



*Department of Public Works*

**October 24, 2016**

**Mayor Jerry Wiley  
City Council  
City Attorney Steve Chinn  
City of Fairway**

**Re: Professional Services Agreement for 2017 Capital  
Improvement Plan**

The Public Works Department requested Cook, Flatt & Strobel to prepare a fee for design services for the 2017 Capital Improvement Plan. The fee was reviewed by City Administrators Nogelmeier and Axelson as well as Committee Chair Watkins and Director Stogsdill. The fee is in line with the scope of services.

Staff recommends the Fairway City Council authorizes the Mayor to sign all appropriate documentation on the Professional Services Agreement in an amount not to exceed \$9,260.00.

Bill Stogsdill  
Director of Public Works  
City of Fairway, KS  
(913) 722-2822  
[bstogsdill@fairwaykansas.org](mailto:bstogsdill@fairwaykansas.org)

# AGREEMENT FOR PROFESSIONAL OR TECHNICAL SERVICES

This Agreement entered into this 14<sup>th</sup> day of November, 2017 by and between Cook, Flatt & Strobel Engineering, hereinafter referred to as "Professional" and the City of Fairway, Kansas, hereinafter referred to as "City" for furnishing services for the following project:

2017 City of Fairway's Capital Improvement Plan

This Agreement incorporates the Terms and Conditions attached hereto as **Exhibit "A."** Professional agrees to perform all the services described therein as being performed by a licensed design professional as they may apply to the scope of work described below. Professional shall furnish the insurance called for on **Exhibit "B."**

## I. SCOPE OF SERVICES

In connection with the above, Professional will perform the following services as noted:

### **Contract Plans and Cost Estimating** (*check if included* X )

1. Professional will prepare a full set of plans and a specification book that meet Johnson County CARS Program standards will need to be developed for Mission Road sidewalk (53<sup>rd</sup> to Shawnee Mission Parkway). Information on the Johnson County CARS Program can be found here:

<http://www.jocogov.org/dept/public-works/cars-program>

Lockton Lane (Eastvale to 61<sup>st</sup> Terrace) and Canterbury (Shawnee Mission Parkway to 53<sup>rd</sup> Street) will require quantities compiled in a bid form as a total and by street to be uploaded to an online plan room.

2. Professional will assist the City in obtaining the approval of final agreements with utility companies and other such public agencies as may be necessary.

3. In consultation with the City's attorney, Professional will prepare a complete set of front end documents and technical specifications for the construction package.

4. Professional will provide quantities and a detailed estimate of cost for the work.

5. Professional will prepare the notice to contractors for bidding purposes, notify Dodge Reports of the progress of the project, send written notices to a number of contractors qualified to bid on the work, and send written notices to various minority organizations and minority contractors, to assure maximum competition from qualified sources.

6. Professional will attend meetings with City staff and elected officials if needed, to explain aspects of the Project, the budget and apprise them of any issues which may require special consideration, including but not limited to historic or environmental considerations.

## **II. TO BE PROVIDED BY THE CITY**

A. The City shall make available to Professional all available pertinent information that it may have in its possession or to which it may have access that is applicable to the current Scope of Work including AIMS information.

B. The City shall appoint a representative to whom Professional will report and from whom Professional will receive instruction and authorization.

C. The City shall arrange for right of access to all properties as required during the execution of the work.

D. The City will provide for the services of an independent testing laboratory to perform all materials testing necessary for control of the project during the construction phase.

E. The City shall provide title work necessary for easement or property acquisition.

## **III. TO BE PROVIDED BY PROFESSIONAL**

A. The services of all professional and technical personnel required for the performance of the services described under Scope of Work.

B. Professional will procure and maintain the insurance as described on **Exhibit "B"** to this Contract.

## **IV. TIME OF PERFORMANCE**

The services of Professional are to commence upon direction from the City, and are to be performed expeditiously as necessary for the timely completion of the Scope of Work described above.

## **V. COMPENSATION**

The City will compensate Professional for the work specified above as follows:

1. For all work and services described in the Scope of Services, the fee shall not exceed \$9,260.00
2. Other compensation arrangements: N/A

3. Schedule of payments: as submitted, not to exceed monthly

4. This payment shall constitute complete compensation for all direct labor, payroll burden, general and administrative overhead, profit, travel, equipment, and materials necessary to complete the tasks as set forth in the Scope of Work.

5. Professional shall assure that any subcontractors or vendors retained by it are promptly compensated out of the funds paid by the City. The City shall have no contractual relationship with such other parties.

