
**ON-CALL AGREEMENT FOR
PROFESSIONAL ENGINEERING SERVICES FOR WATER AND SANITARY SEWER (RFQ NO. 2020-030-2)**

THIS AGREEMENT made and entered into this 10th day of December, 2019, by and between the City of Lee's Summit, Missouri, a Missouri Constitutional Charter City, (hereinafter "City"), and Olsson _____, Inc.(hereinafter "Service Provider").

WITNESSETH:

WHEREAS, City desires to have on-call services for Professional Engineering for Water and Sanitary Sewer; and

WHEREAS, Service Provider has submitted a proposal for the on-call Professional Engineering services and standard hourly rates and expenses to perform said services; and

WHEREAS, City desires to enter into an agreement with Service Provider to perform the services as aforementioned; and

WHEREAS, Service Provider 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 ON-CALL SERVICES TO BE PROVIDED BY SERVICE PROVIDER**

Service Provider shall provide the following professional engineering services to the City on an on-call basis ("On-Call Services"):

- Design of minor water distribution main projects including plans and specifications
- Design of minor sanitary sewer main projects including plans and specifications
- Modeling and predicting water demands of existing and/or proposed developments
- Modeling and predicting wastewater flows of existing and/or proposed developments
- Flow Monitoring and field data collection
- Statistical analysis of water and/or wastewater usage or other data,
- Financial Analysis, rate studies and reporting
- Water and/or wastewater pumping station performance evaluations and troubleshooting
- Assistance with review of project, capital, or maintenance and repair plans
- Technical review of facility and/or infrastructure development
- Infrastructure inspections including system appurtenances, water storage tanks, and other facilities
- Evaluation of performance and suitability of equipment and materials
- Assistance during emergencies
- Assisting staff for public presentations
- General Engineering for facilities including electrical, mechanical and structural engineering
- Studies, design and implementation of System Control and Data Acquisition (SCADA) systems

ARTICLE II
SERVICES TO BE PROVIDED BY SERVICE PROVIDER BY MODIFICATION OR
MEMORANDUM OF AUTHORIZATION

This is an indefinite quantity and indefinite delivery Agreement for Services, which shall only be provided when the City chooses to move forward with a pending project and proper authorization and documentation have been approved. For project(s) determined by the City to be appropriate for this Agreement, the Contractor shall provide the specific services authorized in Article I above as may be agreed upon between the Parties, in the form of a written invoice, quote, purchase order or other form of written acknowledgment describing the Services to be provided (each, a "Work Order"). Each Work Order shall (i) contain a reference to this Agreement and (ii) be attached hereto as Exhibit B and incorporated herein by reference. Work Orders submitted without referencing this Agreement will be subject to rejection. Contractor acknowledges and agrees that Work Order(s) containing unauthorized exceptions, conditions, limitations, or provisions in conflict with the terms of this Agreement, other than City's project-specific requirements, are hereby expressly declared void and shall be of no force and effect. The City does not guarantee any minimum or maximum amount of Services will be requested under this Agreement.

ARTICLE III
LIMITATIONS AND PROCEDURES RELATED TO ON CALL SERVICES

- A. Approvals. On-call services shall only be provided after written approval of the requested services, in the form of a Work Order as described in Article II above, is provided by the Department Director (or designee) of the Department requesting the services. Such approval shall only be given when sufficient budgeted amounts are available to cover the cost of the services. The Service Provider shall provide a monthly written statement of all On-Call Services provided in the preceding month to the Assistant Director of Engineering and the Finance Department.

- B. Compensation. The City shall pay Contractor for the Initial Term and for each subsequent Renewal Term, if any, an annual aggregate amount not to exceed Two Hundred and Fifty Thousand dollars (\$250,000) for Professional Engineering Services (as described in the Scope of Work) at the rates for Professional Engineering Services, as set forth in the Fee Proposal, attached hereto as Exhibit C and incorporated herein by reference. The maximum aggregate amount for this Agreement shall not exceed Seven Hundred and Fifty Thousand Dollars (\$750,000).

ARTICLE IV
PAYMENTS TO THE SERVICE PROVIDER

For the services performed by Service Provider pursuant to this Agreement, or any modifications thereto, and as full compensation therefore, and for all expenditures made and all expenses incurred by Service Provider in connection with this Agreement, or any modifications thereto, except as otherwise expressly provided herein, subject to and in conformance with all provisions of this Agreement, City will pay Service Provider according to the following provisions:

- A. The cost of all on-call services covered under Article I shall be billed at the rates set forth in Exhibit A attached hereto and incorporated herein by reference. Expenses incurred to provide the on-call services shall be billed as set forth in Exhibit A.

- B. Compensation for services to be provided by Service Provider through a modification pursuant to Article II above shall be set forth in said modification, and shall be at the rates set forth in the attached Exhibit A.

- C. If so requested by Service Provider, City will make payment monthly for on-call services that have been satisfactorily completed. The City shall make payment to Service Provider 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. Name or Description of Agreement/RFQ Number/Project and/or Task Name
 2. Invoice Number and Date.
 3. Itemized statement for the previous month of labor (including personnel description, title or classification for each person on the project, hours worked, hourly rate, and amount), itemized reimbursable expenses, and invoice total.
 4. Report of monthly progress describing the services completed to date and projected completion time for the work.
 5. If applicable, project billing summary containing the agreed fee amount, cumulative amount previously billed, billing amount this invoice, agreed amount remaining, and percent of fee billed 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 TERM

The term of this Agreement shall be a one (1) year period from February 1, 2020 through January 31, 2021 ("Initial Term"), unless terminated as otherwise provided for in this Agreement. After the expiration of the Initial Term, the Agreement will automatically renew unless the City or the Service Provider at their discretion chose to terminate, for up to two (2) additional one-year terms (each a "Renewal Term") unless terminated as otherwise provided for in this Agreement. Three (3) months prior to expiration of the initial term or the first renewal term of this Agreement, Service Provider shall submit to City a proposal for increases in its billing rates and expenses to be in effect for the following Renewal Term. Service Provider shall not be permitted to increase billing rates in any Renewal Term in excess of the Employment Cost Index, Wages and Salaries, published by the U.S. Department of Labor, Bureau of Labor Statistics in effect at that time.

ARTICLE VI INSURANCE

A. General.

1. Insurer Qualifications. Without limiting any obligations or liabilities of Service Provider, Service Provider shall purchase and maintain, at its own expense, the minimum insurance set forth in this Section with insurance companies authorized to do business in the State of Missouri, with an AM Best, Inc. rating of A or above, and with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.
2. No Representation of Coverage Adequacy. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Service Provider from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
3. Additional Insured. All insurance coverage, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name and endorse, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

4. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.
5. Primary Insurance. Service Provider's insurance shall be endorsed to indicate its primary, non-contributory insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured. Such coverage shall be at least as broad as ISO CG 20 01 04 13.
6. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for six (6) years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the six-year period.
7. Waiver. To the fullest extent permitted by law, all policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Service Provider. Service Provider shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement.
8. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Service Provider shall be solely responsible for any such deductible or self-insured retention amount.
9. The limits of liability for each policy coverage amount stated above shall be automatically adjusted upward as necessary to remain at all times not less than the maximum amount of liability set forth in Chapter 537.610 RSMo. applicable to political subdivisions pursuant to 537.600; provided that nothing herein or in any such policy shall be deemed to waive the City's sovereign immunity. The statutory waiver of sovereign immunity for 2019 is \$2,865,330 for all claims arising out of a single accident or occurrence.
10. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Service Provider shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the City and Service Provider. Service Provider shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
11. Notice of Claim. Service Provider shall upon receipt of notice of any claim in connection with this Agreement promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. Service Provider 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 an amount such that the policy aggregate becomes less than the current statutory waiver of sovereign immunity regardless of whether such impairment is a result of this Agreement. A breach of this provision is material breach of the contract.
12. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Service Provider will provide the City with suitable evidence of insurance in the form of certificates of insurance and, if requested by the City, a copy of the declaration page(s) of the insurance policies with sensitive information redacted as required by these requirements, issued by Service Provider's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in these requirements and that such coverage and provisions are in full force and effect. The City shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way these insurance requirements or obligations.
13. If any of the policies required by these requirements expire during the life of the Agreement, it shall be Service Provider's responsibility to forward renewal certificates and declaration page(s) to the City 30 days prior to

the expiration date. All certificates of insurance and declarations shall be identified by referencing the Agreement; certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the Agreement, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

- a. The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:
 - i. Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 03 97 or equivalent.
 - ii. Auto Liability – Under ISO Form CA 20 48 or equivalent.
 - iii. Excess Liability – Follow Form to underlying insurance.
 - b. Service Provider’s insurance shall be primary, non-contributory insurance with respect to performance of the Agreement.
 - c. All policies, except for Professional Liability, including Workers’ Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Service Provider under this Agreement.
 - d. ACORD certificate of insurance form 25 (2014/01) is preferred.
14. All Certificates of Insurance shall name the City of Lee’s Summit as the certificate holder and send the certificate and any endorsements to:

City of Lee's Summit
220 SE Green Street
Lee's Summit, MO 64063-2358

B. Required Insurance Coverage.

1. Commercial General Liability. Service Provider shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limits of not less than \$3,000,000 for each occurrence, \$3,000,000 Products and Completed Operations Annual Aggregate and a \$3,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, bodily injury, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 01 93 or equivalent thereof, including but not limited to, separation of insured’s clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be endorsed as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement forms CG 20 10 07 04 and CG 20 37 07 04, or their equivalents. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.
2. Vehicle Liability. Service Provider shall maintain Business Automobile Liability insurance with an unimpaired limit of at least \$3,000,000 each occurrence on Service Provider’s owned, hired and non-owned vehicles assigned to or used in the performance of the Service Provider’s work or services under this Agreement. Coverage will be at least as broad as ISO coverage code “1” “any auto” policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be endorsed as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.
3. Professional Liability. If this Agreement is the subject of any professional services or work, or if the Service Provider engages in any professional services or work adjunct or residual to performing the work under this Agreement, the Service Provider shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Service Provider, or anyone employed by the Service

Provider, or anyone for whose negligent acts, mistakes, errors and omissions the Service Provider is legally liable, with an unimpaired liability insurance limit of at least \$3,000,000 each claim and \$3,000,000 annual aggregate. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

4. Workers' Compensation Insurance. If Service Provider employs anyone who is required by law to be covered by workers' compensation insurance, Service Provider shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Service Provider's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.
 5. Cyber Liability Insurance. If this Agreement is the subject of any services or work involving the use or access of computer systems or data, Service Provider shall maintain Cyber Liability insurance with unimpaired limits not less than \$2,000,000 per occurrence, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Service Provider in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.
- C. Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without thirty (30) days' prior written notice to the City.

ARTICLE VII MISCELLANEOUS PROVISIONS

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

- A. **COVENANT AGAINST CONTINGENT FEES:** Service Provider warrants that Service Provider has not employed or retained any company or person, other than a bona fide employee working for the Service Provider, to solicit or secure this Agreement, and that Service Provider 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 DOCUMENTS:** Payment by City to Service Provider 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 Service Provider 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 Service Provider.
- 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 Service Provider shall enter into a modification of this Agreement or a Memorandum of Authorization describing the services to be provided by Service Provider and City, and the compensation and completion times for said services.

- D. **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 Service Provider 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 Service Provider. Termination for cause shall be preceded by a fourteen-(14) day correction period effective upon delivery of written notice. City shall pay Service Provider for all services rendered up to the date of termination. In the event of termination for cause by City, compensation for services rendered by Service Provider 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 Service Provider shall be reimbursed for the services rendered up to the date of termination plus the reasonable value of any nonrecurring costs incurred by Service Provider but not amortized in the price of the services delivered under this Agreement.
- E. **COMPLIANCE WITH LAWS:** Service Provider shall comply with all Federal, State, and local laws, ordinances, and regulations applicable to the services. Service Provider shall secure all licenses, permits, etc. from public and private sources necessary for the fulfillment of its obligations under this Agreement.
- F. **SUBLETTING ASSIGNMENT OR TRANSFER:** Service Provider 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 Service Provider 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.
- G. **CONFERENCES, VISITS TO SITE, INSPECTION OF SERVICES:** Upon reasonable advance notice and during normal business hours at Service Provider's place of business, representatives of City shall have the privilege of inspecting and reviewing the services being performed by Service Provider and consulting with him/her at such time. Conferences are to be held at the request of City or Service Provider.
- H. **SERVICE PROVIDER'S ENDORSEMENT:** Service Provider shall endorse all plans, specifications, estimates, and Service Provider data furnished by him/her.
- I. **INSPECTION OF DOCUMENTS:** Service Provider shall maintain all records pertaining to its services hereunder for inspection, upon reasonable advance notice and during normal business hours at Service Provider's 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.
- J. **INDEMNIFICATION AND HOLD HARMLESS:** Service Provider shall indemnify, defend, and hold harmless City and its officers, employees, elected officials, and attorneys, each in their official and individual capacities (the City and any such person being herein called an "Indemnified Party"), for, from and against any and all judgments, damages, claims, fines, penalties, losses, costs, and expenses (including reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever (collectively "Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the wrongful, reckless or negligent acts, errors or omissions, or willful misconduct, in the performance of Service Provider's duties and services under this Agreement, or any supplements or amendments thereto, of Service Provider, or its employees, officers, agents, or any tier of subcontractor or person for which Service Provider may be legally liable in the performance of this Agreement.
- K. **LIMITATION OF LIABILITY:** Intentionally Omitted.

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- L. **PROFESSIONAL RESPONSIBILITY:** Service Provider warrants that the Services rendered will conform to the requirements of this Agreement and with the care and skill ordinarily used by members of the same profession practicing under similar circumstances at the same time and in the same locality.
- M. **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.
- N. **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.
- O. **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.
- P. **OPINION OF PROBABLE CONSTRUCTION COST AND SCHEDULE:** Since Service Provider 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 Service Provider's experience and qualifications and represents Service Provider's best judgment as a professional Service Provider familiar with the construction industry, but Service Provider 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 Service Provider.
- Q. **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.
- R. **SAFETY:** In the performance of its services, Service Provider 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.
- S. **ANTI-DISCRIMINATION CLAUSE:** Service Provider 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.
- T. **DELAY IN PERFORMANCE:** Neither City nor Service Provider 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 Service Provider under this Agreement. Service Provider 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.
- U. **NON-EXCLUSIVE AGREEMENT.** This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods and services from another source when necessary.
- V. **TIME OF THE ESSENCE.** Time is of the essence in this Agreement. Unless otherwise specifically provided, any consent to delay in Service Provider's performance of its obligation is applicable only to the particular transaction to which it relates, and is not applicable to any other obligation or transaction.
- W. **SIGNATORY AUTHORITY.** Each person signing this Agreement represents that such person has the requisite authority to execute this Agreement on behalf of the entity the person represents and that all necessary formalities have been met.

- X. IMMIGRATION REQUIREMENTS. Pursuant to Section 258.530, RSMo. if Agreement exceeds five thousand dollars (\$5,000.00), Service Provider warrants and affirms to the City that (i) Service Provider is enrolled and participates in a federal work authorization program with respect to the employees working in connection with the contracted services and (ii) Service Provider does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.
- Y. Service Provider shall swear to and sign an affidavit declaring such affirmation, and provide the City with supporting documentation of its enrollment and participation in a federal work authorization program with respect to the employees working in connection with this Agreement. The required documentation must be from the federal work authorization program provider (e.g. the electronic signature page from the E-Verify program's Memorandum of Understanding); a letter from Service Provider reciting compliance is not sufficient.
- Z. RIGHTS AND REMEDIES. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the City to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the City's acceptance of and payment for services, shall not release the Service Provider from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Agreement.
- AA. NO THIRD-PARTY RIGHTS: The services provided for in this Agreement are for the sole use and benefit of City and Service Provider. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and Service Provider.
- BB. CONFIDENTIALITY OF RECORDS. The Service Provider shall establish and maintain procedures and controls that are acceptable to the City for the purpose of ensuring that information contained in its records or obtained from the City or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Service Provider's duties under this Agreement. Persons requesting such information should be referred to the City. Service Provider also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Service Provider as needed for the performance of duties under this Agreement.
- CC. ATTORNEYS' FEES. In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing Party shall be entitled to receive from the other Party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.
- DD. PROVISIONS REQUIRED BY LAW. Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, the Agreement will promptly be physically amended to make such insertion or correction.
- EE. SEVERABILITY. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

FF. 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:

Asst Director Water Utilities

City of Lee's Summit

1200 SE Hamblen Road

Lee's Summit, MO 64063

Director of Water Utilities

City of Lee's Summit

1200 SE Hamblen Road

Lee's Summit, MO 64081

and notices to Service Provider shall be addressed to:

Kevin Waldron

1301 Burlington, Ste. 100

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.

GG. OPERATIONAL TECHNOLOGY SYSTEMS. The City agrees that the effectiveness of operational technology systems ("OT Systems") and features designed, recommended or assessed by Service Provider are dependent upon City's continued operation and maintenance of the OT Systems in accordance with all standards, best practices, laws, and regulations that govern the operation and maintenance of the OT Systems. The City shall be solely responsible for operating and maintaining the OT System in accordance with applicable industry standards (i.e. ISA, NIST, etc.) and best practices, which generally include but are not limited to, cyber security policies and procedures, documentation and training requirements, continuous monitoring of assets for tampering and intrusion, periodic evaluation for asset vulnerabilities, implementation and update of appropriate technical, physical, and operational standards, and offline testing of all software/firmware patches/updates prior to placing updates into production. Additionally, the City recognizes and agrees that OT Systems are subject to internal and external breach, compromise, and similar incidents. Security features designed, recommended or assessed by Service Provider are intended to reduce the likelihood that OT Systems will be compromised by such incidents. However, Service Provider does not guarantee that the City's OT Systems are or will be impenetrable.

**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 Service Provider.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the ___ day of _____, 20__.

CITY OF LEE'S SUMMIT

Stephen A. Arbo, City Manager


ATTEST

Trisha Fowler Arcuri, City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

Olsson, Inc. _____:
Service Provider



Signature

Jeffrey C. Ford/Senior Vice President

Print Name/Title

WORK AUTHORIZATION AND E-VERIFY:

Section 285.530, RSMo, affects all services provided in excess of \$5,000.00. This Section refers to the prohibition of employment of unauthorized aliens and requires participation in a Federal work authorization program. This law went into effect on January 1, 2009.

You are required to fill out and return with your submittal of qualifications the enclosed Work Authorization Affidavit and provide documentation evidencing current enrollment in a federal work authorization Program, e.g., the electronic signature page from the E-Verify program's Memorandum of Understanding, The required documentation must be from the federal work authorization program provider. Letters from contractors reciting compliance is not sufficient. E-verify, <http://www.dhs.gov/everify>, is a FREE Internet-based federal work authorization program operated by the Department of Homeland Security, U.S. Citizenship and Immigration Services that allows employers to verify the employment eligibility of their employees, regardless of citizenship. Based on information provided by employees on their Form I-9, E-Verify checks the information electronically against records contained in DHS and Social Security Administration databases. There are penalties for employing an unauthorized alien, including suspension of the contractor's business license, termination of the contract, debarment from City and State work for a period of three years or permanently, and withholding 25% of the total amount due the Contractor.

Project No.
CITY OF LEE'S SUMMIT, MISSOURI
WORK AUTHORIZATION AFFIDAVIT PURSUANT TO SECTION 285.530, RSMo
(FOR ALL BIDS IN EXCESS OF \$5,000.00)
Effective 1/1/2009

County of _____)
) ss.
State of _____)

My name is _____. I am an authorized agent of _____ ("Bidder"). Bidder is enrolled and participates in a federal work authorization program for all employees working in connection with services provided to the City of Lee's Summit, Missouri. Bidder does not knowingly employ any person who is an unauthorized alien in connection with the services being provided.

Bidder shall not knowingly employ or contract with an illegal alien to perform work for the City of Lee's Summit, Missouri or enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien.

Affiant

Printed Name

Subscribed and sworn to before me this ____ day of _____, 20__.

Notary Public

SEAL



Exhibit A
RATE SCHEDULE

Labor Rates

<u>Description</u>	<u>Range</u>
Principal.....	\$111 - \$389
Project Professional.....	\$96 - \$193
Assistant Professional.....	\$48 - \$146
Designer.....	\$86 - \$182
CAD Operator.....	\$33 - \$118
Survey.....	\$44 - \$175
Construction Services.....	\$41 - \$193
Administrative/Clerical.....	\$30 - \$133

*Hourly compensation labor rate based on actual salary x 3.15

Crew Rates

1-Man Survey Crew.....	Hourly \$105.00
2-Man Survey Crew.....	Hourly \$140.00

Miscellaneous Expenses

Mileage (Field vehicle).....	Mile \$0.75
Mileage (Personal Vehicle)*	Mile \$0.585
Auto (OA Vehicle).....	Daily \$85.00
Other	See Note 2

*Rates consistent with the IRS Mileage Rate Reimbursement Guidelines (Subject to Change).

Additional Notes

1. These Unit Fees are in effect until January 1, 2021. Special Services and fees not included in the above categories will be provided on a Special Rate Schedule and/or as set forth in Work Order pursuant to Article II of the agreement.
2. Printing, postage, delivery, reproduction, subconsultants and other miscellaneous costs will be reimbursed at actual cost.