

PROFESSIONAL SERVICES AGREEMENT
between
Lee Engineering, LLC
And
THE CITY OF MIDWEST CITY

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter referred to as “**Agreement**”) is entered into by and among The City of Midwest City, a municipal corporation (hereinafter referred to as “**City**”), and LEE ENGINEERING, LLC, (hereinafter referred to as “**Professional Service Provider**”) (**City**, and **Professional Service Provider** being collectively referred to herein as the “**Parties**”) and is effective upon the date of execution by the last party hereto.

WITNESSETH:

WHEREAS, **City** is in need of the following professional services design and develop construction plans for JP 38094(04), a federally funded signal and ADA improvement project; and

WHEREAS, **Professional Service Provider** is in the business of providing professional services that is needed by the **City**; and

WHEREAS, the **City** and the **Professional Service Provider** have reached an agreement for the **Professional Service Provider** to provide the **City** the requested professional services; and

WHEREAS, **City** hereby retains **Professional Service Provider** to provide professional services as an independent contractor; and

WHEREAS, **Professional Service Provider** agrees to provide the **City** all services, in accordance with the standards exercised by experts in the field, necessary to provide the **City** services, products, solutions and deliverables that meet all the purposes and functionality requested or described in the RFP and in this Agreement.

NOW, THEREFORE, for and in consideration of the above premises and mutual covenants as set forth herein, the **City**, and **Professional Service Provider** hereby agree as follows:

1. SERVICES, PRODUCTS, SOLUTIONS AND DELIVERABLES TO BE PROVIDED

Subject to the terms and conditions of this **Agreement**, the **City** retains the **Professional Service Provider** as an independent contractor, to provide **City** all products and/or services, in accordance with the standards exercised by experts in the field, necessary to provide the **City**

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services, products, solutions, and deliverables (collectively referred to as “Deliverables”) that meet all the purposes and functionality requested or described in this **Agreement**. The **City** shall meet with **Professional Service Provider** to identify product and/or service needs on a project-by-project basis. The **City** may issue a purchase order for the identified services accompanied by **Professional Service Provider’s** written proposal. Upon issuance of the purchase order, the **Professional Service Provider** shall be responsible for timely providing the products and/or services authorized by the purchase order (“Project”). Upon completion of the Project (products and/or services in a purchase order), the **Professional Service Provider** will issue an invoice to the **City** and, upon approval of the invoice, the **City** will pay the invoice. Upon completion of each Project and provision to the **City** of all Deliverables for that Project and payment of the invoice for that Project to the **Professional Service Provider**, the **City** shall own all rights and license for the Deliverables and other work products related to that Project.

a) This **Agreement** governs the Scope of Services including, but not limited to, all Deliverables to be provided by **Professional Service Provider** to the **City**. The Attachments are incorporated into this **Agreement** by reference and, should there be a conflict in language, terms, conditions, or provisions, shall have the priority and precedential value as set forth in this **Agreement**.

b) The text of this **Agreement** together with the Attachments constitutes the entire **Agreement** and the only understanding and agreement between the **City** and the **Professional Service Provider** with respect to the services, products, solutions, and deliverables to be provided by the **Professional Service Provider** hereunder. This **Agreement** may only be amended, modified, or changed in writing when signed by all parties, or their respective specifically authorized representatives, as set forth in this **Agreement**.

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c) If there is a conflict in language, terms, conditions, or provisions, in this **Agreement** between the text of this document, and any language, term, condition, or provision in any Attachment, then the text of this document, shall govern and control over any conflicting language, term, condition, or provision in any Attachment. As among the Attachments any conflict in the language, terms, conditions, or provisions shall be governed in the following order of priority and precedence:

- **Attachment “A” (“Scope of Services”)**
- **Attachment “B” (“Schedule of Fees / Rate Card”),**
- **Attachment “C” (“Professional Service Provider’s Team”),**
- **Attachment “D” (“Insurance”).**

2. RETENTION OF SERVICES PROVIDER AND SCOPE OF SERVICES

A. **Professional Service Provider** is solely responsible for the actions, non-action, omissions, and performance of **Professional Service Provider’s** employees, agents, contractors, and subcontractors (herein collectively included in the term “Professional Service Provider’s Project Team”) and to ensure the timely provision of each Project, timely performance of the Scope of Services, and the timely performance of each Project and the provision of all Deliverables as each are defined in **Attachment “A” (“Scope of Services”)** or the Project.

B. **Professional Service Provider** will be solely responsible to ensure the **Professional Service Provider’s Project Team** fully understands each Project, the Scope of Services, the Deliverables, the schedule for performance, and **City’s** goals and purposes. **Professional Service Provider** will be solely responsible to ensure the **Professional Service Provider’s Team**, specifically assigned to work on the Project for the City, is adequately trained, instructed, and managed so that **Professional Service Provider** timely provides each Project task and satisfies the **Professional Service Provider’s** obligations under this **Agreement**. The **Professional Service Provider** may not change the **Professional Service Provider’s Team**,

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for the services to be provided as set forth on Attachment “C” (“**Professional Service Provider’s Team**”) without the prior written consent of the **City**.

C. **Professional Service Provider** shall comply with all applicable federal, state and local laws, standards, codes, ordinances, administrative regulations and all amendments and additions thereto, pertaining in any manner to the performance or services provided under this **Agreement**. **Professional Service Provider** shall obtain all patents, licenses and any other permission required to provide all Deliverables and for use of all Deliverables by the **City**.

3. CONSIDERATION

A. The **City** shall pay the **Professional Service Provider** the compensation after completion of Projects or Deliverables as specified in Attachment “B” (“**Schedule of Fees / Rate Card**”).

B. The **City** and the **Professional Service Provider** acknowledge that the compensation to be paid the **Professional Service Provider** pursuant to this **Agreement** has been established at an amount reasonable for the availability and services of the **Professional Service Provider and the Professional Service Provider’s Team**.

4. INDEPENDENT CONTRACTOR STATUS

The parties hereby acknowledge and covenant that:

A. **Professional Service Provider** is an independent contractor and will act exclusively as an independent contractor is not an agent or employee of the **City** in performing the duties in this **Agreement**.

1. The parties do not intend, and will not hold out that there exists, any corporation, joint venture, undertaking for a profit or other form of business venture or any employment relationship among the parties other than that of an independent contractor relationship.

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2. All payments to **Professional Service Provider** pursuant to this **Agreement** shall be due and payable in the State of Oklahoma, even if services of **Professional Service Provider** are performed outside the State of Oklahoma.

B. The **City** shall not withhold any social security tax, workmen's compensation, Medicare tax, federal unemployment tax, federal income tax, or state income tax from any compensation paid to **Professional Service Provider** as **Professional Service Provider** is an independent contractor and the members of its **Professional Service Provider's Team**, assigned to work on the Project for the **City** are not employees of the **City**. Any such taxes, if due, are the responsibilities of **Professional Service Provider** and will not be charged to the **City**.

C. **Professional Service Provider** acknowledges that as an independent contractor it and **Professional Service Provider's Project Team**, assigned to work on the Project for the **City** are not eligible to participate in any health, welfare or retirement benefit programs provided by the **City** or its employees.

5. TERM, TERMINATION AND STOP WORK

A. This **Agreement** shall commence upon execution by the last party hereto and shall continue in effect for one-year from the date of execution, unless terminated by either party as provided for herein. This **Agreement** may be extended by mutual agreement of the **Parties** in one-year increments, until the Project is completed and accepted as provided herein.

B. The **City** issue notices of termination or suspension to the **Professional Service Provider**. This **Agreement** may be terminated, with or without cause, upon written notice, at the option of **City**.

1. Upon receipt of a notice of termination for the *convenience* from the **City**, the **Professional Service Provider** shall immediately discontinue all services and activities (unless the notice directs otherwise), and

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2. Upon payment for products or services fully performed and accepted, **Professional Service Provider** shall deliver to the **City** all licenses, work, products, deliverables, solutions, communication recommendations, plans, messaging strategies, style guides, design elements, internal and external messaging campaigns, documents, data analysis, reports, and other information and materials accumulated or created in performing this **Agreement**, whether same are complete or incomplete, unless the notice directs otherwise. Upon termination for the *convenience* by the **City**, the **City** shall pay **Professional Service Provider** for completed Projects and Deliverables up to the time of the notice of termination for *convenience*, in accordance with the terms, limits and conditions of the **Agreement** and as further limited by the “not to exceed” amounts set out in this **Agreement**.

3. Upon notice of termination for *cause* from the **City**, the **Professional Service Provider** shall not be entitled to any prior or future payments, including, but not limited to, any services, performances, work, products, deliverables, solutions, costs, or expenses, and **Professional Service Provider** shall release and waive any interest in any retainage. The **City** may hold any outstanding payments for prior completed Projects, Deliverables, Services or expenses and any retainage as security for payment of any costs, expenses, or damages incurred by the **City** by reason of **Professional Service Provider’s** breach or other cause. Provided, however, upon notice of termination for cause, the **Professional Service Provider** shall deliver to the **City** services, products, solutions, and Deliverables including, but limited to, all communication recommendations, plans, messaging strategies, style guides, design elements, internal and external messaging campaigns, documents, data analysis, reports, and other information and materials accumulated or created in performing this **Agreement**, whether complete or incomplete, unless the notice directs otherwise.

4. The rights and remedies of the **City** provided in this paragraph are in addition to any other rights and remedies provided by law or under the **Agreement**. Termination herein

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shall not terminate or suspend any warranty, indemnification, insurance, or confidentiality required to be provided by **Professional Service Provider** under this **Agreement**.

C. Upon notice to **Professional Service Provider**, the **City** may issue a stop work order suspending any Projects, services, performances, work, products, Deliverables, or solutions under this **Agreement**. Any stop work order shall not terminate or suspend any warranty, indemnification, insurance, or confidentiality required to be provided by **Professional Service Provider** under this **Agreement**. In the event the **City** issues a stop work order to **Professional Service Provider**, the **City** will provide a copy of such stop work order to the **Professional Service Provider**. Upon receipt of a stop work order issued from the **City**, the **Professional Service Provider** shall suspend all work, services and activities except such work, services, and activities expressly directed by the **City** in the stop work order. Upon notice to the **Professional Service Provider**, this **Agreement**, and any or all work, services, and activities thereunder, may be suspended up to thirty (30) calendar days by the **City**, without cause and without cost to the **City**; provided however, the **Professional Service Provider** shall be entitled to an extension of all subsequent deadlines for a period equal to the suspension periods for those suspended work, services, and activities only.

D. **Obligation upon Termination for *Convenience*.**

1. In the event this **Agreement** is terminated for convenience hereunder, the **City** shall pay **Professional Service Provider** for such properly documented invoices, if any, in accordance with the provisions of this **Agreement** above, through the date of termination for *convenience* and the period set forth in the notice, and thereafter the **City** shall have no further liability under this **Agreement** to **Professional Service Provider** and **Professional Service Provider** shall have no further obligations to the **City**.

2. Upon termination for *convenience* of the Project and the providing to the **City** of all Deliverables for the Project and payment of the invoice for the Project to **Professional Service Provider**, the **City** shall own all rights and license for the Deliverables and other work products related to that Project.

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6. WARRANTIES

A. **Professional Service Provider** warrants that the Projects performed, and Deliverables provided under this **Agreement** shall be performed consistent with generally prevailing Construction standards and expertise. **Professional Service Provider** shall maintain during the course of this **Agreement** said standard of care, expertise, skill, diligence, and professional competency for any and all such services, products, solutions, and deliverables. **Professional Service Provider** agrees to require all members of the **Professional Service Provider's Team**, also including Full Time Employees assigned to work on the Project, to provide any and all services, products, solutions, and Deliverables at said same standard of care, expertise, skill, diligence, and professional competence required of **Professional Service Provider**.

B. During the term of this **Agreement**, the **City's** initial remedy for any breach of the above warranty shall be to permit **Professional Service Provider** one additional opportunity to perform the work, services, and activities or provide the Projects and Deliverables without additional cost to the **City**. If the **Services Provider** cannot perform the work, services, and activities or provide the products, solutions and deliverables according to the standards and requirements set forth in this **Agreement** within thirty (30) calendar days of the original performance date, the **City** shall be entitled to recover, should the **City** so determine to be in their best interest, any fees paid to the **Professional Service Provider** for previous payments, including, but not limited to, work, services, activities services, Projects and Deliverables and **Professional Service Provider** shall make reimbursement or repayment within thirty (30) calendar days of a demand by the **City**. Should the **Professional Service Provider** fail to reimburse the **City** within thirty (30) calendar days of demand, the **City** shall also be entitled to interest at 1.5% percent per month on all outstanding reimbursement and repayment obligations.

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C. The **Professional Service Provider** also acknowledges and agrees to provide all express and implied, warrants required or provided for by Oklahoma statutory and case law. This warrant is in addition to other warranties provided in or applicable to this **Agreement** and may not be waived by any other provision, expressed, or implied, in this **Agreement** or in any **Attachment** hereto.

7. INSURANCE

A. **Professional Service Provider** must provide and maintain at all times throughout the term of this **Agreement**, and any renewal hereof, such *commercial general insurance with a limit of \$1,000,000 per occurrence for bodily injury and property damage and \$5,000,000 general aggregate* protecting the **City** from claims for bodily injury (*including death*) and or property damage arising out of or resulting from the **Professional Service Provider**, and its employees, use and occupancy of the premises and the activities conducted thereon . The insurance coverage required in this paragraph must include the **City** as additional insureds as their interest may appear under this **Agreement** under the policy or policies.

B. A certificate of insurance evidencing the coverage required herein shall be provided to the **City** within five (5) days of the execution of this **Agreement**.

C. **Professional Service Provider** shall require any contractor or subcontractor to obtain and maintain substantially the same coverage as required of **Professional Service Provider** including the **City** as an additional insured as their interest may appear under this **Agreement**.

D. The insurance requirements set forth herein must not be deemed to limit, affect, waive, or define any obligations of the **Professional Service Provider** in any other paragraph of this **Agreement** or any indemnification or insurance requirement in any other paragraph of this **Agreement**. This paragraph must continue in full force and affect for any act, omission, incident, or occurrence occurring or commencing during the term of this **Agreement**. Further, the insurance coverage required by this paragraph will survive revocation, non-renewal, termination, and expiration of this **Agreement** for any occurrence or event occurring, initiated, or commencing

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prior to such revocation, non-renewal, termination, and expiration or during the period in which the **Professional Service Provider** is services under the **Agreement**.

E. Provided, however, should the **Professional Service Provider** or its officers, invitees, representatives, contractors, employees, or agents carry any additional, different, or other insurance or insurance coverage of any kind or nature, the provisions of this paragraph must not in any way limit, waive or inhibit the **City** from making a claim or recovering under such insurance or insurance coverage.

F. Notwithstanding any other provision to the contrary, upon termination or lapse of insurance coverage required hereunder, this **Agreement** may be terminated. Termination of this **Agreement** pursuant to this paragraph must take precedence and supersede any other paragraph establishing the term of this **Agreement**, establishing a procedure for revocation or termination, or requiring notice and/or providing an opportunity to cure a breach.

G. The insurance limits in this paragraph in no way act or will be deemed to define or limit the right of **City** to recover damages, expenses, losses or for personal injuries, death, or property damage pursuant to applicable law or the indemnification provisions or under any other paragraph or provision in this **Agreement**.

8. INDEMNIFICATION

A. Professional services claim. The **Professional Service Provider** shall indemnify and hold the **City** and the **City's** officers, directors, members, and employees harmless from and against damages, losses and judgments arising from claims by third parties, but only to the extent they are caused by the willful misconduct or negligent acts, errors, or omissions of the **Professional Service Provider**, its employees and its **Professional Service Providers**, or anyone for whose acts any of them may be legally liable, in the performance of professional services under this Agreement.. The **Professional Service Provider** is not obligated to indemnify any Indemnitee in any manner whatsoever for the Indemnitee's own negligence.

B. Non-Professional Services claim. The **Professional Service Provider** shall

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indemnify, defend, and hold harmless **City** and the **City's** officers, directors, members, and employees from any and all liabilities, claims, demands, causes of action, loss, cost, damages, and expenses, including reasonable attorney's fees, expert and **Professional Service Provider** fees to the extent caused by the willful misconduct or negligent acts or omissions of the **Professional Service Provider** and those of its Subconsultants or anyone for whom the **Professional Service Provider** is legally liable. The **Professional Service Provider** is not obligated to indemnify or defend any Indemnitee in any manner whatsoever for the Indemnitee's own negligence.

C. The provisions of this paragraph shall survive the expiration of this **Agreement**. It is understood that these indemnities and hold harmless provisions are not limited or defined by the insurance required under the insurance provisions of this **Agreement**.

9. BONDS

Professional Service Provider shall provide all bonds required by the RFP. All Performance Bonds shall be on forms provided by the **City**. The **City** shall be the beneficiary of the Performance Bond. The Performance Bond shall be underwritten by a company that has filed and has registered to do business with the Oklahoma Secretary of State.

10. CONFIDENTIALITY

Professional Service Provider acknowledges that in the course of training and providing other services to the **City**, the **City** may provide **Professional Service Provider** with access to valuable information of a confidential and proprietary nature including but not limited to information relating to the **City's** employees, customers, marketing strategies, business processes and strategies, security systems, data, and technology. **Professional Service Provider** agrees that during the time period this **Agreement** is in effect, and thereafter, neither **Professional Service Provider** nor **Professional Service Provider's Team**, without the prior written consent of the **City**, shall disclose to any person, other than to the **City**, any information obtained by

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Professional Service Provider. **Professional Service Provider** shall require and maintain adequate confidentiality agreements with its employees, agents, contractors, and subcontractors.

11. NOTICES

A. Notices and other communications to the **City** pursuant to the provisions hereof will be sufficient if sent by first class mail, postage prepaid, return receipt required, or by a nationally recognized courier service, addressed to:

The City of Midwest City, City Clerk
100 N. Midwest Boulevard
Midwest City, OK 73110

respectively, and notices or other communications to the **Professional Service Provider** pursuant to the provisions hereof will be sufficient if by first class mail, postage prepaid, return receipt required, or by a nationally recognized courier service, addressed to:

Ryan Henderson, PE, PTOE
Lee Engineering, LLC
1111 N Lee Avenue, Suite 236
Oklahoma City, OK 73103

B. Any party hereto may change the address or addressee for the giving of notice to it by thirty (30) days prior written notice to the other parties hereto as provided herein. Unless otherwise specified in this **Agreement**, notice will be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to this paragraph.

12. ABIDES BY LAW

The **Professional Service Provider** must abide by the conditions of this **Agreement**, the ordinances of the **City**, and all laws and regulations of the State of Oklahoma and the United States of America (“Laws”), applicable to **Professional Service Provider’s** activities. **Professional**

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Service Provider will be responsible for securing any license, permits and/or zoning which may be required prior to commencement of the Project.

13. ASSIGNMENT AND SUBLEASE

Professional Service Provider may not assign or sublease its interest under this **Agreement** without the prior written consent of the **City**. Any assignment or sublease shall become effective upon receipt of a request signed by authorized and empowered officers/agents of the **Professional Service Provider** and sublessee and provision by the sublessee of a certificate of insurance evidencing the insurance required by this **Agreement** and upon approval of such sublease by **City**. The **City** may, but not required, to execute a letter approving either the assignment or sublease as provided herein on behalf of **City**. Upon approval of such assignment or sublease, **Professional Service Provider** will not be relieved of future performance, liabilities, and obligations under this **Agreement**. **City** shall be provided with a copy of each written sublease agreement, and all amendments thereto, entered into by **Professional Service Provider** within forty-five (45) days after the entering into of same.

14. COMPLETE AGREEMENT AND AMENDMENT

This is the complete agreement between the parties and no additions, amendments, alterations, or changes in this **Agreement** shall be effective unless reduced to writing and signed by all parties hereto. Additionally, no statements, discussions, or negotiations shall be deemed or interpreted to be included in this **Agreement**, unless specifically and expressly provided herein.

15. TIME OF ESSENCE

For the purposes of this **Agreement**, time shall be deemed to be of the essence.

16. MULTIPLE ORIGINALS

This **Agreement** shall be executed in multiple counterparts, each of which shall be deemed an original.

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17. ANTI-COLLUSION

Professional Service Provider agrees that it has not been and shall not be a party to any collusion with any of their officials, trustees, or employees of the **City** as to the terms or conditions of this **Agreement**, and has not and will not exchange, give or donate money or other things of value for special consideration to any officials, trustees, or employees of the **City**, either directly or indirectly, in procuring and execution of this **Agreement**.

18. BREACH AND DEFAULT

A. A breach of any provision of this **Agreement** shall act as a breach of the entire **Agreement** unless said breach is expressly waived in writing by all other parties hereto. Failure to enforce or timely pursue any breach shall not be deemed a waiver of that breach or any subsequent breach. No waiver of any breach by any party hereto of any terms, covenants, or conditions herein contained shall be deemed a waiver of any subsequent breach of the same, similar, or different nature.

B. Further, except as otherwise specifically and expressly provided and any other paragraph hereto, should any party hereto fail to perform, keep or observe any of the terms, covenants, or conditions herein contained, this **Agreement** may be terminated by any party not in default thirty (30) days after receipt of written notice and opportunity to cure, less and except as such lesser time is provided in this **Lease**.

C. Should the **City** breach this **Agreement**, **Professional Service Provider** may only recover that proportion of services provided prior to the breach. **Professional Service Provider** may not collect or recover any other or additional damages, losses, or expenses.

19. THIRD PARTY BENEFICIARIES

All parties expressly agree that no third-party beneficiaries, expressly or implicitly, are intended to be or shall be created or acknowledged by this **Agreement**. This **Agreement** is solely

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for the benefit of the **Professional Service Provider** and the **City**, and none of the provisions hereof are intended to benefit any third parties.

20. VENUE AND CHOICE OF LAW

All parties hereto expressly agree that the venue of any litigation relating to or involving this **Agreement** and/or the rights, obligations, duties, and covenants therein shall be in the appropriate court (state or federal) located in Oklahoma County, Oklahoma. All parties agree that this **Agreement** shall be interpreted and enforced in accordance with Oklahoma law and all rights of the parties shall be determined in accordance with Oklahoma law.

21. VALIDITY

The invalidity or unenforceability of any provision of this **Agreement** shall not affect the validity or enforceability of any other provisions of this **Agreement**, which shall remain in full force and effect.

22. NO WAIVER

The failure or neglect of either of the **Parties** hereto to insist, in any one or more instances, upon the strict performance of any of the terms or conditions of this **Agreement**, or waiver by any party of strict performance of any of the terms or conditions of this **Agreement**, shall not be construed as a waiver or relinquishment in the future of such term or condition, but such term or condition shall continue in full force and effect.

23. NO EXTRA WORK

No claims for extra work, product, services, solution, or deliverables of any kind or nature or character shall be recognized or paid by or be binding upon the **City** unless such services, work, product, solution, or deliverable is first requested and approved in writing by the **City** through a purchase order.

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24. AMENDMENT

This **Agreement** may be amended by mutual agreement of the **Parties**, in writing and signed by both **Parties**. The **City** hereby delegates to the City Manager all amendments and renewals to this **Agreement** for approval and execution **unless** the amendment or renewal is required by City Ordinance to be approved and executed by the City Council.

25. EFFECTIVE DATE

The Effective Date of this **Agreement** is the date approved by the **City** as the last party hereto.

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this **Agreement** on the dates set forth below.

Professional Service Provider: Lee Engineering, LLC

By: 

Name: Ryan Henderson

Title: Project Manager

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APPROVED by the Council and **SIGNED** by the Mayor of The City of Midwest City this
14 day of November, 2023.



THE CITY OF MIDWEST CITY



MATT DUKES, MAYOR



SARA HANCOCK, CITY CLERK

REVIEWED for form and legality.



DONALD D. MAISCH, CITY ATTORNEY