

HWC ENGINEERING
BMO Plaza
135 North Pennsylvania Street, Suite 2800
Indianapolis, IN 46204
(317) 347-3663

MEMORANDUM OF AGREEMENT FOR ENGINEERING SERVICES

Client: City of Charlestown Redevelopment Commission
Client Address: 304 Main Cross Street, Charlestown, IN 47040
Project Name: On-Call Engineering Services
Project Number: 2023-002-S

Services to be provided: General engineering consulting services as outlined in the Scope of services included in Appendix "A" attached.

Schedule: "As Needed" Basis - Tasks to be completed in correlation with INDOT's schedule.

Fees: Hourly, Time & Material, Not to Exceed \$ 30,000
2022 HWC Billing Rates included as Appendix "B"

Invoicing/Payments: Billing is monthly unless otherwise noted. Payments are due within 30 days of invoice receipt. The rates identified in this Agreement are subject to change each December 31st without notification or modification to this Agreement. If a maximum fee amount is indicated, this amount will not be exceeded without further authorization by the client. The terms and conditions under which we are providing these services are set forth on pages 2 - 3 and are incorporated herein by reference. Additional services requested or unusual problems or difficulties may necessitate a higher fee.

The above is intended as a summary of our agreement for the performance of the work described. Please examine same carefully and, if accurate, indicate your approval and acceptance in space provided below.

HWC ENGINEERING, INC.

Date: December 19, 2022
Printed Name & Title: Terry M. Baker, President

CLIENT:

The undersigned hereby states that they are the person or duly authorized agent of the person or organization contracting for the above services for the above-described project and that the terms and conditions stated are understood and herewith agreed to and accepted. HWC Engineering, Inc. is hereby authorized to proceed with the services outlined herein.

Date: _____ By: _____
Printed Name & Title: Dr. Treva Hodges, Mayor



TERMS AND CONDITIONS

To assure an understanding of matters related to our mutual responsibilities these terms and conditions for professional engineering services are part of this agreement for our services.

COMPENSATION FOR HWC's SERVICES - The basis for compensation will be as identified in the agreement. When "Lump Sum" payment is utilized it shall include all labor and expenses (for the scope of work as defined in the agreement) incurred by **HWC** and shall not exceed the fixed payment amount without prior authorization of the **CLIENT**. When hourly (no limit) and hourly not-to-exceed (NTE) is utilized, all labor and reimbursable expenses will be billed according to the rate schedule attached to this agreement.

"Reimbursable Expenses" means the actual expenses incurred directly or indirectly in connection with the work including but not limited to the following: Transportation and subsistence, toll telephone calls, facsimile transmissions, reproduction or printing, **HWC's** computer time, and outside aerial photographs or topography, testing, geotechnical, layout, inspection, and other outside consultants.

TIME OF PAYMENT - **HWC** may submit monthly statements for services and expenses based upon the proportion of the actual work completed at the time of billing. If the **CLIENT** fails to make any payment due **HWC** for services and expenses within 30 days after receipt of **HWC's** invoice the amounts due **HWC** will be increased at the rate of 1.5% per month from the thirtieth day from invoicing. In addition, **HWC** may, after giving fourteen days written notice to **CLIENT**, suspend services under this Agreement until **HWC** has been paid in full all amounts due for services, expenses, and other related charges. 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.

If the **CLIENT** fails to make payments when due and **HWC** incurs any costs in order to collect overdue sums from the **CLIENT**, the **CLIENT** agrees that all such collection costs incurred shall immediately become due and payable to **HWC**. Collection costs shall include, without limitation, legal fees, collection agency fees and expenses, court costs, collection bonds and reasonable **HWC** staff costs at standard billing rates for **HWC's** time spent in efforts to collect. This obligation of the **CLIENT** to pay **HWC's** collection costs shall survive the term of this Agreement or any earlier termination by either party.

INDEMNITIES - **HWC** and the **CLIENT** 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 addition to the indemnity of this Agreement, and to the fullest extent permitted by law, **CLIENT** shall indemnify and hold harmless **HWC**, **HWC's** Subconsultants and the officers, directors, partners, employees of **HWC**, from and against 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, arising out of or resulting from the presence of asbestos, toxic materials, or any other hazardous, toxic or dangerous environmental condition, on or about the Project site (the "Site"), whether known or unknown to **CLIENT**, provided that nothing in this Article shall obligate **CLIENT** to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

The **CLIENT** agrees to extend any and all liability limitations and indemnifications for performance of services under this Agreement to, in and including, but not limited to **HWC's** officers and employees, their heirs and assigns, and **HWC's** Subconsultant's their heirs and assigns.

USE AND OWNERSHIP - All reports, tables, figures, drawings, specifications, boring logs, field data, field notes, laboratory test data, calculations, estimates and other documents (hereinafter "Documents") prepared by **HWC** as instruments of service shall remain the property of **HWC**. The **CLIENT** shall be entitled to copies or reproducible sets of any of the Documents for information and reference in connection with use on the Project by **CLIENT**.

HWC will retain all pertinent records relating to the services performed for a period of five (5) years following performance of work, during which period the records will be made available to the **CLIENT** at all reasonable times for inspection or copying.

HWC agrees that the **CLIENT** is not required to use any plan, report, drawing, specifications, advice, map, document or study prepared by **HWC** and **HWC** waives all right of redress against the **CLIENT** if the **CLIENT** does not utilize same. Such Documents are not intended or represented to be suitable for reuse by **CLIENT** or others on extensions of the Project or any other project. Any such reuse or modification without written verification or adaptation by **HWC**, as appropriate for the specific purpose intended, shall be at **CLIENT's** sole risk and without liability or legal exposure to **HWC**. **CLIENT** shall indemnify and hold harmless **HWC** from all claims, damages, losses and expenses, including attorney's fees arising out of or resulting there from.

CLIENT hereby acknowledges that due to the status of the Documents as instruments of professional service and the value associated therewith such designation, that **HWC** is entitled to enforce the prohibition against misuse of the Documents by **CLIENT** by obtaining an injunction to enjoin and restrain the unauthorized use of the Documents. Additionally, the improper utilization of the Documents hereunder shall be considered to be a breach of this Agreement and entitle **HWC** to all rights and remedies provided herein.

Any verification or adaptation of the Documents for extensions of the Project or for any other Project shall entitle **HWC** to further compensation at rates to be agreed upon by **CLIENT** and **HWC**.

PROFESSIONAL RESPONSIBILITY - **HWC** will exercise reasonable skill, care, and diligence in the performance of services and will carry out all responsibilities in accordance with customarily accepted professional engineering practices. Failure by the **CLIENT** to report any defect or suspected defect to **HWC** within one (1) year from the completion of **HWC's** services for the Project shall relieve **HWC** of the obligation to cure the defect or suspected defect or any costs associated with the efforts to cure the defect or suspected defect.

Neither the professional activities of **HWC**, nor the presence of **HWC** or its employees and sub-consultants at a construction/project site, shall relieve the construction professional or company contracted (hereinafter "**CONTRACTOR**") with the **CLIENT** to provide construction services of its obligations, duties and responsibilities, including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the work in accordance with the contract documents and any health or safety

precautions required by any regulatory agencies. **HWC** and its personnel have no authority to exercise any control over the **CONTRACTOR** or its employees in connection with their work or any health and safety programs or procedures. The **CLIENT** agrees that the **CONTRACTOR** shall be solely responsible for job site safety and warrants that this intent shall be carried out in the **CLIENT's** contract with the **CONTRACTOR**. The **CLIENT** also agrees that the **CLIENT**, **HWC** and **HWC's** sub-consultants shall be indemnified by the **CONTRACTOR** and shall be made additional insureds under the **CONTRACTOR's** policies of general liability insurance.

HWC shall not be required to sign any documents, no matter by whom requested, that would result in **HWC** having to certify, guarantee or warrant the existence of conditions whose existence **HWC** cannot ascertain. The **CLIENT** also agrees not to make resolution of any dispute with **HWC** or payment of any amount due to **HWC** in any way contingent upon **HWC's** signing any such certification.

HWC shall not be responsible for errors, omissions or deficiencies in the designs, drawings, specifications, reports or other services of the **CLIENT** or other consultants, including, without limitation, surveyors and geotechnical engineers, who have been retained separately by **CLIENT**. **HWC** shall have no liability for errors or deficiencies in its designs, drawings, specifications and other services that were caused, or contributed to, by errors or deficiencies (unless such errors, omissions or deficiencies were known or should have been known by **HWC**) in the designs, drawings, specifications and other services furnished by the **CLIENT**, or other consultants retained by the **CLIENT**. Additionally, **HWC** shall not be responsible for the use of the Documents by **CLIENT**, or consultants retained by the **CLIENT**, for any purposes other than in conjunction with the Project.

HWC's opinions of probable construction costs provided under this Agreement are to be made on the basis of **HWC's** experience and qualifications and represent **HWC's** best judgment as an experienced and qualified professional within the industry. However, since **HWC** has no control over the cost of labor (including but not limited to wage scales for public works projects), materials (or changes in materials requested by **CLIENT**), equipment or services furnished by others, changes in applicable laws (including, but not limited to, building codes, flood plain designation, etc.) or over the **CONTRACTOR's** methods of determining prices or over competitive bidding or market conditions, **HWC** cannot and does not guarantee that proposals, bids or actual construction cost will not vary from opinions of probable construction costs prepared by **HWC**.

ABANDONMENT - Services may be terminated by the **CLIENT** and **HWC** by thirty (30) days' 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 so long as such nonperformance has not been caused by delays outside of the control of **HWC**. If so abandoned, **HWC** shall deliver to the **CLIENT** copies of all data, reports, drawings, specifications and estimates completed or partially completed along with a summary of the progress of the work completed within twenty (20) days of the abandonment. In the event of the failure by **HWC** to make such delivery upon demand, then and in that event **HWC** shall pay to the **CLIENT** any damages sustained by reason thereof. The earned value of the work performed shall be based upon an estimate of the portions of the total services as have been rendered by **HWC** to the date of the abandonment for all services to be paid for on a lump sum basis. **HWC** shall be compensated for services properly rendered prior to the effective date of abandonment on all services to be paid on a cost basis or a cost plus fixed fee basis. The payment as made to **HWC** shall be paid as the final payment in **CLIENT's** full settlement and release for the services hereunder unless otherwise provided hereunder.

INSURANCE - **HWC** shall procure and maintain Professional liability insurance for claims arising from the negligent performance of professional services under this Agreement, which shall be either: General Office Coverage or Project Specific Professional Liability Insurance, with a per occurrence limit of not less than \$2,000,000.00. The Professional Liability Insurance shall contain prior acts coverage sufficient to cover all Services performed by **HWC**, and Worker's Compensation, disability benefit, or any other similar employee benefit laws, including bodily injury, occupational sickness or disease of an employee; Commercial General Liability Insurance, with a per occurrence limit of not less than \$1,000,000.00; Additionally, **HWC** shall require its Subconsultants to maintain Commercial General Liability and Comprehensive Automobile Liability coverage equal to or greater than **HWC**.

CLIENT shall procure and maintain Commercial General Liability Insurance, with a per occurrence limit of not less than \$2,000,000.00; shall cause **HWC** and **HWC's** Consultants to be listed as additional insured on any general liability or property insurance policies carried by **CLIENT** which are applicable to the Project; shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause **HWC** and **HWC's** Consultants to be listed as additional insured with respect to such liability and other insurance purchased and maintained by Contractor for the Project.

CLIENT and **HWC** shall each deliver to the other certificates of insurance evidencing the coverage indicated in this Agreement. Such certificates shall be furnished prior to commencement of **HWC's** services and at renewals thereafter during the life of the Agreement.

All policies of property insurance shall contain provisions to the effect that **HWC's** and **HWC's** Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insured's or additional insured's there under.

DISPUTES - All claims or disputes of **HWC** and the **CLIENT** arising out of or relating to the Agreement, or the breach thereof after notice and a reasonable opportunity to cure, shall be first submitted to non-binding mediation. If a claim or dispute is not resolved by mediation, the party making the claim or alleging a dispute shall have the right to institute any legal or equitable proceedings in a court located in Clark County, Indiana.

AMENDMENTS - This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and shall be deemed to supersede all prior and contemporaneous agreements, representations and understandings, whether written or oral, and the same shall be deemed to have been merged into this Agreement. No amendment or modification to this Agreement shall have any force or effect unless in writing and signed by both the **CLIENT** and **HWC**.

E-VERIFY AND DEALING WITH THE GOVERNMENT OF IRAN AFFIDAVIT. **HWC** verifies compliance with E-Verify and the Dealing with the Government of Iran regulations required by Indiana Code Sections 22-5-1.7-11 and 5-22-16.5-11.

APPENDIX "A"

Scope of Services

HWC shall provide general engineering consulting services to the **CLIENT** related to transportation and/or infrastructure projects on an "as needed" basis as directed by the **CLIENT**. The fee for these basic services shall be based upon the actual number of hours expended (including mileage expenses, if applicable) and the appropriate hourly rate as further defined in Appendix "B" and shall not exceed a total of **thirty thousand dollars and no cents (\$30,000)** during the life of this agreement without written approval.

No work will be performed under this agreement without authorization from the **CLIENT**. Email is acceptable for the purpose of documenting directed work.

At the **CLIENT**'s request, larger individual projects may be defined and negotiated separately. Each individual project excluded from the retainer agreement assigned by the **CLIENT** to **HWC** will require separate authorization by the **CLIENT** following negotiation with **HWC**. Said authorization by the **CLIENT** can be made verbally but must be followed with a written agreement within thirty (30) days.

Notations, Exceptions, and Assumptions

The Design Professional, acting as the County Engineer, when acting in good faith in the discharge of his or her duties, shall not thereby render himself or herself liable personally and is, to the maximum extent permitted by law, relieved from all liability for any damage that may accrue to persons or property by reason of any act or omission in the discharge of his or her duties. Any suit brought against the Design Professional because of the acts or omissions performed by him or her in the enforcement of any provisions of the County Statutes or Building Codes shall be defended by the legal department of the County until final termination of the proceedings. The Design Professional shall be entitled to all defenses and municipal immunities that are, or would be, available to the County if the same services were provided by County employees.

HWC Engineering
2022 Hourly Billing Rates

POSITION	HOURLY RATE
Principal	\$ 225.00
Division Manager	\$ 210.00
Sr Project Manager	\$ 200.00
Project Manager	\$ 170.00
Project Engineer I	\$ 145.00
Project Engineer II	\$ 115.00
Sr Designer/Technican	\$ 125.00
Designer/Technican	\$ 110.00
Project Coordinator	\$ 85.00
Landscape Architect I	\$ 135.00
Landscape Architect II	\$ 110.00
Planner I	\$ 135.00
Planner II	\$ 100.00
Project Surveyor	\$ 130.00
Survey Crew Lead I	\$ 120.00
Survey Crew Lead II	\$ 100.00
Survey Crew Member I	\$ 85.00
Survey Crew Member II	\$ 70.00
Clerical Support	\$ 80.00
Inspection Manager	\$ 140.00
Construction Inspector I	\$ 115.00
Construction Inspector II	\$ 100.00
Intern	\$ 56.00

REIMBURSABLE EXPENSES

- Direct Travel Expense - including mileage (the current rate allowed by the IRS), air fare, car rental, lodging, meals, large blueprint and copying runs, etc.
- Large format black and white prints at \$.40 per square foot.
- Plots at \$2.00 per square foot.
- Black and white copies at \$.10 per sheet.
- Color copies at \$.50 per sheet.
- USBs at \$25.00 each.
- Actual cost of photographs, postage and other expenses.
- Expenses will be billed at cost plus a 10% administrative fee.
- Hours worked in excess of 8 hours per day or 40 hours per week will be billed at an overtime rate of 1.5 times the rates listed for non-exempt employees.