

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES
FOR FOUR STORMWATER IMPROVEMENT PROJECTS (RFQ NO. 543-32272)
SW BLAZING STAR DRIVE, SW 34th STREET, NE DELTA SCHOOL ROAD, SW
PINNELL DRIVE**

THIS AGREEMENT made and entered into this ____ day of _____, 20____, by and between the City of Lee's Summit, Missouri (hereinafter "City"), and Lamp Rynearson (hereinafter "Engineer").

WITNESSETH:

WHEREAS, City intends to have engineering services for Four Stormwater Improvement Projects (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 THE ENGINEER**

This project is comprised of the scope of services as outlined below:

General

ENGINEER shall perform professional engineering, design, preparation of easement descriptions for property acquisition, and bidding as hereinafter stated which include customary civil engineering services.

Coordinate the engineering and design of improvements for the four stormwater projects identified above with the City.

1. In general, the Project consists of the following:
 - a. Project areas and purpose:

SW Blazing Star Drive: The primary purpose for this project is to address structural flooding of the property at 1005 SW Blazing Star Drive. This project includes grading and installation of additional infrastructure to capture the flow and convey it into the public system.

SW 34th Street: 714 SW 34th St and 718 SW 34th St receives stormwater to the back of their home from the neighbor's yards. There is not enough grade to move the water away from the back of their homes. The main improvements will include enclosed system improvements and grading. Other improvements may involve relocation of water lines.s

NE Delta School Road: The primary purpose for this project is to address structural flooding of the properties at 4251 NE Port Drive and 4250 NE Sun Court. The existing system has exceeded capacity and flooding the commercial/industrial buildings. This project will include analysis of the public system, and the necessary improvements to capture the flow and convey it around the properties. Some utility relocations may be necessary for sanitary, water and/or gas.

SW Pinnell Drive: The home at 105 SW Pinnell Drive receives stormwater to the back of their home from the rear yard and early childhood center property. A sanitary sewer relocation may be necessary to facilitate stormwater improvements.

- b. Design stormwater improvements for each of the four project sites.
 - c. Right-of-Way / Easement services for the projects, which will include permanent and temporary construction easement exhibits, as well as written descriptions.
 - d. Cost of permits, if any, to be paid by the City. No MDNR sanitary sewer, water, or land disturbance permits are anticipated.
 - e. Preparation of a Stormwater Pollution Prevention Plan (SWPPP).
2. Contract with Anderson Survey Company to provide field and property survey data. Surveying design work will include easement document preparation and property tract map exhibits.

DETAILED SCOPE OF SERVICES

TASK 1 – PROJECT MANAGEMENT, MEETINGS AND QUALITY CONTROL

1. Project Management & Project Control
 - a. Develop and implement Project Management Plan
 - b. Monthly invoices and distribute to client with project status reports
 - c. Develop a design schedule in a form compatible with MS Project, current edition. Submit copy to City and provide digital updates at scheduled progress meetings.
 - d. Perform internal Quality Control reviews on all project deliverables.
2. Attend Meetings with City
 - a. Project Kick-off meeting to finalize project objectives and exchange information. Prepare meeting agenda, provide meeting materials, and prepare meeting minutes.

- b. Conduct two (2) project progress meetings to discuss project status, analysis' / design options and coordination effort etc. Prepare meeting agenda, provide meeting materials, and prepare meeting minutes for each meeting held with City Staff.

TASK 2 - PUBLIC OUTREACH

1. Neighborhood Questionnaire
 - a. Prepare draft Neighborhood Questionnaire for City Review.
 - b. Prepare mailing list to the City for properties within the study area based on GIS data and county tax information. Shipping and handling to be provided by the City.
 - c. Compile and review responses.
 - d. Provide customer service for phone inquiries from residents.
 - e. Meet with property owners (up to 6 meetings total).
2. Public Information Meeting:
 - a. Prepare for and attend one public information meeting, if requested by the City, to explain the project to property owners and key stakeholders, and to receive public comments at a time and place arranged for by the City. Separate project information displays will be setup at the public meeting for each of the four project sites.
 - b. Prepare exhibits, including preliminary plans (showing right-of-way taking and easements).
 - c. Have persons available to explain the proposed work and to answer questions.
 - d. The Consulting Engineer will be available to meet with City staff and concerned property owners as directed by the City to discuss the project at any time throughout the project.

TASK 3 - DATA ACQUISITION AND REVIEW OF EXISTING INFORMATION

1. Review GIS, utility mapping, and available record drawings provided by the City. Review current available property and easement information (plats, easements, GIS, reports) provided by the City.
2. Topographic Survey provided by Sub-Consultant, Anderson Survey Company.
 - a. Locate property boundary corner monuments sufficient to determine the location of property boundary and street right of way lines in the area to be surveyed.
 - b. Set a minimum of three horizontal control points and three benchmarks in the surveyed area.
 - c. Conduct topographic survey
 - Determine elevations at approximately 50-foot intervals and as otherwise needed to show develop existing surface with contours at one-foot intervals.

- Show low opening and finish floor elevations of subject property and adjacent structures.
 - Show the location of visible improvements within the surveyed area.
 - Show the location of visible utilities, record location of utilities, and underground utilities as marked by Missouri's One Call service.
- d. Provide ownership information of the surveyed parcels to the City for the acquisition of Ownership and Encumbrance Reports.
- e. Contract with Utila Safe to pothole up to 22 locations for this Project and determine horizontal and vertical location of potholed features. This assumes up to 8 locations on NE Delta School Road, up 6 locations on SW Pinnell Drive, up to 4 locations on SW Blazing Star Drive and up to 4 locations on SW 34th St. Proposed potholing locations will be coordinated with the City.
- f. Prepare drawing of the above information and provide the drawing in hard copy and digital format.
3. Perform site reconnaissance to review possible flooding areas as determined through the findings of the Resident Questionnaire. Provide condition assessment of existing stormwater infrastructure within Project.
4. Schedule and coordinate project activities with the City (where applicable).

TASK 4 - PRELIMINARY DESIGN

1. Hydrology and Hydraulics

Determine existing and proposed design flow rates for the drainage system. Summarize results including a description of the models and hydrologic and hydraulic methods used for the analyses and basis for using the model selected.

- a. Hydrology Analysis – Develop the runoff flow rates for a minimum 10% & 1% storm events for the project watershed. Provide the appropriate hydrologic parameters used for runoff computations including runoff coefficients, curve numbers, percent imperviousness, time of concentration, rainfall intensity and/or rainfall hyetograph. Summarize the results including the methodology used for the analysis and explain the basis for the selected approach.

SW Blazing Star Drive, SW 34th Street, and SW Pinnell Drive: Rational Method

NE Delta School Road: Rational Method for enclosed system, Rational Method for peak flow into detention basin and peak flow out of basin, based on outfall structure hydraulic analysis.

- b. Hydraulic Analysis – Perform hydraulic calculations per APWA 5600 in sufficient detail to determine conduit and channel sizes. Summarize the methodology used for the hydraulic analysis and explain the basis for the selected approach.

A stormwater model will be developed for capacity analysis under existing conditions. Survey data, as-builts, GIS will be used to create a model.

SW Blazing Star Drive and SW 34th Street: Assume downstream infrastructure to be flowing full when modelling. Determine alignment, flowlines, pipe sizes and

structure locations. Perform minimum grading of lots to meet 1-foot freeboard threshold.

NE Delta School Road: Create an existing conditions hydraulic model to assess the current capacity and determine where the system fails for a 4% storm event. The entire system will be analyzed starting at the outfall. The east branches of the system will be treated as two structures to simplify the process. A total of 24 structures will be analyzed.

Depending on findings from existing conditions model, two alternatives will be presented and discussed with City. Either remove, replace and upsize portions or all of existing storm sewer on existing alignment or split flow and reroute on new alignment along NE Sun Court. Additional upstream detention could potentially reduce peak flows but is not anticipated to change required pipe sizes downstream as limited detention volume is available based on existing site conditions.

SW Pinnell Drive: Evaluate two alternatives. Either regrade existing property and early childhood center property with potential addition of detention or extend storm sewer from SW 2nd Street. Grading could include the addition of a BMP to help mitigate the discharge from frequent storm sewer events. It is anticipated that a storm extension would slightly decrease the overall time of concentration for the subwatershed.

- c. Utilize City Design Standards as appropriate.

2. Utility Coordination

- a. Utility work involves possible water main relocation, sewer main relocation and utility coordination. Coordinate with Lee's Summit Water Utilities regarding water and sanitary sewer infrastructure.

SW Blazing Star Drive and SW 34th Street: Anticipated improvements will cross water and/or sanitary sewer facilities. No water or sewer relocations are anticipated.

NE Delta School Road: Relocating the storm sewer infrastructure may necessitate water main and sanitary sewer main relocations.

SW Pinnell Drive: Extending storm sewer from SW 2nd Street would likely necessitate water main or sanitary sewer main relocation, due to existing infrastructure proximity to streets.

- b. Conduct a coordination meeting among all known affected utility owners to coordinate efforts for any necessary utility relocations. Engineer will include the surveyed locations of the observable and marked utilities in the construction plans. Engineer will also include proposed and/or relocated utility information in the construction plans as provided by the utility companies.
- c. If determined necessary after preliminary review of potential utility conflicts and consultation with the City, a plan shall be prepared and presented for the City to review. Said plan shall detail significant utility conflicts and proposed pothole locations and associated costs for verifying existing utilities. An allowance for

potholing has been included in the survey services provided by the sub-consultant.

- d. Submit a utility report, which is to include representatives contacted, meeting dates, and a summary of discussions, requests, observations and/or concerns.

3. Preliminary Design Submittal

a. Prepare Field Check Plans.

- Cover Sheet
- General Notes, Quantities
- Overall Layout
- Survey Reference / Existing Conditions
- Drainage Area Map
- Design Calculations
- Plan and Profile of Improvements
- Grading Detail Sheet
- Detail
- Quality Assurance Review

Deliverables –

- One full size, one half size, and one .pdf copy of the Preliminary Plans.
 - One hard copy and one .pdf of Preliminary Opinion of Probable Construction Costs
 - One .pdf copy of all Title Reports (acquired by City)
 - One .pdf copy of utility maps provided by utilities
- b. Field Check meeting to be performed with representatives of the Consulting Engineer and the City to review the Field Check plans.
 - c. Property Acquisition Documents.
 - Provide survey exhibit map and descriptions for preparing Right-of-Way/Easement acquisition documents for the City's use in acquiring the property. Documentation will include individual tract maps with a description of temporary and permanent acquisition for each property. The City will provide a standard easement acquisition document for use by Engineer.
 - The fee for providing property acquisition documentation is based on six permanent right of way and twenty-four temporary construction easements. Title work fees are to be paid by the City. Survey exhibit maps and easement descriptions will be prepared after Field Check meeting occurs, to limit need for revisions during Final Design.

Deliverables –

- One hard copy and one.pdf copy of the survey exhibit map and easement description for each tract

TASK 5 - FINAL DESIGN

1. Complete final design and prepare draft final plans, including a quality assurance review.
2. Final utility coordination and develop a utility relocation schedule.
3. Prepare project manual. Prepare contract document special provisions, to modify City standard technical specifications as necessary. The City will provide front end documents for the project manual for Engineer to modify for applicability to project.
4. Prepare a detailed opinion of probable construction cost.
5. SWPPP Development.
 - Description of the construction activity, soils, sequence of activities disturbing soils, staging of erosion and sediment control, controls to reduce sediment and minimize pollutants, pollutant sources.
 - Determine drainage patterns, disturbed areas, temporary or permanent stabilization.
6. Estimate time required to complete construction.
7. Submit Draft Final Plans and Project Manual to City for review.

