TO: Mayor and City Council Members

SUBJECT: Agreement for Design Services for Moorings 10th Addition (south of 53rd Street North, west of Meridian) (District VI)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Agreement.

Background: The City Council approved the paving, water, sewer, drainage and bridge improvements in Moorings 10th Addition on January 8, 2008.

Analysis: The proposed Agreement between the City and MKEC Engineering Consultants, Inc. (MKEC) provides for the design of bond financed improvements consisting of paving, water, sewer, drainage and bridge in Moorings 10th Addition. Per Administrative Regulation 1.10, staff recommends that MKEC be hired for this work, as this firm provided the preliminary engineering services for the platting of the subdivision and can expedite plan preparation.

Financial Considerations: Payment to MKEC will be on a lump sum basis of $172,500 and will be paid by special assessments.

Goal Impact: This Agreement addresses the Efficient Infrastructure goal by providing the engineering design services needed for the construction of paving, water, sewer, drainage and bridge improvements in a new subdivision. It also addresses the Economic Vitality and Affordable Living goal by providing public improvements in new developments that are vital to Wichita's continued economic growth.

Legal Considerations: The Agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the Agreement and authorize the necessary signatures.

Attachments: Agreement.
AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

MKEC ENGINEERING CONSULTANTS, INC.

for

MOORINGS 10TH ADDITION

THIS AGREEMENT, made this ________________ day of _____________________________________, 2008, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the “CITY” and MKEC ENGINEERING CONSULTANTS, INC., party of the second part, hereinafter called the “ENGINEER”.

WITNESSETH: That
WHEREAS, the CITY intends to construct;

WATER DISTRIBUTION SYSTEM NO. 448 90356 serving Lots 2 through 18, Block 1; Lots 1 through 10, Block 2; Lots 1 through 24, Block 3; Lots 1 through 23, Block 4; Lots 1 through 5, Block 5, Moorings 10th Addition (south of 53rd Street North, west of Meridian) (Project No. 448 90356).

LATERAL 14, MAIN 15, SANITARY SEWER NO. 23 serving Lots 1 through 18, Block 1; Lots 1 through 10, Block 2; Lots 1 through 24, Block 3; Lots 1 through 23, Block 4; Lots 1 through 5, Block 5, Moorings 10th Addition (south of 53rd Street North, west of Meridian) (Project No. 468 84467).

STORM WATER DRAIN NO. 344 serving Lots 2 through 18, Block 1; Lots 1 through 10, Block 2; Lots 1 through 24, Block 3; Lots 1 through 23, Block 4; Lots 1 through 5, Block 5, Moorings 10th Addition (south of 53rd Street North, west of Meridian) (Project No. 468 84468).

STORM WATER SEWER NO. 641 serving Lots 2 through 18, Block 1; Lots 1 through 10, Block 2; Lots 1 through 24, Block 3; Lots 1 through 23, Block 4; Lots 1 through 5, Block 5, Moorings 10th Addition (south of 53rd Street North, west of Meridian) (Project No. 468 84469).

CRYSTAL BEACH CIRCLE from the west line of Portwest to and including the cul-de-sac; CRYSTAL BEACH from the west line of Portwest to the west line of Boardwalk; PORTWEST from the south line of Crystal Beach to the south line of Lot 23, Block 4; BOARDWALK from the north line of Bayview to the north line of Lot 1, Block 2; PIERPORT from the east line of Boardwalk to the east line of Lot 10, Block 2 (south of 53rd Street North, west of Meridian) (Project No. 472 84642).

BRIDGE ON WESTPORT (south of 53rd Street North, west of Meridian) (Project No. 472 84643).

NOW, THEREFORE, the parties hereto do mutually agree as follows:
I. **SCOPE OF SERVICES**
The ENGINEER shall furnish professional services as required for designing improvements in Moorings 10th Addition and perform the PROJECT tasks outlined in Exhibit A.

II. **IN ADDITION, THE ENGINEER AGREES**
A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).
B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.
D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.
E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.
F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY’S Affirmative Action Program as set forth in Exhibit “B” which is attached hereto and adopted by reference as though fully set forth herein.
G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.
H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.
I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.
J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than $500,000.00 subject to a deductible of $10,000.00. In addition, a Workman’s Compensation and Employer’s Liability Policy shall be procured and maintained. This policy shall include an “all state” endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman’s Compensation Law. The liability limit shall be not less than:

- **Workman’s Compensation – Statutory**
  - Employer’s Liability - $500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER’S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than $500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.
K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:
A. To furnish all available data pertaining to the PROJECT now in the CITY’S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.
B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.
C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.
D. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.
E. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS
A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

<table>
<thead>
<tr>
<th>Project No.</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>448 90356</td>
<td>$13,800.00</td>
</tr>
<tr>
<td>468 84467</td>
<td>$44,700.00</td>
</tr>
<tr>
<td>468 84468</td>
<td>$14,400.00</td>
</tr>
<tr>
<td>468 84469</td>
<td>$18,600.00</td>
</tr>
<tr>
<td>472 84642</td>
<td>$55,700.00</td>
</tr>
<tr>
<td>472 84643</td>
<td>$25,300.00</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$172,500.00</td>
</tr>
</tbody>
</table>

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:
1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.
If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:
A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER’S inability to proceed with the work.
B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER’S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, dam-
ages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

F. Neither the CITY’S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL

___________________________________________
Carl Brewer, Mayor

SEAL:

ATTEST:

____________________________________________
Karen Sublett, City Clerk

APPROVED AS TO FORM:

____________________________________________
Gary Rebenstorf, Director of Law

MKEC ENGINEERING CONSULTANT, INC.

____________________________________________
(Name & Title)

ATTEST:

____________________________________________
SCOPE OF SERVICES

The ENGINEER shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared per Attachment No. 1.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I – PLAN DEVELOPMENT
   When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.
   1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.
   2. Storm Water Pollution Prevention. On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a NOI prior to bidding; site-specific erosion control plan; and standard BMP detail sheets per Attachment No. 1.
   3. Soils and Foundation Investigations. The CITY’S Engineering Division of the Department of Public Works shall provide subsurface borings and soils investigations for the PROJECT. However, the CITY may authorize the ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER’S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita.
   4. Review Preliminary Design Concepts. Submit preliminary design concepts for review with the City Engineer or his designated representative prior to progressing to detail aspects of the work unless waived by the City Engineer.
   5. Drainage Study. When applicable, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of final check plans. Such written findings and recommendations must be in a format which is self explanatory and readily understood by persons with average backgrounds for the technology involved.
   6. Prepare engineering plans, plan quantities and supplemental specifications as required. Engineering plans will include incidental drainage where required and permanent traffic signing. The PROJECT’S plans and proposed special provisions shall address the requirements included in the City’s Administrative Regulations 6.5, “Cleanup, Restoration or Replacement Following Construction.” Also, final plans, field notes and other pertinent project mapping records are to be submitted per Attachment No. 1. The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept development phase of the design work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, ENGINEER will also need to supply electronic files of the drawings in PDF format.
   7. Prepare right-of-way tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way easements. This shall include the setting monuments of new corners for any additional right-of-way and a one time marking of the right-of-way for utility relocations.
   8. Identify all potential utility conflicts and provide prints of preliminary plans showing the problem locations to each utility. ENGINEER shall meet with utility company representatives to review plans and coordinate resolution of utility conflicts prior to PROJECT letting or, if approved by the City Engineer, identify on plans conflicts to be resolved during construction. Provide to CITY utility status report identifying utility conflicts with dates by which the conflicts will be eliminated with signed utility agreements from each in-
volved utility company. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction that were not identified and coordinated during design.

9. All applicable coordinate control points and related project staking information shall be furnished on a map on the plans, as well on CD-ROM, as a text file, along with the project PDF’s. When applicable, this coordinate information will be used by the CITY for construction staking purposes.

10. All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.

11. The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.

12. The ENGINEER shall complete permanent monumentation of all new R/W, complete and submit all necessary legal documentation for same.

13. Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT.

14. Complete and deliver field notes, plan tracings, specifications and estimates to the CITY within the time allotted for the PROJECTS as stipulated below.

a. Plan Development for the water improvements by **120 days from notice to proceed**.
   (Project No. 448 90356).

b. Plan Development for the sewer improvements by **120 days from notice to proceed**.
   (Project No. 468 84467).

c. Plan Development for the drainage improvements by **120 days from notice to proceed**.
   (Project No. 468 84468).

d. Plan Development for the storm water sewer improvements by **120 days from notice to proceed**.
   (Project No. 468 84469).

e. Plan Development for the paving improvements by **120 days from notice to proceed**.
   (Project No. 472 84642).

f. Plan Development for the paving improvements by **120 days from notice to proceed**.
   (Project No. 472 84643).
Attachment No. 1 to Exhibit “A” – Scope of Services

Plan Submittal

*Water* projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

Paper plan submittals for KDOT projects (i.e. Field Check, ULCC, Final Check, etc.) will not change and the cover sheet mylar will be required for all projects for signature purposes. Projects that have water lines incorporated into the project are required to have those pages in a mylar format. The complete project must be submitted in a scalable .pdf format.

In addition, two (2) sets of 11”x17” plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City, prior to bidding. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita  
Environmental Services  
1900 E. 9th St. North  
Wichita, KS 67214

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of **all** City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer’s estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City’s current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.