

AGREEMENT
BETWEEN THE CITY OF MOORE, OKLAHOMA
AND POE & ASSOCIATES, INC.
FOR
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of October 6, 2014 ("Effective Date") between The City of Moore, Oklahoma ("Owner") and Poe & Associates, Inc. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows: I-35 Hazard Mitigation Wall ("Project").

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

See Appendix 2

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: September 2019
- 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 TBD 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 of Oklahoma.
- 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. 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.

- G. Indemnification and Mutual Waiver
 - 1. *Indemnification by Engineer:* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Assignment or Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants.

2. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations.

In addition, to the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, Consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Assignment or Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, consultants, employees, or others retained by or under contract to the Owner with respect to this Assignment or to the Project.

- 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. Insurance: Engineer will maintain insurance coverage for Workers' Compensation, General Liability, Professional Liability, and Automobile Liability and will provide certificates of insurance to Owner upon request.
 - K. 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 \$ 108,500.00.

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.

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
Appendix 2, Scope of Services

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

OWNER:

By: *Glenn Lewis Mayor*

Title: MAYOR

Date Signed: 10-6-14

Address for giving notices:

City of Moore
301 N. BROADWAY
MOORE, OK 73160

ENGINEER:

By: *[Signature]*

Title: Senior Vice President

Date Signed: 10/14/2014

Engineer License or Firm's Certificate
Number: 541

State of: Oklahoma

Address for giving notices:

Poe & Associates, Inc.
1601 Northwest Expressway, Suite 400
Oklahoma City, OK 73118



POE & ASSOCIATES, INC.
1601 Northwest Expressway, Suite 400
Oklahoma City, OK 73118

CONSULTING ENGINEERS
(405) 949-1962
FAX (405) 608-0380

APPENDIX 1
2014
SCHEDULE OF RATES
For
CONSULTING ENGINEERING SERVICES

PRINCIPAL / EXECUTIVE ENGINEER	\$205.00 / hour
PROJECT MANAGER	\$155.00 / hour
STRUCTURAL PROJECT MANAGER	\$165.00 / hour
SR. PROJECT ENGINEER	\$150.00 / hour
SR. STRUCTURAL ENGINEER	\$165.00 /hour
PROJECT ENGINEER	\$105.00 / hour
STRUCTURAL ENGINEER	\$110.00 / hour
REGISTERED LAND SURVEYOR	\$100.00 / hour
DESIGNER	\$100.00 / hour
SR. INSPECTOR	\$85.00 / hour
SR. TECHNICIAN	\$97.00 / hour
SR. STRUCTURAL TECHNICIAN	\$97.00 / hour
INSPECTOR	\$70.00 / hour
TECHNICIAN	\$68.00 / hour
STRUCTURAL TECHNICIAN	\$72.00 / hour
CLERICAL	\$58.00 / hour
SURVEY CREW (2-MAN)	\$145.00 / hour
Mileage	0.565 / mile
Out-of-Pocket Expenses (including travel expenses)	Actual amount
Outside Consultants and Laboratories	Cost plus 10%

Appendix 2

The City of Moore

I-35 Hazard Mitigation Wall

Moore, Oklahoma

SCOPE OF SERVICES – RFP # 1415-001

The CONSULTANT ENGINEER (Poe & Associates) will perform all engineering and drafting services required to prepare complete detailed construction plans and final PS&E package for drainage, mitigation wall, erosion control, traffic safety, and traffic control for the I-35 Hazard Mitigation Wall.

▪ I-35 Hazard Mitigation Wall

- Wall Construction:
 - Approximately $\frac{3}{4}$ mile in length extending from 19th Street north to 4th Street, adjacent to the Southmoor Addition.

All design will be in English units in accordance with the current 'Oklahoma Department of Transportation (ODOT) Design Manual', 'AASHTO Policy on Geometric Design of Highways and Streets', AASHTO LRFD Bridge Design Specifications', ASSHTO Guide Specifications for Sound Wall Design, the 'Manual on Uniform Traffic Control Devices', and all applicable ODOT and City of Moore policies and procedures.

This project will be completed in two (2) phases as follows:

Phase One:

- Survey
- Drainage Assessment
- Architectural Concepts
- Meetings (Neighborhood, Stakeholder, Owner, City Council & Public)

Phase Two:

- Environmental
- Geotechnical Investigations
- Structural Design
- Hardscape, landscape and irrigation design
- Drainage Design
- Right-of-Way Plans
- Utilities
- Bid Phase Services

o Construction Phase Services

The fee for Phase Two shall be negotiated upon the completion of Phase 1, and the Agreement shall be amended accordingly at that time.

SURVEY

The Consultant will provide all field surveys required for design and staking of right-of-way limits for utility relocations, encroachment removals, and property acquisitions.

ARCHITECTURAL CONCEPTS AND LANDSCAPE DESIGN

Architectural concepts and landscape design will be performed by a sub-consultant (TAP) with coordination from the consultant. This item will include all design concepts for the hazard mitigation wall, hardscape, associated landscape design and irrigation.

STRUCTURAL

I-35 Hazard Mitigation Wall: The Consultant will prepare construction plans to construct the hazard mitigation wall. The wall will be constructed along the right-of-way line on the east side of I-35. The wall will be designed to withstand 135 mph winds and incorporate a unique design. All structural design will be according to the current edition AASHTO LRFD Bridge Design Specifications. The following types of structural plan sheets are anticipated to be required: Summary of Pay Quantities and General Notes, General Plan & Elevations, Design Data and Summary of Quantities, Foundation Report, Substructure Layouts, and wall details.

DRAINAGE / ODOT PROPERTY COORDINATION

The Consultant will prepare construction plans to accommodate the drainage modifications required for the wall construction. Coordination with ODOT and FHWA will be led by The Consultant.

The following types of construction plan sheets are anticipated to be required: Title Sheet, Storm Water Pollution Prevention Plan, Erosion Control, Summary of Drainage Structures, various Roadway Summary Sheets, Summary of Pay Quantities, Pay and Construction Notes, Plan and Profile Sheets, Special Details, Removals, Sequence of Construction, Detailed Construction Traffic Control.

GEOTECHNICAL INVESTIGATIONS

Geotechnical investigations will be performed by a sub-consultant with oversight and coordination from the consultant. This item will include wall foundation investigations.

All required geotechnical field and laboratory testing will be completed in accordance with ODOT's "Geotechnical Specifications for Roadway Design" and "Specifications for the Geotechnical Investigation of Bridges and Related Structures". Work shall be performed under the supervision of a Professional Engineer licensed to practice in the State of Oklahoma.

The Geotechnical investigations for the wall will include a total of twenty-one (21) borings into foundation material utilizing Texas Cone Penetration tests at each location at approximately 200 ft. spacings. Refer to the attached "Proposal for Geotechnical Investigation" for further detail.

ENVIRONMENTAL

The environmental process will be performed by the owner (The City of Moore) and is not included in the consultant's scope of work. The consultant has an environmental sub-consultant ready to perform any needed tasks for the owner as additional services if needed for an additional fee agreed to by the City of Moore and Consultant.

RIGHT-OF-WAY PLANS

The Consultant will provide appropriate right-of-way limits by pluses and offsets on the construction plans. It is not anticipated that additional right-of-way will be required for this project, and is not included in the scope.

UTILITIES

Existing utilities will be located as part of the detailed survey and design process. The Consultant will provide preliminary and 95% plans to all utility owners to verify locations and coordinate relocation requirements. The Consultant will identify utility relocations required and attend a Utility Conference with the utility companies to coordinate relocations. At present, there are no known relocations required of City owned utilities. If relocations of City owned utilities are identified, then The Consultant will prepare the plans for these relocations, as additional services at an additional fee agreed to by the City of Moore and The Consultant.

BID PHASE SERVICES

The Consultant will prepare bidding documents including special provisions. Poe will also provide other bid phase services including attending the prebid conference, issuing addenda, responding to contractor questions and inquiries during the bid period, attending the bid opening, reviewing all bids, and providing recommendation for award.

CONSTRUCTION PHASE SERVICES

On-site construction inspection will be provided by The Consultant. During the construction period, The Consultant project personnel will attend the preconstruction conferences, review shop drawings and submittals by the contractor, and will be available to respond to questions and inquires concerning the project design.

The Consultant will provide on-site construction inspection. This will include conducting a pre-work conference, and reviewing the contractor's mix designs, product submittals and shop drawings. If required, The Consultant will conduct inspections of manufacturing facilities to ensure the quality of construction materials used on the project.

The Consultant will conduct the final inspection and provide punch list items for the closeout of the contract and ensure all items of work complete to the satisfaction of The Consultant, TAP Architecture, and the City of Moore, and then submit all final closeout documents and provide the City with an audit and construction time certification.

POE RESPONSIBILITIES & DELIVERABLES:

- o Survey
- o Structural Design
- o Geotechnical Investigations
- o Right-of-Way Plans and Acquisition
- o Utility Relocation Coordination
- o Final Construction Plans
- o Bid Documents
- o Construction Management

TAP RESPONSIBILITIES & DELIVERABLES:

- o Conduct Information and Listening Meeting with Neighborhood and Stakeholders [1]
- o Explore Alternate Design Concepts for Wall and Landscape
- o Color Drawings and Renderings
- o Opinion of Probable Cost of Alternates
- o Meetings with Owner to develop a preferred design concept [3]
- o Presentation of preferred concept to City Council [1] and at Public Meeting [1]
- o Hardscape, associated landscape design, and irrigation

JOINT RESPONSIBILITIES (POE & TAP) & DELIVERABLES:

- Drainage
- Attend Listening Meeting with Neighborhood and Stakeholders
- Attend Meetings with Owner
- Attend Meetings with City Council and General Public Meeting

OWNER RESPONSIBILITIES (THE CITY OF MOORE) & DELIVERABLES:

- Environmental Clearance
- Listening Meeting with Neighborhood and Stakeholders
- Meetings with City Council and General Public Meeting
- Any Pertinent Agreements with Any Adjacent Property Owners

SCHEDULE OF SUBMITTALS

- Notice to Proceed: October 2014.
- Complete Survey: January 2015.
- Preliminary Plan Field Review Plan Submittal with Cost Estimate: March 2015.
- Preliminary Plan Field Review Meeting: April 2015.
- Utility Plan Submittal: May 2015.
- Utility Review Meeting: June 2015.
- Proposed Utility Relocation Plan Submittal: August 2015.
- Complete NEPA Environmental Submittal: November 2015.
- Present Conceptual Architectural Renderings to City: February 2016.
- Public Involvement Meeting: March 2016.

- City Selection of Final Architectural Rendering: May 2016.
- Complete Final Architectural Design Drawings: July 2016.
- Final Plan Field Review Plan Submittal with Cost Estimate: September 2016.
- Final Plan Field Review Meeting: October 2016.
- Final PS&E Plans Submittal: November 2016.
- Advertise for Bids: December 2016.
- Mandatory Pre-Bid Meeting: January 2017.
- Bid Opening: February 2017.
- Project Award: March 2017.
- Pre-Construction Meeting: April 2017.
- Begin Construction: June 2017.
- Construction Progress Meeting 1: July 2017.
- Construction Progress Meeting 2: August 2017.
- Construction Progress Meeting 3: September 2017.
- Final Construction Field Review Meeting: October 2017.
- As-Built Submittal: November 2017.

POE & ASSOCIATES, INC.
Consulting Engineers

PROPOSED FEE (Phase One)

TAP	\$39,000.00
POE & ASSOCIATES	
SURVEY	\$40,000.00
ENGINEERING, MANAGEMENT & MEETINGS	<u>\$29,500.00</u>
TOTAL FEE (lump sum)	\$108,500.00