

CONTRACT FOR PROFESSIONAL SERVICES

This contract, made by and between the City of Independence, Missouri (hereinafter called City) and, Toth & Associates, a Missouri Corporation (hereinafter called consultant).

WITNESSETH:

WHEREAS, City requires transmission, substation, distribution and system protection engineering services and,

WHEREAS, consultant is prepared to provide said professional services and shall give consultation and advice to City during the performance of said services;

NOW THEREFORE, City and Consultant in consideration of the mutual covenants contained in this contract, agree as follows:

ARTICLE 1 – EFFECTIVE DATE

The effective date of this contract shall be May 22, 2023.

ARTICLE 2 – SERVICES TO BE PERFORMED BY CONSULTANT

Consultant shall perform the services set forth in the documents attached hereto and made a part of this contract, which include one or more of these documents: Request for Proposals, scope of work, statement of work, consultant's proposal, and pricing. Proposal from Toth & Associates dated April 14, 2023, attached hereto and made a part of this Contract

ARTICLE 3 – PERIOD OF SERVICE

The services shall be completed by June 30, 2024.

ARTICLE 4 – COMPENSATION

For services performed, the City shall pay the consultant, an amount not to exceed \$122,407.00.

Regular (e.g. monthly) invoices shall be submitted by the consultant to the City for payment of services performed and expenses incurred during the preceding month. Invoices shall indicate the hours expended for each individual person, the total labor billing, and a summary of other expenses and charges with supporting documentation.

The City's payment terms are Net 30. Payment will be made by the City within thirty (30) days of receipt of the complete invoice. The City's preferred method of payment is via City credit card with no added fees. If credit is not acceptable, payment will be made by check.

The City is exempt from State of Missouri sales and use taxes on purchases made directly for the City. Consultant shall not include any sales or use taxes on transactions between the consultant and City.

ARTICLE 5 – PERMITS AND LICENSES

The consultant shall procure all necessary local construction permits and licenses and a City of Independence occupation license, unless exempt under state law. Consultant will abide by all applicable laws, regulations, and ordinances of all federal, state, and local governments in which work under this contract is performed, and will require the same of all sub-consultants. The consultant must furnish and maintain certification of authority to conduct business in the State of Missouri.

ARTICLE 6 – OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Except as otherwise provided herein, documents, drawings, and specifications prepared by consultant as part of the services shall become the property of City, provided consultant has the unrestricted right to their use. Notwithstanding the foregoing, City accepts that any re-use of the documents or intellectual property shall be at City's sole risk and liability.

ARTICLE 7 – CHANGES, DELETIONS, OR ADDITIONS TO CONTRACT

Either party may request changes within the general scope of this Contract. If a requested change causes an increase or decrease in the cost or time required to perform this contract, City and consultant will agree to an equitable adjustment of the contract price, period of service, or both, and will reflect such adjustment in a change order or formal modification.

ARTICLE 8 – STANDARD OF CARE

Consultant shall exercise the same degree of care, skill, and diligence in the performance of the services as is ordinarily possessed and exercised by a peer professional under similar circumstances.

ARTICLE 9 – LIABILITY AND INDEMNIFICATION

Having considered the potential liabilities that may exist during the performance of a potential contract and the consultant's fee, and in consideration of the mutual covenants contained in the contract, City and consultant agree to allocate and limit such liabilities in accordance with this section:

Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless the City, its officers, directors, and employees, against all damages liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by consultant's negligent performance of services under the contract and that of its sub-consultants, or anyone for whom the consultant is legally liable. Consultant shall indemnify City against legal liability for damages arising out of claims by consultant's employees.

Notwithstanding any other provision of the contract to the contrary, the City agrees to limit the Consultant's liability to the city and to all persons having contractual relationships with the City to three (3x) times the total compensation set forth under the applicable purchase order, except to the extent finally determined to have resulted from the willful misconduct or fraudulent behavior of Consultant and Consultant's employees relating to such Services. Neither the City nor the Consultant nor either party's suppliers, agents, officers, and directors shall have any liability regardless of the theory of recovery, including breach of contract or negligence, to the other party or any other person or entity for any indirect, incidental, special, or consequential damages, cost or expense whatsoever, including but not limited to loss of revenue or profit, whether actual or anticipated, loss of use, failure to realize anticipated savings, loss of or damage to data or other commercial or economic loss, except to the extent finally determined to have resulted from the willful misconduct or fraudulent behavior of Consultant and Consultant's employees relating to such Services. This waiver of consequential damages is made regardless that (i) either party has been advised of the possibility of such damages and (ii) that such damages may be foreseeable.

