

**AGREEMENT BY AND BETWEEN THE CITY OF DES MOINES, IOWA,
AND BAKER TILLY US, LLP FOR CONSULTANT SERVICES FOR CITY COUNCIL
GOVERNANCE AND CIVILITY**

THIS AGREEMENT for Consultant Services (“Agreement”) is made by and between the City of Des Moines, Iowa, a municipal corporation organized and existing pursuant to the laws of the State of Iowa, hereinafter referred to as the "City" and Baker Tilly US, LLP, a limited liability partners with an address of 4807 Innovate Ln, Madison, WI 53718 referred to as the "Consultant”.

WHEREAS, the City desires to procure governance and civility consulting services for the City Council, in the form of individual and small group workshops with Councilmembers and City staff, to help inform how to improve City functions and performance; (“the Project”); and

WHEREAS, on October 26, 2022, Consultant submitted a Scope of Services and Cost Proposal (herein “Proposal”), including the total not-to-exceed cost of \$24,990.00 for all required Services and Deliverables as defined herein, to the City Manager for consideration in regard to said consulting services; and


WHEREAS, the City Manager has determined that good cause has been shown, pursuant to Section 2-710 of the Des Moines Municipal Code, to exempt procurement for the provision of services for the Project from the request for proposals process and to authorize and approve this Agreement with Consultant; and

WHEREAS, this Agreement is intended to formalize and implement the provisions of the Proposal, and all parts thereof and exhibits thereto, all of which are made a part of this Agreement by this reference.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereto, intending to be legally bound, agree as follows:

SECTION 1: SCOPE OF SERVICES TO BE RENDERED

Consultant agrees during the term of this Agreement to provide to the City, under the terms and conditions set forth in this Agreement, the Proposal and Activities described therein and attachments thereto in Exhibit A hereto and by this reference incorporated herein (collectively “Services”), and all work product and documents set forth in said Proposal and attachments thereto (collectively “Deliverables”), as described herein and in said Proposal.

Upon written notice to proceed, Consultant shall submit a schedule, subject to written approval by the City, for completion of list of support and enhancement requests, based on the Project start date of May 1, 2023. *April 29* 

The Consultant agrees to perform this Scope of Services for the City, and to do so in a timely and satisfactory manner in accordance with the City-approved schedule.

The parties further agree that any reference to an “all-day” Council session shall be replaced with a “6-hour” Council session.

SECTION 2: CONTRACT ADMINISTRATION

The City Manager or his designee (collectively “Administrator”) shall be the primary liaison between Consultant and the City for the purpose of administration of the services to be performed under this Agreement. The services to be performed by Consultant shall at all times be subject to the general supervision of the Administrator.

SECTION 3: TERM OF CONTRACT

Consultant shall complete all services outlined in this Agreement on or before July 1, 2023. A later date may be mutually agreed to in writing by amendment to this Agreement executed by duly authorized representatives of both parties.

SECTION 4: PRICES AND PAYMENT

Consultant’s fee for all work performed under this Agreement (Scope of Services) shall be on a flat-fee basis per project Activity as defined in Exhibit A, in a total amount not to exceed Twenty-Four Thousand Nine-Hundred Ninety and no/100 U.S. Dollars (\$24,990.00), which amount includes all actual, documented costs of travel and similar expenses directly related to the work performed under this Agreement, and to be billed and paid as follows:

- Activity 1 - Prepare for the Council workshop – Not to exceed \$6,360.00
- Activity 2 - Facilitate Council workshop – Not to exceed \$14,560.00
- Activity 3 - Prepare Summary – Not to exceed \$4,070.00

Payments to Consultant shall be made within 30 days after the City’s acceptance of services performed and receipt of approved invoice. The City must receive from Consultant an itemized invoice for completion of work performed. Final payment shall be made upon delivery and written acceptance by the Administrator of the Deliverables as defined herein and documented in the Proposal.

SECTION 5: CONTRACT DOCUMENTS

This Agreement shall include and be composed of: (1) this Agreement; (2) the Proposal attached hereto as Exhibit A. In the event of any conflict or inconsistency between this Agreement and the other documents comprising the Agreement, the hierarchy of precedent shall be as listed above. This Agreement may be amended solely by written amendment executed by authorized representatives by both parties.

SECTION 6: MEETINGS

At the request of the Administrator, meetings shall be weekly as the performance of this Agreement progresses, using a virtual meeting platform such as Teams or Zoom. Consultant shall prepare and present such information as may be pertinent or necessary to enable the Administrator to pass critical judgment on the features and progress of services under this Agreement. Consultant shall prepare minutes of all such meetings and provide them to the Administrator within 2 business days of such meeting.

