

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES
FOR 3RD STREET IMPROVEMENTS FROM JEFFERSON STREET TO BLUE
PARKWAY (RFQ NO. 2020-066)**

THIS AGREEMENT made and entered into this ____ day of _____, 2020, by and between the City of Lee's Summit, Missouri (hereinafter "City"), and _____ WSP USA (hereinafter "Engineer").

WITNESSETH:

WHEREAS, City intends to have engineering services for 3rd Street Improvements between Jefferson Street and Blue Parkway (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 3rd Street from Jefferson Street to Blue Parkway Roadway Improvement Project.

***Specific Tasks to be Completed-
Refer to Exhibit A-Services Provided by Engineer***

**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"):

***Specific Tasks to be Completed-
Refer to Exhibit A-Services Provided by Engineer***

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

City shall provide the following services to Engineer:

- Ownership and Encumbrance Reports
- Available plans for water and sewer locations, size and materials
- Available reports, master plans, traffic studies, development plans, comprehensive plans, historical crash data, historical traffic counts, and travel demand modeling data.
- As-built plans
- Available drainage studies
- Available plats of adjacent properties
- EJCDC Contract Documents and Division One-Special Contract Provisions
- Payment of any fees associated with permits
- Mailing of public notices produced by the Engineer

**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 Six Hundred Forty-Seven Thousand Three Hundred Dollars (\$647,300.00), 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 Five Hundred Forty-One Thousand Five Hundred Dollars (\$541,500.00).
- 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 Five Thousand Eight Hundred Dollars (\$105,800.00).

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:

Final deliverables by November 1, 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.

- K. **INDEMNIFICATION AND HOLD HARMLESS:** Engineer shall indemnify, 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
- L. **LIMITATION OF LIABILITY:** In no event will the Parties be liable to the Other 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. 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.

EE. SECTION 34.600, RSMo. Pursuant to Section 34.600, RSMo and to the fullest extent permitted by law, Contractor certifies that Contractor 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.”

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
200 SE Green Street
Lee’s Summit, MO 64063

and notices to Engineer shall be addressed to:

Scott M. Cogan, PE
WSP USA
300 Wyandotte Street, Suite 200
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.

**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 _____, 2020.

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: Agnes Otto
TITLE: Sr. Area Manager, WSP USA

ATTEST:

Third Street Improvements – Jefferson to Blue Parkway

Basic Services to be Provided by Engineer

1. Project Purpose/Justification

The project enhances safety and operations by improving the 3rd Street corridor through complete street improvements to include access management, sidewalks, ADA improvements, lighting, etc. The project will promote economic activity and reinvestment along the minor arterial and principal gateway into downtown Lee's Summit and supports the City's Livable Streets Policy, Downtown Master Plan/Downtown Gateways Plan (Big 5), and other approved City initiatives

2. Project Plan/Scope

- a. Project Limits – Permanent improvements to 3rd Street will be limited to between the east curb returns of Blue Parkway and the west curb returns of Jefferson Street including the reconstruction of intersections (to the curb returns) in between with the following exceptions:
 - i. Adding a multi-use path to the south side of 3rd Street will require a modification to the traffic signals and pavement marking in the 3rd Street and Jefferson Street intersection to allow for two additional pedestrian crosswalks and associated signalization.
 - ii. Traffic control plans will require advanced temporary signage, pavement marking, and devices in advance of the Blue Parkway and Jefferson Street intersections.
 - iii. Additional survey will be performed on 3rd Street from Jefferson Street to Market Street and on Market Street from 4th Street to 2nd Street (within existing right-of-way) for the potential addition of streetscape elements to those areas.
 - iv. Additional survey will be performed on Nichols Street/4th Terrace, Noel Street, and Highland Street to a point where existing sidewalk is present north and south of 3rd Street.
- b. Design Criteria – City of Lee's Summit Design and Construction Manual will generally be followed for the design criteria of the project. A project-specific Design Criteria document will be developed incorporating Lee's Summit criteria and other industry standards the City's review and approval prior to design work beginning.
- c. LPA Process/Documentation – The City of Lee's Summit has applied for STP funding for the project. Assuming that funding is received, MoDOT's Local Public Agency (LPA) Policy will be followed throughout the design and construction phases of the project. Engineer will assist the City by providing requested information for the City to complete the forms and procedures required by the LPA Policy per Section 136 of MoDOT's Engineering Policy Guide (EPG).

- d. Corridor Concept Study – A study will be completed during the concept phase which will include the evaluation of, and recommendations related to safety, traffic operations, access management, economic development impacts, and multi-modal improvements. The study will include objective, data-driven results that will be used during stakeholder and public outreach to convey the benefits of the planned improvements.
- i. Review of Previously Developed Planning/Traffic Studies – WSP will review up to three planning/traffic study documents previously performed along the 3rd Street Corridor.
 - ii. Field Data Collection:
 1. WSP will perform a field review in conjunction with a review of aerial imagery of the roadway network within the 3rd Street Corridor study area. Data to be collected includes existing lane configurations, lane widths, signing, pavement markings, and other safety features for use in the Corridor Concept Study as applicable.
 2. 24-hour traffic volume counts on 3rd Street near the center of the corridor (including ped/bike counts)
 3. 24-hour vehicle turning counts, including AM/Mid-day/PM peak turning counts, at the signalized intersections of:
 - a. 3rd St. & Blue Parkway
 - b. 3rd St. & Jefferson Street
 - c. These would also include ped/bike counts
 - d. Collected data on a typical Tuesday, Wednesday or Thursday when school is in session and during good weather
 - iii. Safety Analysis
 1. WSP will obtain five-years of crash data along 3rd Street within the study area from the City and/or the Missouri Department of Transportation (MoDOT). Crashes will be reviewed, and Crash Diagrams developed, to determine if a pattern of crashes is present at locations along the 3rd Street Corridor. The 1st edition (2010) of the Highway Safety Manual (HSM) will be utilized to evaluate existing crashes, compared to expected crashes along similar corridors (intersections and roadway segments) and recommend potential countermeasures.
- e. Design Surveys – Mobile LIDAR will be utilized for the majority of the project supplemented with GPS-enabled total station to survey the limits of the project defined above. Topographic information, utility locations (based on OneCall locates and surface features), contours, and existing right-of-way/property CAD files will be generated and field checked. Does not include staking centerline or private utility locates (included in Optional Services).
- f. Roadway Typical Section – The three-lane section will remain. Options will be investigated during the Concept Corridor Study phase to 1. Keep the existing pavement/lane widths, 2. Narrow the lane widths to 11' minimums, 3. Narrow the center turn lane leaving wider outside lanes or widening the pavement section to provide slightly wider outer lanes.

- g. Pavement – Four combination pavement cores/soil borings will be taken at 500' intervals along the project, and recommendations summarized in a report to include several options: 1. mill and overlay the existing pavement, 2. full depth replacement of stabilization, base, and pavement sections, full depth replacement incorporating pavement reclamation.
- h. Sidewalks/Shared Use Paths –Sidewalks will be a minimum of 5' wide with a 4' minimum buffer space from the back of curb, where offset. Where adjacent to the back of curb, sidewalk will be 6' wide. Along the south side of 3rd Street, a 10' wide shared-use path will be provided. Location of the shared use path may vary from adjacent to curb to offset depending on utility impacts, the need for retaining walls, impacts to trees, and stakeholder preferences. Up to two mid-block crossings will be incorporated if recommended by the Corridor Concept Study.
- i. Access Management – Based on the results from the Corridor Concept Study, access improvements will be determined. Out of 44 existing access points along the project, it is anticipated that about 15 locations will require a combination of removal, narrowing, combining, and widening. In coordination with Public Involvement efforts described herein, Engineer will coordinate (up to 20 hours total) with individual property owners whose access is proposed to be modified.
- j. Permits/Environmental - The following permits are anticipated and will be prepared/submitted by the Engineer: LSMO Land Disturbance, LSMO Right-of-Way, LSMO Traffic Control, LSMO Electrical, MoDOT Right-of-Way, MDNR Water and Sanitary. It is assumed that all City fees will be waived. It is assumed that the project will be classified as a Programmatic Categorical Exclusion (PCE). Engineer will develop and submit a memo summarizing the project attributes showing that thresholds are within the definition for a PCE.
- k. Right-of-Way – Engineer's surveyor will establish existing right-of-way and will prepare legal descriptions for proposed right-of-way and/or easements. For purposes of estimating, it is assumed that existing right-of-way will need to be established for 52 properties. Engineer's surveyor will prepare up to 60 legal descriptions and tract maps for temporary construction easements, permanent easements, and permanent right-of-way.
- l. Utility Coordination – Engineer will coordinate utility relocations for the project. Engineer will provide plan drawings to utility companies and will provide coordination with participation in one group meeting and up to 2 individual meetings with each utility company. The following utilities have been identified within the corridor: Evergy, AT&T, Spectrum, Google, Spire, R-7 School District, City Fiber, City of Lee's Summit Water and Sanitary Sewers. Engineer will perform design for the replacement of the water main along 3rd Street. No sanitary sewer impacts are anticipated and therefore no design is included in this scope of services.
- m. Future Bus Route Planning – As this corridor has been identified as a future route by KCATA, the Engineer will coordinate with the City and KCATA (1 meeting) to determine the future locations of bus stops. The determination of future bus stops will inform the design team of areas to place lights, sidewalk to curb connections, and potential bench locations. It will also create areas to avoid for buried drainage and utility infrastructure.

- n. Water Main Design – There is currently a combination of 4" and 6" water mains along 3rd Street installed in the 1960s and 1970s. The water mains will be replaced and upgraded to 8" water mains meeting City criteria. Associated service lines and connections to other water mains will be included in the design.
- o. Storm Sewer Design – A camera will be run through the existing storm sewer system by the City's on-call contractor. Results will be analyzed to determine the feasibility of salvaging portions of the existing system. Portions not salvageable or under capacity will be replaced with new infrastructure meeting the City's design criteria. For purposes of this scope of services, it is assumed that the storm sewer infrastructure within the limits of the project will be replaced. Capacity of downstream storm sewer systems will not be evaluated as runoff is not expected to increase significantly. City of Lee's Summit standard details will be used for storm sewer structures. It is assumed that special structural designs or bills of reinforcing will not be required for the storm sewer structures. BMPs will be considered and incorporated into the design where feasible and beneficial.
- p. Erosion Control/SWPPP - City of Lee's Summit erosion control standards will be followed. Engineer will develop a SWPPP using the EPA standard template for inclusion in the Bid Documents.
- q. Geotechnical – Engineer will perform four combination pavement cores/soil borings, laboratory testing, and develop recommendations for site grading and subgrade preparation. Engineer will provide staking and surveying of the boring locations.
- r. Final Cross Sections – One set of cross sections will be developed showing existing ground, proposed surface, pavement/subgrade layers, sidewalks, buried utilities (where elevation information is known), and existing/proposed right-of-way. It is also assumed that the proposed grading can be adequately communicated through cross sections and that no special grading plans will be developed with this project.
- s. Bridges – There are no bridge structures anticipated on the project.
- t. Retaining Walls – It is assumed that 3-4 retaining walls will be required along the project to minimize the impacts to properties and utilities. The type and material of the walls will be determined through the stakeholder outreach phase. It is assumed that either City or wall supplier standard details can be utilized. It is assumed that the height of the walls will be limited such that geotechnical analysis will not be required and handrails will not be required.
- u. Public Involvement – Early stakeholder engagement will include up to 3 "touch points" with stakeholders. Stakeholder groups include Downtown Lee's Summit Main Street, Lee's Summit Historical Society, Lee's Summit Chamber of Commerce, property/business owners along the corridor, and elected officials. The early outreach will include a combination of virtual meetings, distributed exhibits/fact sheets, and outreach tools such as surveys aimed at gathering stakeholder input and preferences. One of these early touch points may include the general public. In addition, three public meetings will be held at the following milestones: following the Concept Design phase to introduce the preferred design and gather feedback, at Right-of-Way Plans to follow the LPA process for receiving an "A Date" to begin property acquisition, and following the selection of the Contractor just prior to construction beginning. Material will be

developed for social media distribution at 4 milestones (1 public-involved touch point and 3 public meetings).

- v. Traffic Control – Through traffic will be maintained on 3rd Street during construction with the exception of short closures for phase changes. It is anticipated that the project can be built in two longitudinal phases while maintaining one-way traffic. Access to properties will be maintained throughout construction.
- w. Aesthetics – Aesthetic elements will be explored during the Concept Design phase in coordination with the stakeholder outreach efforts. Elements that will be explored are pavers/stamped concrete, retaining wall types/treatments, lighting options, benches, and sidewalk location/alignment preferences. No irrigation design or remediation is included.
- x. Traffic Signals– The existing traffic signal at 3rd Street and Blue Parkway is on MoDOT right-of-way and is owned and operated by MoDOT. It is assumed there will be no permanent modifications to this intersection. At the 3rd Street and Jefferson Street intersection, pedestrian facilities will be added to allow crosswalks at the west and south legs of the intersection. Traffic signal timings will be updated to include the pedestrian phases. It is assumed that no changes will be made to the existing traffic signal heads. During construction, it is anticipated that signal timing/cycles at Blue Parkway and Jefferson Street may need to be adjusted to accommodate temporary traffic patterns. It is assumed that this can be accomplished without the need for temporary equipment.
- y. Street Lighting – Pedestrian level lighting will be provided from Blue Parkway to Jefferson Street with street level lighting at the major intersections. Standard/stock lighting fixtures (potentially upgraded to black powder-coated) will be used as the base bid with options for upgrading to more decorative fixtures similar to those used in the downtown area.
- z. Bidding Phase Services – Engineer will provide the Bid Form and Measurement and Payment section of the front end documents and provide the City with requested information to compile the remaining front end documents and Division 1 of the Bid Documents. Engineer will assemble Division 2 (Technical Specifications). It is assumed that City and MoDOT Standard Specifications and Job Special Provisions will be used. Engineer will attend a pre-bid meeting and respond to Contractor questions during the bidding phase.
- aa. Construction Phase Services – No construction phase services are included. These services will be negotiated as a supplement to the contract prior to construction beginning.

3. Deliverables

It is assumed that the following submittals will be made throughout the project.

- Concept Corridor Study (draft and final)
- Geotechnical Report
- Concept Design Exhibits (draft and final)
- Material for public distribution (at 4 milestones)

- Preliminary Plans and Cost Estimate
- Permits (as described in 2.j.)
- Right-of-Way Plans
- Tract Maps and Legal Descriptions (60)
- 95% Plans
- Final Plans and Cost Estimate
- Bid Documents (as described in 2.z.)
- Electronic Deliverables (DWG of base and sheet files, TIN of existing and proposed surfaces)
- As-Built Plans

For each of the submittals listed above, it is assumed that PDFs will be submitted. No hard copy plans will be submitted. For plan milestones, it is assumed that comments received from reviewers will be incorporated into the following milestone submittal.

Optional Services to be Provided by Engineer

1. Project Purpose/Justification

The following tasks have been identified as likely candidates for potential additions to the project and may be included in part or in whole as needed or as additional funding is identified.

2. Project Plan/Scope

- a. Downtown Lee's Summit Main Street CID Upgrades – The DLSMS group may be interested in contributing to improvements either within the project limits or within the downtown area. Engineer will:
 - i. Conduct additional stakeholder outreach, up to 3 additional coordination meetings, to determine the scope of improvements desired by the DLSMS group.
 - ii. Develop design/plans for 3rd Street streetscape enhancements (not including lighting or irrigation design).
 - iii. Develop design/plans for Market Street streetscape enhancements (not including lighting or irrigation design).
 - iv. Develop recommendations for incorporating aesthetic elements into the shepherd's hook light fixtures throughout Downtown as envisioned with the original Downtown Streetscape Improvements project.
 - v. Develop concept wayfinding signage plan for the project and Downtown area.
- b. Gateway Features – City of Lee's Summit Parks & Recreation has developed a master plan for the location of gateway monuments around the City. US-50 and 3rd Street was identified as one of the gateway monument locations. Engineer will develop concept plans for incorporation of Parks and Recreation master-planned monuments.
- c. Transit Station Concept Design – Engineer will develop concepts for 2 potential transit stations (bus stops) with a preferred location/concept.
- d. Right-of-Way – Engineer's surveyor will prepare up to 25 additional legal descriptions and tract maps for temporary construction easements, permanent easements, and permanent right-of-way.
- e. Survey – Engineer's surveyor will stake the centerline at 100' intervals for use by utility companies. Private utility locates will be performed (up to 2 days) for utilities where OneCall locates are missing or appear to be inaccurate.
- f. Utility Coordination – Engineer will conduct 1 additional group utility meeting and 1 additional one-on-one meeting with each utility company.

3. Deliverables

It is assumed that deliverables for Optional Services would be incorporated into the corresponding Basic Services submittals.