

BILL NO. 3156

ORDINANCE NO. _____

AN ORDINANCE APPROVING AN AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES BETWEEN HEIDEMAN ASSOCIATES, INC. AND THE CITY OF BRANSON, AND AUTHORIZING THE MAYOR TO ENTER INTO THE AGREEMENT PERTAINING TO ENGINEERING DESIGN SERVICES ON THE LIFT STATION 31 PROJECT

WHEREAS, the City of Branson requires the services of an engineering firm to provide the engineering design services for the proposed improvements to lift station 31; and

WHEREAS, proposals have been received from engineering firms in reference to the needed design work and the Capital Improvements Committee recommends the selection of Heideman Associates, Inc.; and

WHEREAS, the Board of Aldermen desire to award the contract for engineering design services.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, MISSOURI, AS FOLLOWS:

Section 1: The Board of Aldermen hereby authorizes the Mayor to execute a contract with Heideman Associates, Inc. in substantially the form attached as Exhibit "A" for engineering design services on the lift station 31 project for the City of Branson.

Section 2: This ordinance shall be in full force and effect upon and after its passage and approval.

Read, this first time on this ____ day of _____, 2005.

Read, this second time, passed and truly agreed to by the Board of Aldermen of City of Branson, Missouri this ____ day of _____, 2005.

Louis E. Schaefer, Mayor

ATTEST:

APPROVED AS TO FORM:

Lisa K Westfall
City Clerk



Joseph L. Johnson
City Attorney

ROUTING ORDER	(1) CITY CLERK	(2) FINANCE DEPARTMENT	(3) CITY ATTORNEY
	(4) CITY ADMINISTRATOR	(5) ORIGINATING DEPT.	(6) CONTRACTOR
EFFECTIVE DATE	TERMINATION DATE	CONTRACT NUMBER: .	
<input type="checkbox"/> NEW CONTRACT		<input type="checkbox"/> RENEWAL OF CONTRACT No. _____	
CITY		CONTRACTOR	
CITY OF BRANSON 110 W. MADDUX, SUITE 310 BRANSON, MO 65616 PHONE: (417) 337-8559 FAX: (417) 337-8181 CONTRACT ADMINISTRATOR: DAVID MILLER DEPT: ENGINEERING		NAME: HEIDEMAN ASSOCIATES, INC. ADDRESS: 2160F W. CHESTERFIELD BLVD., SUITE 200 SPRINGFIELD, MO 65807 PHONE:(417) 881-8110 FAX:(417) 881-8605 ATTN: KEVIN SKIBISKI SSN/EIN: _____	

AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

THIS AGREEMENT made as of the _____ day of _____, 2005, by and between the City of Branson, Missouri (hereinafter called OWNER) and Heideman Associates, Inc., 2160F W. Chesterfield Blvd. Suite 200, Springfield, Missouri 65807, specializing in consulting engineering services (hereinafter called ENGINEER).

OWNER requires professional engineering services in connection with the design for the capacity upgrade of Lift Station 31 and the demolition of the associated Fall Creek Treatment Plant Basins.

Therefore, OWNER and ENGINEER in consideration of their mutual covenants agree as follows:

ENGINEER shall serve as OWNER'S professional engineering consultant in those assignments to which this Agreement applies, and shall give consultation and advice to OWNER during the performance of his services. All services shall be performed under the direction of a professional engineer registered in the State of Missouri and qualified in the particular field.

SECTION 1 - AUTHORIZATION OF SERVICES

- 1.1 Services on any assignment shall be undertaken only upon written Authorization of OWNER and agreement of ENGINEER.

- 1.2 Assignments may include services described hereafter as Basic Services or as Additional Services of ENGINEER.

SECTION 2 - BASIC SERVICES OF ENGINEER

2.1 General

- 2.1.1 Perform professional design services in connection with the specifically authorized Project as hereinafter stated which shall include normal civil engineering services and related design services incidental thereto. The scope of services to be provided is to be as listed on the attached proposal for Engineering Services for the Capacity Upgrade of Lift Station 31 and the Demolition of the associated Fall Creek Treatment Plant Basins, dated August 11, 2005.

2.2 Preliminary Design Phase

- 2.2.1 On the basis of the City's project proposal, meet with owner to discuss lift station design concept and determination of design flows.
- 2.2.2 Obtain field survey of all existing improvements required in order to prepare design calculations and drawings for the lift station.
- 2.2.3 Identify area contributing flow to lift station 31. Estimate future flows based on zoning and building patterns in the area.
- 2.2.4 Prepare calculations to determine preliminary pump size, wet well size, and determination of force main adequacy. Address issue of grit removal.
- 2.2.5 Furnish two approval copies of the above preliminary design documents and a preliminary engineers cost estimate.

2.3 Final Design Phase

- 2.3.1 On the basis of the approved preliminary design documents, prepare for incorporation in the Contract Documents detailed drawings to show the character and scope of the work to be performed by contractors on the Project (hereinafter called the "Contract Drawings") for the Sanitary Sewer Lift Station. Prepare any Special Provisions, Special Technical Specifications and bid documents (all of which are hereinafter called the "Bid Documents").
- 2.3.2 Establish sufficient controls to allow the Contractor to perform necessary staking for construction.
- 2.3.3 Furnish to OWNER such documents and design data as may be required for, and assist in the preparation of, the required documents so that OWNER may secure approval of such governmental authorities as have jurisdiction over design criteria applicable to the Project.
- 2.3.4 Advise OWNER of adjustments in excess of ten percent of the cost estimate for the Project caused by changes in scope, design requirements or construction costs and furnish a revised cost estimate for the Project based on the final Contract Drawings and Bid Documents.
- 2.3.5 Furnish two approval copies of the final Contract Drawings and Bid Documents for the sanitary sewer lift station.
- 2.3.6 All plans, specifications, estimates, drawings, and documents prepared or furnished by the ENGINEER shall conform to federal and state laws and City ordinances.

2.3.7 Furnish one (1) set of reproducible approved final Contract Drawings (mylar) and Bid Documents.

2.4 Construction Phase

2.4.1 Perform periodic inspections during construction phase of project for purposes of interpretation of plans and specifications, on as needed basis.

2.4.2 Review all shop drawing submittals.

SECTION 3 - ADDITIONAL SERVICES OF ENGINEER

3.1 General

If authorized in writing by OWNER and agreed to in writing by ENGINEER, ENGINEER shall furnish or obtain from others Additional Services of the following types which are not considered normal or customary Basic Services. The scope of Additional Services may include:

3.1.1 Administrative Assistance

Provide contract and project administration to the degree authorized by OWNER.

3.1.2 Obtain Services of Others

Provide through subcontract the services or data other than those set forth in paragraph 2.2.2.

3.1.3 Preparing to service or serving as a witness for OWNER in any litigation or other proceedings involving the Project.

3.1.4 Extra Services

Services not specifically defined heretofore that may be authorized by OWNER.

SECTION 4 - RESPONSIBILITIES OF OWNER

OWNER shall, within a reasonable time, so as not to delay the services of ENGINEER:

4.1 Provide full information as to his requirements for the Project.

4.2 Assist ENGINEER by placing at his disposal available information pertinent to the assignment including previous reports and any other data relative thereto.

4.3 Guarantee access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform his services under this Agreement.

4.4 Examine all studies, reports, sketches, estimates, Bid Documents, Drawings, proposals and other documents presented by ENGINEER and render in writing decisions pertaining thereto.

4.5 Provide such professional legal, accounting, financial and insurance counseling services as may be required for the Project.

- 4.6 Designate in writing a person to act as OWNER'S representative with respect to the services to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER'S policies and decisions with respect to materials, equipment, elements and systems to be used in the Project, and other matters pertinent to the services covered by this Agreement.
- 4.7 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any defect in the Project.
- 4.8 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- 4.9 Furnish, or direct ENGINEER to provide, necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.

SECTION 5 - PERIOD OF SERVICE

- 5.1 This Agreement will become effective upon the first written notice by OWNER authorizing services hereunder.
- 5.2 This Agreement shall be applicable to all assignments authorized by OWNER and accepted by ENGINEER subsequent to the date of its execution and shall be effective as to all assignments authorized prior to the completion date. All assignments authorized prior to the completion date, even if to be performed in whole or in part subsequent to the completion date, shall be governed by the terms and conditions of this Agreement. At the completion date, upon mutual agreement of the parties hereto, this Agreement may be extended, renegotiated, or terminated. Such extension, renegotiation, or termination shall not have any effect upon assignments authorized prior to the completion date.
- 5.3 Performance time for individual assignments shall be agreed upon at the time of authorization. Work shall be started within ten (10) days of authorization of Notice to Proceed.
- 5.4 Engineer shall complete the preliminary design phase and final design phase within seventeen weeks of the date of execution of this agreement provided that OWNER has met its responsibilities as outlined in Section 4.

SECTION 6 - PAYMENTS TO ENGINEER

- 6.1 Amount of Payment
For services performed, OWNER shall pay ENGINEER the sum of amounts determined as follows:
 - 6.1.1 For time spent by personnel, payment at the hourly rates indicated in the "Schedule of Hourly Labor Billing Rates" Form, included in Exhibit B. Such rates include overhead and profit.

- 6.1.2 For expenses incurred by ENGINEER, such as authorized travel and subsistence including airfare, food, lodging, automobile rental, commercial services, and incidental expenses, the cost to the ENGINEER.
- 6.1.3 For reproduction, printing, long-distance telephone calls, company vehicle usage, testing apparatus, computer services and computer-assisted drafting (CAD), amounts will be charged according to the ENGINEER'S standard rates in effect at the time service is provided.
- 6.1.4 For professional services rendered by others as subcontractor(s) to ENGINEER such as surveying, real property descriptions, soil borings, subsurface investigations, laboratory testing, field quality control tests, progress photos, or other activities required or requested by OWNER, will be billed at the cost to ENGINEER plus 10 percent.

- 6.2 Maximum Amount of Payment
Payment for services rendered under this Agreement shall be subject to the following limitations:
 - 6.2.1 For services performed in 2.2, 2.3 and 2.4 total payment to the ENGINEER shall not exceed \$16,000.00, without formally amending this Agreement.
 - 6.2.2 The maximum amount of payment for services other than those listed in 6.2.1 will be established at the time of authorization of those services.

- 6.3 Method of Billing
 - 6.3.1 A monthly statement shall be rendered by the ENGINEER to OWNER for payment covering all engineering services performed during that month.

- 6.4 Payment
 - 6.4.1 Payment for engineering services shall be due 30 days after receipt of billing and acceptance of the ENGINEER'S work.
 - 6.4.2 Any unsettled claims pertaining to additional services shall not constitute a basis for nonpayment of statements covering authorized work.

SECTION 7 - GENERAL CONSIDERATIONS

- 7.1 Estimates
Since ENGINEER has no control over the cost of labor, materials, or equipment, or over Contractors' methods of determining prices, or over competitive bidding or market conditions, the estimates of construction cost provided for herein are to be made on the basis of his experience and qualifications and represent his best judgment as a design professional familiar with the construction industry, but ENGINEER cannot and does not guarantee that the bids or the project construction cost will not vary from cost estimates prepared by him.
- 7.2 The ENGINEER shall indemnify, protect and save the OWNER harmless from and against any and all claims, demands, liabilities and costs, including attorneys' fees, arising from claims under the Workmen's Compensation Act. Claims for contract damages, claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the ENGINEER'S employees or of any person other than his employees and from claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom, to the extent that any such claims,

demands, liabilities and costs are the result of a negligent act, error or omissions of ENGINEER, ENGINEER will also defend, indemnify, and hold OWNER harmless from claims and demands arising as a result of ENGINEER'S nonprofessional liability which is covered by ENGINEER'S comprehensive general liability insurance policy, and from claims and demands arising out of the award of this contract.

7.2.1 The ENGINEER assumes full responsibility for relations with any third parties acting as subcontractors, agents, suppliers or laborers of the ENGINEER, and shall defend, indemnify and save harmless the OWNER from and against, any and all liability, suits, claims, damages, costs (including attorneys' fees), losses, outlays, and expenses in any manner caused by, arising out of or connected with the ENGINEER'S performance of this contract.

7.3 Suspension of Services

Should OWNER fail to fulfill his responsibilities as provided under Section 4 to the extent that ENGINEER is unduly hindered in his services or if OWNER fails to make any payment to ENGINEER on account of his services and expenses within 90 days after receipt of ENGINEER'S bill therefor, ENGINEER may, after giving seven days' written notice to owner, suspend services under this Agreement until OWNER has satisfied his obligations under this Agreement.

7.4 Termination

This Agreement may be terminated by either party by seven (7) days' written notice in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party. This Agreement may also be terminated if the OWNER and ENGINEER fail to agree on the maximum amount of payment under 6.2.2. If this Agreement is so terminated, ENGINEER shall be paid as provided under Section 6 for all services rendered and expenses incurred to the date of receipt of notice of termination.

7.5 Ownership of Documents

All documents, including original drawings, estimates, specifications, written design criteria and written reports are and remain the property of the ENGINEER until such time as this Agreement is, for any reason, terminated, at which time they become the property of the OWNER. The ENGINEER shall furnish to the OWNER a set of reproducible record prints of drawings and copies of estimates, specifications, written reports, and written design criteria, in consideration of which the OWNER will use them fully in connection with the project and will not sell them, reuse or permit the reuse of said documents by others in connection with another facility. The transfer of ownership of documents shall not constitute the transfer of any ownership or granting of a license in any proprietary rights that the ENGINEER may have in any data, designs, processes or other information incorporated in the documents.

7.6 Insurance

The ENGINEER will secure and maintain such insurance as will protect him from claims under workmen's compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of his employees or of any

person other than his employees, and from claims for damages because of injury to or destruction of tangible property including loss of use therefrom.

- 7.7 No salaried officer or employee of the City, and no member of the City Council shall have a financial interest, direct or indirect, in this contract. A violation of this provision renders the contract void. Any federal regulations, and applicable provisions in RSMo. Chapter 105 shall not be violated.
- 7.8 The ENGINEER agrees in the performance of this contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, or political opinion or affiliation, against any employee of ENGINEER or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder.
- 7.9 The ENGINEER is an independent contractor and nothing contained herein shall constitute or designate the ENGINEER or any of its agents or employees as agents or employees of the City of Branson, Missouri.
- 7.10 The ENGINEER shall not be entitled to any of the benefits established for the employees of the City nor be covered by the Workmen's Compensation Program of the City.
- 7.11 **Successor and Assigns**
OWNER and ENGINEER each binds himself and his successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement, except as above, neither OWNER nor ENGINEER shall assign, sublet or transfer his interest in the Agreement without the written consent of the other.
- 7.12 **Notices**
All notices required to be in writing may be given by first-class mail addressed to City at 110 W. Maddux, Branson, Missouri, and ENGINEER at 2160F West Chesterfield Blvd., Suite 200, Springfield, MO 65807. The date of delivery of any notice shall be the second full day after the date of its mailing.
- 7.13 **Jurisdiction**
This Agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this Agreement be adjudicated, venue shall be proper only in the Circuit Court of Taney County, Missouri.
- 7.14 **Extent of Agreement**
This Agreement represents the entire and integrated agreement between OWNER and ENGINEER and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both OWNER and ENGINEER.

IN WITNESS WHEREOF, the City of Branson, by and through its Mayor, and Heideman Associates, Inc., by its authorized officer have made and executed this Agreement as of the day and year first above written.

CITY OF BRANSON, MISSOURI

By _____
Louis E. Schaefer, Mayor

Attest:

Lisa K Westfall
City Clerk

HEIDEMAN ASSOCIATES, INC.

By _____
Title _____

Approved as to Form:

City Attorney