

ENGINEERING SERVICES WORK AUTHORIZATION AGREEMENT

Allgeier, Martin and Associates, Inc., (hereinafter called the Engineer) is pleased to provide the engineering services described herein. This Agreement provides authorization to proceed with the work and confirms the terms and conditions under which the services are provided. General Conditions are attached hereto, incorporated herein and made part of this Agreement.

Compensation will be based on the attached rate schedule and as outlined in the Proposal Letter. If it is necessary to modify the scope of the project during the execution of the work, we will promptly seek a mutually agreeable revision of the scope of work and the associated fees.

Maximum Fee: \$ \$85,000

By: _____ Date: May 5, 2022
Michael Atkinson, P.E.
Vice President

ALLGEIER, MARTIN and ASSOCIATES, INC. JOPLIN, MISSOURI

PROJECT NAME: Aurora Recreation and Event Center – Civil Engineering Services

PROJECT LOCATION: Aurora, Missouri

FOR PAYMENT OF CHARGES: Invoice to the Account of: (hereinafter called the Client)

CLIENT: City of Aurora, MO

ATTN: Mr. Jon Holmes

STREET ADDRESS: 2 W Pleasant Street

CITY: Aurora STATE: MO ZIP CODE: 65605

WORK AUTHORIZED BY:

Date

Jon Holmes, City Manager
Name and Title

Signature

SCOPE OF WORK:

Basic Engineering Services outlined in Proposal Letter to Mr. Jon Holmes, City Manager dated May 5, 2022.

GENERAL CONDITIONS

AGREEMENT. These General Conditions are a part of the agreement (“Agreement”) between Allgeier, Martin & Associates, Inc. (“Engineer”) and Client, as set forth in the Letter of Agreement/Proposal for the project in question (“Project”).

PAYMENT. Payment is due within ten (10) days of receipt of Engineer’s invoice. If payment is not received within thirty (30) days from the invoice date, Client agrees to pay late fees of 1.5% per month and reasonable attorney’s fees and costs of collection. In the event Client terminates this Agreement for convenience, Client will fully compensate Engineer for all costs incurred up to the termination date plus a 10% termination charge.

INSURANCE. Engineer will maintain Worker's Compensation and Employer's Liability Insurance in conformance with applicable state law, professional liability insurance with coverage of \$5,000,000 per claim and general aggregate, Comprehensive General Liability Insurance with coverage of \$1,000,000 per occurrence and general aggregate, and Automobile Liability Insurance with coverage of \$1,000,000 per accident. Upon request, Engineer will provide certificates of insurance evidencing such coverage.

MUTUAL WAIVER OF SUBROGATION. To the extent that any damages are covered by property insurance during or after the completion of Engineer’s services, Client and Engineer waive all rights, including rights of subrogation, against each other and all contractors, consultants, and employees of the other, except for rights they may have to the proceeds of that insurance. Client and Engineer shall require the same waiver by their respective contractors, subcontractors, and consultants.

STANDARD OF CARE. Engineer will use that degree of care and skill ordinarily exercised by members of its profession under the same or similar circumstances. No other warranty, expressed or implied, is made or intended by Engineer.

LIMITATION OF LIABILITY. IN RECOGNITION OF THE RELATIVE RISKS, REWARDS AND BENEFITS OF THE PROJECT TO BOTH CLIENT AND ENGINEER, TO THE FULLEST EXTENT PERMITTED BY LAW AND FOR ADEQUATE CONSIDERATION, THE TOTAL LIABILITY OF ENGINEER AND ITS AGENTS, EMPLOYEES, AND CONSULTANTS, TO CLIENT FOR ANY AND ALL INJURIES, CLAIMS, LOSSES, EXPENSES, DAMAGES, FROM ANY CAUSE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), GROSS NEGLIGENCE, STRICT LIABILITY OR OTHER CAUSE OF ACTION, IN ANY WAY PERTAINING TO OR ARISING OUT OF THE PERFORMANCE OF SERVICES UNDER THIS AGREEMENT, SHALL NOT EXCEED THE TOTAL FEES PAID TO ENGINEER BY CLIENT.

RIGHT-OF-WAY. Unless otherwise agreed, Client will furnish right-of-entry on the property for Engineer to make the necessary surveys, test, and/or explorations. Engineer will take reasonable precautions to minimize damage to the property caused by its operations, but Engineer has not included in its fee the cost of restoration of damage, that may result.

OWNERSHIP OF DOCUMENTS. All documents, including, but not limited to drawings, specifications, reports, field notes, calculations and estimates (“Instruments of Service”) prepared by the Engineer shall be the sole property of the Engineer. Engineer grants to Client a nonexclusive license to use the Instruments of Service solely for the purpose of constructing the Project, provided that Client substantially performs its obligations under this Agreement, including prompt payment of all sums when due. If Client does not fulfill its payment obligations to Engineer, Client will return all Instruments of Service upon demand and not use them for any purpose. The Instruments of Service are not intended or represented to be suitable for reuse by Client or others on extensions to or modifications of the Project or on any other project. Any reuse or modification without the prior written consent of Engineer will be at Client’s sole risk and without any liability of Engineer or its consultants. Client shall defend, indemnify, and hold harmless Engineer and its employees and consultants against all claims, losses, damages, injuries, and expenses arising out of or resulting from such reuse or modification.

OBSERVATION OF WORK. Any observation of construction work is for the purpose of becoming generally familiar with the progress and quality of the work and to determine, in general, if the work, when completed, will comply with the applicable contract documents. The contractor will be solely and completely responsible for

working conditions on the job site, including safety of all persons and property during the performance of the work and compliance with OSHA regulations. Any monitoring of the contractor's procedures by Engineer is not intended to include review of the adequacy of the contractor's safety measures at or near the Project site. Engineer shall not be responsible for construction means, methods, techniques, sequences, procedures, safety precautions or programs, or a contractor's failure to perform its work in accordance with the drawings and specifications or applicable laws, all of which shall remain the sole responsibility of the contractor.

BETTERMENT/ADDED VALUE. If Engineer negligently omits a required item or component of the Project from the Instruments of Service, Client will be responsible for the amount it would have paid if the item had been included in Engineer's original design. In addition, Engineer will not be responsible for any upgrade or enhancement of an item or component.

CONSEQUENTIAL DAMAGES. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, Client and Engineer waive any and all claims against each other and their agents, employees, and consultants, whether based on contract, indemnity, warranty, tort (including negligence), gross negligence, strict liability or other cause of action, for indirect, incidental, punitive, or consequential damages, including, without limitation, loss of use, income, profits, business, reputation, financing, and production, claims by customers of Client, and governmental fines or penalties.

DELAY IN PERFORMANCE. Neither Client nor Engineer shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. If such delay increases the cost or time required by Engineer to perform its services in an orderly and efficient manner, Engineer shall be entitled to a reasonable adjustment of the schedule and Engineer's fee.

TERMINATION AND SUSPENSION. This Agreement may be terminated by either party upon seven (7) days' written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement. The failure of Client to make any payment when due shall constitute a substantial breach of this Agreement. In the alternative, Engineer may, at its option and without waiving the right to terminate, suspend all services for non-payment on seven (7) days' written notice. Client may also terminate this Agreement for its convenience upon seven (7) days' written notice.

GOVERNING LAW. This Agreement shall be interpreted in accordance with the laws of the State of Missouri, excluding its choice-of-law principles.

DISPUTE RESOLUTION. All disputes arising out of or relating to this Agreement shall be submitted to nonbinding mediation as a condition precedent to any legal action by either party. Unless the parties agree otherwise, the mediation shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. The costs of the mediator's services will be shared equally between Client and Engineer. Any litigation between the parties shall be filed in the federal or state courts of Missouri.

ACCRUAL OF CAUSES OF ACTION. Causes of action between the parties shall accrue, and applicable statutes of limitation shall commence to run, on the date that Engineer's Services are substantially complete under this Agreement or the date when the Project is substantially complete, whichever occurs first.

THIRD PARTIES. Nothing in this Agreement shall be construed to provide any rights or benefits to anyone other than Client and Engineer.

SEVERABILITY. The invalidity, illegality, or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular provision held to be void.

EXTENT OF AGREEMENT. This Agreement represents the entire and integrated agreement between Engineer and Client and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by Engineer and Client.