

AGREEMENT
For
PROFESSIONAL ENGINEERING SERVICES
Between
THE CITY OF COLUMBIA, MISSOURI
And
BURNS & MCDONNELL ENGINEERING COMPANY, INC.

THIS AGREEMENT made by and between the City of Columbia, Missouri (hereinafter called "CITY"), and **Burns & McDonnell Engineering Company, Inc.**, (hereinafter called "ENGINEER"), is entered into on the date of the last signatory noted below (the "Effective Date").

WITNESSETH, that whereas CITY intends to make improvements as described below (hereinafter called "the PROJECT"), consisting of the following:

Route K and Sinclair Roundabout (5S3360) services includes design and limited construction administration for a signal lane roundabout at the intersection of Route K and Sinclair in southwest Columbia. The design will include concrete pavement and sidewalk, stormwater improvements, striping, and signage.

(Description of Project)

NOW, THEREFORE, in consideration of the mutual covenants set out herein the parties agree as follows:

ENGINEER shall serve as CITY's professional engineering contractor in those assignments to which this Agreement applies, and shall give consultation and advice to CITY during the performance of the services. All services shall be performed under the direction of a professional engineer registered in the State of Missouri and qualified in the particular field.

SECTION 1 - AUTHORIZATION OF SERVICES

1.1 ENGINEER shall not undertake to begin any of the services contemplated by this agreement until directed in writing to do so by CITY. CITY may elect to authorize the PROJECT as a whole or in parts.

1.2 Authorized work may include services described hereafter as Basic Services or as Additional Services of ENGINEER.

SECTION 2 - BASIC SERVICES OF ENGINEER

2.1 General

2.1.1 Perform professional engineering services as set forth in Attachment A - "Scope of Basic Services," dated **September 4, 2018** (hereinafter referred to as "Scope of Basic Services").

2.1.2 ENGINEER will designate the following listed individuals as its project team with responsibilities as assigned. ENGINEER shall dedicate whatever additional resources are necessary to accomplish the PROJECT within the specified time frame but will not remove these individuals from the assigned tasks for any reason within the control of ENGINEER without the written approval of CITY.

<u>Name and Title</u>	<u>Assignment</u>
David Hurt, PE	Project Manager
Brant Vermeer, PE	Lead Design Engineer
Luke Rainey	Lead Design Technician

All of the services required hereunder will be performed by ENGINEER or under its supervision and all personnel engaged in the work shall be fully qualified and authorized or permitted under state and local law to perform such services.

None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of CITY and any work or services so subcontracted shall be subject to the provisions of this Agreement.

2.1.3 Subletting, Assignment or Transfer
 No portion of the work covered by this contract, except as provided herein, shall be sublet or transferred without the written consent of the Local Agency. The subletting of the work shall in no way relieve ENGINEER of ENGINEER's primary responsibility for the quality and performance of the work. It is the intention of ENGINEER to engage subcontractors for the purposes of:

<u>Sub-Consultant Name/Address</u>	<u>Services</u>
None	None

2.1.4 **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 **0.00%** of the total Agreement dollar value.
- B. DBE Participation Obtained by ENGINEER: ENGINEER has obtained DBE participation, and agrees to use DBE firms to complete, **0.00%** of the total services to be performed under this Agreement, by dollar value. The DBE firms which

ENGINEER shall use, and the type and dollar value of the services each DBE will perform, is as follows:

DBE FIRM NAME, STREET AND COMPLETE MAILING ADDRESS	TYPE OF DBE SERVICE	TOTAL \$ VALUE OF THE DBE SUBCONTRACT	CONTRACT \$ AMOUNT TO APPLY TO TOTAL DBE GOAL	PERCENTAGE OF SUBCONTRACT DOLLAR VALUE APPLICABLE TO TOTAL GOAL
---	---------------------------	--	---	--

2.2 ENGINEER shall furnish such periodic reports as CITY may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred, and any other matters covered by this Agreement.

2.3 ENGINEER shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Agreement and any other records as deemed necessary by CITY to assure proper accounting for all project funds. These records must be available to CITY or its authorized representatives, for audit purposes, and must be retained for three (3) years after expiration or completion of this Agreement.

2.4 OWNERSHIP OF DOCUMENTS

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

1. ENGINEER shall have the right to their future use with written permission of CITY;

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

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

a. Copyrights. CITY, 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 CITY, its engineer or subconsultant purchases ownership with payments provided by this Agreement.

b. Patents. Rights to inventions made under this agreement shall be determined in accordance with 37 C.F.R. Part 401. The standard patent rights clause at 37 C.F.R. § 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 (3) of the clause shall be deleted; and

III. Subsection (I) of the clause, entitled “communications” shall read as follows: “(I) Communications. All notifications required by this clause shall be submitted to the Public Works Director.”

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

Contractor - Engineer
Government and Federal Agency – Local Agency
Subcontractor – Subconsultant

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

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

2.5 STANDARDS

ENGINEER shall be responsible for working with the Local Agency in determining the appropriate design parameters and construction specifications for the project using good engineering judgment based on the specific site conditions, Local Agency needs, and guidance provided in the most current version of EPG 136 LPA Policy. If the project is on the state highway system or is a bridge project, then the latest version of MoDOT's Engineering Policy Guide (EPG) and Missouri Standard Specifications for Highway Construction shall be used (see EPG 136.7). The Project plans must also be in compliance with the latest ADA (Americans with Disabilities Act) Regulations.

