

BILL NO.: 16-0214

ORDINANCE NO.: 16-

0142

INTRODUCED BY: COUNCIL MEMBER (s)

Reuter

1 **AN ORDINANCE AWARDING REQUESTS FOR CERTAIN PRODUCTS**
2 **AND SERVICES TO THE LOWEST AND BEST BIDDERS AS REFLECTED IN**
3 **THE RESPONSES FOR REQUESTING SERVICES OF ON-CALL HVAC**
4 **SERVICES; AND AUTHORIZATION FOR THE COUNTY EXECUTIVE TO**
5 **EXECUTE ANY NECESSARY AGREEMENTS OR CONTRACTS TO**
6 **EFFECTUATE THE CONTRACTOR SERVICE AGREEMENTS.**

7 **WHEREAS**, Jefferson County, Missouri, (hereafter, the "County") in response to
8 certain requests for services issued by the County received certified responses for the
9 following items or services:

10 REQUESTING SERVICES

11 On-Call HVAC Services

12 NUMBER OF SERVICES RECEIVED

13 6

14 DATE OF SERVICES OPENING

15 10-30-15

16 **WHEREAS**, after reviewing the certified responses set forth above, the
17 Department of Public Works has determined that certain requests for services represent the
18 lowest and best responses for the on call described services and met the qualifications
19 issued by the County; and

FILED

FEB 17 2016

1 **WHEREAS**, the Jefferson County, Missouri, Council finds it is in the best interest
2 of the County to award the certified responses for the on call described services to Hayes
3 Mechanical, DEKA Service, Haberberger Metal Contractors, Inc., American Mechanical,
4 Sheet Metal Contractors, Inc. and Townsend Heating & Cooling for a term from 02-08-16
5 to 02-07-17 upon approval by the County Council and County Executive for the total
6 amount up to **\$25,000.00 per contractor, for a total amount up to \$150,000.00** subject
7 to budgetary limitations.

8 **BE IT ENACTED BY THE JEFFERSON COUNTY, MISSOURI, COUNCIL,**
9 **AS FOLLOWS:**

10 Section 1. The County awards the following certified responses which are
11 incorporated by this reference as if fully set out herein, to the lowest and best responses for
12 the on call described services as follows:

13 BID NAME

14 On-Call HVAC Services

15 TERM

16 02-08-16 to 02-07-17

17 Upon approval by the County Council and County Executive

18 AMOUNT

19 **\$25,000.00 per contractor**

20 **for a total amount up to \$150,000.00**

21 subject to budgetary limitations

1 AWARDED BIDDERS

2 Hayes Mechanical (A1)

3 DEKA Service (A2)

4 Haberberger Metal Contractors, Inc. (A3)

5 American Mechanical (A4)

6 Sheet Metal Contractors, Inc. (A5)

7 Townsend Heating & Cooling (A6)

8 Section 2. The Jefferson County, Missouri, Council hereby authorizes the
9 County Executive to execute the agreement incorporated by Reference as Exhibit "A1
10 through A6" and any agreements or contracts necessary to effectuate the award of the bids
11 and proposals set forth in this Ordinance. The County Executive is further authorized to
12 take any and all actions necessary to carry out the intent of this Ordinance. An unexecuted
13 copy of the Agreement is attached hereto as Exhibit "A1 through A6" and incorporated
14 herein, by reference.

15 Section 3. Copies of all Invitations for Bid, Requests for Proposals, responses
16 thereto, and any contracts or agreements shall be maintained by the Department of the
17 County Clerk consistent with the rules and procedures for the maintenance and retention
18 of records as promulgated by the Secretary of State.

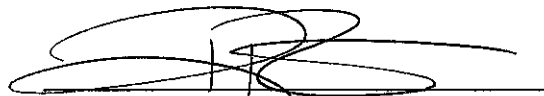
19 Section 4. This Ordinance shall be in full force and effect from and after its
20 date of approval. If any part of this Ordinance is invalid for any reason, such invalidity
21 shall not affect the remainder of this Ordinance.

**THIS BILL BEING DULY INTRODUCED, THE MEMBERS OF THE
JEFFERSON COUNTY, MISSOURI, COUNCIL VOTED AS FOLLOWS:**

Council Member District 1, Don Bickowski	<u>yes</u>
Council Member District 2, Renee Reuter	<u>yes</u>
Council Member District 3, Robert Boyer	<u>yes</u>
Council Member District 4, George Engelbach	<u>yes</u>
Council Member District 5, Oscar J. "Jim" Kasten	<u>yes</u>
Council Member District 6, Cliff Lane	<u>yes</u>
Council Member District 7, James Terry	<u>yes</u>

THE ABOVE BILL ON THIS 8th DAY OF February, 2016:

☒ **PASSED** ☐ **FAILED**


Renee Reuter, County Council Chair


Pat Schlette, Council Administrative Assistant

THIS BILL WAS ✓ APPROVED BY THE JEFFERSON COUNTY
EXECUTIVE AND ENACTED AS AN ORDINANCE OF JEFFERSON COUNTY,
MISSOURI, THIS 10TH DAY OF FEBRUARY, 2016.

THIS BILL WAS _____ VETOED AND RETURNED TO THE
JEFFERSON COUNTY, MISSOURI, COUNCIL WITH WRITTEN OBJECTIONS
BY THE JEFFERSON COUNTY EXECUTIVE, THIS _____ DAY OF
_____, 2016.

Kenneth B. Waller
Kenneth B. Waller, Jefferson County, Missouri, Executive

ATTEST:

Wes Wagner
Wes Wagner, County Clerk

BY: Katherine E. Missey

Reading Date: 02-08-2016

CONTRACTOR COMPANY NAME
HOURLY BILLING RATES

[illegible]

* During Normal Business Hours.

Other Job Qualifications

Please see attached

RECEIVED

JAN 15 2016

Exhibit

EXHIBIT

A2

JEFFERSON COUNTY
CONTRACTOR SERVICES AGREEMENT

THIS AGREEMENT is entered into by DEKA Service
(hereinafter, "Contractor") and the County of Jefferson, Missouri (hereinafter, "County").

WITNESSETH:

WHEREAS, the County has a need at various times over the 2016- 2017__ calendar year of a contractor to perform technical services in the maintenance, replacement, and repair of County building features; and

WHEREAS, the County has selected the Contractor to provide those services on an as-needed basis.

NOW, THEREFORE, in consideration of the payments to be made and the covenants set forth in this Agreement to be performed by the County, the Contractor hereby agrees that it shall faithfully perform the technical services called for by this Agreement in the manner and under the conditions described in this Agreement.

(1) DEFINITIONS: The following definitions apply to these terms, as used in this Agreement:

(A) Not Used

(B) "COUNTY" means the County of Jefferson, Missouri, an agency of state government, which acts by and through its County Council, County Engineer and others in the Public Works Department.

(C) "CONTRACTOR" means the business providing technical services to the County as a party to this Agreement.

(D) "CONTRACTOR'S REPRESENTATIVE" means the person or persons designated in writing by the Contractor to represent that business in negotiations, communications, and various other contract administration dealings with the County's staff .

(E) "DELIVERABLES" means all data, studies, documents, designs, drawings, plans, specifications, or any other products prepared in performance of this Agreement, to be delivered to and become the property of the County pursuant to the terms and conditions set out in paragraph (11) of this Agreement.

(F) Not Used

(G) "ENGINEER" means the County Engineer or any other authorized

representative of the County. Where the specific term "County Engineer" is used, it shall mean the County Engineer exclusively.

(H) Not Used

(I) "INTELLECTUAL PROPERTY" consists of copyrights, patents, and any other form of intellectual property rights covering any data bases, software, inventions, training manuals, systems design or other proprietary information in any form or medium.

(J) "SUBCONTRACTOR" means any individual, partnership, corporation, or joint venture to which the Contractor, with the written consent of the Engineer, subcontracts any part of the technical services under this Agreement but shall not include those entities, which supply only materials or supplies to the Contractor.

(K) "SUSPEND" the services means that the services as contemplated herein shall be stopped on a temporary basis. This stoppage will continue until the County either decides to terminate the project or reactivate the services under the conditions then existing.

(L) "TERMINATE", in the context of this Agreement, means the cessation or quitting of this Agreement based upon the action or inaction of the Contractor, or the unilateral cancellation of this Agreement by the County.

(M) "USDOT" means the United States Department of Transportation, headquartered at Washington, D.C., which acts through its authorized representatives.

(N) "SERVICES" includes all technical, professional engineering and related services and the furnishing of all equipment, supplies, and materials in conjunction with such services as are required to achieve the broad purposes and general objectives of this Agreement.

(2) SCOPE OF SERVICES:

(A) The services covered by this Agreement shall include furnishing the professional, technical, and other personnel and the equipment, material and all other things necessary for the maintenance, replacement, and repair of County building features, from time to time as needed and requested by the County.

(B) Scope and Cost of Requested Services: Each individual request for services shall be covered by a Memorandum of Understanding submitted by the Contractor and endorsed by the County Engineer. The memorandum will define the scope of work to be performed by the Contractor, the time limitations within which the work is to be performed, the specific deliverables required, an estimate of the hours required to complete the services multiplied by the appropriate hourly rates and state the maximum price for those services. Only those hourly rates included in the version of

Exhibit I currently in effect shall be used as the basis of preparing any Memorandum of Understanding. The maximum price or ceiling for any Memorandum of Understanding shall not be exceeded prior to the execution of a supplemental Memorandum of Understanding. The Memorandum of Understanding will also indicate where the Contractor is to forward all deliverables.

(3) TERM OF AGREEMENT: The Contractor's services are to commence upon full execution of this Agreement or January 1, 2016, whichever is later, and terminate on December 31, 2016__; unless otherwise terminated prior to this date pursuant to the provisions of paragraph (10) of this Agreement. Upon concurrence of all parties, this Agreement may be renewed for an additional one (1) year term. Said renewal term is to begin on January 1, 20__17__.

(4) INFORMATION AND SERVICES PROVIDED BY THE COUNTY:

(A) At no cost to the Contractor and in a timely manner, the County will provide available information of record, which is pertinent to the requested services project to the Contractor upon request. In addition, the County will provide the Contractor with the specific items or services set forth in the Memorandum of Understanding for the particular services requested by the County. The Contractor shall be entitled to rely upon the accuracy and completeness of such information, and the Contractor may use such information in performing services under this Agreement.

(B) The Contractor shall review the information provided by the County concerning the requested services and will as expeditiously as possible advise the Engineer of any of that information which the Contractor believes is inaccurate or inadequate or would otherwise have an effect on any of its activities under this Agreement. In such case, the County shall provide the Contractor with new or verified data or information upon which the Contractor is entitled to rely. The Contractor shall not be liable for any errors, omissions, or deficiencies in the Contractor's services resulting from inaccurate or inadequate information furnished by the County which inaccuracies or inadequacies are not detected by the Contractor unless the errors should have been detected by the Contractor through reasonable diligence.

(5) RESPONSIBILITY OF THE CONTRACTOR:

(A) The Contractor shall comply with applicable state and federal laws and regulations governing these services, as published and in effect on the date of this Agreement or any subsequent Memorandums of Understanding. The Contractor shall provide the services in accordance with the criteria and requirements established and adopted by the County; and if none are expressly established in this Agreement, published manuals and policies of the County which shall be furnished by the County upon request; and, absent the foregoing, manuals and policies established by National Standard in the Industry, as published and in effect on the date of this Agreement or any subsequent Memorandums of Understanding.

(B) Without limiting the foregoing, the performance of these services will be in accordance with the specific criteria and project procedures as indicated by the information set out in the appropriate Memorandum of Understanding.

(C) The Contractor shall be responsible for the technical quality, technical accuracy, and the coordination of all deliverables or any other services furnished under this Agreement. At any time during any subsequent stage of project development or phase of work performed by others based upon any deliverables or other services provided by the Contractor, the Contractor shall prepare any additional deliverables or other services needed to correct any negligent acts, errors, or omissions of the Contractor or anyone for whom it is legally responsible in failing to comply with the foregoing standard. The services necessary to correct such negligent acts, errors, or omissions shall be performed without additional compensation, even though the Contractor may have received final payment. The Contractor shall provide such services as expeditiously as is consistent with professional performance. Acceptance of the services will not relieve the Contractor of the responsibility to correct such negligent acts, errors, or omissions.

(D) Not Used.

(E) Not Used.

(F) The Contractor shall cooperate fully with the County and its Engineers, contractors, and contractors on adjacent projects and with municipalities and local government officials, public utility companies and others as may be directed by the Engineer.

(G) In the event any lawsuit or court proceeding of any kind is brought against the County, arising out of or relating to the Contractor's activities or services performed under this Agreement, including any Memorandum of Understanding, or any subsequent stage of project development or phase of work or any project of construction undertaken employing the deliverables provided by the Contractor in performing this Agreement, including any Memorandum of Understanding, the Contractor shall have the affirmative duty to assist the County in preparing the County's defense, including, but not limited to, production of documents, trials, depositions, or court testimony. Any assistance given to the County by the Contractor will be compensated at an amount or rate negotiated between the County and the Contractor as will be identified in a separate agreement between the County and the Contractor. To the extent the assistance given to the County by the Contractor was necessary for the County to defend claims and liability due to the Contractor's negligent acts, errors, or omissions, the compensation paid by the County to the Contractor will be reimbursed to the County.

(6) NO SOLICITATION WARRANTY: The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Contractor, 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, County, 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 will have the right to terminate this Agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount

of such fee, County, percentage, brokerage fee, gifts, or contingent fee, plus costs of collection including reasonable attorney's fees.

(7) SUBCONTRACTORS:

(A) The Contractor agrees that except for those businesses and for those services listed in the appropriate Memorandum of Understanding, there shall be no transfer of technical services performed under this Agreement without the written consent of the County. Subletting, assignment, or transfer of the services or any part thereof to any other corporation, partnership, or individual is expressly prohibited. Any violation of this clause will be deemed cause for termination of this Agreement.

(B) Not Used

(C) Unless waived or modified by the County, the Contractor agrees to require, and shall provide evidence to the County, that those Subcontractors shall maintain commercial general liability, automobile liability, and worker's compensation and employer's liability insurance, for not less than the period of services under such subcontractor agreements, and in not less than the following amounts:

1. Comprehensive General Liability Insurance: The Vendor/Contractor shall maintain and keep in full force and effect during the terms of this Contract such comprehensive general liability insurance as shall protect them from claims which may arise from operations under this Contract, whether such operations be by themselves or by anyone directly or indirectly employed by them. The amounts of insurance shall be not less than \$1,000,000.00 combined single limit for any one occurrence covering both bodily injury and property damage, including accidental death.

2. Automobile Liability: \$400,000 per claim up to \$2,500,000 per occurrence;

3. Worker's Compensation Insurance: The Vendor/Contractor or his sub-contractor or contractors, shall maintain and keep in force of this Contract such worker's compensation insurance limits as required by the statutes of the State of Missouri and Employer's Liability with limits no less than \$500,000.00.

(D) The subletting of the services will in no way relieve the Contractor of its primary responsibility for the quality and performance of the services to be performed hereunder and the Contractor shall assume full liability for the services performed by its Subcontractors.

(E) Not Used.

(F) Not Used.

(G) Not Used.

(8) COMPENSATION: The following provisions apply with respect to the payment of fees to the Contractor:

(A) Labor Costs, Overhead and Profit: Payment shall be made based on the actual hours expended by personnel multiplied by the corresponding hourly rates for the appropriate employee classification indicated in the "Schedule of Hourly Labor Billing Rates", attached as Exhibit I and incorporated herein. These rates include overhead and profit. The schedule is effective for the entire time that this Agreement remains in effect but may be revised within this time period no more than once within any twelve (12) month period to reflect changes in salary and overhead costs. The effective date for the first revision to Exhibit I shall occur no sooner than twelve (12) months from the County's execution of this Agreement. All information requested in the attached Exhibit I shall be provided by the Contractor.

1. Overhead - Direct Labor: Direct labor overhead costs include additions to payroll cost for holidays, sick leave, vacation, group insurance, workers' compensation insurance, social security taxes (FICA), unemployment insurance, disability taxes, retirement benefits, and other related items. Direct labor overhead is shown on Exhibit I.

2. Overhead - General and Administrative: General and administrative overhead costs include administrative salaries (including non-productive salary of associates and employees), officer services, equipment rental and maintenance, office rent and utilities, office maintenance, office supplies, insurance, taxes, legal and audit fees, use of electronic computer for accounting, and other related items. The percentage of direct straight time payroll to be added to salary costs is shown on Exhibit I.

(B) Changes in Hourly Rates: The hourly rates indicated in Exhibit I may be revised no more than once within any twelve (12) month period to reflect changes in salary and overhead costs. The effective date for the first revision to Exhibit I shall occur no sooner than twelve (12) months from the County's execution of this Agreement. The effective date established by the County for any subsequent revisions to Exhibit I should re-establish the beginning date for measuring the aforementioned twelve (12) month period. A new "Schedule of Hourly Labor Billing Rates" must be submitted by the Contractor and approved by the County prior to the inclusion of the revised rates in any subsequent Memorandum of Understanding. The Contractor shall submit all revisions to Exhibit I no later than forty-five (45) days prior to the desired effective date for use of the revised hourly rates. If no revisions are submitted and approved by the County, the billing rates established in the most recently approved Exhibit I will be used as the basis for all subsequent Memorandum of Understandings. Any revisions to the hourly rates included in Exhibit I and approved by the County will in no way change the hourly labor billing rates included in any previously executed Memorandums of Understanding. Any approved revisions to the hourly billing rates will only be applicable to Memorandums of

Understanding that are executed beyond the effective date of the revised Exhibit I.

(C) Individual Project Payment Ceiling: Total payment for an individual project carried out under this Agreement shall be limited to the "contract ceiling" stated in the Memorandum of Understanding covering that specific investigation. No work shall be done or costs incurred in excess of this ceiling until the County executes a supplemental Memorandum of Understanding.

(D) Payments: The Contractor may submit an invoice for services rendered to the County not more than once every month or upon completion of the services outlined in the Memorandum of Understanding. Upon receipt of the invoice, the County will, as soon as practicable, pay the Contractor for the services rendered. The County reserves the right to withhold payment, without penalty, to resolve disputes that may arise regarding the number of hours billed, the hourly rates used to develop the invoice, or the performance of services.

(E) Not Used

(9) PERIOD OF SERVICE:

(A) The services, and if more than one then each phase thereof, shall be completed in accordance with the schedule contained in the Memorandum of Understanding for each request for services. The Contractor and the County will be required to meet this schedule.

(B) The County will grant time extensions for delays due to unforeseeable causes beyond the control of and without fault or negligence of the Contractor. The Contractor shall make requests for extensions of time in writing, before that phase of work is scheduled to be completed, stating fully the events giving rise to the request and justification for the time extension requested.

(C) The Contractor and County agree that time is of the essence, and the Contractor and County will be required to meet the schedules in the appropriate Memorandum of Understanding. In the event of delays due to unforeseeable causes beyond the control of and without fault or negligence of the Contractor, either party shall make no claim for damage. An extension of time shall be the sole allowable compensation for any such delays.

(D) As used in this provision, the term "delays due to unforeseeable causes" includes the following:

1. War or acts of war, declared or undeclared;
2. Flooding, earthquake, or other major natural disaster preventing the Contractor from performing necessary services at the project site, or in the Contractor's offices, at the time such services must be performed;

3. The discovery on the project of differing site conditions, hazardous substances, or other conditions which, in the sole judgment of the Engineer, justifies a suspension of the services or necessitates modifications of the project or plans by the Contractor;

4. Court proceedings;

5. Changes in services or extra services.

(10) SUSPENSION OR TERMINATION OF AGREEMENT:

(A) The County may, without being in breach hereof, suspend or terminate the Contractor's services under this Agreement, or any services included in an active Memorandum of Understanding, for cause or for the convenience of the County, upon giving to the Contractor at least fifteen (15) days' prior written notice of the effective date thereof. The Contractor shall not accelerate performance of services during the fifteen (15) day period without the express written consent of the County.

(B) Should the Agreement be suspended or terminated for the convenience of the County, the County will pay to the Contractor its costs as set forth in paragraph (8) (A), for actual hours expended prior to such suspension or termination multiplied by the hourly rates included in the "Schedule of Hourly Billing Rates", plus reasonable hours incurred by the Contractor in suspending or terminating the services. The payment will make no other allowances for damages or anticipated fees or profits. In the event of a suspension of the services, the Contractor's compensation and schedule for performance of services hereunder shall be equitably adjusted upon resumption of performance of the services.

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

(D) The Contractor shall not be liable for any errors or omissions contained in deliverables, which are incomplete as a result of a suspension, or termination where the Contractor is deprived of the opportunity to complete the Contractor's services.

(11) OWNERSHIP OF DRAWINGS AND DOCUMENTS:

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

1. The Contractor shall have the right to their future use with written permission of the County;

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

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

A. Copyrights. County, as the contracting agency, reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Governmental purposes:

I. The copyright in any works developed under this agreement, or under a sub grant or contract under this agreement; and

II. Any rights of copyright to which County, its contractor or subcontractor purchases ownership with payments provided by this agreement.

B. Patents. Rights to inventions made under this agreement shall be determined in accordance with 37 C.F.R. Part 401. The standard patent rights clause at 37 C.F.R. § 401.14, as modified below, is hereby incorporated by reference.

I. The terms "to be performed by a small business firm or domestic nonprofit organization" shall be deleted from paragraph (g) (1) of the clause;

II. Paragraphs (g) (2) and (g) (3) of the clause shall be deleted; and

III. Paragraph (l) of the clause, entitled "communications" shall read as follows: "(l) Communications. All notifications required by this clause shall be submitted to the County Engineer.

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

Contractor - Contractor

Government and Federal Agency - County

Subcontractor - Subcontractor

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

(B) The County may incorporate any portion of the deliverables into a project other than that for which they were performed, without further compensation to the Contractor; provided however, that (1) such deliverables shall thereupon be deemed to be the work product of the County and the County shall use same at its sole risk and expense.

(12) DECISIONS UNDER THIS AGREEMENT AND DISPUTES:

(A) The Engineer will determine the acceptability of the drawings, specifications, and estimates and all other deliverables to be furnished, and will decide the questions that may arise relative to the proper performance of this Agreement. The determination of acceptable deliverables may occur following final payment, and as late as during the construction of the project which decisions shall be conclusive, binding and incontestable, if not arbitrary, capricious or the result of fraud.

(B) The Engineer will decide all questions which may arise as to the quality, quantity, and acceptability of services performed by the Contractor and as to the rate of progress of the services; all questions which may arise as to the interpretation of the plans and specifications or other deliverables; all questions as to the acceptable fulfillment of the Agreement on the part of the Contractor; the proper compensation for performance or breach of the Agreement; and all claims of any character whatsoever in connection with or growing out of the services of the Contractor, whether claims under this Agreement or otherwise. The Engineer's decisions shall be conclusive, binding and incontestable if not arbitrary, capricious or the result of fraud.

(C) If the Contractor has a claim for payment against the County which in any way arises out of the provisions of this Agreement or the performance or non-performance hereunder, written notice of such claim must be made in triplicate within sixty (60) days of the Contractor's receipt of final payment. Notwithstanding paragraph 20 of this Agreement, the notice of claim shall be personally delivered or sent by certified mail to the Department of Public Works, Jefferson County, Missouri. The notice of claim shall contain an itemized statement showing completely and fully the items and amounts forming the basis of the claim and the factual and legal basis of the claim.

(D) Any claim for payment or an item of any such claim not included in the notice of claim and itemized statement, or any such claim not filed within the time provided by this provision shall be forever waived, and shall neither constitute the basis of nor be included in any legal action, counterclaim, set-off, or arbitration against the County.

(E) The claims procedure in paragraphs 12 (C) and (D) do not apply to any claims of the County against the Contractor. Further, any claims of the County against the Contractor under this Agreement are not waived or estopped by the claims procedure in paragraphs 12 (C) and (D).

(13) SUCCESSORS AND ASSIGNS: The County and the Contractor agree that this Agreement and all agreements entered into under the provisions of this Agreement shall be binding upon the parties hereto and their successors and assigns.

(14) INDEMNIFICATION RESPONSIBILITY:

(A) The Contractor agrees to save harmless the County from all liability, losses, damages, and judgments for bodily injury, including death, and property damage to the extent due to the Contractor's negligent acts, errors, or omissions in the services performed or to be performed under this Agreement, including those negligent acts, errors, or omissions of the Contractor's employees, agents, and Subcontractors.

(B) The Contractor shall be responsible for the direct damages incurred by the County as result of the negligent acts, errors, or omissions of the Contractor or anyone for whom the Contractor is legally responsible, and for any losses or costs to repair or remedy any subsequent stage of project development, phase of work, or project construction as a result of such negligent acts, errors or omissions; provided, however, the Contractor shall not be liable to the County for such losses, costs, repairs and/or remedies which constitute betterment of or an addition of value to the subsequent stages of project development or the construction of the project.

(C) Neither the County's review, approval or acceptance of, or payment for, any services required under this Agreement, nor the termination of this Agreement prior to its completion, will be construed to operate as a waiver of any right under this Agreement or any cause of action arising out of the performance of this Agreement. This indemnification responsibility survives the completion of this Agreement, as well as the completion of subsequent stages of project development or the construction of the project at some later date, and remains as long as the construction contractor may file or has pending a claim or lawsuit against the County on this project arising out of the Contractor's services hereunder.

(15) INSURANCE:

(A) The Contractor shall maintain commercial general liability, automobile liability, and worker's compensation and employer's liability insurance in full force and effect to protect the Contractor from claims under Worker's Compensation Acts, claims for damages for personal injury or death, and for damages to property arising from the negligent acts, errors, or omissions of the Contractor and its employees, agents, and Subcontractors in the performance of the services covered by this Agreement, including, without limitation, risks insured against in commercial general liability policies.

(B) The Contractor shall also maintain professional liability insurance to protect the Contractor against the negligent acts, errors, or omissions of the Contractor and those for whom it is legally responsible, arising out of the performance of professional services under this Agreement.

(C) The Contractor's insurance coverages shall be for not less than the following limits of liability:

1. Comprehensive General Liability Insurance: The Vendor/Contractor shall maintain and keep in full force and effect during the terms of this Contract such comprehensive general liability insurance as shall protect them from claims which may arise from operations under this Contract, whether such operations be by themselves or by anyone directly or indirectly employed by them. The amounts of insurance shall be not less than \$1,000,000.00 combined single limit for any one occurrence covering both bodily injury and property damage, including accidental death.

2. Automobile Liability: \$400,000 per claim up to \$2,500,000 per occurrence;

3. Worker's Compensation Insurance: The Vendor/Contractor or his sub-contractor or contractors, shall maintain and keep in force of this Contract such worker's compensation insurance limits as required by the statues of the State of Missouri and Employer's Liability with limits no less than \$500,000.00.

4. Professional ("Errors and Omissions") Liability: \$1,000,000, each claim and in the annual aggregate.

(D) The Contractor shall, upon request at any time, provide the County with certificates of insurance evidencing the Contractor's commercial general or professional liability ("Errors and Omissions") policies and evidencing that they and all other required insurance is in effect, as to the services under this Agreement.

(E) Any insurance policy required as specified in paragraph No. (15) should be written by a company which is incorporated in the United States of America or is based in the United States of America. Each insurance policy must be issued by a company authorized to issue such insurance in the State of Missouri. In addition, any such insurance policy, except for Worker's Compensation, will name the County as additional insured.

(16) NONDISCRIMINATION CLAUSE: The Contractor shall comply with all the provisions of Executive Order No. 94-03, issued by the Honorable Mel Carnahan, Governor of Missouri, on the fourteenth (14th) day of January 1994, which executive order is incorporated herein by reference and is made a part of this Agreement. This Executive Order promulgates a Code of Fair Practices for the Executive Branch of Missouri Government and prohibits discrimination against recipients of services, and employees or applicants or employment of state contractors and subcontractors, on the grounds of race, color, religion, national origin, sex, age, disability, or veteran status. The Contractor shall also comply with all state and federal statutes applicable to the Contractor relating

to nondiscrimination, including, but not limited to, Chapter 213, RSMo; Title VI and Title VII of the Civil Rights Act of 1964 as amended (42 U.S.C. Sections 2000d and 2000e, *et seq.*); and with any provision of the "Americans with Disabilities Act" (42 U.S.C. Section 12101, *et seq.*).

(17) ACTIONS: No action may be brought by either party hereto concerning any matter, thing, or dispute arising out of or relating to the terms, performance, non-performance, or otherwise of this Agreement except in the Circuit Court of Jefferson County, Missouri. The parties agree that this Agreement is entered into at Hillsboro, Missouri, and substantial elements of its performance will take place or be delivered at Hillsboro, Missouri, by reason of which the Contractor consents to venue of any action against it in Jefferson County, Missouri. The Contractor shall cause this provision to be incorporated into all of its agreements with, and to be binding upon, all subcontractors of the Contractor in the performance of this Agreement.

(18) AUDIT OF RECORDS: For purpose of an audit, the Contractor shall maintain all those records relating to direct costs and expenses incurred under this Agreement, including but not limited to invoices, payrolls, bills, receipts, etc. These records must be available at all reasonable times to the County or its designees and representatives, at the Contractor's offices, at no charge, during the Agreement period and any extension thereof, and for the three (3) year period following the date of final payment made under this Agreement. If the County has notice of a potential claim against the Contractor and/or the County based on the Contractor's services under this Agreement, the Contractor, upon written request of the County, shall retain and preserve its records until the County has advised the Contractor in writing that the disputed claim is resolved.

(19) NOTICE TO THE PARTIES: All notices or communications required by this Agreement shall be made in writing, and shall be effective upon receipt by the County or the Contractor at their respective addresses of record. Letters or other documents which are prepared in 8.5 x 11 inch format may be delivered by telefax, provided that an original is received at the same address as that to which that telefax message was sent, within three (3) business days of the telefax transmission. Either party may change its address of record by written notice to the other party.

(A) Notice to the County: Notices to the County shall be addressed and delivered to the following Engineer, who is hereby designated by the County as its primary authorized Engineer for administration, interpretation, review, and enforcement of this Agreement and the services of the Contractor hereunder:

Jason Jonas, P.E.
Jefferson County Engineer
Department of Public Works
PO Box 100
Hillsboro, Missouri 63050
Telefax No.: 636-797-5565

Telephone No.: 636-797-5369
Email: JJonas@jeffcomo.org

The County reserves the right to substitute another person for the individual named at any time, and to designate one or more other Engineers to have authority to act upon its behalf generally or in limited capacities, as the County may now or hereafter deem appropriate. Such substitution or designations shall be made by the County Engineer in a written notice to the Contractor.

(B) Notice to the Contractor: Notices to Contractor shall be addressed and delivered to Contractor's representative, as follows:

Contractor Contact Name, Registrations/Certifications
Contractor Contact Title
Company Name
Company Address
Company Contact Fax Number
Company Contact Phone Number
Company Contact Email Address
Company Website

The Contractor reserves the right to substitute another person for the individual named at any time, and to designate one or more Contractor's Representatives to have authority to act upon its behalf generally or in limited capacities, as the Contractor may now or hereafter deem appropriate. Such substitutions or designations shall be made by the Contractor's president or chief executive officer in a written notice to the County.

(20) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The Contractor shall comply with all local, state, and federal laws and regulations, which govern the performance of this Agreement.

(21) CONFIDENTIALITY: The Contractor agrees that the Contractor's services under this Agreement are a confidential matter between the Contractor and the County. The Contractor shall not disclose any aspect of the Contractor's services under this Agreement to any other person, corporation, governmental entity, or news media, excepting only to such employees, subcontractors, and agents as may be necessary to allow them to perform services for the Contractor in the furtherance of this Agreement, without the prior approval of the County's Engineer; provided, however, that any confidentiality and non-disclosure requirements set out herein shall not apply to any of the Contractor's services or to any information which (1) is already in the public domain or is already in the Contractor's possession at the time the Contractor performs the services or comes into possession of the information, (2) is received from a third party without any confidentiality obligations, or (3) is required to be disclosed by governmental or judicial order. Any disclosure pursuant to a request to the County under Chapter 610, RSMo, shall not constitute a breach of this Agreement. The content and extent of any authorized disclosure shall be coordinated fully with and under the direction of the

County's Engineer, in advance.

(22) SOLE BENEFICIARY: This Agreement is made for the sole benefit of the parties hereto and nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the County and the Contractor.

(23) SEVERABILITY AND SURVIVAL:

(A) Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the County and the Contractor.

(B) All express representations, indemnifications, or limitations of liability made or given in this Agreement will survive the completion of all services by the Contractor under this Agreement or the termination of this Agreement for any reason.

(24) PAYMENT BOND: In the event a subcontractor is used for any services under this Agreement, Contractor shall provide a payment bond under Section 107.170 RSMo., Any payment bond must be acceptable to the County and must be provided prior to the performance of service. The cost for the payment bond must have been included in the fee of the Contractor under this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective proper officials.

Executed by the Contactor the 23 day of December, 2015.

Executed by the County the _____ day of _____, 20____.

JEFFERSON COUNTY, MISSOURI

BY: Kenneth Wallace
COUNTY EXECUTIVE

Contractor Company Name

BY: Jack Meyers

Title: Service Manager

(Seal)

ATTEST:

Wes Wagner
County Clerk

Katharine E. Missey
Deputy Clerk

ATTEST:

Hayes Mechanical
Contractor Company Name

Title: Service Manager

APPROVED AS TO FORM:

[Signature]
County Counselor

I hereby certify under Section 50.660 RSMo there is either: (1) a balance of funds, otherwise unencumbered, to the credit of the appropriation to which the obligation contained herein is chargeable, and a cash balance otherwise unencumbered, in the Treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation contained herein; or (2) bonds or taxes have been authorized by vote of the people and there is a sufficient unencumbered amount of the bonds yet to be sold or of the taxes levied and yet to be collected to meet the obligation in case there is not a sufficient unencumbered cash balance in the treasury.

[Signature]
COUNTY AUDITOR

County's Engineer, in advance.

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Telephone No.: 636-797-5369
Email: JJonas@jeffcomo.org

The County reserves the right to substitute another person for the individual named at any time, and to designate one or more other Engineers to have authority to act upon its behalf generally or in limited capacities, as the County may now or hereafter deem appropriate. Such substitution or designations shall be made by the County Engineer in a written notice to the Contractor.

(B) Notice to the Contractor: Notices to Contractor shall be addressed and delivered to Contractor's representative, as follows:

Contractor Contact Name, Registrations/Certifications
Contractor Contact Title
Company Name
Company Address
Company Contact Fax Number
Company Contact Phone Number
Company Contact Email Address
Company Website

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(20) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The Contractor shall comply with all local, state, and federal laws and regulations, which govern the performance of this Agreement.

(21) CONFIDENTIALITY: The Contractor agrees that the Contractor's services under this Agreement are a confidential matter between the Contractor and the County. The Contractor shall not disclose any aspect of the Contractor's services under this Agreement to any other person, corporation, governmental entity, or news media, excepting only to such employees, subcontractors, and agents as may be necessary to allow them to perform services for the Contractor in the furtherance of this Agreement, without the prior approval of the County's Engineer; provided, however, that any confidentiality and non-disclosure requirements set out herein shall not apply to any of the Contractor's services or to any information which (1) is already in the public domain or is already in the Contractor's possession at the time the Contractor performs the services or comes into possession of the information, (2) is received from a third party without any confidentiality obligations, or (3) is required to be disclosed by governmental or judicial order. Any disclosure pursuant to a request to the County under Chapter 610, RSMo, shall not constitute a breach of this Agreement. The content and extent of any authorized disclosure shall be coordinated fully with and under the direction of the

to nondiscrimination, including, but not limited to, Chapter 213, RSMo; Title VI and Title VII of the Civil Rights Act of 1964 as amended (42 U.S.C. Sections 2000d and 2000e, *et seq.*); and with any provision of the "Americans with Disabilities Act" (42 U.S.C. Section 12101, *et seq.*).

(17) ACTIONS: No action may be brought by either party hereto concerning any matter, thing, or dispute arising out of or relating to the terms, performance, non-performance, or otherwise of this Agreement except in the Circuit Court of Jefferson County, Missouri. The parties agree that this Agreement is entered into at Hillsboro, Missouri, and substantial elements of its performance will take place or be delivered at Hillsboro, Missouri, by reason of which the Contractor consents to venue of any action against it in Jefferson County, Missouri. The Contractor shall cause this provision to be incorporated into all of its agreements with, and to be binding upon, all subcontractors of the Contractor in the performance of this Agreement.

(18) AUDIT OF RECORDS: For purpose of an audit, the Contractor shall maintain all those records relating to direct costs and expenses incurred under this Agreement, including but not limited to invoices, payrolls, bills, receipts, etc. These records must be available at all reasonable times to the County or its designees and representatives, at the Contractor's offices, at no charge, during the Agreement period and any extension thereof, and for the three (3) year period following the date of final payment made under this Agreement. If the County has notice of a potential claim against the Contractor and/or the County based on the Contractor's services under this Agreement, the Contractor, upon written request of the County, shall retain and preserve its records until the County has advised the Contractor in writing that the disputed claim is resolved.

(19) NOTICE TO THE PARTIES: All notices or communications required by this Agreement shall be made in writing, and shall be effective upon receipt by the County or the Contractor at their respective addresses of record. Letters or other documents which are prepared in 8.5 x 11 inch format may be delivered by telefax, provided that an original is received at the same address as that to which that telefax message was sent, within three (3) business days of the telefax transmission. Either party may change its address of record by written notice to the other party.

(A) Notice to the County: Notices to the County shall be addressed and delivered to the following Engineer, who is hereby designated by the County as its primary authorized Engineer for administration, interpretation, review, and enforcement of this Agreement and the services of the Contractor hereunder:

Jason Jonas, P.E.
Jefferson County Engineer
Department of Public Works
PO Box 100
Hillsboro, Missouri 63050
Telefax No.: 636-797-5565

(C) The Contractor's insurance coverages shall be for not less than the following limits of liability:

1. Comprehensive General Liability Insurance: The Vendor/Contractor shall maintain and keep in full force and effect during the terms of this Contract such comprehensive general liability insurance as shall protect them from claims which may arise from operations under this Contract, whether such operations be by themselves or by anyone directly or indirectly employed by them. The amounts of insurance shall be not less than \$1,000,000.00 combined single limit for any one occurrence covering both bodily injury and property damage, including accidental death.

2. Automobile Liability: \$400,000 per claim up to \$2,500,000 per occurrence;

3. Worker's Compensation Insurance: The Vendor/Contractor or his sub-contractor or contractors, shall maintain and keep in force of this Contract such worker's compensation insurance limits as required by the statutes of the State of Missouri and Employer's Liability with limits no less than \$500,000.00.

4. Professional ("Errors and Omissions") Liability: \$1,000,000, each claim and in the annual aggregate.

(D) The Contractor shall, upon request at any time, provide the County with certificates of insurance evidencing the Contractor's commercial general or professional liability ("Errors and Omissions") policies and evidencing that they and all other required insurance is in effect, as to the services under this Agreement.

(E) Any insurance policy required as specified in paragraph No. (15) should be written by a company which is incorporated in the United States of America or is based in the United States of America. Each insurance policy must be issued by a company authorized to issue such insurance in the State of Missouri. In addition, any such insurance policy, except for Worker's Compensation, will name the County as additional insured.

(16) NONDISCRIMINATION CLAUSE: The Contractor shall comply with all the provisions of Executive Order No. 94-03, issued by the Honorable Mel Camahan, Governor of Missouri, on the fourteenth (14th) day of January 1994, which executive order is incorporated herein by reference and is made a part of this Agreement. This Executive Order promulgates a Code of Fair Practices for the Executive Branch of Missouri Government and prohibits discrimination against recipients of services, and employees or applicants or employment of state contractors and subcontractors, on the grounds of race, color, religion, national origin, sex, age, disability, or veteran status. The Contractor shall also comply with all state and federal statutes applicable to the Contractor relating

(13) SUCCESSORS AND ASSIGNS: The County and the Contractor agree that this Agreement and all agreements entered into under the provisions of this Agreement shall be binding upon the parties hereto and their successors and assigns.

(14) INDEMNIFICATION RESPONSIBILITY:

(A) The Contractor agrees to save harmless the County from all liability, losses, damages, and judgments for bodily injury, including death, and property damage to the extent due to the Contractor's negligent acts, errors, or omissions in the services performed or to be performed under this Agreement, including those negligent acts, errors, or omissions of the Contractor's employees, agents, and Subcontractors.

(B) The Contractor shall be responsible for the direct damages incurred by the County as result of the negligent acts, errors, or omissions of the Contractor or anyone for whom the Contractor is legally responsible, and for any losses or costs to repair or remedy any subsequent stage of project development, phase of work, or project construction as a result of such negligent acts, errors or omissions; provided, however, the Contractor shall not be liable to the County for such losses, costs, repairs and/or remedies which constitute betterment of or an addition of value to the subsequent stages of project development or the construction of the project.

(C) Neither the County's review, approval or acceptance of, or payment for, any services required under this Agreement, nor the termination of this Agreement prior to its completion, will be construed to operate as a waiver of any right under this Agreement or any cause of action arising out of the performance of this Agreement. This indemnification responsibility survives the completion of this Agreement, as well as the completion of subsequent stages of project development or the construction of the project at some later date, and remains as long as the construction contractor may file or has pending a claim or lawsuit against the County on this project arising out of the Contractor's services hereunder.

(15) INSURANCE:

(A) The Contractor shall maintain commercial general liability, automobile liability, and worker's compensation and employer's liability insurance in full force and effect to protect the Contractor from claims under Worker's Compensation Acts, claims for damages for personal injury or death, and for damages to property arising from the negligent acts, errors, or omissions of the Contractor and its employees, agents, and Subcontractors in the performance of the services covered by this Agreement, including, without limitation, risks insured against in commercial general liability policies.

(B) The Contractor shall also maintain professional liability insurance to protect the Contractor against the negligent acts, errors, or omissions of the Contractor and those for whom it is legally responsible, arising out of the performance of professional services under this Agreement.

(B) The County may incorporate any portion of the deliverables into a project other than that for which they were performed, without further compensation to the Contractor; provided however, that (1) such deliverables shall thereupon be deemed to be the work product of the County and the County shall use same at its sole risk and expense.

(12) DECISIONS UNDER THIS AGREEMENT AND DISPUTES:

(A) The Engineer will determine the acceptability of the drawings, specifications, and estimates and all other deliverables to be furnished, and will decide the questions that may arise relative to the proper performance of this Agreement. The determination of acceptable deliverables may occur following final payment, and as late as during the construction of the project which decisions shall be conclusive, binding and incontestable, if not arbitrary, capricious or the result of fraud.

(B) The Engineer will decide all questions which may arise as to the quality, quantity, and acceptability of services performed by the Contractor and as to the rate of progress of the services; all questions which may arise as to the interpretation of the plans and specifications or other deliverables; all questions as to the acceptable fulfillment of the Agreement on the part of the Contractor; the proper compensation for performance or breach of the Agreement; and all claims of any character whatsoever in connection with or growing out of the services of the Contractor, whether claims under this Agreement or otherwise. The Engineer's decisions shall be conclusive, binding and incontestable if not arbitrary, capricious or the result of fraud.

(C) If the Contractor has a claim for payment against the County which in any way arises out of the provisions of this Agreement or the performance or non-performance hereunder, written notice of such claim must be made in triplicate within sixty (60) days of the Contractor's receipt of final payment. Notwithstanding paragraph 20 of this Agreement, the notice of claim shall be personally delivered or sent by certified mail to the Department of Public Works, Jefferson County, Missouri. The notice of claim shall contain an itemized statement showing completely and fully the items and amounts forming the basis of the claim and the factual and legal basis of the claim.

(D) Any claim for payment or an item of any such claim not included in the notice of claim and itemized statement, or any such claim not filed within the time provided by this provision shall be forever waived, and shall neither constitute the basis of nor be included in any legal action, counterclaim, set-off, or arbitration against the County.

(E) The claims procedure in paragraphs 12 (C) and (D) do not apply to any claims of the County against the Contractor. Further, any claims of the County against the Contractor under this Agreement are not waived or estopped by the claims procedure in paragraphs 12 (C) and (D).

1. The Contractor shall have the right to their future use with written permission of the County;

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

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

A. Copyrights. County, as the contracting agency, reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Governmental purposes:

I. The copyright in any works developed under this agreement, or under a sub grant or contract under this agreement; and

II. Any rights of copyright to which County, its contractor or subcontractor purchases ownership with payments provided by this agreement.

B. Patents. Rights to inventions made under this agreement shall be determined in accordance with 37 C.F.R. Part 401. The standard patent rights clause at 37 C.F.R. § 401.14, as modified below, is hereby incorporated by reference.

I. The terms "to be performed by a small business firm or domestic nonprofit organization" shall be deleted from paragraph (g) (1) of the clause;

II. Paragraphs (g) (2) and (g) (3) of the clause shall be deleted; and

III. Paragraph (i) of the clause, entitled "communications" shall read as follows: "(i) Communications. All notifications required by this clause shall be submitted to the County Engineer.

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

Contractor - Contractor

Government and Federal Agency - County

Subcontractor - Subcontractor

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

3. The discovery on the project of differing site conditions, hazardous substances, or other conditions which, in the sole judgment of the Engineer, justifies a suspension of the services or necessitates modifications of the project or plans by the Contractor;

4. Court proceedings;

5. Changes in services or extra services.

(10) SUSPENSION OR TERMINATION OF AGREEMENT:

(A) The County may, without being in breach hereof, suspend or terminate the Contractor's services under this Agreement, or any services included in an active Memorandum of Understanding, for cause or for the convenience of the County, upon giving to the Contractor at least fifteen (15) days' prior written notice of the effective date thereof. The Contractor shall not accelerate performance of services during the fifteen (15) day period without the express written consent of the County.

(B) Should the Agreement be suspended or terminated for the convenience of the County, the County will pay to the Contractor its costs as set forth in paragraph (8) (A), for actual hours expended prior to such suspension or termination multiplied by the hourly rates included in the "Schedule of Hourly Billing Rates", plus reasonable hours incurred by the Contractor in suspending or terminating the services. The payment will make no other allowances for damages or anticipated fees or profits. In the event of a suspension of the services, the Contractor's compensation and schedule for performance of services hereunder shall be equitably adjusted upon resumption of performance of the services.

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

(D) The Contractor shall not be liable for any errors or omissions contained in deliverables, which are incomplete as a result of a suspension, or termination where the Contractor is deprived of the opportunity to complete the Contractor's services.

(11) OWNERSHIP OF DRAWINGS AND DOCUMENTS:

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

Understanding that are executed beyond the effective date of the revised Exhibit I.

(C) Individual Project Payment Ceiling: Total payment for an individual project carried out under this Agreement shall be limited to the "contract ceiling" stated in the Memorandum of Understanding covering that specific investigation. No work shall be done or costs incurred in excess of this ceiling until the County executes a supplemental Memorandum of Understanding.

(D) Payments: The Contractor may submit an invoice for services rendered to the County not more than once every month or upon completion of the services outlined in the Memorandum of Understanding. Upon receipt of the invoice, the County will, as soon as practicable, pay the Contractor for the services rendered. The County reserves the right to withhold payment, without penalty, to resolve disputes that may arise regarding the number of hours billed, the hourly rates used to develop the invoice, or the performance of services.

(E) Not Used

(9) PERIOD OF SERVICE:

(A) The services, and if more than one then each phase thereof, shall be completed in accordance with the schedule contained in the Memorandum of Understanding for each request for services. The Contractor and the County will be required to meet this schedule.

(B) The County will grant time extensions for delays due to unforeseeable causes beyond the control of and without fault or negligence of the Contractor. The Contractor shall make requests for extensions of time in writing, before that phase of work is scheduled to be completed, stating fully the events giving rise to the request and justification for the time extension requested.

(C) The Contractor and County agree that time is of the essence, and the Contractor and County will be required to meet the schedules in the appropriate Memorandum of Understanding. In the event of delays due to unforeseeable causes beyond the control of and without fault or negligence of the Contractor, either party shall make no claim for damage. An extension of time shall be the sole allowable compensation for any such delays.

(D) As used in this provision, the term "delays due to unforeseeable causes" includes the following:

1. War or acts of war, declared or undeclared;
2. Flooding, earthquake, or other major natural disaster preventing the Contractor from performing necessary services at the project site, or in the Contractor's offices, at the time such services must be performed;

(G) Not Used.

(8) COMPENSATION: The following provisions apply with respect to the payment of fees to the Contractor:

(A) Labor Costs, Overhead and Profit: Payment shall be made based on the actual hours expended by personnel multiplied by the corresponding hourly rates for the appropriate employee classification indicated in the "Schedule of Hourly Labor Billing Rates", attached as Exhibit I and incorporated herein. These rates include overhead and profit. The schedule is effective for the entire time that this Agreement remains in effect but may be revised within this time period no more than once within any twelve (12) month period to reflect changes in salary and overhead costs. The effective date for the first revision to Exhibit I shall occur no sooner than twelve (12) months from the County's execution of this Agreement. All information requested in the attached Exhibit I shall be provided by the Contractor.

1. Overhead - Direct Labor: Direct labor overhead costs include additions to payroll cost for holidays, sick leave, vacation, group insurance, workers' compensation insurance, social security taxes (FICA), unemployment insurance, disability taxes, retirement benefits, and other related items. Direct labor overhead is shown on Exhibit I.

2. Overhead - General and Administrative: General and administrative overhead costs include administrative salaries (including non-productive salary of associates and employees), officer services, equipment rental and maintenance, office rent and utilities, office maintenance, office supplies, insurance, taxes, legal and audit fees, use of electronic computer for accounting, and other related items. The percentage of direct straight time payroll to be added to salary costs is shown on Exhibit I.

(B) Changes in Hourly Rates: The hourly rates indicated in Exhibit I may be revised no more than once within any twelve (12) month period to reflect changes in salary and overhead costs. The effective date for the first revision to Exhibit I shall occur no sooner than twelve (12) months from the County's execution of this Agreement. The effective date established by the County for any subsequent revisions to Exhibit I should re-establish the beginning date for measuring the aforementioned twelve (12) month period. A new "Schedule of Hourly Labor Billing Rates" must be submitted by the Contractor and approved by the County prior to the inclusion of the revised rates in any subsequent Memorandum of Understanding. The Contractor shall submit all revisions to Exhibit I no later than forty-five (45) days prior to the desired effective date for use of the revised hourly rates. If no revisions are submitted and approved by the County, the billing rates established in the most recently approved Exhibit I will be used as the basis for all subsequent Memorandum of Understandings. Any revisions to the hourly rates included in Exhibit I and approved by the County will in no way change the hourly labor billing rates included in any previously executed Memorandums of Understanding. Any approved revisions to the hourly billing rates will only be applicable to Memorandums of

of such fee, County, percentage, brokerage fee, gifts, or contingent fee, plus costs of collection including reasonable attorney's fees.

(7) SUBCONTRACTORS:

(A) The Contractor agrees that except for those businesses and for those services listed in the appropriate Memorandum of Understanding, there shall be no transfer of technical services performed under this Agreement without the written consent of the County. Subletting, assignment, or transfer of the services or any part thereof to any other corporation, partnership, or individual is expressly prohibited. Any violation of this clause will be deemed cause for termination of this Agreement.

(B) Not Used

(C) Unless waived or modified by the County, the Contractor agrees to require, and shall provide evidence to the County, that those Subcontractors shall maintain commercial general liability, automobile liability, and worker's compensation and employer's liability insurance, for not less than the period of services under such subcontractor agreements, and in not less than the following amounts:

1. Comprehensive General Liability Insurance: The Vendor/Contractor shall maintain and keep in full force and effect during the terms of this Contract such comprehensive general liability insurance as shall protect them from claims which may arise from operations under this Contract, whether such operations be by themselves or by anyone directly or indirectly employed by them. The amounts of insurance shall be not less than \$1,000,000.00 combined single limit for any one occurrence covering both bodily injury and property damage, including accidental death.

2. Automobile Liability: \$400,000 per claim up to \$2,500,000 per occurrence;

3. Worker's Compensation Insurance: The Vendor/Contractor or his sub-contractor or contractors, shall maintain and keep in force of this Contract such worker's compensation insurance limits as required by the statutes of the State of Missouri and Employer's Liability with limits no less than \$500,000.00.

(D) The subletting of the services will in no way relieve the Contractor of its primary responsibility for the quality and performance of the services to be performed hereunder and the Contractor shall assume full liability for the services performed by its Subcontractors.

(E) Not Used.

(F) Not Used.

(B) Without limiting the foregoing, the performance of these services will be in accordance with the specific criteria and project procedures as indicated by the information set out in the appropriate Memorandum of Understanding.

(C) The Contractor shall be responsible for the technical quality, technical accuracy, and the coordination of all deliverables or any other services furnished under this Agreement. At any time during any subsequent stage of project development or phase of work performed by others based upon any deliverables or other services provided by the Contractor, the Contractor shall prepare any additional deliverables or other services needed to correct any negligent acts, errors, or omissions of the Contractor or anyone for whom it is legally responsible in failing to comply with the foregoing standard. The services necessary to correct such negligent acts, errors, or omissions shall be performed without additional compensation, even though the Contractor may have received final payment. The Contractor shall provide such services as expeditiously as is consistent with professional performance. Acceptance of the services will not relieve the Contractor of the responsibility to correct such negligent acts, errors, or omissions.

(D) Not Used.

(E) Not Used.

(F) The Contractor shall cooperate fully with the County and its Engineers, contractors, and contractors on adjacent projects and with municipalities and local government officials, public utility companies and others as may be directed by the Engineer.

(G) In the event any lawsuit or court proceeding of any kind is brought against the County, arising out of or relating to the Contractor's activities or services performed under this Agreement, including any Memorandum of Understanding, or any subsequent stage of project development or phase of work or any project of construction undertaken employing the deliverables provided by the Contractor in performing this Agreement, including any Memorandum of Understanding, the Contractor shall have the affirmative duty to assist the County in preparing the County's defense, including, but not limited to, production of documents, trials, depositions, or court testimony. Any assistance given to the County by the Contractor will be compensated at an amount or rate negotiated between the County and the Contractor as will be identified in a separate agreement between the County and the Contractor. To the extent the assistance given to the County by the Contractor was necessary for the County to defend claims and liability due to the Contractor's negligent acts, errors, or omissions, the compensation paid by the County to the Contractor will be reimbursed to the County.

(6) NO SOLICITATION WARRANTY: The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Contractor, 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, County, 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 will have the right to terminate this Agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount

Exhibit I currently in effect shall be used as the basis of preparing any Memorandum of Understanding. The maximum price or ceiling for any Memorandum of Understanding shall not be exceeded prior to the execution of a supplemental Memorandum of Understanding. The Memorandum of Understanding will also indicate where the Contractor is to forward all deliverables.

(3) TERM OF AGREEMENT: The Contractor's services are to commence upon full execution of this Agreement or January 1, 2016, whichever is later, and terminate on December 31, 2016__; unless otherwise terminated prior to this date pursuant to the provisions of paragraph (10) of this Agreement. Upon concurrence of all parties, this Agreement may be renewed for an additional one (1) year term. Said renewal term is to begin on January 1, 20__17__.

(4) INFORMATION AND SERVICES PROVIDED BY THE COUNTY:

(A) At no cost to the Contractor and in a timely manner, the County will provide available information of record, which is pertinent to the requested services project to the Contractor upon request. In addition, the County will provide the Contractor with the specific items or services set forth in the Memorandum of Understanding for the particular services requested by the County. The Contractor shall be entitled to rely upon the accuracy and completeness of such information, and the Contractor may use such information in performing services under this Agreement.

(B) The Contractor shall review the information provided by the County concerning the requested services and will as expeditiously as possible advise the Engineer of any of that information which the Contractor believes is inaccurate or inadequate or would otherwise have an effect on any of its activities under this Agreement. In such case, the County shall provide the Contractor with new or verified data or information upon which the Contractor is entitled to rely. The Contractor shall not be liable for any errors, omissions, or deficiencies in the Contractor's services resulting from inaccurate or inadequate information furnished by the County which inaccuracies or inadequacies are not detected by the Contractor unless the errors should have been detected by the Contractor through reasonable diligence.

(5) RESPONSIBILITY OF THE CONTRACTOR:

(A) The Contractor shall comply with applicable state and federal laws and regulations governing these services, as published and in effect on the date of this Agreement or any subsequent Memorandums of Understanding. The Contractor shall provide the services in accordance with the criteria and requirements established and adopted by the County; and if none are expressly established in this Agreement, published manuals and policies of the County which shall be furnished by the County upon request; and, absent the foregoing, manuals and policies established by National Standard in the Industry, as published and in effect on the date of this Agreement or any subsequent Memorandums of Understanding.

representative of the County. Where the specific term "County Engineer" is used, it shall mean the County Engineer exclusively.

(H) Not Used

(I) "INTELLECTUAL PROPERTY" consists of copyrights, patents, and any other form of intellectual property rights covering any data bases, software, inventions, training manuals, systems design or other proprietary information in any form or medium.

(J) "SUBCONTRACTOR" means any individual, partnership, corporation, or joint venture to which the Contractor, with the written consent of the Engineer, subcontracts any part of the technical services under this Agreement but shall not include those entities, which supply only materials or supplies to the Contractor.

(K) "SUSPEND" the services means that the services as contemplated herein shall be stopped on a temporary basis. This stoppage will continue until the County either decides to terminate the project or reactivate the services under the conditions then existing.

(L) "TERMINATE", in the context of this Agreement, means the cessation or quitting of this Agreement based upon the action or inaction of the Contractor, or the unilateral cancellation of this Agreement by the County.

(M) "USDOT" means the United States Department of Transportation, headquartered at Washington, D.C., which acts through its authorized representatives.

(N) "SERVICES" includes all technical, professional engineering and related services and the furnishing of all equipment, supplies, and materials in conjunction with such services as are required to achieve the broad purposes and general objectives of this Agreement.

(2) SCOPE OF SERVICES:

(A) The services covered by this Agreement shall include furnishing the professional, technical, and other personnel and the equipment, material and all other things necessary for the maintenance, replacement, and repair of County building features, from time to time as needed and requested by the County.

(B) Scope and Cost of Requested Services: Each individual request for services shall be covered by a Memorandum of Understanding submitted by the Contractor and endorsed by the County Engineer. The memorandum will define the scope of work to be performed by the Contractor, the time limitations within which the work is to be performed, the specific deliverables required, an estimate of the hours required to complete the services multiplied by the appropriate hourly rates and state the maximum price for those services. Only those hourly rates included in the version of

**JEFFERSON COUNTY
CONTRACTOR SERVICES AGREEMENT**

THIS AGREEMENT is entered into by Hayes Mechanical
(hereinafter, "Contractor") and the County of Jefferson, Missouri (hereinafter, "County").

WITNESSETH:

WHEREAS, the County has a need at various times over the 2016- 2017__ calendar year of a contractor to perform technical services in the maintenance, replacement, and repair of County building features; and

WHEREAS, the County has selected the Contractor to provide those services on an as-needed basis.

NOW, THEREFORE, in consideration of the payments to be made and the covenants set forth in this Agreement to be performed by the County, the Contractor hereby agrees that it shall faithfully perform the technical services called for by this Agreement in the manner and under the conditions described in this Agreement.

(1) DEFINITIONS: The following definitions apply to these terms, as used in this Agreement:

(A) Not Used

(B) "COUNTY" means the County of Jefferson, Missouri, an agency of state government, which acts by and through its County Council, County Engineer and others in the Public Works Department.

(C) "CONTRACTOR" means the business providing technical services to the County as a party to this Agreement.

(D) "CONTRACTOR'S REPRESENTATIVE" means the person or persons designated in writing by the Contractor to represent that business in negotiations, communications, and various other contract administration dealings with the County's staff.

(E) "DELIVERABLES" means all data, studies, documents, designs, drawings, plans, specifications, or any other products prepared in performance of this Agreement, to be delivered to and become the property of the County pursuant to the terms and conditions set out in paragraph (11) of this Agreement.

(F) Not Used

(G) "ENGINEER" means the County Engineer or any other authorized

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective proper officials.

Executed by the Contactor the 14 day of January, 2016.

Executed by the County the _____ day of _____, 20____.

JEFFERSON COUNTY, MISSOURI

BY: Kenneth Wallace
COUNTY EXECUTIVE

Contractor Company Name

BY: D. B. L.

Title: PRESIDENT

(Seal)

ATTEST:

Wes Wagner
County Clerk

Katharine E. Missey
Deputy Clerk

ATTEST:

Debra Bowler
Contractor Company Name

Title: Vice President



APPROVED AS TO FORM:

[Signature]
County Counselor

I hereby certify under Section 50.660 RSMo there is either: (1) a balance of funds, otherwise unencumbered, to the credit of the appropriation to which the obligation contained herein is chargeable, and a cash balance otherwise unencumbered, in the Treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation contained herein; or (2) bonds or taxes have been authorized by vote of the people and there is a sufficient unencumbered amount of the bonds yet to be sold or of the taxes levied and yet to be collected to meet the obligation in case there is not a sufficient unencumbered cash balance in the treasury.

[Signature]
COUNTY AUDITOR

**JEFFERSON COUNTY
CONTRACTOR SERVICES AGREEMENT**

THIS AGREEMENT is entered into by Haberberger Mechanical Contractors (hereinafter, "Contractor") and the County of Jefferson, Missouri (hereinafter, "County").

WITNESSETH:

WHEREAS, the County has a need at various times over the 2016- 2017__ calendar year of a contractor to perform technical services in the maintenance, replacement, and repair of County building features; and

WHEREAS, the County has selected the Contractor to provide those services on an as-needed basis.

NOW, THEREFORE, in consideration of the payments to be made and the covenants set forth in this Agreement to be performed by the County, the Contractor hereby agrees that it shall faithfully perform the technical services called for by this Agreement in the manner and under the conditions described in this Agreement.

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(E) "DELIVERABLES" means all data, studies, documents, designs, drawings, plans, specifications, or any other products prepared in performance of this Agreement, to be delivered to and become the property of the County pursuant to the terms and conditions set out in paragraph (11) of this Agreement.

(F) Not Used

(G) "ENGINEER" means the County Engineer or any other authorized

representative of the County. Where the specific term "County Engineer" is used, it shall mean the County Engineer exclusively.

(H) Not Used

(I) "INTELLECTUAL PROPERTY" consists of copyrights, patents, and any other form of intellectual property rights covering any data bases, software, inventions, training manuals, systems design or other proprietary information in any form or medium.

(J) "SUBCONTRACTOR" means any individual, partnership, corporation, or joint venture to which the Contractor, with the written consent of the Engineer, subcontracts any part of the technical services under this Agreement but shall not include those entities, which supply only materials or supplies to the Contractor.

(K) "SUSPEND" the services means that the services as contemplated herein shall be stopped on a temporary basis. This stoppage will continue until the County either decides to terminate the project or reactivate the services under the conditions then existing.

(L) "TERMINATE", in the context of this Agreement, means the cessation or quitting of this Agreement based upon the action or inaction of the Contractor, or the unilateral cancellation of this Agreement by the County.

(M) "USDOT" means the United States Department of Transportation, headquartered at Washington, D.C., which acts through its authorized representatives.

(N) "SERVICES" includes all technical, professional engineering and related services and the furnishing of all equipment, supplies, and materials in conjunction with such services as are required to achieve the broad purposes and general objectives of this Agreement.

(2) SCOPE OF SERVICES:

(A) The services covered by this Agreement shall include furnishing the professional, technical, and other personnel and the equipment, material and all other things necessary for the maintenance, replacement, and repair of County building features, from time to time as needed and requested by the County.

(B) Scope and Cost of Requested Services: Each individual request for services shall be covered by a Memorandum of Understanding submitted by the Contractor and endorsed by the County Engineer. The memorandum will define the scope of work to be performed by the Contractor, the time limitations within which the work is to be performed, the specific deliverables required, an estimate of the hours required to complete the services multiplied by the appropriate hourly rates and state the maximum price for those services. Only those hourly rates included in the version of

Exhibit I currently in effect shall be used as the basis of preparing any Memorandum of Understanding. The maximum price or ceiling for any Memorandum of Understanding shall not be exceeded prior to the execution of a supplemental Memorandum of Understanding. The Memorandum of Understanding will also indicate where the Contractor is to forward all deliverables.

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(4) INFORMATION AND SERVICES PROVIDED BY THE COUNTY:

(A) At no cost to the Contractor and in a timely manner, the County will provide available information of record, which is pertinent to the requested services project to the Contractor upon request. In addition, the County will provide the Contractor with the specific items or services set forth in the Memorandum of Understanding for the particular services requested by the County. The Contractor shall be entitled to rely upon the accuracy and completeness of such information, and the Contractor may use such information in performing services under this Agreement.

(B) The Contractor shall review the information provided by the County concerning the requested services and will as expeditiously as possible advise the Engineer of any of that information which the Contractor believes is inaccurate or inadequate or would otherwise have an effect on any of its activities under this Agreement. In such case, the County shall provide the Contractor with new or verified data or information upon which the Contractor is entitled to rely. The Contractor shall not be liable for any errors, omissions, or deficiencies in the Contractor's services resulting from inaccurate or inadequate information furnished by the County which inaccuracies or inadequacies are not detected by the Contractor unless the errors should have been detected by the Contractor through reasonable diligence.

(5) RESPONSIBILITY OF THE CONTRACTOR:

(A) The Contractor shall comply with applicable state and federal laws and regulations governing these services, as published and in effect on the date of this Agreement or any subsequent Memorandums of Understanding. The Contractor shall provide the services in accordance with the criteria and requirements established and adopted by the County; and if none are expressly established in this Agreement, published manuals and policies of the County which shall be furnished by the County upon request; and, absent the foregoing, manuals and policies established by National Standard in the Industry, as published and in effect on the date of this Agreement or any subsequent Memorandums of Understanding.

(B) Without limiting the foregoing, the performance of these services will be in accordance with the specific criteria and project procedures as indicated by the information set out in the appropriate Memorandum of Understanding.

(C) The Contractor shall be responsible for the technical quality, technical accuracy, and the coordination of all deliverables or any other services furnished under this Agreement. At any time during any subsequent stage of project development or phase of work performed by others based upon any deliverables or other services provided by the Contractor, the Contractor shall prepare any additional deliverables or other services needed to correct any negligent acts, errors, or omissions of the Contractor or anyone for whom it is legally responsible in failing to comply with the foregoing standard. The services necessary to correct such negligent acts, errors, or omissions shall be performed without additional compensation, even though the Contractor may have received final payment. The Contractor shall provide such services as expeditiously as is consistent with professional performance. Acceptance of the services will not relieve the Contractor of the responsibility to correct such negligent acts, errors, or omissions.

(D) Not Used.

(E) Not Used.

(F) The Contractor shall cooperate fully with the County and its Engineers, contractors, and contractors on adjacent projects and with municipalities and local government officials, public utility companies and others as may be directed by the Engineer.

(G) In the event any lawsuit or court proceeding of any kind is brought against the County, arising out of or relating to the Contractor's activities or services performed under this Agreement, including any Memorandum of Understanding, or any subsequent stage of project development or phase of work or any project of construction undertaken employing the deliverables provided by the Contractor in performing this Agreement, including any Memorandum of Understanding, the Contractor shall have the affirmative duty to assist the County in preparing the County's defense, including, but not limited to, production of documents, trials, depositions, or court testimony. Any assistance given to the County by the Contractor will be compensated at an amount or rate negotiated between the County and the Contractor as will be identified in a separate agreement between the County and the Contractor. To the extent the assistance given to the County by the Contractor was necessary for the County to defend claims and liability due to the Contractor's negligent acts, errors, or omissions, the compensation paid by the County to the Contractor will be reimbursed to the County.

(6) NO SOLICITATION WARRANTY: The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Contractor, 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, County, 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 will have the right to terminate this Agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount

of such fee, County, percentage, brokerage fee, gifts, or contingent fee, plus costs of collection including reasonable attorney's fees.

(7) SUBCONTRACTORS:

(A) The Contractor agrees that except for those businesses and for those services listed in the appropriate Memorandum of Understanding, there shall be no transfer of technical services performed under this Agreement without the written consent of the County. Subletting, assignment, or transfer of the services or any part thereof to any other corporation, partnership, or individual is expressly prohibited. Any violation of this clause will be deemed cause for termination of this Agreement.

(B) Not Used

(C) Unless waived or modified by the County, the Contractor agrees to require, and shall provide evidence to the County, that those Subcontractors shall maintain commercial general liability, automobile liability, and worker's compensation and employer's liability insurance, for not less than the period of services under such subcontractor agreements, and in not less than the following amounts:

1. Comprehensive General Liability Insurance: The Vendor/Contractor shall maintain and keep in full force and effect during the terms of this Contract such comprehensive general liability insurance as shall protect them from claims which may arise from operations under this Contract, whether such operations be by themselves or by anyone directly or indirectly employed by them. The amounts of insurance shall be not less than \$1,000,000.00 combined single limit for any one occurrence covering both bodily injury and property damage, including accidental death.

2. Automobile Liability: \$400,000 per claim up to \$2,500,000 per occurrence;

3. Worker's Compensation Insurance: The Vendor/Contractor or his sub-contractor or contractors, shall maintain and keep in force of this Contract such worker's compensation insurance limits as required by the statutes of the State of Missouri and Employer's Liability with limits no less than \$500,000.00.

(D) The subletting of the services will in no way relieve the Contractor of its primary responsibility for the quality and performance of the services to be performed hereunder and the Contractor shall assume full liability for the services performed by its Subcontractors.

(E) Not Used.

(F) Not Used.

(G) Not Used.

(8) COMPENSATION: The following provisions apply with respect to the payment of fees to the Contractor:

(A) Labor Costs, Overhead and Profit: Payment shall be made based on the actual hours expended by personnel multiplied by the corresponding hourly rates for the appropriate employee classification indicated in the "Schedule of Hourly Labor Billing Rates", attached as Exhibit I and incorporated herein. These rates include overhead and profit. The schedule is effective for the entire time that this Agreement remains in effect but may be revised within this time period no more than once within any twelve (12) month period to reflect changes in salary and overhead costs. The effective date for the first revision to Exhibit I shall occur no sooner than twelve (12) months from the County's execution of this Agreement. All information requested in the attached Exhibit I shall be provided by the Contractor.

1. Overhead - Direct Labor: Direct labor overhead costs include additions to payroll cost for holidays, sick leave, vacation, group insurance, workers' compensation insurance, social security taxes (FICA), unemployment insurance, disability taxes, retirement benefits, and other related items. Direct labor overhead is shown on Exhibit I.

2. Overhead - General and Administrative: General and administrative overhead costs include administrative salaries (including non-productive salary of associates and employees), officer services, equipment rental and maintenance, office rent and utilities, office maintenance, office supplies, insurance, taxes, legal and audit fees, , use of electronic computer for accounting, and other related items. The percentage of direct straight time payroll to be added to salary costs is shown on Exhibit I.

(B) Changes in Hourly Rates: The hourly rates indicated in Exhibit I may be revised no more than once within any twelve (12) month period to reflect changes in salary and overhead costs. The effective date for the first revision to Exhibit I shall occur no sooner than twelve (12) months from the County's execution of this Agreement. The effective date established by the County for any subsequent revisions to Exhibit I should re-establish the beginning date for measuring the aforementioned twelve (12) month period. A new "Schedule of Hourly Labor Billing Rates" must be submitted by the Contractor and approved by the County prior to the inclusion of the revised rates in any subsequent Memorandum of Understanding. The Contractor shall submit all revisions to Exhibit I no later than forty-five (45) days prior to the desired effective date for use of the revised hourly rates. If no revisions are submitted and approved by the County, the billing rates established in the most recently approved Exhibit I will be used as the basis for all subsequent Memorandum of Understandings. Any revisions to the hourly rates included in Exhibit I and approved by the County will in no way change the hourly labor billing rates included in any previously executed Memorandums of Understanding. Any approved revisions to the hourly billing rates will only be applicable to Memorandums of

Understanding that are executed beyond the effective date of the revised Exhibit I.

(C) Individual Project Payment Ceiling: Total payment for an individual project carried out under this Agreement shall be limited to the "contract ceiling" stated in the Memorandum of Understanding covering that specific investigation. No work shall be done or costs incurred in excess of this ceiling until the County executes a supplemental Memorandum of Understanding.

(D) Payments: The Contractor may submit an invoice for services rendered to the County not more than once every month or upon completion of the services outlined in the Memorandum of Understanding. Upon receipt of the invoice, the County will, as soon as practicable, pay the Contractor for the services rendered. The County reserves the right to withhold payment, without penalty, to resolve disputes that may arise regarding the number of hours billed, the hourly rates used to develop the invoice, or the performance of services.

(E) Not Used

(9) PERIOD OF SERVICE:

(A) The services, and if more than one then each phase thereof, shall be completed in accordance with the schedule contained in the Memorandum of Understanding for each request for services. The Contractor and the County will be required to meet this schedule.

(B) The County will grant time extensions for delays due to unforeseeable causes beyond the control of and without fault or negligence of the Contractor. The Contractor shall make requests for extensions of time in writing, before that phase of work is scheduled to be completed, stating fully the events giving rise to the request and justification for the time extension requested.

(C) The Contractor and County agree that time is of the essence, and the Contractor and County will be required to meet the schedules in the appropriate Memorandum of Understanding. In the event of delays due to unforeseeable causes beyond the control of and without fault or negligence of the Contractor, either party shall make no claim for damage. An extension of time shall be the sole allowable compensation for any such delays.

(D) As used in this provision, the term "delays due to unforeseeable causes" includes the following:

1. War or acts of war, declared or undeclared;
2. Flooding, earthquake, or other major natural disaster preventing the Contractor from performing necessary services at the project site, or in the Contractor's offices, at the time such services must be performed;

3. The discovery on the project of differing site conditions, hazardous substances, or other conditions which, in the sole judgment of the Engineer, justifies a suspension of the services or necessitates modifications of the project or plans by the Contractor;

4. Court proceedings;

5. Changes in services or extra services.

(10) SUSPENSION OR TERMINATION OF AGREEMENT:

(A) The County may, without being in breach hereof, suspend or terminate the Contractor's services under this Agreement, or any services included in an active Memorandum of Understanding, for cause or for the convenience of the County, upon giving to the Contractor at least fifteen (15) days' prior written notice of the effective date thereof. The Contractor shall not accelerate performance of services during the fifteen (15) day period without the express written consent of the County.

(B) Should the Agreement be suspended or terminated for the convenience of the County, the County will pay to the Contractor its costs as set forth in paragraph (8) (A), for actual hours expended prior to such suspension or termination multiplied by the hourly rates included in the "Schedule of Hourly Billing Rates", plus reasonable hours incurred by the Contractor in suspending or terminating the services. The payment will make no other allowances for damages or anticipated fees or profits. In the event of a suspension of the services, the Contractor's compensation and schedule for performance of services hereunder shall be equitably adjusted upon resumption of performance of the services.

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

(D) The Contractor shall not be liable for any errors or omissions contained in deliverables, which are incomplete as a result of a suspension, or termination where the Contractor is deprived of the opportunity to complete the Contractor's services.

(11) OWNERSHIP OF DRAWINGS AND DOCUMENTS:

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

1. The Contractor shall have the right to their future use with written permission of the County;

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

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

A. Copyrights. County, as the contracting agency, reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Governmental purposes:

I. The copyright in any works developed under this agreement, or under a sub grant or contract under this agreement; and

II. Any rights of copyright to which County, its contractor or subcontractor purchases ownership with payments provided by this agreement.

B. Patents. Rights to inventions made under this agreement shall be determined in accordance with F.R. Part 401. The standard patent rights clause at 37 C.F.R. § 401.14, as modified below, is hereby incorporated by reference.

I. The terms "to be performed by a small business firm or domestic nonprofit organization" shall be deleted from the paragraph (g) (1) of the clause:

II. Paragraphs (g) (2) and (g) (3) of the clause shall be deleted: and

III. Paragraph (I) of the clause, entitled "communications" shall read as follows: "(I) Communications. All notifications required by this clause shall be submitted to the County Engineer.

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

Contractor - Contractor

Government and Federal Agency - County

Subcontractor - Subcontractor

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

(B) The County may incorporate any portion of the deliverables into a project other than that for which they were performed, without further compensation to the Contractor; provided however, that (1) such deliverables shall thereupon be deemed to be the work product of the County and the County shall use same at its sole risk and expense.

(12) DECISIONS UNDER THIS AGREEMENT AND DISPUTES:

(A) The Engineer will determine the acceptability of the drawings, specifications, and estimates and all other deliverables to be furnished, and will decide the questions that may arise relative to the proper performance of this Agreement. The determination of acceptable deliverables may occur following final payment, and as late as during the construction of the project which decisions shall be conclusive, binding and incontestable, if not arbitrary, capricious or the result of fraud.

(B) The Engineer will decide all questions which may arise as to the quality, quantity, and acceptability of services performed by the Contractor and as to the rate of progress of the services; all questions which may arise as to the interpretation of the plans and specifications or other deliverables; all questions as to the acceptable fulfillment of the Agreement on the part of the Contractor; the proper compensation for performance or breach of the Agreement; and all claims of any character whatsoever in connection with or growing out of the services of the Contractor, whether claims under this Agreement or otherwise. The Engineer's decisions shall be conclusive, binding and incontestable if not arbitrary, capricious or the result of fraud.

(C) If the Contractor has a claim for payment against the County which in any way arises out of the provisions of this Agreement or the performance or non-performance hereunder, written notice of such claim must be made in triplicate within sixty (60) days of the Contractor's receipt of final payment. Notwithstanding paragraph 20 of this Agreement, the notice of claim shall be personally delivered or sent by certified mail to the Department of Public Works, Jefferson County, Missouri. The notice of claim shall contain an itemized statement showing completely and fully the items and amounts forming the basis of the claim and the factual and legal basis of the claim.

(D) Any claim for payment or an item of any such claim not included in the notice of claim and itemized statement, or any such claim not filed within the time provided by this provision shall be forever waived, and shall neither constitute the basis of nor be included in any legal action, counterclaim, set-off, or arbitration against the County.

(E) The claims procedure in paragraphs 12 (C) and (D) do not apply to any claims of the County against the Contractor. Further, any claims of the County against the Contractor under this Agreement are not waived or estopped by the claims procedure in paragraphs 12 (C) and (D).

(13) SUCCESSORS AND ASSIGNS: The County and the Contractor agree that this Agreement ~~and~~ all agreements entered into under the provisions of this Agreement shall be binding upon the parties hereto and their successors and assigns.

(14) INDEMNIFICATION RESPONSIBILITY:

(A) The Contractor agrees to save harmless the County from all liability, losses, damages, and judgments for bodily injury, including death, and property damage to the extent due to the Contractor's negligent acts, errors, or omissions in the services performed or to be performed under this Agreement, including those negligent acts, errors, or omissions of the Contractor's employees, agents, and Subcontractors.

(B) The Contractor shall be responsible for the direct damages incurred by the County as result of the negligent acts, errors, or omissions of the Contractor or anyone for whom the Contractor is legally responsible, and for any losses or costs to repair or remedy any subsequent stage of project development, phase of work, or project construction as a result of such negligent acts, errors or omissions; provided, however, the Contractor shall not be liable to the County for such losses, costs, repairs and/or remedies which constitute betterment of or an addition of value to the subsequent stages of project development or the construction of the project.

(C) Neither the County's review, approval or acceptance of, or payment for, any services required under this Agreement, nor the termination of this Agreement prior to its completion, will be construed to operate as a waiver of any right under this Agreement or any cause of action arising out of the performance of this Agreement. This indemnification responsibility survives the completion of this Agreement, as well as the completion of subsequent stages of project development or the construction of the project at some later date, and remains as long as the construction contractor may file or has pending a claim or lawsuit against the County on this project arising out of the Contractor's services hereunder.

(15) INSURANCE:

(A) The Contractor shall maintain commercial general liability, automobile liability, and worker's compensation and employer's liability insurance in full force and effect to protect the Contractor from claims under Worker's Compensation Acts, claims for damages for personal injury or death, and for damages to property arising from the negligent acts, errors, or omissions of the Contractor and its employees, agents, and Subcontractors in the performance of the services covered by this Agreement, including, without limitation, risks insured against in commercial general liability policies.

(B) The Contractor shall also maintain professional liability insurance to protect the Contractor against the negligent acts, errors, or omissions of the Contractor and those for whom it is legally responsible, arising out of the performance of professional services under this Agreement.

(C) The Contractor's insurance coverages shall be for not less than the following limits of liability:

1. Comprehensive General Liability Insurance: The Vendor/Contractor shall maintain and keep in full force and effect during the terms of this Contract such comprehensive general liability insurance as shall protect them from claims which may arise from operations under this Contract, whether such operations be by themselves or by anyone directly or indirectly employed by them. The amounts of insurance shall be not less than \$1,000,000.00 combined single limit for any one occurrence covering both bodily injury and property damage, including accidental death.

2. Automobile Liability: \$400,000 per claim up to \$2,500,000 per occurrence;

3. Worker's Compensation Insurance: The Vendor/Contractor or his sub-contractor or contractors, shall maintain and keep in force of this Contract such worker's compensation insurance limits as required by the statues of the State of Missouri and Employer's Liability with limits no less than \$500,000.00.

4. Professional ("Errors and Omissions") Liability: \$1,000,000, each claim and in the annual aggregate.

(D) The Contractor shall, upon request at any time, provide the County with certificates of insurance evidencing the Contractor's commercial general or professional liability ("Errors and Omissions") policies and evidencing that they and all other required insurance is in effect, as to the services under this Agreement.

(E) Any insurance policy required as specified in paragraph No. (15) should be written by a company which is incorporated in the United States of America or is based in the United States of America. Each insurance policy must be issued by a company authorized to issue such insurance in the State of Missouri. In addition, any such insurance policy, except for Worker's Compensation, will name the County as additional insured.

(16) NONDISCRIMINATION CLAUSE: The Contractor shall comply with all the provisions of Executive Order No. 94-03, issued by the Honorable Mel Carnahan, Governor of Missouri, on the fourteenth (14th) day of January 1994, which executive order is incorporated herein by reference and is made a part of this Agreement. This Executive Order promulgates a Code of Fair Practices for the Executive Branch of Missouri Government and prohibits discrimination against recipients of services, and employees or applicants or employment of state contractors and subcontractors, on the grounds of race, color, religion, national origin, sex, age, disability, or veteran status. The Contractor shall also comply with all state and federal statutes applicable to the Contractor relating

to nondiscrimination, including, but not limited to, Chapter 213, RSMo; Title VI and Title VII of the Civil Rights Act of 1964 as amended (42 U.S.C. Sections 2000d and 2000e, *et seq.*); and with any provision of the "Americans with Disabilities Act" (42 U.S.C. Section 12101, *et seq.*).

(17) ACTIONS: No action may be brought by either party hereto concerning any matter, thing, or dispute arising out of or relating to the terms, performance, non-performance, or otherwise of this Agreement except in the Circuit Court of Jefferson County, Missouri. The parties agree that this Agreement is entered into at Hillsboro, Missouri, and substantial elements of its performance will take place or be delivered at Hillsboro, Missouri, by reason of which the Contractor consents to venue of any action against it in Jefferson County, Missouri. The Contractor shall cause this provision to be incorporated into all of its agreements with, and to be binding upon, all subcontractors of the Contractor in the performance of this Agreement.

(18) AUDIT OF RECORDS: For purpose of an audit, the Contractor shall maintain all those records relating to direct costs and expenses incurred under this Agreement, including but not limited to invoices, payrolls, bills, receipts, etc. These records must be available at all reasonable times to the County or its designees and representatives, at the Contractor's offices, at no charge, during the Agreement period and any extension thereof, and for the three (3) year period following the date of final payment made under this Agreement. If the County has notice of a potential claim against the Contractor and/or the County based on the Contractor's services under this Agreement, the Contractor, upon written request of the County, shall retain and preserve its records until the County has advised the Contractor in writing that the disputed claim is resolved.

(19) NOTICE TO THE PARTIES: All notices or communications required by this Agreement shall be made in writing, and shall be effective upon receipt by the County or the Contractor at their respective addresses of record. Letters or other documents which are prepared in 8.5 x 11 inch format may be delivered by telefax, provided that an original is received at the same address as that to which that telefax message was sent, within three (3) business days of the telefax transmission. Either party may change its address of record by written notice to the other party.

(A) Notice to the County: Notices to the County shall be addressed and delivered to the following Engineer, who is hereby designated by the County as its primary authorized Engineer for administration, interpretation, review, and enforcement of this Agreement and the services of the Contractor hereunder:

Jason Jonas, P.E.
Jefferson County Engineer
Department of Public Works
PO Box 100
Hillsboro, Missouri 63050
Telefax No.: 636-797-5565

Telephone No.: 636-797-5369
Email: JJonas@jeffcomo.org

The County reserves the right to substitute another person for the individual named at any time, and to designate one or more other Engineers to have authority to act upon its behalf generally or in limited capacities, as the County may now or hereafter deem appropriate. Such substitution or designations shall be made by the County Engineer in a written notice to the Contractor.

(B) Notice to the Contractor: Notices to Contractor shall be addressed and delivered to Contractor's representative, as follows:

Contractor Contact Name, Registrations/Certifications
Contractor Contact Title
Company Name
Company Address
Company Contact Fax Number
Company Contact Phone Number
Company Contact Email Address
Company Website

The Contractor reserves the right to substitute another person for the individual named at any time, and to designate one or more Contractor's Representatives to have authority to act upon its behalf generally or in limited capacities, as the Contractor may now or hereafter deem appropriate. Such substitutions or designations shall be made by the Contractor's president or chief executive officer in a written notice to the County.

(20) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The Contractor shall comply with all local, state, and federal laws and regulations, which govern the performance of this Agreement.

(21) CONFIDENTIALITY: The Contractor agrees that the Contractor's services under this Agreement are a confidential matter between the Contractor and the County. The Contractor shall not disclose any aspect of the Contractor's services under this Agreement to any other person, corporation, governmental entity, or news media, excepting only to such employees, subcontractors, and agents as may be necessary to allow them to perform services for the Contractor in the furtherance of this Agreement, without the prior approval of the County's Engineer; provided, however, that any confidentiality and non-disclosure requirements set out herein shall not apply to any of the Contractor's services or to any information which (1) is already in the public domain or is already in the Contractor's possession at the time the Contractor performs the services or comes into possession of the information, (2) is received from a third party without any confidentiality obligations, or (3) is required to be disclosed by governmental or judicial order. Any disclosure pursuant to a request to the County under Chapter 610, RSMo, shall not constitute a breach of this Agreement. The content and extent of any authorized disclosure shall be coordinated fully with and under the direction of the

County's Engineer, in advance.

(22) SOLE BENEFICIARY: This Agreement is made for the sole benefit of the parties hereto and nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the County and the Contractor.

(23) SEVERABILITY AND SURVIVAL:

(A) Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the County and the Contractor.

(B) All express representations, indemnifications, or limitations of liability made or given in this Agreement will survive the completion of all services by the Contractor under this Agreement or the termination of this Agreement for any reason.

(24) PAYMENT BOND: In the event a subcontractor is used for any services under this Agreement, Contractor shall provide a payment bond under Section 107.170 RSMo., Any payment bond must be acceptable to the County and must be provided prior to the performance of service. The cost for the payment bond must have been included in the fee of the Contractor under this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective proper officials.

Executed by the Contactor the 14th day of DECEMBER, 2015.

Executed by the County the _____ day of _____, 20____.

JEFFERSON COUNTY, MISSOURI

BY: Kenneth Wallace
COUNTY EXECUTIVE

Contractor Company Name

BY: HABERBERGER MECHANICAL

Title: PROJECT MANAGER

(Seal)

ATTEST:

Wes Wagner
County Clerk

Katherine E. Missey
Deputy Clerk

ATTEST:

David P. W. [Signature]
Contractor Company Name

Title: Senior Asst. Project Manager

APPROVED AS TO FORM:

[Signature]
County Counselor

I hereby certify under Section 50.660 RSMo there is either: (1) a balance of funds, otherwise unencumbered, to the credit of the appropriation to which the obligation contained herein is chargeable, and a cash balance otherwise unencumbered, in the Treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation contained herein; or (2) bonds or taxes have been authorized by vote of the people and there is a sufficient unencumbered amount of the bonds yet to be sold or of the taxes levied and yet to be collected to meet the obligation in case there is not a sufficient unencumbered cash balance in the treasury.

[Signature]
COUNTY AUDITOR

EXHIBIT 1



Performance, On Time Every Time

Hourly Billing Rates

Employee Classification	Straight Time Hourly Rate	O.T.- Time & 1/2 Hourly Rate	O.T.- Double Time Hourly Rate	Additional Charges
Service Personnel with Service Truck	\$104.00	\$135.00	\$158.00	Additional \$25.00 per day truck charge
Sheetmetal Forman	\$96.00	\$121.00	\$150.00	N/A
Sheetmetal Journeyman	\$92.00	\$116.00	\$142.00	N/A
Teamster	\$101.00	\$122.00	\$141.00	N/A

RECEIVED

JAN 15 2016

Exhibit _____

JEFFERSON COUNTY
CONTRACTOR SERVICES AGREEMENT

EXHIBIT

A4

THIS AGREEMENT is entered into by American Building Environments, LLC (hereinafter, "Contractor") and the County of Jefferson, Missouri (hereinafter, "County").

WITNESSETH:

c/b/a
American Mechanical

WHEREAS, the County has a need at various times over the 2016- 2017__ calendar year of a contractor to perform technical services in the maintenance, replacement, and repair of County building features; and

WHEREAS, the County has selected the Contractor to provide those services on an as-needed basis.

NOW, THEREFORE, in consideration of the payments to be made and the covenants set forth in this Agreement to be performed by the County, the Contractor hereby agrees that it shall faithfully perform the technical services called for by this Agreement in the manner and under the conditions described in this Agreement.

(1) DEFINITIONS: The following definitions apply to these terms, as used in this Agreement:

(A) Not Used

(B) "COUNTY" means the County of Jefferson, Missouri, an agency of state government, which acts by and through its County Council, County Engineer and others in the Public Works Department.

(C) "CONTRACTOR" means the business providing technical services to the County as a party to this Agreement.

(D) "CONTRACTOR'S REPRESENTATIVE" means the person or persons designated in writing by the Contractor to represent that business in negotiations, communications, and various other contract administration dealings with the County's staff.

(E) "DELIVERABLES" means all data, studies, documents, designs, drawings, plans, specifications, or any other products prepared in performance of this Agreement, to be delivered to and become the property of the County pursuant to the terms and conditions set out in paragraph (11) of this Agreement.

(F) Not Used

(G) "ENGINEER" means the County Engineer or any other authorized

representative of the County. Where the specific term "County Engineer" is used, it shall mean the County Engineer exclusively.

(H) Not Used

(I) "INTELLECTUAL PROPERTY" consists of copyrights, patents, and any other form of intellectual property rights covering any data bases, software, inventions, training manuals, systems design or other proprietary information in any form or medium.

(J) "SUBCONTRACTOR" means any individual, partnership, corporation, or joint venture to which the Contractor, with the written consent of the Engineer, subcontracts any part of the technical services under this Agreement but shall not include those entities, which supply only materials or supplies to the Contractor.

(K) "SUSPEND" the services means that the services as contemplated herein shall be stopped on a temporary basis. This stoppage will continue until the County either decides to terminate the project or reactivate the services under the conditions then existing.

(L) "TERMINATE", in the context of this Agreement, means the cessation or quitting of this Agreement based upon the action or inaction of the Contractor, or the unilateral cancellation of this Agreement by the County.

(M) "USDOT" means the United States Department of Transportation, headquartered at Washington, D.C., which acts through its authorized representatives.

(N) "SERVICES" includes all technical, professional engineering and related services and the furnishing of all equipment, supplies, and materials in conjunction with such services as are required to achieve the broad purposes and general objectives of this Agreement.

(2) SCOPE OF SERVICES:

(A) The services covered by this Agreement shall include furnishing the professional, technical, and other personnel and the equipment, material and all other things necessary for the maintenance, replacement, and repair of County building features, from time to time as needed and requested by the County.

(B) Scope and Cost of Requested Services: Each individual request for services shall be covered by a Memorandum of Understanding submitted by the Contractor and endorsed by the County Engineer. The memorandum will define the scope of work to be performed by the Contractor, the time limitations within which the work is to be performed, the specific deliverables required, an estimate of the hours required to complete the services multiplied by the appropriate hourly rates and state the maximum price for those services. Only those hourly rates included in the version of

Exhibit I currently in effect shall be used as the basis of preparing any Memorandum of Understanding. The maximum price or ceiling for any Memorandum of Understanding shall not be exceeded prior to the execution of a supplemental Memorandum of Understanding. The Memorandum of Understanding will also indicate where the Contractor is to forward all deliverables.

(3) TERM OF AGREEMENT: The Contractor's services are to commence upon full execution of this Agreement or January 1, 2016, whichever is later, and terminate on December 31, 2016__; unless otherwise terminated prior to this date pursuant to the provisions of paragraph (10) of this Agreement. Upon concurrence of all parties, this Agreement may be renewed for an additional one (1) year term. Said renewal term is to begin on January 1, 20__17__.

(4) INFORMATION AND SERVICES PROVIDED BY THE COUNTY:

(A) At no cost to the Contractor and in a timely manner, the County will provide available information of record, which is pertinent to the requested services project to the Contractor upon request. In addition, the County will provide the Contractor with the specific items or services set forth in the Memorandum of Understanding for the particular services requested by the County. The Contractor shall be entitled to rely upon the accuracy and completeness of such information, and the Contractor may use such information in performing services under this Agreement.

(B) The Contractor shall review the information provided by the County concerning the requested services and will as expeditiously as possible advise the Engineer of any of that information which the Contractor believes is inaccurate or inadequate or would otherwise have an effect on any of its activities under this Agreement. In such case, the County shall provide the Contractor with new or verified data or information upon which the Contractor is entitled to rely. The Contractor shall not be liable for any errors, omissions, or deficiencies in the Contractor's services resulting from inaccurate or inadequate information furnished by the County which inaccuracies or inadequacies are not detected by the Contractor unless the errors should have been detected by the Contractor through reasonable diligence.

(5) RESPONSIBILITY OF THE CONTRACTOR:

(A) The Contractor shall comply with applicable state and federal laws and regulations governing these services, as published and in effect on the date of this Agreement or any subsequent Memorandums of Understanding. The Contractor shall provide the services in accordance with the criteria and requirements established and adopted by the County; and if none are expressly established in this Agreement, published manuals and policies of the County which shall be furnished by the County upon request; and, absent the foregoing, manuals and policies established by National Standard in the Industry, as published and in effect on the date of this Agreement or any subsequent Memorandums of Understanding.

(B) Without limiting the foregoing, the performance of these services will be in accordance with the specific criteria and project procedures as indicated by the information set out in the appropriate Memorandum of Understanding.

(C) The Contractor shall be responsible for the technical quality, technical accuracy, and the coordination of all deliverables or any other services furnished under this Agreement. At any time during any subsequent stage of project development or phase of work performed by others based upon any deliverables or other services provided by the Contractor, the Contractor shall prepare any additional deliverables or other services needed to correct any negligent acts, errors, or omissions of the Contractor or anyone for whom it is legally responsible in failing to comply with the foregoing standard. The services necessary to correct such negligent acts, errors, or omissions shall be performed without additional compensation, even though the Contractor may have received final payment. The Contractor shall provide such services as expeditiously as is consistent with professional performance. Acceptance of the services will not relieve the Contractor of the responsibility to correct such negligent acts, errors, or omissions.

(D) Not Used.

(E) Not Used.

(F) The Contractor shall cooperate fully with the County and its Engineers, contractors, and contractors on adjacent projects and with municipalities and local government officials, public utility companies and others as may be directed by the Engineer.

(G) In the event any lawsuit or court proceeding of any kind is brought against the County, arising out of or relating to the Contractor's activities or services performed under this Agreement, including any Memorandum of Understanding, or any subsequent stage of project development or phase of work or any project of construction undertaken employing the deliverables provided by the Contractor in performing this Agreement, including any Memorandum of Understanding, the Contractor shall have the affirmative duty to assist the County in preparing the County's defense, including, but not limited to, production of documents, trials, depositions, or court testimony. Any assistance given to the County by the Contractor will be compensated at an amount or rate negotiated between the County and the Contractor as will be identified in a separate agreement between the County and the Contractor. To the extent the assistance given to the County by the Contractor was necessary for the County to defend claims and liability due to the Contractor's negligent acts, errors, or omissions, the compensation paid by the County to the Contractor will be reimbursed to the County.

(6) NO SOLICITATION WARRANTY: The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Contractor, 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, County, 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 will have the right to terminate this Agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount

of such fee, County, percentage, brokerage fee, gifts, or contingent fee, plus costs of collection including reasonable attorney's fees.

(7) SUBCONTRACTORS:

(A) The Contractor agrees that except for those businesses and for those services listed in the appropriate Memorandum of Understanding, there shall be no transfer of technical services performed under this Agreement without the written consent of the County. Subletting, assignment, or transfer of the services or any part thereof to any other corporation, partnership, or individual is expressly prohibited. Any violation of this clause will be deemed cause for termination of this Agreement.

(B) Not Used

(C) Unless waived or modified by the County, the Contractor agrees to require, and shall provide evidence to the County, that those Subcontractors shall maintain commercial general liability, automobile liability, and worker's compensation and employer's liability insurance, for not less than the period of services under such subcontractor agreements, and in not less than the following amounts:

1. Comprehensive General Liability Insurance: The Vendor/Contractor shall maintain and keep in full force and effect during the terms of this Contract such comprehensive general liability insurance as shall protect them from claims which may arise from operations under this Contract, whether such operations be by themselves or by anyone directly or indirectly employed by them. The amounts of insurance shall be not less than \$1,000,000.00 combined single limit for any one occurrence covering both bodily injury and property damage, including accidental death.

2. Automobile Liability: \$400,000 per claim up to \$2,500,000 per occurrence;

3. Worker's Compensation Insurance: The Vendor/Contractor or his sub-contractor or contractors, shall maintain and keep in force of this Contract such worker's compensation insurance limits as required by the statutes of the State of Missouri and Employer's Liability with limits no less than \$500,000.00.

(D) The subletting of the services will in no way relieve the Contractor of its primary responsibility for the quality and performance of the services to be performed hereunder and the Contractor shall assume full liability for the services performed by its Subcontractors.

(E) Not Used.

(F) Not Used.

(G) Not Used.

(8) COMPENSATION: The following provisions apply with respect to the payment of fees to the Contractor:

(A) Labor Costs, Overhead and Profit: Payment shall be made based on the actual hours expended by personnel multiplied by the corresponding hourly rates for the appropriate employee classification indicated in the "Schedule of Hourly Labor Billing Rates", attached as Exhibit I and incorporated herein. These rates include overhead and profit. The schedule is effective for the entire time that this Agreement remains in effect but may be revised within this time period no more than once within any twelve (12) month period to reflect changes in salary and overhead costs. The effective date for the first revision to Exhibit I shall occur no sooner than twelve (12) months from the County's execution of this Agreement. All information requested in the attached Exhibit I shall be provided by the Contractor.

1. Overhead - Direct Labor: Direct labor overhead costs include additions to payroll cost for holidays, sick leave, vacation, group insurance, workers' compensation insurance, social security taxes (FICA), unemployment insurance, disability taxes, retirement benefits, and other related items. Direct labor overhead is shown on Exhibit I.

2. Overhead - General and Administrative: General and administrative overhead costs include administrative salaries (including non-productive salary of associates and employees), officer services, equipment rental and maintenance, office rent and utilities, office maintenance, office supplies, insurance, taxes, legal and audit fees, , use of electronic computer for accounting, and other related items. The percentage of direct straight time payroll to be added to salary costs is shown on Exhibit I.

(B) Changes in Hourly Rates: The hourly rates indicated in Exhibit I may be revised no more than once within any twelve (12) month period to reflect changes in salary and overhead costs. The effective date for the first revision to Exhibit I shall occur no sooner than twelve (12) months from the County's execution of this Agreement. The effective date established by the County for any subsequent revisions to Exhibit I should re-establish the beginning date for measuring the aforementioned twelve (12) month period. A new "Schedule of Hourly Labor Billing Rates" must be submitted by the Contractor and approved by the County prior to the inclusion of the revised rates in any subsequent Memorandum of Understanding. The Contractor shall submit all revisions to Exhibit I no later than forty-five (45) days prior to the desired effective date for use of the revised hourly rates. If no revisions are submitted and approved by the County, the billing rates established in the most recently approved Exhibit I will be used as the basis for all subsequent Memorandum of Understandings. Any revisions to the hourly rates included in Exhibit I and approved by the County will in no way change the hourly labor billing rates included in any previously executed Memorandums of Understanding. Any approved revisions to the hourly billing rates will only be applicable to Memorandums of

Understanding that are executed beyond the effective date of the revised Exhibit I.

(C) Individual Project Payment Ceiling: Total payment for an individual project carried out under this Agreement shall be limited to the "contract ceiling" stated in the Memorandum of Understanding covering that specific investigation. No work shall be done or costs incurred in excess of this ceiling until the County executes a supplemental Memorandum of Understanding.

(D) Payments: The Contractor may submit an invoice for services rendered to the County not more than once every month or upon completion of the services outlined in the Memorandum of Understanding. Upon receipt of the invoice, the County will, as soon as practicable, pay the Contractor for the services rendered. The County reserves the right to withhold payment, without penalty, to resolve disputes that may arise regarding the number of hours billed, the hourly rates used to develop the invoice, or the performance of services.

(E) Not Used

(9) PERIOD OF SERVICE:

(A) The services, and if more than one then each phase thereof, shall be completed in accordance with the schedule contained in the Memorandum of Understanding for each request for services. The Contractor and the County will be required to meet this schedule.

(B) The County will grant time extensions for delays due to unforeseeable causes beyond the control of and without fault or negligence of the Contractor. The Contractor shall make requests for extensions of time in writing, before that phase of work is scheduled to be completed, stating fully the events giving rise to the request and justification for the time extension requested.

(C) The Contractor and County agree that time is of the essence, and the Contractor and County will be required to meet the schedules in the appropriate Memorandum of Understanding. In the event of delays due to unforeseeable causes beyond the control of and without fault or negligence of the Contractor, either party shall make no claim for damage. An extension of time shall be the sole allowable compensation for any such delays.

(D) As used in this provision, the term "delays due to unforeseeable causes" includes the following:

1. War or acts of war, declared or undeclared;
2. Flooding, earthquake, or other major natural disaster preventing the Contractor from performing necessary services at the project site, or in the Contractor's offices, at the time such services must be performed;

3. The discovery on the project of differing site conditions, hazardous substances, or other conditions which, in the sole judgment of the Engineer, justifies a suspension of the services or necessitates modifications of the project or plans by the Contractor;

4. Court proceedings;

5. Changes in services or extra services.

(10) SUSPENSION OR TERMINATION OF AGREEMENT:

(A) The County may, without being in breach hereof, suspend or terminate the Contractor's services under this Agreement, or any services included in an active Memorandum of Understanding, for cause or for the convenience of the County, upon giving to the Contractor at least fifteen (15) days' prior written notice of the effective date thereof. The Contractor shall not accelerate performance of services during the fifteen (15) day period without the express written consent of the County.

(B) Should the Agreement be suspended or terminated for the convenience of the County, the County will pay to the Contractor its costs as set forth in paragraph (8) (A), for actual hours expended prior to such suspension or termination multiplied by the hourly rates included in the "Schedule of Hourly Billing Rates", plus reasonable hours incurred by the Contractor in suspending or terminating the services. The payment will make no other allowances for damages or anticipated fees or profits. In the event of a suspension of the services, the Contractor's compensation and schedule for performance of services hereunder shall be equitably adjusted upon resumption of performance of the services.

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

(D) The Contractor shall not be liable for any errors or omissions contained in deliverables, which are incomplete as a result of a suspension, or termination where the Contractor is deprived of the opportunity to complete the Contractor's services.

(11) OWNERSHIP OF DRAWINGS AND DOCUMENTS:

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

1. The Contractor shall have the right to their future use with written permission of the County;

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

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

A. Copyrights. County, as the contracting agency, reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Governmental purposes:

I. The copyright in any works developed under this agreement, or under a sub grant or contract under this agreement; and

II. Any rights of copyright to which County, its contractor or subcontractor purchases ownership with payments provided by this agreement.

B. Patents. Rights to inventions made under this agreement shall be determined in accordance with 37 C.F.R. Part 401. The standard patent rights clause at 37 C.F.R. § 401.14, as modified below, is hereby incorporated by reference.

I. The terms "to be performed by a small business firm or domestic nonprofit organization" shall be deleted from paragraph (g) (1) of the clause;

II. Paragraphs (g) (2) and (g) (3) of the clause shall be deleted; and

III. Paragraph (l) of the clause, entitled "communications" shall read as follows: "(l) Communications. All notifications required by this clause shall be submitted to the County Engineer.

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

Contractor - Contractor

Government and Federal Agency - County

Subcontractor - Subcontractor

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

(B) The County may incorporate any portion of the deliverables into a project other than that for which they were performed, without further compensation to the Contractor; provided however, that (1) such deliverables shall thereupon be deemed to be the work product of the County and the County shall use same at its sole risk and expense.

(12) DECISIONS UNDER THIS AGREEMENT AND DISPUTES:

(A) The Engineer will determine the acceptability of the drawings, specifications, and estimates and all other deliverables to be furnished, and will decide the questions that may arise relative to the proper performance of this Agreement. The determination of acceptable deliverables may occur following final payment, and as late as during the construction of the project which decisions shall be conclusive, binding and incontestable, if not arbitrary, capricious or the result of fraud.

(B) The Engineer will decide all questions which may arise as to the quality, quantity, and acceptability of services performed by the Contractor and as to the rate of progress of the services; all questions which may arise as to the interpretation of the plans and specifications or other deliverables; all questions as to the acceptable fulfillment of the Agreement on the part of the Contractor; the proper compensation for performance or breach of the Agreement; and all claims of any character whatsoever in connection with or growing out of the services of the Contractor, whether claims under this Agreement or otherwise. The Engineer's decisions shall be conclusive, binding and incontestable if not arbitrary, capricious or the result of fraud.

(C) If the Contractor has a claim for payment against the County which in any way arises out of the provisions of this Agreement or the performance or non-performance hereunder, written notice of such claim must be made in triplicate within sixty (60) days of the Contractor's receipt of final payment. Notwithstanding paragraph 20 of this Agreement, the notice of claim shall be personally delivered or sent by certified mail to the Department of Public Works, Jefferson County, Missouri. The notice of claim shall contain an itemized statement showing completely and fully the items and amounts forming the basis of the claim and the factual and legal basis of the claim.

(D) Any claim for payment or an item of any such claim not included in the notice of claim and itemized statement, or any such claim not filed within the time provided by this provision shall be forever waived, and shall neither constitute the basis of nor be included in any legal action, counterclaim, set-off, or arbitration against the County.

(E) The claims procedure in paragraphs 12 (C) and (D) do not apply to any claims of the County against the Contractor. Further, any claims of the County against the Contractor under this Agreement are not waived or estopped by the claims procedure in paragraphs 12 (C) and (D).

(13) SUCCESSORS AND ASSIGNS: The County and the Contractor agree that this Agreement and all agreements entered into under the provisions of this Agreement shall be binding upon the parties hereto and their successors and assigns.

(14) INDEMNIFICATION RESPONSIBILITY:

(A) The Contractor agrees to save harmless the County from all liability, losses, damages, and judgments for bodily injury, including death, and property damage to the extent due to the Contractor's negligent acts, errors, or omissions in the services performed or to be performed under this Agreement, including those negligent acts, errors, or omissions of the Contractor's employees, agents, and Subcontractors.

(B) The Contractor shall be responsible for the direct damages incurred by the County as result of the negligent acts, errors, or omissions of the Contractor or anyone for whom the Contractor is legally responsible, and for any losses or costs to repair or remedy any subsequent stage of project development, phase of work, or project construction as a result of such negligent acts, errors or omissions; provided, however, the Contractor shall not be liable to the County for such losses, costs, repairs and/or remedies which constitute betterment of or an addition of value to the subsequent stages of project development or the construction of the project.

(C) Neither the County's review, approval or acceptance of, or payment for, any services required under this Agreement, nor the termination of this Agreement prior to its completion, will be construed to operate as a waiver of any right under this Agreement or any cause of action arising out of the performance of this Agreement. This indemnification responsibility survives the completion of this Agreement, as well as the completion of subsequent stages of project development or the construction of the project at some later date, and remains as long as the construction contractor may file or has pending a claim or lawsuit against the County on this project arising out of the Contractor's services hereunder.

(15) INSURANCE:

(A) The Contractor shall maintain commercial general liability, automobile liability, and worker's compensation and employer's liability insurance in full force and effect to protect the Contractor from claims under Worker's Compensation Acts, claims for damages for personal injury or death, and for damages to property arising from the negligent acts, errors, or omissions of the Contractor and its employees, agents, and Subcontractors in the performance of the services covered by this Agreement, including, without limitation, risks insured against in commercial general liability policies.

(B) The Contractor shall also maintain professional liability insurance to protect the Contractor against the negligent acts, errors, or omissions of the Contractor and those for whom it is legally responsible, arising out of the performance of professional services under this Agreement.

(C) The Contractor's insurance coverages shall be for not less than the following limits of liability:

1. Comprehensive General Liability Insurance: The Vendor/Contractor shall maintain and keep in full force and effect during the terms of this Contract such comprehensive general liability insurance as shall protect them from claims which may arise from operations under this Contract, whether such operations be by themselves or by anyone directly or indirectly employed by them. The amounts of insurance shall be not less than \$1,000,000.00 combined single limit for any one occurrence covering both bodily injury and property damage, including accidental death.

2. Automobile Liability: \$400,000 per claim up to \$2,500,000 per occurrence;

3. Worker's Compensation Insurance: The Vendor/Contractor or his sub-contractor or contractors, shall maintain and keep in force of this Contract such worker's compensation insurance limits as required by the statutes of the State of Missouri and Employer's Liability with limits no less than \$500,000.00.

4. Professional ("Errors and Omissions") Liability: \$1,000,000, each claim and in the annual aggregate.

(D) The Contractor shall, upon request at any time, provide the County with certificates of insurance evidencing the Contractor's commercial general or professional liability ("Errors and Omissions") policies and evidencing that they and all other required insurance is in effect, as to the services under this Agreement.

(E) Any insurance policy required as specified in paragraph No. (15) should be written by a company which is incorporated in the United States of America or is based in the United States of America. Each insurance policy must be issued by a company authorized to issue such insurance in the State of Missouri. In addition, any such insurance policy, except for Worker's Compensation, will name the County as additional insured.

(16) NONDISCRIMINATION CLAUSE: The Contractor shall comply with all the provisions of Executive Order No. 94-03, issued by the Honorable Mel Carnahan, Governor of Missouri, on the fourteenth (14th) day of January 1994, which executive order is incorporated herein by reference and is made a part of this Agreement. This Executive Order promulgates a Code of Fair Practices for the Executive Branch of Missouri Government and prohibits discrimination against recipients of services, and employees or applicants or employment of state contractors and subcontractors, on the grounds of race, color, religion, national origin, sex, age, disability, or veteran status. The Contractor shall also comply with all state and federal statutes applicable to the Contractor relating

to nondiscrimination, including, but not limited to, Chapter 213, RSMo; Title VI and Title VII of the Civil Rights Act of 1964 as amended (42 U.S.C. Sections 2000d and 2000e, *et seq.*); and with any provision of the "Americans with Disabilities Act" (42 U.S.C. Section 12101, *et seq.*).

(17) ACTIONS: No action may be brought by either party hereto concerning any matter, thing, or dispute arising out of or relating to the terms, performance, non-performance, or otherwise of this Agreement except in the Circuit Court of Jefferson County, Missouri. The parties agree that this Agreement is entered into at Hillsboro, Missouri, and substantial elements of its performance will take place or be delivered at Hillsboro, Missouri, by reason of which the Contractor consents to venue of any action against it in Jefferson County, Missouri. The Contractor shall cause this provision to be incorporated into all of its agreements with, and to be binding upon, all subcontractors of the Contractor in the performance of this Agreement.

(18) AUDIT OF RECORDS: For purpose of an audit, the Contractor shall maintain all those records relating to direct costs and expenses incurred under this Agreement, including but not limited to invoices, payrolls, bills, receipts, etc. These records must be available at all reasonable times to the County or its designees and representatives, at the Contractor's offices, at no charge, during the Agreement period and any extension thereof, and for the three (3) year period following the date of final payment made under this Agreement. If the County has notice of a potential claim against the Contractor and/or the County based on the Contractor's services under this Agreement, the Contractor, upon written request of the County, shall retain and preserve its records until the County has advised the Contractor in writing that the disputed claim is resolved.

(19) NOTICE TO THE PARTIES: All notices or communications required by this Agreement shall be made in writing, and shall be effective upon receipt by the County or the Contractor at their respective addresses of record. Letters or other documents which are prepared in 8.5 x 11 inch format may be delivered by telefax, provided that an original is received at the same address as that to which that telefax message was sent, within three (3) business days of the telefax transmission. Either party may change its address of record by written notice to the other party.

(A) Notice to the County: Notices to the County shall be addressed and delivered to the following Engineer, who is hereby designated by the County as its primary authorized Engineer for administration, interpretation, review, and enforcement of this Agreement and the services of the Contractor hereunder:

Jason Jonas, P.E.
Jefferson County Engineer
Department of Public Works
PO Box 100
Hillsboro, Missouri 63050
Telefax No.: 636-797-5565

Telephone No.: 636-797-5369
Email: JJonas@jeffcomo.org

The County reserves the right to substitute another person for the individual named at any time, and to designate one or more other Engineers to have authority to act upon its behalf generally or in limited capacities, as the County may now or hereafter deem appropriate. Such substitution or designations shall be made by the County Engineer in a written notice to the Contractor.

(B) Notice to the Contractor: Notices to Contractor shall be addressed and delivered to Contractor's representative, as follows:

Contractor Contact Name, Registrations/Certifications
Contractor Contact Title
Company Name
Company Address
Company Contact Fax Number
Company Contact Phone Number
Company Contact Email Address
Company Website

The Contractor reserves the right to substitute another person for the individual named at any time, and to designate one or more Contractor's Representatives to have authority to act upon its behalf generally or in limited capacities, as the Contractor may now or hereafter deem appropriate. Such substitutions or designations shall be made by the Contractor's president or chief executive officer in a written notice to the County.

(20) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The Contractor shall comply with all local, state, and federal laws and regulations, which govern the performance of this Agreement.

(21) CONFIDENTIALITY: The Contractor agrees that the Contractor's services under this Agreement are a confidential matter between the Contractor and the County. The Contractor shall not disclose any aspect of the Contractor's services under this Agreement to any other person, corporation, governmental entity, or news media, excepting only to such employees, subcontractors, and agents as may be necessary to allow them to perform services for the Contractor in the furtherance of this Agreement, without the prior approval of the County's Engineer; provided, however, that any confidentiality and non-disclosure requirements set out herein shall not apply to any of the Contractor's services or to any information which (1) is already in the public domain or is already in the Contractor's possession at the time the Contractor performs the services or comes into possession of the information, (2) is received from a third party without any confidentiality obligations, or (3) is required to be disclosed by governmental or judicial order. Any disclosure pursuant to a request to the County under Chapter 610, RSMo, shall not constitute a breach of this Agreement. The content and extent of any authorized disclosure shall be coordinated fully with and under the direction of the

County's Engineer, in advance.

(22) SOLE BENEFICIARY: This Agreement is made for the sole benefit of the parties hereto and nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the County and the Contractor.

(23) SEVERABILITY AND SURVIVAL:

(A) Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the County and the Contractor.

(B) All express representations, indemnifications, or limitations of liability made or given in this Agreement will survive the completion of all services by the Contractor under this Agreement or the termination of this Agreement for any reason.

(24) PAYMENT BOND: In the event a subcontractor is used for any services under this Agreement, Contractor shall provide a payment bond under Section 107.170 RSMo., Any payment bond must be acceptable to the County and must be provided prior to the performance of service. The cost for the payment bond must have been included in the fee of the Contractor under this Agreement.

Exhibit ____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective proper officials.

Executed by the Contactor the 7 day of JANUARY, 20 16.

Executed by the County the _____ day of _____, 20____.

JEFFERSON COUNTY, MISSOURI

Contractor Company Name

BY: Kenneth Wallace
COUNTY EXECUTIVE

BY: S. E. Gibbs
Title: PRESIDENT

(Seal)

ATTEST:

Wes Wagner
County Clerk

Katherine E. Missey
Deputy Clerk

ATTEST:

Supanne Gibbs / American Mechanical
Contractor Company Name

Title: Office Manager

APPROVED AS TO FORM:

[Signature]
County Counselor

I hereby certify under Section 50.660 RSMo there is either: (1) a balance of funds, otherwise unencumbered, to the credit of the appropriation to which the obligation contained herein is chargeable, and a cash balance otherwise unencumbered, in the Treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation contained herein; or (2) bonds or taxes have been authorized by vote of the people and there is a sufficient unencumbered amount of the bonds yet to be sold or of the taxes levied and yet to be collected to meet the obligation in case there is not a sufficient unencumbered cash balance in the treasury.

[Signature]
COUNTY AUDITOR

EXHIBIT 1
CONTRACTOR COMPANY NAME
HOURLY BILLING RATES

[illegible]

* During Normal Business Hours.

[illegible]



16 East 2nd Street
Eureka, Missouri 63025
636.938.9900
636.938.9920
www.americanmechanicalstl.com

American Mechanical Rate Sheet 2016

Service Technician	\$100/hour	Regular Hours (0700 – 330 M-F)
Service Technician	\$150/hour	Saturday and Overtime Hours
Service Technician	\$200/hour	Sunday and Holiday Hours
Sr. Engineer	\$175/hour	
Engineer	\$125/hour	
Engineer in Training	\$100/hour	
Drafting Technician	\$80/hour	
Administrative	\$60/hour	
Service Truck Charge	N/A	
Trip Charge	N/A, unless client cancels or client no-show	
Torch Charge	\$30 - \$100 covers cost of consumables	
Refrigerant Recovery Charge	\$25 - \$100 covers cost of consumables	
Vacuum Pump Charge	\$25 - \$100 covers cost of consumables	
Refrigerant	charged per pound utilized	

**JEFFERSON COUNTY
CONTRACTOR SERVICES AGREEMENT**

THIS AGREEMENT is entered into by Sheet Metal Contractors Inc.
(hereinafter, "Contractor") and the County of Jefferson, Missouri (hereinafter, "County").

WITNESSETH:

WHEREAS, the County has a need at various times over the 2016- 2017__ calendar year of a contractor to perform technical services in the maintenance, replacement, and repair of County building features; and

WHEREAS, the County has selected the Contractor to provide those services on an as-needed basis.

NOW, THEREFORE, in consideration of the payments to be made and the covenants set forth in this Agreement to be performed by the County, the Contractor hereby agrees that it shall faithfully perform the technical services called for by this Agreement in the manner and under the conditions described in this Agreement.

(1) DEFINITIONS: The following definitions apply to these terms, as used in this Agreement:

(A) Not Used

(B) "COUNTY" means the County of Jefferson, Missouri, an agency of state government, which acts by and through its County Council, County Engineer and others in the Public Works Department.

(C) "CONTRACTOR" means the business providing technical services to the County as a party to this Agreement.

(D) "CONTRACTOR'S REPRESENTATIVE" means the person or persons designated in writing by the Contractor to represent that business in negotiations, communications, and various other contract administration dealings with the County's staff .

(E) "DELIVERABLES" means all data, studies, documents, designs, drawings, plans, specifications, or any other products prepared in performance of this Agreement, to be delivered to and become the property of the County pursuant to the terms and conditions set out in paragraph (11) of this Agreement.

(F) Not Used

(G) "ENGINEER" means the County Engineer or any other authorized

representative of the County. Where the specific term "County Engineer" is used, it shall mean the County Engineer exclusively.

(H) Not Used

(I) "INTELLECTUAL PROPERTY" consists of copyrights, patents, and any other form of intellectual property rights covering any data bases, software, inventions, training manuals, systems design or other proprietary information in any form or medium.

(J) "SUBCONTRACTOR" means any individual, partnership, corporation, or joint venture to which the Contractor, with the written consent of the Engineer, subcontracts any part of the technical services under this Agreement but shall not include those entities, which supply only materials or supplies to the Contractor.

(K) "SUSPEND" the services means that the services as contemplated herein shall be stopped on a temporary basis. This stoppage will continue until the County either decides to terminate the project or reactivate the services under the conditions then existing.

(L) "TERMINATE", in the context of this Agreement, means the cessation or quitting of this Agreement based upon the action or inaction of the Contractor, or the unilateral cancellation of this Agreement by the County.

(M) "USDOT" means the United States Department of Transportation, headquartered at Washington, D.C., which acts through its authorized representatives.

(N) "SERVICES" includes all technical, professional engineering and related services and the furnishing of all equipment, supplies, and materials in conjunction with such services as are required to achieve the broad purposes and general objectives of this Agreement.

(2) SCOPE OF SERVICES:

(A) The services covered by this Agreement shall include furnishing the professional, technical, and other personnel and the equipment, material and all other things necessary for the maintenance, replacement, and repair of County building features, from time to time as needed and requested by the County.

(B) Scope and Cost of Requested Services: Each individual request for services shall be covered by a Memorandum of Understanding submitted by the Contractor and endorsed by the County Engineer. The memorandum will define the scope of work to be performed by the Contractor, the time limitations within which the work is to be performed, the specific deliverables required, an estimate of the hours required to complete the services multiplied by the appropriate hourly rates and state the maximum price for those services. Only those hourly rates included in the version of

Exhibit I currently in effect shall be used as the basis of preparing any Memorandum of Understanding. The maximum price or ceiling for any Memorandum of Understanding shall not be exceeded prior to the execution of a supplemental Memorandum of Understanding. The Memorandum of Understanding will also indicate where the Contractor is to forward all deliverables.

(3) TERM OF AGREEMENT: The Contractor's services are to commence upon full execution of this Agreement or January 1, 2016, whichever is later, and terminate on December 31, 2016__; unless otherwise terminated prior to this date pursuant to the provisions of paragraph (10) of this Agreement. Upon concurrence of all parties, this Agreement may be renewed for an additional one (1) year term. Said renewal term is to begin on January 1, 20__17__.

(4) INFORMATION AND SERVICES PROVIDED BY THE COUNTY:

(A) At no cost to the Contractor and in a timely manner, the County will provide available information of record, which is pertinent to the requested services project to the Contractor upon request. In addition, the County will provide the Contractor with the specific items or services set forth in the Memorandum of Understanding for the particular services requested by the County. The Contractor shall be entitled to rely upon the accuracy and completeness of such information, and the Contractor may use such information in performing services under this Agreement.

(B) The Contractor shall review the information provided by the County concerning the requested services and will as expeditiously as possible advise the Engineer of any of that information which the Contractor believes is inaccurate or inadequate or would otherwise have an effect on any of its activities under this Agreement. In such case, the County shall provide the Contractor with new or verified data or information upon which the Contractor is entitled to rely. The Contractor shall not be liable for any errors, omissions, or deficiencies in the Contractor's services resulting from inaccurate or inadequate information furnished by the County which inaccuracies or inadequacies are not detected by the Contractor unless the errors should have been detected by the Contractor through reasonable diligence.

(5) RESPONSIBILITY OF THE CONTRACTOR:

(A) The Contractor shall comply with applicable state and federal laws and regulations governing these services, as published and in effect on the date of this Agreement or any subsequent Memorandums of Understanding. The Contractor shall provide the services in accordance with the criteria and requirements established and adopted by the County; and if none are expressly established in this Agreement, published manuals and policies of the County which shall be furnished by the County upon request; and, absent the foregoing, manuals and policies established by National Standard in the Industry, as published and in effect on the date of this Agreement or any subsequent Memorandums of Understanding.

(B) Without limiting the foregoing, the performance of these services will be in accordance with the specific criteria and project procedures as indicated by the information set out in the appropriate Memorandum of Understanding.

(C) The Contractor shall be responsible for the technical quality, technical accuracy, and the coordination of all deliverables or any other services furnished under this Agreement. At any time during any subsequent stage of project development or phase of work performed by others based upon any deliverables or other services provided by the Contractor, the Contractor shall prepare any additional deliverables or other services needed to correct any negligent acts, errors, or omissions of the Contractor or anyone for whom it is legally responsible in failing to comply with the foregoing standard. The services necessary to correct such negligent acts, errors, or omissions shall be performed without additional compensation, even though the Contractor may have received final payment. The Contractor shall provide such services as expeditiously as is consistent with professional performance. Acceptance of the services will not relieve the Contractor of the responsibility to correct such negligent acts, errors, or omissions.

(D) Not Used.

(E) Not Used.

(F) The Contractor shall cooperate fully with the County and its Engineers, contractors, and contractors on adjacent projects and with municipalities and local government officials, public utility companies and others as may be directed by the Engineer.

(G) In the event any lawsuit or court proceeding of any kind is brought against the County, arising out of or relating to the Contractor's activities or services performed under this Agreement, including any Memorandum of Understanding, or any subsequent stage of project development or phase of work or any project of construction undertaken employing the deliverables provided by the Contractor in performing this Agreement, including any Memorandum of Understanding, the Contractor shall have the affirmative duty to assist the County in preparing the County's defense, including, but not limited to, production of documents, trials, depositions, or court testimony. Any assistance given to the County by the Contractor will be compensated at an amount or rate negotiated between the County and the Contractor as will be identified in a separate agreement between the County and the Contractor. To the extent the assistance given to the County by the Contractor was necessary for the County to defend claims and liability due to the Contractor's negligent acts, errors, or omissions, the compensation paid by the County to the Contractor will be reimbursed to the County.

(6) NO SOLICITATION WARRANTY: The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Contractor, 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, County, 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 will have the right to terminate this Agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount

of such fee, County, percentage, brokerage fee, gifts, or contingent fee, plus costs of collection including reasonable attorney's fees.

(7) SUBCONTRACTORS:

(A) The Contractor agrees that except for those businesses and for those services listed in the appropriate Memorandum of Understanding, there shall be no transfer of technical services performed under this Agreement without the written consent of the County. Subletting, assignment, or transfer of the services or any part thereof to any other corporation, partnership, or individual is expressly prohibited. Any violation of this clause will be deemed cause for termination of this Agreement.

(B) Not Used

(C) Unless waived or modified by the County, the Contractor agrees to require, and shall provide evidence to the County, that those Subcontractors shall maintain commercial general liability, automobile liability, and worker's compensation and employer's liability insurance, for not less than the period of services under such subcontractor agreements, and in not less than the following amounts:

1. Comprehensive General Liability Insurance: The Vendor/Contractor shall maintain and keep in full force and effect during the terms of this Contract such comprehensive general liability insurance as shall protect them from claims which may arise from operations under this Contract, whether such operations be by themselves or by anyone directly or indirectly employed by them. The amounts of insurance shall be not less than \$1,000,000.00 combined single limit for any one occurrence covering both bodily injury and property damage, including accidental death.

2. Automobile Liability: \$400,000 per claim up to \$2,500,000 per occurrence;

3. Worker's Compensation Insurance: The Vendor/Contractor or his sub-contractor or contractors, shall maintain and keep in force of this Contract such worker's compensation insurance limits as required by the statutes of the State of Missouri and Employer's Liability with limits no less than \$500,000.00.

(D) The subletting of the services will in no way relieve the Contractor of its primary responsibility for the quality and performance of the services to be performed hereunder and the Contractor shall assume full liability for the services performed by its Subcontractors.

(E) Not Used.

(F) Not Used.

(G) Not Used.

(8) COMPENSATION: The following provisions apply with respect to the payment of fees to the Contractor:

(A) Labor Costs, Overhead and Profit: Payment shall be made based on the actual hours expended by personnel multiplied by the corresponding hourly rates for the appropriate employee classification indicated in the "Schedule of Hourly Labor Billing Rates", attached as Exhibit I and incorporated herein. These rates include overhead and profit. The schedule is effective for the entire time that this Agreement remains in effect but may be revised within this time period no more than once within any twelve (12) month period to reflect changes in salary and overhead costs. The effective date for the first revision to Exhibit I shall occur no sooner than twelve (12) months from the County's execution of this Agreement. All information requested in the attached Exhibit I shall be provided by the Contractor.

1. Overhead - Direct Labor: Direct labor overhead costs include additions to payroll cost for holidays, sick leave, vacation, group insurance, workers' compensation insurance, social security taxes (FICA), unemployment insurance, disability taxes, retirement benefits, and other related items. Direct labor overhead is shown on Exhibit I.

2. Overhead - General and Administrative: General and administrative overhead costs include administrative salaries (including non-productive salary of associates and employees), officer services, equipment rental and maintenance, office rent and utilities, office maintenance, office supplies, insurance, taxes, legal and audit fees, , use of electronic computer for accounting, and other related items. The percentage of direct straight time payroll to be added to salary costs is shown on Exhibit I.

(B) Changes in Hourly Rates: The hourly rates indicated in Exhibit I may be revised no more than once within any twelve (12) month period to reflect changes in salary and overhead costs. The effective date for the first revision to Exhibit I shall occur no sooner than twelve (12) months from the County's execution of this Agreement. The effective date established by the County for any subsequent revisions to Exhibit I should re-establish the beginning date for measuring the aforementioned twelve (12) month period. A new "Schedule of Hourly Labor Billing Rates" must be submitted by the Contractor and approved by the County prior to the inclusion of the revised rates in any subsequent Memorandum of Understanding. The Contractor shall submit all revisions to Exhibit I no later than forty-five (45) days prior to the desired effective date for use of the revised hourly rates. If no revisions are submitted and approved by the County, the billing rates established in the most recently approved Exhibit I will be used as the basis for all subsequent Memorandum of Understandings. Any revisions to the hourly rates included in Exhibit I and approved by the County will in no way change the hourly labor billing rates included in any previously executed Memorandums of Understanding. Any approved revisions to the hourly billing rates will only be applicable to Memorandums of

Understanding that are executed beyond the effective date of the revised Exhibit I.

(C) Individual Project Payment Ceiling: Total payment for an individual project carried out under this Agreement shall be limited to the "contract ceiling" stated in the Memorandum of Understanding covering that specific investigation. No work shall be done or costs incurred in excess of this ceiling until the County executes a supplemental Memorandum of Understanding.

(D) Payments: The Contractor may submit an invoice for services rendered to the County not more than once every month or upon completion of the services outlined in the Memorandum of Understanding. Upon receipt of the invoice, the County will, as soon as practicable, pay the Contractor for the services rendered. The County reserves the right to withhold payment, without penalty, to resolve disputes that may arise regarding the number of hours billed, the hourly rates used to develop the invoice, or the performance of services.

(E) Not Used

(9) PERIOD OF SERVICE:

(A) The services, and if more than one then each phase thereof, shall be completed in accordance with the schedule contained in the Memorandum of Understanding for each request for services. The Contractor and the County will be required to meet this schedule.

(B) The County will grant time extensions for delays due to unforeseeable causes beyond the control of and without fault or negligence of the Contractor. The Contractor shall make requests for extensions of time in writing, before that phase of work is scheduled to be completed, stating fully the events giving rise to the request and justification for the time extension requested.

(C) The Contractor and County agree that time is of the essence, and the Contractor and County will be required to meet the schedules in the appropriate Memorandum of Understanding. In the event of delays due to unforeseeable causes beyond the control of and without fault or negligence of the Contractor, either party shall make no claim for damage. An extension of time shall be the sole allowable compensation for any such delays.

(D) As used in this provision, the term "delays due to unforeseeable causes" includes the following:

1. War or acts of war, declared or undeclared;
2. Flooding, earthquake, or other major natural disaster preventing the Contractor from performing necessary services at the project site, or in the Contractor's offices, at the time such services must be performed;

3. The discovery on the project of differing site conditions, hazardous substances, or other conditions which, in the sole judgment of the Engineer, justifies a suspension of the services or necessitates modifications of the project or plans by the Contractor;

4. Court proceedings;

5. Changes in services or extra services.

(10) SUSPENSION OR TERMINATION OF AGREEMENT:

(A) The County may, without being in breach hereof, suspend or terminate the Contractor's services under this Agreement, or any services included in an active Memorandum of Understanding, for cause or for the convenience of the County, upon giving to the Contractor at least fifteen (15) days' prior written notice of the effective date thereof. The Contractor shall not accelerate performance of services during the fifteen (15) day period without the express written consent of the County.

(B) Should the Agreement be suspended or terminated for the convenience of the County, the County will pay to the Contractor its costs as set forth in paragraph (8) (A), for actual hours expended prior to such suspension or termination multiplied by the hourly rates included in the "Schedule of Hourly Billing Rates", plus reasonable hours incurred by the Contractor in suspending or terminating the services. The payment will make no other allowances for damages or anticipated fees or profits. In the event of a suspension of the services, the Contractor's compensation and schedule for performance of services hereunder shall be equitably adjusted upon resumption of performance of the services.

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

(D) The Contractor shall not be liable for any errors or omissions contained in deliverables, which are incomplete as a result of a suspension, or termination where the Contractor is deprived of the opportunity to complete the Contractor's services.

(11) OWNERSHIP OF DRAWINGS AND DOCUMENTS:

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

1. The Contractor shall have the right to their future use with written permission of the County;

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

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

A. Copyrights. County, as the contracting agency, reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Governmental purposes:

I. The copyright in any works developed under this agreement, or under a sub grant or contract under this agreement; and

II. Any rights of copyright to which County, its contractor or subcontractor purchases ownership with payments provided by this agreement.

B. Patents. Rights to inventions made under this agreement shall be determined in accordance with 37 C.F.R. Part 401. The standard patent rights clause at 37 C.F.R. § 401.14, as modified below, is hereby incorporated by reference.

I. The terms "to be performed by a small business firm or domestic nonprofit organization" shall be deleted from paragraph (g) (1) of the clause;

II. Paragraphs (g) (2) and (g) (3) of the clause shall be deleted; and

III. Paragraph (I) of the clause, entitled "communications" shall read as follows: "(I) Communications. All notifications required by this clause shall be submitted to the County Engineer.

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

Contractor - Contractor

Government and Federal Agency - County

Subcontractor - Subcontractor

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

(B) The County may incorporate any portion of the deliverables into a project other than that for which they were performed, without further compensation to the Contractor; provided however, that (1) such deliverables shall thereupon be deemed to be the work product of the County and the County shall use same at its sole risk and expense.

(12) DECISIONS UNDER THIS AGREEMENT AND DISPUTES:

(A) The Engineer will determine the acceptability of the drawings, specifications, and estimates and all other deliverables to be furnished, and will decide the questions that may arise relative to the proper performance of this Agreement. The determination of acceptable deliverables may occur following final payment, and as late as during the construction of the project which decisions shall be conclusive, binding and incontestable, if not arbitrary, capricious or the result of fraud.

(B) The Engineer will decide all questions which may arise as to the quality, quantity, and acceptability of services performed by the Contractor and as to the rate of progress of the services; all questions which may arise as to the interpretation of the plans and specifications or other deliverables; all questions as to the acceptable fulfillment of the Agreement on the part of the Contractor; the proper compensation for performance or breach of the Agreement; and all claims of any character whatsoever in connection with or growing out of the services of the Contractor, whether claims under this Agreement or otherwise. The Engineer's decisions shall be conclusive, binding and incontestable if not arbitrary, capricious or the result of fraud.

(C) If the Contractor has a claim for payment against the County which in any way arises out of the provisions of this Agreement or the performance or non-performance hereunder, written notice of such claim must be made in triplicate within sixty (60) days of the Contractor's receipt of final payment. Notwithstanding paragraph 20 of this Agreement, the notice of claim shall be personally delivered or sent by certified mail to the Department of Public Works, Jefferson County, Missouri. The notice of claim shall contain an itemized statement showing completely and fully the items and amounts forming the basis of the claim and the factual and legal basis of the claim.

(D) Any claim for payment or an item of any such claim not included in the notice of claim and itemized statement, or any such claim not filed within the time provided by this provision shall be forever waived, and shall neither constitute the basis of nor be included in any legal action, counterclaim, set-off, or arbitration against the County.

(E) The claims procedure in paragraphs 12 (C) and (D) do not apply to any claims of the County against the Contractor. Further, any claims of the County against the Contractor under this Agreement are not waived or estopped by the claims procedure in paragraphs 12 (C) and (D).

(13) SUCCESSORS AND ASSIGNS: The County and the Contractor agree that this Agreement and all agreements entered into under the provisions of this Agreement shall be binding upon the parties hereto and their successors and assigns.

(14) INDEMNIFICATION RESPONSIBILITY:

(A) The Contractor agrees to save harmless the County from all liability, losses, damages, and judgments for bodily injury, including death, and property damage to the extent due to the Contractor's negligent acts, errors, or omissions in the services performed or to be performed under this Agreement, including those negligent acts, errors, or omissions of the Contractor's employees, agents, and Subcontractors.

(B) The Contractor shall be responsible for the direct damages incurred by the County as result of the negligent acts, errors, or omissions of the Contractor or anyone for whom the Contractor is legally responsible, and for any losses or costs to repair or remedy any subsequent stage of project development, phase of work, or project construction as a result of such negligent acts, errors or omissions; provided, however, the Contractor shall not be liable to the County for such losses, costs, repairs and/or remedies which constitute betterment of or an addition of value to the subsequent stages of project development or the construction of the project.

(C) Neither the County's review, approval or acceptance of, or payment for, any services required under this Agreement, nor the termination of this Agreement prior to its completion, will be construed to operate as a waiver of any right under this Agreement or any cause of action arising out of the performance of this Agreement. This indemnification responsibility survives the completion of this Agreement, as well as the completion of subsequent stages of project development or the construction of the project at some later date, and remains as long as the construction contractor may file or has pending a claim or lawsuit against the County on this project arising out of the Contractor's services hereunder.

(15) INSURANCE:

(A) The Contractor shall maintain commercial general liability, automobile liability, and worker's compensation and employer's liability insurance in full force and effect to protect the Contractor from claims under Worker's Compensation Acts, claims for damages for personal injury or death, and for damages to property arising from the negligent acts, errors, or omissions of the Contractor and its employees, agents, and Subcontractors in the performance of the services covered by this Agreement, including, without limitation, risks insured against in commercial general liability policies.

(B) The Contractor shall also maintain professional liability insurance to protect the Contractor against the negligent acts, errors, or omissions of the Contractor and those for whom it is legally responsible, arising out of the performance of professional services under this Agreement.

(C) The Contractor's insurance coverages shall be for not less than the following limits of liability:

1. Comprehensive General Liability Insurance: The Vendor/Contractor shall maintain and keep in full force and effect during the terms of this Contract such comprehensive general liability insurance as shall protect them from claims which may arise from operations under this Contract, whether such operations be by themselves or by anyone directly or indirectly employed by them. The amounts of insurance shall be not less than \$1,000,000.00 combined single limit for any one occurrence covering both bodily injury and property damage, including accidental death.

2. Automobile Liability: \$400,000 per claim up to \$2,500,000 per occurrence;

3. Worker's Compensation Insurance: The Vendor/Contractor or his sub-contractor or contractors, shall maintain and keep in force of this Contract such worker's compensation insurance limits as required by the statutes of the State of Missouri and Employer's Liability with limits no less than \$500,000.00.

4. Professional ("Errors and Omissions") Liability: \$1,000,000, each claim and in the annual aggregate.

(D) The Contractor shall, upon request at any time, provide the County with certificates of insurance evidencing the Contractor's commercial general or professional liability ("Errors and Omissions") policies and evidencing that they and all other required insurance is in effect, as to the services under this Agreement.

(E) Any insurance policy required as specified in paragraph No. (15) should be written by a company which is incorporated in the United States of America or is based in the United States of America. Each insurance policy must be issued by a company authorized to issue such insurance in the State of Missouri. In addition, any such insurance policy, except for Worker's Compensation, will name the County as additional insured.

(16) NONDISCRIMINATION CLAUSE: The Contractor shall comply with all the provisions of Executive Order No. 94-03, issued by the Honorable Mel Carnahan, Governor of Missouri, on the fourteenth (14th) day of January 1994, which executive order is incorporated herein by reference and is made a part of this Agreement. This Executive Order promulgates a Code of Fair Practices for the Executive Branch of Missouri Government and prohibits discrimination against recipients of services, and employees or applicants or employment of state contractors and subcontractors, on the grounds of race, color, religion, national origin, sex, age, disability, or veteran status. The Contractor shall also comply with all state and federal statutes applicable to the Contractor relating

to nondiscrimination, including, but not limited to, Chapter 213, RSMo; Title VI and Title VII of the Civil Rights Act of 1964 as amended (42 U.S.C. Sections 2000d and 2000e, *et seq.*); and with any provision of the "Americans with Disabilities Act" (42 U.S.C. Section 12101, *et seq.*).

(17) ACTIONS: No action may be brought by either party hereto concerning any matter, thing, or dispute arising out of or relating to the terms, performance, non-performance, or otherwise of this Agreement except in the Circuit Court of Jefferson County, Missouri. The parties agree that this Agreement is entered into at Hillsboro, Missouri, and substantial elements of its performance will take place or be delivered at Hillsboro, Missouri, by reason of which the Contractor consents to venue of any action against it in Jefferson County, Missouri. The Contractor shall cause this provision to be incorporated into all of its agreements with, and to be binding upon, all subcontractors of the Contractor in the performance of this Agreement.

(18) AUDIT OF RECORDS: For purpose of an audit, the Contractor shall maintain all those records relating to direct costs and expenses incurred under this Agreement, including but not limited to invoices, payrolls, bills, receipts, etc. These records must be available at all reasonable times to the County or its designees and representatives, at the Contractor's offices, at no charge, during the Agreement period and any extension thereof, and for the three (3) year period following the date of final payment made under this Agreement. If the County has notice of a potential claim against the Contractor and/or the County based on the Contractor's services under this Agreement, the Contractor, upon written request of the County, shall retain and preserve its records until the County has advised the Contractor in writing that the disputed claim is resolved.

(19) NOTICE TO THE PARTIES: All notices or communications required by this Agreement shall be made in writing, and shall be effective upon receipt by the County or the Contractor at their respective addresses of record. Letters or other documents which are prepared in 8.5 x 11 inch format may be delivered by telefax, provided that an original is received at the same address as that to which that telefax message was sent, within three (3) business days of the telefax transmission. Either party may change its address of record by written notice to the other party.

(A) Notice to the County: Notices to the County shall be addressed and delivered to the following Engineer, who is hereby designated by the County as its primary authorized Engineer for administration, interpretation, review, and enforcement of this Agreement and the services of the Contractor hereunder:

Jason Jonas, P.E.
Jefferson County Engineer
Department of Public Works
PO Box 100
Hillsboro, Missouri 63050
Telefax No.: 636-797-5565

Telephone No.: 636-797-5369
 Email: JJonas@jeffcomo.org

The County reserves the right to substitute another person for the individual named at any time, and to designate one or more other Engineers to have authority to act upon its behalf generally or in limited capacities, as the County may now or hereafter deem appropriate. Such substitution or designations shall be made by the County Engineer in a written notice to the Contractor.

(B) Notice to the Contractor: Notices to Contractor shall be addressed and delivered to Contractor's representative, as follows:

Contractor Contact Name, Registrations/Certifications *Mike Krampf SR*
 Contractor Contact Title *Design & Retrofit Service VP*
 Company Name *SMC*
 Company Address *1661 Veterans Drive, Desoto MO 63020*
 Company Contact Fax Number *636-337-6074*
 Company Contact Phone Number *636-337-2150*
 Company Contact Email Address *mike.krampf@smc-hvac.com*
 Company Website *www.smc-hvac.com*

The Contractor reserves the right to substitute another person for the individual named at any time, and to designate one or more Contractor's Representatives to have authority to act upon its behalf generally or in limited capacities, as the Contractor may now or hereafter deem appropriate. Such substitutions or designations shall be made by the Contractor's president or chief executive officer in a written notice to the County.

(20) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The Contractor shall comply with all local, state, and federal laws and regulations, which govern the performance of this Agreement.

(21) CONFIDENTIALITY: The Contractor agrees that the Contractor's services under this Agreement are a confidential matter between the Contractor and the County. The Contractor shall not disclose any aspect of the Contractor's services under this Agreement to any other person, corporation, governmental entity, or news media, excepting only to such employees, subcontractors, and agents as may be necessary to allow them to perform services for the Contractor in the furtherance of this Agreement, without the prior approval of the County's Engineer; provided, however, that any confidentiality and non-disclosure requirements set out herein shall not apply to any of the Contractor's services or to any information which (1) is already in the public domain or is already in the Contractor's possession at the time the Contractor performs the services or comes into possession of the information, (2) is received from a third party without any confidentiality obligations, or (3) is required to be disclosed by governmental or judicial order. Any disclosure pursuant to a request to the County under Chapter 610, RSMo, shall not constitute a breach of this Agreement. The content and extent of any authorized disclosure shall be coordinated fully with and under the direction of the

County's Engineer, in advance.

(22) SOLE BENEFICIARY: This Agreement is made for the sole benefit of the parties hereto and nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the County and the Contractor.

(23) SEVERABILITY AND SURVIVAL:

(A) Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the County and the Contractor.

(B) All express representations, indemnifications, or limitations of liability made or given in this Agreement will survive the completion of all services by the Contractor under this Agreement or the termination of this Agreement for any reason.

(24) PAYMENT BOND: In the event a subcontractor is used for any services under this Agreement, Contractor shall provide a payment bond under Section 107.170 RSMo., Any payment bond must be acceptable to the County and must be provided prior to the performance of service. The cost for the payment bond must have been included in the fee of the Contractor under this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective proper officials.

Executed by the Contactor the 31st day of December, 2015.

Executed by the County the _____ day of _____, 20____.

JEFFERSON COUNTY, MISSOURI

BY: Kenneth Waller
COUNTY EXECUTIVE

Contractor Company Name SMC

BY: Kimberly M. Brown
Title: Vice President

(Seal)

ATTEST:

Wes Wagner
County Clerk

Katharine E. Missey
Deputy Clerk

ATTEST:

Contractor Company Name

Title: _____

APPROVED AS TO FORM:

[Signature]
County Counselor

I hereby certify under Section 50.660 RSMo there is either: (1) a balance of funds, otherwise unencumbered, to the credit of the appropriation to which the obligation contained herein is chargeable, and a cash balance otherwise unencumbered, in the Treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation contained herein; or (2) bonds or taxes have been authorized by vote of the people and there is a sufficient unencumbered amount of the bonds yet to be sold or of the taxes levied and yet to be collected to meet the obligation in case there is not a sufficient unencumbered cash balance in the treasury.

[Signature]
COUNTY AUDITOR

EXHIBIT 1
CONTRACTOR COMPANY NAME
HOURLY BILLING RATES

[illegible]

* During Normal Business Hours.

[illegible]

RECEIVED

JAN 1 2016

Exhibit

EXHIBIT

A6

**JEFFERSON COUNTY
CONTRACTOR SERVICES AGREEMENT**

THIS AGREEMENT is entered into by Townsend Htg. & Ctg. Inc.
(hereinafter, "Contractor") and the County of Jefferson, Missouri (hereinafter, "County").

WITNESSETH:

WHEREAS, the County has a need at various times over the 2016- 2017__
calendar year of a contractor to perform technical services in the maintenance,
replacement, and repair of County building features; and

WHEREAS, the County has selected the Contractor to provide those services on
an as-needed basis.

NOW, THEREFORE, in consideration of the payments to be made and the
covenants set forth in this Agreement to be performed by the County, the Contractor
hereby agrees that it shall faithfully perform the technical services called for by this
Agreement in the manner and under the conditions described in this Agreement.

(1) DEFINITIONS: The following definitions apply to these terms, as used in
this Agreement:

(A) Not Used

(B) "COUNTY" means the County of Jefferson, Missouri, an agency of
state government, which acts by and through its County Council, County Engineer and
others in the Public Works Department.

(C) "CONTRACTOR" means the business providing technical services
to the County as a party to this Agreement.

(D) "CONTRACTOR'S REPRESENTATIVE" means the person or
persons designated in writing by the Contractor to represent that business in negotiations,
communications, and various other contract administration dealings with the County's
staff .

(E) "DELIVERABLES" means all data, studies, documents, designs,
drawings, plans, specifications, or any other products prepared in performance of this
Agreement, to be delivered to and become the property of the County pursuant to the
terms and conditions set out in paragraph (11) of this Agreement.

(F) Not Used

(G) "ENGINEER" means the County Engineer or any other authorized

representative of the County. Where the specific term "County Engineer" is used, it shall mean the County Engineer exclusively.

(H) Not Used

(I) "INTELLECTUAL PROPERTY" consists of copyrights, patents, and any other form of intellectual property rights covering any data bases, software, inventions, training manuals, systems design or other proprietary information in any form or medium.

(J) "SUBCONTRACTOR" means any individual, partnership, corporation, or joint venture to which the Contractor, with the written consent of the Engineer, subcontracts any part of the technical services under this Agreement but shall not include those entities, which supply only materials or supplies to the Contractor.

(K) "SUSPEND" the services means that the services as contemplated herein shall be stopped on a temporary basis. This stoppage will continue until the County either decides to terminate the project or reactivate the services under the conditions then existing.

(L) "TERMINATE", in the context of this Agreement, means the cessation or quitting of this Agreement based upon the action or inaction of the Contractor, or the unilateral cancellation of this Agreement by the County.

(M) "USDOT" means the United States Department of Transportation, headquartered at Washington, D.C., which acts through its authorized representatives.

(N) "SERVICES" includes all technical, professional engineering and related services and the furnishing of all equipment, supplies, and materials in conjunction with such services as are required to achieve the broad purposes and general objectives of this Agreement.

(2) SCOPE OF SERVICES:

(A) The services covered by this Agreement shall include furnishing the professional, technical, and other personnel and the equipment, material and all other things necessary for the maintenance, replacement, and repair of County building features, from time to time as needed and requested by the County.

(B) Scope and Cost of Requested Services: Each individual request for services shall be covered by a Memorandum of Understanding submitted by the Contractor and endorsed by the County Engineer. The memorandum will define the scope of work to be performed by the Contractor, the time limitations within which the work is to be performed, the specific deliverables required, an estimate of the hours required to complete the services multiplied by the appropriate hourly rates and state the maximum price for those services. Only those hourly rates included in the version of

Exhibit I currently in effect shall be used as the basis of preparing any Memorandum of Understanding. The maximum price or ceiling for any Memorandum of Understanding shall not be exceeded prior to the execution of a supplemental Memorandum of Understanding. The Memorandum of Understanding will also indicate where the Contractor is to forward all deliverables.

(3) TERM OF AGREEMENT: The Contractor's services are to commence upon full execution of this Agreement or January 1, 2016, whichever is later, and terminate on December 31, 2016; unless otherwise terminated prior to this date pursuant to the provisions of paragraph (10) of this Agreement. Upon concurrence of all parties, this Agreement may be renewed for an additional one (1) year term. Said renewal term is to begin on January 1, 2017.

(4) INFORMATION AND SERVICES PROVIDED BY THE COUNTY:

(A) At no cost to the Contractor and in a timely manner, the County will provide available information of record, which is pertinent to the requested services project to the Contractor upon request. In addition, the County will provide the Contractor with the specific items or services set forth in the Memorandum of Understanding for the particular services requested by the County. The Contractor shall be entitled to rely upon the accuracy and completeness of such information, and the Contractor may use such information in performing services under this Agreement.

(B) The Contractor shall review the information provided by the County concerning the requested services and will as expeditiously as possible advise the Engineer of any of that information which the Contractor believes is inaccurate or inadequate or would otherwise have an effect on any of its activities under this Agreement. In such case, the County shall provide the Contractor with new or verified data or information upon which the Contractor is entitled to rely. The Contractor shall not be liable for any errors, omissions, or deficiencies in the Contractor's services resulting from inaccurate or inadequate information furnished by the County which inaccuracies or inadequacies are not detected by the Contractor unless the errors should have been detected by the Contractor through reasonable diligence.

(5) RESPONSIBILITY OF THE CONTRACTOR:

(A) The Contractor shall comply with applicable state and federal laws and regulations governing these services, as published and in effect on the date of this Agreement or any subsequent Memorandums of Understanding. The Contractor shall provide the services in accordance with the criteria and requirements established and adopted by the County; and if none are expressly established in this Agreement, published manuals and policies of the County which shall be furnished by the County upon request; and, absent the foregoing, manuals and policies established by National Standard in the Industry, as published and in effect on the date of this Agreement or any subsequent Memorandums of Understanding.

(B) Without limiting the foregoing, the performance of these services will be in accordance with the specific criteria and project procedures as indicated by the information set out in the appropriate Memorandum of Understanding.

(C) The Contractor shall be responsible for the technical quality, technical accuracy, and the coordination of all deliverables or any other services furnished under this Agreement. At any time during any subsequent stage of project development or phase of work performed by others based upon any deliverables or other services provided by the Contractor, the Contractor shall prepare any additional deliverables or other services needed to correct any negligent acts, errors, or omissions of the Contractor or anyone for whom it is legally responsible in failing to comply with the foregoing standard. The services necessary to correct such negligent acts, errors, or omissions shall be performed without additional compensation, even though the Contractor may have received final payment. The Contractor shall provide such services as expeditiously as is consistent with professional performance. Acceptance of the services will not relieve the Contractor of the responsibility to correct such negligent acts, errors, or omissions.

(D) Not Used.

(E) Not Used.

(F) The Contractor shall cooperate fully with the County and its Engineers, contractors, and contractors on adjacent projects and with municipalities and local government officials, public utility companies and others as may be directed by the Engineer.

(G) In the event any lawsuit or court proceeding of any kind is brought against the County, arising out of or relating to the Contractor's activities or services performed under this Agreement, including any Memorandum of Understanding, or any subsequent stage of project development or phase of work or any project of construction undertaken employing the deliverables provided by the Contractor in performing this Agreement, including any Memorandum of Understanding, the Contractor shall have the affirmative duty to assist the County in preparing the County's defense, including, but not limited to, production of documents, trials, depositions, or court testimony. Any assistance given to the County by the Contractor will be compensated at an amount or rate negotiated between the County and the Contractor as will be identified in a separate agreement between the County and the Contractor. To the extent the assistance given to the County by the Contractor was necessary for the County to defend claims and liability due to the Contractor's negligent acts, errors, or omissions, the compensation paid by the County to the Contractor will be reimbursed to the County.

(6) NO SOLICITATION WARRANTY: The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Contractor, 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, County, 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 will have the right to terminate this Agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount

of such fee, County, percentage, brokerage fee, gifts, or contingent fee, plus costs of collection including reasonable attorney's fees.

(7) SUBCONTRACTORS:

(A) The Contractor agrees that except for those businesses and for those services listed in the appropriate Memorandum of Understanding, there shall be no transfer of technical services performed under this Agreement without the written consent of the County. Subletting, assignment, or transfer of the services or any part thereof to any other corporation, partnership, or individual is expressly prohibited. Any violation of this clause will be deemed cause for termination of this Agreement.

(B) Not Used

(C) Unless waived or modified by the County, the Contractor agrees to require, and shall provide evidence to the County, that those Subcontractors shall maintain commercial general liability, automobile liability, and worker's compensation and employer's liability insurance, for not less than the period of services under such subcontractor agreements, and in not less than the following amounts:

1. Comprehensive General Liability Insurance: The Vendor/Contractor shall maintain and keep in full force and effect during the terms of this Contract such comprehensive general liability insurance as shall protect them from claims which may arise from operations under this Contract, whether such operations be by themselves or by anyone directly or indirectly employed by them. The amounts of insurance shall be not less than \$1,000,000.00 combined single limit for any one occurrence covering both bodily injury and property damage, including accidental death.

2. Automobile Liability: \$400,000 per claim up to \$2,500,000 per occurrence;

3. Worker's Compensation Insurance: The Vendor/Contractor or his sub-contractor or contractors, shall maintain and keep in force of this Contract such worker's compensation insurance limits as required by the statutes of the State of Missouri and Employer's Liability with limits no less than \$500,000.00.

(D) The subletting of the services will in no way relieve the Contractor of its primary responsibility for the quality and performance of the services to be performed hereunder and the Contractor shall assume full liability for the services performed by its Subcontractors.

(E) Not Used.

(F) Not Used.

(G) Not Used.

(8) COMPENSATION: The following provisions apply with respect to the payment of fees to the Contractor:

(A) Labor Costs, Overhead and Profit: Payment shall be made based on the actual hours expended by personnel multiplied by the corresponding hourly rates for the appropriate employee classification indicated in the "Schedule of Hourly Labor Billing Rates", attached as Exhibit I and incorporated herein. These rates include overhead and profit. The schedule is effective for the entire time that this Agreement remains in effect but may be revised within this time period no more than once within any twelve (12) month period to reflect changes in salary and overhead costs. The effective date for the first revision to Exhibit I shall occur no sooner than twelve (12) months from the County's execution of this Agreement. All information requested in the attached Exhibit I shall be provided by the Contractor.

1. Overhead - Direct Labor: Direct labor overhead costs include additions to payroll cost for holidays, sick leave, vacation, group insurance, workers' compensation insurance, social security taxes (FICA), unemployment insurance, disability taxes, retirement benefits, and other related items. Direct labor overhead is shown on Exhibit I.

2. Overhead - General and Administrative: General and administrative overhead costs include administrative salaries (including non-productive salary of associates and employees), officer services, equipment rental and maintenance, office rent and utilities, office maintenance, office supplies, insurance, taxes, legal and audit fees, use of electronic computer for accounting, and other related items. The percentage of direct straight time payroll to be added to salary costs is shown on Exhibit I.

(B) Changes in Hourly Rates: The hourly rates indicated in Exhibit I may be revised no more than once within any twelve (12) month period to reflect changes in salary and overhead costs. The effective date for the first revision to Exhibit I shall occur no sooner than twelve (12) months from the County's execution of this Agreement. The effective date established by the County for any subsequent revisions to Exhibit I should re-establish the beginning date for measuring the aforementioned twelve (12) month period. A new "Schedule of Hourly Labor Billing Rates" must be submitted by the Contractor and approved by the County prior to the inclusion of the revised rates in any subsequent Memorandum of Understanding. The Contractor shall submit all revisions to Exhibit I no later than forty-five (45) days prior to the desired effective date for use of the revised hourly rates. If no revisions are submitted and approved by the County, the billing rates established in the most recently approved Exhibit I will be used as the basis for all subsequent Memorandum of Understandings. Any revisions to the hourly rates included in Exhibit I and approved by the County will in no way change the hourly labor billing rates included in any previously executed Memorandums of Understanding. Any approved revisions to the hourly billing rates will only be applicable to Memorandums of

Understanding that are executed beyond the effective date of the revised Exhibit I.

(C) Individual Project Payment Ceiling: Total payment for an individual project carried out under this Agreement shall be limited to the "contract ceiling" stated in the Memorandum of Understanding covering that specific investigation. No work shall be done or costs incurred in excess of this ceiling until the County executes a supplemental Memorandum of Understanding.

(D) Payments: The Contractor may submit an invoice for services rendered to the County not more than once every month or upon completion of the services outlined in the Memorandum of Understanding. Upon receipt of the invoice, the County will, as soon as practicable, pay the Contractor for the services rendered. The County reserves the right to withhold payment, without penalty, to resolve disputes that may arise regarding the number of hours billed, the hourly rates used to develop the invoice, or the performance of services.

(E) Not Used

(9) PERIOD OF SERVICE:

(A) The services, and if more than one then each phase thereof, shall be completed in accordance with the schedule contained in the Memorandum of Understanding for each request for services. The Contractor and the County will be required to meet this schedule.

(B) The County will grant time extensions for delays due to unforeseeable causes beyond the control of and without fault or negligence of the Contractor. The Contractor shall make requests for extensions of time in writing, before that phase of work is scheduled to be completed, stating fully the events giving rise to the request and justification for the time extension requested.

(C) The Contractor and County agree that time is of the essence, and the Contractor and County will be required to meet the schedules in the appropriate Memorandum of Understanding. In the event of delays due to unforeseeable causes beyond the control of and without fault or negligence of the Contractor, either party shall make no claim for damage. An extension of time shall be the sole allowable compensation for any such delays.

(D) As used in this provision, the term "delays due to unforeseeable causes" includes the following:

1. War or acts of war, declared or undeclared;
2. Flooding, earthquake, or other major natural disaster preventing the Contractor from performing necessary services at the project site, or in the Contractor's offices, at the time such services must be performed;

3. The discovery on the project of differing site conditions, hazardous substances, or other conditions which, in the sole judgment of the Engineer, justifies a suspension of the services or necessitates modifications of the project or plans by the Contractor;

4. Court proceedings;

5. Changes in services or extra services.

(10) SUSPENSION OR TERMINATION OF AGREEMENT:

(A) The County may, without being in breach hereof, suspend or terminate the Contractor's services under this Agreement, or any services included in an active Memorandum of Understanding, for cause or for the convenience of the County, upon giving to the Contractor at least fifteen (15) days' prior written notice of the effective date thereof. The Contractor shall not accelerate performance of services during the fifteen (15) day period without the express written consent of the County.

(B) Should the Agreement be suspended or terminated for the convenience of the County, the County will pay to the Contractor its costs as set forth in paragraph (8) (A), for actual hours expended prior to such suspension or termination multiplied by the hourly rates included in the "Schedule of Hourly Billing Rates", plus reasonable hours incurred by the Contractor in suspending or terminating the services. The payment will make no other allowances for damages or anticipated fees or profits. In the event of a suspension of the services, the Contractor's compensation and schedule for performance of services hereunder shall be equitably adjusted upon resumption of performance of the services.

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

(D) The Contractor shall not be liable for any errors or omissions contained in deliverables, which are incomplete as a result of a suspension, or termination where the Contractor is deprived of the opportunity to complete the Contractor's services.

(11) OWNERSHIP OF DRAWINGS AND DOCUMENTS:

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

1. The Contractor shall have the right to their future use with written permission of the County;

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

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

A. Copyrights. County, as the contracting agency, reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Governmental purposes:

I. The copyright in any works developed under this agreement, or under a sub grant or contract under this agreement; and

II. Any rights of copyright to which County, its contractor or subcontractor purchases ownership with payments provided by this agreement.

B. Patents. Rights to inventions made under this agreement shall be determined in accordance with 37 C.F.R. Part 401. The standard patent rights clause at 37 C.F.R. § 401.14, as modified below, is hereby incorporated by reference.

I. The terms "to be performed by a small business firm or domestic nonprofit organization" shall be deleted from paragraph (g) (1) of the clause;

II. Paragraphs (g) (2) and (g) (3) of the clause shall be deleted; and

III. Paragraph (I) of the clause, entitled "communications" shall read as follows: "(I) Communications. All notifications required by this clause shall be submitted to the County Engineer.

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

Contractor - Contractor

Government and Federal Agency - County

Subcontractor - Subcontractor

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

(B) The County may incorporate any portion of the deliverables into a project other than that for which they were performed, without further compensation to the Contractor; provided however, that (1) such deliverables shall thereupon be deemed to be the work product of the County and the County shall use same at its sole risk and expense.

(12) DECISIONS UNDER THIS AGREEMENT AND DISPUTES:

(A) The Engineer will determine the acceptability of the drawings, specifications, and estimates and all other deliverables to be furnished, and will decide the questions that may arise relative to the proper performance of this Agreement. The determination of acceptable deliverables may occur following final payment, and as late as during the construction of the project which decisions shall be conclusive, binding and incontestable, if not arbitrary, capricious or the result of fraud.

(B) The Engineer will decide all questions which may arise as to the quality, quantity, and acceptability of services performed by the Contractor and as to the rate of progress of the services; all questions which may arise as to the interpretation of the plans and specifications or other deliverables; all questions as to the acceptable fulfillment of the Agreement on the part of the Contractor; the proper compensation for performance or breach of the Agreement; and all claims of any character whatsoever in connection with or growing out of the services of the Contractor, whether claims under this Agreement or otherwise. The Engineer's decisions shall be conclusive, binding and incontestable if not arbitrary, capricious or the result of fraud.

(C) If the Contractor has a claim for payment against the County which in any way arises out of the provisions of this Agreement or the performance or non-performance hereunder, written notice of such claim must be made in triplicate within sixty (60) days of the Contractor's receipt of final payment. Notwithstanding paragraph 20 of this Agreement, the notice of claim shall be personally delivered or sent by certified mail to the Department of Public Works, Jefferson County, Missouri. The notice of claim shall contain an itemized statement showing completely and fully the items and amounts forming the basis of the claim and the factual and legal basis of the claim.

(D) Any claim for payment or an item of any such claim not included in the notice of claim and itemized statement, or any such claim not filed within the time provided by this provision shall be forever waived, and shall neither constitute the basis of nor be included in any legal action, counterclaim, set-off, or arbitration against the County.

(E) The claims procedure in paragraphs 12 (C) and (D) do not apply to any claims of the County against the Contractor. Further, any claims of the County against the Contractor under this Agreement are not waived or estopped by the claims procedure in paragraphs 12 (C) and (D).

(13) SUCCESSORS AND ASSIGNS: The County and the Contractor agree that this Agreement and all agreements entered into under the provisions of this Agreement shall be binding upon the parties hereto and their successors and assigns.

(14) INDEMNIFICATION RESPONSIBILITY:

(A) The Contractor agrees to save harmless the County from all liability, losses, damages, and judgments for bodily injury, including death, and property damage to the extent due to the Contractor's negligent acts, errors, or omissions in the services performed or to be performed under this Agreement, including those negligent acts, errors, or omissions of the Contractor's employees, agents, and Subcontractors.

(B) The Contractor shall be responsible for the direct damages incurred by the County as result of the negligent acts, errors, or omissions of the Contractor or anyone for whom the Contractor is legally responsible, and for any losses or costs to repair or remedy any subsequent stage of project development, phase of work, or project construction as a result of such negligent acts, errors or omissions; provided, however, the Contractor shall not be liable to the County for such losses, costs, repairs and/or remedies which constitute betterment of or an addition of value to the subsequent stages of project development or the construction of the project.

(C) Neither the County's review, approval or acceptance of, or payment for, any services required under this Agreement, nor the termination of this Agreement prior to its completion, will be construed to operate as a waiver of any right under this Agreement or any cause of action arising out of the performance of this Agreement. This indemnification responsibility survives the completion of this Agreement, as well as the completion of subsequent stages of project development or the construction of the project at some later date, and remains as long as the construction contractor may file or has pending a claim or lawsuit against the County on this project arising out of the Contractor's services hereunder.

(15) INSURANCE:

(A) The Contractor shall maintain commercial general liability, automobile liability, and worker's compensation and employer's liability insurance in full force and effect to protect the Contractor from claims under Worker's Compensation Acts, claims for damages for personal injury or death, and for damages to property arising from the negligent acts, errors, or omissions of the Contractor and its employees, agents, and Subcontractors in the performance of the services covered by this Agreement, including, without limitation, risks insured against in commercial general liability policies.

(B) The Contractor shall also maintain professional liability insurance to protect the Contractor against the negligent acts, errors, or omissions of the Contractor and those for whom it is legally responsible, arising out of the performance of professional services under this Agreement.

(C) The Contractor's insurance coverages shall be for not less than the following limits of liability:

1. Comprehensive General Liability Insurance: The Vendor/Contractor shall maintain and keep in full force and effect during the terms of this Contract such comprehensive general liability insurance as shall protect them from claims which may arise from operations under this Contract, whether such operations be by themselves or by anyone directly or indirectly employed by them. The amounts of insurance shall be not less than \$1,000,000.00 combined single limit for any one occurrence covering both bodily injury and property damage, including accidental death.

2. Automobile Liability: \$400,000 per claim up to \$2,500,000 per occurrence;

3. Worker's Compensation Insurance: The Vendor/Contractor or his sub-contractor or contractors, shall maintain and keep in force of this Contract such worker's compensation insurance limits as required by the statutes of the State of Missouri and Employer's Liability with limits no less than \$500,000.00.

4. Professional ("Errors and Omissions") Liability: \$1,000,000, each claim and in the annual aggregate.

(D) The Contractor shall, upon request at any time, provide the County with certificates of insurance evidencing the Contractor's commercial general or professional liability ("Errors and Omissions") policies and evidencing that they and all other required insurance is in effect, as to the services under this Agreement.

(E) Any insurance policy required as specified in paragraph No. (15) should be written by a company which is incorporated in the United States of America or is based in the United States of America. Each insurance policy must be issued by a company authorized to issue such insurance in the State of Missouri. In addition, any such insurance policy, except for Worker's Compensation, will name the County as additional insured.

(16) NONDISCRIMINATION CLAUSE: The Contractor shall comply with all the provisions of Executive Order No. 94-03, issued by the Honorable Mel Carnahan, Governor of Missouri, on the fourteenth (14th) day of January 1994, which executive order is incorporated herein by reference and is made a part of this Agreement. This Executive Order promulgates a Code of Fair Practices for the Executive Branch of Missouri Government and prohibits discrimination against recipients of services, and employees or applicants or employment of state contractors and subcontractors, on the grounds of race, color, religion, national origin, sex, age, disability, or veteran status. The Contractor shall also comply with all state and federal statutes applicable to the Contractor relating

to nondiscrimination, including, but not limited to, Chapter 213, RSMo; Title VI and Title VII of the Civil Rights Act of 1964 as amended (42 U.S.C. Sections 2000d and 2000e, *et seq.*); and with any provision of the "Americans with Disabilities Act" (42 U.S.C. Section 12101, *et seq.*).

(17) ACTIONS: No action may be brought by either party hereto concerning any matter, thing, or dispute arising out of or relating to the terms, performance, non-performance, or otherwise of this Agreement except in the Circuit Court of Jefferson County, Missouri. The parties agree that this Agreement is entered into at Hillsboro, Missouri, and substantial elements of its performance will take place or be delivered at Hillsboro, Missouri, by reason of which the Contractor consents to venue of any action against it in Jefferson County, Missouri. The Contractor shall cause this provision to be incorporated into all of its agreements with, and to be binding upon, all subcontractors of the Contractor in the performance of this Agreement.

(18) AUDIT OF RECORDS: For purpose of an audit, the Contractor shall maintain all those records relating to direct costs and expenses incurred under this Agreement, including but not limited to invoices, payrolls, bills, receipts, etc. These records must be available at all reasonable times to the County or its designees and representatives, at the Contractor's offices, at no charge, during the Agreement period and any extension thereof, and for the three (3) year period following the date of final payment made under this Agreement. If the County has notice of a potential claim against the Contractor and/or the County based on the Contractor's services under this Agreement, the Contractor, upon written request of the County, shall retain and preserve its records until the County has advised the Contractor in writing that the disputed claim is resolved.

(19) NOTICE TO THE PARTIES: All notices or communications required by this Agreement shall be made in writing, and shall be effective upon receipt by the County or the Contractor at their respective addresses of record. Letters or other documents which are prepared in 8.5 x 11 inch format may be delivered by telefax, provided that an original is received at the same address as that to which that telefax message was sent, within three (3) business days of the telefax transmission. Either party may change its address of record by written notice to the other party.

(A) Notice to the County: Notices to the County shall be addressed and delivered to the following Engineer, who is hereby designated by the County as its primary authorized Engineer for administration, interpretation, review, and enforcement of this Agreement and the services of the Contractor hereunder:

Jason Jonas, P.E.
Jefferson County Engineer
Department of Public Works
PO Box 100
Hillsboro, Missouri 63050
Telefax No.: 636-797-5565

Telephone No.: 636-797-5369
Email: JJonas@jeffcomo.org

The County reserves the right to substitute another person for the individual named at any time, and to designate one or more other Engineers to have authority to act upon its behalf generally or in limited capacities, as the County may now or hereafter deem appropriate. Such substitution or designations shall be made by the County Engineer in a written notice to the Contractor.

(B) Notice to the Contractor: Notices to Contractor shall be addressed and delivered to Contractor's representative, as follows:

Contractor Contact Name, Registrations/Certifications
Contractor Contact Title
Company Name
Company Address
Company Contact Fax Number
Company Contact Phone Number
Company Contact Email Address
Company Website

The Contractor reserves the right to substitute another person for the individual named at any time, and to designate one or more Contractor's Representatives to have authority to act upon its behalf generally or in limited capacities, as the Contractor may now or hereafter deem appropriate. Such substitutions or designations shall be made by the Contractor's president or chief executive officer in a written notice to the County.

(20) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The Contractor shall comply with all local, state, and federal laws and regulations, which govern the performance of this Agreement.

(21) CONFIDENTIALITY: The Contractor agrees that the Contractor's services under this Agreement are a confidential matter between the Contractor and the County. The Contractor shall not disclose any aspect of the Contractor's services under this Agreement to any other person, corporation, governmental entity, or news media, excepting only to such employees, subcontractors, and agents as may be necessary to allow them to perform services for the Contractor in the furtherance of this Agreement, without the prior approval of the County's Engineer; provided, however, that any confidentiality and non-disclosure requirements set out herein shall not apply to any of the Contractor's services or to any information which (1) is already in the public domain or is already in the Contractor's possession at the time the Contractor performs the services or comes into possession of the information, (2) is received from a third party without any confidentiality obligations, or (3) is required to be disclosed by governmental or judicial order. Any disclosure pursuant to a request to the County under Chapter 610, RSMo, shall not constitute a breach of this Agreement. The content and extent of any authorized disclosure shall be coordinated fully with and under the direction of the

County's Engineer, in advance.

(22) SOLE BENEFICIARY: This Agreement is made for the sole benefit of the parties hereto and nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the County and the Contractor.

(23) SEVERABILITY AND SURVIVAL:

(A) Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the County and the Contractor.

(B) All express representations, indemnifications, or limitations of liability made or given in this Agreement will survive the completion of all services by the Contractor under this Agreement or the termination of this Agreement for any reason.

(24) PAYMENT BOND: In the event a subcontractor is used for any services under this Agreement, Contractor shall provide a payment bond under Section 107.170 RSMo., Any payment bond must be acceptable to the County and must be provided prior to the performance of service. The cost for the payment bond must have been included in the fee of the Contractor under this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective proper officials.

Executed by the Contactor the ____ day of _____, 20____.

Executed by the County the ____ day of _____, 20____.

JEFFERSON COUNTY, MISSOURI

BY: Kenneth Wallace
COUNTY EXECUTIVE

Contractor Company Name
Townsend Htg. & Ctg., Inc.
BY: [Signature]
Title: president
(Seal)

ATTEST:

Wes Wagner
County Clerk
Katherine E. Missey
Deputy Clerk

ATTEST:
Townsend Htg. & Ctg., Inc.
[Signature]
Contractor Company Name

Title: president

APPROVED AS TO FORM:

[Signature]
County Counselor

I hereby certify under Section 50.660 RSMo there is either: (1) a balance of funds, otherwise unencumbered, to the credit of the appropriation to which the obligation contained herein is chargeable, and a cash balance otherwise unencumbered, in the Treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation contained herein; or (2) bonds or taxes have been authorized by vote of the people and there is a sufficient unencumbered amount of the bonds yet to be sold or of the taxes levied and yet to be collected to meet the obligation in case there is not a sufficient unencumbered cash balance in the treasury.

[Signature]
COUNTY AUDITOR

EXHIBIT 1
CONTRACTOR COMPANY NAME
HOURLY BILLING RATES

[illegible]

* During Normal Business Hours.

Other Job Qualifications

Electrical as pertains to HVAC