

AGREEMENT FOR PROJECT MANAGEMENT & INSPECTION SERVICES

THIS AGREEMENT made on April ____, 2022, by and between the City of Roeland Park, Kansas, its successors and assigns, hereinafter called the CITY, and _____, hereinafter called the CONSULTANT. WHEREAS, the CITY is authorized and empowered to contract with the CONSULTANT for provisions of professional project management and inspection services as hereinafter described; and

WHEREAS, the CONSULTANT, (with offices at _____) is qualified, willing and able to provide the professional project management and inspection services desired by the CITY.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

The CONSULTANT will serve as the CITY'S On-Call Professional Project Manager and Inspection representative during construction projects assigned to the CONSULTANT and will provide project management and inspection services to the CITY during the performance of duties enumerated in Part A of this agreement.

The CITY and the CONSULTANT in consideration of their mutual covenants herein agree in respect to the performance of professional services by the CONSULTANT and the payment for those services by the CITY, as set forth below.

PART A — SERVICES TO BE PROVIDED BY THE CONSULTANT

Services provided by the CONSULTANT may vary by project, the CITY and CONSULTANT will establish specific duties of the CONSULTANT for each project which will be detailed within a “Project Task Order”. The CONSULTANT shall provide the following services.

- a. Attend Neighborhood Meetings, Project Kickoff Meetings, Project Progress Meetings, City Council Meetings, Planning Commission meetings, Council Workshops, or other meetings as required or requested by the CITY.
- b. Coordinate with the Public Works Director on the scope of services and estimated fees associated with each Project Task Order.
- c. Perform review of engineering plans for constructability and conflicts and coordinate resolution on identified issues with the Public Works Director and/or City Engineer.
- d. Perform inspections of sidewalk, driveway, street, curb, storm sewer, playground, park and other public facility construction. Ensuring construction is according to adopted standards, good construction practices and approved plans and specifications. Subgrade condition and compaction, dimensions, alignment, grade, depth, slope, temperature, pipe bedding, concrete reinforcement, and concrete slump are examples of construction elements the CONTRACTOR will be inspecting and confirming consistency to plans and specifications.
- e. Coordinates with construction contractor and City Engineer on material testing for a project.
- f. Keeps a daily record of work completed, including weather and quantities installed and percent of work completed. Reviews and confirms accuracy of pay estimates from construction contractors.

- g. Coordinates with City Engineer on responses to construction contractor's "Request for Information" submittals.
- h. Assists in responding to citizen inquiries and coordinating resolution with the Public Works Director, construction contractors and the City Engineer.
- i. Assists with securing temporary construction easements and permanent easements.
- j. Work will vary by day depending upon the season and the number of projects under construction. The CONTRACTOR will be flexible and able to adjust their schedule to ensure they (or a qualified alternate) are available to perform inspections at key times and attend meetings. The CONTRACTOR will be punctual and timely in performing these services.
- k. Other miscellaneous construction project management and inspection services, as mutually agreed upon by the CITY and CONSULTANT.

PART B — COMPENSATION:

The CITY agrees to pay the CONSULTANT as compensation for all the services stipulated in PART A herein as follows:

Billing will be based on the hourly rate of \$_____ for the actual hours of service provided by the CONSULTANT. Travel time will not be included in billed hours. Mileage will be reimbursed at the current Federal Mileage Reimbursement Rate for miles driven from the CONSULTANT'S office to the project site as well as for miles driven for the CITY projects assigned to the CONSULTANT.

CONSULTANT shall track reimbursable expenses and hours per project and reflect costs allocated to each project on all invoices. Invoices shall be submitted monthly by the second Monday of each month.

Payment will be made monthly on the basis of statements submitted by the CONSULTANT subject to the CITY'S review thereof.

PART C – OBLIGATIONS OF CITY:

CITY, at its own expense, will provide the following:

1. Make available to CONSULTANT on request with reasonable notice, at CITY'S offices, all existing records, maps, plans, specifications, construction standards, easement documents and other data possessed by the CITY when such are necessary, advisable or helpful to the CONSULTANT in the prosecution of its work under this AGREEMENT.
2. Designate in writing a person to act as the CITY'S representative with respect to the services to be performed or furnished by the CONSULTANT under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define the CITY'S policies and decisions with respect to the CONSULTANT'S services for the Project. In the absence of any such designation, or until such designation is made by CITY, its Public Works Director shall serve as the designated representative.

PART D — TERMINATION OF THE AGREEMENT:

This Agreement may be terminated by the CITY with 15 days' written notice. Any such termination by the CONSULTANT shall require a 45-day notice to the City. In the event of substantial failure by the other party to perform in accordance with the terms hereof, through no fault of the terminating party; provided however, that in any such case, the CONSULTANT, to the extent not in default, shall be paid for all services actually rendered and all costs reasonably

incurred up to the time of termination on the basis of the payment provisions of this Agreement. In all events, the CITY shall have the right to terminate the services of the CONSULTANT, irrespective of whether the CONSULTANT is in default, upon such date as shall be specified in a notice to be delivered in writing to the CONSULTANT. Copies of all completed or partially completed inspection records, field notes, as-built plans, and any other documents prepared pursuant to this Agreement shall be delivered to the CITY when, and if, this Agreement is terminated, but it is mutually agreed by the parties that the CITY will use them in accordance with the provisions in Part E, Section 4 of this Agreement.

No such termination shall be deemed to release the CONSULTANT or any insurer from obligations under Part E, Sections 2 and 3 of this Agreement for liability arising from or out of anything occurring or arising on or prior to such termination.

PART E — GENERAL CONSIDERATIONS:

1. Insurance

The CONSULTANT shall secure and maintain insurance for protection from claims under workers' compensation acts (if applicable), claims for damages because of bodily injury including personal injury, sickness or diseases or death of any and all employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom. The CONSULTANT shall list the CITY as an additional insured on the CONSULTANT'S general liability insurance policy.

The CONSULTANT, its agent, representatives, and employees shall also secure and maintain professional liability insurance for protection from claims arising out of the performance of this Agreement. Such insurance shall provide protection from claims arising out of this

Agreement caused by any error, omission, or act of the CONSULTANT or its employees, agents or representatives in at least the amounts hereunder set forth as desirable.

The insurance provided shall contain provisions that it cannot be canceled or modified or fail to be renewed except upon 30 days prior written notice to the CITY from the insurer(s) at risk, and shall be in at least the following minimum amounts:

(a) Professional Liability insurance in the amount of One Million Dollars (\$1,000,000.00) per claim and annual aggregate (including contractual liability coverage, with all coverage retroactive to the earlier of the date of this Agreement and the commencement of CONSULTANT'S services in relation to the Project) covering personal injury, bodily injury and property damages, which coverage shall be maintained for a period of three (3) years after the date of final payment under this Agreement, if reasonably available and in the reasonable opinion of the CONSULTANT affordable.

(b) Commercial General Liability Insurance (including broad-form contractual liability and completed operations), covering personal injury, bodily injury, death and property damage in the following amounts:

Each Occurrence	\$1,000,000
Personal & Adv Injury	\$1,000,000
Products/Completed Operations Aggregate	\$2,000,000
General Aggregate	\$2,000,000

The completed operations coverage shall extend for three (3) years after completion of CONSULTANT'S services.

(c) Comprehensive Automobile Liability Insurance, including owned, hired and non-owned vehicles, if any, in the amount of One Million Dollars (\$1,000,000.00), combined single limit, covering personal injury, bodily injury, death and property damage.

(d) Workers Compensation Insurance (and to the extent such is not applicable, Employers Liability Insurance) which shall fully comply with applicable law, and employer's liability insurance with limits of not less than the greater of (i) statutory requirements or (ii) One Hundred Thousand Dollars (\$100,000.00) per occurrence. CONSULTANT shall provide a valid waiver executed by workers compensation and employer's liability insurance carrier(s) of any right of subrogation against CITY or its employees for any injury to a covered employee working on CITY'S premises.

All liability insurance, except professional liability insurance, shall be written on an occurrence basis with form(s) and carrier(s) acceptable to CITY.

2. Indemnity

Indemnification: CONSULTANT shall insure specifically the indemnification by it contained in this Agreement, and shall include the Indemnitees as additional insureds on the Commercial General Liability Insurance and the Comprehensive Automobile Liability Insurance policies described above. The insurance coverage afforded under these policies shall be (i) primary to any insurance carried independently by the Indemnitees and (ii) not deemed to limit CONSULTANT'S liability under this Agreement. Prior to CITY'S execution of this Agreement, CONSULTANT shall provide to CITY Certificates of Insurance reflecting the required coverages. The Certificate shall specify the date when such insurance expires. The insurance policies shall provide that CITY shall be given not less than thirty (30) days written notice from the insurer(s) at risk before cancellation, non-renewal or material modification of coverage of such insurance. A renewal certificate shall be furnished to CITY prior to the expiration date of any coverage, and CONSULTANT shall give CITY written notice of any proposed reduction or other material modification in such insurance no later than thirty (30) days prior to such change. Cancellation, non-renewal or material modification of coverage of any such insurance shall constitute a failure to perform within the meaning of this Agreement.

Indemnity – Commercial General Liability/Non Professional:

CONSULTANT hereby agrees to indemnify, defend and hold CITY, its officers, employees and agents (collectively the "Indemnitees") harmless from and against any and all losses, judgments, injuries, damages and expenses (including but not limited to reasonable attorney's fees, expenses of litigation, fines and penalties)

that the Indemnitees, or any one or more of them, may incur by reason of any injury, sickness, disease or death to any person or any damage or injury to any property (including but not limited to property of any one or more of the Indemnitees) to the extent arising out of or occurring in connection with the services performed by CONSULTANT under this Agreement or any of CONSULTANT'S acts or omissions. CONSULTANT further agrees that its obligation to indemnify and defend the Indemnitees shall include, but not be limited to, liability for damages resulting from the personal injury, sickness, disease or death of any of CONSULTANT'S employees, regardless of whether CONSULTANT has paid the employee under the provisions of any workers compensation statute or law, or any similar federal or state legislation with protection of employees and that CONSULTANT'S obligation to indemnify and defend the Indemnitees shall apply regardless of any contributory or concurrent negligence of any Indemnitee or Indemnites. Nothing in this section shall be deemed to impose liability on CONSULTANT to indemnify the Indemnites to the extent the cause of any loss is the negligence or other actionable fault of one or more of the Indemnites. In the event the loss is caused by the joint or concurrent negligence of CONSULTANT and one or more of the Indemnites, the loss shall be borne by each party in proportion to its negligence.

Indemnity – Professional Liability: CONSULTANT shall, to the fullest extent permitted by law, hold harmless and indemnify the CITY, its Governing Body and each member thereof, and CITY'S officers, employees, commission members, representatives and their successors and assigns from any and all losses,

liabilities, claims, suits, damages, expenses and costs, including reasonable attorney's fees and costs, to the extent caused by CONSULTANT'S negligent performance or negligent omission of performance of professional services under this Agreement and those of CONSULTANT'S subconsultants or anyone for whom CONSULTANT is legally liable.

3. **Successor and Assigns:**

The CITY and the CONSULTANT each binds itself and its principals, successors, executors, administrators and assigns to the other party of this Agreement and to the principals, successors, executors, administrators and assigns of such other party in respect to all covenants of the Agreement; provided that, neither the CITY nor the CONSULTANT will assign, sublet or transfer its interest in this Agreement without the written consent of the other. CONSULTANT shall not assign the right to any payments to be received hereunder, without the prior written consent of the CITY. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the CITY and the CONSULTANT.

4. **Ownership of Documents**

The CITY acknowledges the CONSULTANT'S daily inspection log, field notes and as built plans as instruments of professional service. Nevertheless, the notes and records prepared under this Agreement shall become the property of the CITY upon completion of the work or as provided in Part D, above and the final version of any document shall be submitted to the CITY electronically in format acceptable to the CITY. The CITY recognizes that new circumstances, not the least of which is the passage of time, may make reuse of such records not advisable. If and to the extent necessary for the CITY'S ownership of such records and all other contract documents, CONSULTANT hereby

assigns all copyright rights therein to the CITY and, if and to the extent such rights are not so assignable, grants an irrevocable exclusive right and license to use thereof by CITY without payment of any additional compensation.

The only parties interested in this Agreement are named herein and this Agreement is made without collusion with any person, firm or corporation. No member of the City Council, officer or agent of the CITY is directly or indirectly financially interested in the Agreement.

PART F – NON DISCRIMINATION

1. CONSULTANT shall observe the provisions of the Kansas Act Against Discrimination and Chapter 5, Article 12 of the Code of the City of Roeland Park, Kansas, and shall not discriminate against any person in the performance of work under this Agreement because of race, religion, color, sex, disability, national origin, ancestry, familial status, sexual orientation, gender identity or military status. In all solicitations or advertisements for employees, CONSULTANT shall include the phrase “Equal Opportunity Employer” or a similar phrase approved by the Kansas Human Rights Commission.
2. If CONSULTANT fails to comply with the manner in which CONSULTANT reports to the Kansas Human Rights Commission in accordance with the provisions of K.S.A. 44-1030, *et seq.*, and amendments thereto, CONSULTANT shall be deemed to have breached this Agreement and the Agreement may be cancelled, terminated, or suspended, in whole or in part by CITY.
3. If CONSULTANT is found guilty of violation of the Kansas Act Against Discrimination under decision or order of the Kansas Human Rights Commission

which has become final, or found guilty of a violation of Chapter 5, Article 12 of the Code of the City of Roeland Park, Kansas, CONSULTANT shall be deemed to have breached the Agreement and this Agreement may be canceled, terminated or suspended in whole or in part by CITY.

4. CONSULTANT shall include provisions comparable to paragraph 1, 2, 3, and this paragraph in every subcontract and purchase order so that such provisions will be binding upon each such subcontractor or vender.
5. Notwithstanding anything expressed or implied elsewhere in this AGREEMENT, if CITY exercises any of its rights under the provisions of the preceding four paragraphs, CONSULTANT shall have no right to recompense or additional payments by reason of such action by CITY.

PART G – MISCELLANEOUS

1. **Severability** Any provision or part of the Agreement 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 the CITY and the CONSULTANT, who agree that the Agreement 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.
2. **Notices**

Any notice required under this Agreement will be in writing, addressed to the appropriated party at the address which appears on the signature page to this Agreement (as modified in writing from item to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile or

by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

3. **Controlling Law**

This Agreement is to be governed by the law of the State of Kansas, and venue for any dispute shall be the District Court of Johnson County, Kansas.

4. The primary project manager and inspector for CONSULTANT will be _____.

5. CONSULTANT represents that all services provided hereunder shall comply with all applicable laws, statues, building and zoning codes, ordinances, rules and regulations and industry standards.

6. CONSULTANT shall perform all services in a manner consistent with that level of care and skill ordinarily exercised by professional project managers and inspectors currently practicing in Johnson County under similar conditions.

7. The intent of the CITY and CONSULTANT is that CONSULTANT shall perform its services under this agreement in all respects as an independent contractor. CONSUTLANT may employ and direct all persons performing any work hereunder, and such persons shall be and remain the sole employees of and subject to the control and direction of CONSULTANT, and shall not be the employees or subject to the direction of CITY, it being the intention of the parties hereto that CONSULTANT shall be and remain an independent contractor, and nothing herein contained shall be construed as inconsistent with that status.

8. The scope of work to be done under this Agreement shall be subject to modification and supplementation upon the written agreement of the duly authorized representatives of the contracting parties. The CONSULTANT shall have no

obligation to perform services in connection with a change in the scope of work unless the cost thereof shall be agreed to under this paragraph.

- 9. The agreement shall remain in place for so long as both parties are agreeable to the terms spelled out herein or until action is taken to terminate by one of the parties per Part D of this agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

CITY OF ROELAND PARK, KANSAS

By _____

By _____
Keith Moody

Title _____

Title: City Administrator

Address:

Address:

4600 W. 51st Street

Roeland Park, Kansas 66205

Phone: _____

Phone: (913) 722-3713

Email: _____

Email: kmoody@roelandpark.org

ATTEST:

Kelley Nielsen, City Clerk

Approved as to form:

Steve Mauer, City Attorney