

BOARD OF PUBLIC WORKS AND SAFETY
Agenda Request Form

(Form B-01-2012)

Organizations and individuals are asked to submit a request form and supporting documents to be placed on the agenda. You will be contacted by the City confirming the date of the meeting in which your request will be heard.

Please make sure that your contact information is accurate in case we need to get in touch with you. The Board of Works meets on the 1st and 3rd Monday of each month at 5:00 p.m. in City Hall located at 70 E. Monroe Street.

Date Submitted:	2-25-14	Requested Meeting Date:	3-3-14
		Confirmed Meeting Date:	
Received by:			
Contact Information: Please provide all requested information in the fields below. (Print or Type)			
On Behalf of Organization or Individual:		Planning and Engineering Department	
Name:	Travis Underhill	Telephone:	736-3631
Title or Position:	City Engineer		
E-Mail:	tunderhill@franklin.in.gov		
Address:	70 E. Monroe Street		
City:	Franklin	State:	IN
		ZIP:	46131
Who will attend the meeting and present the request?			
Name:	Travis Underhill	Telephone:	736-3631
Title or Position:	City Engineer		
E-Mail:	tunderhill@franklin.in.gov		
Please describe the purpose or title of your presentation.			
Stormwater Master Plan Contract			
Supporting documents: All supporting documents should be submitted with the request form.			
1. Contract			
2.			
3.			
4.			

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



**National Society of
Professional Engineers®**

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a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS



AMERICAN COUNCIL OF ENGINEERING COMPANIES

AMERICAN SOCIETY OF CIVIL ENGINEERS

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (No. C-700, 2002 Edition) of the Engineers Joint Contract Documents Committee. Their provisions are interrelated, and a change in one may necessitate a change in the other.

SPECIAL NOTE ON USE OF THIS FORM:

This abbreviated Agreement form is intended for use only for professional services of limited scope and complexity. It does not address the full range of issues of importance on most projects. In most cases, Owner and Engineer will be better served by the Standard Form of Agreement Between Owner and Engineer for Professional Services (No. E-500, 2002 Edition), or one of the several special purpose EJCDC professional services agreement forms.

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American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400

**SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of February 12, 2014 (“Effective Date”) between

City of Franklin (“Owner”)

and Whitaker Engineering, P.C. (“Engineer”)

Engineer agrees to provide the services described below to Owner for Storm Water Master Plan (“Project”).

Description of Engineer’s Services: See Appendix 1 (attached) entitled Storm Water Master Plan

Improvements, dated February 12, 2014, for a detailed scope of work and an hourly rate schedule.

Owner and Engineer further agree as follows:

1.01 Basic Agreement

A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement, and Owner shall pay Engineer for such Services as set forth in Paragraph 9.01.

2.01 Payment Procedures

A. *Preparation of Invoices.* Engineer will prepare a monthly invoice in accordance with Engineer’s standard invoicing practices and submit the invoice to Owner.

B. *Payment of Invoices.* 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, the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, without liability, 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. Payments will be credited first to interest and then to principal.

3.01 Additional Services

A. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above.

B. Owner shall pay Engineer for such additional services as follows: For additional services of Engineer’s employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Engineer’s employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer’s consultants’ charges, if any.

C. No charges for additional services shall be incurred without written consent of Owner.

4.01 Termination

A. The obligation to provide further services 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.

b. By Engineer:

- 1) upon seven days written notice if Engineer believes that Engineer is

being requested by Owner to 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 or suspended for more than 90 days for reasons beyond Engineer's control.

3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 4.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure 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 the receipt of notice by Engineer.

B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Project site, 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.

5.01 Controlling Law

A. This Agreement is to be governed by the law of the state in which the Project is located.

6.01 Successors, Assigns, and Beneficiaries

A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 6.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, 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.

7.01 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. Engineer and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

B. Engineer shall not at any time supervise, direct, or have control over any contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.

C. 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.

D. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction

contract given by Owner without consultation and advice of Engineer.

E. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition).

F. All design 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.

~~G. 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 be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.~~

H. 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, and 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: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

8.01 Total Agreement

A. This Agreement (consisting of pages 1 to 4 inclusive together with any expressly incorporated appendix), 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.

9.01 Payment (Hourly Rates Plus Reimbursable Expenses)

A. Using the procedures set forth in paragraph 2.01, Owner shall pay Engineer as follows:

- 1. An amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class for all services performed on the Project, plus reimbursable expenses and Engineer's consultants' charges, if any.
- 2. Engineer's Standard Hourly Rates are attached as Appendix 1.
- 3. The total compensation for services and reimbursable expenses is estimated to be \$147,600.00
- 4. The total compensation shall not exceed quoted sum without express written agreement.

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

OWNER:

ENGINEER:

By: _____

By: Andrew C. Cochrane, P.E.

Signed: _____

Signed: 

Title: _____

Title: Vice President

Date Signed: _____

Date Signed: February 12, 2014

License or Certificate No. and State _____

IN 19900094

Address for giving notices:

Address for giving notices:

City of Franklin

Whitaker Engineering, P.C.

70 E. Monroe

8145 Halyard Way

Franklin, IN 46131

Indianapolis, IN 46236

Scope of Work

Administrative Project Meetings

1. Attend project kickoff meeting with City Engineer, staff, and MS4 coordinator
2. Meet with City/MS4 staff (2 meetings) to discuss proposed projects, their priorities, progress, etc
3. Attend one (1) public input meeting and prepare public storm water problem survey
4. Attend two (2) Board of Works meetings
5. Attend one (1) council meeting

Evaluation & Assessment

1. Gather and review existing drainage studies on file with City, assess need of proposed projects in the studies, and justify if the projects need to be done
2. Meet with council members on an individual basis (5 meetings) to define specific drainage problem areas and number of homes affected
3. Meet with property owners at City's discretion to discuss (10 meetings – undistributed quantity)
4. Prepare overall capital plan map showing areas of major and minor drainage concern (up to 20) based upon feedback from staff and local knowledge with considerations given to areas that are sources of I&I due to ponding water
5. Investigate areas not identified on the FIRM panels that do flood
6. Perform field reconnaissance in existing areas of deficient drainage and document with photographs
7. Perform field reconnaissance and assess existing MS4 storm sewer outfalls
8. Prepare Initial Priority Rating (IPR) spreadsheet of the 10 most critical and highest priority projects
9. Instruct City Staff on using the IPR spreadsheet for future projects

Storm Sewer System Mapping

1. Gather relevant design and as-built drawings
2. Review Johnson County GIS for data completeness, data quality and coverage for the City of Franklin
3. Review design and as-built storm sewer drawings for project areas as needed to assess existing infrastructure and confirm data in entered into GIS
4. Assess the storm sewer data collected by previous consultants and City and determine extent of remaining data to be collected.
5. Coordinate the acquisition of survey and data to complete mapping
 - a. Collect horizontal and vertical coordinates for catch basins, curb inlets, storm manholes at tops of casting, inverts, and sumps, in survey-grade accuracy (0.05 ft) for up to 400 storm structures inside the 8 zones shown on the attached map. Delineation of zones will be discussed with Owner at initiation meeting prior to survey
 - b. Collect the data in consecutive order of the zones
 - c. Prepare structure data tables for each structure including pipe size and material
 - d. Horizontal coordinates shall be in SPC on NAD83 datum and elevations shall be based upon NAVD 88
6. Verify piping run locations and connections to structures when there is uncertainty
 - a. Investigate piping runs in between storm structures and endeavor to confirm connection location or existence

- b. Compile a list of structures which uncertainties so city staff can assist
7. Process data for incomplete areas
8. Integrate collected survey data into updated GIS system
9. Produce GIS map of those storm sewer piping runs and structures collected and shown within area on attached map. Map shall include castings, inlets, beehives, inverts, outfalls, etc., pipe sizes, and pipe materials and shall have an accuracies consistent with Item 4a on the previous page

Modeling for Proposed Areas of Concerns and Potential Projects

1. Create Storm Water Management Model (SWMM) model of storm sewer infrastructure, 18 inches and larger, within area shown on attached map
2. Create SWMM model for areas of concern to determine project feasibility where directed by the City Engineer or City Staff
3. Create HY-8 or HEC-RAS model(s), if necessary, to determine impacts of culvert restrictions or backwater effects and propose a solution
 - a. Perform survey to obtain data for up to two HEC-RAS models

Report

1. Describe history of storm water problems, process of data collection, and goals of SWMP
2. Create a list of prioritized projects (6-10 projects) with an explanation of why the project is being done, an implementation path, and an opinion of probable cost (OPC) associated with each project. The OPC will include a Level 4 opinion of probable construction cost performed in accordance with Association for the Advancement of Cost Engineering (AACE) for each project. A Level 4 OPC is based upon a project completeness of 1-15% of the design phase. The cost opinion can deviate from actual cost from 30-50%. Prepare AACE Level 3 opinion of probable construction cost to address outfall repairs as noted by City Staff. A Level 3 OPC is based upon a project completeness of 10-40% of the design phase. The cost opinion can deviate from actual cost from 10-20%
3. Summarize projects and associated costs, advantages, and disadvantages
4. Prepare a preliminary project phasing plan of future storm water projects (Gantt chart style) for incorporation into the Storm Water Master Plan report
5. Include an overall map of the City with color-coded projects to coordinate with the Gantt chart project phasing plan
6. Discuss how the enforcement of storm water ordinance violations are linked with the SWMP.
7. Add input to help the BOW realize the importance of enforcing violations for illicit discharges (i.e. IDEM exposure)
8. The report shall be written with consideration given to the importance of City staff and its successors using report as guidance for future amendments to the reports and construction successors would be able to use the SWMP as a guiding documents for future construction

Storm Water Ordinance Review

1. Review draft storm water management ordinance for with regards to economic impact of environmental controls for discharges
2. Review implementation of green infrastructure practices with regards to future development and water quality and the financial impact to private developers

This is **Appendix 1**, consisting of 7 pages,
dated February 12, 2014.

3. Review post-construction BMP inspection and/or maintenance issues and policies as they relate to the overall storm water management of the MS4
4. Prepare comment letter and recommended revisions to storm water ordinance

Deliverables

1. Three bound hard copies of report and an electronic copy
2. Electronic copy of all models created
3. Live electronic geodatabase of proposed mapped area

Not Included in Work

1. Televising sewers,
2. Smoke testing,
3. Entry into manholes,
4. Permitting,
5. Environmental impact statements and assessments,
6. Geotechnical engineering, and
7. Sampling

Reimbursable & Hourly Rate Schedule

Owner shall compensate Professional for services rendered in accordance with the following:

Time and Materials

Reimbursable Expenses

The following expenses will be charged on an as-used basis

Blueline or Bond Print	\$ 2.00/sheet
Mylar prints	\$10.00/sheet
Digital Information (CD/DVD)	\$20.00/each
Certified mailings or Shipping	at cost
Delivery fees	
Marion County	\$22.00
Outside Marion County	\$28.00
Other out-of-pocket expenses	cost plus 10%

After a period of 12 months from the date of an Agreement, all fees remaining under it are subject to an increase based upon an annual agreement revision between the parties.

<u>Staff Level</u>	<u>Hourly Rate</u>
Principal	\$190
Sr. Project Manager	\$175
Project Manager	\$135
Sr. Project Engineer	\$125
Project Engineer	\$118
Engineer Designer	\$94
Engineer Technician	\$88
Administration	\$62

Indemnification

The Work performed by the Engineer shall be at the risk of that Engineer exclusively. To the fullest extent permitted by law, Engineer shall indemnify, defend (at their sole expense) and hold harmless the City of Franklin and their employees (“Indemnified Parties”), from and against any and all claims for bodily injury, death or damage to property, demands, damages, actions, causes of action, suits, losses, judgments, obligations and any liabilities, costs and expenses (including but not limited to investigative and repair costs, attorneys’ fees and costs, and consultants’ fees and costs) (“Claims”) which arise or are in any way connected with the Work performed, materials furnished, or Services provided under this Agreement by the Engineer or its agents. These indemnity and defense obligations shall apply to any acts or omissions, negligent or willful misconduct of the Engineer, its employees or agents, whether active or passive. The Engineer’s indemnification and defense obligations hereunder shall extend to Claims occurring after this Agreement is terminated as well as while it is in force, and shall continue until it is finally adjudicated.”

Insurance

- A. ENGINEER shall, as a prerequisite to this Agreement, purchase and thereafter maintain such insurance as will protect it from the claims set forth below which may arise out of or result from ENGINEER'S operations under this Agreement, whether such operations be by ENGINEER or by any SUB-CONSULTANTS or by anyone directly or indirectly employed by any or all of them, or by anyone for whose acts any of them maybe liable.:

<u>Coverage</u>	<u>Limits</u>
Workmen's Compensation & Disability	Statutory Requirements
Employer's Liability Bodily Injury by Accident	\$500,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$500,000 each employee
Commercial General Liability (Occurrence Basis) Bodily Injury, personal injury, property damage, contractual liability, products-completed operations	\$1,000,000

This is **Appendix 1**, consisting of 7 pages, dated February 12, 2014.

General Aggregate Limit (other than Products/Completed Operations)	\$2,000,000	
Products/Completed Operations Aggregate	\$2,000,000	
Personal & Advertising Injury Limit	\$1,000,000	
Each Occurrence	\$1,000,000	
Fire Damage (any one fire)	\$ 50,000	
Medical Expense Limit (any one person)	\$ 5,000	
Comprehensive Auto Liability (single limit, owned, hired and non-owned)	\$1,000,000	each accident
Bodily injury and property damage	\$1,000,000	
Umbrella Excess Liability	\$2,000,000	each occurrence and

The Deductible on the Umbrella Liability \$ 10,000 shall not
be more than

B. ENGINEER'S comprehensive general liability insurance shall also provide coverage for the following:

1. Premises and operations;
2. Contractual liability insurance as applicable to any hold-harmless agreements.
3. Completed operations and products; which also must be maintained for a minimum period of two years after final payment and ENGINEER shall continue to provide evidence of such coverage to city on an annual basis during the aforementioned period; and
4. Broad form property damage - including completed operations;
5. Fellow employee claims under Personal Injury;
6. Independent Engineers.

C. With the prior written approval of CITY, ENGINEER may substitute different types or amounts of coverage for those specified as long as the total amount of required protection is not reduced.

D. Certificates of Insurance, naming the City of Franklin as an "additional insured", showing such coverage then in force (but not less than the amount shown above) shall be on file with CITY prior to commencement of work. These Certificates shall contain a provision that coverage afforded under the policies will not be canceled or non-renewed until at least thirty (30) days prior written notice has been received by CITY.