SECTION 3 - ADDITIONAL SERVICES OF ENGINEER

3.1 General

If authorized in writing by CITY, and agreed to in writing by ENGINEER, ENGINEER shall furnish or obtain from others Additional Services of the following types which are not considered normal or customary Basic Services. The scope of Additional Services may include:

3.1.1 Financial Consultation

Consult with CITY's fiscal agents and bond attorneys and provide such engineering data as required for any bond prospectus or other financing requirements.

3.1.2 Property Procurement Assistance

Provide consultation and assistance on property procurement as related to professional engineering services being performed.

3.1.3 Obtaining Services of Others

Provide through subcontract the services or data set forth in Scope of Basic Services. ENGINEER is prohibited from holding a retainage on any payment to a subcontractor that provides any services or work on this Project.

3.1.4 Preliminary or final engineering design of capital facilities except as specifically identified herein.

3.1.5 Preparation of reports, data, application, etc., in connection with modifications to FEMA floodplain definition and/or mapping.

3.1.6 Extra Services

Services not specifically defined heretofore that may be authorized in writing by CITY.

SECTION 4 - RESPONSIBILITIES OF CITY

4.1 Provide full information as to CITY'S requirements for the PROJECT.

4.2 Assist ENGINEER by placing at ENGINEER's disposal available information pertinent to the assignment including previous reports and other data relative thereto, including the items outlined in Scope of Basic Services.

4.3 Guarantee access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform ENGINEER's services under this Agreement.

4.4 Examine all studies, reports, sketches, estimates, Bid Documents, Drawings, proposals and other documents presented by ENGINEER and render in writing decisions pertaining thereto.

4.5 Provide such professional legal, accounting, financial and insurance counseling services as may be required for the PROJECT.

4.6 Designate **Allison Anderson, PE**, as CITY's representative with respect to the services to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define CITY's policies and decisions with respect to materials, equipment, elements and systems to be used in the PROJECT, and other matters pertinent to the services covered by this Agreement. The CITY'S designated representative may be changed during the duration of this Agreement by written notice from the City Manager, or City Manager's designee, to ENGINEER.

4.7 Give prompt written notice to ENGINEER whenever CITY observes or otherwise becomes aware of any defect in the PROJECT.

4.8 Furnish approvals and permits from all governmental authorities having jurisdiction over the PROJECT and such approvals and consents from others as may be necessary for completion of the PROJECT.

4.9 Furnish ENGINEER data such as probings and subsurface explorations, with appropriate professional interpretations; property, boundary, easement, right-of-way, topographic and utility surveys; zoning and deed restriction; and other special data or consultations, all of which ENGINEER may rely upon in performing his services under this Agreement.

SECTION 5 - PERIOD OF SERVICE

5.1 This Agreement will become effective upon the first written notice by CITY authorizing services hereunder.

5.2 This Agreement shall be applicable to all work assignments authorized by CITY subsequent to the date of its execution and shall be effective as to all assignments authorized.

5.3 Services shall be started within 10 calendar days of Notice to Proceed and completed on **December 1, 2020**. CITY shall have the right to establish performance times for individual phases or elements of the PROJECT by delivering a written schedule setting out the performance times to the ENGINEER.

The Local Agency will grant time extensions for delays due to unforeseeable causes beyond the control of and without fault or negligence of ENGINEER. Requests for extensions of time shall be made in writing by ENGINEER, 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.

SECTION 6 - COMPENSATION

6.1 For services provided under this contract, the Local Agency will compensate ENGINEER as follows:

A. For design services, including work through the construction contract award stage, the Local Agency will pay ENGINEER the actual costs incurred plus a predetermined fixed fee of **\$11,801.01**, with a ceiling established for said design services in the amount of **\$97,500.00**, which amount shall not be exceeded.

B. For construction inspection services, the Local Agency will pay ENGINEER the actual costs incurred plus a predetermined fixed fee of **\$0**, with a ceiling established for said inspection services in the amount of **\$0**, which amount shall not be exceeded.

C. The compensation outlined above has been derived from estimates of cost which are detailed in Attachment B. Any major changes in work, extra work, exceeding of the contract ceiling, or change in the predetermined fixed fee will require a supplement to this contract, as covered in Article III - ADDITIONAL SERVICES.

D. Actual costs in Sections A and B above are defined as:

1. Actual payroll salaries paid to employees for time that they are productively engaged in work covered by this contract, plus
2. An amount estimated at **75.24%** of actual salaries in Item 1 above for payroll additives, including payroll taxes, holiday and vacation pay, sick leave pay, insurance benefits, retirement and incentive pay, plus
3. An amount estimated at **146.71%** of actual salaries in Item 1 above for general administrative overhead, based on ENGINEER's system for allocating indirect costs in accordance with sound accounting principles and business practice, plus

4. Other costs directly attributable to the project but not included in the above overhead, such as vehicle mileage, meals and lodging, printing, surveying expendables, and computer time, plus
5. Project costs incurred by others on a subcontract basis, said costs to be passed through ENGINEER on the basis of reasonable and actual cost as invoiced by the subcontractors.

E. The rates shown for additives and overhead in Sections VII. D.2 and VII. D.3 above are the established Engineer's overhead rate accepted at the time of contract execution and shall be utilized throughout the life of the contract for billing purposes.

