

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES
FOR WINTERSET WOODS & STERLING HILLS TRUNK SEWER MAIN
(RFQ NO. 196-31583)**

THIS AGREEMENT made and entered into this ____ day of _____, 20____, by and between the City of Lee's Summit, Missouri (hereinafter "City"), and Burns & McDonnell Engineering Co., Inc. (hereinafter "Engineer").

WITNESSETH:

WHEREAS, City intends to have engineering services for Winterset Woods & Sterling Hills Trunk Sewer Main (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**

This project involves the replacement of approximately 3,100 feet of sewer trunk line in the Cedar Creek Watershed. The existing sanitary sewer lines do not have capacity to convey the predicted wet-weather flows nor meet the future needs of development in Sub-basins CC-03 and CC-04. Condition of the pipe is a concern. There has been one documented overflow in the last year. Design shall determine the best location for the replacement pipe along the adjacent stream. Several manholes are presently located in the stream bed. The upstream location is Manhole 28-098, approximately 2,000 feet west of Pryor Road. The approximate downstream location is Manhole 28-044, approximately 1,300 feet north of 3rd Street. A survey has already been completed of the project area and potential access points.

Key components of the project:

1. The line is in the proximity of and crosses the Kansas City Water Jackson-Cass Transmission Main requiring coordination with the Kansas City, MO Water Services Department.
2. The line is in the proximity of and crosses the Jackson County Rock Island Rail Corridor Authority property.

3. Fiber Optic lines are believed to be buried along the railroad corridor right-of-way.
4. There are four sewer connections to neighboring subdivisions along this stretch.
5. Easements will be required on about 12 properties along the main.
6. FEMA permits may be required for construction within the 100 year flood plain and stream. Stream bank stabilization and erosion control are major components of the project.
7. MDNR permits are required for sewer construction.
8. Corps of Engineers construction permits will be required for work within the stream channel. Several stream crossings may be required.
9. Access to the site.

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

SCOPE OF BASIC SERVICES TO BE PROVIDED BY ENGINEER

A. PROJECT ADMINISTRATION / MANAGEMENT

1. Manage and administer project and allocate resources to complete the project within schedule and budget limitations. Prepare and submit a monthly invoice and progress report. Each invoice shall include the purchase order number, project number, unit rates/prices, and extended totals. The progress reports shall include an updated schedule, summary of work completed, outstanding project issues, potential scope adjustments, and a comparison of work completed compared against the budgeted amount.
2. Arrange and conduct a kickoff meeting with the City. Discussions shall be held to review and confirm the project goals and objectives, to evaluate basic concerns on objectives and implementation of the project, and to confirm the scope of work. Prepare agenda and minutes for meeting and distribute to meeting attendees.
3. Arrange and conduct project meetings as needed for milestone reviews with the City to discuss items such as coordination of work and responsibilities, project progress and deliverables review (including flow and capacity analysis, preliminary alignment, and 90% complete Contract Document review), schedules, and easement acquisition status. Prepare agenda and minutes for meeting and distribute to meeting attendees. Three project meetings are anticipated.

B. DATA COLLECTION AND REVIEW

1. Obtain and review existing information and data related to the project area, including topographic and property survey, record drawings, pipe television inspection video, property owner information, GIS data, previous applicable master plans and reports, applicable City design standards, and standard City specification and drawing standards.
2. Perform selected field checks as necessary to prepare the interceptor replacement design. Field checks will be performed to review alignment alternatives, inspect existing manholes, investigate streambank stability and erosion, and identify constructability and access concerns and alternatives. Documentation of field checks will be limited to recording inspection data necessary to adequately prepare design.

3. Conduct a reconnaissance-level fluvial geomorphic assessment of the existing stream in critical areas along the existing and proposed alignments to determine the impact of urbanization on channel morphology and infrastructure exposure and identify methods for restoring protecting proposed infrastructure and channel stability.
4. Conduct a desktop site assessment to comply with the Clean Water Act (CWA) Sections 404 and 401, and to determine if wetlands or other waters of the U.S. exist along the project route. This review will include analysis using U.S. Geological Survey (USGS) 7.5-minute topographic maps, National Wetland Inventory (NWI) maps, National Hydrography Dataset (NHD) information, the county soil survey, and available aerial photography. Following the desktop site assessment, conduct a pedestrian survey to evaluate the project route for the presence of wetlands or other waters of the U.S. according to U.S. Army Corps of Engineers (USACE) requirements. The pedestrian survey will consist of a site visit by a wetland scientist to identify any jurisdictional areas that may be present and to record the locations and boundaries using a Global Positioning System (GPS) unit with sub-meter accuracy. These potential jurisdictional areas will be delineated in accordance with the *1987 Corps of Engineers Wetlands Delineation Manual* (1987 Manual) and the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Midwest Region Version 2.0* (2010 Regional Supplement). Gather information on the soils, wetland hydrology, and upland and wetland vegetation along the project route. The wetland scientist will assess whether a delineated area is likely to be considered under jurisdiction of the USACE by determining if a hydrologic connection to waters of the U.S. exists. As part of this effort, photographs will also be taken onsite to provide a visual documentation of any identified features.
Based on the desktop review and field delineation, prepare a wetland delineation letter report describing the background research, methodologies, and results.
5. Obtain protected species occurrence data from the U.S. Fish and Wildlife Service (USFWS) and Missouri Department of Conservation, Natural Heritage Program (MDC). The protected species occurrence data will be used to determine if any known occurrences of threatened species, endangered species, or designated critical habitats could potentially be affected by the project. Then, complete protected species habitat assessment field surveys along the pipeline route. During the protected species habitat assessment field surveys, the protected species occurrence data obtained from the USFWS and MDC will be confirmed and any previously unknown occurrences of protected species or potential protected species habitat will be identified and evaluated to determine if it could be impacted by the project. Any protected species or potential protected species habitat encountered during the protected species habitat assessment field surveys will be photographed and the location recorded using a GPS with sub-meter accuracy. The results of the protected species habitat assessment field surveys will be provided in habitat assessment letter reports that will be submitted to the City for review and comment. The habitat assessment letter reports will include a project description, maps, the results of the habitat assessment field surveys, site photographs, and will request agency concurrence with the findings. The habitat assessment letter reports that will be

- provided will be suitable for submittal to the USFWS and MDC.
6. Conduct a due diligence archaeological reconnaissance survey of the project area. Initial background research will include a review of the on-line Missouri archaeology database, the National Register of Historic Places database, historic maps, aerial photographs, soils data, and geological data. A summary survey letter report will be prepared and submitted to the City. It is assumed that the project work will not affect properties listed, or eligible for listing, in the National Register of Historic Places; no sites will be identified or recorded; and no artifacts will be collected.
 7. Coordinate the services of a geotechnical sub-consultant. Collect the following sub-surface information for the project:
 - a) At a depth as determined by the Engineer, soil borings shall be completed at up to three (3) locations determined by the Engineer.
 - b) If auger refusal is encountered, rock corings will be made to the depth specified by the Engineer.
 - c) Provide a written report containing the findings of the subsurface investigations.
 8. Stake the location of the borings in the field and provide a surface elevation at each boring.
 9. Request an Ownership Certification (an Ownership and Encumbrance report) from the City for properties anticipated to require new easements. Twelve properties are anticipated to require new easements. Using the title report information, position the existing property and lot lines on the horizontal control network. Notify the City of any discrepancies encountered in the layout of the properties. All existing sewers are assumed to lie within existing easements. Existing easements are assumed to include right of access/entrance for maintenance and repair activities.

C. PUBLIC NOTIFICATION AND COMMUNICATION

1. Assist the City in responding to inquiries from property owners, homeowner associations, utilities, public officials, other City departments, the Water Utilities Public Information Officer, KCMO Water Services Department, John Knox Village, and Jackson County Rock Island Rail Corridor Authority, during the duration of the design and bid phases of the project and document such correspondence. Provide copies of said documentation to the City regularly.
2. Schedule, facilitate, and assist the City in conducting one public notification open house meeting for the affected property owners to occur after the preliminary alignment has been set.
 - a) Establish meeting time and location with consultation from the City and make necessary arrangements for meeting. Space occupancy fees, if necessary, and refreshments, if desired, will be provided by the City.
 - b) Contact property owners within the project area by letter or email with the meeting time and location. Also notify Water Utilities Public Information Officer, City customer service representatives, other appropriate City departments and communication personnel, homeowners associations within the project area, and city council members whose districts fall within the project area. Obtain updated property owner list from the City. Submit meeting notice letter to the City for comment prior to mailing. Provide final meeting notice letter in electronic format to the City for incorporation into the project website.

- c) Prepare meeting agenda and sign-up sheets for public meeting. Submit meeting agenda to the City for comment prior to printing. Print adequate copies of agendas for anticipated number of meeting attendees.
 - d) As requested by the City, prepare and present exhibits in open house style. Review exhibits with the City prior to presentation. Attend public meeting and address technical questions posed by attendees.
3. Assist the City with development and maintenance of a project website by providing information on the project, such as project description, project location maps, key contacts, public meeting notices and presentations, major activities planned, public impacts, street closures, and general schedule. The City will upload information to the project website and host and maintain the project website.
 4. Attend site conferences with affected property owners to discuss project requirements and potential modifications with individuals or groups of property owners and HOA board. Twelve site conferences are anticipated.

D. DETAILED DESIGN

1. Utilizing data obtained through field investigations and flow data (existing and future anticipated flows) provided by others, perform a desktop hydraulic grade line (HGL) capacity analysis of the existing trunk sewer main to estimate the existing capacity of main. Size the proposed sewer in accordance with the City of Lee's Summit Design Criteria. Update the capacity analysis based on proposed and final alignments.
2. If wetlands or other waters of the U.S. do exist within the project and cannot be avoided, it is assumed that permanent impacts would be less than a 0.5-acre, thus qualifying the project for a USACE Nationwide Permit (NWP) 12 for Utility Line Activities. Prepare and submit the necessary pre-construction notification and NWP 12 permit application package to the USACE. The application package will include a cover letter that details the components of the package and requests the issuance of the necessary permits. Additionally, the application package will include a completed ENR4345 Permit Application Form, a copy of the wetland delineation report, and copies of other agency correspondence that have been obtained for the project. The City will be the permit holder and provide the application fees.
3. Prepare and submit Construction Permit application and application fee to MDNR. The City will be the permit holder and provide the application fees.
4. Obtain Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) data for the project footprint to determine if floodplain modeling (e.g., HEC-RAS study) and a floodplain development permit will be required from the City of Lee's Summit for the project. Prepare and submit the FEMA No-Rise Certification.
5. Stake the preliminary alignment in the field and walk the preliminary alignment with the City.
6. Coordinate project design with affected utility companies identified in the topographic and property survey and preliminary design. Provide one set of 60% complete Contract Drawings to the affected utilities for their review and comment. One meeting with the KCMO Water Services Department is anticipated.
7. Prepare preliminary Contract Drawings and design documents. Standard

documents will include hydraulic calculations, a title sheet, general layout sheet, drawing and symbols lists, sewer plan and profile sheets, easement layout/tract map, erosion control plans, streambank stabilization and restoration plans, standard detail sheet(s), and miscellaneous detail sheet(s). Project drawings shall conform to City drafting standards and minimum plan requirements. No rehabilitation design of existing infrastructure is anticipated. Incorporate City, utility company, and property owner review comments into preliminary documents as applicable.

8. Prepare preliminary Contract Specifications including: (1) utilization of the City's standard "front-end" contract documents, (2) City's Division 1 specifications, (3) Engineer's Supplemental Conditions, (4) technical specifications, and (5) Stormwater Pollution Prevention Plan (SWPPP). Incorporate City, utility company, and property owner review comments into preliminary documents as applicable.
9. Develop an erosion and sediment control plan to meet NPDES Phase 2 Storm Water, Missouri Department of Natural Resources (MDNR), and local jurisdiction requirements. Prepare a General Permit Application and SWPPP and submit to the City for submission to MDNR. The City will be the permit holder and provide the application fees. Outline in the construction Contract Documents that the Contractor will be required to implement the erosion and sediment control plan and keep a copy of the approved Notice of Intent (NOI) issued by MDNR and the erosion and sediment control plan on site. Incorporate the Notice of Transfer of Ownership into the Contract Documents.
10. Prepare and submit a City of Lee's Summit Land Disturbance Permit application and application fee to the City. The City will be the permit holder and provide the application fees.
11. Develop Engineer's Opinion of Probable Construction Cost for the project with a reasonable contingency. Incorporate City review comments into preliminary cost opinions as applicable.
12. Submit copies of the preliminary Contract Drawings, Contract Specifications, and Engineer's Opinion of Probable Construction Cost to the City for review and comment prior to the 60% and 90% complete design review progress meetings.
 - a) Contract Drawings: 5 copies; all copies – 24" x 36" size and properly bound.
 - b) Contract Specifications: 5 copies; all copies – 8 ½" x 11" size and properly bound.
 - c) Engineer's Opinion of Probable Construction Cost: 5 copies; all copies – 8 ½" x 11" size and stapled.
13. After completion of the topographic and property survey and preliminary design efforts, prepare legal descriptions of easements and easement exhibits for properties anticipated to require new permanent easements. The easement exhibit will show an easement number, owner's name(s), scale, north arrow, square footage of sanitary sewer easements and the location of all temporary and permanent easements. Easements shall be sealed by a licensed professional land surveyor. Provide easement descriptions to the City in Microsoft Word and pdf format for review. Incorporate review comments as necessary. Provide an overall easement layout map showing ownership names, easement and tract (PID) numbers, street names and property lines. Twelve

properties are anticipated to require new easements. Easements will be mailed to property owners by the City.

14. Submit copies of the final Contract Drawings and Contract Specifications for bidding and information purposes as follows:
 - a) Contract Drawings: 10 copies; all copies – 24” x 36” size and properly bound.
 - b) Electronic Contract Drawings: 1 copy; all copies – pdf.
 - c) Contract Specifications: 10 copies; all copies – 8 ½” x 11” size and properly bound.
 - d) Electronic Contract Specifications: 1 copy; all copies – pdf.
 - e) Engineer’s Opinion of Probable Construction Cost: 10 copies; all copies – 8 ½” x 11” size.
 - f) Electronic Engineer’s Opinion of Probable Construction Cost: 1 copy; all copies – pdf.
15. Revise alignment field staking and stake easements at approximately the 95% complete design stage.
16. After construction completion, prepare record drawings and submit to the City in Adobe format (pdf) for review. Incorporate review comments as necessary. Provide the City final record drawings in Adobe format (pdf). The record drawings shall incorporate changes shown on the red-line marked up Contractor’s and the RPR’s record sets of drawings, supplementary drawings, shop drawings, change orders, and other records of field changes.

E. BIDDING

1. Assist the City in establishing a bid opening date and coordinate distribution of Contract Documents in accordance with City purchasing procedures. Coordinate with the City purchasing plan room (QuestCDN) for document distribution.
2. Advise the City of any inquiries prior to the bid opening from contractors, subcontractors, suppliers, and public officials. Submit said documentation to the City.
3. Submit to the City, for approval, draft addenda to the Contract Documents as required. The City shall distribute all written addenda.
4. Schedule and conduct a pre-bid conference with the City and prospective bidders approximately 14 calendar days prior to bid opening to discuss the project requirements and bidder questions. Prepare agenda and meeting notes and issue notes in the form of an addendum.
5. Attend bid opening. Assist the City in reviewing the bids for completeness and accuracy.
6. Consult with, advise, and submit a written recommendation of contract award to the City on the responsibility and responsiveness of contractors, the acceptability of major subcontractors, substitute material and equipment proposed by project respondents. The Engineer shall review the following criteria in determination of contractor and subcontractor acceptability:
 - a) Contractors Certified Financial Statement.

- b) The contractor's and major sub-contractors' personnel and their relative experience, and the quality and availability of the equipment and machinery. The contractor and sub-contractor must also establish that the supervisor directly in charge of the work has been active in the category for which qualification is requested, for a continuous period of at least two (2) years within the last five (5) years preceding qualification application.
 - c) The contractor's and sub-contractor's performance of other similar contracts for public and private improvements.
 - d) Contact contractor's and sub-contractor's references.
 - e) The nature and extent of other contract commitments involving the use of the contractor's and sub-contractor's personnel, machinery, and equipment.
 - f) Whether or not the contractor or sub-contractors have been denied contract award by other public entities, and if so, the reasons thereof, including entity name, type of work, and date of denial.
 - g) Any other fact that would materially affect the ability of the contractor or sub-contractors to properly, adequately, expeditiously and satisfactorily prosecute the work.
7. Provide the successful Bidder with three (3) conformed sets of the Contract Documents for execution and insertion of the required bonds and insurance certificates with one extra copy of the agreement for execution. Ensure that the successful Bidder's insurance certificates and bonds are submitted to the City for review and approval prior to inserting in the Contract Documents. Two sets of Contract Documents will be delivered to the Contractor after being signed by City staff; one set will be kept by the Public Works Department. One signed agreement, along with the bonds and insurance certificates, will be delivered to the City Clerk's office.

**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"):

OPTIONAL SERVICES TO BE PROVIDED BY ENGINEER

A. DATA COLLECTION AND REVIEW

- 1. Expose existing water transmission main to obtain visual verification of pipe location and depth.

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

City shall provide the following services to Engineer:

SCOPE OF SERVICES TO BE PROVIDED BY CITY

A. PROJECT ADMINISTRATION / MANAGEMENT

B. DATA COLLECTION AND REVIEW

1. Provide Engineer plats surrounding the project area; research deeds for existing easements and property descriptions.
2. Provide topographic survey of project area, including location of and rim and invert elevations of manholes, utility locations, property and easement locations, creek flow line elevations and top of bank elevations.
3. Provide Engineer existing available information including topographic and property survey, record drawings, pipe television inspection video, property owner information, GIS data, and previous applicable master plans and reports
4. Order and provide Engineer Ownership Certifications (an Ownership and Encumbrance report) for affected properties.

C. PUBLIC NOTIFICATION AND COMMUNICATION

1. Provide meeting location, space occupancy fees (if necessary), and refreshments (if desired) for open house public meetings.
2. Provide Engineer updated property owner list of properties affected by the project.
3. Upload project information to the project website and host and maintain the project website.

D. DETAILED DESIGN

1. Provide Engineer with anticipated development information that is not presented in the Master Plan.
2. Submit the General Permit Application, SWPPP, and permit fees to MDNR.
3. Mail easements to property owners and acquire necessary easements.
4. Provide Engineer with one copy of the City's current front-end documents and Division 1 specifications.
5. Coordinate project-related activities with other City departments and City leadership.
6. Be the permit holder and pay permit fees for all required permits.

E. BIDDING

1. Coordinate project-related activities with other City departments and City leadership.
2. Distribute Contract Documents and all addenda to potential bidders.
3. Maintain plan holders list.

**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 two hundred seven thousand two hundred thirty-two dollars and no cents. (\$207,232.00), 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 two hundred four thousand thirty-two dollars and no cents (\$204,032.00).

- 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 three thousand two hundred dollars and no cents (\$3,200.00).

- 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:

- A. **Preliminary Plan Services** – 90 days

B. Right-of-Way Services – Not Applicable

C. Final Design Services – 120 Days

D. Bid Phase Services – 90 Days

E. Prepare Record Drawings – 30 Days

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:

Cliff Cate, P.E.
Burns & McDonnell Engineering Co., Inc.
9400 Ward Parkway
Kansas City, MO 64114

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

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

Reserved.

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

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

CITY OF LEE'S SUMMIT

Stephen A. Arbo, City Manager

APPROVED AS TO FORM:

Deputy City Attorney

ENGINEER:

BY: Ron Coker, P.E.
TITLE: Senior Vice-President

ATTEST:
