



# LEE'S SUMMIT MISSOURI

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**REQUEST FOR QUALIFICATIONS FOR  
PROFESSIONAL ENGINEERING SERVICES FOR THE M291 NORTH INTERCHANGE WITH  
US50  
RFQ NO. 2022-037  
COMMISSION PROJECT NO. J4P3196  
FEDERAL NO. NHPP 2911091**

The City of Lee's Summit, Missouri, is requesting Statements of Qualifications for the above-referenced project.

**Interested firms must upload their Statement of Qualifications into the Public Purchase E-procurement system prior to the closing date of January 13, 2022 5:00 PM (Central Time)**

**City of Lee's Summit, Public Works Department  
Attention: Craig Kohler, P.E., Senior Staff Engineer  
220 S.E. Green Street  
Lee's Summit, MO 64063**

It is the responsibility of interested firms to check the City's e-procurement system, Public Purchase at <https://www.publicpurchase.com/gems/leessummit,mo/buyer/public/publicInfo> for any addendums or notices of information prior to the closing date and time of this RFQ. All addendums must be signed and included with electronic submittal.

DBE firms must be listed in the MRCC DBE Directory located on MoDOT's website at [www.modot.gov](http://www.modot.gov), in order to be counted as participation towards an established DBE Goal. We encourage DBE firms to submit letters of interest as prime consultants for any project they feel can be managed by their firm. The DBE goal determination for this project is 14 %.

It is required that your firm be prequalified with MoDOT and listed in [MoDOT's Approved Consultant Prequalification List](#), or your firm will be considered non-responsive.

Pursuant to the Brooks Act for Consultant Selection – the following criteria will be the basis for selection with a score of 1 to 5 given to each. Interested firms should prepare a response that addresses the following:

- Experience and availability of key personnel;
- Responsiveness;
- Experience on similar projects;
- Project Approach/Work Plan;
- Critical Issues and Approaches to Solutions;
- Capability to meet schedules or deadlines;



- Quality of projects previously undertaken and capability to complete projects without having major cost escalations or overruns

The submittals must be a maximum of six (6) single sided letter-size paper (8.5" x 11") and have a minimum font size of eleven (11) points. Up to four (4) additional pages may be submitted in an attached appendix and may be up to 11" x 17" in size. In addition, a one-page cover letter should be submitted, which includes a point of contact for the consultant team.

A selection committee will evaluate the submittals based on the above criteria and notify selected firms for oral interviews.

The selected firm will be expected to sign the enclosed City of Lee's Summit's standard Professional Engineering Services contract.

### **Schedule**

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|--------------------------------------|--|
| • Statement of Qualifications Due:   | Thursday January 13, 2022 5:00 p.m. CST    |
| • Selection Committee Meeting:       | Wednesday, January 19, 2022                |
| • Firms Notified for Oral Interview: | Thursday, January 20, 2022                 |
| • Interviews 50 minutes each:        | Wednesday, February 2, 2022 (1:00 to 4:00) |

### **Project Description**

Missouri Highways and Transportation Commission Cost Share Program (Project number J4P3196) is part of the funding of this project, therefore, the plans shall be prepared in accordance with and conform to Commission requirements and follow the Local Public Agency (LPA) process. The estimated Construction Cost for this project is approximately \$16 million.

This project will improve the safety and functionality of the overall transportation system in the area as well as replace obsolete infrastructure to address existing level of service, accommodate growth and facilitate economic activity. Improvements to this area include a new bridge structure(s), ramp reconstruction, US 50 pavement reconstruction between ramps, and realignment of Blue Parkway. The existing obsolete bridge structure will be replaced with a new bridge structure(s) and will provide bicycle, pedestrian and ADA accommodations. The intersection of Blue Parkway will be moved north to the existing location of SE 7<sup>th</sup> Terrace, in order to more properly separate intersections, signal operations and implement access control; therefore, alleviate congestion and improve safety.

### **Scope of Services**

The consultant will be responsible for; environmental services, bridge structure(s), roadway realignment, traffic signals, side walk, shared-use path, lighting, newly constructed or paved roadway sections, medians, curb and gutter, driveways, storm drainage system, and construction phasing. Some utility location, evaluation and relocation work will likely be required including City water and sewer lines along the relocated Blue Parkway.

The consultant will also be responsible for permitting, water quality BMPs, and sustainable design elements if appropriate. Location survey and the creation of exhibits (with Legal descriptions) for right of way acquisition, permanent easements, and temporary construction easements will be required.



This project will be completed in partnership with MoDOT among other entities. Coordination with Highway Patrol Troop A Relocation, LSR7 High School Campus Renovation Project, and adjacent property owners/development expected. The majority of this project is within MoDOT right of way; therefore, MoDOT standards and specifications will be required for design. Refer to MoDOT Engineering Policy Guide for design guidance. The City's Design and Construction Manual and Access Management Policy shall be referenced for the portions of project in City right of way (and/or anticipated roadway conveyances from MoDOT to City). The conceptual schedule for this project is quite aggressive with Final Plans, Specs and Estimate approval within one year of execution of contract.

## Questions

For questions regarding this project, please contact:

**Craig Kohler, P.E., Senior Staff Engineer**

Public Works Department

City of Lee's Summit

220 S.E. Green Street

Lee's Summit, MO 64063

Phone: (816) 969-1800

Email: [craig.kohler@cityofls.net](mailto:craig.kohler@cityofls.net)

This Request for Qualifications (RFQ) is an invitation by the City for interested Professional Engineers to submit qualifications, which may be subject to subsequent discussions and negotiations. It is not a request for a competitive bid. Submittal of qualifications does not create any right in or expectation to a contract with the City. The City reserves the right to reject any and all RFQ's.

Section 285.530, RSMo, affects all services provided in excess of \$5,000.00. This Section refers to the prohibition of employment of unauthorized aliens and requires participation in a Federal work authorization program. This law went into effect on January 1, 2009.

The successful firm selected by the City, prior to entering into a contract with City, will be required to submit the enclosed Work Authorization Affidavit and provide documentation evidencing current enrollment in a federal work authorization Program, e.g., the electronic signature page from the E-Verify program's Memorandum of Understanding. The required documentation must be from the federal work authorization program provider. Letters from contractors reciting compliance is not sufficient. E-verify, <https://www.dhs.gov/everify>, is a FREE Internet-based federal work authorization program operated by the Department of Homeland Security, U.S. Citizenship and Immigration Services that allows employers to verify the employment eligibility of their employees, regardless of citizenship. Based on information provided by employees on their Form I-9, E-Verify checks the information electronically against records contained in DHS and Social Security Administration databases. There are penalties for employing an unauthorized alien, including suspension of the contractor's business license, termination of the contract, debarment from City and State work for a period of three years or permanently, and withholding 25% of the total amount due the Contractor.





**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES  
FOR \_\_\_\_\_ (RFQ NO. \_\_\_\_\_)**

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

**WITNESSETH:**

**WHEREAS**, City intends to have engineering services for \_\_\_\_\_ (hereinafter "Project"); and

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

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

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

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

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

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

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

***(Insert scope or refer to attachment)***

**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"):

***(Insert scope or refer to attachment)***

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

City shall provide the following services to Engineer:

***(Insert scope)***

**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 \_\_\_\_\_ Dollars (\$\_\_\_\_\_), 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 \_\_\_\_\_ Dollars (\$\_\_\_\_\_).
- 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 \_\_\_\_\_ Dollars (\$\_\_\_\_\_).
- 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 Agreement or Agreed Maximum Fee Amount, Cumulative Amount Previously Billed, Billing Amount this Invoice, Agreement or Agreed Amount Remaining, and Percent of Maximum Fee Billed to Date.

All moneys not paid when due as provided herein shall bear interest at a per annum rate equal to one percent (1%) plus the average *Consumer Price Index for All Urban Consumers (CPI-U)-U.S. City Average* for the time period in which payment is past due; provided, however, that in no event will the amount of interest to be paid by the City exceed 9% per annum.

## **ARTICLE V COMPLETION TIME**

The Basic Services shall be completed in accordance with the following schedule:

***(Insert schedule information)***

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. GENERAL:**

1. Insurer Qualifications: Without limiting any obligations or liabilities of Engineer, Engineer shall purchase and maintain, at its own expense, the insurance set forth in this Section with insurance companies authorized to do business in the State of Missouri, with an AM Best, Inc. rating of A or above, and with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.
2. No Representation of Coverage Adequacy: The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Engineer from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
3. Additional Insured: All insurance coverage, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name and endorse, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

4. Coverage Term: All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.
5. Primary Insurance: Engineer's insurance shall be endorsed to indicate its primary, non-contributory insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured. Such coverage shall be at least as broad as ISO CG 20 01 04 13, or equivalent.
6. Claims Made: In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for six (6) years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing the required coverage is in force and contains the provisions as required herein for the six-year period.
7. Waiver: To the fullest extent permitted by law, all policies required herein, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Engineer. Engineer shall arrange to have such subrogation waivers incorporated into each policy via endorsement.
8. Policy Deductibles and/or Self-Insured Retentions: The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention under the required general liability and automobile liability policies shall not erode the limit required by the City. Engineer shall be solely responsible for any such deductible or self-insured retention amount.
9. Automatic Escalator: The limits of liability for each policy coverage amount stated above shall be automatically adjusted upward as necessary to remain at all times not less than the maximum amount of liability set forth in Chapter 537.610 RSMo. applicable to political subdivisions pursuant to 537.600; provided that nothing herein or in any such policy shall be deemed to waive the City's sovereign immunity. The statutory waiver of sovereign immunity for 2021 is \$ 2,940,868.00 for all claims arising out of a single accident or occurrence.
10. Use of Subcontractors: If any work under this Agreement is subcontracted in any way, Engineer shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the City and Engineer. Engineer shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
11. Notice of Claim: Engineer shall upon receipt of notice of any claim in connection with this Agreement promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. Engineer shall also promptly notify the City of any reduction in limits of protection afforded under any policy listed in the certificate(s) of insurance in an amount such that the policy aggregate becomes less



than the current statutory waiver of sovereign immunity regardless of whether such impairment is a result of this Agreement. A breach of this provision is material breach of the Agreement.

12. Evidence of Insurance: Prior to commencing any work or services under this Agreement, Engineer will provide the City with suitable evidence of insurance in the form of certificates of insurance and, if requested by the City, a copy of the relevant endorsement for the insurance policies as required by these requirements, issued by Engineer's insurance insurer(s) as evidence that policies are placed with reasonably acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in these requirements and that such coverage and provisions are in full force and effect. The City shall reasonably rely upon the certificates of insurance and endorsements for the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way these insurance requirements or obligations.

If any of the policies required by these requirements expire during the life of the Agreement, it shall be Engineer's responsibility to forward renewal certificates and relevant endorsements the City 30 days prior to the expiration date. All certificates of insurance and relevant endorsements shall be identified by referencing the Agreement; certificates of insurance and endorsement for the insurance policies submitted without referencing the Agreement, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance shall specifically include the following provisions:

- a. The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:
    - i. Commercial General Liability – Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or equivalent.
    - ii. Auto Liability – Under ISO Form CA 20 48 or equivalent.
    - iii. Excess Liability – Follow Form to underlying insurance.
  - b. Engineer's insurance under which City is included as an additional insured shall be primary, non-contributory insurance with respect to performance of the Agreement.
  - c. All policies, except for Professional Liability, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Engineer under this Agreement.
  - d. ACORD certificate of insurance form 25 (2014/01) is preferred.
13. All Certificates of Insurance shall name the City of Lee's Summit as the certificate holder and send the certificate and any endorsements to:

City of Lee's Summit  
220 SE Green Street  
Lee's Summit, MO 64063-2358

## B. REQUIRED INSURANCE COVERAGE:

1. Commercial General Liability: Engineer shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of at least \$3,000,000 for each occurrence, \$3,000,000 Products and Completed Operations Annual Aggregate and a \$3,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, bodily injury, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 01 93 or equivalent thereof, including but not limited to, separation of insured’s clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be endorsed as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement forms CG 20 10 07 04 and CG 20 37 07 04, or their equivalents. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.
2. Automobile Liability: Engineer shall maintain Business Automobile Liability insurance with an unimpaired limit of at least \$1,000,000 each occurrence on Engineer’s owned, hired and non-owned vehicles assigned to or used in the performance of the Engineer’s work or services under this Agreement. Coverage will be at least as broad as ISO coverage code “1” “any auto” policy form CA 00 01 12 93 or equivalent thereof. City, its agents, representatives, officers, directors, officials and employees shall be endorsed as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.
3. Professional Liability: Engineer shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the services performed by the Engineer, or anyone employed by the Engineer, or anyone for whose negligent acts, mistakes, errors and omissions the Engineer is legally liable, with an unimpaired liability insurance limit of at least \$3,000,000 each claim and \$3,000,000 annual aggregate. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.
4. Workers’ Compensation Insurance: If Engineer employs anyone who is required by law to be covered by workers’ compensation insurance, Engineer shall maintain Workers’ Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Engineer’s employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.
5. Cyber Liability Insurance: If this Agreement is the subject of any services involving the City’s information technology structure, or if the Engineer engages in any services in any way related to performing work involving the City’s information technology structure under this Agreement, Engineer shall maintain Cyber Liability insurance with limits not less than \$3,000,000 per occurrence or claim, \$3,000,000 aggregate.

Coverage shall be sufficiently broad to respond to the duties and obligations as are undertaken by Engineer in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs, regulatory fines and penalties, and credit monitoring expenses with limits sufficient to respond to these obligations.

- C. **CANCELLATION AND EXPIRATION NOTICE:** Insurance required herein shall not expire, be canceled, or be materially changed without thirty (30) days' prior written notice to the City.

## **ARTICLE VII MISCELLANEOUS PROVISIONS**

The following miscellaneous provisions are agreed to by both parties to this Agreement:

- A. **COVENANT AGAINST CONTINGENT FEES:** Engineer warrants that Engineer has not employed or retained, and will not employ or retain for the duration of this Agreement, any company or person, other than a bona fide employee working for the Engineer, to solicit or secure this Agreement, and that Engineer has not paid or agreed to pay any company or person, other than bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee. Engineer further covenants that in the performance of this Agreement no person having such interest shall be employed.
- B. **OWNERSHIP OF ENGINEERING DOCUMENTS:** Payment by City to Engineer as aforesaid in Article IV shall vest in City title to all drawings, sketches, studies, analyses, reports, models, and other paper, documents, computer files, and material 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 SCOPE OF WORK:** In the event of any changes in the scope of services contained in this Agreement, prior to commencing the services City and Engineer shall enter into a mutually executed written modification of this Agreement describing the changes in the services to be provided by Engineer and City, providing for compensation for any additional services to be performed by Engineer, and providing completion times for said services.

- D. **EMERGENCY CHANGES IN SERVICES:** The Director of 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 cost to mitigate or correct the effects of such termination, including by not limited to damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.
  3. Termination Due to Unavailability of Funds in Succeeding Fiscal Years: When funds are not appropriated or otherwise made available to support continuation of the Project in a subsequent fiscal year, this Agreement shall be terminated and Engineer shall be reimbursed for the services rendered up to the date of termination plus the reasonable value of any nonrecurring costs incurred by Engineer but not amortized in the price of the services delivered under this Agreement.
- F. **COMPLIANCE WITH LAWS:** Engineer shall comply with all Federal, State, and local laws, ordinances, and regulations applicable 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 subcontract, sublet, assign, or transfer any interest in the services covered by this Agreement, except as provided for herein and except with the prior written and signed consent of City. The use of subcontractors shall in

no way relieve Engineer of his/her primary responsibility for the services. No approval will be necessary for non-professional services such as reproductions, printing, materials, and other services normally performed or provided by others.

- H. CONFERENCES, VISITS TO SITE, INSPECTION OF SERVICES: Upon reasonable advance notice and during normal business hours at Engineer's place of business, representatives of City shall have the privilege of inspecting and reviewing the services being performed by Engineer and consulting with him/her at such time. Conferences are to be held at the request of City or Engineer.
- I. ENGINEER'S ENDORSEMENT: Engineer shall endorse all plans, specifications, estimates, and engineering data furnished by him/her.
- J. INSPECTION OF DOCUMENTS: Engineer shall maintain all records pertaining to its services hereunder for inspection, upon reasonable advance notice and during normal business hours at Engineer's place of business, by a City representative during the Agreement period and for three (3) years from the date of final payment for each individual project performed pursuant to this Agreement.
- K. INDEMNIFICATION AND HOLD HARMLESS: Engineer shall indemnify, defend, and hold harmless City and its officers, employees, elected officials, and attorneys, each in their official and individual capacities (the City and any such person being herein called an "Indemnified Party"), for, from and against any and all judgments, damages, claims, fines, penalties, losses, costs, and expenses (including reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever (collectively "Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the intentional, reckless, or negligent acts, directives, errors, omissions, or willful misconduct, in the performance of Engineer's duties and services under this Agreement, or any supplements or amendments thereto, of Engineer, or its employees, officers, agents, or any tier of subcontractor or person for which Engineer may be legally liable in the performance of this Agreement. Nothing contained in this Agreement is to be construed to waive the City's sovereign immunity or any other immunity or defense available to the City, its officers, employees, agents, or elected officials.
- L. LIMITATION OF LIABILITY: In no event will either Party be liable to other Party for indirect or consequential damages, and in no event will City's liability under this Agreement exceed the amount to be paid to Engineer pursuant to Article IV of this Agreement.
- M. PROFESSIONAL RESPONSIBILITY: Engineer warrants that the Services rendered will conform to the requirements of this Agreement and with the care and skill ordinarily used by members of the same profession practicing under similar circumstances at the same time and in the same locality.
- N. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the parties with respect to its subject matter, and any prior agreements, understandings, or other matters,

whether oral or written, are of no further force or effect. This Agreement may be amended, changed, or supplemented only by written agreement executed by both of the parties hereto.

- O. CONFLICT: In the event of any conflict, ambiguity, or inconsistency between this Agreement and any other document that may be annexed hereto, the terms of this Agreement shall govern.
- P. GOVERNING LAW: This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri, and any suit pertaining to this Agreement may be brought only in courts in eastern Jackson County, Missouri. The Parties expressly and irrevocably consent to the exclusive jurisdiction and venue of such courts and expressly waive the right to transfer or remove any such action.
- Q. OPINION OF PROBABLE CONSTRUCTION COST AND SCHEDULE: Since Engineer has no control over the cost of labor, materials, or equipment, or over contractor's(s') methods of determining prices, or over competitive bidding or market conditions, the estimate of construction cost and schedule provided for herein is to be made on the basis of Engineer's experience and qualifications and represents Engineer's best judgment as a professional engineer familiar with the construction industry, but Engineer cannot and does not guarantee that the bids or the Project construction cost or schedule will not vary from the opinion of probable construction cost and schedule prepared by Engineer.
- R. TAX EXEMPT: City and its agencies are exempt from State and local sales taxes. Sites of all transactions derived from this Agreement shall be deemed to have been accomplished within the State of Missouri.
- S. SAFETY: In the performance of its services, Engineer shall comply with the applicable provisions of the Federal Occupational Safety and Health Act, as well as any pertinent Federal, State and/or local safety or environmental laws and regulations.
- T. ANTI-DISCRIMINATION CLAUSE: Engineer and its agents, employees, or subcontractors shall not in any way, directly or indirectly, discriminate against any person because of age, race, color, handicap, sex, national origin, or religious creed.
- U. DELAY IN PERFORMANCE: Neither City nor Engineer shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions, floods, earthquakes, fire, epidemics, war, riots, and other civil disturbances, strikes, lockouts, work slowdowns, and other labor disturbances, sabotage, judicial restraint, and delay in or inability to procure permits, licenses, or authorizations from any local, State, or Federal agency for any of the supplies, materials, accesses, or services required to be provided by either City or Engineer under this Agreement. Engineer and City shall be granted a reasonable extension of time for any delay in its performance caused by any such circumstances. Should such circumstances occur, the nonperforming party shall within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of the Agreement.

- V. NON-EXCLUSIVE AGREEMENT. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods and services from another source when necessary.
- W. TIME OF THE ESSENCE. Time is of the essence in this Agreement. Unless otherwise specifically provided, any consent to delay in Engineer's performance of its obligation is applicable only to the particular transaction to which it relates, and is not applicable to any other obligation or transaction.
- X. SIGNATORY AUTHORITY. Each person signing this Agreement represents that such person has the requisite authority to execute this Agreement on behalf of the entity the person represents and that all necessary formalities have been met.
- Y. IMMIGRATION REQUIREMENTS. Pursuant to Section 258.530, RSMo. if Agreement exceeds five thousand dollars (\$5,000.00), Engineer warrants and affirms to the City that (i) Engineer is enrolled and participates in a federal work authorization program with respect to the employees working in connection with the contracted services and (ii) Engineer does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

Engineer shall swear to and sign an affidavit declaring such affirmation, and provide the City with supporting documentation of its enrollment and participation in a federal work authorization program with respect to the employees working in connection with this Agreement. The required documentation must be from the federal work authorization program provider (e.g. the electronic signature page from the E-Verify program's Memorandum of Understanding); a letter from Engineer reciting compliance is not sufficient.

- Z. RIGHTS AND REMEDIES. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the City to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the City's acceptance of and payment for services, shall not release the Engineer from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Agreement.
- AA. NO THIRD-PARTY RIGHTS: The services provided for in this Agreement are for the sole use and benefit of City and Engineer. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and Engineer.
- BB. CONFIDENTIALITY OF RECORDS. The Engineer shall establish and maintain procedures and controls that are acceptable to the City for the purpose of ensuring that information contained in its records or obtained from the City or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Engineer's duties under this Agreement. Persons requesting such information should be referred to the City. Engineer also agrees that any

information pertaining to individual persons shall not be divulged other than to employees or officers of Engineer as needed for the performance of duties under this Agreement.

CC. ANTI-DISCRIMINATION AGAINST ISRAEL ACT. If this Agreement has a total potential value of \$100,000 or more and Engineer has 10 or more employees, the following applies. Pursuant to Section 34.600, RSMo. and to the fullest extent permitted by law, Engineer certifies that Engineer is not engaged in a boycott of Israel as of the Effective Date of this Agreement, and agrees for the duration of this Agreement to not engage in a boycott of Israel as defined in Section 34.600, RSMo.

DD. PROVISIONS REQUIRED BY LAW. Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, the Agreement will promptly be physically amended to make such insertion or correction.

EE. SEVERABILITY. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

FF. NOTICE: Whenever any notice is required by this Agreement to be made, given or transmitted to any party, it shall be enclosed in an envelope with sufficient postage attached to ensure delivery and deposited in the United States Mail, first class, with notices to City addressed to:

City Engineer  
City of Lee's Summit  
220 SE Green Street  
Lee's Summit, MO 64063

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

and notices to Engineer shall be addressed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

GG. E-SIGNATURE AND COUNTERPARTS. The Parties agree that this Agreement may be signed in two or more counterparts and/or signed electronically, and all such counterparts together shall constitute one and the same agreement; such signatures shall bind the signing party in the same manner as if a handwritten signature had been delivered.



**ARTICLE VIII  
EXHIBITS**

The following Exhibits are attached to and made a part of this Agreement:

Exhibit A – Scope of Services

Exhibit B – Fee Estimate

City and Engineer, by signing this Agreement, acknowledges that they have independently assured themselves and confirms that they individually have examined all Exhibits, and agrees that all of the aforesaid Exhibits shall be considered a part of this Agreement and agrees to be bound to the terms, provisions, and other requirements thereof, unless specifically excluded.

**THIS AGREEMENT** shall be binding on the parties thereto only after it has been duly executed and approved by City and Engineer.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**CITY OF LEE'S SUMMIT, MISSOURI**

**ENGINEER:**

\_\_\_\_\_  
Stephen A. Arbo, City Manager

ATTEST:

\_\_\_\_\_  
City Clerk Trisha Fowler Arcuri

APPROVED AS TO FORM:

\_\_\_\_\_  
Scott Ison,  
Chief Counsel of Infrastructure and Recreation

\_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

ATTEST:

\_\_\_\_\_