

**COUNCIL WORKSHOP MEETING
MONDAY, MARCH 6, 2023 – 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 February 6, 2023, Workshop minutes

Approve/Mayor

2. PRESENTATIONS:

3. REPORT OF DEPARTMENT HEADS:

A. Community & Economic Development Department -

a. Oldenburg Industrial Park Highway 100 Improvements

Discuss-Send to Council

b. Oldenburg Industrial Park Infrastructure Improvements

Discuss-Send to Council

B. Engineering Department -

a. 2023 I&I Reduction Project

Discuss-Send to Council

C. Parks Department -

a. Fairgrounds Pavilion Concrete Pad Project

Discuss-Send to Council

b. Highway 100 Median Maintenance Services

Discuss-Send to Council

D. Police Department -

a. 2015 Ford Flex AWD Sport Utility Vehicle

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
MONDAY, FEBRUARY 6, 2023**

The Council Workshop Meeting was held on Monday, February 6, 2023, at 6:00 p.m. in the Council Chamber, 405 Jefferson Street, Washington, Missouri. Mayor Hagedorn opened the meeting with roll call and Pledge of Allegiance.

Mayor:	Doug Hagedorn	Present	
Council Members:	Ward I	Al Behr	Present
		Duane Reed	Present
	Ward II	Mark Hidritch	Present
		Mark Wessels	Present
	Ward III	Chad Briggs	Present
		Jeff Patke	Present
	Ward IV	Mike Coulter	Present
		Joe Holtmeier	Present

Also Present:	City Administrator	Darren Lamb
	City Clerk	Sherri Klekamp
	Library Director	Nelson Appell
	Finance Director	Mary Sprung
	Public Works Superintendent	Kevin Quaethem
	Street Superintendent	Tony Bonastia
	Public Works Director	John Nilges
	Economic Development Director	Sal Maniaci
	Parks Director	Wayne Dunker
	Emergency Management Director	Mark Skornia
	Communications Director	Jennifer Brune
	Police Chief	Jim Armstrong

Approval of Minutes

A motion to approve the minutes from the January 3, 2023, Workshop meeting as presented made by Patke, seconded by Hidritch, passed without dissent.

Report of Department Heads

A. Communications Department –

a. 9-1-1 Contract Update

City Administrator Darren Lamb and Communications Director Jennifer Brune briefly discussed the cost breakdown on how much it would be to contract with Washington Direct Connection with AT&T versus Remote with Franklin County. After discussions on the contract and the Washington Ambulance District, a motion to ask City Attorney Mark Piontek to start drafting the contract with Franklin County made by Wessels, seconded by Holtmeier, passed without dissent.

February 6, 2023

**B. Community & Economic Development Department-
a. Oldenburg Park Annexation Correction**

January 24, 2023

Mayor & City Council

City of Washington

Washington, MO 63090

Re: Oldenburg Park Annexation Correction

Mayor & City Council,

On your agenda for the February 6, 2023 meeting is an ordinance correcting a mistake in the annexation of Oldenburg Industrial Park. The parent parcel included land on both side of the highway, however, the legal description was missing the 5 acres to the north of the Highway. This corrected ordinance will allow the County to update their maps to annex that portion as well.

Community & Economic Development Director Sal Maniaci discussed the annexation correction. After a brief discussion, a motion to forward to Council made by Holtmeier, seconded by Patke, passed without dissent.

**C. Engineering Department-
a. Street Pavement Strategy**

Public Works Director John Nilges discussed the strategy on street pavement projects.

b. High Street Project Budget Amendment

January 25, 2023

Honorable Mayor and City Council

City of Washington

405 Jefferson Street

Washington, MO 63090

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

Honorable Mayor and City Council,

The following is pertinent information to the subject request.

Description:

Find enclosed for your consideration an ordinance amending the 2023 budget for the above referenced project. This project was not included in the 2023 budget. This project includes a two inch asphalt overlay with full width cold milling and removal and replacement of sidewalk and curb and gutter to meet ADA regulations from Fifth Street to Front Street.

Approval is recommended.

Cost of the project:

DESIGN costs not to exceed.....\$142,578.49

CONSTRUCTION INSPECTION costs not to exceed.....\$113,677.86

Total.....\$256,256.35

Budget Information:

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 \$955,000 and the City's share will be \$238,750. The current schedule is for construction in 2025.

February 6, 2023

If you have any questions, concerns or would like additional information, please feel free to contact me.

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

Public Works Director John Nilges discussed the budget amendment. After a brief discussion, a motion to forward to Council made by Holtmeier, seconded by Coulter, passed without dissent.

c. The Meadow at Koch Farm Maintenance Bond Contract

February 2, 2023

Honorable Mayor and City Council

City of Washington

405 Jefferson Street

Washington, MO 63090

RE: THE MEADOW AT KOCH FARM

Acceptance of minimum improvements

Honorable Mayor and City Council,

The following is pertinent information to the subject request.

Description:

The following ordinance will allow for the acceptance of minimum improvements by the City Council. The City will take over maintenance of the improvements. A 20% maintenance bond in the amount of \$15,937.00 is included.

As always, if you have any questions, concerns or would like additional information, please feel free to contact me.

Respectfully,

John Nilges, PE

Public Works Director

Public Works Director John Nilges discussed the maintenance bond contract. After a brief discussion, a motion to forward to Council made by Patke, seconded by Hidritch, passed without dissent.

d. 1400 Jefferson, LLC Easement Deed

January 31, 2023

Honorable Mayor and City Council

City of Washington

Washington, MO 63090

RE: Jefferson Street – Roadway and ADA Compliance Project, STP-6406(607)

Permanent Easement Ordinances and Deed, Tracts 60 & 61

Dear Mayor and City Council Members:

Find attached for your review and approval permanent easement ordinances and deeds for two properties. These takings are required to complete the construction of this project. Please refer to the attachments which indicate the locations of these properties.

Respectfully submitted,

Andrea F. Lueken, P.E.

Assistant City Engineer

February 6, 2023

Public Works Director John Nilges discussed the 1400 Jefferson, LLC and Union Electric Company's easement deeds. After a brief discussion, a motion to forward to Council made by Patke, seconded by Hidritch, passed without dissent.

e. Union Electric Easement Deed

January 31, 2023

Honorable Mayor and City Council

City of Washington

Washington, MO 63090

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Respectfully submitted,

Andrea F. Lueken, P.E.

Assistant City Engineer

With no further discussion, a motion to forward to Council made by Hidritch, seconded by Coulter, passed without dissent.

f. Rabbit Trail CMAQ Application

January 30, 2023

Honorable Mayor and City Council

City of Washington

Washington, MO 63090

RE: Resolution – Rabbit Trail CMAQ Application

Dear Mayor and City Council Members:

The following resolution authorizes the City to apply of funding through East-West Gateway for the following project:

HIGHWAY 100 & INTERNATIONAL AVE / RABBIT TRAIL DRIVE CMAQ

This project will relocate the intersection of Phoenix Center Drive south, add a right turn lane on international, and add pedestrian facilities. The following is the funding breakdown:

<i>Application Fee</i>	<i>\$9,336</i>
<i>Grant</i>	<i>\$1,867,200</i>
<i>City Match</i>	<i>\$466,800</i>
<i>Total</i>	<i>\$2,587,502</i>

If awarded the project, it would be funding out of the City's ½ cent transportation sales tax.

Respectfully,

John Nilges, PE

Public Works Director

Public Works Director John Nilges discussed the application. After a brief discussion, a motion to forward to Council made by Hidritch, seconded by Holtmeier, passed without dissent.

D. Fire Department-

a. Union Pacific Railroad Parking License Agreement

February 1, 2023

City Council,

February 6, 2023

We are requesting your consideration of the attached Ordinance.

Union Pacific Railroad is requesting permission to park at the Washington Fire Department Training Center parking lot for 2 job trailers and up to 100 workers for a period of approximately one month from February into March 2023.

They are working on their tracks from Labadie to New Haven and are looking for a central location to have their work crews arrive, clock-in, shuttle to current location for the day, return, clock-out and depart daily.

Union Pacific used this facility approximately 5 years ago for the same purpose. The Fire Department desires to maintain a good working relationship with Union Pacific as they provide training opportunities on rail safety, hazardous materials, working with emergencies on passenger cars and working with rail tank cars.

There were no issues the last time we provided parking at our facility, and we recommend approval.

Respectfully,

Mark Skornia

Assistant Fire Chief

Assistant Fire Chief Mark Skornia discussed the parking license agreement. After a brief discussion, a motion to forward to Council made by Patke, seconded by Hidritch, passed without dissent.

E. Parks Department-

a. 2023 Aquatic Complex Visit Card Promotion

February 6, 2023

Honorable Mayor and City Council

City of Washington

405 Jefferson Street

Washington, MO 63090

RE: 2023 Aquatic Complex Visit Card Promotion

Honorable Mayor and City Council,

Per the Parks and Recreation Commission recommendation in 2022, staff would like to offer the same discount on the 20-visit pool card in 2023. The cards are normally priced at \$100 for 20 pool visits. From April 1 – May 31, the cards would be available for a discounted rate of \$85. An unlimited number of visit cards could be purchased at the discounted rate. On June 1, the visit cards would return to the regular price of \$100 (for \$20) visits for the remainder of the 2023 pool season. The 10-visit card would remain at \$50 for the entire pool season. Visit card passes would not expire.

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 & Recreation

Parks Director Wayne Dunker discussed the promotion. After discussions on the promotion and upcoming Midwest Pool Management contract, a motion to approve the 2023 Aquatic Complex Visit Card Promotion made by Patke, seconded by Briggs, passed without dissent.

February 6, 2023

b. Boat Dock Repair – Labor Proposal

February 6, 2023

Honorable Mayor and City Council

City of Washington

405 Jefferson Street

Washington, MO 63090

RE: Recommendation – Boat Dock #1 Refurbishing

Honorable Mayor and City Council,

In the Fiscal Year 2022-23 budget \$12,000 was budgeted for dock repair at Riverfront Park. One dock is budgeted this fiscal year and the other the next fiscal year. With the river levels low, we bid out the labor and material costs to get the project completed as soon as possible.

Two bids were received for labor (remove existing decking & bumper rail and install new decking and bumper rail):

S-K Contractors: \$4,800.00

A&M Odd Jobs & Home Repair LLC: \$5,310.00

Three bids were received for materials (composite decking boards & screws):

John Hall Lumber Co.: \$5097.46

Washington Lumber: \$5,202.98

*Hall Bros. Lumber: \$4,593.40 *(screws not included in bid)

Accordingly, staff recommends that Council consider the approval of S-K Contractors bid for labor in the amount of Four Thousand Eight Hundred Dollars and No Cents (\$4,800.00) and John Hall Lumber's bid for materials in the amount of Five Thousand Ninety-Seven Dollars and Forty-Six cents (\$5,097.46)

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 & Recreation

Parks Director Wayne Dunker discussed labor and material expenses for the boat dock repair. After a brief discussion, a motion to forward to Council made by Holtmeier, seconded by Behr, passed without dissent.

c. Boat Dock Repair – Materials Estimate

February 6, 2023

Honorable Mayor and City Council

City of Washington

405 Jefferson Street

Washington, MO 63090

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Honorable Mayor and City Council,

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February 6, 2023

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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 & Recreation

With no further discussion, a motion to forward to Council made by Patke, seconded by Holtmeier, passed without dissent.

*Discussion on silt and the boat ramp at the Riverfront.

d. Skate Park Concrete and Fence Agreement

February 6, 2023

Honorable Mayor and City Council

City of Washington

405 Jefferson Street

Washington, MO 63090

RE: Skate Park Concrete & Fence bids

Honorable Mayor and City Council,

The renovation of the Skate Park at Optimist Park is included in the current Capital Sales Tax Improvement Plan as a funded project. The total budgeted amount for the skate park renovation is \$150,000. As such, Staff bid out Phase I of this renovation project, which includes the replacement of the failing tennis court asphalt (around the concrete skate ramps), sidewalks and fence at the skate park. Demo of the old asphalt, sidewalks, fence, placement of rock and grading will be done by Staff. Phase II of the project (bid out later this year) will consist of cosmetic upgrades to the pavilion and restroom, installation of durable restroom partitions, new water fountain and possibly a new skate park feature. Budget for Phase II is \$54,100.

