

15-404

**STANDARD AGREEMENT FOR PROFESSIONAL SERVICES**

**THIS AGREEMENT** made on December 9, 2015 between the City of Peoria, whose address is 419 Fulton, Peoria, IL 61602 hereinafter called the **CITY** and Millennia Professional Services of Illinois, Ltd., Consulting Engineer's, 850 N. Main Street, Morton, IL 61550, hereinafter called the **ENGINEER**.

**WITNESSETH**, that whereas the **CITY** desires the following described Professional Engineering and Land Surveying **SERVICES**, and the **ENGINEER** certifies that he/she is in compliance with Illinois Statutes relating to professional registration of individuals and to corporate practice, if a corporation, for rendering such **SERVICES**:

**SERVICES** included under this agreement are Engineering Services for various projects requested by the CITY under separate Work Orders and located within the City of Peoria. The **SERVICES** will be conducted under the supervision of an Illinois Professional **ENGINEER** and be sealed by that person.

NOW THEREFORE, the **ENGINEER** agrees to provide the above described **SERVICES** and the **CITY** agrees to compensate the **ENGINEER** for these **SERVICES** on a time and expense basis in accordance with the attached Schedule of Hourly Charges. Reimbursable direct expenses and sub-engineer services performed by another firm will be invoiced at cost. Hours in excess of 8 hours per day or 40 hours per week will only be compensated at the attached Schedule of Hourly Charges there will be no premium hourly charges awarded.

The **ENGINEER**, in signing this **AGREEMENT**, certifies that he/she has no financial or other interests in the outcome of this **PROJECT**. The **CITY** and the **ENGINEER** hereby certify that there was compliance with the provisions of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act (Chapter 30 ILCS 535) in the procurement of the **SERVICES** covered by this **AGREEMENT**.

The **ENGINEER** shall employ only persons duly licensed or registered in the appropriate category in responsible charge of all elements of the **SERVICES**, for which Illinois Statutes require license or registration, and further shall employ only well qualified persons in responsible charge of any elements of the **SERVICES**, all subject to **CITY** approval.

The **ENGINEER** warrants that they have not employed or retained any company or person other than bona fide employee working solely for the **ENGINEER** to solicit or secure the **AGREEMENT**, and that they have not paid or agreed to pay any company or person other than a bona fide employee working solely for the **ENGINEER** any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of the **AGREEMENT**. For breach or violation of their warranty, the **CITY** shall have the right to annul the **AGREEMENT** without liability or, in its discretion, to deduct from the **AGREEMENT** price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

The **ENGINEER** covenants that they have no public or private interest and shall not acquire directly or indirectly any such interest which would conflict in any manner with the performance of their **SERVICES** under the **AGREEMENT**.

**IT IS MUTUALLY AGREED THAT:**

The **CITY** will make payment for **SERVICES** rendered monthly in accordance with invoices rendered by the **ENGINEER**.

The **CITY**, represented by the Director of Public Works or designee, will assign individual projects to the **ENGINEER** at the sole discretion of the **CITY**. A Work Order describing the project limits and proposed improvements shall establish the compensation terms and schedule, if hourly then the attached rate schedule will be used for compensation. The compensation terms of each Work Order shall be the result of negotiations between the **CITY** and **ENGINEER** and be signed by representatives of both parties. Projects to be partially or entirely paid with Motor Fuel Taxes (MFT) dispersed by the Illinois of Transportation (IDOT) will require compliance with IDOT's MFT policies. This will include using form BLR05510, BLR05511 or BLR05512 as the Work Order documentation. Work Orders not utilizing MFT or Federal Funds will be of a form acceptable to both parties.

This **AGREEMENT** shall remain in effect until December 31, 2016. The total fee of all projects completed under this **AGREEMENT** shall not exceed **NINETY THOUSAND DOLLARS (\$90,000)**. The **CITY** retains the option to extend the time of this **AGREEMENT** and/or increase the fee limit with City Council approval. The **CITY** and the **ENGINEER** each binds himself, his partners, successors, executors, administrators and assignees to each other party hereto in respect to all the covenants and **AGREEMENTS** herein and, except as above, neither the **CITY** nor the **ENGINEER** shall assign, sublet or transfer any part of his interest in this **AGREEMENT** without the written consent of the other party hereto. This **AGREEMENT**, and its construction, validity and performance, shall be governed and construed in accordance with the laws of the State of Illinois.

The **ENGINEER** agrees to make their best commercially reasonable effort to pursue the work contracted for by the **CITY** in the most cost effective manner while preserving the quality of product to be delivered.

This **AGREEMENT** may be terminated by the **CITY** upon giving notice in writing to the **ENGINEER** at his last known post office address. Upon such termination, the **ENGINEER** shall cause to be delivered to the **CITY** all surveys, permits, **AGREEMENTS**, preliminary bridge design & hydraulic report, drawings, specifications, partial and completed estimates and data, if any from traffic studies and soil survey and subsurface investigations with the understanding that all such material becomes the property of the **CITY**. The **ENGINEER** shall be paid for any **SERVICES** completed and any **SERVICES** partially completed in accordance with the **WORK ORDER** issued by the **CITY**.

That the **ENGINEER** warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the **ENGINEER**, to solicit or secure this contract, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the **ENGINEER**, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of this contract. For Breach or violation of this warranty the **CITY** shall have the right to annul this contract without liability.

**EMPLOYEE/EMPLOYMENT RESTRICTIONS** – The **ENGINEER** agrees, as a condition of accepting this contract with the **CITY**, that, for a period of one (1) year following completion of this contract, it shall be prohibited from hiring, directly or indirectly, any **CITY** employee or official who was involved, directly or indirectly in: (1) the selection and/or recommendation to select the **ENGINEER** for performance of this contract; (2) coordinating the efforts of the **ENGINEER** in the consummation or completion of this contract; or (3) monitoring or determining the performance of the **ENGINEER**. The **ENGINEER** further acknowledges and agrees that, upon the **CITY'S** determination that a violation of this provision has occurred, the penalty imposed, at the sole discretion of the **CITY**, may include one or more of the following: (1) cancellation of any other contract(s) between the **CITY** and the **ENGINEER**; (2) disqualification of the **ENGINEER** from bidding or being awarded future contracts with the **CITY** for a period of two (2) years; and/or (3) payment of liquidated damages to the **CITY** in the amount of TWENTY FIVE THOUSANDS DOLLARS (\$25,000.00). ***This does not apply to any City Employee involved in the 2011-2012 reduction in force; nor does it apply to parties taking the Early Retirement Incentive offered by the City from November 1, 2011 through November 1, 2012.***

All documents prepared or furnished by **ENGINEER** are the **Property of the CITY** to use the documents on the Project, extensions of the Project, and for related uses of the **CITY**, subject to receipt by **ENGINEER** of full payment for all **SERVICES** relating to preparation of the documents. Any such reuse, or any modification of the documents, without written verification, completion, or adaptation by **ENGINEER**, as appropriate for the specific purpose intended, will be at **CITY'S** sole risk and without liability or legal exposure to **ENGINEER** or to its officers, directors, members, partners, agents, employees, and **ENGINEERS**. **CITY** shall indemnify and hold harmless **ENGINEER** and its officers, directors, members, partners, agents, employees, and **ENGINEERS** from all claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by **ENGINEER**.

The **ENGINEER** agrees to deliver all documents electronically in a format compatible and acceptable with the **CITY**. All computer aided drafting and design files will be submitted to the **CITY** in an AUTOCAD 2010 Format. All files received are required to function in the AutoCad 2010 environment without need for post-processing or any adjustments. Any supporting resource files or libraries shall be noted and provided with the submission of CAD documents.

The **ENGINEER** and **CITY** agree to work together on a basis of trust, good faith and fair dealing to achieve the intent of this **AGREEMENT**. Each party shall take such actions that are reasonably necessary to enable the accurate completion of the professional **SERVICES** and other obligations provided under this **AGREEMENT** as intended in a timely, efficient and economical manner.

The **ENGINEER** will guard against **ERRORS** and **OMISSIONS** in the performance of the professional **SERVICES** under this **AGREEMENT**. The **ENGINEER** will apply appropriate care to the performance of the professional **SERVICES** and the preparation of all **SERVICE** products called for in this **AGREEMENT**, including but not limited to, plans and drawings, contract documents and other instruments to be furnished in the course of performance of the **SERVICES**. The **ENGINEER** shall be governed by that degree of care, knowledge, skill, and diligence that other reputable members of the engineering profession would ordinarily exercise under like circumstances within the State of Illinois. The **ENGINEER** will be responsible to the **CITY** for **DAMAGES**, arising from **ERRORS** and **OMISSIONS** caused by the **ENGINEER'S NEGLIGENCE** in the performance of the professional **SERVICES** and preparation of **SERVICE** products under this **AGREEMENT**.

Acceptance of the **SERVICES** will not relieve the **ENGINEER** of the responsibility for subsequent correction of any such **ERRORS**, **OMISSIONS**, and/or negligent acts or of his/her liability for loss or damage resulting there from. In the event any dispute or claim, related to construction or the construction contracts, should arise between any of the parties to this **AGREEMENT**, each party agrees to exercise good faith efforts to resolve the matter fairly, amicably and in a timely manner.

This **AGREEMENT** shall continue as an open **CONTRACT** and the obligations created herein shall remain in full force and effect until the completion of construction or any **PHASE** of professional **SERVICES** performed by others based upon **SERVICES** or **SERVICE** product provided by the **ENGINEER**. All obligations of the **ENGINEER** accepted under this **AGREEMENT** shall cease if construction or subsequent professional **SERVICES** are not commenced within 5 years after final delivery of professional **SERVICES** or work product pursuant to this **AGREEMENT**.

At any time during construction or during any **PHASE** of professional **SERVICES** performed by others based on **SERVICES** or **SERVICE** product provided by the **ENGINEER**, the **ENGINEER** will confer with the **CITY** and others upon request for the purpose of interpretation or providing clarification of the **SERVICES** or work product provided by the **ENGINEER**.

The **CITY** will notify the **ENGINEER** of any **ERROR** or **OMISSION** believed by the **CITY** to be caused by the **NEGLIGENCE** of the **ENGINEER** as soon as practicable after discovery. Notification may be given by the most practical means deemed suitable by the **CITY**. The **ENGINEER** will designate and keep current the name of an individual with proper address and telephone number for purposes of notification hereunder. The notification will advise the **ENGINEER** of the nature of the matter, the action sought from the **ENGINEER** and the time constraints required for response. The **ENGINEER** agrees to contact the **CITY** promptly in accordance with the time constraints contained in the notification, to undertake necessary construction site visits and inspections, to dispatch personnel to appropriate **CITY** office locations for resolution purposes, and to complete all corrective work necessary to resolve the matter notwithstanding any disagreement or dispute as to **NEGLIGENCE**. In the event it is later determined that the **ENGINEER** was not negligent, the **ENGINEER** will be compensated for additional **SERVICES** performed in accordance with the payment provisions of this **AGREEMENT**. The **CITY** reserves the right to take immediate action to remedy any **ERROR** or **OMISSION** if notification is not successful; if the **ENGINEER** fails to respond to a notification; or if the conditions created by the **ERROR** or **OMISSION** are in need of urgent correction to avoid accumulation of additional construction costs or damage to city property and reasonable notice is not practicable.

Any dispute in the interpretation of the provisions of the **AGREEMENT** or the damages accessed due to **ENGINEER ERRORS OR OMISSIONS** shall be settled through negotiation between the **ENGINEER** and the City Manager or designee of the signatory parties. If they cannot agree, the dispute will be referred through proper administrative channels to the **CITY**. The **CITY** shall decide all claims, questions and disputes. The **ENGINEER** may file a claim for adjudication by the Court of Claims within 60 days after the date of the written response. This shall not be construed to abrogate the **ENGINEER'S** rights under the law.

This **ENGINEER'S PROFESSIONAL LIABILITY INSURANCE** policy will provide coverage for all claims the **ENGINEER** shall become legally obligated to pay resulting from any negligent act, **ERROR** or **OMISSION** related to **ENGINEER'S** professional **SERVICES** required under this **AGREEMENT**.

To the fullest extent permitted by law, **CITY** and **ENGINEER** waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and **ENGINEERS**, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and agree that **ENGINEER'S** total liability to Owner under this **AGREEMENT** shall not exceed \$1,000,000.

**ENGINEER** certifies that to the best of its knowledge and belief, **ENGINEER** and **ENGINEER'S** principals: a) are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal **CITY** or agency; b) within a three-year period preceding this **CONTRACT** have not been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph 5-40(b); (d) have not within a three-year period preceding this **CONTRACT** had one or more public transactions (federal, state, or local) terminated for cause or default.

The **ENGINEER** agrees that it shall not knowingly enter into any lower tier covered transaction when a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized, in writing by the **CITY**. The **ENGINEER** agrees that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transaction", provided by the **DEPARTMENT**, without modification, in all lower-tier covered transactions and in all solicitations for lower-tier covered transactions. The **ENGINEER** may rely upon a certification of a prospective participant in a lower-tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless **ENGINEER** knows the certification is erroneous. **ENGINEER** may decide the method and frequency by which it determines the eligibility of its principals. Each **ENGINEER** may, but is not required to, check the Nonprocurement List. If an **ENGINEER** knowingly enters into a lower-tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation, in addition to other remedies available to the federal government, the **CITY** may terminate the **CONTRACT** for cause or default.

The **ENGINEER** shall obtain the following minimum amounts of insurance from insurance companies authorized to do business in the State of Illinois:

- (1) Workmen's Compensation Insurance in accordance with the laws of the State of Illinois.

Commercial General Liability. Required liability insurance coverage shall be written in the occurrence form and shall provide coverage for the operations of the **CONSULTANT**: operations of **SUBCONSULTANTS** (contingent or protective liability); completed operations; broad form property damage; and contractual liability. The general aggregate limits shall be endorsed on a per **PROJECT** basis.

- (1) General Aggregate Limit \$2,000,000
- (2) Each Occurrence Limit \$1,000,000

The coverage shall provide by an endorsement in the appropriate manner and form, the City of Peoria, its officers, directors, employees, agents, and representatives, are named as additional insured with respect to the policies and operations performed. The **ENGINEER** may accept a separate owner's protective liability policy provided all coverage, limits and endorsements are in conformity with this Section.

Commercial Automobile Liability. The policy shall cover owned, non-owned and hired vehicles.

Bodily Injury & Property Damage  
Liability Limit Each Occurrence \$1,000,000

Umbrella Liability. Any policy shall provide excess limits over and above the other insurance limits stated in this Section. The **ENGINEER** may purchase insurance for the full limits required or by a combination of primary policies for lesser limits and remaining limits provided by the umbrella policy.

Such insurance shall be maintained in full force and effect during the life of the **AGREEMENT** and shall protect the **ENGINEER**, its employees, agents and representatives from claims for damages, for personal injury and death and for damages to property arising in any manner from the negligent act or failure to act by the **ENGINEER**, its employees, agents and representatives in the performance of the **SERVICES** and/or **WORK**.

Certificates showing that the **ENGINEER** is carrying the above-described insurance in the specified amounts shall be furnished to the **CITY** before it is obligated to make any payment to the **ENGINEER** for **SERVICES** and/or **WORK** performed under the provisions of the **AGREEMENT**. The certificates shall provide that the policies shall not be changed or cancelled during the life of the **AGREEMENT** until 30 days advance written notice to the **CITY** has elapsed.

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals this 28<sup>th</sup> day of ~~December 9, 2015.~~

January, 2016.

<b>Executed by ENGINEER:</b>	
Attest: _____	By: <u>Paul J. Marino</u>
Title: _____	Title: <u>President</u>

<b>Executed by CITY:</b>		<b>City of Peoria, Illinois</b>
Attest: _____	Reviewed and Approved: _____	
By: <u>Beth A. Ball</u>	By: <u>Patrick Urich</u>	
Beth A. Ball	Patrick Urich	
Title: City Clerk	Title: City Manager	
	By: <u>Donald D. Leist</u>	
	Donald Leist	
	Title: Corporate Council	
	By: <u>Scott Reeise</u>	
	Scott Reeise	
	Title: City Engineer	