CITY OF LEAWOOD, KANSAS

ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT is made in Johnson County, Kansas, by and between the City of Leawood, Kansas, hereinafter “City,” and _________________________________, hereinafter “Consulting Engineer”. City intends to construct an improvement project (hereinafter called the Project) in Leawood, Kansas, described as follows:

NAME OF PROJECT TYPED HERE:

DESCRIPTION AND LOCATION OF PROJECT:

City hereby contracts with Consulting Engineer for the furnishing of professional engineering services in connection with the Project, for the furnishing of such engineering services more particularly described herein in consideration of these premises and of the mutual covenants herein set forth. By executing this Agreement, the Consulting Engineer represents to City that Consulting Engineer is professionally qualified to do this Project and is licensed to practice engineering by all public entities having jurisdiction over Consulting Engineer and the Project.

SECTION I - DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed herein unless otherwise stated or reasonably required by the Agreement, and other forms of any defined words shall have a meaning parallel thereto.

“City” means the City of Leawood, Kansas.
"Construction Cost" means and includes the total cost of the entire construction of the Project, including all overhead and profit, supervision, materials, supplies, labor, tools, equipment, transportation and/or other facilities furnished, used or consumed, without deduction on account of penalties, liquidated damages or other amounts withheld from payment to the contractor or contractors, but such cost shall not include the Consulting Engineer fee, special consultant’s fee, or other payments to the Consulting Engineer and shall not include cost of land or rights-of-way and easement acquisition or financing costs.

"Consulting Engineer" means the individual or corporation identified on Page 1 to perform consulting engineering services, preparation of plans, specifications and contract documents. Consulting Engineer shall retain as necessary the services of engineers, architects, landscape architects, and surveyors licensed by the Kansas State Board of Technical Professions.

"Contract Documents" means those documents so identified in the Agreement for Construction of the Project, including all Engineering Documents. All terms defined in the General Conditions of the Agreement for Construction of the Project shall have the same meaning when used in this Agreement unless otherwise specifically stated or in the case of a conflict in which case the definition used in this Agreement shall prevail in the interpretation of this Agreement.

"Contract Time" means the completion of contract documents suitable for competitive construction bidding shall be as shown in Section II-1.

"Engineering Documents" means all documents required or reasonably implied by the nature of the Project, including, but not limited to, plans, specifications, drawings, tracings,
designs, calculations, sketches, models, computer data and reports.

“Engineering Services” means the professional services, labor, materials, supplies, testing, surveying, title work, construction administration, if applicable, and all other acts, duties, and services required of Consulting Engineer under this Agreement together with such other services as City may require pursuant to the terms of this Agreement.

“Percent of Services Completed” means work completed in accordance with the completion of the scope of work as defined in Schedule A (SCOPE OF ENGINEERING SERVICES) attached hereto and incorporated herein.

“Program” means space needs study or other concept criteria to determine the total design scope of the Project.

“Project” is as above described.

“Project Manager” means the person employed by City and designated to act as the City’s representative for the Project. The City’s Project Manager is (Name)

“Reimbursable Expenses” means expense of transportation beyond fifty (50) miles of location of Project, reproductions not including printing prior to final publication of documents, postage, handling of engineering and contract documents, renderings, models and make ups and other costs as authorized by City.

"Right-of-Way" and "Easements" means and includes street, highway, or road right-of-way and any other land dedicated to or otherwise subject to public use.

“Scope of Engineering Services” That work as defined and identified with a time schedule in Schedule “A” (SCOPE OF SERVICES) attached hereto and incorporated herein.
“Subsurface Borings and Testing” means borings, probings and subsurface explorations, laboratory tests and inspections of samples, materials and equipment and appropriate professional interpretations and reports and logs of all the foregoing.

“Traffic Control Plan” means a specific plan that includes but is not limited to signing; application and removal of pavement markings; construction sequencing and scheduling; methods and devices for delineation and channelization; placement and maintenance of devices; traffic regulation; and inspection.

SECTION II - COMPENSATION

1. Total Fee: City agrees to pay Consulting Engineer a fixed amount of ------------------------------- DOLLARS ($XX,XXX.XX). The total fee is based on the performance of the scope of services specified in this Agreement, with submittal of final plans and specifications suitable for solicitation of competitive construction bid proposals on or before Date. In addition to this Total Fee is a maximum allowance of DOLLARS (SXXX,XX,XX) for Reimbursable Expenses. Payment to Engineer shall be made monthly based upon the Percent of Services Completed.

2. Additional Services: Consulting Engineer shall provide, with City's concurrence, services in addition to those listed in Section III when such services are authorized in writing by City. Prior to commencing any additional services, Consulting Engineer must submit a proposal outlining the additional services to be provided and the fixed lump sum fee therefore. City
shall pay Consulting Engineer for such services in accordance with the fees based on Schedule “B”, (ADDITIONAL SERVICES FEE SCHEDULE) attached hereto and incorporated herein. Such services may include, but are not limited to, making computations and determinations of special assessments, making special trips requested by City other than those required by Section III, preparing changes in plans ordered by City, providing services necessitated in the event the Engineering Services shall be suspended or abandoned, if such suspension or abandonment is not the result of a breach of this Agreement by the Consulting Engineer, and providing any other special services not otherwise covered by this Agreement which may be requested by City.

Reimbursable expenses incurred in conjunction with additional services shall be paid separately and those reimbursable expenses shall be paid at actual cost but not to exceed the stated allowance amount. Records of Reimbursable Expenses and expenses pertaining to additional services shall accompany request for payment. The Allowance Amount may be increased by written agreement to cover Reimbursable Expenses associated with Additional Services.

3. **Special Services**: Consulting Engineer may be called on to serve as a consultant or witness in any litigation, arbitration, legal or administrative proceeding arising out of this Project. Consulting Engineer shall not be compensated by City if its appearance is to defend its own professional Engineering Services. Consulting Engineer shall not be compensated by City to appear at eminent domain or appraiser’s hearings necessary to acquire easements and right-of-ways for the Project. If Consulting Engineer is requested,
in writing, by City, to appear as a witness for the City and is entitled to be compensated under the provisions of this paragraph, it will be paid based upon the fee schedule “B” (ADDITIONAL SERVICES FEE SCHEDULE) attached hereto and incorporated herein.

4. **Billing:** Consulting Engineer shall bill City monthly for all services performed to date and based on Percent of Services Completed as shown on project progress report submitted to City with such billing. City agrees to pay Consulting Engineer within thirty (30) days of approval by the Governing Body.

5. **City's Right to Withhold Payment:** In the event City becomes informed that any representations of Consulting Engineer provided in its monthly billing, are wholly or partially inaccurate, City may withhold payment of sums then or in the future otherwise due to Consulting Engineer until the inaccuracy and the cause thereof, is corrected to City's reasonable satisfaction. In the event City questions some element of an invoice, that fact shall be made known to Consulting Engineer immediately. Consulting Engineer will help effect resolution and transmit a revised invoice, if necessary. Amounts not questioned by City shall be paid to Consulting Engineer in accordance with the contract payment procedures in Section II-4.

6. **Progress Reports:** A progress report must be submitted with each monthly pay request indicating the Percent of Services Completed to date. This report will serve as support for payment to Consulting Engineer and the basis for payment in the event project is suspended or abandoned. City’s suspension of the Project for periods of less than one (1) year shall not be grounds for an increase in Total Fee.
7. **Change in Scope**: For substantial modifications in authorized Project scope, and/or substantial modifications of drawings and/or specifications previously accepted by City, when requested by City and through no fault of Consulting Engineer, the Consulting Engineer shall be compensated for time and expense based upon the fee schedule “B” (ADDITIONAL SERVICES FEE SCHEDULE) attached hereto and incorporated herein plus Reimbursable Expenses chargeable for this service; provided, however, that any increase in Total Fee or Contract Time must be approved through a written Supplemental Agreement. Consulting Engineer shall correct or revise any errors or deficiencies in its designs, drawings or specifications without additional compensation when due solely to Consulting Engineer’s negligent acts, errors, or omissions. If not solely Consulting Engineer’s fault, then the parties will negotiate an equitable sharing of the fees associated with such changes and the fixed fee will be increased or decreased accordingly. This Agreement may be amended to provide for additions, deletions and revisions in the Engineering Services or to modify the terms and conditions thereof by written Supplemental Agreement.

The Total Fee and Contract Time may only be changed by a written Supplemental Agreement approved by City, unless it is the result of an emergency situation in which case the Project Manager may give written approval to be followed by a written and approved change in Scope of Services. If notice of any change affecting the general scope of the Engineering Services or provisions of this Agreement, including but not limited to, Total Fee or Contract Time, is a requirement of any insurance policy held by
Consulting Engineer as a requirement of this Agreement, the giving of such notice shall be the Consulting Engineer’s responsibility.

SECTION III - RESPONSIBILITIES OF CONSULTING ENGINEER

Consulting Engineer shall furnish and perform expeditiously the various professional duties and services in all phases of the Project to which this Agreement applies as herein provided and which are required for the construction of the Project which services shall include:

A. PRELIMINARY DESIGN PHASE

1. Services: The services to be provided during this phase and time of performance are set out in Schedule "A" (SCOPE OF ENGINEERING SERVICES) attached hereto and incorporated herein.

2. Preliminary Design Documents: Consulting Engineer shall furnish the City _________(X) copies of the above preliminary design documents, unless otherwise noted in Exhibit "A." (SCOPE OF ENGINEERING SERVICES) attached hereto and incorporated herein.

3. Preliminary Cost Estimate: Consulting Engineer shall furnish City a preliminary estimate of Construction Cost based on the preliminary design. Consulting Engineer’s preliminary estimate of Construction Cost is to be made on the basis of Consulting Engineer’s experience and qualifications and represent Consulting Engineer best judgment as an experienced and qualified design professional, familiar with the current construction industry’s pricing structure. Consulting Engineer cannot and does not guarantee that the bids or proposals or the project construction costs will not vary from
the cost estimates prepared by the Consulting Engineer.

4. **Budget**: Consulting Engineer shall promptly advise City if, in its opinion, the amount budgeted for design and construction is not sufficient to adequately design and construct the improvement as requested.

**B. FINAL DESIGN PHASE**

1. **Services**: The services to be provided during this phase and time of performance are set out in Schedule "A" (SCOPE OF ENGINEERING SERVICES) attached hereto and incorporated herein.

2. **Final Design Documents**: Consulting Engineer shall furnish City \( \text{\textit{X}} \) copies unless otherwise noted in Exhibit "A", (SCOPE OF ENGINEERING SERVICES) attached hereto and incorporated herein of the final design plans and shall also prepare the necessary plans and applications for permits for submission to and approval of local, county, state and federal authorities having proper jurisdiction as may be required for initiation, prosecution and construction of the Project. Such permits include permits for storm water runoff, building permits, demolition permits and similar permits.

**C. CONTRACT DOCUMENTS PHASE**

1. **Contract Documents**: Consulting Engineer shall prepare for City final design plans, construction contract documents, supplementary conditions, bid forms, invitations to bid and instructions to bidders and assist in the preparation of other related documents, unless such documents are provided by City. The City Attorney will review all such contract forms and conditions and provide Consulting Engineer with comment prior to release for
bidding.

2. **Final Cost Estimate:** Consulting Engineer shall furnish City an estimate of Construction Cost based on final contract documents. This estimate is commonly known as the “Engineer’s Estimate” and will be used as the basis for construction contract award. Consulting Engineer cannot and does not guarantee that the bids or proposals or the project construction costs will not vary from the cost estimates prepared by the Consulting Engineer.

3. **Budget:** Consulting Engineer shall advise City if, in its opinion, the amount budgeted for the Project is not sufficient to cover all Project costs, including but not limited to, design, construction, right-of-way and easement acquisition, inspection and testing.

### D. BIDDING PHASE

1. **Services:** The services to be provided during this phase are set out in Schedule "A" (SCOPE OF ENGINEERING SERVICES) attached hereto and incorporated herein.

2. **Bids Exceeding Cost Estimate:** If all bids exceed Engineer’s Estimate, Consulting Engineer, at the request of City and for no additional cost, will prepare a report for City identifying why all the bids exceed the estimate. The City has four (4) options if all bids exceed Engineer’s Estimate. The City may: (1) give written approval of an increase in the Project cost; (2) authorize rebidding of the Project; (3) terminate the Project and this Agreement; or (4) cooperate in revising the Project scope or specifications, or both, as necessary to reduce the construction cost. In the case of (4), Consulting Engineer, without additional charge to City, shall consult with City and shall revise and modify the

---

Standard Form as approved:  
Revised 10/2012  
10
drawings and specifications as necessary to achieve compliance with the “Engineer’s Estimate”.

E. CONSTRUCTION PHASE

1. In-house Administration and Inspection: It is understood that City will provide in-house administration and inspection of the construction project; however, Consulting Engineer shall consult with and advise City, when requested. In event that inspection services are made part of services set out in Schedule “A”, (SCOPE OF ENGINEERING SERVICES) attached hereto and incorporated herein, a delay in construction shall not be grounds for an additional payment.

2. Services: The services provided during this phase are set out in Schedule "A" (SCOPE OF ENGINEERING SERVICES) attached hereto and incorporated herein.

3. Supplemental Drawings: If during construction, situations arise which require supplemental drawings or details, Consulting Engineer agrees to timely provide such supplemental drawings or details at no cost to City when the supplemental drawings or details, are required to correct Consulting Engineer’s negligent errors or omissions or clarify Consulting Engineer’s intent in the original design and preparation of Contract Documents.

4. Notice of Defects: If, based on Consulting Engineer’s involvement during the construction phase, Consulting Engineer observes or otherwise becomes aware of any design or construction defect in the work, it shall give prompt written notice to City of such defects and their approximate location on the Project. However, Consulting
Engineer shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions, inspections by construction contractor and programs in connection with the construction work, since these are solely the Contractor's responsibility under the contract for construction. Consulting Engineer shall not be responsible for the Contractor's schedules or failure to carry out the work in accordance with the Contract Documents. Consulting Engineer shall not have control over or charge of acts or omissions of the Contractor, Contractor's subcontractors, or their agents or employees.

5. **Shop Drawings:** Consulting Engineer shall review and take appropriate action on Contractor's shop drawings and samples, and the results of tests and inspections and other data which each Contractor is required to submit for the purposes of checking for compliance with the design concept and conformance with the requirements of the Contract Documents. Such review shall not extend to means, methods, sequences, techniques or procedures of construction, or to safety precautions and programs incident thereto.

6. **As Built Plans:** The Consulting Engineer shall prepare final revised Contract Documents which reflect change orders, minor design changes including changes made in the field and which are marked on the construction contractors plan set. The Contractor will provide the City a marked up set of record drawings. Because some of the data contained on the “As Built Plans” may be based on unverified information provided by others, the Consulting Engineer does not warrant the accuracy of information provided by
F. GENERAL DUTIES AND RESPONSIBILITIES

1. Responsibilities under the General Conditions of the Contract for Construction ("General Conditions"): In addition to the responsibilities herein set forth, Consulting Engineer agrees to be responsible for those matters identified in the General Conditions as being responsibilities of the Consulting Engineer. The General Conditions shall be in a form mutually agreeable between the City and Consulting Engineer and shall be consistent with the intent and requirements of the Agreement.

2. Personnel: Consulting Engineer shall assign only qualified personnel to perform any service concerning the Project. At the time of execution of this Agreement, the parties agree that (NAME) will perform as the principal on this Project. This person shall be the primary contact with the City’s Project Manager and shall have authority to bind Consulting Engineer. So long as the individual named above remains actively employed or retained by Consulting Engineer, he/she shall perform the function of principal on this Project. Personnel changes shall be approved by the City.

3. Subsurface Borings & Material Testing: If tests, additional to those provided for in Schedule "A", (SCOPE OF ENGINEERING SERVICES) attached hereto and incorporated herein are required for design, Consulting Engineer shall prepare specifications for the taking of the additional borings. Such Subsurface Borings and Testing, as defined herein, shall be provided by Consulting Engineer or its subcontractors
and compensated as an Additional Service. The City shall be named as an intended third-party beneficiary to the Consulting Engineer’s subcontracts with the geotechnical engineer, the land surveyor and the testing laboratory. If so named, then the City agrees to pursue its claims directly against those subconsultants, and not against the Consulting Engineer, for damages caused solely by the negligence of those subconsultants.

4. **Service By and Payment to Others:** Any work authorized in writing by City and performed by anyone other than Consulting Engineer or its subcontractors in connection with the proposed Project shall be contracted for and paid for by City directly to the third party or parties. In addition to payments for professional services, this may also include necessary permits, licenses, ownership certifications, materials testing, advertising costs, and other special tests or other work required or requested by City or Consulting Engineer which is not defined within the scope of Engineering Services of Consulting Engineer. The payment for such additional services shall be subject to negotiation between City and the third party and shall be approved prior to the execution of any additional services. Although Consulting Engineer may assist City in procuring such services of third parties, Consulting Engineer shall in no way be liable to either City or such third parties in any manner whatsoever for such services or for payment thereof.

5. **Subcontracting of Service:** Consulting Engineer shall not subcontract or assign any of the Engineering Services to be performed under this Agreement without first obtaining the written approval of City regarding the Engineering Services to be subcontracted or assigned and the consulting firm or person proposed to accomplish the
subcontracted/assigned portion of the Project. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Any person or firm proposed for subcontracting Engineering Services under this Agreement shall maintain throughout the duration of the Agreement, insurance as provided in Section V. D.(6) herein, and shall additionally maintain Professional Liability insurance in a minimum amount of $2,000,000 and provide the City with certification thereof unless waived by the City.

6. **Endorsement:** Consulting Engineer shall sign and affix licensing seal to all final plans, specifications, estimates and engineering data prepared by Consulting Engineer and shall cause all subconsultants to sign and seal their final documents where required by law. Any review or approval by City of any documents prepared by the Consulting Engineer and/or its consultants including but not limited to the plans and specifications, shall be solely for the purpose of determining whether such documents are consistent with City’s construction program and intent and shall not be construed as approval of same by City. No review of such documents shall relieve Consulting Engineer of its responsibility for the accuracy, adequacy, fitness, suitability and coordination of its work product.

7. **Inspection of Documents:** Consulting Engineer shall maintain all project records for inspection by City during the contract term and for three (3) years from the date of final payment and shall notify the City prior to their disposal.

**SECTION IV - CITY OF LEAWOOD'S RESPONSIBILITIES**

1. **Communication:** City shall provide to Consulting Engineer applicable Program Criteria;
examine and timely respond to Consulting Engineer submissions; and give written notice to Consulting Engineer, who shall respond promptly, whenever City observes or otherwise becomes aware of any defect in the Engineering Services.

2. **Access**: City will provide access for Consulting Engineer to enter public and private property necessary to the completion of the project.

3. **Duties**: City shall furnish and perform the various duties and services in all phases of the Project which are outlined and designated in Schedule "A" (SCOPE OF ENGINEERING SERVICES) attached hereto and incorporated herein, as City's responsibility.

4. **Program Criteria**: City shall provide full information, including a program which shall set forth City's objectives, requirements, schedule, constraints, budget with reasonable contingencies, and other necessary design criteria.

5. **Project Representative**: City shall designate a Project Manager to represent City in coordinating this Project with Consulting Engineer, with authority to transmit instructions and define policies and decisions of City.

**SECTION V - GENERAL PROVISIONS**

**A. TERMINATION**

1. **Notice**: City reserves the right to terminate this Agreement either for cause or for its convenience and without cause or default on the part of Consulting Engineer, by providing ten (10) days’ written notice of such termination to Consulting Engineer. Upon receipt of such notice from City, Consulting Engineer shall, at City's option as contained
in the notice: (1) immediately cease all Engineering Services; or (2) meet with City and, subject to City's approval, determine what Engineering Services shall be required of Consulting Engineer in order to bring the Project to a reasonable termination in accordance with the request of City. Consulting Engineer shall also provide to City copies of all “Engineering Documents” completed or partially completed at the date of termination.

If City defaults on its obligation under this Agreement, Consulting Engineer is entitled to terminate this Agreement by providing ten (10) days written notice.

2. **Termination for Cause:** If this Agreement is terminated for cause, after notice to Consulting Engineer and a period of ten (10) days for the Consulting Engineer to remedy the cause for termination, City may take over Consulting Engineering Services and prosecute same to completion, by contract or otherwise, for the amount and at the expense of the Consulting Engineer, and the Consulting Engineer shall be liable to the City for any and all excess cost sustained by the City by reason of such prosecution and completion. When Consulting Engineer services have been so terminated, such termination shall not affect any rights or remedies of the City against Consulting Engineer then existing or which may later accrue. Similarly, any retention or payment of monies due Consulting Engineer shall not release Consulting Engineer from liability.

3. **Compensation for Convenience Termination:** If City shall terminate for its convenience as herein provided, City shall compensate Consulting Engineer for all Engineering Services completed to date of its receipt of the termination notice pursuant to Section II-4
and any additional Engineering Services requested by City to bring the Project to reasonable termination. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.

4. **Compensation for Cause Termination**: If City shall terminate for cause or default on the part of Consulting Engineer, City shall compensate Consulting Engineer for the reasonable cost of Engineering Services completed to date of its receipt of the termination notice pursuant to Section II-4. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed. City also retains all its rights and remedies against Consulting Engineer including but not limited to its rights to sue for damages, interest and attorney fees.

5. **Incomplete Documents**: Neither Consulting Engineer nor its subcontractors shall be responsible for errors or omissions in documents which are incomplete as a result of an early termination under this Section; Consulting Engineer having been deprived of the opportunity to complete such documents and certifies them as ready for construction.

B. **DISPUTE RESOLUTION**

City and Consulting Engineer agree that disputes relative to the project should first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute, Consulting Engineer shall proceed with the Engineering Services as per this Agreement as if no dispute existed, and the City shall continue to make payment for Consulting Engineer’s
completed services unless Consulting Engineer gives notice of termination as provided in paragraph A.1. above; and provided further that no dispute will be submitted to arbitration without both parties' express written consent.

C. OWNERSHIP OF ENGINEERING DOCUMENTS

All Engineering Documents prepared in connection with this Project shall be the property of the Consulting Engineer, whether the Project for which they are made is constructed or not. However, the Consulting Engineer will provide City a copy of all completed or partially completed documents in reproducible form, including but not limited to prints and reproductions. Reports, plans, specifications and related documents are Consulting Engineer’s copyrighted instruments, and at the option of Consulting Engineer may so identify them by appropriate markings. Provided that Consulting Engineer is paid for its services, either by termination or completion of services, then City may subsequently use these documents without any additional compensation or agreement of Consulting Engineer, however, such use, without written verification or adaptation by Consulting Engineer for the specific purpose, intended by City shall be at City's sole risk and without liability or legal exposure to Consulting Engineer whatsoever. If City does reuse the Consulting Engineer’s documents on another project, it shall retain Consulting Engineer or another licensed and insured professional engineer to review, adapt and seal such documents. City does not take any responsibility for the use of documents by others. Submission of or distribution of documents to meet regulatory requirements is not to be considered as contrary to any of Consulting Engineer’s right to the documents.
D. INSURANCE

The Consulting Engineer shall maintain throughout the term of this Agreement, insurance in, at a minimum, the amounts specified below. All general and automobile liability insurance shall be written on an occurrence basis unless otherwise agreed to in writing by City. With the exception of professional liability, the Consulting Engineer shall name the City as an additional insured in the amount of $500,000 for all claims determined to be subject to the Kansas Tort Claims Act. With the exception of professional liability, the Consulting Engineer shall name the City as an additional insured for all other claims as set forth below:

1. **Professional Liability:** Consulting Engineer shall maintain insurance coverage for two (2) years beyond the term of this Agreement, Professional Liability Insurance for the services rendered under the terms of this Agreement, in an amount not less than One Million Dollars ($1,000,000), each claim/aggregate, and shall provide City with certification thereof.

2. **Commercial General Liability:**
   - Each Occurrence: $1,000,000
   - Personal & Advertising Injury: $1,000,000
   - Products/Completed Operations Aggregate: $2,000,000
   - General Aggregate: $2,000,000

   Policy **MUST** include the following conditions:
   (a) Broad Form Contractual/Contractually Assumed Liability
   (b) Explosion, Collapse & Underground
   (c) Independent Contractors

3. **Automobile Liability Insurance:** Policy shall protect the Consulting Engineer against
claims for bodily injury and/or property damage arising out of the ownership or use of any owned, hired and/or non-owned vehicle and must include protection for either:

A) Any Auto

OR

B) All Owned Autos; Hired Autos; and Non-Owned Autos

Limits
Each Accident, Combined Single Limits, Bodily Injury and Property Damage: $1,000,000

Policy shall insure the contractual liability assumed by Consulting Engineer under this Agreement.

4. **Workers’ Compensation and Employers’ Liability:** This insurance shall protect the Consulting Engineer against all claims under applicable state Workers' Compensation laws. The Consulting Engineer shall also be protected against claims for injury, disease or death of employees for which, for any reason, may not fall within the provisions of a Workers' Compensation law under an Employers Liability policy with the following limits:

- Bodily Injury by Accident $500,000 each accident
- Bodily Injury by Disease $500,000 policy limit
- Bodily Injury by Disease $500,000 each employee

5. **Industry Ratings:** City will only accept coverage from an insurance carrier which offers proof that the carrier:

A) Is licensed to do business in the State of Kansas;

B) Carries a Best's Policyholder rating of A-X or better or is otherwise approved by the City; and

Standard Form as approved: Revised 10/2012
C) Carries at least a Class X financial rating;

Certification of insurance coverage in Sections (2), (3) and (4) above shall be on the City’s Standard Certificate of Insurance Form. Certification of professional liability insurance shall be provided on a separate form provided by the Consulting Engineer’s insurance carrier. This insurance shall be required only on City-funded projects where the state or federal government does not establish separate guidelines.

6. Subcontractor's Insurance: If a part of this Agreement is to be sublet, Consulting Engineer shall either:
   
a) Cover all subcontractors under its insurance policies;
   
   or
   
b) Require each subcontractor not so covered to secure insurance which will protect against applicable hazards or risks of loss as and in the minimum amounts designated herein, unless waived by the City.

7. Notice of reduction of policy limits as a result of claim(s)-

Prior to the signing of this contract the Consulting Engineer Contractor shall advise the City Treasurer in writing of any outstanding claim(s) which have or might substantially ($10,000 or more) reduce the aggregate limit of the Liability policies pertinent to the Contract.

The Consulting Engineer shall promptly notify the City’s Treasurer, upon receipt of notice of any claim in connection with the Contract, or any other contract in
which the Consulting Engineer may be involved providing full details of the claim, including an estimate of the loss or liability.

The Consulting Engineer shall promptly notify the City’s Treasurer of any reduction in limits (exceeding $10,000.00) of protection afforded under any policy listed in the Certificate(s), or otherwise required by the Contract Documents, whether or not such impairment came about as a result of this Contract.

In the event the City’s Treasurer shall determine that the Consulting Engineer’s aggregate limits of protection shall have been impaired or reduced to such extent that the City’s Treasurer shall determine such limits inadequate (for the protection for the City) to allow the completion of the contract, the Consulting Engineer shall, upon notice from the City’s Treasurer, promptly arrange for reinstatement of the original limits of liability required hereunder and shall furnish the City’s Treasurer with evidence thereof.

Insurance coverage shall contain a provision that coverage afforded under the policies shall not be canceled or materially changed during the term of this Agreement. At least thirty (30) days advanced written notice by REGISTERED MAIL must be given to the City and the Consulting Engineer prior to any renewal or expiration date of any insurance policy.

E. INDEMNITY

1. Indemnification for General Liability/Non-Professional Negligence. The Consulting
Engineer shall defend, indemnify, and hold harmless the City and any of its agencies, officials, officers, or employees from and against damages, liability, losses, costs, expenses, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including reasonable attorneys’ fees and the cost of defense), in connection with any action, proceeding, demand or claim arising out of or resulting from the negligence, in whole or in part, of the Consulting Engineer, its employees, agents, or subconsultants, or others for whom the Consulting Engineer is legally liable, provided that such damage, liability, loss, cost, or expense is:

a. Attributable to bodily injury, sickness, disease, or death or to damage to or destruction of tangible property (other than the Project itself) of any person, firm or corporation including loss of use resulting therefrom; or

b. Not the result of professional negligence; or

c. In addition, the Consulting Engineer’s obligations hereunder shall specifically apply to those damages, liabilities, losses, costs, or expenses arising from the negligent acts of the City or any of its agencies, officials, officers, or employees in those instances in which the City is named as an additional insured under the Consulting Engineer’s Commercial General Liability insurance policy, and then only to the extent covered by such insurance, not to exceed the limits required herein. If the required insurance is not procured and maintained as required by this Agreement, then the Consulting Engineer’s obligations hereunder shall apply as though the insurance was in place.
2. **Indemnification for Professional Negligence.** The Consulting Engineer shall indemnify and hold harmless the City and any of its agencies, officials, officers, or employees from and against damages, losses, costs, and expenses, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including reasonable attorneys’ fees and the cost of defense), in connection with any action, proceeding, demand or claim but only to the extent caused by the negligent acts, errors, or omissions of the Consulting Engineer, its employees, agents, or subconsultants, or others for whom the Consulting Engineer is legally liable, in the performance of professional services under this Agreement. The Consulting Engineer is not obligated under this subparagraph to indemnify the City for the negligent acts of the City or any of its agencies, officials, officers, or employees.

3. **Additional provision regarding the indemnification provided under paragraph E.1. and E.2. of this agreement.** It is agreed as a specific element of consideration of this Agreement that the indemnification provided by sections E.1. and E.2. of this Agreement shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party and, further notwithstanding any theory of law including, but not limited to, a characterization of the City’s or any third party’s joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that the Consulting Engineer’s obligation hereunder shall not include amounts
attributable to the fault or negligence of the City or any third party for whom the Consulting Engineer is not responsible.

In the case of any claims against the City, its employees or agents indemnified under this Agreement, by an employee of the Consulting Engineer, its affiliates, subsidiaries, or subcontractor/assignees, the indemnification obligation contained in this Agreement shall not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for the Consulting Engineer, its affiliates, subsidiaries, or subcontractor/assignees, under workers’ compensation acts, disability benefit acts, or other employee benefit acts.

NON-DISCRIMINATION AND AFFIRMATIVE ACTION.

1. In the execution of this contract, no person shall on the grounds of race, color, religion, sex, disability, marital status, public assistance status, ex-offender, or national origin be excluded from full employment rights in, be denied the benefits of, or otherwise subjected to discrimination under any program, service or activity under the provisions of any and all applicable federal and state laws against discrimination. The Consulting Engineer shall furnish all information and reports required by the rules, regulations, and other of the Secretary of Labor for purposes of investigation to determine compliance with such laws. The City shall provide Consulting Engineer with its rules and regulations.

2. The Consulting Engineer 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, physical handicap
unrelated to such person’s ability to engage in particular work, national origin or ancestry.

3. In all solicitation or advertisements for employees, the Consulting Engineer shall include the phrase “equal opportunity employer,” or similar phrase approved by the City.

4. If the Consulting Engineer fails to comply with the manner in which the Consulting Engineer reports to the City in accordance with the provisions of K.S.A. 44-1031, the Consulting Engineer shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the City.

5. If the Consulting Engineer is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the City which has become final, the Consulting Engineer shall be deemed to have breached the present contract and it may be canceled, terminated, or suspended in whole or in part, by the City.

6. The Consulting Engineer shall include the provisions of paragraphs (1) through (6) above in every subcontract or purchase order so that such provisions will be binding upon all subcontractors and vendors.

G. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.

H. APPLICABLE LAW, JURISDICTION AND VENUE.

This Agreement is entered into under and pursuant to, and is to be construed and
enforceable in accordance with, the laws of the State of Kansas. In the event that the parties hereto are unable to resolve any controversy or claim arising out of, or relating to, this agreement or the making, performance or interpretation of it without resort to the courts, the parties agree that exclusive jurisdiction and venue over such matter shall be in the District Court of Johnson County, Kansas.

I. ASSIGNMENT OF AGREEMENT

This Agreement shall not be assigned or transferred by Consulting Engineer without the written consent of the City.

J. NO THIRD PARTY BENEFICIARIES

Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

K. INDEPENDENT CONTRACTOR

The Consulting Engineer is an independent contractor and as such is not an agent or employee of the City.

L. WORK PRODUCT FORMAT

1. For documentation purposes, an original electronic media compatible with the City’s own (CAD) System on specified disk type and paper hard copies of (24” X 36” and/or 11” X 17”) shall be prepared for the City’s use. The number of hard copies and sizes will be determined in Schedule A (SCOPE OF ENGINEERING SERVICES) attached hereto and incorporated herein. If the City provides such electronic media to others for any purpose, City shall require the electronic media to be returned to City upon completion of such
use. City recognizes that such use of electronic media will be at the City’s sole risk and without any liability risk or legal exposure by Consulting Engineer.

2. Project Documentation: All documentation provided the City other than project drawings shall be furnished on a microcomputer diskette, 3.5 inch, 1.44mb, in either Micro Soft Word file format or ASCII file format.

3. "Record" Drawings: Following construction, City and construction contractor will provide copies of changes and alterations made in the field during construction to Consulting Engineer to provide As-Built drawings, unless Consulting Engineer has provided a diskette to City on which City can make changes. Consulting Engineer has the right to rely on the information provided by the City and construction contractor in preparing such documents, and shall have no independent duty to verify its accuracy.

M. FEDERAL LOBBYING ACTIVITIES

(Only applies to projects receiving federal funds via the City)

31 USCA Section 1352 requires all subgrantees, contractors, subcontractors and consultants who receive federal funds via City to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan or cooperative agreements. In addition, contract applicants, recipients and subrecipients must file a form disclosing any expenditures they make for lobbying out of non-federal funds during the contract period.

Necessary forms are available from the Project Manager and should be returned to City.
with other final contract documents. It is the responsibility of Consulting Engineer to obtain executed forms from any of its subcontractors who fall within the provision of the Code and to provide City with the same.

N. COVENANT AGAINST CONTINGENT FEES

Consulting Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working for Consulting Engineer, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City may terminate this Agreement without liability or may, in its discretion, deduct from the Total Fee or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

O. COMPLIANCE WITH LAWS

Consulting Engineer shall abide by all applicable federal, state and local laws, ordinances and regulations applicable to the Engineering Services or the Project at the time services are rendered. Consulting Engineer shall secure all occupational and professional licenses necessary to implement the Project and permits from public and private sources necessary for the fulfillment of its obligations under this Agreement.

P. TITLES, SUBHEADS AND CAPITALIZATION
Title and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of this Agreement. Some terms are capitalized throughout this Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

Q. **SEVERABILITY CLAUSE**

Should any provision of this Agreement be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable.

R. **EVALUATION**

It is understood and agreed that the Consulting Engineer services shall be evaluated in accordance with Resolution 1391 of the City of Leawood, Kansas, dated March 23, 1998.

S. **TERM OF AGREEMENT**

This Agreement shall have a duration until acceptance of the work performed or completion of the construction contract, whichever is longer.
T. EXECUTION OF CONTRACT

The parties hereto have caused this Agreement to be executed in triplicate this _____ day of ________________________ 20 ____.

CITY OF LEAWOOD, KANSAS

By: ____________________________

Peggy J. Dunn, Mayor

ATTEST:

____________________________________
Debra Harper, CMC, City Clerk

APPROVED AS TO FORM:

____________________________________
Patricia A. Bennett, City Attorney

NAME OF COMPANY

By: ____________________________

Authorized Signatory

____________________________________
Title

____________________________________
Address

____________________________________
City, State, Zip Code

____________________________________
Telephone Number

____________________________________
Facsimile Number
Conduct project start-up meeting and site visit with City.

Perform field survey of project limits.

Submit Preliminary Engineering Study to City and County. (This study will include bank stabilization design alternatives and preliminary cost estimates.)

Meet with City to determine preferred design alternative.

Contact Kansas Department of Water Resources regarding project and complete permit application if required.

Design Bank Stabilization and Bike Path Reconstruction for south bank of Tomahawk Creek.

6a. Develop future condition 100-year flood elevations showing proposed bank stabilization. (This task will be completed under the current Tomahawk Creek Flood Study project being developed by Phelps Engineering, Inc.)

6b. Develop construction plans and project specifications to be merged with City’s construction documents for the bidding process.

Submit Preliminary Plans and Specifications to City and County. Incorporate review comments from City and County into construction plans.

Submit Final Plans and Specifications to City and County.

Issue notice to Bidders and assist City with bidding process.

Conduct Pre-Construction Conference with selected Contractor and City.

Provide control points and bench marks necessary for project construction.

Provide contract administration during project construction as necessary.
### ADDITIONAL SERVICES FEE SCHEDULE

#### 1998 HOURLY BILLING RATES

<table>
<thead>
<tr>
<th>Engineering Services</th>
<th>Hourly Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clerical/Support Staff</td>
<td>$30.00</td>
</tr>
<tr>
<td>Drafter I</td>
<td>$32.50</td>
</tr>
<tr>
<td>Drafter II</td>
<td>$40.00</td>
</tr>
<tr>
<td>Engineering Technician I</td>
<td>$45.00</td>
</tr>
<tr>
<td>Engineering Technician II</td>
<td>$50.00</td>
</tr>
<tr>
<td>Professional Engineer</td>
<td>$65.00</td>
</tr>
<tr>
<td>Registered Architect</td>
<td>$75.00</td>
</tr>
<tr>
<td>Principal</td>
<td>$90.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Surveying Services</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Clerical/Support Staff</td>
<td>$30.00</td>
</tr>
<tr>
<td>Drafter I</td>
<td>$32.50</td>
</tr>
<tr>
<td>Survey Technician</td>
<td>$45.00</td>
</tr>
<tr>
<td>Licensed Land Surveyor</td>
<td>$60.00</td>
</tr>
<tr>
<td>Principal</td>
<td>$90.00</td>
</tr>
<tr>
<td>Survey Crew - 2 Persons*</td>
<td>$105.00</td>
</tr>
<tr>
<td>Survey Crew - 3 Persons*</td>
<td>$115.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Construction Services</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction Observer I</td>
<td>$35.00</td>
</tr>
<tr>
<td>Construction Observer II</td>
<td>$45.00</td>
</tr>
</tbody>
</table>

* Rate includes local travel and miscellaneous survey supplies.
INSERT ORIGINAL CERTIFICATE OF LIABILITY INSURANCE FORM HERE
RESOLUTION NO. 1391

A RESOLUTION AUTHORIZING AND DIRECTING THE DIRECTOR OF PUBLIC WORKS TO ESTABLISH CRITERIA FOR EVALUATION OF PROFESSIONALS FOR THE PURPOSE OF DETERMINING RESPONSIBLE APPLICANTS FOR PROFESSIONAL SERVICES ASSOCIATED WITH PROJECTS OF THE CITY;

Whereas, the City of Leawood regularly enters into Professional Services Agreements for various City Projects within the City;

Whereas, it is the policy of the Governing Body to award City Professional Services Agreements to the most qualified applicant;

Whereas it is the desire of the Governing Body to see that Engineers and Architects performing work for the City provide a full measure of value in exchange for funds expended by the City and that in furtherance of this objective, Professional Services Agreements of the City are awarded to and performed by responsible Professionals;

Whereas, the Governing Body has determined that all Professionals performing Professional Services under contract with the City should be evaluated at the conclusion of their work;

Whereas the Governing Body has determined that a procedure should be established to evaluate Professional Services so as to assist the Director of Public Works in determination of responsible applicants for City projects;

Whereas the Governing Body has determined that it will consider evaluations of prior work of Professionals in determining responsible applicants for City Projects and that Requests for Proposals will be made only to responsible Professional Service Providers as determined by the Director of Public Works based on review of evaluations of prior work for the City;

NOW, THEREFORE, be it resolved by the Governing Body of the City of Leawood:

Section 1. Evaluation of Professional Services Applicants authorized. That the Governing Body of the City of Leawood does hereby authorize the Director of Public Works of the City to prepare and provide to the Governing Body evaluations of the work of all Professional services performing work under contract with the City.

Section 2. Criteria for evaluation established. In the evaluation of Professionals Services, the Director of Public Works shall consider the following criteria:

A. Completion of work within the allotted time and within Total Fee.
B. Consistency of work effort of the Professional.
C. Quality of work performed by the Professional.
D. Ability of the Professional to communicate and work with residents of the City.
E. Cooperation of the Professional with City Staff, including but not limited to, time period a Professional takes to respond to a request of the project manager, contract administrator, construction inspector or the Director of Public Works.

F. Responsiveness to correction of "punch list" items.

G. Responsiveness to a direct request from the Public Works Director in matters where the Professional is required to take action to ensure the safety of the public.

H. Fairness and appropriate use of requests for change orders during the course of construction.

I. Thoroughness of Specifications and Drawings.

J. Construction Administration.

K. Budget Compliance.

Section 3. Notification of evaluation to be included in Professional Services Agreements. All Agreements prepared by the City for design professionals performing work for the City shall contain provisions notifying applicants that work performed by the Professional will be evaluated and that said evaluations will be considered by the City in determining responsible applicants for future City projects.

Section 4. Evaluation Procedure. During the course of performance of Professional Services, the Director of Public Works shall monitor the work and prepare interim evaluations of the Professional’s compliance with this resolution. Interim evaluations shall be provided to the Professional. On completion of the Professional’s work the Director of Public Works shall prepare a final evaluation of the Professional’s compliance with this resolution. On completion of and prior to submitting the final evaluation to the Governing Body, the Director of Public Works shall provide a copy of the final evaluation to the Professional for review and comment. On receipt of the Professional’s comments, the Director of Public Works may revise the final evaluation and shall provide a copy of the revised final evaluation to the Professional. Any Professional disputing the final evaluation may appeal the evaluation to the Governing Body within thirty (30) days of notification of the final evaluation. On review and after consideration of such information as the Governing Body shall determine to be necessary to a fair review of the final evaluation and consistent with the requirements of due process, the final evaluation may be modified in a manner consistent with the findings of the Governing Body.

Section 5. Final evaluations to be considered in connection with solicitation of applicants for Professional Services. It is hereby established as the policy of the City that the Director of Public Works, in soliciting applicants for Projects shall consider said evaluation of prior work performed by a Professional and shall not request applications from such Professional for a period of one (1) year from the date of such unsatisfactory evaluation.

Section 6. Director of Public Works authorized to prepare additional forms and written procedures. The Director of Public Works is authorized to prepare such additional written forms and procedures as in his or her judgment as necessary to effectuate the intent of this resolution.
Section 7. Take effect. That this resolution shall take effect and be in force from the date of passage by the Governing Body and approved by the Mayor.

PASSED by the Council the 23rd day of March, 1998.

APPROVED by the Mayor the 23rd day of March, 1998.

(SEAL)

PEGGY J. DUNN, Mayor

ATTEST:

MARTHA HEIZER, City Clerk

APPROVED AS TO FORM:

RICHARD S. WETZLER, City Attorney
CITY OF LEAWOOD, KANSAS
PROFESSIONAL’S PERFORMANCE CHECKLIST

Consultant____________________Project Number____________________

Report number______Date____________________

1. Complaints______
   Comments:

2. Thoroughness of Specifications and Drawings______
   Comments:

3. Responsiveness______
   Comments:

4. Budget Compliance______
   Comments:

5. Construction Administration______
   Comments:

6. Quality of Product______
   Comments:

City Project Engineer/Date ____________________________

Director of Public Works/Date _________________________

Page 1 of 2
COMPLETING THE FORM

The numbered notes below correspond to the numbered sections of the first page.

The City’s Project Engineer will complete the form and

1. Record the number and nature of any valid complaints.

2. List any instances of failure to meet the requirements of the contract requirements checklist.

3. Identify performance goals that have not been met during the reporting period.

4. Review any discrepancy reports and their final disposition.

5. Determine whether the consultant’s performance is unacceptable, acceptable, or exceptional. A point value ranging from acceptable (5) to unacceptable (1) may be used instead of a descriptive term.

6. Summarize the consultant’s performance for the period covered by the report and for the contract term to date either in a narrative or by assigning a point value.

7. Recommend actions to be taken by the consultant to improve performance or correct deficiencies and specify any liquidated damages that may be assessed for the performance period covered by the report. If the report shows acceptable performance, congratulate the consultant.