ARTICLE 10 – INSURANCE

Architect, Engineering, and Survey Services

The Consultant shall procure and maintain insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the materials, equipment or supplies provided to the City. The insurer(s) must be licensed for business in the State of Missouri and maintain an A.M. Best rating of no less than A: VII; or an insurer approved by the City. Each policy requires a minimum cancellation notification of at least thirty (30) days' advance written notice to the City.

(1) General Liability Insurance, with bodily injury and property damage limits of \$1,000,000 for each occurrence with a \$2,000,000 general aggregate and \$2,000,000 products and completed operations aggregate.

(2) Professional Liability or Errors and Omissions Insurance, with a limit of \$1,000,000 annual aggregate.

(3) Automobile Liability Insurance, with bodily injury limits of \$1,000,000 for each person and \$1,000,000 for each accident, and with property damage limits of \$1,000,000 for each accident.

The above limits are the minimum acceptable and do not infer or place a limit on the liability of the Consultant. The City is to be named as an additional insured as the City's interest may appear for the General Liability and the Automobile Liability Insurance. The Consultant's insurance shall be primary and any insurance or self-insurance maintained by the City shall be excess for the City and not contribute with the coverage maintained by the Consultant.

The City shall not obtain worker's compensation insurance on behalf of the Consultant or the employees of the Consultant. The Consultant shall comply with the worker's compensation law concerning its business and its employees.

WORKER'S COMPENSATION

The City shall not obtain worker's compensation insurance on behalf of the contractor or the employees of the contractor. The contractor shall comply with the worker's compensation law concerning its business and its employees.

ARTICLE 11 – SHIPPING, TITLE AND RISK OF LOSS

All sales and deliveries are F.O.B. City.

ARTICLE 12 – DELAY IN PERFORMANCE

Neither City nor consultant shall be considered in default of this contract for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this contract, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restrains; and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either City or consultant under this contract. If such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this contract.

ARTICLE 13 – TERMINATION

City may terminate or suspend performance of this contract for City's convenience upon written notice to consultant. Consultant shall terminate or suspend performance of the services on a schedule

acceptable to City. If termination or suspension is for City's convenience, City shall pay consultant for all the services performed till the date of the termination by the City or suspension expenses. If contract is restarted, an equitable adjustment shall be made to consultant's compensation.

This contract may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this contract. The nonperforming party shall have 15 calendar days from the date of the termination notice to cure or to submit a plan for cure acceptable to the other party. In the event that funding for the contract is discontinued, City shall have the right to terminate this contract immediately upon written notice to consultant.

ARTICLE 14 – WAIVER

A waiver by either City or consultant of any breach of this contract shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

ARTICLE 15 – SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this contract or the occurrence of any event rendering any portion or provision of this contract void shall in no way affect the validity or enforceability of any other portion or provision of this contract. Any void provision shall be deemed severed from this contract, and the balance of this contract shall be construed and enforced as if this contract did not contain the particular portion or provision held to be void. The parties further agree to amend this contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this article shall not prevent this entire contract from being void if a provision which is of the essence of this contract be determined void.

ARTICLE 16 – SUCCESSORS AND ASSIGNS

City and consultant each binds itself and its directors, officers, partners, successors, executors, administrators, assigns, and legal representatives to the other party to the contract and to the directors, officers, partners, successors, executors, administrators, assigns, and legal representatives of such other party in respect to all provisions of this contract.

ARTICLE 17 – ASSIGNMENT

Neither City nor consultant shall assign any rights or duties under this contract without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this contract.

ARTICLE 18 – THIRD PARTY RIGHTS

Nothing in this contract shall be construed to give any rights or benefits to anyone other than City and consultant.

ARTICLE 19 – INDEPENDENT CONSULTANTS

Each party shall perform its activities and duties hereunder only as an independent consultant. The parties and their personnel shall not be considered to be employees or agents of the other party. Nothing in this contract shall be interpreted as granting either party the right or authority to make commitments of any kind for the other. This contract shall not constitute, create, or in any way be interpreted as a joint venture, partnership or formal business organization of any kind.

ARTICLE 20 – AUDIT

Consultant agrees that the City, or a duly authorized representative, shall, until the expiration of three (3) years after final payment under this contract have access to and the right to examine and copy any pertinent books, documents, papers, records, or electronic records of the consultant involving transactions related to this contract.

ARTICLE 21 – EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract or purchase order, the consultant agrees as follows:

The consultant will not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, national origin or any other legally protected category. The consultant will take affirmative action to ensure that applicants are employed, and that employees are treated fairly during employment, without regard to their race, age, color, religion, sex, or national origin. 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. The consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

The consultant will, in all solicitations or advertisements for employees placed by or on behalf of the consultant, state that all qualified applicants will receive consideration for employment without regard to race, age, color, religion, sex, or national origin.

The consultant will send to each labor union or representative of workers with which consultant has a collective bargaining agreement or other contract or understanding, a notice to be provided by a contract compliance officer advising the said labor union or workers' representatives of the consultant's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

The consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his or her books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the consultant's noncompliance with the non-discrimination clauses of this contract or purchase order with any of the said rules, regulations, or orders, this contract or purchase order may be canceled, terminated, or suspended in whole or in part, and the organization may be declared ineligible for any further government contracts or purchase order or federally assisted contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rules, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

The consultant will include the entire text of this Equal Employment Opportunity section and its subsections in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub-consultant or vendor. The consultant will take such action with respect to any sub-consultant or purchase order as the City may direct as a means of enforcing such provisions, including sanctions of noncompliance; provided, however, that in the event a

consultant becomes involved in, or is threatened with litigation with a sub-consultant or vendor as a result of such direction by the City, the consultant may request the United States to enter into such litigation to protect the interest of the United States.

ARTICLE 22 – ANTI-DISCRIMINATION AGAINST ISRAEL ACT

Contractors working on behalf of the City of Independence are to abide by Missouri Revised Statute 34.600, otherwise known as the Anti-Discrimination against Israel Act.

ARTICLE 23 – GOVERNING LAW

This contract shall be governed by the laws of the State of Missouri. The City and the consultant agree that the performance of this contract will be deemed to have occurred in the State of Missouri and that consultant's performance under this contract will be deemed the transaction of business in Missouri. Jurisdiction and venue for any claim or cause of action arising under this contract shall be exclusively in the Sixteenth Judicial Circuit of Missouri and the consultant submits to personal jurisdiction of and waives any personal jurisdiction or inconvenient forum objection to, that court.

ARTICLE 24 – COMMUNICATIONS

Any communication required by this contract to the consultant shall be made in writing to the authorized representative named on the completed front page or response page of the solicitation. Any communication required by this contract with the City shall be to:

Mitch Krysa, PE
Power Engineering Manager
PO Box 1019, 17221 E 23rd Street South
Independence, MO 64051-0519
816-325-7468.

Nothing contained in this article shall be construed to restrict the transmission of routine communications between representatives of consultant and City.

ARTICLE 25 – SEPARATE CONTRACTS

City and consultant each reserve the right to, from time to time, enter into other contracts for specific projects. If such contracts are separately approved in writing by the parties, the terms and conditions of those contracts shall prevail for the specific projects set forth therein.

ARTICLE 26 – ENTIRE CONTRACT

This contract represents the entire agreement between the City and consultant. All previous or contemporaneous agreements, representations, promises and conditions relating the consultant's services described herein are superseded. The RFP including the terms and conditions, the consultant's response and written proposal, and purchase order (where applicable) shall constitute the entire contract. If these General Terms & Conditions be in conflict with any attached Special Conditions, the Special Conditions will supersede the General Terms & Conditions. In case of a discrepancy, the purchase order shall take precedence over the RFP and the RFP shall take precedence over the consultant's response and written proposal.

ARTICLE 27 – SURVIVAL OF TERMS

The following provisions shall survive the expiration or termination of this contract for any reason: if any payment obligations exist, Article 4 – Compensation; Article 5 – Permits and Licenses; Article 10 –

Liability and Indemnification; Article 15 – Waiver; Article 16 – Severability; Article 18 – Assignment; Article 20 – Independent Consultants; Article 23 – Governing Law; Article 26 – Entire Contract; and this Article 27 – Survival of Terms.

IN WITNESS WHEREOF, City and consultant, by and through their authorized officers, have made and executed this contract.

City

By _____

Date _____

Consultant

By 

Title Vice President

Date 4/26/2023