On January 12, the City received the following bids for concrete and fencing:

- KJ Unnerstall Construction: \$95,871.75
- Jokerst Paving & Contracting: \$112,883.75
- SK Contractors: \$117,949.25
- Next Level Construction: \$124,130.00

Find in this packet an ordinance for your consideration that would enter the City into a contract with KJ Unnerstall Construction Co. for \$95,871.75 for new concrete and fencing at Optimist Skate Park.

As always, if you have any questions, concerns or would like additional information, please feel free to contact me prior to the Council Meeting.

Respectfully,

Wayne Dunker MA, CPRP

Director of Parks & Recreation

February 6, 2023

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

e. Phase III Rotary Riverfront Trail Expansion

February 6, 2023

Honorable Mayor and City Council

City of Washington

405 Jefferson Street

Washington, MO 63090

RE: Resolution – Recreation Trails Program Grant Application

Honorable Mayor and City Council,

As some of you may remember from 2022, the Parks and Recreation Department is again working on the development of a grant application for the Recreation Trails Program (RTP) through the Missouri State Parks (A division of the Missouri Department of Natural Resources) for the potential funding for Phase III of the Rotary Riverfront Trail Expansion. Phase III is the connection of the East & West Rotary Riverfront Trails and ADA upgrades to the parking lot and restroom facility at Riverfront Park. Despite a good application, the City did not receive funding for this project in 2022. We believe this is a needed project, so we are reapplying.

RTP Grants are federal funds budgeted through the Federal Highway Administration and administered in Missouri through Missouri State Parks and are open to local and state governments, school districts, non-profit and for-profit organizations. Missouri receives between \$1 and \$1.5 million per fiscal year, with the maximum amount awarded is \$250,000 for trail projects. All applicants must have a minimum 20 percent match and must be open to the public for 25 years.

Although, staff is still working on the completion of the grant application, it is anticipated that we will be asking for the full grant amount of \$250,000. In doing so, the City is required to pass a resolution supporting the City's application for federal funds. Accordingly, staff with the support of the Parks and Recreation Commission, recommends that Council review and approve the attached resolution supporting the application for federal assistance from The Recreational Trails Program for Phase III of the Rotary Riverfront Trail Expansion.

As always, if you have any questions, concerns or would like additional information, please feel free to contact me prior to the City Council Meeting.

Respectfully,

Wayne Dunker MA, CPRP

Director of Parks & Recreation

Parks Director Wayne Dunker discussed the grant application. After discussions on the application and the Public Meeting on February 8, 2023, to discuss the Rotary Riverfront Trail Connection, a motion to forward to Council made by Patke, seconded by Holtmeier, passed without dissent.

F. Police Department-

a. Purchase of New Patrol Vehicles

1/30/23

To: City Council

Mayor Hagedorn

From: Chief Armstrong

February 6, 2023

RE: *Purchase of New Patrol Vehicles and Equipment for Same- 2022/2023 Budget Year
Respected Council Members and Honorable Mayor:*

For the year 2022/2023 budget, I am requesting, as budgeted for, the purchase of three (3) police vehicles:

3-2023 Dodge Durango Pursuit Vehicle AWD SUVs

All units will be assigned to the Road Patrol for use and will replace units in current service that have high mileage. Two older model Chevrolet Impalas and one Ford Explorer are the vehicles being replaced. We have experienced quality and reliability issues with the 2021 and 2022 model year Ford Explorers. A couple of them have required extensive repairs. Even though they were under warranty, there was still significant down time associated with the repairs. This prompted us to consider the Dodge Durango Pursuit. We consulted with area police agencies that have experience with the Durango Pursuit. They raved about their performance and reliability.

The 2022/2023 City Vehicle Replacement Fund budgeted for the purchase of three (3) new patrol units. The base state bid price for the 2023 Dodge Durango Pursuit AWD is \$39,450.00. Schicker Chrysler Dodge Jeep Ram of Washington quoted a price of \$39,450 per unit for a total of \$118,350.

We did seek two other bids for comparison. Landmark Dodge of Independence quoted a price of \$39,450 per unit. Dave Sinclair Chrysler Dodge Jeep and Ram quoted a price of \$39,334 per unit. The price difference for the units between Dave Sinclair and Schicker is minimal; about \$116/vehicle.

Given the fact that Schicker is located in town and meets the state contract price, I consider them to be the best bid and recommend we purchase from them.

I request approval of an ordinance and a sales contract with Schicker Chrysler Dodge Jeep Ram of Washington for the purchase of three (3) Dodge Durango Pursuit SUVs at a total purchase price of \$118,350.

Equipment

Getting three new patrol vehicles will require equipment purchase, outfitting, upgrading and equipment change over for the vehicles.

I recommend using Public Safety Upfitters LLC of Fenton, MO for the equipment needed, change out, outfitting and upgrades. Recently we have experienced quality issues with our previous vendor for upfitting. Our staff decided to seek out bids from other area emergency vehicle upfitters. Public Safety Upfitters LLC quoted a price of \$12,708 per vehicle. Defender Product Solutions LLC quoted a price of \$13,076.87 per vehicle. Small Town Upfitting LLC quoted a price of \$14,496 per vehicle.

Public Safety Upfitters is a major outfitter for emergency vehicles in our region. Because of the volume of equipment they purchase for installation, they get bulk pricing from manufacturers. This in turn reduces the equipment costs to the Department. We did research other agencies that use Public Safety Upfitters, and they were pleased with their service. Additionally, they carry they same brand of equipment we currently use in our patrol vehicles. For the above reasons, including being the lowest bid, I recommend using Public Safety Upfitters.

I request approval of an ordinance and a sales contract with Public Safety Upfitters for equipment, outfitting, upgrading, and equipment change over for three (3) 2023 Dodge Durango Pursuit SUVs. Total cost being \$38,124.

The 2022/2023 Vehicle Replacement Fund for the police department and equipping of three (3) police vehicles totals \$191,000.00. The total price from Schicker Chrysler and Public Safety

February 6, 2023

Upfitters is \$156,474. Adding the price of \$2,000 vehicle for graphics, puts the project \$28,526 under budget.

Should you have any questions or concerns, feel free to contact me prior to the City Council meeting.

Respectfully submitted,

Chief James Armstrong, DSN 256

Police Chief Jim Armstrong discussed the purchase. After a brief discussion, a motion to forward to Council made by Hidritch, seconded by Patke, passed without dissent.

b. Purchase of Equipment for New Patrol Vehicles

1/30/23

To: City Council

Mayor Hagedorn

From: Chief Armstrong

RE: Purchase of New Patrol Vehicles and Equipment for Same- 2022/2023 Budget Year

Respected Council Members and Honorable Mayor:

For the year 2022/2023 budget, I am requesting, as budgeted for, the purchase of three (3) police vehicles:

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February 6, 2023

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Public Safety Upfitters is a major outfitter for emergency vehicles in our region. Because of the volume of equipment they purchase for installation, they get bulk pricing from manufacturers. This in turn reduces the equipment costs to the Department. We did research other agencies that use Public Safety Upfitters, and they were pleased with their service. Additionally, they carry they same brand of equipment we currently use in our patrol vehicles. For the above reasons, including being the lowest bid, I recommend using Public Safety Upfitters.

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Should you have any questions or concerns, feel free to contact me prior to the City Council meeting.

Respectfully submitted,

Chief James Armstrong, DSN 256

Police Chief Jim Armstrong discussed the purchase. After a brief discussion, a motion to forward to Council made by Patke, seconded by Hidritch, passed without dissent.

Adjournment

With no further business to discuss, a motion to adjourn made at 6:45 p.m. by Holtmeier, seconded by Briggs passed without dissent.

February 6, 2023



March 1, 2023

Mayor & City Council
City of Washington
Washington, MO 63090

Re: Contracts for Engineering Services

Mayor & City Council,

On your agenda for March 6th are two contracts with Cochran Engineering. They both relate to the engineering, environmental review services, and construction administration needed for the improvements to the Oldenburg Industrial Park, however, with the project coming from two funding sources we are requesting two separate contracts with them.

The first contract is for approximately \$207,000 and is specifically for the design and administration of the improvements needed to Highway 100 for the project. These funds will be 100% reimbursed by the MODOT Cost Share Program that the City put an application in for in January.

The second contract is for approximately \$157,000 and is specifically for the improvements needed for the internal infrastructure for Oldenburg Industrial Park including the water, sewer, and roads. The City has an application with the Economic Development Administration for the actual construction of these improvements, however engineering costs are not covered by the grant. These funds are proposed to come from the economic development budget of the Capital Improvements Sales Tax.

We went out for RFQ's for engineering services and received two submittals. After review, staff scored Cochran the highest and felt the most confident with offering them the contracts.

Feel free to reach out with any questions.

Sincerely,

A handwritten signature in blue ink that reads "Sal Maniaci". The signature is fluid and cursive, with a long horizontal stroke at the end.

Sal Maniaci
Community and Economic Development Director

BILL NO. _____ INTRODUCED BY _____

ORDINANCE NO. _____

AN ORDINANCE ACCEPTING THE PROPOSAL FROM COCHRAN FOR PROFESSIONAL DESIGN SERVICES FOR HIGHWAY 100 TURN LANES FOR OLDENBURG INDUSTRIAL PARK

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 Proposal from Cochran for Professional Design Services for Highway 100 Turn Lanes for Oldenburg Industrial Park. A copy said proposal is marked Exhibit A and is attached hereto and incorporated herein by reference.

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

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



Architecture • Civil Engineering • Land Surveying • Site Development • Geotechnical Engineering • Inspection & Materials Testing

January 26, 2023
REVISED February 15, 2023

Mr. Sal Maniaci
City of Washington
405 Jefferson Street
Washington, MO 63090

SENT VIA: EMAIL
(smaniaci@washmo.gov)

RE: Proposal – Professional Design Services for the Highway 100 Turn Lanes for the Oldenburg Industrial Subdivision in Washington, MO

Dear Mr. Maniaci:

Thank you for giving Cochran the opportunity to submit this proposal to provide professional design services for the above-referenced project. In accordance with our discussions, we offer the following professional services:

ITEM 1: CIVIL CONSTRUCTION DOCUMENTS

SCOPE OF WORK:

The Oldenburg Industrial Subdivision is a 110-acre industrial subdivision on the south side of Highway 100 in Washington, MO. The traffic study completed by Lochmueller Group identified the need for left turn lane and right turn lane improvements on Highway 100 for the project as shown on the attached Exhibit "A".

1. Topographic Survey – perform a topographic survey of project site.
2. Roadway Cores – provide 4 cores of the pavement to confirm the existing pavement and baserock thicknesses.
3. Typical Roadway Sections – design typical roadway sections for the pavement widening.
4. Roadway Cross Sections – provide roadway cross sections at 50' intervals per MoDOT requirements.
5. Storm Sewers – design storm water culvert extensions as required for the pavement widening.
6. Traffic Control – provide traffic control plans in conformance with MoDOT requirements.
7. Construction Details – provide the necessary construction details for grading, roadway widening, culverts, etc.
8. Coordination with electric, telephone, and gas companies as required.
9. Scope of Work to include permitting and approval process with applicable governing authorities.
10. Review civil related shop drawings in a timely manner.
11. Prepare Project Manual for use in bidding and construction. The project manual will contain contract documents (front end documents) and technical specifications.
12. Prepare final engineer's cost estimate. Participate and assist in pre-bid meeting, bid openings, contractor selection, and pre-construction meeting. Cochran will also prepare a bid tabulation.

FEE:

The total amount of fee to be paid for the professional services outlined **Item No. 1** of this proposal shall be a lump sum fee of **\$151,500.00**. This fee is good for a period of thirty (30) days from the date of this proposal.

