

## LOANED PERSONNEL AGREEMENT

This Loaned Personnel Agreement (“Agreement”) is made and entered into by and between the City of Independence, Missouri, having an office located at 17221 E 23rd St. S, Independence, Missouri 64050 (the “Borrower”), and Burns & McDonnell Engineering Company, Inc., having an office located at 9400 Ward Parkway, Kansas City, Missouri 64114 (the “Loaning Company”).

**WHEREAS**, Borrower has a need for assistance from professional and technical candidates in the field of electric distribution engineering and design (“Experience”); and

**WHEREAS**, Borrower anticipates using such professional and technical candidates as an extension of Borrower’s staff to assist Borrower in connection with distribution design projects; and

**WHEREAS**, Loaning Company has proposed candidates with Experience to Borrower for Borrower’s approval which Loaning Company believes meets the qualifications specified by Borrower;

**NOW THEREFORE**, in consideration of the terms, provisions and conditions hereinafter set forth, Borrower and Loaning Company do hereby mutually agree, each with the other, as follows:

The named Parties to this Agreement agree as follows:

1. Loaned Employee(s). Borrower approves and accepts Loaning Company’s proposed candidates named below (“Loaned Employees”) as loaned personnel under the direct control and supervision of Borrower for the duration of this loan as set forth below or the term of this Agreement.

**Loaned Employee:** Andrew Hemperly

**Position:** Distribution Engineer

**Overtime status:** Exempt

**Rate:** \$188/hr

**Start date:** January 2<sup>nd</sup>, 2024

**End date:** June 28<sup>th</sup>, 2024

**Loaned Employee:** Tim Marshall

**Position:** Project Manager

**Overtime status:** Exempt

**Rate:** \$233/hr

**Start date:** January 2<sup>nd</sup>, 2024

**End date:** June 28<sup>th</sup>, 2024

Distribution Engineer shall be provided without any tools, equipment, technology, or other means as may be desirable for performance of work activities; all such means shall be provided by Borrower. Project Manager will utilize existing equipment and resources as provided by Loaning Company.

2. Term. The term of this Agreement shall commence on the above start date and shall continue until expiration of this Agreement or termination consistent with this Agreement.
3. Compensation. Borrower agrees to pay Loaning Company an amount calculated as the product of the approved hours worked and the fixed rate included in Paragraph 1 above for each Loaned Employee. A proposed hours forecast is provided in the attached Proposal for Distribution Engineering Support and is subject to change based on written agreement between Borrower and

Loaning Company. The Loaned Employee shall submit a weekly timesheet as required by the Loaning Company. A breakdown of hours worked per project will be submitted to Borrowing Company upon request. Loaning Company will invoice Borrower on a monthly basis. All invoices, complete with necessary supporting documentation shall be submitted to Borrower for review and payment by Borrower within thirty (30) days of date of receipt.

4. Expenses. Borrower shall pay any and all expenses incurred by the Loaned Employee in performing work activities under this Agreement. Car rental and fuel expenses for round trip office travel and site visits will be invoiced at cost monthly as a pass-through expense.
5. Taxes and Benefits. Loaning Company shall bear sole responsibility for payment of compensation to the Loaned Employee(s). The Loaned Employees will receive a paycheck from Loaning Company on the Loaning Company's normal payday. Holidays, sick leave, vacation, and other benefits will be paid by Loaning Company and will not be charged to Borrower except as part of the above rates. Loaning Company shall pay and report for the Loaned Employees all federal, state, and local income tax withholding, social security taxes, and unemployment insurance applicable to such personnel as employees of Loaning Company. Loaning Company shall provide and bear sole responsibility for providing health or disability insurance, retirement benefits, and other welfare benefits to any personnel that may be entitled to receive such benefits. Notwithstanding anything to the contrary in this Agreement, Loaning Company and the Loaned Employees shall not be entitled to participate in any employment fringe benefit programs of Borrower including, but not limited to: pension and other retirement plans; sick leave; holiday pay; life, health, accident, disability, and other insurance plans; incentive compensation; and other employee benefits. Loaning Company shall maintain professional liability insurance or its equivalent for its Loaned Employees for the duration of the Agreement. Loaning Company acknowledges and agrees that the provisions of this paragraph survive the termination of this Agreement.
6. Control. During the term of this Agreement, unless periodic interruptions in the duration of the loan are discussed prior to the disruption, Borrower shall have the exclusive right to supervise, schedule, direct, and control the work activities of the Loaned Employees, who shall act and perform the work activities for Borrower in the same manner as if they were the employees of Borrower. The Loaned Employees shall report to the locations as directed by Borrower. Borrower shall comply with all applicable laws. Loaning Company relinquishes all rights to direct and control the work activities of the Loaned Employees during the duration of the loan as set forth above.
7. Work Product. All work product produced or performed by Loaned Employees shall be the property of the Borrower.
8. Borrower's Exclusive Remedies. Except as set forth in Paragraph 10, Borrower's sole and exclusive remedies in connection with the Agreement including, but not limited to, the unsatisfactory qualifications or performance of the Loaned Employee are to either (a) terminate this Agreement for overall unsatisfactory performance; or (b) return a Loaned Employee to Loaning Company for unsatisfactory experience or performance of the individual Loaned Employee, in either case upon at least five (5) days' written notice.
9. Non-Solicitation. The parties acknowledge and understand the value of each party's respective employees and their mutual interests in retaining employees, and that significant time and effort is expended in developing the talent, ability, and "know-how" of each party's work force. Accordingly, the parties agree that during the term of this Agreement and for a period of one (1)

year following the termination or expiration of this Agreement, neither party will induce or try to induce any employee of the other party to leave that party or any of its affiliates to work for another person or company. This non-solicitation promise shall not be construed to limit the normal employment advertising and hiring activities of either party. The parties acknowledge and agree that the provisions of this paragraph survive the termination of this Agreement.

10. Borrower Indemnity. To the extent permitted by applicable law, Borrower waives and releases and otherwise agrees to defend, indemnify, and hold Loaning Company and its officers, directors, and employees, including, but not limited to, the Loaned Employees, harmless from any claims, liabilities, damage, costs and expenses (including reasonable attorney's fees) arising out of or resulting from the Agreement including, but not limited to, any act, error or omission by the Loaned Employees while performing work activities under this Agreement, including claims based on the sole negligence or fault of the Loaned Employees. Borrower, for itself, its successors, and assigns, hereby expressly agrees to waive any provision of any workers' compensation act or other similar law whereby Borrower could preclude its joinder by Loaning Company as an additional defendant, or avoid liability for damages, contribution, or indemnity in any action at law, or otherwise where Borrower's employees (including the Loaned Employees), heirs, assigns, or anyone otherwise entitled to receive damages by reason of injury or death brings an action at law against Loaning Company. To the extent permitted by law, Borrower's obligation to Loaning Company herein shall not be limited by any limitation on the amount or type of damages, benefits or compensation payable by or for Borrower under any worker's compensation acts, disability benefit acts, or other employee benefit acts on account of claims against Loaning Company by an employee of Borrower or anyone employed directly or indirectly by Borrower or anyone for whose acts Borrower may be liable. In addition, to the extent permitted by law, Borrower waives all rights against Loaning Company and its officers, directors, and employees, including the Loaned Employees, for damage covered by property, automobile, and general liability insurance during and after the completion of the work activities of the Loaned Employees.
11. Loaning Company Indemnity. Loaning Company agrees to defend, indemnify, and hold harmless Borrower and its officers, directors, and employees from any claims, liabilities, damage, costs or expenses (including reasonable attorney's fees) arising from (a) Loaning Company's failure to pay or report taxes in any way related to this Agreement, (b) Loaning Company's failure to provide health or disability insurance, retirement benefits, or other benefits, to the Loaned Employees, and (c) a claim by the Loaned Employees seeking to participate in, or derive benefit from, any employee benefit program maintained by Borrower.
12. Termination. Borrower may terminate this Agreement upon five (5) days' written notice, with or without cause. In such an event, Borrower shall pay Loaning Company for the time of the Loaned Employee, and their expenses, prior to the termination; provided, however, in no event shall the Borrower be liable to Loaning Company for unabsorbed overhead, loss of anticipated profit or revenue, or other consequential economic loss due to the termination.
13. Audit. For a period of two (2) years following the expiration or termination of the Agreement, upon reasonable written request, Loaning Company shall provide Borrower or its representatives with access to relevant timesheets of Loaned Employees in order to allow Borrower to audit Loaning Company's costs under this Agreement. Notwithstanding anything to the contrary herein, in no event shall Borrower be entitled to audit the composition of the agreed upon labor rates set forth in Paragraph 1 above.

14. Assignment. This Agreement and each and every provision herein are for the exclusive benefit of Loaning Company and Borrower and not for the benefit of any third party. This Agreement may not be assigned by either party without the other party's prior written consent.
15. Independent Contractor. The Loaning Company shall be deemed an independent contractor and nothing herein shall be construed as creating, at any time, the relationship of joint venturers, partners, principal/agent or employer/employee between the Loaning Company and Borrower. The Loaned Employees shall not be considered employees of the City but shall perform work under the direction of Independence Power and Light.
16. Waiver. The waiver by any party to this Agreement of a breach of any of the provisions contained herein shall not operate or be construed as a waiver of any subsequent breach.
17. Governing Law. All questions arising out of this Agreement, or its validity, interpretation, performance, breach, or tort liability shall be governed by the laws of Missouri, without regard to its conflict of law provisions.
18. Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions of this Agreement and this Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted from the effective date of the Agreement.
19. Survival. The parties acknowledge and agree that the provisions of this Agreement which by their nature continue beyond the expiration or termination of this Agreement shall survive.
20. Entire Agreement and Amendment. This Agreement constitutes the entire understanding between the parties. This Agreement may not be modified or amended except in writing signed by all of the parties hereto.
21. Limitation of Liability. To the extent permitted by law, Loaning Company and its officers, directors and employees, including, but not limited to, the Loaned Employees, shall not be liable for any special, indirect, or consequential damages including, without limitation, loss of revenue or profit, lost production, loss of product, loss of use of the equipment or system, non-operation or increased expense of operation of other equipment or systems, cost of capital, or cost of purchase or replacement equipment, systems or power, claims by customers of Borrower, or governmental fines or penalties.

Loaning Company:  
**Burns & McDonnell Engineering Company, Inc.**

Borrower:  
**City of Independence, Missouri**

Signature: 

Signature:

Title: Project Execution Manager

Title:

Date: 11/30/2023

Date: