



**PRIVATE CONSTRUCTION CONTRACT**

THIS PRIVATE CONSTRUCTION CONTRACT (hereinafter “Contract”), made and entered into on the \_\_\_\_ day of, \_\_\_\_\_ 20\_\_\_\_, by and between \_\_\_\_\_, (hereinafter called the "Contractor"), and \_\_\_\_\_, (hereinafter called the "Owner").

WHEREAS, the Owner owns property in the City of Des Moines (hereinafter called the "City" or "Jurisdiction") which requires improvements, as described herein, be constructed for development of the property; and

WHEREAS, the improvements are being constructed at Owner's sole cost and expense; and

WHEREAS, the Contactor is responsible for constructing the improvements as set forth in this Contract; and

WHEREAS, this Contract is to set forth the responsibilities of the Owner and Contractor for construction of the improvements and the conditions and requirements that are to be met before the acceptance of the improvements by the City.

WITNESSETH: That the Contractor and Owner, for the consideration stated herein, agree as follows:

**ARTICLE I: DESIGN**

Owner represents and agrees that the improvements have been designed in accordance with the current edition of SUDAS (Statewide Urban Standard Design and Specifications) and all other applicable laws, regulations, codes, ordinances and City approved design references.

**ARTICLE II: SCOPE OF WORK**

The Contractor hereby agrees to complete the work comprising the below referenced improvements as specified in the Contract Documents, which are officially on file in the office of the City Engineer. This Contract includes all Contract Documents, as defined in the SUDAS Standard Specifications, 2024 Edition for the construction of the following improvements:

In accordance with Plan File Numbers \_\_\_\_\_

The Quantity of work to be done is estimated as shown on Attachment A. The Contractor further agrees to complete the work in strict accordance with said Contract and Contract Documents, and to guarantee the work and improvements as required by law and for the time required in said Contract and Contract Documents, after its acknowledgment of completion and acceptance by the City of Des Moines, Iowa, hereinafter called the “Jurisdiction”.

The improvements shall be constructed in accordance with the SUDAS Standard Specifications, 2024 Edition<sup>1</sup>, which were adopted by the City of Des Moines on March 4, 2024 under Roll Call Number 23-0310, as further revised by the City of Des Moines General Supplemental Specifications<sup>2</sup> to the SUDAS Standard Specification, 2024 Edition, all special provisions included in said Contract Documents and all applicable laws, regulations and codes.

<sup>1</sup> The SUDAS Standard Specifications, 2024 Edition may be viewed at the Iowa SUDAS [website](#).

<sup>2</sup> City of Des Moines [General](#) Supplemental Specifications ( Effective March 4, 2024)

**ARTICLE III: CITY IS THIRD PARTY BENEFICIARY**

The Owner and Contractor expressly agree that the City is a third-party beneficiary of this Contract. Owner and Contractor acknowledge and agree that the improvements to be constructed under this Contract are intended to be conveyed to the City. As such, Owner and Contractor expressly agree that services are being indirectly provided to the City under this Contract, that the City is a third party beneficiary of this Contract with respect to the improvements which it is constructing and that the provisions of this Contract shall inure to the benefit of and shall be enforceable by the City as if it were the Owner hereunder. Owner and Contractor acknowledge and agree that they are contractually obligated to the City pursuant to this provision. All cost of construction of the improvements shall be at the sole cost and expense of the Owner and at no expense to the City.

**ARTICLE IV: COMMENCEMENT AND COMPLETION OF WORK**

The Contractor hereby agrees to commence the work not later than \_\_\_\_\_, and to fully complete the work and improvements, all punch list items and final clean up and provide applicable as built plans not later than \_\_\_\_\_.

**ARTICLE V: APPROVAL OF PLANS AND SPECIFICATIONS**

The Owner must obtain written approval of the City Engineer of the plans and specifications for the improvements. Any changes to those plans and specifications or Contract Documents once approved by the City Engineer must also be approved in writing by the City Engineer.

**ARTICLE VI: MAINTENANCE REQUIREMENTS**

The Contractor hereby agree, at their own expense:

- A. To remedy any and all defects that may develop in or result from work to be performed under the Contract within the period of four (4) years from the date of acceptance of the work under the Contract, by reason of defects in workmanship or materials used in construction of said work;
- B. To keep all work in continuous good repair; and
- C. To pay the Jurisdiction’s reasonable costs of monitoring and inspecting to assure that any defects are remedied, and to repay the Jurisdiction all outlay and expense incurred as a result of Contractor’s and Surety’s failure to remedy any defect as required by this section.

Contractor’s agreement herein made extends to defects in workmanship or materials not discovered or known to the Jurisdiction at the time such work was accepted.

**ARTICLE VII: THE CONTRACT SUM**

Upon performance of this Contract by the Contractor, the Owner shall pay to the Contractor the lump sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), or the total amount based upon the actual quantities constructed and the unit prices listed on Attachment A, which payment shall be in full compensation and settlement for the work. Except as hereafter provided, the details regarding actual payment by the Owner to the Contractor for compensation for work completed shall be between the Owner and the Contractor. The City shall hold the Owner and Contractor responsible for the completion of the work and improvements, until final acceptance is made. Said final acceptance means a certificate of completion of the project, submitted by the Des Moines City Engineer to the Des Moines City Council with written acceptance by the Des Moines City Council by approval of a resolution accepting the improvements. Such certification, approval and acceptance shall not constitute an acceptance of any unauthorized work, and no approval, acceptance or payment shall constitute an acceptance of unauthorized or defective work or improper material.

**ARTICLE VIII: GENERAL**

**A. ENGINEERING SERVICES AND INSPECTIONS**

The Contractor agrees to comply with all procedures required by the Jurisdiction to include, but not limited to: plan check, testing, and construction inspection(s). The Jurisdiction reserves the right to inspect all work on said improvements to the same standard as if the improvement was a Jurisdiction-funded public improvement. The Owner shall hire a licensed surveyor to do all survey work needed for this Contract including an as-built survey. The surveyor shall contact the Jurisdiction regarding format and information required on the as-built survey.

**B. INSPECTION COORDINATION**

The Contractor shall contact the Des Moines Engineering Department at 515-283-4177 (or cellular 515-208-4177), 24-hours before beginning construction and coordinate with Des Moines Engineering Department for inspection. The Contractor shall make arrangements and accommodate inspections by the Jurisdiction. **Failure to have inspections as required may result in the City requiring the Contractor to remove and replace some or all of the work or may result in the City not accepting the improvements.** The Contractor shall notify the Owner and the City Engineer in writing when all construction work, including the punch list and final cleanup, is completed; so that the City Engineer can make a final inspection of the work, and the Owner can order the as-built survey if required and have the surveyor file a monument preservation certification in accordance with Iowa Code 355.11 (if applicable).

**C. FEES PAID BY THE OWNER AND/OR CONTRACTOR**

The Owner and/or Contractor agree to obtain all federal, state, and local permits and pay all fees necessary for the Contract work including, but not limited to, Grading and NPDES permits. The Owner agrees to pay the City's administrative, inspection, and testing fees in accordance with Section 94-321 of the Des Moines City Code, at the time the private construction Contract is submitted to the City Engineer for review and prior to presentation to City Council for approval and permission to construct the improvement. Said fees were established by the City Council on December 18, 2002, under Roll Call No. 02-3007 as follows:

Description of Service/Permit	Fee
Administrative Fee for private construction contracts	\$900.00 per contract
Inspection and Testing Fee for private Paving construction contracts	6% of the first \$30,000 of construction contract cost and 2% thereafter
Inspection and Testing Fee for private Sanitary Sewer construction contracts	8% of the first \$30,000 of construction contract cost and 3% thereafter
Inspection and Testing Fee for private Storm Sewer construction contracts	8% of the first \$30,000 of construction contract cost and 2% thereafter

**Payment should be made payable to the City of Des Moines and presented with this contract**

**FEE CALCULATION**

Enter data for this contract and calculate fees below, which is the sum of the \$900.00 administrative fee plus the inspection and testing fees based upon the contract costs. (See instructions for example calculations.)

**Paving Fee:** Construction Amount \$ \_\_\_\_\_

Administrative Fee: \$900.00 \$ \_\_\_\_\_

Inspection and Testing Fee:

- 6% of first \$30,000 of paving construction cost \$ \_\_\_\_\_

- 2% of the remaining paving construction cost over \$30,000 \$ \_\_\_\_\_

**Total Paving Fee:** \$ \_\_\_\_\_

**Sanitary Sewer Fee:** Construction Amount \$ \_\_\_\_\_

Administrative Fee: \$900.00 \$ \_\_\_\_\_

Inspection and Testing Fee:

- 8% of first \$30,000 of sanitary sewer construction cost \$ \_\_\_\_\_

- 3% of the remaining sanitary sewer construction cost over \$30,000 \$ \_\_\_\_\_

**Total Sanitary Sewer Fee:** \$ \_\_\_\_\_

**Storm Sewer Fee:** Construction Amount \$ \_\_\_\_\_

Administrative Fee: \$900.00 \$ \_\_\_\_\_

Inspection and Testing Fee:

- 8% of first \$30,000 of storm sewer construction cost \$ \_\_\_\_\_

- 2% of the remaining storm sewer construction cost over \$30,000 \$ \_\_\_\_\_

**Total Storm Sewer Fee :** \$ \_\_\_\_\_

#### **D. BONDS, INSURANCE AND INDEMNITY**

The Contractor agrees to provide the insurance required by Section 1070, Part 3 – Bonds and Insurance, of said Standard Specifications through the period of operations covered by this Contract until acknowledgment of completion and/or acceptance by the Des Moines City Council; and the Contractor shall defend, indemnify, and hold harmless the Jurisdiction and its officers, agents, and employees in accordance with Section 1070, 3.03 Contractor's Indemnity - Contractual Liability Insurance. The Contractor agrees to provide, on the form provided, a Performance, Payment and Maintenance Bond in the full amount of this Contract with the maintenance period of four years.

#### **E. NON-DISCRIMINATION**

The Contractor hereby acknowledges and agrees to comply with any and all applicable provisions of the Des Moines Human Rights Ordinance, Chapter 62 of the Des Moines Municipal Code. The Contractor specifically agrees not to discriminate against any employees or applicants for employment on the basis of age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry, disability or familial status. The Contractor further agrees to include this provision in all subcontracts for this project.

#### **F. PUNCH LIST ITEMS AND FINAL COMPLETION**

The Contractor is responsible for timely completion of the improvements in accordance with Article III, including construction of the improvements, completion of all punch list items, final cleanup and providing the as-built survey to the City that also indicates whether the surveyor was required to file a monument preservation certification in accordance with Iowa Code 355.11. **All those items must be completed by the dates set forth in Article IV, or the Contractor will be in violation of this Contract.**

#### **G. CITY'S STANDARD FORM CONTRACT CONTROLS**

The Owner and the Contractor acknowledge that this Contract has been prepared utilizing a standard City of Des Moines contract form provided by the City or downloaded from the City's website in PDF (Portable Document Format). The Owner and Contractor represent that no changes have been made to the form of this Contract other than to insert required information and text in text boxes provided for that purpose, and they agree that unauthorized changes made to the form of the contract shall not be binding on them or on the City and that the form of the contract as it appears on the City's website shall govern and be binding on the parties to this Contract.

#### **H. SURVEY MONUMENT PRESERVATION**

The Owner and Contractor are responsible to fully comply with Section 355.6A of the Iowa Code and shall hire or cause to be hired a licensed professional surveyor to determine if a monument (such as a property corner, section corner, survey control) is likely to be disturbed or removed prior to construction and provide that information to the City before construction begins. The surveyor shall locate and preserve the monuments likely to be disturbed or removed, in the manner provided in section 355.6A. In accordance with Iowa Code 355.11, United States Public Land Survey Corner Monuments shall be preserved and/or replaced.

#### **I. NPDES PERMIT AND STORM WATER POLLUTION PREVENTION PLAN REQUIREMENTS**

If the work under this Contract disturbs one or more total acres, this Contract is subject to Section 402(b) of the Clean Water Act and Iowa Code Section 455B.174 and Iowa Administrative Code 567-64.4 (projects disturbing one or more total acres) and requires inclusion in the National Pollution Discharge Elimination System (NPDES) General Permit No. 2, or an individual NPDES Permit for stormwater (also storm water) discharge associated with industrial activity for construction activities. All work shall be in accordance with Section 9040 – Erosion and Sediment Control of the SUDAS Standard Specifications. The revisions to Section 9040 – Erosion and Sediment Control that are included in the City of Des Moines General Supplemental Specifications to the current SUDAS Standard Specification, as referenced above, shall not apply. The Owner, and its Contractor, shall be totally responsible for all Erosion and Sediment Control work including preparing the storm water pollution prevention plan, publications, notices, fees, fines, and all stormwater pollution prevention work.

#### **J. TREE PROTECTION SUPPLEMENTAL SPECIFICATIONS**

- A. **WORK ON PRIVATE PROPERTY:** Chapter 42, Article X, Tree Removal and mitigation, of the Municipal Code of the City of Des Moines shall apply.
- B. **WORK ON PUBLIC RIGHT OF WAY:** The City of Des Moines Supplemental Specification for Tree Protection shall apply to this Private Construction Contract. The Supplemental Specification for Tree Protection is available from the City Engineer's Office and is also available at the following link: [Tree Regulations](#)

**K. Traffic Signalization Supplemental Specifications**

If the work under this Private Construction Contract includes traffic signalization work, then the City of Des Moines Special Provision for Traffic Signalizations shall be attached and will apply to this Contract.

The regulation can be found at the following site: <https://intrans.iastate.edu/app/uploads/sites/15/2020/02/8010.pdf>

IN WITNESS WHEREOF, the Parties hereto have caused this Instrument to be executed in four (4) original counterparts as of the day and year first above written.

<b>OWNER</b>	<b>CONTRACTOR</b>
_____	_____
Owner's Name	Contractor's Name
By _____	By _____
Signature	Signature
_____	_____
Printed Name	Printed Name
_____	_____
Title	Title
_____	_____
Address	Address
_____	_____
City, State, Zip Code	City, State, Zip Code
_____	_____
Telephone Number	Telephone Number
_____	_____
Email Address	Email Address
<p>Type or print the name and title of the company's owner, president, CEO, etc. if a different person than entered above.</p>	<p>Type or print the name and title of the company's owner, president, CEO, etc. if a different person than entered above.</p>
_____	_____
Name	Name
_____	_____
Title	Title

**CONTRACTOR IDENTIFICATION INFORMATION To Be Provided By:**

1. All Contractors: Contractor's public registration number issued by the Iowa Commissioner of Labor pursuant to Section 91C.5 of the Iowa Code: \_\_\_\_\_.
2. Out-of-State Contractors: Contractor's Bond (State of Iowa, Division of Labor, Out-of-State Contractor Project Bond) pursuant to Section 91C.7 of the Iowa Code  
 Bond No: \_\_\_\_\_  
 Name of Surety: \_\_\_\_\_

**NOTE:** All signatures on this contract must be original signatures in ink; copies or facsimile of any signature will not be accepted.

## ATTACHMENT A

In accordance with Article II: Scope of Work, the Quantity of work to be done is estimated on this Private Construction Contract Attachment A as listed below.

In accordance with Article IV: The Contract Sum is the compensation to be paid by the Owner to the Contractor.

- If the Contractor is to be paid based upon a lump sum price, this amount should be entered on the Contract and only the Item Number, Description, and Quantity of the work as shown on the construction plans need to be listed below.
  
- If the Contractor is to be paid based upon the total amount of the actual quantities constructed instead of based upon a lump sum price, then the Item Number, Description, and Estimated Quantities of work as shown on the construction plans as well as the Unit Prices, and Total Prices are to be listed below, and the total contract sum should be entered in the space provided for the contract sum on the Contract.

