**CITY OF TOPEKA**

**PUBLIC WORKS DEPARTMENT**

**ENGINEERING DIVISION**

**STANDARD AGREEMENT**

**FOR**

**ENGINEERING SERVICES**

THIS AGREEMENT, is between the City of Topeka, Kansas (Owner) and [Enter consultant’s name] (Engineer);

WITNESSETH:

WHEREAS, the Owner wishes to employ the Engineer to perform professional engineering services on [Enter Project Number and Project Name]. These services include providing engineering design and construction documents for the [Enter Project Description] (the Project); and,

WHEREAS, the Owner requires certain engineering services in connection with the Project (the Services);

and,

WHEREAS, the Engineer is prepared to provide the Services;

NOW THEREFORE, in consideration of the promises contained in this Agreement, the Owner and Engineer.

agree to the following:

**ARTICLE 1 - EFFECTIVE DATE**

The effective date of this Agreement shall be

**ARTICLE 2 - GOVERNING LAW**

This Agreement shall be governed by the laws of the State of Kansas and the codes of the City of Topeka

**ARTICLE 3 - SERVICES TO BE PERFORMED BY ENGINEER**

Engineer shall perform the Services described in Attachment A, Scope of Services, in accordance with applicable sections of the City of Topeka Design Criteria and Drafting Standards of latest revision.

**ARTICLE 4 - COMPENSATION**

Owner shall pay Engineer in accordance with the Attachment B, Compensation.

**ARTICLE 5 – OWNER’S RESPONSIBILITIES**

Owner shall be responsible for all matters described in Attachment C, Owner's Responsibilities.

**ARTICLE 6 - SUPPLEMENTAL AGREEMENTS**

The provisions set forth in Attachment D, Supplemental Agreements shall be incorporated into this Agreement.

**ARTICLE 7 - PROJECT SCHEDULE**

The provisions set forth in the Attachment E, Project Schedule shall be incorporated into this Agreement.

**ARTICLE 8 - STANDARD OF CARE**

Engineer shall exercise the same degree of care, skill, and diligence in the performance of Services as is ordinarily possessed and exercised by a professional engineer under similar circumstances.

**ARTICLE 9 - INDEMNIFICATION AND INSURANCE**

Engineer hereby agrees to fully indemnify and hold harmless Owner and any of its departments, divisions, agencies, officers, employees and elected officials from all loss, damage, cost, or expenses specifically including attorneys’ fees and other expenses of litigation incurred by or on behalf of the Owner and any of its officers, employees or elected officials arising out of Engineer's negligent performance of Services under this Agreement. Engineer specifically agrees that this duty to indemnify and hold harmless will apply to the following:

a. Claims, suits, or action of every kind and description when such suits or actions arise from the alleged negligent acts, errors, or omissions of the Engineer, its employees, agents, or subcontractors.

1. Injury or damages received or sustained by any party because of the negligent acts, errors, or omissions of the Engineer, its employees, agents, or subcontractors.

Engineer shall purchase and maintain during the life of this Agreement, insurance coverage which will satisfactorily insure him against claims and liabilities which arise because of the execution of this Agreement.

The insurance coverages are as follows:

(1) Commercial General Liability Insurance, with a limit of $1,000,000 for each occurrence and $2,000,000 in the general aggregate.

(2) Automobile Liability Insurance, with a limit of $1,000,000 for each accident, combined single limit for bodily injuryand property damage.

(3) Worker's Compensation Insurance and Employer's Liability Insurance, in accordance with statutory requirements, with a limit of $500,000 for each accident.

(4) Professional Liability Insurance, with a limit of $1,000,000 for each claim and aggregate.

Prior to issuance of the Notice to Proceed by Owner, Engineer shall have on file with Owner certificates of insurance acceptable to Owner. Said certificates of insurance shall be filed with Owner in January of each year or may be submitted with each agreement.

Engineer shall also maintain valuable papers insurance to assure the restoration of any plans, drawings, field notes or other similar data relating to the work covered by this agreement, in the event of their loss or destruction, until such time as the work has been delivered to the Owner.