ITEM 2: CONSTRUCTION ADMINISTRATION/TESTING/INSPECTION

SCOPE OF WORK:

The Engineer will serve as the City's representative for administering the terms of the construction contract between the City and their contractor. Engineer will endeavor to protect the City against defects and deficiencies in workmanship and materials in work by the Contractor. However, the furnishing of such project representation will not

8 East Main Street Wentzville, MO 63385 Phone: 636-332-4574 Fax: 636-327-0760	737 Rudder Road Fenton, MO 63026 Phone: 314-842-4033 Fax: 314-842-5957	530A East Independence Drive Union, MO 63084 Phone: 636-584-0540 Fax: 636-584-0512	1163 Maple Street Farmington, MO 63640 Phone: 573-315-4810 Fax: 573-315-4811	2804 N. Biagio Street Ozark, MO 65721 Phone: 417-595-4180 Fax: 417-595-4109	905 Executive Drive Osage Beach, MO 65065 Phone: 573-525-0299 Fax: 573-525-0298
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January 26, 2023

REVISED February 15, 2023

make Engineer responsible for the construction methods and procedures used by Contractor or for the Contractor's failure to perform work in accordance with the contract documents. Engineer's services will include more specifically as follows:

1. Cochran will provide site visits to observe the Contractor's progress and quality of work, and to determine if the work conforms to the contract documents. The Engineer will accompany City representatives on visits to the project site as requested.
2. Reject work not conforming to the project documents.
3. Prepare change orders for issuance by the City as necessary and assure that proper approvals are made prior to work being performed.
4. Review shop drawings, submittals, wage rates, pay applications, and other related items called for in the contract documents.
5. Be present during critical construction operations.
6. Full-time compaction testing for new roadway widening and concrete testing.
 - a. Certified field and lab technicians to perform materials sampling and testing as detailed on the attached Lab and Labor Estimate sheet.
 - b. AASHTO Accredited Laboratory to provide lab testing of sampled materials
 - c. Administrative, Project Management, Coordination, Mileage and Drive time Associated with Services
 - d. Fifty-two (52) trips have been allocated for testing and inspection of the project mentioned above; items of scope are as outlined below and defined in the attached table:
 - i. Concrete Testing – Air, Slump, Cylinders (5 Cylinders per test) – (10 trips)
 - ii. Compaction Testing – Nuclear Density Gauge (Subgrade, Subbase, Asphalt) – (21 trips)
 - iii. Observation – (Proof Roll, Footing Bearing Verification, Building Pad Soil Remediation) – (6 trips)
 - iv. Sample Pick Up – (15 trips)
7. Participate in final inspection and provide Punchlist.

FEE – SCOPE OF WORK:

Cochran can provide the services as listed above on a **time and expense basis** for an estimated but not guaranteed amount of **\$55,500.00**. Cochran's lab and field personnel rates are attached below. This estimate was developed using contractor provided construction rates. The estimated value is subject to change if production rates are not met.

Upon request, the estimated amount can be re-evaluated utilizing actual contractor selected misc. options, production rates, and schedule.

Cochran will coordinate the testing with the owner or Site Superintendent. **Any contingent items added to the project not included in the original scope, overruns of original contracted items of the project or work beyond the original contract completion date, will be deemed extra work and invoiced on a time and materials basis according to the attached fee schedule.** Cochran will invoice monthly for all labor and laboratory work based off a time and material basis.

SERVICES NOT INCLUDED:

1. Architectural Services
2. Geotechnical/Environmental/Wetlands/Asbestos/Traffic/Fire Flow/Flood/Stream/Studies or Reports
3. Recording and Permit Fees

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4. Right-of-Way Document Preparation and Acquisition
5. Construction Stakeout
6. Retaining Wall Design
7. ALTA/ACSM Survey
8. Landscaping or Irrigation Plans
9. Site Lighting Electrical Layout
10. Water or Sanitary Sewer Improvements
11. Offsite Utility Improvements
12. As-Built Drawings
13. Rezoning
14. Subdivision Platting

OWNER'S RESPONSIBILITY:

1. The Owner shall give prompt and thorough consideration to all sketches, drawings, bid documents and other documents laid before him. Prompt decisions will be required if project is to proceed on schedule.
2. Advertisement and receipt of construction bids.
3. General day-to-day review of construction.

TOTAL FEE:

The total amount of fee to be paid for the professional services outlined in this proposal shall be as summarized in the following table. This fee is good for a period of thirty (30) days from the date of this proposal.

ITEM NO. 1: CIVIL CONSTRUCTION DOCUMENTS	\$151,500.00
ITEM NO. 2: CONSTRUCTION ADMINISTRATION/TESTING/INSPECTION	\$ 55,500.00
TOTAL	\$207,000.00

1. Reimbursable Expenses – Mileage, long distance telephone calls, courier, in-house and out-of-house printing charges, etc. are not included in the above fees and will be billed to the Client at cost. It is estimated that the reimbursable expenses will not exceed **\$1,000.00**.
2. Any tasks in addition to those specifically described above, will be billed as extras on a time and materials basis using the attached rates.
3. Billing for Cochran fees and reimbursable expenses will be submitted monthly.

PAYMENT:

1. An invoice for progress payments will be submitted monthly during the performance period of this contract for professional services rendered. It is agreed that monthly progress payments for fees earned under this agreement are due and payable within thirty (30) days of submission of invoices.
2. Any invoices remaining unpaid beyond thirty (30) days will accrue interest at the rate of one and one-half (1½%) per month on the unpaid balance.
3. It is further understood that if the project is abandoned, or if any work being performed is suspended in whole or in part prior to the completion of any phase, payment will be due in direct proportion to the amount of work accomplished.
4. In addition, payment will be due for all reimbursable expenses incurred prior to receipt of written notice or such abandonment or suspension.

TIME OF PERFORMANCE:

We will make every effort to complete the project within the Owner's time frame and according to schedule. Cochran will not, however, be responsible for delays caused by events beyond our control.

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TERMS AND CONDITIONS:

Attached to this proposal is a copy of the Cochran Standard Terms and Conditions. These terms and conditions shall apply to this proposal for professional services, which can also serve as a letter agreement. This document is enclosed for your review and reference.

GENERAL:

The terms and conditions of this contract shall apply to all work performed for the benefit of the project, any contiguous property that may be acquired at a later date, and any work performed off the site that benefits the project (permits, licenses, easements, etc.).

Cochran's reputation is based on understanding and meeting all the project objectives of our clients. We look forward to having an opportunity to demonstrate that responsiveness by providing timely and cost effective professional services.

If you would like to authorize Cochran to perform the professional services outlined in this proposal, please indicate your acceptance of the terms of this letter agreement by signing in the space provided below **AND** initialing **ALL** other pages. Return one (1) copy for our contract files.

If you have any questions or changes regarding this proposal, please contact me at 636-584-0540. Thank you.

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED AT COCHRAN'S OPTION.

Sincerely,



Elliott R. Reed, P.E.
Cochran

Acceptance:
City of Washington

By: _____

Title: _____

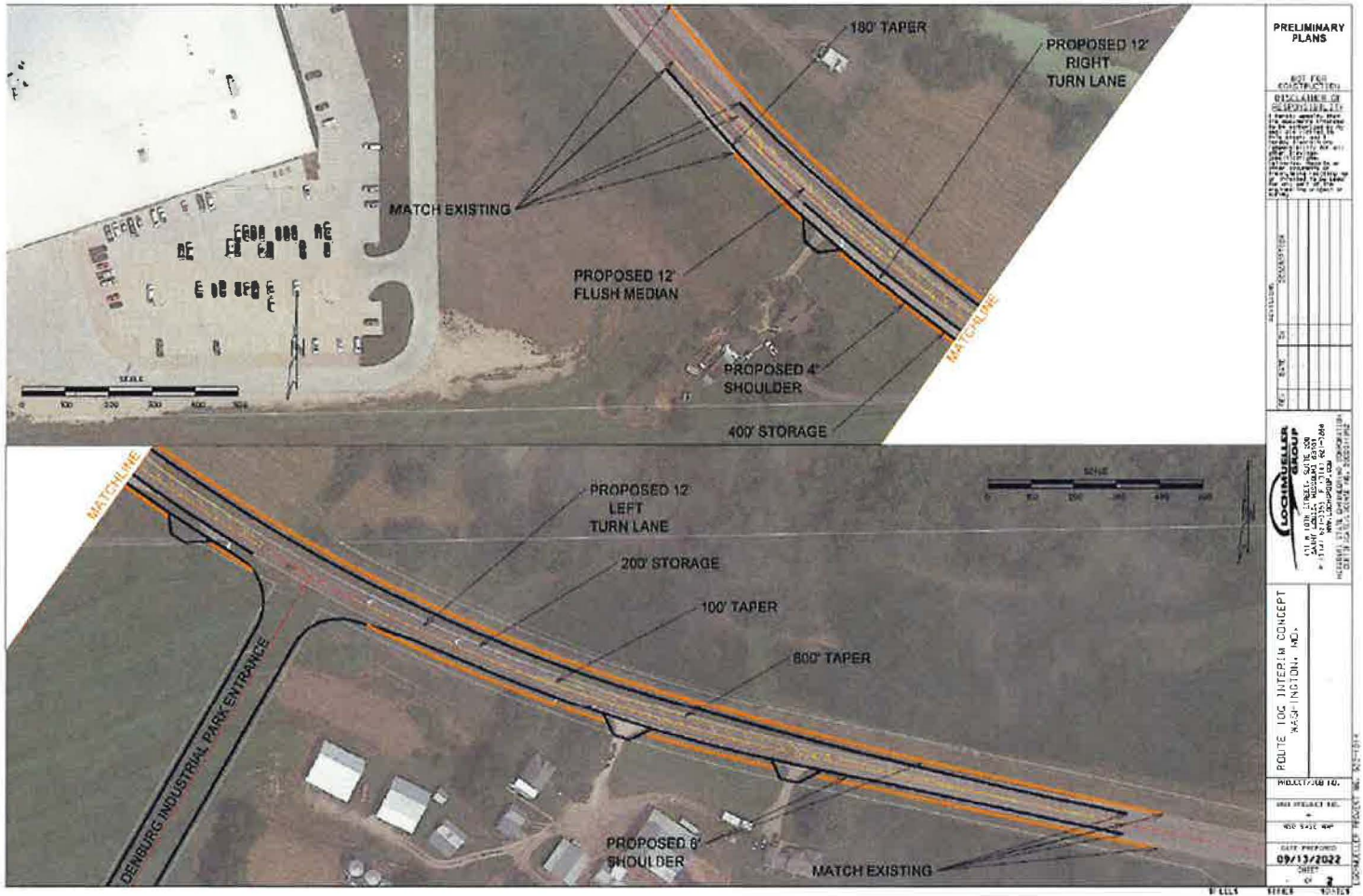
Date: _____

Attachments: Exhibit A
 Standard Charge-Out Rates
 Cochran Terms & Conditions



Architecture • Civil Engineering • Land Surveying • Site Development • Geotechnical Engineering • Inspection & Materials Testing

EXHIBIT A



8 East Main Street
Wentzville, MO 63385
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2023 Hourly Fee Schedule

The following is a list of hourly rates for our Fee Service Contracts.
Effective January 1, 2023, these rates will apply to all projects performed on a time and expense basis.

<u>Title</u>	<u>Charge-Out</u>
Principal	\$ 200.00
Division Director	\$ 185.00
Managing Engineer	\$ 170.00
Project Manager 1	\$ 160.00
Project Manager 2	\$ 150.00
Engineer 1	\$ 140.00
Engineer 2	\$ 130.00
Engineer 3	\$ 115.00
Engineer 4	\$ 105.00
Engineer 5	\$ 95.00
Senior Architect	\$ 150.00
Architect 1	\$ 125.00
Architect 2	\$ 115.00
Architect 3	\$ 105.00
Managing Surveyor	\$ 140.00
Surveyor 1	\$ 130.00
Surveyor 2	\$ 120.00
Surveyor 3	\$ 110.00
Senior Manager	\$ 85.00
Secretary	\$ 60.00
Field Manager	\$ 75.00
Inspector	\$ 70.00
Technician	\$ 55.00
MoDOT Certified Technician	\$ 60.00
Drafter/Survey Tech 1	\$ 105.00
Drafter/Survey Tech 2	\$ 95.00
Drafter/Survey Tech 3	\$ 85.00
Drafter/Survey Tech 4	\$ 70.00
One Man Survey Crew	\$ 120.00

Note:

*Survey Field crew prices will vary depending upon the Survey Tech assigned to the project.
*Overtime rate of 1.5 times the regular rate will be charged for hours worked after 8 hours per day, Saturdays, Sundays, or Holidays.

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**2023
FEE SCHEDULE**

Effective July 26, 2022, these rates will apply to all projects performed on a time and expense basis.

LABORATORY TESTING

	Test Method			Unit	Price
	ASTM	AASHTO	MoDOT		
Asphalt					
Asphalt Binder Content of Asphalt Mixtures by the Nuclear Method	D4125	T 287	TM-54	each	\$100.00
Asphalt Binder Content of HMA by the Ignition Method	D6307	T 308		each	\$150.00
Asphalt Binder Content of HMA with Washed Gradation - Ignition Method				each	\$210.00
RAP or Aggregate Correction Factor (for use with AC Content - Burn Off Method)			TM-77	each	\$125.00
Asphalt Calibration Curve for Nuclear Asphalt Content Gauge - 3 points				each	\$300.00
Bulk Specific Gravity and Density of Non-Absorptive Compacted Bituminous Mixtures	D2726	T 166		each	\$45.00
Thickness or Height of Compacted Bituminous Paving Mixture Specimens	D3549			each	\$10.00
Concrete					
Compressive Strength of Concrete Core (includes sawcutting one end)	C39	T 22		each	\$40.00
Compressive Strength of Concrete Cylinder (4"x8", 6"x12")	C39	T 22		each	\$15.00
Compressive Strength of Grout (Prism or Cube)	C1019			each	\$20.00
Compressive Strength of Mortar Cylinder (2"x4")	C39	T 22		each	\$15.00
Flexural Strength of Concrete Beam	C78	T 97		each	\$60.00
Sawcut Cylinders Ends (to meet ASTM standards)				each	\$15.00
Measuring Length of Drilled Concrete Cores	C174	T 148		each	\$25.00
Concrete Trial Mix Verification				mix	Call for pricing
Soil					
Atterberg Limits	D4318	T 89/90		each	\$95.00
California Bearing Ratio	D1883	T 193		each	\$180.00
Density of Soil in Place by the Drive-Cylinder Method	D2937			each	\$40.00
Modified Proctor	D1557	T 180		each	\$210.00
Moisture Content of Soil	D2216	T 265		each	\$25.00
pH Value	G51	T 289		each	\$45.00
Resistivity	G187	T 288		each	\$130.00
Standard Proctor	D698	T 99		each	\$180.00
Unconfined Compressive Strength of Cohesive Soil	D2166	T 208		each	\$80.00
Materials Finer than 75-µm (No. 200) Sieve by Washing - Soil	C117	T 11		each	\$65.00

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LABORATORY TESTING

	Test Method			Unit	Price
	ASTM	AASHTO	MoDOT		
Aggregates					
Deleterious Content of Aggregate (Concrete, Asphalt and Base)			TM-71	each	\$60.00
Flat and Elongated Particles in Coarse Aggregate	D4791			each	\$65.00
Moisture Content of Aggregate	C566	T 255		each	\$25.00
Specific Gravity and Absorption of Fine Aggregate	C128	T 84		each	\$120.00
Specific Gravity and Absorption of Coarse Aggregate	C127	T 85		each	\$75.00
Sieve Analysis of Fine and Coarse Aggregates	C136	T 27		each	\$75.00
Bulk Density ("Unit Weight") and Voids in Aggregate	C29	T 19		each	\$60.00
Materials Finer than 75-µm (No. 200) Sieve by Washing - Aggregate	C117	T 11		each	\$65.00
Rock					
Compressive Strength of Rock Core	C39	T 22		each	\$40.00
Rock Core Photograph				each	\$25.00
Additional Field Services					
Rebound Hammer Test				day	\$25.00
Coring Bit Wear (Asphalt and Concrete)				inch	\$6.00
Coring Equipment Rental				day	\$75.00
Trailer for Curing Concrete Cylinders and Beams				day	\$100.00
Nuclear Density Gauge				day	\$35.00
Measurement of Pavement Surface Texture Depth by the Sand-Patch Method			TM-19	each	\$20.00
Cylinder Molds				each	\$1.00
Vapor Emissions				each	\$17.50

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COCHRAN STANDARD TERMS AND CONDITIONS

1. Unless expressly stated in the attached proposal letter (“Proposal”), the Proposal must be accepted in writing within thirty days or the Proposal is void and unenforceable.
2. The acceptance of the Proposal is conditioned upon these Terms and Conditions and the terms of the Proposal, which shall be the only terms and conditions applicable to any agreement between Cochran and Client. Requesting performance of the work by Cochran, sending a notice to proceed with the work, or an acknowledgment of the Proposal by the issuance of a purchase order by Client, notwithstanding any terms additional to or different from those contained herein, shall be deemed to be an acceptance of these Terms and Conditions by Client.
3. The Proposal and these Terms and Conditions constitute the entire agreement (“Contract”) between Cochran and the Client for the services identified in the Proposal. All prior proposals, negotiations, representations, recommendations, statements or agreements made or entered into prior to or contemporaneously with this Contract, whether oral or in writing, are superseded by this Contract unless they are expressly incorporated herein by reference. Any terms contained in any communication from Client which are inconsistent with the Contract shall not be binding upon Cochran.
4. Cochran may submit invoices on not less than a monthly basis. Cochran’s invoices are due and payable within fifteen (15) days of the submission of each invoice. Interest will accrue at the rate of one and one-half percent (1.5%) per month on all unpaid invoices from the date payment was due. In the event that Client disputes an invoice, Client will pay the undisputed portion of the invoice and provide a written explanation to Cochran of the basis for Client’s dispute. If Client fails to pay in full any of Cochran’s invoices, Cochran may immediately, without waiving any other rights it may have, suspend work pending resolution of the payment dispute. Client’s failure to pay any of Cochran’s invoices in full shall be considered a material breach of this Contract.
5. Unless specifically stated to the contrary in the Proposal, reimbursable expenses are in addition to the amounts identified for Cochran’s fees for basic and additional services. Reimbursable expenses shall include, but are not limited to: Client-authorized out-of-town travel, transportation, and subsistence expenses; fees paid for securing approval of jurisdictional authorities; postage, courier, or other delivery fees; material costs for models, mock-ups, or other presentation media; photographic film and development expenses.
6. This Contract is binding upon the heirs, successors and assigns of the parties hereto and may not be assigned by either party without the prior written consent of the other party.
7. Nothing in this Contract is intended to create any enforceable third party rights against Client or Cochran.
8. Cochran will perform all of its services consistent with that degree of skill and learning ordinarily used under the same or similar circumstances by the members of Cochran’s profession working in the same locale.
9. If, and to the extent that Cochran’s scope of work includes construction phase services, any such services shall be provided in accordance with and governed by the applicable terms of AIA Document A201 General Conditions of the Contract for Construction, 2007 Edition (“General Conditions”) If there is a conflict between the General Conditions and this Contract, this Contract will control.
10. When making any interpretation or decision as required by the General Conditions, Cochran will not show partiality to any party, and shall not be liable for interpretations or decisions rendered in good faith.
11. Cochran has no responsibility or obligation to supervise or direct the work activities of the Client’s employees and representatives, or any construction contractors, sub-contractors or any of their employees, or other persons not employed by Cochran.
12. Cochran will abide by any job-site safety programs identified in writing by the Client but will not be responsible for job-site safety of any persons not directly employed by Cochran.
13. Cochran has no responsibility or obligation with respect to the construction means, methods, sequencing or procedures of any construction contractors, sub-contractors or any of their employees.
14. Cochran is not responsible for the failure of any contractor to perform work properly and in accordance with any applicable documents, plans, specifications, codes or standards.
15. Cochran is not responsible for the identification of unsafe conditions, nor for the identification, handling, or removal of hazardous and/or toxic substances found on or brought to the site. Prior to the start of work, the Client shall disclose and identify in writing to Cochran, to the best of Client’s knowledge, all hazardous and/or toxic substances located on the site. Client agrees to defend, indemnify and hold Cochran harmless from and against all claims, demands and liabilities of any kind or nature resulting from any hazardous and/or toxic substances that are found on the site and which were not identified by Client – even if not known by Client.

16. Cochran will have no obligation to commence its work until receipt of a written notice-to-proceed from Client and all other information required to be provided by Client. Cochran shall complete its work within any time limits identified in the Proposal. Cochran shall be entitled to an extension of time for performance of its work due to any delays that are due to any cause beyond Cochran's reasonable control. In no event will Client be entitled to any costs, losses, expenses or damages (including, but not limited to, claims or damages attributable to home office overhead costs, loss of profits, loss of business opportunities and/or additional financing costs) as a result of any delay caused or attributable to Cochran.
17. Cochran and Client waive any and all claims against each other for consequential, indirect, incidental and special damages arising out of or relating to this Contract, the alleged breach thereof, and/or Cochran's work; including, but not limited to, lost profits, loss of business, financing costs, extended home office overhead and similar types of damages.
18. Provided that written notice of a material breach of this Contract has been provided to the defaulting party and the defaulting party has failed to cure or taken reasonable efforts to cure its default within seven (7) calendar days of its receipt of the notice, the non-defaulting party may terminate this Contract by sending notice of termination to the defaulting party.
19. If the Contract is terminated for any reason not attributable to Cochran, Client will pay for the work performed by Cochran up to the date of termination plus all of Cochran's costs related to the termination (e.g., close-out costs, costs of terminating contracts with consultants, etc.).
20. In the event that there are any changes in applicable laws, codes or regulations after the Contract is executed that result in the need for Cochran to perform additional services and/or incur additional costs, Client shall pay Cochran for said services and costs at the rates set forth in the Proposal.
21. All documents and electronic media produced by Cochran under this Contract ("Instruments of Service") shall remain the property of Cochran, and Cochran shall retain all rights to the same, including copyrights, and they may be used by the Client only for the project identified in the Proposal. In the event of the termination of this Contract, the Client shall return the Instruments of Service to Cochran, and the Instruments of Service may not be used by the Client or a third party to complete the project without the written consent of Cochran.
22. Client and Cochran waive all rights against each other, any contractors and other professionals, and any of their respective consultants, contractors, suppliers, subcontractors, agents and employees, for damages caused by perils to the extent covered by insurance, except such rights as they may have to the insurance proceeds.
23. This Contract and the rights of the parties shall be governed by the laws of the State of Missouri.
24. Any claims, disputes, or other matters in question arising out of or relating to this Contract, the alleged breach thereof, and/or Cochran's work, at Cochran's sole election and discretion, shall be decided by binding arbitration in accordance with the Construction Industry Arbitration Rules of the AAA. A demand for arbitration must be made within a reasonable time, and before the expiration of the applicable statute of limitations. Unless it consents in writing, Cochran may not be joined in any other arbitration involving the same project. The arbitration shall be held where the project is located.
25. In the event of any dispute, claim, arbitration or litigation arising out of or relating to this Contract, the alleged breach thereof, and/or Cochran's work, the prevailing party shall be awarded its attorney's fees, expert witness fees, expenses, arbitration fees and expenses, and court costs at the trial and all appellate levels; including costs and fees related to collection efforts. Determination of which party prevailed shall be made by the judge or arbitrator(s). The determination shall be made by reviewing the claims resolved at trial or arbitration (which excludes any claims resolved prior to the taking of evidence), and then determining which party achieved the greater success by quantifying the amounts awarded the party recovering damages or obtaining relief and comparing that result to the relief and/or damages requested by that party at the trial or arbitration. If that party received less than 50% of the relief and/or damages it sought, then the other party prevailed. If that party receives more than 50% of the relief and/or damages it sought, then it prevailed. The judge or arbitrator(s) may consider the percentage of recovery when determining the amount of fees and expenses to be awarded to the prevailing party. If more than one claim is presented, then the judge or arbitrator(s) may elect to evaluate who is the prevailing party on a claim by claim basis, or in the aggregate as they deem appropriate. In making the determination of which party prevailed, the judge or arbitrator(s) shall take into consideration any settlement offers or demands made prior to trial or arbitration.
26. **THE TOTAL LIABILITY OF COCHRAN AND ANY OF COCHRAN'S CONSULTANTS FOR ANY ACTIONS, DAMAGES, CLAIMS, DEMANDS, JUDGMENTS, LOSSES, COSTS, OR EXPENSES (INCLUDING ATTORNEY'S FEES AND COURT OR ARBITRATION COSTS AND FEES) ARISING OUT OF OR RESULTING FROM COCHRAN'S OR ITS CONSULTANTS' NEGLIGENT ACTS, ERRORS, OMISSIONS OR BREACHES OF CONTRACT IS LIMITED TO THE LESSER OF THE CONTRACT PRICE OR THE AMOUNT OF PROFESSIONAL LIABILITY INSURANCE MAINTAINED BY COCHRAN AND AVAILABLE TO PAY SAID CLAIM. THIS LIMITATION OF LIABILITY IS APPLICABLE TO ALL CLAIMS THAT MAY BE ASSERTED AGAINST COCHRAN OR ITS CONSULTANTS ARISING OUT OF OR RELATING TO THE PROJECT OR THIS CONTRACT, WHETHER THE CLAIMS ARISE IN CONTRACT, TORT, STATUTE, OR OTHERWISE.**

