

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

This Agreement is by and between **the City of Lee's Summit, Missouri** ("Owner") and **Custom Lighting Services, LLC dba Black & McDonald** ("Contractor").

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

Owner and Contractor hereby agree as follows:

### ARTICLE 1—WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Providing maintenance, repair, replacement and installation services applicable to City's street lights and traffic signals. Services will be provided on an "as-requested" basis, which may include "emergency" work, and all services shall include all labor, supervision, equipment, and materials necessary to provide the contracted services described within the contract documents.

The contract will be awarded for a period of one calendar year (365 days) from the date of execution with the potential of three (3) one-year renewals at the sole option of the Owner.

### ARTICLE 2—THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows:

Project No. 2020-071 - Streetlight and Traffic Signal Services

### ARTICLE 3—ENGINEER

3.01 The Project has been designed by the City of Lee's Summit Public Works Department, which is to act as the Owner's representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

### ARTICLE 4—CONTRACT TIMES

4.01 *Time is of the Essence*

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

4.02 *Contract Times: Dates*

A. The Work will be substantially complete on or before **June 1, 2021**, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before **June 30, 2021**. For each of the three (3) renewal periods, if exercised by the Owner, the work will be substantially completed on or before June 1 and completed and ready for final

payment in accordance with Paragraph 15.06 of the General Conditions on or before June 30 of each respective renewal period year.

4.05 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$700.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$700.00 for each day that expires after such time until the Work is completed and ready for final payment. In addition, Contractor shall be liable to Owner for all other damages, including, but not limited to attorney's fees and expenses, additional engineering fees and expenses, and time, costs, and/or expense of Owner's personnel.

**ARTICLE 5—CONTRACT PRICE**

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

- A. For all Hourly Work, an amount equal to the sum of the established hourly rate for each separately identified item of Hourly Work times the actual quantity of the item:

Item No.	Description	Unit	Bid Unit Price
1	Groundman	Hour	\$ 64.91
2	Journeyman Lineman Electrician	Hour	\$ 97.41
3	Lineman Operator	Hour	\$ 90.01
4	Aerial Lift Truck	Hour	\$ 24.00
5	Crane Truck	Hour	\$ 74.00
6	Boring Machine	Hour	\$ 63.00
7	Excavator (Backhoe)	Hour	\$ 19.00
8	Flashing Arrow Panel	Hour	\$ 6.00
9	Contractor's Percent Added to Cost of New Materials	Percent	<u>10</u> %

- B. Bidder understands that any adjustments in cost at the beginning of each renewal period should be limited to the current Federal Consumer Price Index "CPI-U, All Items" (Urban Consumers) or applicable PPI Index. Any proposed increase(s) above CPI shall not exceed 2% of the total contract amount. Justification for increases above CPI shall be provided to Owner for review. Any adjustments shall be either approved or denied by the Director of Public

Works. Any ensuing contract renewals must be approved and executed by the Director of Public Works. Any proposed wage increase shall not exceed the stipulated wage rate(s) as stated in the applicable Prevailing Wage Order Number that shall be in effect for said particular contractual term and at the issuance of each Field Order.

If the bidder requests an increase in compensation for any renewal period, the Bidder shall notify Owner no less than sixty (60) days prior to the end of the contract period and shall provide evidence to the satisfaction of the Owner of increased cost incurred by the Bidder for any element of the bid for which an increase is requested.

Owner shall notify the Bidder in writing of the intent to exercise the renewal option. However, failure to notify the Bidder does not waive the Owner's right to exercise the renewal option.

Owner reserves the right to issue a separate bid for any Field Order estimated to be over the Owner's bid threshold amount of \$49,999.99 and is determined to be in the best interest of the Owner.

Due to the potential long lead times in manufacturing certain parts or equipment, and the Owner's desire to have the repairs completed as quickly as possible, Owner, at its sole discretion, may provide certain parts or equipment from Owner's inventory.

## **ARTICLE 6—PAYMENT PROCEDURES**

### **6.01 *Submittal and Processing of Payments***

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

### **6.02 *Progress Payments; Retainage***

- A. Owner shall make progress payments on the basis of Contractor's Applications for Payment per each completed Field Order as indicated on each Work Completion Report during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established in Paragraph 2.07A as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
  - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the amount of each completed Field Order, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

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

6.04 *Consent of Surety*

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

6.05 *Interest*

- A. All amounts not paid when due will bear interest at the rate as specified by Missouri State Statute, RSMo 34-057.

**ARTICLE 7—CONTRACT DOCUMENTS**

7.01 *Contents*

- A. The Contract Documents consist of all of the following:
1. This Agreement.
  2. Bonds:
    - a. Performance bond (together with power of attorney).
    - b. Payment bond (together with power of attorney).
  3. General Conditions.
  4. Supplementary Conditions.
  5. Specifications as listed in the table of contents of the project manual (copy of list attached).
  6. Drawings listed on the attached sheet index.
  7. Addenda (number(s) 1 to 1 inclusive).
  9. Exhibits to this Agreement (enumerated as follows):
    - a. **Documentation submitted by Contractor prior to Notice of Award**
  10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    - a. Notice to Proceed.
    - b. Work Change Directives.
    - c. Change Orders.
    - d. Field Orders.
    - e. Work Completion Report
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.

- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

## ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

### 8.01 Contractor's Representations

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
  2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
  4. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
  7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
  8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
  9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
  10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
  11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.
  12. Cooperative Procurement with Other Jurisdictions:

This section is optional, it will not affect contract award. If the Owner awarded you the proposed contract, would you sell under the prices and terms of this Contract to any

Municipal County Public Utility, Hospital, Educational Institution, or any other non-profit organization having membership in the Mid-America Council of Public Purchasing (MACPP) or Mid America Regional Council (MARC) and located within the Greater Kansas City Metropolitan Area? (All deliveries shall be F.O.B. Destination and there shall be no obligations on the part of any member of said Council to utilize this Contract).

YES \_\_\_\_\_ NO \_\_\_\_\_ INITIALS \_\_\_\_\_

Sales will be made in accordance with the prices, terms, and conditions of the Invitation for Bid and any subsequent term contract. There shall, however, be no obligation under the cooperative procurement agreement for any organization represented by MACPP or MARC to utilize the bid or contract unless they are specifically named in the Invitation for Bid as joint bidder. The principal contracting officer is responsible to handle the solicitation and award of the contract. The PCO has sole authority to modify the contract and handle disputes regarding the substance of the contract. The PCO is the Procurement Office of Record, City of Lee's Summit, Missouri. Each jurisdiction that is a party to the joint bid has authority to act as Administrative Contracting Officer with responsibility to issue purchase orders, inspect and receive goods, make payments and handle disputes involving shipment to the jurisdiction.

8.02 *Contractor's Certifications*

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

8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the

standard wording of such published document to the Contractor, through a process such as highlighting or “track changes” (redline/strikeout), or in the Supplementary Conditions.

8.04 *Other Provisions*

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

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

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

Owner:

**City of Lee's Summit, Missouri**

*(typed or printed name of organization)*

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: Stephen A. Arbo

Title: City Manager

Attest: \_\_\_\_\_

Title: City Clerk

Address for giving notices:

220 SE Green Street

Lee's Summit, MO 64063

Designated Representative:

Name: George Binger

Title: City Engineer

Address:

220 SE Green Street

Lee's Summit, MO 64063

*(If [Type of Entity] is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)*

Contractor:

**Custom Lighting Services, LLC dba  
Black & McDonald**

*(typed or printed name of organization)*

By: \_\_\_\_\_  
*(individual's signature)*

Date: \_\_\_\_\_  
*(date signed)*

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

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

Attest: \_\_\_\_\_  
*(individual's signature)*

Title: \_\_\_\_\_  
*(typed or printed)*

Address for giving notices:

6001 E. Front Street

Kansas City, MO 64120

Designated Representative:

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Address:

\_\_\_\_\_

\_\_\_\_\_

License No.: \_\_\_\_\_  
*(where applicable)*

State: \_\_\_\_\_