

BILL NO.: 16-0104

ORDINANCE NO.: 16- D106

INTRODUCED BY: COUNCIL MEMBER (s) Kenter

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 SANITARY SEWER**  
4                   **DESIGN, NORTH HIGHWAY SHED – HIGHWAY MM (HOUSE SPRINGS); AND**  
5                   **AUTHORIZATION FOR THE COUNTY EXECUTIVE TO EXECUTE ANY**  
6                   **NECESSARY AGREEMENTS OR CONTRACTS TO EFFECTUATE THE**  
7                   **CONTRACTOR SERVICE AGREEMENTS.**

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

11 REQUESTING SERVICES

## 12 Sanitary Sewer Design, North Highway Shed – Highway MM (House Springs)

13 NUMBER OF SERVICES RECEIVED

11

15 DATE OF SERVICES OPENING

16 10-23-15

17       **WHEREAS**, after reviewing the certified responses set forth above, the  
18       Department of Public Works has determined that certain requests for services represent the

FILED

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JAN 19 2016

**WES WAGNER**  
COUNTY CLERK OF JEFFERSON COUNTY, MO

1 lowest and best responses for the on call described services and met the qualifications  
2 issued by the County; and

3           **WHEREAS**, the Jefferson County, Missouri, Council finds it is in the best interest  
4        of the County to award the certified responses for the on call described services to  
5        Thouvenot, Wade, & Moerchen, Inc. for a term from 01-11-16 to 01-10-17 upon approval  
6        by the County Council and County Executive for the total amount up to **\$35,000.00** 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 Sanitary Sewer Design, North Highway Shed – Highway MM (House Springs)

15 **TERM**

16 01-11-16 to 01-10-17

17 Upon approval by the County Council and County Executive

18 AMOUNT

19 Up to \$35,000.00

20 subject to budgetary limitations

21 AWARDED BIDDER

22 Thouvenot, Wade, & Moerchen, Inc.

1           Section 2.     The Jefferson County, Missouri, Council hereby authorizes the  
2     County Executive to execute the agreement incorporated by Reference as Exhibit "A" and  
3     any agreements or contracts necessary to effectuate the award of the bids and proposals set  
4     forth in this Ordinance. The County Executive is further authorized to take any and all  
5     actions necessary to carry out the intent of this Ordinance. An unexecuted copy of the  
6     Agreement is attached hereto as Exhibit "A" and incorporated herein, by reference.

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

11          Section 4.     This Ordinance shall be in full force and effect from and after its  
12    date of approval. If any part of this Ordinance is invalid for any reason, such invalidity  
13    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>Absent</u>
Council Member District 6, Cliff Lane	<u>yes</u>
Council Member District 7, James Terry	<u>yes</u>

THE ABOVE BILL ON THIS 11<sup>th</sup> DAY OF January, 2016:

✓ PASSED      FAILED



County Council Chair

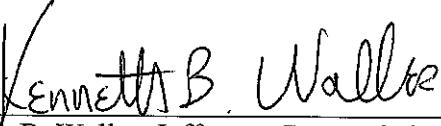


Pat Schlette

Pat Schlette, Council Administrative Assistant

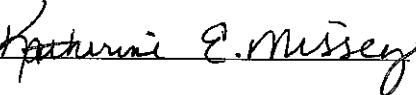
THIS BILL WAS  APPROVED BY THE JEFFERSON COUNTY EXECUTIVE AND ENACTED AS AN ORDINANCE OF JEFFERSON COUNTY, MISSOURI, THIS 14<sup>th</sup> DAY OF JANUARY, 2016.

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

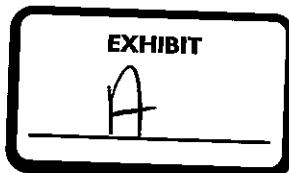
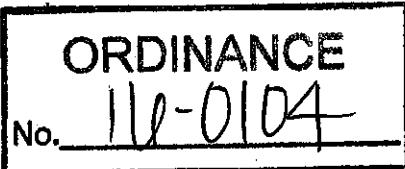
  
Kenneth B. Waller  
Kenneth B. Waller, Jefferson County, Missouri, Executive

ATTEST:

  
Wes Wagner, County Clerk

BY: 

Reading Date: 01-11-2016



JEFFERSON COUNTY  
CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is entered into by Thouvenot, Wade, & Moerchen, Inc. (TWM Engineers & Surveyors), (hereinafter, "Consultant") and the Jefferson County (hereinafter, "County").

