

SHORT FORM OF AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of June, 2016 ("Effective Date")  
between:

Town of Yorktown, Indiana, Town Council ("Owner")

and

Kieser Consulting Group, LLC ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Preparation and Updating of a Comprehensive Plan, Zoning Ordinance and Subdivision Control Ordinance for the Consolidated Area of Yorktown. ("Project").

Engineer's Services under this Agreement are generally identified as follows:

Please see Exhibit "A" Scope of Services

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- B. Engineer shall complete its services within a reasonable time, or within the following specific time period: July 1, 2017.
- C. If the Project includes construction-related professional services, then Engineer's time for completion of services is conditioned on the time for Owner and its contractors to complete construction not exceeding N/A months. If the actual time to complete construction exceeds the number of months indicated, then Engineer's period of service and its total compensation shall be appropriately adjusted.

## 2.01 *Payment Procedures*

- A. *Invoices*: Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then 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, 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. Owner waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal.

## 3.01 *Termination*

- A. The obligation to continue performance 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. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.

b. By Engineer:

- 1) upon seven days written notice if Owner demands that Engineer 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 for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform 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 Engineer's receipt of written notice from Owner.

- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer 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.
- C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

#### 4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the 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.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

#### 5.01 *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. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.

- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- D. 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. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. 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 (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.
- G. All 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. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- H. 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.
- I. 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 as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or 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: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

#### 6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), 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.

#### 7.01 *Basis of Payment—Lump Sum*

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

1. A Lump Sum amount of \$ 34,000.00.

- B. The portion of the compensation amount billed monthly for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.

[or]

#### 7.01 *Basis of 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 \$N/A.

[or]

7.01 *Basis of Payment—Percentage of Construction Cost*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:
1. An amount equal to N/A percent of the cost to construct the work designed or specified by the Engineer ("Construction Cost"). This amount includes compensation for Engineer's Services and services of Engineer's consultants, if any. The percentage of Construction Costs noted herein accounts for labor, overhead, profit, and reimbursable expenses.
  2. As a basis for payment to Engineer, Construction Cost will be based on one or more of the following determinations with precedence in the order listed:
    - a. For work designed or specified by Engineer and incorporated in the completed Project, the actual final cost of the work performed by Contractor.
    - b. For work designed or specified by Engineer but not constructed, the lowest bona fide bid received from a qualified bidder for such work; or, if the work is not bid, the lowest bona fide negotiated proposal or contractor's estimate for such work.
    - c. For work designed or specified but not constructed, upon which no bid, proposal, or estimate is received, Engineer's most recent opinion of probable Construction Cost.
- B. The portion of the compensation amount billed monthly for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.

[or]

7.01 *Basis of Payment—Direct Labor Costs Times Factor, Plus Reimbursables*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:
1. An amount equal to Engineer's Direct Labor Costs times a factor of N/A for services of Engineer's employees engaged on the Project, plus reimbursable expenses, and Engineer's consultants' charges, if any.
  2. The total compensation for services and reimbursable expenses is estimated to be \$N/A.
- 7.02 *Additional Services:* For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer 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. Engineer's standard hourly rates are attached as Appendix 1.

Attachments: Appendix 1, Engineer's Standard Hourly Rates [Exclude Appendix 1, Engineer's Standard Hourly Rates, only if hourly rates are not to be used for either basic compensation (Paragraph 7.01) or additional services (Paragraph 7.02)]

[Itemize any other attachments that will be part of the Agreement].

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

OWNER:

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

Title: President, Yorktown Town Council

Date Signed: \_\_\_\_\_

Address for giving notices:

9800 West Smith Street

Yorktown, Indiana 47396

\_\_\_\_\_

\_\_\_\_\_

ENGINEER:

By: David L. Kieser

Title: Principal/Owner

Date Signed: David L. Kieser 6/6/2016

Engineer License or Firm's Certificate  
Number: N/A

State of: Indiana

Address for giving notices:

9120 Otis Avenue, Suite 103

Lawrence, Indiana 46216

\_\_\_\_\_

\_\_\_\_\_



ENGINEERS JOINT CONTRACT  
DOCUMENTS COMMITTEE

This is **Appendix 1, Engineer's Standard Hourly Rates**, referred to in and part of the Short Form of Agreement between Owner and Engineer for Professional Services dated 6/01, 2016.

### **Engineer's Standard Hourly Rates**

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 1 and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Paragraphs 7.01 and 7.02, and are subject to annual review and adjustment.

B. *Schedule of Hourly Rates:*

Hourly rates for services performed on or after the Effective Date are:

Billing Class VIII	\$ <u>90</u> /hour
Billing Class VII	<u>80</u> /hour
Billing Class VI	<u>75</u> /hour
Billing Class V	_____/hour
Billing Class IV	_____/hour
Billing Class III	_____/hour
Billing Class II	_____/hour
Billing Class I	_____/hour
Support Staff	_____/hour

# ***EXHIBIT "A" SCOPE OF SERVICES***

## INTRODUCTION

The Town of Yorktown Comprehensive Plan, Zoning Ordinance, Subdivision Control Ordinance update for the Consolidated Area will be accomplished in the following manner:

### 1. Purpose

The purpose is to provide a framework for land development activities in the newly consolidated area of Yorktown by the updating of the Zoning Ordinance, Subdivision Control Ordinance and Comprehensive Plan for the Town of Yorktown Planning and Zoning Office.

### 2. Background

The Town of Yorktown Plan Commission adopted a new Comprehensive Plan in 2009. The plan contains numerous recommendations for updating the Town's land development ordinances. This project will focus on re-writing the Town's Zoning Ordinance, Subdivision Control Ordinance to align with the current Comprehensive Plan. The Comprehensive Plan will also be updated in accordance with the changes of the revised ordinances.

### 3. Project Scope

- Update the zoning and subdivision control ordinances and comprehensive Plan with regard to land use changes that have occurred with the consolidation of Yorktown and Mount Pleasant Township .
- Review ordinance compliance with regard to the current Town of Yorktown Codes and Indiana State Statutes.
- Conduct a Technical Review and Analysis of the current zoning and subdivision regulations. The purpose of the Technical Review and Analysis is to address the objectives identified above and to establish an outline for the zoning and subdivision control regulations including areas of the current code to be retained, discarded or modified and others to be added. The review shall specifically identify current code weaknesses; fragmented and inconsistent language; irrelevant and incorrect cross-references; redundant and contradictory policies and practices. Staff has generated a preliminary list of topics and issues pertaining to the current code that will be included in the review and update. Our firm will receive a detailed list with input from Town of Yorktown staff prior to the start of the project.
- Update the zoning and subdivision regulations based on the findings of the Technical Review and Analysis and the 2009 Comprehensive Plan. The update shall also incorporate best management practices and include features of an ideal code that reflects the recommendations

of the 2009 Comprehensive Plan. The Comprehensive Plan will be updated to reflect these ordinance changes as needed.

- Prepare and provide information for review by Town of Yorktown staff and the Plan Commission.
- Lead public meetings – we anticipates three (3) meetings with the Plan Commission and other Town of Yorktown officials.

#### 4. Objective/Outline

The objective of the work covered under this agreement is to assist in the creation of updated zoning and subdivision control regulations, which will include the following elements:

- a. The Consultant will hold up to three (3) public meetings in order to garner public input into the update of the Zoning and Subdivision Control regulations. These meetings will be conducted by the Consultant and the Plan Commission/Department.
- b. The Consultant will meet with Town of Yorktown staff from time-to-time to discuss progress and direction for the project. We anticipates five (5) face-to-face meetings may be necessary throughout the process.
- c. The Consultant will lead all Plan Commission meetings, providing agendas, presentation materials, relevant handouts and facilitating the meetings.
- d. The Consultant will be available throughout the planning process to work in conjunction with and in cooperation with the Town of Yorktown Office of Zoning Administrator on the creation of the updated Zoning and Subdivision control ordinances.
- e. f. The Consultant will provide a Technical Review and Analysis of the current zoning subdivision control ordinances and Comprehensive Plan.
- g. The Consultant will incorporate sustainable practices with regard to development in the planning area.
- h. The Consultant will provide creative techniques for public education and outreach throughout the project process.

#### 5. Project Timing

It is expected that the process for the preparation and adoption of the updated Zoning Ordinance, Subdivision Control Ordinance and Comprehensive Plan will take approximately six (6) to twelve (12) months. This is exclusive of review time by the Town of Yorktown Office of Zoning Administrator and Plan Commission.