

## CONSULTING AGREEMENT

This **CONSULTING AGREEMENT** (this “*Agreement*”) is entered into and effective as of this \_\_\_th day of \_\_\_\_\_, 20\_\_\_, (the “*Effective Date*”) by and between the City of Reading, Pennsylvania, a Municipal Corporation organized and existing under the laws of the Commonwealth of Pennsylvania (the “*Owner*”), and \_\_\_\_\_, a \_\_\_\_\_ (the “*Consultant*”).

### **Background**

The Owner desires to engage the Consultant for the delivery of consulting and engineering services for the project management, engineering and planning services associated with the \_\_\_\_\_ in accordance with the requirements set forth in a Request for Proposals – \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_ (“*RFP*”), attached hereto as Exhibit A and incorporated herein and Consultant’s proposal thereto, attached hereto as Exhibit B and incorporated herein (collectively, the “*Services*”).

### **Agreement**

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, the parties agree as follows:

1. **Engagement; Scope of Services.** Subject to the terms and conditions set forth in this Agreement, the Owner hereby engages the Consultant to perform the Services for the Owner consistent with the terms of this Agreement.

2. **Performance of Services.**

(a) The Consultant shall perform the Services in accordance with the terms of this Agreement and in coordination and/or conjunction with those services rendered by the Owner and its authorized representatives, agents or other consultants. The Consultant shall fully cooperate with the Owner’s authorized representatives, agents or other consultants in relation to the performance of their respective contractual obligations to the Owner. The Owner’s retention of other consultants shall not relieve the Consultant of its responsibilities under this Agreement or entitle the Consultant to an adjustment in the schedule, the Services, or the Consultant’s compensation.

(b) Consistent with the schedule set forth in the RFP, the Consultant shall initially submit the deliverables associated with the Services to the Owner for comments no later than \_\_\_\_\_ days after the Effective Date. Time is of the essence in connection with each and every performance obligation of the Consultant under this Agreement.

(c) The Consultant shall follow the highest standards of the profession in performing the Services. The Consultant shall perform its Services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Services.

(d) Upon the Owner's request, the Consultant shall develop, organize and maintain throughout the term of this Agreement and at least 180 days thereafter (“*Time Period*”),

a secure and private electronic data, information and document storage database (e.g., Microsoft SharePoint) for all documents or data used or created in connection with the Services (“**Electronic Database**”). The Consultant shall ensure that the Owner and its employees and agents have remote internet access to the Electronic Database at all times during the Time Period. Notwithstanding the foregoing, the Owner or its agents may develop an Electronic Database. Upon the Owner’s request, the Consultant shall, consistent with the Owner’s directions, upload all documents or data used or created in connection with the Services to such Electronic Database. Notwithstanding any dispute, claimed breach or other disagreement between the parties, the Consultant shall continuously comply with the obligations set forth in this Paragraph 2(d). The Consultant agrees that any failure to do so shall be grounds for the Owner to seek from a court immediate injunctive relief.

3. **Compensation.**

(a) The Owner shall pay the Consultant for the Services performed in compliance with the terms hereof in accordance with the schedule set forth on Exhibit C, attached hereto and incorporated herein. Each month, the Consultant shall submit a detailed invoice to Owner, which identifies the specific tasks of the Services performed by the Consultant and/or its Subconsultants (as defined in Paragraph 17) in the preceding month. Each invoice shall clearly set forth the detail of how each task was completed, describing the portion of the task completed, the value associated therewith, the percentage of each task completed and the computations for determining the fee due, any supporting documentation and the overall percentage of the Services completed as of the date of such invoice. The invoice shall also identify the portion of each task yet to be completed, the value associated therewith, and the percentage completed. No payments made under this Agreement shall be evidence of the proper performance of this Agreement, either wholly or in part, and no payment, including the final payment, shall be construed to be an acceptance of defective or improper Services or relieve the Consultant of its responsibility to perform the Services in a professional manner and in accordance with the terms of this Agreement.

(b) In the event of any dispute between the Owner and the Consultant as to the percentage or quality of work completed or the absence of supporting documentation, the Owner shall not be obligated to pay the amount in dispute until a final resolution of the dispute. Unless the parties expressly agree otherwise in writing, in the event a dispute arises under this Agreement in connection with payments to be made on any invoice, or otherwise, the Consultant, shall continue to perform its duties and responsibilities under this Agreement, including, without limitation, the Services, during the pendency of such dispute.

4. **Equipment and Supplies.** The Consultant shall supply any equipment and supplies required to render the Services, except as otherwise provided herein.

5. **Permits and Licenses.** The Consultant shall, at its expense, pay all fees and procure all necessary licenses and permits needed to conduct the Services, except as specifically set forth in the RFP. The Consultant shall give any and all necessary formal notices required in conjunction with the lawful prosecution of the Services.

6. **Term.** This Agreement shall commence as of the Effective Date, and it shall continue in effect until (i) such time when the Services have been completed in their entirety, or (ii) this Agreement is terminated in accordance with the provisions of Sections 13 or 15(c) hereof, whichever is earlier (the “*Term*”).

7. **Independent Contractor.** The Consultant is an independent contractor and shall not be deemed an employee of the Owner. Neither party shall be responsible for the acts or omissions of the other party hereto nor the acts or omissions of the employees or agents of the other party hereto. Neither party shall have the authority to speak for, represent or obligate the other party hereto in any way without either the express prior written consent of or written ratification by the other party.

8. **Confidentiality and Non-Disclosure.**

(a) In connection with the provisions of the Services to the Owner, the Consultant will have access to certain “Confidential Information” (as defined herein). For purposes of this Agreement, “*Confidential Information*” means all information of the Owner (or information of another party which the Owner has in its possession) that the Owner identifies to the Consultant as confidential and/or proprietary information, regardless of whether such information was or is transmitted orally, in writing, electronically or other form, or whether such information was or is tangible or intangible or observed.

(b) The Consultant may not release any Confidential Information, nor publish any report or documents relating to the Owner or the performance of the Services without prior written consent of the Owner. The Consultant shall indemnify and hold harmless the Owner, its officers, agents, and employees from all liability which may be incurred by reason of the Consultant’s unapproved dissemination, publication and distribution, or circulation, in any manner whatsoever, of any Confidential Information by the Consultant or its agents or employees.

(c) Notwithstanding Sections 8(a) and 8(b), the Consultant shall not have any obligations under this Agreement with respect to information which (i) is already known to the Consultant (as evidenced by the Consultant’s prior written records) or is publicly available at the time of disclosure; (ii) is disclosed to the Consultant by a third party, unless the Consultant is aware that the third party is subject to an obligation of confidentiality with respect to such information; (iii) becomes publicly available after disclosure through no act of the Consultant; or (iv) is independently developed by the Consultant without breach of this Agreement. Notwithstanding Sections 8(a) and 8(b), the Consultant may use and disclose any information (i) to the extent required by an order of any court or other governmental authority, or (ii) as necessary for the Consultant to protect its interest in this Agreement, but in each case only after the Owner has been so notified and had the opportunity to obtain reasonable protection for such information in connection with such disclosure.

9. **Copyrights and Licenses.**

(a) If the Owner and the Consultant intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

(b) Drawings, specifications, reports, data and other documents, including, without limitation, those in electronic form, prepared by the Consultant and/or its Subconsultants in connection with the Services are the property of the Owner who shall be vested with all common law, statutory and other reserved rights. At the Owner's request, the Consultant and/or its Subconsultants shall provide the Owner and any third party designated by the Owner, a full and complete release, in a form and substance acceptable to the Owner, of any and all rights the Consultant and/or its Subconsultants may have to the drawings, specifications, reports, data and other documents prepared by the Consultant and/or its Subconsultants in connection with the Services.

10. **Insurance & Indemnity.**

(a) During and throughout the entire Term of this Agreement, the Consultant and its Subconsultants shall maintain all such insurance products with the limits set forth below:

(i) Comprehensive General Liability (Per Project) – for bodily injury and property damage – including any liability normally covered by a general liability policy with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the annual aggregate.

(ii) Professional Liability – in minimum amounts of \$5,000,000 per occurrence and \$5,000,000 aggregate.

(iii) Products & Completed Operations – Aggregate (Per Project) with a limit of not less than \$2,000,000. The Products & Completed Operations Insurance policy shall be maintained for a minimum of two (2) years after final payment and the Selected Consultant shall continue to provide evidence of such coverage to the City on an annual basis during the aforementioned period.

(iv) Automobile Liability – with a combined single limit of not less than \$1,000,000.

(v) Excess Umbrella Liability – with limits of not less than \$2,000,000 per occurrence and \$2,000,000 aggregate.

(vi) Worker's Compensation – with coverage in compliance with the statutory requirements.

(vii) Employer's Liability – with limits of not less than \$100,000 each accident, \$500,000 disease-policy limit, and \$100,000 disease-each employee.

(b) Within five (5) calendar days of the Owner's transmittal of the Notice of Award, the Consultant shall furnish to the Owner a certificate of insurance evidencing all required coverage in at least the limits required herein, naming the City of Reading, its elected



(d) The Consultant represents and warrants that any and all statements that it made in its response to the RFP, including, but not limited to, those statement made in documents provided to the Owner, are true and correct and may be relied upon by the Owner.

(e) Each party represents to the other party that such party has the power and authority to enter into this Agreement and that such party is not a party to any restrictions, agreements or understandings whatsoever which would prevent or make unlawful such party's acceptance of the terms set forth in this Agreement or such party's performance hereunder. Each party further represents that such party's acceptance of the terms of this Agreement and the performance of such party's obligations hereunder do not and will not (with the passage of time) conflict with or constitute a breach or default of any contract, agreement or understanding, oral or written, to which such party is a party or by which such party is bound.

12. **Correction of Services.** The Consultant shall promptly correct any Services rejected by the Owner or failing to conform with the requirements of this Agreement, whether discovered before or after the Term. Costs of correcting such rejected or nonconforming Services, including, but not limited, any additional labor or materials of the Consultant, its Subconsultants, the Owner or the Owner's agents, made necessary thereby, shall be at the Consultant's cost and expense. If the Consultant fails to correct such rejected or nonconforming Services within a reasonable time after receiving notice from the Owner, the Owner or its agents may correct such Services and the Consultant shall pay the Owner all costs, expenses, losses and damages incurred by the Owner to make such correction.

13. **Termination.**

(a) The Owner may immediately terminate this Agreement if the Consultant (i) refuses or fails to supply enough properly skilled workers to perform the Services, (ii) fails to make payment to its Subconsultants or suppliers for labor in accordance with the respective agreements between the Consultant and its Subconsultants or suppliers, (iii) violates any laws, ordinances, rules, regulations or orders of a public authority having jurisdiction, (v) becomes insolvent, suffers or permits the appointment of the receiver for its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, or (vi) otherwise materially breaches a provision of this Agreement.

(b) In the event the Owner terminates this Agreement pursuant to Section 13(a), the Owner may assess any legal fees, professional fees, costs and expenses, including, but not limited to, employee time attributable to said event, to the Consultant. The Consultant shall immediately reimburse the Owner for the same. In the event the Consultant fails to adhere to a contractual provision or other requirement of this Agreement, whether the subject provision is material or not, to the extent the Owner incurs legal fees, professional fees, costs or expenses, of any kind in the Owner's attempt to enforce such provision, the Consultant shall be liable to the Owner for the same. In such event, the Owner may deduct such amounts from any fees required to be paid to the Consultant pursuant to this Agreement.

(c) The Owner may terminate this Agreement upon not less than seven (7) days written notice to the Consultant for the Owner's convenience and without cause. In the event of termination not the fault of the Consultant, the Consultant shall be compensated only for

Services performed prior to termination. After the Owner has made such payment, the Owner shall have no further obligation or liability to the Consultant with respect to this Agreement.

(d) Immediately upon expiration or termination of this Agreement, the Consultant shall return to the Owner, in both written and electronic format, all information and other property used or created in connection with the Services by the Consultant or its agents, along with such information and assistance as is reasonable and customary to enable the Owner to successfully transfer the Services to another service provider or other third-party. The Consultant shall maintain a copy of such information in electronic format for at least twelve (12) months after termination of the Services for the purpose of carrying out the intent of this provision.

14. **Claims for Consequential Damages and/or Incidental Damages.** The Consultant waives claims against the Owner for lost profits, lost expected profits, consequential damages and/or incidental damages arising out of or relating to this Agreement. This waiver is applicable, without limitation, to all consequential damages and/or incidental damages, due to either the Consultant and/or the Owner's termination in accordance with Sections 13 or 15(c). Notwithstanding anything else to the contrary in this Agreement, the Owner shall have the right to recover consequential damages and/or incidental damages from the Consultant to the extent permitted by law.

