

**AGREEMENT FOR TRAIL DESIGN AND ENGINEERING SERVICES**

THIS AGREEMENT, made and entered into this 11<sup>th</sup> day of JANUARY 2023 by and between the Jackson County, Missouri, hereinafter referred to as "County" and **VSM Engineering, LLC, 8008 N Chatham Ave., Kansas City, MO 64151**, hereinafter referred to as "Engineer".

**WITNESSETH:**

WHEREAS, the County solicited requests for qualifications for the furnishing of On-Call Trail Design and Engineering Services on Request for Qualifications (RFQ) No. 80-72 and received two responses thereon; and,

WHEREAS, the County's Parks + Rec Department evaluated the qualifications and has recommended award of a term and supply contract to Engineer as most qualified; and,

WHEREAS, Engineer has agreed to perform On-Call Trail Design and Engineering Services as aforementioned; and,

WHEREAS, Engineer represents that the firm is equipped, competent, and able to undertake such an assignment;

NOW, THEREFORE, in consideration of the mutual covenants and considerations herein contained, IT IS HEREBY AGREED by the parties hereto as follows:

**ARTICLE I - SCOPE OF SERVICES TO BE PROVIDED BY THE ENGINEER:**

Engineer, upon receipt of written notice from the County that this Agreement has been approved, will furnish on-call Trail Design and Engineering services as further described in the rate schedule attached hereto as Exhibit A and incorporated herein by reference.

**ARTICLE II - SCOPE OF SERVICES TO BE PROVIDED BY THE COUNTY:**

The County agrees to furnish information and have work done without cost to the Engineer as follows:

- (A) Make available to the Engineer existing records, maps, plans, and other data possessed by County when such are necessary, advisable or helpful to the Engineer in the completion of its work under this Agreement. The County shall furnish a copy of property ownership information from County tax records.

**FILED**  
JAN 11 2023  
MARY JO SPINO  
COUNTY CLERK

- (B) Provide all necessary title work, deeds, plats, etc., as required for the completion of the project and the preparation of the right-of-way and easement plans and descriptions.
- (C) Provide standard County forms and/or standard plans as required including contractual sections for bid documents.
- (D) Pay publishing costs for advertisements of notices, public hearings, request for bids, and other similar items. Pay for all permits and licenses that may be required by local, state, or federal authorities. Secure the necessary land, easements and right-of-way required for the project.
- (E) Designate a representative who will serve as its primary point of contact and who will be authorized to act for and on behalf of the County throughout completion of the services covered by this Agreement.
- (F) Examine all studies and drafts developed by the Engineer, obtain reviews by other agencies involved, and render decisions thereon in a prompt manner so as not to delay the Engineer.

### **ARTICLE III - TERM OF AGREEMENT:**

The term of this Agreement shall be effective upon execution, and extend for twelve-months. Engineer or County may terminate this Agreement by giving 30 days' written notice to the other party. This Agreement may be renewed at the acceptance of both parties for one additional twelve-month term to be exercised in writing and signed by both parties.

### **ARTICLE IV - COVENANT AGAINST CONTINGENT FEES:**

Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Engineer, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the County shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the Agreement the 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.

### **ARTICLE V - SUBLETTING ASSIGNMENT:**

No portion of the work covered by this Agreement, except as provided herein, shall be sublet or transferred without the written consent of the County. The subletting of the work shall in no way relieve the Engineer of its primary responsibility for the quality and performance of the work.

## **ARTICLE VI - PROFESSIONAL ENDORSEMENT:**

All plans, specifications and other documents shall be endorsed by the Engineer and shall reflect the name and seal of the professional engineer endorsing the work.

## **ARTICLE VII - MISCELLANEOUS PROVISIONS:**

The following miscellaneous provisions are agreed to by both parties to this Agreement.

1. **Inspection of Documents.** The Engineer shall maintain all records, survey notes, design documents, cost and accounting records, construction records and other records pertaining to this Agreement and to the project covered by this Agreement, for a period of not less than three (3) years following final payment. An authorized representative of the County shall have access to the records for inspection, during regular working hours at the Engineer's place of business. County shall have the right to audit and inspect Engineer's records and accounts covering costs hereunder at all reasonable times during the performance of the Services and for a period of three (3) years after the acceptance thereof. Engineer shall not be required to keep records of or provide access to its costs expressed as fixed rates, a lump sum, or of costs, which are expressed in terms of percentages of other costs.
2. **Conferences, Visits to Site, Inspection of Work.** A representative of the County shall have the privilege of inspecting and reviewing the work being done by the Engineer and consulting with its staff at any time. Conferences are to be held at the request of the County or the Engineer.
3. **Accuracy of Work.** Engineer shall be responsible for the accuracy of the work and shall promptly make necessary revisions or corrections resulting from errors and omissions on the part of Engineer without additional compensation. Acceptance of the work by the County will not relieve the Engineer of the responsibility for subsequent correction of such errors and the clarification of any ambiguities during construction. Engineer shall give immediate attention to these revisions or corrections so there will be a minimum of delay to the project or to the contractor.
4. **Relationship with Others.** Engineer shall cooperate fully with personnel on adjacent projects, municipalities, local government officials, public utility companies, and others as may be directed by the County. This shall include attendance at meetings, discussions and hearings, as may be requested by the County; furnishing plans and other data as may be requested from time to time by the County, and compliance with all directives issued by the County.
5. **Ownership of Documents.** Plans, electronic data, CADD drawings (current version by the County), image files, aerial photos, project site pictures, legal description documents, maps and specifications prepared under this Agreement shall be delivered to and become the property of the County upon termination or completion of work and payment of all fees due under the Agreement. Basic survey notes, design computations and other data prepared under this Agreement shall be made available to the County upon request. All such information produced under this Agreement shall be available for use by the County without restriction or limitation

on its use. If the County incorporates any portion of the work into a project other than that for which it was performed, the County shall save the Engineer harmless from any claims and liabilities resulting from such use.

6. **Termination.** Engineer or the County may terminate this Agreement by giving written notice to the other party. Termination of this Agreement shall not constitute a waiver of the rights or obligations which County or Engineer may be entitled to receive or be obligated to perform under this Agreement. Should this Agreement terminate, all books, brochures, fliers, lists, and all other County materials must be delivered and returned by the Engineer to the County within 15 calendar days of the demand of the County.

If the Agreement is terminated due to the Engineer's service being unsatisfactory in the judgment of the County, or if the Engineer fails to prosecute the work with due diligence, the County may procure completion of the work in such manner as it deems to be in the best interest of the County. The Engineer will be responsible for any excess cost in addition to that provided for in this Agreement or any damages the County may sustain by reason of the termination of this Agreement due to unsatisfactory performance or prosecution.

7. **Successors and Assigns.** The County and the Engineer each bind themselves, their successors, executors, administrators, and assigns to the other party to this Agreement, and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this Agreement.
8. **Responsibility for Claims and Liability.** The Engineer shall be responsible for any and all damage to property or persons while performing work under this agreement, and shall indemnify and save harmless the County, its officers, and employees from all suits, claims, actions, or damages of any nature whatsoever resulting from the negligence or willful misconduct of the Engineer in the performance of work under this Agreement.
9. **Compliance with Laws.** Engineer shall keep itself fully informed of all existing and current regulations of the County, and State and Federal laws which in any way limit or control the actions or operations of those engaged upon the work, or affecting the materials supplied to or by them. It shall at all times observe and comply with all ordinance, laws, and regulations, and shall protect and indemnify the County against any claims or liability arising from or based on any violations of the same. This Agreement shall be governed by and interpreted in accordance with the laws of Missouri excluding provisions thereof which would apply the laws of another jurisdiction.
10. **Nondiscrimination.** 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, or national origin in the selection and retention of subcontractors. The Engineer will comply with Title VI of the Civil Rights Act of 1964, as amended. More specifically, the 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 Hand

23 CFR 710.405(b), which are herein incorporated by reference and made a part of this Agreement. In all solicitations either by competitive bidding or negotiation made by the Engineer for work to be performed under subcontract, including procurement of materials or equipment, each potential subcontractor or supplier shall be notified of the Engineer's obligations under this Agreement and the regulations relative to nondiscrimination on the grounds of color, race, or national origin.

