

AGREEMENT BY AND BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI, AND ALLGEIER MARTIN AND ASSOCIATES, INC., IN THE AMOUNT OF \$253,290 FOR PROFESSIONAL ENGINEERING SERVICES FOR SE 5TH TERRACE ROADWAY STREAM CROSSING AND FEMA MAP REVISIONS. (RFQ. NO. 2017-305-C),

THIS AGREEMENT made and entered into this ____ day of _____, 2017, by and between the City of Lee's Summit, Missouri (hereinafter "City"), and Allgeier Martin and Associates, Inc. (hereinafter "Engineer").

WITNESSETH:

WHEREAS, City intends to have engineering services for analyses, design , and permitting of SE 5th Terrace creek crossing and FEMA map revisions for tributary A-2 of East Fork of Little Blue River from NE Langsford Road to SE 3rd Street. (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**

(Between the City of Lee's Summit, Missouri and Allgeier, Martin and Associates, Inc. for Engineering Services Associated with the 5th Street Bridge, Project Number 41632272 including hydraulic engineering services for the drainage way near SE Carolina Court)

1. SERVICES

Engineer shall provide the City of Lee's Summit, hereinafter referred to as OWNER, with the following services:

1.1 General

- 1.1.1 ENGINEER shall perform professional planning, design, preparation of easement descriptions for property acquisition, bidding, and limited construction phase services as hereinafter stated which include customary civil engineering services.
- 1.1.2 Coordinate the planning, design and construction of a culvert/bridge for 5th street over the East Fork of the Little Blue River with the OWNER.
- 1.1.3 In general, the Project consists of the following:
 - 1.1.3.1 Project area is generally completing the gap in 5th Street over the East Fork.
 - 1.1.3.2 Design of a waterline to develop a looped water system is also planned at the crossing. It is estimated that the new water line will be constructed under the East Fork to connect 2 dead-end water lines.
 - 1.1.3.3 Bidding and Construction Phase Engineering for installation of the improvements identified above and within the project area boundary.
 - 1.1.3.4 Right-of-Way/Easement Acquisition services for the project. It is estimated that up to 5 separate properties will need easements/right-of-way acquired to construct the project.
 - 1.1.3.5 Secure necessary environmental permits for the project. Correspond with FEMA, USACE and MDNR for construction and necessary permits, including preparation of SWPPP's. Cost of permits, if any, to be paid by the OWNER.
 - 1.1.3.6 Correspond, prepare and submit a Conditional Letter of Map Revision (CLOMR), and a Letter of Map Revision (LOMR) to the appropriate regulatory agency for the purpose of modifying the effective Flood Insurance Rate Map (FIRM), as a result of the change in the hydraulic characteristic of the stream due to 5th Street Improvements.
 - 1.1.3.7 Preliminary estimates suggest that the limits of the LOMR due to the proposed work would extend to 1300 feet upstream (south) of the 5th Street improvements. If the hydraulic analysis reveals that the effects of the proposed work will affect the FIRM beyond the estimated 1300 feet, additional surveying and hydraulic engineering services will be required and requested under Additional Services.

1.2 Planning and Design Phases.

ENGINEER shall provide the following planning and design services for the project, as follows:

- 1.2.1 Meet with OWNER and OWNER's representatives to discuss recommendations, project expectations, alternate considerations and costs.
- 1.2.3 Conduct topographic surveys to the extent necessary for design of the project facilities and 12 additional stream cross sections as necessary including finish floor elevations of eleven (11) houses on the east side of the creek and eight (8) houses on the west side of the creek.
- 1.2.4 Utilities: Conduct research and investigation into existing utilities located within the project boundaries. Engineer shall:
 - 1.2.4.1 Make notification to utilities during conceptual phase/preliminary design process. Notification to be made in a specific, documentable format.
 - 1.2.4.2 Based on specific utility feedback, and field observation, identify potential high expense utility relocation issues.
 - 1.2.4.3 American Society of Civil Engineers (ASCE) National Consensus Standard titled ASCE C-138-02, Standard Guidelines for the Collection and Depiction of Existing Subsurface Utility Data, shall be utilized as a guideline for classifying, coordination and research of existing subsurface utilities.
 - 1.2.4.3.1 Classification of the quality of existing subsurface utility data shall be made for the project. Such a classification will allow the project owner, engineer, and constructor to develop strategies to reduce risk, or at a minimum, to allocate risk due to existing subsurface utilities in a defined manner.
 - 1.2.4.3.2 This project shall be considered a small project, where few subsurface utilities are anticipated to be present, and/or where information about subsurface utilities is believed to be generally accurate and comprehensive. Readily available information will be utilized, along with standard utility coordination efforts, to plan and design the improvements that are to be part of this project.
 - 1.2.4.4 The ENGINEER will advise the OWNER of utility risks discovered during preliminary coordination and research efforts and recommend appropriate quality level of utility data for a given project area during the

planning stages of the project and prior to completion of the final design of the project. Quality level recommendation will take into account such items as type of project, expected utilities, available rights-of-way, project timelines, and any other information determined necessary by the ENGINEER.

1.2.4.4.1 Upon receipt of the quality level recommendation level from the ENGINEER, the OWNER will specify to the ENGINEER the desired quality level of utility data to be utilized for the project.

1.2.4.5 The ENGINEER will furnish the desired utility quality level to the OWNER in accordance with typical industry standard of care.

1.2.4.6 If determined necessary after preliminary review of potential utility conflicts, consultation with the OWNER and assigning of desired utility quality level by the OWNER, a plan shall be prepared and presented for the OWNER to review. Said plan shall detail significant utility conflicts and proposed pothole locations and associated costs for verifying existing utilities. Potholing process, if determined necessary, will include both horizontal and vertical alignment and depth details. Such details will be included in 30 percent plan completion and in final right of way plans. The ENGINEER shall make efforts to provide such information in accordance with the typical industry standard of care.

1.2.4.7 Submit utility report to include representatives contacted, meeting dates, and a summary of discussions, requests, observations and/or concerns.

1.2.5 Prepare preliminary design documents consisting of final design criteria and preliminary drawings, and review same with OWNER.

1.2.6 Based on the information contained in the preliminary design documents, submit to the OWNER an opinion of probable project costs.

1.2.7 On the basis of the accepted preliminary design documents and the opinion of probable project cost, prepare for incorporation in the contract documents final drawings and Job Special Provisions to show the character and extent of the Project. Since the OWNER has adopted and is familiar with the Kansas City APWA general specifications, the ENGINEER will provide the Job Special Provisions in a format that is compatible to the OWNERS contract documents, and the OWNER will provide the Contract Documents and General Specifications.

- 1.2.8. Advise OWNER of any adjustments to the latest opinion of probable Project cost caused by changes in extent or design requirements of the Project or construction costs and furnish a revised opinion of probable Project cost based on the drawings and specifications.
- 1.2.9. Compile for review and approval by OWNER, his legal counsel and other advisors contract agreement forms, general conditions, supplementary conditions, bid forms, invitations to bid and instructions to bidders, and assist in the preparation of other related documents.
- 1.2.10. Furnish electronic and PDF digital files of the Plans, Job Special Provisions, and general information for use by the OWNER.

1.3 Bidding and Construction Phase

Following approval of the design documents by the OWNER, ENGINEER shall assist in the bidding phase for this project described, as follows:

- 1.3.1 Attend and assist with answering contractor's questions arising from owner's project pre-bid conference and development of addendum information that may be necessary as a result of pre-bid conference.
- 1.3.2 Deleted
- 1.3.3 Assist OWNER in opening and evaluating bids or proposals
- 1.3.4 Assist with a project pre-construction conference.
- 1.3.5 Deleted
- 1.3.6 If requested, conduct up to 6 site visits to answer questions which may arise as to design concepts.
- 1.3.7 Provide support during construction to answer questions on intent of project plans, and if requested, review/comment on submittals.
- 1.3.8 Deleted
- 1.3.9 ENGINEER shall not be responsible for the acts or omissions of any contractor, or subcontractor, or any of the contractor(s)' or subcontractors' agents or employees, or any other persons (except ENGINEER's own employees and agents) at the site, or otherwise performing any of the contractor(s)' work; however, nothing contained in paragraph 1.3.1 through 1.3.9, inclusive, shall be construed to release ENGINEER from liability for failure to properly perform duties set forth in this contract.

1.4 Resident Project Representation – N/A

1.5 Right-of-Way/Easement Acquisition

ENGINEER shall provide the following services in association with Right-of-Way/Easement Acquisition services as follows:

- 1.5.1 Review and understand right of way and engineering construction plans.
- 1.5.2 Attend public meetings on proposed projects at the request of city staff.
- 1.5.3 Prepare legal documents using standard right-of-way and easement forms according to local requirements.
- 1.5.4 Property appraisals shall be completed by an appraiser as selected by the OWNER and not be included as part of this scope of work.
- 1.5.5 Attend commissioners viewing, testify in court during condemnation proceedings as directed by legal department. Court testimony or attendance at meetings required or requested as part of the condemnation process shall be provided by the ENGINEER as an additional service.
- 1.5.6 The right-of-way/easements shall be procured in accordance with the requirements of the Uniform Relocation Act.

PROJECT TEAM

Michael Atkinson, P.E., Vice President shall be the Project Manager/Engineer, and Charles Patterson, PhD, P.E. shall be the lead Hydraulics and Hydrology Engineer, and Sarah Simon, P.E. shall be the Lee's Summit Liaison Engineer for the duration of the Project, unless the ENGINEER requests and receives the OWNER's approval to appoint other personnel to these positions.

Topographic surveys, property and right of way lines, including preparation of legal descriptions for easements will be subcontracted to Anderson Surveying Company, Inc. based in Lee's Summit Missouri.

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”):

Hydraulic and Hydrology Services

ENGINEER shall provide the following services in association with Hydraulic and Hydrology Studies as shown in Exhibits 1, 2 and 3.

1.6.1 SE Carolina Ct Area (Generally located in an area just south of SE 3rd Street to an area north of NE Langsford Road, as shown in Exhibits 1 and 2.

1.6.1.1 Collect and review available existing data, including but not limited to survey data, topographic mapping, soil types, flyover contours, prior studies, existing hydrologic and hydraulic models, etc.

1.6.1.2 Conduct field visits as needed to verify drainage basin boundaries, land use, and other parameters needed for analysis.

1.6.1.3 Prepare a hydrologic model for the watershed to establish flowrates for the hydraulic analysis.

1.6.1.4 Prepare a hydraulic model of the unnamed tributary to the East Fork Little Blue River starting generally 200 feet (+/-) as needed upstream of SE 3rd St to the downstream side of NE Langsford Road.

1.6.1.4.1 Evaluate capacity of the SE 3rd street culvert and determine if potential improvements would reduce the flooding for homes upstream of SE 3rd Street (specifically 2129 SE 3rd Street).

1.6.1.4.2 Provide recommendations to reduce flooding for this area. Recommendations may include complete removal of culvert, removal and replacement with upgraded culvert, or potential residential buyout. A cost estimate for a culvert upgrade will be provided.

1.6.1.4.3 Include analysis of the flowrates to ensure removal or upgrading the culvert will not negatively impact downstream areas.

1.6.1.5 Perform miscellaneous field surveying as needed to provide detailed supplemental information, cross sections, verify elevations, etc., for

analysis and mapping and as-built verification of culvert under NE Langsford Road as required for LOMR preparation and submission.

- 1.6.1.6 Map the 1% annual chance floodplain boundary.
- 1.6.1.7 Map the 0.2% annual chance floodplain boundary.
- 1.6.1.8 Map the regulatory floodway.
- 1.6.1.9 Meet with the City to review the proposed mapping changes, if any.
- 1.6.1.10 Meet with the public to review the proposed mapping changes, if any.
- 1.6.1.11 Coordinate map change notification to affected property owners during LOMR preparation.

Based on City and Public comments, prepare and submit a Letter of Map Revision application.

- 1.6.1.12 Respond to FEMA comments during the review process.
- 1.6.1.13 Prepare a written report documenting the hydrologic analysis, hydraulic analysis and mapping process. Supporting mapping and computations will be included in the report.
- 1.6.1.14 Present the final mapping and report to the City and public.

1.6.2 NE Timbercreek Circle Apartments (General located immediately north of NE Langsford Road as shown on Exhibit 3).

- 1.6.2.1 Upon completion of the SE 5th Terrace hydraulic model for the proposed improvements, investigate the effects of the proposed improvements and identify, if any, impacts to the downstream structures, and prepare engineering report of the findings.

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

City shall provide the following services to Engineer:

City Services

The City will cooperate fully with the Engineer in the development of the project, including the following:

- 1.7.1 Make available all information pertaining to the project which may be in the possession of the City.
- 1.7.2 Provide the Engineer with the City's requirements for the project.
- 1.7.3 Make provisions for the Engineer to enter upon property at the project site for the performance of his duties.

- 1.7.4 Examine all studies and layouts developed by the Engineer, obtain reviews by staff, and render decisions thereon in a prompt manner so as not to delay the Engineer.
- 1.7.5 Designate a City's employee to act as City's Person in Responsible Charge under this contract, such person shall have authority to transmit instructions, interpret the City's policies and render decisions with respect to matters covered by this agreement.
- 1.7.6 Perform appraisals and appraisal review, negotiate with property owners and otherwise provide all services in connection with acquiring all right-of-way needed to construct this project.
- 1.7.7 On-site construction observation and construction contract administration.
- 1.7.8 Advertise and obtain bids for the project including distribution of plans and specifications.

ARTICLE IV PAYMENTS TO THE ENGINEER

Refer to attachment to Article IV "Rate Schedule"

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 two hundred and fifty three thousand two hundred and ninety dollars (\$253,290), 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 three hundred and twelve dollars (\$171,312).
- 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 eighty one thousand nine hundred and seventy eight dollars (\$81,978).
- 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.
7. Cost Invoices must be categorized by Phase.

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:

Refer to Exhibits 1, 2, &3

SE 5th Terrace Project

Assuming that the Notice to Proceed will be issued on February 13, 2017, design survey and existing site plans shall be completed around March 24, 2017.

Engineering Design (15%) with existing watershed analysis shall be completed around May 26, 2017.

Engineering Design (25%) with conceptual planning, sizing and layout of project shall be completed around July 14, 2017.

Engineering Design (50%) with preliminary recommendations shall be completed around September 1, 2017.

Engineering Design (85%) with field check design plans and cost estimates shall be completed around October 13, 2017.

Engineering Design (100%) with final plans, specifications, and estimate, including legal descriptions for the Project shall be completed around November 30, 2017.

Bid documents shall be completed around December 15, 2017.

Bidding phase time frame shall be controlled by the OWNER, but is anticipated to take place in the Winter of 2017.

Construction Phase to be determined, but may begin in late Winter thru the Spring months with paving and other surface improvements planned for late Spring or Summer of 2018.

SE Carolina Court Area and Drainageway (H & H):

Cross Section Survey, Structures finished floors, FF, Lowest Adjacent Grades, LAGS (40%) with existing watershed analysis shall be completed around October 6, 2017.

Hydraulic Analysis (75%) with conceptual planning, preliminary exhibits, and culvert sizing shall be completed around November 3, 2017.

LOMR (100%) with Exhibits and submittal to FEMA shall be completed around December 15, 2017.

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. CERTIFICATE OF INSURANCE: The Engineer shall secure and maintain, throughout the duration of this contract, insurance of such types and in at least the amounts that are required herein. Engineer shall provide certificate(s) of insurance confirming the required protection on an ACORD 25 (or equivalent form). The City shall be notified by receipt of written notice from the insurer at least thirty (30) days prior to material modification or cancellation of any policy listed on the certificate(s).

The City reserves the right to require formal copies of any Additional Insured endorsement, as well as the right to require completed copies of all insuring policies applicable to the project. The cost of such insurance shall be included in the Engineer's contract price.

B. NOTICE OF CLAIM: The Engineer shall upon receipt of notice of any claim in connection with this contract promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. The 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 excess of \$10,000.00, whether or not such impairment came about as a result of this contract. If the City shall subsequently determine that the Engineer's aggregate limits of protection shall have been impaired or reduced to such extent that they are inadequate for the balance of the project, the Engineer shall, upon notice from the City, promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

C. INDUSTRY RATING: The City will only accept coverage from an insurance carrier who offers proof that it is licensed to do business in the State of Missouri; carries a Best's policyholder rating of "A" or better; carries at least a Class VII financial rating or is a company mutually agreed upon by the City and the Engineer.

D. SUB-CONSULTANT'S INSURANCE: If any part of the contract is to be sublet, the Engineer shall either:

1. Cover all sub-consultants in the Engineer's liability insurance policy or,
2. Require each sub-consultant not so covered to secure insurance in the minimum amounts required of the Engineer and submit such certificates to the City as outlined herein.

E. SELF-INSURED RETENTIONS / DEDUCTIBLES: Any Engineer that maintains a Self-Insured Retention or Deductible (in excess of \$50,000) must be declared on the Certificates provided to the City. Such amounts shall be the sole responsibility of the Engineer. The City reserves the right to approve such self-insured retentions/deductibles and may require guarantees from the Engineer for such assumed limits.

F. PROFESSIONAL LIABILITY: Professional Liability, or Errors and Omissions Insurance protection must be carried by Engineer in the minimum amount of \$1,000,000.

G. COMMERCIAL GENERAL LIABILITY POLICY

Limits:

| | |
|--|-------------|
| Each occurrence: | \$1,000,000 |
| Personal & Advertising Injury: | \$1,000,000 |
| Products/Completed Operations Aggregate: | \$1,000,000 |
| General Aggregate: | \$1,000,000 |

Policy must include the following conditions:

- Bodily Injury and Property Damage
- Insured Contract's Contractual Liability
- Explosion, Collapse & Underground (if risk is present)
- Additional Insured: City of Lee's Summit, Missouri

H. AUTOMOBILE LIABILITY: Policy shall protect the Engineer against claims for bodily injury and/or property damage arising out of the ownership or use of any owned, hired and/or non-owned vehicle and must include protection for either:

1. Any Auto
2. or all Owned Autos; Hired Autos; and Non-Owned Autos

Limits:

Each Accident, Combined Single Limits,
Bodily Injury and Property Damage: \$500,000
City of Lee's Summit, Missouri does NOT need to be named as additional insured on Automobile Liability

I. WORKERS' COMPENSATION: This insurance shall protect the Engineer against all claims under applicable state Workers' Compensation laws. The Engineer shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of a Workers' Compensation law and contain a waiver of subrogation against the City. The policy limits shall not be less than the following:

| | |
|----------------------------|-------------------------|
| Workers' Compensation: | Statutory |
| Employer's Liability: | |
| Bodily Injury by Accident: | \$100,000 Each Accident |
| Bodily Injury by Disease: | \$500,000 Policy Limit |
| Bodily Injury by Disease: | \$100,000 Each Employee |

J. GENERAL INSURANCE PROVISIONS

1. The insurance limits outlined above represent the minimum coverage limit and do not infer or place a limit of liability on the Engineer nor has the City assessed the risk that may be applicable to the Engineer.
2. The Engineer's liability program will be primary and any insurance maintained by the City (including self-insurance) will not contribute with the coverage maintained by the Engineer.
3. Coverage limits outlined above may be met by a combination of primary and excess liability insurance programs.
4. Any coverage provided on a Claims Made policy form must contain a 3-year tail option (extended reporting period) or the program must be maintained for 3-years subsequent to completion of the Contract.
5. Any failure on the part of the Engineer with any policy reporting provision shall not affect the coverage provided to the City.

6. When "City" is utilized, this includes its officers, employees and volunteers in respect to their duties for 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 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.

- 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 AGREEMENT:** 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 reasonable cost to mitigate or correct the effects of such termination.
 3. Termination Due to Unavailability of Funds in Succeeding Fiscal Years: When funds are not appropriated or otherwise made available to support continuation of the Project in a subsequent fiscal year, this Agreement shall be terminated and 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 sublet, assign, or transfer any interest in the services covered by this Agreement, except as provided for herein and except with the prior written consent of City. The use of subcontractors shall in no way relieve 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, from and against judgments, damages, losses, expenses, including reasonable attorneys' fees, to the extent caused by the negligent acts, errors, omissions, or willful misconduct of Engineer, or its employees, or subcontractors, in the performance of Engineer's duties under this Agreement, or any supplements or amendments thereto.
- L. **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.
- M. **PROFESSIONAL RESPONSIBILITY:** Engineer will exercise reasonable skill, care, and diligence in the performance of its services in accordance with customarily accepted professional engineering practices. If Engineer fails to meet the foregoing standard, Engineer will perform at its own cost, and without reimbursement from City, the professional engineering services necessary to correct errors and omissions that are caused by Engineer's failure to comply with above standard, and that are reported to Engineer within one year from the completion of Engineer's services for each individual project performed pursuant to this Agreement.
- 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.
- 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 codes.
- 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. 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.
- W. 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:

Michael Atkinson, P.E.
Vice President
Allgeier Martin and Associates, Inc
Consulting Engineers
7231 East 24th Street
Joplin, Missouri 64804

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 _____, 2017.

CITY OF LEE'S SUMMIT

Stephen A. Arbo, City Manager

APPROVED AS TO FORM:

Deputy City Attorney

ENGINEER:

Allgeier Martin and Associates, Inc.

BY: _____

TITLE: _____

ATTEST:
