



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

**REQUEST FOR PROPOSALS NO. #17-074**

**MATERIAL TESTING SERVICES**

Solicitation Issue Date:  
January 31, 2017

January 31, 2017

Subject: Request for Proposals for City of Wentzville Construction Material Testing Contract.

Dear Potential Respondent:

Your Firm is being invited to submit a proposal for providing the City of Wentzville Construction Material Testing Services ("Services"). This contract is anticipated to be for a duration of twelve months with potential for extension of two additional years for a total of three (3) years. The City intends to award the contract to a minimum of two (2) qualified Firms.

Submissions of proposals will be accepted until 2 p.m. local prevailing time February 22, 2017. All questions and clarifications may be addressed in writing to Alice Winkelman, Senior Procurement Specialist, [alice.winkelman@wentzvillemo.org](mailto:alice.winkelman@wentzvillemo.org) by 2 p.m. February 9, 2017.

Proposals will be accepted at:

City of Wentzville  
RFP #17-074  
310 West Pearce Blvd.  
Wentzville, MO 63385

Please review the attached for details regarding the City's expectations for material testing services. Thank you in advance for your interest in working with the City of Wentzville.

Sincerely,

Kimberly Butts, CPPO, CPSM  
Director of Procurement  
(636) 639-2005

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**Request for Proposals #17-074  
For  
MATERIAL TESTING SERVICES**

**SECTION 1. PURPOSE AND INTRODUCTION**

The City of Wentzville (“City”) is soliciting a Request for Proposals from qualified Firms for Material Testing Services. This contract is anticipated to be for a duration of twelve months with potential for extension of two additional years for a total of three (3) years.

The City was incorporated as a fourth class city in March 1872 and under RSMo 79.010 established governmental procedures. The City Government is composed of an elected Mayor and six Aldermen with an appointed City Administrator. The City serves a population of 29,070 residents and 583 licensed businesses.

The City is responsible for public works, roads, and streets, parks and recreation, planning, zoning, community development and code enforcement, sewage treatment and storm water management. The Firm will be responsible for performing material testing for various types of heavy civil and building projects as determined by the City’s Engineering Division. The City is currently in the planning and design phases of various capital improvement projects including roads/ streets, buildings, demolition, grading, parks, storm water facilities, sewer facilities, and water distribution.

**Current Contract:** The City of Wentzville is currently under contract with Cochran Engineering for similar services which expires in February 2017.

**SECTION 2. SUBMISSION OF PROPOSALS**

One (1) original and three (3) copies shall be submitted, in a sealed envelope or package:

RFP Due: February 22, 2017, 2:00 p.m. prevailing Central time

Location: The City of Wentzville  
City Hall  
Attn: Procurement Department  
310 West Pearce Blvd  
Wentzville, MO 63385

Contact: Alice Winkelman, Senior Procurement Specialist  
Phone: 636-639-2026 E-mail: [Alice.Winkelman@Wentzvillemo.org](mailto:Alice.Winkelman@Wentzvillemo.org)

**ALL QUESTIONS SHOULD BE TRANSMITTED VIA E-MAIL**

**SECTION 3. PROPOSAL REQUIREMENTS**

The City will consider proposals from firms with specific experience and success in performing MoDOT (Missouri Department of Transportation), Army Corp of Engineers, and Metro St. Louis Sewer District level or equivalent construction experience. Additionally the firm shall have experience and success in performing various forms of standard construction testing and reporting as detailed in specifications and contract documents. All testing shall be performed to AASHTO, ANSI, and ACI Standards. All proposals must include:

1. Firm name, address, telephone number and contact person(s). (1 page max)
2. Brief history of firm including services offered, and experience. (2 page max)
3. List of recent (last 24 months) agencies (Total of Five) that have used the firm's services on similar projects, with contact names and contact information for reference checks. (3 page max)
4. List of recent projects and types of services performed (including: Roadway, Streets, Storm Water, Sanitary Sewer, Water Delivery Systems, Etc.) (3 page max)
5. Identification of specific services to be provided; include experience with the various construction material testing procedures relevant to this RFP. (2 page max)
6. Experience and qualifications of the staff members that will be working on the City's contract (including a list certifications). (3 page max)
7. Fee Schedule (1 page)
8. Non-Collusive Form, completed (not included in page count)

## **SECTION 4. SCOPE OF SERVICES –Materials Testing**

### **4.1 Project Staffing**

In times of heavy workload volume it may be necessary to have multiple staff dedicated to the city on a project by project basis to help eliminate potential backlog and complete planned projects on time. The City requires the ability to adjust volume or frequency of testing services. **Please reflect the Firm's ability, process and proposed pricing in achieving staffing balance by using the estimated totals on the staffing/testing pricing sheet.**

### **4.2 Schedule of Services**

This is only an estimate of services needed, there is no inherent guarantee that these services will be required or commissioned. Evaluate and submit pricing accordingly. Payment will be based on actual services performed.

The Contractor shall provide the following prices for providing services in accordance with the provisions and requirements stated herein. **All costs (personnel, time, travel, fuel, vehicles, mileage, equipment installation or removal, maintenance, data analysis, reporting, or other costs) associated with providing the services listed below shall be considered incidental and are to be included in the proposed prices.**

**RFP #17-074, Schedule of Services (4.2 continued)**

Firms must use this form to submit pricing for their RFP response.

### Materials Testing Estimated Quantities Per Year

Item No.	Description	Unit	Unit Price	Base Qty	Extension
1	Mortar testing	Ea.		10	
2	Masonry Grout	Ea.		10	
3	Certified Engineering Tech	Hr.		1000	
4	Certified Engineering Tech (4 Hours on site)*	1/2 Day		100	
5	Certified Engineering Tech (8 Hours on site)*	Day		25	
6	Nuclear Density Gauge	1/2 Day		130	
7	Nuclear Density Gauge (per individual test)	Ea.		300	
8	Concrete Core Drilling & Compression Test	Ea.		200	
9	Concrete Mix Strength Analysis	Ea.		5	
10	Aggregate Sieve Analysis	Ea.		15	
11	Aggregate Durability Analysis**	Ea.		5	
12	Aggregate Unit Weight	Ea.		5	
13	Asphalt Core Drilling & Density Analysis**	Ea.		5	
14	Asphalt Extraction/ Gradation	Ea.		3	
15	Marshall Density Test	Ea.		5	
16	Asphalt Content	Ea.		5	
17	Standard/Modified Proctor-Soil	Ea.		10	
18	Standard/Modified Proctor-Aggregate	Ea.		10	
19	Moisture Content Soils or Aggregate Analysis	Ea.		18	
20	Atterberg Limits	Ea.		18	
21	Specific Gravity Test-Fine Grain Aggregate	Ea.		3	
22	Specific Gravity Test-Coarse Grain Aggregate	Ea.		3	
23	Concrete Field Testing	Ea.		1500	
24	Concrete Strength Testing (4"x8" Cylinder)	Per Set of 4		1000	
25	Development of Strength-Maturity Relationship	Ea.		3	
26	Concrete Maturity Test (Strength)	Ea.		12	
27	Trip Charge (1 per day)	Ea.		200	
28	Overtime Multiplier	Hr.		30	
				Total	

\* Hours on site are tallied as total hours worked on City of Wentzville Projects. There may be multiple jobsite visits within city throughout the day.

\*\* Submit method of analysis for this item on separate sheet.

NOTE: No direct payment will be made for trip charges other than from office to City of Wentzville. All additional travel time is incidental to services being performed.

## **SECTION 5 MINIMUM QUALIFICATIONS**

5.1. Certified Engineering Technician: The Certified Engineering Technician shall have a minimum of 2 years experience in materials testing and placement observations as well as obtained proper training and certification by; ACI, MoDOT, NRC, and any other relevant Certifications. This person shall have a diverse background in materials testing and control in civil and heavy infrastructure material testing. This person will be responsible for assisting City of Wentzville Staff in the evaluation and observation of construction material items and material placement.

- The Certified Engineering Technician will be responsible for maintaining logs and records of their observations and will act as a liaison for City of Wentzville Staff under certain circumstances.
- The intent for this Certified Engineering Technician is to provide advanced technical or paraprofessional support in connection with the construction of capital improvement projects as well as development projects. Individuals shall have a comprehensive understanding of construction, materials, and methods and be able to evaluate and observe projects according to contract documents. This individual shall be able to use their specialized training to assist in the evaluation of construction materials during the installation process. This Certified Engineering Technician will be charged with providing testing of routine construction materials for conformance to plans, specifications, special provisions, and terms of the construction contract.

## **SECTION 6 EVALUATION CRITERIA**

The criteria used to select a firm include the following factors:

1. Responsiveness of the proposal. (5%)
2. Experience of the Firm and its individual staff members in performing similar services; responses of references. (30%)
3. Ability of Firm to perform the contract; Qualifications of the staff proposed for the project including certifications and experience with various construction material testing procedures. (30%)
4. Price to provide the services requested. (35%)

## SECTION 7. SELECTION PROCESS

The City will review and evaluate the proposals based on the evaluation criteria in Section 6. Firms may be selected for interviews or questioned for clarification. However, the City may choose to proceed without interviewing any firms.

**The City reserves the right to award to multiple Firms as is in the best interest of the City.**

The City of Wentzville hereby notifies all Firms 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 proposals in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

## SECTION 8: MISCELLANEOUS

1. **Schedule:** The following schedule of events is anticipated by the City. The City may, at its' discretion, revise the schedule of events at any time as may be in the best interests of the City.

Publish the Request for Proposal	January 31, 2017
Deadline for Questions	February 9, 2017
City's Response to Questions	February 13, 2017
Proposals Due Date	February 22, 2017

4. **Addenda:** If it becomes necessary to revise or amend any part of this Request for Proposal, the Procurement Department will post the revision by written Addendum to the Request for Proposal on the City's website [http://www.wentzvillemo.org/departments/procurement/current\\_bidding\\_opportunities.php](http://www.wentzvillemo.org/departments/procurement/current_bidding_opportunities.php) It is the Bidder's responsibility to check for any issued addendums prior to submitting their proposal.
5. This solicitation is a Request for Proposals therefore there is no public opening nor will the names of the Firms be read.
6. The City reserves the right, in its sole discretion, to reject any or all proposals, or portions thereof, to waive technicalities or deficiencies in any or all the proposals. The City of Wentzville reserves the right to cancel this RFP in part or in its entirety.
7. **City Seal, Flag and Logo:** In accordance with City of Wentzville Ordinance No. 2633, the City of Wentzville logo is a registered trademark. The City logo is not to be used in bid submissions or advertisements. The Contractor agrees that it shall not use in any form or medium the name of the City for any advertising unless it receives the prior written consent of the Board of Aldermen of the City.



**8. Non-Discrimination:**

The Firm 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 Firm shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or disability. The Firm shall incorporate the foregoing requirements of this paragraph in all of its subcontracts for work performed under the terms and conditions of this anticipated contract. A breach of this provision may be grounds for Contract termination.

**9. Insurance:** See paragraph 9 of the sample Agreement attached.

**MATERIAL TESTING SERVICES  
SECTION 9  
OFFER AND SCHEDULE OF FEES**

The undersigned has thoroughly examined the entire Request for Proposal (RFP), including all addenda thereto, hereby offers to furnish all services in accordance with the requirements of the Request for Proposal, as described in the proposal attached hereto and incorporated herein. The Contractor awarded this Agreement of Services and paid in accordance with the accepted Option(s).

**YEAR 1:** Annual Total from Schedule of Services (paragraph 4.2): \$ \_\_\_\_\_

**YEAR 2:** Percentage increase: \_\_\_\_\_% (based on Year 1 pricing)

**YEAR 3:** Percentage increase: \_\_\_\_\_% (based on Year 1 pricing)

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

Legal  
Company Name: \_\_\_\_\_

Missouri Business  
License Number: \_\_\_\_\_

Signature: \_\_\_\_\_

Name (Printed): \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Email address: \_\_\_\_\_

**EXHIBIT A**  
**NON-COLLUSIVE AFFIDAVIT OF PRIME BIDDER**

State of \_\_\_\_\_ )  
S.S.  
County of \_\_\_\_\_ )

\_\_\_\_\_, being first duly sworn, deposes and says that:

1. He is the (owner, partner, officer, representative, or agent) of \_\_\_\_\_, the Bidder that has submitted the attached Bid;
2. He is 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 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. He further certifies 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 \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**Presented as Sample Enclosure**

**MATERIAL TESTING SERVICES AGREEMENT**

THIS AGREEMENT (this "Agreement"), is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between \_\_\_\_\_, a \_\_\_\_\_ having a principal office at \_\_\_\_\_ (the "Firm"), 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 RFP #17-074 of the City requesting proposals for MATERIAL TESTING SERVICES, the Firm has submitted a certain Proposal in accordance with the Proposed Documents to perform the Services.

B. After due consideration, the City has accepted the Proposal of the Firm and the parties hereto desire to enter into this Agreement whereby the Firm shall undertake the performance of the Services in accordance with the Contract Documents and the City shall pay the Firm as hereinafter specified.

