

**Please Note:** The Council Meeting will be conducted at Rolla City Hall. Citizens are encouraged to watch the proceedings live on Fidelity Cable Channel 16 or through the Fidelity YouTube link at <https://www.youtube.com/channel/UCffrfbYSQtuhOAVkCCyieA>

**COUNCIL PRAYER**  
Ministerial Alliance

**AGENDA OF THE ROLLA CITY COUNCIL**  
**Monday, November 20th, 2023; 6:30 P.M.**  
**City Hall Council Chambers**  
**901 North Elm Street**

**PRESIDING:** Mayor Louis J. Magdits IV

**COUNCIL ROLL:** JOSHUA VROMAN, TERRY HIGGINS, MEGAN JOHNSON, NATHAN CHIRBAN, LISTER B. FLORENCE, JR., MATTHEW FRIDLEY, JAIED HALL, ROBERT KESSINGER, STANLEY MAYBERRY, KEVIN GREVEN, VICTORIA STEEN, AND TINA BALCH

\*\*\*\*\*

**PLEDGE OF ALLEGIANCE**  
Councilman Hall

I. **PUBLIC HEARINGS** – Public Hearing and Ordinance to approve the vacation of a utility easement and alley at property addressed as 610 E 10<sup>th</sup> Street. (City Planner Tom Coots) **Public Hearing and First Reading**

II. **ACKNOWLEDGMENTS and SPECIAL PRESENTATIONS** –

A. RMU GM Rodney Bourne: 4<sup>th</sup> Quarter Report

III. **OLD BUSINESS** –

IV. **NEW BUSINESS** –

- A. **Ordinance** to approve Aptitude Internet LLC ROW Use Agreement. (PW Director Darin Pryor) **Final Reading**
- B. **Ordinance** to approve Aviation Project Consultant Agreement for geotechnical engineering to determine the scope of rehabilitating the taxiway at RNA. (PW Director Darin Pryor) **Final Reading**
- C. **Ordinance** to enter into agreement with All Purpose Erectors for the Bayless Field Lighting Project. (Parks Director Floyd Jernigan) **First and Final Reading**

V. **CLAIMS and/or FISCAL TRANSACTIONS** –

- A. **Motion** to approve the purchase of the additional 3 Tahoes through Don Brown Chevrolet. (Police Chief Fagan)
- B. **Motion** to award the bid for a 2023 model Ford F150 (ACO Truck) to Hutcheson Ford. (Police Chief Sean Fagan)

VI. **CITIZEN COMMUNICATION**

VII. **MAYOR/CITY COUNCIL COMMENTS**

VIII. **COMMENTS FOR THE GOOD OF THE ORDER**

IX. **CLOSED SESSION** –

A. Closed Session per RSMo 610.021- (1) Legal

X. **ADJOURNMENT** -



**Project Information:**

Case No: SUB23-04  
 Location: Alley located between 10<sup>th</sup>, 11<sup>th</sup>, Maple, and Iowa Streets  
 Applicant: Central Missouri Community Health Center and City of Rolla

Request:  
 Vacation of alley

**Public Hearings:**

Planning Commission  
 November 14, 2023  
 5:30 PM  
 City Hall: 1<sup>st</sup> Floor

City Council  
 November 20, 2023  
 6:30 PM  
 City Hall: 1<sup>st</sup> Floor

**For More Information Contact:**

Tom Coots, City Planner  
[tcoots@rollacity.org](mailto:tcoots@rollacity.org)  
 (573) 426-6974  
 901 North Elm Street  
 City Hall: 2<sup>nd</sup> Floor  
 8:00 – 5:00 P.M.  
 Monday - Friday



What is a Vacation?

A vacation is an application to vacate (or remove) all or a portion of a right-of-way adjacent to a property or an easement on a property. The right-of-way or easement must be found to no longer serve any current or future purpose.

What is a Right-of-Way?

In the context of a vacation application, a right-of-way refers to the area which has been dedicated to the City – usually for a public street. An easement is a portion of land that has granted the City the right to use a private property for some public purpose – usually for utilities, drainage, or access.

How Will This Impact My Property?

Each case is different. Adjacent properties are more likely to be impacted. Please contact the Community Development Office at (573) 426-6974 if you have any questions.

What If I Have Concerns About the Proposal?

If you have any concerns or comments, please try to attend the meeting to learn details about the project. You will be given an opportunity to ask questions or make comments regarding the case.

What If I Cannot Attend the Meeting?

Please try to attend the meeting if you have any questions or concerns. However, if you are unable to attend the meeting, you may provide written comments by letter or email. These comments will be presented to the Board.

What If I Have More Questions?

Please contact the Community Development Office if you have any additional questions.

LEGAL DESCRIPTION

Alley located at Block 19, Holloways First Addition, Rolla, Phelps County, Missouri





**CITY OF ROLLA  
CITY COUNCIL AGENDA**

**DEPARTMENT:** Community Development

**ACTION REQUESTED:** First Reading/Public Hearing

**SUBJECT:** Vacation of a utility easement and alley at property addressed as 610 E 10<sup>th</sup> Street

(SUB23-04)

**MEETING DATE: November 20, 2023**

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**Application and Notice:**

Applicant/Owner - South Central Missouri Community Health Center, Inc. (Four Rivers)  
Public Notice - Letters mailed to property owners within 300 feet; Legal ad in the Phelps County Focus; signage posted on the property; <https://www.rollacity.org/agenda.shtml>

**Background:**

The applicant has purchased a property with four platted lots which has an alley dividing the property. The applicant plans to develop the property with a parking lot to serve as overflow parking for their planned medical clinic, just across Maple Street. The alley is not in use and was assumed to have previously been vacated. However, no record of vacation has been found. The alley must be vacated to allow for the area to be used for the planned parking lot.

While vacating the alley, the applicant also seeks to vacate a utility easement that also crossed the property. The easement is not in use and is not needed.

The zoning codes were revised recently to change the process for vacations. Under the new process, a vacation application is mostly driven by the City of Rolla staff. As such, staff reviewed the location and determined that vacating the entire alley would be the best approach, rather than a piece-meal approach requiring each land owner to petition separately. Notice was been provided to each impacted land owner.

The Planning and Zoning Commission recommended that the alley vacation be only for the west portion, adjacent to the applicant property due to objections raised by an impacted landowner. Therefore, the ordinance has been reduced to only propose the vacation of the alley and easement at 610 E 10<sup>th</sup>.

**Property Details:**

Land area - Approximately 1200 sq. ft. to be vacated

**Public Facilities/Improvements:**

Utilities - Sanitary sewer and some communications utilities are located in the alley. An easement will be retained.

**Comprehensive Plan:** The Comprehensive Plan does not provide guidance on street/alley vacations. The adopted Schuman/Ber Juan Neighborhood Plan does indicate that unneeded and abandoned alleys should be vacated to allow for redevelopment.

**Discussion:** The alley is mostly abandoned, however, the eastern 135 feet is used as a shared access to some adjacent properties with a gravel drive. The drive is not used by the general public and does not appear to be maintained. This portion could be vacated with an access easement to benefit the adjacent properties, if the land owners do not object.

**Planning and Zoning Commission Recommendation:**

The Rolla Planning and Zoning Commission conducted a public hearing on November 14, 2023 and voted 6-0 to recommend the City Council approve the request for the west 100 feet, adjacent to 610 E 10<sup>th</sup> Street, only.

**Prepared by:** Tom Coots, City Planner

**Attachments:** Public Notice; Exhibit; Ordinance

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE APPROVING THE VACATION OF AN ALLEY AND UTILITY EASEMENT AT 610 E 10<sup>TH</sup> STREET**

**(SUB23-04)**

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI AS FOLLOWS:**

**SECTION 1:** The location of the alley and easement to be vacated is shown on the attached exhibit.

**SECTION 2:** The said easement area to be vacated is more particularly described as follows:

The west five feet of Lots 5 and 8 in Block 19 of Holloway Addition to the City of Rolla, Missouri.

**SECTION 3:** The said alley area to be vacated is more particularly described as follows:

All that part of the 12' Alley that lies between Lots 5 and 6 and Lots 7 and 8 of Block 19 of Holloway Addition to the City of Rolla, Missouri described as follows:

Beginning at the Northwest corner of Lot 7 of Block 19 of said Holloway Addition; thence North 00°17'40" West, 12.00 feet along the East right of way of Maple Street to the Southwest corner of Lot 6 of said Block 19; thence North 89°50'10" East, 100.41 feet along the South line of said Lot 6 and the South line of Lot 5 of said Block 19 to the Southeast corner of said Lot 5 of Block 19; thence South 00°01'50" East, 12.00 feet to the Northeast corner of Lot 8 of said Block 19; thence South 89°50'10" West, 100.35 feet along the North line of said Lot 8 and the North line of Lot 7 of said Block 19 to the Point of Beginning.

**SECTION 4:** The alley area to be vacated as described in this ordinance shall be retained as a utility easement.

**SECTION 5:** Pursuant to State Statutes, the ownership of the property to be vacated is to revert to the property owners on each side of the alley.

**SECTION 6:** That this Ordinance shall be in full force and effect after the its passage and approval.

**PASSED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI, AND  
APPROVED BY THE MAYOR THIS 4<sup>TH</sup> DAY OF DECEMBER, 2023.**

APPROVED:

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

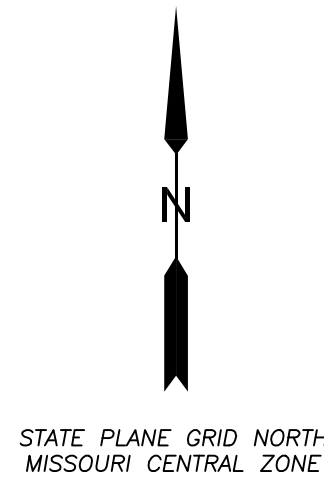
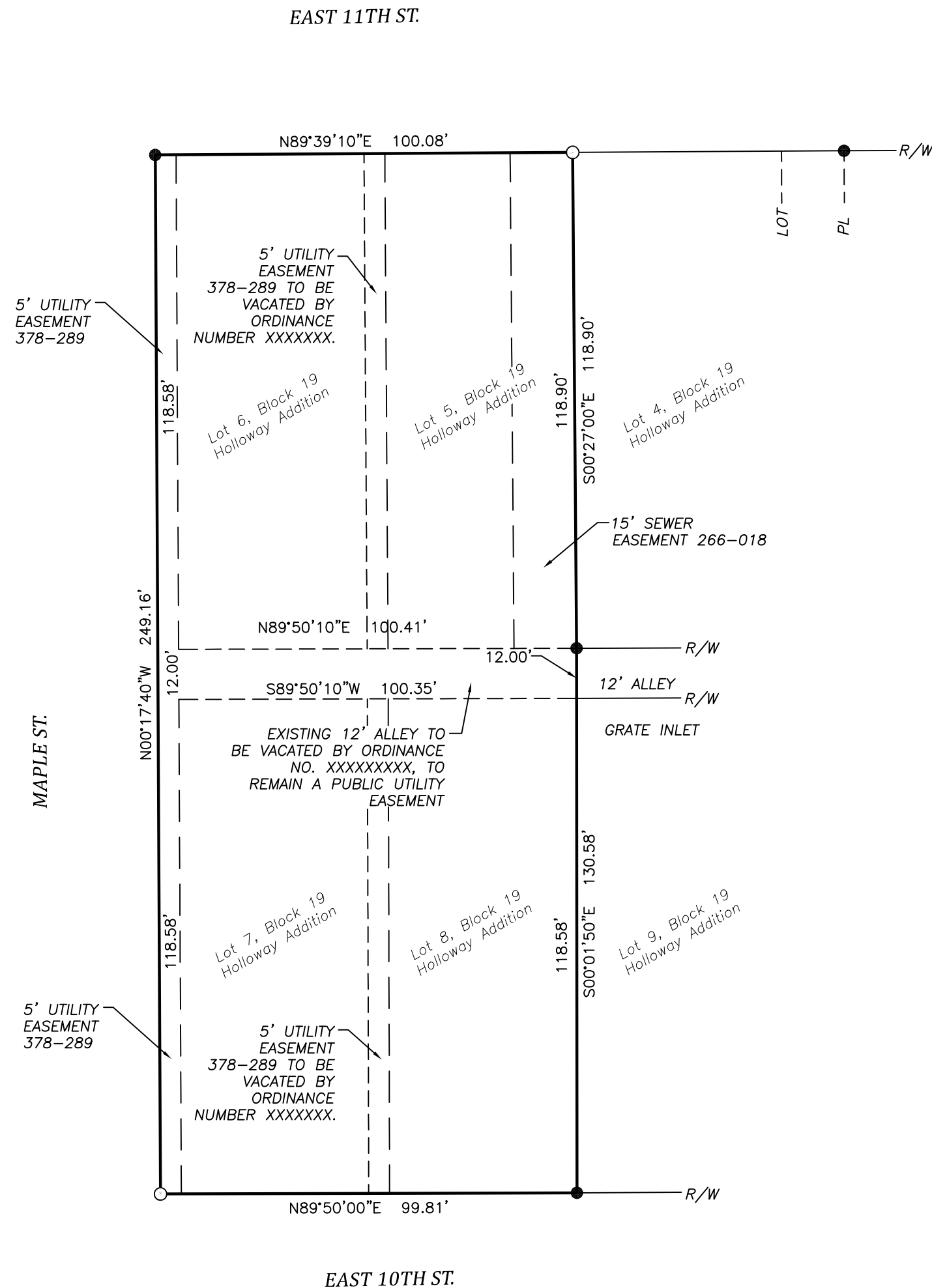
APPROVED AS TO FORM:

\_\_\_\_\_  
City Counselor



# FOUR RIVERS

A Resubdivision of Lots 5, 6, 7 and 8 of Block 19 of Holloway Addition  
To The City of Rolla, Missouri



- SET 1/2" IRON ROD
- FOUND 1/2" IRON ROD
- ◇ CALCULATED POSITION

### RECORDER'S CERTIFICATE

This plat was filed for record in my office this \_\_\_\_\_ day of \_\_\_\_\_, 2023.  
plat recorded at cabinet \_\_\_\_\_, slide \_\_\_\_\_.

Robyn Kordes  
Recorder of Deeds  
Phelps County, Missouri

### DESCRIPTION

Lots 5, 6, 7, and 8 in Block 19 in Holloway Addition to the City of Rolla, Missouri as per plat of record.

### IMPROVEMENT ACCEPTANCE

Approved subject to construction of improvements in accordance with development plans on file with the City of Rolla. this plat meets current subdivision codes of the City of Rolla.

\_\_\_\_\_  
Darin Pryor, PE  
Director of Public Works

\_\_\_\_\_  
Date

\_\_\_\_\_  
Rodney Bourne, General Manager  
Rolla Municipal Utilities

\_\_\_\_\_  
Date

\_\_\_\_\_  
Floyd Jernigan  
Director of Parks

\_\_\_\_\_  
Date

### COUNTY & CITY TAX RELEASE

I hereby certify that all property taxes levied by the County of Phelps and the City of Rolla against the real estate described on this plat have been paid in full for 2022 and all prior years.

\_\_\_\_\_  
Faith Barnes  
Collector of Revenue  
Phelps County, Missouri

\_\_\_\_\_  
Date

### PLANNING AND ZONING APPROVAL

Approved the \_\_\_\_\_ day of \_\_\_\_\_, 2023, by  
the Planning and Zoning Commission of Rolla, Missouri.

\_\_\_\_\_  
Russell Schmidt, Chairman  
Planning and Zoning Commission

\_\_\_\_\_  
Steve Flowers  
Community Development Director

### NOTES

- Type Urban Accuracy Standards.
- Parent Title Reference: 2023-0545.
- Field work performed in September 2023.
- A current title report has not been furnished to the land surveyor by the client, and no investigation has been conducted as to the present status of easements or other restrictive conditions affecting the subject land.

### DEDICATION

Whereas, South Central Missouri Community Health Center, Inc., a Missouri Nonprofit Corporation, therein called ("DEDICATOR") is the owner of the premises described on this plat, and

Whereas, DEDICATOR desires to subdivide the land as shown on this plat with said subdivision to be named "FOUR RIVERS".

DEDICATOR does hereby dedicate to the public use forever all easements shown upon this plat and subdivides the premises shown on this plat so that all of said premises will now be known as "FOUR RIVERS".

DEDICATOR does further grant to all political subdivisions and public utilities providing utility services to the land described on this plat the right to install and maintain electrical, sanitary sewer, water, storm water, telephone, cable television, and natural gas lines within and along those places which are designated as utility easements on this plat.

In witness whereof, the DEDICATOR has executed this dedication this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

by: \_\_\_\_\_  
Stuart Gibson, CEO

State of Missouri }  
County of Phelps } ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me personally appeared Stuart Gibson, to me known to be the person described in and who executed the same as their free act and deed.

In testimony whereof, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My commission expires

### ACKNOWLEDGMENT OF APPROVAL BY CITY COUNCIL

This is to acknowledge that the City Council of the City of Rolla, Missouri has by ordinance duly adopted and approved this plat and has authorized the same to be filed for record in the Office of the Recorder of Deeds, Phelps County, Missouri.

\_\_\_\_\_  
Louis J. Magdits, IV  
Mayor, City of Rolla

\_\_\_\_\_  
Date

\_\_\_\_\_  
Lorri Powell  
City Clerk

\_\_\_\_\_  
Date

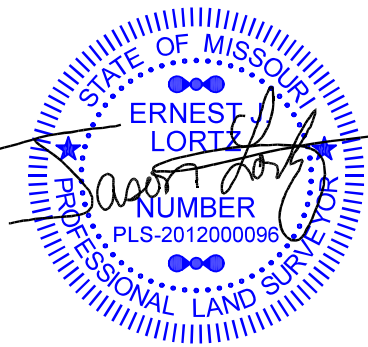
### SURVEYOR'S CERTIFICATION

Know all men by these presents:

That I, Jason Lortz, do hereby certify that this plat meets Missouri Minimum Standards for Property Boundary Surveys and was prepared under my supervision from actual survey of the land herein described prepared by Lortz Surveying, LLC dated October 9, 2023 and signed by Jason Lortz L.S. No. 2012000096 and that corner monuments and lot corner pins shown herein were placed under the personal supervision of Jason Lortz L.S. No. 2012000096 in accordance with Article II, Chapter 42, of the City Code of Rolla, Missouri.

\_\_\_\_\_  
Jason Lortz  
PLS 2012000096

\_\_\_\_\_  
Date



11/7/23

**LORTZ SURVEYING**  
P.O. Box 767 • 231 W. Commercial Street Lebanon, Missouri 65536  
Phone 417-991-8115 • www.lortzsurveying.com • LS: 2012028494

Survey of Lots 5, 6, 7 and 8,  
Block 19, Holloway Addition  
To The City Of Rolla, Missouri

South Central Missouri  
Community Health Center  
Rolla, Missouri

Survey No.  
**L-1977**

Drawn by EJL/SJM	Scale 1" = 30'	Survey No.
Checked by EJL	Date 10/9/2023	

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2023

# Fiscal Year 4th Quarter Report



Rolla Municipal Utilities

Provided to Rolla City Council

November 20, 2023

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# A STATEMENT BY THE BOARD OF PUBLIC WORKS

The Electric Power and Water System of the City of Rolla will be known as the **ROLLA MUNICIPAL UTILITIES**. Mr. J. B. Bronson will continue as general manager.

It will be the policy of the Board to operate the Rolla Municipal Utilities strictly on a business basis. There will be no change in the general policies of the management. All rates will be the same for the present.

