

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES  
FOR AN ALIGNMENT STUDY OF SCHERER ROAD/PARKWAY, SCHERER  
PARKWAY, AND LONGVIEW BOULEVARD (RFQ NO. 2024-065)**

**THIS AGREEMENT** made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Lee's Summit, Missouri (hereinafter "City"), and Lochmueller Group, Inc. (hereinafter "Engineer").

**WITNESSETH:**

**WHEREAS**, City intends to have engineering services for an alignment study of Scherer Road/Parkway, Scherer Parkway, and Longview Boulevard (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 agreements 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"):

**1.0 General**

Generally, the scope of services includes traffic studies, traffic data collection, utility identification, stormwater analysis, and public engagement for an alignment study to improve the Scherer Road corridor to Scherer Parkway from approximately 2,200 feet west of Sampson Road to the intersection of Hook Road and Missouri (MO) Route 291 and from the intersection of Longview Road and Longview Boulevard to Hook Road. The Study will consist of evaluating existing conditions and working with and updating the City's TransCAD model to include future growth within the PRI/SLR property and developing recommended alignments for the future corridors for Longview Boulevard, Scherer Parkway, Scherer Road, Hook Road connector to Scherer Parkway, and the Scherer Parkway and MO. Route 291 Interchange. Also included will be development of

new typical sections for Longview Boulevard, Scherer Parkway, Scherer Road, and the Hook Road connector to Scherer Parkway.

### **1.1 Surveys**

Design level topographic and right of way surveys are not included in this study. Engineer will use the City's existing aerial, contour files, utilities, and property lines for the conceptual study.

### **1.2 Geotechnical Engineering Services**

Design level geotechnical engineering services are not included in this study.

### **1.3 Subsurface Utility Engineering (SUE) Quality Level A**

Design level SUE quality level A engineering services are not included in this study.

### **1.4 Administration and Project Management**

The Engineer shall perform the following Administration and Project Management Tasks:

1. Set up and attend the project kick-off meeting.
2. Personnel planning, project scheduling, and budget control.
3. Plan and hold internal project team meetings.
4. Plan and hold City project weekly coordination and bimonthly progress meetings.
5. Prepare agendas and meeting minutes for bimonthly progress meetings.
6. Submit monthly progress report documents, along with the monthly invoices. The Monthly Progress Report shall document the following:
  - a. Past Month's Activities/Accomplishments
  - b. Pending Issues and Decisions
  - c. Problem Areas and Recommended Corrective Actions
  - d. Budget Summary Status (showing % complete vs. % expended per task)
  - e. Schedule Summary Status (chart showing baseline schedule vs. actual schedule)
  - f. Next month's Planned Activities/Goals
  - g. Summary of Coordination Efforts (including correspondence summaries)
7. Develop subconsultant contracts, review, and process subconsultant invoices.

All the above items shall include/address sub-consultant tasks.

## **1.5 Stakeholder Coordination**

The Engineer shall perform the following Stakeholder Coordination Tasks:

- Attend up to two (2) total stakeholder meetings:
  - Two (2) in person meetings for:
    - One (1) in person meeting with Property Reserve Inc./Suburban Land Reserve, Inc.
    - One (1) in person meeting with LSR7 Staff

The Engineer will develop agendas and meeting minutes for all meetings. Agendas will be submitted to City for review two (2) weeks prior to any meeting and meeting minutes will be completed and submitted to City within (2) weeks after said meeting.

## **1.6 Public Engagement**

Public Engagement scope of services can be found under Optional Services. See Paragraph 2.7.

## **1.7 Quality Assurance and Quality Control**

The Engineer shall perform the following Quality Assurance and Quality Control Tasks:

- Develop project Quality Control Plan (QCP) document.
- Perform independent Quality Assurance Reviews to verify that QCP is being followed and continuously updated as required.
- Perform Quality Control reviews on the alignment exhibits, construction cost estimates, preliminary and final report, and stakeholder and public engagement exhibits and documents.

## **1.8 Utility Coordination**

Utility coordination services are not included in this study. Utility identification is included in Section 1.10.3.d below.

## **1.9 Environmental Services (NEPA Desktop Review)**

Key actions performed in this phase include:

- 1.9.1 Resource Collection (Not included in this scope of services.)
- 1.9.2 Development of Problem Statement (Not included in this scope of services.)
- 1.9.3 Development of Purpose and Need (Not included in this scope of services.)

1.9.4 Conceptual Alternatives Screening

Develop screening criteria and process for preparation of appropriate selection matrix based on key benefits and impacts within the conceptual report and later NEPA document.

1.9.5 Class of Action Determination (Not included in this scope of services.)

**1.10 Corridor Alignment Study**

INFLUENCE AREA is defined as being bounded by Longview Road to the north, Sampson Road to the west, Mo Route 150 to the south, and Mo Route 291 to the east.

STUDY CORRIDORS are defined as existing Scherer Road from 2200 feet west of Sampson Road (at Scherer Parkway) to Mo Route 291 and Longview Boulevard from Longview Road to Hook Road.