SECTION 7: ACCESS TO CONSULTANT'S RECORDS

Consultant shall maintain all books, documents, papers, accounting records, digital files, and other evidence pertaining to cost incurred in performing work covered by this Agreement. The City or any of its duly authorized representatives upon no less than 30 days prior written notice shall have access to all such books, records, documents, digital files, and other evidence for the purpose of inspection, audit and copying (each at the City's sole cost and expense) during normal business hours. All such books, records, documents and digital files shall be retained by Consultant for three years from the date of final payment under this Agreement and the City may only exercise its rights under this Section 7 once during any 12 month period.

SECTION 8: OWNERSHIP OF DOCUMENTS

License to City of Pre-Existing Intellectual Property. Consultant represents and warrants to the City that any models, tools, concepts, ideas, studies, presentations, graphics, images, maps, guides, photos, printed materials, reports, brochures, operating manuals, designs, data, electronic files, software, processes, plans, procedures and other materials existing prior to the date of this Agreement and used by Consultant in performance of the Scope of Services under this Agreement (the "Intellectual Property") are and shall remain the property of Consultant. Consultant warrants and represents that the Intellectual Property does not infringe or otherwise violate any intellectual property right of others, including patent, copyright, trademark, or trade secret and will be free from any claims or encumbrance of intellectual property or proprietary rights of any third party, including any employee, agent, contractor, sub-consultant, subcontractor, subsidiary or affiliate of Consultant. Consultant agrees to indemnify, defend and hold the City harmless from and against all claims, demands, losses, damages or penalties, including attorneys' fees, of any kind by a third party arising out of or related to its use or the City's use of the Intellectual Property in accordance with Section 8 below and Attachment 1 hereto.

Consultant hereby grants to City a non-exclusive, non-transferable, non-assignable license to use the Intellectual Property solely in connection with this Agreement and for purposes of any subsequent updates or modifications to the Deliverables and Documents; for use in implementing, maintaining, supporting, and enhancing governance, civility, City functions and performance; creation of any subsequent request for proposals and agreement relating to governance and civility consulting services or uses by the City; and/or the act(s) of providing, maintaining, supporting, enhancing or implementing other related consultant services by the City, whether performed by Consultant or a third party.

City Ownership of Data. The City owns and shall continue to own all rights to all data and documentation collected or created during the Project or provided to Consultant and the resulting reports to the City.

City Ownership of Documents Created Under the Agreement. Except for the pre-existing Intellectual Property, Consultant agrees that the City shall become the sole and exclusive owner of all presentations, models, tools, concepts, plans, images, drawings, photographs, models, meeting notes, survey notes, reports, specifications, studies, records, Services, Deliverables as defined herein, and other data and documents, in whatever form, prepared under this Agreement, including without limitation, those prepared by Consultant's subcontractors or subconsultant's (collectively "the Documents") upon completion or termination of the services of Consultant. Consultant hereby

irrevocably assigns, transfers and conveys to the City all right, title and interest in and to the Documents and all intellectual property rights and proprietary rights arising out of Documents, including copyrights, patents, trademarks, and derivative works and interests therein or related thereto. Consultant warrants to the City that the Documents will be free from any claims or encumbrance of intellectual property or proprietary rights of Consultant or any third party, including but not limited to any employee, agent, contractor, sub-consultant, subcontractor, subsidiary or affiliate of Consultant and Consultant will indemnify the City for any such claims or encumbrances pursuant to Attachment 1 hereto. Upon completion or termination of this Agreement, Consultant will immediately turn over to City all Documents not previously delivered to City. As owner of the Documents, City may use them for any purpose, including but not limited to the following: any subsequent updates or modifications to the Deliverables and Documents; for use in implementing, maintaining, supporting, and enhancing governance, civility, City functions and performance; creation of any subsequent request for proposals and agreement relating to governance and civility consulting services or uses by the City; and/or the act(s) of providing, maintaining, supporting, enhancing or implementing other related consultant services by the City, whether performed by Consultant or a third party.

SECTION 9: TERMINATION

If the City determines in its discretion that Consultant is not providing Services, Documents or Deliverables or otherwise complying with the terms and conditions of this Agreement, or that further performance by Consultant under this Agreement is no longer beneficial to the City, the City may terminate Consultant's services under this Agreement by giving Consultant written notice of such termination upon no less than 30 days prior written notice. Consultant agrees to cease all activity associated with this Agreement at such time as the written notice is received. Payment for services shall be promptly made by the Consultant for work satisfactorily performed by Consultant through the effective termination date stated on said written notice. In addition, the City may terminate this Agreement due to non-appropriation.

