

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES
FOR SW JEFFERSON ST. (PERSELS RD TO OLDHAM PKWY)
(RFQ NO. 419-32272)**

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

WITNESSETH:

WHEREAS, City intends to have engineering services for SW Jefferson Street (Persels Rd to Oldham Pkwy) (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"):

Project Description:

The project will improve Jefferson Street from Persels Road to the future intersection by others with Oldham Road, approximately ¼ mile long. The improvements include widening and reconstruction of Jefferson Street to a three-lane facility with turn lanes, curb and gutter, enclosed storm drain system, water line relocation, sanitary sewer adjustment, sidewalk, multi-use path, and street lighting. In addition, the existing driveways will be improved to accommodate the improved roadway.

A. Data Collection & Surveying:

1. Perform records research for project area.
2. Establish horizontal and vertical control to be used for project survey and construction of improvements.
3. Perform Topographical Survey locating planimetric features, detailing storm, and sanitary structures to one structure outside of area and locating underground utilities as marked by Missouri One-Call.
4. Prepare basemap of field surveyed information, property and title work to design proposed improvements from.
5. Prepare Legal and Exhibits of proposed Right of Way and Easement takings for potentially 15 affected properties.
6. Perform pick up surveys of critical items that may come up during the design phase of the project.
7. If required for the project, complete and file section corner reports with county and state.
8. Collect and review CITY's available information that addresses water and sewer utilities within the project area. Determine which portions of existing water mains and sanitary sewers are in an existing easement and which are in right-of-way. Obtain available pipeline condition assessment reports from CITY, and determine which sections of pipeline, if any, need additional condition assessment investigation. Condition assessment is not part of this scope of work, but could be added by amendment if the need is discovered.

B. Conceptual Design Phase:

1. Administration: General project coordination, including internal design team and sub consultants, and regular communication with CITY, including monthly invoice preparation.
2. Progress Meetings: ENGINEER will attend one (1) kick-off meeting and one (1) conceptual review meeting with CITY for a total of two (2) meetings.
3. Design Criteria Memorandum: Provide a written design memorandum outlining the design decisions made during concept phase and establish a written record of design criteria to be used for final design. Design criteria shall follow the City of Lee's Summit's Design criteria and policies unless otherwise specified.
4. Typical Section/Alignment/Profile Alternative Analysis: Geometry will be for a three-lane section. Evaluate alternatives to minimize impacts to adjacent property owners.
5. Geometric Layout & Horizontal/Vertical Alignment: Provide concept alignment and profile layout with curb, sidewalk, multi-use path, and other information necessary to convey the general intent of the project. Develop plan/profile

strip map for review meeting with CITY.

6. Construction Limits/3D Modeling: Develop 3D model to evaluate alternatives and set conceptual construction limits.
7. Water and Sewer Utilities Layout: Collect and review the Owner's available information that addresses water and sewer utilities within the project area. Determine which portions of existing water mains and sanitary sewers are in an existing easement and which are in street ROW. Obtain available pipeline condition assessment reports from Owner, and determine which sections of pipeline, if any, need additional condition assessment investigation. Develop a conceptual layout of the alignment using existing as-built drawings and Owner-provided information.
8. Construction Cost Estimate: Develop an initial opinion of probable cost based on conceptual layout.

C. Preliminary Design Phase:

1. Administration: General project coordination, including internal design team and sub consultants, and regular communication with CITY, including monthly invoice preparation.
2. Progress Meetings: ENGINEER will attend one (1) progress meeting with CITY.
3. Stakeholder Engagement: Attend one (1) public meeting to present project overview with stakeholders. ENGINEER shall prepare exhibits to convey the project intent.
4. Design Field Visit: ENGINEER will make one (1) project site visit to identify critical issues and gather information along the project corridor.
5. Pickup Surveys: ENGINEER will make one (1) project site visit to survey critical locations and tie down the beginning and end of the project.
6. Geometric Layout & Horizontal/Vertical Alignment: Establish preliminary alignment and profile layout with curb, sidewalk/trail, driveways, preliminary street lighting, signing and pavement marking layouts.
7. Drainage Design: Develop preliminary storm sewer, culvert and ditch layouts, including profiles.
8. Construction Phasing: Develop construction phasing for traffic control plans.
9. Construction Limits/3D Modeling: Refine 3D model to depict preliminary geometric layout and construction limits and develop cross sections.
10. Water and Sewer Utilities Design Criteria and Preliminary Design: Prepare a memorandum to show layout of the proposed new water and sanitary sewer line plan, identify potential conflicts, define design criteria, and present preliminary construction costs. The Basis of Design Memorandum will include a map which incorporates the base map, conceptual street ROW,

ground elevation contours, topography, and preliminary alignment.

11. Preliminary Plans:

- a. Title sheet: cover sheet with location map, sheet index, and legend of symbols.
- b. Typical sections: pavement sections will be Portland cement concrete.
- c. Plan/profile sheets: sheets will show proposed improvements, including roadway, preliminary storm sewer system, ditches, driveways, sidewalk, trail, preliminary construction limits, and existing and proposed profile grade at centerline of proposed roadway. Plans will be produced at a scale of 1"=20' horizontally and 1"=5' vertically on 22"x34" sheets.
- d. Intersection detail sheets: limits of improvements will be shown, including profiles of curb returns.
- e. Driveway/entrance detail sheets: limits of improvements will be shown, including profiles.
- f. Curb ramp detail sheets: preliminary sidewalk ramp design information will be shown using current APWA and ADAAG/PROWAG guidelines.
- g. Retaining wall layout sheet: the existing wall on the south side of the C&K Enterprises property is expected to be impacted with the widened roadway. Sheet will include preliminary layout, including profile and typical section.
- h. Pavement marking and signing plans: preliminary pavement marking and signs will be shown.
- i. Construction phasing plans: overall concept of construction phasing will be shown.
- j. Traffic control plans: overall concept of handling vehicles and pedestrians during construction will be shown.
- k. Street lighting plan: preliminary lighting plans for a City owned system will be shown.
- l. Erosion and Sediment Control Plans: preliminary erosion and sediment control plans will be shown using current APWA and City guidelines.
- m. Cross section sheets: preliminary cross sections will be shown at 50' intervals.
- n. Water and sewer utilities plan/profile sheets: sheets will show proposed water and sanitary sewer features, including profiles. Plans will be produced at a scale of 1"=20' horizontally and 1"=5' vertically on 22"x34" sheets.

12. Construction Cost Estimate: Develop an opinion of probable cost based on preliminary plans.

13. Client Conformance Review: Review by senior associate to evaluate design and conformance with client's requirements and expectations.
14. Submittal to CITY: Submit plans and construction cost estimate to the CITY for review. The CITY shall complete their review and provide written comments to the ENGINEER within two (2) weeks. The ENGINEER shall have two (2) weeks from receipt of comments to address comments and provide a written response to the CITY.

D. Right of Way Design Phase:

1. Administration: General project coordination, including internal design team and sub consultants, and regular communication with CITY, including monthly invoice preparation.
2. Progress Meetings: ENGINEER will attend two (2) progress meetings with CITY.
3. Stakeholder Engagement: Develop exhibits to convey project intent and schedule one-on-one coordination meetings with property owners (15 properties). One (1) meeting with each property owner is included.
4. Pickup Surveys: ENGINEER will make one (1) project site visit to survey critical locations to establish right of way and easement limits.
5. Detailed Drainage Design: Finalize storm sewer, cross-road structure and ditch design in order to establish limits of right of way and easements.
6. Water and Sewer Utilities Design: Refine design per CITY comments and establish easements.
7. Detailed Erosion Control Design: Finalize design of both temporary and permanent erosion control measures to establish right of way and easement limits.
8. Construction Limits/3D Modeling: Refine 3D model to establish construction limits and set right of way and easement limits.
9. Right of Way Plans: Preliminary plan sheets, including water and sewer utility sheets, will be updated with property acquisition information and design developments.
10. Construction Cost Estimate: Develop an opinion of probable cost based on right of way plans.
11. Client Conformance Review: Review by senior associate to evaluate design and conformance with client's requirements and expectations.
12. Submittal to CITY: Submit plans and construction cost estimate to the CITY for review. The CITY shall complete their review and provide written comments to the ENGINEER within two (2) weeks. The ENGINEER shall have two (2) weeks from receipt of comments to address comments and provide a written response to the CITY.

13. Exhibits: ENGINEER will develop one (1) exhibit and legal description for each property to be used by the CITY for right of way negotiations with property owners (15 properties).
14. Right of way and easement staking: During property acquisition and for utility relocations, ENGINEER, as requested, will stake right of way and easement boundaries for up to 15 properties, one time.

E. Final Design Phase

1. Administration: General project coordination, including internal design team and sub consultants, and regular communication with CITY, including monthly invoice preparation.
2. Progress Meetings: ENGINEER will attend two (2) progress meetings with CITY.
3. Design Field Visit: ENGINEER will make one (1) project site visit before final design.
4. Pickup Surveys: ENGINEER will make one (1) project site visit to survey critical locations for final design.
5. 3D Modeling: Finalize 3D model to depict final geometric layout and design details.
6. Final Plans: In addition to updating the right of way plan sheets, final plans will include:
 - a. General notes: includes standard City notes and project specific notes.
 - b. Project control sheet: horizontal and vertical control will be included for construction and future reference.
 - c. Summary of quantities sheets: sheets will include itemized quantities of bid items separated into categories, as well as recapitulation of quantities.
 - d. Special construction detail sheets: sheets to show specific construction details related to this project.
 - e. Paving detail sheets: sheets to demonstrate paving joints for concrete pavement.
 - f. Drainage area maps: sheets will include map of system's drainage areas.
 - g. Storm sewer schedules: tabulated sheet including hydrologic and hydraulic data.
 - h. Concrete retaining wall details: structural details for concrete cast in place retaining wall near C&K Enterprises.
 - i. Water and sewer utilities detail sheets: construction details for water and sewer plans.

- j. Signing and pavement marking detail sheets: final signing and pavement marking plans and related details.
 - k. Traffic control plans and details sheets: traffic control plans per construction phase and related details.
 - l. Street lighting plans and detail sheets: final street lighting plans and related details.
 - m. Standard and special details: design details from City's Standard Details and Design Specifications and Kansas City Metro Chapter APWA Standard Specifications, where appropriate.
7. Project Specifications: CITY will provide Front End Contract Document and Technical Specification templates for use and modification. ENGINEER will modify Front End Contract Document and Technical Specification and create Job Special Provisions for any non-standard bid items depicted in the final plans.
 8. Client Conformance Review: Review by senior associate to evaluate design and conformance with client's requirements and expectations.
 9. Constructability Review: Review by experienced field personnel to assess the design for constructability issues that could make it difficult or impossible to construct the project per final plans.
 10. Submittal to CITY: Submit plans, construction cost estimate and technical specifications to the CITY for review. The CITY shall complete their review and provide written comments to the ENGINEER within two (2) weeks. The ENGINEER shall have two (2) weeks from receipt of comments to address comments and provide a written response to the CITY. Upon submittal of approved final plans, ENGINEER shall submit AutoCAD files and KMZ file to CITY.

F. Utility Coordination

1. Utility Owners: During conceptual phase verify contacts and schedule one-on-one coordination meetings to gather and share project information, identify high risk/expensive relocation issues and determine constraints. Ten (10) meetings, one (1) with each utility, are included. Review survey data for accuracy of utility locations.
2. Utility coordination: Upon receipt and incorporation of CITY preliminary plan review comments, ENGINEER will submit plans to utilities for review and comment. Utilities will complete a conflict verification form provided by ENGINEER. If conflicts exist, utilities will be asked to prepare relocation plans for approval by ENGINEER and CITY. Utility relocations will be coordinated with proposed street lighting plan locations. Utilities owners will be provided with relocation deadline. ENGINEER will schedule and conduct one (1) utility coordination meeting with all affected utilities invited. ENGINEER will provide CITY with a preliminary utility report.

3. Utility Reports: ENGINEER will provide CITY with preliminary utility report following utility coordination meeting. ENGINEER will provide CITY with final status of utilities report when relocations are complete for inclusion in the bid documents.

G. Environmental Permitting

1. ENGINEER will include appropriate erosion and sediment control plans and details and prepare a Construction Stormwater Pollution Prevention Plan (SWPPP) to be maintained on-site during construction activities.
2. ENGINEER will obtain the standard EDR records search package for \$350 which includes a radius map search, historical topographic maps, historical aerials, and any sanborn maps and historic city directories, if available. ENGINEER will review and summarize the findings either in a study report, design memo or a stand-alone project record.

H. Bidding Services

1. Electronic plan room distribution: ENGINEER shall provide construction documents in PDF format to the CITY for posting in the electronic plan room (QuestCDN) where interested bidders may purchase or access the bidding documents.
2. Questions and clarifications: Be available to answer questions and provide information to prospective bidders. Prepare and distribute bid addenda, as needed.
3. Pre-bid meeting: Attend pre-bid meeting. Prepare and issue pre-bid meeting minutes.
4. Bidding: Attend bid opening and prepare itemized bid tabulation. Evaluate submitted bids and prepare a recommendation of project award to CITY.
5. Pre-Construction meeting: Attend pre-construction meeting and be available to answer questions regarding Design Plans and Specifications prior to Contractor Notice to Proceed.

I. Sub Consultant Services

1. Geotechnical investigation: Geotechnical investigation needs for this project will be completed through a SUBCONSULTANT in accordance with attached Exhibit A. ENGINEER will field survey the horizontal and vertical location of each core and bore location. ENGINEER's Basic Services assumes 16 hours of 2-person crew for field survey of bore and core locations.

**ARTICLE II
OPTIONAL SERVICES TO BE PROVIDED BY ENGINEER**

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

1. Utility subsurface investigation: If depths of utilities are required for the design, through a SUBCONSULTANT the ENGINEER shall identify locations of utility facilities to be exposed so the facility can be surveyed. The ENGINEER will coordinate, stake and schedule excavation for a maximum of 8 hours of time.
2. Utility relocation coordination: Meet on site with contractors performing relocation. Verify relocation accuracy and document actual locations on plans. Review plans for possible conflicts resulting from incorrect relocations.
3. Modifications to interchange plans to coordinate pedestrian features and traffic control between two projects.

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

City shall provide the following services to Engineer:

- A. The City shall make available to the Engineer all existing, records, maps, plans, studies and other information possessed by the City which are relevant to the completion of the work under this Agreement.
- B. The City shall provide all criteria and full information as to the City’s requirements for the project, including design objectives, constraints, performance requirements, and any budgetary limitations; and furnish electronic copies of all standard forms, design standards, and construction standards which the City will require to be included in the plans and specifications.
- C. The City shall provide current peak hour and traffic count data for the project corridor.
- D. The City shall provide ownership and encumbrance (O&E) documents for all properties requiring right-of-way or easement acquisition.
- E. The City shall furnish to the Engineer all front end contract documents and technical specification templates for modification by the Engineer.
- F. The City shall assist the Engineer in arranging for access to enter upon public and private property as needed to perform the services under this Agreement.

- G.** The City shall attend key stakeholder meetings, public information meetings, pre-bid meeting, bid opening, pre-construction conference, construction progress meetings and other project related meetings.
- H.** The City shall give written notice to the Engineer whenever it observes or otherwise becomes aware of any change or development that affects the services and/or time schedule of this Agreement.
- I.** The City shall furnish to the Engineer, upon request of the Engineer, data prepared or services provided by others, including property information and plats, explorations and tests of subsurface conditions, drawings of physical conditions in or relating to the existing utilities or structures, hydrographic surveys, environmental assessments, impact statements, and other relevant environmental or cultural studies pertaining to the Project area or adjacent sites.
- J.** The City shall not be responsible for the accuracy and completeness of all information furnished to the Engineer pursuant to this Article III, City's Responsibilities. The Engineer may use such data and information in performing the services under this agreement.

ARTICLE IV PAYMENTS TO THE ENGINEER

- A.** 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 Seventy-Two Thousand One Hundred Fourteen Dollars (\$272,114.00), according to the following provisions:
- B.** The cost of all Basic Services covered under Article I shall be billed hourly at the rates set forth in Exhibit B attached hereto and incorporated herein by reference. Expenses incurred to provide the Basic Services shall be billed as set forth in Exhibit B. The total fees (hourly fees and expenses) for the Basic Services shall not exceed the total sum of Two Hundred Forty-Two Thousand Five Hundred Eighty-Three Dollars (\$242,583.00).
- C.** The cost of all Optional Services covered under Article II shall be billed hourly at the rates set forth in Exhibit B attached hereto and incorporated herein by reference. Expenses incurred to provide the Optional Services shall be billed as set forth in Exhibit B. The total fees (hourly fees and expenses) for the Optional Services shall not exceed the total sum of Twenty-Nine Thousand Five Hundred Thirty-One Dollars (\$29,531.00).

D. 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. City Purchase Order Number.
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:

- A. Conceptual Plan – Submitted for approval 60 days after Notice to Proceed.
- B. Preliminary Plans - Submitted for approval 60 days after Conceptual Plan approved.
- C. Right of Way Plans - Submitted for approval 60 days after Preliminary Plans approved.
- D. Final Plans - Submitted for approval 30 days prior to project advertised date.
- E. Bidding Services – In accordance with City’s schedule for advertising project February 2018.

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 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 below the amount 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 \$100,000) 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 in excess of \$100,000 and may require guarantees from the Engineer for such assumed limits above \$100,000.

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

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 either party be liable to the other party for indirect or consequential damages, and in no event will City's liability under this Agreement exceed the amount to be paid to Engineer pursuant to Article IV of this Agreement.
- M. PROFESSIONAL RESPONSIBILITY:** Engineer 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:

Tawn Nugent, P.E.
GBA
9801 Renner Boulevard
Lenexa, KS 66219

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:

Brian W. Head, City Attorney

ENGINEER:

BY: _____

TITLE: _____

ATTEST:
