

**MASTER AGREEMENT
FOR
PROFESSIONAL SERVICES
(Unlimited)**

THIS AGREEMENT FOR PROFESSIONAL SERVICES shall become effective **DATE**, between the City of Meridian, a municipal corporation organized under the laws of the State of Idaho, hereinafter referred to as "CITY", 33 East Broadway Avenue, Meridian, Idaho 83642, and **CONSULTANT NAME**, hereinafter referred to as "ENGINEER", whose business address is **ADDRESS**.

INTRODUCTION

Whereas, the City has a need for **SERVICES TITLE & CATEGORY** to be defined by individual Task Orders which will set forth Specific Services, Time of Performance and Payment; and

WHEREAS, the ENGINEER is specially trained, experienced and competent to perform and has agreed to provide such services;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties agree as follows:

TERMS AND CONDITIONS

1. Scope of Services:

1.1 Upon execution of this Master Agreement AND any associated Task Order(s) and receipt of the City's written notice to proceed, Engineer shall comply in all respects and perform and furnish to the City, all services listed in any corresponding task order(s) incorporated herein by this reference, together with any amendments that may be agreed to in writing by the parties.

1.2 All documents or materials acquired or produced by the ENGINEER in conjunction with the project shall become the property of, and be delivered to, the CITY without any restrictions or limitations with respect to their further use thereof. All documents or materials prepared for the CITY shall not be distributed by the ENGINEER, sub-engineer's, their agents, representatives or employees to any third party without the express written consent of the CITY. Use of these documents by the CITY on any other project, without written verification or adaptation by the ENGINEER for the specific purpose intended, will be at the City's sole risk and shall be without liability or legal exposure to the ENGINEER. The CITY shall indemnify and hold harmless the ENGINEER from all claims, damages, losses and expenses

including attorney's fees arising out of or resulting from the use of such documents. Any verification or adaptation will entitle the ENGINEER to further compensation at rates to be agreed upon by the CITY and the ENGINEER."

1.3 The ENGINEER shall provide services and work under this Agreement consistent with the requirements and standards established by applicable federal, state and city laws, ordinances, regulations and resolutions. The ENGINEER represents and warrants that it will perform its work in accordance with generally accepted industry standards and practices for the profession or professions that are used in performance of this Agreement and resulting task order(s) in effect at the time of performance of this Agreement and associated task order(s). Except for that representation and any representations made or contained in any proposal submitted by the ENGINEER and any reports or opinions prepared or issued as part of the work performed by the ENGINEER under this Agreement, ENGINEER makes no other warranties, either express or implied, as part of this Agreement.

1.4 Services and work provided by the ENGINEER at the City's request under this Agreement will be performed in a timely manner in accordance with a Schedule of Work, which the parties hereto shall agree to. The Schedule of Work may be revised from time to time upon mutual written consent of the parties.

2. Consideration

2.1 The ENGINEER shall perform the services for a Not-TO-Exceed total fee as outlined in the corresponding Task Order.

2.2 The ENGINEER shall provide the City with a monthly statement, as services warrant, of fees earned and costs incurred for services provided during the billing period, which the City will pay within 30 days of receipt of a correct invoice and approval by the City. The City will not withhold any Federal or State income taxes or Social Security Tax from any payment made by City to ENGINEER under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of ENGINEER.

2.3 Except as expressly provided in this Agreement and corresponding Task Orders, ENGINEER shall not be entitled to receive from the City any additional consideration, compensation, salary, wages, or other type of remuneration for services rendered under this Agreement, including, but not limited to, meals, lodging, transportation, drawings, renderings or mockups. Specifically, ENGINEER shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, paid holidays or other paid leaves of absence of any type or kind whatsoever.

2.4 Any out of town travel required by individual Task Orders will be reimbursed at cost, per the City's existing travel policy. Any requested travel related/meal reimbursement must be accompanied by itemized receipts.

For the purposes of this agreement and resulting task orders, travel between the ENGINEER'S offices and the project site is not considered out of town travel.

3. Time of Performance:

This agreement shall become effective upon execution by both parties, and shall be in effect for a three (3) year period expiring on **DATE**, unless sooner terminated in writing.

4. Independent Contractor:

4.1 In all matters pertaining to this agreement, ENGINEER shall be acting as an independent contractor, and neither ENGINEER nor any officer, employee or agent of ENGINEER will be deemed an employee of CITY. Except as expressly provided in Exhibit A, ENGINEER has no authority or responsibility to exercise any rights or power vested in the City. The selection and designation of the personnel of the CITY in the performance of this agreement shall be made by the CITY.

4.2 ENGINEER shall determine the method, details and means of performing the work and services to be provided by ENGINEER under this Agreement. ENGINEER shall be responsible to City only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to City's control with respect to the physical action or activities of ENGINEER in fulfillment of this Agreement.

5. Indemnification and Insurance:

ENGINEER shall indemnify and save and hold harmless CITY from and for any and all losses, claims, actions, judgments for damages, or injury to persons or property and losses and expenses and other costs including litigation costs and attorney's fees, to the extent caused or arising from, wrongful conduct or negligent acts and/or errors or omissions under this Agreement by the ENGINEER, its servants, agents, officers, employees, guests, and business invitees, and not caused by or arising out of the tortious conduct or negligence of CITY or its employees. ENGINEER shall maintain, and specifically agrees that it will maintain, throughout the term of this Agreement, liability insurance in the minimum amounts as follow: General Liability One Million Dollars (\$1,000,000) per incident or occurrence, Professional Liability / Professional errors and omissions One Million Dollars (\$1,000,000) aggregate, Automobile Liability Insurance One Million Dollars (\$1,000,000) per incident or occurrence and Workers' Compensation Insurance , in the statutory limits as required by law. the CITY shall be named an additional insured on both General Liability and Automotive policies. The limits of insurance shall not be deemed a limitation of the covenants to indemnify and save and hold harmless CITY; and if

CITY becomes liable for an amount in excess of the insurance limits, herein provided, ENGINEER covenants and agrees to indemnify and save and hold harmless CITY from and for all such losses, claims, actions, or judgments for damages or injury to persons or property and other costs, including litigation costs and attorneys' fees, to the extent caused by or arising from the wrongful conduct, negligent performance, and/or errors or omission under this Agreement by the ENGINEER or Engineer's officers, employs, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including use of. ENGINEER shall provide CITY with a Certificate of Insurance, or other proof of insurance evidencing ENGINEER'S compliance with the requirements of this paragraph and file such proof of insurance with the CITY at least ten (10) days prior to the date ENGINEER begins performance of its obligations under this Agreement. In the event the insurance minimums are changed, ENGINEER shall immediately submit proof of compliance with the changed limits. Evidence of all insurance shall be submitted to the City Purchasing Agent with a copy to Meridian City Accounting, 33 East Broadway Avenue, Meridian, Idaho 83642.

- 6. **Notices:** Any and all notices required to be given by either of the parties hereto, unless otherwise stated in this agreement, shall be in writing and be deemed communicated when mailed in the United States mail, certified, return receipt requested, addressed as follows:

City of Meridian
Purchasing Manager
33 E. Broadway Avenue
Meridian, Idaho 83642

CONSULTANT NAME
Attn:
ADDRESS
TELEPHONE
EMAIL

Either party may change their address for the purpose of this paragraph by giving written notice of such change to the other in the manner herein provided.

- 7. **Attorney Fees:** Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorneys' fees as determined by a Court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination or forfeiture of this Agreement.

8. **Assignment:** It is expressly agreed and understood by the parties hereto, that ENGINEER shall not have the right to assign, transfer, hypothecate or sell any of its rights under this Agreement except upon the prior express written consent of CITY.
9. **Discrimination Prohibited:** In performing the Services required herein, ENGINEER shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any person on the basis of race, color, religion, sex, national origin or ancestry, age or disability.
10. **Reports and Information:**
 - 10.1 At such times and in such forms as the CITY may require, there shall be furnished to the CITY such statements, records, reports, data and information as the CITY may request pertaining to matters covered by this Agreement.
 - 10.2 ENGINEER shall maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this or Agreement. This includes any handwriting, typewriting, printing, photo static, photographic and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.
11. **Audits and Inspections:** At any time during normal business hours and as often as the CITY may deem necessary, there shall be made available to the CITY for examination all of ENGINEER'S records with respect to all matters covered by this Agreement. ENGINEER shall permit the CITY to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.
12. **Publication, Reproduction and Use of Material:** No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The CITY shall have unrestricted authority to publish, disclose and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.
13. **Compliance with Laws:** In performing the scope of services required hereunder, ENGINEER shall comply with all applicable laws, ordinances, and codes of Federal, State, and local governments.
14. **Public Information:** Pursuant to Idaho Code Section 9-335, et seq., information or documents received from the Contractor may be open to public inspection and

copying unless exempt from disclosure. The Contractor shall clearly designate individual documents as "exempt" on each page of such documents and shall indicate the basis for such exemption. The State will not accept the marking of an entire document as exempt. In addition, the State will not accept a legend or statement on one (1) page that all, or substantially all, of the document is exempt from disclosure. The Contractor shall indemnify and defend the State against all liability, claims, damages, losses, expenses, actions, attorney fees and suits whatsoever for honoring such a designation or for the Contractor's failure to designate individual documents as exempt. The Contractor's failure to designate as exempt any document or portion of a document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any such release.

15. Changes: The CITY may, from time to time, request changes in the Scope of Services to be performed hereunder. Such changes, including any increase or decrease in the amount of ENGINEER'S compensation, which are mutually agreed upon by and between the CITY and ENGINEER, shall be incorporated in written amendments to this Agreement.

16. Termination: The termination clauses listed below (Section 16.1 through 16.3) shall apply to this agreement and any resulting task order written in conjunction with this agreement.

16.1 If, through any cause, ENGINEER, its officers, employees, or agents fails to fulfill in a timely and proper manner its obligations under this Agreement, violates any of the covenants, agreements, or stipulations of this Agreement, falsifies any record or document required to be prepared under this agreement, engages in fraud, dishonesty, or any other act of misconduct in the performance of this contract, or if the City Council determines that termination of this Agreement is in the best interest of CITY, the CITY shall thereupon have the right to terminate this Agreement by giving written notice to ENGINEER of such termination and specifying the effective date thereof at least fifteen (15) days before the effective date of such termination. ENGINEER may terminate this agreement at any time by giving at least sixty (60) days notice to CITY.

16.2 In the event of any termination of this Agreement, all finished or unfinished documents, data, and reports prepared by ENGINEER under this Agreement shall, at the option of the CITY, become its property, and ENGINEER shall be entitled to receive just and equitable compensation for any work satisfactorily complete hereunder.

16.3 Notwithstanding the above, ENGINEER shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of this Agreement by ENGINEER, and the CITY may withhold any payments to ENGINEER for the purposes of set-off until such time as the exact amount of damages due the CITY

from ENGINEER is determined. This provision shall survive the termination of this agreement and shall not relieve ENGINEER of its liability to the CITY for damages.

17. **Construction and Severability:** If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.
18. **Advice of Attorney:** Each party warrants and represents that in executing this Agreement. It has received independent legal advice from it's attorney's or the opportunity to seek such advice.
19. **Entire Agreement:** This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.
20. **Resulting Task Orders and Survival:** All Task Orders resulting from this Master Agreement and executed by both parties during the term of this Master Agreement will be bound to the terms and conditions of the Master Agreement until all tasks are completed and accepted by the City whether or not the Master Agreement is terminated or unless tasks are canceled via a change order.
21. **Applicable Law:** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Idaho, and the ordinances of the City of Meridian.
22. **Approval Required:** This Agreement shall not become effective or binding until approved by the City of Meridian.

CITY OF MERIDIAN

CONSULTANT

BY: _____
KEITH WATTS, Purchasing Manager

BY: _____

Dated: _____

Dated: _____

Public Works Department Approval

BY: _____
KYLE RADEK, Assistant City Engineer

Dated: _____

Approved as to Form

CITY ATTORNEY

SAMPLE