

CITY OF ST. CHARLES, MISSOURI
ENGINEERING SERVICES CONTRACT

THIS ENGINEERING SERVICES CONTRACT (hereinafter, the “Contract”) is made in St. Charles County, Missouri, by and between the City of St. Charles, Missouri, a constitutional home rule charter city and political subdivision of the State of Missouri (hereinafter, the “City”), and _____

[insert exact legal name of Consulting Engineer company] (hereinafter, the "Consulting Engineer" or “Engineer”).

The City intends to construct a project (hereinafter, the “Project”) in St. Charles, Missouri, described as follows:

Project Name: _____

Project Description: _____

Project Location: _____

The Project Charter is attached as Schedule A.

The City contracts with the Consulting Engineer to perform professional engineering services for the Project, and to perform the professional engineering services as more particularly described herein. By executing this Contract, the Consulting Engineer represents to the City that the Consulting Engineer is qualified to perform the professional engineering services required for this Project and by this Contract, and is licensed to practice engineering by the public entities having jurisdiction over the Consulting Engineer and the Project.

SECTION I: DEFINITIONS.

As used in this Contract, the following words shall have the meanings ascribed herein unless otherwise stated or reasonably required by this Contract, and other forms of any defined words shall have a meaning parallel thereto.

A. "City" means the City of St. Charles, Missouri.

B. "Construction Cost" means and includes the total cost of the entire construction of the Project, including overhead and profit, supervision, materials, supplies, labor, tools, equipment, transportation or other facilities furnished, used or consumed, without deduction on account of penalties, liquidated damages or other amounts withheld from payment to the contractor or contractors, but such cost shall not include the Consulting Engineer fee, special consultant's fee, or other payments to the Consulting Engineer and shall not include cost of land, right-of-way or easement acquisition or financing costs.

C. "Consulting Engineer" means the person or persons, partnership, limited liability company, corporation, association, joint venture or other entity identified on Page 1 of this Contract to perform engineering services, preparation of plans, specifications or contract documents. The Consulting Engineer shall retain the services of engineers, architects, landscape architects, and surveyors licensed by the State of Missouri to perform services required by this Contract.

D. "Contract Documents" means the documents identified in the contract required for construction of the Project and including Engineering Documents. Terms defined in the General Conditions of the contract for construction of the Project shall have the same meaning when used in this Contract unless otherwise specifically stated or in the case of a conflict in which case the definition used in this Contract shall prevail in the interpretation of this Contract.

E. "Contract Time" means the completion of contract documents suitable for competitive construction bidding as shown in Section II-1.

F. "Engineering Documents" means documents required or reasonably implied by the nature of the Project, including, but not limited to, plans, specifications, drawings, tracings, designs, calculations, sketches, models, computer data and reports.

G. "Engineering Services" means the professional services, labor, materials, supplies, testing, surveying, title work, construction administration, if applicable, and other acts, duties, and services required of the Consulting Engineer pursuant to this Contract together with such other services as the City may require pursuant to this Contract.

H. "Percent of Services Completed" means work completed in accordance with the completion of the scope of work as stated in Schedule B, Scope of Engineering Services, to this Contract.

I. "Program" means a study or other concept criteria required to determine the total design scope of the Project.

J. "Project" means the project identified on page 1 of this Contract.

K. "Project Charter" means a document defining the purpose, goals, scope, objectives, constraints, and overall approach for the work to be completed as part of the project including deliverables, budget, time constraints, risks, resources, and standards agreed upon for the project. The Project Charter is subject to change by mutual agreement of the City and Consulting Engineer throughout the duration of this contract.

L. "Project Costs" means the total cost of the project including but not limited to all planning/design, utility relocation, right-of-way/easement acquisition, and construction costs.

M. "Project Manager" means the person designated by the City or the Consulting Engineer to act as the City's and Consulting Engineer's respective representatives for the Project. The City's Project Manager is identified on the Project Charter.

N. "Project Progress Report" means the monthly report submitted by the Consulting Engineer with the monthly invoice reporting the Percent of Services Completed to date in the form attached as Exhibit A to this Contract and incorporated herein by this reference.

O. "Reimbursable Expenses" means those expenses of the Consulting Engineer as authorized by the City and identified on a schedule to this Contract.

P. "Right-of-Way" and "Easements" means street, highway, or road right-of-way, drainage or utility easements, or any other land dedicated to or otherwise subject to public use.

Q. "Scope of Engineering Services" means the work as defined and identified with a time schedule in Schedule B, Scope of Services, to this Contract and incorporated herein by this reference.

R. "Subsurface Borings and Testing" means borings, excavations, probing, subsurface explorations, laboratory tests and inspections of samples, substances, materials and equipment and appropriate professional interpretations, reports related thereto and logs of all the foregoing.

SECTION II: COMPENSATION.

A. Total Fee: City agrees to pay Consulting Engineer at actual hourly costs and directly reimbursable fees in accordance with the attached rate schedule attached hereto as Schedule C. The total amount paid to the Consulting Engineer shall be the actual hours expended multiplied by the hourly rate from Schedule C, plus directly reimbursable fees as computed from Schedule C. [ALTERNATE: "in accordance with the rates, overhead, fixed fees, and directly reimbursable expenses identified in Schedule C]. The total payments pursuant to this Contract shall not exceed _____ dollars (\$_____)

The Total Fee is based on the performance of the Scope of Services specified in this Contract, with submittal of final construction documents including but not limited to plans, specifications, and engineer's estimate/opinion suitable for solicitation of competitive construction bid proposals on or before _____ [insert date]. Payment to Consulting Engineer shall be made monthly based upon itemized invoices indicating the Percent of Services Completed.

B. Additional Services: Consulting Engineer shall provide services in addition to those listed in Section III when the services are authorized in writing by the City. Prior to commencing any additional services, the Consulting Engineer shall submit to the City a proposal outlining the additional services to be performed and a proposed total fee for the additional services. City shall pay Consulting Engineer for additional services in accordance with the fees stated Schedule C, Additional Services Fee Schedule, which is attached to this Contract. Reimbursable Expenses incurred in conjunction with additional services shall be paid separately

and shall be paid at the cost set forth on a schedule to this Contract. Consulting Engineer shall maintain all records supporting the cost of Reimbursable Expenses and pertaining to additional services and the records shall be open for City inspection.

C. Special Services: City may request Consulting Engineer to provide special services as a consultant or witness in any litigation, legal or administrative proceeding arising out of the Project. Consulting Engineer shall not be compensated by City if the special services are to defend the Consulting Engineer's professional Engineering Services. Consulting Engineer shall not be compensated by City to appear at any hearing or judicial proceeding necessary to acquire easements or right-of-ways for the Project. If the Consulting Engineer is requested by the City to appear as a witness for the City and is entitled to be compensated under the provisions of this paragraph, the Consulting Engineer shall be paid based upon the fees set forth in Schedule C, Additional Services Fee Schedule to this Contract.

D. Invoicing and Payment Processing: Consulting Engineer shall invoice the City monthly for all services performed to date and based on the Percent of Services Completed as shown on the Project progress report submitted to City with the invoice. City shall process the invoice and pay the Consulting Engineer within thirty (30) calendar days of receipt and approval of the invoice.

E. City Right to Withhold Payment: In the event the City becomes aware that any cost, charge, or representation of the Consulting Engineer provided in its invoice is believed by the City to be inaccurate or incorrect, the City may withhold payment of the amount invoiced related to the disputed amount until the matter is corrected to the City's reasonable satisfaction. The City will notify the Consulting Engineer of the disputed amount as soon as reasonably practicable. City and Consulting Engineer will cooperate to expeditiously effect a resolution of the disputed amount and Consulting Engineer shall issue a revised invoice to City as necessary. Invoiced amounts not questioned by City shall be paid to Consulting Engineer in accordance with the contract payment procedures in Section II.D.

F. Project Progress Report: A Project Progress Report shall be submitted with each monthly invoice reporting the Percent of Services Completed to date by task.

G. Change of Scope of Engineering Services: For substantial modifications to the Scope of Engineering Services or substantial modifications of drawings or specifications previously accepted by City and when requested by City and through no fault of the Consulting Engineer, the Consulting Engineer shall be compensated for time and expenses incurred based upon Schedule C, Additional Services Fee Schedule plus Reimbursable Expenses chargeable for this service; provided, however, that any increase in the Total Fee or Contract Time must be approved through a written Supplemental Agreement. This Contract may be amended to provide for additions, deletions and revisions in the Engineering Services, Contract Time or to modify the terms and conditions thereof by written Supplemental Agreement. Consulting Engineer shall correct or revise any errors or deficiencies in its designs, drawings or specifications without additional compensation when due solely to Consulting Engineer's negligent acts, errors, or omissions. If corrections or revisions are not solely Consulting Engineer's fault, then the parties will negotiate an equitable sharing of the fees associated with such changes and the fixed fee will be adjusted accordingly.

SECTION III: RESPONSIBILITIES OF CONSULTING ENGINEER.

The Consulting Engineer shall provide and perform the Engineering Services set forth in the Project Charter (Schedule A) and Scope of Engineering Services (Schedule B) within the Contract Time and which are required for the construction of the Project.

A. PROJECT MANAGEMENT

1. Services: The services to be provided are set out in Schedule B.
2. The Consulting Engineer agrees to follow and abide by all requirements of the City of St. Charles' Project Management Manual (PMM) in the execution of this contract.
3. The Consulting Engineer shall advise the City at each cost estimate/opinion submission if, in its opinion, the amount budgeted for the Project is not sufficient to cover the Project Cost.

B. BIDDING PHASE.

1. Services: The services to be provided during this phase are set out in Schedule B.

2. Bids that Exceed Cost Estimate/Opinion: If all bids received and opened exceed the Engineer's Estimate/Opinion, the Consulting Engineer, at the request of City and for no additional cost to the City, shall prepare a report for the City identifying why the bids exceeded the Engineer's Estimate/Opinion. The City has four (4) options if the bids exceed the Engineer's Estimate/Opinion. The City may: (1) give written approval of an increase in the Project cost; (2) authorize rebidding of the Project; (3) terminate the Project and this Contract; or (4) cooperate in revising the Project scope or specifications, as necessary to reduce the Construction Cost. If option number 4 is selected, the Consulting Engineer shall negotiate with City in order to revise and modify the drawings and specifications as necessary to achieve compliance with the Engineer's Estimate/Opinion.

C. CONSTRUCTION PHASE.

1. In-house Construction Administration and Construction Project Representative (CPR) Services: It is understood that the City may provide in-house or subcontracted construction administration and CPR services for the Project. The Consulting Engineer shall cooperate, consult with and advise City or its subcontractor regarding construction administration and CPR matters when requested. In the event that CPR services are a Consulting Engineer provided service as set out in Schedule B, any delay in construction caused by the Consulting Engineer's work shall not be grounds for additional payment.

2. Services: The services provided during this phase are set out in Schedule B.

3. Supplemental Drawings: If during construction situations arise which require supplemental drawings or details, the Consulting Engineer shall timely provide such supplemental drawings or details at no cost to the City when the supplemental drawings or details are required to correct the Consulting Engineer's negligent errors or omissions or to clarify the Consulting Engineer's intent in the original design and preparation of Contract Documents.

4. Notice of Defects: If during the construction phase, the Consulting Engineer observes or otherwise becomes aware of any design or construction defect in the work, the Consulting Engineer shall give prompt written notice to the City of such defects and their approximate location on the Project. However, the Consulting Engineer shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions, inspections by construction contractor and programs in connection with the construction work, because these are solely the construction contractor's responsibility under the contract for construction. The Consulting Engineer shall not be responsible for the construction contractor's schedules or failure to carry out the work in accordance with the Contract Documents. The Consulting Engineer shall not have control over or charge of acts or omissions of the construction contractor, contractor's subcontractors, or their agents or employees.

5. Shop Drawings: The Consulting Engineer shall review and take appropriate action on the construction contractor's shop drawings and samples, and the results of tests and inspections and other data which each construction contractor or subcontractor is required to submit for the purposes of checking for compliance with the design concept and conformance with the requirements of the Contract Documents. This review shall not extend to means, methods, sequences, techniques or procedures of construction, or to safety precautions and programs incident thereto. The Consulting Engineer's review shall be conducted with reasonable promptness while allowing sufficient time in the Consulting Engineer's judgment to permit adequate review. Review of a specific item shall not indicate that the Consulting Engineer has reviewed the entire assembly of which the item is a component. The Consulting Engineer shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

D. GENERAL DUTIES AND RESPONSIBILITIES.

1. Responsibilities under the General Conditions of the Contract for Construction ("General Conditions"): In addition to the responsibilities herein set forth, the Consulting Engineer shall be responsible for those matters identified in the General Conditions as being responsibilities of the Consulting Engineer. The General Conditions shall be

in a form mutually agreeable between the City and Consulting Engineer and shall be consistent with the intent and requirements of this Contract.

2. Personnel: The Consulting Engineer shall assign only qualified personnel to perform any service concerning the Project. At the time of execution of this Contract, the Consulting Engineer designates _____ **[insert name]** as their Project Manager on the Project. This person shall be the primary contact with the City's Project Manager and shall have responsible authority for delivering the services of this contract from the Consulting Engineer. If not the herein designated Project Manager, the Consulting Engineer shall also designate, in writing to the City, the person in their firm with the authority to bind the Consulting Engineer. So long as the person named above remains employed by the Consulting Engineer, he or she shall perform the function of Project Manager on this Project. A personnel change must be approved by the City, but not unreasonably withheld.

3. Subsurface Borings and Material Testing: If tests in addition to those set forth in Schedule B are required for Project design, the Consulting Engineer shall prepare specifications for the taking of the additional borings. Such Subsurface Borings and Testing, as defined herein, shall be provided by the Consulting Engineer or its subcontractors and compensated as an Additional Service. The City shall be named as an intended third-party beneficiary to the Consulting Engineer's subcontracts with the geotechnical engineer, the land surveyor, and the testing laboratory.

4. Service By and Payment to Others: Any work authorized in writing by the City and performed by anyone other than the Consulting Engineer or its subcontractors in connection with the Project shall be contracted for and paid for by the City directly to the third party or parties. In addition to payments for professional services, this may also include necessary permits, licenses, ownership certifications, materials testing, advertising costs, and other special tests or other work required or requested by the City or the Consulting Engineer which is not defined within the scope of Engineering Services of the Consulting Engineer. The payment for such additional services shall be subject to negotiation between the City and the third party and shall be approved prior to the performance of any additional services. Although the Consulting Engineer may assist the City in procuring such services of third parties, the

Consulting Engineer shall in no way be liable to either the City or such third parties in any manner whatsoever for such services or for payment thereof.

5. Subcontracting of Engineering Services: Engineering Services to be subcontracted and designated subcontractors are identified on Schedule D. The Consulting Engineer shall not subcontract, delegate the performance thereof or assign any of the Engineering Services to be performed pursuant to this Contract without first obtaining the written consent of the City regarding the Engineering Services to be subcontracted or assigned and the consulting firm or person proposed to accomplish the subcontracted or assigned Engineering Services. Unless otherwise stated in the written consent to the assignment or delegation of Engineering Services, no assignment or delegation shall release or discharge the assignor or obligor from any obligation pursuant to this Contract. The City shall be named as an intended third-party beneficiary to the Consulting Engineer's subcontracts. Any person or firm proposed for subcontracting Engineering Services pursuant to this Contract shall maintain throughout the duration of the Contract, insurance as provided in Section V. D.(6) herein, and shall additionally maintain Professional Liability Errors and Omissions insurance in a minimum policy amount equivalent to that of the Consulting Engineer under this contract and provide the City with certification thereof unless waived by the City.

6. Endorsement: The Consulting Engineer shall sign and affix its licensing seal to all final plans, specifications, estimates and engineering data prepared by the Consulting Engineer and shall cause all subcontractors to sign and seal their final documents where required by law. Any review or approval by the City of any documents prepared by the Consulting Engineer or its consultants including, but not limited to, the plans and specifications, shall be solely for the purpose of determining whether such documents are consistent with the City's construction program and intent and shall not be construed as approval of same by the City. No review of such documents by the City shall relieve the Consulting Engineer of its responsibility for the accuracy, adequacy, fitness, suitability and coordination of its work product.

7. Inspection of Documents: The Consulting Engineer shall maintain all Project records for inspection by the City during the contract term and for five (5) years from the date of final payment and shall notify the City prior to their disposal.

8. Design Criteria, Property Acquisition, Survey Standards:

a. *Engineering Design Criteria.* Engineering design criteria for the Project shall be in accordance with City Codes and the City's Engineering Design Standards, and those listed on the Project Charter. The Consulting Engineer shall follow and complete the City's Engineering Design Plan Checklist with each plan submittal.

b. *Property Acquisition.* In the event real property interest acquisition is a service required pursuant to this Contract, then all of the following standards shall apply:

(i) Consulting Engineer shall provide standard title reports for each property interest.

(ii) Consulting Engineer shall provide written metes and bounds legal descriptions and related exhibits for each permanent property interest to be acquired.

(iii) Legal descriptions and exhibits shall be sealed by a Missouri Professional Land Surveyor.

c. *Surveying Standards.* In addition to the standard of care for survey services, these standards shall apply to any surveying services required:

(i) Identify all easements and encumbrances known to exist at the time of the survey. Identification shall include the physical location and reference to the written or recorded location.

(ii) Surveying work shall reference the Missouri Coordinate System of 1983 in accordance with 10 CSR 30-2.050 and applicable supporting requirements thereof.

(iii) Topographic surveying work shall meet the Missouri Mapping Standards in accordance with 10 CSR 30-6, Class I, at a scale of **1 in. = 50 ft.** and contour interval **of 1 ft.**, and applicable supporting requirements thereof.

(iv) A minimum of four control points per mile with base line(s) tied to all control points on paper plans is required.

(v) Right-of-Way or Easement Property Strip Maps surveying work shall be performed in accordance with the General Land Surveying Requirements, Accuracy Standards, and the United States Public Land Survey requirements of the Missouri Minimum Standards for Property Boundary Surveys, 10 CSR 30-2.030, 10 CSR 30-2.040, and 10 CSR 30-3 and applicable supporting requirements thereof.

(vi) Boundary surveys shall be executed in accordance with the Missouri Minimum Standards for Property Boundary Surveys and these boundary surveys shall be properly recorded in the office of the St. Charles County Recorder of Deeds.

SECTION IV: CITY OF ST. CHARLES RESPONSIBILITIES.

A. COMMUNICATION. The City shall provide to the Consulting Engineer applicable Program Criteria; examine and timely respond to Consulting Engineer submissions; and give written notice to Consulting Engineer, who shall respond within five business days (including a request for additional time), whenever the City observes or otherwise becomes aware of any defect in the Engineering Services.

B. ACCESS. The City will provide access for the Consulting Engineer to enter public and private property necessary for the completion of the Project.

C. DUTIES. The City shall furnish and perform the various duties and services in all phases of the Project which are outlined and designated in Schedule A, Project Charter, and Schedule B, Scope of Engineering Services, as the City's responsibility.

D. PROJECT REPRESENTATIVE. The City shall designate a Project Manager to represent the City in coordinating the Project with the Consulting Engineer, with the authority to communicate instructions, policies, and decisions of the City. The Project Manager is subject

to change, but City shall notify the Consulting Engineer in writing of changes in the status or availability of its Project Manager.

SECTION V: GENERAL PROVISIONS.

A. TERMINATION.

1. Notice: The City shall have the authority and right to terminate this Contract for cause or for its convenience and without cause or default on the part of the Consulting Engineer, by providing ten (10) days' written notice of the termination to the Consulting Engineer. Upon receipt of notice of termination from the City, the Consulting Engineer shall, at City's option as contained in the notice: (1) immediately cease all Engineering Services; or (2) meet with the City and, subject to the City's approval, determine what Engineering Services shall be required of the Consulting Engineer in order to bring the Project to a reasonable termination in accordance with the request of the City. The Consulting Engineer shall also provide to the City copies of all Engineering Documents completed or partially completed at the date of termination.

If the City defaults on its obligation pursuant to this Contract, the Consulting Engineer is entitled to terminate this Contract by providing ten (10) days written notice to the City.

2. Termination for Cause: If this Contract is terminated for cause, after notice to the Consulting Engineer and a period of ten (10) days for the Consulting Engineer to remedy the cause for termination, the City may take over the Engineering Services and prosecute same to completion, by contract or otherwise, for the amount and at the expense of the Consulting Engineer, and the Consulting Engineer shall be liable to the City for reasonable excess costs incurred by the City by reason of such prosecution and completion. When the Contract has been terminated, such termination shall not affect any rights or remedies of the City against the Consulting Engineer then existing or which may later accrue. Similarly, any retention or payment of monies due the Consulting Engineer shall not release the Consulting Engineer from liability.

3. Compensation for Convenience Termination: If the City terminates this Contract for its convenience as herein provided, the City shall compensate the Consulting

Engineer for all Engineering Services completed to the date of its receipt of the termination notice and for any additional Engineering Services requested by the City to bring the Project to reasonable termination. Compensation to the Consulting Engineer shall not include anticipatory profit or consequential damages, neither of which will be allowed.

4. Compensation for Cause Termination: If the City terminates this Contract for cause or default by the Consulting Engineer, the City shall compensate the Consulting Engineer for the reasonable cost of Engineering Services completed to the date of its receipt of the termination notice. Compensation to the Consulting Engineer shall not include anticipatory profit or consequential damages, neither of which will be allowed. The City also retains all of its rights and remedies against the Consulting Engineer including but not limited to its rights to sue for damages, interest and attorney fees.

5. Incomplete Documents: The Consulting Engineer shall not be responsible for errors or omissions in documents which are incomplete as a result of an early termination of this Contract pursuant to this Section.

6. Non Appropriation Clause: Notwithstanding other terms to the contrary, the obligation of CITY under this Contract shall cease immediately for a fiscal year in which CITY does not, for any reason, appropriate funds for this Contract.

B. DISPUTE RESOLUTION.

The City and the Consulting Engineer agree that disputes regarding the Project shall first be addressed by negotiations between the parties. If negotiations between the parties fail to resolve the dispute, then the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute, the Consulting Engineer shall proceed with the Engineering Services pursuant to this Contract as if no dispute existed, and the City shall continue to make payment for the Consulting Engineer's completed services unless the Consulting Engineer gives notice of termination. Nothing herein shall prohibit the parties from mutually agreeing upon another method of dispute resolution.

C. OWNERSHIP OF ENGINEERING DOCUMENTS.

All Engineering Documents prepared in connection with this Project shall be the property of the Consulting Engineer, whether the Project for which they are made is constructed or not. However, the Consulting Engineer shall provide the City a copy of all completed or, in the case of termination of the project partially completed, documents in reproducible form, including but not limited to prints, reproductions, and electronic CAD files. Reports, plans, specifications, and related documents are the Consulting Engineer's copyrighted instruments, and at the option of the Consulting Engineer may so identify them by appropriate markings. Provided the Consulting Engineer is paid for its services, either by termination or completion of services, then City shall subsequently be entitled to use these documents without any additional compensation or agreement of the Consulting Engineer, however, such use, without written verification or adaptation by the Consulting Engineer for the specific purpose intended by the City shall be at the City's sole risk and without liability or legal exposure to the Consulting Engineer whatsoever. If the City does reuse the Consulting Engineer's documents on another project, it shall retain Consulting Engineer or another licensed and insured professional engineer to review, adapt and seal such documents. The City does not take any responsibility for the use of documents by persons other than the City. The submission of or distribution of documents to meet regulatory requirements is not to be considered as contrary to any of Consulting Engineer's right to the documents.

D. INSURANCE.

The Consulting Engineer shall maintain throughout the term of this Contract insurance coverage for the risks specified below and shall maintain policy limits at a minimum in the amounts specified below. All commercial general liability and automobile liability insurance shall be written on an occurrence basis. With the exception of professional liability insurance and workers' compensation/employer's liability insurance, the City shall be named as an additional insured on all insurance policies, the Consulting Engineer's insurance will be primary to any insurance the City may have and the City's insurance shall be non-contributory.

1. Professional Liability: The Consulting Engineer shall maintain Professional Liability Errors and Omissions insurance coverage for five (5) years beyond the termination date of this Contract for the Engineering Services performed pursuant to this Contract in a policy limit amount sufficient to cover Project Costs, or \$3,000,000.00 per claim

and aggregate, whichever is less, for each claim/aggregate, and shall provide City with a copy of the insurance endorsements and a certificate of insurance as well as a copy of the policy, when requested. The Consulting Engineer's duty and obligation to maintain Professional Liability insurance and provide the insurance policy to the City shall survive termination of this Contract.

2. Commercial General Liability:

Each Occurrence	\$3,000,000
Personal & Advertising Injury	\$3,000,000
Products/Completed Operations	
Aggregate	\$3,000,000
General Aggregate	\$3,000,000

An umbrella or excess liability policy may be used to attain the shown commercial general liability limits.

Policy shall not contain any endorsements that remove or restrict the following coverages:

- a. Contractual Liability
- b. Explosion, Collapse & Underground
- c. Independent Contractors

3. Automobile Liability Insurance: Policy shall protect the Consulting Engineer against claims for bodily injury or property damage arising out of the ownership or use of any owned, hired or non-owned vehicle and must include protection for either:

- a. all owned, hire or non-owned motor vehicles of any type.

Limits: \$3,000,000 Each Accident, Combined Single Limits, Bodily Injury and Property Damage. An umbrella or excess liability policy may be used to attain the shown commercial general liability limits.

Policy shall insure the contractual liability assumed by the Consulting Engineer pursuant to this Contract.

4. Workers' Compensation and Employers' Liability: This insurance shall protect the Consulting Engineer against all claims under applicable state Workers' Compensation laws.

Workers' Compensation: Statutory Limit

The Consulting Engineer shall also be protected against claims for injury, disease or death of employees for which, for any reason, may not fall within the provisions of a Workers' Compensation law under an Employers Liability policy with the following limits:

Bodily Injury by Accident	\$500,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$500,000 each employee

5. Industry Ratings: The City will only accept coverage from an insurance carrier that offers proof that the carrier:

- a. is licensed to do business in the State of Missouri; and
- b. carries a Best's Policyholder rating of A-VII, or better or is otherwise approved by the City.

Certification of insurance coverage in Sections (2), (3) and (4) above shall be on the ISO Standard Certificate of Insurance Form. Certification of professional liability insurance shall be provided on a separate ACORD form provided by the Consulting Engineer's insurance carrier or its authorized representative. Copies of additional insured endorsements shall accompany the insurance certificates.

6. Subcontractor's Insurance: If a part of this Contract is to be sublet, then the Consulting Engineer shall either:

- a. cover all subcontractors under its insurance policies; or

b. require each subcontractor not so covered to secure insurance which will protect against applicable hazards or risks of loss and in the minimum amounts designated herein, unless waived by the City.

7. The Consulting Engineering or its insurance company shall provide to the City at least thirty (30) days advanced written notice by REGISTERED MAIL prior to any renewal or expiration date of any insurance policy.

E. INDEMNITY.

1. Indemnification for General Liability or Non-Professional Negligence.

The Consulting Engineer shall defend, indemnify, and hold harmless the City and any of its elected officials, employees, officers, boards, commissions or agencies from and against damages, liability, losses, costs, expenses, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including reasonable attorneys' fees and the cost of defense), in connection with any action, proceeding, demand or claim arising out of or resulting from the negligence, in whole or in part, of the Consulting Engineer, its employees, agents, or subcontractors, or others for whom the Consulting Engineer is legally liable, provided that such damage, liability, loss, cost, or expense is:

a. attributable to bodily injury, sickness, disease, or death or to damage to or destruction of tangible property (other than the Project itself) of any person or entity including loss of use resulting there from; or

b. not the result of professional negligence.

In addition, the Consulting Engineer's obligations shall specifically apply to those damages, liabilities, losses, costs, or expenses arising from the negligent acts of the City or any of any of its elected officials, employees, officers, boards, commissions or agencies in those instances in which the City is named as an additional insured under the Consulting Engineer's Commercial General Liability insurance policy resulting from the negligence, in whole or in part, of the Consulting Engineer, its employees, agents, or subcontractors, or others for whom the Consulting Engineer is legally liable, and then only to the extent covered by such insurance, not to exceed the limits required herein. If the required insurance is not procured and maintained as required

by this Contract, then the Consulting Engineer's obligations hereunder shall apply as though the insurance was in place.

2. Indemnification for Professional Negligence. The Consulting Engineer shall indemnify and hold harmless the City and any of its elected officials, employees, officers, boards, commissions or agencies from and against damages, losses, costs, and expenses, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including reasonable attorneys' fees and the cost of defense), in connection with any action, proceeding, demand or claim but only to the extent caused by the negligent acts, errors, or omissions of the Consulting Engineer, its employees, agents, or subcontractors, or others for whom the Consulting Engineer is legally liable, in the performance of professional services pursuant to this Contract. The Consulting Engineer is not obligated under this subparagraph to indemnify the City for the negligent acts of the City or any of its elected officials, employees, officers, boards, commissions or agencies.

3. Additional provisions regarding the indemnification provided under paragraph E.1. and E.2. of this Contract. It is agreed as a specific element of consideration of this Contract that the indemnification provided by paragraphs E.1. and E.2. of this Contract shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party. In the case of any claims against the City, its elected officials, employees, officers, boards, commissions or agencies indemnified under this Contract, by an employee of the Consulting Engineer, its affiliates, subsidiaries, subcontractor or assignee, the indemnification obligations contained in this Contract shall not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for the Consulting Engineer, its affiliates, subsidiaries, subcontractor or assignee, under workers' compensation acts, disability benefit acts, or other employee benefit acts. This indemnification section shall survive the termination of this Contract.

F. NON-DISCRIMINATION AND AFFIRMATIVE ACTION.

1. In the execution of this Contract, no person shall on the grounds of race, color, religion, sex, disability, national origin or other protected status be excluded from full employment rights in, be denied the benefits of, or otherwise subjected to discrimination under

any program, service or activity under the provisions of any and all applicable federal and state laws against discrimination.

2. In all solicitation or advertisements for employees, the Consulting Engineer shall include the phrase "equal opportunity employer," or similar phrase approved by the City.

3. The Consulting Engineer shall include the provisions of paragraphs 1 and 2 in every subcontract or purchase order so that such provisions will be binding upon all subcontractors and vendors.

[4. The Consulting Engineer agrees to comply with the City of St. Charles Title VI Plan as provided for in Schedule F. – *for federally funded projects*]

G. ENTIRE AGREEMENT.

This Contract constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Contract may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Contract.

H. APPLICABLE LAW, JURISDICTION AND VENUE.

This Contract is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Missouri. In the event that the parties hereto are unable to resolve any controversy or claim arising out of, or relating to, this Contract or the making, performance or interpretation of it without resort to the courts, the parties agree that exclusive jurisdiction and venue over such matter shall be in the Eleventh Judicial Circuit Court of St. Charles County, Missouri.

I. ASSIGNMENT OF CONTRACT.

This Contract shall not be assigned or transferred by the Consulting Engineer without the written consent of the City.

J. NO THIRD PARTY BENEFICIARIES.

Nothing contained in this Contract shall create a contractual relationship with, or any rights in favor of, any third party. There shall be no intended or implied third party beneficiaries to this Contract.

K. INDEPENDENT CONTRACTOR.

The Consulting Engineer is an independent contractor and as such is not an employee of the City.

L. WORK PRODUCT FORMAT.

1. For documentation purposes, an original electronic media compatible with the City's own (CAD) System on specified disk type and paper hard copies of (24" x 36" or 11" x 17") shall be prepared for the City's use. The number of hard copies and sizes will be determined in Schedule B, Scope of Services. If the City provides such electronic media to others for any purpose, the City shall require the electronic media to be returned to the City upon completion of such use. The City recognizes that such use of electronic media will be at the City's sole risk and without any liability risk or legal exposure to the Consulting Engineer.

2. Project Documentation: All documentation provided to the City other than project drawings shall be furnished on a flash drive, CD, or other mutually agreeable format in either Microsoft Word file format or ASCII file format.

3. "Record" Drawings: After substantial completion of construction, the City and the construction contractor will provide copies of changes and alterations made in the field during construction to the Consulting Engineer to provide Record drawings, unless the Consulting Engineer has provided a flash drive or CD to the City on which the City can make changes. The Consulting Engineer has the right to rely on the information provided by the City and the construction contractor in preparing such documents, and shall have no independent duty to verify its accuracy.

M. FEDERAL LOBBYING ACTIVITIES.

(Only applies to projects receiving federal funds via the City)

31 USC Section 1352 requires all sub-grantees, contractors, subcontractors and consultants that receive federal funds via the City to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan or cooperative agreement. In addition, contract applicants, recipients and sub-recipients must file a form disclosing any expenditure they make for lobbying out of non-federal funds during the contract period. It is the responsibility of the Consulting Engineer to obtain executed forms from any of its subcontractors who fall within the provision of the Code and to provide City with the same.

N. COVENANT AGAINST CONTINGENT FEES.

The Consulting Engineer represents and warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Consulting Engineer, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a 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 Contract. For breach or violation of this representation and warranty, the City may terminate this Contract without liability or may, in its discretion, deduct from the Total Fee or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

O. COMPLIANCE WITH LAWS.

The Consulting Engineer shall exercise usual and customary professional care in its compliance with applicable laws, codes and regulations in effect as of the date of this contract. Design changes made necessary by newly enacted laws, codes and regulations after this date may entitle the Consulting Engineer to a reasonable adjustment in the schedule and additional compensation in accordance with the Additional Services provisions of this Contract. The Consulting Engineer shall assist the City in applying for those permits and approvals required by law for projects similar to the one for which the Consulting Engineer's services are being engaged. This assistance shall consist of completing and submitting forms to the appropriate regulatory agencies having jurisdiction over the construction documents and other services normally provided by the Consulting Engineer and included in the Scope of Services of this

Contract. The Consulting Engineer shall secure occupational and professional licenses necessary for the fulfillment of its obligations under this Contract.

P. TITLES, HEADINGS, SUBHEADINGS AND CAPITALIZATION.

The title and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of this Contract. Some terms are capitalized throughout this Contract but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

Q. SEVERABILITY CLAUSE.

Should any provision of this Contract be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Contract shall be unaffected thereby and shall continue to be valid and enforceable.

R. FEDERAL WORK AUTHORIZATION COMPLIANCE.

The Consulting Engineer acknowledges the award of this Contract requires compliance with Section 285.530 RSMo regarding enrollment and participation in the federal work authorization program with respect to all persons working in connection with the contracted services. The Consulting Engineer represents and warrants that it is in compliance with Section 285.530 at the time of award of this Contract. A sworn affidavit and supporting documentation affirming participation in a qualified work authorization program and that Consulting Engineer does not knowingly employ any person who is an unauthorized alien in connection with the services to be performed pursuant to this Contract is attached to this Contract and incorporated herein by this reference.

S. PROOF OF LAWFUL PRESENCE IN UNITED STATES.

The Consulting Engineer acknowledges award of this Contract requires compliance with Section 208.009 RSMo which requires the Consulting Engineer to provide the City with affirmative proof that person executing this Contract is a citizen or permanent resident of the

United States or is lawfully present in the United States prior to the City awarding the Consulting Engineer this Contract.

T. COMPLIANCE WITH OFFENDER REGISTRATION REQUIREMENT.

The Consulting Engineer shall comply with City Code of Ordinance Section 145.040 regarding the registration of sex offenders with the Police Department.

U. TERM OF CONTRACT.

This Contract shall have a duration until acceptance of the work performed or completion of the construction contract, whichever is longer.

V. NOTICES.

All notices that are required or permitted to be given hereunder shall be in writing, addressed to the parties hereto at their respective addresses set forth below and delivered by (a) United States registered or certified mail, with postage prepaid; (b) a commercial package courier/delivery service; (c) hand delivery; or (d) sent by facsimile to the facsimile numbers set forth below:

A. If to the City:
City of St. Charles
Attention: Director of Administration
200 North Second Street
St. Charles, MO 63301
Fax No. 636-949-3267

B. If to the Consulting Engineer:

A notice sent by certified or registered mail shall be effective as of the third business day following the day it is deposited in the mail, whether or not it is received. A notice sent by courier or hand delivery is effective on delivery. A notice sent by facsimile is effective on the first business day following transmission of the facsimile, if the sender's facsimile machine prints a confirmation that the recipient received the facsimile transmission and if a copy of the notice is also mailed by first class mail to the party that was to receive the notice accompanied by a note that it confirms a facsimile notice previously given. Either party may designate a different address or addresses by giving the other party written notice of its new address(es).

W. AUTHORITY TO APPROVE AND EXECUTE

The Consulting Engineer and the City each represent and warrant that it has the lawful authority to enter into this Contract and to perform the duties and obligations thereto.

X. ATTACHMENTS

The following exhibits are attached hereto and are hereby made part of this contract:

Schedule A – Project Charter

Schedule B – Consulting Engineer’s Scope of Services

Schedule C – Schedule of Fees and Hourly Rates

Schedule D – List of Subcontracted Services and Subcontractors

Schedule E – Notice and Instructions to Bidders/Vendors regarding §§ 285.525 through 285.550 RSMO, effective January 1, 2009

[Schedule F – Compliance with the City of St. Charles Title VI Plan for projects receiving federal funding]

Y. EXECUTION OF CONTRACT.

The parties have caused this Contract to be executed in duplicate originals on this _____ day of _____, 20_____.

CITY OF ST. CHARLES, MISSOURI:

By: Daniel J. Borgmeyer, Mayor Date

Attest:

Laura L. Whitehead, City Clerk Date

CONSULTING ENGINEER:

NAME OF COMPANY

By: Authorized Signatory Date

Printed Name of Authorized Signatory

Attest:

Signature Date

Printed Name

Schedule A

Project Charter

Schedule B

Consulting Engineer Scope of Services

Schedule C

Schedule of Fees and Hourly Rates

Schedule D

List of Subcontracted Services and Subcontractors

Schedule E

Notice and Instructions to Bidders/Vendors regarding §§ 285.525 through 285.550 RSMO,
effective January 1, 2009

Schedule F

Compliance with the City of St. Charles Title VI Plan

During the performance of this contract, the Engineer, for itself, its assignees and successors in interest agrees as follows:

1. Compliance with Regulations.

The Engineer shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation (hereinafter DOT), Title 49, Code of Federal Regulations, part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination.

The Engineer, with regard to the work performed during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Engineer shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontracts, including Procurement of Materials and Equipment.

In all solicitations either by competitive bidding or negotiations made by the Engineer for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Engineer of the Engineer's obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color, sex, or national origin.

4. Information and Reports.

The Engineer shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City of St. Charles or the Missouri State Department of Transportation to be pertinent to ascertain compliance with such Regulations,

orders and instructions. Where any information required of Engineer is in the exclusive possession of another who fails or refuses to furnish this information, the Engineer shall so certify to the City of St. Charles, or the Missouri Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance.

In the event of the Engineer's noncompliance with the nondiscrimination provisions of this contract, the City of St. Charles and the Missouri Department of Transportation shall impose such contract sanctions as it, or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- a) Withholding of payments to the Engineer under the contract until the Engineer complies, and/or;
- b) Cancellation, termination, or suspension of the contract, in whole or in part.

6. Incorporation of Provisions.

The Engineer shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Engineer shall take such action with respect to any subcontractor or procurement as the City of St. Charles or the U.S. Department of Transportation, Federal Highway Administration, may direct as a means of enforcing such provisions including sanctions for noncompliance.

Provided, however, that in the event Engineer becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Engineer may request the City of St. Charles enter into such litigation to protect the interests of the City of St. Charles and, in addition, the Engineer may request the United States to enter into such litigation to protect the interests of the United States.