Upon completion of all Services, obligations, and duties provided for in this Agreement, or if this Agreement is terminated for any reason, the terms and conditions of this Article shall survive.

**ARTICLE 10 - LIMITATIONS OF RESPONSIBILITY**

Engineer shall not be responsible for: (1) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project, (2) the failure of any contractor, subcontractor, vendor, or other Project participant, not under contract to Engineer, to fulfill contractual responsibilities to the Owner or to comply with federal, state or local laws, regulations, and codes; or (3) procuring permits, certificates, and licenses required for any construction unless such responsibilities are specifically assigned to Engineer in Attachment A, Scope of Services.

**ARTICLE 11 - OPINIONS OF COST AND SCHEDULE**

Since Engineer has no control over the cost of labor, materials, or equipment furnished by others, or over the resources provided by others to meet Project construction schedules, Engineer's opinion of probable construction costs and of construction schedules shall be made on the basis of experience and qualifications as a professional engineer. Engineer does not guarantee that proposals, bids, or actual Project construction costs will not vary from Engineer's cost estimates or that actual construction schedules will not vary from Engineer's projected schedules.

**ARTICLE 12 - REUSE OF DOCUMENTS**

All documents, including, but not limited to, drawings, specifications, and computer software prepared by Engineer pursuant to the Agreement are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project. Any reuse without prior written verification or adaptation by Engineer for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Engineer. Any verification or adaptation requested by Owner shall entitle Engineer to compensation at rates to be agreed upon by Owner and Engineer.

**ARTICLE 13 - OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY**

Except as otherwise provided herein, engineering documents, drawings, and specifications prepared by Engineer as part of the Services shall become the sole property of Owner, however, that both Owner and Engineer shall have the unrestricted right to their use. Engineer shall retain its rights in its standard drawing details, specifications, data bases, computer software, and other proprietary property protected under the copyright laws of the United States. Rights to intellectual property developed, utilized, or modified in the performance of services shall remain the property of Engineer. Owner shall have the unlimited right to the use of intellectual property developed, utilized, or modified in the performance of the Services at no additional cost to the Owner.

**ARTICLE 14 - TERMINATION**

This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement. The nonperforming party shall have fifteen calendar days from the date of the termination notice to cure or to submit a plan for cure acceptable to the other party. Owner may terminate or suspend performance of this Agreement for Owner's convenience upon written notice to Engineer. Engineer shall terminate or suspend performance of the Services on a schedule acceptable to Owner. If termination or suspension is for Owner's convenience, Owner shall pay Engineer for all Services performed prior to the date of the termination notice. Upon restart, an adjustment acceptable to Owner and Engineer shall be made to Engineer's compensation.

**ARTICLE 15 - DELAY IN PERFORMANCE**

Neither Owner nor Engineer shall be considered in default of the Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonconforming party. For purposes of this Agreement, such circumstances include abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, or other civil disturbances; sabotage, judicial restraint, and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either Owner or Engineer under this Agreement.

Should such circumstances occur, the nonconforming party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of the Agreement.

For delays in performance by Engineer, as set forth in Attachment E, Project Schedule, which are caused by circumstances which are within its control, such delays shall be documented on the Engineer's Project Performance Evaluation form. Said form shall be completed at the conclusion of Project and acknowledged by both Owner and Engineer. Completed form shall be retained by Owner for a period of five years and reviewed prior to consultant selection for City projects.

In the event Engineer is delayed in the performance of Services because of delays caused by Owner, Engineer shall have no claim against Owner for damages or contract adjustment other than an extension of time.

**ARTICLE 16 - COMMUNICATIONS**

Any communication required by this Agreement shall be made in writing to the address specified below:

 Engineer: [Enter Consultant Project Manager]

 [Enter Consultant Address]

 [Enter Consultant Phone Number]

 Owner: City of Topeka City Clerk

 215 SE 7th Street, Room 166

 Topeka, KS 66603

 (785) 368-3940

 With a Copy to: City of Topeka Engineering Division

 620 SE Madison, 2nd Floor

 Topeka, KS 66607

 (785) 368-3842

Nothing contained in the Article shall be construed to restrict the transmission of routine communications

between representatives of Engineer and Owner.