11. **Employment of Unauthorized Aliens Prohibited.** Pursuant to §285.530.1, RSMo, Engineer assures that it does not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the State of Missouri and/or Jackson County, and shall affirm, by sworn affidavit and provision of documentation, its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Further, Engineer shall sign an affidavit, attached hereto and incorporated herein as Exhibit B, affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.
12. **Independent Contractor.** Engineer shall work as an independent contractor and not as an employee of the County. The Engineer shall be subject to the direction of the County only as to the result to be accomplished and not as to the means and methods for accomplishing the result. The Engineer shall report all earnings received hereunder as gross income, and be responsible for its own Federal, State, and City withholding taxes and all other taxes, and operate its business independent of the business of the County except as required by this Agreement.
13. **Severability.** If any covenant or other provision of this Agreement is invalid, or incapable of being enforced, by reasons of any rule of law or public policy, all other conditions and provision of this Agreement shall nevertheless remain in full force and effect and no covenant or provision shall be deemed dependent upon any other covenant or provision unless as expressed herein.
14. **Incorporation.** This Agreement incorporates the entire understanding and agreement of the parties.
15. **Schedule.** It is acknowledged that timely performance is an important factor in this Agreement. Engineer shall perform the work as expeditiously as is consistent with the professional standard of care.
16. **Decisions under this Agreement.** The County will determine the acceptability of work performed under this Agreement, and will decide all questions which may arise concerning the project. The County's decision shall be final and conclusive.
17. **Safety Requirements.** Engineer shall make every reasonable effort to perform the Services in a manner complying with all applicable safety legislation and with applicable environmental laws, rules, and regulation in force at the time of development of designs. Engineer shall also be responsible for the safety of its own employees at all times during the performance of any Request for Services.

18. **Purchase Orders.** In the event the County uses a purchase order form to administer this Agreement, the use of such form shall be for convenience purposes only and any typed provision in conflict with the terms of this Agreement and all-preprinted terms and conditions contained in or on such forms shall be deemed stricken and null and void.

#### **ARTICLE VIII- STANDARD OF CARE:**

Engineer represents that it shall perform the services in accordance with the standards of care and diligence normally practiced by recognized Engineering firms in performing services of a similar nature. If, during the two year period following the earlier of completion or termination of the Services under the applicable Request for Services it is shown there is an error in the Services caused solely by the Engineer's failure to meet such standards, and County has promptly notified Engineer of any such error within that period, Engineer shall perform, at Engineer's cost(s), such corrective Engineering services as may be necessary to remedy such error.

#### **ARTICLE IX -INSURANCE AND INDEMNIFICATION:**

1. **ENGINEER'S LIABILITY INSURANCE.** Engineer shall purchase and maintain such insurance as listed in the Department of the Treasury, Federal Register as will protect itself against loss from its alleged or actual liability to satisfy those claims which are set forth below and which may arise out of or result from Engineer's operations under the Agreement, whether such operations be by itself or by anyone for whose acts it may be liable:

- (A) Claims under workers compensation, disability benefits, and other similar employee statutes;
- (B) Claims for damages for bodily injury, occupational sickness or disease, or death of its employees and any person other than its employees;
- (C) Claims for damages for personal injury sustained (1) by any person as a result of an act directly or indirectly related to the employment of such person by the Engineer, or (2) by any other person;
- (D) Claims for damages for injury to or destruction of tangible property, including loss of use resulting there from; and
- (E) Claims for damages for bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle whether it is owned, non-owned, hired or rented.

The insurance required by the preceding paragraph shall be written for not less than a combined single limit for bodily injury and property damage of \$500,000.00 each person; \$3,000,000.00 each occurrence.

2. **PROFESSIONAL LIABILITY INSURANCE.** Engineer shall secure professional liability insurance in the amount of \$1,000,000.00 minimum, per claim/annual appropriate.

Engineer will be required to have the County named as an additional insured on all liability policies of insurance except for Professional Liability and Worker's Compensation policies.

3. **SUBCONTRACTORS.** If Engineer shall subcontract any of this work to a third party, Engineer shall see to it that such third party maintains such insurance and shall furnish evidence thereof to the County. Engineer will cause all such policies of insurance to name the County as additional insured, where available, and provide indemnification for the County against liability upon the risks insured thereby to the amount of coverage specified therein for the Engineer.
4. **FILING OF CERTIFICATES OF INSURANCE AND POLICIES WITH THE COUNTY.** Engineer shall file with the County upon request a copy of all policies of insurance required under the Agreement.

Within ten (10) calendar days of the date when requested or before commencement of the work, Engineer shall file with the County's Parks + Rec Director, certificates acceptable to her of the insurance required by the Agreement. These certificates shall contain a provision that coverage's afforded under the policies will not be canceled until at least thirty (30) days prior written notice of cancellation has been given to the County's Parks + Rec Department Director. Failure to so file these certificates is a breach hereof.

5. **INDEMNIFICATION.** Engineer agrees to indemnify and save harmless the County, against all damages to property, structures and utilities together with all claims for damages arising out of personal injury, including accidental death, to the extent such damages are caused by Engineer's negligent acts or the negligent acts of the Engineer's subcontractors, agents or employees, in the performance of work under this Agreement.

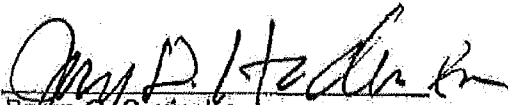
#### **ARTICLE X- PAYMENTS TO THE ENGINEER:**

For the Engineering services performed by Engineer under this Agreement and as full compensation therefore, and for all expenditures made and all expenses incurred by Engineer in connection with this Agreement, except as otherwise expressly provided herein, subject to conformance with *all* provisions of this Agreement, County will pay Engineer on a monthly basis in accordance with the Schedule of Hourly Charges and the Schedule of Reimbursable Cost/Charges, included in Exhibit A.

IN WITNESS WHEREOF Jackson County, Missouri has caused these presents to be executed in its behalf by its duly authorized agent, and the Engineer has hereunto set its hand and seal.

APPROVED AS TO FORM:


JACKSON COUNTY, MISSOURI


By:   
Bryan O. Covinsky  
County Counselor

By:   
Bob Crutsinger  
Director of Finance and Purchasing

ATTEST:

VSM ENGINEERING, LLC

By:   
Mary Jo Spino  
Clerk of the County Legislature

By:   
Federal ID Number: 68-0596334

#### REVENUE CERTIFICATE

This award is made on a need basis and does not obligate Jackson County to pay any specific amount. The availability of funds for specific purchases is subject to annual appropriations.

1-11-2023  
Date

  
Director of Finance and Purchasing





## Rate Sheet 2022-2023

<u>Classification</u>	<u>Hourly Rate*</u>
Principal	\$200
Project Manager	\$200
Senior Engineer (P.E.)	\$175
Civil Engineer (P.E.)	\$150
Civil Engineer, EI	\$110
Technician	\$100
Administration	\$75
Intern	\$60
Mileage	Current IRS Approved Mileage Rate

\*Plus Approved Direct Expenses approved per FAR regulations, etc.

Exhibit B

**WORK AUTHORIZATION AFFIDAVIT**

As a condition for any service provided to the County, a 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.

Business entity, as defined in section 285.525, RSMo pertaining to section 285.530, RSMo, is 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.

Every such business entity shall complete the following affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. The completed affidavit must be returned as a part of the contract documentation.

This affidavit affirms that **VSM Engineering, LLC**, is enrolled in, and is currently participating in, E-verify or any other equivalent electronic verification of work authorization operated by the United States Department of Homeland Security under the Immigration Reform and Control Act of 1986 (IRCA); and **VSM Engineering, LLC**, does not knowingly employ any person who is an unauthorized alien in conjunction with the contracted services.

In Affirmation thereof, the facts stated above are true and correct. (The undersigned understands that false statements made in this filing are subject to the penalties provided under section 575.040, RSMo)

Valerie S. McCaw  
Authorized Representative's Signature  
President  
Title

Valerie S. McCaw  
Printed Name  
1/9/2023  
Date

Subscribed and sworn before me this 9th day of January, 2023. I am commissioned as a notary public within the County of Platte, State of Missouri, and my commission expires on Feb 5th 2026.

Nicole L. Erickson  
Signature of Notary

1/9/2023  
Date

