

**COUNCIL WORKSHOP MEETING
MONDAY, MAY 2, 2022 – 6:00 p.m.
COUNCIL CHAMBER
405 JEFFERSON STREET
WASHINGTON, MO**

INTRODUCTORY ITEMS:

Roll call/Pledge of Allegiance

ACTION:

1. APPROVAL OF MINUTES:

Approval of the April 4, 2022 Workshop minutes

Approve/Mayor

2. PRESENTATIONS:

A. 2021 Annual Comprehensive Financial Report (handouts will be provided) Discussion

3. REPORT OF DEPARTMENT HEADS:

A. Emergency Management Department –
a. Drone Update

Discussion

B. Engineering Department –

a. ArcGIS Mapping Software

Discuss-Send to Council

b. Front Street ADA Improvements Project

Discuss-Send to Council

c. Jefferson Street Roadway & ADA Compliance Project

Discuss-Send to Council

C. Finance Department –

a. Computer Replacements

Discuss-Send to Council

D. Fire Department –

a. Long Range Plan

Discuss-Send to Council

E. Parks Department –

a. Highway 100 Median Landscape Bed Services

Discuss-Send to Council

F. Police Department –

a. School Resource Officers

Discuss-Send to Council

4. EXECUTIVE SESSION:

Public vote on whether or not to hold a closed meeting to discuss personnel, legal or real estate matters pursuant to Section 610.021 RSMo (2000)

ROLL CALL VOTE

5. ADJOURNMENT:

**MINUTES OF THE
CITY OF WASHINGTON, MISSOURI
COUNCIL WORKSHOP MEETING
APRIL 4, 2022**

The Council Workshop Meeting was held on Monday, April 4, 2022 at 6:00 p.m. in the Council Chamber, 405 Jefferson Street, Washington, Missouri. Mayor Lucy opened the meeting with roll call and Pledge of Allegiance.

| | | | |
|-------------------------------|----------------------|-------------------------|--------------------------|
| Mayor: | Sandy Lucy | Present | |
| Council Members: | Ward I | Steve Sullentrup | Present |
| | | Duane Reed | Present |
| | Ward II | Mark Wessels | Present |
| | | Mark Hidritch | Present (6:02 p.m.) |
| | Ward III | Jeff Patke | Present |
| | | Greg Skornia | Present |
| | Ward IV | Gretchen Pettet | Present |
| | | Joe Holtmeier | Present |
| | Also Present: | City Attorney | Mark Piontek (6:54 p.m.) |
| | | City Administrator | Darren Lamb |
| | | City Clerk | Sherri Klekamp |
| | | Human Resources Manager | Shauna Pfitzinger |
| Library Director | | Nelson Appell | |
| Finance Director | | Mary Sprung | |
| Building Official | | Tom Neldon | |
| Public Works Superintendent | | Kevin Quaethem | |
| Airport Manager | | Kevin Hellmann | |
| Public Works Director | | John Nilges | |
| Economic Development Director | | Sal Maniaci | |
| Parks Director | | Wayne Dunker | |
| Emergency Management Director | | Mark Skornia | |
| Communications Director | | Lisa Moffitt | |
| Fire Chief | Tim Frankenberg | | |
| Police Chief | Ed Menefee | | |

Approval of Minutes

A motion to approve the minutes from the March 7, 2022 Workshop meeting as presented made by Patke, seconded by Holtmeier, passed without dissent.

Presentations

A. 2023-2033 Comprehensive Plan

March 30, 2022

Mayor & City Council

City of Washington

Washington, MO 63090

April 4, 2022

Re: 2023-2033 Comprehensive Plan
Mayor & City Council,

On your agenda for the April 4th Council meeting is a contract with H-3 Consulting Services for the Ten Year Comprehensive Plan and Workforce/Economic Development Strategy.

A sub-committee comprising of City Staff and Planning and Zoning Commission members interviewed four different firms to complete a new City Comprehensive Plan and Economic Development Strategy. In the past, these studies were done at different times with different consultants making it difficult to effectively implement both. We feel allowing H-3 and their sub-consultants to review the existing conditions of the City and its businesses, receive input from both industry leaders and citizens, and complete a concise and thorough outline of where the City is and where we should be heading would provide the most benefit to the Community.

The 12 month contract is set at approximately \$135,000 for both a full Comprehensive Plan and Economic Development Strategy (two separate documents will be provided). A full scope and breakdown of services is attached.

After discussion with staff, the proposed City budget breakdown is as follows:

- P&Z: \$75,000
- Transportation Sales Tax: \$17,000
- Economic Development: \$10,000
- Industrial Group Donations: \$10,000
- Stormwater/wastewater: \$18,000

There are \$85,000 in this current budget year, allowing the contract to start without a budget amendment. The completion of the document and final payment can be taken from the 2022-2023 budget if needed.

Feel free to reach out with any questions.

Sincerely,

Tom Holdmeier – Planning and Zoning Commission Chair

Economic Development Director Sal Maniaci presented to Council the H3 Studios Proposal for the 2023-2033 Comprehensive Plan. Topics of discussion included the background on the City completing a Comprehensive Plan approximately every 10 years, summary of services for the Comprehensive Plan and Workforce Development and Economic Development Strategy and breakdown of costs. Due to late changes in the contract by the City Attorney and staff wanting to present the proposal to the Planning and Zoning Commission on Monday for review, the ordinance will be tabled. Staff will bring back an ordinance and contract at the April 18, 2022 meeting.

Report of Department Heads

A. Engineering Department -

a. High Street Reconstruction & ADA Improvements Project, STP-4940(608)

March 23, 2022

Honorable Mayor and City Council

405 Jefferson Street

Washington, MO 63090

RE: High Street Reconstruction and ADA Improvements Project, STP-4940(608)

Dear Mayor and City Council Members:

April 4, 2022

Find enclosed a programming agreement between the City and MoDOT for the High Street Reconstruction and ADA Improvements Project. These improvements between Fifth Street and Front Street would consist of:

- 2” asphalt overly
- Sidewalk and curb and gutter replacement including ADA accessibility upgrades from Fifth Street to Front Street

The cost estimate for construction is \$1,018,750. The total project costs including design, right of way acquisition, construction oversight and construction are \$1,193,750. The federal participation for the entire project will be \$955,00 and the City’s share will be \$238,750. The current schedule is for construction in 2025. This ordinance is contingent upon MoDOT approval which is anticipated subsequent to City approval.

Respectfully Submitted,
Andrea F. Lueken, P.E.
Assistant City Engineer

After Public Works Director John Nilges discussed the project, a motion to forward to Council made by Holtmeier, seconded by Patke, passed without dissent.

b. High Street Extension Project

March 24, 2022

Honorable Mayor and City Council
City of Washington
Washington, MO 63090

RE: High Street Extension to Marquart Farm
Design Contract

Dear Mayor and City Council Members:

Find enclosed an ordinance that would allow the City to enter into a contract with Wunderlich Surveying & Engineering, Inc. for engineering services for the subject project. This project includes extending High Street to the Marquart Farm and constructing a new box culvert. This includes the scope of work approved at the March 21st City Council meeting as part of the development agreement with the property owner.

The contract proposes the following compensation amounts:

DESIGN costs... ..\$23,750

Also included in the ordinance is a budget amendment for FY 2022 for the above referenced project. Construction could start this summer. Once we have design documents to better estimate the costs, we are required to come back to you to vote on a budget amendment to construct.

Approval is recommended.

Sincerely,
John Nilges, P.E.
Public Works Director

After Public Works Director John Nilges discussed the project, a motion to forward to Council made by Holtmeier, seconded by Patke, passed without dissent.

c. Lions Lake Walking Path Improvements Project

March 23, 2022

Honorable Mayor and City Council
City of Washington
Washington, MO 63090

RE: Lions Lake Walking Path Improvements

April 4, 2022

Dear Mayor and City Council Members:

Wayne, Darren, and I met to discuss fairground improvements for the upcoming 2022 Fair. We determined that replacing the Lions Lake walking path could be a very viable project that benefits the Fair and is utilized within the park system every day. The path is increasingly in disrepair with multiple trip hazards. It would also compliment the other approved park path work to be completed this spring.

Per the agreement with the Chamber, the approximate remaining balance from the 2021 Fair revenue to the City is \$32,000.00. That amount is the only direct revenue source the City receives and historically, the City has reinvested that money back into the park system or communications. On March 11, 2022 the City received a winning low bid from K.J. Unnerstall Co. for the Busch Creek Greenway with a sidewalk unit cost of \$6.60/sf. We would like to contract direct with K.J. Unnerstall Construction Co. utilizing the same unit cost bid as recently provided.

In order to proceed quickly, we are requesting that you accept the proposal to pour an 8' concrete ADA compliant walking path on the dam of Lion's Lake. City staff will take care of removals and backfill. The amount of \$31,680 will be offset by the fair revenue as discussed above.

This project could be completed in April, and we are anticipating the path to be closed 2 weeks while the work is complete.

Respectfully submitted,

John Nilges, P.E.

Public Works Director

Wayne Dunker

Parks Director

After Public Works Director John Nilges discussed the project, a motion to forward to Council made by Holtmeier, seconded by Pettet, passed without dissent.

*Airport Manager Kevin Hellmann updated Council on the Airport Fuel Truck.

B. Parks Department -

a. POW-MIA City Signage & Maintenance

March 21, 2022

Honorable Mayor and City Council

City of Washington

405 Jefferson Street

Washington, MO 63090

RE: POW-MIA City Recognition

Honorable Mayor and City Council,

With the help of Terry Sullentrup and other VFW members, the City of Washington became recognized as a POW-MIA City through the Jefferson Barracks POW-MIA Museum Board of Directors on September 17, 2020. With that recognition, MoDOT allows the City to display the proper POW-MIA signage at the entrances to the City. The Street Department has purchased four new signs (in addition to the free one we received from the VFW in September 2020). The signs are ready for installation by MoDOT at the five entrances to the City.

Please note the POW-MIA City recognition is different from the POW-MIA County signage that is currently already in place at some of the entrances to the City. The POW-MIA County signs are only displayed at entrances to the City from other counties (i.e. Highway 47 bridge coming into Washington from Warren County).

April 4, 2022

As always, if you have any questions or would like additional information, please see me before the Council meeting.

Respectfully,

Wayne Dunker, MA, CPRP

Director of Parks and Recreation

After Parks Director Wayne Dunker discussed the POW-MIA signage, a motion to forward to Council made by Holtmeier, seconded by Pettet, passed without dissent.

b. Washington Soccer Academy

April 4, 2022

Honorable Mayor and City Council

City of Washington

405 Jefferson Street

Washington, MO 63090

RE: Recommendation – Lease Agreement with Washington Soccer Academy

Honorable Mayor and City Council,

In late fall 2021, Washington Soccer Academy (WSA) approached the City regarding leasing of Lakeview Soccer Fields. Since that time Darren Lamb, Mark Piontek and I have met with WSA to determine the ramifications of such a lease. We feel the attached lease benefits the Parks & Recreation Department in many ways in addition to saving the department substantial material and labor expenses. By entering into a lease with WSA, the City looks to save at least \$25,000 a year in park maintenance labor and field material expenses. The savings does not include Parks and Recreation Administration Staff time.

The initial term of the lease would be for five years. WSA would have the option, with consent of the City, to extend the term for two more separate and additional periods of five years, on the same terms and conditions. City will require a \$5,000 security deposit. The City will be responsible for providing electric, water, sewer, trash service and public Wi-Fi. The City is also responsible for all repairs and maintenance of paved trails and parking lots and lighting infrastructure (athletic field lights).

Accordingly, the Parks and Recreation Commission and staff recommend that Council consider the approval of a lease agreement with Washington Soccer Academy for the use of Lakeview Soccer Fields 1, 2, &3.

As always, if you have any questions or would like additional information, please see me before the Council meeting.

Respectfully,

Wayne Dunker, MA, CPRP

Director of Parks and Recreation

After Parks Director Wayne Dunker discussed the lease agreement, a motion to forward to Council made by Patke, seconded by Holtmeier, passed without dissent.

C. Police Department -

a. Purchase of New Patrol Vehicles

To: Mayor Lucy and City Council

From: Chief Menefee

Re: Purchase of New Patrol Vehicles and Equipment for 2021/2022 Budget Year

Esteemed Council Members and Honorable Mayor:

For the budget year 2021/2022, I am requesting the purchase of three police vehicles:

April 4, 2022

2-2022 Ford Police Interceptor Utility SUV's

1-2021 Ford F-150 Police Responder Supercrew 4x4 Truck

All units will be assigned to the Road Patrol for use and will replace units in current service that have high mileage. Three older model Chevrolet Impalas are the vehicles being replaced.

The 2021/2022 Vehicle Replacement Fund for the Police Department purchase and equipping for three police vehicles totals \$187,733.00.

- (2) Ford Police Interceptor Utility SUV's = \$72,362
- (1) F-150 Police Responder Supercrew 4x4 Truck = \$42,603
- Ready for Road Package for all three vehicles = \$43,383.14 (including graphics for each

The total for all three vehicles is \$158,348.14. This is under budget by \$29,384.86.

I respectfully request City Council approve the purchase of the listed vehicles from Lou Fusz Ford, as well with VIP Public Safety.

Respectfully,

Edward Menefee, #221

Chief of Police

After Police Chief Ed Menefee discussed the purchase, a motion to forward to Council made by Holtmeier, seconded by Hidritch, passed without dissent.

b. Purchase of New Patrol Vehicle Equipment

To: Mayor Lucy and City Council

From: Chief Menefee

Re: Purchase of New Patrol Vehicles and Equipment for 2021/2022 Budget Year

Esteemed Council Members and Honorable Mayor:

For the budget year 2021/2022, I am requesting the purchase of three police vehicles:

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Respectfully,

Edward Menefee, #221

Chief of Police

After Police Chief Ed Menefee discussed the purchase, a motion to forward to Council made by Holtmeier, seconded by Patke, passed without dissent.

April 4, 2022

c. St. Louis Coalition for Roadway Safety Grant

03-24-22

To: *Washington City Council
Mayor Lucy*

From: *Chief Edward Menefee*

RE: *St. Louis Coalition for Roadway Safety Grant, 2022 for Purchase of Total Station
Esteemed Council Members,*

Attached is a memo from Officer Mike Grissom. It contains a completed application for grant funding through the St. Louis Coalition for Roadway Safety, due date May 20, 2022.

The grant application is a request for funding to purchase new Total Station Equipment. The grant includes the necessary software updates and training for our officers to use the equipment.

Our current Total Station setup is around 15 years old. It is extremely outdated in comparison to new equipment and what it can do. Our old Total Station is unreliable and has suffered some malfunction issues.

The Total Station is vital to our officers when conducting investigations of serious injury or fatal traffic crashes.

One thing that helps our Department to get the grant is we are part of a multi-agency Traffic Crash Reconstruction Team. (Washington, Union, St. Clair, New Haven, Sullivan, Gerald, Pacific and Franklin County.) We share resources and manpower for investigations of fatal or serious injury traffic crashes. The Team helps with manpower needs and expertise for all involved.

This grant is 100% funded by the Coalition. Below is the listed cost of the Total Station Equipment: Total Station Equipment, Software, Software Upgrades & Training \$41,762.00

I request approval to apply for the grant for the Total Station.

Respectfully,

Chief of Police Edward Menefee

After Police Chief Ed Menefee discussed the grant, a motion to approve made by Hidritch, seconded by Pettet, passed without dissent.

D. Water/Wastewater Department -

a. Southpoint Ground Water Storage Tank

To: *Honorable Mayor and City Council*

From: *Kevin Quaethem, Public Works Superintendent*

Subject: *Cochran Proposal for Southpoint Ground Water Storage Tank*

Date: *March 29, 2022*

Mayor and Council,

Staff requested RFQ's for the design, geotechnical investigation and construction administration for the Southpoint Ground Water Storage Tank. We received two from Design Proposal Group and Cochran Engineering.

After an internal review, Cochran was chosen for the project. Staff met with them to discuss the scope of work and they came back with a Proposal for Professional Design Services totaling \$74,960.00.

The Board of Public Works gave approval, and staff is asking for your approval to proceed with Cochran Engineering.

Thank you,

Kevin Quaethem

Public Works Superintendent

April 4, 2022

After Public Works Superintendent Kevin Quaethem discussed the proposal, a motion to forward to Council made by Hidritch, seconded by Pettet, passed without dissent.

Adjournment

With no further business to discuss, a motion to adjourn made at 7:01 p.m. by Patke, seconded by Holtmeier, passed without dissent.

April 4, 2022



April 22, 2022

Honorable Mayor and City Council
City of Washington
405 Jefferson Street
Washington, MO 63090

RE: esri Software
ArcGIS Renewal – Mapping Software

Honorable Mayor and City Council,

The following is pertinent information to the subject request.

Description:

Every three years we have the opportunity to renew our esri / ArcGIS software license. The Engineering Department has put a significant amount of effort into creating digital maps for a variety of uses. The following are examples of uses:

1. City utilities are located and mapped – Public Works
2. Hydrant flow data - Water
3. Work orders – Streets
4. Security cameras / parcel info - Police
5. Traffic speed study – Police/Engineering
6. Lease agreement locations – Admin / Engineering

Cost of the project:

Over three years this project will cost \$45,000, or \$15,000 / year for 3 years.

Bid information:

This is proprietary software and no bids were received or solicited. It is purchased directly from the software provider.

Budget Information:

There is \$15,000 budgeted within the 2022 Engineering Budget under Technical Services.

As always, if you have any questions, concerns, please feel free to contact me.

Respectfully,


John Nilges, PE
Public Works Director

3Ba

BILL NO. _____ INTRODUCED BY _____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND DIRECTING THE EXECUTION OF AN AGREEMENT BY AND BETWEEN THE CITY OF WASHINGTON, MISSOURI AND ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC. FOR ARCGIS SOFTWARE AND SERVICES

Be It Ordained by the Council of the City of Washington, Missouri, as follows:

SECTION 1: The Mayor is hereby authorized and directed to execute and enter into an Agreement by and between the City of Washington, Missouri and Environmental Systems Research Institute, Inc. for ArcGIS Software and Services in an amount totaling Forty Five Thousand Dollars and Zero Cents (\$45,000.00). A copy of said agreement is attached hereto and marked as Exhibit A.

SECTION 2: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3: This ordinance shall take effect and be in full force from and after its passage and approval.

Passed: _____

ATTEST: _____

President of City Council

Approved: _____

ATTEST: _____

Mayor of Washington, Missouri

Exhibit A



April 15, 2022

John Nilges
City of Washington
405 Jefferson St
Washington, MO 63090-2607

Dear John,

The Esri Small Local Government Cloud-Based Enterprise Agreement (SGCBEA) is a three-year agreement that will grant your organization access to Esri term license software. The EA will be effective on the date executed and will require a firm, three-year commitment.

Based on Esri's work with several organizations similar to yours, we know there is significant potential to apply Geographic Information System (GIS) technology in many operational and technical areas within your organization. For this reason, we believe that your organization will greatly benefit from an Enterprise Agreement (EA).

An EA will provide your organization with numerous benefits including:

- A lower cost per unit for licensed software
- Substantially reduced administrative and procurement expenses
- Complete flexibility to deploy software products when and where needed

The following business terms and conditions will apply:

- All current departments, employees, and in-house contractors of the organization will be eligible to use the software and services included in the EA.
- If your organization wishes to acquire and/or maintain any Esri software during the term of the agreement that is not included in the EA, it may do so separately at the Esri pricing that is generally available for your organization for software and maintenance.
- The organization will establish a single point of contact for orders and deliveries and will be responsible for redistribution to eligible users.
- The organization will establish a Tier 1 support center to field calls from internal users of Esri software. The organization may designate individuals as specified in the EA who may directly contact Esri for Tier 2 technical support.
- The organization will provide an annual report of installed Esri software to Esri.
- Esri software and updates that the organization is licensed to use will be automatically available for downloading.

- The fee and benefits offered in this EA proposal are contingent upon your acceptance of Esri's Small Local Government Cloud-Based EA terms and conditions.
- Licenses are valid for the term of the EA.

This program offer is valid for 90 days. To complete the agreement within this time frame, please contact me within the next seven days to work through any questions or concerns you may have.

To expedite your acceptance of this EA offer:

1. Sign and return the EA contract with a Purchase Order or issue a Purchase Order that references this EA Quotation and includes the following statement on the face of the Purchase Order:

"THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL LOCAL GOVERNMENT CLOUD-BASED EA, AND ADDITIONAL TERMS AND CONDITIONS IN THIS PURCHASE ORDER WILL NOT APPLY."

Have it signed by an authorized representative of the organization.

2. On the first page of the EA, identify the central point of contact/agreement administrator. The agreement administrator is the party that will be the contact for management of the software, administration issues, and general operations. Information should include name, title (if applicable), address, phone number, and e-mail address.
3. In the purchase order, identify the "Ship to" and "Bill to" information for your organization.
4. Send the purchase order and agreement to the address, email or fax noted below:

| | |
|--------------------------------|--|
| Esri | e-mail: service@esri.com |
| Attn: Customer Service SGCB-EA | fax documents to: 909-307-3083 |
| 380 New York Street | |
| Redlands, CA 92373-8100 | |

I appreciate the opportunity to present you with this proposal, and I believe it will bring great benefits to your organization.

Thank you very much for your consideration.

Best Regards,

Marcus Kitchens



Environmental Systems Research Institute, Inc.
 380 New York St
 Redlands, CA 92373-8100
 Phone: (909) 793-2853 Fax: (909) 307-3049
 DUNS Number: 06-313-4175 CAGE Code: 0AMS3

Quotation # Q-468694

Date: April 15, 2022

Customer # 602240 Contract #

City of Washington
 Public Works Dept
 405 Jefferson St
 Washington, MO 63090-2607

*To expedite your order, please attach a copy of this quotation to your purchase order.
 Quote is valid from: 4/15/2022 To: 7/14/2022*

ATTENTION: John Nilges
 PHONE: 636-390-1015
 EMAIL: jnilges@washmo.gov

| Material | Qty | Term | Unit Price | Total |
|--|-----|--------|-------------|--------------------|
| 168362 | 1 | Year 1 | \$15,000.00 | \$15,000.00 |
| Population of 0 to 15,000 Small Local Government Cloud-Based Term Enterprise Agreement | | | | |
| 168362 | 1 | Year 2 | \$15,000.00 | \$15,000.00 |
| Population of 0 to 15,000 Small Local Government Cloud-Based Term Enterprise Agreement | | | | |
| 168362 | 1 | Year 3 | \$15,000.00 | \$15,000.00 |
| Population of 0 to 15,000 Small Local Government Cloud-Based Term Enterprise Agreement | | | | |
| Subtotal: | | | | \$45,000.00 |
| Sales Tax: | | | | \$0.00 |
| Estimated Shipping and Handling (2 Day Delivery): | | | | \$0.00 |
| Contract Price Adjust: | | | | \$0.00 |
| Total: | | | | \$45,000.00 |

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

For questions contact:
 Marcus Kitchens

Email:
 mkitchens@esri.com

Phone:
 636-949-6620 x5581

The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at <https://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf>, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at <https://go.esri.com/MAPS> apply to your purchase of that item. If any item is quoted with a multi-year payment schedule, then unless otherwise stated in this quotation, Customer is required to make all payments without right of cancellation. Third-party data sets included in a quotation as separately licensed items will only be provided and invoiced if Esri is able to provide such data and will be subject to the applicable third-party's terms and conditions. If Esri is unable to provide any such data set, Customer will not be responsible for any further payments for the data set. US Federal government entities and US government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at <https://www.esri.com/en-us/legal/terms/state-supplemental> apply to some US state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin for customers located in the USA.

KITCHENSM

This offer is limited to the terms and conditions incorporated and attached herein.

38a

Esri Use Only:
 Cust. Name _____
 Cust. # _____
 PO # _____
 Esri Agreement # _____



**SMALL ENTERPRISE AGREEMENT
 LOCAL GOVERNMENT CLOUD-BASED
 (E214-7)**

This Agreement is by and between the organization identified in the Quotation ("**Customer**") and **Environmental Systems Research Institute, Inc. ("Esri")**.

This Agreement sets forth the terms for Customer's use of Products and incorporates by reference (i) the Quotation and (ii) the Master Agreement. Should there be any conflict between the terms and conditions of the documents that comprise this Agreement, the order of precedence for the documents shall be as follows: (i) the Quotation, (ii) this Agreement, and (iii) the Master Agreement. This Agreement shall be governed by and construed in accordance with the laws of the state in which Customer is located without reference to conflict of laws principles, and the United States of America federal law shall govern in matters of intellectual property. The modifications and additional rights granted in this Agreement apply only to the Products listed in Table A.

**Table A
 List of Products**

Uncapped Quantities

Desktop Software and Extensions (Single Use)

ArcGIS Desktop Advanced
 ArcGIS Desktop Standard
 ArcGIS Desktop Basic
 ArcGIS Desktop Extensions: ArcGIS 3D Analyst,
 ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst,
 ArcGIS Publisher, ArcGIS Network Analyst, ArcGIS
 Schematics, ArcGIS Workflow Manager, ArcGIS Data
 Reviewer

Developer Tools

ArcGIS Engine
 ArcGIS Runtime (Standard)
 ArcGIS Runtime Analysis Extension

Limited Quantities

One (1) Professional subscription to ArcGIS Developer
 Two (2) ArcGIS CityEngine Single Use Licenses
 50 ArcGIS Online Viewers
 50 ArcGIS Online Creators
 10,000 ArcGIS Online Service Credits
 2 ArcGIS Insights in ArcGIS Online

OTHER BENEFITS

| | |
|---|----------|
| Number of Esri User Conference registrations provided annually | 2 |
| Number of Tier 1 Help Desk individuals authorized to call Esri | 2 |
| Maximum number of sets of backup media, if requested* | 2 |
| Five percent (5%) discount on all individual commercially available instructor-led training classes at Esri facilities purchased outside this Agreement | |

*Additional sets of backup media may be purchased for a fee

Customer may accept this Agreement by signing and returning the whole Agreement with (i) the Quotation attached, (ii) a purchase order, or (iii) another document that matches the Quotation and references this Agreement ("**Ordering Document**"). **ADDITIONAL OR CONFLICTING TERMS IN CUSTOMER'S PURCHASE ORDER OR OTHER DOCUMENT WILL NOT APPLY, AND THE TERMS OF THIS AGREEMENT WILL GOVERN.** This Agreement is effective as of the date of Esri's receipt of an Ordering Document, unless otherwise agreed to by the parties ("**Effective Date**").

Term of Agreement: Three (3) years

This Agreement supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to the licensing of the Products. Except as provided in Article 4—Product Updates, no modifications can be made to this Agreement.

Accepted and Agreed:

(Customer)

By: _____
Authorized Signature

Printed Name: _____

Title: _____

Date: _____

CUSTOMER CONTACT INFORMATION

Contact: _____

Telephone: _____

Address: _____

Fax: _____

City, State, Postal Code: _____

E-mail: _____

Country: _____

Quotation Number (if applicable): _____

1.0—ADDITIONAL DEFINITIONS

In addition to the definitions provided in the Master Agreement, the following definitions apply to this Agreement:

"Case" means a failure of the Software or Online Services to operate according to the Documentation where such failure substantially impacts operational or functional performance.

"Deploy", "Deployed" and "Deployment" mean to redistribute and install the Products and related Authorization Codes within Customer's organization(s).

"Fee" means the fee set forth in the Quotation.

"Maintenance" means Tier 2 Support, Product updates, and Product patches provided to Customer during the Term of Agreement.

"Master Agreement" means the applicable master agreement for Esri Products incorporated by this reference that is (i) found at <https://www.esri.com/en-us/legal/terms/full-master-agreement> and available in the installation process requiring acceptance by electronic acknowledgment or (ii) a signed Esri master agreement or license agreement that supersedes such electronically acknowledged master agreement.

"Product(s)" means the products identified in Table A—List of Products and any updates to the list Esri provides in writing.

"Quotation" means the offer letter and quotation provided separately to Customer.

"Technical Support" means the technical assistance for attempting resolution of a reported Case through error correction, patches, hot fixes, workarounds, replacement deliveries, or any other type of Product corrections or modifications.

"Tier 1 Help Desk" means Customer's point of contact(s) to provide all Tier 1 Support within Customer's organization(s).

"Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk.

"Tier 2 Support" means the Esri Technical Support provided to the Tier 1 Help Desk when a Case cannot be resolved through Tier 1 Support.

2.0—ADDITIONAL GRANT OF LICENSE

2.1 Grant of License. Subject to the terms and conditions of this Agreement, Esri grants to Customer a personal, nonexclusive, nontransferable license solely to use, copy, and Deploy quantities of the Products listed in Table A—List of Products for the Term of Agreement (i) for the applicable Fee and (ii) in accordance with the Master Agreement.

2.2 Consultant Access. Esri grants Customer the right to permit Customer's consultants or contractors to use the Products exclusively for Customer's benefit. Customer will be solely responsible for compliance by consultants and contractors with this Agreement and will ensure that the consultant or contractor discontinues use of Products upon completion of work for Customer. Access to or use of Products by consultants or contractors not exclusively for Customer's benefit is prohibited. Customer may not permit its consultants or contractors to install Software or Data on consultant, contractor, or third-party computers or remove Software or Data from Customer locations, except for the purpose of hosting the Software or Data on Contractor servers for the benefit of Customer.

3.0—TERM, TERMINATION, AND EXPIRATION

3.1 Term. This Agreement and all licenses hereunder will commence on the Effective Date and continue for the duration identified in the Term of Agreement, unless this Agreement is terminated earlier as provided herein. Customer is only authorized to use Products during the Term of Agreement. For an Agreement with a limited term, Esri does not grant Customer an indefinite or a perpetual license to Products.

3.2 No Use upon Agreement Expiration or Termination. All Product licenses, all Maintenance, and Esri User Conference registrations terminate upon expiration or termination of this Agreement.

3.3 Termination for a Material Breach. Either party may terminate this Agreement for a material breach by the other party. The breaching party will have thirty (30) days from the date of written notice to cure any material breach.

3.4 Termination for Lack of Funds. For an Agreement with government or government-

owned entities, either party may terminate this Agreement before any subsequent year if Customer is unable to secure funding through the legislative or governing body's approval process.

3.5 Follow-on Term. If the parties enter into another agreement substantially similar to this Agreement for an additional term, the effective date of the follow-on agreement will be the day after the expiration date of this Agreement.

4.0—PRODUCT UPDATES

4.1 Future Updates. Esri reserves the right to update the list of Products in Table A—List of Products by providing written notice to Customer. Customer may continue to use all Products that have been Deployed, but support and upgrades for deleted items may not be available. As new Products are incorporated into the standard program, they will be offered to Customer via written notice for incorporation into the Products schedule at no additional charge. Customer's use of new or updated Products requires Customer to adhere to applicable additional or revised terms and conditions in the Master Agreement.

4.2 Product Life Cycle. During the Term of Agreement, some Products may be retired or may no longer be available to Deploy in the identified quantities. Maintenance will be subject to the individual Product Life Cycle Support Status and Product Life Cycle Support Policy, which can be found at <https://support.esri.com/en/other-resources/product-life-cycle>. Updates for Products in the mature and retired phases may not be available. Customer may continue to use Products already Deployed, but Customer will not be able to Deploy retired Products.

5.0—MAINTENANCE

The Fee includes standard maintenance benefits during the Term of Agreement as specified in the most current applicable Esri Maintenance and Support Program document (found at <https://www.esri.com/en-us/legal/terms/maintenance>). At Esri's sole discretion, Esri may make patches, hot fixes, or updates available for download. No Software other

than the defined Products will receive Maintenance. Customer may acquire maintenance for other Software outside this Agreement.

a. Tier 1 Support

1. Customer will provide Tier 1 Support through the Tier 1 Help Desk to all Customer's authorized users.
2. The Tier 1 Help Desk will be fully trained in the Products.
3. At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.
4. The Tier 1 Help Desk will be the initial point of contact for all questions and reporting of a Case. The Tier 1 Help Desk will obtain a full description of each reported Case and the system configuration from the user. This may include obtaining any customizations, code samples, or data involved in the Case.
5. If the Tier 1 Help Desk cannot resolve the Case, an authorized Tier 1 Help Desk individual may contact Tier 2 Support. The Tier 1 Help Desk will provide support in such a way as to minimize repeat calls and make solutions to problems available to Customer's organization.
6. Tier 1 Help Desk individuals are the only individuals authorized to contact Tier 2 Support. Customer may change the Tier 1 Help Desk individuals by written notice to Esri.

b. Tier 2 Support

1. Tier 2 Support will log the calls received from Tier 1 Help Desk.
2. Tier 2 Support will review all information collected by and received from the Tier 1 Help Desk including preliminary documented troubleshooting provided by the Tier 1 Help Desk when Tier 2 Support is required.
3. Tier 2 Support may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to

supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.

4. Tier 2 Support will attempt to resolve the Case submitted by Tier 1 Help Desk.
5. When the Case is resolved, Tier 2 Support will communicate the information to Tier 1 Help Desk, and Tier 1 Help Desk will disseminate the resolution to the user(s).

6.0—ENDORSEMENT AND PUBLICITY

This Agreement will not be construed or interpreted as an exclusive dealings agreement or Customer's endorsement of Products. Either party may publicize the existence of this Agreement.

7.0—ADMINISTRATIVE REQUIREMENTS

7.1 OEM Licenses. Under Esri's OEM or Solution OEM programs, OEM partners are authorized to embed or bundle portions of Esri products and services with their application or service. OEM partners' business model, licensing terms and conditions, and pricing are independent of this Agreement. Customer will not seek any discount from the OEM partner or Esri based on the availability of Products under this Agreement. Customer will not decouple Esri products or services from the OEM partners' application or service.

7.2 Annual Report of Deployments. At each anniversary date and ninety (90) calendar days prior to the expiration of this Agreement, Customer will provide Esri with a written report detailing all Deployments. Upon request, Customer will provide records sufficient to verify the accuracy of the annual report.

8.0—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

8.1 Orders, Delivery, and Deployment

- a. Upon the Effective Date, Esri will invoice Customer and provide Authorization Codes to activate the nondestructive copy protection program that enables Customer to download,

operate, or allow access to the Products. If this is a multi-year Agreement, Esri may invoice the Fee up to thirty (30) calendar days before the annual anniversary date for each year.

- b. Undisputed invoices will be due and payable within thirty (30) calendar days from the date of invoice. Esri reserves the right to suspend Customer's access to and use of Products if Customer fails to pay any undisputed amount owed on or before its due date. Esri may charge Customer interest at a monthly rate equal to the lesser of one percent (1.0%) per month or the maximum rate permitted by applicable law on any overdue fees plus all expenses of collection for any overdue balance that remains unpaid ten (10) days after Esri has notified Customer of the past-due balance.

- c. Esri's federal ID number is 95-2775-732.

- d. If requested, Esri will ship backup media to the ship-to address identified on the Ordering Document, FOB Destination, with shipping charges prepaid. Customer acknowledges that should sales or use taxes become due as a result of any shipments of tangible media, Esri has a right to invoice and Customer will pay any such sales or use tax associated with the receipt of tangible media.

8.2 Order Requirements. Esri does not require Customer to issue a purchase order. Customer may submit a purchase order in accordance with its own process requirements, provided that if Customer issues a purchase order, Customer will submit its initial purchase order on the Effective Date. If this is a multi-year Agreement, Customer will submit subsequent purchase orders to Esri at least thirty (30) calendar days before the annual anniversary date for each year.

- a. All orders pertaining to this Agreement will be processed through Customer's centralized point of contact.

- b. The following information will be included in each Ordering Document:

- (1) Customer name; Esri customer number, if known; and bill-to and ship-to addresses
- (2) Order number
- (3) Applicable annual payment due

9.0—MERGERS, ACQUISITIONS, OR DIVESTITURES

If Customer is a commercial entity, Customer will notify Esri in writing in the event of (i) a consolidation, merger, or reorganization of Customer with or into another corporation or entity; (ii) Customer's acquisition of another entity; or (iii) a transfer or sale of all or part of Customer's organization (subsections i, ii, and iii, collectively referred to as "**Ownership Change**"). There will be no decrease in Fee as a result of any Ownership Change.

- 9.1** If an Ownership Change increases the cumulative program count beyond the maximum level for this Agreement, Esri reserves the right to increase the Fee or terminate this Agreement and the parties will negotiate a new agreement.
- 9.2** If an Ownership Change results in transfer or sale of a portion of Customer's organization, that portion of Customer's organization will transfer the Products to Customer or uninstall, remove, and destroy all copies of the Products.
- 9.3** This Agreement may not be assigned to a successor entity as a result of an Ownership Change unless approved by Esri in writing in advance. If the assignment to the new entity is not approved, Customer will require any successor entity to uninstall, remove, and destroy the Products. This Agreement will terminate upon such Ownership Change.



April 27, 2022

Honorable Mayor and City Council
405 Jefferson Street
Washington, MO 63090

RE: Front Street ADA Improvements Project, STP-4940(607)

Dear Mayor and City Council Members:

Find enclosed a programming agreement between the City and MoDOT for this project. The improvements between Stafford Street and Jefferson Street would consist of:

- 2" asphalt overlay
- Sidewalk, curb and gutter and access ramp replacement including ADA accessibility upgrades
- Remove and replace storm sewer inlets
- Improve street crossings with street pavers

The cost estimate for construction is \$887,000. The total project costs including design, right of way acquisition, construction oversight and construction are \$1,057,000. The federal participation for the entire project will be \$845,600 and the City's share will be \$211,400. The current schedule is for construction in 2025. This ordinance is contingent upon MoDOT approval which is anticipated subsequent to City approval.

Respectfully Submitted,

Andrea F. Lueken

Andrea F. Lueken, P.E.
Assistant City Engineer

BILL NO. _____ INTRODUCED BY _____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND DIRECTING THE EXECUTION OF AN STP-URBAN PROGRAM AGREEMENT BY AND BETWEEN THE CITY OF WASHINGTON, MISSOURI AND THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION FOR THE FRONT STREET ADA IMPROVEMENTS PROJECT STP-4940(607)

Be It Ordained by the Council of the City of Washington, Missouri, as follows:

SECTION 1: The Mayor is hereby authorized and directed to execute an STP-Urban Program Agreement by and between the City of Washington, Missouri and the Missouri Highways and Transportation Commission for the Front Street ADA Improvements Project STP-4940(607). A copy of this Agreement is attached hereto, and is marked Exhibit A. Said execution is subject to approval by MoDOT.

SECTION 2: The Mayor and City Clerk are hereby authorized and directed to execute said agreement, and to do all things necessary by the terms of said agreement.

SECTION 3: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4: This ordinance shall take effect and be in full force from and after its passage and approval.

Passed: _____

ATTEST: _____

President of City Council

Approved: _____

ATTEST: _____

Mayor of Washington, Missouri

Exhibit A

CCO Form: FS11
Approved: 07/96 (KMH)
Revised: 03/17 (MWH)
Modified:

CFDA Number: CFDA #20.205
CFDA Title: Highway Planning and Construction
Award name/number: STP-4940(607)
Award Year: 2023
Federal Agency: Federal Highway Administration, Department of Transportation

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
STP-URBAN PROGRAM AGREEMENT**

THIS STP-URBAN AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the City of Washington, Franklin County, Missouri (hereinafter, "City").

WITNESSETH:

WHEREAS, the Fixing America's Surface Transportation Act (FAST) 23 U.S.C. §133, authorizes a Surface Transportation Program (STP) to fund transportation related projects; and

WHEREAS, the City desires to construct certain improvements, more specifically described below, using such STP funding; and

WHEREAS, those improvements are to be designed and constructed in compliance with the provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations in this Agreement, the parties agree as follows:

(1) PURPOSE: The purpose of this Agreement is to grant the use of STP funds to the City. The improvement contemplated by this Agreement and designated as Project STP-4940(607) involves:

Resurfacing, remove and replace curb and gutter, upgrade sidewalks, intersection crossings, pavers, and storm sewer.

The City shall be responsible for all aspects of the construction of the improvement.

(2) LOCATION: The contemplated improvement designated as Project STP-4940(607) by the Commission is within the city limits of Washington, Missouri. The general location of the improvement is shown on an attachment hereto marked "Exhibit A" and incorporated herein by reference. More specific descriptions are as follows:

Front Street from Strafford Street to Jefferson Street.

(3) REASONABLE PROGRESS POLICY: The project as described in this agreement is subject to the reasonable progress policy set forth in the Local Public Agency (LPA) Manual and the final deadline specified in Exhibit B attached hereto and incorporated herein by reference. In the event, the LPA Manual and the final deadline within Exhibit B conflict, the final deadline within Exhibit B controls. If the project is within a Transportation Management Area that has a reasonable progress policy in place, the project is subject to that policy. If the project is withdrawn for not meeting reasonable progress, the City agrees to repay the Commission for any progress payments made to the City for the project and agrees that the Commission may deduct progress payments made to the City from future payments to the City.

(4) LIMITS OF SYSTEM: The limits of the surface transportation system for the City shall correspond to its geographical area as encompassed by the urban boundaries of the City as fixed cooperatively by the parties subject to approval by the Federal Highway Administration (FHWA).

(5) ROUTES TO BE INCLUDED: The City shall select the high traffic volume arterial and collector routes to be included in the surface transportation system, to be concurred with by the Commission, subject to approval by the FHWA. It is understood by the parties that surface transportation system projects will be limited to the said surface transportation system, but that streets and arterial routes may be added to the surface transportation system, including transfers from other federal aid systems.

(6) INVENTORY AND INSPECTION: The City shall:

(A) Furnish annually, upon request from the Commission or FHWA, information concerning conditions on streets included in the STP system under local jurisdiction indicating miles of system by pavement width, surface type, number of lanes and traffic volume category.

(B) Inspect and provide inventories of all bridges on that portion of the federal-aid highway systems under the jurisdiction of the City in accordance with the Federal Special Bridge Program, as set forth in 23 U.S.C. §144, and applicable amendments or regulations promulgated thereunder.

(7) CITY TO MAINTAIN: Upon completion of construction of this improvement, the City shall accept control and maintenance of the improved street and shall thereafter keep, control, and maintain the same as, and for all purposes, a part of the City street

system at its own cost and expense and at no cost and expense whatsoever to the Commission. Any traffic signals installed on highways maintained by the Commission will be turned over to the Commission upon completion of the project for maintenance. All obligations of the Commission under this Agreement shall cease upon completion of the improvement.

(8) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the City shall defend, indemnify and hold harmless the Commission, including its members and the Missouri Department of Transportation (MoDOT or Department) employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the City's wrongful or negligent performance of its obligations under this Agreement.

(B) The City will require any contractor procured by the City to work under this Agreement:

1. To obtain a no cost permit from the Commission's district engineer prior to working on the Commission's right-of-way, which shall be signed by an authorized contractor representative (a permit from the Commission's district engineer will not be required for work outside of the Commission's right-of-way); and

2. To carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the Commission, and MoDOT and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, RSMo. The City shall cause insurer to increase the insurance amounts in accordance with those published annually in the Missouri Register pursuant to Section 537.610, RSMo.

(C) In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.

(9) CONSTRUCTION SPECIFICATIONS: Parties agree that all construction under the STP for the City will be constructed in accordance with current MoDOT design criteria/specifications for urban construction unless separate standards for the surface transportation system have been established by the City and the Commission subject to the approval of the FHWA.

(10) FEDERAL-AID PROVISIONS: Because responsibility for the performance of all functions or work contemplated as part of this project is assumed by the City, and the City may elect to construct part of the improvement contemplated by this Agreement with its own forces, a copy of Section II and Section III, as contained in the United States Department of Transportation Form Federal Highway Administration (FHWA) 1273 "Required Contract Provisions, Federal-Aid Construction Contracts," is attached and made a part of this Agreement as Exhibit C. Wherever the term "the contractor" or words of similar import appear in these sections, the term "the City" is to be substituted. The City agrees to abide by and carry out the condition and obligations of "the contractor" as stated in Section II, Equal Opportunity, and Section III, Nonsegregated Facilities, as set out in Form FHWA 1273.

(11) ACQUISITION OF RIGHT OF WAY: With respect to the acquisition of right of way necessary for the completion of the project, City shall acquire any additional necessary right of way required for the project and in doing so agrees that it will comply with all applicable federal laws, rules and regulations, including 42 U.S.C. 4601-4655, the Uniform Relocation Assistance and Real Property Acquisition Act, as amended and any regulations promulgated in connection with the Act. However upon written request by the City and the written acceptance by the Commission, the Commission shall acquire right of way for the City. Upon approval of all agreements, plans and specifications by the Commission and the FHWA, the commission will file copies of said plans in the office of the county clerk: and proceed to acquire by negotiation and purchase or by condemnation any necessary right of way required for the construction of the improvement contemplated herein. All right of way acquired by negotiation and purchase will be acquired in the name of City, and the City will pay to grantors thereof the agreed upon purchase prices. All right of way acquired through condemnation proceedings will be acquired in the name of the State of Missouri and subsequently released to the City. The City shall pay into court all awards and final judgments in favor of any such condemnees. The City shall also reimburse the Commission for any expense incurred by the Commission in acquiring said right of way, including but not limited to the costs of surveying, appraisal, negotiation, condemnation, and relocation assistance benefits. Unless otherwise agreed to in writing the Commission shall have the final decision regarding the settlement amount in condemnation.

(12) REIMBURSEMENT: The cost of the contemplated improvements will be borne by the United States Government and by the City as follows:

(A) Any federal funds for project activities shall only be available for reimbursement of eligible costs which have been incurred by City. Any costs incurred by City prior to authorization from FHWA and notification to proceed from the Commission are **not** reimbursable costs. All federally funded projects are required to have a project end date. Any costs incurred after the project end date are not eligible for reimbursement. The federal share for this project will be 80 percent not to exceed \$845,600. The calculated federal share for seeking federal reimbursement of participating costs for the herein improvements will be determined by dividing the total federal funds applied to the

project by the total participating costs. Any costs for the herein improvements which exceed any federal reimbursement or are not eligible for federal reimbursement shall be the sole responsibility of City. The Commission shall not be responsible for any costs associated with the herein improvement unless specifically identified in this Agreement or subsequent written amendments.

(B) The total reimbursement otherwise payable to the City under this Agreement is subject to reduction, offset, levy, judgment, collection or withholding, if there is a reduction in the available federal funding, or to satisfy other obligations of the City to the Commission, the State of Missouri, the United States, or another entity acting pursuant to a lawful court order, which City obligations or liability are created by law, judicial action, or by pledge, contract or other enforceable instrument. Any costs incurred by the City prior to authorization from FHWA and notification to proceed from the Commission are not reimbursable costs.

(13) PERMITS: The City shall secure any necessary approvals or permits from the Federal Government and the State of Missouri as required to permit the construction and maintenance of the contemplated improvements.

(14) TRAFFIC CONTROL: The plans shall provide for handling traffic with signs, signal and marking in accordance with the Manual of Uniform Traffic Control Devices (MUTCD).

(15) WORK ON STATE RIGHT OF WAY: If any contemplated improvements for Project STP-4940(607) will involve work on the state's right of way, the City will provide reproducible final plans to the Commission relating to such work.

(16) DISADVANTAGED BUSINESS ENTERPRISES (DBEs): At time of processing the required project agreements with the FHWA, the Commission will advise the City of any required goals for participation by DBEs to be included in the City's proposal for the work to be performed. The City shall submit for Commission approval a DBE goal or plan. The City shall comply with the plan or goal that is approved by the Commission and all requirements of 49 C.F.R. Part 26, as amended.

(17) NOTICE TO BIDDERS: The City shall notify the prospective bidders that disadvantaged business enterprises shall be afforded full and affirmative opportunity to submit bids in response to the invitation and will not be discriminated against on grounds of race, color, sex, or national origin in consideration for an award.

(18) PROGRESS PAYMENTS: The City may request progress payments be made for the herein improvements as work progresses but not more than once every two weeks. Progress payments must be submitted monthly. All progress payment requests must be submitted for reimbursement within 90 days of the project completion date for the final phase of work. The City shall repay any progress payments which involve ineligible costs.

(19) PROMPT PAYMENTS: Progress invoices submitted to MoDOT for reimbursement more than thirty (30) calendar days after the date of the vendor invoice shall also include documentation that the vendor was paid in full for the work identified in the progress invoice. Examples of proof of payment may include a letter or e-mail from the vendor, lien waiver or copies of cancelled checks. Reimbursement will not be made on these submittals until proof of payment is provided. Progress invoices submitted to MoDOT for reimbursement within thirty (30) calendar days of the date on the vendor invoice will be processed for reimbursement without proof of payment to the vendor. If the City has not paid the vendor prior to receiving reimbursement, the City must pay the vendor within two (2) business days of receipt of funds from MoDOT.

(20) OUTDOOR ADVERTISING: The City further agrees that the right of way provided for any STP improvement will be held and maintained inviolate for public highway or street purposes, and will enact and enforce any ordinances or regulations necessary to prohibit the presence of billboards or other advertising signs or devices and the vending or sale of merchandise on such right of way, and will remove or cause to be removed from such right of way any sign, private installation of any nature, or any privately owned object or thing which may interfere with the free flow of traffic or impair the full use and safety of the highway or street.

(21) FINAL AUDIT: The Commission will perform a final audit of project costs. The United States Government shall reimburse the City, through the Commission, any monies due. The City shall refund any overpayments as determined by the final audit.

(22) AUDIT REQUIREMENT: If the City expend(s) seven hundred fifty thousand dollars (\$750,000) or more in a year in federal financial assistance it is required to have an independent annual audit conducted in accordance with 2 CFR Part 200. A copy of the audit report shall be submitted to MoDOT within the earlier of thirty (30) days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period. Subject to the requirements of 2 CFR Part 200, if the City expend(s) less than seven hundred fifty thousand dollars (\$750,000) a year, the City may be exempt from auditing requirements for that year but records must be available for review or audit by applicable state and federal authorities.

(23) FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006: The City shall comply with all reporting requirements of the Federal Funding Accountability and Transparency Act (FFATA) of 2006, as amended. This Agreement is subject to the award terms within 2 C.F.R. Part 170.

(24) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(25) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The City shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(26) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representatives of the City and the Commission.

(27) COMMISSION REPRESENTATIVE: The Commission's St. Louis District Engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(28) NOTICES: Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed given three (3) days after delivery by United States mail, regular mail postage prepaid, or upon receipt by personal or facsimile delivery, addressed as follows:

- (A) To the City:
405 Jefferson
Washington, MO 63090
- (B) To the Commission:
1590 Woodlake Drive
Chesterfield, MO 63017

or to such other place as the parties may designate in accordance with this Agreement. To be valid, facsimile delivery shall be followed by delivery of the original document, or a clear and legible copy thereof, within three (3) business days of the date of facsimile transmission of that document.

(29) NONDISCRIMINATION ASSURANCE: With regard to work under this Agreement, the City agrees as follows:

(A) Civil Rights Statutes: The City shall comply with all state and federal statutes relating to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d and §2000e, et seq.), as well as any applicable titles of the "Americans with Disabilities Act" (42 U.S.C. §12101, et seq.). In addition, if the City is providing services or operating programs on behalf of the Department or the Commission, it shall comply with all applicable provisions of Title II of the "Americans with Disabilities Act".

(B) Administrative Rules: The City shall comply with

the administrative rules of the United States Department of Transportation relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation (49 C.F.R. Part 21) which are herein incorporated by reference and made part of this Agreement.

(C) Nondiscrimination: The City shall not discriminate on grounds of the race, color, religion, sex, disability, national origin, age or ancestry of any individual in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The City shall not participate either directly or indirectly in the discrimination prohibited by 49 C.F.R. §21.5, including employment practices.

(D) Solicitations for Subcontracts, Including Procurements of Material and Equipment: These assurances concerning nondiscrimination also apply to subcontractors and suppliers of the City. These apply to all solicitations either by competitive bidding or negotiation made by the City for work to be performed under a subcontract including procurement of materials or equipment. Each potential subcontractor or supplier shall be notified by the City of the requirements of this Agreement relative to nondiscrimination on grounds of the race, color, religion, sex, disability or national origin, age or ancestry of any individual.

(E) Information and Reports: The City shall provide all information and reports required by this Agreement, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Commission or the United States Department of Transportation to be necessary to ascertain compliance with other contracts, orders and instructions. Where any information required of the City is in the exclusive possession of another who fails or refuses to furnish this information, the City shall so certify to the Commission or the United States Department of Transportation as appropriate and shall set forth what efforts it has made to obtain the information.

(F) Sanctions for Noncompliance: In the event the City fails to comply with the nondiscrimination provisions of this Agreement, the Commission shall impose such contract sanctions as it or the United States Department of Transportation may determine to be appropriate, including but not limited to:

1. Withholding of payments under this Agreement until the City complies; and/or
2. Cancellation, termination or suspension of this Agreement, in whole or in part, or both.

(G) Incorporation of Provisions: The City shall include the provisions of paragraph (29) of this Agreement in every subcontract, including procurements of materials and leases of equipment, unless exempted by the statutes, executive order, administrative rules or instructions issued by the Commission or the United States

Department of Transportation. The City will take such action with respect to any subcontract or procurement as the Commission or the United States Department of Transportation may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that in the event the City becomes involved or is threatened with litigation with a subcontractor or supplier as a result of such direction, the City may request the United States to enter into such litigation to protect the interests of the United States.

(30) ACCESS TO RECORDS: The City and its contractors must maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be available at no charge to the FHWA and the Commission and/or their designees or representatives during the period of this Agreement and any extension, and for a period of three (3) years after the date on which the City receives reimbursement of their final invoice from the Commission.

(31) CONFLICT OF INTEREST: The City shall comply with conflict of interest policies identified in 23 CFR 1.33. A conflict of interest occurs when an entity has a financial or personal interest in a federally funded project.

(32) MANDATORY DISCLOSURES: The City shall comply with 2 CFR 200.113 and disclose, in a timely manner, in writing all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by the City on _____(DATE).

Executed by the Commission on _____(DATE).

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

CITY OF WASHINGTON

By _____

Title _____

Title _____

ATTEST:

ATTEST:

By _____

Secretary to the Commission

Title _____

Approved as to Form:

Approved as to Form:

By _____

Commission Counsel

Title _____

Ordinance No: _____

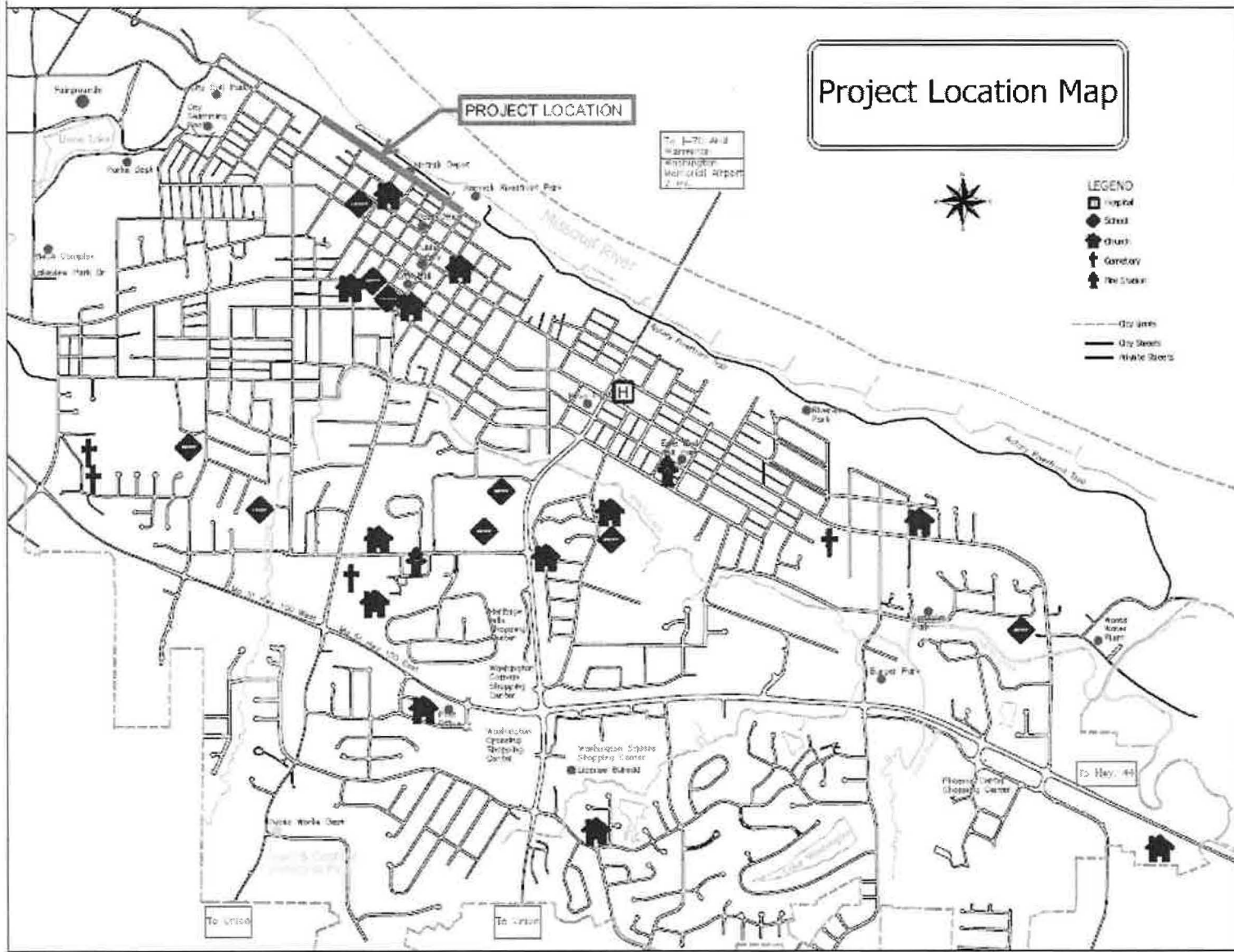


Exhibit A - Location of Project

Exhibit B – Project Schedule

Project Description: STP-4940(607) Front Street

| PROJECT DEVELOPMENT SCHEDULE | | | |
|---|---------------------------------|----------------------------------|--------------------------------|
| <i>Note: many stages can occur concurrently.</i> | | | |
| Activity Description | Start Date (MM/YYYY) | Finish Date (MM/YYYY) | Time Frame (Months) |
| Receive notification letter | 10/2021 | 10/2021 | 1 |
| Execute agreement (project sponsor and DOT) | 02/2022 | 04/2022 | 2 |
| Engineering services contract submitted and approved* | 06/2022 | 10/2022 | 3 |
| Obtain environmental clearances (106, CE2, T&E, etc.) | 10/2022 | 05/2021 | 7 |
| Public meeting/hearing | 01/2023 | 01/2023 | 1 |
| Develop and submit preliminary plans | 11/2022 | 03/2023 | 4 |
| Preliminary plans approved | 03/2023 | 06/2021 | 3 |
| Develop and submit right-of-way plans | 03/2023 | 07/2023 | 4 |
| Review and approval of right-of-way plans | 07/2023 | 09/2023 | 2 |
| Submit and receive approval for notice to proceed for right-of-way acquisition (A-Date)* | 11/2023 | 01/2024 | 2 |
| Right-of-way acquisition | 01/2024 | 08/2024 | 7 |
| Utility coordination | 05/2023 | 07/2024 | 14 |
| Develop and submit PS&E | 05/2024 | 08/2024 | 3 |
| District approval of PS&E/advertise for bids* | 08/2024 | 10/2024 | 1 |
| Submit and receive bids for review and approval | 10/2024 | 01/2025 | 3 |
| Project implementation/construction | 03/2025 | 07/2025 | 4 |
| * Finish date must match fiscal year for each milestone shown in bold text. | | | |

*Note: the dates established in the schedule above will be used in the applicable ESC between the sponsor agency and consultant firm.

**Schedule dates are approximate as the project schedule will be actively managed and issues mitigated through the project delivery process. The Award Date or Planning Study Date deliverable is not approximate and requires request to adjust.

Exhibit C - Required Contract Provisions

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. **Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants /

Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.



April 27, 2022

Honorable Mayor and City Council
City of Washington
Washington, MO 63090

**RE: Jefferson Street - Roadway and ADA Compliance Project
Federal Project# STP-6406(607)**

Dear Mayor and City Council Members:

Find enclosed for your consideration an ordinance amending the 2022 budget for the above referenced project. The amendment is required because funds were not carried over from the previous fiscal year. The expected final design costs for this project are \$229,943.28.

A budget amendment of \$90,000.00 is included and approval of this ordinance is recommended.

Sincerely,

Andrea F. Lueken

Andrea F. Lueken, P.E.
Assistant City Engineer

3Bc

BILL NO. _____ INTRODUCED BY _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE 2022 BUDGET OF THE CITY OF WASHINGTON, MISSOURI

Be It Ordained by the Council of the City of Washington, Missouri, as follows:

SECTION 1: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 2: This ordinance shall amend the 2022 Budget as follows:

Transportation Sales Tax Fund 261 - Increase of \$90,000.00 for Jefferson Street Project Engineering Services (261-18-000-541101 Street Improvements).

SECTION 3: This ordinance shall take effect and be in full force from and after its passage and approval.

Passed: _____

ATTEST: _____

President of City Council

Approved: _____

ATTEST: _____

Mayor of Washington, Missouri

Memo

To: Mayor and City Council
From: Mary Sprung
Date: May 2, 2022
Re: Computer Replacement Bids

In order to maintain the current level of operational output and to keep up with the City's 5-year computer replacement plan, I went out for bid for 48 new computers and 6 new computer monitors and stands. These will provide computers for police, dispatch and Finance department who did not receive new computers when all other departments in City Hall were updated in the prior year round of replacements.

Included in the 2022 budget, is \$50,000 to cover the cost of computers needed in the year. At this time, I solicited bids from 3 vendors, but only received one bid back. Therefore, I did online price comparison to obtain 2 additional bids from Wal-Mart and Amazon.

NOC Technology bid came in at \$42,684.72 which included a 3-year warranty and installation of the equipment. After adding in the 3-year warranty option, the online price comparison were all very close or under NOC's computer bids. With factoring in \$50 per computer for installation, NOC's bid cost per computer was lower than both Wal-mart and Amazon.

My recommendation is to purchase the machines from NOC Technology as they were the lowest and best bid obtained. Total cost for new computers, monitors and installation is \$42,684.72.

After these computers are installed and some newer computers that we have recycled from other departments are moved out to various Fire department locations, this will complete the replacement of desktop computers. Any balance remaining in July will be reevaluated and will be used to begin replacing next year's computer replacements which will be mainly laptop computers.

As always, I am happy to answer any questions.

BILL NO. _____ INTRODUCED BY _____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY OF WASHINGTON, MISSOURI TO ACCEPT THE BID FROM NOC TECHNOLOGY FOR THE PURCHASE OF 48 NEW DELL OPTIPLEX DESKTOP COMPUTERS, COMPUTER MONITORS AND STANDS INCLUDING SETUP AND INSTALLATION

Be It Ordained by the Council of the City of Washington, Missouri, as follows:

SECTION 1: The Mayor is hereby authorized and directed to accept the bid from NOC Technology for the purchase of 48 New Dell Optiplex Desktop Computers, Computer Monitors and Stands including Setup and Installation. A copy of said bid is marked Exhibit A and is attached hereto and incorporated herein by reference as if fully set forth.

SECTION 2: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3: This ordinance shall take effect and be in full force from and after its passage and approval.

Passed: _____

ATTEST: _____

President of City Council

Approved: _____

ATTEST: _____

Mayor of Washington, Missouri

Exhibit A







CofW - 48 Workstations and Dispatch Monitors

Prepared for **City of Washington**

By Jon Lober | jonl@noctechs.com
Valid until Friday, May 6, 2022

3Ca

\$42,684.72

| Product | Quantity | Price | Subtotal |
|--|----------|----------|-------------|
|  OptiPlex 3080 Micro Desktop -10th Generation Intel Core i5-10500 -8GB (1x8GB) DDR4 -Win 10 Pro 64 English -256GB Solid State Drive -3 Year Next Business Day Dell Pro Support -Professional Setup Included | 28 | \$816.18 | \$22,853.04 |
|  OptiPlex 3080 SFF Desktop -10th Generation Intel Core i5-10500 -8GB (1x8GB) DDR4 -DVD Drive -Win 10 Pro 64 English -256GB Solid State Drive -3 Year Next Business Day Dell Pro Support -Professional Setup Included | 20 | \$843.30 | \$16,866.00 |
|  Samsung S80A Computer Monitor, 27 Inch 4K Monitor, Vertical Monitor, USB C Monitor, HDR10 (1 Billion Colors), Built-in Speakers -Professional Setup Included | 6 | \$454.29 | \$2,725.74 |
|  VIVO Dual Monitor Desk Stand Free-standing LCD mount, Vertical Position 2 Screens up to 30" -Professional Setup Included | 3 | \$79.98 | \$239.94 |

| | |
|--------------|--------------------|
| Subtotal | \$42,684.72 |
| Shipping | \$0.00 |
| Tax | \$0.00 |
| Total | \$42,684.72 |

3Ca



April 27, 2022

Honorable Mayor and Darren Lamb
405 Jefferson Street
Washington, MO 63090

RE: Emergency Service Consulting International (ESCI)

Dear Honorable Mayor and Mr. Lamb:

In 2018 ESCI completed a fire station location study and ISO consulting services during the most recent ISO grading. This study was limited to reviewing the operation and station location inside the city limits at that time.

In reviewing the fire department operation, it has become obvious that the department needs a long range plan. The reorganization has led to an internal committee reviewing direction, however, it has become apparent there is outside help needed. In addition, the Washington Community Fire Protection District understands there are more demands from their taxpayers as well and they have no plan presently.

The fire protection district approved \$30,000 to conduct a fire station study and long range plan. In discussion with ESCI, they have a package and experience that will review the entire operation of the fire department including deployment, station locations, long range planning, manpower, financial capabilities and overall operation.

Attached, you will find an ordinance to amend the fire department budget for up to \$20,000 contributing to the fire district in order to enter into a contract with ESCI for a long range master plan. The fire district would enter into the contract and the City cover the cost above \$30,000, not to exceed a City contribution of \$20,000. As the City and fire district are partners in fire protection for the entire 65 square miles, the plan needs to include a view of how to move forward with consideration of how annexation will affect each organization.

The rapid growth of the City and changes have outpaced the last study. Our goal is to update the City report as well as take a comprehensive look into all fire protection the fire department provides with a solid plan into the future.

If you have any questions, please let me know.

Yours in service,

Tim Frankenberg, CFPS, CT, CSP
Fire Chief

3Da



LONG RANGE MASTER PLAN

PROJECT DESCRIPTION AND SCOPE OF WORK

ESCI Emergency Services
Consulting International

Providing Expertise and Guidance that Enhances Community Safety

25030 SW Parkway Avenue, Suite 330
Wilsonville, OR 97070



3Da

Long-Range Master Plan

The old adage is: "If you fail to plan, plan to fail".

The Long-Range Master Plan provides the agency with a detailed, high altitude, understanding of future needs and includes a host of findings and recommendations for moving forward. As such, it is designed to assist communities with quantifying current service delivery, evaluating service delivery and response performance, identifying forecast growth and emergent conditions, and developing strategies to meet anticipated needs and resultant future service demand.

In brief, the Master Planning Process is designed to answer three questions:

1. *Where is our organization today?* This is achieved via a detailed evaluation of the fire department as it is currently configured.
2. *Where will we need to be in the future?* This is based on ESCI's analysis of past and future population growth and forecast future service demand.
3. *How will we get there?* Providing short and long-range future strategies, designed to address long term, future needs.

The project consists of three components, beginning with an *Evaluation of Current Conditions*. In this step, ESCI reviews existing programs, practices, and financial conditions, and provides a detailed analysis of current service delivery and response performance. These observations and findings are compared with industry standards and best practices, accompanied by recommendations for improvement where needed. This report component addresses the question of "*Where is our organization today?*"

The next step is the development of *Future Service Demand Forecasts*. ESCI uses a combination of historical population data, census information, comprehensive plans, and past incident history to project anticipated future workload and address the question of "*Where will we need to be in the future?*"

Finally, the report uses the information gathered to by identifying and evaluating *Future Strategies* with which to meet long range needs. The approaches may include modification of existing programs, addition or relocation of facilities, changes in personnel deployment, or other strategies as needed to answer the question of "*How will we get there?*"

Frequently, communities will follow the Long-Range Master Plan with a Strategic Plan developed as a means by which to identify, prioritize, and plan the implementation of the findings and recommendations from the Long Range Master Plan. The Long-Range Master Plan Scope of Work is follows:

Scope of Work | Emergency Services Master Plan

Phase I: Project Initiation

Task 1-A: Project Initiation & Development of Work Plan

ESCI will develop a project work plan based on the scope of work and converse with the community's project team to gain a comprehensive understanding of the organization's background, goals, and expectations for the project. This work plan will be developed identifying:

- Primary tasks to be performed
- Person(s) responsible for each task
- Timetable for each task to be completed
- Method of evaluating results
- Resources to be utilized
- Possible obstacles or problem areas associated with the accomplishment of each task

This process will also help to establish working relationships, make logistical arrangements, determine an appropriate line of communications, and finalize contractual arrangements.

Task 1-B: Acquisition & Review of Background Information

ESCI will request pertinent information and data from the organization's assigned project manager. This data will be used extensively in the analysis and development of the master plan document. The documents and information relevant to this type of project will include, but not be limited to, the following:

- Past or current department studies or research
- Community Comprehensive Plan documents, including current and future land use information
- Local census and demographics data
- Zoning maps and zoning code
- Financial data, including debt information, long-range financial plans and projections
- Department administrative policies and procedures
- Standard Operating Guidelines (SOGs) and service delivery practices
- Current service delivery objectives and targets
- Facilities and apparatus inventories
- Local collective bargaining agreement(s), if applicable
- Automatic and mutual aid agreements
- Computer-Aided Dispatch (CAD) incident records
- Records management data, including National Fire Incident Reporting System (NFIRS) incident data
- Local Geographic Information Systems (GIS) data, where available

Task 1-C: Stakeholder Input

The ESCI project team will conduct interviews with and gather information from key personnel including:

- Elected or appointed officials
- Fire department managers and other key staff
- Finance function manager
- Community planning staff
- Human resource function coordinator
- External fire and EMS agencies within the region
- Medical facilities, medical director for regional or community EMS, if necessary
- Employee and volunteer groups
- Others as they may contribute to this project

The project team will interview key stakeholders of any organization associated with this study. At a minimum, members of the project team will interview appropriate community officials, fire department officials, volunteer association leaders, labor organization representatives, and others that the project team deems necessary.

From these interviews, ESCI will obtain additional perspective on operational, economic, and policy issues facing the agency. In addition, the project team will learn more about the availability of data necessary to meet projected goals.

Phase II: Evaluation of Current Conditions

The initial phases of the study focus on a baseline assessment of the current conditions and current service performance. ESCI will conduct an organizational analysis of the department based on the elements included in the following tasks. The purpose of this evaluation is to assess the agency's operations in comparison to industry standards and best practices, as well as to create a benchmark against which the options for future service delivery can be measured.

Task 2-A: Organization Overview

An overview of the organization will be developed discussing:

- Service area population and demographics
- History, formation, and general description of the agency
- Description of the current service delivery infrastructure
- Governance and lines of authority
- Foundational policy documents
- Organizational design
- Operating budget, funding, fees, taxation, and financial resources

Task 2-B: Management Components

The organization's basic management processes will be reviewed, including:

- Mission, vision, strategic planning, goals, and objectives
- Internal assessment of critical issues
- Internal assessment of future challenges
- Internal and external communications processes
- Document control and security
- Reporting and recordkeeping
- Information technology systems

Task 2-C: Capital Assets and Capital Improvement Programs

ESCI will review the status of current major capital assets (facilities and apparatus) and analyze needs relative to the existing condition of capital assets and their viability for continued use in future service delivery, including:

Facilities – Tour and make observations in areas related to station efficiency and functionality. Items to be contained in the report include:

- | | |
|------------------------|--------------------|
| • Design | • Code compliance |
| • Construction | • Staff facilities |
| • Safety | • Efficiency |
| • Environmental issues | • Future viability |

Apparatus/Vehicles – Review and make recommendations regarding inventory of apparatus and equipment. Items to be reviewed include:

- | | |
|--------------------------------------|----------------|
| • Regulations compliance | • Maintenance |
| • Age, condition, and serviceability | • Future needs |
| • Distribution and deployment | |

Task 2-D: Staffing and Personnel Management

ESCI will review the department's staffing levels. Areas to be considered include:

- Review and evaluate administration and support staffing levels
- Review and evaluate operational staffing levels
- Review staff allocation to various functions and divisions
- Review staff scheduling methodology
- Analyze current standards of coverage and staffing performance for incidents
- Review firefighter/EMS staff distribution
- Review utilization of career and volunteer companies, if applicable and in accordance with methodologies recommended in NFPA 1710 and 1720
- Review responsibilities and activity levels of personnel

Personnel management systems will also be reviewed, focusing on:

- Human resources policies and handbooks
- Quality and status of job descriptions
- Personnel reports and recordkeeping
- Compensation systems
- Disciplinary processes
- Counseling services
- Application and recruitment processes
- Testing, measuring, and promotion processes
- Health and wellness programs

Task 2-E: Service Delivery and Performance

ESCI will review and make observations in areas specifically involved in, or affecting, service levels and performance. Areas to be reviewed shall include, but not necessarily be limited to:

- Service Demand Study—
 - Analysis and geographic display of current service demand by incident type and temporal variation
- Resource Distribution Study—
 - Overview of the current facility and apparatus deployment strategy, analyzed through Geographical Information Systems, with identification of service gaps and redundancies
- Resource Concentration Study—
 - Analysis of response time to achieve full effective response force
 - Analysis of company and staff distribution as related to effective response force assembly
- Response Reliability Study—
 - Analysis of current workload, including unit hour utilization of individual companies (to the extent data is complete)
 - Review of actual or estimated failure rates of individual companies (to the extent data is complete)
 - Analysis of call concurrency and impact on effective response force assembly
- Response Performance Summary—
 - Analysis of actual system reflex time performance, analyzed by individual companies (to the extent data is available)
- Mutual and Automatic Aid Systems

Task 2-F: Planning for Fire Protection and Emergency Medical Services

The planning processes within the agency shall be reviewed. Key components include:

- Review and evaluate the adequacy of the current planning process
- Review elements of tactical planning within the organization
- Review operational planning within the organization
- Review strategic planning practices
- Review long range or other planning efforts
- Make recommendations relative to future planning process needs

Task 2-G: Support Programs

ESCI will review and make overall observations involving support programs for the critical areas of training and life safety services. Items to be reviewed include:

Training

- General training competencies
- Training administration
- Training schedules
- Training facilities
- Training procedures, manuals, and protocols and record keeping

Life Safety Services (Fire Prevention)

- Code enforcement activities
- New construction inspection and involvement
- General inspection program
- Fire and Life-Safety public education programs
- Fire investigation programs
- Pre-incident planning
- Statistical collection and analysis

Phase III: Future System Demand Projections

The project moves forward with an assessment of the future community conditions, service demand, and fire protection risks that the organization can be expected to serve. ESCI will conduct an analysis of community growth projections and interpret their impact on emergency service planning and delivery.

Task 3-A: Population Growth Projections

An interpretation of available census and community development data will be provided indicating:

- Population history
- Census-based population growth projections
- Community planning-based population growth projections

Task 3-B: Service Demand Projections

Population growth projections, along with historical and forecast incident rates, will be utilized to develop projections for future service demand.

Task 3-C: Community Risk Analysis

Land use and zoning classifications will be used, along with specific target hazard information, to analyze and classify community fire protection risk by geography. This process will be completed with GIS software and will consider:

- Population and population density
- Demographics
- Community land use regulations
- Occupancy types by land use designation
- Hazardous substances and processes

Phase IV: Future Delivery System Models

The project concludes with strategies intended to place the organization in a position to successfully serve its future demand and risk. ESCI will develop and analyze various operational models for providing emergency services with the specific intent of identifying options that can deliver the desired levels of service identified in the previous task at the most efficient cost. Recommendations will be provided identifying the best long-range strategy for service delivery and the impact of initiating such a strategy. In addition, short and mid-term strategies will be recommended for service delivery improvement or increased efficiency.

Task 4-A: Review of Response Standards and Targets

The establishment of fire and EMS response time standards and targets is a process that is undertaken by the local jurisdiction, based on their assessment of community risk, citizen expectations, and the agency's capabilities. As consultants, ESCI's role is not to set response standards for the community, but rather provide assistance with data analysis and comparison to industry standards to assist the agency in developing service delivery goals.

ESCI will identify the current level of emergency services provided by the department and compare the department's performance to industry standards and best practices, such as the standards described by the Insurance Services Office (ISO), National Fire Protection Association (NFPA), Center for Public Safety Excellence (CPSE), and locally adopted performance objectives. A review and discussion of existing response performance goals, if in place, will be provided matching the nature and type of risks identified in the previous report sections. The performance goals shall be discussed with consideration to:

- Resource Distribution – Initial attack (first due) resources for risk-specific intervention
- Resource Concentration – Effective response force assembly (apparatus and personnel), of the initial resources necessary to stop the escalation of the emergency for each risk type

Task 4-B: Recommended Long-Term Strategy

ESCI will develop a recommended long-term option for resource deployment that will improve the department's level of service towards the identified performance objectives and targets. This may include, but is not necessarily limited to, specific recommendations regarding:

- Any relocations of existing facilities
- General locations of future necessary fire stations
- Selection and deployment of apparatus by type
- Deployment of operations personnel
- Future administrative and support personnel
- Deployment special units or resources
- Additional infrastructure or facilities for administration and support programs

ESCI will evaluate and present in graphical and descriptive format for each of the deployment option(s):

- Degree of benefit to be gained through its implementation
- Extent to which it achieves established performance targets
- Potential negative consequences

Task 4-C: Short and Mid-Term Strategies

Recommendations for improving service delivery and system efficiency prior to any full implementation of the long-term strategy will be provided in areas such as:

- Agency management and organization
- Staffing and personnel deployment
- Service delivery methods
- Training programs
- Prevention programs
- Enhanced cooperative service agreements with other communities or agencies
- System funding and cost recovery
- Others as appropriate and necessary

Task 4-D: Cost Projections

ESCI will provide general projections of the cost of recommended long-term strategies, specifically related to:

- Facility changes or additions
- Staff changes or additions
- Primary apparatus changes or additions

Cost projections will be provided for both capital expenditures and on-going operational costs. Operational costs will be provided as one-year projections of additional or reduced expenditures resulting from full implementation of the strategy. Additional findings and recommendations will be made, where appropriate, regarding:

- Options for long-term funding strategies
- Options for cost avoidance
- Options for cost recovery

Phase V: Development, Review, and Delivery of the Project Report

Task 5-A: Development and Review of the Draft Report

ESCI will develop and produce an electronic version of the draft written report for review by the client and client representatives. Client feedback is a critical part of this project and adequate opportunity will be provided for review and discussion of the draft report prior to finalization. The report will include:

- Detailed narrative analysis of each report component structured in easy-to-read sections and accompanied by explanatory support to encourage understanding by both staff and civilian readers
- Clearly designated recommendations highlighted for easy reference and cataloged as necessary in a report appendix
- Supportive charts, graphs, and diagrams, where appropriate
- Supportive maps utilizing GIS analysis, as necessary

Task 5-B: Delivery and Presentation of the Final Report

ESCI will complete any necessary revisions of the draft and produce five publication-quality bound, final versions of the written report along with an electronic copy in PDF file format. A formal presentation of the project report will be made by ESCI project team member(s) to staff, elected officials, and/or the general public as necessary and will include the following:

- A summary of the nature of the report, the methods of analysis, the primary findings, and critical recommendations
- Supportive audio-visual presentation
- Review and explanation of primary supportive charts, graphs, diagrams, and maps, where appropriate
- Opportunity for questions and answers, as needed

All presentation materials, files, graphics, and written material will be provided to the client at the conclusion of the presentation(s).

Optional Sections to Be Added or Substituted

Note: The sections below are offered as options and can be included as needed.

Add on to Task 2-G: Support Programs

Communications

- Alarm systems and communications infrastructure
- PSAP and Dispatch Center capabilities and methods
- Dispatch Center staffing

Task 2-H: Emergency Medical Services Support and System Oversight

Evaluate the current Emergency Medical Services support and oversight mechanisms to include, but not limited to, the following:

- Review of logistical support services
- Review of current medical control and oversight
- Review of quality assurance/quality improvement mechanisms in place
- Review of system integrity with regard to required credentialing

Task 2-I: HAZMAT Services Support and Response Capability

Evaluate the agency's capabilities with regards to hazardous materials incident responses to include, but not limited to, the following:

- Review of physical and personnel resources
- Review of training and educational compliance
- Review of historical staffing performance with regard to hazardous materials responses

Task 2-J: Technical Rescue Services Support and Response Capability

Evaluate the agency's capabilities with regard to technical rescue incident responses to include, but not limited to, the following:

- Review of physical and personnel resources
- Review of training and educational compliance
- Review of historical staffing performance with regard to technical rescue responses

Task 3-D: Public Input Meetings

At the conclusion of Phases I, II, and III, ESCI staff will facilitate a community public input meeting intended to provide information and gather input from members of the general public, community organizations, and neighborhood associations. In order to assess public sentiment toward potential future system changes, discussions will center on the following issues:

- Customer perception of emergency services
- Desired level of service
- Support for adoption of an emergency services master plan
- General input

The project team will prepare survey instruments, questionnaires, and forms to be used during the community input meeting. Professional graphics and a presentation of study objectives will be used to increase customers' understanding of their role in the process. The results of the assessment of current resources, projections of future demand and risk, and the fire service costs and existing funding sources will be summarized, presented, and discussed in the public input meeting. Data and input gathered from the meeting will be summarized within the study, as well as during meetings with internal stakeholders. ESCI will provide facilitation staff for the public meeting, but will expect the client to assist with logistics, scheduling, meeting locations, and public advertising.

BILL NO. _____ INTRODUCED BY _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE 2021-2022 BUDGET OF THE CITY OF WASHINGTON, MISSOURI AND AUTHORIZING PAYMENT TO THE WASHINGTON COMMUNITY FIRE PROTECTION DISTRICT FOR ENTERING INTO AN AGREEMENT WITH ESCI FOR A LONG RANGE MASTER PLAN FOR THE WASHINGTON FIRE DEPARTMENT SERVING THE CITY AND DISTRICT

Be It Ordained by the Council of the City of Washington, Missouri, as follows:

SECTION 1: The ordinance shall amend the 2021/2022 Budget and authorizing payment to the Washington Community Fire Protection District for entering into an Agreement with ESCI for a Long Range Plan for the Washington Fire Department serving the City and District in the amount of \$20,000 specifically to the following line item: Increase: 004-24-000-520400 Contracted Services from the Reserve Fund 004-341000.

SECTION 2: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3: This ordinance shall take effect and be in full force from and after it's passage and approval.

Passed: _____

ATTEST: _____

President of City Council

Approved: _____

ATTEST: _____

Mayor of Washington, Missouri



May 2, 2022

Honorable Mayor and City Council
City of Washington
405 Jefferson Street
Washington, MO 63090

RE: Recommendation – Highway 100 Median Landscape Bed Services – bid recommendation

Honorable Mayor and City Council,

In 2011, the City applied for and was awarded a Federal Transportation Grant for the installation of median landscaping beds on Highway 100. Once the project was completed, the Parks and Recreation Department took over maintenance of the median beds. The beds were planted with native wildflowers and grasses in 2013. In addition to beautifying the highway the median beds purpose is to help slow traffic to prevent crossover accidents, absorb rainwater and help preserve plants in the area.

In 2011, the thought process was that once the native beds were established, they were supposed to be very low maintenance. After the plants matured, they were supposed to choke out weeds, require less mulch and cut down on labor compared to regular bedding plants however if native beds are not properly managed, they can look unattractive. There are also expenses incurred with setting up lane closures on Highway 100, which is a MODOT requirement.

John Nilges, Public Works Director, and I have been working together to find a solution to the median complaints that the City receives on a reoccurring basis. After some research, we believe the maintenance of the median beds can be funded by Stormwater Funds, as the native medians help absorb water in an all asphalt environment. It was determined that since the beds reduce stormwater runoff, the funding for the maintenance of the beds should come out of the local use tax and the approved FY21-22 budget included \$30,000 for this use. By hiring an experienced contractor, citizens will see noticeable results, thus making the beds more visually appealing.

Median landscaping bed services was put out to bid and the City received two bids and one that was incomplete. The winning bid was from DJM Ecological Services, Inc. for \$20,850 per year and the other was from Native Landscaping Solutions Inc. for \$55,256. The contract is for five years.

Accordingly, staff recommends that Council consider the approval of DJM Ecological Services bid in the amount of Twenty Thousand Eight Hundred Dollars and No Cents (\$20,800.00).

As always, if you have any questions or would like additional information, please see me before the Council meeting.

Respectfully,

Wayne Dunker

Wayne Dunker, MA, CPRP
Director of Parks and Recreation

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BILL NO. _____ INTRODUCED BY _____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND DIRECTING
THE EXECUTION OF A CONTRACT AGREEMENT
BY AND BETWEEN THE CITY OF WASHINGTON,
MISSOURI AND DJM ECOLOGICAL SERVICES, INC.
FOR HIGHWAY 100 MEDIAN BED LANDSCAPING
SERVICES

Be It Ordained by the Council of the City of Washington, Missouri, as follows:

SECTION 1: The Mayor is hereby authorized and directed to accept the Contract Agreement by and between the City of Washington, Missouri and DJM Ecological Services, Inc. for Highway 100 Median Bed Landscaping Services in the amount totaling Twenty Thousand Eight Hundred Dollars and Zero Cents (\$20,800.00). A copy of said contract is attached hereto and marked as Exhibit A.

SECTION 2: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3: This ordinance shall take effect and be in full force from and after it's passage and approval.

Passed: _____

ATTEST: _____

President of City Council

Approved: _____

ATTEST: _____

Mayor of Washington, Missouri

CITY-CONTRACTOR AGREEMENT

This **SERVICE AGREEMENT** ("Agreement") is entered into effective as of the 2nd day of May, 2022 ("Effective Date") by and between DJM Ecological Services, Inc., a Missouri for-profit corporation with offices located at 2205 Ebert Lane, Wentzville, Missouri, ("Contractor"), and the City of Washington, Missouri (hereinafter called the "City") (Contractor and the City may hereafter individually be referred to as a "Party" or collectively referred to as the "Parties").

WHEREAS, the Parties desire to enter into a Service Agreement under which the Contractor is to provide general grounds maintenance services, of City-owned properties and rights-of-ways, and other areas as described in this Agreement, currently owned, managed, or otherwise under the stewardship of the City;

WHEREAS, the Contractor, has submitted documentation to the City, in the manner and time specified, a proposal in accordance with the terms of the Agreement, and;

WHEREAS, the City has examined and canvassed the proposal submitted, and as a result, has determined and declared the Contractor to be the best bidder for said Work, and has duly awarded to the said Contractor therefor, for the sums named in the proposal attached to and made a part of this contract:

NOW THEREFORE, THIS AGREEMENT WITNESSETH, in consideration of the recitals stated above, which all Parties agree are accurate and complete, the agreements, promises, and warranties set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I. SCOPE AND DEFINITIONS

SECTION A. SCOPE OF THE AGREEMENT

Implementation of the Agreement

Paragraph 1.1. This Agreement, and its related Exhibits and Attachments, attached hereto and incorporated herein for all purposes, comprise the entire contract between the City and Contractor concerning the Work. It may be altered only by a written Modification or Change Order.

Paragraph 1.2. It is the intent of the Agreement to describe a complete Project. Any Work that may reasonably be inferred from the Agreement as being required to

produce the intended result shall be supplied by the Contractor at no additional cost to the City, whether or not it is specifically called for.

SECTION B. DEFINITIONS

Wherever used in the Agreement the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

Paragraph 1.3. "Additional Work" or "Additional Services" means Work beyond the scope of services identified in the specifications described in Exhibit "A".

Paragraph 1.4. "Agreement" or "Contract" means this signed written agreement between the City and Contractor covering the Work to be performed by Contractor, and other Addenda, attachments and Exhibits to this Agreement and made a part thereof as provided herein.

Paragraph 1.5. "Application for Payment" means the form approved by the City which is to be used by Contractor in requesting progress or final payment and which is to include such supporting documentations as is required by the Agreement.

Paragraph 1.6. "Bonds" means bid and/or performance bond or other instruments of security.

Paragraph 1.7. "Change Order" means a written order to Contractor signed by the City authorizing an addition, deletion, or revision in the Work, or an adjustment in the Contract Price issued after the Effective Date of the Agreement.

Paragraph 1.8. "Commencement Date" means the date upon which the Work shall begin.

Paragraph 1.9. "Contract Price" means the monies jointly and separately due and payable by the City to Contractor under this Agreement.

Paragraph 1.10. "Day" means a calendar day of twenty-four hours measured from midnight to the next midnight.

Paragraph 1.11. "Modifications" means (a) a written amendment of the Agreement signed by both Parties, or (b) a Change Order.

Paragraph 1.12. "Owner" means the City.

Paragraph 1.13. "Permit" means a written permit issued by any local, State, or Federal agency, or other legal authority, as required to conduct the Work.

Paragraph 1.14. "Person" means an individual, partnership, joint venture, corporation, limited liability company, or unincorporated organization.

Paragraph 1.15. "Project" means the total scope of Work specified in the Agreement.

Paragraph 1.16. "Report" means weekly, monthly, quarterly, or yearly report that demonstrates the tasks completed over that period of time.

Paragraph 1.17. "Subcontractor" means a Person having a direct contract with Contractor or with any other subcontractor for the performance of part of the Work.

Paragraph 1.18. "Third Party" or "Third Parties" means any Person other than a member of Contractor or the City.

Paragraph 1.19. "Unit" means a specific quantity of material or service (per park, per gallon, per tree, per mile, per track, per, acre, per sculpture, linear feet, square feet, etc.).

Paragraph 1.20. "Unit Price" means the dollar amount per Unit as quoted/bid in Exhibit "A".

Paragraph 1.21. "Work" means all of the services, labor, equipment and materials to be performed, provided, or furnished by Contractor as required by the Agreement.

ARTICLE II.

CONTRACT ADMINISTRATION

SECTION A. CONTRACT FORMATION, INTERPRETATION, ASSIGNMENT, AND SUBCONTRACTS

Subcontracting and Assignments

Paragraph 2.1. Contractor shall supply a complete list of any and all subcontractor(s) proposed to be used under the Agreement and shall not use any Subcontractor or other Person (including those who are to furnish the principal items of material or equipment), whether initially or as a substitute, without the prior written consent of the City.

Once a subcontractor(s) has been approved by the City, the Contractor shall submit a signed and dated Contract between the Contractor and the subcontractor indicating the total dollar amount of the subcontractor's Contract. Before any subcontractor can begin work on the project, whether originally subcontracted prior to the start of the project or subcontracted after the project has begun all provisions of this article must be complied with.

Paragraph 2.2. The City may assign this Agreement in part or in whole including all rights and obligations to any assignee at its sole discretion and without any prior notice

or consent from Contractor including but not limited to any entity that succeeds to any of the rights and obligations to provide governmental type services to the local community, including any city, county or state agency, and/or a newly formed municipality. Upon any such assignment by the City, this Agreement shall remain a valid and enforceable agreement and the original terms and conditions contained herein, or any properly amended terms and conditions shall remain valid and enforceable. Contractor shall not assign this Agreement, including to any Affiliates, without the City's prior written consent. Any purported assignment without such consent shall be void.

Paragraph 2.3. Contractor shall be fully responsible for all acts and omissions of its Subcontractors, of all Persons directly or indirectly employed by them and Persons for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of Persons directly employed by Contractor. Nothing in the Agreement shall create any contractual relationship between the City and any Subcontractor, except as may otherwise be required by law.

SECTION B. TERM

Paragraph 2.4. This Agreement shall be effective as of the Effective Date written on the first page of this Agreement. If the first page is undated, then the Effective Date shall be the date the first Work is commenced.

Paragraph 2.5. This Agreement shall continue from the Effective Date until terminated by the expiration of the Term as indicated in Exhibit "A" or by termination procedures as described in this Agreement. Agreement is subject to annual appropriation.

Paragraph 2.6. If Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the City, or of an employee, or of a separate contractor employed by the City; or by a Change Order in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other caused beyond the Contractor's control; or by delay authorized by the City pending mediation and arbitration; or by other causes that the City determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the City may determine.

SECTION C. CONTRACT COMMUNICATION

Notices

Paragraph 2.6. All notices, requests, demands, and other communications specifically required or authorized by this Agreement shall be written and shall be (a) delivered personally, (b) mailed by registered mail or certified mail, return receipt requested, postage prepaid, (c) sent by facsimile transmission, or (d) sent by e-mail. All

such communications shall use the receiving Party's contact information as contained in

this Article II Section C. A Party may change its contact information by sending a notice to the other Party complying with these notice requirements.

Paragraph 2.7. All other communications, including telephone, regular mail, e-mail, and other informal communication methods, shall be effective only when the responsible officer, director, manager, or supervisor of the receiving Party has actual knowledge of the communication.

Paragraph 2.8. Contractor's contact information is as follows:

JOHN Q. COMPANY
Attn: John Q. Contractor
President
1111 Contract Drive
Anywhere, USA 60000
Telephone:
Cell Phone:
E-mail:

Paragraph 2.9. City of Washington contact information is as follows:

CITY OF WASHINGTON
Attn: Wayne Dunker
Director of Parks and Recreation
405 Jefferson Street
Washington, Missouri 63090
Telephone: 636-390-1080
E-mail: wdunker@washmo.gov

SECTION D. CONTRACT PERFORMANCE

Work

Paragraph 2.10. Contractor, acting as an independent contractor, agrees to furnish at his/her own expense all supervision, labor, expertise, equipment, supplies, and other requirements as set forth herein and as more specifically described in Exhibit "A" and will provide such in a good and "Workmanlike Manner", the term Workmanlike Manner being defined as the rendition of services in a manner deemed proficient by those with the special knowledge, training, and experience to judge such services and in accordance with highest generally accepted standard of care in the industry.

Contractor as an Independent Contractor

Paragraph 2.11. At all relevant times to this Agreement, Contractor shall act as an independent contractor to the City in providing Work to the City. Nothing in this Agreement shall be interpreted to create any employment, partnership, or joint ventures. Except to the extent required to enable Contractor to perform his/her specific duties under this Agreement, Contractor shall not act as an agent of the City, by entering into this Agreement, the City in no way, assumes any liabilities, debts or obligations of the Contractor whether now existing or hereafter created.

Paragraph 2.12. Contractor shall not have the authority to incur or assume any debt, obligation, expense, or liability against the City, and shall not have the authority to bind or otherwise obligate the City to any contracts, agreements, warranties, or understandings.

Change Orders

Paragraph 2.13. Any Change Orders or Modifications to the Agreement must be approved by the City and be incorporated by written amendment to the Agreement. Contractor shall not have the authority to make, revise, alter, depart, or otherwise diverge from any of the terms, conditions, or places furnished to Contractor by the City and/or this Agreement absent consent of the City and written amendment to the Agreement.

Continuing the Work

Paragraph 2.14. Contractor shall carry on the Work and maintain the performance of the Work during all disputes or disagreements with the City, except upon the City's default hereunder. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the Parties may otherwise agree in writing.

Equipment Storage

Paragraph 2.15. Contractor shall be responsible for locating and providing storage for all equipment.

Permits

Paragraph 2.16. Contractor shall be solely responsible for obtaining and paying for all permits and licenses related to their performance of the Work.

Taxes and Fees

Paragraph 2.17. Contractor shall pay all taxes and fees which may be chargeable against the performance of the Work, or incident to the Agreement by a government agency, including but not limited to any employment related taxes, F.I.C.A. taxes, social security taxes, and other taxes and fees, directly to the appropriate governmental bodies. The City is a political subdivision of the State of Missouri and exempt from tax; The City agrees to make their tax-exempt certification available to the Contractor to the extent required to assure the City is not charged taxes which they are not responsible to pay. The City shall not be liable in any way for such fees or taxes and the Contractor shall indemnify and hold the City, their Affiliates officers, directors, members, and employees and assigns harmless from and against all claims, demands, causes of action, suits or other litigation in connection with Contractor's failure to report such taxes and fees. No additional compensation will be paid to Contractor for taxes or fees.

Contract Price and Payment Procedures

Paragraph 2.18. Contract Price constitutes the total compensation (subject to authorized adjustments made by a Change Order) payable to Contractor for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by Contractor shall be at its expense without change in the Contract Price. Contract Price is described in the specification in Exhibit "A".

Paragraph 2.19. Contractor shall submit to the City monthly Applications for Payment that shows all applicable areas where the Work was performed. Failure to fully comply with the Application for Payment procedure will cause daily in processing payments.

Paragraph 2.20. On the twenty-fifth (25th) day of each month and no later than the thirtieth (30th) of the month during the Term of the Agreement, beginning with the first (1st) month after the Commencement Date, Contractor shall submit to the City the Application for Payment, accompanied by (a) the monthly Report, (b) a sworn statement by Contractor certifying (i) the Application for Payment is correct, (ii) all insurance required by this Agreement is in full force and effect, (iii) all Subcontractors and suppliers have been paid from previous Applications for Payment, (iv) Certified payroll, and (v) the Contractor is not in default under any provisions of the Agreement and that no event has occurred which with the passing of time or the giving of notice could be a default under the Agreement, and (c) any other documents, information or data which the City request be provided.

Paragraph 2.21. If the City disputes any portion of an Application for Payment, they shall, within thirty (30) Days of receipt of the Application for Payment, furnish the Contractor a reasonably detailed explanation of the objection, and may withhold payment on the portion in dispute. If Contractor objects to the withholding, it shall provide the City with written notice of its objection within ten (10) Days of receipt of the written explanation from the City. The Parties may then proceed to Dispute Resolution as described in this Agreement as to any disputed amount. All undisputed amounts shall be paid within forty-five (45) Days of the receipt of the Application for Payment by

Paragraph 2.22. Contractor shall notify the City in writing within ten (10) Days of their receipt of payment from the City, if there is any discrepancy based on a Contractor audit of the number of Units. This notice shall include the nature of the disagreement, the address of the location of the Unit in question, the type of service being provided, and the date such service began or ended. If the Contractor does not notify the City of a discrepancy within the ten (10) Day period, the discrepancy is waived, and the Contractor is afforded no further recourse, right or remedy as to the discrepancy.

Paragraph 2.23. At any time during the Term of the Agreement, the City may be Change Order alter the number of Units applicable to the Work. If the number of Units is increased, the Work on any additional Units will be paid to Contractor in an amount equal to the number of additional Units multiplied by the Unit Price herein. If the number of Units are decreased, the Contract Price will be reduced in an amount equal to the number of Units decreased multiplied by the Unit Price. Unit Price and Units are described in the specifications in Exhibit "A".

Paragraph 2.24. Final Payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the City to the Contractor when: the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work, and to satisfy other requirements, if any, which extend beyond final payment; and a final Certificate for Payment has been issued.

Liquated Damages

Paragraph 2.25. Contractor and City recognize that time is of the essence and that City may suffer financial loss if the Work is not completed within the times specified in Exhibit "A", plus any extensions thereof allowed. The Parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by City if the Work is not completed on time. Accordingly, instead of requiring any such proof, City and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay City \$500.00 for each day that expires after the time specified in Exhibit "A" until the Work is complete.

Character and Conduct of Contractor's Employees and Subcontractors

Paragraph 2.26. The Contractor's employees and Subcontractors who normally and regularly come into direct contact with the public shall bear some means of company identification such as a company uniform with name badges, name tags or identification marks. Vehicles and equipment shall also bear some means of company identification.

Paragraph 2.27. The Contractor shall perform the Work with as little noise and as little disturbance to Third Parties and surrounding property owners as possible.

Paragraph 2.28. Care shall be taken by Contractor or of Third Parties to prevent damage to property, including buildings, sidewalks, parking lots, trails, roads, pavilions, playgrounds, lawns, shrubs, flowers, trees, plants, etc. on City-Owned Property, Rights-of-Ways.

Safety and Protection

Paragraph 2.29. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor shall appoint a qualified, experienced safety representative, whose duties shall be the prevention of accidents and the maintaining and supervision of the safety precautions and programs.

Injury or Damage

Paragraph 2.30. Contractor shall promptly notify the City of all damage to property belonging to the City or Third Parties, or injuries incurred by persons other than employees of Contractor in no case later than one (1) hour after the injury or damage occurred.

Paragraph 2.31. Contractor shall be responsible for any damage to the property, real or personal, of any Third Party or of the City that is caused by any act or omission of the Contractor in the performance under the Agreement. If the City finds that the Contractor has failed to completely reimburse the Third Party any amount and the City, and the City deems it necessary to compensate the Third Party for its damaged property, the City may pay the Third Party and deduct this amount from the amount due to Contractor under this Agreement. The City reserves the right to pay all fines, penalties, costs and assessments levied by any governmental authority against the Contractor and to withhold said amount from any payments due to Contractor under this Agreement. The terms and conditions of this paragraph shall survive the termination of this Agreement.

Additional Services

Paragraph 2.32. Contractor shall prepare a list of rates for special services not specified in Exhibit "A". Contractor shall supply the list from time to time, but not less than once per year.

Reports by Contractor

Paragraph 2.33. Contractor shall submit reports as identified in Exhibit "A" and upon request by the City provide a written report of equipment, staffing, emergencies, security problems or any related events. The Contractor shall cooperate with the City as necessary to review financial statements and/or audit Contractor's books and records concerning this Agreement.

SECTION E. PERFORMANCE AND TERMINATION

Force Majeure

Paragraph 2.34. Contractor and the City shall be excused from complying with the terms and conditions of this Agreement if, to the extent, and for as long as, such Party's

compliance is delayed or prevented by a Force Majeure event. A Force Majeure event will not excuse either Party from making payments, performing indemnity obligations (as applicable), or other duties not directly limited by the Force Majeure event, except as otherwise provided within this paragraph entitled "Force Majeure". "Force Majeure" includes acts of God, floods, blizzards, ice storms, and hurricanes; insurrection, revolution, piracy, and war. Strikes, slowdowns, walkouts, lockouts, industrial disturbances and labor disputes are not excused under this provision.

Provisions Surviving Termination

Paragraph 2.35. In the event of termination of this Agreement, the terms and conditions which expressly survive termination of this Agreement and those dealing with warranty, indemnities, audit, confidentiality, insurance, arbitration, disclaimer of consequential damages and any limitation of liability, shall survive termination and remain in full force and effect.

Termination by the City

Paragraph 2.36. The City may terminate the Agreement upon 1.) thirty (30) Days written notice for any reason, or 2.) upon any of the following events of default ("Events of Default") if after giving the Termination Notice described in Paragraph 2.36, the Contractor has not cured the Event of Default within the applicable cure period:

- A. If Contractor fails to fulfill or maintain in a timely and proper manner any obligations, duties or provision of the Agreement and Contractor fails to cure such default to the satisfaction of the City within ten (10) Days of the Contractor's receipt of written notice from the City specifying the how the Contractor failed to perform in reasonable detail.
- B. If Contractor is adjudicated voluntarily bankrupt, or if Contractor is subject to the appointment of receiver or trustee and fails to have the receiver or trustee removed within sixty (60) Days, or if any assignment or Contractor's property shall be made for the benefit of creditors, or if Contractor becomes insolvent, or unable to pay its debts as they become due.
- C. If there is a change of Control of the Contractor, whether voluntarily or by operation of law, or substantially all the assets of the Contractor are sold or transferred voluntarily or otherwise, the Agreement shall terminate unless the City agrees by Change Order to continue the Agreement with the Contractor after the change of Control or disposition of assets. The Contractor shall promptly notify the City of any actual or proposed change in, transfer of or acquisition by another party of Control of the Contractor. "Control" as used herein means the power, whether direct or indirect, to direct the affairs of the Contractor by whatever manner exercised. Any agreement by the City to continue this Agreement after the change in Control or disposition of assets shall be contingent upon the new controlling party or owner of the assets becoming a signatory to the Agreement and otherwise complying with all the terms and conditions herein, including but not limited to the submission of Bonds, if required by this Agreement, and certificates of insurance acceptable to the City.

Administrative Fee

Paragraph 2.37. If there is an Event of Default, which the Contractor does not cure within the applicable cure period, the City may charge and the Contractor shall pay to the City an administrative fee to compensate the City for its costs associated with the Contractor's failure to perform the Work as required in this Agreement. The City may levy this administrative fee without terminating this Agreement. The fee shall be equal to 1.5 times the Unit Cost multiplied by the number of Days the Event of Default continues uncured after the expiration of the applicable cure period and shall be payable to the City by the Contractor upon written demand. The Parties stipulate that the fee is a reasonable estimate and is not to be construed as a fine or penalty, and shall be in addition to any other remedy the City may have at law, in equity or under the Agreement.

Termination Notice: Cancellation of Orders and Subcontracts

Paragraph 2.38. Upon the occurrence of an Event of Default subject to any applicable notice and cure period, the City should they elect to terminate the Agreement, will issue a written notice of termination (the "Termination Notice") to the Contractor. In addition, the City may issue a Termination Notice for any reason as so long as the Contractor is given thirty (30) Days' notice in the Termination Notice. Termination shall be effective upon the date specified in the Termination Notice, and upon said date this Agreement shall be deemed immediately terminated and thereafter neither Party shall have any rights or obligations under this Agreement except as expressly provided herein. Any termination of the Agreement shall not relieve the Contractor (a) from the obligation to pay any fees, taxes or other charges then due to the City or any other Third Party incident to the Agreement, (b) from the obligation to file any monthly, quarterly or annual Reports through termination, (c) from any claim from damages previously accrued or then accruing against the Contractor nor (d) from any provisions of this Agreement that expressly survive termination. Upon the effective date of termination as contained in the Termination Notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all Work and shall proceed to promptly cancel all existing orders and subcontracts for the Work. Contractor shall immediately submit an Application for Payment showing in detail the Work performed through the date of termination. The City agrees to compensate the Contractor for that portion of Work actually performed prior to the effective date of termination and not disputed under this Agreement and not previously paid, less any charges, deductions, or administrative fees. Termination of this Agreement shall not affect any rights or remedies of the City against Contractor then existing or which may thereafter accrue. Any retention or payment of monies due Contractor by the City shall not release Contractor from liability.

Termination or Stop Work by Contractor and Remedies for Default by the City

Paragraph 2.39. If through no act or fault of Contractor, the Work is suspended for a period of more than ninety (90) Days by the City or under an order of court or other public authority, or the City fails for sixty (60) Days to pay Contractor any sum not in dispute, or if the City otherwise default hereunder, then Contractor may, (i) upon fifteen (15) Days written notice to the City, and provided the City does not remedy such

suspension or failure to pay within that time, terminate this Agreement and recover payment from the City for the undisputed Work which Contractor completed prior to the effective date of termination, or (ii) upon seven (7) Days written notice to the City stop the Work until payment of all such amounts due Contractor are received, without termination of this Agreement as the Contractor's sole and exclusive remedies.

**ARTICLE III.
CONTRACTOR'S REPRESENTATIONS AND WARRANTIES**

General Service Warranty

Paragraph 3.1. The general service warranty applies to all services performed by Contractor or its subcontractors. Contractor warrants it will perform all services in a good and Workmanlike Manner.

Contractor's Representations and Warranties

Paragraph 3.2. Contractor is familiar with the nature and extent of the Agreement, the Work, the locality, with all local conditions and federal, state, and local laws, ordinances, rules, and regulations including but not limited to all rules, regulations, and the restrictive covenants governing the land within the jurisdiction of the City, that in any manner may affect cost, progress or performance of the Work.

Paragraph 3.3. The person signing this Contract on behalf of the Contractor is authorized by Contractor to do so.

Paragraph 3.4. Contractor's representations and warranties under this Article III of the Agreement entitled Contractor's Representations and Warranties will survive the termination of this Agreement.

**ARTICLE IV.
FINANCIAL ADMINISTRATION**

SECTION A. APPLICATIONS FOR PAYMENT AND PROCEDURES

Compensation

Paragraph 4.1. Contractor's compensations shall be set forth in the specifications in Exhibit "A".

Contractor's Invoices

Paragraph 4.2. Applications for Payment shall be submitted in such form and accompanied by such certification and documentation as the City may reasonably request, including the following as applicable: (a) Daily rate and the number of day worked in performing the Work, (b) the type and quantities of materials or supplies furnished by Contractor and utilized in performing the Work (e.g. chemicals), (c) the dates and hours equipment or machinery was employed in performing the Work, (d) Report on number of acres cleared, and (e) any charges for extra services authorized by the City (Each service must be individually listed next to its charge and approved proposals or Change Orders must be included).

Payment of Application for Payment

Paragraph 4.3. Except as provided in the paragraph entitled "Disputed Invoices," the City agrees to pay Contractor's Application for Payment within forty-five (45) Days after the City's receipt of the Application for Payment.

Remedies for Unpaid Invoices

Paragraph 4.4. Undisputed Applications for Payment or the undisputed part of an Application for Payment remaining unpaid after forty-five (45) Days from receipt by the City shall accrue simple interest at the rate of 10% per annum (or the maximum interest rate allowed by applicable law, whichever is less), from the 46th day after receipt by the City through the day the City mails payment to the Contractor.

Disputed Applications for Payment

Paragraph 4.5. If the City, in good faith, disputes any Application for Payment in whole or in part, the City shall notify Contractor of the dispute within the time required for payment and shall timely pay any undisputed portion. Interest shall not accrue on the amounts disputed in good faith.

City Payment Does Not Constitute Waiver

Paragraph 4.6. The City payment of an Application for Payment shall not prevent it from later filing claims against Contractor or waive its rights to recover money previously paid to Contractor. Without limiting the generality of the preceding sentence, the City may recover any sums paid to Contractor by mistake of law or of fact.

SECTION B. LIENS AND CLAIMS**Contractor's Obligations Concerning Liens and Claims**

Paragraph 4.7. Contractor shall pay all valid claims for its labor, materials, services, supplies, and products as they become due. Whether a claim is valid or invalid, no lien, privilege, charge, or similar encumbrance shall become fixed upon the City lands, fixtures, improvements, or other property because of Contractor's failure to

pay for goods or services provided for hereunder. After being notified of the existence of such claims, charges, liens, privilege, or encumbrances, Contractor agrees to take all necessary steps to obtain the release of such lien, privilege, or encumbrance.

Paragraph 4.8. If Contractor fails or refuses to pay its claims or indebtedness, then the City shall have the right to pay any such claims or indebtedness out any money due or to become due to Contractor under this Agreement; provided, however, the City shall not pay any such claim or indebtedness as long as Contractor is actively contesting it and has taken all actions necessary (including the posting of a bond or security if appropriate) to protect the City's property interests and the interests of other Persons in that same property.

Paragraph 4.9 Before the City pays any Application for Payment, the City may require Contractor to certify that there are no unsatisfied claims for labor, materials, equipment, supplies, or products.

**ARTICLE V.
RISK MANAGEMENT**

SECTION A. GENERAL INDEMNIFICATION

Release, Defense, and Indemnity

Paragraph 5.1. To the fullest extent permitted by law, Contractor shall indemnify and hold harmless City and its officers, directors, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.

Paragraph 5.2. Contractor agrees to release, protect, defend, indemnify, and hold harmless the City or any of its officers, directors, employees, agents, consultants and subcontractors from and against any and all claims (including claims of Third Parties and claims of spouses, heirs, survivors, legal representatives, successors and assigns) of Contractor, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work for personal injury, illness, death, property (whether real or person, owned or leased) damage) and loss arising out of or resulting from the performance of this Agreement suffered by Contractor **EVEN IF THE CLAIMS ARE CONTRIBUTED TO OR CAUSED BY THE SOLE, JOINT, COMPARATIVE, CONCURRENT, ACTIVE OR PASSIVE**

NEGLIGENCE OF ANY MEMBER(S) OF THE CITY.

The release, protection, defense, indemnity and hold harmless obligations assumed by Contractor, and the limitations afforded the City, in this paragraph include any liability for employment discrimination, medical, compensation, or other benefits owed to employees of Contractor as a result of the direct employment relationship of such individuals with a member of Contractor even if such individuals are determined to be the borrowed or statutory employee of any member(s) of the City.

The indemnities in Paragraph 5.2 of this Agreement shall only be effective to the maximum extent permitted by the applicable law, either legislative enactment or a controlling judicial decision. If such existing or future law limits in any way the extent to which indemnification may be provided to an indemnity that is negligent, solely negligent, or otherwise at fault and, notwithstanding the choice of law provision set forth herein, such law is applicable to interpretation of this Agreement, then this Agreement shall automatically be amended to provide that the indemnification provided hereunder shall extend only to the maximum extent permitted by such law. The liability of the City is limited due its status as a political subdivision of the State of Missouri.

Paragraph 5.3. For the purpose of Article V, the phrase "arising from or resulting from the performance of this Agreement" shall be broadly construed to include, but not be limited to, not only formal work, but also any occurrences at the work site, including transportation to and from the work (other than personal or public transportation to the work site), breaks of all kinds, including, without limitation, breaks for meals and/or rest, horseplay of all kinds, or volunteering of all kinds to assist others in their work.

Indemnity for Removal of Liens

Paragraph 5.4. Should the Contractor fail to fulfill its obligations under Article IV Section B concerning removal of liens, privileges or encumbrances on the property of any resident(s) of the City or property of the City arising out of performance under this Agreement, Contractor agrees to release, protect, defend, indemnify, and hold harmless the City for its direct costs actually incurred in removing such lien, privilege or encumbrance, should the City decide to proceed with removal.

Limitation on Damages

Paragraph 5.5. Contractor agrees that no resident(s) of the City will be responsible for and specifically agrees to release, defend, indemnify, and hold harmless the residents of the City, Mayor, City Council, employees, and agents from any and all liability for indirect, special, incidental, consequential, punitive or exemplary damages suffered by any employee(s) of Contractor.

SECTION B. INSURANCE

Basic Insurance Coverage

Paragraph 5.6. The Contractor and all subcontractors shall support its indemnity obligations by furnishing liability insurance coverage of the types set forth.

Comprehensive General Liability and Bodily Injury

Including Death: \$1,000,000 each person
\$3,000,000 each occurrence

Property Damage: \$3,000,000 each occurrence
\$3,000,000 aggregate

Comprehensive Automobile Liability, Bodily Injury

Including Death: \$1,000,000 each person
\$3,000,000 each occurrence

Property Damage: \$3,000,000 each accident

Owner's Protective Bodily Injury

Including Death: \$1,000,000 each occurrence
\$1,000,000 each occurrence

Property Damage: \$1,000,000 each occurrence
\$1,000,000 aggregate

Workers Compensation

The Contractor shall procure and shall maintain during the term of the Agreement, Workers' Compensation insurance for all of its employees to be engaged and perform work under the Agreement, and in case any such work is sublet, the Contractor shall require the subcontractor similarly to provide Workers' Compensation Insurance for all such employees to be engaged in such work, unless such employees are covered by

the protection afforded by the Contractor's Workers Compensation Insurance. In the event any class of employees engaged in hazardous work under the Agreement is not protected under the Workers' Compensation Statute, the Contractor shall provide, and shall cause such subcontractor to provide, adequate Employer's Liability Insurance for the protection of its employees not otherwise protected.

The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the Contractor for the City.

In full compliance with the Worker's Compensation Act of the State of Missouri and Employer's Liability Coverage the minimum amount of insurance shall be \$1,000.00 per occurrence.

Insurance Endorsements and Provisions

Paragraph 5.7. Prior to commencing to Work under this Agreement, Contractor shall obtain a waiver of subrogation from its insurers on the policies required in favor of the City.

Paragraph 5.8. All such insurance coverage required under this Agreement shall name the City as an additional insured.

Paragraph 5.9. Have such policies contain or be endorsed to contain a severability of interest provision so that each insured shall be treated separately under the policy so that the insurer may not deny enforcement based on the conduct or omissions of another insured; provided, however, this provision shall not cause any insurer or underwriter to pay more than the limits of the insurance coverage provided;

- Be primary over any insurance coverage maintained by the City;
- Be maintained in full force and effect during the term of this Agreement; and
- Contain provisions stating that such policies shall not be materially changed or cancelled without thirty (30) day prior written notice having first been furnished to the City.

Certificates of Insurance

Paragraph 5.10. Contractor and all Subcontractors agree that prior to commencing any of the Work under this Agreement; they shall have their insurance carrier furnish the City a certificate or certificates of insurance and endorsement page(s) evidencing insurance coverage in accordance with the requirements identified herein. Acceptance by the City of a certificate or certificates of insurance and/or endorsement page(s) showing coverage not in compliance with the insurance requirements of this Agreement shall not relieve Contractor or Subcontractor(s) from its obligations under this Agreement.

Bid Bond

Paragraph 5.11. Contractor shall furnish with the executed Agreement a Bid Bond, not less than five (5) percent of the amount of the bid. The City will hold the Bond for the duration of the Contract, as security for faithful performance obligations under the Contract Documents.

Paragraph 5.12. All Bonds signed by an agent must be accompanied by a certified copy of agent's authority to act. Only surety companies authorized to do business in, and having an agent for services in the State of Missouri will be acceptable.

Paragraph 5.13. If the Surety on any Bonds furnished by the Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in the state where the project is located or it ceases to meet the requirements of the preceding paragraph, the Contractor shall substitute another Bond and Surety, both of which must be acceptable to the City before continuing the Work.

Severability

Paragraph 5.15. If any part of Article V contravenes any applicable statutes, regulations, rules, or common law requirements, then, to the extent and only to the extent of such contravention, such part shall be severed from this Article V and deemed nonbinding while all other parts of this Article V shall remain binding.

**ARTICLE VI.
LEGAL ADMINISTRATION**

SECTION A. COMPLIANCE WITH LAWS AND REGULATIONS

General Legal Compliance

Paragraph 6.1. Contractor shall comply with all applicable local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Agreement as well as other regulations and restrictive covenants of the City.

If the Contractor discovers any provisions in the Agreement, which is contrary or inconsistent with any law, ordinance, or regulation, it shall immediately report it in writing to the City.

Paragraph 6.2. Contractor shall affirm by sworn affidavit that he/she has enrolled and participated in a federal work authorization program with respect to its employees who work in connection with the contracted services and to sign the affidavit affirming that Contractor does not knowingly employ any person who is an unauthorized alien in connection with the Contract. Such affidavit shall be required as a condition of this Contract prior to or at the time of execution of this Contract, and Contractor shall

provide documentation for the program.

SECTION B. GOVERNING LAW AND DISPUTE RESOLUTION

Paragraph 6.4. The Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Missouri. The Agreement is performable in Franklin, County, Missouri, and the Parties agree that venue for any dispute under the Agreement shall be Franklin County. Any Party, who is the prevailing Party in any legal proceeding brought under or in relation to the Agreement shall be entitled to recover court costs and reasonable attorney's fees from the non-prevailing Party.

SECTION C. MISCELLANEOUS

Severability

Paragraph 6.5. If any part of this Agreement contravenes any applicable statutes, regulations, rules, or common law requirements, then, to the extent and only to the extent of such contravention, such part shall be severed from this Agreement and deemed nonbinding while all other parts of this Agreement shall remain binding, so long as the material purposes of this Agreement can be determined and effectuated.

Singular and Plural

Paragraph 6.6. Reference to one gender includes a reference to the other gender.

Headings

Paragraph 6.7. The headings, sub-headings, and other subdivisions of this Agreement are inserted for convenience only. The Parties do not intend them to be an aid in legal construction.

Counterpart Execution

Paragraph 6.8. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed an original of this Agreement for all purposes. No Party shall be bound to this Agreement unless and until all Parties have executed a counterpart.

Binding Authority

Paragraph 6.9. Each of the individuals executing this Agreement represents that he or she has full right and authority to execute this instrument on behalf of the City or Contractor, as the case may be, and to bind such Party. If the Person executing this Agreement has a title that includes the term "Manager," "Director," or "Vice President," then the Parties agree that such Person has apparent authority to execute this Agreement and bind the Party. If such Person executes this Agreement on behalf of a Party, the other Party is not required to obtain a power of attorney, delegation of

authority, or corporate resolution evidencing such authority.

Entirety of Contract

Paragraph 6.10. The Agreement embodies the entire contract between Parties.

Waiver

Paragraph 6.11. Failure to exercise any option to terminate shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. A waiver of any breach of any provision of the Agreement shall not constitute or operate as a waiver of any breach of such provision or any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provisions or any other provision. The failure of the City at any time to enforce or to object to a failure or refusal to perform any terms, condition, or covenant of the Agreement, or to exercise any option herein given, or to require at any time performance by the Contractor of any term, condition, or covenant hereof, shall in no way constitute a waiver of any subsequent breach, or effect the validity of the Agreement or any part hereof or the right of the City thereafter to enforce the same, but shall apply only to the specific instance to which the failure to enforce is directed.

Approvals

Paragraph 6.12. All approvals or consents required or permitted pursuant to the Agreement shall be in writing in order to be considered valid and effective.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY OF WASHINGTON

By _____

James D. Hagedorn, Mayor

(SEAL)

ATTEST:

Sherri Klekamp, City Clerk

CONTRACTOR

By _____

"Contractor"

Title _____

(SEAL)

ATTEST:

Title:

3Ea

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TECHNICAL SPECIFICATIONS

PART 1 - GENERAL

1.01 PERFORMANCE OF WORK

The Contractor acting as an independent contractor, shall furnish at his/her own expense all supervision, labor, equipment, tools, materials, supplies, and necessary documentation required to perform and complete the Work in a good first class and workman like manner. The Work designated, described and required by these specifications and proposals shall be in accordance with the Contract Documents and any applicable City ordinances, county, state and federal laws. Contractor represents and warrants that he/she has special skills which qualify him/her to perform the Work and is not a party to any other agreement, written or oral, the performance of which would prevent or interfere with the performance, in whole or in part, of the Work.

1.02 PRE-BID SITE INSPECTION

The Contractor shall be responsible for performing a pre-bid site inspection of each location. Contractor shall be responsible for determining actual acreage, square footage, and/or time required to perform the Work at each location.

1.03 THE WORK

The Contractor shall perform all services and provide all supplies, materials, equipment, tools and labor, necessary for Highway 100 Medians Maintenance Services in accordance with the Contract Documents. The Contract will be valid for five (5) years: 2022, 2023, 2024, 2025, 2026.

PART 2 - SCOPE OF SERVICES

The Contractor shall provide Highway 100 Medians Maintenance Services as set forth below:

2.01 HOURS OF OPERATION

Contractor shall provide General Maintenance Services between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday. No work shall take place on Saturdays, Sundays or City recognized Holidays unless prior approval by the Director of Parks and Recreation is received. No work shall take place the week of Thanksgiving.

Contractor shall submit a work schedule to the City contact prior to the start of any work.

2.02 SERVICE/SITE LOCATIONS

Provide landscape maintenance services for four (4) MODOT medians on Highway 100 in Washington, Missouri. SEE EXHIBIT.

2.03 DURATION OF CONTRACT

The duration of the Contract shall be for five (5) years: 2022, 2023, 2024, 2025, 2026 under the same terms and conditions.

2.04 MAINTENANCE AND SERVICES

The Highway 100 Medians contain various plants and shrubs such as Prairie Dropseed, Little Bluestem, Liatris, Purple Cone Flower, Black Eyed Susan, Butterfly Weed, New England Aster, Black Chokeberries and Fragrant Sumac.

SPRING (Early April)

Remove litter and debris, apply new mulch and apply weed pre-emergent.

SUMMER (May – October)

Remove litter and debris, weed, tree & invasive pulling, and apply spray herbicide one (1) time a month. To reduce the appearance of dead vegetation in the medians weeds, trees and invasive over 8 inches tall shall be pulled and weeds, trees and invasive under 8 inches shall be sprayed with herbicide.

FALL (Early November)

Remove litter and debris, trim and/or prune all grasses and perennials back, haul away debris, apply weed pre-emergent and apply new mulch.

Cut back height of vegetation shall be 5-6 inches. Mulch shall be dyed brown shredded bark and shall be applied 1-2 inches thick and not to cover up vegetation. Vegetation killed by herbicide overspray shall be replaced with same type at no cost to the City.

The Contractor shall perform all required Work and shall provide and furnish labor, materials, necessary tools, equipment, and transportation services to provide grounds maintenance service on property designated by the Parks and Recreation Department. It is understood and agreed that said labor, materials, tools, equipment and service will be furnished; and said Work performed and completed under the direction and supervision and subject to the approval of the City.

2.05 INDEPENDENT CONTRACTOR

It is understood that the Contractor is an independent Contractor and neither him/her nor his/her employees shall represent themselves as either employees or agents of the City. Any person employed by the Contractor who, in the opinion of the City, does not perform satisfactorily or is intemperate or rude to residents or employees of the City shall, at the written request of the City be removed from further employ in any portion of the Contract.

2.06 SITE INSPECTION

A site inspection by the Contractor shall be performed prior to each maintenance function. Trash, debris or hazards shall be removed prior to Work being performed. All clippings, leaves, trash and debris shall be removed from the site upon completion, and disposal shall be the responsibility of the Contractor.

2.07 EQUIPMENT

General landscaping tools such as mowers, trimmers, hedge trimmers and hand tools etc. may be used.

The Contractor shall provide appropriate traffic control equipment while working in the medians. Contractor employees shall wear high visibility safety vests when working in the medians.

Contractor shall apply for their own permit to work on the right away through Missouri Highways and Transportation Commission.

Lane drops and traffic control equipment shall be supplied by the Contractor or Subcontractor, per MODOT's specifications.

2.08 UNIFORMS

Contractor employee(s) must wear a uniform shirt with the company name that is visible from twenty-five feet (25') at all times while completing the work in the City.

2.09 PARKING

Contractor is to park in specified and legal parking areas/zones without blocking driveways or site entrances, etc. Care shall be taken so as not to damage lawn and/or landscaped areas when parking.

2.10 CLEANUP

Prior to leaving the site, Contractor shall inspect, remove and haul away all debris items. The concrete and asphalt portions of the medians should be free of plant clippings and mulch.

2.14 DAMAGE TO PROPERTY

Any damage to property as the result of the Contractor's operations shall be the responsibility of the Contractor. Contractor shall be held responsible for any damage, breakage and/or loss of signs, irrigation system, vegetation or any loss incurred to adjacent property, buildings, vegetation or fences through the negligence of the contractor or his/her employees while working on the medians. Should the damage not be rectified within the time agreed upon or to the satisfaction of the Parks Department, the City reserves the right to replace that which was damaged, or assess the Contractor such costs as may be reasonable and related to the damage caused by the Contractor. The Contractor shall inform the Director of any damage caused by the contractor's operation on the day such damage occurs.

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Exhibit



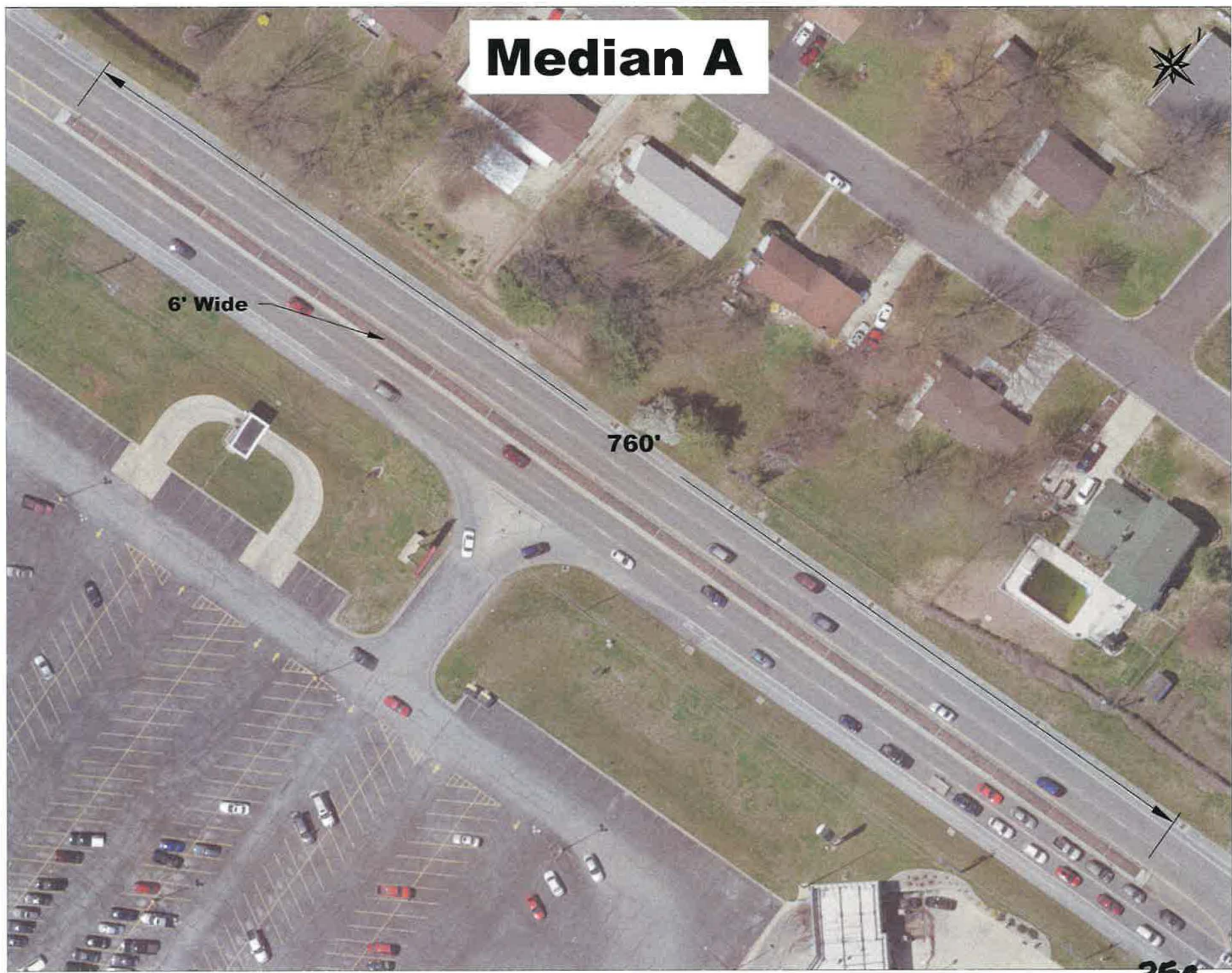
Median A



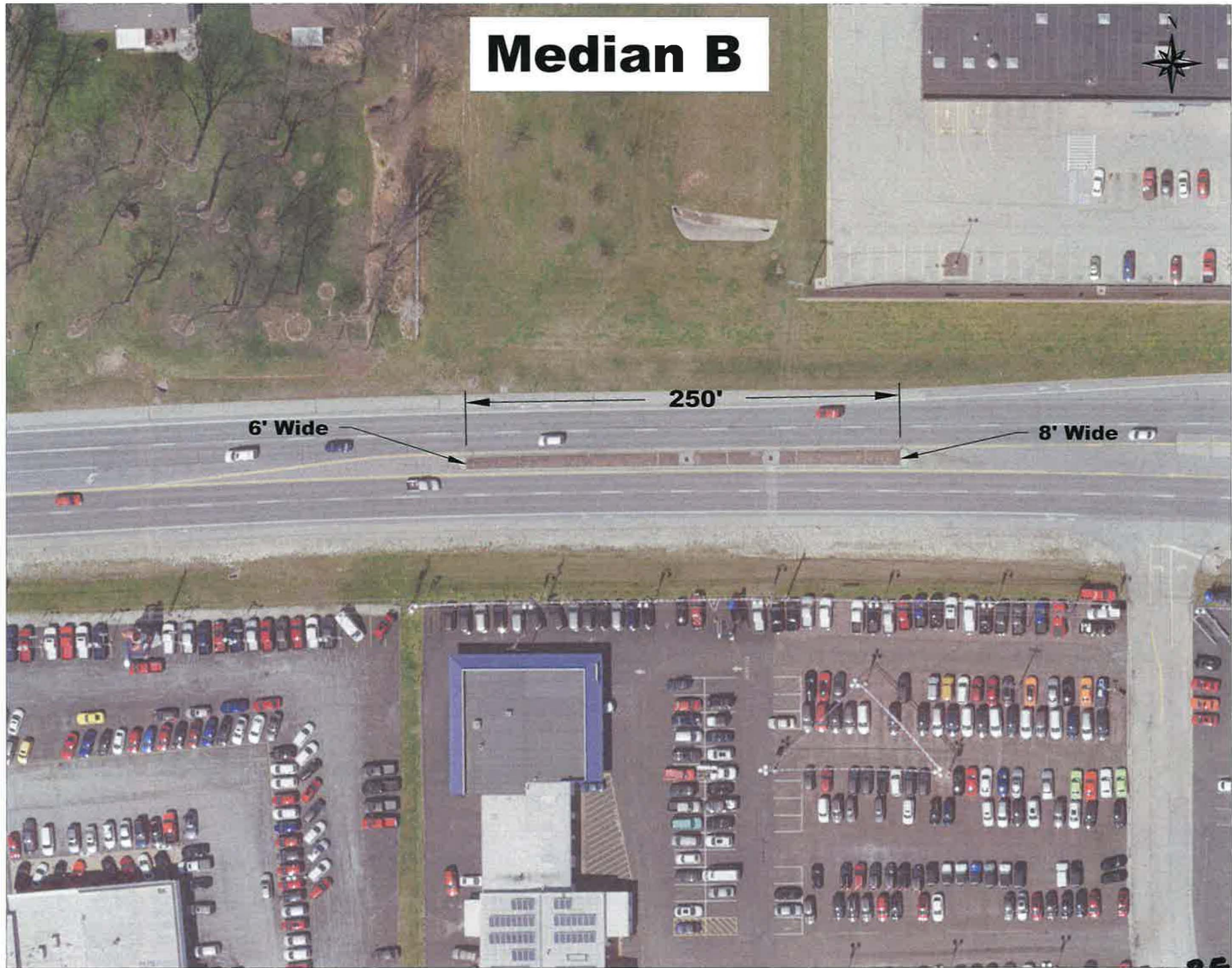
6' Wide

760'

3Ea



Median B



6' Wide

250'

8' Wide

Median C



16' Wide

760'

6' Wide

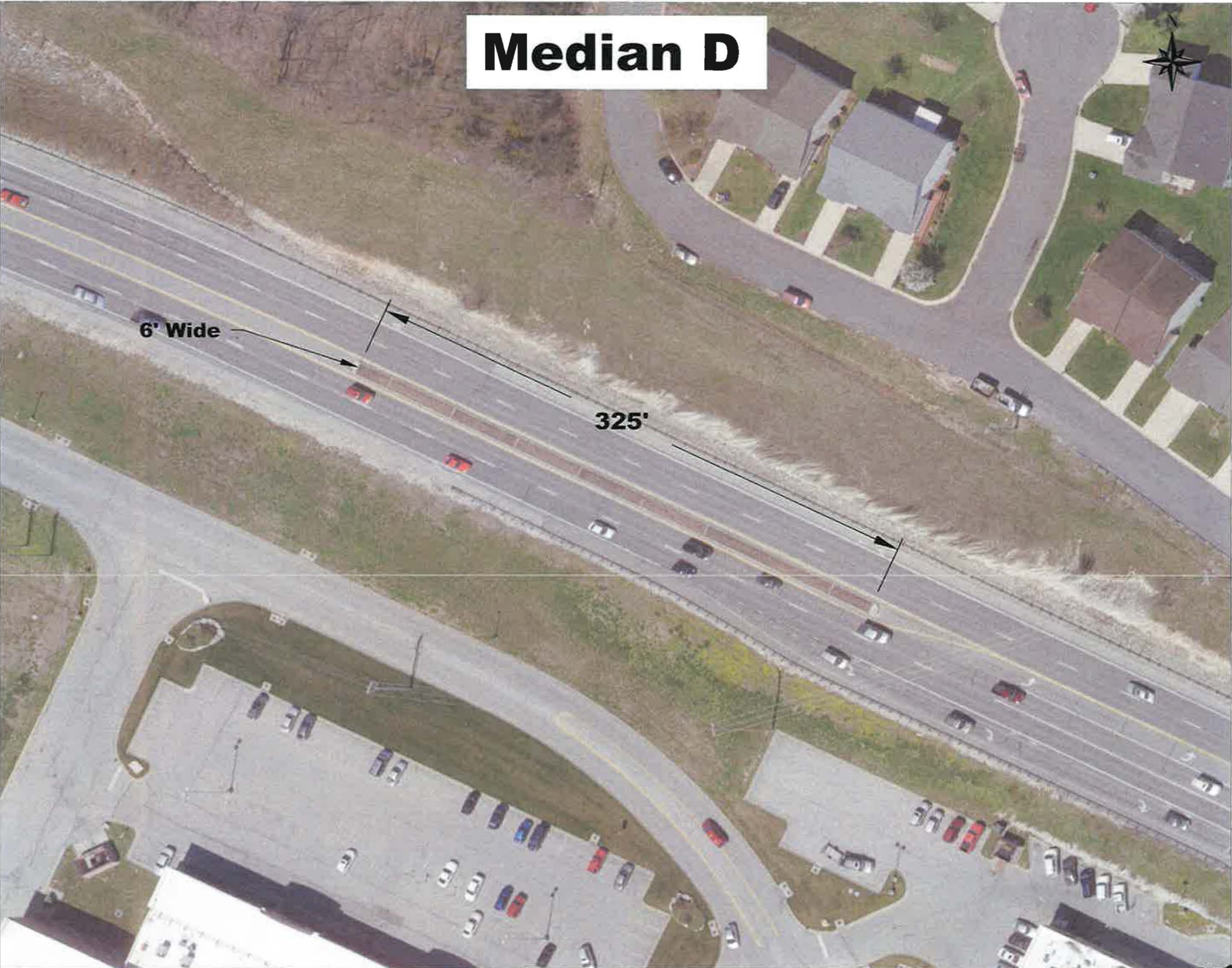


Median D



6' Wide

325'





POLICE
CITY OF WASHINGTON

Chief Edward Menefee
Washington Police Department
301 Jefferson Street
Washington, MO 63090

Administration: (636)390-1055
Dispatch: (636)390-1050
Fax: (636)390-2455
Email: emenefee@washmo.gov

Date: 04-26-22

To: City of Washington Council Members
Mayor Doug Hagedorn

From: Chief Edward Menefee

RE: Agreement for School Resource Officers (SRO) for Washington School District

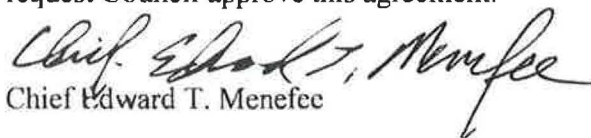
Council Members and Mayor,

I am submitting for your approval a City of Washington – School District of Washington Agreement for School Resource Officers.

The term of the agreement will be from July 1, 2022 through June 30, 2023. The amount paid to the City by the Washington School District is \$143,000.00. This covers salary and benefits for three (3) SROs for nine (9) months; the time school is in session.

The amount charged the School District is up over last year; it was \$134,000 last agreement. This is due to officer raises over the past couple years.

The Washington School District has agreed to and signed off on the agreement. I respectfully request Council approve this agreement.


Chief Edward T. Menefee

BILL NO. _____ INTRODUCED BY _____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND DIRECTING THE EXECUTION OF AN AGREEMENT BY AND BETWEEN THE CITY OF WASHINGTON, MISSOURI AND THE WASHINGTON SCHOOL DISTRICT FOR THREE (3) SCHOOL RESOURCE OFFICERS TO BE ASSIGNED TO DUTY FOR THE WASHINGTON SCHOOL DISTRICT

BE IT ORDNANIED by the Council of the City of Washington, Missouri, as follows:

SECTION 1: The Mayor is hereby authorized and directed to execute an agreement between the City of Washington, Missouri and the Washington School District for payment by the Washington School District for assignment of three (3) School Resource Officers to work at the schools in the Washington School District. A copy of said agreement is marked Exhibit "A" and is attached hereto and incorporated herein by reference.

SECTION 2: All ordinance or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3: The ordinance shall take effect and be in full force from and after the date of its passage and approval.

Passed: _____

ATTEST: _____

President of City Council

Approved: _____

ATTEST: _____

Mayor of Washington, Missouri

"Exhibit A"

CITY OF WASHINGTON – SCHOOL DISTRICT OF WASHINGTON
AGREEMENT FOR SCHOOL RESOURCE OFFICERS

School Resource Officers

- I. The Washington Police Department will provide three (3) POST commissioned/licensed law enforcement officers to serve as School Resource Officers on the campus areas of the School District of Washington.
- II. The School Resource Officers will work within the School District of Washington during the school year. The School Resource Officers' schedule will be determined in consultation with the administrative officials of the School District of Washington. The School Resource Officers will remain under the operational control and supervision of the Washington Police Department.
- III. The School Resource Officers' duties will include enforcement of the Missouri Criminal Code, the Missouri Juvenile Code and the Municipal Code of the City of Washington, with the goal of ensuring a safe environment for the students, faculty, and staff.
- IV. During periods when the School District of Washington is not in session the School Resource Officers' will return to Washington Police Department duties. While school is in session, School Resource Officers may be assigned to other duties during Washington Police Department emergencies.
- V. School Resource Officers shall remain employees of the City and shall not be considered employees of the School District of Washington. However, a School Resource Officer will be authorized pursuant to this agreement to provide security in schools outside the City of Washington that are located within the school district.
- VI. School Resource Officers shall have access to student information, discipline meetings, and administration meetings, as the School District of Washington deems necessary and subject to the confidentiality and privacy provisions of the Family Education Rights and Privacy Act, the Individuals with Disability Act, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and other state and federal statutory and case law.

Term

- I. The term of this agreement will be from July 1, 2022, through June 30, 2023.

Payment

- I. The School District of Washington will reimburse the City of Washington for the School Resource Officers in the amount of \$143,000.00 for service during the term of the agreement.
- II. The payment will be due June 30, 2023.

- III. If an officer is unable to perform the duties for an extended period of time and no replacement School Resource Officer is assigned to the District the payment will be prorated to reflect the time missed.
- IV. Vacation and Compensation Time will be taken while school is not in session unless otherwise arranged.

Removal of a School Resource Officer

- I. In the event the School District of Washington feels a School Resource Officer is not effectively performing her/his duties and responsibilities, the District will notify the Chief of Police in writing. The Chief of Police, or designee, will meet with District administration to conference regarding problem(s). The School Resource Officer will be given time to correct or resolve problem(s) if appropriate. If the problem(s) continue to exist or if the problem(s) do not get resolved, the School Resource Officer may be removed from the District.

Termination

- I. Either party may terminate this agreement without cause upon 30 days prior written notice to the other party.

Notices

- I. All notices to be served by the parties shall be mailed certified or registered mail, return receipt requested, or delivered in person, at the following addresses:

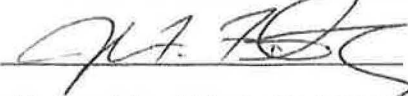
To the Washington Police Department
Office of the Chief of Police
301 Jefferson St.
Washington, MO 63090

To the School District of Washington
Superintendent of Schools
School District of Washington
220 Locust Street
Washington, MO 63090

Governing Provisions

- I. The provisions of this agreement will be governed by the laws of the State of Missouri.
- II. If a court of competent jurisdiction determines that any provision contained in this agreement, or any party thereof, cannot be enforced, the parties agree that such determination shall not affect or invalidate the remainder of the agreement.
- III. This agreement constitutes the entire agreement between the Washington Police Department and the School District of Washington, and supersedes all prior understandings, whether written or oral, between the parties with regard to the subject matter hereof. Any amendments or modifications to this Agreement must be in writing, approved in a manner required by law for each entity, and signed by the parties.

AUTHORIZATION SIGNATURES BY REPRESENTATIVES OF CONTRACTED PARTIES-

BY: 
Washington School District Representative

BY: _____
Mayor - Washington, MO.

ATTEST: _____ City Clerk