

**City of Lincoln Lancaster County Railroad Transportation Safety District**

**CONTRACT FOR ENGINEERING SERVICES**

THIS CONTRACT, executed in triplicate, is between the **City of Lincoln Lancaster County Railroad Transportation Safety District** (the "RTSD") and

a corporation of the state of \_\_\_\_\_

with a place of business at:

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Fed EIN # \_\_\_\_\_ Email: \_\_\_\_\_

WITNESSETH: That in consideration of the mutual covenants herein contained, the RTSD hereby agrees to employ the Engineer to perform engineering and related professional services hereinafter outlined in connection with

**SECTION I — SCOPE OF SERVICES**

The Engineer agrees to timely and professionally complete, furnish and pay all costs, including any related taxes, and to furnish all labor, supplies and material and everything else reasonably necessary to complete the same unless specifically provided otherwise in this Agreement for the services listed in Exhibit A, attached hereto. Such services may also be referred to as "the Work." Supplemental services as may be authorized by the RTSD are included in Exhibit A, and such supplemental services shall also be referred to as the Work described herein.

**SECTION II — COMPENSATION**

For the services covered by this Contract, the RTSD agrees to pay the Engineer as follows:

- A. **Basic Services.** Engineer shall be paid the hourly rates set forth in Exhibit B and the total of all fees and allowed actual expenses shall not exceed the cumulative amount of [\$ \_\_\_\_\_ ] without prior consent of the RTSD.
- B. **Supplemental Services.** Engineer shall be paid the compensation set forth in Exhibit B for supplemental services, plus all allowed actual expenses for supplemental services. A maximum amount for each item of supplemental services will be established and approved by the RTSD before supplemental services are commenced. Supplemental services are not included in any of the prices or billing limits named in Section IIA above.
- C. **Cost Overruns.** The Engineer is responsible for determining if its actual fees or expenses will exceed the maximum amounts stated in Section IIA and/or Section IIB above. If at any time during this Project, the Engineer determines that its fees or expenses will exceed, or have exceeded the maximum amount stated above, the Engineer shall immediately notify the RTSD in writing and describe which fees or expenses are causing the overrun and the

- reason. The Engineer shall also estimate the additional fees or expenses needed to complete the Work. The RTSD will then determine if the maximum amount is to be increased, remain the same, or determine if the scope of the Project needs to be modified or terminated. An amendment will be prepared if needed.
- D. **Notice to Proceed.** The RTSD is not responsible for fees or expenses incurred prior to the Notice-to-Proceed date or after the completion deadline date stated in Exhibit C (work schedule) of this Agreement unless otherwise set forth in this Agreement.
- E. **Invoices.** The Engineer shall submit invoices to the RTSD at monthly intervals unless otherwise agreed upon by the RTSD and the Engineer. The invoices must present activities of the Engineer showing not less than actual hours worked, hourly rates applied, and actual expenses incurred. All invoices shall be in a format acceptable to the RTSD. For supplemental services, an invoice shall be submitted showing the activities involved in the supplemental service with a calculation of the fees and actual expenses in accordance with the fee and actual expense structure for supplemental services set forth in Exhibit B and all invoices shall be in a format acceptable to the RTSD.
- F. **Progress Reports.** Invoices must be substantiated by progress reports which indicate the percentage of Work completed. If the Engineer does not submit a monthly invoice, then no progress report is required. The Engineer shall provide a progress report within a reasonable time after a request for such report by the RTSD, separate and apart from the billing process.
- G. **Payment.** The RTSD shall pay the Engineer within 30 days of approval of the Engineer's invoices. The RTSD may reject all or part of any invoice for any reasonable cause. Payment is dependent upon whether the monthly progress reports provide adequate substantiation for the Work and whether the RTSD determines that the Work is satisfactory. Upon determination that the Work was adequately substantiated and satisfactory, payment will be made in the amount of 100 percent of the billed actual costs and hourly fees. After the Engineer has completed all Work required under this Agreement, a final invoice shall be submitted to the RTSD. Upon acceptance of the Work by the RTSD and final payment is made, an audit of all invoiced amounts may be completed by the RTSD or its authorized representative. The RTSD shall have no obligation to pay for any services which do not constitute the Work, as defined in this Agreement.
- H. **Final Payment.** The acceptance by the Engineer of the final payment will constitute and operate as a release to the RTSD for all claims and liability of the Engineer, its representatives, and assigns, for any and all things done, furnished, or relating to the services and Work rendered by or in connection with this Agreement or any part thereof. The Engineer agrees to reimburse the RTSD for any overpayments discovered by the RTSD or the Engineer, respectively.
- I. **Audit Standards.** The Engineer shall maintain, and also require that its Sub-Consultants/Subcontractors maintain, all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and shall make such materials available for examination at its office at all reasonable times during the term of this Agreement and for three years from the date of final payment under this Agreement. Such materials must be available for inspection by the RTSD, City of Lincoln, County of Lancaster, State of Nebraska, Federal Highway Administration (FHWA), or any authorized representative of the state or federal governments and, when requested, the Engineer shall furnish copies.

### **SECTION III — RTSD'S RESPONSIBILITIES**

The RTSD will furnish, as required for the Work and not at the expense of the Engineer, the following items:

- A. Property, boundary, easement, right-of-way, and utility surveys, and property descriptions when such information is required.
- B. All maps, drawings, records, audits, annual reports, and other data that are available in the files of the RTSD and the City of Lincoln and Lancaster County, as available, and which may be useful in the Work involved under this contract, including existing surveys, maps, and boring information for the site. Such information is supplied "where is - as is" for the Engineer's review. Engineer must identify and specifically request available information by itemized request with sufficient detail to identify existing documents. The RTSD does not warrant or represent that such information is accurate or complete with regard to the Project and the Work to be performed under this Agreement. Engineer understands and

agrees that Engineer is not entitled to rely upon the available information provided by the RTSD as such information may contain errors, omissions, misrepresentations, uncharacteristic representations or other inconsistencies including inconsistencies or changed conditions that may not be readily discernable but should be reasonably discovered by the Engineer's exercise of due care.

- C. Access to public and private property, as necessary and as may be available, when required in conduct of field investigations.
- D. Charges for review of drawings and specifications by governmental agencies, if any.

#### SECTION IV — OTHER MATTERS

It is mutually understood and agreed:

- A. **Termination.** The RTSD has the right to terminate this contract for any cause, including but not limited to, breach of this Agreement or convenience in which event the Engineer shall be paid for the accepted Work completed to the date of termination. The ownership of the Work completed at the time of such termination shall be retained by the RTSD. In addition, the RTSD may terminate this agreement in whole or in part when funding is not lawfully available for expenditure or when sources of funding are terminated, suspended, reduced, released, or otherwise not forthcoming.
- B. **Change in Scope.** A change in scope of Work shall be accompanied by a corresponding adjustment in the compensation to be paid hereunder, which adjustment shall be as may be mutually agreed upon between the parties hereto prior to the implementation of such change in scope.
- C. **Project Representatives.** \_\_\_\_\_ will act as the RTSD's authorized representative for this Project and \_\_\_\_\_ will act as the Engineer's authorized representative. The Engineer's authorized representative shall have direct and responsible charge for timely completing the Engineer's responsibilities. All changes and other matters requiring decisions on the part of the RTSD will be administered and directed by the RTSD's authorized representative, subject to the authority granted by the RTSD's Board of Directors.
- D. **Cost Estimates.** Engineer represents that construction estimates are done to industry standards, using unit prices where possible. Engineer does not warrant that engineer bids will be acceptable to the RTSD.
- E. **RTSD's Concerns.** The Engineer shall fully and timely respond to all concerns and comments the RTSD has regarding the design documents.
- F. **Signatures and Approvals.** Engineer's design documents shall be complete for bidding purposes and include all required seals, signatures and approvals.
- G. **Construction Phase Changes.** Engineer may only authorize changes in the Work not involving changes to the contract compensation or contract time period and only after reasonable notice to the RTSD. All other changes must be approved by the RTSD in a written change order or amendment to this Agreement.
- H. **Advisory Capacity for Disputes.** In disputes between the RTSD and Project engineer, the Engineer shall advise the RTSD on issues concerning performance under the contract documents.
- I. **Ownership of Drawings and Specifications.** Drawings, specifications, and other deliverables ("information") shall become the property of the RTSD as soon as payment for the same has been completed. The Engineer may retain copies of all information for its records and may use the information if it so desires. It is mutually agreed that the information is to be used by the RTSD solely in connection with this Project. In the event the RTSD elects to use portions of or all of the information contained in the documents prepared for this Project for any purpose other than the specific purpose for which they were prepared, the RTSD agrees to hold harmless and indemnify the Engineer for and against any and all liability, including cost of defense, in any manner whatsoever arising out of the utilization of such information.
- J. **Engineer's Supervision; Seal.** The Engineer shall perform all required services under the direct supervision of a registered professional engineer licensed to practice in the State of Nebraska. The Engineer, also, hereby agrees to affix the seal of a registered professional engineer licensed to practice in the State of Nebraska on all plans and specifications prepared hereunder.