SECTION 10: INSURANCE AND INDEMNIFICATION

Consultant shall defend, pay on behalf of, indemnify and hold harmless the City as shown in Attachment 1 to this Agreement. Consultant shall obtain and maintain in continuous effect during the term of this Agreement with the City and while any of its obligations remain unsatisfied, the insurance coverages, limits, waivers and endorsements shown in Attachment 1 to this Agreement and shall provide the City with a certificate of insurance showing such coverages prior to execution of this Agreement.

SECTION 11: NON-DISCRIMINATION

Consultant shall not discriminate or permit discrimination in its operations or employment practices against any person or group of persons on the grounds of race, color, creed, national origin, gender, age, sex, religion, sexual orientation, gender identity, disability or familial status and shall furnish evidence of compliance with this provision when so requested by the City.

SECTION 12: CHOICE OF LAW

This Agreement will be governed by and interpreted and construed in accordance with the laws of the State of Iowa, and any action relating to this Agreement shall be brought in the Iowa District Court in Polk County, Iowa or the United States District Court for the Southern District of Iowa. If any provision of this Agreement is held to be invalid or unenforceable, the remainder shall be valid and enforceable.

SECTION 13: FORCE MAJEURE

Except for any payment obligations, neither party hereto will be liable for any failure or delay in performing under this Contract where such failure or delay is due to causes beyond its reasonable control, including declared health emergencies and pandemics, natural catastrophes, governmental acts or omissions, laws or regulations, war, terrorism, labor strikes or difficulties, communications systems breakdowns, hardware or software failures, transportation stoppages or slowdowns or the inability to procure supplies or materials.

SECTION 14: NOTICES, INVOICES AND COMMUNICATIONS

- a. All notices which the parties are authorized or required to give one another pursuant to this Agreement, and all reports, payments and invoices, shall be in writing and may be personally delivered, sent by ordinary mail, or sent with a nationally recognized overnight carrier to the addresses hereafter provided. Unless otherwise provided herein, mailed notices, reports, payments or invoices shall be deemed to be received by the party to whom directed 5 business days after being deposited into the United States mail. Such notices, reports, payments and invoices shall be delivered or mailed to the following persons at the addresses listed:

If to Consultant: Baker-Tilly US, LLP
c/o Carol Jacobs, Managing Director
18500 Von Karman Ave
10th Floor
Irving, CA 92612
Email: carol.jacobs@bakertilly.com

If to City: City of Des Moines
c/o Scott Sanders, City Manager
City Hall
400 Robert D. Ray Drive
Des Moines, Iowa 50309
Email: [sasanders@dmgov.org](mailto:sanders@dmgov.org)

With a copy to: City of Des Moines
Purchasing Division
400 Robert D. Ray Drive
Des Moines IA 50309
Attn: Mary Niichel-Hegwood
Email: mmnhegwood@dmgov.org

b. Invoices. Invoices shall be emailed to fin-ap@dmgov.org

The person and the place to which notices are to be mailed to either party may be changed from time to time by notice given in accordance with the provisions of this Section.

c. Operations Communications. Communications regarding day-to-day operations shall be made by email addressed as follows, and may change from time to time by notification by email:

If to Consultant: carol.jacobs@bakertilly.com

If to City: Malcolm Hankins, mahankins@dmgov.org

SECTION 15: LAWS, REGULATIONS AND CODES

Consultant hereby agrees that all work done as part of this Agreement, which is subject to current federal, Iowa state, or local laws, regulations, and/or Codes, shall comply with such applicable laws, regulations, and Codes.

SECTION 16: CONSULTANT'S REPRESENTATIONS

Consultant represents and agrees that:

- a. Consultant has the experience, ability and skill necessary to perform all the services required of it under this Agreement and having the scope and complexity of the Project contemplated herein.
- b. Consultant has the capabilities and resources necessary to perform its obligations hereunder.
- c. All services provided by the Consultant shall be performed in a timely manner and shall be performed with that degree of care, skill, and diligence ordinarily exercised under similar conditions and in the performance of projects of a similar nature to the Project contemplated by this Agreement.
- d. Consultant shall be responsible for all services provided under this Agreement regardless of whether such services are provided by Consultant or by any subconsultant hired by Consultant.
- e. The Consultant is responsible for the professional quality, technical accuracy, timely completion and the coordination of all Documents, Deliverables and services furnished by Consultant for the City under this Agreement regardless of whether Documents and Deliverables are prepared by the Consultant or by the Consultant's subconsultant's. The Consultant is responsible for coordination and internal checking of all work products and for the accuracy of all information contained therein, as fully as if each work product were prepared by the Consultant. The Consultant shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its plans, studies, designs, drawings, specifications, reports, or other services.
- f. The Consultant expressly warrants that all Documents, Deliverables and services supplied shall be merchantable within the meaning of section 554.2314 of the Iowa Code in effect on the date of the bid or proposal in the City of Des Moines, Iowa. Additionally, the Documents, Deliverables and services shall conform to specifications, drawings, and other descriptions and shall be free from defects in materials and workmanship.