The Board has three primary obligations:

1. To give the best possible service to the Citizens of Rolla.
2. To accumulate funds for the payment of the indebtedness. (Bond Issue and Revenue Certificates).
3. To build up reserve funds for any emergency and for replacement of machinery and equipment.

Regarding Service Interruptions:

This trouble is not in the local system, but in the source of supply. We hope eventually to have other sources of supply available and improve the electric service in Rolla.

Beginning immediately, \$1000.00 per month from the profits will be paid to the General Fund of the City of Rolla, which is to replace the Franchise Tax formerly paid by the Missouri General Utilities.

No merchandise will be sold in competition with local merchants.

No repair service will be maintained in competition with local Electric Service men.

Next Monday, November 12th, our offices will open in our new building, formerly the Negro U. S. O Building, 102 W. 9th Street. All business will be transacted from this location after that date. The Rolla Free Public Library will occupy the second floor, and the State Board of Health and the County Agent the basement of this building. These quarters are furnished to the above organizations without cost as a public service of the Rolla Municipal Utilities.

## Rolla Board of Public Works

H. E. CASTLEMAN, President  
F. H. FRAME, Vice-President  
R. E. SCHUMAN, Secretary  
F. A. CAMERON, Member

# **FOURTH QUARTER FINANCIAL RECAP (Unaudited)**

## **OPERATING INCOME and EXPENSES**

	<b>4th Quarter FYTD 2023</b>	<b>4th Quarter FYTD 2022</b>	<b>CHANGE</b>
<b>OPERATING REVENUES</b>	\$31,241,103	\$31,263,128	(\$22,025)
<b>OPERATING EXPENSES</b>	(\$32,155,062)	(\$31,424,337)	\$730,725
<b>OPERATING INCOME</b>	(\$913,960)	(\$161,209)	(\$752,751)
<b>OTHER INCOME &amp; EXPENSES</b>	\$1,718,956	\$844,255	\$874,701
<b>NET INCOME/LOSS</b>	\$804,966	\$683,046	\$121,920

At the end of the 2023 Fiscal Year, we are showing a total operating income of \$31,241,103. This is a slight decrease of \$22,025 compared to Fiscal Year 2022.

Total operating expenses through the 4<sup>th</sup> quarter of 2023 were \$32,155,062. Our operating expenses increased \$730,725 from the end of 4<sup>th</sup> quarter of 2022; this is mainly due to the increased cost of purchased power.

Total Net Income after the 4<sup>th</sup> quarter of 2023 was \$804,966. This is an increase of \$121,920 over the 4<sup>th</sup> quarter of 2022.



# STATUS OF WORK PROJECTS



## ***ELECTRIC DEPARTMENT***

- McCutchen Drive
  - From 18<sup>th</sup> Street to Harvey Lane. Relocate existing overhead 34 kV sub-transmission and 12kV overhead distribution, including underground feed to St. Maria's subdivision.
- Missouri Science & Technology
  - S&T South Substation – Extension of overhead 34.5 kV system, installation of new metering. Energized October 5, 2023.
- EV Charging Station
  - 1735 North Bishop – Underground primary extension, new transformer & metering.
- Tower Road Substation
  - Failure in cubicle happened January 30, 2023. Lengthy wait for parts. Replaced circuits, conductors, main breaker. Completed in October.
- Upcoming Projects
  - a. Rolla Senior Apartments – Replacement of underground primary. Converting from 4 kV system to 12 kV system
  - b. 1000 N. Oak Steet – Electric & water service to new planned unit development
  - c. Repairs to and replacement of poles identified by pole audit, as needed.
  - d. Additional pole attachments by multiple companies expanding telecommunication infrastructure in Rolla.
  - e. Installation of services, pole replacements & other work as needed to accommodate installation of new meter reading equipment being installed by Ameren.
  - f. Ongoing changes – Removal of overhead services not in use.

## **WATER DEPARTMENT**

- Bardsley Road from 14<sup>th</sup> Street to 16<sup>th</sup> Street – Replacement of water main in conjunction with new residential development.
- Hypoint Well 3 - Replacement of motor & pump, new electric service to building, refurbishment electrical, control, and chemical feed systems. Placed into service September 11, 2023.
- Nagogami Pressure Zone – consideration of water distribution system improvements to development area(s) north of I-44.
- Upcoming Projects – Replacement of old water main
  - a. Vienna Road - completed
  - b. Avon Court
  - c. Eastwood Drive
  - d. Elmwood Drive

## **FIBER**

- Projects
  - a. 9<sup>th</sup> Street Conversion from overhead to underground
  - b. Nagogami Substation to Nagogami Standpipe – Extension of fiber system to reduce reliance on radios.
  - c. Fiber service to Phelps County Courthouse – completed
  - d. MPUA assistance with fiber in Fredericktown for MoPEP generation unit - completed

## **MPUA/MoPEP UPDATES**

- Grain Belt Modification
- Testimony at State Capitol
- Iatan 2 Refinancing
- Demand Side Resources
- MPUA Annual Conference, Executive Committee, and Board Meetings.  
Attended by Chad Davis, Jason Grunloh, Gwen Cresswell, Jason Bell, Eric Lonning and Rodney Bourne. September 27-29, 2023.

## **MISCELLANEOUS**

- Board Vice-President retired
- Public Power Week – Cookout Celebration was on October 4<sup>th</sup>
- Solar Farm Discussion with Licking High School group
- Upcoming Prairie State Energy Campus tour
- Service Center Expansion Update



**CITY OF ROLLA  
CITY COUNCIL AGENDA**

**DEPARTMENT HEAD: Darin Pryor**

**ACTION REQUESTED: Ordinance 1<sup>st</sup> Reading**

**ITEM/SUBJECT: Aptitude Internet LLC ROW Use Agreement**

**BUDGET APPROPRIATION**

**DATE: 11/13/22**

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**COMMENTARY:**

**In February 2018 city council approved an ordinance updating chapter 36 specifically dealing with users of city Right of Ways (ROW). Part of that update requires any new users of the ROW to obtain a ROW Use Agreement. A copy of the proposed agreement with Aptitude Internet Solutions is included for your review. Staff is recommending a final reading of the an ordinance to authorize the mayor to sign the ROW Use Agreement with Aptitude Internet LLC.**

**ITEM NO. IV.A.1**

ORDINANCE NO.

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A CERTAIN AGREEMENT BETWEEN THE CITY OF ROLLA, MISSOURI AND APTITUDE INTERNET, LLC.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI, AS FOLLOWS:

Section 1: That the Mayor of the City of Rolla, Missouri be and is hereby authorized and directed to execute on behalf of the City of Rolla, Missouri an agreement between the City of Rolla and Aptitude Internet, LLC., a copy of said agreement being attached hereto and marked Exhibit "A".

Section 2: This ordinance will be full force and effect from and after the date of its passage and approval.

PASSED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI AND APPROVED BY THE MAYOR THIS 13TH DAY OF NOVEMBER 2023.

APPROVED:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY COUNSELOR

**RIGHTS-OF-WAY USE AGREEMENT  
FOR COMMUNICATIONS FACILITIES**

**THIS RIGHTS-OF-WAY USE AGREEMENT FOR COMMUNICATIONS FACILITIES** (“Agreement”) is made and entered into as of the Effective Date (as defined in Section 11.1), by and between, **Aptitude Internet Solutions**, (the “Licensee”), and the City of Rolla, Missouri, a municipality of the State of Missouri (the “City”). Licensee and City may sometimes be referred to in this Agreement individually as a “Party” or collectively as the “Parties.”

**WHEREAS**, Licensee has requested consent from the City to authorize its use of the City’s Rights-of-Way to construct, install, maintain, and operate facilities for communications or related capabilities; and

**WHEREAS**, Missouri law provides conditions relating to the City’s consent to, and authorizes the City to regulate the use and occupancy of its Rights-of-Way (“Rights-of-Way” or “ROW”) for placement of various communications facilities; and

**WHEREAS**, the City is authorized to and has established standards for occupancy of the Rights-of-Way by communications facilities and other uses that are consistent with and recognize the Public Service Commission’s duties and jurisdiction; and

**WHEREAS**, the City and Licensee desire to enter into this Agreement, to establish the terms of Licensee’s use of the Rights-of-Way, and to incorporate the provisions and definitions of the ROW Code (as defined in Section 1.2); and

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

**SECTION 1. GENERAL**

**1.1 Preservation of Police Power Authority.** Any rights granted to Licensee pursuant to this Agreement are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public.

**1.2 Defined Terms.** For purposes of this Agreement, the capitalized terms shall have the meanings as set forth herein and in the Code of Ordinances of the City, including specifically Chapter 36, and as may be amended (the “Code” or “ROW Code”). Words used in the present tense include the future tense, words in the single number include the plural number, and words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning. The following additional capitalized terms shall also apply to this Agreement:

A. **“Communications”** The transmission via the Facilities, in whole or in part, between or among points specified by the user, of information of the user’s choosing (e.g., data, video, voice), without change in the form or content of the information as sent and received, regardless of the statutory or regulatory scheme to which such transmissions may be subject.

B. **“Communications Service”** The transmission of writing, signs, signals, pictures, sounds, or other forms of intelligence through wire, wireless, or other means, including, but not limited to, any “telecommunications service,” “enhanced service,” “information service,” or “Internet Service,” as such terms are now, or may in the future, be defined under applicable law, and including all instrumentalities, Facilities, apparatus (Communications Facilities), and services (among other things, the receipt, forwarding, and delivery of Telecommunications) incidental to such transmission or designed to directly or indirectly facilitate or accept such transmission and shall also include “video services” as defined in § 67.2677 RSMo. The term “Communications Service” does not include the rental of conduit or physical facilities, which if proposed must be expressly and separately approved in Exhibit A below or sought directly by such third party from City. Any party seeking to provide cable television, video services, or use wireless communication facilities shall be subject to additional and separate requirements, limitations, and/or approvals of federal, state, and local law and shall have on file with the City such authorization to provide such services prior to commencement.

**1.3 Agreement Subject to Provisions of ROW Code.** This Agreement fully incorporates the provisions of the ROW Code as if fully set forth herein, and Licensee agrees as a part of this Agreement to abide by the provisions of the ROW Code and other applicable ordinances and law including Utility Standards of the City as a ROW User, and to be subject to the enforcement by the City as provided therein and in this Agreement as a material term herein. This Agreement may establish Licensee obligations that are supplementary to the ROW Code, but nothing in this Agreement shall be deemed to waive any obligation or requirement applicable to Licensee authorized or established by the ROW Code. The consent to use the Rights-of-Way authorized by this Agreement is subject to the continuing accuracy during the term of this Agreement of the application information provided by and maintained by Licensee for this authorization as provided to and on file with the City.

## **SECTION 2. GRANT OF AUTHORITY TO USE THE RIGHTS-OF-WAY**

**2.1 Agreements Non-Exclusive.** This Agreement shall grant nonexclusive privileges to use the Rights-of-Way. The City specifically reserves the right to grant, at any time, such additional agreements or other rights to use the Rights-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to applicable federal and state law. Nothing in this Agreement shall relieve Licensee from its obligations to apply for and obtain all necessary permits for installation of its Facilities including excavation, building, electrical, zoning, etc. before installation of its Facilities within the ROW.

**2.2 Nature of Rights Granted by this Agreement.** This Agreement shall not convey title to Licensee, equitable or legal, in the Rights-of-Way and gives only the right to occupy the City’s Rights-of-Way for the purposes and for the period stated in this Agreement and subject to the requirements of this Agreement. This Agreement also shall not grant the right to use Facilities owned or controlled by the City or a third-party, without the separate consent of the City or such third-party owning or controlling the Facilities, nor shall it excuse Licensee from obtaining appropriate access or pole attachment agreements before locating on Facilities controlled or owned by the City, Rolla Municipal Utilities (“RMU”), or a third-party.

**2.3 Grant.** Subject to the terms and conditions of this Agreement, the ROW Code, and the conditions set forth on Exhibit A attached hereto and incorporated by reference into this Agreement, Licensee is hereby granted the nonexclusive right and privilege to construct, operate, and maintain Facilities in, through, over, above, and along the City's Rights-of-Way for the purposes of supplying **Communications Service** within the City. Licensee agrees that this Rights-of-Way Use Agreement shall supersede any existing franchise or other rights-of-way use agreement, between the Licensee and the City, if any. As a condition of this grant, Licensee is required to obtain and maintain any permit, license, certification, grant, registration, or any other authorization lawfully required by any appropriate governmental entity, including, but not limited to, the City, the Federal Communications Commission, or the Missouri Public Service Commission. Licensee shall not have the right to install wireless antennae or antennae support structures in the ROW pursuant to this Agreement, nor provide services not authorized herein, except as provided in Exhibit A, or such subsequent amendment as may be approved thereto. The size, location, and specifications of the underground and above-ground Facilities are subject to prior City approval and consent. In the event that the use of the Rights-of-Way is proposed to change or Licensee desires to provide services other than as described herein, Licensee shall be required to seek amendment hereto prior to commencing such service or changed use.

**2.4 Use of Rights-of-Way; Police Powers; Licensee's Use Subordinate.** The Licensee shall construct and maintain its Facilities in accordance with all applicable federal, state, and local laws, codes, and ordinances, including all permit requirements, and fee payments, in effect as of the Effective Date or adopted after the Effective Date, to the extent such are not in contravention of applicable law. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of Licensee's Facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon Licensee. The use of the Rights-of-Way authorized by this Agreement shall in all matters be subordinate to the City's use of and rights to the same and Licensee shall be limited to such uses as have been expressly granted to Licensee by the City. Licensee shall excavate in or install Facilities in the Rights-of-Way in locations and in a manner only as authorized by a permit granted by the City. Licensee shall further be subject to the City's exercise of its powers, including but not limited to its administration and regulation related to the management of the Rights-of-Way exercised in a competitively neutral and non-discriminatory reasonable manner.

**2.5 No Interference/Notification Requirements.** Licensee shall construct and maintain its Facilities to be so located, constructed, and maintained as to avoid interference with the proper use of all Rights-of-Ways and so as not to materially or without authority interfere with other users of the Rights-of-Way. Except as may otherwise be provided, the Licensee shall reasonably notify all residents and properties materially affected by the proposed work prior to commencement of such work. Reasonable notification shall include at least two of the following: **door hangers** (REQUIRED), newspaper posting, posting on City website, and advertising on the local radio. All construction and maintenance by Licensee or its subcontractors shall be performed in accordance with generally accepted industry standards and all standard specifications, drawings, and procedures required or approved by the City.

**2.6 Notification, Joint Installation, and Collocation Requirements.** Licensee shall, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way under such generally applicable written policy or direction as may be established by the City. Licensee shall further make its installed Facilities available to other licensees on a nondiscriminatory competitively neutral basis as may be required by federal law codified at 47 U.S.C. § 224.

**2.7 Licensee Responsible for Costs.** The Licensee shall be responsible for all reasonable, lawfully reimbursable, documented costs incurred by the City that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the permit fee established pursuant to the ROW Code and not contrary to any applicable requirements of Sections 67.1830 to 67.1846 RSMo. All such costs shall be itemized, and the City's books and records related to these costs shall be made available upon request to the Licensee. Licensee shall be responsible for its own costs incurred removing or relocating its Facilities when required to do so by the City due to the City requirements relating to maintenance and use of the Rights-of-Way as set forth in Section 7.6, below. The Licensee shall be subject to pay the City reasonable compensation for use of the Rights-of-Way where such a fee is not contrary to applicable law and where established by the City Council.

### **SECTION 3. TERM**

**3.1 Term.** This Agreement shall be effective for a term of ten (10) years from the Effective Date, and shall continue from year to year thereafter, unless terminated by either party with ninety (90) days prior written notice to the other of an intent to terminate this Agreement following the Initial Term, provided in no circumstance shall this Agreement be effective for longer than twenty (20) years and subject to earlier termination or forfeiture as provided for elsewhere in this Agreement.

### **SECTION 4. TAXES**

**4.1 Taxes.** The Licensee agrees to pay all legally applicable taxes including license taxes, business taxes, utility taxes, video services provider fees, and other applicable taxes of the City and failure to pay such taxes shall be considered a breach of this Agreement. Nothing in this Agreement is intended to alter, amend, modify, or expand the taxes that may be lawfully assessed on Licensee's business activities under applicable law. Licensee shall be subject to audit and shall itemize by category of service the amount received and taxes paid for services provided by Facilities in the Rights-of-Way. Such taxes shall be in addition to compensation, if any, required by the City by ordinance or otherwise subject to any limitations herein and of applicable state or federal law.

### **SECTION 5. TRANSFER OF AGREEMENT OR FACILITIES**

**5.1 Transfer of Agreement.** Unless otherwise prohibited by law, Licensee shall not sell, transfer, lease, or assign this Agreement or its rights under this Agreement, in whole or in part, without obtaining the City's prior consent, which consent will not be unreasonably

withheld, conditioned, or delayed. Notwithstanding the foregoing sentence, Licensee may sell, transfer, lease, or assign this Agreement or its rights under this Agreement, in whole or in part, with prior thirty (30) days' written notice to the City if to: (a) any entity controlling, controlled by, or under common control with Licensee; (b) any surviving successor entity or newly created successor entity in the event of a merger, reorganization, or consolidation involving Licensee. The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership or this Agreement. Licensee shall not change its name under which it does business with the public without providing at least thirty (30) days' prior written notice to the City.

**5.2 Agreement Binding.** In the event of a sale, transfer, assignment, or any other transaction Licensee may enter into that involves transfer of Licensee's rights, duties, and/or privileges under this Agreement, all provisions of this Agreement that are obligatory upon, or that inure to the benefit of Licensee, shall also be obligatory upon and shall inure to the benefit of any and all successors and assigns of Licensee. Further, all obligations, duties, liabilities, limitations, prohibitions, amendments, and forfeitures by this Agreement created or imposed upon Licensee shall be binding upon and be assumed, kept, and performed by its legal and bona fide assigns and successors in interest, according to the true intent and purpose of this Agreement, whether expressly so stated or not.

**5.3 Sale or Lease of Facilities.** Except as otherwise may be provided by law, Licensee shall not lease, sell, sublet, or otherwise transfer possession or control or use of the Facilities, or any portion thereof, for any purpose to any person that has not obtained a duly issued Agreement, or other grant by the City to use the Rights-of-Way and which includes the authority to use or maintain such leased or transferred Facilities. Notwithstanding the foregoing, Licensee may use and maintain Licensee's installed Facilities for the benefit of its customers of its Communications Services provided that any such customer shall have no right of physical access to the Facilities in the ROW without a separate agreement with the City.

## **SECTION 6. FORFEITURE OF LICENSE AND PRIVILEGE.**

**6.1 Forfeiture.** In case of material failure on the part of the Licensee, its successors and assigns, to comply with any of the provisions of this Agreement, including the provisions of the Code of Ordinances, or if the Licensee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this Agreement, including the provisions of the Code, or if the Licensee loses authority to provide its Communication Services or do business within the City under applicable law, or if the Licensee, its successors and assigns, shall forfeit all rights and privileges permitted herein, and all rights hereunder shall cease, terminate, and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City proceeds to forfeit this Agreement, it shall first serve a written notice upon the Licensee, setting forth in detail the neglect or failure complained of, and the Licensee shall have thirty (30) days thereafter in which to cure the default by complying with the conditions of this Agreement. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with, unless said material default could not have been cured within said thirty (30) day period by Licensee exercising reasonable diligence and Licensee is exercising diligence to cure said default, the City shall take action by an affirmative vote of the City Council present at the meeting and voting, at which Licensee may appear and be heard, to terminate the Agreement;

setting out the grounds upon which said Agreement is to be canceled or terminated. Nothing herein shall prevent the City from taking any other action or remedy as may be set forth in the City's Code of Ordinances or as may otherwise exist at law. All remedies described in this Section are cumulative and in addition to any other rights and remedies to which City may be entitled at law, in equity or under this Agreement.

## **SECTION 7. GENERAL CONDITIONS**

**7.1 Compliance With Laws.** In performing activities and exercising its rights and obligations under this Agreement, the Licensee shall comply with all applicable federal, state, and local laws, ordinances, regulations, and policies, including, but not limited to, all laws, ordinances, zoning, and other regulations and policies relating to construction, bonding, insurance, and use of public property.

**7.2 Insurance.** In addition to the requirements of Section 36-28.i of the City Code, except as may be prohibited by law, Licensee shall provide, at its sole expense, and maintain during the term of this Agreement commercial general liability insurance with a reputable, qualified, and financially sound company licensed to do business in the State of Missouri, and unless otherwise approved by the City, with a rating by Best of not less than "A," that shall protect the Licensee, the City, and the City's officials, officers, and employees from claims which may arise from operations under this Agreement, whether such operations are by the Licensee, its officers, directors, employees and agents, or any subcontractors of Licensee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from all Licensee operations, products, services or use of automobiles, or construction equipment. The amount of insurance for Single Limit Coverage applying to Bodily and Personal Injury and Property Damage shall be at least \$3,065,952.00, but in no event less than the individual and combined sovereign immunity limits established by § 537.610 RSMo., or its successor, for political subdivisions; provided that nothing herein shall be deemed to waive the City's sovereign immunity. An endorsement shall be provided which states that the City is named as an additional insured with full and equivalent coverage as the insured under the insured's policy and stating that the policy shall not be cancelled or materially modified so as to be out of compliance with the requirements of this Section, or not renewed without thirty (30) days' advance written notice of such event being given to the City Administrator. The City's additional insured coverage shall have no deductible. **The insurance requirements in this Section or otherwise shall not apply to Licensee to the extent and for such period during this Agreement as Licensee is exempted from such requirements pursuant to § 67.1830(6)(a) RSMo. and has on file with Public Works an affidavit certifying that Licensee has twenty-five million dollars in net assets and the facts otherwise establishing that Licensee is therefore so exempted and provided that this exemption shall not apply if Licensee uses or obtains the right to use any City or RMU poles or other facilities.**

**7.3 Construction Guarantee and Maintenance.** Licensee agrees that it shall be responsible to guarantee for a period of four years the restoration of the Rights-of-Way in the area where such Licensee conducted excavation and performed the restoration minimally as required by § 67.1834 RSMo. A bond, letter of credit, or other surety (collectively "Surety") in the form approved by the City shall be posted if required by the City to guarantee construction



performance. **Surety shall not be required to the extent and for such period during this Agreement as Licensee is exempted from such requirements pursuant to § 67.1830(6)(a) RSMo. and has on file with Public Works an affidavit certifying that Licensee has twenty-five million dollars in net assets and the facts otherwise establishing that Licensee is therefore so exempted and provided that this exemption shall not apply if Licensee uses or obtains the right to use any City or RMU poles or other facilities.** Licensee shall also be responsible for maintenance of its Facilities and any and all damage caused to the ROW, equipment within the ROW, or otherwise by Licensee's use of the ROW.

**7.4 Enforcement; Attorneys' Fees.** The City shall be entitled to enforce this Agreement through all remedies lawfully available, and Licensee shall be liable to pay the City its costs of enforcement, including reasonable attorneys' fees, enforceable by a judicial action, if so necessary.

**7.5 Relationship of the Parties.** Under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, or employment between the Parties.

**7.6 Relocation or Removal of Facilities.**

**7.6.1** In addition to the requirements of Section 36-30 of the ROW Code, the City may in its exercise of the public interest require that Licensee, at Licensee's sole cost and expense, relocate, adjust, or reinstall underground any of its Licensee's Facilities. The City shall give reasonable notice of such requirement to Licensee, including the location of Facilities to be relocated and a reasonable time to relocate such Facilities. Reasonable time shall be at least 6 months. Licensee shall forthwith remove, adjust, or relocate such Facilities within the reasonable time provided by the City in its written notice. The cost of such relocation, removal, or reinstallation of the Facilities shall be the exclusive obligation of said Licensee without expense to the City. If any Facilities are not relocated in accordance with this Section and within the reasonable time frames required by the City, the City or its contractors may relocate the Facilities and the Licensee and its Surety shall be jointly and severally liable to the City for any and all costs incurred by the City, including but not limited to any liquidated delay damages. Any time period during which Licensee is unable to relocate its Facilities due to the actions or inactions of a third party, which is unaffiliated to Licensee and not under contract with or control of Licensee, including, without limitation, the City, will not be counted against the reasonable time frame allowed to Licensee to relocate its Facilities.

**7.6.2** Licensee shall upon request of any person other than the City requesting relocation of Facilities and holding a validly issued building or moving permit and within a reasonable period as may be established by the City, temporarily raise, lower, adjust, or relocate its Facilities as may be reasonably necessary for such permit-holder to exercise its rights under the permit. Except where good cause is approved by the City, a permit-holder must make its request at least fourteen (14) days prior to the date it intends to exercise its rights under the permit. If applicable, Licensee will, within seven (7) days of its receipt of such a request, deliver to the permit-holder an invoice for the services. However, Licensee will not be required to honor any such request unless and until the permit-holder makes payment in advance for any expenses incurred by the Licensee pursuant to said person's request. If any Facilities are not relocated in accordance with this Section and within the reasonable time frames required by the City, the City

or its contractors may relocate the Facilities and the Licensee and its Surety shall be jointly and severally liable to the City for any and all costs incurred by the City, including but not limited to any liquidated delay damages. Any time period during which Licensee is unable to relocate its facilities due to the actions or inactions of a third party, which is unaffiliated to Licensee and not under contract with or control of Licensee, including, without limitation, the City, will not be counted against the reasonable time frame allowed to Licensee to relocate its Facilities.

**7.7 No Cause of Action Against the City.** The Licensee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from any of the provisions or requirements of this Agreement, or because of the enforcement thereof by the City, or for the failure of the City to have the authority to grant all, or any part, of the rights herein granted; provided that Licensee expressly acknowledges that it accepted the rights herein granted under this Agreement in reliance upon its independent and personal investigation and understanding of the power or authority of the City to enter into the Agreement herein with Licensee; provided further that the Licensee acknowledges by its acceptance of said Agreement that it has not been induced to enter into this Agreement upon any understanding, or promise, whether given verbally or in writing by or on behalf of any Party, or by any other person concerning any term or condition of this Agreement not expressed herein; provided further that the Licensee acknowledges by the acceptance of this Agreement that it has carefully read the provisions, terms, and conditions hereof and all incorporated provisions and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions of this Agreement. Nothing herein shall be deemed to waive the City's sovereign immunity.

## **SECTION 8. INDEMNIFICATION**

**8.1 Indemnification.** Licensee at its sole cost and expense, hereby agrees to indemnify, protect, release, defend (with counsel acceptable to the City), and hold harmless the City, its municipal officials, elected officials, councils, boards, commissions, officers, employees, attorneys, and agents, from and against any and all causes of action, claims, demands, all contractual damages and losses, economic damages and losses, all other damages and losses, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, from the action or inaction of Licensee, its agents, representatives, employees, contractors, subcontractors, or any other person for whose acts Licensee may be liable, in constructing, operating, using, maintaining, repairing, restoring, or removing Facilities, or in carrying on Licensee's business or operations in the City, or out of the fact that the City entered into this Agreement with Licensee, the rights granted to Licensee, or the activities performed, or failed to be performed, by Licensee under this Agreement, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents, or contractors, or as otherwise may be limited by law. This indemnity shall apply, without limitation, to any claim or cause of action for invasion of privacy, defamation, antitrust, negligence, theft, fire, violation or infringement of any copyright, trademark, trade name, service mark or patent or intellectual property right of any person, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Agreement. The indemnification, duty to defend, and hold harmless obligations set forth in this Section shall survive for a period of five (5) years after the date of expiration or

termination of this Agreement. Any payments required by Licensee to City pursuant to this indemnification Section or otherwise required under this Agreement shall accrue interest from the date due at one and one-half percent (1.5%) interest per month until fully paid.

## **SECTION 9. NOTICE**

**9.1** Any notice, demand, consent, approval, request, or other communication required or permitted to be given to either Party under or with respect to this Agreement (collectively, “Notice”) must be in writing and must be delivered in person, by a reputable overnight delivery service, or by certified mail, postage prepaid, return receipt requested, to the appropriate address(es) set forth below:

If Notice to Licensee:

\_\_Aptitude Internet Solutions ATTTN: Bill Denkler

\_\_1027 Sainte Genevieve Ave\_\_\_\_\_

\_\_Farmington, MO 63640\_\_\_\_\_

If Notice to City:

City of Rolla, Missouri  
Attn: City Administrator  
901 North Elm Street  
Rolla, MO 65401

**9.2** If notice is given by personal delivery, a receipt indicating that personal delivery was made must be obtained. Notice will be deemed effective on the date of receipt by the addressee as shown on the receipt if given by personal delivery, on the return receipt if notice is given by certified mail, or the confirmation of delivery form if notice is given by overnight delivery service. Rejection or refusal to accept or the inability to deliver because of a changed address of which no proper notice was given will be deemed to be receipt of the notice as of the date of rejection, refusal, or inability to deliver. Either Party may change its address for notice by giving notice of address change to the other Party in the manner for giving notice prescribed in Section 9.1.

## **SECTION 10. MISCELLANEOUS**

**10.1** This Agreement and all Exhibits constitute the entire Agreement between the Parties as to the subject matter of this Agreement, and no negotiations or discussions prior to the Effective Date shall be of any effect.

**10.2** The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of any other provision.

**10.3** No term or condition of this Agreement will be deemed to have been waived by a Party unless the waiver is made in writing and is signed by the Party against whom the waiver is claimed. No waiver of default or breach of this Agreement or consent to the default or breach will be deemed to have been waived or consented to unless the waiver or consent is made in writing and signed by the Party against whom the waiver or consent is claimed. The waiver of or consent to a breach or default of this Agreement will not be deemed to be a waiver of or consent to any other breach or default of this Agreement, or to any subsequent breach or default of the same term or condition of this Agreement. No course of dealing or conduct or failure of a Party to strictly enforce any term, right, or condition of this Agreement constitutes a general waiver or relinquishment of the term, right, or condition.

**10.4** The rights and remedies of the Parties shall be cumulative and in addition to any other rights and remedies provided by law or equity. The laws of the State of Missouri shall govern this Agreement.

**10.5** This Agreement is for the benefit of the Parties and not for any other person or entity. This Agreement creates no third-party beneficiary rights.

**SECTION 11. EFFECTIVE DATE AND ACCEPTANCE**

**11.1** This Agreement shall be effective on the date this Agreement is last signed by both Parties (“Effective Date”). The Parties acknowledge that this Agreement is a lawful contract between them, that they entered into this Agreement voluntarily, and have full authority to sign this Agreement.

**IN WITNESS WHEREOF**, this Agreement is entered into as of the Effective Date.

**CITY OF ROLLA, MISSOURI**

\_\_\_\_\_

Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

IV.A.12

**Aptitude Internet Solutions**

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

(CORPORATE SEAL)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The forgoing instrument was acknowledged before me this \_\_\_\_\_, 2023, by \_\_\_\_\_, on behalf of Aptitude Internet Solutions. This person is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
(Signature of Notary taking Acknowledgment)

Notary Public, State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

## EXHIBIT A

### SPECIAL CONDITIONS

The following special conditions shall be a condition of this Agreement and shall supplement and limit any provision in this Agreement to the contrary:

1. All new Licensee Facilities shall be installed underground, except where good cause is shown to authorize use of existing above-ground Licensee Facilities, including (1) when and where nearby similar facilities exist above ground or (2) when conditions are such that underground construction is impossible, impracticable, or economically unfeasible, as determined by the City. Above-ground Facilities authorized for good cause shall, in the City's reasonable judgment be limited to construction and Facilities having minimal detrimental impact on the area where construction is proposed. Ground-mounted pedestals customarily installed for underground Facilities shall be authorized subject to applicable permit requirements and design, location, appearance, and other reasonable requirements of the City, provided that such pedestals or equipment that are larger than 3 feet in height or otherwise not customarily found within the City limits shall not be deemed authorized by this Agreement without specific separate written authorization of the City.
2. Licensee acknowledges and agrees that pursuant to its obligation to pay all applicable taxes it shall pay the City's license tax as a provider of telephone services, if applicable, and shall remit to the City such tax on gross receipts of its business as required by Chapter 16 of the Code of the City of Rolla, Missouri, or as may be amended, regardless of technology or nomenclature used by Licensee to provide such services, including but not limited to wire, wireless, internet-based transmissions, and switched or unswitched, to the extent permitted by law.
3. Licensee represents and agrees that it (including its duly licensed contractors acting on its behalf identified on the Rights-of-Way permit application or otherwise to the City) shall not authorize third parties without a valid license, Rights-of-Way Use Agreement, or other lawful authorization in writing from the City to be within the City's Rights-of-Way to install or perform maintenance on its Facilities or have physical access thereto in the Rights-of-Way.
4. Licensee acknowledges and agrees that it will have 683 linear feet of underground, and 8958 linear feet of aerialfiber Facilities installed within the City Rights-of-Way for the purposes herein as depicted on Exhibit B attached hereto and incorporated herein.
5. For purposes of clarification only, a document providing Communication Service or the means of providing Communication Service to a third party as authorized herein but nominated or referred to as lease authorizing a service or use to a third-party shall not be deemed to violate Section 5.3, or constitute rent outside the scope of providing a Communication Service, solely because of such nomenclature or reference provided

it otherwise complies with the requirements of this Agreement and meets the following conditions:

- Does not provide the third-party with an ownership or property interest in or any form or type of title in the ROW, ROW Agreement, or any Facilities in the ROW, whether temporary or otherwise, and the lessee does not acquire the right to own, control, maintain, modify, physical access, or revise the Facilities in the ROW, whether specific Facilities or not; and
- Does not grant any rights or remedies as against the City and any such rights or remedies are limited to those as may be granted herein to be directly exercised by Licensee.

EXHIBIT B



HWY-V Aerial Approved  
Previously on MODOT Permit

**LEGEND**

ROW	FDH Cabinet
Address	Parcel
<b>Fiber Cable</b>	City Limits
Proposed Aerial	Conduit
Proposed Underground	Dimension Lines
30"x 60"	
Pole	
Grid	

0 25 50 100 US Feet

N 	<b>PROJECT NAME:</b>		ROL2_001_ROLLA_001B
	<b>WORK ORDER ID:</b>		ROL2_001_ROLLA_001B
	<b>DATE:</b>	10/18/2023	
	<b>REVISION:</b>	0	
	<b>ENGINEER:</b>	Bill Denkler	

Grid 1 of 3  
VE228\_C

**APTITUDE**

Ervin Cable Construction LLC

**MISSOURI ONE CALL SYSTEM**



**CITY OF ROLLA  
CITY COUNCIL AGENDA**

**DEPARTMENT HEAD: Darin Pryor**

**ACTION REQUESTED: Ordinance Final Reading**

**ITEM/SUBJECT: Aviation Project Consultant Agreement**

**BUDGET APPROPRIATION \$50,000**

**DATE: 11/13/2023**

\*\*\*\*\*

**COMMENTARY:**

**Attached is an ordinance that authorizes the Mayor to enter into an agreement with Woolpert, Inc for design services. This agreement is for geotechnical engineering to determine the scope of rehabilitating the taxiway at the Rolla National Airport. This agreement is for \$45,558.00. It will be reimbursed at 100% from non-primary entitlement funds. These funds are from the Federal Aviation Administration and administered by MoDOT.**

**Staff Recommends the final reading of the ordinance authorizing the Consultant Agreement with Woolpert, Inc for geotechnical services on the airport taxiway.**

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF ROLLA, MISSOURI TO EXECUTE ON BEHALF OF THE CITY OF ROLLA, MISSOURI AN AVIATION CONSULTANT AGREEMENT CITY OF ROLLA, MISSOURI AND WOOLPERT, INC.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI, AS FOLLOWS:

Section 1: That the Mayor of the City of Rolla, Missouri be and is hereby authorized and directed to execute on behalf of the City of Rolla, Missouri An Aviation Project Consultant Agreement between the City of Rolla, Missouri and Woolpert, Inc, a copy of said agreement being attached hereto and marked Exhibit A.

Section 2: This ordinance will be full force and effect from and after the date of its passage and approval.

PASSED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI AND APPROVED BY THE MAYOR THIS 13th DAY OF NOVEMBER 2023.

APPROVED:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY COUNSELOR

EXHIBIT A

Airport: Rolla National  
MoDOT Project No.: 23-056A-1

Airport Name: Rolla National  
Project No.: 23-056A-1  
County: Maries/Phelps

**AVIATION PROJECT CONSULTANT AGREEMENT**  
(FEDERAL ASSISTANCE)  
(Revision 04/11/2018)

THIS AGREEMENT is entered into by Woolpert, Inc. (hereinafter the "Consultant"), and the City of Rolla, Missouri, (hereinafter the "Sponsor").

WITNESSETH:

WHEREAS, the Sponsor has selected the Consultant to perform professional services to accomplish a project at the Rolla National Airport; and

WHEREAS, while neither the Missouri Department of Transportation (MoDOT) nor the Federal Aviation Administration (FAA) is a party to this Agreement, MoDOT and/or FAA land acquisition, environmental, planning, design and construction criteria and other requirements will be utilized unless specifically approved otherwise by MoDOT; and

WHEREAS, the Sponsor intends to accomplish a project at the Rolla National Airport as listed in Exhibit I of this Agreement, entitled "Project Description", which is attached hereto and made a part of this Agreement.

NOW, THEREFORE, in consideration of the payments to be made and the covenants set forth in this Agreement to be performed by the Sponsor, the Consultant hereby agrees that it shall faithfully perform the professional services called for by this Agreement in the manner and under the conditions described in this Agreement.

(1) DEFINITIONS: The following definitions apply to these terms, as used in this Agreement:

(A) "SPONSOR" means the owner of the airport referenced above.

(B) "SPONSOR'S REPRESENTATIVE" means the person or persons designated in Section (23)(A) of this agreement by the Sponsor to represent the Sponsor in negotiations, communications, and various other contract administration dealings with the Consultant.

(C) "MoDOT" means the Missouri Department of Transportation, an executive branch agency of state government, which acts on behalf of the Missouri Highways and Transportation Commission.

Airport: Rolla National  
MoDOT Project No.: 23-056A-1

(D) "CONSULTANT" means the firm providing professional services to the Sponsor as a party to this Agreement.

(E) "CONSULTANT'S REPRESENTATIVE" means the person or persons designated in Section (23)(B) of this agreement by the Consultant to represent that firm in negotiations, communications, and various other contract administration dealings with the Sponsor.

(F) "DELIVERABLES" means all drawings and documents prepared in performance of this Agreement, to be delivered to and become the property of the Sponsor pursuant to the terms and conditions set out in Section (12) of this Agreement.

(G) "DISADVANTAGED BUSINESS ENTERPRISE (DBE)" means an entity owned and controlled by a socially and economically disadvantaged individual as defined in 49 Code of Federal Regulations (CFR) Part 26, which is certified as a DBE firm in Missouri by MoDOT. Appropriate businesses owned and controlled by women are included in this definition.

(H) "FAA" means the Federal Aviation Administration within the United States Department of Transportation (USDOT), headquartered at Washington, D.C., which acts through its authorized representatives.

(I) "INTELLECTUAL PROPERTY" consists of copyrights, patents, and any other form of intellectual property rights covering any data bases, software, inventions, training manuals, systems design or other proprietary information in any form or medium.

(J) "SUBCONSULTANT" means any individual, partnership, corporation, or joint venture to which the Consultant, with the written consent of the Sponsor, subcontracts any part of the professional services under this Agreement but shall not include those entities which supply only materials or supplies to the Consultant.

(K) "SUSPEND" the services means that the services as contemplated herein shall be stopped on a temporary basis. This stoppage will continue until the Sponsor either decides to terminate the project or reactivate the services under the conditions then existing.

(L) "TERMINATE", in the context of this Agreement, means the cessation or quitting of this Agreement based upon the action or inaction of the Consultant, or the unilateral cancellation of this Agreement by the Sponsor.

(M) "USDOT" means the United States Department of Transportation, headquartered at Washington, D.C., which acts through its authorized representatives.

(N) "SERVICES" includes all professional engineering and related services and the furnishing of all equipment, supplies, and materials in conjunction with

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such services as are required to achieve the broad purposes and general objectives of this Agreement.

(2) SCOPE OF SERVICES:

(A) The services covered by this Agreement shall include furnishing the professional, technical, and other personnel and the equipment, material and all other things necessary to accomplish the proposed project detailed in Exhibit I of this Agreement.

(B) The specific services to be provided by the Consultant are set forth in Exhibit II of this Agreement, entitled "Scope of Services," which is attached hereto and made a part of this Agreement.

(3) ADDITIONAL SERVICES: The Sponsor reserves the right to direct additional services not described in Exhibit II as changed or unforeseen conditions may require. Such direction by the Sponsor shall not be a breach of this Agreement. In this event, a Supplemental Agreement will be negotiated and executed prior to the Consultant performing the additional or changed services, or incurring any additional cost for those additional services. Any changes in the maximum compensation and fee, or time and schedule of completion, will be covered in the Supplemental Agreement. Supplemental Agreements must be approved by MoDOT to ensure additional funding is available.

(4) INFORMATION AND SERVICES PROVIDED BY THE SPONSOR:

(A) At no cost to the Consultant and in a timely manner, the Sponsor will provide available information of record which is pertinent to this project to the Consultant upon request. In addition, the Sponsor will provide the Consultant with the specific items or services set forth in Exhibit III of this Agreement, entitled "Services Provided by the Sponsor", which is attached hereto and made a part of this Agreement. The Consultant shall be entitled to rely upon the accuracy and completeness of such information, and the Consultant may use such information in performing services under this Agreement.

(B) The Consultant shall review the information provided by the Sponsor and will as expeditiously as possible advise the Sponsor of any of that information which the Consultant believes is inaccurate or inadequate or would otherwise have an effect on its design or any of its other activities under this Agreement. In such case, the Consultant shall provide new or verified data or information as necessary to meet the standards required under this Agreement. Any additional work required of the Consultant as the result of inaccurate or inadequate information provided by the Sponsor will be addressed per the provisions of Section (3) of this Agreement. The Consultant shall not be liable for any errors, omissions, or deficiencies resulting from inaccurate or inadequate information furnished by the Sponsor which inaccuracies or inadequacies are not detected by the Consultant, unless the errors should have been detected by the Consultant through reasonable diligence.

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(5) RESPONSIBILITY OF THE CONSULTANT:

(A) The Consultant shall comply with applicable local, state and federal laws and regulations governing these services, as published and in effect on the date of this Agreement. The Consultant shall provide the services in accordance with the criteria and requirements established and adopted by the Sponsor; and if none are expressly established in this Agreement, published manuals and policies of MoDOT and FAA which shall be furnished by the Sponsor upon request; and, absent the foregoing, manuals and policies of the FAA, as published and in effect on the date of this Agreement.

(B) Without limiting the foregoing, land acquisition, environmental, planning, design and construction criteria will be in accordance with the information set out in Exhibit II of this Agreement.

(C) The Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of designs, drawings, specifications, and other services furnished under this Agreement. At any time during construction of the Sponsor project associated with this Agreement or during any phase of work performed by others on said project that is based upon data, plans, designs, or specifications provided by the Consultant, the Consultant shall prepare any data, plans, designs, or specifications needed to correct any negligent acts, errors, or omissions of the Consultant or anyone for whom it is legally responsible in failing to comply with the foregoing standard. The services necessary to correct such negligent acts, errors, or omissions shall be performed without additional compensation, even though final payment may have been received by the Consultant. The Consultant shall provide such services as expeditiously as is consistent with professional performance. Acceptance of the services will not relieve the Consultant of the responsibility to correct such negligent acts, errors, or omissions.

(D) Completed design reports, plans and specifications, plans and specifications submitted for review by permit authorities, and plans and specifications issued for construction shall be signed, sealed, and dated by a Professional Engineer registered in the State of Missouri. Incomplete or preliminary plans or other documents, when submitted for review by others, shall not be sealed, but the name of the responsible engineer, along with the engineer's Missouri registration number, shall be indicated on the design report, plans and specifications or included in the transmittal document. In addition, the phrase "Preliminary - Not for Construction," or similar language, shall be placed on the incomplete or preliminary plan(s) in an obvious location where it can readily be found, easily read, and not obscured by other markings, as a disclosure to others that the design report, plans and specifications are incomplete or preliminary. When the design report, plans and specifications are completed, the phrase "Preliminary - Not for Construction" or similar language shall be removed and the design report, plans and specifications shall thereupon be sealed.

(E) The Consultant shall cooperate fully with the Sponsor's activities on adjacent projects as may be directed by the Sponsor. This shall include attendance at

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meetings, discussions, and hearings as requested by the Sponsor. The minimum number and location of meetings shall be defined in Exhibit II.

(F) In the event any lawsuit or court proceeding of any kind is brought against the Sponsor, arising out of or relating to the Consultant's activities or services performed under this Agreement or any project of construction undertaken employing the deliverables provided by the Consultant in performing this Agreement, the Consultant shall have the affirmative duty to assist the Sponsor in preparing the Sponsor's defense, including, but not limited to, production of documents, trials, depositions, or court testimony. Any assistance given to the Sponsor by the Consultant will be compensated at an amount or rate negotiated between the Sponsor and the Consultant as will be identified in a separate agreement between the Sponsor and the Consultant. To the extent the assistance given to the Sponsor by the Consultant was necessary for the Sponsor to defend claims and liability due to the Consultant's negligent acts, errors, or omissions, the compensation paid by the Sponsor to the Consultant will be reimbursed to the Sponsor.

(6) NO SOLICITATION WARRANTY: The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, 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 Agreement. For breach or violation of this warranty, the Sponsor will have the right to terminate 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, gifts, or contingent fee, plus costs of collection including reasonable attorney's fees.

(7) DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS:

(A) DBE Goal: The following DBE goal has been established for this Agreement. The dollar value of services and related equipment, supplies, and materials used in furtherance thereof which is credited toward this goal will be based on the amount actually paid to DBE firms. The goal for the percentage of services to be awarded to DBE firms is 0% of the total Agreement dollar value.

(B) Eligibility of DBE's: Only those firms currently certified as DBE's by MoDOT, City of St. Louis/Lambert Airport Authority, Metro, City of Kansas City, and Kansas City Area Transportation Authority are eligible to participate as DBEs on this contract. A list of these firms is available on MoDOT's Office of External Civil Rights webpage at the following address under the MRCC DBE Directory:

[http://www.modot.org/business/contractor\\_resources/External\\_Civil\\_Rights/DBE\\_program.htm](http://www.modot.org/business/contractor_resources/External_Civil_Rights/DBE_program.htm)

(C) Consultant's Certification Regarding DBE Participation: The Consultant's signature on this Agreement constitutes the execution of all DBE

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certifications which are a part of this Agreement. The Consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the Sponsor deems appropriate, which may include, but is not limited to: withholding monthly progress payments; assessing sanctions; liquidated damages; and/or disqualifying the Consultant from future bidding as non-responsible.

1. Policy: It is the policy of the USDOT and the Sponsor that businesses owned by socially and economically disadvantaged individuals (DBEs) as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Thus, the requirements of 49 CFR Part 26 apply to this Agreement.

2. Obligation of the Consultant to DBEs: The Consultant agrees to assure that DBEs have the maximum opportunity to participate in the performance of this Agreement and any subconsultant agreement financed in whole or in part with federal funds. In this regard the Consultant shall take all necessary and reasonable steps to assure that DBEs have the maximum opportunity to compete for and perform services. The Consultant shall not discriminate on the basis of race, color, religion, creed, disability, sex, age, or national origin in the performance of this Agreement or in the award of any subsequent subconsultant agreement. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT assisted agreements and contracts. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as the recipient deems appropriate.

3. Geographic Area for Solicitation of DBEs: The Consultant shall seek DBEs in the same geographic area in which the solicitation for other Subconsultants is made. If the Consultant cannot meet the DBE goal using DBEs from that geographic area, the Consultant shall, as a part of the effort to meet the goal, expand the search to a reasonably wider geographic area.

4. Determination of Participation Toward Meeting the DBE Goal: DBE participation shall be counted toward meeting the goal as follows:

A. Once a firm is determined to be a certified DBE, the total dollar value of the subconsultant agreement awarded to that DBE is counted toward the DBE goal set forth above.

B. The Consultant may count toward the DBE goal a portion of the total dollar value of a subconsultant agreement with a joint venture eligible under the DBE standards equal to the percentage of the ownership and control of the DBE partner in the joint venture.



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C. The Consultant may count toward the DBE goal expenditures to DBEs who perform a commercially useful function in the completion of services required in this Agreement. A DBE is considered to perform a commercially useful function when the DBE is responsible for the execution of a distinct element of the services specified in the Agreement and the carrying out of those responsibilities by actually performing, managing and supervising the services involved and providing the desired product.

D. A Consultant may count toward the DBE goal its expenditures to DBE firms consisting of fees or commissions charged for providing a bona fide service, such as professional, technical, consultant, or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for the performance of this Agreement, provided that the fee or commission is determined by the Sponsor to be reasonable and not excessive as compared with fees customarily allowed for similar services.

E. The Consultant is encouraged to use the services of banks owned and controlled by socially and economically disadvantaged individuals.

5. Replacement of DBE Subconsultants: The Consultant shall make good faith efforts to replace a DBE Subconsultant who is unable to perform satisfactorily with another DBE Subconsultant. Replacement firms must be approved by the Sponsor and MoDOT.

6. Verification of DBE Participation: Prior to the release of the retained percentage by the Sponsor, the Consultant shall file a list with the Sponsor showing the DBEs used and the services performed. The list shall show the actual dollar amount paid to each DBE that is applicable to the percentage participation established in this Agreement. Failure on the part of the Consultant to achieve the DBE participation specified in this Agreement may result in sanctions being imposed on the Sponsor for noncompliance with 49 CFR Part 26. If the total DBE participation is less than the goal amount stated by the Sponsor, the Sponsor may sustain damages, the exact extent of which would be difficult or impossible to ascertain. Therefore, in order to liquidate such damages, the monetary difference between the amount of the DBE goal dollar amount and the amount actually paid to the DBEs for performing a commercially useful function will be deducted from the Consultant's payments as liquidated damages. If this Agreement is awarded with less than the goal amount stated above by the Sponsor, that lesser amount shall become the goal amount and shall be used to determine liquidated damages. No such deduction will be made when, for reasons beyond the control of the Consultant, the DBE goal amount is not met.

7. Documentation of Good Faith Efforts to Meet the DBE Goal: The Agreement goal established by the Sponsor is stated above in Subsection (7)(A). The Consultant must document the good faith efforts it made to achieve that DBE goal, if the agreed percentage specified in Subsection (7)(C)(8) below is less than the

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percentage stated in Subsection (7)(A). Good faith efforts to meet this DBE goal amount may include such items as, but are not limited to, the following:

A. Attended a meeting scheduled by the Sponsor to inform DBEs of contracting or consulting opportunities.

B. Advertised in general circulation trade association and socially and economically disadvantaged business directed media concerning DBE subcontracting opportunities.

C. Provided written notices to a reasonable number of specific DBEs that their interest in a subconsultant agreement is solicited in sufficient time to allow the DBEs to participate effectively.

D. Followed up on initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested in subconsulting work for this Agreement.

E. Selected portions of the services to be performed by DBEs in order to increase the likelihood of meeting the DBE goal (including, where appropriate, breaking down subconsultant agreements into economically feasible units to facilitate DBE participation).

F. Provided interested DBEs with adequate information about plans, specifications and requirements of this Agreement.

G. Negotiated in good faith with interested DBEs, and did not reject DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.

H. Made efforts to assist interested DBEs in obtaining any bonding, lines of credit or insurance required by the Sponsor or by the Consultant.

I. Made effective use of the services of available disadvantaged business organizations, minority contractors' groups, disadvantaged business assistance offices, and other organizations that provide assistance in the recruitment and placement of DBE firms.

8. DBE Participation Obtained by Consultant: The Consultant has obtained DBE participation and agrees to use DBE firms to complete at least 0% of the total services to be performed under this Agreement, by dollar value. All DBE firms which the Consultant intends to use, including DBE firm participation above and beyond the goal established in Subsection (7)(A), and the type and dollar value of the services each DBE will perform, is as follows:

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(A) DBE NAME AND ADDRESS	(B) TYPE OF DBE SERVICE	(C) DOLLAR VALUE OF DBE SUB- CONTRACT	(D) PERCENT APPLICAB LE TO DBE GOAL (100%, 60%)	(E) DOLLAR AMOUNT APPLICABL E TO DBE GOAL (C x D)	(F) PERCENT OF TOTAL CONTRACT (C / TOTAL CONTRACT AMOUNT)
Kansas City Testing and Engineering, LLC 1308 Adams Street Kansas City, KS 66103	Environmental Services	\$45,558.00	100%	45,558.00	100%
TOTAL DBE PARTICIPATION				\$45,558	100%

9. Good Faith Efforts to Obtain DBE Participation: If the Consultant's agreed DBE goal amount as specified in Subsection (7)(C)(8) is less than the Sponsor's DBE goal given in Subsection (7)(A), then the Consultant certifies good faith efforts were taken by Consultant in an attempt to obtain the level of DBE participation set by the Sponsor in Subsection (7)(A). Documentation of the Consultant's good faith efforts is to be submitted with this Agreement to the Sponsor and a copy submitted to MoDOT.

(8) SUBCONSULTANTS:

(A) The Consultant agrees that except for those firms and for those services listed below, there shall be no transfer of engineering services performed under this Agreement without the written consent of the Sponsor. Subletting, assignment, or transfer of the services or any part thereof to any other corporation, partnership, or individual is expressly prohibited. Any violation of this clause will be deemed cause for termination of this Agreement.

EXCEPTIONS (Subconsultant information):

List all Subconsultant(s) to be used for any piece of work outlined in this agreement, excluding DBE Firms listed in the DBE Participation Subsection (7)(C)(8), DBE Participation Obtained by Consultant, in this agreement. If none, write "N/A" in the first row of the first column.

FIRM NAME	COMPLETE ADDRESS	NATURE OF SERVICES	SUBCONTRACT AMOUNT
N/A	N/A	N/A	N/A

(B) The Consultant agrees and shall require the selected Subconsultants to maintain books, documents, papers, accounting records, and other evidence pertaining to direct costs and expenses incurred under the Agreement and to make such materials available at their offices at reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement for

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inspection by the Sponsor or any of its authorized representatives (or any authorized representative of MoDOT or the federal government), and copies thereof shall be furnished.

(C) Unless waived or modified by the Sponsor, the Consultant agrees to require, and shall provide evidence to the Sponsor, that those Subconsultants shall maintain commercial general liability, automobile liability, professional liability and worker's compensation and employer's liability insurance, or alternatively, a comparable umbrella insurance policy submitted to and approved by MoDOT, for not less than the period of services under such subconsultant agreements, and in an amount equal to the Sponsor's sovereign immunity caps as stated in section 537.600 RSMo and subsequently adjusted by the Missouri Department of Insurance. If the statutory limit of liability for a type of liability specified in this section is repealed or does not exist, the minimum coverage shall not be less than the following amounts:

1. Commercial General Liability: \$500,000.00 per person up to \$3,000,000.00 per occurrence;
2. Automobile Liability: \$500,000.00 per person up to \$3,000,000.00 per occurrence;
3. Worker's Compensation in accordance with the statutory limits; and Employer's Liability: \$1,000,000.00; and
4. Professional Liability: \$1,000,000.00, each claim and in the annual aggregate.

(D) The subletting of the services will in no way relieve the Consultant of its primary responsibility for the quality and performance of the services to be performed hereunder, and the Consultant shall assume full liability for the services performed by its Subconsultants.

(E) The payment for the services of any Subconsultants will be reimbursed at cost by the Sponsor in accordance with the submitted invoices for such services, as set forth in Section (9), entitled "Fees and Payments".

(F) The Consultant agrees to furnish a list of any MoDOT-approved DBE Subconsultants under this Agreement upon the request of the Sponsor or MoDOT. Further, the Consultant agrees to report to the Sponsor on a monthly basis the actual payments made by the Consultant to such DBE Subconsultants.

(G) The Consultant agrees that any agreement between the Consultant and any Subconsultant shall be an actual cost plus fixed fee agreement if the amount of the agreement between the Consultant and Subconsultant exceeds Twenty-Five Thousand Dollars (\$25,000). Subconsultant agreements for amounts of \$25,000 or less may be lump sum or actual cost plus fixed fee as directed by the Sponsor.

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(9) FEES AND PAYMENTS:

(A) The Consultant shall not proceed with the services described herein until the Consultant receives written authorization in the form of a Notice to Proceed from the Sponsor.

(B) The amount to be paid to the Consultant by the Sponsor as full remuneration for the performance of all services called for in this Agreement will be on the following basis, except that the lump sum fee for labor, overhead and profit plus other costs will not exceed a maximum amount payable of **\$45,558.00**, which is shown in Exhibit IV, "Derivation of Consultant Project Costs", and Exhibit V, "Engineering Basic and Special Services-Cost Breakdown" attached hereto and made a part of this Agreement. Payment under the provisions of this Agreement is limited to those costs incurred in accordance with generally accepted accounting principles to the extent they are considered necessary to the execution of the item of service.

(C) The Consultant's fee shall include the hourly salary of each associate and employee, salary-related expenses, general overhead, and direct non-salary costs as allowed by 48 CFR Part 31, the Federal Acquisition Regulations (FAR), and 23 CFR 172, Procurement, Management, and Administration of Engineering and Design Related Services. The hourly salary of each associate and employee is defined as the actual productive salaries expended to perform the services. The other billable costs for the project are defined as follows:

1. Salary-related expenses are additions to payroll cost for holidays, sick leave, vacation, group insurance, worker's compensation insurance, social security taxes (FICA), unemployment insurance, disability taxes, retirement benefits, and other related items.

2. General overhead cost additions are for administrative salaries (including non-productive salaries of associates and employees), equipment rental and maintenance, office rent and utilities, office maintenance, office supplies, insurance, taxes, professional development expenses, legal and audit fees, professional dues and licenses, use of electronic computer for accounting, and other related items.

3. Direct non-salary costs incurred in fulfilling the terms of this Agreement, such as but not limited to travel and subsistence, subcontract services, reproductions, computer charges, materials and supplies, and other related items, will be charged at actual cost without any override or additives.

4. The additions to productive salaries for Items in Subsections (9)(C) 1 and 2 will be established based on the latest audit.

5. The Consultant shall provide a detailed man hour/cost breakdown for each phase of the project indicating each job classification with base wage rates and the number of hours associated with each phase. The breakdown shall include work activities and be in sufficient detail to reflect the level of effort involved.

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This information shall be attached hereto and made a part of this Agreement as Exhibit V "Engineering Basic and Special Services -Cost Breakdown".

6. The Consultant shall provide a detailed breakdown of all Subconsultant fees, including overhead and profit, when requested by the Sponsor and/or MoDOT. Once the cumulative amount to be paid to a Subconsultant by the Consultant, as full remuneration for the performance of services, as called for in this Agreement and any supplemental agreements hereafter, equals or exceeds Twenty-Five Thousand Dollars (\$25,000), submittal of a separate Exhibit IV, "Derivation of Consultant Project Costs" and Exhibit V, "Engineering Basic and Special Services-Cost Breakdown", prepared to solely reflect the Subconsultant's fees shall be attached hereto and made a part of this Agreement, subject to the process described in Section (3) of this Agreement. These Exhibits prepared to reflect the Subconsultant's fees shall be labeled Exhibit IV-A and Exhibit V-A, respectively.

7. The Consultant shall provide a detailed breakdown of all travel expense, living expense, reproduction expense, and any other expense that may be incurred throughout the project. These expenses must be project specific and not covered in or by an overhead rate.

8. The property and equipment used on this project such as automotive vehicles, survey equipment, office equipment, etc., shall be owned, rented, or leased by the Consultant, and charges will be made to the project for the use of such property at the rate established by company policies and practices. Approval of the Sponsor and MoDOT will be required prior to acquisition of reimbursable special equipment.

9. The Consultant agrees to pay each Subconsultant under this Agreement for satisfactory performance of its contract no later than 15 days from the Consultant's receipt of each payment the Consultant receives from the Sponsor. The Consultant agrees further to return retainage payments to each Subconsultant within 15 days after the Subconsultant's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Sponsor. This clause applies to both DBE and non-DBE Subconsultants.

(D) The Consultant shall submit an invoice for services rendered to the Sponsor not more than once every month. A progress summary indicating the current status of the services shall be submitted along with each invoice. Upon receipt of the invoice and progress summary, the Sponsor will, as soon as practical, but not later than 30 days from receipt, pay the Consultant for the services rendered, including the proportion of the fixed fee earned as reflected by the estimate of the portion of the services completed as shown by the progress summary, less partial payments previously made. A late payment charge of one and one half percent (1.5%) per month shall be assessed for those invoiced amounts not paid, through no fault of the Consultant, within 30 days after the Sponsor 's receipt of the Consultant's invoice. The Sponsor will not be liable for the late payment charge on any invoice which requests

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payment for costs which exceed the proportion of the maximum amount payable earned as reflected by the estimate of the portion of the services completed, as shown by the progress summary. The payment, other than the fixed fee, will be subject to final audit of actual expenses incurred during the period of the Agreement.

(E) The Sponsor may hold a percentage of the amount earned by the Consultant, not to exceed two percent (2%), until 100% of services as required by Section (2), "Scope of Services," of this Agreement are completed and have been received and approved by the Sponsor and MoDOT. The payment will be subject to final audit of actual expenses during the period of the Agreement. Upon completion and acceptance of all services required by Section (2), "Scope of Services," the two percent (2%) retainage will be paid to the Consultant. As an alternative to withholding two percent (2%) retainage as set forth above, the Sponsor may accept a letter of credit or the establishment of an escrow account in the amount of said retainage and upon such other terms and conditions as may be acceptable to the Sponsor and the Consultant. If a letter of credit or escrow account is not acceptable to the Sponsor, then the percent retainage will control.

(10) PERIOD OF SERVICE:

(A) The services, and if more than one, then each phase thereof, shall be completed in accordance with the schedule contained in Exhibit VI, "Performance Schedule," attached hereto and made a part of this Agreement. The Consultant and the Sponsor will be required to meet this schedule.

(B) The Consultant and Sponsor will be required to meet the schedules in this Agreement. The Sponsor will grant time extensions for delays due to unforeseeable causes beyond the control of and without fault or negligence of the Consultant and no claim for damage shall be made by either party. Requests for extensions of time shall be made in writing by the Consultant before that phase of work is scheduled to be completed, stating fully the events giving rise to the request and justification for the time extension requested. The anticipated date of completion of the work, including review time, is stated in Exhibit VI of this Agreement. An extension of time shall be the sole allowable compensation for any such delays, except as otherwise provided in Section (3) for additional/changed work and differing/unforeseen conditions. Any extensions or additional costs shall be subject to MoDOT approval.

(C) As used in this provision, the term "delays due to unforeseeable causes" include but are not limited to the following:

1. War or acts of war, declared or undeclared;
2. Flooding, earthquake, or other major natural disaster preventing the Consultant from performing necessary services at the project site, or in the Consultant's offices, at the time such services must be performed;

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3. The discovery on the project of differing site conditions, hazardous substances, or other conditions which, in the sole judgment of the Sponsor, justifies a suspension of the services or necessitates modifications of the project design or plans by the Consultant;

4. Court proceedings;

5. Changes in services or extra services.

(11) TERMINATION OF AGREEMENT – 2 CFR § 200 Appendix II(B):

(A) Termination for Convenience:

1. The Sponsor may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of the Consultant. Upon receipt of the notice of termination, except as explicitly directed by the Sponsor, the Consultant must immediately discontinue all services affected.

2. Upon termination of the Agreement, the Consultant must deliver to the Sponsor all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Consultant under this Agreement, whether complete or partially complete.

3. The Sponsor agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

4. The Sponsor further agrees to hold the Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

(B) Termination for Default:

1. Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

2. The terminating party must provide the breaching party seven days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.



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3. Termination by the Sponsor:

a. The Sponsor may terminate this Agreement, in whole or in part, for the failure of the Consultant to:

i. Perform the services within the time specified in this Agreement or by Sponsor-approved extension;

ii. Make adequate progress so as to endanger satisfactory performance of the Project; or

iii. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

b. Upon receipt of the notice of termination, the Consultant must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Consultant must deliver to the Sponsor all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Consultant under this Agreement, whether complete or partially complete.

c. The Sponsor agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

d. The Sponsor further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

e. If, after finalization of the termination action, the Sponsor determines the Consultant was not in default of the Agreement, the rights and obligations of the parties shall be the same as if the Sponsor issued the termination for the convenience of the Sponsor.

4. Termination by Consultant:

a. The Consultant may terminate this Agreement in whole or in part, if the Sponsor:

i. Defaults on its obligations under this Agreement;

ii. Fails to make payment to the Consultant in accordance with the terms of this Agreement; or

iii. Suspends the Project for more than one

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hundred eighty (180) days due to reasons beyond the control of the Consultant.

b. Upon receipt of a notice of termination from the Consultant, the Sponsor agrees to cooperate with the Consultant for the purpose of terminating the Agreement or a portion thereof, by mutual consent. If the Sponsor and Consultant cannot reach mutual agreement on the termination settlement, the Consultant may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the Sponsor's breach of the Agreement.

c. In the event of termination due to Sponsor breach, the Consultant is entitled to invoice the Sponsor and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Consultant through the effective date of termination action. The Sponsor agrees to hold the Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

(12) OWNERSHIP OF DRAWINGS AND DOCUMENTS:

(A) All drawings and documents prepared in performance of this Agreement shall be delivered to and become the property of the Sponsor upon suspension, abandonment, cancellation, termination, or completion of the Consultant's services hereunder; provided, however,

1. The Consultant shall have the right to their future use with written permission of the Sponsor;

2. The Consultant shall retain its rights in its standard drawing details, designs, specifications, CADD files, databases, computer software, and any other proprietary property; and

3. The Consultant shall retain its rights to intellectual property developed, utilized, or modified in the performance of the services subject to the following:

A. Copyrights. Sponsor, as the contracting agency, reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Governmental purposes:

I. The copyright in any works developed under this Agreement, or under a subgrant or contract under this Agreement; and

II. Any rights of copyright to which Sponsor, its Consultant or Subconsultant purchases ownership with payments provided by this Agreement.

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B. Patents. Rights to inventions made under this Agreement shall be determined in accordance with 37 CFR Part 401. The standard patent rights clause at 37 CFR § 401.14, as modified below, is hereby incorporated by reference.

I. The terms "to be performed by a small business firm or domestic nonprofit organization" shall be deleted from paragraph (g)(1) of the clause;

II. Paragraphs(g)(2) and (g)(3) of the clause shall be deleted; and

III. Subsection (l) of the clause, entitled "communication" shall read as follows: "(l) Communication. All notifications required by this clause shall be submitted to the Sponsor".

IV. The following terms in 37 CFR 401.14 shall for the purpose of this Agreement have the following meaning:

Contractor - Consultant

Government and Federal Agency - Sponsor

Subcontractor - Subconsultant

4. Basic survey notes, design computations, and other data prepared under this Agreement shall be made available for use by the Sponsor without further compensation and without restriction or limitation on their use.

(B) Electronically Produced Documents:

1. Electronically produced documents will be submitted to the Sponsor, MoDOT, and/or FAA in data files compatible with CAD 2108 (specify CADD version) and Adobe PDF. The Consultant makes no warranty as to the compatibility of the data files beyond the above specified release or version of the stated software.

2. Because data stored on electronic media can deteriorate undetected or be modified without the Consultant's knowledge, the electronic data files submitted to the Sponsor will have an acceptance period of 60 calendar days after receipt by the Sponsor. If during that period the Sponsor finds any errors or omissions in the files, the Consultant will correct the errors or omissions as a part of this Agreement. However, any changes requested by the Sponsor during the 60 calendar day acceptance period that constitute Additional Services under Section (3) shall be compensated in accordance with the terms of the Agreement. The Consultant will not

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be responsible for maintaining copies of the submitted electronic data files after the acceptance period.

3. Any changes requested after the acceptance period will be considered additional services for which the Consultant shall be reimbursed at the hourly rates established herein plus the cost of materials.

4. The data on the electronic media shall not be considered the Consultant's instrument of service. Only the submitted hard copy documents with the Consultant Engineer's seal on them will be considered the instrument of service. The Consultant's nameplate shall be removed from all electronic media provided to the Sponsor.

(C) The Sponsor may incorporate any portion of the deliverables into a project other than that for which they were performed, without further compensation to the Consultant; provided however, that (1) such deliverables shall thereupon be deemed to be the work product of the Sponsor, and the Sponsor shall use same at its sole risk and expense; and (2) the Sponsor shall remove the Consultant's name, seal, endorsement, and all other indices of authorship from the deliverables.

(13) DECISIONS UNDER THIS AGREEMENT AND DISPUTES:

(A) The Sponsor will determine the acceptability of the drawings, specifications, and estimates and all other deliverables to be furnished, and will decide the questions that may arise relative to the proper performance of this Agreement. The determination of acceptable deliverables may occur following final payment, and as late as during the construction of the project which decisions shall be conclusive, binding and incontestable, if not arbitrary, capricious or the result of fraud.

(B) The Sponsor will decide all questions which may arise as to the quality, quantity, and acceptability of services performed by Consultant and as to the rate of progress of the services; all questions which may arise as to the interpretation of the plans and specifications; all questions as to the acceptable fulfillment of the Agreement on the part of the Consultant; the proper compensation for performance or breach of the Agreement; and all claims of any character whatsoever in connection with or growing out of the services of the Consultant, whether claims under this Agreement or otherwise. The Sponsor's decisions shall be conclusive, binding and incontestable if not arbitrary, capricious or the result of fraud.

(C) If the Consultant has a claim for payment against the Sponsor which in any way arises out of the provisions of this Agreement or the performance or non-performance hereunder, written notice of such claim must be made within sixty (60) days of the Consultant's receipt of payment for the retained percentage. Notwithstanding Section (23) of this Agreement, the notice of claim shall be personally delivered or sent by certified mail to the Sponsor. The notice of claim shall contain an itemized statement showing completely and fully the items and amounts forming the basis of the claim and the factual and legal basis of the claim.

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(D) Any claim for payment or an item of any such claim not included in the notice of claim and itemized statement, or any such claim not filed within the time provided by this provision shall be forever waived, and shall neither constitute the basis of nor be included in any legal action, counterclaim, set-off, or arbitration against the Sponsor.

(E) The claims procedure in Subsections (13)(C) and (D) does not apply to any claims of the Sponsor against the Consultant. Further, any claims of the Sponsor against the Consultant under this Agreement are not waived or estopped by the claims procedure in Subsections (13)(C) and (D).

(F) Notwithstanding Subsections (13)(A) through (E) above, in the event of any material dispute hereunder, both parties agree to pursue, diligently and in good faith, a mutually acceptable resolution.

(14) SUCCESSORS AND ASSIGNS: The Sponsor and the Consultant agree that this Agreement and all agreements entered into under the provisions of this Agreement shall be binding upon the parties hereto and their successors and assigns.

(15) INDEMNIFICATION RESPONSIBILITY:

(A) The Consultant agrees to save harmless the Sponsor, MoDOT, and the FAA from all liability, losses, damages, and judgments for bodily injury, including death and property damage to the extent due to the Consultant's negligent acts, errors, or omissions in the services performed or to be performed under this Agreement, including those negligent acts, errors, or omissions of the Consultant's employees, agents, and Subconsultants.

(B) The Consultant shall be responsible for the direct damages incurred by the Sponsor as result of the negligent acts, errors, or omissions of the Consultant or anyone for whom the Consultant is legally responsible, and for any losses or costs to repair or remedy construction as a result of such negligent acts, errors or omissions; provided, however, the Consultant shall not be liable to the Sponsor for such losses, costs, repairs and/or remedies which constitute betterment of or an addition of value to the construction or the project.

(C) Neither the Sponsor's review, approval or acceptance of or payment for any services required under this Agreement, nor the termination of this Agreement prior to its completion, will be construed to operate as a waiver of any right under this Agreement or any cause of action arising out of the performance of this Agreement. This indemnification responsibility survives the completion of this Agreement, as well as the construction of the project at some later date, and remains as long as the construction contractor may file or has pending a claim or lawsuit against the Sponsor on this project arising out of the Consultant's services hereunder.

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(16) INSURANCE:

(A) The Consultant shall maintain commercial general liability, automobile liability, and worker's compensation and employer's liability insurance in full force and effect to protect the Consultant from claims under Worker's Compensation Acts, claims for damages for personal injury or death, and for damages to property from the negligent acts, errors, or omissions of the Consultant and its employees, agents, and Subconsultants in the performance of the services covered by this Agreement, including, without limitation, risks insured against in commercial general liability policies.

(B) The Consultant shall also maintain professional liability insurance to protect the Consultant against the negligent acts, errors, or omissions of the Consultant and those for whom it is legally responsible, arising out of the performance of professional services under this Agreement.

(C) The Consultant's insurance coverages shall be for not less than the following limits of liability:

1. Commercial General Liability: \$500,000.00 per person up to \$3,000,000.00 per occurrence;

2. Automobile Liability: \$500,000.00 per person up to \$3,000,000.00 per occurrence;

3. Worker's Compensation in accordance with the statutory limits; and Employer's Liability: \$1,000,000.00; and

4. Professional ("Errors and Omissions") Liability: \$1,000,000.00, each claim and in the annual aggregate.

(D) In lieu of the minimum coverage stated in Subsections (16)(C)(1) and (C)(2) above, the Consultant may obtain insurance at all times in an amount equal to the Sponsor's sovereign immunity caps as stated in section 537.600 RSMo and subsequently adjusted by the Missouri Department of Insurance. If the statutory limit of liability for a type of liability specified in this section is repealed or does not exist, the Consultant shall obtain insurance with the minimum coverage stated in Subsections (16)(C)(1) and (C)(2) above.

(E) The Consultant shall, upon request at any time, provide the Sponsor with certificates of insurance evidencing the Consultant's commercial general or professional liability ("Errors and Omissions") policies and evidencing that they and all other required insurance is in effect, as to the services under this Agreement.

(F) Any insurance policy required as specified in Section (16) shall be written by a company which is incorporated in the United States of America or is based in the United States of America. Each insurance policy must be issued by a company authorized to issue such insurance in the State of Missouri.

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(17) CONSTRUCTION PHASE OF THE PROJECT:

(A) This Agreement does not include construction phase services. Review of shop drawings and other construction phase services can be added by Supplemental Agreement after design has been completed and the construction contract period has been determined.

(B) Because the Consultant has no control over the cost of labor, materials, equipment, or services furnished by others, or over the construction contractor(s)' methods of determining prices, or over competitive bidding or market conditions, any of the Consultant's opinions of probable project costs and/or construction cost, if provided for herein, are to be made on the basis of the Consultant's experience and qualifications and represent the Consultant's best judgment as an experienced and qualified design professional, familiar with the construction industry, but the Consultant cannot and does not guarantee that proposals, bids, or actual total project costs and/or construction costs will not vary from opinions of probable costs prepared by the Consultant.

(C) The Consultant 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 and programs in connection with the construction work, since these are solely the construction contractor(s)' responsibility under the construction contract(s). The Consultant shall not be responsible for the construction contractor(s)' schedules or failure to carry out the construction work in accordance with the construction contract(s). The Consultant shall not have control over or charge of acts of omissions of the construction contractor(s), or any of its or their subcontractors, agents, or employees, or of any other persons performing portions of the construction work.

(18) NONDISCRIMINATION ASSURANCE: During the performance of this Agreement, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Consultant") agrees as follows:

(A) Compliance With Regulations: The Consultant will comply with the "Title VI List of Pertinent Nondiscrimination Acts and Authorities", as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement. In addition, the Consultant shall comply with all state statutes related to nondiscrimination.

(B) Nondiscrimination: The Consultant, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of Subconsultants, including procurements of materials and leases of equipment. The Consultant will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

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(C) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential Subconsultant or supplier will be notified by the Consultant of the Consultant's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

(D) Information and Reports: The Consultant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor, MoDOT or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish the information, the Consultant will so certify to the Sponsor, MoDOT or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.

(E) Sanctions for Noncompliance: In the event of a Consultant's noncompliance with the nondiscrimination provisions of this Agreement, the Sponsor will impose such contract sanctions as it, MoDOT, or the FAA may determine to be appropriate, including, but not limited to:

1. Withholding payments to the Consultant under this Agreement until the Consultant complies; and/or
2. Cancelling, terminating, or suspending this Agreement, in whole or in part.

(F) Incorporation of Provisions: The Consultant will include these nondiscrimination provisions in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Consultant will take action with respect to any subcontract or procurement as the Sponsor, MoDOT or the FAA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, that if the Consultant becomes involved in, or is threatened with litigation by a Subconsultant or supplier because of such direction, the Consultant may request the Sponsor or the United States to enter into such litigation to protect the interests of the Sponsor or United States.

(H) Title VI List of Pertinent Nondiscrimination Acts and Authorities: During the performance of this Agreement, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Consultant") agrees to comply with the following nondiscrimination statutes and authorities, including, but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);



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2. 49 CFR Part 21 (Non-Discrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);

3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

4. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR Part 27;

5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);

6. Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

7. The Civil Rights Restoration Act of 1987 (PL 100-209) (Broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

8. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131-12189) as implemented by U.S. Department of Transportation regulations at 49 CFR Parts 37 and 38;

9. The FAA's nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To

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ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and

12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681 *et seq.*).

(19) APPROVAL: This Agreement is made and entered into subject to the approval of MoDOT.

(20) AVIATION FEDERAL AND STATE CLAUSES:

(A) Civil Rights – 49 USC § 47123: The Consultant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision binds the Consultant and any subconsultants from the solicitation period through the completion of the Agreement. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

(B) Trade Restriction Certification – 49 U.S.C. § 50104, 49 CFR Part 30:

1. By execution of this Agreement, the Consultant certifies that with respect to this Agreement, the Consultant:

A. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);

B. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and

C. has not entered into any subcontract for any product to be used on the project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

2. This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

3. The Consultant must provide immediate written notice to the Sponsor if the Consultant learns that its certification or that of a subconsultant was

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erroneous when submitted or has become erroneous by reason of changed circumstances. The Consultant must require subconsultants provide immediate written notice to the Consultant if at any time it learns that its certification was erroneous by reason of changed circumstances.

4. Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a Consultant or subconsultant:

A. who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR; or

B. whose subconsultants are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list; or

C. who incorporates in the public works project any product of a foreign country on such USTR list.

5. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a Consultant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

6. The Consultant agrees that it will incorporate this provision for certification without modification in all lower tier subcontracts. The Consultant may rely on the certification of a prospective subconsultant that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Consultant has knowledge that the certification is erroneous.

7. This certification is a material representation of fact upon which reliance was placed when entering into this Agreement. If it is later determined that the Consultant or subconsultant knowingly rendered an erroneous certification, MoDOT or the FAA may direct through the Sponsor cancellation of the Agreement for default at no cost to the Sponsor, MoDOT or the FAA.

(C) Eligible Employees - Executive Order 07-13:

1. The Consultant shall comply with all the provisions of Executive Order 07-13, issued by the Honorable Matt Blunt, Governor of Missouri, on the sixth (6th) day of March, 2007. This Executive Order, which promulgates the State of Missouri's position to not tolerate persons who contract with the state engaging in or supporting illegal activities of employing individuals who are not eligible to work in the United States, is incorporated herein by reference and made a part of this Agreement. By signing this Agreement, the Consultant hereby certifies that any employee of the Consultant assigned to perform services under this Agreement is eligible and authorized to work in the United States in compliance with federal law. In the event the Consultant

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fails to comply with the provisions of Executive Order 07-13, or in the event the Sponsor has reasonable cause to believe that the Consultant has knowingly employed individuals who are not eligible to work in the United States in violation of federal law, the Sponsor reserves the right to impose such contract sanctions as it may determine to be appropriate, including but not limited to contract cancellation, termination or suspension in whole or in part or both.

2. The Consultant shall include the above-provision concerning said Executive Order within every subcontract. The Consultant shall take such action with respect to any subcontract as the Sponsor may direct as a means of enforcing such provisions, including sanctions for noncompliance.

(D) Texting While Driving – Executive Order 13513, DOT Order 3902.10:

1. In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

2. In support of this initiative, the Sponsor encourages the Consultant to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Consultant must include the substance of this clause in all sub-tier contracts exceeding Three Thousand Five Hundred Dollars (\$3,500) and involve driving a motor vehicle in performance of work activities associated with the project.

(E) Veteran's Preference – 49 USC § 47112(c): In the employment of labor (except in executive, administrative, and supervisory positions), the Consultant and all subconsultants must give preference to covered veterans as defined within Title 49 U.S.C. § 47112. Covered veterans include Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. § 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

(F) Federal Fair Labor Standards Act (Federal Minimum Wage) – 29 USC § 201, et seq.: All contracts and subcontracts that result from this Agreement incorporate by reference the provisions of 29 CFR Part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers. The Consultant has full responsibility to monitor compliance to the above-referenced statute and regulation. The Consultant must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

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(G) Occupational Safety and Health Act of 1970 – 20 CFR Part 1910:  
All contracts and subcontracts that result from this Agreement incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The Consultant must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Consultant retains full responsibility to monitor its compliance and its subconsultants' compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The Consultant must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

(H) Energy Conservation Requirements – 2 CFR § 200, Appendix II(H):  
The Consultant and any subconsultants agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201 *et seq.*).

(I) Debarment and Suspension (Non-Procurement) – 2 CFR Part 180 (Subpart C), 2 CFR Part 1200, DOT Order 4200.5 DOT Suspension & Debarment Procedures & Ineligibility:

1. By executing this Agreement, the Consultant certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this Agreement.

2. The Consultant, by administering each lower tier subconsultant agreement that exceeds \$25,000 as a "covered transaction", must verify each lower tier Subconsultant participant of a "covered transaction" under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The Consultant will accomplish this by:

A. Checking the System for Award Management at website: <https://www.sam.gov>.

B. Collecting a certification statement similar to the statement in Subsection (20)(I)1.

C. Inserting a clause or condition in the covered transaction with the lower tier Subcontractor.

3. If the Sponsor, MoDOT or the FAA later determines that a lower tier participant failed to disclose to a higher tier that it was excluded or disqualified at the time it entered the covered transaction, the Sponsor, MoDOT or the FAA may pursue any available remedy, including suspension or debarment of the non-compliant participant.

(J) Lobbying and Influencing Federal Employees – 31 U.S.C. § 1352, 2 CFR § 200, Appendix II(J), 49 CFR Part 20, Appendix A:

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1. The Consultant certifies by execution of this Agreement, to the best of its knowledge and belief, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Consultant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The Consultant shall require that the language of this Subsection (20)(F) be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than Ten Thousand Dollars (\$10,000) and not more than One Hundred Thousand Dollars (\$100,000) for each such failure.

(K) Contract Workhours and Safety Standards Act Requirements – 2 CFR § 200 Appendix II (E):

1. Overtime Requirements: No contractor or subcontractor contracting for any part of the Agreement work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in Subsection (20)(K)1. above, the contractor and any subcontractor responsible therefor shall be liable for the unpaid

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wages. In addition, such contractor and subcontractor shall be liable to the Sponsor and/or the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in Subsection (20)(K)1. above, in the sum of Ten Dollars (\$10) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in Subsection (20)(K)1. above.

3. Withholding for Unpaid Wages and Liquidated Damages: The FAA, MoDOT or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in Subsection (20)(K)2. above.

4. Subcontractors: The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this Subsection (20) and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this Subsection (20).

(L) Breach of Contract Terms Sanctions - 2 CFR §200 Appendix II(A): Any violation or breach of the terms of this Agreement on the part of the Consultant or any Subconsultant may result in the suspension or termination of this Agreement or such other action that may be necessary to enforce the rights of the parties of this Agreement. The Sponsor will provide the Consultant written notice that describes the nature of the breach and corrective actions the Consultant must undertake in order to avoid termination of this Agreement. The Sponsor reserves the right to withhold payments to the Consultant until such time the Consultant corrects the breach or the Sponsor elects to terminate this Agreement. The Sponsor's notice will identify a specific date by which the Consultant must correct the breach. The Sponsor may proceed with termination of this Agreement if the Consultant fails to correct the breach by deadline indicated in the Sponsor's notice. The duties and obligations imposed by the Agreement and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

(M) Clean Air and Water Pollution Control – 2 CFR 200 § 200, Appendix II(G): The Consultant agrees:

1. To comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251-1387); and

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2. To report any violation to the Sponsor immediately upon discovery. The Sponsor assumes responsibility for notifying the Environmental Protection Agency and the FAA.

(N) Seismic Safety – 49 CFR Part 41: In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conforms to a building code standard that provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the Sponsor a "certification of compliance" that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

(O) Right to Inventions - 2 CFR §200 Appendix II(F), 37 CFR § 401: Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Sponsor in any resulting invention as established by 37 CFR Part 401, Rights to Inventions Made by Non-Profit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements. This Agreement incorporates by reference the patent and inventions rights as specified within 37 CFR § 401.14. The Consultant must include this requirement in all sub-tier contracts involving experimental, developmental or research work.

(P) Certification of Consultant Regarding Tax Delinquency and Felony Convictions: The Consultant certifies that it is not a corporation that:

1. Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; or

2. Was convicted of a criminal violation under any Federal law within the preceding twenty-four (24) months.

(21) ACTIONS: No action may be brought by either party hereto concerning any matter, thing, or dispute arising out of or relating to the terms, performance, non-performance, or otherwise of this Agreement except in the Circuit Court of Phelps County, Missouri. The parties agree that this Agreement is entered into at Rolla, Missouri and substantial elements of its performance will take place or be delivered at Rolla, Missouri, by reason of which the Consultant consents to venue of any action against it in Phelps County, Missouri. The Consultant shall cause this provision to be incorporated into all of its agreements with, and to be binding upon, all Subconsultants of the Consultant in the performance of this Agreement.



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(22) AUDIT OF RECORDS: For purpose of an audit, the Consultant shall maintain all those records relating to direct costs and expenses incurred under this Agreement, including but not limited to invoices, payrolls, bills, receipts, etc. These records must be available at all reasonable times to the Sponsor, MoDOT, the FAA, and the Comptroller General of the United States or their designees and representatives, at the Consultant's offices, at no charge, during the Agreement period and any extension thereof, and for the three (3) year period following the date of final payment made under this Agreement. If the Sponsor has notice of a potential claim against the Consultant and/or the Sponsor based on the Consultant's services under this Agreement, the Consultant, upon written request of the Sponsor, shall retain and preserve its records until the Sponsor has advised the Consultant in writing that the disputed claim is resolved.

(23) NOTICE TO THE PARTIES: All notices or communications required by this Agreement shall be made in writing and shall be effective upon receipt by the Sponsor or the Consultant at their respective addresses of record. Letters or other documents which are prepared in 8.5 x 11 inch format may be delivered by telefax, provided that an original is received at the same address as that to which that telefax message was sent, within three (3) business days of the telefax transmission. Either party may change its address of record by written notice to the other party.

(A) Notice to the Sponsor: Notices to the Sponsor shall be addressed and delivered to the following Sponsor's representative, who is hereby designated by the Sponsor as its primary authorized representative for administration, interpretation, review, and enforcement of this Agreement and the services of the Consultant hereunder:

NAME AND TITLE OF SPONSOR'S REPRESENTATIVE	Mr. John Butz, City Administrator		
SPONSOR'S NAME	City of Rolla		
SPONSOR'S ADDRESS	901 North Elm Street Rolla, MO 65401		
PHONE	573.426.7948	FAX	
E-MAIL ADDRESS	jbutz@rollacity.org		

The Sponsor reserves the right to substitute another person for the individual named at any time, and to designate one or more other representatives to have authority to act upon its behalf generally or in limited capacities, as the Sponsor may now or hereafter deem appropriate. Such substitution or designations shall be made by the Sponsor in a written notice to the Consultant.

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(B) Notice to the Consultant: Notices to Consultant shall be addressed and delivered to Consultant's representative, as follows:

NAME AND TITLE OF CONSULTANT'S REPRESENTATIVE	Joe Pestka, Planner Program Director II		
CONSULTANT'S NAME	Woolpert, Inc.		
CONSULTANT'S ADDRESS	931 Wildwood Drive, Suite 101 Jefferson City, MO 65109		
PHONE	573.636.3200	FAX	573.636.3201
E-MAIL ADDRESS	joe.pestka@woolpert.com		

The Consultant reserves the right to substitute another person for the individual named at any time, and to designate one or more other representatives to have authority to act upon its behalf generally or in limited capacities, as the Consultant may now or hereafter deem appropriate. Such substitutions or designations shall be made by the Consultant's president or chief executive officer in a written notice to the Sponsor.

(24) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The Consultant shall comply with all local, state, and federal laws and regulations which govern the performance of this Agreement.

(25) CONFIDENTIALITY: The Consultant agrees that the Consultant's services under this Agreement are a confidential matter between the Consultant and the Sponsor. The Consultant shall not disclose any aspect of the Consultant's services under this Agreement to any other person, corporation, governmental entity, or news media, excepting only to Consultant's lawyers, accountants, insurers, and such employees, Subconsultants, and agents as may be necessary to allow them to perform services for the Consultant in the furtherance of this Agreement, without the prior approval of the Sponsor; provided, however, that any confidentiality and non-disclosure requirements set out herein shall not apply to any of the Consultant's services or to any information which (1) is already in the public domain or is already in the Consultant's possession at the time the Consultant performs the services or comes into possession of the information; (2) is received from a third party without any confidentiality obligations; or (3) is required to be disclosed by governmental or judicial order. Any disclosure pursuant to a request to the Sponsor under Chapter 610, RSMo, shall not constitute a breach of this Agreement. The content and extent of any authorized disclosure shall be coordinated fully with and under the direction of the Sponsor, in advance.

(26) SOLE BENEFICIARY: This Agreement is made for the sole benefit of the parties hereto and nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Sponsor and the Consultant.

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(27) SEVERABILITY AND SURVIVAL:

(A) Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Sponsor and the Consultant.

(B) All express representations, indemnifications, or limitations of liability made or given in this Agreement will survive the completion of all services by the Consultant under this Agreement or the termination of this Agreement for any reason.

(28) PAYMENT BOND: In the event that any subconsultants are used to supply at least fifty thousand dollars (\$50,000) worth of materials and/or labor not within the scope of environmental assessment services or licensed professional services as defined by chapter 327, RSMo, the Consultant shall require any such subconsultants to provide laborers and materialmen with adequate bond security. Payment bonds shall be executed by any such subconsultants with the subconsultant as principal and a surety company authorized to do business in the State of Missouri as surety, and any agent executing the same on behalf of a subconsultant or surety company must attach a current Power of Attorney setting forth sufficient execution authority. Said payment bonds must be acceptable to the Sponsor to cover all materials used, all labor performed, and all insurance premiums necessary to comply with Section 107.170, RSMo, and must be provided to the Sponsor prior to the performance of such subconsultant services under this Agreement.

(29) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representative of the Sponsor and the Consultant.

(30) ATTACHMENTS: The following Exhibits and other documents are attached to and made a part of this Agreement:

- (A) Exhibit I: Project Description.
- (B) Exhibit II: Scope of Services.
- (C) Exhibit IIA: Current FAA Advisory Circulars, Standards, Guidance and MoDOT Standards
- (D) Exhibit III: Services Provided by the Sponsor.
- (E) Exhibit IV: Derivation of Consultant Project Costs.
- (F) Exhibit V: Engineering Basic and Special Services - Cost Breakdown.
- (G) Exhibit VI: Performance Schedule

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IN WITNESS WHEREOF, the parties hereto have entered into this Agreement, executed by their respective proper officials, on the date last written below.

Executed by the **Consultant** the 26th day of October, 2023.

Executed by the **Sponsor** the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Consultant:  
Woolpert, Inc.

Sponsor:  
City of Rolla

By: DocuSigned by:  
Jason Virzi  
88C68044F188434...  
Signature

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

Title: Vice President

Title: Mayor

ATTEST:

ATTEST:

By: DocuSigned by:  
Laura Koonce  
2400A783C07143F...  
Signature

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

Title: \_\_\_\_\_ Project Manager

Title: \_\_\_\_\_

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## **EXHIBIT I**

### **PROJECT DESCRIPTION**

1. This project shall consist of the design of reconstructing Taxiway A, rehabilitating the taxiway connector, and rehabilitating the taxiway edge lighting. This project is expected to be bid in two separate packages. Bid Package No. 1 will consist of the Taxiway A reconstruction and taxiway connector rehabilitation. Bid Package No. 2 is expected to be bid out at a later date depending on funding, and that will consist of the taxiway edge lighting rehabilitation.

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## **EXHIBIT II**

### **SCOPE OF WORK**

The Scope Work only includes the subconsultant geotechnical subsurface investigation for Bid Package No. 1, which does not include Consultant fees. See the attached geotechnical proposal titled Exhibit II-1.

IV.B.38

## Exhibit II-1 SOW of Work



September 20, 2023

Laura Koonce, P.E.  
Aviation  
laura.koonce@woolpert.com

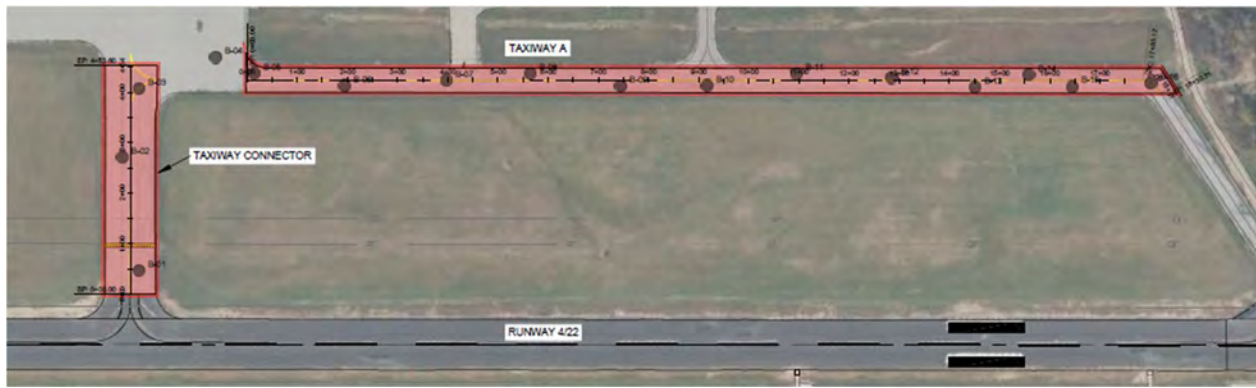
RE: VIH Taxiway and Connector Reconstruction  
Taxiway and Connector, Rolla National Airport  
KCTE Proposal No. GP20-23-194 Updated

Ms. Koonce,

Kansas City Testing and Engineering, LLC (KCTE) is pleased to present this proposal to perform geotechnical engineering services for the proposed new VIH Taxiway and Connector Reconstruction, Rolla, MO.

### **Project Description**

We understand the project consists of reconstruction of Taxiway A and Connector. This proposal is for geotechnical services including field exploration, laboratory testing, and geotechnical recommendations.



### **Scope of Services**

KCTE proposes to perform sampling at 16 locations for the reconstruction. The borings will be drilled to the plan depth of 10 and 20 feet as depicted. KCTE will obtain standard penetration sampling or thin-walled tube samples of soils encountered as conditions warrant. Taxiway pavement will be cored with a 5" barrel. Rock will be cored with N sized core drilling techniques.

We understand that the site is accessible using a truck mounted drill rig and plan to utilize a CME 55 truck mounted drill rig for the exploration. KCTE will notify the public utilities to have them located prior to working on the site. KCTE understands that the client will be responsible for private utility locates and location of borings at the taxiway and connector locations. KCTE assumes access to recent and prior site survey results. KCTE will perform an Engineer site visit prior to the work.

A geotechnical engineering report will be prepared under the direction of a registered professional engineer. The report will include a copy of the boring logs, field and laboratory test results and geotechnical recommendations. The report will be limited to the following geotechnical items:

The borings will be drilled to determine the thickness of existing pavement layers, quantity, and extent of the different types of soil, the arrangement of soil layers, and the depth to bedrock and groundwater (if encountered) and obtain samples for laboratory testing. Boring logs shall be provided in accordance with AC 150/5320-6.

- Execute a laboratory testing program to determine the physical properties of the site soils and provide an estimate of the behavior under various conditions in accordance with AC 150/5320-6.
- California Bearing Ratio (CBR) of underlying subgrade material.
- Soil Reaction Modulus (k-value) of underlying subgrade material.
- Groundwater encountered.
- Swell/consolidation potential for the underlying soils (% swell).
- Gradation of subgrade materials including percent finer than 0.02mm.
- Atterberg limits of subgrade materials
- Frost Susceptibility

A geotechnical engineering report will be stamped and sealed and prepared under the direction of a registered professional engineer in accordance with AC 1505320-6. The report will include:

- Provide subgrade stabilization recommendations – include two options, if applicable, and if mechanical stabilization is an option. Include best stabilizing agents for soil type(s) and typical rate of application.
- Provide frost depth and soil frost group classification for pavement in accordance with FAA frost group classifications. Include frost susceptibility evaluation and pavement section recommendations, if any, to mitigate.
- Analyze the results of the field exploration and laboratory testing to develop pavement design criteria and provide associated geotechnical recommendations in accordance with current Advisory Circulars (ACs) for pavement design.
- Prepare a final report which summarizes the data obtained and laboratory testing performed, and provides analysis, conclusions, and recommendations. Include color photographs of bores.

### **Schedule**

We anticipate starting the project 4-5 weeks after notice to proceed. Sitework will require 1 week to be completed, weather permitting. Laboratory work will require approximately 1 week, with a copy of the geotechnical report provided 2 weeks after the completion of the laboratory work.

### **Fees and Conditions**

**KCTE will perform the proposed work for the Not to Exceed of \$45,558.00 based on the above scope of work.**

Add \$85.00 per foot for placement of four piezometers, not to exceed 40' in depth for each piezometer. Monitoring of the piezometers will be completed at a rate of \$1,095.00 per monitoring event. Monitoring events will occur once a month for six months so that a wet period and a dry period are observed. **Piezometers left in place for longer than 30 days may require registration with MDNR. Cost for this is also included but will only be billed if it is determined necessary. Assume piezometer installation occurs during initial geotechnical drilling event and a second mobilization will not be required.**

**Estimated cost for 4 piezometers and 6 monitoring events is \$21,570.00.**

IV.B.40





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## EXHIBIT IIA CURRENT FAA ADVISORY CIRCULARS REQUIRED FOR USE IN AIP FUNDED PROJECTS

**Updated April 18, 2019**

View the most current versions of these ACs and any associated changes at  
[http://www.faa.gov/airports/resources/advisory\\_circulars/](http://www.faa.gov/airports/resources/advisory_circulars/) and  
[https://www.faa.gov/regulations\\_policies/advisory\\_circulars/](https://www.faa.gov/regulations_policies/advisory_circulars/).

<b>NUMBER</b>	<b>TITLE</b>
70/7460-1L Change 2	Obstruction Marking and Lighting
150/5000-9A	Announcement of Availability Report No. DOT/FAA/PP/92-5, Guidelines for the Sound Insulation of Residences Exposed to Aircraft Operations
150/5000-17	Critical Aircraft and Regular Use Determination
150/5020-1	Noise Control and Compatibility Planning for Airports
150/5070-6B Changes 1-2	Airport Master Plans
150/5070-7 Change 1	The Airport System Planning Process
150/5100-13B	Development of State Standards for Non Primary Airports
150/5100-17, Changes 1-7	Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects
150/5200-28F	Notices to Airmen (NOTAMS) for Airport Operations
150/5200-30D Change 1	Airport Field Condition Assessments and Winter Operations Safety
150/5200-31C Changes 1-2	Airport Emergency Plan
150/5210-5D	Painting, Marking and Lighting of Vehicles Used on an Airport
150/5210-7D	Aircraft Rescue and Fire Fighting Communications
150/5210-13C	Airport Water Rescue Plans and Equipment
150/5210-14B	Airport Rescue Fire Fighting Equipment, Tools and Clothing
150/5210-15A	Airport Rescue and Firefighting Station Building Design
150/5210-18A	Systems for Interactive Training of Airport Personnel
150/5210-19A	Driver's Enhanced Vision System (DEVs)

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150/5220-10E	Guide Specification for Aircraft Rescue and Fire Fighting (ARFF) Vehicles
150/5220-16E Change 1	Automated Weather Observing Systems (AWOS) for Non-Federal Applications
150/5220-17B	Aircraft Rescue and Fire Fighting (ARFF) Training Facilities
150/5220-18A	Buildings for Storage and Maintenance of Airport Snow and Ice Control Equipment and Materials
150/5220-20A	Airport Snow and Ice Control Equipment
150/5220-21C	Aircraft Boarding Equipment
150/5220-22B	Engineered Materials Arresting Systems (EMAS) for Aircraft Overruns
150/5220-23	Frangible Connections
150/5220-24	Foreign Object Debris Detection Equipment
150/5220-25	Airport Avian Radar Systems
150/5220-26 Changes 1-2	Airport Ground Vehicle Automatic Dependent Surveillance – Broadcast (ADS-B) Out Squitter Equipment
150/5300-13A Change 1	Airport Design
150/5300-14C	Design of Aircraft Deicing Facilities
150/5300-15A	Use of Value Engineering for Engineering and Design of Airport Grant Projects
150/5300-16A	General Guidance and Specifications for Aeronautical Surveys: Establishment of Geodetic Control and Submission to the National Geodetic Survey
150/5300-17C Change 1	Standards for Using Remote Sensing Technologies in Airport Surveys
150/5300-18B Change 1	General Guidance and Specifications for Submission of Aeronautical Surveys to NGS: Field Data Collection and Geographic Information System (GIS) Standards
105/5320-5D	Airport Drainage Design
150/5320-6F	Airport Pavement Design and Evaluation
150/5320-12C Changes 1-8	Measurement, Construction, and Maintenance of Skid Resistant Airport Pavement Surfaces
150/5320-15A	Management of Airport Industrial Waste
150/5320-17A	Airfield Pavement Surface Evaluation and Rating Manuals
150/5235-4B	Runway Length Requirements for Airport Design
150/5335-5C	Standardized Method of Reporting Airport Pavement Strength-PCN

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150/5340-1L	Standards for Airport Markings
150/5340-5D	Segmented Circle Airport Marker System
150/5340-18F	Standards for Airport Sign Systems
150/5340-26C	Maintenance of Airport Visual Aid Facilities
150/5340-30J	Design and Installation Details for Airport Visual Aids
150/5345-3G	Specification for L-821, Panels for the Control of Airport Lighting
150/5345-5B	Circuit Selector Switch
150/5345-7F	Specification for L-824 Underground Electrical Cable for Airport Lighting Circuits
150/5345-10H	Specification for Constant Current Regulators and Regulator Monitors
150/5345-12F	Specification for Airport and Heliport Beacons
150/5345-13B	Specification for L-841 Auxiliary Relay Cabinet Assembly for Pilot Control of Airport Lighting Circuits
150/5345-26D	FAA Specification for L-823 Plug and Receptacle, Cable Connectors
150/5345-27E	Specification for Wind Cone Assemblies
150/5345-28G	Precision Approach Path Indicator (PAPI) Systems
150/5345-39D	Specification for L-853, Runway and Taxiway Retroreflective Markers
150/5345-42H	Specification for Airport Light Bases, Transformer Housings, Junction Boxes, and Accessories
150/5345-43J	Specification for Obstruction Lighting Equipment
150/5345-44K	Specification for Runway and Taxiway Signs
150/5345-45C	Low-Impact Resistant (LIR) Structures
150/5345-46E	Specification for Runway and Taxiway Light Fixtures
150/5345-47C	Specification for Series to Series Isolation Transformers for Airport Lighting Systems
150/5345-49D	Specification L-854, Radio Control Equipment
150/5345-50B	Specification for Portable Runway and Taxiway Lights
150/5345-51B	Specification for Discharge-Type Flasher Equipment
150/5345-52A	Generic Visual Glideslope Indicators (GVGI)
150/5345-53D	Airport Lighting Equipment Certification Program

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150/5345-54B	Specification for L-884, Power and Control Unit for Land and Hold Short Lighting Systems
150/5345-55A	Specification for L-893, Lighted Visual Aid to Indicate Temporary Runway Closure
150/5345-56B	Specification for L-890 Airport Lighting Control and Monitoring System (ALCMS)
150/5360-12F	Airport Signing & Graphics
150/5360-13A	Airport Terminal Planning
150/5360-14A	Access to Airports by Individuals with Disabilities
150/5370-2G	Operational Safety on Airports During Construction
150/5370-10H	Standard Specifications for Construction of Airports
150/5370-11B	Use of Nondestructive Testing in the Evaluation of Airport Pavements
150-5370-12B	Quality Management for Federally Funded Airport Construction Projects
150/5370-13A	Off-Peak Construction of Airport Pavements Using Hot-Mix Asphalt
150/5370-15B	Airside Applications for Artificial Turf
150/5370-16	Rapid Construction of Rigid (Portland Cement Concrete) Airfield Pavements
150/5370-17	Airside Use of Heated Pavement Systems
150/5390-2C	Heliport Design
150/5395-1B	Seaplane Bases
150/5380-6C	Guidelines and Procedures for Maintenance of Airport Pavements
150/5380-7B	Airport Pavement Management Program
150/5380-9	Guidelines and Procedures for Measuring Airfield Pavement Roughness
MoDOT	MoDOT DBE Program- <a href="http://www.modot.org/ecr/index.htm">http://www.modot.org/ecr/index.htm</a>

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### EXHIBIT III

#### **SERVICES PROVIDED BY THE SPONSOR**

The Sponsor, as a part of this Agreement, shall provide the following:

1. Assist the Consultant in arranging to enter upon public and private property as required for the Consultant to perform his services.
2. Obtain approvals and permits from all governmental entities having jurisdiction over the project and such approvals and consents from others as may be necessary for completion of the project.
3. Prompt written notice to the Consultant whenever the Sponsor observes or knows of any development that affects the scope or timing of the Consultant's services.
4. One (1) copy of existing plans, standard drawings, bid item numbers, reports or other data the Sponsor may have on file with regard to this project.
5. All payments to landowners or tenants associated with the acquisition of the required property rights prior to or concurrent with closing.
6. All staff, procedures and activities related to acquiring the property , including but not limited to appraisals, reviews, negotiations, relocation assistance and eminent domain.
7. Pay all publishing costs for advertisements of notices, public hearings, request for proposals and other similar items. The Sponsor shall pay for all permits and licenses that may be required by local, state or federal authorities, and shall secure the necessary land easements and/or rights-of-way required for the project.
8. Issue Notice to Airmen (NOTAM's) through the applicable FAA Flight Service Station.
9. Disadvantaged business enterprise (DBE) goals for the project based upon proposed bid items, quantities and opinions of construction costs.
10. Guidance for assembling bid package to meet Sponsor's bid letting requirements.
11. Designate contact person (see Section (23)(A)).
12. Pay costs for title searches.

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**EXHIBIT IV**

**DERIVATION OF CONSULTANT PROJECT COSTS**

**EXHIBIT V**

**ENGINEERING BASIC AND SPECIAL SERVICES-COST BREAKDOWN**

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## EXHIBIT IV

## DERIVATION OF CONSULTANT PROJECT COSTS

JEFFERSON CITY MEMORIAL AIRPORT  
JEFFERSON CITY, MISSOURI

## DESIGN/BIDDING SERVICES

June 21, 2023

1 **DIRECT SALARY COSTS:**

TITLE	HOURS	RATE/HOUR	COST (\$)
Practice Operations Leader	0	\$ 112.00	\$ -
Consultant II	0	\$ 110.00	\$ -
Prgm Dir II	0	\$ 88.00	\$ -
Engineer Project Mgr IV	0	\$ 84.00	\$ -
Arch Project Mgr IV	0	\$ 84.00	\$ -
Quality Control Manager	0	\$ 78.00	\$ -
Prgm Dir I	0	\$ 76.00	\$ -
Arch Project Mgr II	0	\$ 54.00	\$ -
Engineer Project Mgr III	0	\$ 55.00	\$ -
Eng Designer II	0	\$ 49.00	\$ -
Billing Analyst Team Lead II	0	\$ 46.00	\$ -
Architectural Designer II	0	\$ 39.00	\$ -
Project Coordinator II	0	\$ 31.00	\$ -

Total Direct Salary Costs = \$ -

2 **LABOR AND GENERAL ADMINISTRATIVE OVERHEAD**

Percentage of Direct Salary Costs @ 169.68% = \$ -

3 **SUBTOTAL:**

Items 1 and 2 = \$ -

4 **PROFIT:**

15% of Item 3 Subtotal\* = \$ -

\*Note: 0-15% Typical

Subtotal = \$ -

5 **OUT-OF-POCKET EXPENSES:**

a. Mileage	0 Miles @	\$0.655 / Mile =	\$0.00
b. Per Diem	0 Days @	\$59.00 / Day =	\$0.00
c. Lodging (Taxes & Fees included)	0 Nights @	\$115.00 / Night =	\$0.00
d. Travel & Airline Costs	0 Trips @	\$500.00 / Trip =	\$0.00
e. Auto Rental	0 Days @	\$85.00 / Day =	\$0.00

Total Out-of-Pocket Expenses = \$0.00 Not to exceed

6 **SUBCONTRACT COSTS:**

a. Kansas City Testing & Engineering, LLC = \$45,558.00 = \$45,558.00 Not to exceed

7 **MAXIMUM TOTAL FEE:**

Items 1, 2, 3, 4, 5 and 6 = \$ 45,558.00

Exhibit IV - 1



**ROLLA NATIONAL AIRPORT  
VICHY, MISSOURI  
GEOTECHNICAL SERVICES**

**BASIC AND SPECIAL SERVICES**

October 20, 2023

Classification: Gross Hourly Rate:	Prgm Dir II \$272.92	Engineer Project Mgr IV \$260.51	Geospatial Project Mgr IV \$251.21	Engineer III \$241.90	Planner III \$217.09	Engineer Project Mgr II \$151.96	Engineer in Training II \$145.76	Geospatial Phase Mgr III \$142.66	Survey Office Tech IV \$105.44	Survey Field Tech II \$99.24	Project Coordinator II \$96.14	Other Costs	
<b>A. BASIC SERVICES</b>													
1. Preliminary Phase: Total = \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	(1,2,3,4) \$0.00	
2. Design Phase: Total = \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	(1,2,3,4) \$0.00	
3. Bidding Phase: Total = \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	(1,2,3,4) \$0.00	
<b>PART A SUBTOTAL = \$0.00</b>													
<b>B. SPECIAL SERVICES</b>													
1. Property Survey: Total = \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	(1,2,3,4) \$0.00
2. Design Survey: Total = \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	0 \$0.00	(1,2,3,4) \$0.00
3. Update ALP: Total = \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	(1,2,3,4) \$0.00
4. Land Acquisition Assistance: Total = \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	(1,2,3,4) \$0.00
5. Geotechnical: Total = \$45,000.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	# of Hrs. \$0.00	(1,2,3,4) \$45,000.00
<b>PART B SUBTOTAL = \$45,000.00</b>													
<b>GRAND TOTAL = \$45,000.00</b>													

Exhibit V - 1

Exhibit V

- |                                       |                       |                      |
|---------------------------------------|-----------------------|----------------------|
| (1) Mileage, Motel and Meals          | (3) Computer Services | (5) Other (Identify) |
| (2) Equipment, Materials and Supplies | (4) Vendor Services   |                      |

## EXHIBIT VI

### PERFORMANCE SCHEDULE

The Consultant agrees to proceed with services immediately upon receipt of written Notice to Proceed (NTP) by the Sponsor and to employ such personnel as required to complete the scope of services in accordance with the following time schedule:

#### BASIC SERVICES

- |    |  |  |
|----|--|--|
| A. | Preliminary Phase  | As Required  |
| B. | Design Phase   |  |
|    | 1. Submittal of Preliminary Design Report  | <b>0</b> calendar days after receipt of NTP                                    |
|    | 2. Plans & Specifications  |  |
|    | a. Submittal of 100% Plans and Contract Documents/Specifications for review (allow 45 days for MoDOT review) | <b>0</b> calendar days after receipt of NTP                                    |
|    | b. Submittal of Final Design Report and Plans and Contract Documents/Specifications for bidding              | <b>0</b> calendar days after receipt of review comments (MoDOT, FAA & Sponsor) |
| C. | Bidding Phase  | As Required  |

#### CONSTRUCTION SERVICES

- |    |                       |             |
|----|-----------------------|-------------|
| 1. | Construction Services | As Required |
|----|-----------------------|-------------|

#### SPECIAL SERVICES

- |    |                                 |  |
|----|---------------------------------|--|
| A. | Field Survey-Property Survey    |  |
|    | 1. Field Survey – Design Survey | <b>0</b> calendar days after receipt of NTP after receipt of NTP |
| B. | Geotechnical                    | <b>60</b> calendar days after receipt of NTP                     |

**CITY OF ROLLA  
CITY COUNCIL AGENDA**

DEPARTMENT HEAD: Floyd Jernigan,    ACTION REQUESTED: 1<sup>st</sup> and final reading  
Parks & Recreation Director

ITEM/SUBJECT: Bayless Field Lighting Project

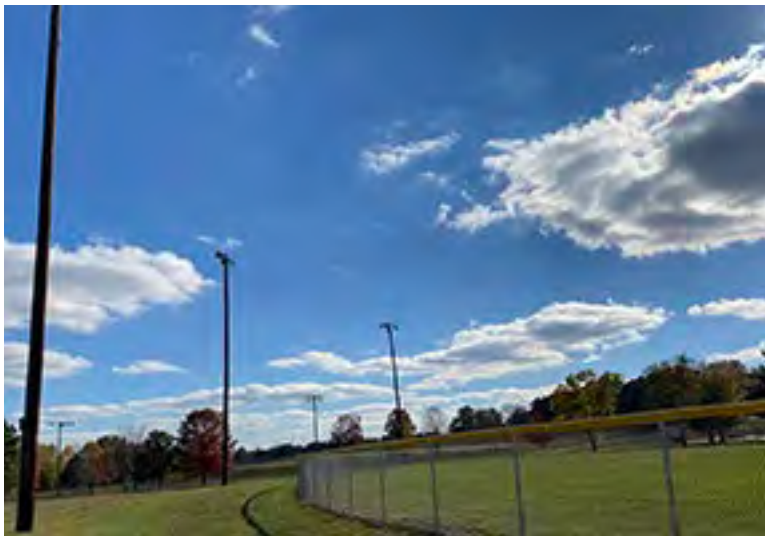
BUDGET APPROPRIATION (IF APPLICABLE) \$300,000                      DATE: Nov. 20, 2023

**COMMENTARY:**

Council awarded the bid for a new lighting system at its Nov. 6 meeting to replace the current setup of metal halide fixtures and poles dating from the 1960s and '80s. We are proposing to replace with a more energy efficient LED system on 70-foot metal poles with new updated controls. The new lights will have surge and grounding protection. The lighting system is also within national "light spillage" guidelines and has visors to control glare. There will be some small savings in annual utility costs with a new LED system and bulb frequency replacement will be much better. The project is set for completion by April 1.

Funding for this project is from the Community Facilities ARPA grant awarded by MO DED. The City's 50% match is covered by park improvements in Ber Juan Park since 2021. Other Ber Juan improvements in this grant include: a permanent bathroom, replacement of the existing bridges in the sports complex to ADA standards, outdoor exercise stations along the BJP loop, and replacement and expansion of the BJP trail loop.

Recommendation: Staff is requesting first and final reading of the ordinance approving the contract with All Purpose Erectors Inc.



**Note: General Conditions  
Available in City Clerk's Office**

ORDINANCE NO.

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A CERTAIN AGREEMENT BETWEEN THE CITY OF ROLLA, MISSOURI AND ALL PURPOSE ERECTORS REGARDING THE BAYLESS FIELD LIGHTING PROJECT.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI, AS FOLLOWS:

Section 1: That the Mayor of the City of Rolla, Missouri be and is hereby authorized and directed to execute on behalf of the City of Rolla, Missouri an agreement between the City of Rolla and All Purpose Erectors, a copy of said agreement being attached hereto and marked Exhibit "A".

Section 2: This ordinance will be full force and effect from and after the date of its passage and approval.

PASSED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI AND APPROVED BY THE MAYOR THIS 20th DAY OF NOVEMBER 2023.

APPROVED:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY COUNSELOR

PROPOSAL FOR  
**FY2023-24 – BAYLESS FIELD LIGHT REPLACEMENT PROJECT,  
PROJECT 070-580-A1**

FOR  
BER JUAN PARK, ROLLA, MISSOURI

Proposal Submitted by: ALL PURPOSE ELECTORS, INC.

*To the City Council, City of Rolla, Missouri:*

This proposal is submitted for the Project entitled “FY2023-24 – BAYLESS FIELD LIGHT REPLACEMENT PROJECT, PROJECT 070-580-A1.

The Contract Documents for these improvements are those prepared by the Parks and Recreation Department, City of Rolla, Missouri.

In submitting this proposal, the undersigned declares that the only persons or parties interested in the proposal as principals are those named herein; and that the proposal is made without collusion with any other person, firm, or corporation.

A bid bond issued by an acceptable surety company and payable to the order of the City of Rolla, for not less than five percent (5%) of the total amount of the bid, is attached to this bid proposal.

The undersigned further declares that he has carefully examined the proposal, plans and Specifications, and that he has familiarized himself with all of the local conditions affecting the contract and the detailed requirements of construction, and understands that in making this Proposal he waives all right to plead any misunderstanding regarding the same.

The undersigned has by investigation of the site of the work and otherwise satisfied himself as to the nature and location of the work and has fully informed himself as to all conditions and matters that can in any way affect the work or the cost thereof.

The undersigned further understands and agrees that if this Proposal is accepted he is to furnish and provide all necessary machinery, tools, apparatus and other means of construction, and to do all of the work and to furnish all of the materials specified in the contract, except such materials and/or work to be furnished by the City, in the manner and at the time therein prescribed, and in accordance with the requirements therein set forth.

IV.C.3

The undersigned will execute the agreement and furnish the required performance and Payment Bonds and proof of insurance coverage within fourteen (14) days after notice to him of acceptance of his bid by the City; and further, that this bid may not be withdrawn for a period of sixty (60) days after the date set for the opening thereof. If any bidder shall withdraw his bid within said period, the Contractor shall be liable under the provisions of the Bid Security, or the Contractor and his surety shall be liable under the Bid Bond as the case may be.

IV.C.4

EXHIBIT A

CONTRACT AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_\_ Day of \_\_\_\_\_ by and between the City of Rolla, Missouri, Party of the First Part and hereinafter called Owner, and All Purpose Erectors, Inc. Party of the second Part and hereinafter called the Contractor.

WITNESSETH:

THAT WHEREAS, the Owner has caused to be prepared, in accordance with law, specifications, plans, and other Contract Documents for the work herein described, and has approved and adopted said documents, and has caused to be published and advertised for and in connection with the construction of: **Bayless Field Light Replacement**, in complete accord with the Contract Documents and the said plans and specifications; and

WHEREAS, the said Contractor, in response to such advertisement, has submitted to the Owner, in the manner and at the time specified, a sealed proposal in accordance with the terms of said advertisement; and

WHEREAS, the Owner, in the manner prescribed by law, has publicly opened, examined and canvassed the proposals submitted in response to the published invitation therefore, and as a result of such canvass has determined and declared the aforesaid Contractor to be lowest and best bidder for the said work and has duly awarded to the said Contractor a contract therefore, for the sum or sums named in the Contractor's proposal, a copy thereof being attached to and made a part of this contract.

NOW THEREFORE, in consideration of the compensation to be paid to the Contractor and of the mutual agreement herein contained, the parties to these presents have agreed and hereby agree, the Owner for itself and its successors, and the Contractor for itself, himself, or themselves, or its, his or their successors and assigns, or its, his, or their executors and administrators, as follows:

ARTICLE I. That the Contractor shall (a) furnish all tools, equipment, supplies, superintendent, transportation, and other construction accessories, services and facilities; (b) furnish all materials, supplies, and equipment specified and required to be incorporated in, and form a permanent part of the completed work except the items specified to be furnished by the Owner; (c) provide and perform all necessary labor, and (d) in a good, substantial, and workmanlike manner, and in accordance with the provisions of the General Conditions and the Special Conditions of the Contract, which are attached hereto and made a part hereof, and in conformity with the Contract Plans and Specifications designated and identified therein, execute, construct, and complete all work included in, and covered by the Owner's official award of this Contract to the said Contractor, such award being based on the acceptance by the Owner of the Contractor's proposal, for the construction of **Bayless Field Light Replacement**.

It is further stipulated that not less than the prevailing hourly rate of wages as found by the Department of Labor and Industrial Relations of the State of Missouri, or determined by the Court of Appeal shall be paid to all workers performing work under this Contract.

ARTICLE II. Contractor acknowledges that Section 285.530, R.S.Mo, prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the State of Missouri. Contractor therefore covenants that it is not knowingly in violation of Subsection 1 of Section 285.530, R.S.Mo, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work on the Project, and that its employees are lawfully eligible to work in the United States.

ARTICLE III. Occupational Safety and Health Administration (OSHA)

**Safety Training:**

- a. Contractor shall provide a ten (10) hour Occupational Safety and Health Administration (OSHA) construction safety program for all employees who will be on-site at the project. The construction safety program shall include a course in construction safety and health that is approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations which is at least as stringent as an approved OSHA program as required by Section 292.675, R.S.Mo.
- b. Contractor shall require its on-site employees to complete a construction safety program within sixty (60) days after the date work on the project commences.
- c. Contractor acknowledges and agrees that any of Contractor's employees found on the project site without the documentation of the successful completion of a construction safety program shall be required to produce such documentation within twenty (20) days, or will be subject to removal from the project.
- d. Contractor shall require all of its subcontractors to comply with the requirements of this Section and Section 292.675, R.S.Mo.

**Notice of Penalties for Failure to Provide Safety Training**

- a. Pursuant to Section 292.675, R.S.Mo, Contractor shall forfeit to City as a penalty two thousand five hundred dollars (\$2,500.00), plus one hundred dollars (\$100.00) for each on-site employee employed by Contractor or its Subcontractor, for each calendar day, or portion thereof, such on-site employee is employed without the construction safety training required in Safety Training section of Article III above.
- b. The penalty described in above subsection A of this section shall not begin to accrue until the time periods described in Sections B and C Safety Training of Article III above have elapsed.
- c. Violations of Article III – Safety Training above and imposition of the penalty described in this Section shall be investigated and determined by the Missouri Department of Labor and Industrial Relations.

ARTICLE IV. That the Contractor shall construct and complete the work designated and described in the foregoing proposal and attached specifications in accordance with the Notice to Bidders, Instruction to Bidders, Proposal, Bond, General Conditions, Special Conditions, Technical Specifications, Drawings, Addenda, and other component parts of the Contract



Documents hereto attached, all of which documents from the Contract and are as fully a part hereto as if repeated verbatim herein.

ARTICLE V. That the Owner shall pay to the Contractor for the performance of the work described as follows: Complete construction of the improvements in accordance with plans and specifications; and the Contractor will accept as full compensation therefore, the sum (subject to adjustment as provided by the Contract) of \$ 219,000 for All work covered by and included in the contract award and designated in the foregoing Article I. Payment therefore shall be made in the manner provided in the General Conditions attached hereto.

ARTICLE VI. That the Contractor shall begin assembly of materials and equipment within ten (10) days after receipt from the Owner of executed copies of the Contract.

Liquidated Damages - Should the contractor fail to complete the work on or before the completion date specified the contractor will be charged liquidated damages in the amount of \$100.00 per calendar day for each full calendar day that the work is not fully completed. Liquidated damages will not be charged for weekends and holidays.

ARTICLE VII. Before the final payment can be made to the Contractor on the project, the Contractor must complete and return the Affidavit Compliance with the Prevailing Wage Law form furnished at the end of the Special Conditions section.

ARTICLE VIII. Before the final payment can be made on the project to the Contractor, the Contractor must complete and return the Contractor's Affidavit Regarding Settlement of Claims form furnished at the end of the Special Conditions section.

ARTICLE IX. This Contract will not be binding and effective until confirmed by the Owner.

IN WITNESS-WHEREOF: The parties have executed this Contract as of the day and year first above written.

CITY OF ROLLA, MISSOURI

CONTRACTOR

BY \_\_\_\_\_  
Mayor, Owner, Party of the First Part

BY \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name/Title

STATE OF MISSOURI    )  
SS                        )  
County of Phelps        )

On this \_\_\_\_\_ day of \_\_\_\_\_ before me appeared \_\_\_\_\_ ,  
to me personally known, who, being by me duly sworn, did say that he is the Mayor of the City  
of Rolla, Missouri, a municipal corporation, and the seal affixed to said instrument is the  
corporate seal of said municipal corporation and that said instrument is the corporate seal of said  
municipal corporation and that said instrument was signed under authority of the City Council of  
of the City of Rolla, Missouri; and the said \_\_\_\_\_ Acknowledged  
said instrument to be the free act and deed of said municipal corporation.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

STATE OF MISSOURI    )  
SS                        )  
County of Phelps        )

On this \_\_\_\_\_ day of \_\_\_\_\_ before me appeared \_\_\_\_\_ ,  
to me personally known, who, being by me duly sworn, did say that (s)he is the \_\_\_\_\_  
of \_\_\_\_\_  
and that the seal affixed to said instrument is the corporate seal of said corporation by authority  
of its board of directors; and the said \_\_\_\_\_ acknowledged said  
instrument to be the free act and deed of said corporation.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

## **CONTRACT AGREEMENT TO BE PROVIDED UPON BID AWARD**

**EVERY TRANSIENT EMPLOYER**, as defined in Section 285.230, RSMo, enclosed in the laws section, must post in a prominent and easily accessible place at the work site a clearly legible copy of the following: (1) The notice of registration for employer withholding issued to such transient employer by the director of revenue; (2) Proof of coverage for workers' compensation insurance or self-insurance signed by the transient employer and verified by the department of revenue through the records of the division of workers' compensation; and (3) The notice of registration for unemployment insurance issued to such transient employer by the division of employment security. Any transient employer failing to comply with these requirements shall, under Section 285.234, RSMo, enclosed in the laws section, be liable for a penalty of five hundred dollars per day until the notices required by this section are posted as required by that statute.

### **PROOF OF LAWFUL PRESENCE - § 208.009**

1. This Missouri Statute prohibits any illegal alien from receiving state or local "public benefits," and
2. The Statute requires all applicants at the time of application for such public benefits to provide "**affirmative proof** that the applicant is a citizen or a permanent resident of the United State or is lawfully present in the United States."

### **Affidavit of Work Authorization and Documentation**

Effective January 1, 2009 and pursuant to 285.530 R.S.Mo, for all agreements in excess of \$5,000.00, the bidder must affirm its enrollment and participation in a federal work authorization program with respect to the employees proposed to work in connection with the services requested herein by

- submitting a completed, notarized copy of "**AFFIDAVIT OF COMPLIANCE WITH SECTION 285.500 R.S.MO., ET SEQ. FOR ALL AGREEMENTS IN EXCESS OF \$5,000.00**" and
- providing documentation affirming the bidder's enrollment and participation in a federal work authorization program (see below) with respect to the employees proposed to work in connection with the services requested herein.

The City of Rolla encourages companies that are not already enrolled and participating in a federal work authorization program to do so.

E-Verify is an example of a federal work authorization program. Acceptable enrollment and participation documentation consists of the following two pages of the E-Verify Memorandum of Understanding (MOU): 1) a valid, completed copy of the first page identifying the bidder and 2) a valid copy of the signature page completed and signed by the bidder, the Social Security Administration, and the Department of Homeland Security - Verification Division.

Information regarding E-verify is available at

**AFFIDAVIT OF COMPLIANCE**  
**SECTION 285.530.2**

State of Missouri                    )  
  ) ss  
County of St. Louis                    )

Now this 28<sup>th</sup> day of September, 2023, the undersigned, being first duly sworn, deposes and says:

1. I am more than 18 years of age.
2. I make this affidavit from my personal knowledge of the facts stated herein or upon information and facts available to me as a duly authorized owner, partner, corporate or LLC officer or Human Relations Director of All Purpose Erectors, Inc.  
(Name of Corporation, LLC, sole proprietorship or partnership)
3. I am authorized to make this affidavit on behalf of All Purpose Erectors, Inc.  
(name of business entity, same as above)
4. I state and affirm that All Purpose Erectors, Inc. is enrolled and is currently  
(Name of business entity, same as above)  
participating in E-Verify, a federal work authorization program or another equivalent electronic verification of work authorization program operated by the United States Department of Homeland Security under the Immigration Reform and Control Act of 1986.
5. Further, All Purpose Erectors, Inc. does not knowingly employ any person who is  
(name of business entity, same as above)  
an unauthorized alien.
6. Further, All Purpose Erectors, Inc. has performed an electronic verification check  
(name of business entity, same as above)  
as described above on all workers hired since January 1, 2009 or obtained documents required for completion of a federal I-9 form before it began participating in e-verify.
7. Attached to this affidavit is a true and accurate copy of this company's Memorandum of Understanding with the United States concerning the use of e-verify.

I certify under penalty of perjury that the statements above are complete, true and accurate to the best of my knowledge and belief.

  
\_\_\_\_\_  
(Authorized Agent, Partner, Owner or Officer)


If business has a Human Relations Director or equivalent that person must sign as an affiant as well.

I certify under penalty of perjury that the statements above are complete, true and accurate to the best of my knowledge and belief.

\_\_\_\_\_  
Human Relations Director


*This form is promulgated pursuant to 15CSR 60-15.020. Use of this form is not required but the Attorney General has deemed this affidavit sufficient in form to satisfy the requirements of section 285.540, RSMo., Supp. 2008.*

**FURTHER THE AFFIANT SAYETH**

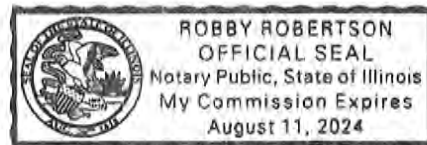
  
(Signature)

On this 28<sup>th</sup> day of September in the year 2023 before me,  
Robby Robertson a Notary Public in and for said State,  
personally appeared Musata Roberts, known to me  
to be the person who executed the within affidavit, and acknowledged to me that he/she  
executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official  
seal in the county and State aforesaid, the day and year first above written.

  
Notary Public

My Commission Expires:



**FY2023-24 – BAYLESS FIELD LIGHT REPLACEMENT PROJECT,  
PROJECT 070-580-A1  
BER JUAN PARK,  
CITY OF ROLLA, MISSOURI**

**SCOPE OF WORK AND PROJECT SPECS**

Bid price includes all labor, materials, forms and equipment necessary for constructing all improvements as shown on the plans and specifications. The proposal to include the following:

- > Optimal pole height for nationally recognized standards of lighting quality for ballfield play up to and including state and national levels of youth and adult softball and youth baseball.
- > Replacement 70 foot poles
- > Ground and surge protection
- > Company's own control panel
- > Outfield lighting that will serve Bayless Field but also adjacent fields (left field Kwantes, center field Morgan).
- > Glare protection
- > Adherence to national spillage standards – IES uniformity and spillage.
- > Estimated energy cost of contractor's system, based on annual average usage and expected KwHr costs provided by the City of Rolla.
- > Best warranty policy stated for labor and parts. A minimum of a 25YR warranty is required
- > Lighting coverage diagram showing light levels throughout the playing area. Stated light levels for the infield, outfield, home plate and pitcher's mound must be provided with the bid.
- > Ability to utilize existing electrical – 480 volt, 3 phase
- > Number of fixtures, wattage and lumens of same
- > Installation by certified commercial installer

**Project to be completed and accepted on or before April 1, 2024.**

CITY OF ROLLA  
CITY COUNCIL AGENDA

DEPARTMENT HEAD: Chief Sean Fagan

ACTION REQUESTED: Motion

ITEM/SUBJECT: Police SUVs

BUDGET APPROPRIATION: \$432,000

DATE: November 20, 2023

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Commentary:

On March 6, 2023, Council approved a motion for us to give the “go-ahead” for Don Brown Chevrolet to order vehicles, on our behalf, for the upcoming FY’24 budget year. Here is an excerpt from our request, which explains the reason for not using the usual bid process for this purchase:

“The Missouri Office of Administration has designated four dealerships as State Bid Providers for police vehicles, of which Don Brown is the designated Chevrolet dealer. Chevrolet Tahoes are expected to, again, be the least expensive vehicles to purchase and have proven to be exceptional performers. If we want to order any Chevrolet Tahoes for the 2023-2024 budget year, delivered to us after Oct 1, 2023, we will need to let Don Brown know the number of vehicles we will want to order by April. Last year, the order bank was open for a total of 10 hours before all the Tahoe allocation for the United States was reached and the order bank was closed.”

At the time, we expected the order bank to open soon, and we were anticipating needing five (5) vehicles. Due to the UAW strike, that process was delayed by several months. In the meantime, our vehicle replacement schedule was updated to reflect the need for eight (8) vehicles this year, and a total of \$432,000 was approved for this purpose in our budget.

After the budget was approved in September, we contacted Don Brown with the change. When the order bank was finally opened on November 7<sup>th</sup>, Don Brown contacted us to confirm our order for eight (8) vehicles, at which time the order was placed.

While the purchase of the additional three (3) vehicles was approved by Council in the budget, it was never officially approved that they be purchased *through Don Brown Chevrolet*. Therefore, we are submitting this request as a formality. The total cost will be \$407,824 for all eight vehicles.

Recommendation:

Staff recommends a motion to approve the purchase of the additional three (3) Tahoes through Don Brown Chevrolet.

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CITY OF ROLLA  
CITY COUNCIL AGENDA

DEPARTMENT HEAD: Chief Sean Fagan

ACTION REQUESTED: Motion

ITEM/SUBJECT: Bid for Animal Control Truck

BUDGET APPROPRIATION: \$45,000

DATE: November 20, 2023

---

Commentary:

Bids were received and opened at 11:00 am on November 8, 2023 for the purchase of one (1) new, 2024 model year, ½ ton, full-size, four wheel drive, extended cab, long bed pickup.

We received two bids, *neither of which qualified*:

Hutcheson Ford (St. James)	2023 Ford F150	\$44,535
Ed Morse Ford (St. Robert)	2024 Ford F250	\$54,005

For 2024, Ford has discontinued the ½ ton, extended cab, long bed truck. It is only offered as a ¾ or 1-ton option. Hutcheson Ford was able to locate a new, 2023, ½ ton truck meeting the remaining specifications, which would be our recommendation over the ¾ ton option offered by Ed Morse Ford at a much higher price.

Recommendation:

It is staff recommendation that Council award the bid to Hutcheson Ford, at a cost of \$44,535, for a new, 2023 model Ford F150.

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