



REQUEST FOR PROPOSALS
FOR
2023 PAVEMENT MARKING PROGRAM

Date of Issuance:
March 6, 2023

Submittal Deadline:
April 4, 2023 at 2:00 P.M. CDT

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SECTION 1. PURPOSE AND INTRODUCTION

The City of Cottleville (“City”) is seeking bids from qualified Contractors for the repainting of existing long line pavement markings on various roads in the City of Cottleville, MO (“Project”). Specific locations are shown in Exhibit B

The City reserves the right to work with the selected Contractor to revise the limits and widths for the new trails.

SECTION 2. SUBMISSION OF PROPOSALS

One (1) original, in a sealed envelope or package.

RFP Due: **April 4, 2023** - 2:00 p.m. Prevailing Central Time

Location: City of Cottleville
Attn: Leland Maize
5490 Fifth Street
Cottleville, MO 63304

Contact: Leland Maize, Assistant City Engineer
Phone: 636-498-6565 E-mail: leland.maize@cityofcottleville.com

ALL QUESTIONS SHALL BE TRANSMITTED VIA E-MAIL

SECTION 3. PROPOSAL REQUIREMENTS

The City will consider proposals from Contractors with specific experience and success in the installation of roadway pavement markings. All proposals must include:

- A. Contractor name, address, telephone number and contact person(s) email address
- B. A schedule of how the Contractor will complete the design and construction

SECTION 4. SCOPE OF SERVICES

Scope

This project will consist of the installation of a combination of white and yellow four (4) inch pavement markings. All markings will match what is existing. No symbols or lines other than four (4) inch pavement markings will be included as part of this project. The total project will consist of 75,136 LF of pavement markings. The specific locations are outlined in red in Exhibit B and are as follows:

- Cottleville Parkway (From Weiss Road to Mid Rivers Mall Drive)
- Knaust Road (From Arnold Avenue to Cottleville Parkway)
- Weiss Road (Knaust Road - E of Castle Point, to 450 FT North of the Hwy N intersection)
- Hwy N Part I (Meadowlake Dr. to 660 FT West of Weiss Rd Intersection)
- Hwy N Part II (740 FT South of Weiss Rd Intersection to Fifth Street)
- Motherhead Rd (Hwy N to Ajays Court)

The successful Contractor will be expected to furnish all tools, equipment, labor, materials, supplies and services to install the pavement markings presented in this RFP.

The following requirements will apply to this project:

- All methods, practices, and materials shall conform to the Missouri Standard Specifications for Highway Construction 2022 Fourth Edition.
- The Contractor will use high build acrylic waterborne pavement marking paint with drop-on glass beads.
- All pavement markings shall be uniform in appearance with crisp, well-defined edges and shall be uniform in width and thickness. Surface distribution of the beads shall be uniform.
- Lateral deviation of pavement markings shall not exceed one (1) inch in one hundred (100) feet.
- The width of all four (4) inch pavement markings must be no less than four (4) inches and no greater than four and one quarter (4 ¼) inches.
- Paint shall be applied to a minimum wet thickness of 15 mils (0.381 mm).
- Discoloration of pavement markings will be cause for rejection.
- The Contractor shall be responsible for the protection of all pavement markings until the pavement markings have reached a no-track state.
- The surface on which paint markings are installed shall be clean and dry. Paint shall not be applied in damp conditions or if there is any evidence of surface moisture on the pavement. These conditions shall exist prior to application and for eight (8) hours immediately following the final application.
- The pavement surface temperature and ambient air temperature shall be above 50°F and shall remain above 50°F for eight (8) hours immediately following the final application.
- All pavement markings shall be installed in accordance with the manufacturer's specifications and recommendations.
- All pavement markings placed per this contract shall meet or exceed the following minimum retro-reflectivity requirements:
-

Retro-reflectivity Acceptance Requirements		
Type of Material	Color	Millicandelas/ft ² /footcandle (Millicandelas/m ² /lux) (Minimum Initial)
Paint	White	300
Paint	Yellow	225

- Retro-reflectivity tests will be performed no earlier than fourteen (14) calendar days after the date of initial placement and no later than twenty-one (21) calendar days after the date of initial placement. Retro-reflectivity testing shall be performed along the streets listed in the table below. The location of each test site shall be determined by the City. Each test location shall consist of measuring retro-reflectivity of a four (4") white and four (4") yellow line segment. The number of locations to be tested along each street is stated in the table below.

Street	No. of Test Locations
Hwy N	1
Weiss Rd	1
Knaust Rd	1
Cottleville Pkwy	1

- If said retro-reflectivity reading is deficient by more than three (3%) of the minimum specification, liquidated damages shall be assessed in the amount equal to percent (%) deficient multiplied by the total cost to place the line type along the street measured. A retro-reflectivity deficiency greater than ten (10%) percent will require all lines on the street tested to be replaced and no additional cost to the City.

The Contractor shall not commence work prior to the date of written notice from the City Engineer to begin work and shall complete all work by calendar day **June 15, 2023**. Full Notice to Proceed (NTP) is expected to be on or about **April 24, 2023**. The City and the contractor may mutually agree to begin work prior to the full NTP.

SECTION 5. CLARIFICATION AND/OR REVISIONS

Any questions concerning this RFP may be submitted via phone conversation or in writing via mail, or email, on or before **March 28, 2023** to:

Leland Maize
Assistant City Engineer
Attn: 2023 Pavement Marking Program
5490 Fifth Street
Cottleville, MO 63304

Email: leland.maize@cityofcottleville.com

Contractors are expected to raise any questions, exceptions, or additions they have concerning the RFP immediately during the RFP process. If a Contractor discovers any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in this RFP, then the consultant should immediately notify the error to the name mentioned above for revision or clarification to the RFP.

In the event revision or clarification to the RFP becomes necessary, an addendum to the RFP will be provided to all recipients

SECTION 6. ADDITIONAL REQUIREMENTS

1. Contractor shall furnish all tools, equipment, labor, materials, supplies, and services to construct the project in strict conformance with the Contract Documents and Specifications, within the time set forth therein, for the price indicated in the Offer & Schedule of Fees. These prices are to cover all expenses incurred in performing the work required under the Agreement.

2. Contractor will have a maximum of ten (10) calendar days; excluding holidays from the date of the Notice of Intent to Award letter to submit supportive documentation as outlined in the notification letter. Failure to complete the outlined requirements within such timeframe shall be subject to forfeiture of the subject contract.
3. Contractor will substantially complete (make available for use) the said work within the timeframe agreed to, and that should they fail to complete the work in the time specified or such additional time as may be allowed by the City under the Contract, the amount of liquidated damages to be recovered shall be per the Agreement.
4. The Proposal is firm for 90 days from the submittal deadline date.
5. **Laws to be Observed:** The Contractor shall at all times observe and comply with all Federal and State laws, all local laws, ordinances, and regulations existing at the time of or enacted subsequent to the execution of the contract which, if in any manner, affect the execution of the work.
6. **Taxes:** This project is exempt from all sales taxes for construction materials and supplies used directly in fulfilling contract requirements. Sales tax shall not be included into the price(s) for this project. The Contractor shall follow the regulations as outlined in Section 144.062 RSMo Construction Materials Exemption Allowed.
7. **Prevailing Wage:** The successful Contractor shall be required to comply in all respects with State Wage Rates, including applicable statutory provisions concerning payment of prevailing wages on public works projects, Sections 290.210 through 290.340 RSMo as currently amended, and shall pay to all workmen performing under work contract not less than prevailing hourly rate of wages as determined by the Department of Labor and Industrial Relations of the State of Missouri

As such, the bid for this project shall be based upon the required payment by the Contractor for wages for each craft or type of workmen required to execute the Contract. A schedule of such prevailing hourly rate of wages as determined by the Department of Labor and Industrial Relations of Missouri, pursuant to said statutory provisions is attached hereto and made a part of this Contract.
8. **OSHA Required Training:** Pursuant to Section 292.675 RSMo, Contractor shall require all on-site employees to complete the ten-hour training program as required under Section 292.675 RSMo. This program shall be provided by Contractor and shall be a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for Contractor's on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations ("MoDOLIR") which is at least as stringent as an approved OSHA program. All employees are required to complete the program within sixty days of beginning work under this Agreement. Contractor shall further require all subcontractors under Contractor to provide the ten-hour training program required under Section 292.675 RSMo. to such subcontractors' on-site employees. On-site employees who have previously completed such ten-hour training program must hold documentation of prior completion of the program.
9. **Equal Employment Opportunity:** The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Contractor shall state that all qualified applicants will receive consideration for

employment without regard to race, color, religion, sex, national origin, or disability. The Contractor shall incorporate the foregoing requirements of this paragraph in all of its subcontracts for work performed under the terms and conditions of this Contract. A breach of this provision may be grounds for termination of this Contract.

10. **Notice of Intent to Award:** The successful bidder will receive a Notice of Intent to Award listing documentation that the bidder is required to submit, which includes but is not limited to the following:
 - a. Agreement
 - b. Affidavit of Participation in Federal Work Authorization Form (*sample included with this solicitation*)
 - c. E-Verify Memorandum of Understanding (*showing electronic signatures of Contractor and Homeland Security*)
 - d. Insurance
 - e. Bonds

11. **Maintenance Bond:** The Contractor shall procure and maintain a Maintenance Bond in the amount of 10% of the final Contract Sum after any and all Change Orders and/or formal contract amendments. The Maintenance Bond shall be in full force for a one (1) year guarantee period from the date of final acceptance. Final payment will not be made until the City receives the Maintenance Bond. The Bond shall serve to ensure required maintenance of the Project will be provided throughout the maintenance period.

12. **Bond Premiums:** The premiums on all the bonds shall be paid by the Contractor.

13. **Notice to Proceed:** Upon submittal and acceptance of all items as outlined in the Notice of Award, the successful bidder will receive Notice to Proceed
 - a. The City will issue the contractor a tax exemption letter and a project exemption certificate. These documents are to be given to the Contractor's suppliers and used only for the specific project identified and will expire on the date indicated unless renewed by the City.

 - b. The Contractor shall not commence work prior to the date of written notice from the City and shall complete all work before **June 15, 2023**. Notice to Proceed is expected to be **April 24, 2023**.

SECTION 7. MISCELLANEOUS

- A. The Contracts, if awarded, will be awarded to the Respondents whose submittals are deemed most advantageous to City, upon approval of the Board of Alderman.

- B. City may accept any submittal in whole or in part. If subsequent negotiations are conducted, they shall not constitute a rejection or alternate RFP on the part of City. However, final selection of a Contractor is subject to Board of Alderman approval.

- C. City reserves the right to accept one or more submittals (if applicable) or reject any or all submittals received in response to this RFP, and to waive informalities and irregularities in the proposals received. City also reserves the right to terminate this RFP, and reissue a subsequent solicitation, and/or remedy technical errors in the RFP process.

- D. In the event the parties cannot negotiate and execute a contract within the time specified by the City, the City reserves the right to terminate negotiations with the selected Contractor and commence negotiations with another Contractor.
- E. This RFP does not commit City to enter into a Contract, award any services related to this RFP, nor does it obligate City to pay any costs incurred in preparation or submission of a response or in anticipation of a contract.
- F. Independent Contractor. Respondent agrees and understands that, if selected, it and all persons designated by it to provide services in connection with a contract, is (are) and shall be deemed to be an independent contractor(s), responsible for its (their) respective acts or omissions, and that City shall in no way be responsible for Respondent's actions, and that none of the parties hereto will have authority to bind the others or to hold out to third parties, that it has such authority.
- G. Immigration Law. Section 285.530.2 RSMo requires a political subdivision as a condition of a contract or grant in excess of \$5,000 awarded after January 1, 2009, to require the business entity to affirm by sworn affidavit and provision of documentation that the business entity 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 an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contract. An affidavit will be required as a condition of the contract prior to or at the time of execution that the company has such a program, has provided documentation for the program, and that it will not employ unauthorized aliens in connection with the work.
- H. All submittals become the property of the City upon receipt and will not be returned. Any information deemed to be confidential by Respondent should be clearly noted on the page(s) where confidential information is contained; however, the City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Missouri Sunshine Law, since information deemed to be confidential by Respondent may not be considered confidential under Missouri law, or pursuant to a Court order.