15. **Equal Employment Opportunity.**

(a) During the performance of the Agreement, the Consultant shall not discriminate against any employees or applicant for employment because of race, color, religion, sex, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(b) The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Owner may elect to provide the Selected Consultant with the required form notice. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) In the event of the Consultant's noncompliance with Section 15(a), Section (b) or with any applicable laws, the Agreement may be canceled, terminated, or suspended in whole, or in part, by the Owner. In such event, the Consultant may be declared ineligible for further Owner contracts. The Consultant shall include the paragraphs set forth in this Section 15 in every subcontract or purchase order.

16. **Employment of Certain Persons Prohibited.** No person who, at the time, is serving sentence in a penal or correctional institution shall be employed on the work covered by the Agreement.

17. **Subcontracts.** The Consultant shall not subcontract work under the Agreement unless prior written approval is granted by the Owner. Each person or entity which the Consultant subcontracts with to perform Services, as approved in writing by the Owner (each a “*Subconsultant*”), shall be bound by the conditions of the Agreement and shall execute and deliver to the Owner a Political Contribution Affidavit and Non Discrimination Statement, as set forth in the RFP, prior to performing any Services.

18. **Right to Audit Records.** The Owner shall be entitled to audit the books and records of the Consultant or any of its Subconsultants to the extent that such books and records relate to the Agreement or the performance of Services. Such books and records shall be maintained by the Consultant and its Subconsultants for a period of three (3) years from the date of final payment under the Agreement unless a shorter period is otherwise authorized by the Owner in writing.

19. **Compliance with Applicable Laws and Standards.** The Consultant shall strictly comply with all applicable Federal, State, and local laws, ordinances, decrees, orders, published governmental guidance documents, and industrial statues, regulations, codes and standards in its performance of Services.

20. **Communicating with Governmental Agencies.** Notwithstanding anything to the contrary in this Agreement, the Consultant shall provide the Owner with notice before communicating with any governmental agencies about any information related to the Services. The Owner shall be provided with the opportunity to direct all communications with governmental agencies.

21. **Governing Law; Jurisdiction.** This Agreement shall be governed and construed by the laws of the Commonwealth of Pennsylvania without regard to its principles of conflicts of law. EACH PARTY IRREVOCABLY CONSENTS TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE STATE COURTS LOCATED IN THE COUNTY OF BERKS, COMMONWEALTH OF PENNSYLVANIA, AND IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS BETWEEN THE PARTIES, INCLUDING, BUT NOT LIMITED TO, THOSE ACTIONS OR PROCEEDINGS RELATING TO THIS AGREEMENT, SHALL BE LITIGATED IN SUCH COURT.

22. **Entire Agreement.** This Agreement (including its exhibits) constitutes the entire agreement of the parties pertaining to the subject matter hereof and merges all prior negotiations and drafts of the parties with regard to the transactions contemplated herein. Any and all other written or oral agreements existing between the parties hereto regarding such transactions are expressly canceled. In the event of any conflict between this Agreement and any of the exhibits attached hereto, the more stringent terms shall govern.

23. **Alterations, Modifications or Additions of the Services.** The Services will be under the supervision of the Owner or its authorized representatives, agents or other consultants.



If to the Consultant:

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29. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining provisions (including any remaining provisions within the same numbered paragraph), unless the absence of such invalid or unenforceable provision materially and adversely affects the right or obligations of either party hereto.

30. **Survival.** In the event of any termination of this Agreement, Sections 8, 9, 10, 12, 13, 30 hereof shall survive and continue in effect and shall inure to the benefit of and be binding upon the parties and their legal representatives, heirs, successors, and assigns.

31. **Background.** The Background Section of this Agreement is expressly incorporated into the substantive provisions of this Agreement and shall be binding upon the parties as if expressly contained in the body of the Agreement.

32. **Drafting of Agreement.** The parties hereto acknowledge that each has participated in the drafting of this Agreement and the parties hereto expressly waive the defense of contra proferentum, i.e., that this Agreement or any portion of this Agreement may be construed against any party as the drafter thereof.

***[THIS SPACE INTENTIONALLY LEFT BLANK]***

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

The City of Reading:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

The Consultant:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit A**  
**Request for Proposal**

**Exhibit B**

**Consultant's Proposal**

**Exhibit C**

**Service Compensation Schedule**