

RESOLUTION NO. 09 12 2024B

A RESOLUTION AUTHORIZING AN AGREEMENT WITH BURNS & MCDONNELL ENGINEERING COMPANY, INC., PROVIDING FOR ELECTRICAL DESIGN SERVICES, IN AN AMOUNT NOT TO EXCEED \$93,396.00.

WHEREAS, the City of O'Fallon conducted a formal request for qualifications for Electrical Design Services; and

WHEREAS, City staff reviewed the agreement from Burns & McDonnell Engineering Company, Inc., for professional engineering services for Electrical Design Services; and

WHEREAS, City staff recommends approval of this Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF O'FALLON, MISSOURI, AS FOLLOWS:


SECTION 1: The City Council approves on behalf of the City an agreement with Burns & McDonnell Engineering Company, Inc., for Electrical Design Services at a cost not to exceed \$93,396.00, in substantial conformity with the terms shown on Exhibit A attached hereto and incorporated herein by this reference as if set out here in full, together with such changes therein as shall be approved by the officers of the City executing same which are consistent with the provisions and intent of this legislation and necessary, desirable, convenient or proper in order to carry out the matters herein authorized. The City Administrator and other appropriate City officials are hereby authorized to execute the Agreement and such additional documents and take any and all actions necessary, desirable, convenient or prudent in order to carry out the intent of this legislation.

PASSED BY THE CITY COUNCIL FOR THE CITY OF O'FALLON, MISSOURI, THIS 12TH DAY OF SEPTEMBER, 2024.

Attest:


Bess Bacher, City Clerk

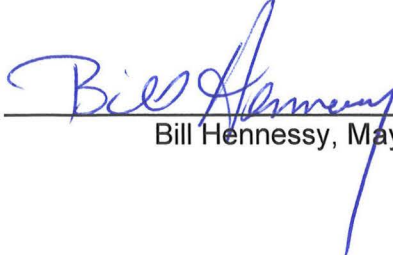



Presiding Officer

RESOLUTION NO. 09 12 2024B

APPROVED BY THE MAYOR FOR THE CITY OF O'FALLON, MISSOURI, THIS 12TH DAY OF SEPTEMBER, 2024.




Bill Hennessy, Mayor

Attest:


Bess Bacher, City Clerk

Approved as to Form:

Kevin M. O'Keefe, City Attorney

SEP 12 2024

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement, by and between the City of O'Fallon, a Missouri Municipal Corporation (OWNER), and Burns & McDonnell (Engineer)

**ARTICLE 1
ENGINEER'S SERVICES**

ENGINEER shall provide to OWNER professional services for Electrical Design Services, hereinafter referred to as "PROJECT". These services are identified and described in the Scope of Work (EXHIBIT A) attached to and made a part of this Agreement.

**ARTICLE 2
OWNER'S RESPONSIBILITIES****A. OWNER's Representative**

OWNER shall designate in writing a person to act as OWNER's Representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and make decisions with respect to ENGINEER's services for the PROJECT. OWNER may change its representative by submitting to the ENGINEER in writing.

B. Information

1. OWNER shall provide ENGINEER with general goals, objectives, and requirements for the PROJECT, including design objectives and constraints, space, capacity and performance requirements, flexibility, expandability, any budgetary limitations; and identify general design and construction standards which OWNER will require to be included in the Drawings and Specifications; and furnish copies of OWNER's standard forms, conditions, and related documents for ENGINEER to include in the Contract Documents, when applicable.
2. OWNER shall give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of Hazardous Environmental Condition. OWNER shall give written notice to ENGINEER of any other development that affects the scope or time of performance of ENGINEER's services, or any defect or nonconformance in ENGINEER's services or in the work of any Contractor provided the OWNER becomes aware of the development, defect or nonconformance in services and recognizes that there are potential effects on the project.
3. If OWNER provides a budget for the PROJECT, it shall include contingencies for bidding, changes in the work during construction and other costs which are the responsibility of OWNER. OWNER shall, at the request of ENGINEER, provide a statement of funds available for the PROJECT and their source.
4. OWNER shall furnish to ENGINEER as required for performance of ENGINEER'S services (except to the extent provided otherwise in the Scope of Work), data prepared by or services of others, including; soil borings, probing and subsurface explorations, hydrographic surveys laboratory tests and inspections of samples, materials and equipment, appropriate professional interpretation of all of the foregoing; environmental assessment and impact statements; and other special data or consultation that is readily available to OWNER. The data provided is informational and ENGINEER may use the data in performing its services, provided, however, that ENGINEER shall review all such data, prior to using it, and notify the OWNER immediately if, in ENGINEER'S experience and judgment, any data does not appear to be consistent with actual conditions or appears to be otherwise incorrect.
5. OWNER shall provide such accounting, independent cost estimating and insurance counseling services as may be required for the PROJECT, such legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to the PROJECT including any that may be raised by contractor(s), such auditing service as OWNER may require to ascertain how or for what purpose any contractor has used the moneys paid under the construction contract, and such inspection services as OWNER may require (except to the extent provided otherwise in the Scope of Work) to ascertain that contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.

6. OWNER shall advise ENGINEER of the identity and the scope of services of any independent consultants employed by OWNER to perform or furnish services in regard to the PROJECT, including but not limited to, cost estimating, PROJECT peer review, value engineering, and constructability review.
7. OWNER shall furnish to ENGINEER data as to OWNER's anticipated cost for services to be provided by others for OWNER so that ENGINEER may make necessary calculations to develop and periodically adjust ENGINEER's opinion of Probable Cost.
8. If OWNER designates a Construction Manager or an individual or entity other than, or in addition to, ENGINEER to represent OWNER at the site, define and set forth as an attachment to this Exhibit D the duties, responsibilities, and limitations of authority of such other party as well as the relation thereof to the duties, responsibilities and authority of the ENGINEER.
9. OWNER must establish and be present for the pre-bid conference, bid opening, pre-construction conferences, construction progress meetings, and other job related meetings, and substantial completion and final payment inspections.

C. Access and Approvals

1. OWNER shall arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform its services under this Agreement. ENGINEER acknowledges that OWNER as a governmental entity must take certain steps to lawfully access private property; ENGINEER shall notify OWNER of the need to access private property which shall allow sufficient time for the OWNER to take those necessary steps. ENGINEER shall coordinate with OWNER with respect to access to public or private property.
2. OWNER shall assist the ENGINEER in the completion of all applicable forms and permits required by governmental authorities having jurisdiction over the PROJECT. OWNER shall provide all fees associated with the applications for forms and permits. OWNER will approve and execute all forms and permits prior to forwarding to governmental authorities.

D. Coordination

1. If OWNER designates a person to represent OWNER at the site other than ENGINEER, the duties, responsibilities and limitations of authority of such other person and the effect thereof on the duties and responsibilities of ENGINEER will be set forth in an "Exhibit D" that is to be identified, attached to and made a part of this Agreement before such services begin.
2. If more than one prime contract is to be awarded for construction, materials, equipment and services for the entire PROJECT, OWNER shall designate prior to the start of construction a person or organization to have authority and responsibility for coordinating the activities among the various prime contractors.

E. Notice

1. OWNER shall give reasonable written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services, or any defect or nonconformance in the work of ENGINEER or any Contractor.
2. The ENGINEER is responsible for any of its work that violates sound engineering practices and policies, and/or the intent of the scope of the PROJECT.

**ARTICLE 3
COMPENSATION AND PAYMENT**

A. METHODS OF PAYMENT FOR SERVICES AND REIMBURSABLE EXPENSES

1. OWNER will compensate ENGINEER for the performance of the services described in the Scope of Work (EXHIBIT A), part 1 in accordance with the Terms and Conditions of the attached EXHIBIT B.
2. OWNER shall compensate ENGINEER for the Additional Services performed or furnished under EXHIBIT A, Part 2, as set forth in EXHIBIT B.

3. OWNER shall compensate ENGINEER for reimbursable expenses over and above the services provided for in paragraphs 3.A.1 and 3.A.2 incurred by ENGINEER and ENGINEER's consultants as set forth in EXHIBIT C.

B. OTHER PROVISIONS CONCERNING PAYMENTS

1. Preparation of Invoices – Invoices will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER unless otherwise agreed. The amount billed each invoice will be calculated and set forth in Exhibit B.
2. Payment of Invoices – Invoices are due and payable within 30 days of receipt. If OWNER fails to make payment due ENGINEER for services and expenses within 90 days after receipt of ENGINEER's invoice therefore, the amounts due the ENGINEER will be increase at a rate of 1.0% per month (or maximum rate allowable by law, if less) from said ninetieth day. In addition, ENGINEER may, after giving seven days written notice to OWNER, suspend the services under this agreement until ENGINEER has been paid in full amounts due for services, expenses and other related charges. Payments will be credited first to interest and then to principal.
3. Disputed Invoices – In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. All Dispute resolution shall be handled in the process specified in Article 11 Paragraph F.

4. PAYEMENTS DUE UPON TERMINATION

- i. In the event of any termination under Paragraph 10.A & 10. B; ENGINEER will be entitled to invoice the OWNER and will be paid in accordance with Exhibit B for all services performed and furnished and all reimbursable expenses incurred through the effective date of termination.
 - ii. In the event of termination by OWNER for convenience or by ENGINEER for cause, ENGINEER, in addition to invoicing for those items identified in paragraph 3.B.4.i, shall be entitled to invoice OWNER and shall be paid a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, costs of terminating contracts with ENGINEER's sub consultants, and other related closeout costs, using methods and rates as set forth in EXHIBIT C.
5. Records of ENGINEER's Costs – Records of ENGINEER's costs pertinent to ENGINEER's compensation under this agreement shall be kept in accordance with generally accepted accounting practices. To the extent necessary to verify ENGINEER's charges and upon OWNER's timely requests, copies of such records will be made available to OWNER at no cost.

**ARTICLE 4
TIME FOR PERFORMANCE**

A. COMMENCEMENT/COMPLETION

ENGINEER shall commence the performance of the services for the PROJECT upon the date of this Agreement and complete the work in accordance with such schedule attached as part 3 of Exhibit A as may be mutually agreed to by the parties.

B. SUSPENSION

If OWNER fails to give prompt written authorization to proceed with any phase of the services after completion of the immediately preceding phase, or if the ENGINEER's services are delayed at no fault of ENGINEER, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this agreement.