STUDY INTERSECTIONS are defined as follows:

- Longview Road and Sampson Road
- Longview Road and Longview Boulevard
- Longview Road and Pryor Road
- Scherer Road and Sampson Road
- Scherer Road and Pryor Road
- Scherer Road and Ward Road
- Scherer Road and Mo Route 291
- Hook Road and Pryor Road
- Hook Road and Ward Road
- Ward Road and Mo Route 150

1.10.1 Traffic Engineering Modeling, and Trip Generation

Information Gathering

- a. Request any traffic count data on file with the City for roadways in the STUDY AREA and obtain existing traffic signal timings for the STUDY INTERSECTIONS.
- b. Review traffic studies and planning documents pertaining to the STUDY CORRIDORS as furnished by the City.
- c. Review the City's Comprehensive Plan to identify the type of land use growth and infrastructure upgrades planned for the INFLUENCE AREA.
- d. Obtain a copy of the City's travel demand model, including any documentation, to gain an understanding of the model, its capabilities, and its reflection of roadways and land uses in the INFLUENCE AREA.

Existing Conditions Analysis

- a. Not used. Task item removed.
- b. Obtain 5 years of historic crash summary data for the STUDY CORRIDORS.
- c. Summarize crash data along the STUDY CORRIDORS by crash type, severity, and location. The crash data will be compared to averages for similar facilities to determine if the STUDY CORRIDORS experience more or less crashes than comparable roadways.
- d. Assess existing multimodal connectivity and service levels along the STUDY CORRIDORS and identify any gaps in multimodal infrastructure relative to the City's Livable Streets Policy and any relevant multimodal plans.

Community Visioning

- a. Coordinate and attend one (1) in-person visioning workshop with the City to discuss ideas and establish goals and objectives for the future Scherer Road alignment and extension of Longview Blvd.
- b. Discuss with the City plans for future development in the INFLUENCE AREA and potentially beyond, to the extent it would influence traffic in the STUDY CORRIDORS.
- c. Clearly define a vision for the future Scherer Road alignment and extension of Longview Blvd based on the input from the City received at the visioning workshop.
- d. Set goals and criteria for evaluating alternatives for the future Scherer Road alignment and extension of Longview Blvd that reinforce the vision for the project.
- e. Meet with the PRI/SLR landowner to understand their goals and plans for developing their property.

Travel Demand Forecasting

- a. Update the City's travel demand model for a 2055 horizon year scenario to reflect the City's latest land use plan and desired assumptions for redevelopment of the PRI property.
- b. Update the City's travel demand model for a 2055 horizon year scenario to incorporate the latest committed transportation projects of significance.
- c. Run the City's travel demand model for a 2055 horizon year scenario to generate a forecast of traffic utilizing the future Scherer Road, assuming an alignment between Sampson Road and Mo Route 291 at Hook Road, and the future Longview Boulevard extension. This would reflect unconstrained capacity to quantify the traffic demands for these new roadways.

- d. Summarize the need for the project based on the City's vision, the future travel demand forecasts, and the existing conditions analysis.

#### 1.10.2 Develop & Evaluate Alternatives

- a. Coordinate and attend one in-person brainstorm workshop with the City to discuss specific roadway type alternatives and alignments to extend Scherer Road/Parkway from Sampson Road to Mo Route 291 and extend Longview Boulevard to Hook Road.
- b. Develop three (3) distinct Scherer Parkway alternatives for further study. Each will be assumed to depart from Scherer Parkway east of Sampson Road and connect to Mo Route 291 at Hook Road. Only a diamond interchange configuration will be assumed for the future Mo Route 291 interchange for every alternative. Develop one (1) distinct alternative for Scherer Road and its connection to Scherer Parkway and one (1) distinct connection from Hook Road to Scherer Parkway west of the Scherer Parkway and the future Mo Route 291 interchange.
- c. Develop one (1) distinct Longview Boulevard alternative for further study.
- d. Update the City's travel demand model, if necessary, to generate alternative-specific traffic forecasts. Horizon year turning movement forecasts will be generated for the STUDY INTERSECTIONS, plus major new intersections along the future Scherer Road alignment, and the intersection of Longview Boulevard and Scherer Road, for the weekday morning and afternoon peak hours.
- e. Not used. Task Item Removed.
- f. Evaluate multimodal connectivity and service levels along the proposed alignment for each alternative and determine compliance with the City's Livable Streets Policy, any relevant multimodal plans, and City code.

#### 1.10.3 Develop Concepts

- a. Create Conceptual Typical Sections

Engineer will create alternative typical sections for Longview Boulevard, Scherer Parkway, Scherer Road, and the Hook Road connection to Scherer Parkway

Longview Boulevard and Scherer Parkway will include both a divided and non-divided typical section. Number of lanes, lane width, sidewalk, shared-use path, curb and gutter, and right of way width will be discussed with the City prior to development.

Scherer Road and the Hook Road connection to Scherer Parkway will be a non-divided facility. Number of lanes, lane width, sidewalk, shared-use path, curb and gutter, and right of way width will be discussed with the City prior to development.

