BILL NO. 74 ORDINANCE NO. 2019-74

AN ORDINANCE OF THE CITY OF TRENTON, MISSOURI APPROVING A CONTRACT BY AND BETWEEN THE CITY OF TRENTON, MISSOURI AND HOWE COMPANY, LLC FOR ON-CALL ENGINEERING IN THE CITY OF TRENTON AND AUTHORIZING THE MAYOR AND CITY CLERK OF THE CITY OF TRENTON, MISSOURI, TO EXECUTE THE SAME BY AND ON BEHALF OF SAID CITY.

BE IT ORDAINED, BY THE CITY COUNCIL OF THE CITY OF TRENTON, MISSOURI, AS FOLLOWS, TO WIT:

Section 1. The Mayor and City Clerk of the City of Trenton, Missouri, are hereby authorized and directed to execute said Contract, a copy of which is attached hereto as Exhibit "A", for the on-call engineering in Trenton, Missouri between Howe Company, LLC., and the City of Trenton in and on behalf of the City of Trenton, Missouri.

Section 2. This Ordinance shall be in full force and effect immediately from and after its passage and approval.

PASSED this 28 day of October, 2019.

Linda Crooks
MAYOR AND EX OFFICIO PRESIDENT OF THE CITY COUNCIL OF THE CITY OF TRENTON, MISSOURI

ATTEST:

CITY CLERK

APPROVED this 28 day of October, 2019.

Linda Crooks
MAYOR OF THE CITY OF TRENTON, MISSOURI

ATTEST:

CITY CLERK

Howe Company LLC

Civil & Structural Engineers
www.howecompany.com

October 28, 2019

Ron Urton, P.E.
City Administrator/Utility Director
City of Trenton, MO
City Hall
1100 Main Street
Trenton, MO 64683

Re: On-Call Engineering
Agreement for Professional Services

Dear Mr. Urton,

Thank you for considering Howe Company (HoweCo) to provide professional services in conjunction with On-Call Engineering for general municipal work including water distribution, sanitary sewer collection, storm drainage, street design, and general site development, hereafter called the "Project". A detailed description of our proposed services on the project is provided in the attached Basic Services Summary.

Our compensation for completing the services listed in the Basic Services Summary will be a lump sum fee or on an hourly basis. Reimbursable expenses (out-of-pocket expenses such as vehicle mileage, postage, outside printing changes, delivery charges, filing fees, or application fees, etc.) are extra and will be invoiced at actual cost. An estimate of reimbursable expenses will be included with each work order. The mileage rate is the IRS rate in effect at the time of service.

You will be invoiced monthly, based on the project progress that has occurred. All invoices are due and payable on receipt and will be considered past due if payment is not received within 21 days. Once project invoices are past due, an interest charge will accrue to your account at the rate of one-and-one-half percent (1½%) per month, and we will retain the right to cease work on the project until satisfactory arrangements are made to settle the account.

We expect to begin our services promptly, after receipt of your acceptance of this proposal, and complete our work, with all due diligence and in a timely manner. If there are protracted delays, for any reason, we will notify you immediately. You agree to provide all necessary information for the performance of our services within a reasonable time after it is requested and that

This agreement will be effective through October 31, 2021 and may be renewed by simple letter.

Exhibit A

The following individuals are designated as primary project representatives for City of Trenton, MO and HoweCo. These individuals shall be the primary point of contact and shall receive all correspondence or notices.

**Howe Company, LLC**
Shannon J. Howe, P.E., S.E.
804 E. Patton Street
Macon, Missouri 63552
Phone: 660-395-4693
Fax: 660-395-4694
E-mail: shannon@howecompany.com

**City of Trenton, MO**
Ron Urton, P.E.
1100 Main Street
Trenton, MO 64683
Phone:660-359-2283
Fax:
E-mail: cityadmin@trenton.com

This letter agreement, along with the attached Basic Services Summary and Terms and Conditions (3 pages), represent the entire understanding between us in respect to this project. The Terms and Conditions detail many provisions affecting this agreement, including some which limit HoweCo's liability regarding the project. The Terms and Conditions should be read and understood before entering into this agreement. If these documents satisfactorily set forth your understanding of our agreement, please sign the enclosed copy of this letter agreement in the space provided below and return it to us. This proposal is open for 60 calendar days from the date on the cover page.

We appreciate this opportunity to provide you this proposal for our services and look forward to working with you on this project. If questions should arise after you review this proposal, please call the number listed above.

**HOWE COMPANY, LLC**

By: _____
Shannon J. Howe, P.E., S.E.

**Agreed to by City of Trenton, MO**

By: _____ Accepted Date: _____.
Ron Urton, P.E.

Title: City Administrator/Utility Director

## BASIC SERVICES SUMMARY

Attached to and made a part of the Agreement for Professional Services dated October 28, 2019, by and between City of Trenton, MO and Howe Company, LLC, (HoweCo) in respect to On-Call Engineering for general municipal work including water distribution, sanitary sewer collection, storm drainage, street design, and general site development, the "Project" described therein.

## BACKGROUND INFORMATION

The following understanding serves as the basis for the development of the Scope of Basic Services and Fees;

- The City of Trenton has selected Howe Company, LLC to provide on-call engineering for municipal work including water distribution, sanitary sewer collection, storm drainage, street design, and general site development. Each assignment will be negotiated and documented on a work order.

## SCOPE OF BASIC SERVICES

For the compensation outlined in the of Agreement, Howe Company, LLC will perform the following professional services. Services not detailed within the Scope of Basic Services are specifically excluded from the scope of HoweCo's work and HoweCo assumes no responsibility to perform any services not specifically listed.

HoweCo will:

- Perform the engineering services described in the work orders signed by the City of Trenton and Howe Co.

## ADDITIONAL SERVICES

If agreed to by the client and HoweCo, we will provide Additional Services related to the Project. Additional Services are those not included as part of the Scope of Basic Services and shall be paid for by the Client in addition to payment for Basic Services, in accordance with HoweCo's prevailing fee schedule, in effect at the time that such services are rendered, or as otherwise agreed to by the client and HoweCo.

## EXCLUDED SERVICES

The following services are not included in the Scope of Basic Services and are specifically excluded from the Scope of Basic pServices. If these services are required, then a work order is required to add the scope and additional fee:

- Excluded services for each assignment will be noted on the work orders.

Howe Company LLC

## STANDARD TERMS & CONDITIONS

**Item 1. Scope of Work.** Howe Company (HoweCo) shall perform services in accordance with an "agreement" made with the "client". The agreement consists of HoweCo proposal, Hourly Rate Schedule, and these Terms & Conditions. The "client" is defined as the person or entity requesting and/or authorizing the work, and in doing so, client represents and warrants that he is duly authorized in this role, even if performed on behalf of another party or entity, in which case the other party or entity is also considered as the client. The acceptance of HoweCo proposal signifies the acceptance of the terms of this agreement.

The fees for services rendered will be billed in accordance with the accompanying Hourly Rate Schedule. Unit rates for services not covered in the fee schedule or elsewhere in the agreement can be provided. The standard prices proposed for the work are predicated upon the client's acceptance of the conditions and allocations of risks and obligations described in the agreement. The client shall impart the terms of this agreement to any third party to whom the client releases any part of work.

HoweCo shall have no obligations to any party other than those expressed by agreement.

**Item 2. Site Access/Background Data.** The client will provide for the right-of-way access to the work site. In the event the work site is not owned by the client, client represents to HoweCo that all necessary permissions for HoweCo to enter the site and conduct the work have been obtained. While HoweCo shall exercise reasonable care to minimize damage to the property, the client understands that some damage may occur during the normal course of the work, that HoweCo has not included in its fee the cost of restoration of damage, and that the client will pay for such restoration costs. Client shall provide the appropriate land title and/or background information to HoweCo required for the performance of our work. HoweCo will not be required to perform an independent search for easements, encumbrances, title evidence and ownership data as HoweCo will rely upon the materials and representations that client supplies to HoweCo.

**Item 3. Utilities.** In the performance of its work, HoweCo will take all reasonable precautions to avoid damage to underground structures or utilities, and will rely on the utility or locator services to correctly identify their buried facilities and service lines, and on plans, drawings or sketches made available and provided by the client. The client agrees to hold HoweCo harmless and indemnify HoweCo from any claims, expenses, or other liabilities, including reasonable attorney fees, incurred by HoweCo for any damages to underground structures and utilities which were not correctly and clearly shown on the plans provided to HoweCo or otherwise disclosed by the client, utility, or locator service. HoweCo will be responsible for ordering the utility locator or exploratory excavation services only if expressly set forth in the scope of the proposal.

**Item 4. Hazardous Materials and Site Conditions.** Prior to the start of services, or at the earliest time such information is learned, it shall be the duty of the client, or other involved or contacted parties, to advise HoweCo of any known or suspected undocumented fills, hazardous materials, by-products, or constituents, and any known environmental, hydrologic, geologic, and geotechnical conditions, which exist on or near any premises upon which work is to be performed by HoweCo employees or subcontractors or which in any other way may be pertinent to HoweCo's proposed services.

**Item 5. Confidentiality.** HoweCo shall hold confidential the business and technical information obtained or generated in performance of services under this agreement and identified in writing by the client as "confidential". HoweCo shall not disclose such "confidential" information except if such disclosure is required by governmental statute, ordinance, or regulation; for compliance with professional standards of conduct for public safety, health, and welfare concerns; or for protection of HoweCo against claims or liabilities arising from performance of its services. The technical and pricing information contained in any report or proposal submitted by HoweCo is to be considered confidential and propriety, and shall not be released or otherwise made available to any third party without the express written consent of HoweCo. Client now has no contract with any other professional engineer/surveyor/planner for the performance of the specific services outlined in the agreement and any previous contracts are terminated and copies of all previous work will be provided to HoweCo for use in this current project.

**Item 6. Standard of Care.** HoweCo will perform the services under this agreement in accordance with generally accepted practice, in a manner consistent with the level of care and skill ordinarily exercised by members of this profession under similar circumstances in this locality. No other warranties implied or expressed, in fact or by law, are made or intended.

**Item 7. Technical Methodology and Protocol.** HoweCo will select generally accepted methods and procedures it considers appropriate to accomplish the intended and understood purpose of its services within the scope of this agreement, and the client signifies concurrence with these methods and procedures by acceptance of this agreement. In the event other special methods or procedures are preferred by the client or are considered more appropriate, a written description or designation of these must be provided to HoweCo prior to execution of this agreement.

**Item 8. Limitations of Liability.** In recognition of the relative risks and benefits of the project to both the Client andHoweCo, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit theliability of HoweCo and his or her subconsultants to the client on the project for any and all claims, losses, costs, damages of any nature whatsoever, or claims expenses from any cause or causes, so that the total aggregate liability

## STANDARD TERMS & CONDITIONS continued

of HoweCo and his or her subconsultants to all those named shall not exceed HoweCo's total fee for services rendered, or $50,000, whichever is less, on this project. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty.

**Item 9. Consequential Damages.** Notwithstanding any other provision of the Agreement, neither party shall be liable to the other for any consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by the client or HoweCo, their employees, agents, subconsultants or subcontractors. Consequential damages include, but are not limited to, loss of use, loss of income, loss of profit, loss of business, and/or loss of reputation.

**Item 10. Insurance and Indemnity.** HoweCo represents that it maintains general liability, property damage, and professional liability insurance, and that HoweCo's employees are covered by Workman's Compensation Insurance. Certificates of Insurance can be provided to the client upon request.

HoweCo shall not be responsible for any loss, damage, or liability beyond these insurance limits and conditions. HoweCo agrees to indemnify the client from and save client harmless against any loss, damage, or liability stemming from acts of gross negligence by
HoweCo. Except as expressly set forth in Items Nos. 8 and 9, the client agrees to hold HoweCo, its officers, directors, agents, and employees, harmless from any claims, suits, or liability including but not limited to attorney fees, costs of settlement, and other incidental costs, for personal injury, death, illness, property damage or any other loss, allegedly arising from or related to HoweCo's work.

**Item 11. Modifications.** This agreement and all its attachments represent the entire understanding between the parties, and neither the client nor HoweCo may amend or modify any aspect of this contract unless such alterations are reduced to writing and properly executed by the parties hereto. These items and conditions shall supersede all prior or contemporaneous communications, representations, or agreements, and any provisions expressed or implied in requests for proposal, purchase order, authorization to proceed, or other contradictory provisions, whether written or oral.

**Item 12. Reuse of Documents.** All documents including drawings, specifications, and electronic media furnished by HoweCo pursuant to this Agreement are instruments of its services. They are not intended or represented to be suitable for reuse by client or others on extensions of this project, or on any other project. Any reuse without specific written verification or adaptation by HoweCo will be at client's sole risk, and without liability of HoweCo, and client shall indemnify and hold harmless HoweCo from all claims, damages, losses and expenses including court costs and attorney's fees arising out of or resulting therefrom. Any such verification or adaptation will entitle HoweCo to further compensation at rates to be agreed upon by client and HoweCo.

**Item 13. Payment.** Invoices for performed work will be submitted monthly for services rendered the prior month, payable within 21 days of invoice date. The fees quoted are based upon an expected timely payment. Late payment charges of 1.5% per month will be added to delinquent charges. Client shall be further obligated to pay HoweCo's cost of collection, including, but not limited to, court costs and attorney's fees, in the event of default in payment under this paragraph. This agreement is entered into in Macon County, Missouri and the Laws of Missouri are to apply to the agreement. If legal action is required by HoweCo, to collect fees or expenses advanced or to resolve disputes, then the parties agree that Macon County shall be the proper venue for that legal action. HoweCo, at its option, may terminate its services due to client's failure to pay when due. In the event of termination of services prior to completion, client shall compensate HoweCo for all services performed to and for such termination. If the Client fails to make payments when due or otherwise is in breach of this Agreement, HoweCo may suspend performance of services upon five (5) calendar days written or electronic notice to the Client. HoweCo shall have no liability whatsoever to the Client for any costs or damages as a result of suspension caused by any breach of the Agreement by the Client.

**Item 14. Opinions of Cost.** Since HoweCo has no control over the cost of labor, materials or equipment or over a Contractor's method of determining prices, or over competitive bidding or market conditions, its opinions of probable project cost or construction cost for this project will be based upon its own experience with construction, but HoweCo cannot and does not guarantee that proposals, bids or the construction cost will not vary from its opinions of probable costs. If the client wishes greater assurance as to the construction cost, they shall employ an independent cost estimator.

**Item 15. Shop Drawing Review.** Client agrees that HoweCo's review of shop drawings, when such review is included in the scope of services, shall be solely for their conformance with HoweCo's design intent and conformance with information given in the construction documents. HoweCo shall not be responsible for any aspects of a shop drawing submission that affect or are affected by the means, methods, techniques, sequences and operations of construction, safety precautions and programs incidental thereto, all of which are the contractor's responsibility. The contractor will be responsible for lengths, dimensions, elevations, quantities and coordination of the work with other trades. Client warrants that the contractor shall be made aware of his responsibilities to review shop drawings and approve them in these respects before submitting them to HoweCo.

**Item 16. Mediation.** In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the Client and HoweCo agree that all disputes between them arising out of, or related to this Agreement, shall be submitted to nonbinding mediation, unless the parties mutually agree otherwise. In the

## STANDARD TERMS & CONDITIONS continued

event the parties agree to resolve conflicts that arise during the design or construction of the project or following the completion of the project by methods other than nonbinding mediation, then all such agreements must be set forth in writing, and must be signed by representatives of both the Client and HoweCo to be effective. It is further agreed by the Client and HoweCo that supplemental agreements to resolve conflicts that arise during the design or construction of the project, or following the completion of the project, must not only be signed by representatives of both the Client and HoweCo; but must specify, in writing, the method of dispute resolution which has been selected to replace nonbinding mediation.

**Item 17. Assignment.** Neither party of this Agreement shall transfer, sublet or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent to the other party. Subcontrating to subconsultants normally contemplated by HoweCo shall not be considered an assignment for purposes of this Agreement.

**Item 18. Betterment.** If a required item or component of the project should be omitted from construction documents, HoweCo shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event will HoweCo be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the project.

**Item 19. Construction Contingency.** Client recognizes and expects that certain change orders may be required to be issued as the result in whole or part om imprecision, incompleteness, errors, omissions, ambiguities, or inconsistencies in the Drawings, Specifications, and other design documentation furnished by the E/A/S or in the other professional services performed or furnished by the E/A/S under this Agreement ("Covered Change Orders"). Accordingly, Client agrees to budget a minimum of five percent (5%) of the total clients construction contractor's bid amount(s) for contingencies.

Howe Company LLC

## Charges for Professional Service

## City of Trenton On-Call Contract

| DESCRIPTON | HOURLY RATE |
|---|---|
| ENGINEER | $100.00 |
| PROFESSIONAL ENGINEER I | $120.00 |
| PROFESSIONAL ENGINEER II | $130.00 |
| PROFESSIONAL ENGINEER III | $140.00 |
| PROFESSIONAL ENGINEER IV | $145.00 |
| PROFESSIONAL ENGINEER V | $150.00 |
| PROFESSIONAL ENGINEER VI | $160.00 |
| STRUCTURAL ENGINEER I | $135.00 |
| STRUCTURAL ENGINEER II | $150.00 |
| STRUCTURAL ENGINEER III | $175.00 |
| SURVEY PARTY CHIEF II | $150.00 |
| SURVEY PARTY CHIEF I | $140.00 |
| LICENSED SURVEYOR-IN-TRAINING | $100.00 |
| PROFESSIONAL LAND SURVEYOR I | $140.00 |
| PROFESSIONAL LAND SURVEYOR II | $150.00 |
| ADMINISTRATIVE TECHNICIAN | $70.00 |
| ENGINEERING TECHNICIAN | $70.00 |
| ENGINEERING TECHNICIAN I | $80.00 |
| ENGINEERING TECHNICIAN II | $90.00 |
| ENGINEERING TECHNICIAN III | $100.00 |
| ENGINEERING TECHNICIAN IV | $110.00 |
| SENIOR ENGINEERING TECHNICIAN | $120.00 |
| CONSTRUCTION OBSERVER I | $70.00 |
| CONSTRUCTION OBSERVER II | $85.00 |
| CONSTRUCTION OBSERVER III | $110.00 |
| TECHNICIAN | $60.00 |

Hourly Rates are good through October 31, 2020.

Hourly Rates may increase no more than $5/hr each year.

Mileage will be charged at IRS rate. Cylinder Testing is $18/each