F. The payment of costs under this contract will be limited to costs which are allowable under 23 CFR 172 and 48 CFR 31.

G. METHOD OF PAYMENT: Partial payments for work satisfactorily completed will be made to ENGINEER upon receipt of itemized invoices by the Local Agency. Invoices will be submitted no more frequently than once every two weeks and must be submitted monthly for invoices greater than \$10,000. A pro-rated portion of the fixed fee will be paid with each invoice. Upon receipt of the invoice and progress report, the Local Agency will, as soon as practical, but not later than 45 days from receipt, pay ENGINEER 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 report, 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 amount not paid, through no fault of ENGINEER, within 45 days after the Local Agency's receipt of ENGINEER's invoice. The Local Agency will not be liable for the late payment charge on any invoice which requests 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 report. The payment, other than the fixed fee, will be subject to final audit of actual expenses during the period of this Agreement.

6.1.1 For services performed, CITY shall pay ENGINEER the sum of amounts determined as follows:

6.1.1.1 For time spent by personnel, payment at the hourly rates indicated in the "Schedule of Hourly Labor Billing Rates" (attached). ~~Such rates include overhead and profit.~~ The schedule may be revised annually if the term of this Agreement exceeds one (1) year. To be effective, any revision in the Schedule of Hourly Labor Billing Rates shall be provided by ENGINEER to CITY at least thirty (30) days prior to work performed under this Agreement to which such rates apply. JRM

6.1.1.2 For outside expenses incurred by ENGINEER, such as authorized travel and subsistence, commercial services, and incidental expenses, the cost to ENGINEER.

6.1.1.3 For reproduction, printing, long-distance telephone calls, company vehicle usage, testing apparatus, computer services and computer-assisted drafting (CAD), amounts will be charged according to ENGINEER's standard rates in effect at the time service is provided.

6.1.1.4 For professional services rendered by others as subcontractor(s) to ENGINEER such as surveying, real property descriptions, soil borings, subsurface investigations, laboratory testing, field quality control tests, progress photos, or other activities required or requested by CITY, will be billed at the cost to ENGINEER.

6.1.1.5 For time spent by outside individual professional consultants employed by ENGINEER in providing services to CITY, the cost to ENGINEER. Expenses incurred by such outside consultants in service to CITY shall be reimbursable in accordance with 6.1.1.2 above.

6.1.1.6 Total payment for Scope of Services and all other expenses and costs to CITY under this agreement and described herein **shall not exceed \$97,500.00.**

SECTION 7 - GENERAL CONSIDERATIONS

7.1 Insurance

7.1.1 ENGINEER'S INSURANCE: ENGINEER agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this contract the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as CITY's review or acceptance of insurance maintained by ENGINEER is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by ENGINEER under this contract.

Commercial General Liability ENGINEER agrees to maintain Commercial General Liability at a limit of liability not less than **\$2,000,000** combined single limit for any one occurrence covering both bodily injury and property damage, including accidental death. Coverage shall not contain any endorsement(s) excluding nor limiting Contractual Liability or Cross Liability. If the contract involves any underground/digging operations, the general liability certificate shall include X, C and U (Explosion, Collapse and Underground) coverage.

Professional Liability ENGINEER agrees to maintain Professional (Errors & Omissions) Liability at a limit of liability not less than **\$2,000,000** per claim and **\$2,000,000** aggregate. For policies written on a "Claims-Made" basis, ENGINEER agrees to maintain a Retroactive Date prior to or equal to the Effective Date of this contract. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced; or any other event triggering the right to purchase a Supplemental Extended

Reporting Period (SERP) during the life of this contract, ENGINEER agrees to purchase a SERP with a minimum reporting period not less than two (2) years. The requirement to purchase a SERP shall not relieve ENGINEER of the obligation to provide replacement coverage.

Business Automobile Liability ENGINEER agrees to maintain Business Automobile Liability at a limit of liability not less than **\$2,000,000** combined single limit for any one occurrence and not less than \$150,000 per individual, covering both bodily injury, including accidental death, and property damage, to protect themselves from any and all claims arising from the use of the ENGINEER's own automobiles, and trucks; hired automobiles, and trucks; and automobiles both on and off the site of work. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event ENGINEER does not own automobiles, ENGINEER agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Workers' Compensation Insurance & Employers' Liability ENGINEER agrees to take out and maintain during the life of this contract, Employers' Liability and Workers' Compensation Insurance for all of their employees employed at the site of the work, and in case any work is sublet, the ENGINEER shall require the subcontractor similarly to provide Workers' Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the ENGINEER. Workers' Compensation coverages shall meet Missouri statutory limits. Employers' Liability minimum limits shall be \$500,000 each employee, \$500,000 each accident and \$500,000 policy limit. In case any class of employees engaged in hazardous work under this contract is not protected under the Workers' Compensation Statute, the ENGINEER shall provide and shall cause each subcontractor to provide Employers' Liability Insurance for the protection of their employees not otherwise protected.

Excess/Umbrella Liability The above liability limits may be satisfied by any combination of primary and excess/umbrella liability policies.

Additional Insured ENGINEER agrees to endorse CITY as an Additional Insured with a CG 2026 Additional Insured – Designated Person or Organization endorsement, or similar endorsement, to the Commercial General Liability. The Additional Insured shall read "City of Columbia."

Waiver of Subrogation ENGINEER agrees by entering into this contract to a Waiver of Subrogation for each required policy herein except professional liability. When required by the insurer, or should a policy condition not permit ENGINEER to enter into a pre-loss agreement to waive subrogation without an endorsement, then ENGINEER agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should ENGINEER enter into such an agreement on a pre-loss basis.

Certificate(s) of Insurance ENGINEER agrees to provide CITY with Certificate(s) of Insurance evidencing that all coverages, limits and endorsements required herein are

maintained and in full force and effect. Said Certificate(s) of Insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. The Certificate(s) of Insurance shall name the City as additional insured in an amount as required in this contract and contain a description of the project or work to be performed.

Right to Revise or Reject CITY reserves the right, but not the obligation, to review and revise any insurance requirement, not limited to limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work / specifications affecting the applicability of coverage. Additionally, the CITY reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein or any insurer providing coverage due of its poor financial condition or failure to operating legally.

7.1.2 HOLD HARMLESS AGREEMENT

To the fullest extent not prohibited by law, ENGINEER shall indemnify and hold harmless the City of Columbia, its directors, officers, agents and employees from and against all claims, damages, losses and expenses (including but not limited to attorney's fees) arising by reason of any negligent act or failure to act, or willful misconduct, of ENGINEER, of any subcontractor (meaning anyone, including but not limited to consultants having a contract with ENGINEER or a subcontractor for part of the services), of anyone directly or indirectly employed by ENGINEER or by any subcontractor, or of anyone for whose acts ENGINEER or its subcontractor may be liable, in connection with providing these services except as provided in this Agreement. This provision does not, however, require ENGINEER to indemnify, hold harmless or defend the City of Columbia from its own negligence, except as set out herein.

7.2 Professional Responsibility

7.2.1 Missouri Licensure & Certificate of Authority

ENGINEER certifies that it is currently in compliance, and agrees to maintain compliance for the duration of this Agreement, with all licensure requirements of the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors and Professional Landscape Architects (hereinafter "APEPLSPLA") to practice in Missouri as a professional engineer as provided under chapter 327 of the Missouri Revised Statutes. To the extent required by Section 327.401 of the Missouri Revised Statutes, ENGINEER understands and agrees that the person personally in charge and supervising the professional engineering services of ENGINEER under this Agreement shall be licensed and authorized to practice engineering in Missouri, and that ENGINEER will keep and maintain a valid certificate of authority from APEPLSPLA.

7.2.2 ENGINEER will exercise reasonable skill, care, and diligence in the performance of its services and will carry out its responsibilities in accordance with customarily accepted good professional engineering practices. If ENGINEER fails to meet the foregoing standard, ENGINEER will perform at its own cost, and without reimbursement from CITY, the professional engineering services necessary to correct errors and omissions which are caused by ENGINEER's failure to comply with above

standard, and which are reported to ENGINEER within one year from the completion of ENGINEER's services for the PROJECT.

7.2.3 In addition, ENGINEER will be responsible to CITY for damages caused by its negligent conduct during its activities at the PROJECT site or in the field.

7.2.4 Professional Oversight Indemnification

ENGINEER understands and agrees that CITY has contracted with ENGINEER based upon ENGINEER's representations that ENGINEER is a skilled professional and fully able to provide the services set out in this Agreement. In addition to any other indemnification set out in this Agreement, ENGINEER agrees to defend, indemnify and hold and save harmless CITY from any and all claims, settlements and judgments whatsoever arising out of CITY's alleged negligence in hiring or failing to properly supervise ENGINEER. ENGINEER agrees to provide CITY with Certificate(s) of Insurance evidencing that all coverages, limits and endorsements are maintained and in full force and effect.

7.3 Estimates and Projections

Estimates and projections prepared by ENGINEER relating to construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are based on ENGINEER's experience, qualifications and judgment as a design professional. Since ENGINEER has no control over weather, cost and availability of labor, material and equipment, labor productivity, construction contractor's procedures and methods, unavoidable delays, construction contractor's methods of determining prices, economic conditions, competitive bidding or market conditions and other factors affecting such estimates or projections, ENGINEER does not guarantee that actual rates, costs, performance, schedules, etc., will not vary from estimates and projections prepared by ENGINEER.

7.4 On-Site Services

PROJECT site visits by ENGINEER during construction shall not make ENGINEER responsible for construction means, methods, techniques, sequences or procedures; for construction safety precautions or programs; or for any construction contractor(s)' failure to perform its work in accordance with the plans and specifications.

7.5 Changes

CITY shall have the right to make changes within the general scope of ENGINEER's services, with an appropriate change in compensation and/or schedule, upon execution of a mutually acceptable amendment or change order signed by an authorized representative of CITY and the President or any Vice President of ENGINEER.

7.6 Suspension of Services

Should CITY fail to fulfill its responsibilities as provided under Section 4 to the extent that ENGINEER is unduly hindered in his services or if CITY fails to make any payment to ENGINEER on account of its services and expenses within ninety (90) days after receipt of ENGINEER's bill therefor, ENGINEER may, after giving seven (7) days'

written notice to CITY, suspend services under this Agreement until CITY has satisfied his obligations under this Agreement.

7.7 Suspension or Termination of Agreement

A. The Local Agency may, without being in breach hereof, suspend or terminate ENGINEER's services under this Agreement, or any part of them, for cause or for the convenience of the Local Agency, upon giving to ENGINEER at least fifteen (15) days' prior written notice of the effective date thereof. ENGINEER shall not accelerate performance of services during the fifteen (15) day period without the express written request of the Local Agency.

B. Should the Agreement be suspended or terminated for the convenience of the Local Agency, the Local Agency will pay to ENGINEER its costs as set forth in Attachment B including actual hours expended prior to such suspension or termination and direct costs as defined in this Agreement for services performed by ENGINEER, a proportional amount of the fixed fee based upon an estimated percentage of Agreement completion, plus reasonable costs incurred by ENGINEER in suspending or terminating the services. The payment will make no other allowances for damages or anticipated fees or profits. In the event of a suspension of the services, ENGINEER's compensation and schedule for performance of services hereunder shall be equitably adjusted upon resumption of performance of the services.

C. ENGINEER shall remain liable to the Local Agency for any claims or damages occasioned by any failure, default, or negligent errors and/or omission in carrying out the provisions of this Agreement during its life, including those giving rise to a termination for non-performance or breach by ENGINEER. This liability shall survive and shall not be waived, or estopped by final payment under this Agreement.

D. Upon the occurrence of any of the following events, ENGINEER may suspend performance hereunder by giving the Local Agency 30 days advance written notice and may continue such suspension until the condition is satisfactorily remedied by the Local Agency. In the event the condition is not remedied within 120 days of ENGINEER's original notice, ENGINEER may terminate this Agreement.

1. Receipt of written notice from the Local Agency that funds are no longer available to continue performance.
2. The Local Agency's persistent failure to make payment to ENGINEER in a timely manner.
3. Any material contract breach by the Local Agency.

7.7.1 In the event of CITY's termination of this Agreement pursuant to the above section, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared under this Agreement, shall at the option of CITY become its property.

Further, ENGINEER shall not be relieved of any liability to CITY for any damages sustained by CITY by virtue of any breach of this Agreement by ENGINEER and CITY may withhold any payments due ENGINEER for the purpose of set-off until such time as the exact amount of damages to CITY, if any, is determined.

7.7.2 Covenant Against Contingent Fees

ENGINEER warrants that ENGINEER has not employed or retained any company or person, other than a bona fide employee working for ENGINEER, to solicit or secure this Agreement, and that ENGINEER has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the Local Agency shall have the right to annul this agreement without liability, or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee, plus reasonable attorney's fees.

7.8 Publications

Recognizing the importance of professional development on the part of ENGINEER's employees and the importance of ENGINEER's public relations, ENGINEER may prepare publications, such as technical papers, articles for periodicals, and press releases, pertaining to ENGINEER's services for the PROJECT. Such publications will be provided to CITY in draft form for CITY's advance review. CITY will review such drafts promptly and will provide comments to ENGINEER. CITY may require deletion of proprietary data or confidential information from such publications but otherwise will not unreasonably withhold its approval. The cost of ENGINEER's activities pertaining to any such publication shall be paid entirely by ENGINEER.

7.9 Nondiscrimination

7.9.1 ENGINEER, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the grounds of race, color, religion, sex, age, national origin, ancestry, marital status, disability, sexual orientation, gender identity or expression, or any other protected category designated by local, state, or federal law in the selection and retention of subcontractors. ENGINEER will comply with state and federal related to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d, 2000e), as well as with any applicable titles of the Americans with Disabilities Act (42 U.S.C. 12101, et seq.). More specifically, ENGINEER will comply with the regulations of the Department of Transportation relative to nondiscrimination in federally assisted programs of the

Department of Transportation, as contained in 49 CFR 21 through Appendix H and 23 CFR 710.405 which are herein incorporated by reference and made a part of this contract. In all solicitations either by competitive bidding or negotiation made by ENGINEER for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by ENGINEER's obligations under this Agreement and the regulations relative to non-discrimination on the grounds of race, color, religion, sex, age, national origin, ancestry, marital status, disability, sexual orientation, gender identity or expression, or any other protected category designated by local, state, or federal law.

7.9.2 ENGINEER shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, ancestry, marital status, disability, sexual orientation, gender identity or expression, or any other protected category designated by local, state, or federal law. ENGINEER shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, age, national origin, ancestry, marital status, disability, sexual orientation, gender identity or expression, or any other protected category designated by local, state, or federal law. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. ENGINEER agrees to post notices in conspicuous places, available to employees and applicants for employment.

7.9.3 ENGINEER shall, in all solicitation or advertisements for employees placed by or on behalf of ENGINEER, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin, ancestry, marital status, disability, sexual orientation, gender identity or expression, or any other protected category designated by local, state, or federal law.

7.9.4 ENGINEER shall comply with all provisions of State and Federal Laws governing the regulation of Equal Employment Opportunity including Title VI of the Civil Rights Act of 1964.

7.10 Successor and Assigns

CITY and ENGINEER each binds himself and his successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither CITY nor ENGINEER shall assign, sublet or transfer interest in this Agreement without the written consent of the other.

7.11 Rights and Benefits

ENGINEER's services will be performed solely for the benefit of CITY and not for the benefit of any other persons or entities.

7.12 Compliance with Local Laws

ENGINEER shall comply with all applicable laws, ordinances and codes of the state and city.

7.13 Law; Submission to Jurisdiction Governing.

This Agreement shall be governed by, interpreted and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this Agreement, shall be Boone County, Missouri or the United States Western District of Missouri. The parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri and waive any defense of forum non conveniens.

7.14 Employment of Unauthorized Aliens Prohibited

7.14.1 ENGINEER agrees to comply with Missouri State Statute section 285.530 in that ENGINEER shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri.

7.14.2 As a condition for the award of this contract, ENGINEER shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. ENGINEER shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

7.14.3 ENGINEER shall require each subcontractor to affirmatively state in its contract with ENGINEER that the subcontractor shall not knowingly employ, hire for employment or continue to employ an unauthorized alien to perform work within the state of Missouri. ENGINEER shall also require each subcontractor to provide ENGINEER with a sworn affidavit under the penalty of perjury attesting to the fact that the subcontractor's employees are lawfully present in the United States.

7.15 Lobby Certification

Certification on Lobbying: Since federal funds are being used for this agreement, the Engineer's signature on this agreement constitutes the execution of all certifications on lobbying which are required by 49 C.F.R. Part 20 including Appendix A and B to Part 20. Engineer agrees to abide by all certification or disclosure requirements in 49 C.F.R. Part 20 which are incorporated herein by reference.

7.16 No Waiver of Immunities

In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitutions or laws.

7.17 Entire Agreement

This Agreement represents the entire and integrated Agreement between ENGINEER and CITY relative to the Scope of Services herein. All previous or contemporaneous agreements, representations, promises and conditions relating to ENGINEER's services described herein are superseded.

7.18 Attachments

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

Attachment A – Scope of Service

Attachment B - Estimate of Cost

Attachment C – DBE Contract Provisions

Attachment D – Fig. 136.4.15 Conflict of Interest Disclosure Form

Attachment E – Work Authorization Affidavit

In the event of a conflict between the terms and conditions of this Agreement and any attachment hereto, the terms contained in this Agreement shall prevail and the terms contained in any attachment shall subsequently prevail in the order attached hereto.

[SIGNATURES ON FOLLOWING PAGE]

CITY OF COLUMBIA, MISSOURI

By: _____
Mike Matthes, City Manager

Date: _____

ATTESTED BY:

Sheela Amin, City Clerk

APPROVED AS TO FORM:

Nancy Thompson, City Counselor *JSM*

CERTIFICATION: I hereby certify that the above expenditure is within the purpose of the appropriation to which it is charged, Account No. 44008830-604023, 00707, and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefor.

By: _____
Director of Finance

**BURNS & MCDONNELL ENGINEERING
COMPANY, INC.**

By: *Bryan Bulla*

Date: *9/13/18*

ATTEST:

By: *Keri L. Cowley*

Name: *KERI L. COWLEY*
Assist. Secy.



ATTACHMENT A
SCOPE OF BASIC SERVICES
September 4, 2018
Sinclair and Route K Roundabout

PROJECT DESCRIPTION

The proposed Sinclair and Route K Roundabout project is an intersection improvement project funded by a cost share agreement between MoDOT, Columbia Public Schools, and the City of Columbia. This intersection is currently a two-way stop with the Sinclair Road leg and the Old Plank Road leg offset from each other. The proposed intersection improvement is a single lane roundabout. Construction will include new concrete pavement and sidewalks, stormwater improvements, striping, and signage. The notice to proceed with design is anticipated to be in October of 2018, with final plans due Fall of 2019, and construction to begin in Spring of 2020. The survey and a concept layout of the roundabout have been completed. Also, the initial contacts have been made to the utilities about the project. The right of way for this improvement has previously been acquired; so, the City does not anticipate the need to acquire additional easements. If any easements are needed for construction, the City will write the easement descriptions and acquire the easements. The City's Standards and Specifications will be used for the design of the project.

TASK SUMMARY

The following is a summary of the tasks associated with the scope of services.

- A. Preliminary Plans
- B. Final Plans, Specifications, and Estimates
- C. Bid Phase Services
- D. Construction Phase Services

DETAILED SCOPE OF WORK

TASK A. PRELIMINARY PLANS

- Complete preliminary site visit.
- Hold design team kickoff meeting.
- Prepare 30% plans. (The City will provide a topographical survey and concept layout of the proposed project.)
- Prepare opinion of probable cost.
- Attend open house Interested Parties meeting.
 - a. Prepare displays and documents needed for meeting.
 - b. Assist the City in conducting an open house type interested parties meeting.
- Hold utility coordination meeting.

- Attend Public Hearing at the City Council meeting.
 - a. Prepare diagrams needed for the meeting.
 - b. Assist the City in presenting the project to Council and answering questions.
- The City will complete the environmental review/NEPA classification with MoDOT.
- The City will complete the water quality cell design and specifications.
- The City will provide right of way and easement acquisition services.

TASK B. FINAL PLANS, SPECIFICATIONS, AND ESTIMATE

- Prepare 100% final plans.
- Hold final utility coordination.
- Prepare opinion of probable cost.
- Prepare final project technical specifications (City will prepare the front-end bid documents).

TASK C. BID PHASE SERVICES

- Respond to pre-bid questions related to design of the project.
- The City will provide the administration of bid and hold the pre-bid meeting.

TASK D. CONSTRUCTION PHASE SERVICES

- Attend pre-construction meeting.
- Answer construction questions related to design and complete site visits, if necessary, to resolve issues.
- City will review shop drawings and materials certifications.
- City will provide all other construction phase services with their own forces.

ATTACHMENT B - Estimate of Cost

Design Services - Sinclair & Rte. K Roundabout
City of Columbia, MO



9/4/2018

TASKS	Project Manager	Senior Engineer	Staff Engineer	CADD Technician	TOTAL HOURS
TASK A. PRELIMINARY PLANS					
Complete preliminary site visit	4		4		8
Design team kickoff meeting	4		4		8
<i>Prepare 30% plans</i>					
Cover Sheet	0.5		2	6	8.5
Typical Sections	0.5		8	12	20.5
Plan & Profile	4		24	24	52
Drainage Design	2		24	8	34
Preliminary opinion of probable cost	2		4		6
Prepare displays and documents needed for IP Meeting	2		4	12	18
Assist with & attend IP Meeting	8		8		16
Preliminary Utility Coordination Meeting	6		6		12
Attend Public Hearing at the City Council meeting	6				6
Prepare diagrams needed for the City Council meeting	1		2	6	9
TASK B. FINAL PLANS, SPECIFICATIONS, AND ESTIMATE					
<i>Prepare Final Plans:</i>					
Cover Sheet	0.5		1	3	4.5
Typical Sections	0.5		4	12	16.5
Summary of Quantities	2		16	8	26
Plan & Profiles	4		24	16	44
Project Control	0.5		4	6	10.5
Special Sheets & Details	1		24	16	41
Drainage Design	1		8	16	25
Traffic Control and Detour Signing	1		16	16	33
Erosion Control	1		4	4	9
Pavement Marking	1		8	8	17
Signing	1		12	12	25
Cross Sections & Earthwork	2		16	16	34
Final Utility Coordination Meeting	6		6		12
Quality Control Check	1	8	4	12	25
Final opinion of probable cost	2		4		6
Specifications, Job Special Provisions, PS&E Submittal Forms, & Work Day Study	2	8	8		18
Prepare & Submit 100% Un-signed Un-sealed PSE	0.5		2	2	4.5
Revise per City & MoDOT Comments and Re-Submit 100% Signed & Sealed PSE	1		8	8	17
TASK C. BID PHASE SERVICES					
Respond to pre-bid questions related to design of the project	4		8	4	16
TASK D. CONSTRUCTION PHASE SERVICES					
Attend pre-construction meeting	4		4		8
Answer construction questions related to design and complete site visits, if necessary	8		8	8	24
TASK E. PROJECT MANAGEMENT					
Accounting/Invoicing/Admin	12				12
TOTAL	96	16	279	235	626

ATTACHMENT B - Estimate of Cost



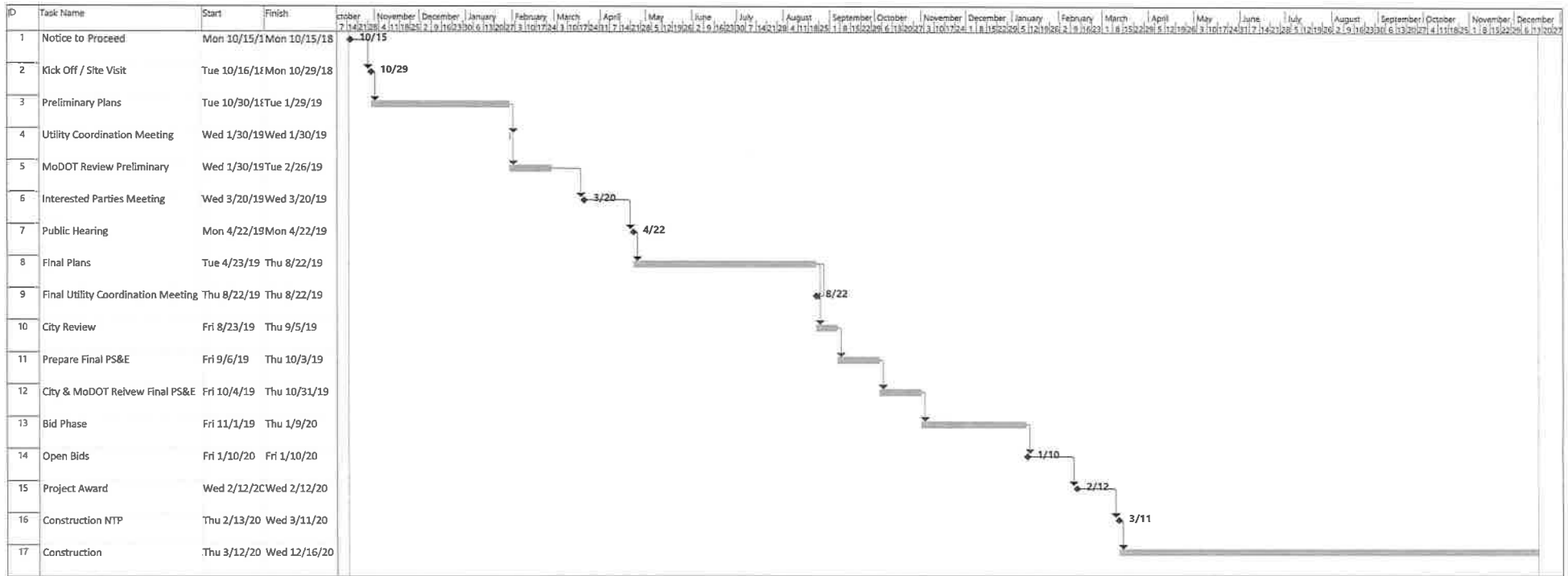
Design Services - Sinclair & Rte. K Roundabout
 City of Columbia, MO

9/4/2018

Recapitulation of Fee Estimate

SALARY COSTS

Classification	Total Hours	Current Rate	Direct Salary Cost
Project Manager	96	\$ 65.00	\$ 6,240.00
Senior Engineer	16	\$ 55.00	\$ 880.00
Staff Engineer	279	\$ 38.00	\$ 10,602.00
CADD Technician	235	\$ 36.00	\$ 8,460.00
Total Hours		626	
Salary Costs			\$ 26,182.00
Overhead (75.24%+146.71%)		221.95%	\$58,110.95
Total Direct Labor and Overhead			\$ 84,292.95
Fixed Fee		14%	\$ 11,801.01
Subtotal			\$ 96,093.96
Direct Expenses			
Travel (Vehicle Mileage)	1500	\$ 0.545	\$ 817.50
Large Printing & Plotting			\$ 588.54
Subtotal Direct Expenses			\$ 1,406.04
TOTAL			\$ 97,500.00



Project: Sinclair_KK_Schedule
Date: Wed 9/5/18

Task		Summary		Inactive Milestone		Duration-only		Start-only		External Milestone		Manual Progress	
Split		Project Summary		Inactive Summary		Manual Summary Rollup		Finish-only		Deadline			
Milestone		Inactive Task		Manual Task		Manual Summary		External Tasks		Progress			

Attachment C
Disadvantage Business Enterprise Contract Provisions

1. Policy: It is the policy of the U.S. Department of Transportation and the Local Agency that businesses owned by socially and economically disadvantaged individuals (DBE's) as defined in 49 C.F.R. 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 C.F.R. Part 26 and Section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21) apply to this Agreement.

2. Obligation of the Engineer to DBE's: The Engineer 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 Engineer shall take all necessary and reasonable steps to assure that DBEs have the maximum opportunity to compete for and perform services. The Engineer 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.

3. Geographic Area for Solicitation of DBEs: The Engineer shall seek DBEs in the same geographic area in which the solicitation for other subconsultants is made. If the Engineer cannot meet the DBE goal using DBEs from that geographic area, the Engineer 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 Engineer 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.

C. The Engineer 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 Engineer 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 MoDOT's External Civil Rights Division to be reasonable and not excessive as compared with fees customarily allowed for similar services.

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

5. Replacement of DBE Subconsultants: The Engineer 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 MoDOT's External Civil Rights Division.

6. Verification of DBE Participation: Prior to final payment by the Local Agency, the Engineer shall file a list with the Local Agency 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 Engineer to achieve the DBE participation specified in this Agreement may result in sanctions being imposed on the Commission for noncompliance with 49 C.F.R. Part 26 and/or Section 1101(b) of TEA-21. If the total DBE participation is less than the goal amount stated by the MoDOT's External Civil Rights Division, liquidated damages may be assessed to the Engineer.

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 Engineer's payments as liquidated damages. If this Agreement is awarded with less than the goal amount stated above by MoDOT's External Civil Rights Division, 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 Engineer, the DBE goal amount is not met.

7. Documentation of Good Faith Efforts to Meet the DBE Goal: The Agreement goal established by MoDOT's External Civil Rights Division. The Engineer must document the good faith efforts it made to achieve that DBE goal, if the agreed percentage specified is less than the percentage stated. 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 Department 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 not rejecting 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 Commission or by the Engineer.

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. Good Faith Efforts to Obtain DBE Participation: If the Engineer's agreed DBE goal amount as specified is less than the established DBE goal given, then the Engineer certifies that the following good faith efforts were taken by Engineer in an attempt to obtain the level of DBE participation set by MoDOT's External Civil Rights.

Attachment D – Fig. 136.4.15
Conflict of Interest Disclosure Form for LPA/Consultants
Local Federal-aid Transportation Projects

Firm Name (Consultant): Burns & McDonnell Engineering Company, Inc.

Project Owner (LPA): City of Columbia

Project Name: Route K and Sinclair Roundabout

Project Number: 5S3360

As the LPA and/or consultant for the above local federal-aid transportation project, I have:

1. Reviewed the conflict of interest information found in Missouri's Local Public Agency Manual (EPG 136.4)
2. Reviewed the Conflict of Interest laws, including 23 CFR § 1.33, 49 CFR 18.36.

And, to the best of my knowledge, determined that, for myself, any owner, partner or employee, with my firm or any of my sub-consulting firms providing services for this project, including family members and personal interests of the above persons, there are:

- No real or potential conflicts of interest
If no conflicts have been identified, complete and sign this form and submit to LPA

- Real conflicts of interest or the potential for conflicts of interest
If a real or potential conflict has been identified, describe on an attached sheet the nature of the conflict, and provide a detailed description of Consultant's proposed mitigation measures (if possible). Complete and sign this form and send it, along with all attachments, to the appropriate MoDOT District Representative, along with the executed engineering services contract.

LPA

Consultant

Printed Name: _____

Printed Name: _____

Signature: _____

Signature: _____

Date: _____

Date: _____

NOTICE TO VENDORS
Section 285.525 – 285.550 RSMo Effective January 1, 2009

Effective January 1, 2009 and pursuant to RSMo 285.530 (1), No business entity or employer shall knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri.

As a condition for the award of any contract or grant in excess of five thousand dollars by the state or by any political subdivision of the state to a business entity, or for any business entity receiving a state administered or subsidized tax credit, tax abatement, or loan from the state, the business entity shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Every such business entity shall sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. [RSMO 285.530 (2)]

An employer may enroll and participate in a federal work authorization program and shall verify the employment eligibility of every employee in the employer's hire whose employment commences after the employer enrolls in a federal work authorization program. The employer shall retain a copy of the dated verification report received from the federal government. Any business entity that participates in such program shall have an affirmative defense that such business entity has not violated subsection 1 of this section. [RSMO 285.530 (4)]

For vendors that are not already enrolled and participating in a federal work authorization program, E-Verify is an example of this type of program. Information regarding E-Verify is available at:

http://www.dhs.gov/xprevprot/programs/gc_1185221678150.shtm.

