

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES
FOR MAIN STREET IMPROVEMENTS FROM CHIPMAN ROAD TO COMMERCE
DRIVE (SOLE SOURCE)**

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

WITNESSETH:

WHEREAS, City intends to have engineering services for Main Street Improvements from Chipman Road to Commerce Drive (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 contracts 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"):

Design services for Main Street from Chipman Road to Commerce Drive Roadway Improvement Project.

Specific Tasks to be Completed-Refer to Exhibit "A"

**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"):

None

ARTICLE III
SCOPE OF SERVICES TO BE PROVIDED BY CITY

City shall provide the following services to Engineer:

- Ownership and Encumbrance Reports
- Tenant names
- Available water and sewer locations, size and materials
- Copies of available reports and as-built plans
- Available drainage studies
- Available plats of adjacent properties
- EJCDC Contract Documents and Division One-Special Contract Provisions
- Pay any fees associated with permits
- Assist Consultant in gaining right of entry to private property for geotechnical exploration

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 Hundred and Seventy-One Thousand Dollars (\$171,000.00), 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 Hundred and Seventy-One Thousand Dollars (\$171,000.00).
- 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 Zero Dollars (\$0.00).
- 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 Contract or Agreed Maximum Fee Amount, Cumulative Amount Previously Billed, Billing Amount this Invoice, Contract 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:

- The basic services will be ready for construction bidding by January 31, 2021.

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 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 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.
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 Engineer. Engineer 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. Engineer 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, 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 contract.
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 declaration page(s) of the insurance policies as required by these requirements, issued by Engineer'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 Engineer'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. Engineer'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 Engineer 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. Engineer 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. Engineer shall maintain Business Automobile Liability insurance with an unimpaired limit of at least \$3,000,000 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. 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 Engineer engages in any professional services or work adjunct or residual to performing the work under this Agreement, the 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 not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

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 contract 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 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 but 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 contract period and for three (3) years from the date of final payment for each individual project performed pursuant to this Agreement.

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

- ~~K. LIMITATION OF LIABILITY: In no event will City be liable to Engineer 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.~~
- L. 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.
- 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, 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.
- P. 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.

- 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, 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.
- S. 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.
- T. 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.
- 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 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.
- 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), 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.

Y. 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.

Z. 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.

AA. 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.

BB. 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.

CC. 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.

DD. 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. 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
200 SE Green Street
Lee's Summit, MO 64063

and notices to Engineer shall be addressed to:

Walter P. Moore
Attn: Daniel L. Brown
100 Walnut Street, Suite 1825
Kansas City, MO 64106

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

**ARTICLE VIII
ALL OTHER TERMS REMAIN IN EFFECT**

Reserved.

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

Stephen A. Arbo, City Manager


ATTEST:

City Clerk Trisha Fowler Arcuri

APPROVED AS TO FORM:

Nancy K. Yendes,
Chief Counsel of Infrastructure and Planning
Office of City Attorney

ENGINEER:



BY: Daniel L. Brown
TITLE: Principal

ATTEST:

Exhibit A

PHASE 1. PRELIMINARY DESIGN

1.01. Data Collection.

- A. Attend pre-design meeting. Assumes two (2) people for two (2) hours with meeting minutes prepared and distributed.
- B. Develop design criteria for the project; prepare design memorandum.
- C. Prepare a letter to the property / business owners introducing the project and the design team and providing contact information for questions. A questionnaire will be included asking specific questions related to their property (i.e. drainage concerns, irrigation system locations, etc.). A self-addressed stamped envelope will be provided to return the questionnaire to the design team. In addition, an online version of the questionnaire will be created, and a link provided in the letter for those that prefer to complete online. Once the material to distribute to the property / business owners is approved by the City, it will be delivered to each property / business owner either in person or by mail.
- D. Complete a pre-design walk through with the City to discuss and identify the limits of the project, limits of topography and boundary information needed, and other site information which may impact the design of the project.
- E. Field data collection for the project limits as defined previously:
 - Control surveys.
 - a. Survey research and survey coordination.
 - b. Process control surveys.
 - c. Recover and tie section corners.
 - d. Establish project control points.
 - e. Provide reference ties for project control points.
 - f. Recover project benchmarks.
 - g. Establish temporary benchmarks throughout the project as needed for design surveys.
 - Field surveys.
 - a. Field survey all existing surface topographic features within the project limits identified on the attached exhibits.
 - b. Survey existing locatable property corners and include in mapping. Does not include resetting any corners.
 - c. Download and process design surveys.
 - d. Develop existing surface from surveys.
 - e. Provide miscellaneous pick-up surveys for critical areas outside original project limits as preliminary design progresses.
 - Contact Missouri One-Call and the City to coordinate marking of underground utilities and field locate all marked or visible utilities.
 - Low opening elevation of existing structures adjacent to storm sewer system and at low points.

- Off-site storm sewer structures and swales adjacent to the project.
- Field locate visible irrigation systems, if any.
- Contact utilities, obtain record facility maps, and inquire about planned upgrades.
- Expose buried utilities in critical locations to determine vertical elevation and horizontal location.
 - a. The Consulting Engineer shall contract with a vacuum excavation specialists for positive depth identification of buried utilities in up to five (5) locations (Assumes excavation will take place in grass and not pavement areas). The costs associated with vacuum excavation shall be paid by the Consulting Engineer to the vacuum excavation specialist.
 - b. Survey utility pothole locations and reflect information on drawings. Assumes one (1) additional trip by Surveyor).

F. Ownership and abutting property information.

- Secure plats.
- Obtain ownership information. The City shall obtain Ownership and Encumbrance Reports (O&Es) for necessary tracts of land and provide to the Consulting Engineer.
- Collect record drawings on abutting projects and developments.

G. Geotechnical investigation. The Consulting Engineer shall contract with a geotechnical firm to drill exploratory borings at defined locations to determine existing subsurface conditions. The costs associated with the work shall be paid by the Consulting Engineer to the geotechnical firm.

- Location of public utilities at boring locations will be coordinated through Missouri One-Call and the City of Lee's Summit. City permit will be completed, but fees for permitting and/or bonding are not included (assumed to be waived by the City). Two flagmen and associated signage for temporary traffic control is included.
- Three (3) borings will be drilled to depths up to 10-feet. If refusal material is encountered above the planned depth the boring will be terminated. Rock coring is not included.
- Laboratory testing will include geotechnical index testing such as moisture content and Atterberg limits on select samples.
- Preparation of a letter report addressing the following key issues: excavation considerations and depth to rock, groundwater considerations, potentially expansive or sensitive soil and its effects on pavement support and verification of City's standard pavement section.

H. Analyze the storm drainage needs along the Project.

- Determine watershed areas for all streams and basins draining onto and adjacent to the proposed roadway.
- Determine ultimate development stormwater flows crossing or entering the proposed roadway.
- Create existing conditions hydraulic model.

- a. Analyze gutter spread at critical locations along project for design storm event.
 - b. Analyze enclosed system pipe capacity for design storm event.
- I. Preliminary Geometrics.
- Develop preferred horizontal alignment for NW Main Street.
 - Create vertical profile that minimizes impacts to adjacent properties.
 - Evaluate grading alternatives that minimize impacts to adjacent properties.
- J. Complete AM and PM peak hour turning movement counts at the following intersections:
- NW Main Street and NW Commerce Drive
 - NW Main Street and E Chipman Road
- K. Review turning movement counts and the existing Traffic Impact Study of the area provided by the City and prepare a memorandum with recommendations for intersection and corridor lane configurations within the project area.
- 1.02.** Prepare base map at a scale of 1"=20' showing contours at 1-foot intervals, surveyed topographic features, property owner information, utility service lines and property and easement lines.
- 1.03.** Prepare preliminary plans. Anticipated plan sheets include:
- A. Cover sheet.
 - B. General notes and legend.
 - C. Survey reference information and alignment data sheet.
 - D. Typical sections.
 - E. Storm drainage design.
 - Drainage area map.
 - Drainage calculations.
 - Storm sewer profiles.
 - F. Plan and Profile sheets (Plan Scale 1"=20', Profile Scale Horiz. 1"=20', Vert. 1"=5') for NW Main Street.
 - G. ADA ramp layouts.
 - H. Preliminary temporary traffic control for construction plan sheets.
 - I. Preliminary pavement marking and signing (Plan Scale 1"=50').
 - J. Cross sections every 25-feet, in addition to points of interest, showing existing drives, utilities, earthwork areas and grade break information.
- 1.04.** Perform quality assurance review.
- 1.05.** Submit preliminary plans as necessary to utility companies for their use in preparing for relocations (Assumes no more than 8 sets of half-size plans).
- 1.06.** Develop preliminary opinion of probable project construction costs itemized by unit of work, including contingency.

- 1.07.** Submit preliminary plans and opinion of probable construction cost to City for review. Consulting Engineer will provide two (2) full-size and two (2) half-size sets of plans and one digital PDF set of plans suitable for printing additional copies.
- 1.08.** Design review meeting(s) with City as necessary in connection with such preliminary work. Assumes one (1) meeting with two (2) people for two (2) hours with meeting minutes prepared and distributed.
- 1.09.** Field Check to be performed with representatives of the Consulting Engineer and the City at the project site with appropriate detailed plans. Entire project will be walked and necessary additions/changes to the design will be noted.
- 1.10.** Right-of-way and easements.
- A. Describe right-of-way and easements necessary to complete project.
Assumes nine (9) tracts will require a temporary construction easement, permanent easement or additional right-of-way. Therefore, a total of nine (9) legal descriptions and associated exhibits are included.
- Furnish legal descriptions sealed by a Registered Land Surveyor (RLS) licensed in the state of Missouri. Legal descriptions will also be provided in a digital format compatible with Microsoft Word.
 - Maps and sketches as follows:
 - a. Right-of-Way Plans. Update "Field Check" plans to reflect all proposed takings for City review. Consulting Engineer will provide two (2) full-size and two (2) half-size sets of plans and one digital PDF set of plans suitable for printing additional copies.
 - b. Individual exhibit drawings of takings for each ownership including:
 - (1) Title block.
 - (2) Ownership boundaries.
 - (3) Existing rights-of-ways and easements.
 - (4) Proposed takings identified with text and graphically.
 - (5) Legend for taking type.
 - (6) Graphical scale and north arrow.
 - (7) Ownership information.
 - (8) Legal description of all takings.
 - Provide digital copies of sealed legal descriptions, easement documents and exhibits to City for distribution and execution.
- B. The Consulting Engineer shall stake in the field the location of rights-of-way and/or permanent easements to assist with property acquisition.
- 1.11.** Consulting Engineer will prepare for and attend a public meeting to present the Right-of-Way Plans to the property / business owners and address questions at a time and place arranged by the City. The primary purpose of this meeting will be to gather feedback from the property / business owners on the design, answer their questions and assist in getting easement / right-of-way documents signed and executed.

- 1.12. Consulting Engineer will be available to meet with City staff and critical stakeholders as directed by the City to discuss the project at any time throughout the project. Five (5) meetings with one (1) person for two (2) hours are budgeted.
- 1.13. Prepare the necessary applications for approval of land disturbance permits from the Missouri Department of Natural Resources (MDNR).
- 1.14. Correspondence with the City on project related items via phone and email. Assumes two (2) hours per week for 16 weeks.

PHASE 2. FINAL DESIGN

- 2.01. Prepare detailed plans and specifications. Anticipated plan sheets include:
 - A. Cover sheet.
 - B. General notes and legend.
 - C. Survey reference information and alignment data sheet.
 - D. Typical sections.
 - E. Storm drainage design.
 - Finalize system layout and pipe profiles.
 - Update plan notes and drainage calculations.
 - F. Plan and Profile sheets (Plan Scale 1"=20', Profile Scale Horiz. 1"=20', Vert. 1"=5') for NW Main Street.
 - G. Intersection details.
 - H. ADA ramp details.
 - I. Final temporary traffic control for construction plan sheets.
 - J. Final pavement marking and signing.
 - K. Final cross sections and grading limits.
 - L. Temporary erosion and sediment control (ESC) plans.
 - M. Standard and special details.
- 2.02. Prepare project manual. City standard technical specifications shall be used for the project. Prepare special conditions, as necessary, to modify City standard technical specifications. City will prepare front-end documents for the project manual.
- 2.03. Perform final plan quantity takeoffs and develop quantity summary tables.
- 2.04. Perform quality assurance review.
- 2.05. Stormwater Pollution Prevention Plan (SWPPP), including erosion and sediment control plans will be prepared. Plans shall conform to City design checklists and requirements. SWPPP shall follow City template and conform to MDNR requirements. Provide 2 copies of SWPPP manual to the City at time of bidding.
- 2.06. Schedule and attend three (3) utility coordination meetings. These meetings will include a preliminary plan review, a right-of-way plan review meeting and a relocation status meeting.

- A. Assumes 2 people for 2 hours with meeting minutes prepared and distributed for each meeting.
 - B. Preparation of meeting agenda and list of conflicts table for each meeting.
 - C. Submit right-of-way plans as necessary to utility companies for their use in preparing for relocations.
 - D. Assist utilities with conflict coordination.
 - Provide electronic base maps to all utilities for their use in developing relocation plans.
 - Compile a master utility relocation drawing from the individual utility's electronic relocation plans provided above. These plans are intended to facilitate timely and more accurate coordination among utilities and are NOT intended for construction or locating purposes.
 - E. Project coordination with the utility companies on project related items via phone, email, and mail. Assumes one (1) hour per week for 24 weeks.
- 2.07. Prepare a detailed opinion of probable construction cost.
- 2.08. Submit final plans, specifications and opinion of probable construction cost to City for review. Final plans will include the completed plans for the NW Commerce Drive sidewalk extension completed as part of the NW Commerce Drive Improvements project (City Project No. 415). Consulting Engineer will provide two (2) half-size and two (2) full-size sets of plans, four (4) project manuals and one digital PDF set of plans and project manual suitable for printing additional copies.
- 2.09. Design review meeting(s) with City as necessary during preparation of detailed plans. Assumes one (1) meeting with two (2) people for two (2) hours with meeting minutes prepared and distributed.
- 2.10. Correspondence with the City on project related items via phone and email. Assumes two (2) hours per week for 16 weeks.

PHASE 3. BIDDING

- 3.01. The Consulting Engineer will provide the City with digital PDF copies of the plans and specifications for distribution using QuestCDN. The City will coordinate with QuestCDN to advertise the project. The City shall be responsible for fees directly related to plan distribution and hard copies as requested.
- 3.02. Respond to bidder's requests for information during the bidding process.
- 3.03. Prepare written addenda to the bidding documents as required and or requested.
- 3.04. Arrange for and attend a pre-bid conference.
- 3.05. Arrange for, attend, and prepare meeting minutes for a pre-construction conference with City representatives, the successful bidder, and utility companies.

PHASE 4. CONSTRUCTION

4.01. Consulting Engineer will prepare for and attend a public meeting to present the Final Plans to the property / business owners and address questions at a time and place arranged by the City. The primary purpose of this meeting will be to introduce the selected contractor and address construction related questions.

4.02. Submittal Review.

A. Provide review and recommendation of No Exceptions Taken / Exceptions Noted / Revise and Resubmit / Submit Specified Item(s) for the following submittals as identified in the City's Project Manual Submittal Checklist:

- Preliminary Matters: Preliminary Progress Schedule and Preliminary Sched Curb and Gutter: Concrete, Curing Compound, Dowel Bars and Expansion Material
- Landscaping: Fertilizer, Mulch, Plantings, Seed, Sod and Turf Reinforcement Mat
- Miscellaneous: Anchor Bolts (not signal or lighting), Epoxy, Geotextile, Grout and Traffic Control Plan
- Pavement - Asphalt: Surface Course
- Pavement – Concrete: Concrete, Curing Compound, Expansion Material, Joint Layout, Joint Sealer and Reinforcing Steel
- Ramps: Detectable Warning Surface, Concrete, Curing Compound, Dowel Bars and Expansion Material
- Rip Rap: Rip Rap
- Sidewalk: Concrete, Curing Compound, Dowel Bars and Expansion Material
- Signs (Permanent): Anchors, Banding, Brackets, Posts, Sleeves, Sign Blanks, Sign Sheeting and Signs
- Storm Sewers: Concrete, End Section, Pipe, Pipe Joint Material, Reinforcing Steel, Ring and Lid Assembly, Steps and Structures
- Subgrade: Drainable Base, Fly Ash Stabilization, Lime Stabilization, MoDOT Base Courses, Underdrain Filter Fabric and Underdrain Pipe

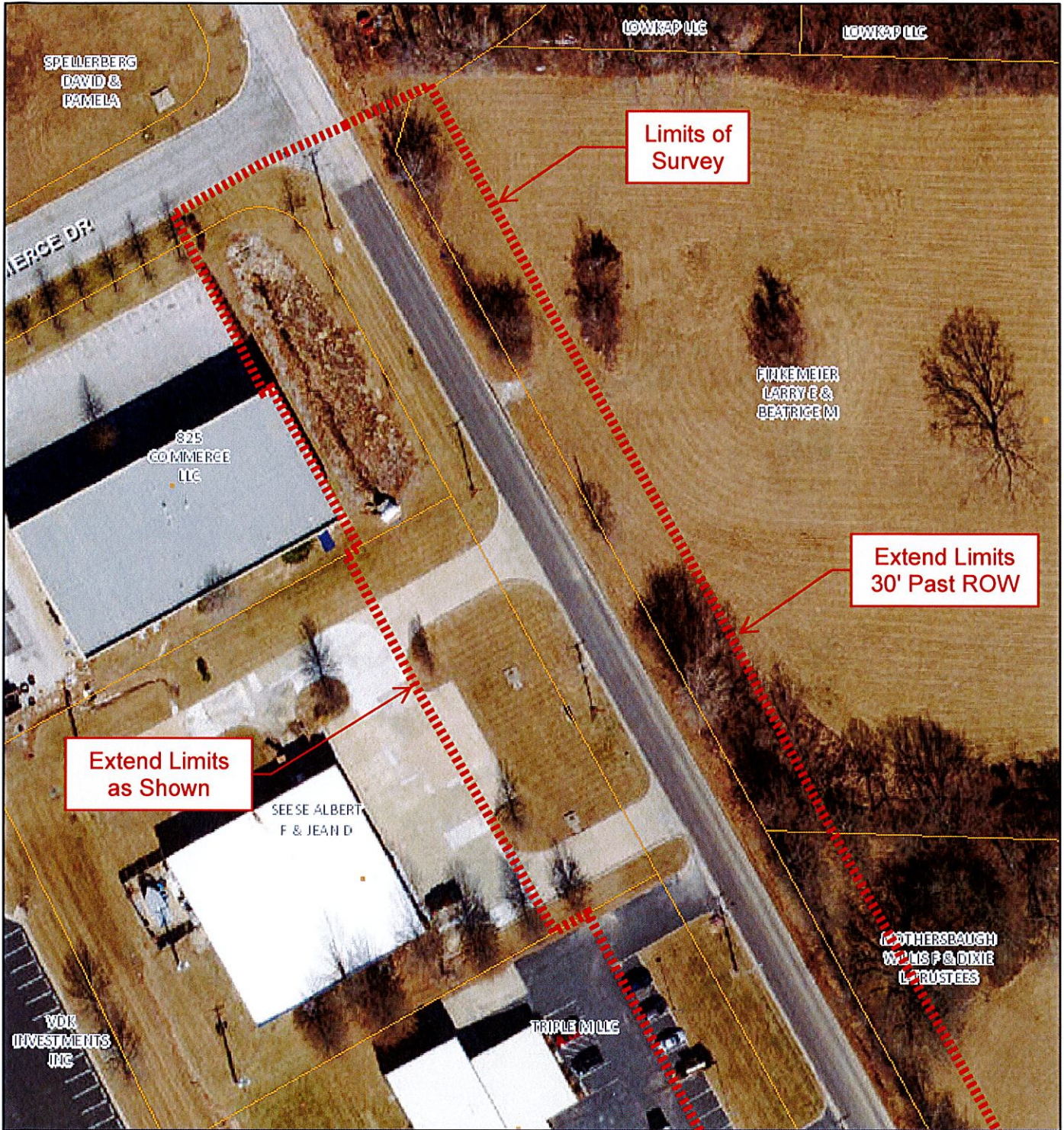
Recommendations of No Exceptions Taken / Exceptions Noted / Revise and Resubmit / Submit Specified Item(s) will be communicated in PDF format via email to the City and an explanation of denial or modification needed will be included.

4.03. Consulting Engineer will be available to attend construction meetings and visit the site as necessary during construction as requested by the City to answer questions. Assumes a construction duration of five (5) months and one (1) person for eight (8) hours per month.

4.04. Provide As-Built Plans.

A. Consulting Engineer will review, approve or deny contractor requested changes to the contract drawings as provided by the City and/or Contractor and make revisions to the original drawings as needed. Revised drawings will be provided in PDF format for use by the City.

NW Main Street - Survey Limits 1 of 3



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Tax Parcels

Tax Parcel

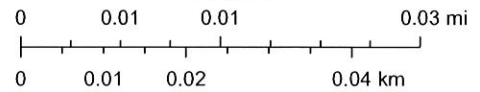
Condo

Address

Ownership

Jackson County, MO

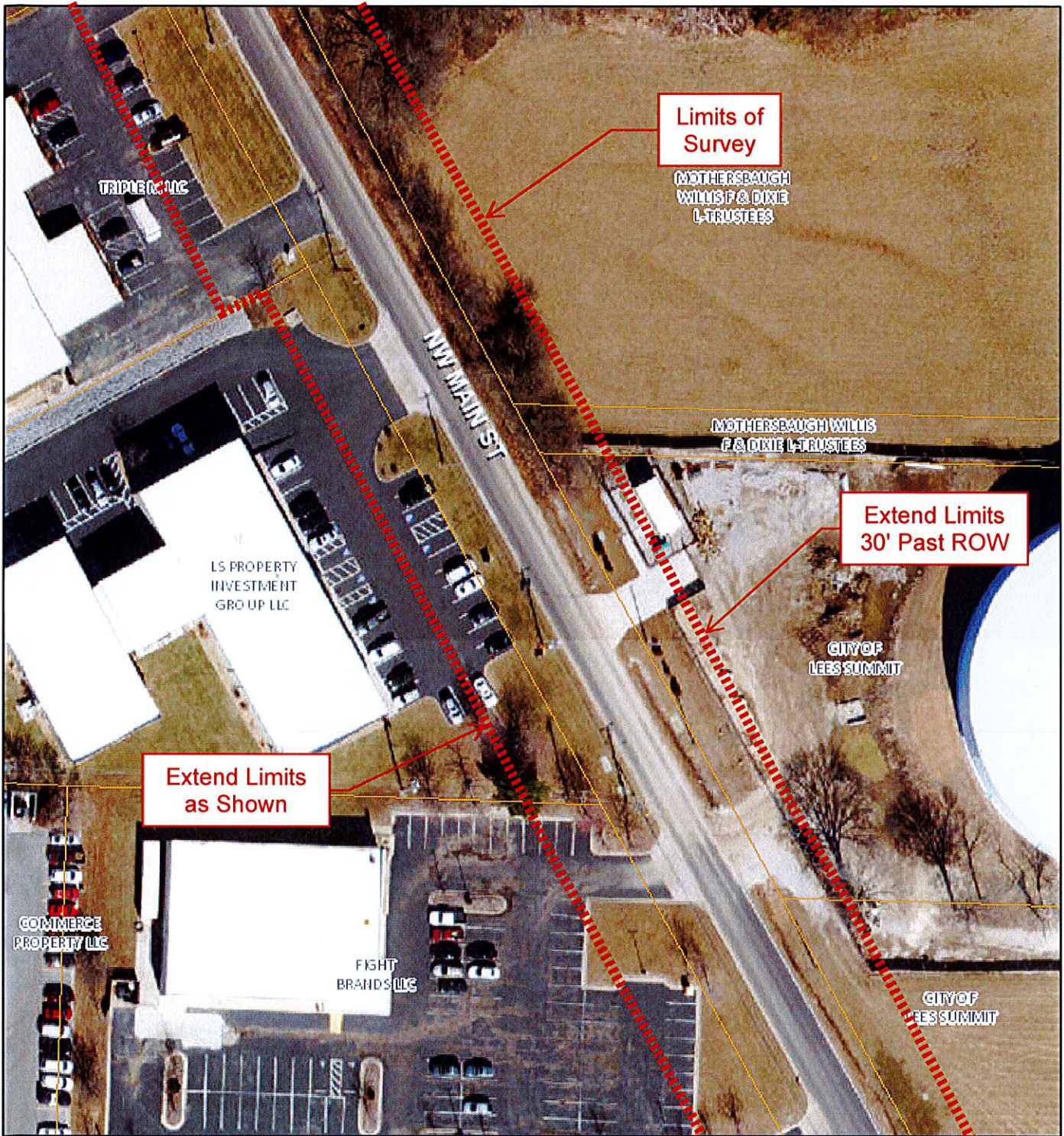
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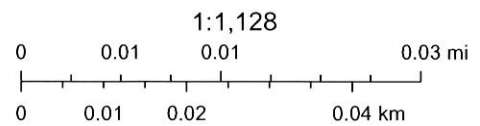
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NW Main Street - Survey Limits 2 of 3



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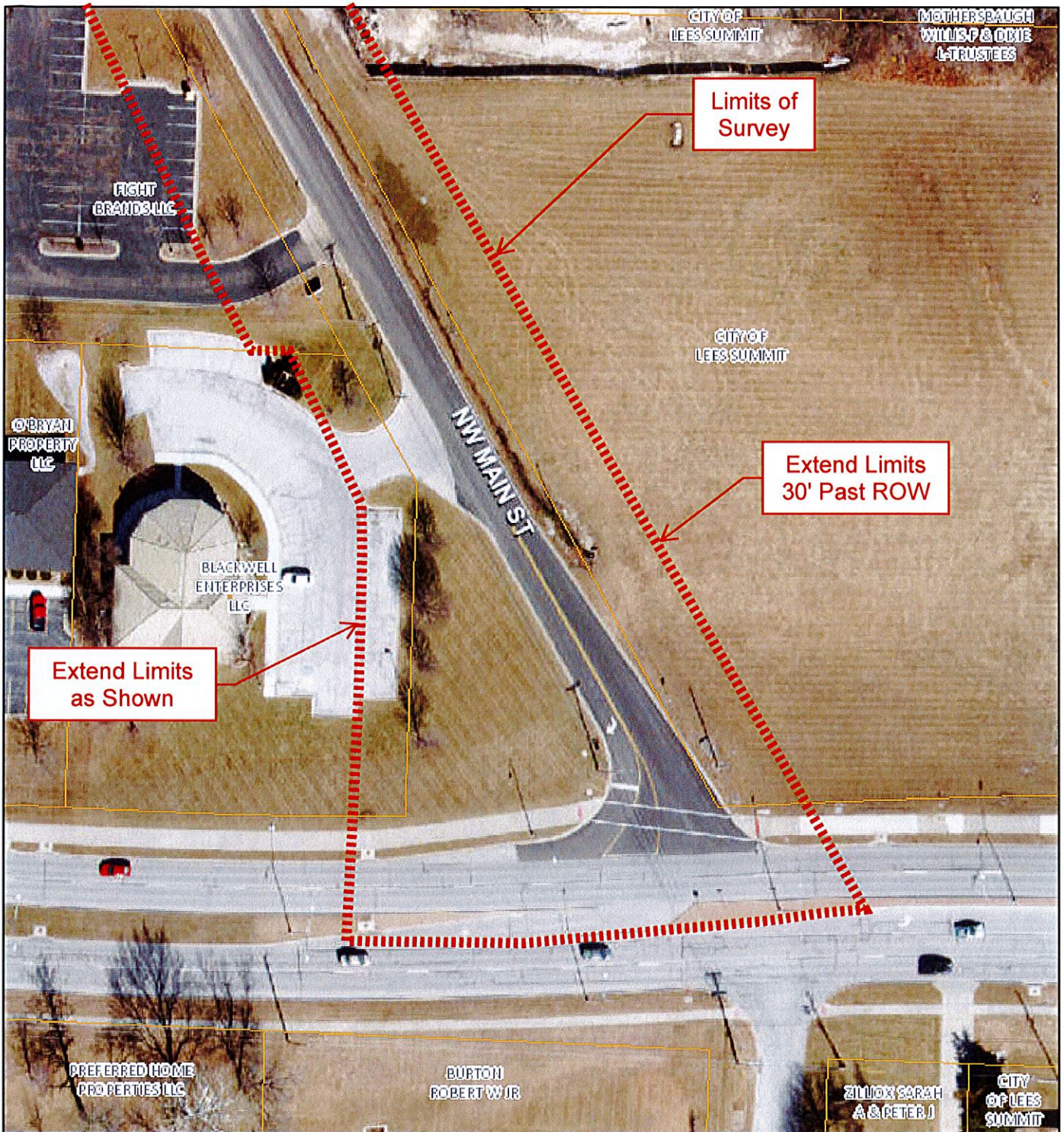
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- Address
- Ownership
- Jackson County, MO
- Tax Parcel
- Condo



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NW Main Street - Survey Limits 3 of 3

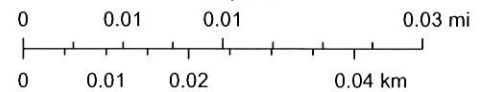


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Tax Parcels

• Address



□ Tax Parcel

Ownership

□ Condo

▭ Jackson County, MO

Jackson County MO GIS Department, Jackson County, MO GIS Department, Jackson County, MO

E-10

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