WITNESSETH:

WHEREAS, the County has a need within the 2016-2017 calendar years for a consultant to perform professional services in the preparation of a Sanitary Sewer Design for the North Highway Facility; and

WHEREAS, the County has selected the Consultant to provide those services on a per project 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 Consultant hereby agrees that it shall faithfully perform the professional 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 Jefferson County, an agency of state government, which acts by and through its County Commission, County Engineer and others in the Public Works Department.

(C) "CONSULTANT" means the firm providing professional services to the County as a party to this Agreement.

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

(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) "DISADVANTAGED BUSINESS ENTERPRISE (DBE)" means an entity owned and controlled by a socially and economically disadvantaged individual as

defined in 49 C.F.R. Part 26, which is certified as a DBE firm in Missouri by the County. Appropriate businesses owned and controlled by women are included in this definition.

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

(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 Consultant, or the unilateral cancellation of this Agreement by the County.

(M) Not used

(N) "SERVICES" includes all 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) GENERAL: 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 review and design of a sanitary sewer system for the North Highway Facility, including conceptual report outlining the all the options available and a recommendation of design, preliminary, PS&E and construction phase design services for the sewer system. Engineering services are to meet all relevant industry standards.

(B) DETAILED SCOPE: The scope of work to be performed by the Consultants:

1) Data Collection Phase

- a) Consultant shall make contact with the House Springs Sewer Representative and discuss any available mapping and /or routing of an acceptable sewer line
- b) Consultant will discuss with the House Springs Sewer Representative any alternative north sewer alignments or locations that are agreeable by the Sewer Company.
- c) Consultant shall make contact with the Jefferson County Code Enforcement Division and obtain the County requirements for sewer options, any County inspection requirements and any other information relevant to designing a North building sewer.
- d) Consultant shall make contact with the Department of Natural Resources (DNR) to obtain any information regarding restrictions for crossing the adjacent water paths, and any requirements and history relevant to the project of designing a North building sewer.
- e) Consultant will be responsible for verifying general field data such as manhole elevations or distance. Any survey information required for this project shall be summarized by the Consultant in a Scope of Services and submitted to the County. County will seek the support through On- Call Surveying Services contracts.

2) Detailed Conceptual Study

- a) Consultant shall provide the County a Conceptual Study with at least three options for consideration and recommendation(s) of option(s) that best serves the County's need.
- b) Consultant shall summarize the existing conditions such as acreage of property, percent drainable surface, the septic system in place, etc.
- c) Consultant shall summarize in the conceptual study all the requirements or provisions provided by each of the influencing agencies (for example, sewer company, DNR).
- d) Consultant shall summarize the information obtained

Exhibit A1

in the field information collection phase and highlight its significance in the study.

- e) Consultant shall be available for meetings, site visits, emails, and phone conversations with County and other influencing agencies.
- f) The conceptual study shall include the options available to the County, the reasons why the concept or option is moving forward or being eliminated.
- g) Conceptual Study recommendation (s) must be approved by the County before proceeding into Preliminary Plans.

3) Preliminary Plans (no more than two conceptual recommendations to enter into preliminary plans)

- a) In the event that there is more than one conceptual plan recommended, the Consultant shall complete the evaluation to a point of providing an estimated cost, impacted parties, list of permits or standards that would need to be accommodated, and a final recommendation on an option for final plan development.
- b) In the event that only one conceptual recommendation is moved into preliminary plans, the Consultant shall provide an estimated cost, impacted parties, and a list of permits or standards that would need to be accommodated.
- c) Preliminary Plans must be approved by the County before proceeding into Final Plans.

4) Final Plans in a format that can be spend out to construction for bid

- a) Plans are to be prepared and formatted for bid by the County.
- b) Consultant shall provide exhibits necessary for any easements (maximum of 7 expected) utilizing information provided by the surveyor.

