

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

This Agreement is by and between **the City of Lee's Summit, Missouri** ("Owner") and **Clarkson Construction Company** ("Contractor").

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

ARTICLE 1—WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: **Mouse Creek Trail Tunnel – Constructing a reinforced concrete box crossing under Pryor Road and connecting shared use path. Project also includes construction of a water quality basin and associated storm sewer. The work also includes relocation of water line, construction of retaining walls and installation of lighting and cameras.**

ARTICLE 2—THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **Project No. 105A: Mouse Creek Trail Tunnel**

ARTICLE 3—ENGINEER

- 3.01 The Owner has retained **GFT, inc.** ("Engineer") to ~~act as Owner's representative~~, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract, except as described in Paragraph 3.03 of this Agreement.
- 3.02 The part of the Project that pertains to the Work has been designed by **Engineer.**
- 3.03 The Owner shall be responsible for handling the following matters notwithstanding the fact that certain portions of the Contract Documents may list the Engineer as having responsibility for said matters:
- A. Furnish a Resident Project Representative;
 - B. Change of Working Hours;
 - C. Make Determinations for Unit Price Work (determine quantities and classifications);
 - D. Field orders, Work Change Directives, Change Orders;
 - E. Progress Payments;
 - F. Monitor Contractor's schedule, progress, schedule and conduct progress meetings;
 - G. Receive in writing questions from the Contractor regarding all matters concerning the requirements of the Contract Documents (sometimes referred to as requests for information or

interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents;

- H. The Owner will be the initial interpreter of the requirements of the Contract Documents;
- I. The Owner will render decision regarding the requirements of the Contract Documents;
- J. The Owner will judge of the acceptability of the Work; and
- K. Coordinate construction services provided by the Engineer as needed.

In the event that portions of the Contract Documents indicate that the Engineer is to handle, provide input, or receive notices or filings with regard to any of the above referenced matters, this Article 3 shall prevail.

ARTICLE 4—CONTRACT TIMES

4.01 *Time is of the Essence*

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Days*

- A. The Work will be substantially complete within **100 days** after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within **60 days after Substantial Completion**.

4.03 *Milestones*

- A. Completion of the punch list attached to the Certificate of Substantial Completion shall be achieved within 30 days after Substantial Completion.
- ~~B. Parts of the Work must be substantially completed on or before the following Milestone(s):~~

4.04 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

**Schedule of Deductions for Each Day of Overrun in Contract Time,
Original Contract Amount (or the Engineer's Estimate of the Total Construction Cost)**

From (\$)	To, and including (\$)	Assessment, per Day (\$)
0	25,000	475
25,001	50,000	475
50,001	100,000	500
100,001	500,000	700
500,001	1,000,000	950
1,000,001	2,000,000	1,100
2,000,001	3,000,000	1,225
3,000,001	4,000,000	1,625
4,000,001	5,000,000	2,025
5,000,001	6,000,000	2,425
6,000,001	7,000,000	2,825
7,000,001	8,000,000	3,225
8,000,001	9,000,000	3,625
9,000,001	10,000,000	4,025
10,000,001	70,000,000	4,300

1. *Substantial Completion:* Contractor shall pay Owner **\$1,100** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
2. *Completion of Remaining Work:* After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner **\$1,100** for each day that expires after such time until the Work is completed and ready for final payment.

3. *Milestones:*

- a. Contractor shall pay Owner **\$1,100** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of Paragraph 4.03.A, or until the time specified for the Work to be completed and ready for final payment, at which time the rate indicated in Paragraph 4.04.A.2 will apply, rather than this Milestone rate.
- b. Contractor shall pay Owner **\$1,100** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of each Milestone reflected in Paragraph 4.03.B, or until the time specified for Substantial Completion is reached, at which time the rate indicated in Paragraph 4.04.A.1 will apply, rather than this Milestone rate.

4. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.

- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

ARTICLE 5—CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:

- A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item).

ITEM NO.	ITEM DESCRIPTION	UNIT	QUANTITY	UNIT COST	TOTAL COST
1	CLEARING AND GRUBBING	AC	0.7	\$17,750.27	\$12,425.19
2	DEMOLITION AND REMOVAL	LS	1	\$42,755.80	\$42,755.80
3	UNCLASSIFIED EXCAVATION	CY	7,381	\$21.84	\$161,201.04
4	EMBANKMENT	CY	468	\$10.86	\$5,082.48
5	WASTE (HAUL OFF)	CY	5,274	\$15.32	\$80,797.68
6	AGGREGATE BASE (4") (MODOT TYPE 5) (SIDEWALK)	SY	816	\$37.09	\$30,265.44
7	PORTLAND CEMENT CONC. PVM. (6") (KCMMB 4K) (SHARED USE PATH)	SY	816	\$150.55	\$122,848.80
8	ROCK LINING	CY	41	\$183.53	\$7,524.73
9	LEE'S SUMMIT FIELD INLET (7'X6.5')	EA	1	\$13,925.00	\$13,925.00
10	JUNCTION BOX (4'X3')	EA	2	\$7,525.00	\$15,050.00
11	PRECAST MANHOLE 4' DIAMETER	EA	1	\$10,120.00	\$10,120.00

ITEM NO.	ITEM DESCRIPTION	UNIT	QUANTITY	UNIT COST	TOTAL COST
12	END SECTIONS (15" RCP)	EA	2	\$2,900.00	\$5,800.00
13	END SECTIONS (18" RCP)	EA	1	\$2,960.00	\$2,960.00
14	END SECTIONS (60" RCP)	EA	1	\$6,720.00	\$6,720.00
15	15" FLAP GATE	EA	1	\$5,250.00	\$5,250.00
16	STORM SEWERS (18") (HDPE)	LF	216	\$109.00	\$23,544.00
17	STORM SEWERS (15") (RCP)	LF	65	\$100.00	\$6,500.00
18	STORM SEWERS (18") (RCP)	LF	77	\$102.00	\$7,854.00
19	STORM SEWERS (36") (RCP)	LF	82	\$179.00	\$14,678.00
20	STORM SEWERS (42") (RCP)	LF	199	\$203.00	\$40,397.00
21	STORM SEWERS (60") (RCP)	LF	160	\$368.00	\$58,880.00
22	REINFORCED CONCRETE BOX (14' X 8'-2")	LF	252.2	\$7,576.49	\$1,910,790.78
23	CLASS B CONCRETE (RETAINING WALL)	CY	34.6	\$4,139.39	\$143,222.89
24	PEDESTRIAN FENCE (48 IN.)	LF	148	\$354.00	\$52,392.00
25	SILT FENCE	LF	383	\$2.00	\$766.00
26	COMPOST FILTER BERM	LF	239	\$3.50	\$836.50
27	AREA INLET CHECKS	EA	1	\$118.00	\$118.00
28	SEDIMENT REMOVAL	CY	8	\$505.28	\$4,042.24
29	SODDING	SY	2,287	\$7.27	\$16,626.49
30	SEEDING	AC	0.4	\$2,238.00	\$895.20
31	SIGN POST (SQUARE STEEL)	EA	1	\$590.00	\$590.00
32	SIGNS (PERMANENT)	SF	3	\$35.00	\$105.00
33	TUNNEL LIGHTING SYSTEM	LS	1	\$107,170.00	\$107,170.00
34	TUNNEL CAMERA SYSTEM	LS	1	\$60,000.00	\$60,000.00
				TOTAL	\$2,972,134.26

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

ARTICLE 6—PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on the basis of Contractor's Applications for Payment monthly performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
 - a. **100** percent of the value of the Work completed (with the balance being retainage).
 - ~~1) If 50 percent or more of the Work has been completed, as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and~~
 - b. **100** percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to **95** percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less **150** percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.
- C. In accordance with the Missouri Prompt Pay Act (8.960 RSMo), the Owner may withhold payment for any of the following reasons, or as determined by the engineer.
 - 1. liquidated damages
 - 2. unsatisfactory job progress
 - 3. defective construction work or material not remedied
 - 4. disputed work
 - 5. failure to comply with any material provision of the contract
 - 6. third party claims filed or reasonable evidence that a claim will be filed
 - 7. failure to make timely payments for labor, equipment or materials
 - 8. damage to a contractor, subcontractor or material supplier

9. reasonable evidence that a subcontractor or material supplier cannot be fully compensated under its contract with the contractor for the unpaid balance of the contract sum
10. citation by the enforcing authority for acts of the contractor or subcontractor which do not comply with any material provision of the contract and which result in a violation of any federal, state or local law, regulation or ordinance applicable to that project causing additional costs or damages to the owner.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

6.04 *Consent of Surety*

- A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

6.05 *Interest*

- A. All amounts not paid when due will bear interest at the rate as specified by Missouri State Statute, RSMo 8.960.

ARTICLE 7—CONTRACT DOCUMENTS

7.01 *Contents*

- A. The Contract Documents consist of all of the following:
 1. This Agreement.
 2. Bonds:
 - a. Performance bond (together with power of attorney).
 - b. Payment bond (together with power of attorney).
 3. General Conditions.
 4. Supplementary Conditions.
 5. Specifications as listed in the table of contents of the Project Manual.
 6. Drawings (not attached but incorporated by reference) consisting of **33** sheets with each sheet bearing the following general title: **Mouse Creek Trail Tunnel**
 7. Addenda (numbers **[number]** to **[number]**, inclusive).
 8. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.

- e. Warranty Bond, if any.
- 9. Price Indexing Statements, C-605
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 Contractor's Representations

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 - 1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
 - 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - 3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - 4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions, if any, at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
 - 5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
 - 6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
 - 7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.

8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

8.02 *Contractor's Certifications*

- A. Pursuant to Section 34.600, RSMo., and to the fullest extent permitted by law, Contractor certifies that it 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.
- B. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

8.04 *Other Provisions*

- A. This Agreement and all work related to this Project shall be governed by the laws of the State of Missouri and shall be litigated and/or mediated in Jackson County, Missouri.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

Owner:

City of Lee's Summit, Missouri

By: _____

Date: _____

Name: Mark Dunning

Title: City Manager

Attest: _____

Title: City Clerk

Address for giving notices:

220 SE Green Street

Lee's Summit, MO 64063

Designated Representative:

Name: George M. Binger III

Title: City Engineer

Address:

220 SE Green Street

Lee's Summit, MO 64063

Phone: 816.969.1800

Email: _____

APPROVED AS TO FORM:

Office of the City Attorney

Contractor:

By: _____

Date: _____

Name: _____

Title: _____

(If [Type of Entity] is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Title: _____

Address for giving notices:

Designated Representative:

Name: _____

Title: _____

Address:

Phone: _____

Email: _____

License No.: _____
(where applicable)

State: _____