- K. **Independent Engineer.** The status of Engineer including Engineer's agents and employees, under or by virtue of the terms of this Contract is that of independent engineer to the RTSD.
- L. **Compliance with Law.** Engineer shall comply with all Federal and State laws and City and County ordinances applicable to the Project and the Work to be performed.
- M. **Fair Employment Practices.** Neither the Engineer nor the Engineer's agents or employees shall discriminate against any employee or applicant for employment, or be employed in the performance of this contract, with respect to his hire, tenure, terms, conditions or privileges of employment, because of race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to requirements of Section 481122, Nebraska Reissue Revised Statutes, Reissue 1998 (as amended) and Section 11.08.160 of the Lincoln Municipal Code (as amended).
- N. **Insurance.** Engineer shall carry insurance in the following kinds and minimum limit indicated:

**1. Insurance; Coverage**

The Engineer shall, prior to beginning Work, provide proof of insurance coverage in a form satisfactory to the RTSD, which shall not withhold approval unreasonably. The coverages and minimum levels required by this contract are set forth below and shall be in effect for all times that Work is performed pursuant to this Contract. No Work on the Project or pursuant to this Contract shall begin until all insurance obligations herein are met to the satisfaction of the RTSD, which shall not unreasonably withhold approval. Self-insurance shall not be permitted unless consent is given by the RTSD prior to execution of the Agreement. Deductible levels shall be provided in writing from the Engineer's insurer and will be no more than \$50,000.00 per occurrence, unless otherwise agreed upon by the RTSD.

**1.1 Workers' Compensation**

The Engineer shall provide proof of workers' compensation insurance of not less than minimum statutory requirements under the laws of the State of Nebraska and any other applicable State. The Engineer shall provide the RTSD with an endorsement for waiver of subrogation. The Engineer shall also be responsible for ensuring that all subcontractors have workers' compensation insurance for their employees before and during the time any Work is performed pursuant to this Contract.

**1.2 Commercial General Liability**

The Engineer shall provide proof of Commercial General Liability Insurance with the coverages and at the minimum limits set forth herein. These minimum limits can be met by primary and umbrella liability policies. Coverage shall include: Premises-Operations, Products/Completed Operations, Contractual, Broad Form Property Damage, and Personal Injury and shall be no less than \$1,000,000 Each Occurrence and \$2,000,000 Aggregate. Such coverage shall be endorsed for the general aggregate to be on a **PER PROJECT** basis, and the Engineer shall provide an additional insured endorsement acceptable to the RTSD. The description of operations must state "Blanket coverage for all projects and operations of Engineer" or similar language that meets the approval of the RTSD, which approval shall not be unreasonably withheld. If Work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or railroad crossing, the Engineer must provide proof acceptable to the RTSD that any exception for such Work in the Engineer's commercial general liability policy has been removed or deleted.