SECTION 8. OFFER AND SCHEDULE OF FEES

The undersigned has thoroughly examined the entire RFP, including all addenda thereto, hereby offers to furnish all services in accordance with the requirements of the Request for Proposal, as described in this proposal.

Contractors should in a sealed package the following Contractor Bid Submittal Form, clearly marked on the front of the package "2023 Pavement Marking Program." All submittals must be received at City Hall **no later than 2:00 p.m. CDT on April 4, 2023.**

Any submittal received after this time shall not be considered. Submittals sent by facsimile or email will not be accepted.

BID FORM

DUE: April 4, 2023

2023 Pavement Marking Program

<u>ITEM</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT COST</u>	<u>TOTAL</u>
INSTALLATION OF PAINTED WHITE PAVEMENT MARKINGS FOUR INCHES (4") WIDE	LF	36,946		
INSTALLATION OF PAINTED YELLOW LINE PAVEMENT MARKINGS, FOUR INCHES (4") WIDE	LF	69,948		
RETRO-REFLECTIVITY TESTING OF STRIPING	LS	1		

PROJECT TOTAL COST: _____

Date: _____

Legal
Company Name: _____

Signature: _____

Name (Printed): _____

Title: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone No.: _____ Fax: _____

Email address: _____

Federal Tax ID No.: _____ State in which Company is incorporated: _____

State Business/Charter Number: _____

**EXHIBIT A
SUBCONTRACTOR FORM**

This form must accompany and be part of your sealed proposal. If you do not plan to use subcontractors, indicate below and return this form with your proposal.

The above referenced Bidder intends to subcontract for materials, services, supplies, specialty contractors, etc. as follows:

Subcontractor Name	Address (Street, City, State)	Nature of Participation	Dollar Value of Subcontract

**AGREEMENT
2023 PAVEMENT MARKING PROGRAM**

THIS AGREEMENT (this "Agreement"), is made and entered into as of the ____ day of _____, 2023 (the "Effective Date"), by and between _____ Company Inc., a Missouri Corporation, having a principal office at _____ (the "Contractor"), and the City of Cottleville, a Missouri municipal corporation located in 5490 Fifth Street, Cottleville MO 63304 (the "City"). *All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Contract Documents (as hereinafter defined).*

RECITALS

- A. In response to a Request For Proposals ("RFP"), issued March 6, 2023, by the City, requesting proposals for the repainting of existing long line pavement markings on various roads in the City of Cottleville, MO (the "Project"), the Contractor has submitted a certain proposal in accordance with the RFP to perform the Services (as defined in Paragraph 6) (the "Proposal").
- B. After due consideration, the City has accepted the Proposal of the Contractor and the parties hereto desire to enter into this Agreement whereby the Contractor shall undertake the performance of the Services in accordance with the Contract Documents (as defined in Paragraph 1) and the City shall pay the Contractor as hereinafter specified.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by references, the mutual promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Contractor hereby agree as follows:

1. Contract Documents:

This Agreement shall consist of, without limitation:

- a. RFP
- b. Contractor's Proposal and Schedule of Fees
- c. Subcontractor Form
- d. A fully-executed Agreement
- e. Terms and Conditions
- f. Scope of Services
- g. Construction Notice to Proceed (issued by City)

and shall also include any Exhibits to the above documents, any Addenda issued prior to receipt of bid proposals, any duly-issued Modifications, and all other documents contained or specified within the specifications, details, or job special provisions, as such may be on file in the Office of the City Clerk of Cottleville, Missouri (all of the foregoing collectively referred to as the "Contract Documents" are hereby incorporated in this Agreement by

reference). When any provision(s) of the Contract Documents conflict, the provision(s) most advantageous to the City shall govern.

2. **Term:** The term of this Project shall begin on the Effective Date of this Agreement and shall end on the date that the Project is accepted, in full, by the City (the "date of Final Acceptance").
3. **Payment:** Contractor shall be paid for the Services based on the percent completed. The Contractor shall submit to the City all invoices complete with necessary supporting documentation and partial lien waivers and indicate the percentage complete. The City shall make payment within 30 days of receipt of an invoice after satisfactory performance of the Services. Final determination of percentage complete will be made by the City Administrator. Invoices shall be submitted no more than once per month except for the final payment. Payment Terms: net 30 days. Remit Address: City Clerk, City of Cottleville, 5490 Fifth Street, Cottleville, MO 63304.
4. **Prompt Payment:** This Agreement calls for prompt payment by the City to the Contractor (as well as prompt payment by the Contractor to the subcontractor and material supplier) unless contrary to any federal funding requirements, as required by Section 34.057, RSMo.
5. **The Contract Sum:** The Contractor shall furnish all labor, materials, tools, equipment and Services necessary to complete the Project, and shall perform and complete the Services in accordance with this Agreement. The Contract Sum is _____ Dollars and ___/100 (\$_____), which shall include all compensation due to Contractor for the Services. Any additional work not within the Base Bid that is hereinafter approved by the City in writing shall be incorporated into the Agreement pursuant to a Change Order.
6. **Scope of Services:** The services provided by the Contractor under this Agreement shall include all services set forth in the Scope of Services, Section 4 of the RFP (the "Services").

Except as expressly specified herein, Contractor hereby agrees to provide all of the supervision, labor, technical services, facilities, materials, tools, equipment, and apparatus, and to perform all the Services and do all the things necessary for the proper completion of the Services which are particularly described in the Scope of Services, set forth in Section 4 of the RFP. All Services shall be performed in conformance with all applicable ordinances of the City and laws of Missouri, all federal laws, and all rules and regulations thereunder.

The Services shall be provided by the Contractor in accordance with all the provisions of this Agreement, City ordinances, and the City of Cottleville's General Conditions for the Services which are attached to the RFP and incorporated herein by reference.

7. **Time of Completion:** Contractor shall immediately commence work on the Services, as specified in the Notice to Proceed, and shall fully complete the Services by June 15, 2023. The parties understand that time is of the essence and that the rate of progress and prompt completion are essential conditions, and that in the event the Services are not fully completed within the period provided herein, the Contractor shall pay to the City the sums provided in the Contract Documents.

8. **Guaranty:** The Contractor hereby expressly guarantees the Services as to workmanship and quality of materials used in connection herewith for a term of one (1) year, commencing on the date of Final Acceptance by the City, and binds itself, its successors or assigns, to make all repairs or replacements which may become necessary within said period due to construction defects and nonconformity with the Contract Documents. Whenever notified by the City that said repairs or replacements are required, the Contractor shall at once make the same as directed at its own expense. If the Contractor does not proceed with such repairs or replacements within five (5) days after receipt of written notice, the City may use (and the Contractor agrees and consents to such use) the Maintenance Bond (as provided in Paragraph 12), according to the terms thereof, to make any necessary repairs or replacements to any portion of the Project. Upon expiration of the one (1) year guaranty period, the City shall release the Maintenance Bond, less any amounts reasonably necessary to remedy any of the Contractor's performance and/or maintenance obligations under this Agreement that may still be outstanding at the time of expiration of the guaranty period.
9. **Maintenance Bond:** On or before the date of Final Acceptance the Contractor shall furnish a satisfactory Maintenance Bond in the amount of 10% of the final Contract Sum after any and all Change Orders and/or formal amendments. The Maintenance Bond shall be in full force for a one (1) year guarantee period from the date of Final Acceptance. The submitted Maintenance Bond shall be substantially in the form of the "Form of Maintenance Bond" included within the Bid Documents.
10. **Independent Contractor:** The Contractor shall be and operate as an independent Contractor in the performance of this Agreement. The Contractor shall have complete charge of the personnel engaged in the performance of the Services, and all persons employed by the Contractor shall be employees of said Contractor and not employees of the City in any respect.
11. **Contractor's Liability Insurance:** The Contractor shall obtain and maintain during the term of the Agreement the insurance coverages set forth in this Paragraph 14 in at least the amounts provided for herein, but in no event less than the individual and combined sovereign immunity limits established by Section 537.610, RSMo. All such insurance policies shall be with companies licensed to do business in the State of Missouri and rated no less than AA by Best or equivalent. All costs of obtaining and maintaining insurance coverage's are included in the Bid Amount and no additional payment will be made therefor by the City:

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

\$1,000,000 bodily injury policy limit

Professional Liability - Errors and Omissions \$1,000,000 per claim

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

Builder's Risk insurance is not required for this Project.

Each insurance policy shall name the City as an additional insured. Certificates evidencing such insurance shall be furnished to the City prior to Contractor commencing the Services as outlined in the RFP. The certificates must state, "The City of Cottleville is an additional insured", on a primary and non-contributory basis. Certificate Holder shall be listed as "City of Cottleville, Attention City Clerk, 5490 Fifth Street, Cottleville, MO 63304." The certificate shall bear an endorsement precluding cancellation of or change in coverage without at least thirty (30) days written notice to the City.

The City may waive any insurance coverages or amounts required by this Paragraph 11 when the City deems such waiver to be in the interest of the public health, safety, and general welfare.

12. **Liquidated Damages:** The Contractor agrees and acknowledges that time is of the essence and that absence of reasonable progress and delay in the project becoming Available for Use, in Project Closeout, and in Final Acceptance will inconvenience the public and increase administrative costs of the City, the costs of which the Contractor and the City are incapable of ascertaining at this time. Should the Contractor, or in the case of Contractor's default, any surety, fail to complete the Services and/or receive Final Acceptance within the times stipulated in this Agreement, or within such extensions of time as may be allowed by the City in the manner set forth in the Contract Documents, the Contractor (or surety, as applicable) shall pay to the City as liquidated damages, and not as a penalty, the sum of **Five Hundred Dollars (\$500.00)** for each calendar day of delay past the allotted calendar days to achieve Available for Use (Substantial Completion) as notified by the City, plus **One Hundred Dollars (\$100.00)** for each calendar day of delay past the allotted calendar days to achieve Final Acceptance as notified by the City. In the sole discretion of the City, the amount of the liquidated damages may be deducted from any money due the Contractor under this Agreement. Permitting the Contractor to finish the Services or any part thereof after the expiration of the time for completion or any approved extension, shall in no way operate as a waiver of the City of any of rights under this Agreement.
13. **Compliance with Federal, State and Local Law:** The Contractor shall comply with all applicable federal, state and local law requirements for performance under this Agreement. The Contractor shall abide by all health and environmental requirements imposed by law in performance of its duties.
14. **Required OSHA Training:** Pursuant to Section 292.675 RSMo., Contractor shall require all on-site employees to complete the ten-hour training program as required under Subsection 292.675.2, RSMo. This program shall be provided by Contractor and shall be a ten-hour Occupational Safety and Health Administration ("OSHA") construction safety

program for Contractor's on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations ("MoDOLIR") which is at least as stringent as an approved OSHA program. All employees are required to complete the program within sixty days of beginning work under this Agreement. Contractor shall further require all subcontractors under Contractor to provide the ten-hour training program required under Subsection 292.675.2, RSMo., to such subcontractors' on-site employees. On-site employees who have previously completed such ten-hour training program must hold documentation of prior completion of the program.