Deliverables –

- One full size, one half size, and one .pdf copy of the Draft Final Plans
 - One hard copy and one .pdf of Final Opinion of Probable Construction Costs
 - One hard copy and one .pdf copy of the Project Manual (including SWPPP and job special provisions)
8. Provide plan modifications and sealed documents based on review comments received from City.

Deliverables –

- One full size, one half size, and one .pdf copy of sealed Final Plans
- One hard copy and one .pdf of sealed Final Opinion of Probable Construction Costs
- One hard copy and one .pdf copy of the sealed Project Manual (including SWPPP and job special provisions)

TASK 6 – BIDDING PHASE SERVICES

1. Provide the City with digital PDF copies of the plans and specifications for distribution using QuestCDN. The City will coordinate with QuestCDN to advertise the project. The City shall be responsible for fees directly related to plan distribution and hard copies as requested.

2. Respond to Contract and City questions as requested by the City during the bid phase of the project.
3. Prepare written addenda to the bidding documents as required and or requested (assumes 1 addendum).
4. Pre-bid conference meeting. Prepare meeting agenda and provide meeting minutes.

TASK 7 – CONSTRUCTION PHASE SERVICES

1. The scope and fee for these services will be developed during the Bidding Phase of the project and will be addressed with a modification to this agreement.

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"):

1. Sanitary Sewer Relocation. Prepare preliminary plan and profiles, final plan and profiles, and standard City details. Coordinate proposed relocation with City's project manager and Water Utilities representative. Drawings to be incorporated into storm sewer improvement set of plans if Optional Service is requested. Assumes relocation is less than 1,000 linear feet and therefore excludes MDNR sewer extension construction permitting.
2. Water Main Relocation. Prepare preliminary plan and profiles, final plan and profiles, water connection details, and standard City details. Coordinate proposed relocation with City's project manager and Water Utilities representative. Assumes relocation extent is limited to less than 2,000 linear feet.

ARTICLE III SCOPE OF SERVICES TO BE PROVIDED BY CITY

City shall provide the following services to Engineer:

1. Make available all project information in the City's possession, including reports, drainage studies, as-built plans, and City utility locations, sizes and materials.
2. Make provisions for the Engineer and surveying subconsultant to enter property for the performance of this scope of services.
3. Obtain Ownership & Encumbrance Documents from a Title Company, for select properties designated by the Engineer.
4. Provide a timely review of all submittals.

5. Perform appraisals and negotiate with property owners for acquiring permanent and temporary construction easements for this Project.
6. Provide EJCDC Contract Documents and Division One – Special Contract Provisions.
7. Pay any fees associated with permits.
8. Advertise and obtain bids for the project.
9. Provide on-site construction observation and construction contract administration.

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 Fifty Nine Thousand Eight Hundred Dollars (\$159,800), 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 Forty Thousand Dollars (\$140,000).
- B. The cost of all Optional Services covered under Article II shall be billed hourly at the rates set forth in Exhibit A attached hereto and incorporated herein by reference. Expenses incurred to provide the Optional Services shall be billed as set forth in Exhibit A. The total fees (hourly fees and expenses) for the Optional Services shall not exceed the total sum of Nineteen Thousand Eight Hundred Dollars (\$19,800).
- C. If so requested by Engineer, City will make payment monthly for Basic Services and Optional Services that have been satisfactorily completed. The City shall make payment to Engineer within a period not to exceed thirty (30) days from the date an invoice is received by City. All invoices shall contain the following information:
 1. Project Name/Task Name/RFP Number/Description of Agreement.
 2. Invoice Number and Date.
 3. Purchase Order Number issued by City.
 4. Itemized statement for the previous month of Labor (including Personnel Description, Title or classification for each person on the Project, Hours Worked, Hourly Rate, and Amount), Itemized Reimbursable Expenses, and Invoice Total.
 5. Description of monthly progress detailing the amount of the services completed to date and projected completion time.