**AGREEMENT**

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

**1. Contract Documents:**

This Agreement shall consist of: (i) RFP #17-074 including, without limitation:

- a. Request for Proposals
- b. Firm's Proposal and Schedule of Fees
- c. Affidavit of Non-Collusion
- d. Executed Agreement
- e. Affidavit of Participation in Federal Work Authorization Program Form
- f. E-Verify with Electronic Signatures
- g. Certificate of Insurance
- h. Terms and Conditions
- i. Scope of Services
- j. Notice of Award (issued by City)

and shall also include any Exhibits to the above documents, any Addenda issued prior to receipt of bid proposals, 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. Term:**

The term of this contract shall be date of award through \_\_\_\_\_(one year), with City reserving the option to renew for two additional consecutive one-year periods, subject to the “Multi-year contracts; Non-appropriation” provisions of the attached Terms and Conditions. Upon expiration of the last term, the agreement will continue on a month-to-month basis until the City is able to obtain a new agreement through the process dictated by the City Procurement Policy.

**3. Scope of Services:**

Services to include all services set forth in the Scope of Services, Section 4 of the Request for Proposal (the “Services”).

Except as expressly specified herein, Firm hereby agrees to provide all of the supervision, labor, technical services, facilities, materials, tools, equipment, and apparatus, and to perform all the services and do all the things necessary for the proper completion of the services which are particularly described as set forth in the Scope of Services, Section 4 of the Request for Proposal. All Services shall be in conformance with all applicable policies of the City and laws of Missouri applicable to 4<sup>th</sup> class cities, all federal laws and requirements and all rules and regulations thereunder, and the generally accepted standard of care.

The above described Services shall be provided by the Firm in accordance with all the provisions of this Agreement, City policies and attached City of Wentzville General Conditions for the Services, attached to the Request for Proposal and incorporated herein by reference, and which terms shall prevail over any conflicting terms that may otherwise be adopted herein as part of any attachment.

**4. Compensation:**

The City hereby agrees to pay the Firm, as full compensation for the complete and satisfactory performance of this Agreement:

Such amount as is set forth in the attached Offer and Schedule of Fees as submitted by Firm that is incorporated herein in its entirety and subject to any such limits as established herein or therein and in approving authorization by the City.

**5. Time and Manner of Payments:**

All invoices complete with necessary support documentation shall be submitted to the City and payment shall be made by City within thirty (30) days of receipt of an invoice received after satisfactory performance of the Services. Payment Terms are net 30 days. Remit Address is City of Wentzville, Accounts Payable, 5 W. Pearce Blvd., Wentzville, MO 63385 or [accountspayable@wentzvillemo.org](mailto:accountspayable@wentzvillemo.org) .

**6. Attorney Fees’ and Costs:**

The Firm 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 Firm’s breach of the Agreement, the Firm’s failure to perform any obligation or requirement contained herein, or the City’s enforcement of this Agreement.

**7. Other Representations, Warranties and Other Covenants by the Firm:**

The Firm represents and warrants that the Firm 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 Firm has sufficient expertise, knowledge, information and data, and engages sufficient personnel to perform the Firm's obligations under this Agreement. The Firm further represents and warrants that the Firm is an equal opportunity employer. The Firm agrees that the Firm shall not use in any form or medium the name of the City for any advertising unless the Firm receives the prior written consent of the City.

**8. 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.

**9. Firm's Liability Insurance:**

The Firm shall obtain and maintain during the term of the Project and the Agreement, the insurance coverage's at least equal to the coverage's set forth in this paragraph 9, and as further provided in the Terms and Conditions, but no event less than the individual and combined sovereign immunity limits established by Section 537.610 R.S.Mo. 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 Property Damage)	\$1,000,000 per occurrence \$2,763,000 aggregate
Commercial 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
Professional Liability - Errors and Omissions	\$1,000,000 per claim

In addition, the Firm and all subcontractors shall provide Worker's Compensation Insurance in at least statutory amounts for all workers employed at the Project site.

Policy shall name the City as the Insured. Certificates evidencing such insurance shall be furnished to the City prior to Firm commencing the services as outlined in the Request for Proposals. The certificates must state, "The City of Wentzville is an additional insured", on a primary and non-contributory basis. Certificate Holder shall be listed as "City of Wentzville, Attention City Clerk, 310 W Pearce Blvd., Wentzville, MO

63385.” The certificate 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 9 when the City deems such waiver to be in the interest of the public health, safety, and general welfare.

**10. Termination:**

The City shall have the right to terminate this Agreement at any time for any reason by giving the Firm written notice to such effect. The City shall pay to the Firm in full satisfaction and discharge of all amounts owing to the Firm under this Agreement an amount equal to the cost of all Services performed by the Firm up to such termination date, less all amounts previously paid to the Firm on account of this Agreement Price. The Firm 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 Firm for any damages on account of such termination for loss of anticipated future profits with respect to the remainder of the Services.

**11. 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.

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

FIRM NAME

CITY OF WENTZVILLE, MISSOURI

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name & Title

\_\_\_\_\_  
Name & Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

ATTESTED:

\_\_\_\_\_  
City Clerk

## **MATERIAL TESTING SERVICES TERMS AND CONDITIONS**

### **Independent Firm:**

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

### **Compliance with Laws:**

The Firm 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 Firm shall notify the City of the nature and impact of such conflict.

### **Subcontracts:**

The Firm 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 Firm utilizes a subcontractor, the Firm shall ensure that any agreement between Firm 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 Firm.

If the Firm 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 Firm 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 Firm 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 Firm, will not be subject to a lien under 429.015 RSMo.

### **Indemnification:**

To the fullest extent permitted by law, the Firm 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 Firm, 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 Firm under the terms of this agreement. The Firm 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 Firm agrees that this indemnification requires the Firm to obtain insurance in amounts specified herein and that the Firm 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 Firm shall look solely to the City for the satisfaction of any claims the Firm may have arising under this Agreement.

### **Insurance:**

The Firm 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 Firm 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 Firm'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 Firm 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 Firm 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 Firm, 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 Firm 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 Firm, upon written notice from the City, to immediately proceed with such alteration or change, and the Firm 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 Nonappropriation**”), 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 Firm 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 Firm.

**Other Firms:**

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

**Request for Proposals:**

If the City issued a request for proposals in connection with the Services, such request for proposals and the proposal of the Firm in response thereto are incorporated herein by reference and made a part of this Agreement. In case of any conflicts between the request for proposals and the executed Firm/Services Agreement or proposal of the Firm, the requirements of the City's Request for Proposal and this executed Firm/Professional Services Agreement shall control and supersede unless a change thereto is specifically stated in this Agreement.

**Work Records and Work Product:**

The Firm 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 Firm created in performance of or relating to this Agreement. The Firm 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 Firm 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 Firm identified in the Firm's proposal and no other personnel of the Firm 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 Firm 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 Firm 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 Firm 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 Firm 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.

**Presented as example; not required with proposal**  
**AFFIDAVIT OF PARTICIPATION IN**  
**FEDERAL WORK AUTHORIZATION PROGRAM**

Comes now \_\_\_\_\_ as \_\_\_\_\_ first being duly sworn, on my  
(Name) (office held)  
 oath, affirm \_\_\_\_\_ is enrolled and will continue to participate in a federal  
(company name)  
 work authorization program in respect to employees that will work in connection with the  
 contracted services related to the services being provided to the City of Wentzville for  
 the duration of the contract, if awarded, in accordance with Section 285.530.2, Revised  
 Statutes of Missouri. I also affirm that \_\_\_\_\_ does not and will not  
(company name)  
 knowingly employ a person who is an unauthorized alien in connection with the  
 contracted services for the duration of the contract, if awarded.

Attached to this affidavit is documentation of \_\_\_\_\_'s  
(company name)  
 participation in a federal work authorization program.

**(ATTACH DOCUMENTATION SHOWING THAT COMPANY PARTICIPATES IN FEDERAL  
 WORK AUTHORIZATION PROGRAM)**

*In Affirmation thereof, the facts stated above are true and correct (The undersigned  
 understands that false statements made in this filing are subject to the penalties provided under Section  
 575.040, RSMo).*

\_\_\_\_\_  
 Signature (person with authority)

\_\_\_\_\_  
 Printed Name

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date

State of Missouri            )  
   )  
 County of \_\_\_\_\_     )  
   )       ss.

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

My commission expires:

\_\_\_\_\_  
 Notary Public

**Presented as information; not required with proposal**

**PROOF OF E-VERIFICATION WITH U.S. DEPARTMENT OF HOMELAND SECURITY**

**Electronic Signature Page**