associated with such an event shall be considered grounds for a changed condition event and shall afford Foth the opportunity for schedule and cost relief associated with such an event by the Owner notwithstanding any express language in the Agreement to the contrary.


Orange & Pink Routes
Legend
Booneville
Feature 1
Feature 2
Future Road
Future Grand Ave
Veterans Parkway
Google Earth
© 2020 Google
2 mi
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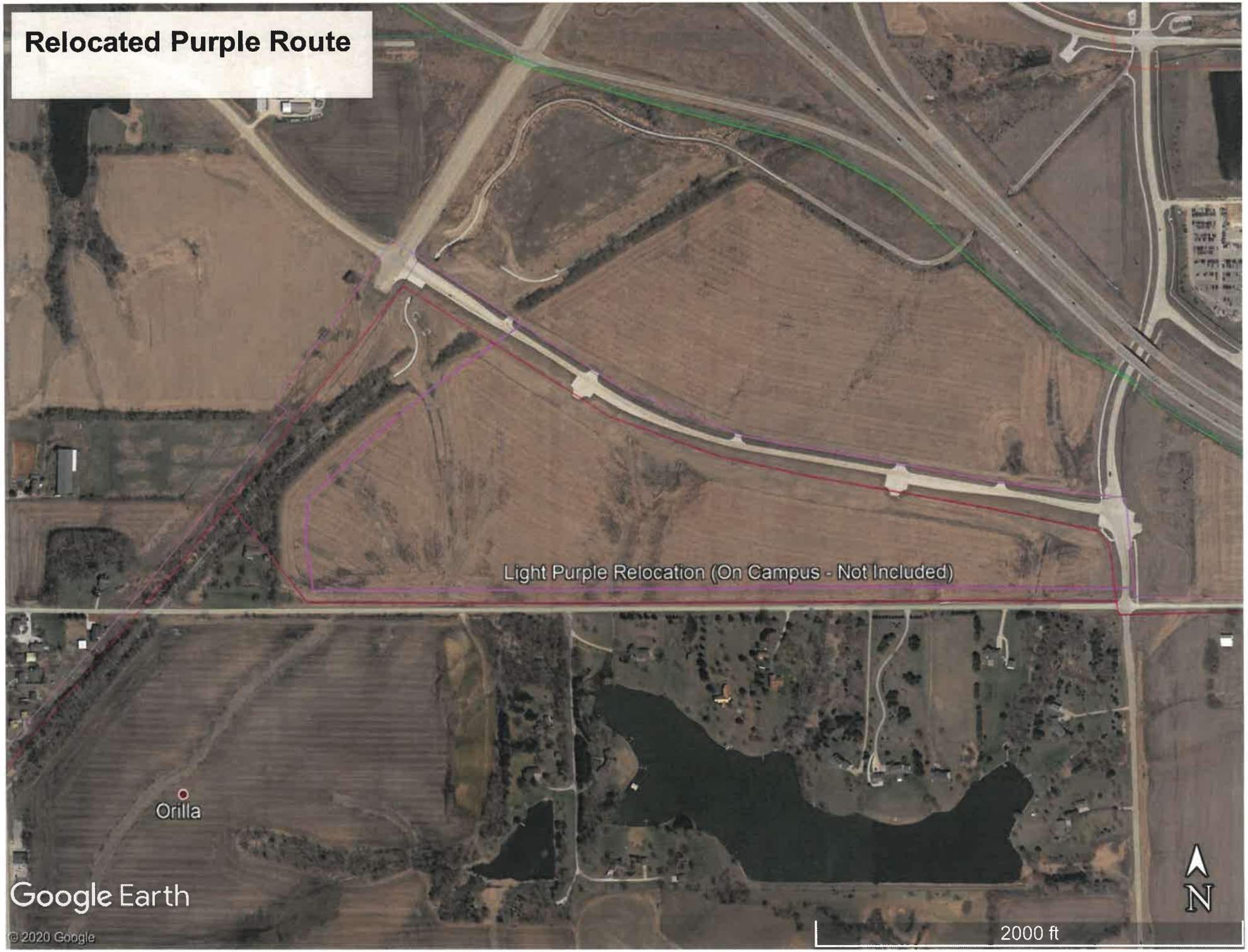
Relocated Purple Route
Light Purple Relocation (On Campus - Not Included)
Orilla
Google Earth
© 2020 Google
2000 ft
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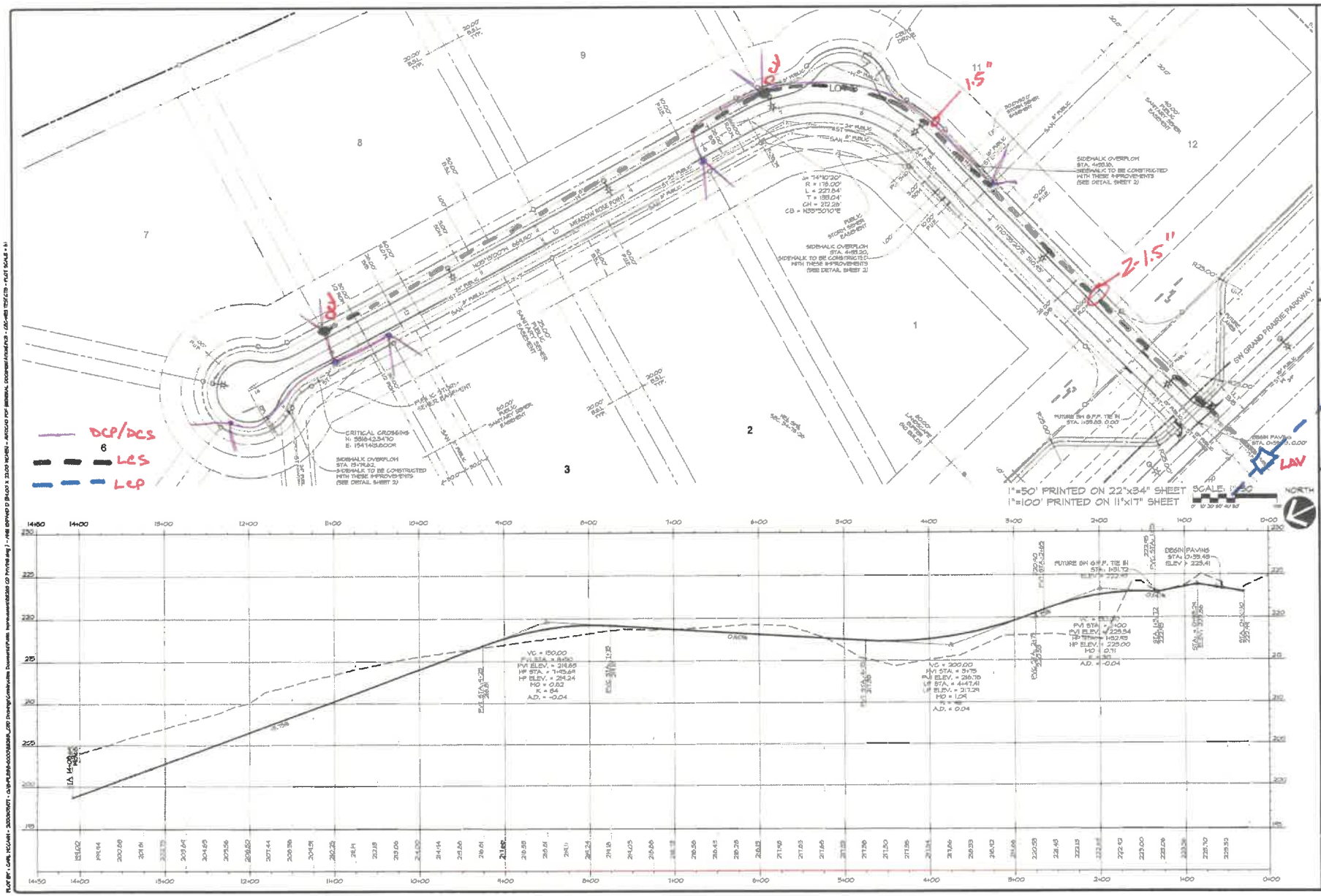


CEC
Civil Engineering Consultants, Inc.
2460 86th Street, Urbandale, Iowa 50322
515.276.4884 Fax: 515.276.7084 email@ceciac.com

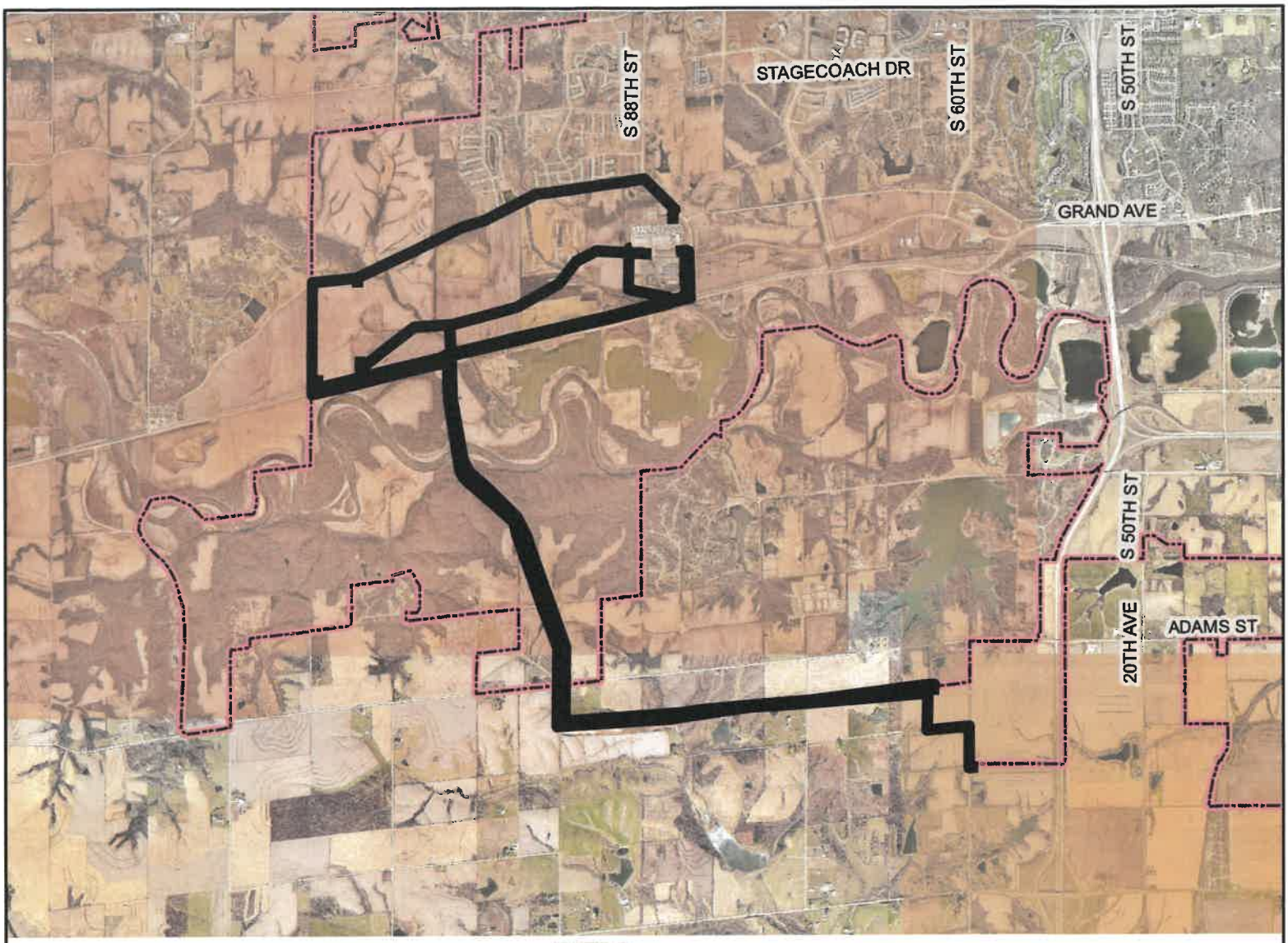
DATE OF SURVEY:	MARCH 09, 2020	
DESIGNED BY:	JNC	
DRAWN BY:	HSH	

THE PRESERVE ESTATES PLAT 1
GRAND PRAIRIE PARKWAY, WEST DES MOINES, IA 50266

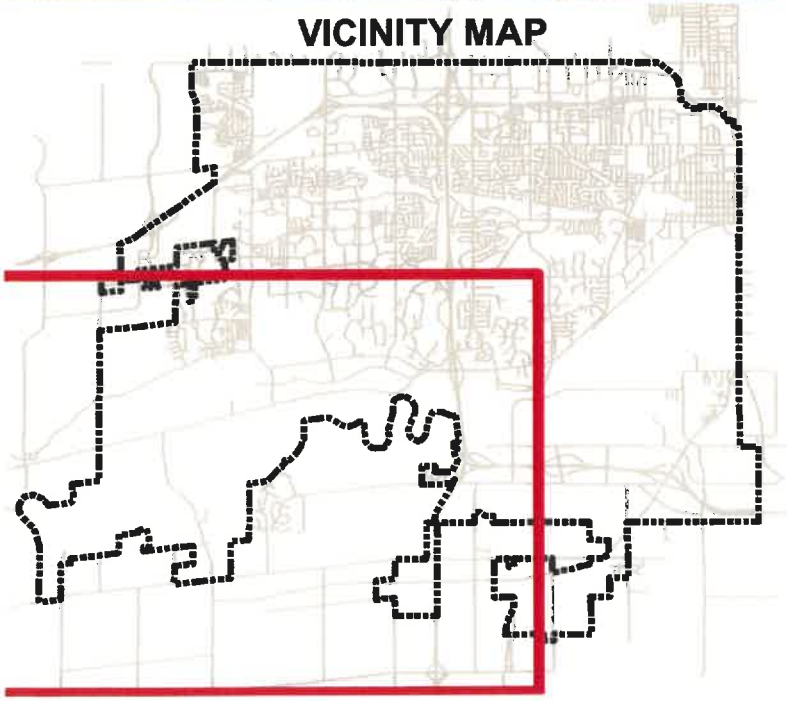
PAVING PLAN

SHEET 4 OF 16

E-5265



VICINITY MAP



LEGEND

PROJECT LOCATION

N
W E
S

THE CITY OF WEST DES MOINES

PROJECT:

Fiber Optic Interconnect Orange & Pink Routes

LOCATION: **Exhibit "A"**

DRAWN BY: BJM	DATE: 12/1/2020	PROJECT NUMBER/NAME: 0510-068-2020	SHT. 1 of 1