C. LIQUIDATED DAMAGES

Timely completion is an essential element of this contract. Final Plans shall be completed by the dates outlined in the schedule as set forth in Exhibit A Part 3. One hundred dollars per calendar day (**\$100 / calendar day**) will be deducted from any money due to ENGINEER for work not completed by the dates. The amount specified above is not a penalty but liquidated damages for loss to the City and the public.

**ARTICLE 5
CHANGES IN THE WORK**

- A. **CHANGES** - OWNER reserves the right, without impairing this Agreement, to order changes or alterations in the work to be performed hereunder by ENGINEER. If changes or alterations ordered affect the cost or progress of the work, adjustment shall be made in the time for performance of the work and compensation owing to ENGINEER, as the case may be. These said changes must be agreed upon by both parties prior to the work beginning, and a scope of work change must be executed.
- B. **CONCEALED CONDITIONS** - Should concealed or unknown conditions be encountered in the performance of the work which present the risk of discharge, dispersal, release or escape of asbestos, any hazardous substance or any hazardous waste, ENGINEER shall promptly suspend its performance of the Work for the protection of the parties and their employees and notify OWNER of the conditions encountered. OWNER and ENGINEER shall promptly investigate the conditions and, if warranted, equitable and necessary adjustments shall be made in the terms and conditions of this Agreement. It is agreed, however, that ENGINEER shall have no duty to determine the existence of any hazardous substance or hazardous waste at the site of the work or to provide response action services even with equitable adjustments. The WORK shall be suspended until such time as the services of a qualified professional is acquired to assess the condition and make a recommendation for mitigation and or response. The ENGINEER will be compensated for the impact that the concealed condition has on its services rendered.

**ARTICLE 6
STANDARD OF CARE**

- A. ENGINEER represents that its services shall be performed with the skill and care which would be exercised by comparable qualified design professionals performing similar services at the time and place such services are performed. If the failure to meet these standards results in deficiencies in its services, ENGINEER shall furnish at its own cost and expense, the additional services, labor, materials and equipment necessary to correct such deficiencies. The City reserves the right to seek other remedies.
- B. ENGINEER shall be responsible for the technical accuracy of its services and documents resulting therefrom, and OWNER shall not be responsible for discovering deficiencies therein. ENGINEER shall correct deficiencies without additional compensation regardless of the state of the project in which the error or omission is discovered.
- C. ENGINEER shall perform or furnish professional engineering and related services in all phases of the PROJECT to which this agreement applies. ENGINEER shall serve as OWNER's prime professional for the PROJECT. ENGINEER may employ such consultant as ENGINEER deems necessary to assist in the performance or the furnishing of the services. ENGINEER shall not be required to employ any ENGINEER's Consultant unacceptable to ENGINEER. ENGINEER shall not employ any ENGINEER's sub consultants unacceptable to the OWNER.
- D. ENGINEER and OWNER shall comply with acceptable Laws and Regulations and OWNER mandated standards. This agreement is based on these requirements as of its effective date. Changes to these requirements after the effective date of this agreement may be the basis for modifications to OWNER's responsibilities or to the ENGINEER's scope of services, times of performance, or compensation.
- E. OWNER shall make decisions and carry out its other responsibilities in a timely manner and shall bear all costs incident thereto so as to not delay the services of ENGINEER. ENGINEER shall expedite the design as specified in this document.
- F. Prior to the commencement of the Construction Phase, OWNER shall notify ENGINEER of any variation from the language indicated in the Exhibit E - "Notice of Acceptability of Work", or of any other notice or certification the ENGINEER will be requested to provide to OWNER or third parties in connection with the PROJECT. OWNER and ENGINEER shall reach an agreement on the terms of any such requested notice or certification, and OWNER shall authorize such additional services as are necessary to enable ENGINEER to provide the notices or certifications requested.
- G. ENGINEER shall not be required to sign any documents, no matter who requested, that would result in the ENGINEER having to certify, guarantee, or warrant the existence of conditions whose existence the ENGINEER cannot ascertain. OWNER agrees not to make resolution of any dispute with the ENGINEER or payment of any amount due to the ENGINEER in any way contingent upon ENGINEER signing any such certification.

- H. During Construction Phase ENGINEER shall not supervise, direct or have control over Contractor's work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of the Contractor to comply with Laws and Regulations applicable to the Contractor's furnishing and performing the Work.
- I. ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. ENGINEER shall not be responsible for the acts or omissions of any Contractor(s), subcontractor, or supplier, or if any of the Contractor's agents or employees or any other persons (except ENGINEER's own employees or ENGINEER'S sub consultant, acting under the direction of the ENGINEER) at the site or otherwise furnishing or performing any of the Contractor's work; or if any decision made on interpretations or clarifications of the Contract Documents given by the OWNER without consultation and advice of ENGINEER.
- K. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (Document No. 1910-8, 1996 Edition) unless both parties mutually agree to use other General Conditions.

ARTICLE 7 INDEMNITY

A. ENGINEER's Duty

ENGINEER shall indemnify and hold harmless OWNER against all claims and suits by third parties for loss of or damage to property, or personal injury, including death, to persons, and from all judgments and recovered therefore, and from all expenses for defending such claim or suit, including court costs and attorney's fees, arising out of claims relating to the negligent acts, errors or omissions of ENGINEER in connection with ENGINEER'S performance of this Agreement. In no event shall ENGINEER have any duty to indemnify OWNER hereunder against claims arising as a result of OWNER'S sole negligence. ENGINEER'S indemnity obligation does not include any third party claims or suits arising out of errors or omissions in ENGINEER'S services due to ENGINEER being required, directly or indirectly by OWNER to take certain actions contrary to the recommendations of ENGINEER or which have the effect of eliminating safety related features in order to design within funding limitations or both. The parties acknowledge that ENGINEER shall be obligated to pay the OWNER'S costs of defense, including court costs and attorney's fees, in response to the claims covered by this section, but, ENGINEER shall not be required to provide such a defense. ENGINEER shall cooperate with the OWNER in defending all such claims described in this section and shall pay the costs of OWNER'S defense within 30 days following invoice therefor.

B. OWNER's Duty

1. OWNER agrees to release, waive all rights of subrogation against, defend, indemnify and hold ENGINEER harmless from all claims, liabilities, demands, costs, expenses (including attorney's fees) and causes of action arising out of errors or omissions in ENGINEER's services due to ENGINEER being required, directly or indirectly, by OWNER to take certain actions contrary to the written recommendations of ENGINEER that notify the OWNER that the OWNER's direction will negatively impact service or safety of the project and is contrary to sound engineering practice or which have the effect of eliminating safety related features in order to design within funding limitations or both.

ARTICLE 8 LIMITATION OF LIABILITY

OWNER agrees that in no event will ENGINEER be liable under this Agreement for any consequential, special, contingent or penal damages, including but not limited to loss of revenue, loss of profit, operating costs or business interruption losses, regardless of cause, including breach of contract, tort (including sole or concurrent negligence), strict liability or otherwise of ENGINEER, except to the extent of the compensation paid to ENGINEER.

ARTICLE 9 INSURANCE

ENGINEER shall, unless otherwise approved in writing by Owner, obtain and maintain throughout the duration of this Agreement (or as otherwise specified) insurance written through a company duly authorized to conduct business in the State of Missouri and with a A.M. Best Rating of A-IX or higher and of the types and in the amounts described below.

- A. Errors and Omissions Insurance (Professional Liability). Errors and omissions insurance with a limit of \$2,000,000 per claim/ \$2,000,000 aggregate. Such insurance shall cover all services provided by ENGINEER hereunder. In the event the ENGINEER also provides construction management services, such services shall be included in the coverage. Owner may on a project-by-project basis request the ENGINEER to provide a "project policy" with a five-year "extended reporting period" endorsement. Such requirement shall be by written amendment to the Agreement. All coverage shall be retroactive to the earlier of the date of this Agreement or the commencement of the ENGINEER's services in relation to any Project authorized hereunder, covering personal injury, bodily injury and property damage.
- B. Commercial General Liability (CGL) Insurance. Commercial general liability ("CGL") in the amount of \$1,000,000 Each Occurrence, \$2,000,000 General Aggregate, \$2,000,000 Products/Completed Operations Aggregate, \$1,000,000 Personal Injury/Advertising Injury. The policy shall be endorsed so that the General Aggregate limit applies separately to each Project authorized hereunder.
1. CGL insurance shall cover liability arising from premises, operations, independent contractor, products-completed operations and personal injury and advertising liability and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
 2. Owner shall be included as an Additional Insured under the CGL, using an ISO Additional Insured Endorsement or equivalent. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to, or maintained by, Owner.
 3. A Waiver of Subrogation in favor of the Owner shall be provided as an endorsement to the policy.
- C. Business Auto Liability Insurance. Business auto liability and, if necessary, commercial umbrella insurance with a limit of \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos). Owner shall be named as an additional insured and a waiver of subrogation in favor of the Owner shall be endorsed to the policy.
- D. Workers Compensation Insurance. Workers' compensation and employer's liability insurance.
1. ENGINEER shall carry statutory Workers' Compensation Insurance as required by any applicable law or regulation. Employers Liability Insurance shall be in amounts of \$1,000,000 each accident for bodily injury, \$1,000,000 for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease.
 2. A waiver of subrogation in favor of the Owner shall be endorsed to the policy.
- E. Excess Umbrella Insurance. Excess umbrella liability insurance with a limit of \$1,000,000 per occurrence /\$1,000,000 aggregate, in excess of the above employer's liability, automobile liability and commercial general liability policies.
- F. By requiring the insurance as set out herein, Owner does not represent that coverage and limits will necessarily be adequate to protect ENGINEER, and such coverage and limits shall not be deemed as a limitation on ENGINEER's liability under the indemnities provided to Owner in this Agreement, or any other provision of the Contract Documents.
- G. Prior to commencing the work, ENGINEER shall furnish Owner with a certificate(s) of evidence of insurance (ACORD Form 25 or equivalent), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. Any endorsements confirming additional insured status, primary coverage and waivers of subrogation must accompany the insurance certificate(s).

1. All policies shall provide for thirty (30) days' written notice to Owner prior to the cancellation or material change of any insurance referred to therein. A copy of such endorsement must accompany the insurance certificate(s).
 2. Failure of Owner to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Owner to identify a deficiency from evidence that is provided shall not be construed as a waiver of ENGINEER's obligation to maintain such insurance.
- H. Owner shall have the right but not the obligation to prohibit ENGINEER from entering the Project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Owner.
- I. Failure to maintain the insurance required in this Section may result in termination of this Agreement at Owner's option. Owner may, but is not obligated to, obtain any insurance required hereunder and not maintained by the ENGINEER and charge the cost thereof to ENGINEER.
- J. With respect to insurance maintained after final payment in compliance with a requirement above, an additional certificate(s) evidencing such coverage shall be promptly provided to Owner when requested.
- K. ENGINEER shall provide certified copies of all insurance policies required above within ten (10) days of Owner's written request for said copies.
- L. ENGINEER shall include the above requirements for types of insurance requirements in all of its subcontracts. Limit amounts for subcontractors may be less than those set forth above, upon written agreement of Owner. ENGINEER shall be responsible for collecting certificates of insurance and monitoring insurance coverage of its subcontractors to verify that the required coverage is maintained as required. All Subcontractors providing professional services shall be required to provide professional liability insurance.
- M. Owner reserves the right to request ENGINEER to obtain additional insurance and limits on individual Projects authorized hereunder. ENGINEER shall endeavor to obtain such insurance as soon as possible after such request and advise Owner if the ENGINEER will be required to pay any additional premium. If so, the Owner shall pay such additional premium in excess of the premium for the above insurance. If ENGINEER cannot obtain such additional insurance, Owner may terminate this Agreement in full or in part upon notice to ENGINEER.

ARTICLE 10 TERMINATION

A. Termination by OWNER

1. In the event ENGINEER fails to comply with any provisions of this Agreement, or if the progress is unsatisfactory, OWNER may serve written notice hereof upon ENGINEER, and if ENGINEER neglects within a period of seven (7) days thereafter to commence its efforts to correct such failure, to the satisfaction of the OWNER, OWNER may terminate the Agreement upon written notice to ENGINEER. Upon such termination, ENGINEER shall cease its performance of this Agreement and shall deliver to OWNER all completed or partially completed satisfactory work and OWNER shall pay to ENGINEER the amount due for such satisfactory work.
2. OWNER also reserves the right to terminate this Agreement if it abandons or indefinitely postpones the PROJECT. Such termination shall be accomplished by written notice to that effect delivered to ENGINEER. Upon receipt of such notice, ENGINEER shall immediately cease work and deliver to OWNER all completed or partially completed work. Payment to ENGINEER shall be made for work performed up to receipt by ENGINEER of such termination notice, together with ENGINEER's costs for closing down its work, and ENGINEER shall have no claim for loss of anticipated profits or any additional compensation.

B. Termination by ENGINEER

In the event OWNER fails to comply with any provisions of this Agreement, or if it fails to timely pay compensation due to ENGINEER, ENGINEER may serve written notice thereof upon OWNER, and if OWNER fails within a period of seven (7) days thereafter to correct such failure, ENGINEER may terminate this Agreement upon written notice to OWNER. Upon such

termination, ENGINEER shall cease its performance of this Agreement and when paid the amount due for such work, shall deliver to OWNER all completed or partially completed work for the PROJECT.

C. Termination by OWNER for Convenience

By OWNER effective upon the receipt of notice by ENGINEER.

The terminating party under paragraphs 10.A.1, 10.A.2, 10.B or 10.C may set the effective date of termination at a time up to 30 days later than otherwise provided to allow ENGINEER to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

**ARTICLE 11
GENERAL CONSIDERATIONS**

A. Use of Documents

All documents including Drawings, Specifications, and CADD discs prepared or furnished by ENGINEER pursuant to this Agreement shall become the property of the OWNER upon completion or termination of the Agreement. All documents shall be made available for use by the OWNER without restriction or limitation on its use. If the OWNER incorporates any portion of the work into a project or reuses any portion thereof, without written consent from the ENGINEER, then the owner does so at OWNER's sole risk and OWNER shall indemnify and hold harmless ENGINEER from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom.

B. Opinions of Cost

Since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, ENGINEER's opinions of probable Total PROJECT Costs and Construction Costs provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional, familiar with the construction industry; but ENGINEER cannot and does not guarantee that proposals, bids or actual Total PROJECT or Construction Costs will not vary from opinions of probable cost prepared by ENGINEER. If, prior to the bidding or negotiating phase of the PROJECT, OWNER wishes greater assurance as to Total PROJECT or Construction Costs, OWNER will employ an independent cost estimator as provided in ARTICLE 2.

C. Purchase Order Terms

If OWNER issues a purchase order for the services provided by this Agreement according to OWNER's purchasing procedures, the terms and conditions printed on such purchase order and its supplements or amendments are superseded by this Agreement, and are not applicable to the work.

D. Controlling Law

This Agreement is to be governed by the Laws of the State of Missouri.

E. Successors and Assigns

1. OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representative of OWNER and ENGINEER are hereby bound to the other party of this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.
2. Neither OWNER nor ENGINEER shall assign, sublet or transfer any rights under or interest in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent ENGINEER from employing such independent professional associates and consultants as ENGINEER may deem appropriate to assist in the performance of services hereunder.

3. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than OWNER and ENGINEER, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.
4. In the event the Agreement is terminated by the Engineer or the Owner, the Engineer will provide, at the owners request, all plans, tracing, maps, specifications, calculations, survey data, models, topo, design files, computer files, electronic data and files, notes, and all other documents related to the project. The status of these documents should reflect that with which the Engineer has requested payment for or has been paid for.

F. Dispute Resolution

1. *Notice:* Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to OWNER promptly (but in no event later than 30 days) after the start of the event giving rise thereto. Notice of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to the OWNER within 60 days after the start of such event (unless OWNER allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter).
2. *OWNER's Decision:* OWNER will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. OWNER's written decision on such Claim, dispute, or other matter will be final and binding upon ENGINEER unless:
 - A. an appeal from OWNER's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 11.G; or
 - B. if no such dispute resolution procedures have been set forth in Article 11.G, a written notice of intention to appeal from OWNER's written decision is delivered by ENGINEER to OWNER within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by OWNER), to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.
3. If OWNER does not render a formal decision in writing within the time stated in Article 11.F.2, a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.
4. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this Article 11.F.

G. Mediation

1. All disputes between ENGINEER and OWNER shall be subject to non-binding mediation. Either party may demand mediation by serving a written notice stating the essential nature of the dispute. Mediation shall commence within sixty (60) days of receipt of notice. The mediator shall be appointed by agreement of the parties. Failing such agreement, the mediator shall be appointed by reference to a Circuit Judge serving in the County of Saint Charles, Missouri. No action or suit between the parties may commence unless:
 - a. The parties fail to hold a mediation within ninety (90) days after service of the written notice as required above;
 - b. A mediation occurred but did not resolve the dispute; or
 - c. A statute of limitation would elapse if suit was not filed.

H. Alien Registration, Compliance and Enforcement

1. Definitions - as used in this section, the following terms shall have the following meanings:
 - A. "Business entity", any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood. The term "business entity" shall include but not be limited to self-employed individuals, partnerships, corporations, contractors, and subcontractors. The term "business entity" shall include any business entity that possesses a business permit, license, or tax certificate issued by the state, any business entity that is exempt by law from obtaining such a business permit, and any business entity that is operating unlawfully without such a business permit. The term "business entity" shall not include a self-employed

individual with no employees or entities utilizing the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo;

- B. "Contractor", a person, employer, or business entity that enters into an agreement to perform any service or work or to provide a certain product in exchange for valuable consideration. This definition shall include but not be limited to a general contractor, subcontractor, independent contractor, contract employee, project manager, or a recruiting or staffing entity;
 - C. "Employee", any person performing work or service of any kind or character for hire within the state of Missouri;
 - D. "Employer", any person or entity employing any person for hire within the state of Missouri, including a public employer. Where there are two or more putative employers, any person or entity taking a business tax deduction for the employee in question shall be considered an employer of that person for purposes of this section;
 - E. "Employment", the act of employing or state of being employed, engaged, or hired to perform work or service of any kind or character within the state of Missouri;
 - F. "Federal work authorization program", any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986 (IRCA), P.L.99-603;
 - G. "Knowingly", a person acts knowingly or with knowledge,
 - H. With respect to the person's conduct or to attendant circumstances when the person is aware of the nature of the person's conduct or that those circumstances exist; or
 - I. With respect to a result of the person's conduct when the person is aware that the person's conduct is practically certain to cause that result;
 - J. "Municipality", the City of O'Fallon, Missouri.
 - K. "Public employer", every department, agency, or instrumentality of the state of Missouri or any political subdivision of the state of Missouri;
 - L. "Unauthorized alien", an alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. 1324a(h)(3);
 - M. "Work", any job, task, employment, labor, personal services, or any other activity for which compensation is provided, expected or due, including but not limited to all activities conducted by business entities.
2. Illegal Acts
- A. No business entity or employer may knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the municipality.
 - B. Accordingly, if the amount to be paid pursuant to this contract or grant exceeds five thousand dollars by the municipality the contracting or grant recipient business entity shall, as a condition of the award of contract or grant, 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 also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. No such business entity or employer shall violate subsection 2A of this section.
 - C. The affidavit shall be approved as to form by the municipal attorney.

- D. 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 2A of this section.
- E. A general contractor or subcontractor of any tier shall not be liable under subsection 2A of this section when such general contractor or subcontractor contracts with its direct subcontractor who violates subsection 2A of this section, if the contract binding the contractor and subcontractor affirmatively states that the direct subcontractor is not knowingly in violation of subsection 2A of this section and shall not henceforth be in such violation and the contractor or subcontractor receives a sworn affidavit under the penalty of perjury attesting to the fact that the direct subcontractor's employees are lawfully present in the United States.
- F. The determination of whether a worker is an unauthorized alien shall be made by the federal government. A determination of such status of an individual by the federal government shall create a rebuttable presumption as to that individual's status in any judicial proceedings brought under this section.
- G. Should the federal government discontinue or fail to authorize or implement any federal work authorization program, the municipality shall review this section for the purpose of determining whether this section is no longer applicable and should be repealed.

Accordingly, the parties have executed this Agreement in the prescribed form and manner, effective as of the day and year of the signature of the last party to execute the Agreement.

