



**City of Wentzville
Kimberly Butts, Director of Procurement
310 W. Pearce Blvd.
Wentzville, Missouri 63385
(636) 639-2005**

**Invitation for Bids
IFB #16-086**

Rotary Park Restroom Project Rebid

April 6, 2016

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**City Of Wentzville
Kimberly Butts, Director of Procurement
310 W. Pearce Blvd.
Wentzville, Missouri 63385**

**BID NOTICE
INVITATION FOR BIDS #16-086
ROTARY PARK RESTROOM PROJECT REBID**

April 6, 2016

The City of Wentzville (the "City") is requesting sealed bids, in duplicate from qualified Contractors for: Rotary Park Restroom Project

The Rotary Park Restroom Project ("Project") shall consist of the restroom addition to the existing building at Rotary Park and other incidental items and work described in the Project manual or reasonable inferable therefrom.

A non-mandatory Pre-Bid Meeting will be held at City Hall, 310 W. Pearce Blvd., Wentzville, MO 63385 at 10:00 a.m. on April 18, 2016.

Sealed bids will be accepted by the City of Wentzville, Procurement Department, City Hall, 310 W. Pearce Blvd., Wentzville, MO 63385 until 2 p.m. prevailing local time on April 27, 2016 at which time they will be publicly opened and read aloud. The sealed envelope shall be clearly marked with the IFB #16-086, Rotary Park Restroom Project and Bidder Name on the outside of envelope.

Bid documents and plans are available on the City's Bid Opportunities website at http://www.wentzvillemo.org/departments/procurement/current_bidding_opportunities.php You will be required to create a free log-in with Vendor Registry in order to download the bid documents and plans.

All questions regarding this project shall be submitted to Jill Schmitz, Procurement Specialist at Jill.Schmitz@wentzvillemo.org in writing by April 20, 2016.

Bid security in the amount of five percent (5%) of the total bid amount shall accompany each bid in accordance with the Exhibit A, paragraph 8.

The successful bidder shall be required to comply in all respects with the State Statutory provisions concerning the payment of prevailing wages on Public Works, Section 290.262 RSMo (in #12 it states RSMo 290.210 thru 290.340) and shall pay to all workmen performing the work under the Contract not less than the prevailing hourly rate of wages as determined by the Department of Labor and Industrial Relations of the State of Missouri.

City of Wentzville

Kimberly Butts, CPSM, CPPO
Director of Procurement

INFORMATION FOR BIDDERS

1. **Background and Funding:** The Rotary Park Restroom Project will include a restroom and lobby addition to an existing building.

This project is fully funded through City of Wentzville funding.

2. **Questions:**

- A. Bidders must submit written questions through the Procurement Department's contact person shown on the Bid Notice page. No verbal interpretation will be recognized; any and all such interpretations shall be confirmed in an addendum by the City.

In order to ensure all potential respondents receive the same information, the City will post its response on the City's website

http://www.wentzvillemo.org/departments/procurement/current_bidding_opportunities.php.

Bidders are responsible for checking the City's website for the issuance of any addendums. The Bidding Opportunities website shall be the official site for information as related to this IFB. Any documentation posted elsewhere will not be applicable should a bidder use the information as related to a contract protest. Please visit this site periodically to check for any additional information.

- B. Any information provided to a bidder outside of the procedural guidelines of this IFB shall be considered not to be valid and will not be considered during the evaluation process.
 - C. To ensure fair consideration for all bidders, the City prohibits communication to or with any City department(s), board member(s), or employee(s) during the submission process, except as provided above. Additionally, the City prohibits communications initiated by a bidder to the City official(s) or employee(s) evaluating or considering the bids prior to the time an award decision is made. Any communication between Bidder and the City will be initiated by the appropriate City official(s) or employee(s) in order to obtain information or clarification needed to develop a proper, accurate evaluation of the bid. Such communications initiated by a bidder may be grounds for disqualifying the offending bidder from consideration for award of the bid and/or any future bid(s).
3. **Seal Bids Required:** No type of electronic submittal (fax, email, etc.) of bid proposals will be accepted.
 4. **Bidder Documentation:** All responses, inquiries, or correspondence relating to, or in reference to, this Invitation for Bid, and all reports, charts, displays, schedules, exhibits and other documentation by the Bidder shall become the property of the City when received. All bids submitted shall also become the property of the City. If any proprietary information is contained in the bid, it should be clearly identified. Marking the entire bid as proprietary will be neither accepted nor honored. If a request is made to view a Bidder's bid submission, the City will comply according to Missouri Sunshine Law.
 5. **Bid Opening:** Bids will be opened promptly and read aloud on the date and time and at the location indicated. The Bidder is solely responsible for insuring its Bid Proposal is received at the time, date, and location specified. The bid opening is public and anyone may attend. No bid information, other than the bid tabulation, will be made available to the public during the evaluation period between the bid opening and the award of the bid.

6. **Waive Irregularities; Rejection of Bid:** The City of Wentzville expressly reserves the right to waive minor or slight irregularities in a bid which in the City's judgment are in the best interest of the public and do not provide a material advantage to the bidder over all the other bidders. The City of Wentzville reserves the right to reject any or all bids received in part or entirely.
7. **Examination of Bid/Contract Documents and Site of Work:** The Bidder is expected to carefully examine the site of proposed work, the specifications, and the Bid/Contract documents before submitting a bid. The submission of a bid shall be considered prima facie evidence that the Bidder has made such examination and is satisfied to the conditions to be encountered in performing the work and as to the requirements of the Bid/Contract documents.
8. **Product Substitutions:** Requests for product substitutions will not be considered during bidding. If Contractor's bid includes substitutions it shall be at the Contractor's risk and responsibility to demonstrate that the substitution is a "functional equivalent" product during submittal reviews. During the review process, if substituted products are determined not to be functionally equivalent, Contractor shall provide products as specified at no additional cost to City.
9. **Laws to be Observed:** The Contractor shall at all times observe and comply with all Federal and State laws, all local laws, ordinances, and regulations existing at the time of or enacted subsequent to the execution of the contract which, if in any manner, affect the prosecution of the work. The Contractor and his surety shall indemnify and save harmless the City and all of his representatives, engineers, consultants, and employees against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by himself, his employees, or his subcontractors.

Changes may be made to this contract as a result of any ordinance, law and/or directive issued by the City and/or the State of Missouri and/or the Federal Government. Should such a change occur, the contract documents and Specifications shall be amended reflecting such change and signed by both parties acknowledging the change(s).

10. **Taxes:** This project is exempt from all sales taxes for construction materials and supplies used directly in fulfilling contract requirements. Sales tax shall not be included in the prices for this project.
11. **Prevailing Wage:** The successful Bidder shall be required to comply in all respects with Federal and State Wage Rates, including applicable statutory provisions concerning payment of prevailing wages on public works projects, Sections 290.210 through 290.340 RSMo. (most current version), as currently amended, and shall pay to all workmen performing under work contract not less than prevailing hourly rate of wages as determined by the Department of Labor and Industrial Relations of the State of Missouri.

As such, the Bid Proposal for this project shall be based upon the required payment by the Contractor for wages for each craft or type of workmen required to execute the Contract. A schedule of such prevailing hourly rate of wages as determined by the Department of Labor and Industrial Relations of Missouri, pursuant to said statutory provisions is attached hereto and made a part of this Contract.

12. **OSHA:** The successful Bidder shall require all on-site employees to complete a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program provided by the contractor which includes a course in construction safety and health approved by OSHA or a similar program approved by MoDOLIR which is at least as stringent as an approved OSHA program, as required under Subsection 292.675 RSMo. All employees are required to complete the program within sixty days of beginning work under this contract. The successful bidder shall also require all subcontractors under the contractor to provide the ten-hour training program required under Subsection 292.675 RSMo to such subcontractors' on-site employees.

13. **Equal Employment Opportunity.** The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or disability. The Contractor shall incorporate the foregoing requirements of this paragraph in all of its subcontracts for work performed under the terms and conditions of this Contract. A breach of this provision may be grounds for termination of this Contract.
14. **American Products:** The City encourages every Public Works project in excess of \$5,000 to use American products. These products are to be used whenever the quality and price are comparable with other goods.
15. **Buy Missouri Preference:** Contractors are encouraged to purchase commodities and tangible property manufactured, produced, or grown within the local area and in the State of Missouri, and from all firms, corporations, or individuals with licensed businesses in the State of Missouri. This guideline pertains to all commodities and tangible property when quality is equal or better and the delivered price is the same or less, or when competing bids, in their entirety, are comparable.
16. **References:** The City reserves the right to request references from any bidder.
17. **Method of Award:** The solicitation shall be awarded to the lowest, responsive, responsible bidder. The City reserves the right, in its sole discretion, to reject any or all bids, or portions thereof, to waive technicalities or deficiencies in any or all the bids. The City of Wentzville reserves the right to cancel this IFB in part or in its entirety. This IFB does not commit the City of Wentzville to award a contract or to pay any costs to bidders in preparation of their bid.

The City of Wentzville hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this solicitation, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

18. **Notice of Award:** Upon approval of the bidder by the Board of Aldermen, the successful bidder will receive a Notice of Award listing supportive documentation that the bidder is required to submit, which includes but is not limited to the following:
 - City-Contractor Agreement (*sample included with this solicitation*)
 - Affidavit of Participation in Federal Work Authorization Form (*sample form available for bidder viewing on the City Procurement Department website.*)
 - E-Verify Memorandum of Understanding (*showing electronic signatures of Contractor and Homeland Security*)
 - Insurance
 - Bonds
19. **Performance Bond:** If the Contractor's Bid is in excess of \$50,000.00, the Contractor shall also furnish within ten (10) days of notification of contract award a satisfactory Performance Bond in the full amount of the Bid based on the bid quantities listed on the Bid Proposal form. The Performance Bond furnished shall guarantee the faithful performance of the Work and warrant the Work for the guaranty period established in this City Contractor Agreement.
20. **Payment Bond:** If the Contractor's Bid is in excess of \$50,000, the Contractor shall furnish within ten (10) days of notification of contract award a satisfactory Payment Bond in the full amount of the Contract Sum. The Payment Bond furnished shall meet all requirements of Section 107.170 of the Revised Statutes of Missouri, as amended, and shall guarantee the

payment of any and all materials, incorporated, consumed or used in connection with the construction of such work, and all insurance premiums, both for compensation, and for all other kinds of insurance, said work, and for all labor performed in such work whether by subcontractor or otherwise, including payment of prevailing wage requirements of the State of Missouri.

21. **Notice to Proceed:** Upon submittal and acceptance of all items as outlined in the Notice of Award, the successful bidder will receive Notice to Proceed and will be required to attend a Pre-Construction Meeting prior to beginning work.

EXHIBIT A BID PROPOSAL

For: IFB #15-086 Rotary Park Restroom Project

To: Procurement Department
City of Wentzville
310 W. Pearce Blvd.
Wentzville, MO 63385

Pursuant to and in compliance with your Invitation for Bid, the Information for Bidders, Contract Document and Specifications and other documents relating thereto, the undersigned Bidder hereby proposes and agrees/guarantees that:

1. They have visited and examined the project site(s) and have carefully examined the Contract Documents and Specifications and any and all Addenda, as indicated below.
2. If this Invitation for Bid is accepted, to furnish all tools, equipment, labor, materials, supplies, and services to construct the project in strict conformance with the Contract Documents and Specifications, within the time set forth therein, for the price indicated in this Exhibit A Bid Proposal). These prices are to cover all expenses incurred in performing the work required under the Agreement of Services, of which this Bid Proposal is a part.
3. If awarded the Contract for the above work, they will have a maximum of ten (10) calendar days; excluding holidays from the date of the Notice of Award letter to submit supportive documentation as outlined in the notification letter. Failure to complete the outlined requirements within such timeframe shall be subject to forfeiture of the subject contract.
4. Time is of the essence. The Contractor will commence construction of the work promptly upon receipt of the Notice to Proceed, after the Pre-Construction Meeting, and will complete the project without delay in accordance with the Contract Documents and Specifications.
5. The Contractor will complete the said work within one hundred fifty (150) calendar days after receiving the Notice to Proceed, and if the Contractor fails to complete the work in the time specified or such additional time as may be allowed by the Engineer under the Contract, the amount of liquidated damages to be recovered shall per the Agreement of Services.
6. The Bid Proposal is firm for 90 days from the bid opening date. Bid proposals will be considered firm for 90 days from the bid opening date. By written mutual agreement with bidder(s), the bid(s) may be held firm for an additional period of time to allow the City additional evaluation time, etc.
7. Bidder understands and will comply with all terms and conditions of these Bid Documents, the City-Contractor Agreement, and the Contract Documents and Specifications and any subsequent award or contract.
8. Bid bond required if total bid price exceeds \$50,000.00: The bid bond (5% of bid amount) submitted with this Bid Proposal is from a surety that is authorized to do business in the State of Missouri and is authorized to issue bonds in the State of Missouri.

Restroom Bid

In response to the Invitation for Bids for IFB#16-086, and in accordance with the Instructions to Bidders and other Bidding Documents, the undersigned Bidder declares that he has had an opportunity to examine the site of the Work and has carefully examined the Contract Documents therefore, including the Addenda identified below, and on the basis thereof, and being fully familiar with the local conditions affecting the Work, and upon written notice of award of contract, acknowledges and agrees to provide all labor, material, equipment, tools, management and supervision, safety and technical services, insurance, bonds and incidentals necessary or required for the faithful performance of the Contract Work in accordance **with the specifications and plans prepared by Cochran** in a safe, timely and workmanlike manner for the following Bid Price:

Total Restroom Bid: \$ _____

Indicate below all Addenda received on which the above Invitation for Bid is based

Addendum No. _____ Dated: _____
Addendum No. _____ Dated: _____
Addendum No. _____ Dated: _____

The Contractor understands and agrees that by signing the Invitation for Bid the Bidder is certifying that Contractor employs only personnel authorized to work in the United States in accordance with applicable federal and state laws. This certification applies to State of Missouri Immigration Alien Laws and statutes required local government(s) to have proof of a person's lawful presence within the United States before distributing "Public Benefits" (contracts, purchase orders, etc.) to that Bidder.

Name of Bidder: _____

Indicate whether () Individual; () Partnership; () Corporation, Incorporated in the State of _____.

Signature: _____

Name (Printed): _____

Title: _____

Business Address: _____

City: _____

State: _____ Zip: _____

Telephone No: _____ Fax No: _____

State Charter #: _____

Email address: _____

ATTEST: _____
Title Dated

Attach Corporate Seal, if Applicable

Enclosures: Exhibit A – Bid Proposal Form
 Exhibit B – Project Reference Form
 Exhibit C - Non-Collusive Affidavit
 Bid Security of 5% of Bid Amount if Bid Amount exceeds \$50,000

**EXHIBIT B
PROJECT REFERENCES FORM**

Reference 1:

Name of Project: _____

Name of City or Government Agency: _____

Contact Person(s), Phone #, e-mail: _____

Total Contract Value of Project: _____

Reference 2:

Name of Project: _____

Name of City or Government Agency: _____

Contact Person(s), Phone #, email: _____

Total Contract Value of Project: _____

Reference 3:

Name of Project: _____

Name of City or Government Agency: _____

Contact Person(s), Phone #, email: _____

Total Contract Value of Project: _____



**EXHIBIT C
AFFIDAVIT OF NON-COLLUSION (PRIME BIDDER)**

State of _____)
S.S.

County of _____)

_____, being first duly sworn, deposes and says that:

1. They are the (owner, partner, officer, representative, or agent) of _____
_____, the Bidder that has submitted the attached Bid;

2. They are fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;

3. Such bid is genuine and is not a collusive or sham bid; and that all statements made and fact set out in the Invitation for Bid are true and correct;

4. Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest including this affidavit, has in any way colluded, considered, connived, or agreed, directly or indirectly with any other bidder, firm, or person, to submit a sham bid in connection with the Contract for which the attached bid has been submitted or to refrain from bidding in connection with such Contract; or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other bidder, firm, or person to fix the price or prices in the attached Bid or of any other bidder, or to fix the overhead, profit, or cost element of the Bid price of the other bidder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against the City of Wentzville or any person interested in the Proposed Contact.

5. The price or prices quoted in the attached Bid are fair and proper, and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affidavit; and

6. They further certify that bidder is not financially interested in or financially affiliated with any other Bidder on this project.

Signed: _____

Title:

Subscribed and sworn to before me this _____ day of _____, 2016.

Notary Public

My Commission expires: _____



Presented as Sample Enclosure
CITY - CONTRACTOR AGREEMENT

Agreement #16-086

ROTARY PARK RESTROOM PROJECT #16-086

This CITY-CONTRACTOR AGREEMENT (this "Agreement"), is made and entered into as of this ____ day of _____, 2016, by and between _____, a _____ having a principal office at _____ (the "Contractor"), and the City of Wentzville, a Missouri municipal corporation located in St. Charles County (the "City"). *All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Contract Documents (as hereinafter defined).*

RECITALS

- A. In response to Invitation for Bid #16-086 of the City requesting bid Bids for Rotary Park Restroom Project, the Contractor has submitted a certain bid in accordance with the Bid Documents to perform the Services.
- B. After due consideration, the City has accepted the bid of the Contractor and the parties hereto desire to enter into this Agreement whereby the Contractor shall undertake the performance of the Services in accordance with the Contract Documents and the City shall pay the Contractor as hereinafter specified.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises hereinafter set forth the City and the Contractor hereby agree as follows:

- 1. **Contract Documents:** This Agreement shall consist of: (i) Invitation for Bid #15-086 including, without limitation:
 - 1. Invitation for Bids
 - 2. Bid and Bid Proposal – Exhibit A (submitted by Contractor)
 - 3. References – Exhibit B
 - 4. Affidavit of Non-Collusion – Exhibit C
 - 5. Subcontractor Approval Form – Exhibit D
 - 6. E-Verify Memorandum of Understanding with Electronic Signatures
 - 7. Affidavit of Participation in Federal Work Authorization Program Form
 - 8. City-Contractor Agreement (executed by City and Contractor)
 - 9. Terms and Conditions
 - 10. General Conditions
 - 11. Job Special Provision
 - 12. Building Package – Drawings and Technical Specification prepared by

Cochran

13. Notice of Award (issued by City)

14. Notice to Proceed (issued by City)

and shall also include any exhibits to the above documents, any addenda issued prior to receipt of bids, any duly-issued modifications, and all other documents contained or specified within the specifications, details or job special provisions, as such may be on file in the office of the Procurement Department and Office of the City Clerk of Wentzville, Missouri (all of the foregoing collectively referred to as the "Contract Documents" are hereby incorporated in this Agreement by reference). When any provision(s) of the Contract Documents conflict, the provision(s) most advantageous to the City shall govern.

2. **Payment:** Contractor shall be paid for the quantities placed based on a percent complete per the amount quoted of each amount on the Bid Proposal Form Exhibit A and per the Methods of Measurement and Payment. The Contractor shall submit all invoices complete with necessary supporting documentation and partial lien waivers to indicate the percentage complete of each sum amount to the City. The City shall make payment within 30 days of receipt of an invoice after satisfactory performance of the delivery and receipt of the services as shown on the Bid Proposal Form Exhibit A. Final determination of percentage complete will be made by the Engineer. Invoices shall be submitted no more than once a month except for the final payment. Payment Terms: net 30 days. Remit Address is Accounts Payable, 5 W. Pearce Blvd., Wentzville, MO 63385.
3. **The Work/Contract Sum:** The Contractor shall furnish all labor, materials, tools, equipment and services, and perform and complete the Work required for the Project in accordance with this Agreement which shall include provision of every item specified in the Contract Documents necessary to complete the Project as designed. The Contract Sum is \$_____, which shall include all compensation to Contractor due for the Work, which shall include all such work within the Base Bid and additionally all such Work within selected Alternate Bids. Any additional Work not within the Base Bid and Alternate Bids that is hereinafter approved by the City in writing shall be incorporated into the contract pursuant to a Change Order.
4. **Time of Completion:** Contractor shall commence work under this Agreement within five (5) days of receipt of written notice from the City to proceed and shall fully complete all items of the Work within the time set forth in the Contract Documents. The parties understand that time is of the essence and that the rate of progress and prompt completion are essential conditions, and that in the event the Work is not fully completed within the period provided herein, the Contractor shall pay to the City the sums provided in the Contract Documents.
5. **Guaranty:** The Contractor hereby expressly guarantees the aforesaid Work as to workmanship and quality of materials used in connection herewith for a term of one (1) year, commencing on the date of Final Acceptance by the City, and binds itself, its successors or assigns, to make all repairs or replacements which may become necessary within said period due to construction defects and nonconformity with the Contract Documents. Whenever notified by the City that said repairs or replacements are required, the Contractor shall at once make the same as directed at its own expense. If the Contractor does not proceed with such repairs or replacements within five (5) days after receipt of written notice, the City may use (and the Contractor

agrees and consents to such use) the Maintenance Bond, according to the terms thereof, to make any necessary repairs or replacements to any portion of the Work. Upon expiration of the one (1) year guaranty period, the City shall release the Maintenance Bond, less any amounts reasonably necessary to remedy any of the Contractor's performance and/or maintenance obligations under this Agreement that may still be outstanding at the time of expiration of the guaranty period.

6. **Payment Bond:** If the Contractor's Bid is in excess of \$50,000, the Contractor shall furnish within ten (10) calendar days of notification of contract award a satisfactory Payment Bond in the full amount of the Contract Sum. The Payment Bond furnished shall meet all requirements of Section 107.170 of the Revised Statutes of Missouri, as amended, and shall guarantee the payment of any and all materials, incorporated, consumed or used in connection with the construction of such work, and all insurance premiums, both for compensation, and for all other kinds of insurance, said work, and for all labor performed in such work whether by subcontractor or otherwise, including payment of prevailing wage requirements of the State of Missouri. The submitted Payment Bond shall be substantially in the form of the "Form of Payment Bond" included within the Bid Documents.

7. **Performance Bond:** If the Contractor's Bid is in excess of \$50,000, the Contractor shall furnish within ten (10) calendar days of notification of contract award a satisfactory Performance Bond in the full amount of the Bid based on the bid quantities listed on the Bid Proposal form. The Performance Bond furnished shall guarantee the faithful performance of this Contract. The submitted Performance Bond shall be substantially in the form of the "Form of Performance Bond" included within the Bid Documents.

8. **Maintenance Bond:** Upon Final Acceptance the Contractor shall furnish a satisfactory Maintenance Bond in the amount of 10% of the final Contract Sum after any and all Change Orders and/or formal amendments. The Maintenance Bond shall be in full force for a one (1) year guarantee period from the date of Final Acceptance. The submitted Maintenance Bond shall be substantially in the form of the "Form of Maintenance Bond" included within the Bid Documents.

9. **Independent Contractor:** The Contractor shall be and operate as an independent Contractor in the performance of this Agreement. The Contractor shall have complete charge of the personnel engaged in the performance of the Services, and all persons employed by the Contractor shall be employees of said Contractor and not employees of the City in any respect.

10. **Contractor's Liability Insurance:** The Contractor shall obtain and maintain during the term of the Project and the City Contractor Agreement the insurance coverage's at least equal to the coverage's set forth in this paragraph 10, and as further provided in the General Conditions, but no event less than the individual and combined sovereign immunity limits established by Section 537.610 RSMo. Insurance policies providing required coverage's shall be with companies licensed to do business in the State of Missouri and rated no less than AA by Best or equivalent. All costs of obtaining and maintaining insurance coverage's are included in the Bid Amount and no additional payment will be made therefor by the City:

Comprehensive General Liability Insurance (including coverage for Bodily Injury and	\$1,000,000 per occurrence \$2,735,000 aggregate
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Property Damage)	
Comprehensive Automobile Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$1,000,000 per occurrence
Employer's Liability	\$1,000,000 bodily injury by accident (each accident) \$1,000,000 bodily injury by disease (each employee) \$1,000,000 bodily injury policy limit

In addition, the Contractor and all subcontractors shall provide Worker's Compensation Insurance in at least statutory amounts for all workers employed at the Project site. The Contractor shall also provide a policy of Builder's Risk Insurance in the amount of 100% of the complete insurable value of the Project, which policy shall protect the Contractor and the City, as their respective interests shall appear.

Before commencing any work, the Contractor shall provide to the City certificates of insurance evidencing the issuance and maintenance in force of the coverage's required by this paragraph 10. Each such certificate shall show the City, and such other governmental agencies as may be required by the City to be insured by underlying grant or contract relating to the Project, as an additional insured, on a primary and non-contributory basis, and shall bear an endorsement precluding cancellation of or change in coverage without at least thirty (30) days written notice to the City.

The City may waive any insurance coverage's or amounts required by this paragraph 10 when the City deems such waiver to be in the interest of the public health, safety, and general welfare.

11. **Indemnification:** To the fullest extent permitted by law, the Contractor agrees to defend with counsel approved by the City, and indemnify and hold harmless the City, its officers, engineers, representatives, agents and employees from and against any and all liabilities, damages, losses, claims or suit, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or money damages, or trespass, or any other circumstances, sustained by the City or others, arising from the Contractor's breach of the Contract or out of services or products provided by the Contractor or its subcontractors under the terms of this agreement. The Contractor shall not be liable for any loss or damage attributable solely to the negligence of the City. To the extent required to enforce this provision, the Contractor agrees that this indemnification requires the Contractor to obtain insurance in amounts specified in the Contract Documents and that the Contractor has had the opportunity to recover the costs of such insurance in the compensation set forth in this Agreement.

In any and all claims against the City or any of its agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

12. **Attorney Fees' and Costs:** The Contractor shall reimburse to the City any costs and attorneys' fees that the City may reasonably incur in pursuit of any remedies at law or equity or enforcement of any rights established in this Agreement, which may result from the Contractor's breach of the Agreement, the Contractor's failure to perform any obligation or requirement contained herein, or the City's enforcement of this Agreement.
13. **Liquidated Damages:** The Contractor agrees and acknowledges that time is of the essence of this Agreement and that delay in the project becoming Available for Use, in Project Closeout, and in Final Acceptance will inconvenience the public and increase administrative costs of the City, the costs of which the Contractor and the City are incapable of ascertaining at this time. Should the Contractor, or in the case of Contractor's default, the surety, fail to complete the Work and/or receive Final Acceptance within the times stipulated in this Agreement, or within such extensions of time as may be allowed by the City in the manner set forth in the Contract Documents, the Contractor (or surety, as applicable) shall pay to the City as liquidated damages, and not as a penalty, the sum of **Five Hundred Dollars (\$500.00)** for each calendar day that the Work and Final Closeout documents including Maintenance Bond and Final Lien waivers from all subcontractors, remain incomplete after the time allowed for the completion, including approved extensions. In the sole discretion of the City, the amount of the liquidated damages may be deducted from any money due the Contractor under this Agreement. Permitting the Contractor to finish the Work or any part thereof after the expiration of the time for completion or any approved extension, shall in no way operate as a waiver of the City of any of rights under this Agreement.
14. **Termination:** The City shall have the right to terminate this Agreement at any time for any reason by giving the Contractor written notice to such effect. The City shall pay to the Contractor in full satisfaction and discharge of all amounts owing to the Contractor under this Agreement an amount equal to the cost of all Services performed by the Contractor up to such termination date, less all amounts previously paid to the Contractor on account of this Agreement Price. The Contractor shall submit to the City its statement for the aforesaid amount, in such reasonable detail as the City shall request, within thirty (30) days after such date of termination. The City shall not be liable to the Contractor for any damages on account of such termination for loss of anticipated future profits with respect to the remainder of the Services.
15. **Compliance with Federal, State and Local Law:** The Contractor shall comply with all applicable federal, state and local law requirements for performance under this Agreement. The Contractor shall abide by all health and environmental requirements imposed by law in performance of its duties.
16. **Prevailing Wage:** The Contractor shall be required to comply with all applicable provisions concerning the payment of prevailing wages on public works projects, as provided in the General Conditions. A copy of the applicable Annual Wage Order and Incremental Increases for each occupational title required under this project is included in the Bid Documents and shall be included in the Contract Documents.
17. **Required OSHA Training:** Pursuant to Section 292.675 RSMo., Contractor shall require all on-site employees to complete the ten-hour training program as required under Subsection 292.675.2 RSMo. This program shall be provided by Contractor and shall be a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for Contractor's on-site employees which includes a course in construction safety and health approved by OSHA or a similar program

approved by the Missouri Department of Labor and Industrial Relations (“MoDOLIR”) which is at least as stringent as an approved OSHA program. All employees are required to complete the program within sixty days of beginning work under this Agreement. Contractor shall further require all subcontractors under Contractor to provide the ten-hour training program required under Subsection 292.675.2 RSMo. to such subcontractors’ on-site employees. On-site employees who have previously completed such ten-hour training program must hold documentation of prior completion of the program.

Notice is hereby given to Contractor that it shall be subject to the penalties set forth in Subsection 292.675.4 RSMo. and such penalties shall be forfeited to the City pursuant to such Subsection. MoDOLIR shall investigate any claim of violation of Section 292.675 RSMo. Upon City’s receipt of notification from MoDOLIR of violations of 292.675 by Contractor and a determination by MoDOLIR that penalties shall be assessed for such violations, the City shall withhold and retain from the contract all sums and amounts due and owing to the City as a result of any violation of Section 292.675 RSMo. All words in this paragraph shall have the definitions as provided in Section 292.675.1 RSMo.

18. **Taxes:** The City is exempt from federal excise tax and Missouri sales tax and the Contractor shall not charge the same to the City and shall comply in all respects with the Special Sales Tax Provisions of the General Conditions.
19. **Other Representations, Warranties and Other Covenants by the Contractor:** The Contractor represents and warrants that the Contractor has been engaged in such work as is required for the Services and has provided services such as the ones to be performed under this Agreement to other municipalities and/or private enterprises and that the Contractor has sufficient expertise, knowledge, information and data, and engages sufficient personnel to perform the Contractor’s obligations under this Agreement. The Contractor further represents and warrants that the Contractor is an equal opportunity employer. The Contractor agrees that the Contractor shall not use in any form or medium the name of the City for any advertising unless the Contractor receives the prior written consent of the City.
20. **Amendment; Waiver:** No amendment, modification or waiver of any provision of this Agreement shall be effective unless in writing signed by an authorized representative of the party against whom such provision as amended or modified or such waiver is sought to be enforced. Failure to insist upon strict compliance with any of the terms or conditions of the Agreement shall not be deemed a waiver of such term or condition.
21. **Accounting:** During the period of this Agreement, the Contractor shall maintain books of accounts of its expenses and charges in connection with this Agreement in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the Contractor.
22. **Compliance with State Immigration Statutes:** As a condition for the award of this Agreement, the Contractor shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Services. The Contractor shall also sign an (Affidavit of Participation in Federal Work Authorization Program) affirming that it does not knowingly employ any person who is an unauthorized alien in

connection with the Services. The Contractor shall not be required to provide these affidavits to the City if such affidavits have been previously provided to the City within the past year. All words in this paragraph shall have the definitions as provided in Section 285.525 RSMo.

- 23. **Governing/Choice of Law; Jurisdiction:** This Agreement shall be governed by and construed and interpreted in accordance with the internal laws of the State of Missouri, without regard to its principles of conflict of laws, and shall be deemed to be executed and performed in the County of St. Charles, Missouri. Any legal action arising out of, or relating to this agreement, shall be governed by the laws of the State of Missouri, and the parties agree to the exclusive jurisdiction and venue over them by a court of competent jurisdiction located in the County of St. Charles, Missouri, or the U.S. District Court for the Eastern District of Missouri.
- 24. **Headings:** The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.
- 25. **Representations:** Contractor agrees that it has not relied on any representations or warranties of the City, oral or written, other than expressly identified in this Agreement. The parties agree this Agreement represents the entire agreement between the parties.
- 26. **Severability:** The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision of this Agreement, which shall remain in full force and effect to the maximum extent permitted by law.
- 27. **Counterparts:** This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

CONTRACTOR

CITY OF WENTZVILLE, MISSOURI

Signature

Nickolas Guccione, Mayor

Title

ATTEST:

Address

City, State, Zip

City Clerk

Date

Date

TERMS AND CONDITIONS

Independent Contractor. The Contractor shall be and operate as an independent Contractor in the performance of this Agreement. The Contractor shall have complete charge of the personnel engaged in the performance of the Services, and all persons employed by the Contractor shall be employees of said Contractor and not employees of the City in any respect.

Compliance with Laws. The Contractor shall comply with all applicable City ordinances and other laws and regulations, Federal, State, and any political subdivision thereof, including but not limited to, unemployment and workers' compensation, occupational safety, equal employment and affirmative action and wage and price laws insofar as applicable to the performance of this Agreement. In the event of a conflict between laws, codes and regulations of various governmental entities having jurisdiction over the Services, the Contractor shall notify the City of the nature and impact of such conflict.

Subcontracts. The Contractor shall not subcontract any of the Services to be performed by it hereunder without the express written consent of the City, except as provided herein. In the event Contractor utilizes a subcontractor, the Contractor shall ensure that any agreement between Contractor and such subcontractor complies with all requirement imposed for such agreement by federal, state, and local law. In addition, this Agreement shall not be assigned by the Contractor.

If the Contractor submits invoices to the City which include payments to be made on account of work performed by a subcontractor, such payments shall be conditioned upon submission by the Contractor of waiver of liens, or such other documents satisfactory to the City to protect the City's title to land, buildings, or improvements or to otherwise protect the City's interest. By submitting an invoice to the City, the Contractor warrants and guarantees that title to all land, buildings or improvements which may be subject to a lien under 429.015 RSMo, upon the receipt of such payment by the Contractor, will not be subject to a lien under 429.015 RSMo.

Indemnification. To the fullest extent permitted by law, the Contractor agrees to defend with counsel approved by the City, and indemnify and hold harmless the City, its officers, engineers, representatives, agents and employees from and against any and all liabilities, damages, losses, claims or suits, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or any other circumstances, sustained by the City or others, arising from breach of this Agreement or out of services negligently performed hereunder by the Contractor, or claims relating thereto, and including but not limited to the City's reliance on or use of the services or products provided by the Contractor under the terms of this agreement. The Contractor shall not be liable for any loss or damage attributable solely to the negligence of the City. To the extent required by law to enforce this provision, the Contractor agrees that this indemnification requires the Contractor to obtain insurance in amounts specified herein and that the Contractor has had the opportunity to recover the costs of such insurance in the compensation set forth in this Agreement.

No Aldermen, officer, administrator, director, board member, or employee of the City shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement. The Contractor shall look solely to the City for the satisfaction of any claims the Contractor may have arising under this Agreement.

