

**ON-CALL AGREEMENT FOR
PROFESSIONAL LAND SURVEYING SERVICES (RFQ NO. 2017-302-1)**

THIS AGREEMENT made and entered into this ____ day of _____, 20____, by and between the City of Lee's Summit, Missouri (hereinafter "City"), and Anderson Survey Company, Inc. (hereinafter "Surveyor").

WITNESSETH:

WHEREAS, City desires to have an on-call professional land surveyor for land surveying services; and

WHEREAS, Surveyor has submitted a proposal for the on-call land surveying services and standard hourly rates and expenses to perform said services; and

WHEREAS, City desires to enter into an agreement with Surveyor to perform the services as aforementioned; and

WHEREAS, Surveyor represents that it 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 ON-CALL SERVICES TO BE PROVIDED BY SURVEYOR**

Surveyor shall provide the following professional land surveying services to the City on an on-call basis ("On-Call Services"):

1. Provide land surveying services for projects designed by City staff including, but not limited to, horizontal and vertical control, topography, cross sections, profiles, contours, field locates, field utility information, property lines and as-built drawings.
2. Provide field survey data on reproducible media and in electronic file format compatible with the following:
 - a. AutoCAD 2016 or current version used by the City
 - b. Current version of AutoCAD Civil 3D
 - c. text files of surveys that include point number, northing, easting, elevation and feature codes.
3. Provide a copy of field notes or data collector information.
4. Provide legal boundary surveys.
5. Provide construction staking on projects where the City is responsible for this service.
6. Prepare legal descriptions and exhibits for property, right of way and easements to be acquired by the City, or that may already be owned by the City.

7. Miscellaneous surveying services as required by the City.
8. Emergency surveying services as required by the City.

**ARTICLE II
SERVICES TO BE PROVIDED BY SURVEYOR BY MODIFICATION OR
MEMORANDUM OF AUTHORIZATION**

By entering into this Agreement, City is not obligated to select Surveyor to provide professional land surveying services beyond those services authorized in Article I above. In the event Surveyor is engaged to provide additional services, City and Surveyor shall enter into a written modification or memorandum of authorization describing (a) the scope of services to be provided by Surveyor and City, (b) compensation to the Surveyor for services to be provided, (c) required deliverables or products from the Surveyor to the City, and (d) completion times for said services. The compensation to be paid Surveyor pursuant to any supplemental agreement or memorandum of authorization shall be at the rates set forth in Exhibit A attached hereto and incorporated herein by reference. In no event is any work in excess of that described in Article I above authorized by this Agreement without City and Surveyor first entering into a written modification.

**ARTICLE III
LIMITATIONS AND PROCEDURES RELATED TO ON CALL SERVICES**

On-call services shall only be provided after written approval of the requested services is provided by the Department Director (or designee) of the Department requesting the services. Such approval shall only be given when sufficient budgeted amounts are available to cover the cost of the services. The Surveyor shall provide a monthly written statement of all On-Call Services provided in the preceding month to the Department of Public Works Supervisory Engineer.

**ARTICLE IV
PAYMENTS TO THE SURVEYOR**

For the services performed by Surveyor pursuant to this Agreement, or any modifications thereto, and as full compensation therefore, and for all expenditures made and all expenses incurred by Surveyor in connection with this Agreement, or any modifications thereto, except as otherwise expressly provided herein, subject to and in conformance with all provisions of this Agreement, City will pay Surveyor according to the following provisions:

- A. The cost of all on-call services covered under Article I shall be billed at the rates set forth in Exhibit A attached hereto and incorporated herein by reference. Expenses incurred to provide the on-call services shall be billed as set forth in Exhibit A.
- B. Compensation for services to be provided by Surveyor through a modification pursuant to Article II above shall be set forth in said modification, and shall be at the rates set forth in the attached Exhibit A.

C. If so requested by Surveyor, City will make payment monthly for on-call services that have been satisfactorily completed. The City shall make payment to Surveyor 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. Name or Description of Agreement/RFQ Number/Project and/or Task Name
2. Invoice Number and Date.
3. 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.
4. Report of monthly progress describing the services completed to date and projected completion time for the work.
5. If applicable, project billing summary containing the agreed fee amount, cumulative amount previously billed, billing amount this invoice, agreed amount remaining, and percent of 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 TERM

The term of this Agreement shall be a one (1) year period from November 11, 2016 through November 10, 2017. City shall have the option to renew this Agreement at its discretion, for two (2) additional one-year periods. Three (3) months prior to expiration of the initial term or the first renewal term of this Agreement, Surveyor shall submit to City a proposal for increases in its billing rates and expenses to be in effect for the following one (1) year term. Surveyor shall not be permitted to increase billing rates in any one (1) year renewal period in excess of the Employment Cost Index, Wages and Salaries, published by the U.S. Department of Labor, Bureau of Labor Statistics.

ARTICLE VI INSURANCE

A. CERTIFICATE OF INSURANCE

The Surveyor shall secure and maintain, throughout the duration of this contract, insurance of such types and in at least the amounts that are required herein. Surveyor shall provide certificate(s) of insurance confirming the required protection on an ACORD 25 (or equivalent form). The City shall be notified by receipt of written notice from the insurer at least thirty (30) days prior to material modification or cancellation of any policy listed on the certificate(s). The City reserves the right to require formal copies of any Additional Insured endorsement, as well as the right to require completed copies of all insuring policies applicable to the project. The cost of such insurance shall be included in the Surveyor's contract price.

B. NOTICE OF CLAIM

The Surveyor 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 Surveyor shall also promptly notify the City of any reduction in limits of protection afforded under any policy listed in the certificate(s) of insurance in excess of \$10,000.00, whether or not such impairment came about as a result of this contract. If the City shall subsequently determine that the Surveyor'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 Surveyor 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 Surveyor.

D. SUB-CONSULTANT'S INSURANCE

If any part of the contract is to be sublet, the Surveyor shall either:

Cover all sub-consultants in the Surveyor's liability insurance policy or,

Require each sub-consultant not so covered to secure insurance in the minimum amounts required of the Surveyor and submit such certificates to the City as outlined herein.

E. SELF-INSURED RETENTIONS / DEDUCTIBLES

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

F. PROFESSIONAL LIABILITY

Professional Liability, or Errors and Omissions Insurance protection must be carried by Surveyor in the minimum amount of \$1,000,000.

G. COMMERCIAL GENERAL LIABILITY POLICY

Limits:

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

Policy must include the following conditions:

Bodily Injury and Property Damage

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

H. AUTOMOBILE LIABILITY

Policy shall protect the Surveyor 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 Surveyor against all claims under applicable state Workers' Compensation laws. The Surveyor 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 of the Surveyor nor has the City assessed the risk that may be applicable to the Surveyor.
2. The Surveyor'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 Surveyor.
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 Surveyor 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:** Surveyor warrants that Surveyor has not employed or retained any company or person, other than a bona fide employee working for the Surveyor, to solicit or secure this Agreement, and that Surveyor 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 LAND SURVEYING DOCUMENTS:** Payment by City to Surveyor 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 Surveyor 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 Surveyor.
- 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 Surveyor shall enter into a modification of this Agreement or a Memorandum of Authorization describing the services to be provided by Surveyor and City, and the compensation and completion times for said services.
- D. **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 Surveyor 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 Surveyor. Termination for cause shall be preceded by a fourteen-(14) day correction period effective upon delivery of written notice. City shall pay Surveyor for all services rendered up to the date of termination. In the event of termination for cause by City, compensation for services rendered by Surveyor 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 Surveyor shall be reimbursed for the services rendered up to the date of termination plus the reasonable value of any nonrecurring costs incurred by Surveyor but not amortized in the price of the services delivered under this Agreement.
- E. **COMPLIANCE WITH LAWS:** Surveyor shall comply with all Federal, State, and local laws, ordinances, and regulations applicable to the services. Surveyor shall secure all licenses, permits, etc. from public and private sources necessary for the fulfillment of its obligations under this Agreement.

Exhibit 1 to Bill / Ordinance

- F. **SUBLETTING ASSIGNMENT OR TRANSFER:** Surveyor 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 Surveyor 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.
- G. **CONFERENCES, VISITS TO SITE, INSPECTION OF SERVICES:** Upon reasonable advance notice and during normal business hours at Surveyor's place of business, representatives of City shall have the privilege of inspecting and reviewing the services being performed by Surveyor and consulting with him/her at such time. Conferences are to be held at the request of City or Surveyor.
- H. **SURVEYOR'S ENDORSEMENT:** Surveyor shall endorse all plans, specifications, estimates, and land surveying data furnished by him/her.
- I. **INSPECTION OF DOCUMENTS:** Surveyor shall maintain all records pertaining to its services hereunder for inspection, upon reasonable advance notice and during normal business hours at Surveyor'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.
- J. **INDEMNIFICATION AND HOLD HARMLESS:** Surveyor 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 Surveyor, or its employees, or sub consultants, in the performance of Surveyor's duties under this Agreement, or any supplements or amendments thereto to the extent permitted by the Constitution and the Laws of the State of Missouri.
- K. **LIMITATION OF LIABILITY:** In no event will City be liable to Surveyor for indirect or consequential damages, and in no event will City's liability under this Agreement exceed the amount to be paid to Surveyor pursuant to Article IV of this Agreement.
- L. **PROFESSIONAL RESPONSIBILITY:** Surveyor will exercise reasonable skill, care, and diligence in the performance of its services in accordance with customarily accepted professional land surveying practices. If Surveyor fails to meet the foregoing standard, Surveyor will perform at its own cost, and without reimbursement from City, the professional land surveying services necessary to correct errors and omissions that are caused by Surveyor's failure to comply with above standard, and that are reported to Surveyor within one year from the completion of Surveyor's services for each individual project performed pursuant to this Agreement.
- M. **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.
- N. **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.
- O. **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

- P. 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.
- Q. SAFETY: In the performance of its services, Surveyor 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.
- R. ANTI-DISCRIMINATION CLAUSE: Surveyor 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.
- S. DELAY IN PERFORMANCE: Neither City nor Surveyor 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 Surveyor under this Agreement. Surveyor 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.
- T. NO THIRD-PARTY RIGHTS: The services provided for in this Agreement are for the sole use and benefit of City and Surveyor. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and Surveyor.
- U. 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:

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

and notices to Surveyor shall be addressed to:

Anderson Survey Company
203 NW Executive Way
Lee's Summit, MO 64063

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 Surveyor.

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

CITY OF LEE'S SUMMIT

Stephen A. Arbo, City Manager

APPROVED AS TO FORM:

Brian W. Head, City Attorney

ANDERSON SURVEY COMPANY, INC.

BY: _____

TITLE: _____

ATTEST:

**ANDERSON SURVEY COMPANY, INC.
CURRENT RATE OF CHARGES
AS OF July 1, 2016**

| | |
|--|--------------------------|
| <u>Firm Principal</u> | \$120.00 per hour |
| <u>Registered Land Surveyor</u> | \$94.00 per hour |
| <u>2-Man Field Crew</u> | \$127.50 per hour |
| <u>3-Man Field Crew</u> | \$155.00 per hour |
| <u>Draftsman</u> | \$60.00 per hour |
| <u>Senior Draftsman</u> | \$68.00 per hour |
| <u>Survey Technician</u> | \$72.50 per hour |
| <u>Clerical</u> | \$26.50 per hour |

All field charges are computed portal to portal.

GPS or Robotic Equipment Charges: \$40.00 per hour

Mileage: To and from jobsite, 49¢ per mile

Out-of-pocket expenses: Cost plus 10%

Per Diem charges furnished upon request.

Charges for out-of-norm field equipment furnished upon request.

