



**City of O'Fallon Missouri
Request for Qualifications**

PROFESSIONAL ECONOMIC DEVELOPMENT

CONSULTING SERVICES RELATED

TO THE DEVELOPMENT OF AN

ALTERNATIVE ENERGY PARK

Request for Qualification No

Issue date:

June 25, 2010

Closing location:

MAIL and COURIER/BY HAND:

City of O'Fallon
100 North Main Street
O'Fallon, MO 63366
Attn: Jill Schmitz, Purchasing Agent

Closing date and time:

Please submit **Six (6)** of copies of your firms qualifications marked "Professional Economic Development Consulting Service-Alternative Energy Park." Qualifications must be received before 10:00 a.m. **Central Time** on July 9, 2010

Contact person:

Gregory A. Smothers, Assistant City Administrator

Tel: (636) 379-5405

Fax: (636) 978-4144

gsmothers@ofallon.mo.us

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**REQUEST FOR QUALIFICATIONS
FOR
PROFESSIONAL ECONOMIC DEVELOPMENT
CONSULTING SERVICES RELATED
TO THE DEVELOPMENT OF AN
ALTERNATIVE ENERGY PARK**

INTRODUCTION

The City of O'Fallon is seeking qualifications for professional Economic Development Consulting Services related to the development of an Alternative Energy Park.

A more detailed description of the project is contained in Attachment "A" of this Request for Qualifications.

SUBMITTAL

Please submit six (6) copies of your firm's qualifications marked "Professional Economic Development Consulting Services Related to the Development of an Alternative Energy Park to":

City of O'Fallon, Purchasing Department
Attn: Jill Schmitz, Purchasing Agent
100 North Main Street
O'Fallon, MO, 63366.

Qualifications are due no later than **10:00 am CST on July 9, 2010**

QUALIFICATIONS

Qualifications are not limited to, but should include the following:

1. The specialized experience and technical competence of the firm with respect to the type of services required including, but not limited to,
 - a. A brief description of the firm
 - b. A list of key personnel to be involved in the work and any experience or expertise they have related to the type of work being requested, and the role those key personnel will fulfill in the project
 - c. This summary should include the same information as to specialized experience and technical competence, as well as firm description and key personnel information, for any and all associated or subcontracted firms anticipated to be involved in providing services on the project on behalf of the firm
2. The capacity and capability of the firm (or firms) to perform the work in question, including specialized services, within the time limitations fixed for completion of the project including, but not limited to,
 - a. It is understood that some firms do not employ in-house all necessary professional disciplines to accomplish a given project. A description of any arrangements/joint ventures that will be made with any other firm should be included
 - b. Provide a list of the firm's current projects, completion schedule, and percent completed
3. The past record of the performance of the firm (or firms) with respect to such factors as control of costs, quality of work, and ability to meet schedules including, but not limited to,
 - a. A listing and description of similar projects that have been completed by the firm in the past 2-3 years
 - b. As a minimum, please include a list of the last five to ten similar projects completed by your firm, project time as per the agreement vs. actual project time, consultant's estimated cost estimate, low bid, final project costs and owner contact information (address, phone number and contact person for the agency)
 - c. The estimated schedule for completion of the project.
 - d. Include a discussion of the firm's project approach highlighting the creative processes utilized in solving project problems
 - e. Include a description of the firm's processes that affect and control the project schedule such as coordination with strategic partners, market assessment, etc.

4. The firm's proximity to and familiarity with the area in which the project is located including, but not limited to,
 - a. Confirm the firm's sensitivity to citizen concerns and the need for sharing project information with the public and elected officials
 - b. With regard to the familiarity of the firm with the project, include a discussion explaining the benefit the City of O'Fallon would gain by selecting the firm with regard to both the firm's anticipated technical approach on this project and overall participation as a project team member.

SCHEDULE

Below is the estimated schedule based on information known to date:

| | |
|-----------------|--|
| July 9, 2010 | RFQ's due |
| July 23, 2010 | Selection committee ranks consulting firms based on qualifications |
| July 26, 2008 | Potential Interviews / Negotiate scope of work and price |
| August 12, 2010 | Council Approval |
| August 13, 2010 | Notice to proceed |

The professional services for this project are to be completed by **February 14, 2011**

If selected, it will be imperative to complete the study within the indicated time frame.

SELECTION PROCESS

Qualifications received will be evaluated by a review committee of the City's staff for adequacy of content for the items noted above. The committee will rank the firms and select the firm that they believe to be the best qualified and capable of performing the desired work. The City will then begin contract negotiations with the highest rank firm. If the City is unable to negotiate a satisfactory contract with the firm selected, negotiations with that firm shall be terminated and the City will begin negotiations with another qualified firm. The City does reserve the right to reject any or all responses, to request interviews or further information, or to cancel the project. A selection criteria form (worksheet) is included as Attachment "C" for your information.

The City of O'Fallon will require the selected firm to sign the City's standard contract for professional services (included as Attachment "B" for your reference). This signed contract will be required to be submitted to the City of O'Fallon within 10 calendar days of the notice of award.

It is the desire of the City to award a single contract for the entire scope of services outlined in this request for proposals. However, it is possible that due to budget constraints, the City may award only portions of this proposal. It is also possible that the City may decide to award a contract that would break this proposal into two or more phases or award the phases separately.

Please be advised that depending on the amount of the final contract, it may be necessary for the City Council to approve the contract. This will delay execution of the contract by the City until this approval is obtained.

Any questions that may arise should be directed in writing to Greg Smothers, Assistant City Administrator, (636)379-5405

Attachment A

PROJECT BACKGROUND

The City of O'Fallon, MO, named one of America's Best Places to live by Money Magazine in 2006 and 2008 and in 2009 by Relocate-America.com, holds a purchase option on approximately 112 acres of undeveloped land located at Highways DD and I-64. This land, which offers tremendous Interstate and local highway access, sits in the heart of St. Charles County's High-Tech Corridor, and offers a unique opportunity for the City of O'Fallon to explore the development of a Research Park, putting O'Fallon in the forefront of the Midwest's alternative energy development.

With the nearby Missouri Research Park at capacity, and the recent trend of Alternative Energy companies exploring this region, the demand for additional space has been established in recent years. As such, the City is seeking a professional consultant to provide Economic Development services in developing the Alternative Energy Park. The Scope of Work is detailed in Exhibit A of this proposal.

Attachment B

SAMPLE COPY OF THE CITY'S PROFESSIONAL SERVICES AGREEMENT

Below is a sample copy of the City's Professional Services Agreement. The firm selected is expected to execute a similar contract with the City.

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into this _____ day of _____, 20____, by and between the City of O'Fallon, a Missouri Municipal Corporation (OWNER), and

_____ (Consultant).

ARTICLE 1

CONSULTING SERVICES

CONSULTANT shall provide to OWNER professional consulting services for ALTERNATIVE ENERGY PARK Project, hereinafter referred to as "PROJECT". These services are identified and described in the Scope of Work (EXHIBIT A) attached to and made a part of this Agreement.

ARTICLE 2

OWNER'S RESPONSIBILITIES

Owner's Representative

1. OWNER shall designate in writing a person to act as OWNER's Representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and make decisions with respect to CONSULTANT'S services for the PROJECT. OWNER may change its representative by submitting to the CONSULTANT in writing.

Information

1. OWNER shall provide CONSULTANT with general goals, objectives, and requirements for the PROJECT, including project objectives and constraints, space, capacity and performance requirements, flexibility, expandability, any budgetary limitations.
2. OWNER shall give prompt written notice to CONSULTANT whenever OWNER observes or otherwise becomes aware of a Hazardous Environmental Condition. OWNER shall give written notice to CONSULTANT of any other development that affects the scope or time of performance of CONSULTANT's services, or any defect or nonconformance in CONSULTANT's services or in the work of any Contractor provided the OWNER becomes aware of the development, defect or nonconformance in services and recognizes that there are potential effects on the project.
3. If OWNER provides a budget for the PROJECT, it shall include contingencies for bidding, changes in the work during the project and other costs which are the responsibility of OWNER. OWNER shall, at the request of CONSULTANT, provide a statement of funds available for the PROJECT and their source.
4. OWNER shall furnish to CONSULTANT as required for performance of CONSULTANT's services (except to the extent provided otherwise in the Scope of Work), data prepared by or services of all of which CONSULTANT may use and rely upon in performing its services. The data provided is informational and CONSULTANT shall verify data and use at its own risk.
5. OWNER shall provide such accounting, independent cost estimating and insurance counseling services as may be required for the PROJECT, such legal services as OWNER may require or CONSULTANT may reasonably request with regard to legal issues pertaining to the PROJECT, such auditing service as OWNER may require to ascertain how or for what purpose any consultant has used the moneys paid under the consulting contract, and such inspection services as OWNER may require (except to the extent provided otherwise in the Scope of Work) to ascertain that consultant(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.

6. OWNER shall advise CONSULTANT of the identity and the scope of services of any independent consultants employed by OWNER to perform or furnish services in regard to the PROJECT, including but not limited to, cost estimating, PROJECT peer review, value consulting, and feasibility review.
7. OWNER shall furnish to CONSULTANT data as to OWNER's anticipated cost for services to be provided by others for OWNER so that CONSULTANT may make necessary calculations to develop and periodically adjust CONSULTANT'S opinion of Probable Cost.
8. OWNER must establish and be present for the pre-bid conference, bid opening, project conferences, project progress meetings, and other project related meetings.

Access and Approvals

1. OWNER shall arrange for access to and make all provisions for CONSULTANT to enter upon public and private property as required for CONSULTANT to perform its services under this Agreement. OWNER may have only limited access to private property. CONSULTANT will be required to secure access to the private property if so desired.
2. OWNER shall assist the CONSULTANT in the completion of all applicable forms and permits required by governmental authorities having jurisdiction over the PROJECT. OWNER shall provide all fees associated with the applications for forms and permits. OWNER will approve and execute all forms and permits prior to forwarding to governmental authorities.

Coordination

1. If more than one prime contract is to be awarded for the entire PROJECT, OWNER shall designate prior to the start of the project a person or organization to have authority and responsibility for coordinating the activities among the various prime contractors.

Notice

1. OWNER shall give reasonable written notice to CONSULTANT whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT'S services, or any defect or nonconformance in the work of CONSULTANT or any Contractor.
2. The CONSULTANT is responsible for any of its work that violates sound CONSULTING practices and policies, and/or the intent of the scope of the PROJECT.

ARTICLE 3 COMPENSATION AND PAYMENT

METHODS OF PAYMENT FOR SERVICES AND REIMBURSABLE EXPENSES

1. OWNER will compensate CONSULTANT for the performance of the services described in the Scope of Work (EXHIBIT A), part 1.
2. OWNER shall compensate CONSULTANT for the Additional Services performed or furnished under EXHIBIT A, Part2.

OTHER PROVISIONS CONCERNING PAYMENTS

1. Preparation of Invoices – Invoices will be prepared in accordance with CONSULTANT's standard invoicing practices and will be submitted to OWNER by CONSULTANT unless otherwise agreed. The amount billed each invoice will be calculated and set forth in Exhibit B.
2. Payment of Invoices – Invoices are due and payable within 30 days of receipt. If OWNER fails to make payment due CONSULTANT for services and expenses within 90 days after receipt of CONSULTANT's invoice therefore, the amounts due the CONSULTANT will be increase at a rate of 1.0% per month (or maximum rate allowable by law, if less) from said ninetieth day. In addition, CONSULTANT may, after giving seven days written notice to OWNER, suspend the services under this agreement until CONSULTANT has been paid in full amounts due for services, expenses and other related charges. Payments will be credited first to interest and then to principal.
3. Disputed Invoices – In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. All Dispute resolution shall be handled in the process specified in Article 11 Paragraph F.

4. PAYMENTS DUE UPON TERMINATION

a. in the event of any termination under Paragraph 10.A & 10. B, CONSULTANT will be entitled to invoice the OWNER for all services performed and furnished and all reimbursable expenses incurred through the effective date of termination.

b. In the event of termination by OWNER for convenience or by CONSULTANT for cause, CONSULTANT, in addition to invoicing for those items identified in paragraph 3.B.4.i, shall be entitled to invoice OWNER and shall be paid a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, costs of terminating contracts with CONSULTANT'S sub consultants, and other related closeout costs.

5. RECORDS OF CONSULTANT'S COSTS

Records of CONSULTANT'S costs pertinent to CONSULTANT'S compensation under this agreement shall be kept in accordance with generally accepted accounting practices. To the extent necessary to verify CONSULTANT'S charges and upon OWNER's timely requests, copies of such records will be made available to OWNER at no cost.

**ARTICLE 4
TIME FOR PERFORMANCE**

1. COMMENCEMENT/COMPLETION

CONSULTANT shall commence the performance of the services for the PROJECT upon the date of this Agreement and complete the work in accordance with such schedule attached as part 3 of Exhibit A as may be mutually agreed to by the parties.

2. SUSPENSION

If OWNER fails to give prompt written authorization to proceed with any phase of the services after completion of the immediately preceding phase, or if the CONSULTANT'S services are delayed at no fault of CONSULTANT, CONSULTANT may, after giving seven days written notice to OWNER, suspend services under this agreement.

3. LIQUIDATED DAMAGES

Timely completion is an essential element of this contract. The Project shall be completed by (February 14, 2011). One hundred dollars per calendar day (\$100 / calendar day) will be deducted from any money due to CONSULTANT for work not completed by the dates. The amount specified above is not a penalty but liquidated damages for loss to the City and the public.

**ARTICLE 5
CHANGES IN THE WORK**

OWNER reserves the right, without impairing this Agreement, to order changes or alterations in the work to be performed hereunder by CONSULTANT. If changes or alterations ordered affect the cost or progress of the work, adjustment shall be made in the time for performance of the work and compensation owing to CONSULTANT, as the case may be. These said changes must be agreed upon by both parties in writing prior to the work beginning, and a scope of work change must be executed.

**ARTICLE 6
STANDARD OF CARE**

1. CONSULTANT represents that its services shall be performed with the skill and care which would be exercised by comparable qualified consulting professionals performing similar services at the time and place such services are performed. If the failure to meet these standards results in deficiencies in its services, CONSULTANT shall furnish at its own cost and expense, the additional services, labor, materials and equipment necessary to correct such deficiencies. The City reserves the right to seek other remedies.

2. CONSULTANT shall be responsible for the accuracy of its services and documents resulting there from, and OWNER shall not be responsible for discovering deficiencies therein. CONSULTANT shall correct deficiencies without additional compensation regardless of the state of the project in which the error or omission is discovered.

3. CONSULTANT shall perform or furnish professional CONSULTING and related services in all phases of the PROJECT to which this agreement applies. CONSULTANT shall serve as OWNER's prime professional for the PROJECT. CONSULTANT may employ such consultant as CONSULTANT deems necessary to assist in the performance or the furnishing of the services. CONSULTANT shall not be required to employ any Consultant unacceptable to CONSULTANT. CONSULTANT shall not employ any CONSULTANT'S sub consultants unacceptable to the OWNER.

4. CONSULTANT and OWNER shall comply with acceptable Laws and Regulations and OWNER mandated standards. This agreement is based on these requirements as of its effective date. Changes to these requirements after the

effective date of this agreement may be the basis for modifications to OWNER's responsibilities or to the CONSULTANT'S scope of services, times of performance, or compensation.

5. OWNER shall make decisions and carry out its other responsibilities in a timely manner and shall bear all costs incident thereto so as to not delay the services of CONSULTANT.
6. CONSULTANT shall not be required to sign any documents, no matter who requested, that would result in the CONSULTANT having to certify, guarantee, or warrant the existence of conditions whose existence the CONSULTANT cannot ascertain. OWNER agrees not to make resolution of any dispute with the CONSULTANT or payment of any amount due to the CONSULTANT in any way contingent upon CONSULTANT signing any such certification.

ARTICLE 7 INDEMNITY

CONSULTANT's Duty

1. CONSULTANT shall indemnify, defend and hold harmless OWNER against all claims and suits by third parties for loss of or damage to property, or personal injury, including death, to persons, and from all judgments recovered therefore, and from all expenses for defending such claim or suit, including court costs and attorney's fees, arising out of claims of the negligent acts, errors, or omissions of CONSULTANT in connection with CONSULTANT'S performance of this Agreement. In no event shall CONSULTANT have any duty to indemnify OWNER hereunder against claims arising as a result of OWNER's sole negligence. CONSULTANT'S indemnity obligation does not include any third party claims or suits arising out of errors or omissions in CONSULTANT'S services due to CONSULTANT being required, directly or indirectly by OWNER to take certain actions contrary to the recommendations of CONSULTANT or which have the effect of eliminating safety related features in order to design within funding limitations or both.

ARTICLE 8 LIMITATION OF LIABILITY

1. OWNER agrees that in no event will CONSULTANT be liable under this Agreement for any consequential, special, contingent or penal damages, including but not limited to loss of revenue, loss of profit, operating costs or business interruption losses, regardless of cause, including breach of contract, tort (including sole or concurrent negligence), strict liability or otherwise of CONSULTANT, except to the extent of the compensation paid to CONSULTANT.

ARTICLE 9 INSURANCE

1. Without limiting its liability hereunder, CONSULTANT shall maintain during the life of this Agreement the following insurance and furnish OWNER, in duplicate, certificates of insurance listing the City as an additional co-insured as evidence thereof. Such certificates shall provide that cancellation of said insurance shall not be effected without thirty (30) days prior written notice to OWNER. The certificates shall plainly designate the name of the PROJECT for which the certificate is provided.
 - a. Workers' Compensation Insurance, providing coverage in compliance with the laws of the state in which any part of the work is to be performed, and Employer's Liability Coverage in the minimum amount of \$100,000 for each occurrence.
 - b. Commercial General Liability Insurance written on an occurrence basis with the following limits of liability

| | |
|-------------------|-------------|
| General Aggregate | \$2,000,000 |
| Each occurrence | \$1,000,000 |
| Umbrella | \$3,000,000 |
 - c. Automobile Liability Insurance. Bodily injury and property damage combined single limit - \$1,000,000 each occurrence, \$3,000,000 aggregate
 - d. CONSULTANT's Professional Liability Insurance. Bodily injury and property damage - \$1,000,000 per each occurrence, \$2,000,000 aggregate
2. The Commercial General Liability Insurance shall include Contractual Liability Coverage for the liability assumed by CONSULTANT in ARTICLE 7 herein. The Insurance provided for in this section has been specifically negotiated and agreed to in connection with the Missouri statutes pertaining thereto and CONSULTANT has been allowed to recover its costs for such insurance in the contract rates state herein. Nothing contained in this Agreement shall be deemed to constitute a waiver of the city's sovereign immunity.

**ARTICLE 10
TERMINATION**

1. Termination by OWNER

In the event CONSULTANT fails to comply with any provisions of this Agreement, or if the progress is unsatisfactory, OWNER may serve written notice hereof upon CONSULTANT, and if CONSULTANT neglects within a period of seven (7) days thereafter to commence its efforts to correct such failure, to the satisfaction of the OWNER, OWNER may terminate the Agreement upon written notice to CONSULTANT. Upon such termination, CONSULTANT shall cease its performance of this Agreement and shall deliver to OWNER all completed or partially completed satisfactory work and OWNER shall pay to CONSULTANT the amount due for such satisfactory work.

OWNER also reserves the right to terminate this Agreement if it abandons or indefinitely postpones the PROJECT. Such termination shall be accomplished by written notice to that effect delivered to CONSULTANT. Upon receipt of such notice, CONSULTANT shall immediately cease work and deliver to OWNER all completed or partially completed work. Payment to CONSULTANT shall be made for work performed up to receipt by CONSULTANT of such termination notice, together with CONSULTANT'S costs for closing down its work, and CONSULTANT shall have no claim for loss of anticipated profits or any additional compensation.

2. Termination by CONSULTANT

In the event OWNER fails to comply with any provisions of this Agreement, or if it fails to timely pay compensation due to CONSULTANT, CONSULTANT may serve written notice thereof upon OWNER, and if OWNER fails within a period of seven (7) days thereafter to correct such failure, CONSULTANT may terminate this Agreement upon written notice to OWNER. Upon such termination, CONSULTANT shall cease its performance of this Agreement and when paid the amount due for such work, shall deliver to OWNER all completed or partially completed work for the PROJECT.

3. Termination by OWNER for Convenience by OWNER effective upon the receipt of notice by CONSULTANT

The terminating party under paragraphs 10.A.1, 10.A.2, 10.B or 10.C may set the effective date of termination at a time up to 30 days later than otherwise provided, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

**ARTICLE 11
GENERAL CONSIDERATIONS**

1. Use of Documents

All documents prepared or furnished by CONSULTANT pursuant to this Agreement shall become the property of the OWNER upon completion or termination of the Agreement. All documents shall be made available for use by the OWNER without restriction or limitation on its use. If the OWNER incorporates any portion of the work into a project or reuses any portion thereof, without written consent from the CONSULTANT, then the owner does so at OWNER'S sole risk and OWNER shall indemnify and hold harmless CONSULTANT from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting there from.

2. Opinions of Cost

Since CONSULTANT has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, CONSULTANT'S opinions of probable Total PROJECT Costs provided for herein are to be made on the basis of CONSULTANT'S experience and qualifications and represent CONSULTANT'S best judgment as an experienced and qualified professional, but CONSULTANT cannot and does not guarantee that proposals, bids or actual Total PROJECT will not vary from opinions of probable cost prepared by CONSULTANT

3. Purchase Order Terms

If OWNER issues a purchase order for the services provided by this Agreement according to OWNER'S purchasing procedures, the terms and conditions printed on such purchase order and its supplements or amendments are superseded by this Agreement, and are not applicable to the work.

4. Controlling Law

This Agreement is to be governed by the Laws of the State of Missouri.

5. Successors and Assigns

a. OWNER and CONSULTANT each is hereby bound and the partners, successors, executors, administrators and legal representative of OWNER and CONSULTANT are hereby bound to the other party of this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

b. Neither OWNER nor CONSULTANT shall assign, sublet or transfer any rights under or interest in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent CONSULTANT from employing such independent professional associates and consultants as CONSULTANT may deem appropriate to assist in the performance of services hereunder.

c. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than OWNER and CONSULTANT, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and CONSULTANT and not for the benefit of any other party.

D. In the event the Agreement is terminated by the CONSULTANT or the Owner, the CONSULTANT will provide, at the owners request, all computer files, electronic data and files, notes, and all other documents related to the project. The status of these documents should reflect that with which the CONSULTANT has requested payment for or has been paid for.