City of O' Fallon, Missouri, OWNER

BY: [Signature] DATE 09/12/2024
City Administrator

ATTEST:

[Signature]
Bess Bacher - City Clerk



Burns & McDonnell, ENGINEER

BY: [Signature] Date September 3, 2024
Senior Vice President (Printed Name / Title)

ATTEST:

[Signature]

Kristine Evans, Exec. Assistant (Printed Name / Title)

**EXHIBIT A
SCOPE OF WORK**

Part 1 – Scope of Services

The Services to be provided by ENGINEER for OWNER are as follows:



Page 1 of 3

PROJECT:

OWNER requests ENGINEER to provide Services as set out in this scope and fee proposal on the following Project:

Electrical Services (24-104)

SCOPE OF SERVICES:

Project scope includes electrical services for three major tasks: electrical maintenance contract services, remote sites lightning and electrical protection, and water treatment plant (WTP) switchgear and MCC improvements.

The Services to be provided by ENGINEER for OWNER are as follows:

A. Task 1: Project Management

1. Conduct virtual project kick-off meeting with OWNER staff. ENGINEER shall prepare agenda, minutes, and host the kick-off meeting to coordinate project goals, schedule, and preferred communications.
2. ENGINEER to provide general project management activities, including oversight and coordination of the contract and budget, schedule, quality control, and monthly invoice preparation.
3. Provide a monthly project report to update OWNER on progress, work items completed, and work items planned.

B. Task 2: Electrical Maintenance Contract Services

1. ENGINEER to coordinate with OWNER at project kickoff meeting to discuss OWNER priorities for the scope of services desired in a request for proposal (RFP) for the OWNER to solicit proposals from OWNER selected electrical contractors.
2. ENGINEER to provide draft RFP for owner review.
3. ENGINEER to provide one (1) round of revisions based on OWNER feedback of draft RFP for final development of RFP.
4. OWNER to publicly advertise electrical services RFP. ENGINEER to review RFP responses for compliance with RFP requirements and provide a recommendation of award to OWNER.

C. Task 3: Lightning and Electrical Protection

1. ENGINEER to visit up to three (3) major lift stations and up to five (5) groundwater well sites with OWNER staff for evaluation of existing electrical gear and protection equipment.



Page 2 of 3

2. ENGINEER to coordinate with OWNER staff during one (1) in-person meeting on the desired electrical protection measures and standards at remote facilities.
3. ENGINEER to provide draft technical memo (TM) summarizing the findings of the site visits and existing conditions of the electrical gear and protection equipment at the remote facilities and the recommended improvements to meet OWNER desired electrical protection goals.
4. ENGINEER to provide one (1) round of revisions based on OWNER feedback of draft TM.
5. ENGINEER to coordinate with OWNER to develop standard details and specifications for the OWNER to implement at the remote facilities. It is anticipated that up to three (3) standard detail sheets and four (4) specifications will be developed. An Issued For Bid (IFB) set of contract documents with front end specifications ready for public advertisement is not included and can be added at the request of the OWNER.
6. OWNER to implement the recommended improvements as part of the electrical maintenance contract scope of work (TASK 2) or independently.

D. TASK 4: WTP Switchgear and MCC Improvements.

1. ENGINEER to perform one (1) field visit to the WTP switchgear and MCC equipment with OWNER staff to evaluate existing conditions.
2. ENGINEER to evaluate two (2) alternatives for OWNER consideration:
 - a. Improvements to the existing switchgear and MCC equipment required to increase reliability and resilience
 - b. Replacement of the existing equipment. ENGINEER to request up to two (2) equipment proposals for equipment replacement.
3. ENGINEER to develop an AACE Class 5 cost estimate for both alternatives.
4. ENGINEER to document the results of the existing conditions findings and the alternatives evaluation in a draft technical memo (TM).
5. One (1) round of OWNER review and revisions is assumed prior to the Final TM. ENGINEER to provide vendor received quotations as part of the existing equipment improvements and replacement alternatives.

Construction Phase Services for any improvements identified and implemented by OWNER are not included in this scope of work. The scope and fee associated with these tasks will be negotiated upon completion of the scope of services herein. This will be done as a supplemental agreement to the Contract.



Page 3 of 3

RESPONSIBILITIES OF OWNER:

It is our understanding OWNER will provide the following:

- A. Assistance by placing at ENGINEER's disposal all available information pertinent to the Scope of Services on this Project, including previous reports, drawings, and any other data relative thereto. ENGINEER shall rely on information made available by OWNER as accurate without independent verification.
- B. OWNER staff to attend ENGINEER site visits and provide access to electrical equipment requested by ENGINEER.
- C. Attend project kickoff and review meeting(s).
- D. Review and provide comments on draft documents within five (5) business days. OWNER shall send comments to ENGINEER via email.
- E. Respond to requests for information submitted by ENGINEER by listed deadlines on requests.
- F. Future considerations for electrical loads for all evaluated equipment shall be provided by OWNER.

Part 2 – Additional Services

The OWNER reserves the right to request additional work, and changed or unforeseen conditions may require changes and work beyond the scope of this agreement. In this event, a supplement to this agreement shall be executed and submitted for the approval of the OWNER prior to performing the additional or changed work or incurring any additional cost thereof. Any change in compensation or schedule will be specified in the supplement.

Part 3 – Schedule of Completion (schedule assumes a notice to proceed by October 1, 2024)

Project Milestones		
	Milestone/Activity	Week of:
	Kickoff	9/30/2024
Task 2 Maintenance RFP	Draft Maintenance RFP	10/21/2024
	Finalize and Advertise Maintenance RFP	11/18/2024
Task 3 Remote Sites Electrical Protection	Site Visit	9/30/2024
	Draft Tech Memo	11/18/2024
	Finalize Tech Memo	12/16/2024
Task 4 WTP Switchgear and MCC	Site Visit	9/30/2024
	Draft Tech Memo	11/18/2024
	Finalize Tech Memo	12/16/2024

EXHIBIT B

Proposed Fee
O'Fallon Electrical Services 24-104
City of O'Fallon, Missouri

Task	Project Tasks	QC Team	Project Manager	Senior Electrical	Staff Electrical	Support Staff	Estimating	Total Hours	Total Fee
		14	12	14	11	10	14		
Task 1	Project Management								
1.01	Monthly Invoicing & Project Management		36					36	\$ 9,430
	Sub-total Hours	0	36	0	0	0	0	36	\$ 9,430
Task 2	Electrical Maintenance RFP								
2.01	Kickoff Meeting		2	2	2			6	\$ 2,172
2.02	Draft RFP & Contractor Coordination		2	4	8	16		30	\$ 7,033
2.03	Review Meeting		2	2	2	4		10	\$ 2,428
2.04	RFP Final		2	4	4	8		18	\$ 4,389
2.05	Response Review and Recommendation			2	4			6	\$ 1,514
	Sub-total Hours	4	4	14	20	28	0	70	\$ 17,535
Task 3	Lightning and Electrical Protection Remote Sites								
3.01	Site Visits and Kickoff Meeting		2	8	8	8		26	\$ 6,777
3.02	Equipment and Protection evaluations		2	12	28			42	\$ 10,596
3.03	Draft & Final Technical Memo		4	10	20			34	\$ 8,732
3.04	Standards and Specifications		4	8	16	16		44	\$ 10,642
3.05	Review Meeting			2	2			4	\$ 1,048
3.06	Standards and Specs Revisions			2	2	4		8	\$ 1,904
	Sub-total Hours	10	2	42	76	28	0	158	\$ 39,698
Task 4	WTP Switchgear and MCC Improvements								
4.01	Site Visit and Kickoff Meeting		2	8	8			18	\$ 5,065
4.02	Equipment Condition and reliability assessment		4	4	16			24	\$ 6,055
4.03	Improvement/Replacement Evaluation		2	8	16	20	8	54	\$ 13,243
4.04	Review Meeting and Final Revisions			2	4	4		10	\$ 2,370
	Sub-total Hours	6	2	22	44	24	8	106	\$ 26,733
Total Project		20	44	78	140	80	8	370	\$ 93,398

**EXHIBIT C
REIMBURSEABLE EXPENSES**

Schedule of Hourly Professional Service Billing Rates

<u>Position Classification</u>	<u>Classification Level</u>	<u>Hourly Billing Rate</u>
General Office *	5	\$72.00
Technician *	6	\$92.00
Assistant *	7	\$111.00
	8	\$152.00
	9	\$181.00
Staff *	10	\$204.00
	11	\$223.00
Senior	12	\$252.00
	13	\$273.00
Associate	14	\$281.00
	15	\$283.00
	16	\$285.00
	17	\$289.00

NOTES:

1. Position classifications listed above refer to the firm's internal classification system for employee compensation. For example, "Associate", "Senior", etc., refer to such positions as "Associate Engineer", "Senior Architect", etc.
2. For any nonexempt personnel in positions marked with an asterisk (*), overtime will be billed at 1.5 times the hourly labor billing rates shown.
3. For outside expenses incurred by Burns & McDonnell, such as authorized travel and subsistence, and for services rendered by others such as subcontractors, the client shall pay the cost to Burns & McDonnell plus 10%.
4. A charge will be applied at a rate of \$9.95 per labor hour for technology usage, software, hardware, printing & reprographics, shipping and telecommunications. Specialty items are not included in the technology charge.
5. Monthly invoices will be submitted for payment covering services and expenses during the preceding month. Invoices are due upon receipt. A late payment charge of 1.5% per month will be added to all amounts not paid within 30 days of the invoice date.
6. The services of contract/agency and/or any personnel of a Burns & McDonnell parent, subsidiary or affiliate shall be billed to Owner according to the rate sheet as if such personnel is a direct employee of Burns & McDonnell.
7. The rates shown above are effective for services through December 31, 2024, and are subject to revision thereafter.

Form BMR24-5

EXHIBIT D
OWNERS REPRESENTATIVE GUIDELINES

NOT USED

**EXHIBIT E
ENGINEERS NOTICE OF ACCEPTABILITY OF WORK**

NOTICE OF ACCEPTABILITY OF WORK

PROJECT:

OWNER:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION AGREEMENT:

CONSTRUCTION CONTRACT DATE:

ENGINEER:

To:

OWNER

And To:

CONTRACTOR

From:

ENGINEER

The Engineer hereby gives notice to the above Owner and Contractor that the completed Work furnished and performed by Contractor under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated _____, _____, and the terms and conditions set forth on the reverse side of this Notice.

By: _____

Title: _____

Dated: _____

(Reverse side of Notice)

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") on the front side of this sheet is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the professional judgment of Engineer.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the date hereof.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under Engineer's Agreement with Owner and under the Construction Contract referred to on the front side of this Notice, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement and Construction Contract.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract referred to on the front side of this Notice, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents.