



## Board of Alderman Request for Action

**MEETING DATE:** 9/6/2022

**DEPARTMENT:** Public Works

**AGENDA ITEM:** Resolution 1113 - Commercial Street Pedestrian Improvements

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**REQUESTED BOARD ACTION:**

Motion to approve Resolution 1113, authorizing the Mayor to sign an engineering services agreement with BG Consultants for engineering services for Commercial Street Pedestrian Improvements in the amount of \$105,000.

**SUMMARY:**

On March 1, 2022 the Board approved Res 1030 establishing a Pre-Qualified On-Call Professional Services list. BG Consultants is included as a firm that has the qualifications to perform the engineering for this project.

The City received a Transportation Alternatives Program (TAP) grant from the Mid-America Regional Council (MARC) to construct a six-foot sidewalk on Commercial Street from the School District to Meadow Street.

The project budget is:

**Planned Expenditures**

Phase	FY 2023	FY 2024
Engineering	\$150,000	-
Construction	-	\$750,000
Total	\$150,000	\$750,000

**Funding Sources**

Source	FY 2023	FY 2024
Transportation Sales Tax Fund	\$150,000	\$250,000
TAP Funding (MoDOT)	-	\$500,000
Total	\$150,000	\$750,000

**Updated:** August 16, 2022

**PREVIOUS ACTION:**

The Board approved Ordinance 3141-22 on June 7, 2022 authorizing the Mayor to sign the agreement with MODOT for the TAP Funding.

**POLICY ISSUE:**

Continued service, improving access and walkability, Safe Routes to School.

**FINANCIAL CONSIDERATIONS:**

Construction in 2024 is estimated to be \$750,000.

**ATTACHMENTS:**

☐ Ordinance

☒ Resolution

☐ Staff Report

☐ Other:

☒ Contract

☐ Plans

☐ Minutes

## **RESOLUTION 1113**

### **A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN AGREEMENT WITH BG CONSULTANTS FOR ENGINEERING SERVICES FOR COMMERCIAL STREET PEDESTRIAN IMPROVEMENTS IN THE AMOUNT OF \$105,000**

**WHEREAS**, the City received a Transportation Alternatives Program (TAP) grant from the Mid-America Regional Council (MARC) for the construction of a six-foot sidewalk on Commercial Street from the school district property to Meadow Street; and

**WHEREAS**, the sidewalk will be constructed on the east side of Commercial Street; and

**WHEREAS**, the sidewalk will provide a safe area for pedestrians to walk between downtown and the school district property; and

**WHEREAS**, BG Consultants. responded to RFQ 22-09, On Call Professional Services, submitted their qualifications and are an approved firm to provide engineering services for pedestrian improvements on Commercial Street; and

**WHEREAS**, BG Consultants have provided a scope of services to complete the design and construction engineering services in the amount of \$105,000.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF SMITHVILLE, MISSOURI**, That the Mayor is authorized to execute an agreement with BG Consultants for engineering services for pedestrian improvements on Commercial Street in the amount of \$105,000.

**PASSED AND ADOPTED** by the Mayor and Board of Aldermen this 6<sup>th</sup> day of September, 2022.

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Damien Boley, Mayor

ATTEST:

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Linda Drummond  
City Clerk

## PROFESSIONAL ENGINEERING SERVICES AGREEMENT

This is an Agreement (hereafter referred to as the “Agreement” or “Contract”) by and between City of Smithville, MO (“City”) located at 107 W. Main Street, Smithville, MO 64089 and BG Consultants, Inc. (“Consultant” or “Engineer”) a Corporation registered to do business in the State of Missouri located at 1405 Wakarusa Drive, Lawrence, KS 66049.

WITNESSETH:

WHEREAS the City desires to procure engineering services pertaining to Sidewalk Improvements on the East side of Commercial Street (Meadow Street to 400 ft. north of Stonebridge Lane) and the City is desirous of retaining a consulting engineer/architect for such works; and

WHEREAS the Engineer is qualified by experience and training and is willing to perform the engineering/architectural services necessary to said work.

WHEREAS upon consultation between the parties it was agree that the Consultant would provide the services as set forth in **Exhibit A** which is attached hereto and incorporated as if more fully set forth verbatim.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein the parties agree as follows:

**1. CONTRACT DOCUMENTS:** The Agreement between the parties shall consist of this Agreement, Exhibit A, B and C. The Parties further agree that this Agreement is a memorialization and a supplement to Exhibits A, B and C attached hereto. In the event of a conflict in the interpretation of the contract/Agreement documents, the parties agree that the terms within the Agreement documents shall be construed or given binding effect in the following order:

- a) This Agreement; and then
- b) Exhibit A; and then.
- c) Exhibit B; and then
- d) Exhibit C.

**2. GENERAL SCOPE OF THE WORK:** Consultant shall furnish all of the labor and materials and perform all of the work set out in **Exhibit A** and incorporated in this Agreement, to the same extent and effect as if fully set out herein.

**3. CONTRACT/AGREEMENT PRICE:** The total price for all work, materials, and labor to be furnished and performed by the Consultant shall be as outlined in Exhibit B and shall not exceed **one hundred and five thousand and NO/100 dollars (\$105,000.00)**. Other than as set forth in paragraph 11, this price is a fixed fee and shall not increase for any reason including but not limited to convenience of the City, unknown site conditions, delays, weather or other Consultant claims. Consultant may submit monthly invoices to the City Director of Public Works (or such other person as designated by the City) detailing the hours of services provided and the percentage of the project completed. Upon verification by the City that the invoice does not exceed the percentage of the project completed, the City will pay said invoice within thirty (30) days. The City will not make any payments for invoiced amounts which exceed the percentage of completed project.

**4. TIME:** The work to be performed hereunder shall be commenced as soon as reasonably possible after the execution of this Agreement and is subject to authorized adjustments. The work contemplated by this agreement shall be completed by the Engineer by the 31<sup>st</sup> day of December 2023.

**5. NOTICES** Any Notice as set forth herein must be served by Federal Express or similar overnight delivery service or by certified mail, return receipt requested, addressed to the party and shall be deemed given as of the deposit in the U. S. Mails or with overnight delivery service. Notice to the City shall be sent to the Director of Public Works and the City Administrator, City of Smithville, 107 W. Main Street Smithville MO 64089. Notice to Consultant shall be sent to the Consultant at 544 Columbia Drive, Lawrence, KS 66049. Either party may designate such other Person and/or delivery address from time to time by written Notice.

**6. INDEPENDENT CONTRACTOR:** The Consultant represents to the City that it is fully experienced and properly qualified to perform the services provided for herein and that it is properly equipped organized and financed to perform such services. The Consultant shall finance its own operations and shall operate as an Independent Contractor and not as an agent of the City and shall indemnify and hold the City free and harmless from all liabilities, costs, and charges to the extent caused by any negligent act, omission or representation of the Engineer or of its subcontractors, agents, and employees, including costs and attorney's fees.

Consultant shall at all times cause all its workers, laborers, employees, independent contractors and subcontractors and agents and employees of such persons to be fully covered with Worker's Compensation insurance at the amounts required by law. The Consultant will indemnify and hold the City harmless for all damages and liabilities, including reasonable attorney's fees and costs for injuries to its employees, agents, servants, and/or subcontractors, to the extent caused by the negligence of the Consultant.

The Consultant represents that it has General Liability insurance in a sum no less than \$2,000,000.00. The Engineer will provide the City with a Certificate of Insurance evidencing the same and naming the City as "additional named insured" and will indemnify and save the City harmless from all liability and costs, including reasonable attorney's fees claimed by any person who claims an injury as a result of the work. All insurance coverage must be written by companies that have an A.M. Best's rating of "A-VII" or better or as specifically approved by the City and are licensed or approved by the State of Missouri to do business in Missouri.

Regardless of any approval by the City, it is the responsibility of the Engineer to always maintain the required insurance coverage in force; its failure to do so will not relieve it of any agreement, obligation or responsibility. In the event of the Engineer 's failure to maintain the required insurance in effect, the City may order the Engineer to immediately terminate its work until the breach has been cured or terminate this Contract.

**7. COMPLIANCE AND REQUIREMENTS:** All work, labor and materials to be furnished and performed by the Engineer shall be to the satisfaction of the City Director of Public Works (or such other person as designated by the City) acting on behalf of the City, and payment shall be made only for such work and materials as are accepted in writing by the City Director of Public Works (or such other person as designated by the City) provided, however, that the City shall not arbitrarily withhold acceptance of such work and materials or payment so long as the Engineer makes satisfactory progress and performs all of its obligations in accordance with or pursuant to all the terms and conditions of this Agreement.

**8. CORRECTION OF DEFAULTS:** The Engineer will, at the request of the City Director of Public Works (or such other person as designated by the City), correct any defects to the materials or

workmanship, and neither final payment by the City nor the final acceptance by the City of the work and materials shall relieve Engineer from responsibility for any defect in materials and workmanship.

**9. ASSIGNMENT:** The Engineer shall not assign this Agreement or any amount payable hereunder without the prior written consent of the City. The Engineer shall upon request of the City, disclose to the City the names, addresses and owners of all subcontractors or other persons with whom it intends to contract with or hereafter contracts in connection with the performance of this Agreement.

**10. CONFLICTS OF INTEREST:** The Engineer represents that neither the Engineer nor its officers, directors, agents, employees, or subcontractors are related within the second degree of affinity or consanguinity with any elected officials or employees of the City.

The Engineer will not offer, give, or agree to give any employee or former employee of the City, anything of a pecuniary value for or because of:

- a. Any official action taken, or to be taken, or which could be taken; or
- b. A legal duty performed or to be performed, or which could be performed; or
- c. A legal duty violated, or to be violated, or which could be violated by such employee or former employee.

No regular employee or elected or appointed member of the City shall be permitted to obtain any benefit of this Contract, or to obtain any benefit that may accrue there from.

**11. EXTRAS:** No claim for payment (more than the amount set forth in this Agreement for extra services or materials of any kind shall be made by the Engineer or shall be paid by the City unless the same is performed or furnished pursuant to a written agreement executed by the City and the Engineer.

**12. COMPLIANCE WITH LAW:** This Agreement is entered into subject to the federal, state, and local laws, charters, ordinances, and regulations. The Engineer shall comply with the professional standard of care relative to all federal, state and local laws, ordinances and regulations and shall ensure all such compliance with regard to its subcontractors, including but not limited to the Americans with Disabilities Act and the Equal Employment Opportunity Law. Engineer shall secure all occupational and professional licenses and permits from public and private sources necessary for the performance of the services contemplated by this Agreement as well as the placement and/or use of any equipment at the location specified.

**13. AFFIDAVIT OF WORK AUTHORIZATION AND DOCUMENTATION:** Pursuant to 285.530 R.S.Mo, the Engineer 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 EXHIBIT 1 RFQ 21-13 P/R PW Facility for Engineering Services, AFFIDAVIT OF WORK AUTHORIZATION 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.

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.

**14. UNITED STATES GOODS:** Engineer agrees and understands that any manufactured goods or commodities used or supplied in the performance of the Agreement, or any subcontract thereto shall be manufactured or produced in the United States unless exempt from such requirement pursuant to §34.353 R.S.MO.

**15. NOT A JOINT VENTURE:** Nothing contained in this Agreement shall be deemed to constitute the City and the Engineer as partners in a partnership or joint venture for any purpose whatsoever.

**16. NON-LIABILITY OF CITY PERSONNEL:** Neither the Board of Alderpersons, Board Members, nor any other officer, official, employee, or agent of the City shall be *personally* responsible for any liability arising under or growing out of this Agreement or operations of the Engineer.

**17. ENTIRE CONTRACT/AGREEMENT:** This Agreement and the Exhibits attached hereto constitute the entire agreement between the parties. Terms not specifically set out herein and no verbal agreement or conversation with any officer, official, agent or employee of the City, either before or after the execution of the Agreement, shall affect, modify or add to the terms or obligations contained in this Agreement. Any such purported term, verbal agreement or conversation shall in no way be binding upon the City or the Engineer.

**18. RECORDS:** The Engineer shall maintain all records for inspection by City representatives during the Contract period and for three (3) years after the date of termination of the Contract. The Engineer agrees that the City Auditor, or any of his/her duly authorized representatives shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine any and all pertinent books, documents, papers and records of the Engineer involving the transactions related to this Agreement.

**19. SURVIVAL OF REPRESENTATIONS:** All representations of the Consultant hereunder shall survive final payment and acceptance of the work.

**20. APPLICABLE LAW:** the laws of the State of Missouri shall govern this contract. Any action regarding the consent or arising out of the terms and conditions shall be instituted and litigated in the courts of the State of Missouri, County of Clay and in no other. Consultant is validly registered to do business in Missouri. The parties submit to the jurisdiction of the courts of the State of Missouri and to venue in Clay County.

**21. REMEDIES:** In addition to all other remedies at law or in equity, if Consultant shall fail to complete and/or meet any of its obligations under the terms of this Agreement, the City may, by giving the Consultant written Notice, cancel and terminate this Contract if the breach is not cured within Thirty (30) days after the sending of such Notice (unless otherwise set forth herein).

**22. NONRESIDENT/FOREIGN CONTRACTORS.** The Consultant shall procure and maintain during the life of this contract:

a. A certificate from the Missouri Director of Revenue evidencing compliance with the transient employer financial assurance law, unless exempt pursuant to the provisions of Section 285.230 R.S.Mo.

**23. INTELLECTUAL PROPERTY RIGHTS:** Consultant shall pay all license, royalty or similar intellectual property fees or costs. Consultant shall hold City harmless and shall indemnify and

defend City against all claims, damages, suits or losses for any and all negligent infringements on any intellectual property rights of another (whether patents, copyrights, etc.) relating to or caused by the work of the Consultant.

**24. CONTRACT LANGUAGE** The language of this Contract reflects negotiations between Consultant and City, each of whom have had the opportunity to modify the text. In the event of litigation or other dispute concerning the language of this Contract, general rules construing ambiguities against the drafter shall not apply. It is agreed that if more than one copy of this document may be executed and that the original filed with the City Clerk shall pursuant to §432.080 R.S. Mo be deemed to be the controlling original.

**25. CHANGE ORDERS:** Change Orders which are approved by the Consultant and the City's designee in writing which do not increase the cost of the project may be utilized to make needed changes to the scope of the work and to manage minor changes necessary.

**26. CITY OWNERSHIP AND PROPRIETARY INFORMATION** – The parties expressly agree that all data, documents, records, studies, or other information generated, created, found or otherwise completed by Engineer in the performance of Engineer's duties under the terms of this Agreement shall be considered as works for hire, and shall at all times be considered the proprietary information of and under the ownership of the City. All data, documents, records, studies, or other information generated, referred to above, shall be provided to the City by Consultant upon request so long as the City is not in default under other terms of this Agreement. City grants the Engineer the right to use all data, documents, records, studies, or other information generated, created, found, or otherwise completed by Engineer in the performance of Engineer's duties under the terms of this Agreement.

Reuse or modification of any such documents by City, without Consultant's written permission, shall be at City's sole risk, and City agrees to indemnify, defend, and hold Consultant harmless from all claims, damages, and expenses, including attorneys' fees, arising out of such reuse by City or by others acting through City. Notwithstanding any other provision in this Agreement, the Consultant shall not be in violation of this Agreement if the Consultant utilizes any standard details, data, or documents that may be incorporated into the work product generated by the Consultant in connection with this Project. The City understands that regardless of any transfer of ownership or copyright rights granted to the City pursuant to the terms of this Agreement, the Consultant shall in no way be restricted or prohibited from future use of any such standard details, data, or documents.

**27. TERMINATION**. The City reserves the right to terminate this Agreement by giving at least five (5) days prior written notice to the Consultant, without prejudice to any other rights or remedies of the City should the Consultant be in breach of this Agreement, be adjudged a bankrupt, or if Consultant should make a general assignment for the benefit of its creditors, or if a receiver should be appointed for Consultant, or if Consultant should persistently or repeatedly refuse or fail to supply enough properly skilled workmen for the work under the Agreement, or persistently disregard instructions of the City or fail to observe or perform any provisions of the Agreement.

**28. COMPLIANCE WITH LAW**. This Agreement and the goods and services rendered herein are subject to all federal laws, the Constitution of the State of Missouri, the Revised Statutes of Missouri. Any specific provision contained herein which is contrary to federal laws or the Constitution of the State of Missouri and the Revised Statutes of Missouri shall be considered void without invalidating or otherwise affecting the remainder of the Agreement.

**29. EFFECTIVE DATE:** The effective date of the Agreement shall be deemed to be when all the required signatures have been executed by the City and the Consultant.



**30. WAIVER:** The waiver by either party of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term. No term, covenant, or condition of this Agreement can be waived except by the written consent of the City, and forbearance or indulgence by the City in any regard whatsoever shall not constitute a waiver of any term, covenant, or condition to be performed by Engineer to which the same may apply and, until complete performance by the Engineer of said term, covenant or condition, the City shall be entitled to invoke any remedy available to it under this Agreement or by law despite any such forbearance or indulgence.

**31. SEVERABILITY:** All of the provisions of this Agreement shall be severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provisions that it cannot be presumed that the parties to this Agreement could have included the valid provisions without invalid provisions; or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

**32. UNEMPLOYMENT INSURANCE AND TAXES:** The Engineer shall pay, at the Engineer's own cost, all relevant taxes in connection with the work or materials to be performed, including but not limited to State and Federal, Unemployment and old age benefit taxes, sales and use taxes, income tax, withholding tax or other work or payroll related taxes. No payments to the Engineer will be approved unless the Engineer is current with tax payments to the City or unless satisfactory arrangements have been made for payment with the City.

**33. FORCE MAJEURE:** In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of restrictive governmental laws or regulations, riots, insurrection, war, or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement, then the time allowed for performance of such act shall be extended by a period equivalent to the period of such delay.

**34. CONDITION PRECEDENT:** This Agreement shall be null and void and of no effect unless and until the City has by Ordinance or Resolution passed by the City Board of Alderpersons, obtained the authority to enter into this Agreement.

**IN WITNESS WHEREOF**, the parties have set their hands and seals the date and year first above written. The parties represent that the signatories below have full authority and authorization to sign on behalf of the respective parties.

**THE CITY OF SMITHVILLE**

By: \_\_\_\_\_  
Mayor or City Administrator

Name: Damien Boley, Mayor

**ENGINEER:**

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

Title Corporate Secretary

## EXHIBIT A – SCOPE OF SERVICES

The Scope of Services described in this Exhibit A is for the engineering design of a sidewalk improvements project along Commercial Street (Meadow Street to 400 ft. north of Stonebridge Lane) in Smithville, Missouri, hereinafter referred to as “PROJECT”. The PROJECT will be funded in part by the Missouri Department of Transportation’s (MODOT) Transportation Alternatives Project (TAP) program.

### A. Design Phase Services

CONSULTANT will provide the following Design Phase Services.

1. CONSULTANT will perform design of the PROJECT to prepare construction plans and project special provisions referencing the most current edition of the following design guides and specifications:
  - a. *A Policy on Geometric Design of Highways and Streets, 7<sup>th</sup> Edition* published by AASHTO.
  - b. *Manual on Uniform Traffic Control Devices (MUTCD)* published by the Federal Highway Administration.
  - c. *Local Public Authority (LPA) Policy (LPA:136)* prepared by MODOT.
  - d. *Public Rights-of-Way Accessibility Guidelines* prepared by the U.S. Access Board.
2. Perform a topographic survey of the PROJECT. Topographic survey will be performed at the following locations:
  - a. East right-of-way of Commercial Street (Meadow Street to 400 ft. north of Stonebridge Lane).
  - b. The west right -of-way of Commercial Street at public street intersections within the PROJECT limits.
3. Receive information from utility companies having facilities within the PROJECT limits. CONSULTANT will contact ONE CALL to request utility companies locate existing utility infrastructure within the area to be surveyed. Existing utilities that are marked at the time of the topographic survey may be included in the topographic survey.
4. Perform engineering design of PROJECT. CONSULTANT and CITY anticipate the improvements will primarily include the following:
  - a. Horizontal and vertical alignment of new sidewalks.
  - b. Typical sidewalk and pavement section(s)
  - c. Cross sections and earthwork balance.
5. CONSULTANT will attend one concept alignment meeting with CITY to discuss progress and the concept design prior to preparing construction plans.
6. Prepare construction plans for the design of the PROJECT. The following plan sheets are anticipated:
  - a. Title Sheet.
  - b. General Notes and Project Control.
  - c. Typical Sections.
  - d. Plan of Proposed Sidewalk Improvements.
  - e. Pavement Details.
  - f. Summary of Quantities.
  - g. Permanent Seeding Plan.
  - h. Erosion Control Plan.
  - i. Traffic Control Details and Quantities.
  - j. Cross Sections.
7. Construction plans will be prepared to a Preliminary Check stage to be reviewed by CITY. After the Preliminary Check, CONSULTANT will incorporate CITY’s review comments and process

the following stages of construction plan review through the CITY and MODOT: 50% complete, 90% complete, PS&E, and Bidding plans.

8. CONSULTANT will attend a 50% complete plans review meeting with CITY and MODOT.
9. Assist the CITY with compiling a list of known utilities in the PROJECT limits and summarizing utility adjustment coordination for CITY records. Provide one set of construction plans to each utility owner having facilities located within the PROJECT limits at the 50% and 90% complete stages.
10. Prepare a Project Manual to include the bidding and construction contract documents as well as technical specifications. Bidding and construction contract documents
11. Prepare an opinion of probable construction costs at the Preliminary Check, 50% complete, 90% complete and PS&E PROJECT development stages.
12. Prepare the permit application(s) and applicable exhibit(s) for known permits required for construction. CONSULTANT will deliver permit application(s) to CITY for CITY to submit for approval. Permit application fees will be the CITY's responsibility.
13. Applying for and obtaining a Section 404 Permit from the U.S. Army Corps of Engineers is not anticipated or included in this scope of services.
14. Environmental Assessment or Environmental Impact Statement services concerning the National Environmental Policy Act are specifically excluded.
15. Geotechnical engineering services are specifically excluded. If requested by CITY, CONSULTANT will assist CITY in soliciting proposals for services from geotechnical engineering companies. CITY will contract directly with a qualified geotechnical engineering firm to provide geotechnical services.

## **B. PUBLIC INVOLVEMENT SERVICES**

CONSULTANT will provide the following Public Involvement Services.

1. CONSULTANT will attend up to one (1) Open House public meeting in Smithville, MO.
2. CONSULTANT will attend up to one (1) Board of Alderman meeting to provide a PROJECT update to CITY.
3. All other meetings with the public and/or property owners are not included.

## **C. PROPERTY ACQUISITION SERVICES**

CITY and CONSULTANT both anticipate the proposed infrastructure improvements will primarily be contained within existing rights-of-way, but grading limits to facilitate the PROJECT may encroach on private property adjacent the PROJECT site. Therefore, CONSULTANT will provide the following Property Acquisition Services

1. CONSULTANT will prepare the easement description and strip map for up to ten (10) properties.
2. CITY will be responsible for acquisition of property and/or easements necessary for the PROJECT.

**D. BID PHASE SERVICES** – Bid Phase Services are not included as they will be performed by MODOT.

## **E. CONSTRUCTION PHASE SERVICES**

CONSULTANT will provide the following Construction Phase Services based on a 60 Working Day construction contract time.

1. CONSULTANT will attend one (1) preconstruction meeting.
2. CONSULTANT will review Contractor Submittals and Shop Drawings.
3. CONSULTANT will attend up to eight (8) progress meetings during the construction contract time.
4. CONSULTANT will perform up to ten (10) additional on-site visits, outside of the progress meetings identified above, during the construction contract time.
5. CONSULTANT will clarify the CONSULTANT's design intent in response to Contractor and/or City questions which may arise during the construction of the PROJECT.
6. Construction inspection services are not included. CONSULTANT can provide CITY with construction inspection services by supplemental agreement or separate agreement.

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## **EXHIBIT B – COST AND SCHEDULE**

### **A. ENGINEERING FEE**

1. CONSULTANT will provide services in Exhibit A, Items A, B and C for a lump sum fee of **eighty thousand and NO/100 dollars (\$80,000.00)**. CITY will be invoiced for services in Exhibit A in accordance with this AGREEMENT. Monthly invoicing will be based on the percentage of the scope of services performed.
2. CONSULTANT will provide services in Exhibit A, Item E for at CONSULTANT's current hourly rates at the time of service, based on the actual hours of service expended on the PROJECT, but not to exceed a Total Fee of **Twenty-Five thousand and NO/100 dollars (\$25,000.00)**. CITY will be invoiced for services in Exhibit A in accordance with this AGREEMENT.
  - a. CITY acknowledges, understands and agrees this Total Fee for compensation for services in Exhibit A, Item E is an estimated budget based on an estimated volume of professional service hours that CONSULTANT might render on the Project. Additional compensation in excess of this estimated budget may be necessary depending on the volume of hours which CONSULTANT is requested to provide Construction Phase Services.

### **B. ESTIMATED PROJECT SCHEDULE**

1. CONSULTANT will perform services in an effort to meet CITY scheduling goals for a MODOT bid opening date in the Federal Fiscal Year 2023. The schedule may need to be adjusted based on CITY and/or MODOT's actual programmed bid opening date.

## **EXHIBIT C –SPECIAL PROVISIONS**

### **NO THIRD PARTY BENEFICIARIES**

1. Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

### **LIMITATION OF LIABILITY**

1. CITY's exclusive remedy for any alleged breach of standard of care hereunder shall be to require CONSULTANT to re-perform any defective Services. Notwithstanding any other provision of this Agreement, the total liability of CONSULTANT, its officers, directors and employees for liabilities, claims, judgments, demands and causes of action arising under or related to this Agreement, whether based in contract or tort, shall be limited to the total compensation actually paid to CONSULTANT for the Services. All claims by CITY shall be deemed relinquished unless filed within one (1) year after completion of the Services.
2. It is agreed to by the parties to this Agreement that the Consultant's services in connection with the Project shall not subject Consultant's employees, officers, or directors to any personal liability or legal exposure for risks associated with the Project. Therefore, the CITY agrees that the CITY's sole and exclusive remedy for any claim, demand or suit shall be directed and/or asserted only against the Consultant, a Kansas corporation, and not against any of the Consultant's individual employees, officers or directors.
3. CONSULTANT and CITY shall not be responsible to each other for any special, incidental, indirect or consequential damages (including lost profits) incurred by either CONSULTANT or CITY or for which either party may be liable to any third party, which damages have been or are occasioned by Services performed or reports prepared or other work performed hereunder.

### **HAZARDOUS MATERIALS**

1. The CONSULTANT and the CONSULTANT's subconsultants shall have no responsibility for the discovery, presence, handling, removal or disposal or exposure of persons to hazardous materials in any form at the Project site.

The Consultant shall not supervise, direct, or have control over Contractor's work. The consultant shall not have authority over or responsibility for the construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the work of the Contractor. The Consultant does not guarantee the performance of the construction contract by the Contractor and does not assume responsibility for the Contractor's failure to furnish and perform its work in accordance with the Contract documents.