

AGREEMENT FOR THE PROVISION OF LIMITED PROFESSIONAL SERVICES

DATE: MAY 26, 2021

LOCHMUELLER PROJECT No: 521-0074-00P

**CLIENT: CITY OF WILDWOOD
16860 MAIN STREET
WILDWOOD, MO 63040**

PROJECT NAME/LOCATION: TRAFFIC STUDY FOR RELOCATION OF MONARCH FIRE STATION

SCOPE/INTENT AND EXTENT OF SERVICES:

The basic services to be provided by CONSULTANT under this Agreement are as set forth in Appendix "A" ("Services") attached hereto and incorporated herein by reference.

FEE ARRANGEMENT:

LOCHMUELLER shall receive payment for the Services performed under this Agreement as set forth in Appendix "D" attached hereto and incorporated herein by reference.

SCHEDULE:

LOCHMUELLER shall deliver the Services to the CLIENT in accordance with the Schedule contained in Appendix "C" attached hereto and incorporated herein by reference.

THIS AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS ON THE REVERSE SIDE HEREOF. PLEASE REVIEW THEM CAREFULLY.

OFFERED BY: LOCHMUELLER GROUP, INC.

ACCEPTED BY: CITY OF WILDWOOD

Signature

Signature

Print Name and Title

Print Name and Title

LOCHMUELLER GROUP INC. (LOCHMUELLER) shall perform the services outlined in this Agreement for the stated fee arrangement.

ACCESS TO SITE

Unless otherwise stated, **LOCHMUELLER** and its **SUBCONSULTANT's**, if any, shall have access to the site for activities necessary for the performance of the services. **LOCHMUELLER** and its **SUBCONSULTANT's** will take precautions to minimize damage due to these activities, but has not included in the fee the cost of restoration of any resulting damage.

BILLING AND PAYMENTS

Invoices for **LOCHMUELLER's** services shall be submitted, at **LOCHMUELLER's** option, either upon completion of such services or on a monthly basis. Invoices shall be payable within 30 days after the invoice date. **ALL PAYMENTS SHALL BE MAILED TO LOCHMUELLER GROUP, INC. AT 6200 VOGEL ROAD, EVANSVILLE, INDIANA 47715.** If the invoice is not paid within 30 days, **LOCHMUELLER** may, without waiving any claim or right against the **CLIENT**, and without liability whatsoever to the **CLIENT**, terminate the performance of the service.

LATE PAYMENTS

Accounts unpaid 45 days after the invoice date may be subject to a monthly service charge of 1.0% on the then unpaid balance. In the event any portion or all of an account remains unpaid 90 days after billing, the **CLIENT** shall pay all costs of collection, including attorney's fees and all court costs.

ADDITIONAL OR CHANGE IN SERVICES

In the event that the **CLIENT** requires additional or a major change in scope, character, or complexity of the services after the services have progressed as directed by the **CLIENT**, adjustments in compensation to **LOCHMUELLER** and in time for performance of the services as modified shall be determined through negotiations between the **CLIENT** and **LOCHMUELLER**. **LOCHMUELLER** shall not commence the additional services or the change of the scope of the services until an amendment to the Agreement is executed and **LOCHMUELLER** is authorized to proceed in writing by the **CLIENT**.

CERTIFICATIONS AND STANDARD OF CARE

Guarantees and Warranties: **LOCHMUELLER** shall not be required to execute any document that would result in its certifying, guaranteeing or warranting the existence of conditions whose existence **LOCHMUELLER** cannot ascertain. Any opinions or probable project costs or construction costs rendered by **LOCHMUELLER** represent its best judgment and are furnished for general guidance only. **LOCHMUELLER** makes no warranty, either express or implied, as to the accuracy of such opinions as compared to bid or actual costs. **LOCHMUELLER** warrants only that it will perform its services consistent with the professional skill and care ordinarily provided by consultants practicing in the same or similar locality under the same or similar circumstances at the time that the services are provided ("Standard of Care"). No other warranty, expressed or implied, is made or intended by this Agreement.

RESPONSIBILITY FOR CLAIMS

In recognition of the relative risks, rewards and benefits of the project to both the **CLIENT** and **LOCHMUELLER**, the risks have been allocated such that the **CLIENT** agrees that, to the fullest extent permitted by law, **LOCHMUELLER's** total liability to the **CLIENT** for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this Agreement from any cause or causes, shall not exceed the amount of **LOCHMUELLER's** total compensation for services paid and received by **LOCHMUELLER** under this Agreement. Such causes include, but are not limited to **LOCHMUELLER's** negligence, errors, omissions, or breach of contract. **LOCHMUELLER** shall not be responsible for the means, methods and techniques of the construction contractor in the prosecution of its work nor for the construction contractor(s)' and their subcontractors' safety programs, training or compliance with safety requirements of any federal or state agency.

NO PERSONAL LIABILITY

Notwithstanding any other provisions of this Agreement to the contrary, **LOCHMUELLER's** officers, directors, shareholders, partners, employees or agents shall not be personally liable, regardless of the cause of action asserted including breach of contract, warranty guarantee, products liability, negligence, tort, strict liability, or any other cause pertaining to **LOCHMUELLER's** performance or non-performance of the Agreement. **CLIENT** will look solely to **LOCHMUELLER** for its remedy for any claim arising out of or related to this Agreement.

CONSEQUENTIAL DAMAGES

CLIENT and **LOCHMUELLER** further agree to waive, on behalf of their assigns, employees, agents, and successors-in-interest, any and all consequential damages arising out of their responsibilities hereunder. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty.

SUBCONTRACTORS

If **LOCHMUELLER** has been asked by the **CLIENT** to subcontract certain geotechnical services on behalf of the **CLIENT**, **LOCHMUELLER** agrees to do so only as an accommodation to the **CLIENT** and in reliance upon the **CLIENT's** assurance that the **CLIENT** will make no claim to bring any action at law or in equity against **LOCHMUELLER** as a result of this subcontracted service. The **CLIENT** understands that **LOCHMUELLER** is neither trained nor knowledgeable in the procedures or results of the subcontractor's services and the **CLIENT** shall not rely upon **LOCHMUELLER** to check the quality or accuracy of their services. In addition, the **CLIENT** agrees to the fullest extent permitted by law to indemnify and hold **LOCHMUELLER** harmless from any damage, liability or cost (including attorneys' fees and costs of defense) arising from the services performed by this subcontractor except only those damages, liabilities or costs caused by the sole negligence or willful misconduct of **LOCHMUELLER**.

CONTROLLING LAW AND DISPUTE RESOLUTION

This Agreement is to be governed by and interpreted in accordance with the law of the State where the project is located. If either **CLIENT** or **LOCHMUELLER** has a Claim against the other, the claimant shall promptly give written notice thereof and both Parties shall, in the first instance, endeavor in good faith to negotiate a settlement of the claim. If the Parties cannot resolve the dispute by negotiation, the Parties shall participate in mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect and with a neutral third-party mutually acceptable to them, and they will share equally in the cost of the mediation. If the Parties do not resolve the dispute within three (3) months of starting the mediation, the Parties may proceed with litigation. All litigation shall be in a federal or state court situated in the county in which the project resides, subject to applicable law.

TERMINATION OF SERVICES

This Agreement may be terminated by the **CLIENT** or **LOCHMUELLER** should the other fail to perform its obligations hereunder. In the event of termination, the **CLIENT** shall pay **LOCHMUELLER** for all services rendered to the date of termination, all reimbursable expenses, and reimbursable termination expenses.

OWNERSHIP OF DOCUMENTS

All reports, drawings, specifications, computer files, field data, notes and other documents and instruments prepared by **LOCHMUELLER** as instruments of service shall remain the property of **LOCHMUELLER**. **LOCHMUELLER** shall retain all common law, statutory and other reserved rights, including, without limitation, the copyrights thereto.

ELECTRONIC MEDIA

Data, words, graphical representations and drawings that are stored on electronic media such as computer disks and magnetic tapes, or which are transmitted electronically, may be subject to uncontrollable alteration. **CLIENT** agrees it may only justifiably rely upon the final hardcopy materials bearing the consultant's original signature and seal.

FORCE MAJEURE

Neither party to this Agreement shall be liable to the other party for delays in performing the Scope of Services, or for the direct or indirect cost resulting from such delays, that may result from labor strikes, riots, war, acts of governmental authorities, extraordinary weather conditions or other natural catastrophe, or any other cause beyond the reasonable control or contemplation of either party.

SEVERABILITY

The invalidity, illegality or unenforceability of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Agreement.

HEADINGS

Headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants, and conditions of this Agreement.

REPRESENTATIONS

Each party represents and warrants to the other that:

- a) It is duly organized and validly existing in the jurisdiction of its organization and has all the necessary power and authority to execute, deliver and perform this Agreement.
- b) The execution, delivery and performance of this Agreement has received all necessary partnership, corporate or other approvals, and does not conflict with any law, regulation, order, contract or instrument to which such party is bound.
- c) The individual(s) signing on its behalf is/are duly authorized to execute this Agreement to legally bind such party.

ATTACHMENT "A"

PROJECT DESCRIPTION

The Monarch Fire Protection District House #2 is currently located on Wildhorse Creek Road to the west of Route 109. The District has proposed to relocate the fire station approximately 0.5 miles to the east to the southwest corner of Wildhorse Creek and Eatherton Road.

The City of Wildwood is concerned about the potential for increased response times as a result of the relocation. Specifically, the intersection of Wildhorse Creek Road and Route 109 is currently congested during peak times, especially for westbound traffic. MoDOT has plans to improve the intersection by installing a roundabout, but there may be an interim period where the fire station would be operating in the new location without MoDOT's improvements in place.

Based on a review of the site location, it is anticipated that the following intersections would be evaluated:

- Wildhorse Creek Road and Route 109
- Wildhorse Creek Road and Eatherton Road

The study would focus on conditions during the morning, afternoon school dismissal, and evening commuter peak periods of a typical weekday. Should the number of time periods or locations change, this proposal will be revised accordingly.

SCOPE OF SERVICES

1. Meet with representatives of the City of Wildwood and MoDOT to discuss the scope of this study and kick-off the project.
2. Obtain information from the City of Wildwood pertaining to emergency call volume, call locations, and response times for the existing fire station for a period of approximately one year.
3. Obtain information from the City of Wildwood pertaining to the relocated fire station, including a site plan, anticipated operational characteristics, probable response routes, etc.
4. Obtain information from MoDOT regarding the status and implementation timeline of improvements to the Wild Horse Creek Road intersection with Route 109.

5. Obtain a traffic count of Wild Horse Creek Road and Eatherton Road during the weekday morning (7-9 AM) and weekday afternoon (2-6 PM) peak periods. Traffic count data is available for the intersection of Wild Horse Creek Rd and Route 109 from the 2018 MoDOT Study of that location.
6. Establish baseline operating conditions in VISSIM reflecting existing (pre-COVID) traffic at the two study intersections (Wild Horse Creek Road/Route 109 and Wild Horse Creek Rd/Eatherton Road) for the weekday morning, afternoon school dismissal, and evening commuter peak hours. This will be accomplished by factoring the new count at Wild Horse Creek Road and Eatherton Road, if applicable.
7. Establish baseline operating conditions in VISSIM reflecting future year forecasted traffic for the weekday morning, afternoon school dismissal, and evening commuter peak hours. This will include the proposed roundabout at Wild Horse Creek Rd and Route 109 and will reflect traffic forecasts from the 2018 MoDOT Study of that location.
8. Review the site plan for the proposed station and determine if the proposed access onto external roadways (Wild Horse Creek Road and Eatherton Road) is compliant with access management guidelines. Sight distance will be verified to confirm that safe ingress and egress can be provided at each driveway location.
9. Forecast the number of trips that the relocated fire station would generate over the course of a typical weekday, accounting for anticipated call volume, staff shift changes, and occasional visits from the public and other fire district staff to the station.
10. Determine the impact of the additional trips on the study intersections during the weekday morning, afternoon school dismissal, and evening commuter peak hours. One INTERIM SCENARIO based on existing traffic volumes and the existing intersection configurations and one LONG-TERM SCENARIO based on future year traffic volumes and the improved intersections will be evaluated in VISSIM.
11. Quantify the impact of the station relocation on emergency response times during the peak periods. This will be accomplished by comparing emergency vehicle routing through the VISSIM simulation from the existing and proposed station locations. The change (increase or decrease in travel time) for each response route would then be applied to actual response times from the existing station. The analysis will be performed for both the INTERIM and LONG-TERM SCENARIOS. Note the VISSIM simulation will not be developed to reflect motorists “pulling over” to allow emergency vehicles to pass, in order to represent a conservative, worst-case scenario.
12. Compare response times from the relocated station to the existing station aggregated over the entire primary response zone for the emergency apparatus assigned to this station. Determine if the emergency response from the relocated station will satisfy the

response criteria set forth in the most recent edition of the National Fire Protection Association (“NFPA”) 1710 Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments.

13. Determine the need for traffic control or roadway improvements to mitigate any impacts and otherwise offer recommendations in an effort to address the traffic-related concerns of the City of Wildwood with the proposed station location.
14. Summarize our findings in a draft report that would be submitted to the City of Wildwood for review and approval.
15. Address one round of comments from the City of Wildwood and submit to MoDOT at your request for their review and comment.
16. Attend up to 4 meetings with the City of Wildwood and/or MoDOT to present the findings of the study.

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ATTACHMENT "B"

INFORMATION AND SERVICES TO BE PROVIDED BY CLIENT

The client will provide a preliminary site plan for the proposed fire station and any available data pertaining to traffic and/or emergency response calls.

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ATTACHMENT "C"

SCHEDULE

The Traffic Study will be submitted to the reviewing agencies within four weeks of notice-to-proceed and the collection of traffic counts.

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ATTACHMENT "D"

COMPENSATION

1.0 AMOUNT OF PAYMENT

1.1 LOCHMUELLER shall receive compensation for such professional services under the Scope of Services of Attachment "A" of this Agreement on a time and materials basis for a fee not-to-exceed \$19,800.00. Should any additional services be requested, they would be completed on an hourly and expense rate basis based on the rates set forth in the attached rate schedule EXHIBIT "1", attached hereto and incorporated herein by reference.

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