

**CONTRACT**  
**for**  
**ENGINEERING SERVICES**

**BETWEEN**

**HYRUM CITY**  
**AND**  
**CONSULTANT**

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# **MASTER CONTRACT FOR ENGINEERING AND TECHNICAL SERVICES**

This contract dated the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, is entered into by and between **Hyrum City** ("Owner") and **Consultant** ("Engineer").

## **RECITAL**

A. Owner and Engineer desire to identify certain services to be performed by Engineer pursuant to the terms of this Contract and to reach certain understandings with respect to such services.

## **ARTICLES**

It is therefore agreed as follows:

### **ARTICLE 1. DESCRIPTION OF WORK**

Engineer agrees to perform needs assessments, feasibility studies, design services, construction management, technical studies, engineering services, and other services as may be mutually agreed to from time to time by Owner and Engineer and as more specifically described in Scope of Work and Compensation Document (the "Work"). Engineer agrees to, except as provided otherwise in this contract, furnish supervision, labor and materials, and obtain licenses and permits required for performance of the Work.

### **ARTICLE 2. TERM OF CONTRACT AND SCHEDULE**

The term of this contract shall be from the effective date of the contract through Completion Date. Term of work and schedule of work shall be stipulated in each Scope of Work and Compensation Document

### **ARTICLE 3. CONSIDERATION AND PAYMENT**

- 3.1 For satisfactory performance of the Work, Owner will pay Engineer consideration determined in accordance with Scope of Work and Compensation Document executed by the Owner and the Engineer.
- 3.2 Compensation for engineering services shall be made in accordance with one of the following methods: Compensation will be either 1) a negotiated lump sum, or 2) a cost reimbursement basis from actual time and expenses charged at the hourly rates indicated in the Scope of Work and Compensation Document.

The specific method for compensation and associated engineering services to be rendered for such compensation shall be as outlined in each Scope of Work and Compensation Document .

- 3.3 All invoices submitted to Owner for work performed shall contain references to the Contract issued for said work. Engineer will retain receipts for reimbursable expenses in general accordance with Internal Revenue Service rules pertaining to the support of expenditures for income tax purposes. Receipts will be available for inspection by Owner's auditors upon request. Payment shall be made as outlined in each Work Release to this contract. Invoices shall include services and tasks performed for the invoicing period. Time and expense invoices shall include the reimbursable out-of-pocket expenses incurred and the shall indicate the number of hours worked, the persons responsible for performing the Work, the rate of compensation at which such services and tasks were performed, the subtotal for each task and service performed and a grand total for all services performed.
4. Engineer will submit monthly invoices for services rendered and Owner will make prompt payments in response to Engineer's invoices. Owner recognizes that late payment of invoices results in extra expenses for Engineer. Engineer retains the right to assess Owner interest at the rate one and five-tenths percent (1.5%) per month, but not to exceed the maximum rate allowed by law, on invoices which are not paid within forty-five (45) days from the date of the invoice. In the event undisputed portions of Engineer's invoices are not paid when due, Engineer also reserves the right, after seven (7) days prior written notice, to suspend the performance of its services under this Agreement until all past due amounts have been paid in full.
5. If Owner disputes any items in Engineer's invoice for any reason, including the lack of supporting documentation, Owner may temporarily delete the disputed item and pay the remaining amount of the invoice. Owner will promptly notify Engineer of the dispute and request clarification and/or correction. After any dispute has been settled, Engineer will include the disputed item on a subsequent, regularly scheduled invoice, or on a special invoice for the disputed item only.

#### **ARTICLE 4. SERVICES AND INFORMATION**

Owner will provide all criteria and information pertaining to Owner's requirements for the project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations. Owner will also provide copies of any Owner-furnished Standard Details, Standard Specifications, or Standard Bidding Documents which are to be incorporated into the project. Owner will furnish the services of soils/geotechnical engineers or other consultants that include reports and appropriate professional recommendations when such services are deemed necessary by Engineer. The Owner agrees to bear full responsibility for the technical accuracy and content of Owner-furnished documents and services.

In performing professional engineering and related services hereunder, it is understood by Owner that Engineer is not engaged in rendering any type of legal, insurance or accounting services, opinions or advice. Further, it is the Owner's sole responsibility to obtain the advice of an attorney, insurance counselor or accountant to protect the Owner's legal and financial interests. To that end, the Owner agrees that Owner or the Owner's representative will examine all studies, reports, sketches, drawings, specifications, proposals and other documents, opinions or advice prepared or provided by Engineer, and will obtain the advice of an attorney, insurance counselor or other

consultant as the Owner deems necessary to protect the Owner's interests before Owner takes action or forebears to take action based upon or relying upon the services provided by Engineer.

#### **ARTICLE 5. NON-EXCLUSIVE RIGHTS**

Nothing in the contract is to be construed as granting to Engineer exclusive rights to perform any or all of Owner's requirements of the type contemplated hereunder.

#### **ARTICLE 6. CHANGES**

The parties agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of this Agreement. The execution of the change shall be authorized and signed in the same manner as this Agreement. Adjustments in the period of services and in compensation shall be in accordance with applicable paragraphs and sections of this Agreement. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning as outlined in the Scope of Work and Compensation Document. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. Engineer will inform Owner of such situations so that changes in scope and adjustments to the time of performance and compensation can be made as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for performance of the services, an equitable adjustment shall be made, and the Agreement modified accordingly.

#### **ARTICLE 7. INDEMNIFICATION**

The Engineer agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Owner, its officers, and employees (collectively, Owner) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Engineer's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the Engineer is legally liable. The Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Engineer, its officers, directors, employees and subconsultants (collectively, Engineer) against all damages, liabilities or costs including reasonable attorneys' fees and defense costs, to the extent caused by the Owner's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the Owner is legally liable.

Neither the Owner nor the Engineer shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

#### **ARTICLE 8. EQUAL EMPLOYMENT AND NONDISCRIMINATION**

In connection with the services under this Agreement, Engineer agrees to comply with the applicable provisions of federal and state Equal Employment Opportunity, and other employment, statutes and regulations.

#### **ARTICLE 9. INSURANCE**

Engineer agrees to procure and maintain, at its expense, Workers' Compensation insurance as required by statute; Automobile Liability insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned

vehicles; Commercial General Liability insurance of \$1,000,000 combined single limit for personal injury and property damage; and Professional Liability insurance of \$1,000,000 per claim for protection against claims arising out of the performance of services under this Agreement caused by negligent acts, errors, or omissions for which Engineer is legally liable. Upon request, Owner shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance will be furnished to the Owner. Engineer agrees to indemnify Owner for the claims covered by Engineer's insurance.

#### **ARTICLE 10. STANDARD OF PERFORMANCE**

The standard of care for all professional engineering, consulting and related services performed or furnished by Engineer and its employees under this Agreement will be the care and skill ordinarily used by members of Engineer's profession.

#### **ARTICLE 11. SUSPENSION OF WORK**

Owner may, by written notice, direct Engineer to suspend performance of any or all of the Work for a specified period of time. If such suspension is not occasioned by the fault or negligence of Engineer, the notice may be modified to compensate Engineer for extra costs incurred due to said suspension, provided that any claim for adjustment is supported by appropriate cost documentation and asserted within twenty (20) calendar days after the date Owner issues an order for resumption of the Work. Upon receipt of such notice, Engineer shall a) discontinue Work, b) place no further orders or subcontracts, c) suspend all orders and subcontracts, d) protect and maintain the Work, and e) otherwise mitigate Owner's costs and liabilities for those areas of work suspended.

#### **ARTICLE 12. TERMINATION OF AGREEMENT**

Owner or Engineer may terminate the Agreement, in whole or in part, by giving seven (7) days written notice, if the other party substantially fails to fulfill its obligations under the Agreement through no fault of the terminating party. Where the method of payment is "lump sum," or cost reimbursement, the final invoice will include all services and expenses associated with the project up to the effective date of termination.

#### **ARTICLE 13. OWNERSHIP AND REUSE OF DESIGNS AND DRAWINGS**

All documents, including all reports, drawings, specifications, computer software or other items prepared or furnished by Engineer pursuant to this Agreement, are instruments of service with respect to the project. Engineer retains ownership of all such documents. Owner may retain copies and digital CAD files of the documents for its information and reference in connection with the project; however, none of the documents are intended or represented to be suitable for reuse by Owner or others on extensions of the project or on any other project. Any reuse without written verification or adaptation by Engineer for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Engineer, and Owner will defend, indemnify and hold harmless Engineer from all claims, damages, losses and expenses, including attorney's fees, arising or resulting therefrom. Any such verification or adaptation will entitle Engineer to further compensation at rates to be agreed upon by Owner and Engineer.

#### **ARTICLE 14. NONDISCLOSURE**

Engineer will not divulge to third parties without the prior consent of Owner any information obtained from or through Owner in connection with the performance of this contract. Unless

waived by Owner, Engineer shall require its employees and subcontractors of any tier to adhere to these nondisclosure terms.

#### **ARTICLE 15. LAWS AND REGULATIONS**

Engineer shall at all times comply with applicable laws, statutes, rules, regulations, and ordinances, including those governing wages, hours, desegregation, employment discrimination, and safety. In connection with the services under this Agreement, Engineer agrees to comply with the applicable provisions of federal and state Equal Employment Opportunity, and other employment, statutes and regulations.

#### **ARTICLE 16. PATENT AND COPYRIGHT**

- 16.1 Indemnity. Engineer shall indemnify, defend, and hold harmless the Owner against and from all claims, losses, costs, suits, judgments, damages, and expenses, including attorneys' fees, of any kind of nature whatsoever on account of infringement of any patent, copyrighted work, secret process, trade secret, unpatented invention, section, or otherwise, including claims thereof pertaining to, or arising from Engineer's performance under this contract.
- 16.2 Should Engineer's employees, officers, agents, subcontractors of any tier, or anyone of a like nature in the performance of the Work or as a result of performing the Work, develop any trade secret, prepare any copyrighted material, make any improvement, originate any invention, develop any process or otherwise, such trade secret, copyright, improvement, invention, or process shall be the property of Engineer, but Engineer shall grant or cause to be granted to Owner the right and/or license to permanently use, or cause to be used for the benefit of Owner any such trade secret, copyright, improvement, design, invention, or process in any manner for so long as Owner desires to use same for Owner's own internal use.

#### **ARTICLE 17. NOT USED**

#### **ARTICLE 18. OPINIONS OF PROBABLE COST**

Any opinions of probable project cost or probable construction cost provided by Engineer are made on the basis of information available to Engineer and on the basis of Engineer's experience and qualifications and represents its judgment as an experienced and qualified professional engineer. However, since Engineer has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, Engineer does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost Engineer prepares.

#### **ARTICLE 19. INDEPENDENT CONTRACTOR**

Engineer shall perform the Work as an independent contractor, and all persons employed by Engineer in connection herewith shall be employees of Engineer, and not employees of Owner in any respect.

#### **ARTICLE 20. SUCCESSORS AND ASSIGNMENT**

Owner and Engineer, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the covenants of this Agreement. Neither Owner nor Engineer will assign, sublet, or transfer any interest in this Agreement or claims arising therefrom without the written consent of the other.

#### **ARTICLE 21. RIGHT TO RETAIN SUBCONSULTANTS**

The Engineer may use the services of subconsultants when, in the Engineer's sole opinion, it is appropriate and customary to do so. Such persons and entities include but are not limited to, surveyors, specialized consultants and testing laboratories. The Engineer's use of other consultants for additional services shall not be unreasonably restricted by the Owner provided the Engineer notifies the Owner in advance.

#### **ARTICLE 22. NOTICES**

Any notice by either party to the other hereunder shall be served if delivered in person, to the office of the representative authorized and designated in writing to act for the respective party, or; if deposited in the mail, properly stamped with the required postage and addressed to the office of such representative. Either party may change its representative or address by giving the other party written notice of such change. Unless otherwise notified, notices shall be given as follows:

Owner  
Hyrum City  
60 West Main  
Hyrum, Utah 84319

Engineer

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### **ARTICLE 23. DISPUTES**

Unless otherwise provided in this Contract, all claims, counter-claims, disputes, and other matters in question between Owner and Engineer arising out of or relating to this Contract or the breach of it will be decided by arbitration if the parties mutually agree, or in the First Judicial District Court in and for Cache Count, State of Utah.. The prevailing party in any dispute relating to the Agreement shall be awarded its attorneys' fees, costs, and other litigation fees incurred to the fullest extent allowed by applicable law.

#### **ARTICLE 24. ACCOUNTING AND AUDITING**

Engineer shall keep accurate and complete records in support of all remuneration paid hereunder in accordance with generally recognized accounting principles and practices. Owner, or its audit representative, shall have the right at any reasonable time to examine, audit, and reproduce all records pertaining to costs, including but not limited to payrolls, employees' time sheets, invoices, and all other evidence of expenditures for the Work. Such records shall be available for one (1) year after completion of the Work or as otherwise required by law.

#### **ARTICLE 25. NONWAIVER**

The failure of Owner to insist upon or enforce strict performance by Engineer of any of the terms of this contract or to exercise any rights herein shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or rights on any future occasion.



#### **ARTICLE 26. SEVERABILITY**

If any provision of this agreement is held invalid or unenforceable, the remaining provisions shall be valid and binding upon the Terms & Conditions for Professional Services. One or more waivers by either party of any provision, term or condition shall not be construed by the other party as a waiver of any subsequent breach of the same provision, term or condition.

#### **ARTICLE 27. CONSTRUCTION PROCEDURES**

Engineer's observation or monitoring portions of the Work performed under construction contracts shall not relieve the contractor from its responsibility for performing work in accordance with applicable contract documents. Engineer shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the Work and shall not manage, supervise, control or have charge of construction. Engineer shall not be responsible for the acts or omissions of the contractor or other parties on the project. Engineer shall be entitled to review all construction contract documents and to require that no provisions extend the duties or liabilities of Engineer beyond those set forth in this Agreement.

#### **ARTICLE 28. HAZARDOUS MATERIALS**

Owner shall provide notice to Engineer, to the best of its knowledge, if hazardous materials may be present on any project site.

It is acknowledged by both parties that Engineer's scope of services do not include services related in any way to hazardous materials. In the event Engineer or any other party encounters undisclosed hazardous materials, Engineer shall have the obligation to notify Owner and, to the extent required by law or regulation, the appropriate governmental officials, and Engineer may, at its option and without liability for delay, consequential or any other damages to Owner, suspend performance of services on that portion of the project affected by hazardous materials until Owner: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the hazardous materials; and (ii) that the project site is in full compliance with all applicable laws and regulations according to the consultant(s) or contractor(s) retained by the Owner. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous materials, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the project site in connection with Engineer's services under this Agreement.

If Engineer's services hereunder cannot be performed because of the existence of hazardous materials, Engineer shall be entitled to terminate this Agreement for cause on 30 days written notice.

#### **ARTICLE 29. NOT USED**

#### **ARTICLE 30. GOVERNING LAW**

This contract shall be interpreted in accordance with the substantive and procedural laws of the State of Utah.

**ARTICLE 31. ENTIRE AGREEMENT**

This contract and any referenced attachment constitute the complete agreement between the parties.

**ARTICLE 32. EXECUTION AND EFFECTIVE DATE**

This Agreement, including the exhibits and schedules made part hereof, constitute the entire Agreement between Engineer and Owner, supersedes and controls over all prior written or oral understandings. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by the parties.

**ARTICLE 33. APPROVALS**

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized officials, this contract in duplicate on the respective date indicated below:

**CONSULTANT**

*Engineer*

**CITY**

*Owner*

By: \_\_\_\_\_  
Name

By: \_\_\_\_\_  
Name, Mayor

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Name, City Recorder