

**CITY OF LINCOLN, NEBRASKA
AGREEMENT FOR ENGINEERING SERVICES**

THIS AGREEMENT is entered into by and between City of Lincoln, Nebraska, a municipal corporation and Nebraska political subdivision (City), and

(Engineer).

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

(The Work).

SECTION I — SCOPE OF SERVICES

Engineer agrees to timely and professionally complete the Work described above and herein, 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 the Scope of Services (Scope), attached hereto. Such Scope of Services may also be referred to as “the Work.” To the extent that the Scope, Engineer’s proposal, or any other attachment hereto is in conflict with this Agreement, this Agreement shall control.

SECTION II — COMPENSATION

For the services or Work covered by this Agreement, City agrees to pay Engineer as follows:

- A. **Basic Services.** Engineer shall be paid the compensation set forth in the Scope attached hereto, plus all allowed actual expenses and the total of all fees and allowed actual expenses shall not exceed \$ _____ without written consent of City. City is not responsible for fees or expenses incurred prior to the Notice-to-Proceed date or after the completion deadline date stated in the Work Schedule attached to this Agreement unless otherwise agreed to by City.

- B. **Additional Services or Change in Scope.** City may from time to time, require additional services or change in Scope. Such services, including the amount of compensation for such services, which are mutually agreed upon by and between City and Engineer, shall be effective when incorporated by written amendments to this Agreement. Additional services or change in Scope shall not begin until the amendment is executed.

- C. **Cost Overruns.** Engineer is responsible for determining if its actual fees or expenses will exceed the maximum amount stated above. If at any time during the Work, Engineer determines that its fees or expenses will exceed, or have exceeded the maximum amount stated above, Engineer must immediately notify City in writing and describe which fees or expenses are causing the overrun and the reason. Engineer must also estimate the additional fees or

expenses needed to complete the Work. City will then determine if the maximum amount is to be increased, remain the same, or determine if the scope of the Work needs to be modified or terminated. An amendment will be prepared if cost overruns are authorized by City.

D. **Notice to Proceed.** Following execution of this Agreement, City shall provide written notification to Engineer to proceed. Engineer shall not begin the Work under this Agreement until specified in the Notice to Proceed.

E. **Term of Agreement.** The term of this Agreement shall commence upon execution of this Agreement by both parties, on _____, or and shall continue until completion of all obligations of this Agreement, but in no event longer than _____, unless approved extensions are issued by written amendment.

F. **Invoices.** Unless otherwise set forth in the attachments, invoices shall be payable as follows:

Monthly
Quarterly
Lump Sum

Invoices must present activities of Engineer and/or any subcontractors showing not less than actual hours worked, hourly rates applied, actual expenses incurred unless otherwise specified in the Scope or Fee Schedule, and any applicable supporting documentation, such as, but not limited to, receipts. All invoices shall be in a format acceptable to City.

G. **Progress Reports.** Invoices shall be substantiated by written progress reports which indicate the percentage of the Work completed or other metrics of progress agreed to or reasonably requested by City or as set forth in the proposal or Scope. A written progress report shall be provided to City each month in which Work is done by Engineer. Engineer shall provide a progress report within a reasonable time after a request for such report by City, separate and apart from the billing process.

H. **Payment.** City shall pay Engineer within thirty (30) days of approval of Engineer's invoices. City 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 City determines that the Work is satisfactory. Upon determination that the Work was adequately substantiated and satisfactory, payment will be made in the amount of one hundred percent (100%) of the billed actual costs and hourly fees. After Engineer has completed all Work required under this Agreement, a final invoice shall be submitted to City. Upon acceptance of the Work by City and final payment is made, an audit of all invoiced amounts may be completed by City or its authorized representative.

I. **Final Payment.** The acceptance of the final payment will constitute and operate as a release to City for all claims and liability of 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. Engineer agrees to reimburse City for any overpayments.

8. **Audit and Review.** This Agreement shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code, and all parties shall make available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to this Agreement, as allowed by law. 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 material available for examination at its office at all reasonable times during the Agreement term and for five (5) years from the date of final payment under this Agreement. Such materials must be available for inspection by City, State, FHWA, or any authorized representative of the state or federal governments and, when requested, Engineer shall furnish copies.

SECTION III — CITY’S RESPONSIBILITIES

If available, City will furnish, as required for the Work and not at the expense of Engineer, the following items:

- A. Property, boundary, easement, right-of-way, 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 City and which may be useful in the Work involved under this Agreement, including existing surveys, maps, and boring information for the site. Engineer must identify and specifically request available information by itemized written request with sufficient detail to identify existing documents. City does not warrant or represent that such information is accurate or complete with regard to the Work.
- C. Access to public and private property, as necessary, when required in conduct of field investigations.
- D. Charges for review of drawings and specifications by governmental agencies required for concurrence or permits, if any.

SECTION IV — OTHER MATTERS

It is mutually understood and agreed:

- A. **Termination of Agreement.** Termination may occur for any of the following reasons:
 - 1) This Agreement may be terminated by City or Engineer if the other party fails to adequately perform any material obligation required by this Agreement (Default). Termination rights under this section may be exercised only if the defaulting party fails to cure a Default within ten (10) calendar days after receiving written notice from the non-defaulting party specifying the nature of the Default.
 - 2) City may terminate this Agreement, in whole or part, for any reason for City’s own convenience upon at least ten (10) calendar days’ written notice to Engineer.
 - 3) City 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, or otherwise not forthcoming through no fault of City. In the event of unavailability of funds to pay any amounts due under this Agreement, City shall immediately notify

Engineer, and this Agreement shall terminate without penalty or expense to City. Upon termination, City shall pay Engineer for any approved and documented Work completed up to the date of termination, but not to exceed the maximum amount allowed by this Agreement.

- 4) If the Agreement is terminated by City as provided in (2) or (3) above, Engineer shall be paid for all Work performed, and reimbursable expenses incurred, not to exceed the maximum amounts payable under the compensation section above, up until the date of termination. Engineer hereby expressly waives any and all claims for damages or compensation arising under this Agreement except as set forth in this section in the event of termination.
- 5) Engineer agrees that, upon termination as provided in this section (1) above, Engineer shall not be employed by any developer or other party who is or may be interested in the Work, without prior approval of City.
- 6) City reserves the right to withhold payment for Work rendered that is not in compliance with this Agreement or setoff against payments due.

B. Project Representatives. _____ will act as City's Authorized Representative for the Work and _____ will act as Engineer's authorized representative. Engineer's authorized representative shall have direct and responsible charge for timely completing Engineer's responsibilities. All changes and other matters requiring decisions on the part of City will be administered and directed by City's authorized representative.

C. Cost Estimates. Engineer represents that construction estimates are done according to the Scope and shall comply with the current applicable City of Lincoln Standard Specifications for Municipal Construction, using unit prices where possible. Engineer does not warrant that contractor bids will be acceptable to City.

D. Signatures and Approvals. All submittals by Engineer shall be complete for project purposes and include all required seals, signatures, and approvals.

E. Construction Phase Changes. All design changes made during construction must be approved by City in a written change order or amendment to this Agreement.

F. Advisory Capacity for Disputes. In disputes between City and any other party, Engineer shall advise City on issues concerning the Work.

G. Ownership of Drawings and Specifications. Upon termination or final payment, drawings, specifications, electronic files, and other work product or deliverables (information) shall become the property of City as soon as payment for the same has been completed or termination has been affected. Engineer may retain copies of all information for its records and use if it so desires. In the event City elects to use portions of or all of the information contained in the documents prepared for the Work, for any purpose other than the specific

purpose for which they were prepared, City agrees to hold harmless and indemnify Engineer for and against any and all liability in any manner whatsoever arising out of the utilization of such information.

- H. **Engineer's Supervision; Seal.** All required Work shall be performed under the direct supervision of a registered professional engineer licensed to practice in the State of Nebraska. 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.
- I. **Independent Contractor.** City is interested only in the results produced by this Agreement. Engineer has sole and exclusive charge and control of the manner and means of performance. Engineer shall perform as an independent contractor, and it is expressly understood that neither Engineer nor any of its staff are employees of City and are not entitled to any City benefits including, but not limited to, overtime, retirement benefits, workers' compensation, sick leave, injury leave, or other leave provisions.
- J. **Compliance with Law.** Engineer shall comply with all Federal, State, and local laws, rules, and regulations applicable to the Work, including applying for and obtaining all necessary permits, certifications, licenses, and approvals required by the law or regulations that relate to the Work.
- K. **Fair Employment.** Engineer shall not discriminate against any employee (or applicant for employment) with respect to compensation, terms, advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to the requirements of Lincoln Municipal Code Chapter 11.08, Neb. Rev. Stat. § 48-1122, as amended, or such similar federal law as may be applicable.
- L. **Insurance; Coverage; Indemnification.** Engineer, prior to beginning the Work, agrees to City's Indemnification requirements and shall provide proof of insurance coverage in a form satisfactory to City, which shall not withhold approval unreasonably, with the coverages, minimum limits, and endorsements described in the INSURANCE CLAUSE FOR ALL CITY OF LINCOLN, LANCASTER COUNTY, AND PUBLIC BUILDING COMMISSION AGREEMENTS, and the insurance clause shall be attached and incorporated herein to the Agreement.
- M. **Sovereign Immunity.** Nothing contained in this clause or other clauses of this Agreement shall be construed to waive the Sovereign Immunity of City.
- N. **Copyrights, Royalties, and Patents; Warranty.**
 - 1) Without exception, Engineer represents and warrants that the consideration for this Agreement includes Engineer's payment, if any, for any and all royalties or costs due any third party arising from patents, trademarks, copyrights, and other similar intangible rights claimed by any such third party in any way involved with or related to the Work provided herein by Engineer pursuant to this Agreement. Further, Engineer shall pay all related royalties, license fees, or other similar fees for any such

intangible rights. Engineer represents that all materials, processes, or other protected rights, if any, to be used in the creation of the Work have been duly licensed or authorized by the appropriate parties for such use. Engineer agrees to furnish City upon demand written documentation of such license or authorization and if unable to do so, Engineer agrees that City may withhold a reasonable amount from Engineer's compensation herein to defray any associated costs to secure such license or authorization or defend any infringement claim.

- 2) Engineer shall indemnify City and defend suits or claims for infringement for damages, including but not limited to attorney's fees, of any patent, copyright, trademark, or other intangible rights that Engineer has used in the course of performing this Agreement.
- 3) Engineer represents and warrants to City that it is free to enter into this Agreement and that its performance thereunder will not conflict with any other Agreement to which Engineer may be a party. Engineer represents and warrants to City that the Service is unique and original, is clear of any claims or encumbrances, and does not infringe on the rights of any third parties.
- 4) Engineer agrees to and hereby transfers all right, title, and interest, including those of a property or copyright nature, in any reports, studies, data, website creation, digital files, imagery, metadata, maps, statistics, forms, and any other works or materials produced under the terms of this Agreement. No such work or materials produced, in whole or in part, under this Agreement, shall be subject to private use or copyright by Engineer without express written consent of City. City shall have the unrestricted rights of ownership of such works or materials and may freely copy, reproduce, broadcast, or otherwise utilize such works or materials as City deems appropriate. Engineer warrants that all materials, processes or other protected rights to be used have been duly licensed or authorized for City's use.

O. **Engineer's Standard of Care.** In providing the Work under this Agreement, Engineer shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality. Upon notice to Engineer and by mutual agreement between the parties, Engineer will, without additional compensation, correct those services not meeting the standard set forth herein. Engineer further agrees that the Work provided shall conform to the requirements of this Agreement.

P. **Integration; Amendment; Assignment; Severability; Waiver.** 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 assignment or transfer of any of the Work to be performed by Engineer is hereby prohibited unless prior written consent of City is obtained. This Agreement shall be binding upon the successors and assigns of the parties hereto. Each section of this Agreement is hereby declared to be independent of every other section so far as inducement for the acceptance of this Agreement, and invalidity of any section of this

Agreement shall not invalidate any other section thereof. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement. This Agreement shall be construed and interpreted under the laws of the State of Nebraska.

- Q. **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.
- R. **Federal Immigration Verification.** In accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, 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. 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. §1324b. Engineer shall require any sub-agreement or to comply with the provisions of this section. For information on the E-Verify Program, go to www.uscis.gov/everify.
- 1) **Attestation Form.** If Engineer is an individual or sole proprietor, Engineer agrees to complete the United States Citizenship Attestation Form as provided by City and attach it to the Agreement.
- 2) **Public Benefits Eligibility Status Check.** If Engineer is agreeing to determine eligibility for and provide a public benefit as public benefit is defined under Neb. Rev. Stat. §§ 4-108 through 4-114, Engineer agrees to have each applicant for public benefits attest that he or she is a U.S. citizen or qualified alien using the form attached. Engineer agrees to register and use the SAVE Program as required under Neb. Rev. Stat. §§ 4-108 through 4-114. If the applicant indicates he or she is an alien, Engineer shall verify the applicant's lawful presence in the United States as provided under the SAVE Program and retain all documentation and provide copies of such documentation at City's request. For information on the SAVE program, go to www.uscis.gov/SAVE.
- S. **Living Wage.** If the compensation for the Work provided pursuant to this Agreement is equal to or exceeds \$25,000, this Agreement is subject to the Living Wage Ordinance Chapter 2.81 of the Lincoln Municipal Code. The ordinance requires that, unless specific exemptions apply or a waiver is granted, Engineer shall provide payment of a minimum living wage to employees providing services pursuant to this Agreement. Under the provisions of the Living Wage Ordinance, City shall have authority to terminate this Agreement and to seek other remedies for violation of this ordinance.

T. **Records Retention.** Unless City specifies in writing a different period of time, Engineer agrees to preserve and make available at reasonable times all of its books, documents, papers, records, and other evidence involving transactions related to this Agreement for a period of five (5) years from the date of the expiration or termination of this Agreement. See City of Lincoln Records Retention Schedule. Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds five (5) years.

U. **Document Control Clause.** The Agreement includes the following documents:

- 1) Amendments to Agreement;
- 2) Agreement with Scope and Fee;
- 3) Insurance requirements, certificates, and endorsements;
- 4) _____
- 5) _____

In the event that Agreement documents, other than the Agreement, contain terms and conditions conflicting with other agreement documents, the Agreement document with the date closest to the date of execution of this Agreement shall control.

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

CITY OF LINCOLN, NEBRASKA

By: _____
Leirion Gaylor Baird, Mayor of Lincoln

OR *Department Director if \$50,000 or less*

Director: _____
Department: _____

ENGINEER

By: _____

Title: _____