

CONTRACT AGREEMENT

This agreement, made this ____ day of _____ in the year Two Thousand _____ by and between ____, hereinafter called the contractor, and the City of Ladue, Missouri, hereinafter called the City.

Now therefore, the contractor and the City, for consideration of the amount of _____, agree as follows:

ARTICLE 1. SCOPE OF THE WORK:

The contractor shall furnish all parts, tools, equipment, labor and everything else necessary to perform, and shall perform in accordance with the specifications and terms of this contract. The work includes all work and materials necessary to perform the work as described on the proposal dated June 6, 2024 for the placement of Reclamite on Dielman Road

ARTICLE 2. TIME OF COMPLETION:

The Notice of Award is anticipated to be issued on July 16, 2024. The contractor shall fully complete all work under this contract within 60 calendar days from Notice to Proceed. The rate of progress and the time of completion being essential conditions of this contract.

The Contractor agrees and acknowledges that time is of the essence of this Agreement and that delay in the prosecution of the Work and the Project will inconvenience the public and increase administrative costs of the City, the costs of which the Contractor and the City are incapable of ascertaining at this time. Should the Contractor, or in the case of Contractor's default, the surety, fail to complete the Work within the time stipulated in this Agreement, or within such extension 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 two hundred and fifty dollars (\$250.00) for each calendar day that the Work remains uncompleted after the time allowed for the completion, including approved extensions.

In the sole discretion of the City, the amount of the liquidated damages may be deducted from any money due the Contractor under this Agreement.

Permitting the Contractor to finish the Work or any part thereof after the expiration of the time for completion or any approved extension, shall in no way operate as a waiver of the City of any of rights under this Agreement.

ARTICLE 3. PAY QUANTITIES AND UNIT PRICES:

The City shall pay the contractor for all work done on the basis of final computations for all work acceptably completed according to this contract, at the unit price shown in the proposal for the quantity actually installed.

ARTICLE 4. FINAL PAYMENT AND ACCEPTANCE:

When all work provided for under this contract has been completed in conformance with the specifications and requirements of this contract, and accepted without regard to the provisions of guarantee as provided under the terms of this contract, a final cost estimate shall be prepared by the Contractor and approved by the City Director of Public Works and filed with the City and with the contractor within fifteen (15) days after the date of acceptance of the work as a statement of the amount due the contractor. This estimate shall include any charges for extra work ordered and properly chargeable under this contract and deducting any sum properly deductible under this contract.

ARTICLE 5. THE CONTRACT DOCUMENTS:

The Corrective Asphalt Materials proposal together with this agreement form the Contract.

ARTICLE 6. RATES OF PAY:

This project is not subject to prevailing wage rates according to Missouri Department of Labor.

ARTICLE 7. SUPERVISION:

The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract regardless by whom such is performed, unless Contract Documents give other specific instructions concerning those matters. Work consists of the work as described in the Project Manual.

ARTICLE 8. SAFETY:

The City of Ladue, and the City of Ladue's Representative may have personnel on the project site from time to time. All information and/or instructions shall be requested in writing by the Contractor and responded to in writing. No opinion or instructions will be given to the Contractor on safety.

The Contractor shall be solely responsible for the safety on and around the project site, including but not limited to, excavation, shoring, ladders, drop cords, scaffolding, barricades, construction means, methods, traffic control, techniques, sequences and procedures.

ARTICLE 9. INDEMNITY:

To the fullest extent permitted by law, the Contractor agrees to defend with counsel selected 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 Contract.

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.

ARTICLE 10. 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.

ARTICLE 11. ONE YEAR CORRECTION PERIOD:

The Contractor expressly guarantees the aforesaid Work as to workmanship and quality of materials used in connection herewith for a term of one (1) year, commencing on the date of final acceptance by the City, and binds itself, its successors or assigns, to make all repairs or replacements which may become necessary within said period due to construction defects and nonconformity with the Contract Documents.

ARTICLE 12. 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.

ARTICLE 13. 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 Project 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 owns sufficient equipment 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.

ARTICLE 14. AMENDMENT; WAIVER:

No amendment, modification or waiver of any provision of this Agreement shall be effective unless in a 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.

ARTICLE 15. CHOICE OF LAW:

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.

ARTICLE 16. 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.

ARTICLE 17. 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.

ARTICLE 18. INDEPENDENT CONTRACTOR:

The Contractor shall be and operate as an independent Contractor in the performance of this Contract. The Contractor shall have complete charge of the personnel engaged in the performance of the Work, and all persons employed by the Contractor shall be employees of said Contractor and not employees of the City in any respect. The Contractor shall supervise and direct the Work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedure and for coordinating all portions of the work.

ARTICLE 19. 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 (60) days of beginning work under this Agreement. Contractor shall further require all subcontractors under Contractor to provide the ten-hour training program required under Subsection 292.675.2 RSMo. to such subcontractors' on-site employees. On-site employees who have previously completed such ten-hour training program must hold documentation of prior completion of the program.

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

ARTICLE 20. INSURANCE

The Contractor shall obtain and maintain for itself during the term of the Project and the Contract liability insurance coverage of at least \$3,370,137 aggregate and \$505,520 per occurrence. Insurance policies providing required coverages 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 coverages are included in the compensation amount and no additional payment will be made therefor by the City. In addition, the Consultant shall provide Worker’s Compensation Insurance in at least statutory amounts for all workers employed for the Services. Before commencing any Work, the Consultant shall provide to the City certificates of insurance evidencing the issuance and maintenance in force of the coverages required by this paragraph and bearing an endorsement precluding cancellation of or change in coverage without at least thirty (30) days written notice to the City. Any self-insurance or deductible above \$50,000.00 is not permitted. The City may waive any insurance coverages or amounts required to be carried by the Contractor under this paragraph when the City deems such waiver to be in the interest of the public health, safety, and general welfare.

NOTHING HEREIN SHALL BE CONSTRUED AS A WAIVER OF THE CITY’S SOVEREIGN IMMUNITY UNDER SECTION 537.610.1 RSMO. OR OTHERWISE. The purpose of the insurance required under this paragraph is to confirm that the Contractor has adequate insurance to cover the Consultant for tort claims that may arise out of the Work. It is not for the purchase of insurance for the City EXCEPT FOR AND ONLY TO THE LIMITED EXTENT OF any claims against the City arising out of the Contractor’s Work and based upon one of the two statutory exceptions to sovereign immunity as expressly set forth in Section 537.600.1(1) and (2). To that limited extent, the City shall be named as an additional insured on the policy bearing an endorsement that: “The Insurer shall not be liable to make any payment for Loss in connection with any Claim made against the City of Ladue as an additional Insured that is barred by sovereign immunity, and nothing contained in this Policy shall constitute a waiver of the City’s sovereign immunity.” Nothing in this requirement shall be deemed a waiver of the City’s sovereign immunity.

ARTICLE 21. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAW:

The Contractor shall comply with all applicable federal, (including specifically Title VI of the Civil Rights Act of 1964), state and local law requirements for performance under this Agreement. Contractor shall comply with Section 34.353 RSMo. to the extent applicable to this Agreement. The Contractor shall abide by all health and environmental requirements imposed by law in performance of its duties.

IN WITNESS WHEREOF the parties hereto have caused this instrument to be executed in three

(3) original counterparts as of the day and year first above written.

CONTRACTOR

Company Name

BY

President

Secretary

Date

Mayor

Attested

Date