

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES
FOR DOUGLAS ROAD IMPROVEMENTS - 2nd STREET TO CHIPMAN ROAD
(RFQ NO. 2022-61)**

THIS AGREEMENT made and entered into this ____ day of _____, 20____, by and between the City of Lee's Summit, Missouri (hereinafter "City"), and Kimley-Horn and Associates, Inc. (hereinafter "Engineer").

WITNESSETH:

WHEREAS, City intends to have engineering services for NE Douglas Street Improvements - 2nd Street to Chipman Road (hereinafter "Project"); and

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

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

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

WHEREAS, Engineer represents that the firm 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 BASIC SERVICES TO BE PROVIDED BY ENGINEER**

Engineer shall provide the following professional engineering services to City ("Basic Services"):

1.1 General

The scope of services, based upon the City Design Authorization Memo, includes evaluation of improvement alternatives, surveying, roadway design, water line design, preparation of property acquisition documents, geotechnical investigations, traffic data collection, and utility coordination for improvements to Douglas Street from 2nd Street to Chipman Road. Improvements will consist primarily of constructing a two-lane city street with curb & gutters, five-foot sidewalk (west side), street lighting, shared-use path (east side), bicycle facilities, enclosed stormwater systems, stormwater BMP's, retaining walls (if needed),

signage, pavement markings, traffic signal modifications, temporary traffic control, a new eight-inch water main, and landscaping/streetscaping features.

1.2 Surveys

1.2.1 Design Surveys

Engineer will subcontract with Powell CWM, Inc. (Powell) to provide field survey data for design of the project, and this survey will be tied to the City's control network.

Powell will conduct field surveys, utilizing radial topography methods or mobile lidar, at intervals and for distances along the project site as appropriate for modeling the existing ground (maximum of 25-foot intervals), including locations of pertinent features or improvements. Powell will locate buildings and other structures, streets, existing enclosed drainage features (including pipe sizes and flow lines) for structures that front Douglas Street and one additional structure downstream, existing crossroad culverts (including sizes and flow lines), existing streetlights, existing traffic signals, pull boxes, controllers, power supplies, sidewalks, shared-use paths, street signs, trees over four inches in diameter, visible utilities as well as those underground utilities marked by their owners and/or representatives, and any other pertinent topographic features that may be present at and/or along the project site. Powell will establish benchmarks and control points for use during construction.

1.2.2 Downstream Enclosed Drainage Surveys

In addition to surveying the existing enclosed drainage system within the project limits, Powell will capture pipe sizes and flow lines for drainage structures located outside of the project limits. The limits for this additional surveying will be along 2nd Street (and including the structures within the side street intersections with 2nd Street) from Douglas Street east to the paved drainage ditch to the northeast of the intersection of NE Wilson Street and NE Eastridge Street.

1.2.3 Property Surveys

Powell will locate existing monumentation representing right of way and/or easements based on record data which will be provided by an abstractor under a sub consultant agreement with Powell. In addition to the existing right of way and easement locates, Powell will locate existing property lines within the project limits.

1.2.4 Additional Pick-up Survey Days

Powell will provide up to four (4) additional pick-up survey days and associated post processing for additional pick-up surveying. The following items are included, but are not limited to:

- Place PK nails with whiskers along the centerline of NE Douglas Street at 50-foot intervals on curves and 100-foot intervals elsewhere.
- Stake right of way, new right of way, and temporary easements as requested by the City.

1.3 Geotechnical Services

Engineer will subcontract with Geotechnology, Inc. (Geotechnology) to provide pavement designs for the new roadway and soil evaluations for retaining walls.

Geotechnology will provide a boring plan which will include the following:

- Pavement Design – Provide up to seven (7) borings drilled at regular intervals along NE Douglas Street to establish the existing pavement structure and to assist in development of the proposed pavement structure.

The borings will be sampled to a depth of 10 feet. If auger refusal material is encountered prior to the planned depth the boring will be terminated. Rock coring is not planned nor budgeted. Soil sampling will be performed using split-spoon sampling techniques at 2.5-foot intervals. Geotechnology will provide a full-time geologist or engineer. This staff will be on site during drilling to oversee and manage the sample collection and soil identification process, provide direction during exploration, prepare logs of the material encountered, and transport samples to their laboratory for further testing. The borings will be backfilled with dry mix concrete and capped with a thickness of either quickset cement or Aquaphalt pavement patch equivalent to the thickness of the pavement section. Auger cuttings will be removed from the site and disposed in a dumpster in Geotechnology's yard. Borings on pavement are planned. Borings in lawn areas are not anticipated.

- A report will be prepared under the supervision of a professional engineer registered in the State of Missouri. Geotechnology will provide one digital copy (in PDF format) of a report that includes the following:
 - A discussion of the understanding of the project;
 - A review of existing site and subsurface conditions;
 - Documentation of the thickness and composition of the existing pavement structure;
 - A plan with the boring locations;
 - Pavement core photographs;

- General geologic information, including depth of rock (if encountered);
- Site grading considerations, including an evaluation of the suitability for reuse of the on-site soils;
- Considerations for temporary excavations;
- Pavement subgrade preparation considerations, and
- Pavement thickness recommendations based on anticipated traffic loads.

1.4 Subsurface Utility Engineer (SUE) Level A

Engineer will subcontract to perform subsurface excavation for up to four (4) locations to develop accurate location and depth information for underground utilities.

1.5 Administration and Project Management

The Engineer shall perform the following Administration and Project Management Tasks:

1. Organize and attend the project kick-off meeting.
2. Personnel planning, project scheduling, and budget control.
3. Plan and hold up to 80 City project weekly coordination and up to 13 monthly progress meetings which may include representatives from other city departments or state agencies. Agendas and meeting minutes will be completed for the monthly progress meetings.
4. Prepare and submit up to 30 monthly progress report documents, along with the monthly invoices. The Monthly Progress Report shall document the following:
 - a. Past Month's Activities/Accomplishments
 - b. Pending Issues and Decisions
 - c. Current Issues and Next Steps
 - d. Budget Summary Status (showing % complete vs. % expended per task)
 - e. Schedule Summary Status (chart showing baseline schedule vs. actual schedule)
 - f. Next month's Planned Activities/Goals
 - g. Summary of Coordination Efforts (including correspondence summaries)
5. Prepare subconsultant contracts. Review and process subconsultant invoices.

All of the above items shall include/address sub-consultant tasks.

1.6 Public Engagement

The Engineer shall perform the following Public Engagement tasks:

- 1.6.1 Project Website - Engineer will develop and host a project website, to be active through the construction. Engineer will provide status updates on the website through the contractor's notice to proceed. Once construction begins, Engineer will update no more than monthly any progress updates, including photos, provided by the City.
- 1.6.2 Concept Meeting – Engineer will conduct one (1) concept meeting to present options for improvements on the project. Up to three options, developed based on input from the kick-off meeting and technical analyses, will be presented for input. This meeting will be an in-person meeting to be held at City Hall. Information and documents provided at the meeting will be available online along with the option to send in comments. This webpage will be hosted by the Engineer and access via the public website and will include the Engineer's online project mapping and public engagement tool ProjectCoordinate. This meeting will be held at the same time as the Concept Meeting for the Olive / Orchard Road and Drainage project.
- 1.6.3 Design Public Meeting – Engineer will conduct one (1) public meeting at the completion of the preliminary plans in accordance with MoDOT LPA Manual Section 136.7.6. This meeting will be an in-person meeting to be held at City Hall. Information and documents provided at the meeting will be available online along with the option to send in comments. This webpage will be hosted by the Engineer and access via the public website and will include the Engineer's online project mapping and public engagement tool ProjectCoordinate. This meeting will be held at the same time as the Concept Meeting for the Olive / Orchard Road and Drainage project.
- 1.6.4 Pre-Construction Meeting – Engineer will attend one (1) pre-construction / “meet the contractor” meeting before construction begins. This meeting will be an in-person meeting to be held at City Hall. Materials for the meeting will be provided by others, with the Engineer attending to provide history or project development and to clarify questions asked about the design intent.
- 1.6.5 Stakeholder Coordination – Prior to the public meetings in Task 1.6.2, 1.6.3, and 1.6.4, the Engineer will conduct a “pre-meeting” with key stakeholder groups including, but not necessarily limited to, Downtown Preservation, Downtown Mainstreet, Parks and Recreation Department, and the LSR7 School District. City staff will provide names and contact information for those to invite. These stakeholder coordination meetings will be held in the hours (approximately 1-2 hours) prior to the in-person public meetings at the same location within City Hall. Up to three (3) total meetings are included.

1.7 Quality Assurance and Quality Control

The Engineer shall perform the following Quality Assurance and Quality Control Tasks:

- Develop a project Quality Control Plan (QCP) document,
- Perform independent Quality Assurance Reviews to verify that QCP is being followed on deliverables,
- Perform independent Quality Control reviews of the deliverables,
- Perform Conceptual, Preliminary, Right of Way, and Final Design reviews of deliverables,
- Perform Conceptual, Preliminary, Right of Way, and Final Plan reviews of deliverables,
- Perform Opinion of Probable Construction Cost reviews,
- Review subconsultant QCPs, and
- Review deliverables from subconsultants:
 - Geotechnical Reports,
 - Survey Design Files, and
 - Right of Way and Easement Acquisition Documents.

1.8 Public and Private Utility Coordination

The Engineer will provide to the public and private utilities approved copies of the preliminary, right of way, and final design plans that include surveyed locations of utilities identified, located, and marked via the Missouri One-Call process.

The Engineer will log all communication with public and private utilities as well as request utility as-builts and identify areas of potential impact.

Engineer will conduct the following coordination meetings among the public and private utility owners that appear to have conflicts with the project, to enable them to coordinate efforts for any necessary utility relocations. Engineer will prepare agendas and meeting minutes for the following meetings.

- Kickoff Meeting (one (1) meeting, 30 to 45 days after conceptual design submittal to utility companies)
- Preliminary Design Meeting (one meeting, 30 to 45 days after preliminary submittal to utility companies)
- Final Design Meeting (one meeting, 30 to 45 days after final plans submittal to utility companies)

Engineer will include the surveyed locations of the observable and marked utilities in the construction plans. Engineer will also include proposed and/or relocated utility information in the preliminary and final construction plans as provided by the utility companies.

Attend additional coordination meetings with the City and utility owners, and prepare agendas and meeting minutes for these meetings. Up to six (6) meetings are included.

1.9 Conceptual Design (10% Submittal)

1.9.1.1 Traffic Data Collection

The Engineer will collect daily traffic volume, speed and classification counts during 24-hour periods of a typical weekday, Saturday, and Sunday at up to five (5) locations. Turning-movement counts will also be collected during the AM and PM peak hours at up to four (4) intersections. Turning movement counts will include bicycle and pedestrian counts.

Engineer will review approved master plans, traffic studies, and historical traffic count data provided by the City. Master plans include:

- Thoroughfare Master Plan
- Greenway Trails Master Plan
- Comprehensive Plan

Engineer will review crash data provided by the City for all crashes that occurred within the project area during the past five (5) years as provided by City staff. Any patterns or tendencies observed from the crash data will be documented.

1.9.1.2 Traffic Operation Analysis

The Engineer will review the data, plans, and studies to generate future year daily, AM, and PM peak hour traffic volumes for the project. Future volumes will be for year 2042.

Capacity analysis will be performed for the existing and proposed configurations. The analysis includes:

- Bicycle Level of Traffic Stress analysis
- Shared-use path Level of Service analysis
- Intersection Level of Service analysis using Synchro software

The Engineer will perform up to four (4) field observations of existing delay within the study area to validate base models.

1.9.2 Roadway Alternative Development and Analysis

The Conceptual roadway design phase will include development of up to three (3) different typical sections for Douglas Road.

Project plan sheets for the project limits will be developed based on each typical section to identify the limits of potential impact to existing right-of-way. Concept level opinions of probable construction cost will be developed for each set of plan sheets.

For the evaluation, the Engineer will prepare a memorandum evaluating advantages and disadvantages of each typical section, based on the following:

- Traffic Operations,
- Multi-modal Impacts,
- Utility Impacts,
- R/W Impacts, and
- Probable Construction Cost.

Results of the evaluation will be summarized and documented in tabular format in the memorandum. Conceptual roadway plan sheets and the evaluation criteria will be presented to the public for review and comment at the Concept Meeting.

The Engineer will summarize all conceptual findings in one (1) meeting with City staff. The Engineer, with City staff, will select the preferred design to be advanced to Preliminary Design, which will include a typical section, pedestrian accommodations, bicycle accommodations, and turn lane needs/storage lengths.

1.9.3 Concept Study Report

The Engineer will prepare one draft Concept Study Report to document the data collected, study methodology, analysis results, evaluation of alternatives, summary of the public meeting, and recommendations. After receiving comments from City, the Engineer will log and resolve each comment and prepare a final Report incorporating changes identified in the comment log. Report format will be electronic (PDF).

1.10 Preliminary Design (50% Submittal)

- 1.10.1 The Preliminary Design phase and submittal will include the final horizontal alignment and vertical alignment for the project, the anticipated right of way limits and easements required, and an Opinion of Probable Construction Cost (OPCC) matching the 50% design level.

The preliminary design phase submittal will include:

- Title Sheet,

- General Notes and Legend,
- Survey Control and Layout Sheet,
- Typical sections,
- Roadway plan & profile sheets showing:
 - Existing topographical data,
 - New horizontal and vertical alignments,
 - Curb and gutter,
 - Enclosed drainage improvements,
 - Sidewalks and shared-use paths,
 - Proposed 8” water main extension,
 - Retaining walls (if needed),
 - Existing utilities,
 - Proposed right of way and easements,
- Drainage area map sheet,
- Driveway Profiles,
- Construction phasing plan (Phasing approach only, not temporary traffic control plans),
- Pavement marking layout,
- Preliminary street lighting layout,
- Preliminary traffic signal modifications (pole and signal head layout),
- Preliminary landscape plans
- Culvert sections (if needed),
- Cross sections,
- Preliminary quantities, and
- Opinion of probable construction cost.

After receiving comments from City, the Engineer will log and resolve each comment and will prepare and submit revised documents according to the project schedule. The log of resolved comments will be submitted with the revised plans. The City will notify the Engineer of preliminary design approval according to the project schedule.

Any City requested changes to the horizontal or vertical alignment after approved preliminary plans may require a scope amendment and a supplemental agreement. Final design will begin upon City notification of preliminary design approval to Engineer.

The Engineer will rely on City Design Standards and supplement with MoDOT Design Standards. Design criteria as specified in the City Design Authorization Memo will be used with exceptions being documented and approved by the City prior to implementation. If Federal Funds are approved for this project the Engineer will follow the MoDOT LPA process for preliminary design and submittals.

1.10.2 8-inch Water Main Extension

- Water main plan & profile sheets drawn at 1" = 20', showing:
 - Existing topographical data,
 - Horizontal and vertical alignments of water line reconstruction, and
 - Proposed permanent utility easements.
- Preliminary quantities and OPCC.

1.10.3 Preliminary Street Lighting Layout

Engineer will perform photometric analysis of the corridor using AGi32 software. Analysis will be performed for up to two (2) different combinations of luminaires and poles. Engineer will coordinate with the City Traffic Engineer to select the luminaire and pole to be included in the street lighting design. Layout of light pole locations for the selected luminaires and poles will be provided on plan sheets. Layout will include anticipated locations for power supplies. Voltage drop calculations for the layout will be prepared.

Engineer will coordinate with electrical utility company to identify power supply locations for the street lighting system.

Lighting design will conform with the City of Lee's Summit Design Criteria Section 5800 - Street Lighting, City of Lee's Summit Standard Specifications Section 2800 - Street Lighting.

1.10.5 Develop Traffic Signal Modification Plans

Engineer will produce signal modification design, details, and specifications for the existing signal at the intersection of 2nd Street and Douglas Street. Modifications are assumed to include up to two (2) new signal poles with mast arms and signal heads, new pedestal poles and pushbuttons, possible relocation of the signal controller, new conduits, new pull boxes, and associated wiring.

Engineer will coordinate with electrical utility company to identify power supply locations for the modified signal.

Engineer will coordinate with City Traffic Engineer for proposed signal pole and signal controller locations.

Signal modification design will conform with the City of Lee's Summit Design Criteria Section 5900 - Traffic Signals, City of Lee's Summit Standard Specifications Section 2900 – Traffic Signals, and Manual on Uniform Traffic Control Devices (MUTCD).

1.11 Right of Way Plans (60% Submittal)

1.11.1 The City approved preliminary plans will be updated for the Right of Way Plan submittal to MoDOT. Items that will be updated or added:

- Update Title Sheet,
- Add a summary of parcel acquisition, full or partial, and remainders sheet, and
- Include acquisition line work from Right of Way Plan to plan sheets where properties are shown.

After receiving comments from City, the Engineer will log and resolve each comment and will prepare and submit revised documents according to the project schedule. The log of resolved comments will be submitted with the revised plans. The City will notify the Engineer of right of way plan approval according to the project schedule.

Any City requested changes to the right of way or temporary easements after approved right of way plans may require a scope amendment and a supplemental agreement.

If Federal Funds are approved for this project the Engineer will follow the MoDOT LPA process for right of way plans and submittals.

1.12 Final Design (PS&E Submittal)

1.12.1 Conduct final design to prepare construction plans and specifications for one construction contract. The following items will be included:

- Finalize title sheet,
- Finalize typical section sheets,
- Update approved R/W plan and profile sheets into final construction roadway plan and profile sheets,
- Finalize retaining wall plans and details (if needed),
- Develop concrete jointing details,
- Finalize storm sewer design,
- Develop drop inlet special details (if needed),
- Develop erosion control plans and details,
- Finalize waterline plans and details,
- Finalize construction phasing and develop temporary traffic control plans,
- Finalize culvert sections (if needed),
- Finalize pavement marking plans,
- Develop signing plans,
- Finalize street lighting plans,
- Finalize traffic signal modification plans and details (if needed),
- Finalize cross sections,
- Finalize quantities,

- Develop Bid Manual,
- Develop Construction Project Manual, and
- Finalize Engineers OPCC.

Engineer will develop the Bid Manual and Construction Manual as per the MoDOT LPA Manual Section 136.9.4 Bid Documents. For the sections to be completed by the LPA, the City will provide the Engineer the City's standard construction bid documents, modified for this project, and other EJCDC language as applicable. Engineer will be responsible for developing the following sections of the Bid Manual and Construction Manual:

- Technical Specifications,
- PSP's 1120 – M&P,
- Submittal Checklist,
- Bid Item List, and
- C410 and C520 portions of the Bid Manual and Construction Manual

Prepare, submit, and coordinate approval of a Stormwater Pollution Prevention Plan (SWPPP).

After receiving comments from City, the Engineer will log and resolve each comment and will prepare and submit revised documents according to the project schedule. The log of resolved comments will be submitted with the revised plans. The City will notify the Engineer of Final design approval according to the project schedule.

Any City requested changes to the final design after approved final design plans may require a scope amendment and a supplemental agreement. Final design will begin upon City notification of preliminary design approval to Engineer.

1.12.2 8-inch water Main Final Design and Plans

Conduct final design to prepare construction plans and specifications for one construction contract. The following items will be included as part of the PS&E submittal:

- Finalize waterline plan & profile sheets,
- Compile applicable City details and develop additional water main details as necessary,
- Develop water main specifications as necessary to supplement the City's Standard Specifications in the Construction Project Manual,
- Finalize the water main opinion of probable construction cost, and
- Engineer will apply for the MDNR water main construction permit and coordinate application with the City.

1.12.3 Final Street Lighting Design, Plans, and Details

Engineer will produce final street lighting design, construction plans, details, voltage drop calculations, and specification coordination for the design developed in the preliminary phase.

1.13 Property Acquisition Documents

Provide mapping for preparing Right-of-Way/Easement acquisition documents for the City's use in acquiring the property. Documentation will include individual tract maps with a description of temporary and permanent acquisition for each property. The City will provide a standard easement acquisition document or "go-by" example for use by Engineer. The fee for providing property acquisition documentation is based on permanent right of way and temporary construction easements for up to 70 parcels. Property acquisition document preparation will begin after receiving the City's preliminary design approval according to the project schedule.

2.0 Bidding Phase Services

During the bidding phase of the project, Engineer will:

1. Respond to one (1) set of Contractor and City questions as requested by the City during the bid phase of the project,
2. Attend one (1) prebid meeting with the City/Contractors as requested by City,
3. Assist with addenda creation (needed for technical items), and
4. Assist with submittal review and make recommendations.

3.0 Project Deliverables and Permits

The following will be submitted to the City, or others as indicated, by Engineer:

1. One (1) copy of the Geotechnical Report,
2. One (1) half size (11" x 17") copy of the Preliminary Design with OPCC,
3. One (1) half size (11" x 17") copy of the Right of Way Plans,
4. One (1) half size (11" x 17") copy of the Final Design with OPCC,
5. Five (5) signed and sealed half size (11" x 17") copies of the revised Final Design with OPCC,
6. One (1) digital copy of the plans, submitted in items two through five above, in PDF format,
7. One (1) Digital (8.5" x 11") letter size copy of the project bid manual,
8. Four (4) hard (8.5" x 11") Letter size copies of the project construction manual and one (1) digital copy in PDF format,
9. One (1) digital copy, in PDF format, of the revised Final Plans to each potentially affected utility company,

10. CADD file submitted to each of the following: the City, utilities and contractor,
11. Two (2) copies of the right-of-way and/or easement acquisition documents,
12. One (1) copy of the traffic study and concept analysis documentation,
13. One (1) copy of the lighting calculations,
14. One (1) copy of the storm water calculations/drainage report,
15. One (1) copy of the Stormwater Pollution Prevention Plan (SWPPP), and
16. One (1) copy of the MDNR water main construction permit.

4.0 Schedule

Engineer shall begin work under this Agreement upon Notice to Proceed and shall complete the work in accordance with the schedule below:

<u>Phase Description</u>	<u>Deliverable Date</u>
Surveys – Design and Property	80 working days after NTP
Draft Concept Design and Traffic Study	75 working days after NTP
Final Concept Design and Traffic Study	105 working days after NTP
Preliminary Design	75 working days after approved Conceptual Study
Right of Way Plans	40 working days after approved Preliminary Plans
Property Acquisition Documents	30 calendar days after City approved Right of Way Plans
Final Design Submittal (90%)	110 working days after approved Right of Way Plans
Final Design (100%) Submittal	20 working days after Receipt of PS&E Review comments

These deliverable dates are based on a three-week concurrent City and MoDOT review periods. If reviews takes longer than three weeks, Engineer will update the project schedule/deliverable dates to reflect the change in schedule. Once the NTP date is known, the deliverable dates for preliminary and final design submittals will be identified.

ARTICLE II OPTIONAL SERVICES TO BE PROVIDED BY ENGINEER

The following is a list of additional services which will be furnished by Engineer, if needed by City, upon receipt of written authorization by the Director of Public Works (“Optional Services”):

1.0 General

The following is a list of optional services that can be provided by the Engineer for the Douglas Street from 2nd Street to Chipman Road project, if needed.

1.1 Environmental Services (NEPA)

If federal funding is acquired for the project, the Engineer will coordinate the appropriate National Environmental Policy Act (NEPA) level document with the Missouri Department of Transportation (MoDOT). This scope assumes the level of document to be a Programmatic Categorical Exclusion (PCE) per the September 22, 2021 FHWA/MoDOT Programmatic Agreement. The following tasks shall be performed as required by MoDOT.

1.1.1 Request for Environmental Review (RER)

Engineer will obtain information pertinent to complete online submittal of the RER from the City. Engineer will submit the RER to MoDOT for review and address comments requests for additional information.

1.1.2 Data Collection and Constraints

Engineer will develop an initial constraints map and collect data from governmental and other sources to document potential environmental constraints. Desktop constraints will be verified thorough a detailed site visit to review the presence of readily visible and environmentally sensitive features such as potential Section 4(f) properties, wetlands, endangered and threatened species habitats, streams, ponds, rivers, farmlands, historic properties, residences, any hazardous material sites, and businesses. Photos of the site will be taken of environmentally sensitive features, as necessary.

Aquatic Resources Delineation

This scope assumes that there will not be any protected aquatic resources (i.e., floodplains, wetlands, streams, rivers, ponds) located within the project study area.

1.1.3 Agency Coordination

Section 106 Evaluation

Engineer will coordinate with the State Historic Preservation Officer (SHPO) and MoDOT regarding Section 106, establish an Area of Potential Effect (APE), and cultural, historical, and archaeological clearance for the project. If a cultural resources survey and/or architectural survey is required, this will be considered extra work to be approved in writing by the Client. For the purposes of this contract, fees for historic and archaeological surveys are included.

Section 4(f) Evaluation

Engineer will determine if any Section 4(f) properties are located within the project study area. Potential Section 4(f) properties include Lea McKeighan Park, residences either listed or contributing properties to historic districts on the National Register of Historic Places (NRHP), and/or existing trail/sidewalk segments on Douglas Drive. The Engineer will coordinate with Officials with Jurisdiction (OWJ)s as needed to confirm Section 4(f) applicability. The Engineer will evaluate if the project would result in any impacts to Section 4(f) resources per MoDOT/FHWA guidelines by completing form 136.6.8_2013 and submitting into RER. This scope assumes any potential impacts would meet the requirements for a programmatic evaluation.

Section 7 Determination

Engineer will obtain an IPaC list from the US Fish and Wildlife Service (USFWS) to document federally listed threatened and endangered species in the area. Engineer will also obtain the Missouri Department of Conservation (MDC) Inventory of state listed species. Potential impacts to listed species will be evaluated. Spatial, seasonal, or temporal restrictions or design modifications will be evaluated, as needed. Informal Section 7 consultation with the USFWS is anticipated in this scope.

Air Quality

Engineer will coordinate with the City and the Mid-America Regional Council (MARC) in determining the level of air quality analysis required.

1.1.4 Special Environmental Studies

Habitat Assessment

Engineer will complete a habitat assessment for the project that will include documentation of the potential project effects on state and federally listed species. The habitat assessment will provide required information requested in form 136.6.18 and include detailed evaluation for the preferred habitats of the listed species and provide an effects determination for each species. This scope assumes the project will qualify for the Range-wide Programmatic Informal Consultation for Indiana Bat and Northern Long-eared Bat.

Noise Analysis

Engineer will coordinate with MoDOT to determine the appropriate level of noise analysis for the project. The Engineer will prepare exhibits that compare existing and proposed traffic lanes and distances to noise sensitive area to aid in review. This scope assumes the project will not be determined a federal Type 1 noise project; thus, not requiring a detailed noise analysis.

Water Quality

We will assess the potential for any water quality impacts, including potential contamination of groundwater aquifers or surface waters and document measures to be incorporated to minimize adverse water quality effects. Disturbance of land equal to or greater than one acre will require a National Pollutant Discharge Elimination System (NPDES) permit at the time of construction.

Hazardous Materials

Engineer will conduct a review of MDC's hazardous materials sites and complete a site review documenting potentially hazardous materials sites that could affect construction of the project within the standard ASTM guideline parameters.

1.1.5 Deliverables

The following will be submitted to the City, or others as indicated, by Engineer:

1. One copy of the Environmental Constraints map
2. One copy of the Threatened and Endangered Species Clearance Letter
3. One copy of each Agency Clearance Letter other than listed above
4. One copy of the Noise Study Determination exhibit
5. One copy of the Cultural Historic Report (if required)
6. One copy of the Archeological Resources Report (if required)
7. One copy of the Deminimis Section 4F document (if required)
8. One copy of the Categorical Exclusion (CE) Clearance Document

1.2 Additional Subsurface Utility Engineering (SUE) QLA

Engineer will perform subsurface excavation for up to four (4) additional locations to develop accurate location and depth information for underground utilities.

1.3 Additional Landscaping Services

1.3.1 Conceptual Streetscape Enhancement Plan

The Engineer will develop up to three (3) Streetscape Enhancement Plans, for each typical section developed in the Conceptual Plans, that will illustrate the general scope, scale, theme, and relationship of potential streetscape design elements.

Each concept will include the following:

1.3.1.1 Streetscape enhancements anticipated to be landscape planting improvements located outside of the public right-of-way.

1.3.1.2 Hardscape enhancements, anticipated to be the addition of street trees, will be located outside the public right-of-way at to be determined intervals.

1.3.1.3 One gateway feature located at NE Douglas Street / NE Chipman Road.

1.3.2 Preliminary Landscape Design

For preliminary landscape design, the Engineer will develop preliminary landscape plans, to include the following:

- Develop plant palette for corridor plant materials,
- Preliminary turf restoration plan for all areas disturbed by construction activities, and
- Concept planting plan with low groundcovers and/or shrubs in strategic locations agreed upon with the City. New trees will be located in areas outside of public right-of way where existing trees are shown to be removed due to construction limits. New trees are not anticipated to be located within the public right-of-way.

1.3.3 Final Landscaping Design and Details

Prepare final design and specifications for corridor landscape plan, including:

- Finalize corridor landscape plan, including limits of turf restoration and location of plant materials, and
- Finalize planting details and notes.

1.3.4 Irrigation Design/Plans for Planted Areas

Engineer will provide Irrigation plans, details and notes showing points of connection, sleeving and general irrigation coverage for planting located within the right-of-way.

1.3.5 Lighting Design/Plans for Planted Areas

Landscape lighting will be provided from 1st/2nd street. Plans will include fixture location and fixture type. Photometrics to be provided by manufacturer. Gateway/Monument lighting will be provided at

Chipman/Douglas. Plans will include fixture location and fixture type. Photometrics to be provided by manufacturer.

1.3.6 Tree Preservation / Mitigation Plans

Engineer will provide Tree Preservation/Mitigation plans, details and notes for existing trees that are to be removed, saved, or mitigated. This task includes one site visit to determine health, quality, and species.

1.3.7 Gateway/Monument Design/Plans

Engineer will provide signed and sealed construction drawings and details for the city approved Gateway/Monument signage. Gateway/ Monument lighting will be provided. Plans will include fixture location and fixture type. Photometrics to be provided by manufacturer.

ARTICLE III SCOPE OF SERVICES TO BE PROVIDED BY CITY

City shall provide the following services to Engineer:

- List of tenant names,
- Available water and sewer locations, size and materials,
- Copies of available reports and as-built plans,
- Copies of available drainage studies,
- Copies of available plats of adjacent properties,
- EJCDC Contract Documents, Division One-Special Contract Provisions,
- Assist Engineer as needed in gaining right of entry to private property for geotechnical exploration,
- City will coordinate the Land Disturbance Permit, and
- The City will coordinate with Operation Green Light and provide updated traffic signal timing information (including vehicle and pedestrian crossing intervals) due to the signal modifications anticipated at the NW Chipman Road at NE Douglas Street intersection.

ARTICLE IV PAYMENTS TO THE ENGINEER

For the services performed by Engineer pursuant to this Agreement, and as full compensation therefore, and for all expenditures made and all expenses incurred by Engineer 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 Engineer a maximum fee for Basic Services and Optional Services in the sum of One Million Three Hundred and Two Thousand Five Hundred and Sixty Three Dollars (\$1,302,563.00), according to the following provisions:

- A. The cost of all Basic Services covered under Article I shall be billed hourly at the rates set forth in Exhibit A attached hereto and incorporated herein by reference. Expenses incurred to provide the Basic Services shall be billed as set forth in Exhibit A. The total fees (hourly fees and expenses) for the Basic Services shall not exceed the total sum of One Million One Hundred and Nine Thousand Eight Hundred and Seventy Eight Dollars (\$1,109,878.00).
- B. The cost of all Optional Services covered under Article II shall be billed hourly at the rates set forth in Exhibit A attached hereto and incorporated herein by reference. Expenses incurred to provide the Optional Services shall be billed as set forth in Exhibit A. The total fees (hourly fees and expenses) for the Optional Services shall not exceed the total sum of One Hundred and Ninety Two Thousand Six Hundred and Eight Five Dollars (\$192,685.00).
- C. If so requested by Engineer, City will make payment monthly for Basic Services and Optional Services that have been satisfactorily completed. The City shall make payment to Engineer 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. Purchase Order Number issued by City.
 - 4. 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.
 - 5. Description of monthly progress detailing the amount of the services completed to date and projected completion time.
 - 6. Project Billing Summary containing the Agreement or Agreed Maximum Fee Amount, Cumulative Amount Previously Billed, Billing Amount this Invoice, Agreement or Agreed Amount Remaining, and Percent of Maximum 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
COMPLETION TIME**

The Basic Services shall be completed in accordance with the following schedule:

- A. The basic services will be ready for construction bidding by June 28, 2024.

The Director of Public Works may, with the mutual consent of the parties, amend the deadlines contained in this Article by written authorization upon a showing of cause for amendment by Engineer.

The Optional Services shall be completed in accordance with the deadlines set by the Director of Public Works and accepted by Engineer at the time said Optional Services are authorized by the Director of Public Works.

ARTICLE VI INSURANCE

A. GENERAL:

1. **Insurer Qualifications:** Without limiting any obligations or liabilities of Engineer, Engineer shall purchase and maintain, at its own expense, the 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 Engineer 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:** Engineer'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, or equivalent.
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 the required 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 required herein, 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 Engineer. Engineer shall arrange to have such subrogation waivers incorporated into each policy via 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 under the required general liability and automobile liability policies shall not erode the limit required by the City. Engineer shall be solely responsible for any such deductible or self-insured retention amount.
9. Automatic Escalator: 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 2021 is \$ 2,940,868.00 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, Engineer 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 Engineer. Engineer shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
11. Notice of Claim: Engineer 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. Engineer 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 Agreement.
12. Evidence of Insurance: Prior to commencing any work or services under this Agreement, Engineer 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 relevant endorsement for the insurance policies as required by these requirements, issued by Engineer's insurance insurer(s) as evidence that policies are placed with reasonably 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 endorsements for 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.

If any of the policies required by these requirements expire during the life of the Agreement, it shall be Engineer's responsibility to forward renewal certificates and relevant endorsements the City 30 days prior to the expiration date. All certificates of insurance and relevant endorsements shall be identified by referencing the Agreement; certificates of insurance and endorsement for the insurance policies submitted without referencing the Agreement, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance 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. Engineer's insurance under which City is included as an additional insured shall be primary, non-contributory insurance with respect to performance of the Agreement.
- c. All policies, except for Professional Liability, 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 Engineer under this Agreement.
- d. ACORD certificate of insurance form 25 (2014/01) is preferred.

13. 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: Engineer shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of at least \$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. Automobile Liability: Engineer shall maintain Business Automobile Liability insurance with an unimpaired limit of at least \$1,000,000 each occurrence on Engineer’s owned, hired and non-owned vehicles assigned to or used in the performance of the Engineer’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. 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: Engineer shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the services performed by the Engineer, or anyone employed by the Engineer, or anyone for whose negligent acts, mistakes, errors and omissions the Engineer 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 Engineer employs anyone who is required by law to be covered by workers’ compensation insurance, Engineer shall maintain Workers’ Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Engineer’s employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of \$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 involving the City’s information technology structure, or if the Engineer engages in any services in any way related to performing work involving the City’s information technology structure under this Agreement, Engineer shall maintain Cyber Liability insurance with limits not less than \$3,000,000 per occurrence or claim, \$3,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as are undertaken by Engineer in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, 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, regulatory fines and penalties, and 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:** Engineer warrants that Engineer has not employed or retained, and will not employ or retain for the duration of this Agreement, any company or person, other than a bona fide employee working for the Engineer, to solicit or secure this Agreement, and that Engineer 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 agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee. Engineer further covenants that in the performance of this Agreement no person having such interest shall be employed.
- B. **OWNERSHIP OF ENGINEERING DOCUMENTS:** Payment by City to Engineer 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 Engineer 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 Engineer. Any reuse without written verification or adaptation by Engineer for the specific purpose intended will be at City's risk and without liability or exposure to Engineer, and City shall indemnify and hold harmless, to the extent allowed by the Constitution and Laws of the State of Missouri, Engineer from all claims, damages, losses, expenses, including attorneys' fees arising out of or resulting therefrom.
- C. **MODIFICATIONS TO SCOPE OF WORK:** In the event of any changes in the scope of services contained in this Agreement, prior to commencing the services City and Engineer shall enter into a mutually executed written modification of this Agreement describing the changes in the services to be provided by Engineer and City, providing for compensation for any additional services to be performed by Engineer, and providing completion times for said services.
- D. **EMERGENCY CHANGES IN SERVICES:** The Director of Public Works, 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 Director of Public Works and the City Manager.

In the event an emergency change in services is authorized by the Director of Public Works 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 Engineer 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 Engineer. Termination for cause shall be preceded by a fourteen-(14) day correction period effective upon delivery of written notice. City shall pay Engineer for all services rendered up to the date of termination. In the event of termination for cause by City, compensation for services rendered by Engineer up to the date of termination shall be offset by City's cost to mitigate or correct the effects of such termination, including by not limited to damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.
 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 Engineer shall be reimbursed for the services rendered up to the date of termination plus the reasonable value of any nonrecurring costs incurred by Engineer but not amortized in the price of the services delivered under this Agreement.
- F. **COMPLIANCE WITH LAWS:** Engineer shall comply with all Federal, State, and local laws, ordinances, and regulations applicable to the services. Engineer 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:** Engineer shall not subcontract, sublet, assign, or transfer any interest in the services covered by this Agreement, except as provided for herein and except with the prior written and signed consent of City. The use of subcontractors shall in no way relieve Engineer 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 Engineer's place of business, representatives of City shall have the privilege of inspecting and reviewing the services being performed by Engineer and consulting with him/her at such time. Conferences are to be held at the request of City or Engineer.
- I. **ENGINEER'S ENDORSEMENT:** Engineer shall endorse all plans, specifications, estimates, and engineering data furnished by him/her.
- J. **INSPECTION OF DOCUMENTS:** Engineer shall maintain all records pertaining to its services hereunder for inspection, upon reasonable advance notice and during normal business hours at

Engineer's place of business, by a City representative during the Agreement 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:** Engineer 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 intentional, reckless, or negligent acts, directives, errors, omissions, or willful misconduct, in the performance of Engineer's duties and services under this Agreement, or any supplements or amendments thereto, of Engineer, or its employees, officers, agents, or any tier of subcontractor or person for which Engineer may be legally liable in the performance of this Agreement. Nothing contained in this Agreement is to be construed to waive the City's sovereign immunity or any other immunity or defense available to the City, its officers, employees, agents, or elected officials.
- L. **LIMITATION OF LIABILITY:** In no event will either Party be liable to other Party for indirect or consequential damages, and in no event will City's liability under this Agreement exceed the amount to be paid to Engineer pursuant to Article IV of this Agreement.
- M. **PROFESSIONAL RESPONSIBILITY:** Engineer 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.
- 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, and any suit pertaining to this Agreement may be brought only in courts in eastern Jackson County, Missouri. The Parties expressly and irrevocably consent to the exclusive jurisdiction and venue of such courts and expressly waive the right to transfer or remove any such action.
- Q. **OPINION OF PROBABLE CONSTRUCTION COST AND SCHEDULE:** Since Engineer 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 Engineer's experience and

qualifications and represents Engineer's best judgment as a professional engineer familiar with the construction industry, but Engineer 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 Engineer.

- 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, Engineer 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 laws and regulations.
- T. **ANTI-DISCRIMINATION CLAUSE:** Engineer 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 Engineer 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 Engineer under this Agreement. Engineer 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. **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.
- W. **TIME OF THE ESSENCE.** Time is of the essence in this Agreement. Unless otherwise specifically provided, any consent to delay in Engineer'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.
- X. **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.
- Y. **IMMIGRATION REQUIREMENTS.** Pursuant to Section 258.530, RSMo. if Agreement exceeds five thousand dollars (\$5,000.00), Engineer warrants and affirms to the City that (i) Engineer is enrolled and participates in a federal work authorization program with respect to the employees working in connection with the contracted services and (ii) Engineer does not

knowingly employ any person who is an unauthorized alien in connection with the contracted services.

Engineer 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 Engineer 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 Engineer 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 Engineer. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and Engineer.
- BB. **CONFIDENTIALITY OF RECORDS.** The Engineer 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 Engineer's duties under this Agreement. Persons requesting such information should be referred to the City. Engineer also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Engineer as needed for the performance of duties under this Agreement.
- CC. **ANTI-DISCRIMINATION AGAINST ISRAEL ACT.** If this Agreement has a total potential value of \$100,000 or more and Engineer has 10 or more employees, the following applies. Pursuant to Section 34.600, RSMo. and to the fullest extent permitted by law, Engineer certifies that Engineer is not engaged in a boycott of Israel as of the Effective Date of this Agreement, and agrees for the duration of this Agreement to not engage in a boycott of Israel as defined in Section 34.600, RSMo.
- 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:

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

Director of Public Works
City of Lee's Summit
220 SE Green Street
Lee's Summit, MO 64063

and notices to Engineer shall be addressed to:

Kimley-Horn
Attn: Charles Touzinsky III
805 Pennsylvania Avenue, Suite 150
Kansas City, MO 64105

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. E-SIGNATURE AND COUNTERPARTS. The Parties agree that this Agreement may be signed in two or more counterparts and/or signed electronically, and all such counterparts together shall constitute one and the same agreement; such signatures shall bind the signing party in the same manner as if a handwritten signature had been delivered.

ARTICLE VIII EXHIBITS

The following Exhibits are attached to and made a part of this Agreement:

Exhibit A – Rate Schedule

City and Engineer, by signing this Agreement, acknowledges that they have independently assured themselves and confirms that they individually have examined all Exhibits, and agrees that all of the aforesaid Exhibits shall be considered a part of this Agreement and agrees to be bound to the terms, provisions, and other requirements thereof, unless specifically excluded.

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

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

CITY OF LEE'S SUMMIT, MISSOURI

ENGINEER:

Mark Dunning, City Manager

ATTEST:

City Clerk Trisha Fowler Arcuri

APPROVED AS TO FORM:

Scott Ison,
Chief Counsel of Infrastructure and Recreation



BY: William J. Schmitz

TITLE: Associate

ATTEST:



EXHIBIT A - Rate Schedule

Standard Rate Schedule

Kimley-Horn and Associates, Inc.

Effective July 1, 2022 to June 30, 2023

Classification	Hourly Rate
Administrative Assistant	\$85 - \$145
Technician (CAD, Construction, GIS, etc.)	\$90 - \$150
Senior Technician/Designer	\$125 - \$185
Graduate Engineer/Planner/Scientist	\$105 - \$165
Project Engineer/Planner/Scientist	\$140 - \$200
Project Manager	\$160 - \$250
Senior Project Engineer/Planner/Scientist	\$180 - \$250
Principal	\$225 - \$295

Additional rates may be negotiated at a later date for classifications or services not included above.