**ARTICLE 17 - WAIVER**

A waiver by either Owner or Engineer of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

**ARTICLE 18 - SEVERABILITY**

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

**ARTICLE 19 - INTEGRATION**

This Agreement represents the entire and integrated agreement between Owner and Engineer. All prior and contemporaneous communications, representations, and agreements by Engineer, whether oral or written, relating to the subject matter of this Agreement, as set forth in Attachment D, Supplemental Agreements are hereby incorporated into and shall become a part of this Agreement

**ARTICLE 20 - SUCCESSORS AND ASSIGNS**

Owner and Engineer each binds itself and its directors, officers, partners, successors, executors, administrators, assigns, and legal representatives to the other party of this Agreement and to the directors, officers, partners, successors, executors, administrators, assigns, and legal representatives of such other party in respect to all provisions of this Agreement.

**ARTICLE 21 - ASSIGNMENT**

Neither Owner nor Engineer shall assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent Engineer from employing independent consultants, associates, and subcontractors to assist in the performance of the Services; however, other agreements to the contrary notwithstanding, in the event Engineer employs independent consultants, associates, and subcontractors to assist in performance of the Services, Engineer shall be solely responsible for the negligent performance of the independent consultants, associates, and subcontractors so employed.

**ARTICLE 22 - THIRD PARTY RIGHTS**

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than Owner and Engineer.

**ARTICLE 23 – RELATIONSHIP OF PARTIES**

Nothing contained herein shall be construed to hold or to make the Owner a partner, joint venturer, or associate of Engineer, nor shall either party be deemed the agent of the other, it being expressly understood and agreed that the relationship between the parties hereto is and shall at all times remain contractual as provided by the terms and conditions of this Agreement.

IN WITNESS WHEREOF, Owner and Engineer have executed this Agreement.

|  |  |
| --- | --- |
|  CITY OF TOPEKA |   |
| **Owner** | **Engineer** |
|   |  |
| **By: Richard U. Nienstedt** Interim City Manager**Title** | **By:** **Title**  |
| **Date:** **Attest:**  | **Date:** **Attest:**  |
|  City Clerk, Brenda Younger |  |

APPROVED AS TO FORM AND LEGALITY

DATE\_\_\_\_\_\_\_\_\_\_\_\_\_\_ BY\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ATTACHMENT A**

**TO**

**AGREEMENT FOR ENGINEERING SERVICES**

Owner: City of Topeka, Kansas

Engineer: [Enter Consultants Name]

Project Number & Name: [Enter Project Number and Name]

**SCOPE OF SERVICES**

BASIC SERVICES

The project is specifically defined below:

[Enter a description of the proposed project]

The Engineer agrees to provide the following services.

 [Enter a description of the services to be provided by the Consultant]

SUPPLEMENTAL SERVICES

Any work requested by the Owner that is not included in the Basic Services will be classified as Supplemental Services. Supplemental Services shall include, but are not limited to the following.

 [Enter a description of the supplemental services that may be provided by the Consultant]

**ATTACHMENT B**

**TO**

**AGREEMENT FOR ENGINEERING SERVICES**

Owner: City of Topeka, Kansas

Engineer: [Enter Consultants Name]

Project Number & Name: [Enter Project Number and Name]

**COMPENSATION**

For the services covered by this Agreement, the Owner agrees to pay the Engineer as follows:

A. For the Basic Services described in Attachment A, [Enter type of fee and amount]. Payments shall be made monthly in amounts which are consistent with the amount of engineering services provided, as determined by the Engineer.

B. Compensation for Supplemental Services shall be made as defined below, when authorized in writing by the Owner. The maximum limit for each item of additional service shall be established individually and specifically agreed to by the Owner as stated below, unless the service is included in a subsequent agreement.

Hourly rates for each classification as defined by the Engineer's rate schedule, see Attachment F. Hourly charge rates are subject to adjustment annually on January 1. Overtime, when authorized by the Owner, will be billed at [Enter overtime rate] times the rates listed (non-engineer time only).

Reimbursable charges will be considered the amount of actual costs of expenses or charges, including such items as staking materials, equipment rental, equipment hourly charges, mileage, toll telephone calls, reproduction and similar project related expenses.

D. The entire amount of each statement shall be due and payable upon receipt by the Owner.

E. It is understood and agreed:

1. That the Engineer shall start the performance of Services within 10 days of receipt of a notice to proceed and shall complete the work in accordance with the contract times set forth in Attachment E, Project Schedule.

2. That the Engineer shall keep records on the basis of generally accepted accounting practice of costs and expenses which records shall be available for inspection at all reasonable times.

**ATTACHMENT C**

**TO**

**AGREEMENT FOR ENGINEERING SERVICES**

Owner: City of Topeka, Kansas

Engineer: [Enter Consultants Name]

Project Number & Name: [Enter Project Number and Name]

**OWNER'S RESPONSIBILITIES**

The Owner will furnish, as required by the work and not at the expense of the Engineer, the following items:

1. Make available to the Engineer all records, reports, maps, and other data pertinent to provision of the services required under this contract.

2. Examine all plans, specifications and other documents submitted by the Engineer and render decisions promptly to prevent delay to the Engineer.

3. Designate one City of Topeka employee as the Owner representative with respect to all services to be rendered under this agreement. This individual shall have the authority to transmit instructions, receive information and to interpret and define the Owner's policies and decisions pertinent to the Engineer's services.

4. Issue notices to proceed to the Engineer for each phase of the design services.

**ATTACHMENT D**

**TO**

**AGREEMENT FOR ENGINEERING SERVICES**

Owner: City of Topeka, Kansas

Engineer: [Enter Consultants Name]

Project Number & Name: [Enter Project Number and Name]

**SUPPLEMENTAL AGREEMENTS**

Owner and Engineer agree that the following communications, representations, and agreements by Engineer, whether oral or written, relating to the subject matter of the Agreement are hereby incorporated into and shall become a part of the Agreement as set forth in ARTICLE 19 - INTEGRATION.

**ATTACHMENT E**

**TO**

**AGREEMENT FOR ENGINEERING SERVICES**

Owner: City of Topeka, Kansas

Engineer: [Enter Consultants Name]

Project Number & Name: [Enter Project Number and Name]

**PROJECT SCHEDULE**

Owner and Engineer recognize that time is of the essence of the Agreement and that Owner will suffer financial loss if the work is not completed within the times stipulated herein, plus any extensions thereof. Accordingly, Engineer has established time intervals, in calendar days, for submittals at various stages of the project as detailed below. As each actual submittal date occurs, Engineer shall meet with Owner to discuss the progress of the work and the actual submittal date shall be documented. If project is behind schedule, the reason shall be recorded. Engineer shall not be responsible for the time required by Owner's representative to review Engineer's submittal. When review is complete, Owner shall, in writing, authorize Engineer to proceed to the next submittal date. After final submittal date, Engineer and Owner shall meet to evaluate Engineer's performance with regard to design schedule. An Engineer's Project Performance Evaluation form shall be completed and acknowledged by both Owner and Engineer. Completed form shall be retained by Owner for a period of five years and reviewed prior to consultant selection for City projects. Past performance shall be accounted for on the evaluation sheet used to rank consultants during the interview process.

1. Schedule: Engineer will make plan submittals to Owner based on the following schedule:

1. Concept Drawings - Engineer will submit concept drawings within [Enter days] calendar days after Notice to Proceed by Owner.
2. Field Check - Engineer will submit field check drawings within [Enter days] calendar days after Notice to Proceed by Owner.
3. Right-of-Way Drawings - Engineer will submit right-of-way drawings within [Enter days] calendar days after the Notice to Resume Work is given by Owner following Field Check.
4. Office Check - Engineer will submit office check drawings and specifications within [Enter days] calendar days after the Notice to Resume Work is given by Owner following Field Check.
5. Bid Documents - Engineer will submit bid documents within [Enter days] calendar days after the Notice to Resume Work is given by Owner following Office Check.

f. As-Built Plans – Engineer will submit as-built plans within 30 calendar days after marked-up plans are

 returned to the Engineer, from the Owner or within 30 calendar days after all punch list items have been

 completed if the Engineer’s firm provided construction inspection services for the project.