Updated 01/2016

Initials _____

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March 1, 2023

Mayor & City Council
City of Washington
Washington, MO 63090

Re: Contracts for Engineering Services

Mayor & City Council,

On your agenda for March 6th are two contracts with Cochran Engineering. They both relate to the engineering, environmental review services, and construction administration needed for the improvements to the Oldenburg Industrial Park, however, with the project coming from two funding sources we are requesting two separate contracts with them.

The first contract is for approximately \$207,000 and is specifically for the design and administration of the improvements needed to Highway 100 for the project. These funds will be 100% reimbursed by the MODOT Cost Share Program that the City put an application in for in January.

The second contract is for approximately \$157,000 and is specifically for the improvements needed for the internal infrastructure for Oldenburg Industrial Park including the water, sewer, and roads. The City has an application with the Economic Development Administration for the actual construction of these improvements, however engineering costs are not covered by the grant. These funds are proposed to come from the economic development budget of the Capital Improvements Sales Tax.

We went out for RFQ's for engineering services and received two submittals. After review, staff scored Cochran the highest and felt the most confident with offering them the contracts.

Feel free to reach out with any questions.

Sincerely,

Sal Maniaci
Community and Economic Development Director

BILL NO. _____ INTRODUCED BY _____

ORDINANCE NO. _____

AN ORDINANCE ACCEPTING THE PROPOSAL FROM COCHRAN FOR PROFESSIONAL DESIGN SERVICES FOR ON-SITE INFRASTRUCTURE IMPROVEMENTS FOR OLDENBURG INDUSTRIAL PARK

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 Proposal from Cochran for Professional Design Services for On-Site Infrastructure Improvements for Oldenburg Industrial Park. A copy said proposal is marked Exhibit A and is attached hereto and incorporated herein by reference.

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

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



January 25, 2023

Mr. Sal Maniaci
City of Washington
405 Jefferson Street
Washington, MO 63090

SENT VIA: EMAIL
(smaniaci@washmo.gov)

RE: Proposal – Professional Design Services for the On-site Infrastructure Improvements for the Oldenburg Industrial Subdivision in Washington, MO

Dear Mr. Maniaci:

Thank you for giving Cochran the opportunity to submit this proposal to provide professional design services for the above-referenced project. In accordance with our discussions, we offer the following professional services:

ITEM 1: CIVIL CONSTRUCTION DOCUMENTS

SCOPE OF WORK:

The Oldenburg Industrial Subdivision is a 110-acre industrial subdivision on the south side of Highway 100 in Washington, MO. The civil design for the first phase of the subdivision will include streets, water, sanitary sewer, and storm water detention. The street design will include Watermann Drive and Averbek Drive as shown on the attached Exhibit "B". The water design will include a 12-inch water main extension into the site from Highway 100. The sanitary sewer design will include a lift station to service the entire Oldenburg Subdivision along with a gravity sewer extension to serve Lot 1 of the development. The storm water detention basin will be designed to serve Lot 1 as well as the future industrial lots in the subdivision.

1. Topographic Survey – perform a topographic survey of site as shown on the attached Exhibit "A".
2. Site Plan – design on-site streets based on the attached Exhibit "B".
3. Grading – design grading to work with existing topography to provide for proper drainage of paved areas and drives. The grading plan will include all SWPPP design and details necessary for land disturbance permitting.
4. Sanitary Sewer Plan – design gravity on-site sewer lines, laterals and structures as required to provide service to the proposed development. Design and permitting of one sanitary sewer lift station is included in the scope of services. Off-site sewer extensions are not included in the scope of services.
5. Storm Sewer Plan – design an on-site storm sewer system to adequately handle the storm water runoff for the proposed development. Design of storm water detention and storm water quality facilities meeting city requirements is included in the scope of services.
6. Water Line Design – design an on-site water line system to serve the subdivision for domestic and fire flows. Scope does not include the design of water pumps or water towers for fire flow requirements. Scope does not
7. Site Lighting Plan – provide a street lighting plan meeting city requirements.
8. Construction Details – provide the necessary construction details for the storm sewers, sanitary sewers, water main, pavement & roadways, erosion control and grading.
9. Scope of Work to include permitting and approval process with applicable governing authorities.
10. Review civil related shop drawings in a timely manner.
11. Permitting of new water main and sanitary sewer improvements with the Missouri Department of Natural Resources to obtain a Construction Permit. Cochran will prepare the construction permit application for signature by Owner.
12. Prepare Project Manual for use in bidding and construction. The project manual will contain contract documents (front end documents) and technical specifications.
13. Prepare final engineer's cost estimate. Participate and assist in pre-bid meeting, bid openings, contractor selection, and pre-construction meeting. Cochran will also prepare a bid tabulation.

8 East Main Street
Wentzville, MO 63385
Phone: 636-332-4574
Fax: 636-327-0760

737 Rudder Road
Fenton, MO 63026
Phone: 314-842-4033
Fax: 314-842-5957

**530A East Independence Drive
Union, MO 63084
Phone: 636-584-0540
Fax: 636-584-0512**

1163 Maple Street
Farmington, MO 63640
Phone: 573-315-4810
Fax: 573-315-4811

2804 N. Biagio Street
Ozark, MO 65721
Phone: 417-595-4180
Fax: 417-595-4109

905 Executive Drive
Osage Beach, MO 65065
Phone: 573-525-0299
Fax: 573-525-0298

FEE:

The total amount of fee to be paid for the professional services outlined **Item No. 1** of this proposal shall be a lump sum fee of **\$98,750.00**. This fee is good for a period of thirty (30) days from the date of this proposal.

ITEM 2: GEOTECHNICAL INVESTIGATION

SCOPE OF WORK:

1. Field: mobilization, boring layout, 2 borings to a depth of 15 feet below existing grade within detention basin area; 14 borings to a depth of 10 feet below existing grade within site, 1 boring to a depth of 20 feet below existing grade at lift station location, (all borings to proposed depth or auger refusal, whichever comes first) split-spoon sampling at 2.5-to 5-foot intervals
2. Laboratory: visual-manual classification and moisture content determination for all split-spoon samples, Atterberg limits for select samples
3. Engineering: boring logs, profiles, and boring plan

FEE:

The total amount of fee to be paid for the professional services outlined **Item No. 2** of this proposal shall be a lump sum fee of **\$7,935.00**. This fee is good for a period of thirty (30) days from the date of this proposal.

ITEM 3: CONSTRUCTION ADMINISTRATION/TESTING/INSPECTION

SCOPE OF WORK:

The Engineer will serve as the City's representative for administering the terms of the construction contract between the City and their contractor. Engineer will endeavor to protect the City against defects and deficiencies in workmanship and materials in work by the Contractor. However, the furnishing of such project representation will not make Engineer responsible for the construction methods and procedures used by Contractor or for the Contractor's failure to perform work in accordance with the contract documents. Engineer's services will include more specifically as follows:

1. Cochran will provide site visits to observe the Contractor's progress and quality of work, and to determine if the work conforms to the contract documents. The Engineer will accompany City representatives on visits to the project site as requested.
2. Reject work not conforming to the project documents.
3. Prepare change orders for issuance by the City as necessary and assure that proper approvals are made prior to work being performed.
4. Review shop drawings, submittals, wage rates, pay applications, and other related items called for in the contract documents.
5. Be present during critical construction operations, i.e. pressure testing, bacteriological testing, connections to existing mains, etc.
6. Part-time water main, gravity sanitary sewer, sanitary sewer forcemain, and lift station installation inspection.
 - a. Water main installation – assume 16 days of construction with 2 hours of inspection per day
 - b. Gravity sanitary sewer installation – assume 23 days of construction with 2 hours of inspection per day
 - c. Sanitary sewer forcemain installation – assume 17 days of construction with 2 hours of inspection per day
 - d. Sanitary sewer lift station installation – assume 5 visits for inspection of lift station construction

7. An inspector will be on-site as needed to measure payment quantities for solid rock excavation.
8. Full-time compaction testing for new street subgrade and concrete testing.
 - a. Certified field and lab technicians to perform materials sampling and testing as detailed on the attached Lab and Labor Estimate sheet.
 - b. AASHTO Accredited Laboratory to provide lab testing of sampled materials
 - c. Administrative, Project Management, Coordination, Mileage and Drive time Associated with Services
 - d. One hundred seventeen (117) trips have been allocated for testing and inspection of the project mentioned above; items of scope are as outlined below and defined in the attached table:
 - i. Concrete Testing – Air, Slump, Cylinders (5 Cylinders per test) – (25 trips)
 - ii. Compaction Testing – Nuclear Density Gauge (Subgrade, Subbase, Asphalt) – (42 trips)
 - iii. Observation – (Proof Roll, Footing Bearing Verification, Building Pad Soil Remediation) – (5 trips)
 - iv. Sample Pick Up – (45 trips)
9. Participate in final inspection and provide Punchlist.

FEE – SCOPE OF WORK:

Cochran can provide the services as listed above on a **time and expense basis** for an estimated but not guaranteed amount of **\$49,500.00**. Cochran's lab and field personnel rates are attached below. This estimate was developed using contractor provided construction rates. The estimated value is subject to change if production rates are not met.

Upon request, the estimated amount can be re-evaluated utilizing actual contractor selected misc. options, production rates, and schedule.

Cochran will coordinate the testing with the owner or Site Superintendent. **Any contingent items added to the project not included in the original scope, overruns of original contracted items of the project or work beyond the original contract completion date, will be deemed extra work and invoiced on a time and materials basis according to the attached fee schedule.** Cochran will invoice monthly for all labor and laboratory work based off a time and material basis.

SERVICES NOT INCLUDED:

1. Architectural Services
2. Environmental/Wetlands/Asbestos/Traffic/Fire Flow/Flood/Stream/Studies or Reports
3. Recording and Permit Fees
4. Off-site Conceptual Work and/or Cost Estimation
5. Right-of-Way Document Preparation and Acquisition
6. Construction Stakeout
7. Retaining Wall Design
8. ALTA/ACSM Survey (Previously Completed)
9. Landscaping or Irrigation Plans
10. Site Lighting Electrical Layout
11. Offsite Roadway Improvements
12. Offsite Utility Improvements
13. As-Built Drawings
14. Rezoning
15. Subdivision Plat (Previously Completed)

OWNER'S RESPONSIBILITY:

1. The Owner shall give prompt and thorough consideration to all sketches, drawings, bid documents and other documents laid before him. Prompt decisions will be required if project is to proceed on schedule.
2. Advertisement and receipt of construction bids.
3. General day-to-day review of construction.

TOTAL FEE:

The total amount of fee to be paid for the professional services outlined in this proposal shall be as summarized in the following table. This fee is good for a period of thirty (30) days from the date of this proposal.

ITEM NO. 1: CIVIL CONSTRUCTION DOCUMENTS	\$ 98,750.00
ITEM NO. 2: GEOTECHNICAL INVESTIGATION	\$ 7,935.00
ITEM NO. 3: CONSTRUCTION ADMINISTRATION/TESTING/INSPECTION	\$ 49,500.00
TOTAL	\$156,185.00

1. Reimbursable Expenses – Mileage, long distance telephone calls, courier, in-house and out-of-house printing charges, etc. are not included in the above fees and will be billed to the Client at cost. It is estimated that the reimbursable expenses will not exceed **\$1,500.00**.
2. Any tasks in addition to those specifically described above, will be billed as extras on a time and materials basis using the attached rates.
3. Billing for Cochran fees and reimbursable expenses will be submitted monthly.

PAYMENT:

1. An invoice for progress payments will be submitted monthly during the performance period of this contract for professional services rendered. It is agreed that monthly progress payments for fees earned under this agreement are due and payable within thirty (30) days of submission of invoices.
2. Any invoices remaining unpaid beyond thirty (30) days will accrue interest at the rate of one and one-half (1½%) per month on the unpaid balance.
3. It is further understood that if the project is abandoned, or if any work being performed is suspended in whole or in part prior to the completion of any phase, payment will be due in direct proportion to the amount of work accomplished.
4. In addition, payment will be due for all reimbursable expenses incurred prior to receipt of written notice or such abandonment or suspension.

TIME OF PERFORMANCE:

We will make every effort to complete the project within the Owner's time frame and according to schedule. Cochran will not, however, be responsible for delays caused by events beyond our control.

TERMS AND CONDITIONS:

Attached to this proposal is a copy of the Cochran Standard Terms and Conditions. These terms and conditions shall apply to this proposal for professional services, which can also serve as a letter agreement. This document is enclosed for your review and reference.

3AB

GENERAL:

The terms and conditions of this contract shall apply to all work performed for the benefit of the project, any contiguous property that may be acquired at a later date, and any work performed off the site that benefits the project (permits, licenses, easements, etc.).


Cochran's reputation is based on understanding and meeting all the project objectives of our clients. We look forward to having an opportunity to demonstrate that responsiveness by providing timely and cost effective professional services.

If you would like to authorize Cochran to perform the professional services outlined in this proposal, please indicate your acceptance of the terms of this letter agreement by signing in the space provided below **AND** initializing **ALL** other pages. Return one (1) copy for our contract files.

If you have any questions or changes regarding this proposal, please contact me at 636-584-0540. Thank you.

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED AT COCHRAN'S OPTION.

Sincerely,



Elliott R. Reed, P.E.
Cochran

Acceptance:
City of Washington

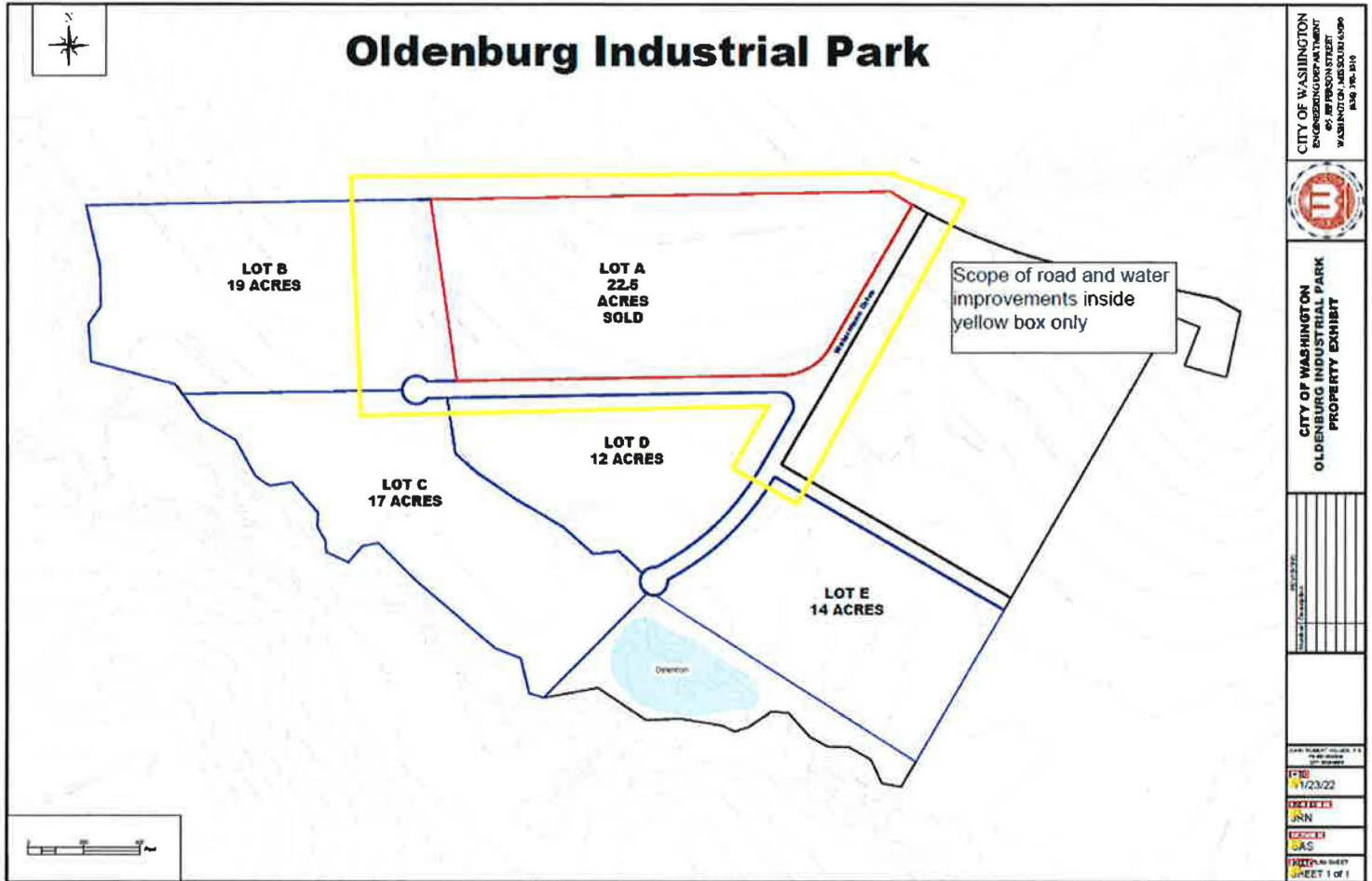
By: _____

Title: _____

Date: _____

Attachments: Exhibit A
 Standard Charge-Out Rates
 Cochran Terms & Conditions

EXHIBIT "B"



3Ab



2023 Hourly Fee Schedule

The following is a list of hourly rates for our Fee Service Contracts.
Effective January 1, 2023, these rates will apply to all projects performed on a time and expense basis.

<u>Title</u>	<u>Charge-Out</u>
Principal	\$ 200.00
Division Director	\$ 185.00
Managing Engineer	\$ 170.00
Project Manager 1	\$ 160.00
Project Manager 2	\$ 150.00
Engineer 1	\$ 140.00
Engineer 2	\$ 130.00
Engineer 3	\$ 115.00
Engineer 4	\$ 105.00
Engineer 5	\$ 95.00
Senior Architect	\$ 150.00
Architect 1	\$ 125.00
Architect 2	\$ 115.00
Architect 3	\$ 105.00
Managing Surveyor	\$ 140.00
Surveyor 1	\$ 130.00
Surveyor 2	\$ 120.00
Surveyor 3	\$ 110.00
Senior Manager	\$ 85.00
Secretary	\$ 60.00
Field Manager	\$ 75.00
Inspector	\$ 70.00
Technician	\$ 55.00
MoDOT Certified Technician	\$ 60.00
Drafter/Survey Tech 1	\$ 105.00
Drafter/Survey Tech 2	\$ 95.00
Drafter/Survey Tech 3	\$ 85.00
Drafter/Survey Tech 4	\$ 70.00
One Man Survey Crew	\$ 120.00

Note:

*Survey Field crew prices will vary depending upon the Survey Tech assigned to the project.
*Overtime rate of 1.5 times the regular rate will be charged for hours worked after 8 hours per day, Saturdays, Sundays, or Holidays.

COCHRAN STANDARD TERMS AND CONDITIONS

1. Unless expressly stated in the attached proposal letter (“Proposal”), the Proposal must be accepted in writing within thirty days or the Proposal is void and unenforceable.
2. The acceptance of the Proposal is conditioned upon these Terms and Conditions and the terms of the Proposal, which shall be the only terms and conditions applicable to any agreement between Cochran and Client. Requesting performance of the work by Cochran, sending a notice to proceed with the work, or an acknowledgment of the Proposal by the issuance of a purchase order by Client, notwithstanding any terms additional to or different from those contained herein, shall be deemed to be an acceptance of these Terms and Conditions by Client.
3. The Proposal and these Terms and Conditions constitute the entire agreement (“Contract”) between Cochran and the Client for the services identified in the Proposal. All prior proposals, negotiations, representations, recommendations, statements or agreements made or entered into prior to or contemporaneously with this Contract, whether oral or in writing, are superseded by this Contract unless they are expressly incorporated herein by reference. Any terms contained in any communication from Client which are inconsistent with the Contract shall not be binding upon Cochran.
4. Cochran may submit invoices on not less than a monthly basis. Cochran’s invoices are due and payable within fifteen (15) days of the submission of each invoice. Interest will accrue at the rate of one and one-half percent (1.5%) per month on all unpaid invoices from the date payment was due. In the event that Client disputes an invoice, Client will pay the undisputed portion of the invoice and provide a written explanation to Cochran of the basis for Client’s dispute. If Client fails to pay in full any of Cochran’s invoices, Cochran may immediately, without waiving any other rights it may have, suspend work pending resolution of the payment dispute. Client’s failure to pay any of Cochran’s invoices in full shall be considered a material breach of this Contract.
5. Unless specifically stated to the contrary in the Proposal, reimbursable expenses are in addition to the amounts identified for Cochran’s fees for basic and additional services. Reimbursable expenses shall include, but are not limited to: Client-authorized out-of-town travel, transportation, and subsistence expenses; fees paid for securing approval of jurisdictional authorities; postage, courier, or other delivery fees; material costs for models, mock-ups, or other presentation media; photographic film and development expenses.
6. This Contract is binding upon the heirs, successors and assigns of the parties hereto and may not be assigned by either party without the prior written consent of the other party.
7. Nothing in this Contract is intended to create any enforceable third party rights against Client or Cochran.
8. Cochran will perform all of its services consistent with that degree of skill and learning ordinarily used under the same or similar circumstances by the members of Cochran’s profession working in the same locale.
9. If, and to the extent that Cochran’s scope of work includes construction phase services, any such services shall be provided in accordance with and governed by the applicable terms of AIA Document A201 General Conditions of the Contract for Construction, 2007 Edition (“General Conditions”) If there is a conflict between the General Conditions and this Contract, this Contract will control.
10. When making any interpretation or decision as required by the General Conditions, Cochran will not show partiality to any party, and shall not be liable for interpretations or decisions rendered in good faith.
11. Cochran has no responsibility or obligation to supervise or direct the work activities of the Client’s employees and representatives, or any construction contractors, sub-contractors or any of their employees, or other persons not employed by Cochran.
12. Cochran will abide by any job-site safety programs identified in writing by the Client but will not be responsible for job-site safety of any persons not directly employed by Cochran.
13. Cochran has no responsibility or obligation with respect to the construction means, methods, sequencing or procedures of any construction contractors, sub-contractors or any of their employees.
14. Cochran is not responsible for the failure of any contractor to perform work properly and in accordance with any applicable documents, plans, specifications, codes or standards.
15. Cochran is not responsible for the identification of unsafe conditions, nor for the identification, handling, or removal of hazardous and/or toxic substances found on or brought to the site. Prior to the start of work, the Client shall disclose and identify in writing to Cochran, to the best of Client’s knowledge, all hazardous and/or toxic substances located on the site. Client agrees to defend, indemnify and hold Cochran harmless from and against all claims, demands and liabilities of any kind or nature resulting from any hazardous and/or toxic substances that are found on the site and which were not identified by Client – even if not known by Client.

16. Cochran will have no obligation to commence its work until receipt of a written notice-to-proceed from Client and all other information required to be provided by Client. Cochran shall complete its work within any time limits identified in the Proposal. Cochran shall be entitled to an extension of time for performance of its work due to any delays that are due to any cause beyond Cochran's reasonable control. In no event will Client be entitled to any costs, losses, expenses or damages (including, but not limited to, claims or damages attributable to home office overhead costs, loss of profits, loss of business opportunities and/or additional financing costs) as a result of any delay caused or attributable to Cochran.
17. Cochran and Client waive any and all claims against each other for consequential, indirect, incidental and special damages arising out of or relating to this Contract, the alleged breach thereof, and/or Cochran's work; including, but not limited to, lost profits, loss of business, financing costs, extended home office overhead and similar types of damages.
18. Provided that written notice of a material breach of this Contract has been provided to the defaulting party and the defaulting party has failed to cure or taken reasonable efforts to cure its default within seven (7) calendar days of its receipt of the notice, the non-defaulting party may terminate this Contract by sending notice of termination to the defaulting party.
19. If the Contract is terminated for any reason not attributable to Cochran, Client will pay for the work performed by Cochran up to the date of termination plus all of Cochran's costs related to the termination (e.g., close-out costs, costs of terminating contracts with consultants, etc.).
20. In the event that there are any changes in applicable laws, codes or regulations after the Contract is executed that result in the need for Cochran to perform additional services and/or incur additional costs, Client shall pay Cochran for said services and costs at the rates set forth in the Proposal.
21. All documents and electronic media produced by Cochran under this Contract ("Instruments of Service") shall remain the property of Cochran, and Cochran shall retain all rights to the same, including copyrights, and they may be used by the Client only for the project identified in the Proposal. In the event of the termination of this Contract, the Client shall return the Instruments of Service to Cochran, and the Instruments of Service may not be used by the Client or a third party to complete the project without the written consent of Cochran.
22. Client and Cochran waive all rights against each other, any contractors and other professionals, and any of their respective consultants, contractors, suppliers, subcontractors, agents and employees, for damages caused by perils to the extent covered by insurance, except such rights as they may have to the insurance proceeds.
23. This Contract and the rights of the parties shall be governed by the laws of the State of Missouri.
24. Any claims, disputes, or other matters in question arising out of or relating to this Contract, the alleged breach thereof, and/or Cochran's work, at Cochran's sole election and discretion, shall be decided by binding arbitration in accordance with the Construction Industry Arbitration Rules of the AAA. A demand for arbitration must be made within a reasonable time, and before the expiration of the applicable statute of limitations. Unless it consents in writing, Cochran may not be joined in any other arbitration involving the same project. The arbitration shall be held where the project is located.
25. In the event of any dispute, claim, arbitration or litigation arising out of or relating to this Contract, the alleged breach thereof, and/or Cochran's work, the prevailing party shall be awarded its attorney's fees, expert witness fees, expenses, arbitration fees and expenses, and court costs at the trial and all appellate levels; including costs and fees related to collection efforts. Determination of which party prevailed shall be made by the judge or arbitrator(s). The determination shall be made by reviewing the claims resolved at trial or arbitration (which excludes any claims resolved prior to the taking of evidence), and then determining which party achieved the greater success by quantifying the amounts awarded the party recovering damages or obtaining relief and comparing that result to the relief and/or damages requested by that party at the trial or arbitration. If that party received less than 50% of the relief and/or damages it sought, then the other party prevailed. If that party receives more than 50% of the relief and/or damages it sought, then it prevailed. The judge or arbitrator(s) may consider the percentage of recovery when determining the amount of fees and expenses to be awarded to the prevailing party. If more than one claim is presented, then the judge or arbitrator(s) may elect to evaluate who is the prevailing party on a claim by claim basis, or in the aggregate as they deem appropriate. In making the determination of which party prevailed, the judge or arbitrator(s) shall take into consideration any settlement offers or demands made prior to trial or arbitration.
26. **THE TOTAL LIABILITY OF COCHRAN AND ANY OF COCHRAN'S CONSULTANTS FOR ANY ACTIONS, DAMAGES, CLAIMS, DEMANDS, JUDGMENTS, LOSSES, COSTS, OR EXPENSES (INCLUDING ATTORNEY'S FEES AND COURT OR ARBITRATION COSTS AND FEES) ARISING OUT OF OR RESULTING FROM COCHRAN'S OR ITS CONSULTANTS' NEGLIGENT ACTS, ERRORS, OMISSIONS OR BREACHES OF CONTRACT IS LIMITED TO THE LESSER OF THE CONTRACT PRICE OR THE AMOUNT OF PROFESSIONAL LIABILITY INSURANCE MAINTAINED BY COCHRAN AND AVAILABLE TO PAY SAID CLAIM. THIS LIMITATION OF LIABILITY IS APPLICABLE TO ALL CLAIMS THAT MAY BE ASSERTED AGAINST COCHRAN OR ITS CONSULTANTS ARISING OUT OF OR RELATING TO THE PROJECT OR THIS CONTRACT, WHETHER THE CLAIMS ARISE IN CONTRACT, TORT, STATUTE, OR OTHERWISE.**

Updated 01/2016

Initials _____

3AB



February 28, 2023

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

RE: Sanitary Sewer Replacement and Rehabilitation
Insituform

Dear Mayor and City Council Members:

Attached you will find an ordinance/contract for maintenance and rehabilitation of sanitary sewers and storm sewers utilizing Cast-in-Place (CIPP) methods. The project scope was competitively bid, we received two bids.

Bid 1:	Insituform Technologies:	\$249,241.60
Bid 2:	SAK Construction, LLC:	\$263,354.00
Engineers Estimate:		\$281,324.00

We have successfully utilized Insituform on many projects in the past.

CIPP is a process that involves pulling a resin "sock" through an existing pipe to make it watertight and structurally sound. It is completed on pipes that normally would require traditional excavation, remove, and replace. By utilizing this technology, we are able to repair underground piping with very little disruption to the travelling public or users of the system.

This process is one part of our efforts to reduce infiltration into the sanitary sewer system and repair stormwater pipe that is meeting the end of its design life. This project will line approximately 5,163 ft of sanitary sewer located under Elm Street, Cedar Street, and along Lions Lake. Also, we will be lining a 30" corrugated metal storm sewer with substantial utility conflicts in the Brookview Subdivision.

We have additional budget, and I'm working with the contractor on an additive change order to line more sanitary sewer near MacArthur / 7th Street and a problematic sanitary in Dawn Valley. Once I have the Change Order scope finalized, I will present at a future date.

Thank you for your consideration.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "John Nilges".

John Nilges, P.E.
Public Works Director

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 INSITUFORM TECHNOLOGIES USA, LLC FOR THE 2023 I&I REDUCTION PROJECT

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 a Contract Agreement by and between the City of Washington, Missouri and Insituform Technologies USA, LLC for the 2023 I&I Reduction Project. A copy of said agreement is attached and is marked as Exhibit A.

SECTION 3: 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 4: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5: 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

**SECTION 00400
CONTRACT AGREEMENT
2023 Cast-in-Place Pipe (CIPP) Project**

THIS AGREEMENT, made and entered into this _____ day of _____, 2023, by and between the CITY OF WASHINGTON, MISSOURI, party of the first part; hereinafter termed the "City", and Insituform Technologies USA, LLC, party of the second part, hereinafter termed in this agreement as the "Contractor".

WITNESSETH:

THAT WHEREAS, the City has caused to be prepared specifications and other contract documents for the work herein described, and has approved and adopted these contract documents and has invited proposals for the furnishing of materials, labor and equipment for, and in connection with, the construction of improvements in accordance with the terms of this contract; and,

WHEREAS, the Contractor, in response to the invitation, submitted to the City in the manner and at the time specified, a proposal in accordance with the terms of the contract; and,

WHEREAS, the City has opened, examined and canvassed the proposals submitted, and as a result of such canvass, has determined and declared the Contractor to be the lowest and best bidder for constructing said improvements, and has duly awarded to the said Contractor contract therefore, for the sum or sums named in the proposal attached to and made a part of this contract;

NOW THEREFORE, THIS AGREEMENT WITNESSETH, that the parties to these presents, in consideration of the compensation to be paid the Contractor, and of the mutual agreements herein contained, have agreed and hereby agree the City for itself, and its successors and the Contractor for itself, himself, or themselves, its, his or their successors and assigns, to its, his or their executors and administrators, as follows:

ARTICLE I: That the Contractor will furnish at his own cost and expense, all labor, tools, equipment and materials required, and construct and complete in a good first class and workmanlike manner, the work as designated, described and required by the plan, specifications and proposals for construction of the improvement, all in accordance with the specifications, general conditions, supplementary conditions, instructions to bidders, proposal, and other specified documents, all of which contract documents from the contract, and are as fully a part thereof as if repeated verbatim herein; all work to be done under the direct supervision, and to the entire satisfaction of the City.

Contractor shall provide (a) a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for its employees working onsite on the project. The program shall include a course in construction safety and health

approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations which is at least as stringent as an approved OSHA program. All employees working on the project are required to complete the program within sixty (60) days of beginning work on the construction project. (b) Any employee found on the worksite subject to this section without documentation of the successful completion of the course required under subsection (a) shall be afforded 20 days to produce such documentation before being subject to removal from the project. (c) Contractor shall require all onsite employees of any subcontractors to complete the ten-hour training program required under subsection (a). (d) Pursuant to Sec. 272.675 RSMo., Contractor shall forfeit as a penalty to the City \$2,500.00 plus \$100.00 for each employee employed by Contractor or subcontractor, for each calendar day, or portion thereof, such employee is employed without the required training. The penalty shall not begin to accrue until the time periods in subsections (a) and (b) have elapsed. City shall withhold and retain from the amount due Contractor under this contract, all sums and amounts due and owing City as a result of any violation of this section.

ARTICLE II: Specifically, the Contractor shall comply in all respects with the Anti-Discrimination Provisions.

ARTICLE III: In accordance with the provisions of Section 34.600 RSMo. the Contractor shall, upon execution of the Contract, execute and deliver to the City an affidavit in the form marked **Affidavit of Compliance with Section 34.600 RSMo** attached hereto and incorporated herein by reference. Failure to provide the affidavit and comply with the provisions of Section 34.600 RSMo shall render the Contract void.

ARTICLE IV: That the Contractor shall be held to comply with all requirements of the Prevailing Wage Law of the State of Missouri, and shall forfeit as a penalty to the state, county, city and county, city, town, district, or other political subdivision on whose behalf the contract is made or awarded, one-hundred dollars (\$100.00) for each workman employed, for each working day, or portion thereof, such workman is paid less than the said stipulated rates for any work done under this contract, by him or by any subcontractor under him.

ARTICLE V: Contractor agrees to comply with Missouri Revised Statute Section 285.530.1 in that it shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the State of Missouri. As a condition for the award of this contract, the Contractor shall, by sworn affidavit, and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. The Contractor shall also sign the affidavit, attached hereto and made a part of this contract, affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Contractor shall require each subcontractor to affirmatively state in its contract with Contractor that the subcontractor shall not knowingly employ, hire for employment or continue to employ an unauthorized alien to perform work within the State of Missouri and shall not henceforth do so. Alternatively, Contractor shall require each subcontractor to provide

Contractor with a sworn affidavit under the penalty of perjury attesting to the fact that the subcontractor's employees are lawfully present in the United States.

ARTICLE VI: That the City will pay the Contractor for the performance of this Contract and the Contractor will accept in full compensation therefore, the sum of Two Hundred Forty-Nine Thousand Two Hundred Forty-One and 60/100 dollars (\$ 249,241.60xxxxxx), for all work covered in the Base Proposal Bid.

IN WITNESS WHEREOF, the parties have made and executed this Agreement the day and year first above written.

CITY OF WASHINGTON
COUNTY OF FRANKLIN
STATE OF MISSOURI

INSITUFORM TECHNOLOGIES USA, LLC

By: Janet Hass
Contractor

Mayor

Contracting & Attesting Officer
Title

City Clerk



March 6, 2023

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

RE: Fairgrounds Pavilion Concrete Pad bid

Honorable Mayor and City Council,

As you may recall from the January 17th Council meeting, the Town & Country Fair Board is proposing a new metal pavilion on the site where the Entertainment Tent is located during the Town & Country Fair. In the past, rental tents have been placed on the asphalt pad but rental tents are becoming harder to find and the asphalt pad is deteriorating. The Fair Board is proposing to fund a new metal pavilion structure to replace the use of tents and the Parks and Recreation Department is proposing a 160'x70' concrete pad and sidewalks for the new pavilion. The new pavilion and concrete pad could then serve the ever-growing local Pickleball population with four covered Pickleball Courts when the pavilion is not being used during the Fair. The project will be funded by the \$26,379.00 the City received from the 2022 Fair Contract and \$73,621.00 from ARPA funds. With your permission the Parks Department bid out the concrete portion of the project.

On February 21, the City received the following bids for this project:

- Curb Appeal Landscapes \$81,875.00
- Next Level Construction \$87,882.00
- K.J. Unnerstall Construction \$98,305.00
- TPC Infrastructure \$129,257.00

Find in this packet an ordinance for your consideration that would enter the City into a contract with Curb Appeal Landscapes for \$81,875.00 for a new concrete pad and sidewalks at the Entertainment Tent site in the Fairgrounds. Asphalt removal and site grading will be done inhouse by Staff.

As always, if you have any questions, concerns or would like additional information, please feel free to contact me prior to the Council Meeting.

Respectfully,

Wayne Dunker

Wayne Dunker, MA, CPRP
Director of Parks & Recreation

3Ca

BILL NO. _____ INTRODUCED BY _____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY OF WASHINGTON, MISSOURI TO ACCEPT THE CONTRACTOR AGREEMENT FROM CURB APPEAL LANDSCAPES FOR INSTALLATION OF A CONCRETE PAD AT THE FAIRGROUNDS AND AMEND THE 2023 BUDGET

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 Contractor Agreement with Curb Appeal Landscapes for installation of a concrete pad at the Fairgrounds. A copy of the agreement is attached and is marked as Exhibit A.

SECTION 2: This ordinance shall amend the 2023 budget as follows:
General Fund Revenue Increase: 001-21-000-541100 Improvements Other Than Buildings \$26,379, General Fund Expenditure: 001-21-000-541100 Improvements Other Than Buildings \$26,379 and increase in ARPA funds of \$73,621.

SECTION 3: The Mayor and City Clerk are hereby authorized and directed to execute said contract, and to do all things necessary by the terms of said contract.

SECTION 4: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5: 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

CITY-CONTRACTOR AGREEMENT

This Construction Agreement (“Agreement”) is entered into effective as of the ___ day of _____ 2023 (“Effective Date”) by and between _____, a Missouri for-profit corporation with offices located at _____, (“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 an Agreement under which the Contractor is to provide Work 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 constructing said Work, and has duly awarded to the said Contractor contract 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 be 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.

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:

Name: Curb Appeal Landscapes
Title: Chris Hudson
Address: 23 Town & Country Dr.
Washington, MO 63090
Phone: 636-432-1812
Email: chris@calandscapesllc.com

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 no 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 delay 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 the City.

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 by 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.

Liquidated 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" above 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 (as identified in Exhibit "A").

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 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 or of Third Parties.

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) Days 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. 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. 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

Paragraph 5.12. Shall use the Performance Bond forms contained in the contract documents.

Paragraph 5.13. 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 5.14. 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 same in writing to the City.

Paragraph 6.2. Contractor shall be held to comply with all requirements of the Prevailing Wage Law of the State of Missouri, and shall forfeit as a penalty to the state, county, city, town district or other political subdivision on whose behalf the Contract is made or awarded, one hundred dollars (\$100.00) for each workman employed, for each calendar day, or portion thereof, such workman is paid less than the said stipulated rates for any work done under this Contractor, by him/her or by any subcontractor under him/her.

Paragraph 6.3. 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 agrees 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.

(Remaining of page intentionally left blank)

Approvals

Paragraph 6.12. All approvals or consents required or permitted pursuant to the Agreement shall be 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:



March 6, 2023

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

RE: Recommendation – Highway 100 Median Maintenance Services bid

Honorable Mayor and City Council,

At the December 5, 2022 City Council meeting I asked for permission to re-bid the Highway 100 Median Maintenance services contract. This solution will allow an outside source to spruce up the medians to a higher level than they are being maintained now. By hiring an experienced contractor, citizens should see visible results after the first year. After a year of contractor maintenance, if the desired outcome is not what everyone envisioned, other options can be explored, including renovating one median bed at a time to see if the public likes the improvements. Future improvements and maintenance of the medians have the potential of being supported by funding from local service organizations. The Highway 100 Median Maintenance Committee met on February 24 and recommends the process detailed above.

The maintenance of the Highway 100 median beds can be funded by Stormwater Funds, as the native plantings in the medians help absorb water in an all-asphalt environment. Since the beds reduce stormwater runoff and help with MS4 Program compliance, the funding for the maintenance of the beds can come from the local use tax in the Stormwater Fund.

Median Maintenance Services was put out to bid and the City received two bids. The winning bid was from Go Green Lawn and Landscape for \$26,500 per year and the other was from DJM Ecological Services for \$37,110 per year. The contract is for three years but Go Green Lawn and Landscape stated they could go year to year if the City needed to change some of the median beds in a future year.

Accordingly, the Highway 100 Median Maintenance Committee and Staff recommends that Council consider the approval of Go Green Lawn and Landscapes bid in the amount of \$26,500.00.

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

3Cb

BILL NO. _____ INTRODUCED BY _____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY OF WASHINGTON, MISSOURI TO ACCEPT THE SERVICE AGREEMENT FROM GO GREEN LAWN AND LANDSCAPES FOR HIGHWAY 100 MEDIAN MAINTENANCE SERVICES AND AMEND THE 2023 BUDGET

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 Service Agreement with Go Green Lawn and Landscapes for Highway 100 Median Maintenance Services. A copy of the agreement is attached and is marked as Exhibit A.

SECTION 2: This ordinance shall amend the 2023 Budget as follows:

Stormwater Fund:

Decrease of \$250,000 250-40-000-541107 Storm Water System Improvements

Increase of \$30,000 250-40-000-520400 Other Contracted Services

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
CITY-SERVICE AGREEMENT

This **SERVICE AGREEMENT** ("Agreement") is entered into effective as of the ___ day of _____, 2023 ("Effective Date") by and between _____, a Missouri for-profit corporation with offices located at _____, 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").

NON-APPROPRIATION: City's funding of this Agreement shall be on a Fiscal Year basis and is subject to annual appropriations. _____ acknowledges that City is a municipal corporation, is precluded by the State Constitution and other laws from entering into obligations that financially bind future governing bodies, and that, therefore, nothing in this Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of this Agreement. Accordingly, the parties agree that the terms within this Agreement or any Schedules relating hereto are contingent upon appropriation of funds.

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.

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:

Go Green Lawn and Landscapes
Attn: Martin Ewell
President
18173 Edison Ave, Suite D
Chesterfield, MO 63005
Telephone: 314-249-3630
E-mail: ewellml@yahoo.com

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 the City.

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, nametags 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 form 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.

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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 agrees 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 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 _____



POLICE
CITY OF WASHINGTON

Washington Police Department
Chief Jim Armstrong DSN 256

301 Jefferson Street
Washington, MO 63090
Administration: (636)390-1055
Dispatch: (636)390-1050
Fax: (636)390-2455

February 28, 2023

To: City Council
Mayor Hagedorn

From: Chief Armstrong

RE: Purchase of replacement vehicle - 2022/2023 Budget Year

Respected Council Members and Honorable Mayor:

For the year 2022/2023 budget, I am requesting the purchase of one (1) police vehicle:

2015 Ford Flex SEL AWD SUV

The vehicle will be assigned to the detective division for use and will replace a vehicle that was recently involved in a motor vehicle crash. After evaluation of the vehicle by an insurance adjuster, it was determined a total loss. Since it could not be repaired, the police department needs a vehicle to replace it in the fleet.

The insurance payout for the totaled vehicle is \$13,305.50. This vehicle was used by the detective division and was an unmarked unit. When looking for a replacement vehicle our goal was to find a similar vehicle, an all-wheel drive mid to full size SUV. We attempted to locate a replacement vehicle within those parameters and budget, but nothing was found that met our needs and priced less than or equal to the insurance payout. We did find a vehicle that both met our needs and has a good service history. The vehicle is a 2015 Ford Flex AWD SUV. The vehicle is listed for sale by Chris Auffenberg Ford Washington. After negotiation the final sale price offered was \$18,000. I recently requested approval for the purchase and outfitting of three new patrol vehicles under the vehicle replacement fund. The approved amount for those vehicles came in well under budget. I am requesting to use \$4,694.50 from that fund to supplement the purchase of the replacement vehicle.

3Da

Given the fact that Chris Auffenberg Ford is in town and has the vehicle that meets our needs, I consider them to be the sole source and recommend we purchase from them.

I request approval of an ordinance and a sales contract with Chris Auffenberg Ford of Washington for the purchase of one (1) Ford Flex AWD SUV at a total purchase price of \$18,000. After the insurance payout of \$13,305.50 the amount used from the current budget will be \$4,694.50

Should you have any questions or concerns, feel free to contact me prior to the City Council meeting.

Respectfully submitted,

Chief James Armstrong

Chief James Armstrong, DSN 256

BILL NO. _____ INTRODUCED BY _____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY OF WASHINGTON, MISSOURI TO ENTER INTO A SALES CONTRACT BETWEEN CHRIS AUFFENBERG FORD LINCOLN, WASHINGTON, MISSOURI FOR THE PURCHASE OF ONE (1) 2015 FORD FLEX AWD SPORT UTILITY VEHICLE

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 a Sales Contract between Chris Auffenberg Ford Lincoln, Washington, Missouri and the City of Washington, Missouri for the purchase of one (1) 2015 Ford Flex AWD Sport Utility Vehicle. A copy of said contract is marked Exhibit A and is attached hereto and incorporated herein by reference.

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

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

Passed: _____

ATTEST: _____

President of City Council

Approved: _____

ATTEST: _____

Mayor of Washington, Missouri

Exhibit A
SALES CONTRACT

This Sales Contract made and entered into this 6th day of March 2023, by and between Chris Auffenberg Ford, Washington, Missouri, hereinafter referred to as "Seller", and the City of Washington, Missouri, a municipal corporation hereinafter referred to as "City".

WITNESSETH: Whereas, Seller was a sole source for a used 2015 Ford Flex AWD Sport Utility Vehicle.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Seller agrees to provide to the City One (1) 2015 Ford Flex AWD Sport Utility Vehicle; in the manner set forth in the contract documents, for payment in the total sum of Eighteen Thousand Dollars and Zero Cents (\$18,000.00).
2. The contract documents shall consist of the following:
 - A. This Contract
 - B. Signed copy of Ordinance
 - C. General Specification and Quote

This contract, together with the other documents enumerated in this paragraph, forms the contract between the parties.

These documents are as fully a part of the contract as if attached hereto or repeated herein.

3. This agreement shall be construed or determined according to the laws of the State of MO.

IN TESTIMONY WHEREOF, Seller has hereunto set its hand, and the City of Washington, Missouri executes this contract the day and year first above written.

SELLER:
BY: _____
Company Representative

CITY:
BY: _____
Mayor - Washington, Missouri

ATTEST: _____
City Clerk