

SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of January 21, 2020 ("Effective Date")
between

Lafayette Redevelopment Commission, City of Lafayette, Indiana ("Owner")

and

TBIRD Design Services Corporation ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

"2020 General On-Call Services".

Engineer's Services under this Agreement are generally identified as follows:

All Professional Services shall be executed by a separate Task Order which, upon execution, will become part of this Agreement. Each Task Order shall define the scope of work, include the proposed fee and type of fee, and anticipated schedule for completing the work defined by the Task Order.

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.

2.01 *Payment Procedures*

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 45 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 45 days after receipt of Engineer's invoice, then the amounts due Engineer may be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from said forty-fifth day. In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due

for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal.

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. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.

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; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the 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.
- 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. Owner shall require Contractor to purchase and maintain general liability and to cause Engineer and Engineer's consultant's to be listed as additional insured's on a primary and non-contributory basis with respect to such liability purchased and maintained by Contractor for the Project.
- G. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- H. To the fullest extent permitted by law, Owner and Engineer (1)waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and

consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall not exceed the available proceeds under any General Liability (including automobile) and Professional Liability Insurance required to be carried by Engineer under this agreement .

- I. Owner and Engineer each agree to indemnify and hold the other harmless, and their respective officers, employees, agents and representatives, from and against liability for all claims, losses, damages, and expenses, including reasonable attorney fees, to the extent such claims, losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors, or omissions. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of the Owner and Engineer, they shall be borne by each party in proportion to its negligence
- J. 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.
- K. The Engineer shall at its own expense maintain in effect during the term of this contract the following insurance with limits as shown or greater
 1. General Liability (including automobile) – combined single limit of \$2,000,000.00. The Owner shall be named as an Additional Insured and be given a 30 day notice of cancellation, non-renewal or significant change of coverage. Engineer's insurance shall be written on a "primary" basis and the Owner's insurance program shall be in excess of all of Engineer's available coverage's.
 2. Worker's Compensation– statutory limit. Workers Compensation shall include a Waiver of Subrogation endorsement in favor of the Owner.
 3. Professional Liability for protection against claims arising out of performance of professional services caused by negligent error, omission, or act in the amount of \$2,000,000.00.
 4. The Engineer shall provide Certificates of Insurance indicating the aforesaid coverage upon request of the Owner.

- L. Investment in Iran. Pursuant to Indiana Code 5-22-16.5, Engineer hereby certifies under penalties of perjury that it does not engage in investment activities in Iran as more particularly described in Indiana Code 5-22-16.5
- M. Compliance with IC 22-5-1.7 – E-Verify Program. Engineer must enroll in and verify the work eligibility status of all newly hired employees of the Engineer through the E-Verify program operated by the United States Department of Homeland Security. If the E-Verify program ceases to exist, the Consultant will not be required to verify the work eligibility status of newly hired employees through the E-Verify program. The Engineer shall execute an affidavit affirming that the Engineer does not knowingly employ an unauthorized alien.(Appendix “B”)
- N. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Engineer.
- O. In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the Owner and the Engineer agree that all disputes between them arising out of or relating to this Agreement or the Project shall be submitted to nonbinding mediation. The Owner and the Engineer further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors, sub consultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution among the parties to all those agreements.

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, not-to-exceed amount, Plus Reimbursable Expenses*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:
 - 1. Engineer’s Standard Hourly Rates are attached in Appendix “A”.

Attachments: Appendix “A”, Engineer's Standard Hourly Rates

Attachments: Appendix “B”, Affidavit: Employment of Unauthorized Aliens

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

OWNER:

By: _____

Title Donald J. Teder

By: _____

Title Jos Holman

By: _____

Title T.J. Thieme

By: _____

Title Shelly Henriott

By: _____

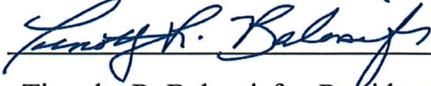
Title Jim Terry

: _____

Date Signed: _____

ENGINEER:

TBIRD Design Services Corporation

By: 

Title Timothy R. Balensiefer, President

Date Signed: January 21, 2020

Address for giving notices:

Dennis Carson, Economic Development Director

515 Columbia St.

Lafayette, IN

765.807.1090

Address for giving notices:

TBIRD Design Services Corp

Timothy R. Balensiefer

105 N. 10th St

Lafayette, IN 47901



Design Services Corporation

Engineering • Surveying • Environmental • Construction Management

EXHIBIT "A"

SCHEDULE OF FEES

January 1, 2020

EMPLOYEE CLASSIFICATION	HOURLY BILLING RATE
Principal	\$170.00
Senior Engineer	\$155.00
Senior Land Surveyor	\$155.00
Engineer	\$130.00
Land Surveyor	\$130.00
Project Designer	\$100.00
CAD Designer	\$90.00
Engineering Intern	\$60.00
Field Services Manager	\$110.00
Field Services Technician	\$90.00
Administrative Assistant/Secretary	\$60.00
Survey Field Crew	\$120.00
Two Man Survey Crew	\$150.00
Three Man Survey Crew	\$210.00
Reimbursable Expenses/Subcontracts	Cost plus 15%
Mileage	IRS Standard Mileage Rate

Notes:

- Hourly billing rate include actual salary or wage, plus cost of benefits, including but not limited to: social security contributions, unemployment, excise and payroll taxes, worker's compensation, health and retirement benefits, bonuses and sick leave, vacation and holiday pay applicable thereto.
- Overtime Rate shall be at a rate of 1.3 of hourly billing rate.
- Services performed specifically for legal proceedings (depositions, expert witness, related preparation of documents pertaining to professional opinions, and etc.) shall be multiplied by a factor of 1.5 times the above hourly billing rate.
- TBIRD's rates are subject to change.

Appendix "B"

AFFIDAVIT RE: EMPLOYMENT OF UNAUTHORIZED ALIENS

The undersigned, to comply with the requirements of Indiana Code 22-5-1.7-11, affirms that

TBIRD Design Services Corp. does not knowingly employ an unauthorized alien.

Dated: January 21, 2020 Signature: *Timothy R. Balensiefer*
Printed Name: **Timothy R. Balensiefer**
Title: **President**
Company: **TBIRD Design Services Corp.**
Address: **105 N. 10th St**
Lafayette, IN 47901

STATE OF INDIANA)
)SS:
COUNTY OF TIPPECANOE)

Before me, a Notary Public in and for said County and State, personally appeared

Timothy R. Balensiefer as President of TBIRD Design Services Corp.,
(Name) (Title) (Company)

who acknowledged the execution of the foregoing instrument, and who, having been duly sworn, stated that any representations therein contained are true.

WITNESS my hand and Notarial Seal this 21st day of January 2020.

My Commission Expires: August 30, 2023

Signature: *Rebecca L. Walker*

Printed: Rebecca L. Walker

County of Residence: Carroll

NOTARY PUBLIC

