

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

This Agreement is made and entered into this 5th day of October, 2020, by and between the CITY OF JOHNSTON, a municipal corporation, hereinafter referred to as "City", and HR Green, Inc., (Fed. I.D. # 42-0927178), a professional corporation incorporated and licensed under the laws of the State of Iowa, party of the second part, hereinafter referred to as "Consultant" as follows:

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

1. SCOPE OF SERVICES

Services provided under this Agreement shall be as further described in Attachment 1, Scope of Services. The Consultant will utilize sub-consultant SmartSource Consulting for Community Engagement portions of this project.

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 2.

I. Basic Services of the Consultant \$25,000.00

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

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

4. INSURANCE

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

injury, death, property damage, and lost income. Consultant shall provide worker's compensation insurance coverage for Consultant and all Consultants' 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 JOHNSTON
Attn: Cyndee Rhames, City Clerk
Address: P.O. Box 410
City, State: JOHNSTON, IA 50131-0410

FOR THE CONSULTANT:

Name: HR Green, Inc.
Attn: Ken Demlow
Address: 5525 Merle Hay Rd., Suite 200
City, State: Johnston, IA 50131

6. GENERAL COMPLIANCE

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

7. STANDARD OF CARE

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

8. INDEPENDENT CONTRACTOR

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

9. NON-DISCRIMINATION

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

10. HOLD HARMLESS

Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless the City, its officers, and employees (collectively, City) against all damages, liabilities, judgments or costs, including reasonable investigative fees, attorneys' fees, and court costs, to the extent caused by the Consultant's 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. Consultant shall not be obligated to provide the City with legal counsel or advanced investigative fees, legal fees, or costs.

11. ASSIGNMENT

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

12. APPROPRIATION OF FUNDS

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

13. AUTHORIZED AMENDMENTS TO AGREEMENT

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

performed under this Agreement shall be issued by the City unless funds are available to pay such additional costs, and the Consultant shall not be entitled to any additional compensation for any additional compensable work performed under this Agreement. The Consultant expressly waives any right to additional compensation, whether in law or equity, unless prior to commencing the additional work the Consultant was given a written amendment, order or directive describing the additional compensable work to be performed and setting forth the amount of compensation to be paid, such amendment, order or directive to be signed by the authorized City representative. It is the Consultant's sole responsibility to know, determine, and ascertain the authority of the City representative signing any amendment, directive or order.

14. OWNERSHIP OF CONSULTING DOCUMENTS

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

15. INTERPRETATION

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

16. COMPLIANCE WITH FEDERAL LAW

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

17. SOLICITATION AND PERFORMANCE

- A. The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, and that the Consultant has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or contingent fee.
- B. The Consultant shall not engage the services of any person or persons in the employ of the City at the time of commencing such services without the written consent of the City.

18. SUSPENSION AND TERMINATION OF AGREEMENT

- A. The right is reserved by the City to suspend this Agreement at any time. Such suspension may be affected by the City giving written notice to the Consultant, and shall be effective as of the date established in the suspension notice. Payment for Consultant's services shall be made by the City for services performed to the date established in the suspension notice. Should the City reinstate the work after notice of suspension, such reinstatement may be accomplished by thirty (30) days written notice within a period of six (6) months after such suspension, unless this period is extended by written consent of the Consultant.
- B. Upon ten (10) days written notice to the Consultant, the City may terminate the Agreement at any time if it is found that reasons beyond the control of either the City or Consultant make it

impossible or against the City's interest to complete the Agreement. In such case, the Consultant shall have no claims against the City except for the value of the work performed up to the date the Agreement is terminated.