5) Construction support

- a) Consultant shall support the County on the project

Exhibit A1

through the construction phase. This support includes but is not limited to: meetings with impacted parties, review of permits, review of job progress, field visits, final paperwork for any permits, and production and finalization of any necessary maintenance relinquishment documentation.

(C) COST ESTIMATES: Anticipated rates and hours are provided in Exhibit 1 based upon the phases listed below. Also attached are rates for all TWM billing classes, in the event additional staff is needed.

- a) Data collection
- b) Conceptual Study
- c) Preliminary Design
- d) Final Design
- e) Construction Support

(D) Estimated Project Timeline

- a) 1/15/2016 – Consultant fee proposal due to County for review
- b) 2/15/2016 – Executed MOU completed between County and Consultant. (On call survey and geotechnical service needs due to the County from the Consultant.)
- c) 5/16/2016- NTP issued to Consultant ( 90 days to complete Conceptual Study Phase)
- d) 8/15/2016- Consultant to present the recommendations from the Conceptual Study to the County for review.
- e) 8/26/2016- County review complete and Consultant moves into the Preliminary Design Phase (30 days to complete Preliminary Design Phase part one).
- f) 9/26/2016- Consultant to submit to the County the preliminary Plan options - part 1 ( if there is more than 1) for review

- g) 10/3/2016- County review complete and Consultant continues on the selected Preliminary Design phase ( 30 days to complete)
- h) 11/4/2016 Consultant Submits the Preliminary Design and moves into the Final Design Phase.
- i) 12/15/ 2016 Consultant completes the final plans and issues the final deliverables to the County. All invoicing through final plan is to be completed with the deliverable submittal (if not completed during phasing).

(3) **TERM OF AGREEMENT:** The Consultant's services are to commence upon execution of this Agreement and terminate on March 1, 2017 unless otherwise terminated prior to this date pursuant to the provisions of paragraph (10) of this Agreement.

(4) **INFORMATION AND SERVICES PROVIDED BY THE COUNTY:**

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

(B) The Consultant 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 Consultant 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 Consultant with new or verified data or information upon which the Consultant is entitled to rely. The Consultant shall not be liable for any errors, omissions, or deficiencies in the Consultant's services resulting from inaccurate or inadequate information furnished by the County which inaccuracies or inadequacies are not detected by the Consultant unless the errors should have been detected by the Consultant through reasonable diligence.

(5) **RESPONSIBILITY OF THE CONSULTANT:**

(A) The Consultant 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 Consultant 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 of the ICC 2003 Building Code, 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 Consultant shall be responsible for the professional 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 Consultant, the Consultant shall prepare any additional deliverables or other services needed to correct any negligent acts, errors, or omissions of the Consultant 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 final payment may have been received by the Consultant. The Consultant shall provide such services as expeditiously as is consistent with professional performance. Acceptance of the services will not relieve the Consultant of the responsibility to correct such negligent acts, errors, or omissions.

(D) All deliverables produced under this agreement shall be signed, sealed, and dated by the appropriate party responsible for performance of the services and who possesses appropriate registration in the state of Missouri to perform the type of services included in this Agreement or any subsequent Memorandum of Understanding. All requirements for professional registration and the signing and sealing of deliverables shall be in accordance with Missouri state law. All deliverables which are not the final version shall carry the words "Draft or Preliminary" or other similar language in an obvious location where it can readily be found, easily read, and is not obscured by other markings, as a disclosure to others that the deliverables are incomplete or preliminary. When the deliverables are presented in their final form, the word "Draft or Preliminary" or other similar language shall be removed and the deliverables thereupon signed, sealed, and dated as previously described in this paragraph.

(E) Where the scope of services requires the preparation of completed plans, plans submitted for review by permit authorities, and plans issued for construction, the plans shall be signed, sealed, and dated by a design professional registered in the State of Missouri. Incomplete or preliminary plan(s), when submitted for review by others, shall not be sealed, but the name of the responsible engineer, along with the engineer's Missouri registration number, shall be indicated on the plan(s) or included in the transmittal document. In addition, the phrase "Preliminary - Not for

Construction," or similar language, shall be placed on the incomplete or preliminary plan(s) in an obvious location where it can readily be found, easily read, and not obscured by other markings, as a disclosure to others that the plan(s) are incomplete or preliminary. When the plan(s) are completed, the phrase "Preliminary - Not for Construction" or similar language shall be removed and the plan(s) shall thereupon be sealed.

(F) The Consultant shall cooperate fully with the County and its Engineers, consultants, and contractors on adjacent projects and with municipalities and local government officials, public utility companies and others as may be directed by the Engineer. This may include attendance at meetings, discussions, and hearings as requested 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 Consultant'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 Consultant in performing this Agreement, including any Memorandum of Understanding, the Consultant 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 Consultant will be compensated at an amount or rate negotiated between the County and the Consultant as will be identified in a separate agreement between the County and the Consultant. To the extent the assistance given to the County by the Consultant was necessary for the County to defend claims and liability due to the Consultant's negligent acts, errors, or omissions, the compensation paid by the County to the Consultant will be reimbursed to the County, except in circumstances where the Consultant was absolved of any negligent acts, errors or omissions. The County shall therefore instead seek reimbursement of compensation to Consultant from the party making claim against the County.

(6) **NO SOLICITATION WARRANTY:** The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Consultant, 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) **SUBCONSULTANTS:**

(A) The Consultant agrees that except for those firms and for those

services listed in the appropriate Memorandum of Understanding, there shall be no transfer of engineering 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) The Consultant agrees, and shall require the selected Subconsultants, to maintain books, documents, papers, accounting records, and other evidence pertaining to direct costs and expenses incurred under the Agreement and to make such materials available at their offices at reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement, for inspection by the County or any of its authorized representative, and copies thereof shall be furnished.

(C) Unless waived or modified by the County, the Consultant agrees to require, and shall provide evidence to the County, that those Subconsultants 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 subconsultant agreements, and in not less than the following amounts:

1. Commercial General Liability: \$400,000 per claim up to \$2,000,000 per occurrence;
2. Automobile Liability: \$100,000 per claim up to \$300,000 per occurrence;
3. Worker's Compensation in accordance with the statutory limits; and

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

(E) The payment for the services of any Subconsultants will be reimbursed at cost by the County in accordance with the submitted invoices for such services, as set forth in paragraph (8), entitled "Fees and Payments".

(F) The Consultant agrees to furnish a list of any County-approved DBE subconsultants under this Agreement upon the request of the County.

(G) The Consultant agrees that any agreement between the consultant and any subconsultant shall be an actual cost plus fixed fee agreement if the amount of the agreement between the consultant and subconsultant exceeds \$25,000.

(8) **COMPENSATION:** The following provisions apply with respect to the

payment of fees to the Consultant:

(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 Consultant.

(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 Consultant and approved by the County prior to the inclusion of the revised rates in any subsequent Memorandum of Understanding. The Consultant 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 Consultant may submit an invoice for services rendered to the County not more than once every month. Upon receipt of the invoice, the County will, as soon as practicable, pay the Consultant 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) Audit: The County, if it so elects, will conduct a final cost audit of

the Consultant's services performed under the terms of this Agreement. The Consultant will, during normal working hours, permit access to all records and books for the audit.

(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 Consultant 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 Consultant. Requests for extensions of time shall be made in writing by the Consultant, 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. Such extension of time shall be the sole allowable compensation for all such delays.

(C) The Consultant and County agree that time is of the essence, and the Consultant 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 Consultant, no claim for damage shall be made by either party. 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 Consultant from performing necessary services at the project site, or in the Consultant'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 design or plans by the Consultant;
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 Consultant'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 Consultant at least fifteen (15) days' prior written notice of the effective date thereof. The Consultant 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 Consultant 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 Consultant 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 Consultant's compensation and schedule for performance of services hereunder shall be equitably adjusted upon resumption of performance of the services.

(C) The Consultant 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 Consultant. This liability shall survive and shall not be waived, or estopped by final payment under this Agreement.

(D) The Consultant 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 Consultant is deprived of the opportunity to complete the Consultant'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 Consultant's services hereunder; provided, however,

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

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

3. The Consultant 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 subgrant or contract under this agreement; and

II. Any rights of copyright to which County, its consultant or subconsultant 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 - Consultant

Government and Federal Agency - County

Subcontractor - Subconsultant

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 Consultant; 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; and (2) the County shall remove the Consultant's name, seal, endorsement, and all other indices of authorship from the deliverables.

**(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 Consultant 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 Consultant; 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 Consultant, 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 Consultant 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 Consultant'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 office of the County Engineer in 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 Consultant. Further, any claims of the County against the Consultant 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 Consultant 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 Consultant 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 Consultant'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 Consultant's employees, agents, and Subconsultants.

(B) The Consultant shall be responsible for the direct damages incurred by the County as result of the negligent acts, errors, or omissions of the Consultant or anyone for whom the Consultant 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 Consultant 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 Consultant's services hereunder.

(15) INSURANCE:

(A) The Consultant shall maintain commercial general liability, automobile liability, and worker's compensation and employer's liability insurance in full force and effect to protect the Consultant 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 Consultant and its employees, agents, and Subconsultants in the performance of the services covered by this Agreement, including, without limitation, risks insured against in commercial general liability policies.

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

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

1. Commercial General Liability: \$400,000 per claim up to \$2,000,000 per occurrence;

2. Automobile Liability: \$100,000 per claim up to \$300,000 per occurrence;
3. Worker's Compensation in accordance with the statutory limits; and
4. Professional ("Errors and Omissions") Liability: \$ 500,000, each claim and in the annual aggregate.

(D) The Consultant shall, upon request at any time, provide the County with certificates of insurance evidencing the Consultant'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) shall 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 and Professional Liability, will name the County as additional insured.

(16) **NONDISCRIMINATION CLAUSE:** The Consultant 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 consultants and subconsultants, on the grounds of race, color, religion, national origin, sex, age, disability, or veteran status. The Consultant shall also comply with all state and federal statutes applicable to the Consultant 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 Consultant consents to venue of any action against it in Jefferson County, Missouri. The Consultant shall cause this provision to be incorporated into all of its agreements with, and to be binding upon, all subconsultants of the Consultant in the performance of this Agreement.

(18) **AUDIT OF RECORDS:** For purpose of an audit, the Consultant 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 Consultant'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 Consultant and/or the County based on the Consultant's services under this Agreement, the Consultant, upon written request of the County, shall retain and preserve its records until the County has advised the Consultant 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 Consultant at their respective addresses of record. Acceptable forms of writing include, but are not limited to, email and pdf documents. 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 Consultant hereunder:

Jason Jonas, P.E.  
County Engineer  
Jefferson County Missouri  
PO Box 100  
Hillsboro, Missouri 63050  
Email: [JJonas@jeffcomo.org](mailto:JJonas@jeffcomo.org)  
Telephone No.: 636-797-5369  
Telefax No.: 636-797-5565

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 Consultant.

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

Christopher Bergmann, P.E.  
TWM Project Manager

720 Olive Street Suite 200 A  
St. Louis, Missouri 63101  
Email: [cbergmann@twm-inc.com](mailto:cbergmann@twm-inc.com)  
Telephone No: (314) 241-6300

The Consultant reserves the right to substitute another person for the individual named at any time, and to designate one or more Consultant's Representatives to have authority to act upon its behalf generally or in limited capacities, as the Consultant may now or hereafter deem appropriate. Such substitutions or designations shall be made by the Consultant'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 Consultant shall comply with all local, state, and federal laws and regulations which govern the performance of this Agreement.

(21) **CONFIDENTIALITY:** The Consultant agrees that the Consultant's services under this Agreement are a confidential matter between the Consultant and the County. The Consultant shall not disclose any aspect of the Consultant's services under this Agreement to any other person, corporation, governmental entity, or news media, excepting only to such employees, subconsultants, and agents as may be necessary to allow them to perform services for the Consultant 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 Consultant's services or to any information which (1) is already in the public domain or is already in the Consultant's possession at the time the Consultant 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 Consultant.

(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 Consultant.

Exhibit A1

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

(24) **PAYMENT BOND:** In the event a subconsultant is used for any services under this Agreement, Consultant shall provide a payment bond under Section 107.170 RSMo., as amended, for any services which are printing, aircraft, archaeology, surveying, hazardous waste or geotechnical including but not limited to the collection of soil samples. 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 Consultant under this Agreement.

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

Executed by the Consultant the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Executed by the County the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

JEFFERSON COUNTY, MISSOURI

BY: Kenneth Whittle

COUNTY EXECUTIVE

Thouvenot, Wade, & Moerchen, Inc.

BY: Randall W. Bush

Title: Vice President

(Seal)

ATTEST:

Wes Wagner  
County Clerk

ATTEST:

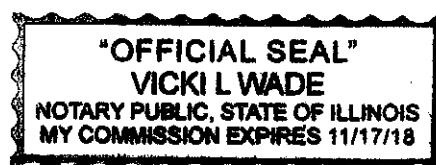
Vicki L Wade

Thouvenot, Wade, & Moerchen, Inc.

Title: Company Notary

APPROVED AS TO FORM:

John H. Johnson  
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

Exhibit A1

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.

  
\_\_\_\_\_  
COUNTY AUDITOR



Local Agency:  
Project:

## Jefferson County, Missouri Sanitary Sewer Design for the

TWM Project No. 1

E00 150601

## **Breakdown of TWWI labor**

Basic Scope of Engineering Services		Project Manager	Project Engineer	CAD Technician	Survey Project Manager	Survey Registered Land Surveyor	Survey Personnel	Total Phase Hours/Labor Cost
<b>I - Data Collection Phase</b>		22	0	0	0	0	0	22
Meetings with House Springs Sewer		8						
Correspondence with Jefferson County Code Enforcement		8						
Correspondence with DNR		4						
Coordination regarding surveying info		2						
<b>Sub-Total Phase Hours</b>		22	0	0	0	0	0	22
Unit Labor Cost	\$ 118.00	\$ 118.00	\$ 91.00	\$ 102.00	\$ 119.00	\$ 72.00		
Total Phase Labor Cost	\$ 2,596.00							\$ 2,596.00
<b>II - Detailed Conceptual Study</b>		18	40	0	0	0	0	58
Project Meetings		8						
Option 1 Analysis - New drain field		2	6					
Option 2 Analysis - South/east sewer		2	10					
Option 3 Analysis - North/west sewer		2	12					
Site Summary		2	6					
Recommendations		2	6					
<b>Sub-Total Phase Hours</b>		18	40	0	0	0	0	58
Unit Labor Cost	\$ 118.00	\$ 118.00	\$ 91.00	\$ 102.00	\$ 119.00	\$ 72.00		
Total Phase Labor Cost	\$ 2,124.00	\$ 4,720.00						
<b>III - Preliminary Plans (2 concepts anticipated)</b>		20	14	0	0	0	0	34
Preparation of costs		2	6					
Research into impacted parties		8						
Preparation of exhibits		8						
Write up of recommendations/analysis		2	8					
<b>Sub-Total Phase Hours</b>		20	14	0	0	0	0	34
Unit Labor Cost	\$ 118.00	\$ 118.00	\$ 91.00	\$ 102.00	\$ 119.00	\$ 72.00		
Total Phase Labor Cost	\$ 2,360.00	\$ 1,652.00						
<b>IV - Final Plans</b>		34	40	8	14	7	42	145
Plan Preparation		4	16	8				
Permit Acquisition		8						
Specifications		4	12					
Final Quantities		4	12					
Utility Coordination		12						
Preparation of easement exhibits (maximum 7 easements expected)								
Coordination regarding surveying info		2						
Coordination regarding geotechnical		2						
<b>Sub-Total Phase Hours</b>		34	40	8	14	7	42	145
Unit Labor Cost	\$ 118.00	\$ 118.00	\$ 91.00	\$ 102.00	\$ 119.00	\$ 72.00		
Total Phase Labor Cost	\$ 4,012.00	\$ 4,720.00	\$ 1,458.00	\$ 1,458.00	\$ 833.00	\$ 3,024.00		
<b>V - Construction Support</b>		30	6	0	0	0	0	36



