

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES
FOR GEOTECHNICAL CONSTRUCTION, MATERIAL TESTING AND INSPECTION
SERVICES YEARLY CONTRACT (RFQ NO. 2017-300)**

THIS AGREEMENT made and entered into this 6th day of October, 2016, by and between the City of Lee's Summit, Missouri (hereinafter "City"), and Professional Services Industries, Inc (hereinafter "Engineer").

WITNESSETH:

WHEREAS, City intends to have engineering services for Geotechnical Construction, Material Testing and Inspection Services Yearly Contract (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"):

1. Geotechnical and Materials Engineering services to include, but not limited to, subsurface exploration, foundation recommendations, soil stabilization, slope stability, retaining wall recommendations, construction recommendations, site visits, interpretation of test data, forensics sampling and analysis, third party reviews, QA/QC analysis, pavement design and analysis, engineering recommendations and preparation of reports.
2. Construction materials testing such as soils, concrete, masonry, aggregates, bituminous mixtures, pavements, roofing systems, structural steel.

3. Building Construction Special Inspection Services as required by the 2012 International Building Code, Chapter 17; or later edition as adopted by the Codes Administration Department.
4. Laboratory testing of soils, aggregates, concrete, asphalt, masonry, steel, roofing, fireproofing and other construction materials.
5. Provide necessary support equipment to carry out required procedures.

Engineer acknowledges that the above scope of services have been awarded to two independent consultants, a primary and a secondary. In all cases, the primary engineering firm will be contacted first. In cases where the primary engineer is providing quality control testing services for a contractor on a City project, the secondary engineering firm shall be used. Additionally, in cases where the primary engineering firm cannot provide services in a timely manner, the secondary engineering firm may be used.

Engineer is Primary Engineering Firm.

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”):

In addition to the on-call services to be provided pursuant to Article I, City may select Engineer to provide professional engineering services on projects which are otherwise capable of being the subject of a stand-alone Agreement for Professional Engineering Services. By entering into this Agreement, City is not obligated to select Engineer to provide professional engineering services beyond those services authorized in Article I above. In the event Engineer is engaged to provide such services, City and Engineer shall enter into a written supplemental agreement describing the scope of services to be provided by Engineer and City, providing for compensation for services to be provided by Engineer, and providing completion times for said services. The compensation to be paid Engineer pursuant to any supplemental agreement 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 Engineer first entering into a written supplemental agreement.

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

City shall provide the following services to Engineer:

City will provide access to the project sites for personnel and equipment and provide a project manager to act as primary contact, and to obtain such drawings and other documents or information as needed to complete the tasks assigned.

**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 according to the following provisions:

- A. The cost of all On-Call 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 On-Call Services shall be billed as set forth in Exhibit A. The total fees (hourly fees and expenses) for the On-Call Services shall not exceed budgeted amounts.
- B. Compensation for services to be provided by Engineer through a supplemental agreement pursuant to Article II above shall be set forth in said supplemental agreement, and shall be at the rates set forth in the attached Exhibit A.
- C. If so requested by Engineer, City will make payment monthly for On-Call 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. 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. Description of monthly progress detailing the amount of the services completed to date and projected completion time.
 - 5. 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.

6. 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
TERM**

The term of this Agreement shall be a one (1) year period from October 6, 2016 through October 6, 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, Engineer 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. Engineer 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, Midwest Region - ECU233021, published by the U.S. Department of Labor, Bureau of Labor Statistics.

**ARTICLE VI
INSURANCE**

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

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

original limits of liability required hereunder and shall furnish evidence thereof to the City.

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

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

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

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

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

G. **COMMERCIAL GENERAL LIABILITY POLICY**

Limits:

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

Policy must include the following conditions:

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

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

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

Limits:

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

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

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

J. GENERAL INSURANCE PROVISIONS

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

**ARTICLE VII
MISCELLANEOUS PROVISIONS**

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

- A. COOPERATIVE PROCUREMENT WITH OTHER JURISDICTIONS: Engineer hereby agrees to the cooperative procurement with other jurisdictions based on the Base Agreement with the City of Lee's Summit. Engineer Agrees to perform the services contained under the terms of the Base Agreement to any Municipal, County Public

Utility, Hospital, Educational Institution, or any other non-profit organization having membership in the Mid-America Council of Public Purchasing (MACPP) or the Mid America Regional Council (MARC) and located within the Greater Kansas City Metropolitan Trade Area (All deliveries shall be F.O.B. Destination and there shall be no obligations on the part of any member of said Council to utilize this Contract). Sales of Engineer's services will be made in accordance with the terms and conditions of the Request for Qualifications and this Base Agreement. There shall, however, be no obligation under the cooperative procurement agreement for any organization represented by MACPP or MARC to utilize the contract unless they were specifically named in the Request for Qualification as a joint bidder. All sales to other jurisdictions will be made on purchase orders issued by that jurisdiction. All receiving, inspection, payments and other contract administration will be the responsibility of the ordering jurisdiction.

- B. 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.
- C. 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.
- D. 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.
- E. 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.

- F. **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.
- G. **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.
- H. **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.

- I. 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.
- J. ENGINEER'S ENDORSEMENT: Engineer shall endorse all plans, specifications, estimates, and engineering data furnished by him/her.
- K. 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.
- L. 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.
- M. LIMITATION OF LIABILITY: In no event will City be liable to Engineer for indirect or consequential damages, and in no event will City's liability under this Agreement exceed the amount to be paid to Engineer pursuant to Article IV of this Agreement.
- N. 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.
- O. 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.
- P. 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.

- Q. **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.
- R. **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.
- S. **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.
- T. **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.
- U. **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.
- V. **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.
- W. **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.
- X. **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:

Professional Services Industries, Inc.
1211 W Cambridge Circle
Kansas City, KS 66103

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

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

Reserved.

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

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

CITY OF LEE'S SUMMIT

Stephen A. Arbo, City Manager

APPROVED AS TO FORM:

Office of the City Attorney

ENGINEER:

BY: _____
TITLE: _____

ATTEST:
