

**CITY OF LAWRENCE, KANSAS
CONSTRUCTION CONTRACT**

THIS AGREEMENT is made and entered into this 1st day of March, 2019, by and between the City of Lawrence, Kansas (Owner) a municipal corporation and TSP Environmental (Contractor).

Owner and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

ARTICLE 1 - WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:
Bowersock Dam Scour Hole Repairs
Kansas Riverbank Stabilization
Engineering design for all work and final plan for recreational and Kansas River access

ARTICLE 2 - THE PROJECT

- 2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:
Bowersock Dam Scour Hole Repairs UT1885
Kansas Riverbank Stabilization PW17E9
Engineering design for all work and final plan for recreational and Kansas River access
Work is described in RFP R1815

ARTICLE 3 - ENGINEER

- 3.01 The Project has been designed by Recreation Engineering and Planning, LLC but Owner will act as its own representative and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents but shall have no liability for the project's design.

ARTICLE 4 – CONTRACT TIME

- 4.01 Date for Final Completion: The Work will be substantially completed on or before December 31, 2019, and completed and ready for final payment in accordance with Paragraph GC-54 of the General Conditions on or before January 1, 2020 or within 365 days of procurement of required permits, whichever is later.

[or]

- 4.01 Days to Achieve Final Completion: The Work will be completed and ready for final payment in accordance with Paragraph GC-54 of the General Conditions.
- 4.02 Liquidated Damages: Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified above, plus any extensions thereof allowed in accordance with Paragraph GC-46 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$100 for each day that expires after the time specified above for Final Completion until the Work is complete.

ARTICLE 5 - CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds indicated below:

- A. For the base scope of work other than Unit Price Work, a Lump Sum of: ONEMILLION TWO HUNDRED THIRTY FIVE THOUSAND ONE HUNDRED FIFTY EIGHT DOLLARS (words)
\$1,235,158.00 (numerals)

[or]

- A. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the bid quantity of that item. Total of bid prices: N/A

[or]

- A. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

ARTICLE 6 - PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments: Contractor shall submit Applications for Payment in accordance with Paragraph GC-53 of the General Conditions. Applications for Payment will be processed by Engineer or Owner as provided in the General Conditions.

- A. Progress Payments; Retainage: Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment monthly during performance of the Work. All such payments will be measured by a schedule of values acceptable to the Owner or, in the case of Unit Price Work, based on the number of units completed. Progress payments will be made in an amount equal to 95 percent of Work completed, with the balance being retainage, but in each case less the aggregate of payments previously made and less such amounts as Owner may withhold, including *but* not limited to liquidated damages.

- B. Final Payment: Upon final completion and acceptance of the Work in accordance with Paragraph GC-54 of the General Conditions, Owner shall pay the remainder of the Contract Price as provided in said Paragraph GC-54.

ARTICLE 7 – CONTRACTOR'S REPRESENTATIONS

7.01 Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and

data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.

- E. Contractor may consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents, and has included effort to perform final design and details for the project.
- F. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- G. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and additional examinations, and data with the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - CONTRACT DOCUMENTS

8.01 Contents

- A. The Contract Documents consist of the following
 - 1. Agreement.
 - 2. Statutory bond.
 - 3. Performance bond.
 - 4. General Conditions.
 - 5. Addenda (numbers _____ to _____, inclusive). N/A
 - 6. Contractor's Proposal (pages P-1 to P-5, inclusive) and documentation submitted by Contractor prior to Notice of Award.
 - 7. RFP R1815
- B. The documents listed in Paragraph 8.01.A are attached to this Agreement (except as expressly noted otherwise above).
 - 1. Change Orders which may be delivered or issued on or after the Date of the Agreement and are not attached hereto.
- C. There are no Contract Documents other than those listed above in this Article 8.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 9 - MISCELLANEOUS

9.01 Terms

A. Terms used in this Agreement will have the meanings stated in the General Conditions.

9.02 Insurance

- A. The Contractor shall secure insurance to protect himself and the Owner against hazards as enumerated herein. All policies shall be in amounts, form and companies satisfactory to the Owner, name the City of Lawrence as an additional insured, and:
 - (a) Cover any or all subcontractors in their insurance policies; OR
 - (b) Require each subcontractor to secure insurance to protect themselves against hazards enumerated herein which are not covered by the general contractor’s policies.

All certificates of insurance required herein shall state that thirty (30) day written notice shall be given to the Owner before the policy is canceled or changed.

No contractor or subcontractor will be allowed to start construction work on this contract until certificates of all insurance required herein are filed with the Owner.

- B. Public Liability and Property Damage: The Contractor shall maintain insurance protecting against any and all claims and demands arising from injury to person or persons not in the employ of the Contractor, and against any and all claims and demands resulting from damage to any property due to any act or omission of the Contractor, his agents or employees, in the operation of the work or the execution of this contract. Such insurance shall remain in effect on portions of the work which have been completed and which may or may not be occupied or utilized by the Owner prior to the completion and acceptance of all work included in the contract.

Where the work to be performed under the contract involves excavation or other underground work or construction, the property damage insurance provided shall cover all injury to or destruction of property below the surface of the ground, such as wires, conduits, pipes, mains, sewer, etc., caused by the Contractor’s operations. Property damage insurance shall also cover the collapse of, or structural injury to, any building or structure on or adjacent to the construction work area, or the injury to or destruction of property resulting therefrom, caused by the removal of other buildings, structures, or supports, or excavation below the ground, where the construction of a new structure or the demolition of an existing structure involves any of the foregoing designated hazards and in all cases where the contract provides for alterations in, additions to, or the underpinning of, an existing structures or structures.

Minimum limits for Public Liability and Property Damage insurance required are as follows:

Public Liability:

- (a) Each Occurrence \$500,000
- (b) Aggregate \$1,000,000

Property Damage:

- (a) One Accident \$500,000
- (b) All Accidents \$1,000,000

The Contractor shall name the City of Lawrence, Kansas as an additional insured to protect the Owner against any and all claims that might arise as a result of the operation of the Contractor or his subcontractor or subcontractors, in fulfilling this contract.

- C. Employer's Liability and Worker's Compensation. The Contractor shall secure and maintain employer's liability and worker's compensation insurance in an amount that is in conformity and compliance with the statutory requirements of the laws of the State of Kansas.

In case any class of employees is not protected under the Worker's Compensation statute, the Contractor shall provide, and shall cause each subcontractor to provide, adequate employer's liability coverage that will protect them against any claims resulting from injuries to and death of workers engaged in work under this contract.

- D. Contractor's Contingent of Protective Liability and Property Damage. In case part of this contract is sublet, the Contractor shall secure contingent or protective liability and property damage insurance to protect himself from any and all claims arising from the operations of his subcontractors in the execution of work included in this contract. The coverage in each case shall be acceptable to the Owner.
- E. Builder's Risk Fire Insurance with Extended Coverage. The Contractor shall secure adequate insurance to protect the Contractor and the Owner against damage to equipment, structure, or materials from fire and hazards included in extended coverage endorsement or supplemental contract.
- F. Automobile Public Liability and Property Damage. The Contractor shall maintain automobile public liability insurance in the amount of not less than \$500,000 for injury to one person and \$1,000,000 for one accident; and automobile property damage insurance in the amount of not less than \$1,000,000 for one accident to protect himself from any and all claims arising from the use of the following in the execution of work included in this contract:
- (a) Contractor's own automobiles and trucks;
 - (b) Hired automobiles and trucks; and
 - (c) Automobiles and trucks not owned by the Contractor.

Such insurance shall cover the use of automobiles and trucks both on and off the site of the project.

9.03 Indemnification

- A. For purposes of this contract, the Contractor hereby agrees to indemnify and hold harmless the Owner 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 Contractor, its officers, subsidiaries, employees and subcontractors/assignees and their respective officers and employees, in the performance of services pursuant to this contract.

In the case of any claims against the Owner or its employees and officials indemnified under this contract, by an employee of the Contractor, its officers, subsidiaries, or subcontractors/assignees, the indemnification obligation contained in this contract shall be limited to those losses caused by the negligence of the Contractor but shall not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for the Contractor, its officers, subsidiaries, or subcontractors/assignees, under workers' compensation acts, disability benefit acts, or other employee benefit acts, as allowed by law. The Contractor's obligation hereunder shall not include amounts attributable to the fault or negligence of the Owner or any third party for whom the Contractor is not responsible.

9.04 Assignment of Contract

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.05 Successors and Assigns

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.06 Severability

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.07 Right Of Owner To Terminate Contract.

- A. If the work to be done under this contract shall be abandoned by the Contractor; or if the contract shall be assigned by them otherwise than as herein provided; or if the Contractor shall be adjudged bankrupt; or if a general assignment of their assets be made for the benefit of their creditors; or if a receiver should be appointed for the Contractor or any of their property; or if, at any time, the Engineer shall certify in writing to the Owner that the performance of the work under this contract is being unnecessarily delayed; or that the Contractor is violating any of the conditions or covenants of this contract or the specifications therefore; or that they are executing the same in bad faith or otherwise not in accordance with the terms of said contract; or if the work be not substantially completed within the time named for its completion or within the time to which such completion date may be extended; then the Owner may serve written notice upon the Contractor and their surety, of said Owner's intention to terminate this contract and; unless within five (5) days after the serving of such notice upon the Contractor, a satisfactory arrangement be made for the continuance thereof, this contract shall cease and terminate. In the event of such termination, the Owner shall immediately serve notice thereof upon the surety and the Contractor, and the surety shall have the right to take over and complete the work, provided, however, if the surety does not commence performance thereof within thirty (30) days from the date of said notice of termination, the Owner may take over the work and prosecute same to completion, by contract or otherwise, for the account and at the expense of the Contractor, and the Contractor and their surety shall be liable for any and all excess cost sustained by the Owner by reason of such prosecution and completion; and in such event the Owner may take possession of, and utilize in completing the work, all such materials, equipment, tools, and plant as may be on the site of the work and necessary therefore

9.08 Other Provisions

- A. The Contractor agrees that the Contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin

or ancestry. The Contractor shall in all solicitations or advertisements for employees include the phrase "equal opportunity employer." The Contractor agrees that if the Contractor fails to comply with the manner in which the Contractor reports to the Kansas Human Rights Commission ("Commission"), in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the Owner. If the Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the Owner.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in triplicate. All portions of the Contract Documents have been signed or identified by Owner and Contractor or on their behalf.

OWNER: City of Lawrence, Kansas

CONTRACTOR:

By: _____
Thomas M. Markus

By: _____
Donald E. Swang Jr.

Title: City Manager

Title: _____
President

APPROVED AS TO FORM

[CORPORATE SEAL]

By: _____
Toni R. Wheeler

Title: City Attorney

Address for giving notices:
P.O. Box 708
Lawrence, KS 66044-0708

Address for giving notices:
25000 Capitol
Redford, MI 48239