## Exhibit 1

## Breakdown of TWM Labor

Basic Scope of Engineering Services				Survey Project Manager	Project Engineer	CAD Technician	Survey Personnel	Total Phase Hours/Labor Cost	
							Survey Project Manager	Survey Registered Land Surveyor	Survey Technician
Meet with Impacted Parties				16					
Field Visits				6	6				
Final Paperwork on Permits				4					
Assistance with Contractor RFIs				4					
Sub-Total Phase Hours	30			6	0	0	0	0	
Unit Labor Cost	\$ 118.00			\$ 118.00	\$ 91.00	\$ 102.00	\$ 119.00	\$ 72.00	
Total Phase Labor Cost	\$ 3,540.00			\$ 708.00	\$ -	\$ -	\$ -	\$ -	\$ 4,246.00

**THOUVENOT, WADE & MOERCHEN, INC.**  
**SCHEDULE OF FEES**

<b>Principal</b>	\$170.00
<b>Senior Engineer</b>	\$162.00
<b>Project Engineer V</b>	\$156.00
<b>Project Engineer IV</b>	\$149.00
<b>Project Engineer III</b>	\$125.00
<b>Project Engineer II</b>	\$118.00
<b>Project Engineer I</b>	\$112.00
<b>Project Manager IV</b>	\$146.00
<b>Project Manager III</b>	\$135.00
<b>Project Manager II</b>	\$119.00
<b>Project Manager I</b>	\$102.00
<b>Senior Structural Engineer</b>	\$170.00
<b>Structural Engineer V</b>	\$156.00
<b>Structural Engineer IV</b>	\$153.00
<b>Structural Engineer III</b>	\$133.00
<b>Structural Engineer II</b>	\$127.00
<b>Structural Engineer I</b>	\$121.00
<b>Survey Crew (3 man crew)</b>	\$233.00
<b>Survey Crew (2 man crew)</b>	\$181.00
<b>Survey Crew (2 man crew w/Robotics or GPS)</b>	\$193.00
<b>Survey Crew (1 man w/Robotics or GPS)</b>	\$139.00
<b>Survey Crew (1 man w/3D Scanner)</b>	\$192.00
<b>Engineer III</b>	\$99.00
<b>Engineer II</b>	\$95.00
<b>Engineer I</b>	\$89.00
<b>Surveyor IV</b>	\$135.00
<b>Surveyor III</b>	\$119.00
<b>Surveyor II</b>	\$105.00
<b>Surveyor I</b>	\$91.00
<b>Management Construction Engineering Services</b>	\$113.00
<b>Construction Observation (Non-Professional Engineer)</b>	\$102.00
<b>3D Scanning Technician</b>	\$92.00
<b>Technician V</b>	\$89.00
<b>Technician IV</b>	\$81.00
<b>Technician III</b>	\$75.00
<b>Technician II</b>	\$72.00
<b>Technician I</b>	\$64.00
<b>Jr. Technician</b>	\$38.00
<b>Senior Electrical Designer</b>	\$112.00
<b>Senior Transportation Designer</b>	\$109.00
<b>Data Systems Manager</b>	\$103.00
<b>Cad Manager</b>	\$100.00
<b>Cad Designer III</b>	\$91.00
<b>Cad Designer II</b>	\$85.00
<b>Cad Designer I</b>	\$71.00
<b>Accountant II</b>	\$102.00
<b>Accountant I</b>	\$74.00
<b>Word Processing</b>	\$66.00
<b>Air &amp; Vacuum Testing</b>	\$182.00
2 Technicians w/ Equipment	\$242.00
<b>Mandrel Testing</b>	\$167.00
2 Technicians w/ Equipment	\$227.00
<b>Video Testing</b>	\$198.00
1 Technician w/ Equipment	\$264.00
<b>Outside Services (Consultants, Delivery Service, Express Mail, etc.)</b>	<b>At Cost plus 15%</b>
<b>Commercial Travel, Meals, Lodging &amp; Other Expenses</b>	<b>At Cost</b>
<b>4 X 4 Polaris (per Day)</b>	<b>\$64.00</b>
<b>Travel (Non local) per Mile at current GSA rate.</b>	