

**AGREEMENT  
BETWEEN OWNER AND CONTRACTOR FOR  
CONSTRUCTION CONTRACT (STIPULATED PRICE)**

Prepared by

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
*A Practice Division of the*  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Endorsed by



CONSTRUCTION SPECIFICATIONS INSTITUTE

Copyright © 2007 National Society of Professional Engineers  
1420 King Street, Alexandria, VA 22314-2794  
(703) 684-2882  
[www.nspe.org](http://www.nspe.org)

American Council of Engineering Companies  
1015 15th Street N.W., Washington, DC 20005  
(202) 347-7474  
[www.acec.org](http://www.acec.org)

American Society of Civil Engineers  
1801 Alexander Bell Drive, Reston, VA 20191-4400  
(800) 548-2723  
[www.asce.org](http://www.asce.org)

Associated General Contractors of America  
2300 Wilson Boulevard, Suite 400, Arlington, VA 22201-3308  
(703) 548-3118  
[www.agc.org](http://www.agc.org)

The copyright for this EJCDC document is owned jointly by the four  
EJCDC sponsoring organizations and held in trust for their benefit by NSPE.

**AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between City of Lee's Summit, Missouri ("Owner") and  
Streetwise, Inc. ("Contractor").  
Owner and Contractor hereby agree as follows:

**ARTICLE 1 – WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Work shall consist of providing pavement marking services for roughly 168 centerline miles of streets maintained by the City of Lee's Summit, Missouri. Services will be provided on an "as-requested" basis. Pavement marking services shall include all labor, supervision, equipment, and materials necessary to provide the contracted services described within the contract documents.

The City intends to authorize four (4) Service Request Work Orders per year for the maintenance of existing markings. An estimated list of average quantities per year is shown in the Article 5-Contract Price section of this agreement. Maintenance work for a Service Request Work Order will be authorized for an entire section of the City at one time. A map of the four (4) maintenance sections is included in the Drawings and Details Section. Modifications to existing pavement marking placement may also be included in a Service Request Work Order.

Unplanned work outside of or in addition to what is indicated in a Service Request Work Order may be required on an emergent basis, would be issued by change order, and is considered to be an On-Call Work Order.

The contract will be awarded for a period of one calendar year (365 days) from the date of execution with the potential of three (3) one-year renewals at the sole option of the City. Cost adjustment provisions for renewals are described in Article 5-Contract Price section of this agreement.

**ARTICLE 2 – THE PROJECT**

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

728-Pavement Marking Services

**ARTICLE 3 – ENGINEER**

3.01 The Project has been designed by The City of Lee's Summit Public Works Department which is to act as Owner's representative, assume all duties and responsibilities, and have the rights and

authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

#### **ARTICLE 4 – CONTRACT TIMES**

##### 4.01 *Time of the Essence*

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

##### 4.02 *Dates for Substantial Completion and Final Payment*

- A. The Work will be substantially completed on or before November 1, 2020, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions on or before December 1, 2020.
- B. No pavement marking shall be applied during periods of Weather Limitations as specified by article 3023.3 of “Section 3000-Traffic Control City of Lee’s Summit Standard Specifications” and between November 1<sup>st</sup> and March 31<sup>st</sup> of any year.
- C. On-Call work orders will be substantially completed within five working days following date of acceptance by Contractor unless otherwise approved by the Engineer and shall comply with dates for Substantial Completion and Final Payment in accordance with Section 4.02A.

##### 4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$700 for each day that expires after the time specified in Paragraph 4.02 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$700 for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment. In addition, Contractor shall be liable to Owner for all other damages, including, but not limited to attorney’s fees and expenses, additional engineering fees and expenses, and time, costs, and/or expense of Owner’s personnel.

**ARTICLE 5 – CONTRACT PRICE**

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A, and 5.01.B below:

A. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual quantity of that item:

<u>UNIT PRICE WORK</u>					
<u>Item No.</u>	<u>Description</u>	<u>Unit</u>	<u>Estimated Quantity</u>	<u>Bid Unit Price</u>	<u>Bid Price</u>
1	4" White Line – High Build Paint (Striping)	<u>LF</u>	835,865	\$0.12	<u>\$100,303.80</u>
2	4" Yellow Line – High Build Paint (Striping)	<u>LF</u>	968,667	\$0.12	<u>\$116,240.04</u>
3	4" White Parking Line – Preformed Marking (Striping)	<u>LF</u>	6,255	\$3.10	<u>\$19,390.50</u>
4	6" White Line – Preformed Marking (Striping)	<u>LF</u>	9,644	\$5.00	<u>\$48,220.00</u>
5	12" White Line – Preformed Marking (Striping)	<u>LF</u>	1,300	\$7.00	<u>\$9,100.00</u>
6	12" Yellow Line – Preformed Marking (Striping)	<u>LF</u>	1,922	\$7.00	<u>\$13,454.00</u>
7	24" White Line – Preformed Marking (Striping)	<u>LF</u>	4,989	\$14.00	<u>\$69,846.00</u>
8	Yield Line Triangles – Preformed Marking (Striping)	<u>LF</u>	135	\$10.00	<u>\$1,350.00</u>
9	ADA Wheelchair Symbol – Preformed Marking	<u>EA</u>	34	\$165.00	<u>\$5,610.00</u>
10	Traffic Calming Triangle Symbol – Preformed Marking	<u>EA</u>	18	\$150.00	<u>\$2,700.00</u>
11	Left/Right Arrow Symbol – Preformed Marking	<u>EA</u>	600	\$215.00	<u>\$129,000.00</u>
12	2 Headed Arrow Symbol – Preformed Marking	<u>EA</u>	15	\$200.00	<u>\$3,000.00</u>
13	3 Headed Arrow Symbol – Preformed Marking	<u>EA</u>	2	\$260.00	<u>\$520.00</u>
14	Straight Arrow Symbol – Preformed Marking	<u>EA</u>	2	\$110.00	<u>\$220.00</u>
15	Only Symbol – Preformed Marking	<u>EA</u>	17	\$215.00	<u>\$3,655.00</u>
16	Lane Reduction Arrow Symbol-Preformed Marking	<u>EA</u>	4	\$285.00	<u>\$1,140.00</u>
17	Wrong Way Arrow Symbol-Preformed Marking	<u>EA</u>	1	\$200.00	<u>\$200.00</u>
18	Loading Zone Symbol-Preformed Marking	<u>EA</u>	3	\$700.00	<u>\$2,100.00</u>
19	Visitor Symbol-Preformed Marking	<u>EA</u>	2	\$300.00	<u>\$600.00</u>
20	Bike Lane Symbol-Preformed Marking	<u>EA</u>	16	\$265.00	<u>\$4,240.00</u>
21	Pavement Marking Removal (Permanent Striping)	<u>LF</u>	1000	\$0.50	<u>\$500.00</u>
22	Pavement Marking Removal (Permanent Symbols)	<u>EA</u>	6	\$35.00	<u>\$210.00</u>
23	On-Call Work Order Mobilization	<u>EA</u>	2	\$800.00	<u>\$1,600.00</u>
<b>Total of all Bid Prices (Unit Price Work)</b>					<b><u>\$533,199.34</u></b>

The Bid prices for Unit Price Work set forth as of the Effective Date of the Agreement are based on estimated quantities. As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and

classifications are to be made by Engineer as provided in Paragraph 9.07 of the General Conditions.

- B. Bidder understands that any adjustments in cost at the beginning of each renewal period should be limited to the current Federal Consumer Price Index “CPI-U, All Items” (Urban Consumers) or applicable PPI Index. Any proposed increase(s) above CPI shall not exceed 2% of the total contract amount. Justification for increases above CPI shall be provided to the Public Works Project Manager for review. Any adjustment shall be either approved or denied by the Director of Public Works. Any ensuing contract renewal must be approved and executed by the Director of Public Works. Any proposed wage increase shall not exceed the stipulated wage rate(s) as stated in the applicable Prevailing Wage Order Number that shall be in effect for said particular contractual term.

If the Bidder requests an increase in compensation for any renewal period, the Bidder shall notify the Public Works Engineering Division no less than sixty (60) days prior to the end of the contract period and shall provide evidence to the satisfaction of the City of increased costs incurred by the Bidder for any element of the bid/RFP for which an increase is requested.

The Public Works Engineering Division shall notify the Bidder in writing of the intent to exercise the renewal option. However, failure to notify the Bidder does not waive the City’s right to exercise the renewal option.

## **ARTICLE 6 – PAYMENT PROCEDURES**

### *6.01 Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ~~Engineer~~ Owner as provided in the General Conditions.

### *6.02 Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor’s Applications for Payment per each completed Service Request Work Order and per each completed On-Call Work Order ~~on or about the 1st day of each month~~ during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.
  - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.

- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion

#### 6.03 Final Payment

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

### ARTICLE 7 – INTEREST

- 7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate as specified by Missouri State Statute, RSMo 34-057. ~~of \_\_\_\_\_ percent per annum.~~

### ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
  - A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
  - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
  - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (~~except Underground Facilities~~), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."
  - E. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

- F. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- G. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- H. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- I. Cooperative Procurement with Other Jurisdictions:

This section is optional, it will not affect contract award. If the City of Lee's Summit awarded you the proposed contract, would you sell under the prices and terms of this Contract to any Municipal, County, Public Utility, Hospital, Educational Institution, or any other non-profit organization having membership in the Mid America Council of Public Purchasing (MACPP) or Mid-America Regional Council (MARC) and located within the Greater Kansas City Metropolitan Trade Area? (All deliveries shall be F.O.B. Destination and there shall be no obligations on the part of any member of said Council to utilize this Contract).

YES \_\_\_\_\_ NO \_\_\_\_\_ INITIALS: \_\_\_\_\_

Sales will be made in accordance with the prices, terms, and conditions of the Invitation for Bid and any subsequent term contract. There shall, however, be no obligation under the cooperative procurement agreement for any organization represented by MACPP or MARC to utilize the bid or contract unless they are specifically named in the Invitation for Bid as a joint bidder. The principal contracting officer (PPO) is responsible to handle the solicitation and award the contract. The PCO has sole authority to modify the contract and handle disputes regarding the substance of the contract. The PCO is the Procurement Officer of Record, City of Lee's Summit, Missouri. Each jurisdiction that is a party to the joint bid has authority to act as Administrative Contracting Officer with responsibility to issue purchase orders, inspect and receive goods, make payments and handle disputes involving shipment to the jurisdiction.

**ARTICLE 9 – CONTRACT DOCUMENTS**

9.01 *Contents*

- A. The Contract Documents consist of the following:
  - 1. This Agreement (pages 1 to 10, inclusive).
  - 2. Performance bond (pages 1 to 3, inclusive).
  - 3. Payment bond (pages 1 to 3, inclusive).
  - 4. General Conditions (pages 1 to 66, inclusive).
  - 5. Supplementary Conditions (pages 1 to 7, inclusive).



6. Specifications as listed in the table of contents of the Project Manual.
7. Drawings and Details as listed in the Table of Contents of the Project.
8. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
  - a. Notice to Proceed (pages 1 to 1, inclusive).
  - b. Work Change Directives.
  - c. Change Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

## **ARTICLE 10 – MISCELLANEOUS**

### 10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

### 10.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and 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 the Contract Documents.

### 10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

#### 10.04 Severability

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

#### 10.05 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
  1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

#### 10.06 Other Provisions

1. This Agreement and all work related to this Project shall be governed by the laws of the State of Missouri and shall be litigated and/or mediated in Jackson County, Missouri's Independence Courthouse.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on \_\_\_\_\_ (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR:

City of Lee's Summit, Missouri \_\_\_\_\_

\_\_\_\_\_

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

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

Title: City Manager \_\_\_\_\_

Title: \_\_\_\_\_

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Approved as to Form: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: Chief of Litigation \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:  
220 SE Green Street  
Lee's Summit, MO 64063  
\_\_\_\_\_

Address for giving notices:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attest:

License No.: \_\_\_\_\_

(Where applicable)

(If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

Agent for service of process:  
\_\_\_\_\_