Item No.	Description	Quantity	Unit Price	Total Price
<b>TOTAL CONTRACT SUM:</b>				

OWNER'S CORPORATE ACKNOWLEDGEMENT

State of \_\_\_\_\_ )  
 ) SS  
\_\_\_\_\_ County )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me known, who, being by me duly sworn, did say that they are the \_\_\_\_\_, and \_\_\_\_\_, respectively, of the corporation executing the foregoing instrument; that (no seal has been procured by) (the seal affixed thereto is the seal of) the corporation; that said instrument was signed (and sealed) on behalf of the corporation by authority of this Board of Directors; that \_\_\_\_\_ and \_\_\_\_\_ acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My commission expires \_\_\_\_\_

OWNER'S PARTNERSHIP ACKNOWLEDGMENT

State of \_\_\_\_\_ )  
 ) SS  
\_\_\_\_\_ County )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_ to me personally known, who being by me duly sworn, did say that the person is one of the partners of \_\_\_\_\_, a partnership, and that the instrument was signed on behalf of the partnership by authority of the partners and the partner acknowledged the execution of the instrument to be the voluntary act and deed of the partnership by it and by the partner voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My commission expires \_\_\_\_\_

OWNER'S INDIVIDUAL ACKNOWLEDGEMENT

State of \_\_\_\_\_ )  
 ) SS  
\_\_\_\_\_ County )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me known to be the identical person(s) named in and who executed the foregoing instrument, and acknowledged that (he) (she) (they) executed the instrument as (his) (her) (their) voluntary act and deed.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My commission expires \_\_\_\_\_

OWNER'S LIMITED LIABILITY COMPANY ACKNOWLEDGEMENT

State of \_\_\_\_\_ )  
 ) SS  
\_\_\_\_\_ County )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me a Notary Public in and for said county, personally appeared \_\_\_\_\_, to me personally know, who being by me duly sworn did say that person is \_\_\_\_\_ of said \_\_\_\_\_, that (the seal affixed to said instrument is the seal of said OR no seal has been procured by the said) \_\_\_\_\_, and that said instrument was signed and sealed on behalf of the said \_\_\_\_\_, by authority of its managers and the said \_\_\_\_\_ acknowledged the execution of said instrument to be the voluntary act and deed of said \_\_\_\_\_, by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My commission expires \_\_\_\_\_



CONTRACTOR'S CORPORATE ACKNOWLEDGEMENT

State of \_\_\_\_\_ )  
 ) SS  
\_\_\_\_\_ County )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me known, who, being by me duly sworn, did say that they are the \_\_\_\_\_, and \_\_\_\_\_, respectively, of the corporation executing the foregoing instrument; that (no seal has been procured by) (the seal affixed thereto is the seal of) the corporation; that said instrument was signed (and sealed) on behalf of the corporation by authority of this Board of Directors; that \_\_\_\_\_ and \_\_\_\_\_ acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My commission expires \_\_\_\_\_

CONTRACTOR'S PARTNERSHIP ACKNOWLEDGMENT

State of \_\_\_\_\_ )  
 ) SS  
\_\_\_\_\_ County )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_ to me personally known, who being by me duly sworn, did say that the person is one of the partners of \_\_\_\_\_, a partnership, and that the instrument was signed on behalf of the partnership by authority of the partners and the partner acknowledged the execution of the instrument to be the voluntary act and deed of the partnership by it and by the partner voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My commission expires \_\_\_\_\_

CONTRACTOR'S INDIVIDUAL ACKNOWLEDGEMENT

State of \_\_\_\_\_ )  
 ) SS  
\_\_\_\_\_ County )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me known to be the identical person(s) named in and who executed the foregoing instrument, and acknowledged that (he) (she) (they) executed the instrument as (his) (her) (their) voluntary act and deed.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My commission expires \_\_\_\_\_

CONTRACTOR'S LIMITED LIABILITY COMPANY ACKNOWLEDGEMENT

State of \_\_\_\_\_ )  
 ) SS  
\_\_\_\_\_ County )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me a Notary Public in and for said county, personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn did say that person is \_\_\_\_\_ of said \_\_\_\_\_, that (the seal affixed to said instrument is the seal of said OR no seal has been procured by the said) \_\_\_\_\_, and that said instrument was signed and sealed on behalf of the said \_\_\_\_\_, by authority of its managers and the said \_\_\_\_\_ acknowledged the execution of said instrument to be the voluntary act and deed of said \_\_\_\_\_, by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My commission expires \_\_\_\_\_