**1.3 Automobile Liability**

The Engineer shall provide proof of Automobile coverage, which shall include: Comprehensive Form, Owned, Hired and Non-Owned. Bodily Injury and Property Damage Combined Single Limit shall be at least \$1,000,000 Per Accident.

**1.4 Professional Liability; Errors and Omissions**

Errors and Omissions or Professional Liability insurance, as may be required, covering damages arising out of negligent acts, errors, or omissions committed by Engineer in

the performance of this Agreement, with a liability limit of not less than \$1,000,000 each claim. Engineer shall maintain this policy for a minimum of two (2) years after completion of the Work or shall arrange for a two year extended discovery (tail) provision if the policy is not renewed. The intent of this policy is to provide coverage for claims arising out of the performance of professional services under this contract and caused by any error, omission, breach or negligent act, including infringement of intellectual property (except patent and trade secret) of the Engineer.

**1.5 Cyber Insurance**

If required by the RTSD, the Engineer shall maintain network risk and cyber liability coverage (including coverage for unauthorized access, failure of security, breach of privacy perils, as well as notification costs and regulatory defense) in an amount of not less than \$1,000,000.00. Such insurance shall be maintained in force at all times during the term of the agreement and for a period of two years thereafter for services completed during the term of the agreement.

**1.6 Railroad Protective Liability**

If Work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing or otherwise required by the Special Provisions or applicable requirements of an affected railroad, the Engineer shall provide Railroad Protective Liability Insurance naming the affected railroad/s as insured with minimum limits for bodily injury and property damage of \$2,000,000 per occurrence, \$6,000,000 aggregate, or such other limits as required in the Special Provisions or by the affected railroad. The original of the policy shall be furnished to the railroad and a certified copy of the same furnished to the RTSD prior to any related Work or entry upon railroad premises by the Engineer or for Work related to the Contract.

**2. Additional Insured**

An Additional Insured endorsement, or other proof that is acceptable to the RTSD, shall be provided to RTSD naming the RTSD as additional insured under the commercial general liability policy and automobile liability policy. Said insurance shall be written on an **OCCURRENCE** basis, and shall be **PRIMARY, with any insurance coverage maintained by the RTSD being secondary or excess.**

**3. Certificates**

The Engineer shall provide certificates of insurance and endorsements evidencing compliance with these requirements. Upon request, the Engineer shall furnish a full and complete copy of any policy of insurance (other than workers' compensation), required by this Contract, to the RTSD within a reasonable time, not to exceed thirty days. The certificates of insurance shall provide for at least thirty (30) days' firm written notice in the event of cancellation. Intent to notify is not acceptable. During the term of the Agreement and during the period of any required continuing coverages, the Engineer shall provide, prior to expiration of the policies, certificates and endorsements evidencing renewal insurance coverages. The parties agree that the failure of RTSD to object to the form of a certificate and/or additional insured endorsement provided shall not constitute a waiver of this requirement.

**4. Umbrella or Excess Liability**

The Engineer may use an Umbrella, Excess Liability, or similar coverage to supplement the primary insurance stated above in order to meet or exceed the minimum coverage levels required by this Contract.

**5. Minimum Scope of Insurance**

All Liability Insurance policies shall be written on an "Occurrence" basis only. All insurance coverage are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of no less than A: VII unless specific approval has been granted by the RTSD otherwise.

**6. Indemnification**

To the fullest extent permitted by law, the Engineer shall indemnify, defend, and hold harmless the RTSD, its elected officials, officers, employees, agents, consultants, and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney fees, arising out of or resulting from performance of the Work, provided that such

claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible or intangible property, including the Work itself, but only to the extent caused by the negligent, wrongful, or intentional acts or omissions of the Engineer, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by the negligence of a party indemnified hereunder. In the event the claim, damage, loss or expense is caused in part by the negligence of a party indemnified hereunder, the indemnification by the Engineer shall be prorated based on the extent of the liability of the party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce obligations of indemnity which would otherwise exist as to a party or person described in this Section.

7. **Reservation of Rights**

The RTSD reserves the right to require a higher limit of insurance or additional coverages when the RTSD determines that a higher limit or additional coverage is required to protect the RTSD or the interests of the public. Such changes in limits or coverages shall be eligible for a change order or amendment to the Contract.

8. **Sovereign Immunity**

Nothing contained in this clause or other clauses of this Agreement/Contract shall be construed to waive the Sovereign Immunity of the RTSD.

O. **Copyrights, Royalties & Patents.** Without exception, Engineer represents the consideration for this Agreement includes Engineer's payment for any and all royalties or costs arising from patents, trademarks, copyrights, and other similar intangible rights in any way involved with or related to this Agreement except those required to be paid by construction engineers as part of the construction contract. Further, Engineer shall pay all related royalties, license fees, or other similar fees for any such intangible rights. Engineer shall defend suits or claims for infringement of any patent, copyright, trademark, or other intangible rights in any way related to this Agreement. This section survives any termination of this Agreement.

P. **Copyright -- Engineer's Warranty.**

1. Engineer warrants that all material, processes, or other protected rights to be used in the Work have been duly licensed or authorized by the appropriate parties for such use. This section survives any termination of this Agreement.

2. Engineer agrees to furnish the RTSD upon demand written documentation of such license or authorization. If unable to do so, Engineer agrees that the RTSD may withhold a reasonable amount from Engineer's compensation herein to defray any associated costs to secure such license or authorization. Engineer shall defend any infringement claim arising out of Engineer's performance of this Agreement. This section survives any termination of this Agreement.

Q. **Industry Standards.** Engineer warrants to the RTSD that the Work and services to be performed under this Agreement shall be in accordance with accepted and established practices and procedures recognized as such in Engineer's trade in general and that Engineer's services shall conform to the requirements of this Agreement.

R. **Nebraska Law.** This Agreement shall be governed and interpreted by the Laws of the State of Nebraska without reference to the principles of conflicts of law.

S. **Integration, Amendment & Assignment.** This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement. This Agreement may be amended only by written agreement of both parties. Any subletting, assignment or transfer of any Work or services to be performed by the Engineer is hereby prohibited unless prior written consent of the RTSD is obtained. This contract shall be binding upon the successors and assigns of the parties hereto.

T. **Capacity.** The undersigned person representing Engineer does hereby agree and represent that he or she is legally capable to sign this Agreement and to lawfully bind Engineer to this Agreement.

U. **E-Verify.** In accordance with Neb. Rev. Stat. 4-108 through 4-114, the Engineer agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work

authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. The Engineer shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A. 1324b. The Engineer shall require any subcontractor to comply with the provisions of this section. For information on the E-Verify Program, go to [www.uscis.gov/verify](http://www.uscis.gov/verify).

IN WITNESS WHEREOF, RTSD and Engineer do hereby execute this Agreement.

Executed by the ENGINEER this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

Signature: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Executed by the RTSD this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

CITY OF LINCOLN LANCASTER  
COUNTY RAILROAD  
TRANSPORTATION SAFETY  
DISTRICT

By: \_\_\_\_\_  
Executive Director

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

APPROVED AS TO FORM

By: \_\_\_\_\_  
RTSD Attorney

EXHIBIT "A"  
SCOPE OF SERVICES

EXHIBIT "B"

LIST OF HOURLY RATES FOR  
BASIC SERVICES AND SUPPLEMENTAL SERVICES

EXHIBIT "C"

SCHEDULE AND COMPLETION DEADLINE