

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES
FOR West Prairie Lee – Sewer Modeling and Design Services (RFQ NO. 2022-012)**

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

WITNESSETH:

WHEREAS, City intends to have engineering services for West Prairie Lee – Sewer Modeling and Design Services (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"):

West Prairie Lee Sewer Modeling and Design Services as specifically detailed in Exhibit B, Scope of services, attached and incorporated by reference.

**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 Water Utilities ("Optional Services"):

Not Applicable.

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

City shall provide the following services to Engineer:

As specifically detailed in Exhibit A, Fee schedule and estimate, as attached and incorporated by reference.

**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 One Hundred and Thirty Thousand and Nine Hundred and Forty-Nine Dollars (\$130,949.00), 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 One Hundred and Thirty Thousand and Nine Hundred and Forty-Nine Dollars (\$130,949.00).

- B. 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:

Project Completion May 13, 2022.

The Director of Water Utilities 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 Water Utilities and accepted by Engineer at the time said Optional Services are authorized by the Director of Water Utilities.

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.

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 07 04 and CG 20 37 07 04 or their equivalents.
 - 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 (2016/03) is preferred.
- e. 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 limits of \$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 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 limits of \$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 10 13 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 liability insurance limit of \$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 or be canceled without thirty (30) days' prior written notice to the City. Engineer shall not materially reduce the coverage applicable to this project without 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 delivered and to be delivered 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 Water Utilities, 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 Water Utilities and the City Manager.

In the event an emergency change in services is authorized by the Director of Water Utilities 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 performance of the services under this Agreement. 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 agrees 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 Water Utilities
City of Lee's Summit
1200 SE Hamblen Road
Lee's Summit, MO 64081

and notices to Engineer shall be addressed to:

Burns & McDonnell Engineering Company, Inc.
ATTN: Cliff Cate, Director of Water/Wastewater Systems
9400 Ward Parkway
Kansas City, MO 64114

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

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 schedule and estimate
- Exhibit B – Scope of services

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:

Stephen A. Arbo, City Manager

BY: VARIN FRECKMAN
TITLE: VICE PRESIDENT

ATTEST:

City Clerk Trisha Fowler Arcuri

ATTEST:

APPROVED AS TO FORM:

ASSISTANT SECRETARY

Scott Ison,
Chief Counsel of Infrastructure and Recreation



Exhibit A
Schedule of Professional Service Billing Rates
Hourly Professional Service Billing Rates

| <u>Position Classification</u> | <u>Classification Level</u> | <u>Hourly Billing Rate</u> |
|------------------------------------|---------------------------------|--------------------------------|
| General Office * | 5 | \$69.00 |
| Technician * | 6 | \$87.00 |
| Assistant * | 7 | \$105.00 |
| | 8 | \$143.00 |
| | 9 | \$171.00 |
| Staff * | 10 | \$197.00 |
| | 11 | \$218.00 |
| Senior | 12 | \$241.00 |
| | 13 | \$263.00 |
| Associate | 14 | \$273.00 |
| | 15 | \$275.00 |
| | 16 | \$277.00 |
| | 17 | \$279.00 |

Unit Cost Rates

| <u>Description</u> | <u>Unit Cost</u> |
|------------------------------------|---------------------------------|
| Flow Meter Installation | \$500.00/each |
| Rain Gauge Installation | \$300.00/each |
| Flow Monitoring (minimum 5 meters) | \$60.00/meter-day (90-day base) |
| | \$65.00/meter-day (60-day base) |
| Rain Gauge Monitoring | \$15.00/gauge-day |

NOTES:

1. Position classifications listed above refer to the firm's internal classification system for employee compensation. For example, "Associate", "Senior", etc., refer to such positions as "Associate Engineer", "Senior Architect", etc.
2. For any nonexempt personnel in positions marked with an asterisk (*), overtime will be billed at 1.5 times the hourly labor billing rates shown.
3. Project time spent by corporate officers will be billed at the Level 17 rate plus 25 percent.
4. A charge will be applied at a rate of \$9.95 per labor hour for technology usage, software, hardware, printing & reprographics, shipping and telecommunications. Specialty items are not included in the technology charge.
5. Monthly invoices will be submitted for payment covering services and expenses during the preceding month. Invoices are due upon receipt. A late payment charge of 1.5% per month will be added to all amounts not paid within 30 days of the invoice date.
6. The services of contract/agency and/or any personnel of a Burns & McDonnell subsidiary or affiliate shall be billed to Owner according to the rate sheet as if such personnel is a direct employee of Burns & McDonnell.
7. The rates shown above are effective for services through December 31, 2022, and are subject to revision thereafter.

Fee Estimate

West Praire Lee - Sewer Modeling and Design Services - Phase 1

Lee's Summit, MO

| Task | Project Tasks | QC Team | Proj Admin | Project Director | Project Manager | Lead Engineer | Designer | Assistant Engineer | Lead Hydraulic Modeler | Assistant Hydraulic Modeler | Enviro Scientist | Total Hours | Labor Fee | Tech & Expense Fee | Total Fee | Tech Fee (\$9.95) | Expense |
|---------------|----------------------------------|-----------|------------|------------------|-----------------|---------------|-----------|--------------------|------------------------|-----------------------------|------------------|-------------|-------------------|--------------------|-------------------|-------------------|---------------|
| | | 15 | 8 | 17 | 14 | 12 | 13 | 9 | 13 | 9 | 13 | | | | | | |
| Task 1 | Project Management | | | | | | | | | | | | | | | | |
| 1.a | Kickoff Meeting | | | 2 | 4 | 4 | | 4 | 2 | | | 16 | \$ 3,642 | \$ 309 | \$ 3,951 | \$ 159 | \$ 150 |
| 1.b | Data Request and Review | | | | | 4 | | 8 | | | | 12 | \$ 2,208 | \$ 119 | \$ 2,327 | \$ 119 | |
| 1.c | Project Administration | | 8 | | 32 | | | | | | | 40 | \$ 9,472 | \$ 498 | \$ 9,970 | \$ 398 | \$ 100 |
| 1.d | Project Meetings | | | 4 | 10 | 10 | | | 4 | | | 28 | \$ 6,968 | \$ 529 | \$ 7,497 | \$ 279 | \$ 250 |
| | Sub-total Hours | 0 | 8 | 6 | 46 | 18 | 0 | 12 | 6 | 0 | 0 | 96 | \$ 22,290 | \$ 1,455 | \$ 23,745 | \$ 955 | \$ 500 |
| Task 2 | Model Update | | | | | | | | | | | | | | | | |
| 2.a | Model Review | 8 | | | | | | | 6 | | | 14 | \$ 3,606 | \$ 139 | \$ 3,745 | \$ 139 | |
| 2.b | Preliminary System Evaluation | | | | | | | 18 | 2 | | | 20 | \$ 3,414 | \$ 199 | \$ 3,613 | \$ 199 | |
| 2.c | Model Expansion | 4 | | | | | | 24 | 12 | | | 40 | \$ 7,932 | \$ 398 | \$ 8,330 | \$ 398 | |
| 2.d | Future Loadings | 2 | | | | | | 12 | 4 | | | 18 | \$ 3,468 | \$ 179 | \$ 3,647 | \$ 179 | |
| 2.e | Capacity Evaluation and Review | 4 | | | | | | 88 | 16 | | | 108 | \$ 19,296 | \$ 1,075 | \$ 20,371 | \$ 1,075 | |
| | Sub-total Hours | 18 | 0 | 0 | 0 | 0 | 0 | 142 | 40 | 0 | 0 | 200 | \$ 37,716 | \$ 1,990 | \$ 39,706 | \$ 1,990 | - |
| Task 3 | Concept Development | | | | | | | | | | | | | | | | |
| 3.a | Site Visit | | | | | 8 | 8 | | | | | 16 | \$ 3,816 | \$ 309 | \$ 4,125 | \$ 159 | \$ 150 |
| 3.b | Recommended Improvements | | | 4 | 12 | 48 | 24 | | | | | 88 | \$ 21,136 | \$ 876 | \$ 22,012 | \$ 876 | |
| 3.c | Utility Coordination | | | | | 12 | | | | | | 12 | \$ 2,736 | \$ 119 | \$ 2,855 | \$ 119 | |
| 3.d | Property and Easement Review | | | | | 12 | | | | | | 12 | \$ 2,736 | \$ 119 | \$ 2,855 | \$ 119 | |
| 3.e | Permitting Review | | | | | 8 | | | | | 20 | 28 | \$ 6,804 | \$ 279 | \$ 7,083 | \$ 279 | |
| 3.f | Opinion of Probable Costs | | | | 8 | 20 | 8 | | | | | 36 | \$ 8,648 | \$ 358 | \$ 9,006 | \$ 358 | |
| 3.g | Design and Construction Schedule | | | | 4 | 4 | | | | | | 8 | \$ 1,960 | \$ 80 | \$ 2,040 | \$ 80 | |
| | Sub-total Hours | 0 | 0 | 4 | 24 | 112 | 40 | 0 | 0 | 0 | 20 | 200 | \$ 47,836 | \$ 2,140 | \$ 49,976 | \$ 1,990 | \$ 150 |
| Task 4 | Technical Memorandum | | | | | | | | | | | | | | | | |
| 4.a | Draft Technical Memorandum | 4 | 4 | 2 | 8 | 24 | 2 | 16 | 2 | | | 62 | \$ 13,292 | \$ 617 | \$ 13,909 | \$ 617 | |
| 4.b | Final Technical Memorandum | 2 | | | 2 | 8 | | | 2 | | | 14 | \$ 3,374 | \$ 239 | \$ 3,613 | \$ 139 | \$ 100 |
| | Sub-total Hours | 6 | 4 | 2 | 10 | 32 | 2 | 16 | 4 | 0 | 0 | 76 | \$ 16,666 | \$ 856 | \$ 17,522 | \$ 756 | \$ 100 |
| | Total Project | 24 | 12 | 12 | 80 | 162 | 42 | 170 | 50 | 0 | 20 | 572 | \$ 124,508 | \$ 6,441 | \$ 130,949 | \$ 5,691 | \$ 750 |

| Fee Summary | |
|-------------------------------|-------------------|
| Burns & McDonnell Fee | \$ 124,508 |
| Expense Fee | \$ 6,441 |
| Total Prop Project Fee | \$ 130,949 |

Exhibit B

City of Lee's Summit, Missouri West Prairie Lee – Sewer Modeling and Design Services – Phase 1 Scope of Services

Project Background: The City of Lee's Summit recently completed a wastewater masterplan which identified the West Prairie Lee Interceptor should be further evaluated due to development within the watershed. The watershed is highly urbanized and expects additional development within the near future. The existing collection system consists of 8-inch to 24-inch pipes and a main interceptor which splits west of Hwy-291. The north interceptor continues west, running near 2nd Street, and the south interceptor runs south towards Lee's Summit High School. The existing collection system is shallow and surcharging of pipes is a concern during existing conditions. The Downtown Market Development has been identified within the north interceptor's watershed, creating the need for additional capacity during future conditions.

Project Objectives: The West Prairie Lee – Sewer Modeling and Design Services – Phase 1 will evaluate the north interceptor's ability to accommodate growth and maintain adequate level of service based on Lee's Summit current design standards. The City's existing InfoSWMM hydraulic model already incorporates the north interceptor. Engineer will utilize and review the existing model to determine appropriate locations to expand the model to the upstream collector pipes. The model assumptions regarding future system loading will be verified and the existing and future system model will be used to identify potential capacity constraints and needed improvements to mitigate the issues.

SCOPE OF SERVICES:

1. PROJECT MANAGEMENT:

- a. Kickoff Meeting. Engineer will conduct a project kickoff meeting with the City to discuss project goals, scope, schedule, required data, proposed analysis scenarios, and other pertinent items. Engineer will prepare a map of project area to layout the initial proposed improvements along the north interceptor which the City has determined feasible. The initial proposed improvements shall be utilized by Engineer in Task 2.e – Capacity Evaluation and Review Engineer will be responsible for preparation and distribution of the meeting agenda and meeting minutes.
- b. Data Request and Review. Engineer will prepare a list of required information for the City to provide to the Engineer. The required information request list will be recorded in a spreadsheet log. Engineer will review data provided by the City to be utilized for the project. Initial list of information request is included the Scope of Services Responsibility of City.
- c. Project Administration. Engineer will provide project management and quality-assurance/quality-control through the duration of the project. Engineer will be responsible for preparation of invoices and monthly progress reports to include summary of work completed in the previous month, list of action items and responsibility, and the month look ahead of project tasks to be completed.
- d. Project Meetings. Engineer shall prepare and distribute agendas and meeting minutes. In-person meetings at the City's Water Utilities Service Center include the following:
 - i. One (1) Initial Model Review and Expansion Meeting, up to four (4) Engineer staff attendees, in person. The Engineer will present the results of the quality review of existing wastewater hydraulic model, preliminary system evaluation and development of model expansion areas.

- ii. Two (2) meetings up to two (2) Engineer staff attendees, in person, one (1) with City development services and one (1) with Downtown Market Plaza design team to discuss and confirm future loadings.
- iii. One (1) Capacity Review and Concept Improvement Review Meeting, up to four (4) Engineer staff attendees, in person. Engineer will present the results of the hydraulic capacity needs and improvement feasibility. Engineer will provide input and discuss with City the parameters to define recommendation for pipe and/or manhole rehabilitation.
- iv. One (1) Draft Technical Memorandum (TM) Review Meeting, up to two (2) Engineer staff attendees, in person. Engineer will provide the City with an overview of the findings and recommendations documented in the Draft TM.
- v. One (1) Final TM Meeting, up to two (2) Engineer staff attendees, virtual. Final TM meeting will be held to allow the City to provide comments and the Engineer to respond.

2. MODEL UPDATE:

- a. Model Review. The Engineer will conduct a detailed review of the West Prairie Lee (generally bounded by the extents shown on Exhibit B1) InfoSWMM model provided by the City. Issues identified in the model will be discussed with the City and documented in the Final West Prairie Lee Interceptor TM. It is assumed that the model will be adequate and representative for this study, apart from the Downtown Market Development Loading.
- b. Preliminary System Evaluation. The existing model will be used to complete the preliminary system evaluation for the area shown in Exhibit B1 – West Prairie Lee Sewer Improvement Project Area – North Interceptor. Results of this task will determine the need for the model expansion to include smaller collector pipes. In locations with known basement flooding or locations where a collector sewer may be impacted by the interceptor backup, the collector pipes will be incorporated into the InfoSWMM model, provided by the City, to mitigate interceptor induced basement flooding. For all other areas, existing model will be used without the expansion.
- c. Model Expansion. Hydraulic model will be expanded to include collector pipes between the interceptor and the location of observed basement flooding in areas identified in Task 2.b. Extent of model expansion is based on the area circled in Exhibit B1. If flow data is available for pipes added to the model, model calibration will be conducted for up to one (1) location. Additional model expansion and model calibration is an optional service.
- d. Future Loadings. Expanded model will be loaded with distributed sewer loadings from downstream connection manholes. In parallel, the new Downtown Market Development loading will be compared to the existing model peak flow projections. City anticipates no changes will be required to model.
- e. Capacity Evaluation and Review. Updated model will be used to identify locations of inadequate capacity in the interceptor under current and future conditions. Model runs will be completed to determine sewer improvements that will meet the City's design standards and criteria with consideration given to the existing development, highways, traffic control, business access, etc. All improvements will be sized to satisfy the future planning conditions as developed in the existing hydraulic model provided by the City.

ASSUMPTIONS:

- Hydraulic model provided for the study area is representative of the current and future system conditions, with the exception of any changes to the Downtown Market Development loading.

- Hydraulic model parameters and calibrations are adequate for this study including, but not limited to, the appropriate system assessment, design rainfall and as-built development conditions.
- The City will provide input on the initial capacity improvement which they have determined feasible. Up to six (6) additional alternative capacity improvement scenarios will be evaluated considering both the current and future system conditions.

DELIVERABLES:

- Updated InfoSWMM model for West Prairie Lee north interceptor with Downtown Market Development loading and proposed interceptor improvements.

3. CONCEPT DEVELOPMENT:

- a. **Site Visit.** Engineer will complete a site visit within the project area defined in Exhibit B1. Document existing site features, including but not limited to potential above ground utility conflicts, surface conflicts and risks, and other site information that may influence the recommended capacity improvements.
- b. **Recommended Improvements.** Based on the hydraulic capacity review, available mapping, preliminary desktop and field observations, best professional judgement, and hydraulic model runs from item 2.e, three (3) feasible alternative improvements will be developed. Engineer will prepare the necessary conceptual level layouts and exhibits using available ESRI ArcGIS databases and shapefiles to clearly describe the proposed sewer improvements to achieve the future level of service desired for the interceptor as defined by the City standards.
- c. **Utility Coordination.** Engineer will coordinate with utility companies in the project area to obtain as-built drawings and locations of existing utilities. Identify potential utility conflicts for each of the three alternative improvements from available information and determine if relocations will be required. City shall provide utility contact information.
- d. **Property and Easement Review.** Engineer will review current property and easement information, provided by City, along existing alignment to determine feasible sewer improvements. Identify anticipated temporary and permanent easement requirements associated with the three alternative improvements.
- e. **Permitting Review.** Engineer will identify anticipated state and local permits associated with the three alternative improvements. A desktop site assessment will be completed to determine if wetlands or other water of the U.S. exist along the proposed interceptor improvements. Engineer will complete a protected species desktop habitat assessment to identify where potential habitat may occur. A Cultural Resource Investigation will be conducted to gather information on any known recorded historic and cultural resource sites that may be in the project vicinity. Engineer will review FEMA Flood Insurance Rate Map data for the project footprint to determine if a floodplain development permit or a floodplain modeling study will be required. The results of the desktop assessments will be used to identify potential permitting requirements for the three alternative improvements.
- f. **Opinion of Probable Costs.** Engineer will prepare a Class 4 opinion of probable construction cost for three (3) alternative improvements identified in task 3.b consistent with Association for the Advancement of Cost Engineering (AACE) standards. Engineer will base estimates on typical unit costs for similar sewer improvements from recent projects performed within the area and will incorporate knowledge of current construction cost trends. Preliminary unit cost estimates will include reasonable contingency and will be included in the TM.

- g. Design and Construction Schedule. Engineer will develop schedule illustrating the permitting schedule requirements, final design timeline, and construction duration for the recommended improvement.

4. TECHNICAL MEMORANDUM:

- a. Draft Technical Memorandum. Engineer will prepare a Draft TM to summarize the hydraulic model update and review, current and future growth conditions, recommended improvements for hydraulic constraints, permitting and property needs based on the proposed alternative improvements, opinion of probable costs for the alternative improvements, and schedule for the recommended improvement. Engineer will prepare and deliver a draft copy to City for review.
- b. Final Technical Memorandum. City comments from the Draft TM will be addressed and incorporated into the Final TM. Engineer will prepare two hard copies and an electronic copy of the final TM to be submitted to the City. The final recommended improvement approved by the City will be included in the Final TM and carried forward to final design under separate design authorization.

ASSUMPTIONS:

- Draft TM will include three (3) recommendation alternative improvements for City review and comment. City will provide feedback, and final recommendations will be developed.

DELIVERABLES:

- Draft TM – electronic format
- Final TM – Two (2) hard copies and electronic format

Schedule

Engineer will proceed with providing the services set forth herein within 14 calendar days of executing this Agreement. The draft TM will be issued within 120 days of receipt of information requested in the Responsibilities of City in the following paragraph.

Responsibilities of City:

1. City will attend project kickoff meeting and other meetings indicated in the Scope of Services.
2. City will provide GIS data for topography, property ownership and boundaries, aerial photography, sewer system characterization, waterlines, and zoning.
3. The City's design standards and design and construction manuals to be used for analysis are available on City's website. City will provide Engineer with any updates to the standards prior to beginning project.
4. The City will provide the existing and future conditions model for the West Prairie Lee Interceptor in Innovyze InfoSWMM format.
5. The City will provide flow monitoring data collected within the project basins area.
6. The City will provide the most recent Comprehensive Plan if different than what is available on City website.
7. The City will provide the updated Wastewater Master Plan upon completion if different than what is available on City website.
8. The City will provide as-built drawings for sewers within the project area.

9. The City will provide existing easement information.
10. The City will provide available historical sewer backup information.
11. The City will provide a list of utility contacts for utilities present in the project area.

Optional Services:

1. South Interceptor model updates, existing and future conditions hydraulic analysis
2. Additional Calibration required beyond one (1) in the expanded model.
3. Model Updates resulting from quality review results and as-built review.
4. Additional sewer pipe and manhole condition assessment review.

EXHIBIT B1

WEST PRAIRIE LEE SEWER IMPROVEMENT PROJECT AREA – NORTH INTERCEPTOR

