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**ENGINEER / DESIGN PROFESSIONAL SERVICES AGREEMENT**

This Agreement dated this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2013, by and between the Johnson County Economic Development Corporation, (herein “JCEDC”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (herein “Engineer/Design Professional”).

In consideration of the performance of the services rendered under this Agreement and payment for such services, the parties agree to the following:

1. Services:

As authorized by JCEDC in writing, the Engineer/Design Professional shall provide JCEDC with the professional services on the Johnson County Mo. Innovation District Study for the benefit of JCEDC as more fully set forth in the Proposal and Scope of Services submitted by Engineer/Design Professional and as outlined in JCEDC's Request for Proposals, which are all fully incorporated herein by this reference. The Engineer/Design Professional shall provide JCEDC, as applicable, with the services, reports, studies, surveys, plans, specifications, and other work outlined. Engineer/Design Professional agrees to provide all such services in a timely manner as established by JCEDC in writing for the project, the Engineer/Design Professional's Proposal or in the absence of the designation, within a reasonable time after receipt of JCEDC directives.

Provision of Services:

Engineer/Design Professional agrees to provide services by and through qualified personnel under standards and conditions generally accepted by professionals in the field or

occupations for which services are provided. Services shall be provided based only upon the Scope of Services described or by any additional proposals provided to the Engineer/Design Professional by JCEDC or JCEDC's representative a written proposal for services which is approved by JCEDC in writing. No services shall be performed nor shall compensation be paid for Engineer/Design Professional services performed without a JCEDC approved written proposal for. Professional services. Proposals for additional services shall be in written form and shall be specifically responsive to the criteria provided by JCEDC. All services performed by the Engineer/Design Professional, based upon JCEDC approved proposals submitted by the Engineer/Design Professional, shall be subject to the terms and conditions of this agreement unless otherwise specifically agreed upon by JCEDC and Engineer/Design Professional in writing. The approved Scope of Services is attached as an exhibit.

Creation of Contract Documents:

Engineer/Design Professional shall not without the express written permission of JCEDC draft and/or create any contract documents, except for technical specifications and plans, associated with this project Engineer/Design Professional shall not be compensated for any contract documents drafted or created which are in violation of this provision. In the event that Engineer/Design Professional is asked to draft and/or create contract documents by JCEDC, then said contract documents must be in compliance with JCEDC's then existing contract standards for public projects and no compensation shall be provided to Engineer/Design Professional for contract documents which fail to meet JCEDC's standards.

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1. Compensation:

In consideration for the Engineer/Design Professional's provision of services under this agreement, JCEDC agrees to compensate the Engineer/Design Professional for services rendered in accordance with the hourly rates, unit prices and reimbursement rates for expenses set forth in the proposal for the project for which compensation is sought as attached hereto. No increases in the rates and charges set forth in the proposal shall be permitted without the written authorization of JCEDC. Payments shall be made within thirty (30) days of receipt of invoice by JCEDC. Invoices shall be submitted periodically as mutually agreed upon by JCEDC and Engineer/Design Professional, or in the absence of such agreement, upon completion of the work constituting the task or project for which services are provided. Invoices for services on an hourly fee plus expense basis shall individually describe the task or project by name, show hours expended by classes of personnel in increments of not less than one‐half hour and rates applied, as well as describe work performed during the invoice period; reimbursable expenses shall be itemized. Invoices for services performed on a unit price basis shall identify the task or project by name, identify and quantify units charged for services during the invoice period. Invoices for services on a lump sum basis shall identify the task or project by name and the invoiced amount. Periodic invoices shall not exceed the amounts permitted in the Engineer/Design Professional's proposal approved by JCEDC. When periodic requests for payment are made, they shall only reflect charges for work already complete. JCEDC may retain ten percent (10%) of any partial payment pending final completion of the contract services to correct any deficiencies in performance. JCEDC reserves the right to withhold payment for inadequately documented invoices until documented as required herein. JCEDC further reserves the right to withhold payments for unperformed work or work not performed on a timely basis in accordance with the Engineer/Design Professional's proposal when delays in performance of services are not attributable to JCEDC, or as a result of a billing dispute between JCEDC and Engineer/Design Professional. No penalty shall be assessed to JCEDC for such amounts withheld until after any dispute is resolved in Engineer/Design Professional1s favor. Invoices shall be submitted in duplicate and in such format as the Economic Development Administration (EDA) may require for JCEDC's compliance with its grant obligations.

1. JCEDC Responsibilities:

JCEDC agrees to furnish Engineer/Design Professional with all current and available information for each task or project assigned to the Engineer/Design Professional, along with any information necessitated by changes in work or services initiated by JCEDC which may affect services rendered hereunder. Engineer/Design Professional shall notify JCEDC of all information it may require from JCEDC or other Engineer/Design Professionals and Contractors of JCEDC sufficiently in advance so as to avoid delay of the work to be completed by Engineer/Design Professional.

1. Coordination of Work and Work Product:

Engineer/Design Professional shall coordinate all work with JCEDC's designated representative for each task or project assigned to Engineer/Design Professional and submits to JCEDC's representative all work products in written or graphic form and in electronic form, if requested, as applicable or required. Upon payment of fees and reimbursable expenses due and owing Engineer/Design Professional in accordance with this Agreement, all reports, surveys, test data, memoranda, samples, plans, specifications, and other documents or materials submitted by or to JCEDC shall be

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considered the property of JCEDC. When available and requested by JCEDC, work product shall be provided in electronic form at actual cost in media compatible for use with JCEDC software and equipment, and Adobe (.pdf) format shall be acceptable. JCEDC shall assume all liability for reuse of Engineer/Design Professional's documents other than by Engineer/Design Professional, or except as specifically authorized by Engineer/Design Professional.

1. Protection of Work, Property and Persons:

To the extent Engineer/Design Professional's work will require any field work, testing, sampling or otherwise, the requirements of this Section shall apply. The Engineer/Design Professional will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with, and only in connection with, Engineer/Design Professional's services provided under this Agreement. The Engineer/Design Professional will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all of its employees providing work under this Agreement and other persons who may be affected thereby, and other property included with area where the services are being provided under the project, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities. The Engineer/Design Professional shall comply with all pertinent provisions of the Occupational Safety and Health Administration (OSHA), any State Safety and Health agency requirements.

The Engineer/Design Professional will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. The Engineer/Design Professional will erect and maintain, as required by the conditions and progress of the services, all necessary safeguards for safety and protection of its employees while said employees are providing services under this Agreement. The Engineer/Design Professional will notify JCEDC of adjacent utilities when prosecution of the request for proposal may affect them. The Engineer/Design Professional will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or part, by the Engineer/Design Professional, any Subcontractor or any person directly or indirectly employed by any of them or anyone for whose acts they may be liable.

In emergencies affecting the safety of persons or the scope of work or property within the project area, the Engineer/Design Professional, without special instructions or authorization from JCEDC, shall act to prevent threatened damage, injury or loss. The Engineer/Design Professional will give JCEDC prompt written notice of any significant changes in the scope of work caused thereby and a change order shall thereupon be issued covering the changes and deviations involved.

All Engineer/Design Professionals entering into contracts for public works shall require all employees who will conduct field work, testing or sampling under this Agreement to complete ten hours of training pursuant to Section 292.675 RSMo within sixty days of beginning work on the project.

Any Engineer/Design Professional violating the training requirements of Section 292.675 RSMo shall forfeit as a penalty to the public body on whose b half the contract is made the sum of $2,500.00 plus $100.00 for each violating employee, per day. Theses penalties shall accrue on expiration of the time limits set forth in Sections 292.675.2 and 292.675.3 RSMo.

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All sums due for such forfeiture and penalty shall be withheld from payments owed under the Contract. No payment otherwise due shall be made during any term of uncorrected violations of Section 292.675 RSMo and no interest or penalties shall accrue on any such unmade payment.

The Engineer/Design Professional is aware of the provisions of the Overhead Power Line

Safety Act, 319.075 to 319.090 RSMo, and agrees to comply with the provisions thereof to the extent included in activities conducted under this Agreement. Engineer/Design Professional understands that it is their duty to notify any utility operating high voltage overhead lines and make appropriate arrangements with said utility if the performance of contract would cause any activity by Engineer/Design Professional or any other party within ten feet of any high voltage overhead line. To the fullest extent permitted by law, Engineer/Design Professional shall indemnify, hold harmless and defend JCEDC, its officers, agents, and employees from and against all claims, drainages, losses and expenses (including but not limited to attorney's fees) arising by reason of any act or failure to act, negligent or otherwise, of Engineer/Design Professional, of any Subcontractor (meaning anyone, including but not limited to Engineer/Design Professionals having a contract with Engineer/Design Professional or a subcontract for part of the services), of anyone directly or indirectly employed by Engineer/Design Professional or by any Subcontractor, or of anyone for whose acts the Engineer/Design Professional or its Subcontractor may be liable, in connection with any claims arising under the Overhead Power Line Safety Act.

1. General Insurance Requirements:

Engineer/Design Professional shall purchase and maintain such insurance as will protect if from claims set forth below which may arise out of, or result from the Engineer/Design Professional's work, whether such execution be by the Engineer/Design Professional, any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone whose acts any of them may be liable:

Workers Compensation:

Claims under workmen's compensation, disability benefit and other similar employee benefit acts in amounts required by law. In case any class of employees engaged in hazardous work under this Agreement is not protected under the workmen's compensation statute, the Engineer/Design Professional shall provide adequate and suitable insurance for the protection of its employees not otherwise protected.

Bodily Injury:

Claims for damages because of bodily injury, occupational sickness or disease, or death of employees in the amounts required by law.

Personal Injury:

Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Engineer/Design Professional, or (2) by any other person.

Third Person Bodily Injury:

Claims for damages because of bodily injury, sickness or disease, or death of any person other

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than employees in the amount of at least $376,378.00 per person and $2,509, 186.00 per occurrence, or such amounts as are annually listed as the governmental sovereign immunity waiver in section 537.610 RSMo, as annually adjusted.

Automobile Coverage:

Claims for damages because of injuries to persons and property arising out of the operation of the following in the execution of projects:

Engineer/Design Professional's own automobiles and trucks, Hired automobiles and trucks, and

Automobiles and trucks now owned by the Engineer/Design Professional. The insurance shall cover the use of the above mentioned automobiles and trucks during the

term of this Agreement. The minimum amounts of such insurance shall be the same as required for Public Liability and Property Damage Insurance.

Professional Liability:

Claims for damages resulting from errors or omissions of the Engineer/Design Professional or its employees in the amount of at least two million dollars ($2,000,000.00).

1. Indemnification:

Failure of Engineer/Design Professional to obtain or maintain such insurance during this contract, or to provide proper proofs thereof upon request of JCEDC, shall not diminish, waive or otherwise reduce the Engineer/Design Professional's obligations to maintain such insurance coverage and Engineer/Design Professional shall indemnify and hold JCEDC and all its personnel harmless from and against any and all claims, damages, losses and expenses, including reasonable attorney's fees and litigation costs, arising out of or resulting from the performance of services, provided that any such claim, damage, loss or expenses, is caused in whole or in part by the negligent act, omission and/or liability of the Engineer/Design Professional, its agents or employees. Further, Engineer/Design Professional shall hold JCEDC harmless from any failure by Engineer/Design Professional to complete their work in compliance with all applicable local, state and federal regulations.

1. Delegation and Subcontracting:

Unless otherwise proposed and approved in the Engineer/Design Professional's proposal for services, the Engineer/Design Professional shall not delegate or subcontract any work to be performed by the Engineer/Design Professional under this agreement to any other person, business or entity without the express advance written approval of JCEDC for such delegation or subcontract work.

1. Records and Samples:

To the extent not otherwise transferred to JCEDC's possession, Engineer/Design Professional agrees to retain and provide JCEDC with reasonable access to all work product, records, papers and other documents involving transactions and work related to or performed under this agreement for a period of three (3) years after final payment is made to Engineer/Design Professional under this agreement. When services involve testing or sampling, Engineer/Design Professional agrees to either retain all test products or samples collected by or submitted to Engineer/Design Professional, or return same to JCEDC as mutually agreed upon. In absence of agreement, Engineer/Design

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Professional shall not dispose of test samples or products without notice to or consent by JCEDC or JCEDC's representative.

1. Additional Services:

No compensation shall be paid for any service rendered by the Engineer/Design Professional considered an additional service beyond the scope of services approved by JCEDC unless rendition of that service and expense thereof has been authorized in writing by JCEDC in advance of performance of such service. Any additional services performed by the Engineer/Design Professional prior to such authorization by JCEDC shall be deemed a part of basic services for work performed under a JCEDC approved proposal for services governed by this agreement, whether enumerated in this agreement or not, for which the Engineer/Design Professional shall be entitled to no additional compensation.

1. Authorization:

When the term JCEDC is used in this agreement, it shall mean the Board of Directors of the Johnson County Economic Development Corporation. Authorization by JCEDC shall mean written instruction from the Board of Directors or Board President, or designee. It is further understood and agreed that no person or party is authorized to bind JCEDC to any proposed agreement for services under the auspices of this agreement without having obtained the prior approval of the JCEDC Board of Directors, Board President, or designee. In this regard, it is understood and agreed that the Engineer/Design Professional shall not be entitled to rely upon verbal representations by any agent or employee of JCEDC in deviation to the terms and conditions of this agreement, or as authorization for compensation for services except as may be approved by the JCEDC Board of Directors or Board President in writing. When the term JCEDC representative is used, it shall mean the Executive Director or designee as specified in writing.

1. Period of Services and Termination:

The period of performance under this agreement shall be as specified in the project schedule attached hereto. JCEDC may and reserves the right to terminate this agreement at any time with or without cause by giving the Engineer/Design Professional written notice of termination. Upon receipt of such notice, Engineer/Design Professional shall discontinue all services in connection with the performance of services authorized under this agreement or JCEDC approved proposal for services and JCEDC shall upon invoice remit payment for all authorized services completed up to the date of termination notice. Upon payment of this invoice, the Engineer/Design Professional shall deliver any and all work product including drawings, plans, and specifications, or other documents, prepared as instruments of service, whether complete or in progress. It is further agreed that if services are terminated the Engineer/Design Professional shall be compensated for all services rendered through the date of termination not to exceed the amount authorized for services through the date of termination. If JCEDC questions the extent of work on a final invoice, the Engineer/Design Professional shall give JCEDC the opportunity to review and evaluate all work upon which the invoice is based in the offices of the Engineer/Design Professional prior to payment. This agreement or work performed under the provisions of this agreement may also be terminated by the Engineer/Design Professional upon not less than seven days written notice in the event JCEDC shall substantially fail to perform in accordance with the terms and conditions of this agreement, through no fault of the Engineer/Design Professional. In the event of termination by the

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Engineer/Design Professional, the other provisions concerning termination contained in this paragraph shall be applicable.

1. Governing Law:

This agreement shall be governed by the laws of the United States and the State of Missouri. It is agreed that this agreement is made in Johnson County, Missouri and that Johnson County, Missouri is proper venue for any action pertaining to the interpretation or enforcement of any provision within or services performed under this agreement.

1. Certification of Lawful Presence / Work Authorization:

Engineer/Design Professional will complete the required certifications of lawful presence and, if the

contract is to exceed $5,000.00, shall complete and return the Work Authorization Certification attached hereto. Engineer/Design Professional shall indemnify and hold harmless JCEDC and its officials, agents and employees from all costs and liabilities incurred as a result of Engineer/Design Professional's failure, or failure of its employees, agents or Subcontractors, to comply with Section 285.530 RSMo regarding unauthorized aliens to the extent the same are applicable during the term of this Agreement. Attached hereto are certifications of compliance required.

1. Nature of Relationship:

Engineer/Design Professional herein is an independent Engineer/Design Professional and shall not act as an agent for JCEDC, nor shall Engineer/Design Professional be deemed to be an employee of JCEDC for any purposes whatsoever. The Engineer/Design Professional shall not enter into any agreement or incur any obligations on JCEDC's behalf or commit JCEDC in any manner.

1. Miscellaneous:

This agreement constitutes the entire agreement of the parties superseding all prior negotiations, written or verbal, and may only be amended by signed writing executed by the parties through their authorized representatives hereunder.

1. Ownership of Plans, Documents and Records:

The field notes, design notes, original drawings of the construction plans, and logs of any wells drilled, as instruments of service, are and shall remain, the property of the Engineer/Design Professional. The Engineer/Design Professional shall also deliver all electronic information on CD in Adobe ".pdf' format. Any documents submitted in AutoCAD format shall have Engineer/Design Professional's seal removed. JCEDC shall assume all liability for reuse of AutoCAD documents other than by Engineer/Design Professional, or except as specifically authorized by Engineer/Design Professional.

JCEDC shall make copies, for the use of the Engineer/Design Professional, of all of its maps, records, laboratory tests, or other data pertinent to the work to be performed by the Engineer/Design Professional pursuant to this Agreement, and also make available any other maps, records, or other materials available to JCEDC from any other maps, records, or other materials available to JCEDC from any other public agency or body. The Engineer/Design Professional shall have no liability for defects in the services attributable to the Engineer/Design Professional's reliance upon or use of data, design criteria, as‐built drawings, or other information furnished by JCEDC or third parties retained by JCEDC.

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The Engineer/Design Professional shall furnish to JCEDC, copies of all maps, records, field notes, and soil tests which were developed in the course of work for JCEDC and, for which compensation has been received by the Engineer/Design Professional. The Engineer/Design Professional understands that the a portion of the funds to pay for the services provided herein are through a grant from the Economic Development Administration (herein "EDA") and that pursuant to the terms of JCEDC's grant with the Economic Development Administration (EDA) that EDA reserves a royalty‐free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for Federal government purposes: (a) the copyright in any work developed under this award, sub‐award, or contract awarded under this grant; and (b) any rights of copyright to which a Grantee or sub‐grantee or a contractor purchases ownership with award funds.

1. Compliance with Federal Regulations, Policies and Grant Requirements:

The Engineer/Design Professional agrees to fully cooperate with representatives from the Economic Development Administration (EDA) and JCEDC to enable compliance with all federal regulations, policies and grant requirements associated with this Project. The following documents make up a part of this Contract, and are incorporated herein fully by reference under the:

Terms and conditions of the Request for Proposals dated April 3, 2013

Cooperative Agreement between Economic Development Administration (EDA) and JCEDC Technical Assistance Grant ‐ Award No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, effective date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Proposal from Engineering/Design Profession for the Johnson County Mo. Innovation District dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The Engineer/Design Professional shall comply with all of the terms, conditions and requirements contained within those said documents. Engineer/Design Professional shall be responsible for identifying all compliance steps, and requirements imposed upon Engineer/Design Professional and JCEDC. In the event that the terms of said attached documents conflict with this Agreement, the Request for Proposals or the Engineer/Design Professional's Proposal, the Engineer/Design Professional shall immediately contact JCEDC's representative for clarification.

IN WITNESS WHEREOF, the parties have executed this agreement by their duly authorized signatories effective the date and year first above written.

ENGINEER/DESIGN PROFESSIONAL JOHNSON COUNTY ECONOMIC

DEVELOPMENT CORPORATION

(JCEDC)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Gilbert Powers, President

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Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ATTEST: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

William H. Gabel, Secretary

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