6. Dispute Resolution

a. Notice

Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to OWNER promptly (but in no event later than 30 days) after the start of the event giving rise thereto. Notice of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to the OWNER within 60 days after the start of such event (unless OWNER allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter).

b. Owner's Decision

OWNER will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. OWNER's written decision on such Claim, dispute, or other matter will be final and binding upon CONSULTANT unless:

- an appeal from OWNER's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 11.G; or
- if no such dispute resolution procedures have been set forth in Article 11.G, a written notice of intention to appeal from OWNER's written decision is delivered by CONSULTANT to OWNER within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by OWNER), to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

c. If OWNER does not render a formal decision in writing within the time stated in Article 11.F.2, a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

d. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this Article 11.F.

e. Arbitration

- All claims, counterclaims, disputes and other matters in question between the parties hereto arising out of or relating to this Agreement or the breach thereof will be decided by arbitration in accordance with the Arbitration Rules of the American Arbitration Association. This Agreement to arbitrate and any other agreement or consent to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction.

- Notice of demand for arbitration must be filed in writing with the other party to this Agreement and with the American Arbitration Association. The demand must be made within a reasonable time after the claim; dispute or other matter in questions has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.
- The award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to modification or appeal except to the extent permitted by Sections 10 and 11 of the Federal Arbitration Act (9 U. S. C. Sections 10 and 11).
- Prior to the exercise of any rights or remedies described in this Article, OWNER and CONSULTANT agree that if any claim or dispute arising out of this Agreement or the breach cannot be settled through direct discussions, OWNER AND CONSULTANT may agree to first endeavor to settle the claim or dispute by mediation under the Mediation Rules of the American Arbitration Association then in effect.

Accordingly, the parties have executed this Agreement as of the day and year first above written.

OWNER: City of O'Fallon, Missouri

CONSULTANT: _____

Keith Riesberg
City Administrator

PRINCIPAL
Title _____

Date: _____

Date: _____

EXHIBIT A
Part 1 – Scope of Work

The scope of work for this project will include, but not be limited to, the following eight general areas of assistance required from the Consultant:

1. Development of a strategic technology vision and mission statement for the proposed park.
2. Conduct a market assessment for the proposed park
3. Recommend specific technology focuses to fit the region's industrial and R&D prowess.
4. Strategic partner recommendations-institutional, governmental and corporate-and initial outreach.
5. Initial cornerstone park project concept development.
6. Conceptual consortium and collaborative agreement between strategic partners.
7. Recognition of potential financing sources for cornerstone project and further development.
8. If, at the sole discretion of the City, the park is deemed feasible additional services to be provided include:
 - a. Real estate brokering and park marketing.
 - b. Securing of consortium formation.
 - c. Development and/or project management of cornerstone project.

Part 2 – Additional Services

The OWNER reserves the right to request additional work, and changed or unforeseen conditions may require changes and work beyond the scope of this agreement. In this event, a supplement to this agreement shall be executed and submitted for the approval of the OWNER prior to performing the additional or changed work or incurring any additional cost thereof. Any change in compensation or schedule will be specified in the supplement.

Attachment C Sample copy of rating sheet

City of O'Fallon, MO
 Consulting Services Selection Criteria
 Alternative Energy Park

DATE

| Criteria | Weight | Firms | | | | | | |
|---|-------------|-----------------|----------------|-----------------|----------------|-----------------|----------------|-----------------|
| | | 1 | | 2 | | 3 | | Raw Score (1-5) |
| | | Raw Score (1-5) | Weighted Score | Raw Score (1-5) | Weighted Score | Raw Score (1-5) | Weighted Score | |
| Experience in work required | 25% | | 0 | | 0 | | 0 | |
| Understanding of Project Approach | 25% | | 0 | | 0 | | 0 | |
| Favorable references/projects completed within time frame | 15% | | 0 | | 0 | | 0 | |
| Recent experience showing accuracy of project cost estimates | 10% | | 0 | | 0 | | 0 | |
| Proposal meets the City's time requirements / project schedule | 10% | | 0 | | 0 | | 0 | |
| Adequate staffing | 10% | | 0 | | 0 | | 0 | |
| Local preference for those firms which have local geographic presence | 5% | | 0 | | 0 | | 0 | |
| TOTAL | 100% | | 0 | | 0 | | 0 | |