

**ENGINEERING AGREEMENT  
FOR  
CIVIL ENGINEERING SERVICES**

THIS AGREEMENT, made this 26<sup>th</sup> day of August 2011, by and between The City of Junction City, Kansas, located at 7<sup>th</sup> and Jefferson Streets, Junction City, KS 66441 (hereinafter "Client"), and Kaw Valley Engineering, Inc., located at 2319 North Jackson, Junction City, Kansas 66441, (hereinafter "Engineer"):

WHEREAS, Client intends to develop a Gravity Storm Sewer System in the Ash Street Area to Divert Storm Water to the Riverwalk Pond Area (hereinafter "Project").

WITNESSETH, that for and in consideration of the mutual covenants and promises between the parties hereto, it is hereby agreed that the Engineer shall provide the following services for the Client as set forth below:

**ARTICLE 1 – SCOPE OF SERVICES**

**1.01 Basic Scope of Services.** Upon execution of this Agreement, the Engineer shall provide the following services:

1. **Survey, Base Map Preparation – Easement.**
2. **Design Engineering and Project Specifications.**
3. **Bid Project – Address Questions / Comments During Bidding.**
4. **Reimbursables (Estimate).**
5. **Project Inspection Estimated at Two (2) Weeks.**

**1.02 Electronic Files.** The Engineer shall provide to the client electronic drawing files. Said files shall contain plat and plan information and will be in Autocad Map compatible format. If Engineer's work product exists in electronic or computerized format, or is transferred in electronic or computerized format (CADD), the stamp, seal and signature shall be original and may not be a computer generated copy, photocopy, or facsimile transmission of the original. Original maps or plans with original signatures and seals shall be considered the original documents.

**1.03 Additional Services.** In addition to the above-defined Basic Scope of Services, Client may desire additional services as Project requirements develop. If authorized by the Client and the Engineer, the Engineer shall provide Additional Services which may include, but are not limited to the following:

- 1.
- 2.
- 3.

**1.04 Change in Scope.** In the event there are changes in design criteria and/or geometrics which could not be anticipated by the Client or the Engineer, the scope of the project could vary. If such conditions are encountered, the Engineer shall notify the Client and provide a revised Scope of Services.

## ARTICLE II – CLIENT’S RESPONSIBILITIES

### 2.01 Client’s Responsibilities.

- A. Provide Engineer with all criteria and full information as to Client’s requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Client will require to be included in the Drawings and Specifications; and furnish copies of Client’s standard forms, conditions and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to the Engineer any other available information pertinent to the Project, including reports and data relative to previous designs, or investigations at or adjacent to the Project Site.
- C. Give prompt written notice to Engineer whenever Client observes or otherwise becomes aware of a Hazardous Environmental Condition or of any development that affects the scope or time of performance of Engineer’s services, or any defect or nonconformance in Engineer’s services or in the work of any Contractor.
- D. Arrange for the safe access to and make all provisions for Engineer and Engineer’s employees to enter upon public and private property as required for Engineer to perform services under Agreement.
- E. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer for a Specific Project (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Client deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- F. Obtain reviews, approvals and permits from all governmental authorities having jurisdiction to approve all Phases of the Project designed or specified by the Engineer and such reviews, approvals and consents from others as may be necessary for completion of each Phase of the Project.

## ARTICLE IV – BILLING AND PAYMENT

### 3.01 Method of Payment for Services of Engineer.

- A. *For Basic Services.* The Client shall pay the Engineer for Basic Services according to the following Lump Sum Professional Fee per scope item, plus Reimbursable Expenses as set out in the attached Standard Hourly Rate Schedule:

1. Survey, Base Map Preparation – Easement.....	\$1,500.00
2. Design Engineering and Project Specifications .....	\$8,350.00
3. Bid Project – Address Questions / Comments During Bidding.....	\$1,500.00
4. Reimbursables (Estimate).....	\$ 500.00
5. Project Inspection Estimated at Two (2) Weeks.....	\$5,200.00

*Total Estimated Fees*..... \$17,050.00

- B. *For Additional Services.* Additional Services are not included as part of the Basic Scope of Services and shall be paid for by the Client in addition to payment for Basic Services. The Client shall pay the Engineer for Additional services performed in accordance with the Standard Hourly Rate Schedule attached hereto.
- 3.02 Payment Due.** Invoices shall be submitted by the Engineer monthly, are due upon presentation and shall be considered past due if not paid within thirty (30) calendar days of the invoice date.
- 3.03 Interest.** If payment in full is not received by the Engineer within thirty (30) calendar days of the invoice date, invoices shall bear interest at one-and-one-half (1.5) percent of the PAST DUE amount per month, which shall be calculated from the invoice date. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal.
- 3.04 Disputed Invoices.** In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.
- 3.05 Payment Upon Termination.** In the event of any termination of this Agreement, Engineer will be entitled to invoice the Client and will be paid for all services performed or furnished and all reimbursable expenses incurred through the effective date of termination.

#### ARTICLE IV– GENERAL CONSIDERATIONS

##### 4.01 Standards of Performance.

- A. The standard of care for all professional surveying/engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of Engineer's/Surveyor's 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.
- B. During the Construction Phase, Engineer shall not supervise, direct, or have control over the Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with the Laws and Regulations applicable to Contractor's furnishing and performing the Work.
- C. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the work in accordance with Contract Documents.
- D. Engineer shall not be responsible for the acts or omissions of any Contractor(s), subcontractor, or supplier, or of any of the Contractor's agents or employees or any other persons (except Engineer's own employees) at the Site or otherwise furnishing or performing any of the Contractor's work; or for any decision made on interpretations or

clarifications of the Contract Documents given by Client without consultations and advice of Engineer.

**4.02 Authorized Project Representatives.** Contemporaneous with the execution of this Agreement, Engineer and Client shall designate specific individuals to act as Engineer's and Client's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Client under this Agreement. Such individuals shall have authority to transmit instructions, receive information and render decisions relative to the Project on behalf of each respective party.

**4.03 Use of Deliverables.** Any use or reuse of original or altered CADD design materials by Client, agents of Client, or other parties without the prior review and written approval of Engineer shall be at the sole risk of Client. Further, Client agrees to defend, indemnify and hold Engineer harmless from all claims, injuries, damages, losses, expenses and attorney fees arising out of the unauthorized use, re-use, or modification of these materials.

Client recognizes that designs, plans, and data stored on electronic media including, but not limited to, computer disks and magnetic tapes may be subject to unauthorized use, misuse and uncontrollable deterioration. Upon document approval, Engineer shall submit to Client any deliverables which have been contractually agreed to on electronic media. Client shall have thirty (30) days to inspect such deliverables and notify Engineer of any irregularities in the deliverables. Engineer will correct any such irregularities detected by Client in order to complete the design in accordance with the intent of the Agreement and specifications. At the end of said 30-day inspection period, Engineer shall submit a final set of sealed documents, and any additional services to be performed by Engineer relative to the submitted electronic materials shall be considered additional work, and shall be approved by Client prior to commencing such effort.

CADD submittals to or on behalf of Client will be prepared using Autocad Map, and shall be considered within the Scope of Services in the Agreement. Submittals in other formats and/or other computer environments, and the work-effort related thereto, shall be considered additional work, and shall be approved by Client prior to commencing such effort.

**4.04 Opinions of Probable Cost.** Engineer's opinions of Probable Cost (if any) are to be made on the basis of Engineer's experience and qualifications and represent Engineer's good judgement as an experienced and qualified professional generally familiar with the industry. However, since Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over a Contractor's methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of Probable Cost prepared by Engineer. If Client wishes greater assurance as to Probable Cost, Client shall employ an independent cost estimator as provided in Article II, paragraph Client's Responsibilities.

**4.05 Use of Documents.**

- A. All Documents are instruments of service. Engineer shall retain an ownership and property interest therein (including the right of reuse at the discretion of Engineer) whether or not the Project is completed.
- B. Copies of Documents that may be relied upon by the Client are limited to the printed copies (also known as "hard-copies") that are signed and sealed by the Engineer. Files in electronic media format of text, data, graphics, or of other types that are furnished by Engineer to

Client are only for convenience of Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days of receipt, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. Engineer shall not be responsible to maintain documents stored in electronic media format after acceptance by Client.
- D. When transferring documents in electronic media format, Engineer make no representations as to compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by Engineer at the beginning of the Project.
- E. Client may make and retain copies of Documents for information and reference in connection with use on this specific Project by Client. Such Documents are not intended or represented to be suitable for reuse by Client or others on extension of the Project for which they were prepared or on any other project. Any such reuse or modification without written verification or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Client's sole risk and without liability or legal exposure to Engineer or to Engineer's Consultants. Client shall indemnify and hold harmless Engineer and Engineer's employees from all claims, damages, losses, and expenses, including attorney's fees arising out of or resulting therefrom.
- F. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- G. Any verification or adaptation of the Documents for extensions of the Project for which they were prepared or for any other project will entitle Engineer to further compensation at rates to be agreed upon by Client and Engineer.

**4.06 Delays.** The Client agrees that the Engineer is not responsible for damages arising directly or indirectly from any delays for causes beyond the Engineer's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters; fires, riots, war or other emergencies or acts of God; failure of any government agency to act in timely manner; failure of performance by the Client or Client's contractors or consultants; or discovery of any hazardous substances or differing site conditions.

In addition, if the delays resulting from any such causes increase the cost or time required by the Engineer to perform its services in an orderly and efficient manner, the Engineer shall be entitled to an equitable adjustment in schedule and/or compensation.

**4.07 Termination.** This Agreement may be terminated for cause by either party upon 30 days written notice in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party. If this Agreement is so terminated, the Engineer shall be paid for all services performed up to the effective date of termination.

**4.08 Controlling Law.** The Client and Engineer agree that this Agreement and any legal actions concerning its validity, interpretation and performance shall be governed by the laws of the State

of Kansas. It is further agreed that any legal action between the Client and the Engineer arising out of this Agreement or the performance of the services shall be brought in a court of competent jurisdiction in the State of Kansas.

#### **4.09 Dispute Resolution.**

- A. All claims, disputes, and other matters in controversy between Client and Engineer arising out of or in any way related to this Agreement will be submitted to non-binding mediation as a condition precedent to litigation. Notwithstanding any other provision of the Agreement, Engineer shall have, in addition to any other right or option set forth herein, the right to proceed in creating a lien upon the building or other improvements and upon the real estate on which the building or improvements are situated for the work and labor done and the labor and materials furnished on and to said real estate and to enforce its mechanic's lien pursuant to all rights and remedies available to it under law.
- B. The prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorney's fees, and other related expenses.

**4.10 Limitation of Liability.** In recognition of the relative risks and benefits of the Project to both the Client and the Engineer, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of the Engineer to the Client or anyone claiming by, through, or under the Client for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorney's fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Engineer to the Client shall not exceed the Engineer's total fee for services rendered on this Project. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise permitted by law.

**4.11 Indemnification.** To the fullest extent permitted by law, Client shall indemnify and hold harmless Engineer, Engineer's officers, directors, partners, and employees from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by the negligent acts or omissions of Client and Client's officers, directors, partners, employees and Client's consultants with respect to this Agreement.

**4.12 Notices.** Any notice required under this Agreement shall be in writing, addressed as specified in this Agreement and sent by facsimile; registered, certified, express or regular U.S. mail; or by courier service to the address (or facsimile number) listed in this Agreement. All notices shall be deemed delivered upon the date of receipt by any of the methods specified above to the address or fax number of the recipient listed in this Agreement. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

**4.13 Survival.** All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

**4.14 Severability.** Any provision or part of this Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Client and Engineer, who agree that this Agreement shall be reformed to replace the stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

- 4.15 Successors, Assigns, and Beneficiaries.** The Client and Engineer each binds himself and his partners, successors, executor, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither the Client nor the Engineer will assign, sublet or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the Client and the Engineer.
- 4.16 Waiver.** Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- 4.17 Time for Completion.** The Engineer shall begin work within **five (5)** working days of the execution of this Agreement and will complete all work as outlined in the Basic Scope of Services within **60** days therefrom. Services to be provided under this Agreement and costs related thereto do not allow for delays due to abnormal weather, inefficient or non-responsive review by the Client and review agencies, or unforeseen circumstances not under the direct control of the Engineer.

#### **ARTICLE V – AUTHORIZATION TO PROCEED**

- 5.01 Authorization to Proceed.** By execution of this Agreement Client accepts the terms hereof, acknowledges receipt of a copy hereof, including all Exhibits, and authorizes Engineer to proceed with the work. In the event Client is not the Owner of the Project, Client represents that Client has obtained permission from said Owner for Engineer to proceed.

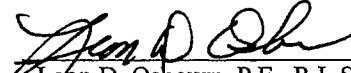
#### **ARTICLE VI – ENTIRE AGREEMENT**

- 6.01 Entire Agreement.** This Agreement, comprising pages **1** through **8**, and Exhibit **A**, is the entire Agreement between the Client and the Engineer. It supersedes all prior communications, understandings and agreements, whether oral or written. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**ENGINEER**

Kaw Valley Engineering, Inc.

By:   
Leon D. Osbourn, P.E., R.L.S.  
Title: President  
Date: 8-26-11

Address for Giving Notice:

Kaw Valley Engineering, Inc.  
2319 North Jackson, P.O. Box 1304  
Junction City, Kansas 66441

Authorized Project Representative:

Name: Leon D. Osbourn, P.E., R.L.S.  
Title: President  
Phone: 785-762-5040  
Fax: 785-762-7744

**CLIENT**

City of Junction City, Kansas

By: \_\_\_\_\_  
Mr. Gregory S. McCaffery  
Title: Assistant City Manager  
Date: \_\_\_\_\_

Address for Giving Notices:

City of Junction City, Kansas  
Post Office Box 287  
Junction City, Kansas 66441

Authorized Project Representative:

Name: Mr. Gregory S. McCaffery  
Title: Assistant City Manager  
Phone: 785-238-3103  
Fax: 785-223-5165