

**AGREEMENT FOR PROFESSIONAL SERVICES**

This is an Agreement effective as of \_\_\_\_\_ (“Effective Date”) between the **City of Weiser** ("Owner") and **Keller Associates, Inc.** (“Consultant”).

Owner's Project, of which Consultant's services under this Agreement are a part, is generally identified as follows: **9<sup>th</sup> Street to County Road 70 Waterline** (“Project”).

The Owner and the Consultant agree to the following Project scope, schedule, and compensation:

**SCOPE:** Consultant’s services under this Agreement are generally identified as design of the 9<sup>th</sup> Street to County Road 70 Waterline as described in Attachment A.

**SCHEDULE:** The Agreement shall commence on the above written date. Consultant anticipates completing its services in accordance with Attachment A.

**COMPENSATION:**

**Basic Services.** As compensation for services to be performed by Consultant, the Owner will pay Consultant a lump sum amount of \$37,700 (thirty-seven thousand seven hundred dollars) as described in Attachment A.

**Additional Services.** Compensation for performing Additional Services will be pursuant to a mutually agreed upon amendment to this Agreement.

In Witness Whereof, the parties hereto have executed this Agreement as of the date first above written. The Terms and Conditions attached are included and incorporated in this agreement by this reference. Owner and Consultant further acknowledge that they have reviewed and accepted the attached Terms and Conditions.

**OWNER: CITY OF WEISER**

**CONSULTANT: KELLER ASSOCIATES, INC.**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: Michael Schulz  
Name: Michael Schulz  
Title: Principal  
Address: 100 East Bower Street, Suite 110  
Meridian, ID 83642  
Telephone: (208) 288-1992  
Date: 2/1/2024

## TERMS AND CONDITIONS

1. **CONTRACT** – This document constitutes the full and complete Agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral. The Agreement may be amended only if both parties specifically agree in writing to such amendment of the Agreement.
2. **INVOICES AND PAYMENT** – Owner will make payment within 30 calendar days of the invoice date. Consultant shall keep accurate records of expenses. If Owner contests an invoice, Owner shall advise the Consultant within 15 days of receipt of invoice of the specific basis for doing so, may withhold only that portion so contested, and shall pay the undisputed portion.

**Interest.** If payment is not received by the Consultant within 30 calendar days of the invoice date, Owner shall pay interest at a rate of 1½% per month (or the maximum allowable by law, whichever is lower) of the past due amount. Payments will be credited first to interest and then to principal.

**Suspension.** If the Owner fails to make payments when due, the Consultant may suspend performance of services upon five (5) calendar days' notice to the Owner. Owner agrees to indemnify and hold Consultant harmless from any claim or liability resulting from such suspension.
3. **DOCUMENTS** – All documents prepared or furnished by Consultant are instruments of service, and Consultant retains ownership and property interest (including the copyright and the right of reuse) in such documents. Owner shall have a limited license to use the documents in and for the Project subject to full payment for all services relating to preparation of the documents. The Owner agrees to obtain prior written agreement for any reuse or modifications of the instruments of service, and understands that any unauthorized use of the instruments of service shall be at the Owner's sole risk and without liability to the Consultant.
4. **STANDARD OF CARE** – The standard of care for all professional engineering and related services performed or furnished by the Consultant 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. The Consultant makes no warranties, expressed or implied, under this Agreement or otherwise, in connection with the Consultant's services. Consultant shall exercise usual and customary professional care in its efforts to comply with applicable codes, regulations, laws, rules, ordinances, and such other requirements in effect as of the date of execution of this Agreement.
5. **CHANGES OR DELAYS** – The proposed scope of services, compensation, schedule, and allocation of risks reflect Consultant's understanding of the Project at the date of this Agreement. Costs and schedule commitments shall be subject to renegotiation for changed conditions, unreasonable delays caused by the Owner's failure, independent government agencies, Force Majeure events (i.e. acts of God, riots, wars, sabotage, strikes, civil disturbances, pandemics, government declared emergencies, etc.), or causes beyond the reasonable control of Consultant. Where this occurs, changes in the Agreement shall be negotiated and an equitable adjustment in compensation and schedule shall be made.
6. **TERMINATION OR REDUCTION OF SERVICES** – The Owner and Consultant may terminate this Agreement in whole or in part at any time by giving 30 days written notice thereof. The Owner shall promptly pay Consultant for all services rendered to the effective date of suspension of services, plus suspension charges, which shall include the cost of assembling documents, personnel and equipment, rescheduling or reassignment, and commitments made to others on the Owner's behalf. If Owner elects to terminate, modify, or reduce any portion of Consultant's services under this Agreement, Owner shall indemnify Consultant from any damages related to the services or activities Consultant did not provide.
7. **SUSPENSION OF SERVICES** – If the Owner suspends services of the Consultant for any reason for more than thirty days, the Consultant shall be reimbursed for expenses incurred due to suspension of services, including costs associated with rescheduling or reassigning personnel, and commitments made to others on Owner's behalf.
8. **INDEMNITY AND LIMITATION OF LIABILITY** – Owner and Consultant each agree to indemnify and hold the other (including their respective officers, directors, employees, agents, owners, shareholders, members, partners, sub-consultants, subcontractors, and representatives) harmless from and against liability for all claims, losses, damages and expenses, to the extent such claims, losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors or omissions. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of Owner and Consultant, they shall be borne by each party in proportion to its negligence. Neither the Owner nor Consultant shall be liable for incidental, indirect or consequential damages. The Consultant's liability to the Owner and to all construction contractors and subcontractors on the Project, due to the Consultant's negligent acts, errors omissions, or breach of contractual obligations relating to or arising out of the Project shall not exceed the Consultant's total fee.

9. **OPINIONS OF COST** – Consultant’s opinions of probable cost represent Consultant’s judgment as an experienced and qualified design professional. Since Consultant has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Owner’s and other contractor’s methods of determining prices, or over competitive bidding or market conditions, the Consultant cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable cost prepared by the Consultant.
10. **CONSTRUCTION PHASE SERVICES** – If Consultant performs any services during the construction phase of the Project, Consultant shall not supervise, direct, or have control over Contractor’s work. Consultant shall not have authority over or responsibility for the construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the work of the Contractor. Consultant does not guarantee the performance of the construction contract by the Contractor and does not assume responsibility for the Contractor’s failure to furnish and perform its work in accordance with the Contract Documents.
11. **MISCELLANEOUS**

**Right of Entry:** Unless otherwise noted in the scope of work, the Owner shall provide for Consultant’s right to enter the property owned by the Owner and others in order to fulfill the services to be performed hereunder.

**Dispute Resolution:** Owner or its Contractor agree to notify Consultant of any claims against the Consultant within 10 days of discovery of any allegations, errors or omissions. Should a dispute arise, Owner and Consultant agree to negotiate disputes between them in good faith for a period of 30 calendar days from the date the dispute is raised in writing by either the Owner or Consultant. If the parties fail to resolve the dispute through negotiation, then the dispute shall be decided through non-binding mediation or other mutually agreed alternative dispute resolution technique. Fees and expenses for mediation shall be split equally between the parties. The Owner and Consultant agree non-binding mediation or other mutually acceptable dispute resolution technique shall precede litigation. This Agreement shall be governed by the laws of the State where the Project is located.

**Hazardous Environmental Conditions:** The scope of Consultant’s services does not include any responsibility for detection, remediation, accidental release, or services relating to waste, oil, asbestos, lead or other hazardous materials, as defined by Federal, State, and local laws or regulations. Consultant is not required to become an arranger, operator, generator, or transporter of hazardous substances, and shall have no responsibility for the discovery, handling, removal, disposal or exposure of persons to hazardous substances of any form.

**Subsurface Investigations:** In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total project cost and/or execution. These conditions and cost/execution effects are not the responsibility of Consultant.

**Consultant Reliance:** Owner shall make available to Consultant all relevant information pertinent to the Project. Consultant shall be entitled to rely, without liability or the need for independent verification, on the accuracy and completeness of any and all information provided by Owner, Owner’s consultants and contractors, information from public records, and information ordinarily or customarily furnished by others, including, but not limited to specialty contractors, manufacturers, suppliers, and publishers of technical standards.

**Certifications:** Consultant shall not be required to sign any documents that result in Consultant having to certify, warrant, or guarantee the existence of conditions whose existence Consultant cannot ascertain within its services for the Project.

**Third Parties:** Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Consultant. Consultant’s services hereunder are being performed solely for the benefit of the Owner, and no other entity shall have any claim against Consultant because of this Agreement or Consultant’s performance of services hereunder.

**Severability & Waiver:** In the event any of these Contract Provisions are found to be illegal or otherwise unenforceable, the unenforceable Contract Provisions will be stricken, and those remaining Contract Provisions shall continue in full force and effect. The failure of either party of this Agreement to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, shall not be construed as a waiver of such term, covenant or right.

**Joint Drafting:** The Parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

**Attachment A**  
**CITY OF WEISER**  
**9<sup>TH</sup> STREET TO COUNTY ROAD 70 WATERLINE**  
**SCOPE OF WORK**

**PROJECT DESCRIPTION**

The City of Weiser (“Owner”) has contracted with Keller Associates, Inc. (“Consultant”) to provide design services for the 9<sup>th</sup> Street to County Road 70 Waterline. The Consultant’s scope of work has been developed based on the following project description. As the project moves forward, some of the information may change or be refined, and additional information will become known, resulting in the possible need to change, refine, or supplement the scope of work.

The Owner plans to construct approximately 400 linear feet of 10-inch waterline from the intersection of 9<sup>th</sup> Street and West Idaho Street to County Road 70. The project will include boring under an existing railway owned and operated by Union Pacific Railroad. The proposed waterline alignment is shown in the figure below.



Consultant’s services are limited to those services outlined in the following scope of work.

**SCOPE OF WORK**

**TASK 1: PROJECT MANAGEMENT**

*Consultant Responsibilities:*

- 1.1. General Project Management. Provide general project administration services including contract administration, project accounting, scheduling, and internal project administration.
- 1.2. Kickoff Meeting. Participate in a project kickoff meeting. Prepare agenda and meeting notes. The purpose of this meeting will be to establish Owner design criteria, review the overall project schedule including major milestones and meetings, review project constraints and objectives, discuss available data and published materials that will be made available by the Owner, and review process for deliverables including process for Owner review and approval.

*Owner Responsibilities:*

- Provide meeting space for project meetings. Provide advertising as needed.
- Provide requested information within two weeks of request.

*Assumptions:*

- Project management budget assumes a project schedule of up to 3 months.
- Unless otherwise noted, meetings/workshops may include a combination of in person or virtual attendees. This assumption applies to this task as well as subsequent tasks.

*Deliverables:*

- Monthly invoices.
- Kickoff meeting agendas and meeting notes.
- Request for information.

**TASK 2: SURVEY**

*Consultant Responsibilities:*

- 2.1. Existing Utilities. Coordinate with utility providers for the purpose of requesting maps of subject utilities such as gas, power, telephone, storm drainage, cable T.V., street lighting, irrigation, and other utilities that respond to the request for utility locates.
- 2.2. Topographic Surveying and Base Map. Provide topographic surveying for the pipeline alignment. Topographic survey will include existing visible structures, marked utilities, and observed features, such as existing fencing, sidewalks, and roadways. Consultant will use survey information to prepare a base map for the site. Survey will use NAVD 88 Vertical Datum and Idaho State Plane, NAD 83 Horizontal datum. Base map will incorporate Owner GIS data, available aerial imagery, horizontal survey data, and information provided by utilities (identified with input from Dig-Line). Establish benchmarks for future construction reference.

*Owner Responsibilities:*

- Obtain or provide GIS information, including orthophotography, existing utilities, and land parcel data, easements, and rights-of-way for the project extents. Provide any available record drawings and plats of existing subdivisions.
- Secure access to non-public properties, if required.

*Assumptions:*

- Surveying to be completed within existing right-of-way and easements; no boundary surveying to be completed. Land and easement acquisition, negotiations, and legal descriptions if required will be provided as an additional service.
- Consultant will rely on the accuracy of information provided by others.

*Deliverables:*

- Topographic base map.

**TASK 3: FINAL DESIGN SERVICES**

*Consultant Responsibilities:*

- 3.1. Final Design Drawings and Specifications. Consultant will prepare 90% design drawings. Consultant will perform design drafting in AutoCAD for the construction plans which will include standard notes, vicinity maps, sheet indexes, north arrows, scale, topography, pipe size, type, fitting, surface repair, crossing requirements, survey control, and special details necessary for a biddable product. In preparing the final design, Consultant will rely on the accuracy of information provided by others. Drafting will be completed on 11"x17" sheets. Final design drawings to include plan and profile drawings. Plans will also include standard details and/or references to appropriate design standards such as Idaho Standards for Public Works Construction (ISPWC).

Specifications will include using the *EJCDC* front-end contract documents, updates to the Supplemental Conditions, special provisions, and references to ISPWC.

Upon completion of the 90% plans, Consultant will submit a review set of plans to the Owner and address Owner comments.

- 3.2. Design Review Meeting. Participate in 90% design review meeting with the Owner.
- 3.3. 100% Documents. Address Owner comments in plans and specs and submit 100% documents for Owner.

3.4. Opinion of Probable Construction Cost. Prepare an opinion of probable costs at the 100% design phase using the bid schedule developed for the project.

*Owner Responsibilities:*

- Provide input on location and sizes of service lines and meters to be replaced/upgraded.
- Provide legal and risk reviews of the bid documents.
- Provide consolidated written comments and input on the design deliverables.
- Provide private property, stakeholder, and public outreach efforts.

*Assumptions:*

- Contractor will be required to prepare and implement a Storm Water Pollution Prevention Plan (SWPPP), prepare final traffic control plans and secure associated permits. Shoring (if required) will be designed by the Contractor.

*Deliverables:*

- 90%, and 100% design submittal (drawings and specifications), including one PDF submittal.
- Opinion of probable cost at 100%.

**TASK 4: PERMITTING**

*Consultant Responsibilities:*

4.1. Permit Application. Consultant to complete the UPRR application and submit the application with the 100% plans to UPRR for review and approval.

*Owner Responsibilities:*

- Owner will pay the UPRR application fees directly.
- Owner to provide required City representative signatures for executed UPRR application.

*Assumptions:*

- UPRR engineering plan reviews vary but can take 60 days or more
- Does not include any other permitting or field work

*Deliverables:*

- Complete UPRR permit application

**ADDITIONAL SERVICES** (not included in scope of work)

- Special use permits, environmental services, or additional permitting beyond those described in the scope of work
- Public outreach or stakeholder outreach support
- Field investigations, including subsurface investigations, to check available record drawings
- Construction phase surveying (quantities, staking, record)
- Funding administration support
- Hydraulic modeling including surge analysis
- Geotechnical investigation
- Completion of the warranty walkthrough 11-months after the issuance of Substantial Completion to the Contractor

**SCHEDULE**

Consultant anticipates the following project schedule. The number of days associated with each of the tasks are approximate and assume timely delivery of requested information. Actual schedule may vary:

<b>Task</b>	<b>Schedule (calendar days)</b>	<b>Comments</b>
Task 2 – Survey	30 days	Survey will be completed within 30 days after receiving notice to proceed, weather permitting.
Task 3 – 90% Design Complete	30 days	90% design plans and specifications will be completed within 30 days after receiving survey.
Task 3 – 100% Design Complete	30 days	100% design plans and specifications will be completed within 30 days after receiving Owner comments from the 90% review design meeting.
Task 4 – Permitting	7 days	UPRR application will be prepared and submitted with final plans to UPRR for review following Owner approval of final plans.

**COMPENSATION**

As compensation for services to be performed by Consultant, the Owner will pay Consultant as described in the following table. The total authorized budget amount shall not be exceeded without written authorization from the Owner. Lump sum amounts shall include all costs for direct labor, indirect labor, overhead, reimbursable expenses, equipment, travel, per diem, and fixed fees.

<b>Task</b>	<b>Type</b>	<b>Amount</b>
Task 1 – Project Management	LS	\$3,700
Task 2 – Survey	LS	\$9,700
Task 3 – Final Design	LS	\$21,700
Task 4 – Permitting	LS	\$2,600
<b>TOTAL COST</b>		<b>\$37,700</b>

LS = Lump Sum      T&M = Time and Materials