

CITY OF LAWRENCE  
PROJECT \_\_\_\_\_

**ENGINEERING SERVICES AGREEMENT  
FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS**

THIS AGREEMENT is made in Douglas County, Kansas, by and between the City of Lawrence, Kansas, hereinafter called the City, and Professional Engineering Consultants, P.A. hereinafter called the Consultant. The City intends to complete an improvement project, 19th St. from Constant Avenue to Arkansas Street, Project No. \_\_\_\_\_, (hereinafter called the Project) in Lawrence, Kansas, described in Exhibit A.

The City hereby contracts with the Consultant for professional engineering services in connection with the Project, for such engineering services more particularly described herein in consideration of the mutual covenants herein set forth. By executing this Agreement, the Consultant represents to the City that the Consultant is professionally qualified to provide such and is licensed to practice engineering by all public entities having jurisdiction over the Consultant and the Project.

**SECTION I - DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings ascribed herein unless otherwise stated or reasonably required by this contract, and other forms of any defined words shall have a meaning parallel thereto.

“Additional Services” means any services requested by the City which are not covered by Exhibit A of this Agreement.

“Agreement” means this contract and includes change orders issued in writing.

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“City” means the City of Lawrence, Kansas.

"City Engineer" means the person employed by the City with the title of City Engineer who is licensed to practice engineering in the State of Kansas.

“Consultant” means the company or individual identified on page 1. Consultant shall employ for the services rendered, engineers, architects, landscape architects, and surveyors licensed, as applicable, by the Kansas State Board of Technical Professions.

“Contract Documents” means those documents so identified in the Contract for Construction of this Project, including Engineering Documents. All terms defined in said General Conditions shall have the same meaning when used in this Agreement unless otherwise specifically stated or in the case of a conflict in which case the definition used in this Agreement shall prevail in the interpretation of this Agreement.

“Engineering Documents” means all plans, specifications, reports, drawings, tracings, designs, calculations, computer models, sketches, notes, memorandums or correspondence related to the work described in Exhibit A attached hereto.

“Engineering Services” means the professional services, labor, materials, supplies, testing and other acts or duties required of Consultant under this Agreement together with Additional Services as City may request and evidenced by a supplemental agreement pursuant to the terms of this Agreement.

“Project” is as described in Exhibit A.

“Subsurface Borings and Testing” means borings, probings and subsurface explorations, laboratory tests and inspections of samples, materials and equipment; and appropriate professional interpretations of all the foregoing.

## **SECTION II - PAYMENT**

### **A. COMPENSATION.**

1. Lump Sum Fee: The City agrees to pay the Consultant a lump sum fee for Design Services (field check) of \$166,000. Design services after field check and Construction Phase Services shall be completed under separate negotiated agreement or through Amendment of this Agreement. Professional fees are based on the scope of services outlined in Exhibit A of this Agreement and shall be completed in accordance with a mutually agreed to schedule. Other methods of compensation are allowed only after written approval by the City Engineer.
2. Hourly Rate: Any Additional Services which are not set forth in this Agreement will be charged on the basis of the hourly rate schedule attached hereto as Exhibit B and reimbursable expenses not contemplated in this Agreement will be charged at actual cost. No Additional Services or costs shall be incurred without proper written authorization of the City.
3. Reimbursable Expenses: Reimbursable expenses shall be included in the total maximum fee. Reimbursable expenses include expenses of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; long-distance communications; expenses of printing and

reproductions, postage and facsimile transmissions; expenses of renderings and models requested by the City and other costs as authorized by the City. Reimbursable expenses will not include overhead costs or additional insurance premiums. Unit rates for reimbursable expenses shall be included in Exhibit B attached.

4. Sales Tax: Compensation as provided for herein is exclusive of any sales, use or similar tax imposed by taxing jurisdictions on the amount of compensation, fees or services. Should such taxes be imposed, the City shall reimburse the Consultant in addition to the contractual amounts provided. The City shall provide tax exempt number if required, and if requested by the Consultant.
5. Billing: Consultant shall bill the City monthly for all services and reimbursable expenses. It is understood by the Consultant that monthly pay requests must be received by the 5th day of the month. The bill submitted by Consultant shall itemize the services and reimbursable expenses for which payment is requested, notwithstanding any claim for interest or penalty claimed in a Consultant's invoice. The City agrees to pay the Consultant within ten (10) days of approval by the governing body. If the Consultant fails to submit an itemized bill for services and/or reimbursable expenses within sixty (60) days of completion of the services, the City shall have no duty to pay the Consultant for those services.
6. City's Right to Withhold Payment: In the event the City becomes credibly informed that any representations of the Consultant provided in its monthly

billing are wholly or partially inaccurate, the City may withhold payment of disputed sums then, or in the future, otherwise due to the Consultant until the inaccuracy and the cause thereof is corrected to the City's reasonable satisfaction. In the event the City questions some element of an invoice, that fact shall be made known to the Consultant immediately. The Consultant will help effect resolution and transmit a revised invoice if necessary. The City shall pay the undisputed portion of any invoice as provided in Part 5 of this Section II.

7. Progress Reports: A written progress report, as set out in Exhibit C, must be submitted with each monthly pay request indicating which specific design tasks and their percentage have been completed to date, and tasks that will be performed the following month. This report will serve as support for payment to the Consultant.
8. Timing of Services: Consultant will perform the services in a timely manner; however, if during their performance, for reasons beyond the control of the Consultant, protracted delays occur, the parties agree that they will negotiate in writing an equitable adjustment of time and compensation, taking into consideration the impact of such delays.
9. Change in Scope: For substantial modifications in authorized Project scope, and/or substantial modifications of drawings and/or specifications previously accepted by the City, when requested by the City and through no fault of the Consultant, the Consultant shall be compensated for time and expense required to incorporate such modifications at Consultant's standard hourly

rates per Exhibit B. Provided, however, that any increase in contract price or contract time must be requested by the Consultant and must be approved through a written supplemental agreement prior to performing such services. Consultant shall correct or revise any errors or deficiencies in its designs, drawings or specifications without additional compensation when due to Consultant's negligence, error, or omission.

10. Additional Services: The Consultant shall provide, with the City's concurrence, services in addition to those listed in Exhibit A, when such services are requested, in writing, by the City. Prior to entering into any Additional Services, the Consultant must submit a proposal outlining the Additional Services to be provided, estimation of total hours and a maximum fee based upon the hourly rate schedule attached hereto as Exhibit B. Payment to the Consultant, as compensation for these Additional Services, shall be in accordance with the attached hourly rate schedule attached as Exhibit B. Reimbursable expenses incurred in conjunction with Additional Services shall be paid separately and those reimbursable expenses shall be paid at actual cost. Records of reimbursable expenses and expenses pertaining to Additional Services and services performed on an hourly basis shall be made available to the City if so requested in writing. Production of these documents shall be made at the Consultant's office during normal business hours within a reasonable time at a date and time mutually convenient to both parties.

11. Supplemental Agreement: This Agreement may be amended to provide for additions, deletions and revisions in the services or to modify the terms and conditions thereof by written amendment signed by both parties. The contract price and contract time may only be changed by a written supplemental agreement approved by the City, unless it is the result of an emergency situation in which case the City Engineer may give verbal and facsimile approval to be followed by a written and approved supplemental agreement. If notice of any change affecting the general scope of the services or provisions of this Agreement, including but not limited to, contract price or time, is a requirement of any insurance policy held by the Consultant as a requirement of this Agreement, the giving of such notice shall be the Consultant's responsibility.

### **SECTION III - RESPONSIBILITIES OF CONSULTANT**

- A. **SCOPE OF SERVICES**: The Consultant shall furnish and perform the various professional duties and services in all phases of the Project to which this Agreement applies, as specifically provided in Exhibit A and which are required for the completion of the Project

- B. **GENERAL DUTIES AND RESPONSIBILITIES**

1. Personnel: The Consultant shall assign only qualified personnel to perform any service concerning the Project. Michael W. Berry, P.E. will perform as the Consultant's principal for this Project. As principal on this Project, this person shall be the primary contact with the City Engineer, or another person

so designated, and shall have authority to bind the Consultant. So long as the individual named above remains actively employed or retained by the Consultant, he/she shall perform the function of principal on this Project.

2. Independent Contractor: The Consultant is an independent contractor and as such is not an employee of the City.
3. Special Services: The Consultant may be called on to serve as a Consultant or witness in any litigation, arbitration, legal or administrative proceeding arising out of this Project. The Consultant shall not be paid extra by the City if the appearance is to defend Consultant's professional engineering services. If the Consultant is requested in writing by the City to appear as a witness, the Consultant will be paid its hourly fee as reflected on the hourly rate schedule attached hereto as Exhibit B.
4. Subsurface Borings and Material Testing: If tests additional to those provided in Exhibit A are requested by the City for design, the Consultant shall prepare specifications for the taking of the additional borings. Such Subsurface Borings and Testing, as defined herein, shall be provided by the Consultant through other contractors. Payment to the Consultant will be negotiated in writing.
5. Service by and Payment to Others: Any work authorized in writing by the City and performed by a third party other than the Consultant, or their subconsultants in connection with the proposed Project, shall be contracted for and paid for by the City directly to the third party or parties. Fees for extra



work shall be subject to negotiation between the City and the third party.

Fees shall be approved by the City prior to the execution of any extra work.

Although the Consultant may assist the City in procuring such services of third parties, the Consultant shall in no way be liable to either the City or such third parties in any manner whatsoever for such services or for payment thereof.

6. Subcontracting of Service: The Consultant shall not subcontract or assign any of the architectural, engineering or consulting services to be performed under this Agreement without first obtaining the written approval of the City regarding the services to be subcontracted or assigned and the firm or person proposed to perform the services. Neither the City nor the Consultant 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.
7. Endorsement: The Consultant shall sign and seal all final plans, specifications, estimates and engineering data furnished by the Consultant. The Consultant warrants to the best of its knowledge, information and belief that its performance will be done in a professional manner. Any review or approval by the City of any documents prepared by the Consultant, including but not limited to the plans and specifications, shall be solely for the purpose of determining whether such documents are consistent with the City's construction program and intent. No review of such documents shall relieve

the Consultant of their responsibility for the accuracy. It will be the Consultant's responsibility to verify the existence of any and all rights-of-way and easements, including temporary construction easements, that are necessary for the Project construction. Rights-of-way and easements shown on the construction plans shall have proper legal verification to prove their existence.

8. Professional Responsibility: The Consultant will exercise reasonable skill, care and diligence in the performance of its services as is ordinarily possessed and exercised by a licensed professional performing the same services under similar circumstances.
9. Inspection of Documents: The Consultant shall maintain all Project records for inspection by the City during the contract period and for three (3) years from the date of final payment.

**SECTION IV - CITY OF LAWRENCE RESPONSIBILITIES**

**A. GENERAL DUTIES AND RESPONSIBILITIES**

1. Communication: The City shall provide to the Consultant information and criteria regarding the City's requirement for the Project; examine and timely respond to the Consultant's submissions; and give notice to the Consultant, who shall respond promptly, whenever the City observes or otherwise becomes aware of any defect in the services.
2. Access: The City will provide access agreements for the Consultant to enter public and private property when necessary.
3. Duties: The City shall furnish and perform the various duties and services in all phases of the Project which are outlined and designated in Exhibit A as the City's responsibility.
4. Program and Budget: The City shall provide full information stating the City's objectives, schedule, budget with reasonable contingencies, and necessary design criteria.
5. Other consultants: The City may contract with "specialty" consultants when such services are requested by the Consultant.
6. Testing: Any tests required to supplement the scope of services or tests required by law shall be furnished by the City.
7. Legal, Insurance, Audit: The City shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project. The City shall furnish all bond forms required for the Project.

8. Project Representative: The City Engineer, or the City Engineer's designee, shall represent the City in coordinating this Project with the Consultant, with authority to transmit instructions and define policies and decisions of the City.

## **SECTION V - GENERAL PROVISIONS**

### **A. TERMINATION**

1. Notice: The City reserves the right to terminate this Agreement for either cause or for its convenience and without cause or default on the part of the Consultant, by providing written notice of such termination to the Consultant. Upon receipt of such notice from City, the Consultant shall, at City's option as contained in the notice, immediately cease all services and meet with City to determine what services shall be required of the Consultant in order to bring the Project to a reasonable termination in accordance with the request of the City. The Consultant shall also provide to the City digital and mylar copies of all drawings and documents completed or partially completed at the date of termination. The Consultant is entitled to terminate this agreement by providing thirty (30) days written notice.
2. Compensation for Convenience Termination: If City shall terminate for its convenience, as herein provided, City shall compensate Consultant for all services completed to date prior to receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.

3. Compensation for Default Termination: If the City shall terminate for cause or default on the part of the Consultant, the City shall compensate the Consultant for the reasonable cost of services completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed. The City also retains all its rights and remedies against the Consultant including but not limited to its rights to sue for damages, interest and attorney fees.
4. Incomplete Documents: Neither the Consultant, nor its subconsultant, shall be responsible for errors or omissions in documents which are incomplete as a result of an early termination under this section, the Consultant having been deprived of the opportunity to complete such documents and certify them as ready for construction.

**B. DISPUTE RESOLUTION**

City and the Consultant agree that disputes relative to the Project should first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests provided, however, that notwithstanding any such dispute the Consultant shall proceed with the services as per this Agreement as if no dispute existed.

**C. OWNERSHIP OF ENGINEERING DOCUMENTS**

All Engineering Documents prepared in connection with this Project shall be the property of the Consultant, whether the Project for which they are made is executed

or not; however, the Consultant shall provide the City a copy of all Engineering Documents as requested by the City and related to services for which the consultant has been compensated.

Reports, plans, specifications and related documents are the Consultant's copyrighted instruments, and the Consultant, at its option, may so identify them by appropriate markings. Provided that the Consultant is paid in full for its services, then the City may reuse these final documents without any additional compensation. However, such reuse shall be for City use and the Consultant shall have no liability for City alteration to the documents or for any use other than as intended pursuant to the terms hereof.

#### **D. INSURANCE**

Unless otherwise specified, the City shall be shown as an additional insured on all applicable insurance policies except professional liability and worker's compensation. All general and automobile liability insurance shall be written on an occurrence basis unless otherwise agreed to in writing by the City. The City shall be given written thirty (30) days notice of any insurance policy cancellation.

1. Professional Liability: The Consultant shall maintain, throughout the duration of this Agreement, Professional Liability Insurance in an amount not less than one million dollars (\$1,000,000), per claim and annual aggregate, and shall provide the City with certification attached to this Agreement.

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2. Commercial General Liability

Each Occurrence      \$500,000

General Aggregate      \$500,000

The policy must also include personal injury; products/completed operations; contractual liability and independent contractors.

3. Worker's Compensation: The Consultant shall retain Worker's Compensation Insurance in the statutory amounts.

4. Employer's Liability:

Bodily Injury by Accident      \$100,000      (each accident)

Bodily Injury by Disease      \$500,000      (policy limit)

Bodily Injury by Disease      \$100,000      (each employee)

5. Automobile Insurance: The Consultant shall maintain a policy in the minimum amounts as required for general liability to protect against claims for bodily injury and/or property damage arising out of the ownership or use of any owned, hired and/or non-owned vehicle.

6. Industry Ratings: City will only accept coverage from an insurance carrier which offers proof that it:

- a) Is licensed to do business in the State of Kansas;
- b) Carries a Best's Policyholder rating of A or better; and

- c) Carries at least a Class X financial rating; or is a company mutually agreed upon by the City and Consultant.

7. Subconsultant's Insurance: If a part of this Agreement is to be sublet, the Consultant shall either:

- a) Cover all subconsultants in its insurance policies; or
- b) Require each subconsultant not so covered to secure insurance which will protect against all applicable hazards or risks of loss in the amount so designated.

Whichever option is chosen, the Consultant shall indemnify and hold harmless the City as to any and all damages, claims, or losses, including attorney's fees, arising out of the negligent acts or omissions of its subconsultants.

#### **E. INDEMNITY**

1. Indemnify and Hold Harmless: For purposes of this Agreement, the Consultant hereby agrees to indemnify and hold harmless the City and its employees and officials from any and all loss to the extent caused or incurred in whole or in part as a result of the negligence or wrongful acts of the Consultant, its officers, subsidiaries, employees and subconsultants/assignees and their respective officers and employees, in the performance of services pursuant to this Agreement.

In the case of any claims against the City or its employees and officials indemnified under this Agreement, by an employee of the Consultant, its



officers, subsidiaries, or subconsultant/assignees, the indemnification obligation contained in this Agreement shall be limited to those losses caused by the negligence of the Consultant but shall not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for the Consultant, its officers, subsidiaries, or subconsultant/assignees, under workers' compensation acts, disability benefit acts, or other employee benefit acts, as allowed by law. The Consultant's obligation hereunder shall not include amounts attributable to the fault or negligence of the City or any third party for whom the Consultant is not responsible.

**F. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.

**G. APPLICABLE LAW**

This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Kansas.

**H. ASSIGNMENT OF AGREEMENT**

This Agreement shall not be assigned or transferred by either the Consultant or the City without the written consent of the other.

**I. NO THIRD PARTY BENEFICIARIES**

Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

**J. COVENANT AGAINST CONTINGENT FEES**

The Consultant warrants that they have 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 they have not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City may terminate this Agreement without liability or may, in its discretion, deduct from the contract price or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

**K. COMPLIANCE WITH LAWS**

Consultant shall abide by all applicable federal, state and local laws, ordinances and regulations applicable to this Project until the Engineering Services required by this Agreement are complete. Consultant shall secure all occupational and professional licenses, permits, etc., from public and private sources necessary for the fulfillment of its obligations under this Agreement.

**L. TITLES, SUBHEADS AND CAPITALIZATION**

Title and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the

Agreement. Some terms are capitalized throughout the Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

**M. SEVERABILITY CLAUSE**

Should any provision of this Agreement be determined to be void, invalid unenforceable or illegal for whatever reason, such provisions shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable.

**N. HAZARDOUS MATERIALS**

The Consultant and the Consultant's subconsultants shall have no responsibility for the discovery, presence, handling, removal, or disposal or exposure of persons to hazardous materials in any form at the Project site.

**O. AFFIRMATIVE ACTION**

The Consultant agrees to comply with the provisions of K.S.A. 44-1030, in the Kansas Acts Against Discrimination, and Section 10-113 eq seq of the Code of the City of Lawrence, Kansas, Affirmative Action in Public Contracts.

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**P. EXECUTION OF CONTRACT**

The parties hereto have caused this Agreement to be executed in duplicate this  
\_\_\_\_\_ day of \_\_\_\_\_, 2015.

**CONSULTANT**

By: \_\_\_\_\_

Michael W. Berry, P.E.

Executive Vice President

Professional Engineering Consultants, P.A.

**CITY OF LAWRENCE, KANSAS**

By: \_\_\_\_\_

Diane Stoddard

Interim City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Toni Ramirez Wheeler

City Attorney

**ATTEST:**

\_\_\_\_\_  
Robert A. Koopman, P.E., Principal

Municipal Services Division Manager

Professional Engineering Consultants, P.A.