6. Interest. Payments due and unpaid by the City to Professional shall bear interest commencing five (5) days after payment is due at the statutory rate applicable to late payments under Kansas law.

Professional

  
Name and title

Sr. Vice President

City

\_\_\_\_\_  
Name and title

## Exhibit "A"

### TERMS AND CONDITIONS

1. Termination of Agreement for Cause. If Professional shall fail to fulfill in a timely and proper manner his/her obligations under this Contract, or if the Professional shall violate any of the covenants, agreements, or stipulations of this Contract, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Professional of such termination and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Professional under this Agreement shall, at the option of the City, become its property. No further payment shall be made to Professional until the full extent of the City's damages has been ascertained. If the City has been damaged by a breach by Professional, the City shall have the right to apply any earned but unpaid moneys otherwise owed to Professional to the payment of such damages, and if insufficient unpaid funds exist, Professional shall promptly pay the City any damages the City may incur upon receipt of City's documented invoice for such damages. Professional shall be entitled to receive all remaining compensation for any work satisfactorily completed hereunder.

2. Termination for Convenience of the City. The City may terminate this Agreement at any time by giving at least ten (10) days notice in writing to the Professional. If the Agreement is terminated by the City under this section, the Professional will be paid for the time provided and expenses incurred up to the termination date.

3. Changes. The City may, from time to time, request changes in the scope of the services of the Professional to be performed hereunder. Such changes, including any increase or decrease in the amount of the Professional's compensation, which are mutually agreed upon by and between the City and the Professional, shall be incorporated in written amendments to this Contract.

4. Personnel.

a. The Professional represents that he/she has, or will secure at Professional's own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City.

b. All of the services required hereunder will be performed by the Professional or under Professional's supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and Local law to perform such services.

c. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

5. Assignability. Professional shall not assign any interest on this Contract, and shall not transfer any interest in the same (whether by assignment or invitation), without the prior written consent of the City thereto. Provided, however, that the claims for money by Professional from the City under this

Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the City.

6. Records and Audits. Professional shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to the Agreement and such other records as may be deemed necessary by the City to assure proper accounting for all project funds, both Federal and non-Federal shares. These records will be made available for audit purposes to the City or any authorized representative, and will be retained for three years after the expiration of this Agreement unless permission to destroy them is granted by the City.

7. Findings Confidential. All of the reports, information, data, etc. prepared or assembled by the Professional under this Agreement are confidential and Professional agrees that they shall not be made available to any individual or organization without the prior written approval of the City. Professional shall not be authorized to make statements to the media or otherwise on behalf of the City without express direction and consent of the City

8. Copyright. No report, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of Professional. The City shall be deemed the author of any such data for which Professional has been compensated to produce.

9. Use of Professional's findings and report. Professional acknowledges that the City is engaging Professional to produce borings, test results and other data, findings and opinions (hereinafter "Data") that the City will supply to its design professionals and contractors for use in the design and construction of facilities, and Professional agrees that those parties may rely on the Data to the same extent that the City may rely on it.

10. Compliance with Local Laws. Professional shall comply with all applicable laws, ordinances, and codes of the State and local governments, and shall save the City harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Contract.

11. Equal Employment Opportunity. During the performance of this Contract, Professional agrees as follows:

a. Professional will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, religion, or sex. Professional will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, national origin, religion, or sex. Such action shall include, but not be limited to, 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. Professional agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this non-discrimination clause.

b. Professional will, in all solicitation or advertisements for employees placed by or on behalf of Professional, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, religion, or sex.

c. Professional will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

d. Professional will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

e. Professional will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the City and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

f. In the event of Professional's noncompliance with the non-discrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part, and Professional may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

g. Professional will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Professional will take such action with respect to any subcontract or purchase order as the City may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event Professional becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the City, Professional may request the United States Government to enter into such litigation to protect the interests of the United States.

12. Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

13. Section 503 of the Rehabilitation Act of 1973, as amended, provides for the nondiscrimination in contractor employment. All recipients of Federal funds must certify to the following through all contracts issued, including affirmative action to hire and promote disabled workers.

a. Professional will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for

employment is qualified. Professional agrees to take affirmative action to employ, advance in employment, and to otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices, such as employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship.

b. The Professional agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

c. In the event of Professional's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

d. Professional agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state Professional's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of the applicants and employees.

e. Professional will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that Professional is bound by terms of Section 503 of the Rehabilitation Act of 1973 and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

f. Professional will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. Professional will take such action with respect to any subcontractor or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

14. Section 504 of the Rehabilitation Act of 1973, as amended, provides for nondiscrimination of an otherwise qualified individual solely on the basis of his handicap in benefiting from any program or activity receiving Federal financial assistance. All recipients must certify to compliance with all provisions of this Section.

15. Age Discrimination Act of 1975 and Kansas Law Against Discrimination. No person in the United States, on the basis of age, be excluded from participation in, be denied benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance. Further, Professional shall in no way, directly or indirectly, discriminate against any person because of age, race, color, handicap, sex, national origin, or religious creed. Professional must comply with the Kansas Act Against Discrimination and if applicable, execute a Certificate of Non-Discrimination as provided in K.S.A. 44-1030.

16. Interest of Members of a City. No member of the governing body of the City and no other officer, employee, or agent of the City who exercises any functions or responsibilities in connection

with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Agreement, and Professional shall take appropriate steps to assure compliance.

17. Interest of Professional and Employees. Professional covenants that he/she presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his/her services hereunder. Professional further covenants that in the performance of this Agreement, no person having any such interest shall be employed.

18. Dispute Resolution. The parties agree that any claim, dispute or controversy arising out of or relating to this Agreement or the breach thereof that cannot be resolved through discussions by the parties shall be submitted to non-binding mediation administered by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association (“AAA”) pursuant to the Construction Industry Mediation Rules then in effect. Any claim, dispute, or controversy arising out of or relating to this Agreement or the breach thereof which has not been resolved by mediation shall be resolved through litigation in Johnson County, Kansas District Court.

19. Governing Law. This Agreement shall be governed by the laws of the State of Kansas, without giving effect to its conflict of law principles.

20. Severability. If any provision or any part of a provision of this Agreement shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to applicable laws by any authority having jurisdiction, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provisions or parts of the provision of this Agreement, which shall remain in full force and effect as if the unenforceable provision or part was deleted.

21. Amendments. This Agreement may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of both parties.

22. Entire Agreement. This Agreement forms the entire agreement between Owner and Professional. No oral representations or other agreements have been made by the parties except as specifically stated in this Agreement.

## **Exhibit "B"**

### **INSURANCE REQUIREMENTS**

1. The Designer shall secure and maintain through the duration of this Agreement insurance (on an occurrence basis unless stated below) of such types and in such amounts stated below, but in no case less than as may be necessary to protect the Designer and the Owner and agents of the Owner against all hazards or risks of loss as hereinafter specified. The Owner will only accept coverage from an insurance carrier who offers proof that it:

- 1) Is authorized to do business in the State of Kansas;
- 2) Carries a Best's policy holder rating of A or better and at least a Class X financial rating.
- 3) Is a company mutually agreed upon by the Owner and the Designer.

2. The form of such insurance, together with the underwriter thereof in each case, shall be approved by the Owner, but regardless of such approval it shall be the responsibility of the Designer to maintain adequate insurance coverage at all times. Owner reserves the right to review certified copies of any and all insurance policies to which this Agreement is applicable. Failure of the Designer to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation, including but not limited to, the indemnification obligation.

3. The cost of defense of claims shall not erode the limits of coverage furnished. (This does not apply to Professional Liability, see Article 13.)

4. If Designer should retain consultants to perform any of its services, Designer shall see to it that such third party maintains such insurance and shall furnish evidence thereof to Owner.

5. The insurance policies shall require that Owner shall be given at least thirty (30) days written notice from the insurer(s) before cancellation (except for non-payment of premium, for which at least ten (10) days advance notice shall be given to Owner) of such insurance and shall contain an endorsement stating the insurers agreement to provide such notice, using CNA form G-140327-B (Ed. 07/11), Travelers Form IL T4 00 (12/09) or other equivalent carrier forms, such as Acord forms. A copy of the Notice of Cancellation Endorsement must be furnished to the Owner prior to commencement of Work. The Contractor shall notify the Owner of any reduction in limits of protection under any policy listed in the Certificate in excess of \$10,000.00 at least ten (10) days prior to such change, whether or not such impairment came about as a result of the Contract. If the Owner determines the Contractor's aggregate limits of protection has been impaired or reduced to such an extent that the Owner shall determine such limits inadequate for the balance of the project, the Contractor shall, upon notice from the Owner, promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the Owner. Cancellation, non-renewal or material modification of coverage of any such insurance shall be the basis for the Owner's exercising its right to terminate the Contract.

6. Satisfactory certificates of insurance, written on a standard AIA Document G705 or ACORD form 25-S, Accord Form 27, as applicable, shall be filed with the Owner prior to Contractor's entry on to the Project site. The Certificate shall specify the date when such insurance

expires. A renewal certificate shall be furnished to Owner prior to the expiration date of any coverage.

7. Severability of Interest. All insurance carried shall be endorsed to provide that, inasmuch as this policy is written to cover more than one insured, all terms, conditions, insuring agreements and endorsements, with the exception of limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

8. Designer shall include the Indemnitees as identified in the Agreement as additional insureds on the Commercial General Liability Insurance and the Commercial Automobile Liability Insurance policies described above. Indemnitees shall be included as additional insureds under Designer's furnished insurance (except Workers' Compensation Insurance and Professional Liability Insurance), for ongoing and completed operations. General Liability shall provide the additional insured status by using ISO Additional Insured Endorsement (CG 20 10), edition date 11/85, or an equivalent (e.g., CG 20 10, edition date 10/93, plus CG 20 37, edition date 04/13 or other carrier form per Article 5). Said insurance shall be written on an OCCURRENCE basis, and shall be PRIMARY and NON-CONTRIBUTING and shall not be deemed to limit Designer's liability under this Agreement.

9. Designer agrees to procure and carry, at its sole cost, until completion of this Agreement all insurance, with identical limits of liability and scope of coverages, as set forth below:

#### 10. Insurance limits

10.1 Commercial Automobile Liability Insurance. Designer shall maintain commercial automobile insurance, including contractual liabilities insuring the Indemnities set forth in the Agreement, subject to standard ISO CA0001 coverage terms and conditions, covering all owned, non-owned and hired automobiles used in connection with the services or other work hereunder and shall have minimum bodily injury and property damage limits of \$1,000,000.00 combined single limit each accident. An MCS-90 endorsement shall be procured when applicable.

10.2 Workers' Compensation and Employer's Liability Insurance. Designer shall maintain Worker's Compensation Insurance to cover the statutory limits of the Workers' Compensation laws of the state in which any work is to be performed and when applicable to Federal Laws, Voluntary Compensation and Employer's Liability (including occupational disease) coverage with limits not less than \$500,000.00 per occurrence. The Designer shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of a worker's compensation law. This policy shall include "all states" coverage.

10.3 Commercial General Liability Insurance. Designer shall obtain and maintain Commercial General Liability Insurance, on an occurrence form for the hazards of (i) construction operation, (ii) subcontractors (iii) independent contractors, (iv) products and completed operations (with completed operations to remain in force for as long as Designer or those included as Additional Insureds bear exposure under all applicable statutes of limitation following project completion), (v) explosion, collapse and underground, (vi) pollution liability, and (vii) contractual liability insuring the indemnities set forth in the Agreement subject to standard ISO CG0001 coverage

terms and conditions. Each Project shall have minimum limits of \$1,000,000.00 per occurrence and \$2,000,000.00 products/completed operations aggregate coverage.

10.4 Excess Liability. Designer shall maintain Excess Liability coverage on an umbrella form with minimum limits of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate.

11. Waiver of Subrogation. All insurance policies supplied shall include a waiver of any right of subrogation of the insurers thereunder against Owner and all its assigns, affiliates, employees, insurers and underwriters.

12. No Limitation of Liability. The required coverages referred to and set forth herein shall in no way affect, nor are they intended as a limitation on, Designer's liability with respect to its performance of this Agreement.

13. Professional Liability coverage. The Designer shall procure and maintain Professional Liability Insurance. Such insurance shall be issued by companies reasonably acceptable to Owner, and shall not be canceled, without thirty (30) days' prior written notice to the Owner, except for non-payment of premium, (for which at least ten (10) days advance notice shall be given to Owner) . The Designer will maintain and pay premiums on worker's compensation insurance, employer's liability insurance, general liability insurance, and property damage insurance policies. Additionally, Designer will maintain and pay the premium on professional liability insurance in an aggregate amount of not less than Two Million Dollars (\$2,000,000.00), with a deductible of not more than One Hundred Thousand Dollars (\$100,000.00). Certificates of insurance for such coverage will be provided to Owner within ten (10) days of the execution of this Agreement. All such insurance shall be at no cost to the Owner.

14. Designer shall not be permitted to commence any work on site until satisfactory copies of the Certificates evidencing insurance; Notice of Cancellation Endorsement; and Additional Insured Endorsement, have all been received and approved by Owner. Delay in commencement due to failure to provide such documentation shall constitute an unexcused delay.