- b. Create Conceptual alignment Strip Maps

Engineer will develop alternative alignment strip maps for use in the conceptual design as well as the stakeholder and public engagement. Strip maps will be a maximum of 36 inches wide by 108 inches long and a legible scale. Each distinct alternative alignment will have an associated strip map as follows.

- Longview Boulevard – One (1) Strip Maps
- Scherer Parkway – Three (3) Strip Maps
- Scherer Road – One (1) Strip Maps
- Hook Road Connector alignment will be shown on the Scherer Parkway Strip Maps.

c. Generate Engineers Estimate of Probable Construction Cost

Engineer will generate conceptual engineers estimate of probable construction cost estimates for each of the alignments as delineated in section b above. Estimate will be completed in Microsoft Excel and will utilize recent City and other local construction bid prices. Format will be 8.5-inch x 11-inch (letter) size sheets.

d. Utility Identification and Impacts

Engineer will investigate/review/consider the location of existing utilities (underground and overhead) as well as future planned water and sanitary sewer line systems to serve the PRI/SLR future development when developing the distinct alternative alignments for Longview Boulevard, Scherer Parkway, Scherer Road, and Hook Road connector to Scherer Road.

e. Hydrology and Drainage Impacts

Engineer will investigate/review/consider the location of existing creeks, swales, and drainage patterns when developing the distinct alternative alignments for Longview Boulevard, Scherer Parkway, Scherer Road, and Hook Road connector to Scherer Road.

1.10.4 Summarize Findings and Report

- a. Engineer will compare & contrast alternatives based on the goals and evaluation criteria and recommend a preferred alignment.
- b. Engineer will summarize findings in an Alignment Study report.
- c. Engineer will submit for City review and comment.
- d. Engineer will update the document in response to comments and submit final.

## **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”):

### **2.0 General**

The following is a list of optional services that can be provided by the Engineer for the project.

### **2.1 Preferred Alignments Geotechnical Memorandum**

Engineer will engage a geotechnical engineering subconsultant to provide geotechnical investigations for the preferred alignment for Scherer Parkway, Scherer Road, and Longview Boulevard.

Engineer will utilize Soil Conservation Service data to develop a memorandum that summarizes the existing subsurface conditions to be expected within the selected alignment corridors. The memorandum included in this scope is for study purposes only and additional borings will be required for design.

### **2.2 Traffic Data Collection**

Engineer will engage a traffic data collection subconsultant to perform data collection at the following locations:

- Longview Road and Sampson Road
- Longview Road and Longview Boulevard
- Longview Road and Pryor Road
- Scherer Road and Sampson Road
- Scherer Road and Pryor Road
- Scherer Road and Ward Road
- Scherer Road and Mo Route 291
- Hook Road and Pryor Road
- Hook Road and Ward Road
- Hook Road and Mo Route 291
- Ward Road and Mo Route 150

The traffic data collection will include 24-hour video turning movement counts at the above intersections with truck classifications and pedestrian crossings if applicable. The collection will be conducted when conditions are above freezing, while school is in session, and avoiding holiday influences.



## **2.3 Microanalysis of Traffic Data**

Add the following into section 1.10 of Article I.

Engineer will perform microanalysis of the existing traffic data to supplement the traffic engineering completed in the following sections.

### **1.10.1 Traffic Engineering Modeling, and Trip Generation**

#### Existing Conditions Analysis

- e. Evaluate existing traffic operations during the weekday morning and afternoon peak hours at the STUDY INTERSECTIONS and along the STUDY CORRIDORS based on Highway Capacity Manual methodologies using Synchro.

### **1.10.2 Develop & Evaluate Alternatives**

- g. Evaluate traffic operations at the STUDY INTERSECTIONS, plus major new intersections along the future Scherer Road alignment, and the intersection of Longview Boulevard and Scherer Road, for each alternative for the weekday morning and afternoon peak hours using Synchro.

## **2.4 Inclusion of a 2040 Horizon Year in the Travel Demand Forecasting**

Add the following into section 1.10 of Article I.

### **1.10.1 Traffic Engineering Modeling, and Trip Generation**

#### Travel Demand Forecasting

- a. Update the City's travel demand model for a 2040 horizon year scenario to reflect the City's latest land use plan and desired assumptions for redevelopment of the PRI property.
- b. Update the City's travel demand model for a 2040 horizon year scenario to incorporate the latest committed transportation projects of significance.
- c. Run the City's travel demand model for a 2040 horizon year scenario to generate a forecast of traffic utilizing the future Scherer Road, assuming an alignment between Sampson Road and Mo Route 291 at Hook Road, and the future Longview Boulevard extension. This would reflect unconstrained capacity to quantify the traffic demands for these new roadways.
- d. Summarize the need for the project based on the City's vision, the future travel demand forecasts, and the existing conditions analysis.

## **2.5 Assistance for Comprehensive Plan Amendment**

Engineer will assist the City with preparation and attendance for one (1) City Planning Commission meeting during the Comprehensive Plan Amendment process.

## 2.6 Stakeholder Coordination

The Engineer shall perform the following Stakeholder Coordination Tasks:

- Attend up to two (2) additional stakeholder meetings:

The Engineer will develop agendas and meeting minutes for all additional meetings. Agendas will be submitted to City for review two (2) weeks prior to any meeting and meeting minutes will be completed and submitted to City within (2) weeks after said meeting.

## 2.7 Public Engagement

The Engineer will plan for and attend one (1) open house style public meeting for the residents and other additional public interested in the future of the Scherer Parkway and Longview Boulevard corridors.

The public meeting will present, via strip maps and presentation boards, the selected alternatives, as prepared in Section 1.10, for Longview Boulevard, Scherer Parkway, the Scherer Parkway and MO Route 291 Interchange, and other ancillary improvements to Scherer Road and the Hook Road connector to Scherer Parkway. Also included will be the proposed typical sections and other pertinent project fact sheet type information. A questionnaire will also be created.

The Consultant will perform the following tasks for the public meeting:

- Schedule meeting with the City to discuss coordination
- Conduct facility meeting site visit
- Coordinate audio/visual for presentation
- Create informational boards
- Write and design welcome/station guide handout
- Write and design comment form (hard copy and electronic version for iPads)
- Create sign-in sheet
- Host sign-in table and public involvement/comment station
- Analyze public comment data and prepare public meetings summary report

The process will be documented in a Public Meeting Summary Report.

## 2.8 Scherer Road Additional Alignments

Add the following into section 1.10 of Article I.

### 1.10.2 Develop & Evaluate Alternatives

- a. Develop two (2) additional distinct alternatives for Scherer Road to tie into Scherer Parkway.

### 1.10.3 Develop Concepts

- b. Create Conceptual alignment Strip Maps

Engineer will develop alternative alignment strip maps for use in the conceptual design as well as the stakeholder and public engagement. Strip maps will be a maximum of 36 inches wide by 108 inches long and a legible scale. Each distinct alternative alignment will have an associated strip map as follows.

- Scherer Road – Two (2) Additional Strip Maps
- c. Generate Engineers Estimate of Probable Construction Cost  
Engineer will generate conceptual engineers estimate of probable construction cost estimates for each of the alignments as delineated in section b above. Estimate will be completed in Microsoft Excel and will utilize recent City and other local construction bid prices. Format will be 8.5-inch x 11-inch (letter) size sheets.
- d. Utility Identification and Impacts  
Engineer will investigate/review/consider the location of existing utilities (underground and overhead) as well as future planned water and sanitary sewer line systems to serve the PRI/SLR future development when developing the additional distinct alternative alignments for Scherer Road.
- e. Hydrology and Drainage Impacts  
Engineer will investigate/review/consider the location of existing creeks, swales, and drainage patterns when developing the additional distinct alternative alignments for Scherer Road.

#### 1.10.4 Summarize Findings and Report

- a. Engineer will compare & contrast alternatives based on the goals and evaluation criteria and recommend a preferred alignment.
- b. Engineer will summarize findings and include in the Alignment Study report.

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

City shall provide the following services to Engineer:

- Property owners/tenant names
- Available water and sewer locations, size, and materials
- Copies of available studies, reports, and as-built plans, if available
- Available drainage studies
- Available plats of adjacent properties
- Assist Consultant as needed in gaining right of entry to private property for survey, field checks, and geotechnical exploration.
- Existing TransCAD model and associated documentation.

- Development plans with entitlements and associated studies.
- Any associated utility (public and private) coordination.

#### **ARTICLE IV PAYMENTS TO THE ENGINEER**

For the services performed by Engineer pursuant to this Agreement, and as full compensation therefore, and for all expenditures made and all expenses incurred by Engineer in connection with this Agreement, except as otherwise expressly provided herein, subject to and in conformance with all provisions of this Agreement, City will pay Engineer a maximum fee for Basic Services and Optional Services in the sum of Six Hundred Eighty Six Thousand Three Hundred and Sixty Five Dollars (\$686,365.00), 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 Four Hundred Seventy Four Thousand Nine Hundred and Fifty Nine Dollars (\$474,959.00).
- 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 Two Hundred Eleven thousand Four Hundred and Six Dollars (\$211,406.00).
- 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 Agreement or Agreed Maximum Fee Amount, Cumulative Amount Previously Billed, Billing Amount this Invoice, Agreement 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:

<u>Deliverable:</u>	<u>Due Date:</u>
Preliminary Alignment Study	December 20, 2024
Final Approved Alignment Study	January 31, 2025

The Director of Public Works may, with the mutual consent of the parties, amend the deadlines contained in this Article by written authorization upon a showing of cause for amendment by Engineer.

The Optional Services shall be completed in accordance with the deadlines set by the Director of Public Works and accepted by Engineer at the time said Optional Services are authorized by the Director of Public Works.

## **ARTICLE VI INSURANCE**

### **A. GENERAL:**

1. Insurer Qualifications: Without limiting any obligations or liabilities of Engineer, Engineer shall purchase and maintain, at its own expense, the insurance set forth in this Section with insurance companies authorized to do business in the State of Missouri, with an AM Best, Inc. rating of A or above, and with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.
2. No Representation of Coverage Adequacy: The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Engineer from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
3. Additional Insured: All insurance coverage, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name and endorse, to the fullest

- extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.
4. Coverage Term: All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.
  5. Primary Insurance: Engineer's insurance shall be endorsed to indicate its primary, non-contributory insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured. Such coverage shall be at least as broad as ISO CG 20 01 04 13, or equivalent.
  6. Claims Made: In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for six (6) years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing the required coverage is in force and contains the provisions as required herein for the six-year period.
  7. Waiver: To the fullest extent permitted by law, all policies required herein, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Engineer. Engineer shall arrange to have such subrogation waivers incorporated into each policy via endorsement.
  8. Policy Deductibles and/or Self-Insured Retentions: The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention under the required general liability and automobile liability policies shall not erode the limit required by the City. Engineer shall be solely responsible for any such deductible or self-insured retention amount.
  9. Automatic Escalator: The limits of liability for each policy coverage amount stated above shall be automatically adjusted upward as necessary to remain at all times not less than the maximum amount of liability set forth in Chapter 537.610 RSMo. Applicable to political subdivisions pursuant to 537.600; provided that nothing herein or in any such policy shall be deemed to waive the City's sovereign immunity. The statutory waiver of sovereign immunity for 2021 is \$ 2,940,868.00 for all claims arising out of a single accident or occurrence.
  10. Use of Subcontractors: If any work under this Agreement is subcontracted in any way, Engineer shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the City and Engineer. Engineer shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

11. Notice of Claim: Engineer shall upon receipt of notice of any claim in connection with this Agreement promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. Engineer shall also promptly notify the City of any reduction in limits of protection afforded under any policy listed in the certificate(s) of insurance in an amount such that the policy aggregate becomes less than the current statutory waiver of sovereign immunity regardless of whether such impairment is a result of this Agreement. A breach of this provision is material breach of the Agreement.
12. Evidence of Insurance: Prior to commencing any work or services under this Agreement, Engineer will provide the City with suitable evidence of insurance in the form of certificates of insurance and, if requested by the City, a copy of the relevant endorsement for the insurance policies as required by these requirements, issued by Engineer's insurance insurer(s) as evidence that policies are placed with reasonably acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in these requirements and that such coverage and provisions are in full force and effect. The City shall reasonably rely upon the certificates of insurance and endorsements for the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way these insurance requirements or obligations.

If any of the policies required by these requirements expire during the life of the Agreement, it shall be Engineer's responsibility to forward renewal certificates and relevant endorsements the City 30 days prior to the expiration date. All certificates of insurance and relevant endorsements shall be identified by referencing the Agreement; certificates of insurance and endorsement for the insurance policies submitted without referencing the Agreement, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance shall specifically include the following provisions:

- a. The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:
  - i. Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 03 97 or equivalent.
  - ii. Auto Liability – Under ISO Form CA 20 48 or equivalent.
  - iii. Excess Liability – Follow Form to underlying insurance.
- b. Engineer's insurance under which City is included as an additional insured shall be primary, non-contributory insurance with respect to performance of the Agreement.
- c. All policies, except for Professional Liability, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Engineer under this Agreement.
- d. ACORD certificate of insurance form 25 (2014/01) is preferred.

13. All Certificates of Insurance shall name the City of Lee's Summit as the certificate holder and send the certificate and any endorsements to:

City of Lee's Summit  
220 SE Green Street  
Lee's Summit, MO 64063-2358

**B. REQUIRED INSURANCE COVERAGE:**

1. Commercial General Liability: Engineer shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of at least \$3,000,000 for each occurrence, \$3,000,000 Products and Completed Operations Annual Aggregate and a \$3,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, bodily injury, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 01 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be endorsed as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement forms CG 20 10 07 04 and CG 20 37 07 04, or their equivalents. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
2. Automobile Liability: Engineer shall maintain Business Automobile Liability insurance with an unimpaired limit of at least \$1,000,000 each occurrence on Engineer's owned, hired and non-owned vehicles assigned to or used in the performance of the Engineer's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. City, its agents, representatives, officers, directors, officials and employees shall be endorsed as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
3. Professional Liability: Engineer shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the services performed by the Engineer, or anyone employed by the Engineer, or anyone for whose negligent acts, mistakes, errors and omissions the Engineer is legally liable, with an unimpaired liability insurance limit of at least \$3,000,000 each claim and \$3,000,000 annual aggregate. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
4. Workers' Compensation Insurance: If Engineer employs anyone who is required by law to be covered by workers' compensation insurance, Engineer shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Engineer's employees engaged in the performance of



work or services under this Agreement and shall also maintain Employers Liability Insurance of \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

5. Cyber Liability Insurance: If this Agreement is the subject of any services involving the City's information technology structure, or if the Engineer engages in any services in any way related to performing work involving the City's information technology structure under this Agreement, Engineer shall maintain Cyber Liability insurance with limits not less than \$3,000,000 per occurrence or claim, \$3,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as are undertaken by Engineer in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs, regulatory fines and penalties, and credit monitoring expenses with limits sufficient to respond to these obligations.
- C. CANCELLATION AND EXPIRATION NOTICE: Insurance required herein shall not expire, be canceled, or be materially changed without thirty (30) days' prior written notice to the City.

## **ARTICLE VII MISCELLANEOUS PROVISIONS**

The following miscellaneous provisions are agreed to by both parties to this Agreement:

- A. COVENANT AGAINST CONTINGENT FEES: Engineer warrants that Engineer has not employed or retained, and will not employ or retain for the duration of this Agreement, any company or person, other than a bona fide employee working for the Engineer, to solicit or secure this Agreement, and that Engineer has not paid or agreed to pay any company or person, other than bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee. Engineer further covenants that in the performance of this Agreement no person having such interest shall be employed.
- B. OWNERSHIP OF ENGINEERING DOCUMENTS: Payment by City to Engineer as aforesaid in Article IV shall vest in City title to all drawings, sketches, studies, analyses, reports, models, and other paper, documents, computer files, and material produced by Engineer exclusively for the services performed pursuant to this Agreement up to the time of such payments, and the right to use the same without other or further compensation, provided that any use for another purpose shall be without liability to the Engineer. Any reuse without written verification or adaptation by Engineer for the specific purpose intended will be at City's risk and without liability or exposure to Engineer, and City shall indemnify and hold harmless, to the extent allowed by the Constitution

and Laws of the State of Missouri, Engineer from all claims, damages, losses, expenses, including attorneys' fees arising out of or resulting therefrom.

- C. **MODIFICATIONS TO SCOPE OF WORK:** In the event of any changes in the scope of services contained in this Agreement, prior to commencing the services City and Engineer shall enter into a mutually executed written modification of this Agreement describing the changes in the services to be provided by Engineer and City, providing for compensation for any additional services to be performed by Engineer, and providing completion times for said services.
- D. **EMERGENCY CHANGES IN SERVICES:** The Director of Public Works, with the consent of the City Manager, is authorized to execute on behalf of the City modification agreements as provided for in subsection C. above where there is an emergency and the overall compensation authorized in Article IV above, and any supplements or modifications thereto, is not increased. For purposes of this subsection, an "emergency" shall mean those unforeseen circumstances that present an immediate threat to public health, welfare, or safety; or when immediate response is necessary to prevent further damage to public property, machinery, or equipment; or when delay would result in significant financial impacts to the City as determined by the Director of Public Works and the City Manager.

In the event an emergency change in services is authorized by the Director of Public Works and the City Manager pursuant to this provision, the modification agreement shall be submitted to the City Council for ratification at its next available meeting.

- E. **TERMINATION:** In the event of termination by City, if there are any services hereunder in progress but not completed as of the date of termination, then said Agreement may be extended upon written approval of the City until said services are completed and accepted.
1. **Termination for Convenience:** The services called for by this Agreement or any supplements thereto may be terminated upon request and for the convenience of City upon thirty (30) days advance written notice. City shall pay Engineer for all services rendered up to the date of termination.
  2. **Termination for Cause:** This Agreement may also be terminated for cause by City or Engineer. Termination for cause shall be preceded by a fourteen-(14) day correction period effective upon delivery of written notice. City shall pay Engineer for all services rendered up to the date of termination. In the event of termination for cause by City, compensation for services rendered by Engineer up to the date of termination shall be offset by City's cost to mitigate or correct the effects of such termination, including by not limited to damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.
  3. **Termination Due to Unavailability of Funds in Succeeding Fiscal Years:** When funds are not appropriated or otherwise made available to support continuation of the Project in a subsequent fiscal year, this Agreement shall be terminated and Engineer shall be reimbursed for the services rendered up to the date of termination plus the reasonable value of any nonrecurring costs incurred by Engineer but not amortized in the price of the services delivered under this Agreement.

- F. **COMPLIANCE WITH LAWS:** Engineer shall comply with all Federal, State, and local laws, ordinances, and regulations applicable to the services. Engineer shall secure all licenses, permits, etc. from public and private sources necessary for the fulfillment of its obligations under this Agreement.
- G. **SUBLETTING ASSIGNMENT OR TRANSFER:** Engineer shall not subcontract, sublet, assign, or transfer any interest in the services covered by this Agreement, except as provided for herein and except with the prior written and signed consent of City. The use of subcontractors shall in no way relieve Engineer of his/her primary responsibility for the services. No approval will be necessary for non-professional services such as reproductions, printing, materials, and other services normally performed or provided by others.
- H. **CONFERENCES, VISITS TO SITE, INSPECTION OF SERVICES:** Upon reasonable advance notice and during normal business hours at Engineer's place of business, representatives of City shall have the privilege of inspecting and reviewing the services being performed by Engineer and consulting with him/her at such time. Conferences are to be held at the request of City or Engineer.
- I. **ENGINEER'S ENDORSEMENT:** Engineer shall endorse all plans, specifications, estimates, and engineering data furnished by him/her.
- J. **INSPECTION OF DOCUMENTS:** Engineer shall maintain all records pertaining to its services hereunder for inspection, upon reasonable advance notice and during normal business hours at Engineer's place of business, by a City representative during the Agreement 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, defend, and hold harmless City and its officers, employees, elected officials, and attorneys, each in their official and individual capacities (the City and any such person being herein called an "Indemnified Party"), for, from and against any and all judgments, damages, claims, fines, penalties, losses, costs, and expenses (including reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever (collectively "Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the intentional, reckless, or negligent acts, directives, errors, omissions, or willful misconduct, in the performance of Engineer's duties and services under this Agreement, or any supplements or amendments thereto, of Engineer, or its employees, officers, agents, or any tier of subcontractor or person for which Engineer may be legally liable in the performance of this Agreement. Nothing contained in this Agreement is to be construed to waive the City's sovereign immunity or any other immunity or defense available to the City, its officers, employees, agents, or elected officials.
- L. **LIMITATION OF LIABILITY:** In no event will either Party be liable to 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 warrants that the Services rendered will conform to the requirements of this Agreement and with the care and skill ordinarily used by members of the same profession practicing under similar circumstances at the same time and in the same locality.
- N. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the parties with respect to its subject matter, and any prior agreements, understandings, or other matters, whether oral or written, are of no further force or effect. This Agreement may be amended, changed, or supplemented only by written agreement executed by both of the parties hereto.
- O. **CONFLICT:** In the event of any conflict, ambiguity, or inconsistency between this Agreement and any other document that may be annexed hereto, the terms of this Agreement shall govern.
- P. **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri, and any suit pertaining to this Agreement may be brought only in courts in eastern Jackson County, Missouri. The Parties expressly and irrevocably consent to the exclusive jurisdiction and venue of such courts and expressly waive the right to transfer or remove any such action.
- Q. **OPINION OF PROBABLE CONSTRUCTION COST AND SCHEDULE:** Since Engineer has no control over the cost of labor, materials, or equipment, or over contractor's(s') methods of determining prices, or over competitive bidding or market conditions, the estimate of construction cost and schedule provided for herein is to be made on the basis of Engineer's experience and qualifications and represents Engineer's best judgment as a professional engineer familiar with the construction industry, but Engineer cannot and does not guarantee that the bids or the Project construction cost or schedule will not vary from the opinion of probable construction cost and schedule prepared by Engineer.
- R. **TAX EXEMPT:** City and its agencies are exempt from State and local sales taxes. Sites of all transactions derived from this Agreement shall be deemed to have been accomplished within the State of Missouri.
- S. **SAFETY:** In the performance of its services, Engineer shall comply with the applicable provisions of the Federal Occupational Safety and Health Act, as well as any pertinent Federal, State and/or local safety or environmental laws and regulations.
- T. **ANTI-DISCRIMINATION CLAUSE:** Engineer and its agents, employees, or subcontractors shall not in any way, directly or indirectly, discriminate against any person because of age, race, color, handicap, sex, national origin, or religious creed.
- U. **DELAY IN PERFORMANCE:** Neither City nor Engineer shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions, floods, earthquakes, fire, epidemics, war, riots, and other civil disturbances, strikes, lockouts, work slowdowns, and other labor disturbances, sabotage, judicial restraint, and delay in or inability to procure permits, licenses, or authorizations from any local, State, or Federal agency for any of the supplies, materials, accesses, or services required to be provided by either City or Engineer

under this Agreement. Engineer and City shall be granted a reasonable extension of time for any delay in its performance caused by any such circumstances. Should such circumstances occur, the nonperforming party shall within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of the Agreement.

- V. **NON-EXCLUSIVE AGREEMENT.** This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods and services from another source when necessary.
- W. **TIME OF THE ESSENCE.** Time is of the essence in this Agreement. Unless otherwise specifically provided, any consent to delay in Engineer's performance of its obligation is applicable only to the particular transaction to which it relates, and is not applicable to any other obligation or transaction.
- X. **SIGNATORY AUTHORITY.** Each person signing this Agreement represents that such person has the requisite authority to execute this Agreement on behalf of the entity the person represents and that all necessary formalities have been met.
- Y. **IMMIGRATION REQUIREMENTS.** Pursuant to Section 258.530, RSMo. if Agreement exceeds five thousand dollars (\$5,000.00), Engineer warrants and affirms to the City that (i) Engineer is enrolled and participates in a federal work authorization program with respect to the employees working in connection with the contracted services and (ii) Engineer does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

Engineer shall swear to and sign an affidavit declaring such affirmation, and provide the City with supporting documentation of its enrollment and participation in a federal work authorization program with respect to the employees working in connection with this Agreement. The required documentation must be from the federal work authorization program provider (e.g. the electronic signature page from the E-Verify program's Memorandum of Understanding); a letter from Engineer reciting compliance is not sufficient.

- Z. **RIGHTS AND REMEDIES.** No provision in this Agreement shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the City to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the City's acceptance of and payment for services, shall not release the Engineer from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Agreement.
- AA. **NO THIRD-PARTY RIGHTS:** The services provided for in this Agreement are for the sole use and benefit of City and Engineer. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and Engineer.
- BB. **CONFIDENTIALITY OF RECORDS.** The Engineer shall establish and maintain procedures and controls that are acceptable to the City for the purpose of ensuring that

information contained in its records or obtained from the City or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Engineer's duties under this Agreement. Persons requesting such information should be referred to the City. Engineer also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Engineer as needed for the performance of duties under this Agreement.

CC. ANTI-DISCRIMINATION AGAINST ISRAEL ACT. If this Agreement has a total potential value of \$100,000 or more and Engineer has 10 or more employees, the following applies. Pursuant to Section 34.600, RSMo. and to the fullest extent permitted by law, Engineer certifies that Engineer is not engaged in a boycott of Israel as of the Effective Date of this Agreement, and agrees for the duration of this Agreement to not engage in a boycott of Israel as defined in Section 34.600, RSMo.

DD. PROVISIONS REQUIRED BY LAW. Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, the Agreement will promptly be physically amended to make such insertion or correction.

EE. SEVERABILITY. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

FF. NOTICE: Whenever any notice is required by this Agreement to be made, given or transmitted to any party, it shall be enclosed in an envelope with sufficient postage attached to ensure delivery and deposited in the United States Mail, first class, with notices to City addressed to:

City Engineer  
City of Lee's Summit  
220 SE Green Street  
Lee's Summit, MO 64063

Director of Public Works  
City of Lee's Summit  
220 SE Green Street  
Lee's Summit, MO 64063

and notices to Engineer shall be addressed to:

Scott J. Smith, PE  
Lochmueller Group  
820 S. Main St., Suite 207  
St. Charles, MO 63301

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.

GG. E-SIGNATURE AND COUNTERPARTS. The Parties agree that this Agreement may be signed in two or more counterparts and/or signed electronically, and all such counterparts together shall constitute one and the same agreement; such signatures shall bind the signing party in the same manner as if a handwritten signature had been delivered.

**ARTICLE VIII  
EXHIBITS**

The following Exhibits are attached to and made a part of this Agreement:

Exhibit A – Fee Rate Schedule

*Remainder of this page left blank on purpose.*

City and Engineer, by signing this Agreement, acknowledges that they have independently assured themselves and confirms that they individually have examined all Exhibits, and agrees that all of the aforesaid Exhibits shall be considered a part of this Agreement and agrees to be bound to the terms, provisions, and other requirements thereof, unless specifically excluded.

**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, MISSOURI**

**ENGINEER:**

\_\_\_\_\_  
Mark Dunning, City Manager

\_\_\_\_\_  
BY: Scott J. Smith

ATTEST:

TITLE: Missouri Director and Principal

\_\_\_\_\_  
City Clerk Trisha Fowler Arcuri

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_

\_\_\_\_\_  
Scott Ison,  
Chief Counsel of Infrastructure and Recreation





411 North 10th Street, Suite 200, St. Louis, Missouri 63101  
 820 South Main Street, Suite 207, St. Charles, Missouri 63301

## 2024 HOURLY RATE SCHEDULE

### PROFESSIONAL ENGINEERING AND PLANNING SERVICES

CLASSIFICATION	HOURLY RATE	CLASSIFICATION	HOURLY RATE
Senior Project Manager III .....	\$314	Engineering Designer I .....	\$130
Senior Project Manager II .....	\$289	Environmental Specialist IV .....	\$177
Senior Project Manager I .....	\$255	Environmental Specialist III .....	\$176
Senior Engineer I.....	\$252	Environmental Specialist II .....	\$145
Project Liaison .....	\$240	Environmental Specialist I .....	\$105
Project Engineer IV .....	\$205	Environmental Technician II .....	\$109
Project Engineer III .....	\$182	Environmental Technician I .....	\$94
Project Engineer II .....	\$165	Environmental Geologist .....	\$180
Project Engineer I .....	\$159	Historian/Section 106 Specialist IV .....	\$187
Engineering Intern III .....	\$145	Historian/Section 106 Specialist III .....	\$155
Engineering Intern II .....	\$135	Historian/Section 106 Specialist II .....	\$137
Engineering Intern I .....	\$125	Historian/Section 106 Specialist I .....	\$105
Senior Landscape Architect I .....	\$245	Certified Construction Inspector II .....	\$149
Landscape Architect .....	\$140	Certified Construction Inspector I .....	\$116
Senior Trans Planner II.....	\$252	Senior Appraiser .....	\$185
Senior Trans Planner I.....	\$194	Right of Way Services Specialist .....	\$146
Planner III.....	\$150	Realty Specialist.....	\$137
Planner II.....	\$130	Senior Graphic Designer .....	\$159
Planner I.....	\$115	Administrative Assistant .....	\$101
Engineering Designer IV .....	\$211	Student Intern .....	\$84
Engineering Designer III .....	\$156	Field Technician .....	\$87
Engineering Designer II .....	\$142		

DIRECT EXPENSES will be charged to the client in addition to the above quoted rates. Mileage will be charged at the allowable federal mileage reimbursement rate at the time the mileage was incurred. Direct expenses include but are not limited to: mileage, filing fees, testing costs and express mail costs, provided that they are reasonable and necessary for the accomplishment of the work. These rates may be changed on an annual basis at the discretion of Lochmueller Group, Inc.