Pursuant to Section 292.675, RSMo, Contractor shall forfeit to City as a penalty two thousand five hundred dollars (\$2,500.00), plus one hundred dollars (\$100.00) for each on-site employee employed by Contractor or its Subcontractor, for each calendar day, or portion thereof, such on-site employee is employed without the required construction safety training. MoDOLIR shall investigate any claim of violation of Section 292.675, RSMo. Upon City's receipt of notification from MoDOLIR of violations of 292.675, RSMo., by Contractor and a determination by MoDOLIR that penalties shall be assessed for such violations, the City shall withhold and retain from the contract all sums and amounts due and owing to the City as a result of any violation of Section 292.675, RSMo. All words in this paragraph shall have the meaning as provided in Section 292.675.1, RSMo.

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

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

17. **Other Representations, Warranties and Other Covenants by the Contractor:** The Contractor represents and warrants that the Contractor has been engaged in such work as is required for the Services and has provided services such as the ones to be performed under this Agreement to other municipalities and/or private enterprises and that the

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

18. **Amendment; Waiver:** No amendment, modification or waiver of any provision of this Agreement shall be effective unless in writing signed by an authorized representative of the party against whom such provision as amended or modified or such waiver is sought to be enforced. Failure to insist upon strict compliance with any of the terms or conditions of the Agreement shall not be deemed a waiver of such term or condition.
19. **Attorney Fees' and Costs:** The Contractor shall reimburse to the City any costs and attorneys' fees that the City may reasonably incur in pursuit of any remedies at law or equity or enforcement of any rights established in this Agreement, which may result from the Contractor's breach of the Agreement, the Contractor's failure to perform any obligation or requirement contained herein, or the City's enforcement of this Agreement.
20. **Termination:** The City shall have the right to terminate this Agreement at any time for any reason by giving the Contractor written notice to such effect. The City shall pay to the Contractor in full satisfaction and discharge of all amounts owing to the Contractor under this Agreement an amount equal to the cost of all Services performed by the Contractor up to such termination date, less all amounts previously paid to the Contractor on account of this Agreement Price. The Contractor shall submit to the City its statement for the aforesaid amount, in such reasonable detail as the City shall request, within thirty (30) days after such date of termination. The City shall not be liable to the Contractor for any damages on account of such termination for loss of anticipated future profits with respect to the remainder of the Services.
21. **Accounting:** During the period of this Agreement, the Contractor shall maintain books of accounts of its expenses and charges in connection with this Agreement in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the Contractor.
22. **Compliance with State Immigration Statutes:** As a condition for the award of this Agreement, the Contractor shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Services. The Contractor shall also sign an (Affidavit of Participation in Federal Work Authorization Program) affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Services. The Contractor shall not be required to provide these affidavits to the City if such affidavits have been previously provided to the City within the past year. All words in this paragraph shall have the definitions as provided in Section 285.525 RSMo. Contractor therefore covenants that it is not knowingly in violation of subsection 1 of Section 285.530, RSMo, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work on the Project, and that its employees are lawfully eligible to work in the United States.

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

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

Company

CITY OF COTTLEVILLE, MISSOURI

By: _____
Signature Date

By: _____
Rich Francis, City Administrator Date

Print Name

ATTESTED:

By: _____
Amy Lewis, City Clerk Date

TERMS AND CONDITIONS

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

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

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

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

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

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

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

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

Request for Proposals: The RFP and the Proposal is incorporated herein by reference and made a part of this Agreement. In case of any conflicts between the RFP and the Agreement or Proposal, the requirements of the City's RFP and this Agreement shall control and supersede unless a change thereto is specifically stated in this Agreement.

Work Records and Work Product: The Contractor shall provide the City with copies of all documents pertinent to the Services which shall include, without limitation, reports, correspondence, meeting minutes, and originals of all deliverables. The City shall own all right, title and interest, including without limitations, all copyrights and intellectual property rights, to all documents and Work Product of the Contractor created in performance of or relating to this Agreement. The Contractor agrees to take all steps reasonably requested by the City to evidence, maintain, and defend the City's ownership rights in the Work Product. Upon termination of this Agreement, the Contractor shall promptly deliver to City any documents, and work product, whether printed or electronic.

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