- g. The Consultant shall exercise independent professional judgment and shall assume professional responsibility for all Services provided hereunder.
- h. The Consultant warrants that it is authorized by law to engage in the performance of the Services of this Agreement. The Consultant warrants that it has secured all required licenses and certifications to provide Services under this Agreement. The Consultant represents and warrants that the execution, delivery and performance of this Agreement does not and will not conflict with or violate the terms of any agreement or understanding to which the Consultant is a party or otherwise bound.

SECTION 17: CITY APPROVAL

This Agreement is subject to the approval of the Des Moines City Council or the City Manager, as applicable pursuant to City ordinance and policy, and neither the City nor its representatives in this matter shall be bound by the Agreement until said approval is given as documented below by City execution.

SECTION 18: CONFIDENTIALITY

The terms of this Agreement shall not be considered confidential. In addition, the City will not under any circumstance consider the Services in their entirety, including Documents, Deliverables, and associated materials related thereto to be a confidential record. Confidential Information shall not include information which: (i) is now or hereafter becomes part of the public domain; (ii) was received by either party from a third party under no obligation of confidentiality to the other party; or (iii) is disclosed by either party to a third party without restriction.

Consultant understands that the City of Des Moines, Iowa is a governmental entity subject to disclosure obligations under the United States Freedom of Information Act and Chapter 22 of the Iowa Code, "Examination of Public Records," where all records of a governmental body are presumed to be public records, open to inspection by members of the public. Section 22.7 of the Iowa Code sets forth a number of exceptions to that general rule, establishing several categories of "confidential records." Under this provision, confidential records are to be kept confidential, "...unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information." Among the public records which are considered confidential under this Iowa Code provision are the following:

- 3. Trade secrets which are recognized and protected by such law.
- 6. Reports to governmental agencies which, if released, would give advantage to competitors and serve no public purpose.

If a request is hereafter made by a member of the public to examine Consultant's confidential information, even if marked "confidential", the City will so notify Consultant of the request and will keep confidential such documents covered by Consultant's confidentiality request, pending action by Consultant to defend its request for confidentiality. In that notification, Consultant will be given not more than five (5) calendar days within which to file suit in Polk County Iowa District Court to seek entry of a declaratory order and/or injunction to protect and keep confidential such documents and any other information, provided by Consultant, and absent the entry of a court order or a final decision

of the Iowa Public Information Board declaring such to be confidential, the requested confidential information documents will be released for public examination.

The parties shall comply with all applicable federal, state and local laws regarding confidentiality and privacy requirements regarding personal information.

Consultant agrees that it will use all City confidential information solely to enable it to perform its obligations hereunder, and will not disclose any confidential information to any person or entity without the prior express written consent of the City. Provided, however, that confidential information may be provided by Consultant to those of its employees who need such information to enable Consultant to perform its obligations hereunder and who are required to keep such information confidential and to its auditors, consultants and advisors who agree to keep such information confidential or are otherwise bound to restrictions on disclosure.


SECTION 19: MISCELLANEOUS

- a. The City is in no way restricted from procuring similar services from other companies as needed.
- b. This Agreement shall not be assignable by Consultant without the prior written consent of the City, and any such assignee shall be bound to the terms and conditions of this Agreement.
- c. This Agreement constitutes the exclusive contract between the parties and incorporates the provisions of these terms and conditions, and supersedes any previous agreements or contracts, either written or oral. The terms and conditions hereof may not be altered without prior written amendment executed by both parties.
- d. Both parties hereto, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of Service Provider shall not be deemed or construed to be the employees or agents of the City for any purposes whatsoever.


IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of this 1st day of April, 2023 by their duly authorized representatives.

CITY OF DES MOINES, IOWA

**BAKER-TILLY US, LLP –
MANAGEMENT PARTNERS**



Scott Sanders
City Manager



Carol Jacobs
Managing Director

APPROVED AS TO FORM:

/s/ Glenna K. Frank
Glenna K. Frank, Assistant City Attorney