

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES  
FOR COLBERN ROAD IMPROVEMENTS FROM M350 TO DOUGLAS STREET  
(RFQ NO. 569-32272)**

**THIS AGREEMENT** made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Lee's Summit, Missouri (hereinafter "City"), and Garver, LLC (hereinafter "Engineer").

**WITNESSETH:**

**WHEREAS**, City intends to have engineering services for the Colbern Improvements (hereinafter "Project"); and

**WHEREAS**, Engineer has submitted a proposal for the Project and an estimate of engineering costs to perform the Project; and

**WHEREAS**, the City Manager is authorized and empowered by City to execute contracts providing for professional engineering services; and

**WHEREAS**, City desires to enter into an agreement with Engineer to perform the Project; and

**WHEREAS**, Engineer represents that the firm is equipped, competent, and able to undertake such an assignment.

**NOW THEREFORE**, in consideration of the mutual covenants and considerations herein contained, **IT IS HEREBY AGREED** by the parties hereto as follows:

**ARTICLE I  
SCOPE OF BASIC SERVICES TO BE PROVIDED BY ENGINEER**

Engineer shall provide the following professional engineering services to City ("Basic Services"):

**1.1 General**

Generally, the scope of services includes surveying, roadway and bridge design, traffic studies, water line and gravity sewer design, preparation of property acquisition documents, geotechnical investigations, traffic data collection, and utility coordination for improvements to Colbern Road from Missouri (MO) Route 350 to 2000 feet east of Douglas Street. Improvements will consist primarily of constructing a new four and five lane city street with curb & gutters, sidewalks, lighting, shared-use paths, enclosed stormwater systems, stormwater BMP's, MSE retaining walls, signage, pavement markings, and a new water main and relocated gravity sewer, and landscaping/streetscaping features. Also included will be a new bridge over the UPRR and Little Cedar Creek, reconfiguring the

Colbern Road and Blue Parkway roundabout, and relocating Blue Parkway north of Colbern Road to tie into the reconfigured Colbern Road and Blue Parkway roundabout.

## **1.2 Surveys**

### **1.2.1 Design Surveys**

Contract with Powell CWM, Inc. (Powell) to provide field survey data for designing the project, and this survey will be tied to the City's control network.

Powell will conduct field surveys, utilizing radial topography methods, at intervals and for distances along the project site as appropriate for modeling the existing ground (maximum of 50 foot intervals), including locations of pertinent features or improvements. Powell will locate buildings and other structures, streets, bridges (column and abutment locations included), existing enclosed drainage features, existing cross road culverts, existing street lights, existing traffic signals, pull boxes, controllers, sidewalks, trails, street signs, trees over eight inches in diameter, visible utilities as well as those underground utilities marked by their owners and/or representatives, and any other pertinent topographic features that may be present at and/or along the project site. Powell will establish control points for use during construction.

Powell will provide four (4) additional pick-up survey days and associated post processing for additional pick-up surveying.

### **1.2.2 Hydraulic Surveys**

Powell will conduct field surveys to assist in the development of the hydraulic modeling. Eleven cross sections will be taken at the following locations: high point at centerline of roadway, at the upstream toe of roadway embankment, at the downstream toe of roadway embankment, four at upstream valley section, and four at downstream valley section (spaced 200 feet apart along the stream centerline). The sections will be wide enough to include the top of bank, top of water surface, flow line of the creek, limits of the 100 year floodplain, and any other pertinent features important to the hydraulic modeling.

### **1.2.2 Property Surveys**

Powell will locate existing monumentation representing right of way and/or easements based on record data which will be provided by an abstractor under a sub consultant agreement with Powell.

## **1.3 Traffic Data Collection**

Engineer will subcontract with The Traffic Group to perform data collection at the following locations:

- NW Colbern/Bannister Road and NW Pryor Road
- Mo Route 350 SB on ramp and off ramp
- Mo Route 350 NB on ramp and off ramp.
- NW Colbern Road and NW Blue Parkway
- NW Colbern Road and NW Blue Parkway/Unity Way
- NW Colbern Road and N Main Street
- NW Main Street and NW Victoria Drive
- NW Colbern Road and NE Douglas Street
- NE Douglas Street and WB I-470 on ramp and off ramp
- NE Douglas Street and EB I-470 on ramp and off ramp
- NE Douglas Street and NE Mulberry Street
- NE Douglas Street and NE Victoria Drive

The traffic data collection will include 24-hour video turning movement counts at the above intersections with truck classifications and pedestrian crossings included. The collection will occur shortly after Notice to Proceed and will be conducted when conditions are above freezing, while school is in session, and avoiding holiday influences.

#### **1.4 Geotechnical Services**

Engineer will subcontract with Geotechnology, Inc. to provide geotechnical investigations and recommendations for the new bridge and MSE retaining walls.

Geotechnology will provide a boring plan which will include the following:

- Retaining Walls – Up to thirteen (13) borings to 10 to 15-ft in depth with one being 20 feet deep. Up to ten (10) rock probes in the cut sections 5 to 10-ft deep. Probes will not include soil sampling. Borings and rock probes will be alternated between the north and south sides of Colbern Road resulting in an approximate interval of 200 feet.
- Bridge Substructure – Six borings, two borings at each bent. For the purpose of evaluating drilled shafts each boring will be extended 25-ft into rock.

#### **1.5 Subsurface Utility Engineer (SUE) Level A**

Engineer will subcontract with Geotechnology, Inc. to perform subsurface excavation for up to four (4) locations to develop accurate location and depth information for underground utilities.

## **1.6 Administration and Project Management**

The Engineer shall perform the following Administration and Project Management Tasks:

1. Set up and attend the project kick-off meeting.
2. Personnel planning, project scheduling, and budget control.
3. Plan and hold internal project team meetings.
4. Plan and hold City project weekly coordination and bimonthly progress meetings.
5. Prepare agendas and meeting minutes for bimonthly progress meetings, and submit monthly progress report documents, along with the monthly invoices. The Monthly Progress Report shall document the following:
  - a. Past Month's Activities/Accomplishments
  - b. Pending Issues and Decisions
  - c. Problem Areas and Recommended Corrective Actions
  - d. Budget Summary Status (showing % complete vs. % expended per task)
  - e. Schedule Summary Status (chart showing baseline schedule vs. actual schedule)
  - f. Next month's Planned Activities/Goals
  - g. Summary of Coordination Efforts (including correspondence summaries)
6. Develop subconsultant contracts, review, and process subconsultant invoices.

All of the above items shall include/address sub-consultant tasks.

## **1.7 Stakeholder Coordination**

The Engineer shall perform the following Stakeholder Coordination Tasks:

- Attend stakeholder face to face meetings:
  - Ten (10) meetings with Unity Village (Unity Village, Unity Villas, Newmark Grubb Zimmer)

- Four (4) meetings with Howard and Dorothy Stayton
- Eight (8) meetings with the Lee's Summit Municipal Airport/FAA
- Four (4) meetings with MoDOT LPA Staff
- Three (3) meetings with the Union Pacific Rail Road (UPRR)

The Engineer will develop agendas and meeting minutes for all meetings. Agendas will be submitted to City for review two (2) weeks prior to any meeting and meeting minutes will be completed and submitted to City within (2) weeks after said meeting.

In addition to the Stakeholder Coordination the Engineer will make two (2) presentations to the City Council for the purposes of informing the public and to solicit feedback. The Engineer will develop a presentation utilizing powerpoint or presentation boards as directed by the City. Engineer will submit the presentation or draft exhibits to the City two (2) weeks prior to presentation for approval and comment.

## **1.8 Quality Assurance and Quality Control**

The Engineer shall perform the following Quality Assurance and Quality Control Tasks:

- Develop project Quality Control Plan (QCP) document.
- Perform independent Quality Assurance Reviews to verify that QCP is being followed and continuously updated as required.
- Perform independent Quality Control reviews on the design and plans.
- Perform Conceptual, Preliminary, Right of Way, and Final Design Reviews.
- Perform Conceptual, Preliminary, Right of Way, and Final Plan Reviews.
- Perform Engineers Estimate of Probable Cost Reviews.
- Review deliverables from subconsultants such as, but not limited to:
  - Geotechnical Reports
  - Survey Design Files
  - Traffic Data Collection Summaries
  - Right of Way and Easement Acquisition Documents

## **1.9 Utility Coordination**

Furnish plans to all known utility owners potentially affected by the project at the approved conceptual, preliminary, and final design stage of plan development.

Conduct the following coordination meetings among all known affected utility owners to enable them to coordinate efforts for any necessary utility relocations.

- Kickoff Meeting (30 days after conceptual design submittal to utility companies)
- Preliminary Design Meeting (30 days after preliminary submittal to utility companies)
- Final Design Meeting (30 days after final plans submittal to utility companies)

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.

Attend coordination meetings with the City as required, and prepare agendas and meeting minutes for these meetings.

## **1.10 Environmental Services (NEPA)**

Engineer will coordinate the completion and approval of a Categorical Exclusion 2 (CE2) with the Missouri Department of Transportation (MoDOT). The following tasks shall be performed as required by MoDOT.

### **1.10.1 Request for Environmental Review (RER)**

Engineer will obtain information pertinent to complete online submittal of the RER from the City. Engineer will submit the RER to MoDOT for review and address comments requests for additional information.

### **1.10.2 Data Collection and Constraints**

Engineer will develop an initial constraints map and collect data from governmental and other sources to document potential environmental constraints. Desktop constraints will be verified thorough a detailed site visit to review the presence of readily visible and environmentally sensitive features such as wetlands, endangered and threatened species habitats, streams, ponds, rivers, farmlands, historic properties, residences, any hazardous material sites, and businesses. Photos of the site will be taken of environmentally sensitive features.

### **1.10.3 Agency Coordination**

Engineer will coordinate with the State Historic Preservation Officer (SHPO) and MoDOT regarding Section 106, establish an Area of Potential Effect (APE), and cultural, historical and archaeological clearance for the project. If a cultural resources survey and/or architectural survey is required, this will be considered extra work to be approved in writing by the Client. For the purposes of this contract, fees for historic and archaeological surveys are included.

Engineer will complete a *de minimis* Section 4(f) determination and submit to MoDOT for review and approval. Section 4(f) *de minimis* coordination is anticipated as there is a house on the National Register of Historic Places (NRHP) that may be affected by the project.

Engineer will obtain an IPaC list from the US Fish and Wildlife Service (USFWS) to document federally listed threatened and endangered species in the area. Garver will also obtain the Missouri Department of Conservation (MDC) Inventory of state listed species. Potential impacts to listed species will be evaluated. Spatial, seasonal, or temporal restrictions or design modifications will be evaluated. Informal Section 7 consultation with the USFWS is anticipated in this scope.

Engineer will coordinate with the US Army Corps of Engineers (USACE) and Missouri Department of Natural Resources (MDNR) regarding potential impacts to jurisdictional waters of the US and water quality.

Engineer will coordinate with the City and the Mid-America Regional Council (MARC) in determining the level of air quality analysis required.

#### 1.10.4 Special Environmental Studies

##### Habitat Assessment

Engineer will complete a habitat assessment for the project that will include documentation of the potential project effects on state and federally listed species. The habitat assessment will include detailed evaluation for the preferred habitats of the listed species and provide an effects determination for each species.

##### Wetland Delineation

Engineer will complete a wetland delineation that will include field evaluation and mapping of jurisdictional waters. A report of the findings will be completed and presented to the USACE for use in Section 404 permitting. Engineer will coordinate avoidance, minimization and mitigation with the designer and the City. We will assess the potential effect of construction activities of the proposed project on jurisdictional waters and wetlands, consult with the US Army Corp of Engineers (USACE), the US Fish and Wildlife Service, and MDNR to propose mitigation measures if required.

##### Noise Analysis

Engineer will conduct a detailed noise analysis of the proposed improvements from State Route 350 to NE Douglas Street. The noise study will take into account existing and future traffic volumes. Potential traffic noise impacts will be evaluated and if needed one barrier analysis will be completed. The noise study will be conducted in accordance with

MoDOT Noise Policy. Engineer will submit the noise analysis to MoDOT for review and approval.

1. Enter the pavement centerlines, edges, and profiles (along with side slope information) into the TNM model from plan, profiles, and cross-sections. Topographic mapping for insertion of terrain lines would also be used where possible.
2. Based on traffic counts and projections provided by MoDOT and/or the Garver, determine the appropriate design traffic volumes to be used in the analyses. Typically, LOS "D" traffic volumes are used for traffic noise modeling because this is the condition where the combination of traffic volumes and speeds produce the highest noise levels. At LOS "E" or "F," the traffic volumes would be higher, but the lower speeds at these levels of service create less noise.
3. Enter all required parameters into the TNM computer model to simulate the existing conditions.
4. Measure in the field the existing traffic noise levels during periods when LOS "D" traffic volumes exist. Use the measured noise levels to validate the TNM model by showing a difference of 3 dBA or less between the two. If necessary, make appropriate adjustments to the base TNM computer model to reflect the existing conditions as well as possible.
5. Use the calibrated TNM computer model to compute and plot the existing and future 66 dBA sound contours.
6. In areas where eligible receptors exist and the noise levels are or would be expected to be higher than the 66 dBA levels, determine the locations (i.e., usually at the right-of-way limits or just off the edge of shoulder) and heights (up to a maximum of 20 feet) of required walls.
7. Compute the expected reductions in dBA levels for each wall. The reduction must be at least 7 dBA for 67% of first-row receptors and 5dBA for 67% of first-row impacted receptors to justify the construction of a wall. One barrier analysis are included in this scope of work.
8. Compute the expected wall square footage, and compare these estimated areas to the allowed square footage per benefitted receptor. Square footage greater than 1300 Sq. Ft. per benefitted eligible receptor cannot generally be justified according to MoDOT criteria.

9. Prepare summary tables to list the costs and benefits of the potential walls, and identify which walls are eligible for funding, according to MoDOT criteria.
10. Prepare and submit a report which summarizes the findings and noise contours.
11. Revise the study report per comments received from the property owners, City and MoDOT, and submit the final report to MoDOT for review/approval.

#### Water Quality

Engineer will coordinate with the City, Unity Village, and MDNR on protecting the Unity Village drinking water supply. We will assess the potential for any water quality impacts, including potential contamination of groundwater aquifers or surface waters and document measures to be incorporated to minimize adverse water quality effects. Disturbance of land equal to or greater than one acre will require a National Pollutant Discharge Elimination System (NPDES) permit at the time of construction.

#### Hazardous Materials

Engineer will conduct a review of MDC's hazardous materials sites and complete a site review documenting potentially hazardous materials sites that could affect construction of the project within the standard ASTM guideline parameters.

### **1.11 Conceptual Design (10% Submittal)**

#### **1.11.1 Traffic Engineering, Modeling, and Trip Generation**

The engineer will generate future year traffic volumes, analyze existing and proposed conditions, and assess multiple access management options. The following tasks will be completed to support the development of a preferred option to carry into development of final construction plans.

- The engineer will perform field observations of existing delay within the study area to validate base models
- The engineer will develop traffic volumes for multiple scenarios to be used for analysis from the raw data collected in **Item 1.3**