- C. The City may also terminate this Agreement at any time if it is found that the Consultant has violated any material term or condition of this Agreement or that Consultant has failed to maintain workers' compensation insurance or other insurance provided for in this Agreement. In the event of such default by the Consultant, the City may give ten (10) days written notice to the Consultant of the City's intent to terminate the Agreement. Consultant shall have ten (10) days from notification to remedy the conditions constituting the default.
- D. In the event that this Agreement is terminated in accordance with paragraph C of this section, the City may take possession of any work and may complete any work by whatever means the City may select. The cost of completing said work shall be deducted from the balance which would have been due to the Consultant had the Agreement not been terminated and work completed in accordance with contract documents.
- E. The Consultant may terminate this Agreement if it is found that the City has violated any material term or condition of this Agreement. In the event of such default by the City, the Consultant shall give ten (10) days written notice to the City of the Consultant's intent to terminate the Agreement. City shall have ten (10) days from notification to remedy the conditions constituting the default.

19. TAXES

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

20. SEVERABILITY

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

21. DISPUTE RESOLUTION

Should a dispute or conflict arise between the City and the Consultant during the design and construction of the Project, or following the completion of the Project, the City and the Consultant agree to submit the issues to formal non-binding mediation prior to exercising their right to commence litigation in a court of law. The parties shall each bear their own attorneys' fees, costs and expenses during mediation. The cost of the mediator shall be shared equally by the parties. Should mediation fail and litigation ensue, the prevailing party shall be entitled to reasonable attorneys' fees and costs to the extent said fees and costs are attributable to the non-prevailing parties' fault.

22. MISCELLANEOUS HEADINGS

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

23. 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.

24. COUNTERPARTS

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

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

CONSULTANT

CITY OF JOHNSTON

BY: _____

BY: _____

Name: Edward Barrett

Paula Dierenfeld, Mayor

Title: Practice Leader - FBS

WITNESS

ATTEST

Name: Ken Demlow

Name: _____

Title: Project Manager, HR Green

Title: _____

ATTACHMENT 1

SCOPE OF SERVICES

Project Description:

In this project, CLIENT seeks to "...establish a community vision for broadband connectivity for residents and businesses in the City of Johnston by evaluating existing and future highspeed internet services, needs and capabilities and identifying tangible steps for achieving the community vision."

MetroNet has approached the City to do a fiber overbuild. The City still needs to understand the broadband connectivity for the areas MetroNet will not overbuild and to gain a Vision for the City of which MetroNet is a part.

Scope of Services

The Scope of services will generally adhere to the process and deliverables laid out in the City of Johnston Broadband Visioning RFP and HR Green's RFP response proposal. The project will be divided into two Phases:

- Phase 1: Assess Current Conditions, including MetroNet planned improvements
- Phase 2: Visioning

Within those Phases, COMPANY will complete these Tasks:

- Phase 1
 - Task 1: Verify existing City assets – the City will provide the COMPANYt with broadband related infrastructure GIS files. When HLD design is being done, if there are questions about locations, availability and usefulness of City broadband related infrastructure, COMPANY will provide Johnston Public Works with maps to verify. PW has asked for ample time to coordinate verification.
 - Task 2: Industry Market Assessment
 - Task 3: Community Engagement – including an online community survey and stakeholder meetings that will primarily be arranged through Zoom and, possibly Facebook Live
 - Task 4: Permitting and Policy Review
 - Task 5: Gap Analysis
- Phase 2
 - Task 1: Options to Fill Gaps
 - Task 2: P3 Options
 - Task 3: Visioning Meetings

Each major phase listed above is described in the attached Proposal.

Project Deliverables:

Phase 1

- Task 1: Verify existing City assets – Deliverables
 - GIS map of current City asset – COMPANY will coordinate with Public Works to verify any infrastructure questions of City assets.
- Task 2: Industry Market Assessment – Deliverables
 - Market Assessment Report
- Task 3: Community Engagement - Deliverables
 - Survey development and deployment – COMPANY will coordinate with City Communications Director as to the most efficient and productive ways to promote the survey and display results. These could include social media, the City’s website or other digital means. COMPANY can provide a social media platform, but will coordinate with the City.
 - Key findings for satisfaction, demand, price sensitivity and overall interest
 - Raw survey data will be provided for additional analysis as needed
 - Anonymous anecdotal responses from citizens
 - Public feedback on community ownership and competition
 - Risk tolerance regarding potential incremental tax, bonding or debt assumption to fund plans
 - Summary feedback on individual and group meetings
 - Service offering pricing summary
 - Summarize current government capabilities and cost of services
 - Summarize projected broadband needs for stakeholders
- Task 4: Permitting and Policy Review – Deliverables
 - Report of permitting and policy recommendations that will be technology and vendor neutral
- Task 5: Gap Analysis – Deliverables
 - Report of connectivity gaps

Phase 2

- Task 1: Options to Fill Gaps – Deliverables
 - Gap map with up to five options to fill gaps (with industry pricing)
- Task 2: P3 Options – Deliverables
 - Report of current partnership examples and list of possible partners from what is currently taking place in Iowa
- Task 3: Visioning Meetings – Deliverables
 - Summary Report
 - One Community presentation
 - One leadership work session

This schedule was prepared to include reasonable allowances for review and approval times required by the CLIENT and public authorities having jurisdiction over the project. This schedule shall be equitably adjusted as the project progresses, allowing for changes in the scope of the project requested by the CLIENT or for delays or other causes beyond the control of COMPANY.

Not included as part of this agreement:

1. Printing and postage for survey mailing (assuming online survey)
2. Advertising dollars for survey promotion (assuming City outlets)
3. Measures to get more responses (if there is a lack of responses, COMPANY will discuss options with CLIENT for greater efforts for responses, but fees do not include any other measures)
4. Software for next steps of survey data use – there are software packages that can utilize survey data for next steps (particularly regarding building a network), with an example being CrowdFiber. The COMPANY did not see that as pertaining to the City, so those types of software are not included in our pricing
5. Detail design
6. Detail design costing
7. Negotiations with possible partner providers
8. Analysis of policies and permitting outside of broadband related

Supplemental services not included in the agreement can be provided by COMPANY under separate agreement, if desired.

City shall provide the following:

1. Provide GIS base data and other information for current assets and needs
2. Provide broadband related policy and permitting processes
3. Coordinate meetings for community engagement and visioning
4. Promote survey

ATTACHMENT 2

SCHEDULE

Project Schedule

The Consultant shall complete the Scope of Services for the Project in accordance with the schedule shown; assuming notice to proceed for professional services is issued by the City on or before October 1, 2020.

Verify Existing Assets -----	October 2020 to November 2020
Industry Market Assessment-----	October 2020 to November 2020
Community Engagement -----	October 2020 to December 2020
Permitting & Policy Review -----	October 2020 to November 2020
Gap Analysis -----	January 2020
Options to Fill Gaps -----	February 2020
P3 Options -----	January 2020 to February 2020
Visioning Meetings -----	March 2020

The schedule was prepared to include reasonable allowances for review and approval times required by the City and public authorities having jurisdiction over the project.

The completion of the project is subject to the review and approval process of agencies beyond the control of the Consultant. The completion of the project is also subject to influence from the public and political processes. Therefore, completion of the project may occur earlier or later than the schedule shown herein. The Consultant will perform these services with reasonable diligence and expediency consistent with sound professional practices.

ATTACHMENT 3

SCHEDULE OF FEES



HR GREEN, INC.
Billing Rate Schedule
Effective January 1, 2018

Professional Services	Billing Rate Range
Principal	\$195- \$280
Senior Professional	\$170- \$250
Professional	\$110- \$195
Junior Professional	\$85- \$140
Senior Technician	\$115- \$140
Technician	\$80- \$125
Senior Field Personnel	\$100- \$170
Field Personnel	\$90- \$165
Junior Field Personnel	\$50- \$95
Administrative Coordinator	\$65-\$105
Administrative	\$60- \$110
Corporate Admin	\$80- \$140
Operators/Interns	\$50- \$100