Insurance. The Contractor shall furnish the City the certificates of insurance for workers' compensation, public liability, and property damage, including automobile coverage in the amounts specified by the City in the request for proposals, if any, otherwise in the amounts required by the City, if any, but in no event less than the maximum amounts of liability set forth in Chapter 537.610 RSMo, as amended, applicable to political subdivisions. The policies of insurance shall be in such form and shall be issued by such company or companies as may be satisfactory to the City. In addition to the foregoing, the Contractor shall maintain Professional Liability "errors and omissions" insurance in the form for the coverages satisfactory to City as indicated in the request for proposals, if any, but in no event less than the maximum amounts of liability set forth in Chapter 537.610 RSMo applicable to

political subdivisions unless otherwise approved by the City. The City, and such additional persons and entities as may be deemed to have an exposure to liability as a result of the performance of the Contractor's services, as determined by the City, shall be named as additional insured on a primary and non-contributory basis, with duty of defense on all insurance policies required hereunder.

Nondisclosure/Confidentiality. The Contractor agrees that it will preserve the confidentiality of all City data and account information and will not divulge to third parties without the written consent of the City any information obtained from or through the City in connection with the performance of this Agreement.

Changes. No change in this Agreement shall be made except in writing prior to the change in Services or terms being performed. The Contractor shall make any and all changes in the Services without invalidating this Agreement when specifically ordered to do so in writing by the City. The Contractor, prior to the commencement of such changed or revised Services, shall submit promptly to the City, a written cost or credit proposal for such revised Services. If the City and the Contractor shall not be able to agree as to the amount, either in consideration of time or money to be allowed or deducted, it shall nevertheless be the duty of the Contractor, upon written notice from the City, to immediately proceed with such alteration or change, and the Contractor shall be compensated the reasonable value of such Services. **No work or change shall be undertaken or compensated for without prior written authorization from the City and shall be subject to any required approval from state or federal departments or agencies.**

Multi-year contracts; Non-appropriation. Notwithstanding any provision herein to the contrary, the City is obligated only to make the payments set forth in the attached contract as may lawfully be made from funds budgeted and appropriated for that purpose during the City's then current fiscal year at the discretion of the City. If no funds are appropriated or otherwise made legally available to make the required payments for this Agreement during the next occurring fiscal year (an "**Event of Non-appropriation**"), this Agreement will terminate at the end of the then current fiscal year as if terminated expressly. The failure or inability of the City to appropriate funds for this Agreement in any subsequent fiscal year shall not be deemed a breach of this Agreement by any party. If applicable, this Agreement may be annually renewed at each fiscal year by inclusion of specific appropriation for this Agreement, from year to year not to exceed the maximum renewal period or term as set forth in the Agreement.

Accounting. During the period of this Agreement, the Contractor shall maintain books of accounts of its expenses and charges in connection with this Agreement in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the Contractor.

Other Contractors. The City reserves the right to employ other Contractors in connection with the Services.

Invitation for Bids. If the City issued an Invitation for Bids in connection with the Services, such Invitation for Bids and the bid proposal of the Contractor in response thereto are incorporated herein by reference and made a part of this Agreement. In case of any conflicts between the Invitation for Bids and the executed City-Contractor Agreement or proposal of the Contractor, the requirements of the City's Invitation for Bids and this executed City-Contractor Agreement shall control and supersede unless a change thereto is specifically stated in this Agreement.

Work Records and Work Product. The Contractor shall provide the City with copies of all documents pertinent to the Services which shall include, without limitation, reports, correspondence, meeting minutes, and originals of all deliverables. The City shall own all right, title and interest, including without limitations, all copyrights and intellectual property rights, to all documents and Work Product of the Contractor created in performance of or relating to this Agreement. The Contractor agrees to take all steps reasonably requested by the City to evidence,

maintain, and defend the City's ownership rights in the Work Product. Upon termination of this Agreement, the Contractor shall promptly deliver to City any documents, and work product, whether printed or electronic.

Personnel. The Services shall be performed exclusively by the personnel of the Contractor identified in the Contractor's proposal and no other personnel of the Contractor shall perform any of the Services without the express written approval of the City.

Compliance with State Immigration Statutes. As a condition for the award of this Agreement, the Contractor shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Services. The Contractor shall also sign an (Affidavit of Participation in Federal Work Authorization Program) affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Services. The Contractor shall not be required to provide these affidavits to the City if such affidavits have been previously provided to the City within the past year. All words in this paragraph shall have the definitions as provided in Section 285.525 R.S.Mo.

Representations. The Contractor agrees that it has not relied on any representations or warranties of the City, oral or written, other than expressly identified in this Agreement. The parties agree this Agreement represents the entire agreement between the parties.

Governing/Choice of Law; Jurisdiction. This Agreement shall be governed by and construed and interpreted in accordance with the internal laws of the State of Missouri, without regard to its principles of conflict of laws, and shall be deemed to be executed and performed in the County of St. Charles, Missouri. Any legal action arising out of, or relating to this Agreement, shall be governed by the laws of the State of Missouri, and the parties agree to the exclusive jurisdiction and venue over them by a court of competent jurisdiction located in the County of St. Charles, Missouri or the U.S. District Court for the Eastern District of Missouri.

Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement.