

**AGREEMENT FOR PROFESSIONAL ARCHITECTURAL SERVICES
FOR DESIGN SERVICES OF FIRE STATION #3
(RFQ NO.2017-069)**

THIS AGREEMENT made and entered into this ____ day of _____, 2017, by and between the City of Lee's Summit, Missouri, a Missouri Constitutional Charter City, (hereinafter "City"), and Williams, Spurgeon, Kuhl & Freshnock Architect, Inc. (WSKF) (hereinafter "Architect").

WITNESSETH:

WHEREAS, City intends to have architectural services for Fire Station #3 (hereinafter "Project"); and

WHEREAS, Architect has submitted a proposal for the Project and an estimate of costs to perform the Project; and

WHEREAS, the City Manager is authorized and empowered by City to execute contracts providing for professional architectural services; and

WHEREAS, City desires to enter into an agreement with Architect to perform the Project; and

WHEREAS, Architect represents that it is equipped, competent, and able to undertake such an assignment.

NOW THEREFORE, in consideration of the mutual covenants and considerations herein contained, **IT IS HEREBY AGREED** by the parties hereto as follows:

**ARTICLE I
SCOPE OF SERVICES TO BE PROVIDED BY ARCHITECT**

Architect shall provide professional architectural services to City ("Services") as shown in the attached Exhibit A, Scope of Services Summary, which is incorporated herein by reference.

**ARTICLE II
OPTIONAL SERVICES TO BE PROVIDED BY ARCHITECT**

This Article is not applicable.

**ARTICLE III
SCOPE OF SERVICES TO BE PROVIDED BY CITY**

City shall provide the following services to Architect:

- A. Preliminary Plan Services**
 - 1. Boundary and topographic survey.
 - 2. Geotechnical report.

- B. Construction Administration Services**
 - 1. Construction testing and special inspections.

**ARTICLE IV
PAYMENTS TO THE ARCHITECT**

For the services performed by Architect pursuant to this Agreement, and as full compensation therefore, and for all expenditures made and all expenses incurred by Architect in connection with this Agreement, except as otherwise expressly provided herein, subject to and in conformance with all provisions of this Agreement, City will pay Architect a lump-sum fee for all Services set forth in Exhibit A in the sum of Three Hundred Thirty Three Thousand Three Hundred Dollars (\$ 333,300).

City will make payment monthly for Services that have been satisfactorily completed based on the estimated percent complete for all Services. The City shall make payment to Architect within a period not to exceed thirty (30) days from the date an invoice is received by City. All invoices shall contain the following information:

1. Project Name/Task Name/RFP Number/Description of Agreement.
2. Invoice Number and Date.
3. Statement of percent complete for the previous month, itemized reimbursable Expenses, and invoice total.
4. Description of monthly progress detailing the services completed to date and projected completion time.
5. Project Billing Summary to date.

All moneys not paid when due as provided herein shall bear interest at a per annum rate equal to one percent (1%) plus the average *Consumer Price Index for All Urban Consumers (CPI-U)-U.S. City Average* for the time period in which payment is past due; provided, however, that in no event will the amount of interest to be paid by the City exceed 9% per annum.

**ARTICLE V
COMPLETION TIME**

The Scope of Services shall be completed in accordance with the deadlines set forth in the attached Exhibit B, Schedule, which is incorporated herein by reference

The Fire Chief may, with the mutual consent of the parties, amend the deadlines contained in the Schedule by written authorization upon a showing of cause for amendment by Architect.

**ARTICLE VI
INSURANCE**

Architect shall maintain at Architect's expense the following insurance coverage during the period of the Agreement and will provide City with certificates of insurance on all required coverage prior to commencement of any services performed pursuant to this Agreement:

- A. **CERTIFICATE OF INSURANCE:** The Architect shall secure and maintain, throughout the duration of this contract, insurance of such types and in at least the amounts that are required herein. Architect shall provide certificate(s) of insurance confirming the required protection on an ACORD 25 (or equivalent form). The City shall be notified by receipt of written notice from the insurer at least thirty (30) days prior to material modification or cancellation of any policy listed on the certificate(s). The City reserves the right to require formal copies of any

Additional Insured endorsement, as well as the right to require completed copies of all insuring policies applicable to the project. The cost of such insurance shall be included in the Architect's contract price.

- B. NOTICE OF CLAIM: The Architect shall upon receipt of notice of any claim in connection with this contract promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. The Architect shall also promptly notify the City of any reduction in limits of protection afforded under any policy listed in the certificate(s) of insurance in excess of \$10,000.00, whether or not such impairment came about as a result of this contract. If the City shall subsequently determine that the Architect's aggregate limits of protection shall have been impaired or reduced to such extent that they are inadequate for the balance of the project, the Architect shall, upon notice from the City, promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.
- C. INDUSTRY RATING: The City will only accept coverage from an insurance carrier who offers proof that it is licensed to do business in the State of Missouri; carries a Best's policyholder rating of "A" or better; carries at least a Class VII financial rating or is a company mutually agreed upon by the City and the Architect.
- D. SUB-CONSULTANT'S INSURANCE: If any part of the contract is to be sublet, the Architect shall either:
 - 1. Cover all sub-consultants in the Architect's liability insurance policy or,
 - 2. Require each sub-consultant not so covered to secure insurance in the minimum amounts required of the Architect and submit such certificates to the City as outlined herein.
- E. SELF-INSURED RETENTIONS / DEDUCTIBLES: Any Architect that maintains a Self-Insured Retention or Deductible (in excess of \$50,000) must be declared on the Certificates provided to the City. Such amounts shall be the sole responsibility of the Architect. The City reserves the right to approve such self-insured retentions/deductibles and may require guarantees from the Architect for such assumed limits.
- F. PROFESSIONAL LIABILITY: Professional Liability, or Errors and Omissions Insurance protection must be carried by Architect in the minimum amount of \$2,000,000.

G. COMMERCIAL GENERAL LIABILITY POLICY

Limits:

Each occurrence:	\$2,000,000
Personal & Advertising Injury:	\$2,000,000
Products/Completed Operations Aggregate:	\$2,000,000
General Aggregate:	\$2,000,000

Policy must include the following conditions:

- Bodily Injury and Property Damage
- Insured Contract's Contractual Liability
- Explosion, Collapse & Underground (if risk is present)
- Additional Insured: City of Lee's Summit, Missouri

- H. AUTOMOBILE LIABILITY: Policy shall protect the Architect against claims for bodily injury and/or property damage arising out of the ownership or use of any owned, hired and/or non-owned vehicle and must include protection for either:
1. Any Auto
 2. or all Owned Autos; Hired Autos; and Non-Owned Autos

Limits:

Each Accident, Combined Single Limits,
 Bodily Injury and Property Damage: \$2,000,000
 City of Lee's Summit, Missouri does NOT need to be named as additional insured on Automobile Liability

- I. WORKERS' COMPENSATION: This insurance shall protect the Architect against all claims under applicable state Workers' Compensation laws. The Architect shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of a Workers' Compensation law and contain a waiver of subrogation against the City. The policy limits shall not be less than the following:

Workers' Compensation:	Statutory
Employer's Liability:	
Bodily Injury by Accident:	\$100,000 Each Accident
Bodily Injury by Disease:	\$500,000 Policy Limit
Bodily Injury by Disease:	\$100,000 Each Employee

J. GENERAL INSURANCE PROVISIONS

1. The insurance limits outlined above represent the minimum coverage limit and do not infer or place a limit of liability on the Architect nor has the City assessed the risk that may be applicable to the Architect.
 2. The Architect's liability program will be primary and any insurance maintained by the City (including self-insurance) will not contribute with the coverage maintained by the Architect.
 3. Coverage limits outlined above may be met by a combination of primary and excess liability insurance programs.
 4. Any coverage provided on a Claims Made policy form must contain a 3-year tail option (extended reporting period) or the program must be maintained for 3-years subsequent to completion of the Contract.
 5. Any failure on the part of the Architect with any policy reporting provision shall not affect the coverage provided to the City.
 6. When "City" is utilized, this includes its officers, employees and volunteers in respect to their duties for the City.
- A. Architect agrees to require and shall provide evidence to City that its sub-consultants shall maintain comprehensive general liability, automobile liability, workers' compensation, and professional liability insurance, for not less than the period of services under agreements with its sub-consultants, and in not less than the amounts outlined for Architect. The comprehensive general liability policy of Architect's sub-consultants shall name City and Architect as an additional insured.

**ARTICLE VII
 MISCELLANEOUS PROVISIONS**

The following miscellaneous provisions are agreed to by both parties to this Agreement:

- A. **COVENANT AGAINST CONTINGENT FEES:** Architect warrants that Architect has not employed or retained any company or person, other than a bona fide employee working for the Architect, to solicit or secure this Agreement, and that Architect has not paid or agreed to pay any company or person, other than bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
- B. **OWNERSHIP OF ARCHITECTURAL DOCUMENTS:** Payment by City to Architect as aforesaid in Article IV shall vest in City title to all drawings, sketches, studies, analyses, reports, models, and other paper, documents, computer files, and material produced by Architect exclusively for the services performed pursuant to this Agreement up to the time of such payments, and the right to use the same without other or further compensation, provided that any use for another purpose shall be without liability to the Architect. Any reuse without written verification or adaptation by Architect for the specific purpose intended will be at City's risk and without liability or exposure to Architect, and City shall indemnify and hold harmless, to the extent allowed by the Constitution and Laws of the State of Missouri, Architect from all claims, damages, losses, expenses, including attorneys' fees arising out of or resulting therefrom.
- C. **MODIFICATIONS TO AGREEMENT:** In the event of any changes in the scope of services contained in this Agreement, prior to commencing the services City and Architect shall enter into a modification of this Agreement describing the changes in the services to be provided by Architect and City, providing for compensation for any additional services to be performed by Architect, and providing completion times for said services.
- D. **EMERGENCY CHANGES IN SERVICES:** The Fire Chief, with the consent of the City Manager, is authorized to execute on behalf of the City modification agreements as provided for in subsection C. above where there is an emergency and the overall compensation authorized in Article IV above, and any supplements or modifications thereto, is not increased. For purposes of this subsection, an "emergency" shall mean those unforeseen circumstances that present an immediate threat to public health, welfare, or safety; or when immediate response is necessary to prevent further damage to public property, machinery, or equipment; or when delay would result in significant financial impacts to the City as determined by the Fire Chief and the City Manager.

In the event an emergency change in services is authorized by the Fire Chief and the City Manager pursuant to this provision, the modification agreement shall be submitted to the City Council for ratification at its next available meeting.

- E. **TERMINATION:** In the event of termination by City, if there are any services hereunder in progress, but not completed as of the date of termination, then said Agreement may be extended upon written approval of the City until said services are completed and accepted.
 - 1. **Termination for Convenience:** The services called for by this Agreement or any supplements thereto may be terminated upon request and for the convenience of City upon thirty (30) days advance written notice. City shall pay Architect for all services rendered up to the date of termination.

2. Termination for Cause: This Agreement may also be terminated for cause by City or Architect. Termination for cause shall be preceded by a fourteen-(14) day correction period effective upon delivery of written notice. City shall pay Architect for all services rendered up to the date of termination. In the event of termination for cause by City, compensation for services rendered by Architect up to the date of termination shall be offset by City's reasonable cost to mitigate or correct the effects of such termination.
 3. Termination Due to Unavailability of Funds in Succeeding Fiscal Years: When funds are not appropriated or otherwise made available to support continuation of the Project in a subsequent fiscal year, this Agreement shall be terminated and Architect shall be reimbursed for the services rendered up to the date of termination plus the reasonable value of any nonrecurring costs incurred by Architect but not amortized in the price of the services delivered under this Agreement.
- F. **COMPLIANCE WITH LAWS**: Architect shall comply with all Federal, State, and local laws, ordinances, and regulations applicable to the services. Architect shall secure all licenses, permits, etc. from public and private sources necessary for the fulfillment of its obligations under this Agreement.
- G. **SUBLETTING ASSIGNMENT OR TRANSFER**: Architect shall not sublet, assign, or transfer any interest in the services covered by this Agreement, except as provided for herein and except with the prior written consent of City. The use of subcontractors shall in no way relieve Architect of his/her primary responsibility for the services. No approval will be necessary for non-professional services such as reproductions, printing, materials, and other services normally performed or provided by others.
- H. **CONFERENCES, VISITS TO SITE, INSPECTION OF SERVICES**: Upon reasonable advance notice and during normal business hours at Architect's place of business, representatives of City shall have the privilege of inspecting and reviewing the services being performed by Architect and consulting with him/her at such time. Conferences are to be held at the request of City or Architect.
- I. **ARCHITECT' ENDORSEMENT**: Architect shall endorse all plans, specifications, estimates, and design data furnished by him/her in accordance with state statutes.
- J. **INSPECTION OF DOCUMENTS**: Architect shall maintain all records pertaining to its services hereunder for inspection, upon reasonable advance notice and during normal business hours at Architects place of business, by a City representative during the contract period and for three (3) years from the date of final payment for each individual project performed pursuant to this Agreement.
- K. **INDEMNIFICATION AND HOLD HARMLESS**: Architect shall indemnify and hold harmless City and its officers, employees, elected officials, and attorneys, each in their official and individual capacities, from and against judgments, damages, losses, expenses, including reasonable attorneys' fees, to the extent caused by the negligent acts, errors, omissions, or willful misconduct of Architect, or its employees, or subcontractors, in the performance of Architect's duties under this Agreement, or any supplements or amendments thereto.
- L. **LIMITATION OF LIABILITY**: In no event will City be liable to Architect for indirect or consequential damages, and in no event will City's liability under this Agreement exceed the amount to be paid to Architect pursuant to Article IV of this Agreement.

- M. **PROFESSIONAL RESPONSIBILITY:** Architect will exercise reasonable skill, care, and diligence in the performance of its services in accordance with customarily accepted professional architectural practices. If Architect fail to meet the foregoing standard, Architect will perform at its own cost, and without reimbursement from City, the professional architectural services necessary to correct errors and omissions that are caused by Architect's failure to comply with above standard, and that are reported to Architect within one year from the completion of Architect's services for each individual project performed pursuant to this Agreement.
- N. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the parties with respect to its subject matter, and any prior agreements, understandings, or other matters, whether oral or written, are of no further force or effect. This Agreement may be amended, changed, or supplemented only by written agreement executed by both of the parties hereto.
- O. **CONFLICT:** In the event of any conflict, ambiguity, or inconsistency between this Agreement and any other document that may be annexed hereto, the terms of this Agreement shall govern.
- P. **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.
- Q. **OPINION OF PROBABLE CONSTRUCTION COST AND SCHEDULE:** Since Architect has no control over the cost of labor, materials, or equipment, or over contractor's(s') methods of determining prices, or over competitive bidding or market conditions, the estimate of construction cost and schedule provided for herein is to be made on the basis of Architect experience and qualifications and represents Architect's best judgment as a professional architect familiar with the construction industry, but Architect cannot and does not guarantee that the bids or the Project construction cost or schedule will not vary from the opinion of probable construction cost and schedule prepared by Architect.
- R. **TAX EXEMPT:** City and its agencies are exempt from State and local sales taxes. Sites of all transactions derived from this Agreement shall be deemed to have been accomplished within the State of Missouri.
- S. **SAFETY:** In the performance of its services, Architect shall comply with the applicable provisions of the Federal Occupational Safety and Health Act, as well as any pertinent Federal, State and/or local safety or environmental codes.
- T. **ANTI-DISCRIMINATION CLAUSE:** Architect and its agents, employees, or subcontractors shall not in any way, directly or indirectly, discriminate against any person because of age, race, color, handicap, sex, national origin, or religious creed.
- U. **DELAY IN PERFORMANCE:** Neither City nor Architect shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions, floods, earthquakes, fire, epidemics, war, riots, and other civil disturbances, strikes, lockouts, work slowdowns, and other labor disturbances, sabotage, judicial restraint, and delay in or inability to procure permits, licenses, or authorizations from any local, State, or Federal agency for any of the supplies, materials, accesses, or services required to be provided by either City or Architect under this Agreement. Architect and City shall be granted a reasonable extension of time

for any delay in its performance caused by any such circumstances. Should such circumstances occur, the nonperforming party shall within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of the Agreement.

V. NO THIRD-PARTY RIGHTS: The services provided for in this Agreement are for the sole use and benefit of City and Architect. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and Architect.

W. NOTICE: Whenever any notice is required by this Agreement to be made, given or transmitted to any party, it shall be enclosed in an envelope with sufficient postage attached to ensure delivery and deposited in the United States Mail, first class, with notices to City addressed to:

Fire Chief
City of Lee's Summit
207 SE Douglas Street
Lee's Summit, MO 64063

and notices to Architect shall be addressed to:

WSKF Architect, Inc.
110 Armour Road
North Kansas City, MO 64116

or such place as either party shall designate by written notice to the other. Said notices may also be personally hand delivered by each party to the other, at the respective addresses listed above. If hand delivered, the date of actual completion of delivery shall be considered the date of receipt. If mailed, the notice shall be considered received the third day after the date of postage.

ARTICLE VIII ALL OTHER TERMS REMAIN IN EFFECT

THIS AGREEMENT shall be binding on the parties thereto only after it has been duly executed and approved by City and Architect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the _____ day of _____, 2017.

CITY OF LEE'S SUMMIT


Stephen A. Arbo, City Manager

APPROVED AS TO FORM:

Nancy K. Yendes
Chief Council of Infrastructure and Planning

ARCHITECT:

Williams Spurgeon Kuhl & Freshnock Architects Inc.

BY:  _____

TITLE: PRINCIPAL _____