

AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of _____, 2019 ("Effective Date")
between **the Marshall County Industrial Development Authority, 93 Carroll Road, Benton, Kentucky
42025 ("Owner")**

AND

Rivercrest Engineering Incorporated, 7020 US Highway 68 W, Paducah, KY 42003 ("Engineer").

WITNESSETH

Whereas, the Owner intends to periodically plan and implement various planning projects or capital improvements which will require engineering services; and

Whereas, the Owner desires to engage the services of the Engineer to perform required work on an assignment by assignment basis; and

Whereas, the Engineer is a skilled, competent, and experienced professional firm having the necessary personnel and equipment to perform the required work.

The intent of this agreement is to provide a mechanism for the Owner to engage the Engineer in a wide range of professional engineering services. Services may include but are not limited to planning, water distribution system modeling, preliminary engineering, GIS, mapping, design, permitting, easement development and acquisition, procurement, contract administration, and construction observation.

When services of the Engineer are needed, a Scope of Work will be developed jointly by the Owner and Engineer, subject to the approval of the Owner. The Engineer will prepare a detailed proposal letter or man-hour estimate outlining their understanding of the scope of work, approach, proposed fee structure, and schedule for approval by the Owner. The Owner will issue written work orders or letters of authorization to the Engineer after review and approval of the Engineer's proposal. Each approved work order or approved task will become a "Project" to be implemented under guidance of this agreement and will be given a specific project number for consistency and tracking.

Engineer's Services under this Agreement will be outlined per project, in detail, in a proposal letter addressed to the Marshall County Industrial Development Authority (IDA) Chairman, or other designated representative.

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. The term of this Agreement is two years. Thereafter, the Agreement can be renewed annually on its anniversary indefinitely, with unit price fee adjustments negotiated during the renewal process. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.

- B. Engineer shall complete its services within a reasonable time, as outlined in each individual proposal letter and as approved by the Owner's authorization letter.
- C. If the Project includes construction-related professional services, then Engineer's time for completion of services is conditioned on the time for Owner and its contractors to complete construction not exceeding construction time estimated in the initial proposal letter. If the actual time to complete construction exceeds the number of days/weeks/months initially indicated, then Engineer's period of service and its total compensation shall be appropriately adjusted.

2.01 *Payment Procedures*

- A. *Invoices*: Engineer's proposal letter will outline payment structure to be either **hourly** based on actual work hours and expenses utilized to complete tasks, **or lump sum** based on an initial scope of services, estimate of required work hours, and expenses. Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices will be prepared by the Engineer for Owner's receipt during the first half of each month. Invoices are due and payable within 30 days of receipt. Payments not received within the due date are subject to interest at the rate of 10% per annum.

3.01 *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:
 - 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.
 - b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice.
 - 2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.
- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

- C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.
- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located – Commonwealth of Kentucky.
- D. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.

- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.
- G. All documents including drawings and specifications prepared by the Engineer are considered instruments of service in respect to the Projects with ownership remaining with the Engineer. Provided that the Engineer is paid in full for its services, the Owner may subsequently use these documents without any additional compensation or agreement of the Engineer. However, such use, without written verification or adaptation by the Engineer for the specific purpose intended shall be at the Owner's sole risk and without liability or legal exposure to the engineer.
- H. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- I. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.
- J. Owner and Engineer agree that all water distribution modeling and GIS data relating to Owner's facilities are the property of the Owner and shall be delivered to Owner electronically upon request and/or termination of the Agreement subject to the provisions of Paragraph 3.01.
- K. The Owner may, at any time, retain the services of other engineering firms to perform work at the Owner's sole discretion, and nothing contained within this Agreement shall be considered exclusive between Engineer and Owner.

6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

7.01 *Basis of Payment—Hourly Time & Materials or Lump Sum*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as outlined in the individual letter proposals and as approved by the Owner in the authorization letters.
- B. The portion of the compensation amount billed monthly for Engineer's services will be based upon labor and equipment hours and expenses incurred or the Engineer's estimate of the percentage of the total lump sum services completed during the billing period.

7.02 *Insurance*

- A. Engineer shall at his own expense, purchase and maintain insurance coverage as specified in this paragraph for a period of one (1) year after substantial completion of construction (or termination of contract services if construction is not involved) that will protect Owner and Engineer from claims which may arise out of or result from Engineer and Owner's operation under this Agreement.
- B. Minimum coverage. Engineer shall maintain at a minimum the following insurance policies and coverage with carriers authorized to cover risks and licensed to underwrite policies in the Commonwealth of Kentucky:
 - 1) Worker's Compensation as required by all applicable state and federal laws
 - 2) Employer's Liability with limits of \$500,000 each incident
 - 3) Comprehensive General Liability with minimum limits of \$1,000,000 per occurrence / \$1,000,000 aggregate.
 - 4) Professional Liability with limits of not less than \$1,000,000 per claim and in the aggregate, insuring the professional liability of the Engineer.
 - 5) Business Auto Insurance for all owned vehicles with minimum limits of \$1,000,000 combined single limit.

Certificates of Insurance, naming the Owner as an additional insured as to the coverage provided under subsections (2), (3), (4), and (5) above, will be provided by Engineer to Owner.

- 7.03 *Additional Services:* For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer an agreed lump sum amount or an amount equal to the cumulative hours charged to the Project by each class of Engineer's employee times the standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Appendix 1.

Attachments:

Appendix 1, Engineer's Standard Hourly Rates

Appendix 2, Engineer's Proposal Letters and Owner's Authorization Letters

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER: Marshall County Industrial Development Authority

ENGINEER: Rivercrest Engineering Incorporated

By: _____

By: R. Flynn

Title: Dennis Smith - Board Chairman

Title: R. Brian Flynn - President

Date Signed : _____

Date : 3/19/19

Engineer License or Firm's Certificate

Number: KY 21024

State of: Kentucky

Address for giving notices:

Address for giving notices:

Marshall Co. Industrial Development Authority

Rivercrest Engineering Incorporated

c/o Elena Blevins

c/o Brian Flynn, PE - President

93 Carroll Road, Benton, KY 42025

7020 US Hwy 68 W, Paducah, KY 42003

Email – eblevins@kentuckylake.org

Email – bflynn@rivercresteng.com

Dennis@pinnacleinc.net

This is **Appendix 1, Engineer's Standard Hourly Rates**, referred to in and part of the Short Form of Agreement between Owner and Engineer for Professional Services dated _____, _____.

Engineer's Standard Hourly Rates

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 1 and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Paragraphs 7.01 and 7.02, and are subject to annual review and adjustment.

B. *Schedule of Hourly Rates:*

Hourly rates for services performed on or after the Effective Date are:

ENGINEERING SERVICES RATES

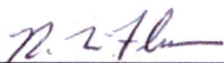
Rivercrest Engineering Incorporated	
PERSONNEL CLASSIFICATION	RATE *
Principal	135.00
Project Manager	115.00
Project Engineer	100.00
Designer or Graduate Engineer (FE)	90.00
Construction Contract Administrator	115.00
Engineering Technician	75.00
Construction Observer	75.00
* Labor rates include all fringe and overhead costs. Hourly rates for non-exempt class employees will be invoiced at 1.25X normal hourly rates for service rendered in excess of 40 hours per week per employee	
MISCELANEOUS EXPENSES	RATE
Mileage	\$0.585/mi – or currently approved Federal reimbursement rate.
Prints – Paper	Color Plan Sheets (\$5.50 per sheet) Page (\$0.25 per sheet)
Postage and Delivery	Actual Cost
Miscellaneous Expenses	Actual Cost
Subsistence – Food and Lodging	Actual Cost – Not to Exceed \$100 per day per employee

Rates for specialty services - for example environmental studies, archaeological services, boundary surveying, and field/laboratory/office geotechnical services - will be invoiced at the Engineer's **actual direct cost plus 15%**.

Materials purchased or equipment rented by Engineer or subcontractors in the course of performing the Services will be reimbursed at Engineer's **actual direct cost plus 15%**.

These rates shall become effective when approved by the Owner and signed below by the Engineer's representative.

Rivercrest agrees the above referenced rates shall remain in effect for a minimum of one year from the date of the consultant's signature below. Rate adjustments after the referenced one-year term, may be requested in writing by Rivercrest and reasonably reviewed and considered by client.

 Signature of Consultant-Rivercrest Engineering, Inc	3/19/19 Date
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ENGINEERS JOINT CONTRACT
DOCUMENTS COMMITTEE

Following is **Appendix 2**, to include
**Engineer's Individual Services Proposal
Letters and Owner's Authorization
Letters**

Appendix 1, Standard Hourly Rates Schedule

**EJCDC E-520 Short Form of Agreement Between Owner and Engineer for Professional Services.
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