- Engineer will develop 2019 design traffic volumes for the existing configuration
- Engineer will study background growth trends in area and project base 2030 (interim) and 2040 (ultimate) forecasts
- Engineer will perform Trip Generation for known developments within the study area
  - Conduct Stakeholder Meeting to determine the location/size of the proposed developments within Unity Village and other locations
  - Review Lee's Summit Thoroughfare Plan and prior studies
  - Develop assumptions methodology for stakeholder review
  - Perform trip generation for all study area developments assuming a base driveway configuration
  - Add trip generation to the 2030 (interim) and 2040 (ultimate) base volumes to produce 2030/2040 design volumes
- The Engineer will use the 2030/2040 design volumes and re-route traffic for up to 3 access management scenarios that assume median openings with some driveways having restricted movements. Options to relocate Main Street will be included.
- The engineer will perform capacity analysis for the existing and proposed configurations. The analysis includes:
  - Multi-Modal Level of Service Analysis for three proposed cross-sections of Colbern Road using Complete Streets LOS software
  - Shared-path Level of Service/Suitability analysis
  - Intersection Level of Service analysis using Synchro/SimTraffic software for the following scenarios
    - 2019 Existing Configuration (AM/PM)
    - 2030 Existing Configuration (AM/PM)
    - 2040 Existing Configuration (AM/PM)
    - 2030 Build Configuration (AM/PM) – up to 3 scenarios
    - 2040 Build Configuration (AM/PM) – up to 3 scenarios
    - Supplemental Roundabout Analysis using Sidra (2030/2040 AM/PM)
  - The engineer will summarize all preliminary findings in a meeting with City staff before finalizing any recommendation
- The engineer will produce a selected alternative which includes access management features, bicycle accommodations, traffic signal modifications, future signal locations, roundabout configuration updates, and turn lane needs/storage lengths

- The engineer will produce sections for draft report. After comments from City, the engineer will update all report elements for the final report. The report will include sections documenting the operational performance and safety impacts (via crash modification factors from the HSM) of various alternatives and support of selected alternative.

1.11.2 The conceptual roadway design phase will include development alternative typical sections. The following four typical sections will be developed and evaluated:

- Narrow median west of bridge
- Wide median west of bridge
- Narrow median east of bridge
- Wide median east of bridge

For the new bridge the following typical sections will be developed and evaluated:

- Widen existing bridge
- New Bridge
- Two bridges (one eastbound and one westbound)

For the evaluation the Garver Team will develop pro's and con's based on the following criteria.

- Traffic Operation and Safety Impacts (reported in 1.11.1)
- Utility Impacts
- R/W Impacts
- Long term maintenance
- UPRR Constraints/Procedures
- Cost

Results will be summarized and documented in tabular format.

Conceptual Bridge Plans will be submitted to the UPRR for review.

## **1.12 Preliminary Design (50% Submittal)**

1.12.1 The preliminary design phase submittal will include:

- Title Sheet,
- General Notes and Legend,

- Survey Control and Layout Sheet
- Typical sections,
- Roadway plan & profile sheets showing:
  - Existing topographical data,
  - New horizontal and vertical alignments,
  - Curb and gutter,
  - Enclosed drainage improvements,
  - Sidewalks and trails/paths,
  - Proposed water line, gravity sewer, and sewer force main (if needed),
  - MSE walls (if needed),
  - Existing utilities,
  - Proposed right of way and easements,
- Roundabout Plans
  - Roundabout calculations (speed profiles per FHWA Roundabout Design Guide and City of Lee's Summit Design and Construction Manual Section 5200 )
- Drainage area map sheet,
- Driveway Profiles
- Concept MOT and staging plans,
- Pavement marking plans,
- Preliminary lighting layout,
- Cross road culvert sections,
- Cross sections,
- Preliminary quantities,
- Opinion of probable construction cost.

Any City and MoDOT provided review comments will be reviewed and addressed and revised documents will be submitted as per the project schedule. Review comment responses will be documented and a copy will be submitted with the revised plans.

This preliminary design submittal will be for the purpose of setting the horizontal alignment and vertical profile, coordinating the proposed improvements and right of way/easements with the City, and developing an order of magnitude cost estimate for the project. Any City requested changes to the horizontal or vertical alignment after approved preliminary plans may require a scope amendment and a supplemental agreement. Final design will begin upon City notification of preliminary design approval.

Utilize City Design Standards and supplement with MoDOT Design Standards as needed. Design criteria as specified in the City Design Authorization Memo will be utilized as applicable with exceptions being documented and approved by the City prior to implementation.

### 1.12.2 Water Main Extension and Gravity Sewer Design

- Water and sewer plan & profile sheets drawn at 1"=20', showing:
  - Existing topographical data,
  - Horizontal and vertical alignments of water and sewer relocations where necessary due to conflict or depth, to include the following:
    - water line along Colbern Road from northbound on-ramp of Blue Parkway east approximately 2,000 feet,
    - water line from roughly road station 43+00 to road station 49+00,
    - gravity sewer relocation near the Colbern Road bridge
  - Horizontal and vertical alignments of water line extension from roughly road station 31+00 to road station 84+00,
  - Crossings with proposed or existing drainage structures and utilities,
  - Proposed permanent utility easements,
- Preliminary quantities and opinion of probable construction cost.

### 1.12.3 Hydraulics and Hydrology

Garver will provide Hydrology and Hydraulics services for a proposed bridge over Colbern Road at Little Cedar Creek.

- The project limits for the analysis will extend approximately 1,000 feet upstream and downstream of the centerline of Colbern Road over the creek.
- Garver will develop discharges for the portion of the creek to be studied. Flows will be developed using the HEC-HMS software to determine the existing watershed and fully urbanized watershed condition discharges for the 10-, 25-, 50, 100-, and 500-year storms. If possible, Garver will also attempt to obtain the Flood Insurance Rate Study hydrologic models for Cedar Creek that were used in the published FEMA study. Garver will compare each of the models and work with the City to choose the most appropriate creek discharges to use to design the proposed bridge.
- Garver will develop a hydraulic model of the existing portion of the tributary to be analyzed using the HEC-RAS software. A hydraulic model will be developed with both existing and fully-urbanized watershed discharges. The models to be created for hydraulic analysis will be an existing bridge and a proposed bridge. Up to two proposed bridges will be analyzed. Garver will attempt to obtain the FEMA hydraulic models used in the FEMA study of the creek. These models will be used to compare results between the proposed bridge and current FEMA conditions.

- Garver will work with the project surveyors to obtain surveyed cross sections of the creek in the study area. The cross section survey effort is described in the survey section of this scope of services.
- Since the current floodplain of the creek is shown as a Zone AE floodplain, a Floodway analysis will be prepared for this scope of services.
- Garver will prepare a drainage report including the following:
  - description of the existing floodplain hydraulic condition;
  - Plots of relevant cross sections and floodplain limits,
  - Tables showing existing and proposed condition hydraulic results such as water surface elevations, average velocities and velocity distribution and other hydraulic parameters;
  - Plots of the floodplain and Floodway boundary;

Submit drainage report to City for review.

#### 1.12.4 Preliminary Bridge Design

The preliminary design phase submittal will include:

- Sounding Request,
- TS&L Drawings,
- Bridge Memorandum,
- Design Layout,
- Preliminary quantities,
- Engineer's opinion of probable construction cost.

For preliminary bridge design, the Engineer will develop a bridge memo and Type, Size, and Location (TS&L) documents for the approved bridge configuration. Preliminary Plan documents will be provided to City for review. Submittal documents will be provided to UPRR for review.

Superstructure and Substructure Design for the two span bridge (135'-135') will be performed in accordance with MoDOT EPG design criteria.

#### 1.12.5 Preliminary Landscape Design

For preliminary corridor landscape design, the Engineer will develop preliminary landscape plans, to include the following:

- Develop plant palette for corridor plant materials
- Preliminary turf restoration plan for all areas disturbed by construction activities
- Concept planting plan with low groundcovers and/or shrubs in strategic locations agreed upon with the City. New trees will be

located in areas outside of rights-of way where existing stands are disturbed by construction activities. No trees will be located within rights-of-way, per City.

- Development of preliminary location and design details for relocation of existing Unity Village limestone columns, limestone walls, and freestanding, precast signage, as necessary.

#### 1.12.6 Preliminary Lighting Layout

Engineer will perform a lighting photometric study to evaluate 1 style of light fixture placed in the raised median, if applicable, or roadside depending on selected typical section for the entire project extents. Lights on the bridge will be anticipate to be mounted outboard.

Lighting design will be performed using the Visual lighting software. Lighting design will conform with the City of Lee's Summit Design Criteria Section 5800 - Street Lighting, City of Lee's Summit Standard Specifications Section 2800 - Street Lighting, APWA KCMO Section 2800 – Street Lights, MoDOT Engineering Policy Guide Category 901 – Lighting, and Illuminating Engineering Society recommendations.

The electrical engineer will conduct a site visit during the preliminary phase, as well as attend 1 other on-site meeting during this phase.

The Engineer will deliver one lighting layout exhibits and an associated opinion of probable construction cost for each under this phase. Additionally, the Engineer will provide a high-level opinion of probable construction cost during the conceptual phase.

#### 1.12.7 Preliminary Airport/FAA Submittals

The Engineer will coordinate the request for land release with the Federal Aviation Administration (FAA) for the parcel of land on the south-east quadrant of the intersection of Colbern Road and Douglas Street which is owned by the Lee's Summit Airport and was acquired through an FAA grant. Included in the request will be a metes and-bounds survey of the acquisition area and a fair market value appraisal to be completed by the City of Lee's Summit appraiser.

The Engineer will submit studies and exhibits for all equipment to be used during construction of the project through the FAA's Obstruction Evaluation/Airport Airspace Analysis (OE/AAA) website. In addition, Garver will submit OE/AAA studies for permanent vertical infrastructure that will be constructed with this project as required by the FAA.

#### 1.12.8 Preliminary Sustainability Assessment (Envision Checklist/Scorecard)

Engineer will perform a preliminary sustainability assessment using the ENVISION Checklist/Scorecard. Completed Checklist/Scorecard will be presented to City staff for discussion and the final copy will be submitted to City for record.

### **1.13 Right of Way Plans (60% Submittal)**

1.13.1 The MoDOT and City approved preliminary plans will be updated for the Right of Way Plan submittal to MoDOT. Items needed to be updated or added:

- Update Title Sheet
- Add a summary of takings and remainders sheet
- Addition of takings/remainers to parcels on the plan sheets

### **1.14 Final Design (PS&E Submittal)**

1.14.1 Conduct final design to prepare construction plans and specifications for one construction contract. The following items will be included:

- Finalize title sheet,
- Finalize typical section sheets,
- Update approved R/W plan and profile sheets into final construction roadway plan and profile sheets,
- Finalize MSE retaining wall plans and details (if needed),
- Develop concrete jointing details,
- Finalize storm sewer design and plan and profile sheets,
- Develop drop inlet special details (if needed),
- Develop erosion control plans and details,
- Finalize waterline plans and details,
- Finalize gravity sewer plans and details
- Finalize force main plans and details (if needed),
- Finalize MOT and staging plans,
- Finalize culvert sections,
- Finalize pavement marking plans,
- Develop signing plans,
- Finalize lighting plans and details,
- Develop traffic signal modification plans and details
- Finalize cross sections,
- Develop Colbern Road Bid Manual,
- Develop Colbern Road Construction Project Manual,
- Finalize Engineers opinion of probable construction cost.

Engineer will develop the Bid Manual and Construction Project Manual as per the MoDOT LPA Manual Section 136.9.4 Bid Documents. For the sections to be completed by the LPA the Engineer will use the City's standard construction bid documents, modified for this project, and other EJCDC language as applicable.

Any City and MoDOT provided review comments will be reviewed and addressed and revised documents will be submitted as per the project schedule. Review comment responses will be documented and a copy will be submitted with the revised plans.

Prepare, submit, and coordinate approval of a Stormwater Pollution Prevention Plan (SWPPP).

#### 1.14.2 Water Main and Gravity Sewer Final Design and Plans

Conduct final design to prepare construction plans and specifications for one construction contract. The following items will be included as part of the PS&E submittal:

- Finalize water and sewer plan & profile sheets (95%)
- Compile applicable City details and develop additional water and sewer details as necessary,
- Coordinate water line support with Engineers bridge engineers,
- Develop water and gravity sewer specifications as necessary to supplement the City's Standard Specifications in the Construction Project Manual,
- Finalize the water and gravity sewer opinion of probable construction cost,
- Submit to Missouri DNR for permitting.

#### 1.14.3 Final Bridge Design/Plans

Prepare complete detailed plans for the construction of one bridge over Little Cedar Creek and UPRR. Upon Lee's Summit and MoDOT approval of the bridge layout, prepare detailed final construction plans for the structure.

Colbern Rd. over Little Cedar Creek and UPRR is anticipated to be a conventional type structure with two structural prestressed concrete spans. The proposed bridge will be skewed to align with UPRR and creek alignment on the existing tangent horizontal alignment with normal cross slopes. The proposed bridge will carry four eleven-foot lanes, two four-foot shoulders, twelve-foot trail on the south and 6-foot sidewalk on the north. Barriers are used between traffic and sidewalk/trail. Median or median barrier will not be required on the bridge. MSE wall will be utilized at the west end of the bridge, and it is anticipated that tall faced

abutments will be used adjacent to the UPRR at the east end of the bridge. A global stability analysis will be performed for all retaining walls.

The consultant will incorporate Aesthetics into the final construction plans for the structure. It is anticipated that the Aesthetics will include form liners and pedestrian rail will be a black fence similar to Pryor Rd. Barrier will contain two three-inch or four-inch diameter conduits for future utilities. A waterline is anticipated on the bridge, located below the deck. Roadway lighting is anticipated on the bridge.

Colbern Rd. at the bridge will be closed during construction. Staged construction will not be required to construct the proposed bridge.

Final design plans will be in accordance with AASHTO LRFD Bridge Design Specifications, Latest Edition with current Interim Revisions, the MoDOT Engineering Policy Guide (EPG), MoDOT standard drawings and specifications, and current Lee's Summit policies/procedures provided to the consultant (if applicable).

Geometry calculations and project cost estimate for bridge will be prepared. Final plans will be provided to Lee's Summit and MoDOT for review. 100% Submittal documents will be provided to the UPRR for review. Standard specifications and details per MoDOT standard format will be provided to Lee's Summit and MoDOT. LRFR load rating summary and AASHTOWARE BrR (formerly VIRTIS) model will be provided to Lee's Summit and MoDOT.

Anticipated sheets include:

- General Plan & Elevation,
- General Notes and Quantities,
- End Bent Details,
- Intermediate Bent Details,
- Prestressed Beam Details,
- Drainage Details, as required,
- Slab Details and Typical Section,
- Expansion Joint Details, as required,
- Barrier Details (Cast-In-Place and Slip-Form option),
- Bridge Approach Slab
- Reinforcement Summary
- Boring Logs,
- As-Built Foundation Data,
- MSE Retaining Wall Plan and Profile,
- MSE Retaining Wall Details.

#### 1.14.4 Final Landscaping Design and Details

Prepare final design and specifications for corridor landscape plan, including:

- Finalize corridor landscape plan, including limits of turf restoration and location of plant materials,
- Finalize planting details and notes,
- Finalize detailing of Unity Village limestone column & wall and stone sign relocations.

#### 1.14.5 Final Lighting Design, Plans, and Details

Engineer will produce final lighting design, construction plans, details, and specification coordination for the design developed in the preliminary phase.

Engineer will coordinate with the local utility as needed for powering of the new roadway lighting.

Lighting design will conform with the City of Lee's Summit Design Criteria Section 5800 - Street Lighting, City of Lee's Summit Standard Specifications Section 2800 - Street Lighting, APWA KCMO Section 2800 – Street Lights, MoDOT Engineering Policy Guide Category 901 – Lighting, and Illuminating Engineering Society recommendations. Electrical design will comply with these standards as well as the National Electric Code, current edition.

The Engineer will deliver a revised opinion of probable construction cost under this phase.

#### 1.14.6 Develop Traffic Signal Modification Plans and Details

Engineer will produce signal modifications design, preliminary and final construction plans, details and specifications for the existing signal at the intersection of Northwest Colbern Road with Northeast Douglas Street.

Engineer will produce preliminary and final construction plans for the removal of the existing signal at the intersection of Northwest Colbern Road with Northwest Blue Parkway, detailing signal equipment and equipment foundation to be removed.

Engineer will coordinate with the local utility as needed for powering of the modified signal.

Engineer will coordinate with City Traffic Engineer for proposed signal pole locations, existing signal timings and interconnect.

Engineer will analyze up to three (3) temporary traffic control scenarios at the intersection of Northwest Colbern Road with Northeast Douglas Street for both morning and evening peak hours. The preferred temporary traffic control scenario will be evaluated with the City Traffic Engineer.

Engineer will produce temporary traffic signal plans at the intersection of Northwest Colbern Road with Northeast Douglas Street. The design may include temporary span wire signals. The engineer will also develop temporary signal timing plans for the preferred alternative to be used during construction.

Signal modification design will conform with the City of Lee's Summit Design Criteria Section 5900 - Traffic Signals, City of Lee's Summit Standard Specifications Section 2900 – Traffic Signals, MoDOT Engineering Policy Guide Category 902 – Lighting, and Manual on Uniform Traffic Control Devices (MUTCD). All signal modification design will comply with these standards as well as with the latest requirements of the National Electrical Code (NEC), National Electrical Safety Code (NESC), standards of the American Society of Testing Materials (ASTM), American Standards Associations (ASA), and National Electrical Manufacturers Association (NEMA).

The traffic engineer will attend one (1) on-site meeting during this project.

The Engineer will deliver an opinion of probable construction cost for preliminary and final plans.

#### 1.14.7 Final Airport/FAA Reviews

Engineer will update the Land Release based on final design and coordinate with the FAA for final approval.

Engineer will update obstruction evaluation studies and exhibits based on the final design for all equipment to be used during construction of the project through the FAA's Obstruction Evaluation/Airport Airspace Analysis (OE/AAA) website. In addition, Garver will update OE/AAA studies for permanent vertical infrastructure based on final design as required by the FAA.

#### 1.14.8 Final Sustainability Assessment (Revised Envision Checklist/Scorecard)

Engineer will review the preliminary ENVISION Checklist/Scorecard and update the ENVISION Checklist/Scorecard with any changes made during the final design phase. The updated Checklist/Scorecard will be

presented to City staff for discussion and the final copy will be submitted to City for record.

### **1.15 Property Acquisition Documents**

Provide mapping as required 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 or "go-by" example for use by Engineer. The fee for providing property acquisition documentation is based on permanent right of way and temporary construction easements for no more than 20 parcels. Property acquisition document preparation will begin after receiving the City's comments from the Preliminary Design review.

### **2.0 Bidding/Construction Phase Services**

During the bidding and construction phase of the project, Engineer will:

1. Respond to Contractor and City questions as requested by the City during the bid phase of the project.
2. Attend prebid meetings with the City/Contractors as requested by City.
3. Provide as-built drawings as per field mandated changes as approved by the City. Drawings will be provided in both PDF and MicroStation to AutoCAD converted format. Drawings and design files will be delivered on DVD's. Two (2) copies will of the DVD will be submitted.

### **3.0 Project Deliverables and Permits**

The following will be submitted to the City, or others as indicated, by Engineer:

1. One copy of the Geotechnical Report.
2. Three half size (11" x 17") copies and one full size (22" x 34") copy of the Preliminary Design with opinion of probable construction cost.
3. Three half size (11" x 17") copies and one full size (22" x 34") copy of the Right of Way Plans.
4. Three half size (11" x 17") copies and one full size (22" x 34") copy of the Final Design with opinion of probable construction cost.
5. One signed and sealed full size (22" x 34") copy of the revised Final Design, for reproduction, with opinion of probable construction cost.
6. One digital copy of the plans, submitted in items two through five above, in PDF format.

7. One Digital (8.5" x 11") letter size copy of the project bid manual
8. Four hard (8.5" x 11") Letter size copies of the project construction manual and on digital copy in PDF format.
9. One digital copy, in PDF format, of the revised Final Plans to each potentially affected utility company.
10. CADD file submitted to each of the following: the City, utilities and contractor.
11. Two copies of the right-of-way and/or easement acquisition documents.
12. One copy of the traffic study and concept analysis documentation.
13. One copy of the lighting calculations.
14. One copy of the roundabout calculations.
15. One copy of the storm water calculations/drainage report.
16. One copy of the Stormwater Pollution Prevention Plan (SWPPP).
17. One copy of the FAA Request for Land Release
18. One copy of the FAA Obstruction Evaluation/Airport Airspace Analysis (OE/AAA) Studies
19. One copy of the No Rise Certification
20. UPRR Right of Entry Agreement
21. UPRR C & M Agreement
22. Section 404 Nationwide Permit 14
23. Section 401 Water Quality certification (blanket authorization from MDNR in connection with general conditions of Section 404 permit – If met).
24. One copy of the Threatened and Endangered Species Clearance Letter
25. One copy of the Wetland Delineation Report
26. One copy of each Agency Clearance Letter other than listed above
27. One copy of the approved Noise Study
28. One copy of the Cultural Historic Report (if required)
29. One copy of the Archeological Resources Report (if required)
30. One copy of the Bridge Asbestos Report
31. One copy of the Bridge Lead Based Paint Report
32. One copy of the Deminimis Section 4F document (if required)
33. One copy of the Categorical Exclusion 2 (CE2) Clearance Document
34. One copy of the MDNR Construction Permit

#### **4.0 Schedule**

Engineer shall begin work under this Agreement upon Notice to Proceed and shall complete the work in accordance with the schedule below:

<u>Phase Description</u>	<u>Deliverable Date</u>
Surveys – Design and Property	80 calendar days after NTP
Draft Concept Design and Traffic Study	80 calendar days after NTP
Final Concept Design and Traffic Study	105 calendar days after NTP
Preliminary Design	November 28, 2019
Right of Way Plans	March 5, 2020

Property Acquisition Documents	30 calendar days after City approved Right of Way Plans
Final Design Submittal (90%)	September 17, 2020
Final Design (100%) Submittal	November 12, 2020

These deliverable dates are based on three (3) week City review periods. If review takes longer than three weeks Engineer will update the project schedule/deliverable dates to reflect the change in schedule. Once the NTP date is known, the deliverable dates for preliminary and final design submittals will be identified.

**ARTICLE II  
OPTIONAL SERVICES TO BE PROVIDED BY ENGINEER**

Engineer shall provide, if needed by the City, and only upon receipt of written authorization by the Director of Public works, the optional services (“Optional Services”) as outlined as follows:

**1.1 General**

The following is a list of optional services that can be provided by the Engineer for the Colbern Road from M350 to Douglas Street project.

**1.2 Additional Subsurface Utility Engineer (SUE) QLA**

Engineer will subcontract with Geotechnology, Inc. to perform subsurface excavation for up to four (4) additional locations to develop accurate location and depth information for underground utilities.

**1.3 CLOMR/LOMR**

**1.3.1 CLOMR**

Upon completion of the above tasks, a submittal for a Conditional Letter of Map Revision (CLOMR) will be prepared and submitted to the City for review. The submittal will include a brief report with exhibits, maps, hydraulic models, and draft notification letter (City will prepare and send the notification letters to adjacent property owners) and FEMA MT-2 forms. The CLOMR will include the proposed floodplain modifications determined in the hydraulic modeling task above.

The CLOMR will be submitted to the City. Upon concurrence by the City, the CLOMR will be forwarded to FEMA for final review. Garver

will coordinate with the City, FEMA and the FEMA review consultant to resolve review comments from these entities.

### **1.3.2 LOMR**

Upon completion of the construction of the Colbern Road project and bridge improvements, Garver will prepare a Letter of Map Revision (LOMR) for submittal to the City for review. The submittal will include a brief report with exhibits, maps, hydraulic models, and draft notification letter (City will prepare and send the notification letters to adjacent property owners) and FEMA MT-2 forms. The LOMR will include the proposed floodplain modifications determined from actual project as-built surveys and in the hydraulic modeling task above.

The LOMR will be submitted to the City. Upon concurrence by the City, the LOMR will be forwarded to FEMA for final review. Garver will coordinate with the City, FEMA and the FEMA review consultant to resolve review comments from these entities.

The payment of required FEMA review fees for both the CLOMR and the LOMR will be the responsibility of the City and are not included in Garver's scope of services.

Surveying services to obtain as-built project information are not included in this task.

## **1.4 Relocate/Modify 12" Forcemain**

Preliminary design phase (50%) submittal will include:

- Sanitary Sewer force main profile sheets drawn at 1"=20', showing:
  - Existing topographical data,
  - Horizontal and vertical alignments of sewer force main relocations where necessary due to conflict or depth, east from approximately road station 37+00
  - Proposed permanent utility easements,
- Preliminary quantities and opinion of probable construction cost.

### **Sanitary Sewer Force Main Final Design**

Conduct final design to prepare construction plans and specifications for one construction contract. The following items will be included as part of the PS&E submittal:

- Finalize sewer force main plan & profile sheets (95%)
- Compile applicable City details and develop additional force main details as necessary,

- Develop sewer force main specifications as necessary to supplement the City's Standard Specifications in the Construction Project Manual,
- Finalize the sewer force main opinion of probable construction cost,
- Submit to Missouri DNR for permitting.

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

City shall use its best efforts to provide the information to Engineer as described as follows:

- Tenant names
- Available water and sewer locations, size and materials
- Copies of available reports and as-built plans
- Available drainage studies
- Available plats of adjacent properties
- EJCDC Contract Documents, Division One-Special Contract Provisions
- Assist Consultant as needed in gaining right of entry to private property for geotechnical exploration.
- City will coordinate with the construction contractor for the UPRR Construction Submittal.
- City will coordinate the Land Disturbance Permit.
- The City will coordinate with Operation Green Light and provide updated traffic signal timing information (including vehicle and pedestrian crossing intervals) due to the signal modifications anticipated at the NW Colbern Road at NE Douglas Street intersection.

### **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 Million Four Hundred Sixty Two Thousand One Hundred Twenty Seven Dollars (\$1,462,127.00), 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 Million Three Hundred Eighty Three Thousand Seven Hundred Twenty Seven Dollars (\$1,383,727.00).

- 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 Seventy Eight Thousand Four Hundred Dollars (\$78,400.00).
- 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:

- A. The basic services will be ready for construction bidding by December 31, 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 here under 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  
City of Lee's Summit  
220 SE Green Street  
Lee's Summit, MO 64063

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

and notices to Engineer shall be addressed to:

Garver  
Attn: Charles Touzinsky III  
7301 West 129th Street, Suite 300  
Overland Park, KS 66213

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 Council of Infrastructure and Planning  
Office of City Attorney

**ENGINEER:**

Garver, LLC  
BY: Scott Schuis  
TITLE: Vice President

ATTEST:

Chris [Signature]