6. Project Billing Summary containing the 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.

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:

Dates are subject to the Engineer receiving a Notice to Proceed by the end of July.

Data Acquisition (including survey): August – September 2019

Preliminary Design: September – October 2019

Final Design: November – December 2019

ROW Appraisals & Acquisitions (by City): November 2019 – February 2020

Bidding (by City): March 2020

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

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

ARTICLE VI INSURANCE

- A. **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: | \$2,000,000 |
| Personal & Advertising Injury: | \$2,000,000 |
| Products/Completed Operations Aggregate: | \$2,000,000 |
| General Aggregate: | \$2,000,000 |
- 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: \$2,000,000

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. **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.
- B. **OWNERSHIP OF ENGINEERING DOCUMENTS:** Payment by City to Engineer as aforesaid in Article IV shall vest in City title to all drawings, sketches, studies, analyses, reports, models, and other paper, documents, computer files, and material produced by Engineer exclusively for the services performed pursuant to this Agreement up to the time of such payments, and the right to use the same without other or further compensation, provided that any use for another purpose shall be without liability to the Engineer. Any reuse without written verification or adaptation by Engineer for the specific purpose intended will be at City's risk and without liability or exposure to Engineer, and City shall indemnify and hold harmless, to the extent allowed by the Constitution and Laws of the State of Missouri, Engineer from all claims, damages, losses, expenses, including attorneys' fees arising out of or resulting therefrom.
- C. **MODIFICATIONS TO 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.
- D. **EMERGENCY CHANGES IN SERVICES:** The Director of Public Works, with the consent of the City Manager, is authorized to execute on behalf of the City modification agreements as provided for in subsection C. above where there is an emergency and the overall compensation authorized in Article IV above, and any supplements or modifications thereto, is not increased. For purposes of this subsection, an "emergency" shall mean those unforeseen circumstances that present an immediate threat to public health, welfare, or safety; or when immediate response is necessary to prevent further damage to public property, machinery, or equipment; or when delay would result in significant financial impacts to the City as determined by the Director of Public Works and the City Manager.

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

- E. **TERMINATION:** In the event of termination by City, if there are any services hereunder in progress but not completed as of the date of termination, then said Agreement may be extended upon written approval of the City until said services are completed and accepted.
1. Termination for Convenience: The services called for by this Agreement or any supplements thereto may be terminated upon request and for the convenience of City upon thirty (30) days advance written notice. City shall pay Engineer for all services rendered up to the date of termination.
 2. Termination for Cause: This Agreement may also be terminated for cause by City or Engineer. Termination for cause shall be preceded by a fourteen-(14) day correction period effective upon delivery of written notice. City shall pay Engineer for all services rendered up to the date of termination. In the event of termination for cause by City, compensation for services rendered by Engineer up to the date of termination shall be offset by City's 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.
- F. **COMPLIANCE WITH LAWS:** Engineer shall comply with all Federal, State, and local laws, ordinances, and regulations applicable to the services. Engineer shall secure all licenses, permits, etc. from public and private sources necessary for the fulfillment of its obligations under this Agreement.
- G. **SUBLETTING ASSIGNMENT OR TRANSFER:** Engineer shall not 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.
- 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 contract 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 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.
- L. **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.
- M. **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.
- 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.
- 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 codes.
- 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. 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.
- W. 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	Director of Public Works
City of Lee's Summit	City of Lee's Summit
220 SE Green Street	200 SE Green Street
Lee's Summit, MO 64063	Lee's Summit, MO 64063

and notices to Engineer shall be addressed to:

Lamp Rynearson
Attn: Dan Miller
9001 State Line Road, Ste. 200
Kansas City, Missouri 64114-3232

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

ATTEST:

City Clerk Trisha Fowler Arcuri

APPROVED AS TO FORM:

Nancy K. Yendes,
Chief Counsel of Infrastructure and Planning
Office of City Attorney

ENGINEER:

BY: _____
TITLE: _____

ATTEST:
