



City of O'Fallon Missouri
Request for Qualifications

Professional Services
Environmental Services Consultant

Issue date:
December 13, 2012

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)** copies of your firm's qualifications marked "Professional Consulting Services – Environmental Services". Qualifications must be received before 10:00 a.m. **Central Time on Friday, January 13, 2012.**

Contact person:
Jill Schmitz, Purchasing Agent
Tel: (636) 379-5527
Fax: (636) 978-4144
jschmitz@ofallon.mo.us

**REQUEST FOR QUALIFICATIONS
FOR
PROFESSIONAL
CONSULTING SERVICES
Environmental Services Consultant**

INTRODUCTION

The City of O’Fallon (City) has operated an Environmental Services Department (ES Dept.) since December 2002. The ES Dept. provides residential collection of household municipal solid waste (MSW), bulk items, recyclables and yard waste for approximately 23,592 households within the City of O’Fallon. As part of this, the City began operating a regional solid waste transfer station under MDNR Permit Number 0418303 in 2003. The solid waste transfer station is situated on 9.07 acres located at 1572 Progress West Lane. Existing site development includes a transfer station, operations center, paved areas, storage area, scale house and a maintenance building.

In 2007, the City entered into a contract with FWCD, L.L.C. to operate, maintain and manage its regional transfer station. The transfer station is permitted to receive MSW and construction and demolition debris (C&D). The facility handled approximately 154,017 tons in 2010 which included approximately 27,385 tons from the City and 126,622 tons from third parties.

The City is exploring the possibility of improving the operations of the Environmental Services Division. In connection therewith, we are seeking qualifications for professional consulting services related to the following areas:

1. Preparation of a “status quo” evaluation of future expenses and revenues associated with the ES Dept. The evaluation should include the potential cost impact to the rates paid by customers of the ES Dept. specifically for the next five years then a more general look at the 5 to 10 year period;
2. Preparation of an appraisal of the ES Dept.’s assets including all real property, the Operations Center and Transfer Station, equipment, dumpsters and containers, and the MDNR operating permit and FWCD contract associated with the transfer station;
3. Providing an independent review of the operations (salaries, efficiencies, equipment, etc.), including the contract at the City’s Transfer Station. The goal of this review is to ensure that the City is getting the greatest value out of the general operations, the transfer station facility and the transfer station permit held by the City for the benefit of our Citizens;
4. Preparation of a final report which summarizes all of the information collected, the results of the appraisal, and recommendations to the City. This scope shall include

presentations of the final report once to a Citizen's Committee and then on a second occasion to elected officials.

Upon negotiation and award of a contract for Professional Services, the City will provide the Consultant with a detailed inventory of the ES Dept.'s physical assets, permits, lease agreements, significant regulatory correspondence with the MDNR, ES Dept. tonnage and financial budgets for the past five years, previous appraisals, surveys and environmental reports for the physical assets, if available, and the contract with FWCD. The scope of services under the contract for Professional Services shall be completed within 90 days of notice to proceed.

SUBMITTAL

Please submit six (6) copies of your firm's qualifications marked "Professional Consulting Services – Environmental Services Consultant":

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 Friday, January 13, 2012. No faxed or emailed copies will be accepted.**

QUALIFICATIONS

The Consultant's statement of qualifications shall be limited to not more than 20 pages of material (double sided pages) excluding the cover letter. 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 and any proposed sub consultants that will be involved in the work.
 - b. A list of the Consultant's and sub consultant's 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. An organization chart and one page resumes shall be provided for the project manager and key personnel.
 - c. A summary of the specialized experience and technical competence of the firm and for any and all associated or subcontracted firms anticipated to be involved in providing services on the project on behalf of the firm. The Consultant may submit up to five project abstracts (one page each), from 2007 to the present,

which demonstrate the specialized experience and technical competence of the Consultant's team. Each project description shall detail the years the services were provided and the services provided that are similar to the services requested in this RFQ.

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. A description of any arrangements such as teaming agreements and/or subcontract agreements that will be made with any other firm should be included. It is understood that some firms do not employ in-house all necessary professional disciplines to accomplish a given project.
 - b. A list of the key personnel's current projects, completion schedule, and availability to participate in this project.
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 3 years.
 - b. As a minimum, include a list of the last five similar projects completed by your firm, project completion time as per the agreement vs. actual project completion time, consultant's original estimated cost versus final project costs, and owner/client contact information (address, phone number, contact person and title).
 - c. A discussion of past work completed by the Consultant and other subcontractors or team members and whether those projects were completed on time and on schedule.
4. The Firm's Technical Approach including but not limited to:
 - a. A work breakdown and estimated schedule for completion of the project by task, including the project personnel responsible for leading each task.
 - b. A discussion of the firm's project approach highlighting the creative processes utilized in solving project problems.
 - c. A description of the firm's processes that affect and control the project schedule such as coordination with strategic partners, market assessment, etc.
 - d. A discussion of the firm's proximity to and familiarity with the area in which the project is located.
 - e. A discussion of the firm's approach to addressing citizen concerns and the need for sharing project information with the public and elected officials.
 - f. A discussion of 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. These dates are subject to changes.

December 13, 2011	City Issues RFQ
January 5, 2012	Date for submittal of questions
January 13, 2012	Qualification based proposals due
January 13, 2012 to February 3, 2012	Selection committee ranks consulting firms based on qualifications
Week of February 6, 2012	Potential interviews with firms
Week of February 13, 2012	Negotiate scope of work and price
February 23, 2012	Potential Council approval
March, 2012	Potential Notice to proceed

The scope of services under the contract for Professional Services shall be completed within 90 days of notice to proceed. 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 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 ranked 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.

The City of O'Fallon will require the selected firm to sign the City's standard contract for professional services (a sample is included as Attachment "A" 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. If a firm has any comments on the standard contract language, they need to provide those comments with their submittal.

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 Jill Schmitz, Purchasing Agent. **All questions must be submitted by Wednesday, January 5, 2012, 5 pm, CST.**

EXHIBIT A

Part 1 – Scope of Work

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

1. Preparation of a “status quo” evaluation of future expenses and revenues associated with the ES Dept. The evaluation should include the potential cost impact to the rates paid by customers of the ES Dept. specifically for the next five years then a more general look at the 5 to 10 year period;
2. Preparation of an appraisal of the ES Dept.’s assets including all real property, the Operations Center and Transfer Station, equipment, dumpsters and containers, and the MDNR operating permit and FWCD contract associated with the transfer station;
3. Providing an independent review of the operations (salaries, efficiencies, equipment, etc.), including the contract at the City’s Transfer Station. The goal of this review is to ensure that the City is getting the greatest value out of the general operations, the transfer station facility and the transfer station permit held by the City for the benefit of our Citizens;
4. Preparation of a final report which summarizes all of the information collected, the results of the appraisal, and recommendations to the City. This scope shall include presentations of the final report once to a Citizen’s Committee and then on a second occasion to elected officials.

The schedule shall be as follows:

1. Preparation of an appraisal of the Environmental Services Department to be completed within 45 days of notice to proceed.
2. Review of the Department’s operations and preparation of a final report to be completed within 90 days of notice to proceed.

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.

EXHIBIT B

City of O'Fallon, MO
 Consulting Services Selection Criteria
 Environmental Services

Criteria	Weight	Firms					
		1		2		3	
		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

Attachment A

SAMPLE COPY OF THE CITY'S PROFESSIONAL SERVICES AGREEMENT

Attached is a sample copy of the City's Professional Services Agreement. The firm selected is expected to execute a similar contract with the City. *Please note that the attached agreement is set up for an engineering design of a construction project and as such will need to be modified for the services that are anticipated within this request for qualifications.*

Sample Agreement for Informational Purposes Only

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 **COMPANY NAME**, (CONSULTANT).

ARTICLE 1

CONSULTANT'S SERVICES

CONSULTANT shall provide to OWNER professional services for **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

A. OWNER's Representative

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.

B. Information

1. OWNER shall provide CONSULTANT with general goals, objectives, and requirements for the PROJECT, including design objectives and constraints, space, capacity and performance requirements, flexibility, expandability, any budgetary limitations; and identify general design and construction standards which OWNER will require to be included in the Drawings and Specifications; and furnish copies of OWNER's standard forms, conditions, and related documents for CONSULTANT to include in the Contract Documents, when applicable.
2. OWNER shall give prompt written notice to CONSULTANT whenever OWNER observes or otherwise becomes aware of 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 construction 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 others, including; soil borings, probing and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretation of all the foregoing; environmental assessment and impact statements; and other special data or consultation that is readily available to the OWNER; 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 including any that may be raised by contractor(s), such auditing service as OWNER may require to ascertain how or for what purpose any contractor has used the moneys paid under the construction contract, and such inspection services as OWNER may require (except to the extent provided otherwise in the Scope of Work) to ascertain that contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.

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- 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 engineering, and constructability review.
- 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.
- If OWNER designates a Construction Manager or an individual or entity other than, or in addition to, CONSULTANT to represent OWNER at the site, define and set forth as an attachment to this Exhibit D the duties, responsibilities, and limitations of authority of such other party as well as the relation thereof to the duties, responsibilities and authority of the CONSULTANT.
- OWNER must establish and be present for the pre-bid conference, bid opening, pre-construction conferences, construction progress meetings, and other job related meetings, and substantial completion and final payment inspections.

C. Access and Approvals

- 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.
- 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.

D. Coordination

- If OWNER designates a person to represent OWNER at the site other than CONSULTANT, the duties, responsibilities and limitations of authority of such other person and the effect thereof on the duties and responsibilities of CONSULTANT will be set forth in an "Exhibit D" that is to be identified, attached to and made a part of this Agreement before such services begin.
- If more than one prime contract is to be awarded for construction, materials, equipment and services for the entire PROJECT, OWNER shall designate prior to the start of construction a person or organization to have authority and responsibility for coordinating the activities among the various prime contractors.

E. Notice

- 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.
- The CONSULTANT is responsible for any of its work that violates sound engineering practices and policies, and/or the intent of the scope of the PROJECT.

ARTICLE 3 COMPENSATION AND PAYMENT

A. METHODS OF PAYMENT FOR SERVICES AND REIMBURSABLE EXPENSES

- OWNER will compensate CONSULTANT for the performance of the services described in the Scope of Work (EXHIBIT A), part 1 in accordance with the Terms and Conditions of the attached EXHIBIT B.
- OWNER shall compensate CONSULTANT for the Additional Services performed or furnished under EXHIBIT A, Part 2, as set forth in EXHIBIT B.
- OWNER shall compensate CONSULTANT for reimbursable expenses over and above the services provided for in paragraphs 3.A.1 and 3.A.2 incurred by CONSULTANT and CONSULTANT's consultants as set forth in EXHIBIT C.

B. OTHER PROVISIONS CONCERNING PAYMENTS

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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. PAYEMENTS DUE UPON TERMINATION
 - i. In the event of any termination under Paragraph 10.A & 10. B; CONSULTANT will be entitled to invoice the OWNER and will be paid in accordance with Exhibit B for all services performed and furnished and all reimbursable expenses incurred through the effective date of termination.
 - ii. 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, using methods and rates as set forth in EXHIBIT C.
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

A. 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.

B. 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.

C. LIQUIDATED DAMAGES

Timely completion is an essential element of this contract. Final Plans shall be completed by the dates outlined in the schedule as set forth in Exhibit A Part 3. 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

A. **CHANGES** - 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 prior to the work beginning, and a scope of work change must be executed.

B. **CONCEALED CONDITIONS** - Should concealed or unknown conditions be encountered in the performance of the work which present the risk of discharge, dispersal, release or escape of asbestos, any hazardous substance or any hazardous waste, CONSULTANT shall promptly suspend its performance of the Work for the protection of the parties and their employees and notify OWNER of the conditions

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encountered. OWNER and CONSULTANT shall promptly investigate the conditions and, if warranted, equitable and necessary adjustments shall be made in the terms and conditions of this Agreement. It is agreed, however, that CONSULTANT shall have no duty to determine the existence of any hazardous substance or hazardous waste at the site of the work or to provide response action services even with equitable adjustments. The WORK shall be suspended until such time as the services of a qualified professional is acquired to assess the condition and make a recommendation for mitigation and or response. The CONSULTANT will be compensated for the impact that the concealed condition has on its services rendered.

ARTICLE 6 STANDARD OF CARE

- A. CONSULTANT represents that its services shall be performed with the skill and care which would be exercised by comparable qualified design 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.
- B. CONSULTANT shall be responsible for the technical accuracy of its services and documents resulting therefrom, 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.
- C. CONSULTANT shall perform or furnish professional engineering 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's Consultant unacceptable to CONSULTANT. CONSULTANT shall not employ any CONSULTANT's sub consultants unacceptable to the OWNER.
- D. 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.
- E. 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. CONSULTANT shall expedite the design as specified in this document.
- F. Prior to the commencement of the Construction Phase, OWNER shall notify CONSULTANT of any variation from the language indicated in the Exhibit E - "Notice of Acceptability of Work", or of any other notice or certification the CONSULTANT will be requested to provide to OWNER or third parties in connection with the PROJECT. OWNER and CONSULTANT shall reach an agreement on the terms of any such requested notice or certification, and OWNER shall authorize such additional services as are necessary to enable CONSULTANT to provide the notices or certifications requested.
- G. 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.
- H. During Construction Phase CONSULTANT shall not supervise, direct or have control over Contractor's work nor shall CONSULTANT have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of the Contractor to comply with Laws and Regulations applicable to the Contractor's furnishing and performing the Work.
- I. CONSULTANT neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. CONSULTANT shall not be responsible for the acts or omissions of any Contractor(s), subcontractor, or supplier, or if any of the Contractor's agents or employees or any other persons (except CONSULTANT's own employees or CONSULTANT'S sub consultant, acting under the direction of the CONSULTANT) at the site or otherwise furnishing or performing any of the Contractor's work; or if any decision made on interpretations or clarifications of the Contract Documents given by the OWNER without consultation and advice of CONSULTANT.

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- K. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (Document No. 1910-8, 1996 Edition) unless both parties mutually agree to use other General Conditions.

ARTICLE 7 INDEMNITY

A. CONSULTANT's Duty

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.

B. OWNER's Duty

1. OWNER agrees to release, waive all rights of subrogation against, defend, indemnify and hold CONSULTANT harmless from all claims, liabilities, demands, costs, expenses (including attorney's fees) and causes of action 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 written recommendations of CONSULTANT that notify the OWNER that the OWNER's direction will negatively impact service or safety of the project and is contrary to sound engineering practice or which have the effect of eliminating safety related features in order to design within funding limitations or both.

ARTICLE 8 LIMITATION OF LIABILITY

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

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.

- (1) 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.
- (2) 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

- (3) Automobile Liability Insurance. Bodily injury and property damage combined single limit - \$1.0 million each occurrence, \$3,000,000 million aggregate
- (4) Architect's and CONSULTANT's Professional Liability Insurance. Bodily injury and property damage - \$2.0 million per each occurrence, \$2 million aggregate

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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

A. Termination by OWNER

1. 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.
2. 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.

B. 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.

C. 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 allow CONSULTANT to demobilize personnel and equipment from the Site, 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

A. Use of Documents

All documents including Drawings, Specifications, and CADD discs 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 therefrom.

B. 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 and Construction 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, familiar with the construction industry; but CONSULTANT cannot and does not guarantee that proposals, bids or actual Total PROJECT or Construction Costs will not vary from opinions of probable cost prepared by CONSULTANT. If, prior to the bidding or negotiating phase of the PROJECT, OWNER wishes

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greater assurance as to Total PROJECT or Construction Costs, OWNER will employ an independent cost estimator as provided in ARTICLE 2.

C. 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.

D. Controlling Law

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

E. Successors and Assigns

1. 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.
2. 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.
3. 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.
4. In the event the Agreement is terminated by the Engineer or the Owner, the Engineer will provide, at the owners request, all plans, tracing, maps, specifications, calculations, survey data, models, topo, design files, 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 Engineer has requested payment for or has been paid for.

F. Dispute Resolution

1. *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).
2. *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:
 - A. 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
 - B. 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.

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3. 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.
4. 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.

G. Mediation

1. All disputes between CONSULTANT and OWNER shall be subject to non-binding mediation. Either party may demand mediation by serving a written notice stating the essential nature of the dispute. Mediation shall commence within sixty (60) days of receipt of notice. The mediator shall be appointed by agreement of the parties. Failing such agreement, the mediator shall be appointed by reference to a Circuit Judge serving in the County of Saint Charles, Missouri. No action or suit between the parties may commence unless:
 - a. The parties fail to hold a mediation within ninety (90) days after service of the written notice as required above;
 - b. A mediation occurred but did not resolve the dispute; or
 - c. A statute of limitation would elapse if suit was not filed.

H. Alien Registration, Compliance and Enforcement

1. Definitions - as used in this section, the following terms shall have the following meanings:
 - A. "Business entity", any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood. The term "business entity" shall include but not be limited to self-employed individuals, partnerships, corporations, contractors, and subcontractors. The term "business entity" shall include any business entity that possesses a business permit, license, or tax certificate issued by the state, any business entity that is exempt by law from obtaining such a business permit, and any business entity that is operating unlawfully without such a business permit. The term "business entity" shall not include a self-employed individual with no employees or entities utilizing the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo;
 - B. "Contractor", a person, employer, or business entity that enters into an agreement to perform any service or work or to provide a certain product in exchange for valuable consideration. This definition shall include but not be limited to a general contractor, subcontractor, independent contractor, contract employee, project manager, or a recruiting or staffing entity;
 - C. "Employee", any person performing work or service of any kind or character for hire within the state of Missouri;
 - D. "Employer", any person or entity employing any person for hire within the state of Missouri, including a public employer. Where there are two or more putative employers, any person or entity taking a business tax deduction for the employee in question shall be considered an employer of that person for purposes of this section;
 - E. "Employment", the act of employing or state of being employed, engaged, or hired to perform work or service of any kind or character within the state of Missouri;
 - F. "Federal work authorization program", any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986 (IRCA), P.L.99-603;
 - G. "Knowingly", a person acts knowingly or with knowledge,
 - H. With respect to the person's conduct or to attendant circumstances when the person is aware of the nature of the person's conduct or that those circumstances exist; or
 - I. With respect to a result of the person's conduct when the person is aware that the person's conduct is practically certain to cause that result;

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- J. "Municipality", the City of O'Fallon, Missouri.
- K. "Public employer", every department, agency, or instrumentality of the state of Missouri or any political subdivision of the state of Missouri;
- L. "Unauthorized alien", an alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. 1324a(h)(3);
- M. "Work", any job, task, employment, labor, personal services, or any other activity for which compensation is provided, expected or due, including but not limited to all activities conducted by business entities.

2. Illegal Acts

- A. No business entity or employer may knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the municipality.
- B. Accordingly, if the amount to be paid pursuant to this contract or grant exceeds five thousand dollars by the municipality the contracting or grant recipient business entity shall, as a condition of the award of contract or grant, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Every such business entity shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. No such business entity or employer shall violate subsection 2A of this section.
- C. The affidavit shall be approved as to form by the municipal attorney.
- D. An employer may enroll and participate in a federal work authorization program and shall verify the employment eligibility of every employee in the employer's hire whose employment commences after the employer enrolls in a federal work authorization program. The employer shall retain a copy of the dated verification report received from the federal government. Any business entity that participates in such program shall have an affirmative defense that such business entity has not violated subsection 2A of this section.
- E. A general contractor or subcontractor of any tier shall not be liable under subsection 2A of this section when such general contractor or subcontractor contracts with its direct subcontractor who violates subsection 2A of this section, if the contract binding the contractor and subcontractor affirmatively states that the direct subcontractor is not knowingly in violation of subsection 2A of this section and shall not henceforth be in such violation and the contractor or subcontractor receives a sworn affidavit under the penalty of perjury attesting to the fact that the direct subcontractor's employees are lawfully present in the United States.
- F. The determination of whether a worker is an unauthorized alien shall be made by the federal government. A determination of such status of an individual by the federal government shall create a rebuttable presumption as to that individual's status in any judicial proceedings brought under this section.
- G. Should the federal government discontinue or fail to authorize or implement any federal work authorization program, the municipality shall review this section for the purpose of determining whether this section is no longer applicable and should be repealed.

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

OWNER: City of O'Fallon, Missouri

CONSULTANT: Engineering Company

Keith Riesberg
City Administrator

Name
President

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Representatives

OWNER

Steve Bender, P.E.
City Engineer
100 North Main Street
O'Fallon, MO 63366

CONSULTANT

Person
Company
Address

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EXHIBIT A – Professional Services Contract

SCOPE OF WORK

Part 1 – Scope of Work

[Insert Text]

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.

[Insert Text]

Part 3 – Schedule of Completion

[Insert Text]

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EXHIBIT B – Professional Services Contract

TERMS AND CONDITIONS

Payments to Engineer for Services and Reimbursable Expenses

[Insert Text]

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EXHIBIT C – Professional Services Contract

REIMBURSEABLE EXPENSES

[IF REQUIRED]

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EXHIBIT D – Professional Services Contract

OWNERS REPRESENTATIVE GUIDELINES

[IF REQUIRED]

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EXHIBIT E – Professional Services Contract

CONSULTANTS NOTICE OF ACCEPTABILITY OF WORK

NOTICE OF ACCEPTABILITY OF WORK

PROJECT:

OWNER:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION AGREEMENT:

CONSTRUCTION CONTRACT DATE:

CONSULTANT:

To:

OWNER

And To:

CONTRACTOR

From:

CONSULTANT

The Engineer hereby gives notice to the above Owner and Contractor that the completed Work furnished and performed by Contractor under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated _____, _____, and the terms and conditions set forth on the reverse side of this Notice.

By: _____

Title: _____

Dated: _____

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(Reverse side of Notice)

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work (“Notice”) on the front side of this sheet is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the professional judgment of Engineer.
3. This Notice is given as to the best of Engineer’s knowledge, information, and belief as of the date hereof.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor’s work) under Engineer’s Agreement with Owner and under the Construction Contract referred to on the front side of this Notice, and applies only to facts that are within Engineer’s knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement and Construction Contract.
5. This Notice is not a guarantee or warranty of Contractor’s performance under the Construction Contract referred to on the front side of this Notice, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents.