


OFFER

The undersigned (the "Bidder") offers this Bid as an offer to contract with the City under the terms and conditions set forth below, and certifies that Bidder has read, understands, and agrees to fully comply with, and be contractually bound by all the terms and conditions set forth in this Invitation For Bids ("IFB"), the Contract formed hereby (as defined below) and any amendments thereto, together with all Exhibits, Specifications, Plans and other documents included as part of this Contract (collectively the "Contract Documents").

By submission of this Offer, Bidder understands the City may award the contract by line item, groups of line items, or multiple award, whichever is deemed most advantageous to the City, pursuant to Section 2.16 "Award of Contract" set forth below.

Missouri Charter No: 19002742 <u>FLO633008</u>		For Clarification of this Bid contact:	
Federal EIN: <u>65-2163861</u>		Name: <u>Andy Jones</u>	
<u>Martin Marietta Kansas City LLC</u> Martin Marietta		Telephone: <u>913-228-4281</u>	
Bidder's Full Legal Name <u>JA</u>		Email: <u>andy.jones@martinmarietta.com</u>	
Bidder's d/b/a (if applicable)			
<u>2710 Wycliff Rd.</u>		Signature of Person Authorized to Bind Bidder	
Address		<u>Andy Jones</u>	
<u>Raleigh</u>	<u>NC</u>	<u>27607</u>	Printed Name
City	State	Zip Code	<u>Senior Sales Rep</u>
			Title

ACCEPTANCE OF OFFER (FOR CITY OF LEE'S SUMMIT USE ONLY)

Effective Date: _____ Contract No. 2021-034

CITY OF LEE'S SUMMIT, Missouri a municipal corporation

Stephen A. Arbo, City Manager

ATTEST: _____ APPROVED AS TO FORM: _____

Office of City Clerk _____ City Attorneys' Office _____

ARTICLE I - DEFINITIONS

For purposes of this Invitation for Bids, the following definitions shall apply:

- 1.1. **"Bid"** or **"Offer"** means a responsive bid or quotation submitted by a Bidder in response to this IFB.
- 1.2. **"Bid Deadline"** means the date and time set forth on the cover of this IFB for the Procurement Officer to be in actual possession of the sealed Bids.
- 1.3. **"Bid Opening"** means the date and time set forth on the cover of this IFB for opening of sealed Bids.
- 1.4. **"Bidder"** means any person or firm submitting a Bid in response to this IFB.
- 1.5. **"City"** means the City of Lee's Summit, Missouri, a municipal corporation. For purposes of solicitations by the Parks and Recreation Department, the term "City" may be substituted with "LSPR" per Section 2.2 of the City of Lee's Summit Procurement Policy.
- 1.6. **"City Manager"** means the City Manager of the City or his/her authorized designee. For purposes of solicitations by the Parks and Recreation Department, the term "City Manager" may be substituted with "Parks Administrator" per Section 2.2 of the City of Lee's Summit Procurement Policy.
- 1.7. **"City Representative"** or **"Project Manager"** means a City employee who has been designated to act as a contact person to the Procurement Officer, and who is responsible for (i) monitoring and overseeing the Vendor's performance under the Contract and (ii) providing information regarding details pertaining to the Contract.
- 1.8. **"Confidential Information"** means that portion of a Bid, Proposal, Offer, Specification or protest that contains information that the person submitting the information believes should be withheld, provided (i) such person submits a written statement advising the City of this fact at the time of the submission and (ii) the information is so identified wherever it appears.
- 1.9. **"Contract"** or **"Contract Documents"** means, collectively, (i) the executed Offer/Bid, (ii) this IFB, including all completed exhibits, (iii) the Notice of Award, (iv) the Notice to Proceed and/or Purchase Order(s), (v) any approved Addendum, Change Order or Amendment, (vi) the Vendor's Certificates of Insurance, endorsements, and a copy of the Declarations Page(s) of the insurance policies and (vii) any Plans, Specifications, or other documents attached, appended, or incorporated herein by reference. Alternate or optional bid items will become part of the Contract only if they are accepted by the City in writing on the Price Sheet.
- 1.10. **"Day(s)"** means calendar day(s) unless otherwise specified.
- 1.11. **"Invitation for Bids"** or **"IFB"** means this request by the City for participation in the competitive bidding process according to all documents, including those attached or incorporated herein by reference, utilized for soliciting Bids for the Materials and/or Services in compliance with the City's Procurement Policy.
- 1.12. **"Materials"** means any personal property, including equipment, materials, replacements, and supplies provided by the Vendor in conjunction with the Contract.
- 1.13. **"Multiple Award"** means an award of an indefinite quantity contract for one or more similar products, commodities, or Services to more than one Bidder.
- 1.14. **"Price"** means the total expenditure for a defined quantity of a commodity or service.
- 1.15. **"Procurement Officer"** means the City employee, as designated on the cover of this IFB, who has specifically been designated to act as a contact person to the Bidders and/or Vendors relating to their Invitation for Bids.
- 1.16. **"Procurement Policy"** means the City Procurement Policy, as amended from time to time.
- 1.17. **"Public Purchase"** means the City's procurement website, www.publicpurchase.com/.
- 1.18. **"Services"** means the furnishing of labor, time or effort by a Vendor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance and as further defined in the Contract.
- 1.19. **"Specification"** means any description of the physical characteristics, functional characteristics, or the nature of a commodity, product, supply, or Services. The term may include a description of any requirements for inspecting, testing, or preparing a supply or service item for delivery.
- 1.20. **"Subcontractor"** means both (i) those persons or groups of persons having a direct contract with the Vendor to

perform a portion of the Contract and (ii) those who furnish Materials according to the plans and/or Specifications required by this Contract.

- 1.21. "**Substitutions**" means Vendor's proposed changes in products, materials, equipment, and methods of construction from those required by the Contract Documents.
- 1.22. "**Substitutions for Cause**" means changes proposed by Vendor that are required due to changed product conditions, such as unavailability of product, regulatory changes, or unavailability of required warranty terms.
- 1.23. "**Substitutions for Convenience**" means changes proposed by Vendor or City that are not required in order to meet other Project requirements, but which may offer advantage to Vendor or City.
- 1.24. "**Unit Price**" means the unit cost of a defined unit of measure of a commodity or service.
- 1.25. "**Vendor**" means the individual, partnership, corporation, or limited liability company who has submitted a Bid in response to this IFB and who, as a result of the competitive bidding process, is awarded a contract for Materials and/or Services by the City.

ARTICLE II – BID PROCESS; BID AWARD

- 2.1. **Scope of Work.** This IFB is to secure a qualified Vendor(s) to provide the City Departments with bulk rock on an as needed basis as a yearly Contract (the "Materials") as more particularly described in the Specifications/Price Sheet, attached hereto as Exhibit A and incorporated herein by reference. For the purpose of this solicitation, the Materials required under this IFB shall be provided at the Price(s) specified in Exhibit A, Specifications/Price Sheet.
 - a. **Contract Amounts.** The resulting Contract(s) is/are intended to be an indefinite quantity and indefinite delivery Contract(s) for the Materials based on the City's needs. The City does not guarantee any minimum or maximum amount of purchases will be requested by the City pursuant to a Contract. Purchases will only be made when the City identifies a need and proper authorization and documentation have been approved. For purchase(s) determined by the City to be appropriate for this Contract, the Vendor shall provide the specific Materials to the City in such quantities and configurations as may be agreed upon between the parties, in the form of a written invoice, quote, materials order or other form of written contract describing the Materials to be delivered (each, a "Materials Order"). Each Materials Order shall (i) contain a reference to this Contract and be incorporated herein by reference. A Materials Order submitted without referencing this Contract will be subject to rejection.
 - b. **Unauthorized Provisions.** Vendor acknowledges and agrees that a Materials Order containing unauthorized exceptions, conditions, limitations, or provisions in conflict with the terms of the Contract, other than City's project-specific requirements, is hereby expressly declared void and shall be of no force and effect.
- 2.2. **Amendment of IFB.** No alteration may be made to this IFB or the resultant Contract without the express, written approval of the City in the form of an official IFB addendum or Contract amendment. Any attempt to alter this IFB/Contract without such approval is a violation of this IFB/Contract and the City Procurement Policy. Any such action is subject to the legal and contractual remedies available to the City including, but not limited to, Contract cancellation and suspension and/or debarment of the Bidder or Vendor.
- 2.3. **Preparation/Submission of Bid.** Bidders are invited to participate in the competitive bidding process for the Materials specified in this IFB. Bidders shall review their Bid submissions to ensure the following requirements are met.
 - a. **Non-responsive or Non-responsible Bids.** The City will consider as "non-responsive" or "non-responsible" and shall reject any Bid not prepared and submitted in accordance with the IFB and Specifications, or any Bid lacking sufficient information to enable the City to make a reasonable determination of compliance with the Specifications. Unauthorized or unreasonable exceptions, conditions, limitations, or provisions shall be cause for rejection. Bids may be deemed non-responsive or non-responsible at any time during the evaluation process if, in the sole opinion of the City, any of the following, but not limited to, are true:

- i. Bidder does not provide required documentation or authorized signature.
 - ii. Bidder does not meet the minimum required skill, experience, or requirements to provide the Materials.
 - iii. Bidder has a past record of failing to fully perform or fulfill contractual obligations, regardless of whether the contract was with the City, particularly obligations similar to those included in this IFB.
 - iv. Bidder cannot demonstrate financial stability.
 - v. The Bid submission contains false, inaccurate, or misleading statements that, in the opinion of the City Manager or authorized designee, are intended to mislead the City in its evaluation of the Bid.
- b. **Specification Minimums.** Bidders are reminded that the Specifications stated in this IFB are the minimum levels required and that Bids submitted must be for products that meet or exceed the minimum level of all features specifically listed in this IFB. Bids offering less than the minimums specified will be deemed non-responsive. Any catalog, brand name, or manufacturer's reference used is considered descriptive and not restrictive, and is indicative of the type and quality of Materials the City desires to purchase. It shall be the Bidder's responsibility to carefully examine each item listed in the Specifications. Bidders shall provide complete manufacturers' descriptive literature regarding the Materials. Literature shall be sufficient in detail in order to allow full and fair evaluation of the Offer.
- c. **Required Submittal.** Bidders shall provide the entire IFB document (all pages) that contains the following completed pages/documents in order to be considered a responsive Bid:
- i. Offer, signed in ink by a person authorized to bind the Bidder (Page i).
 - ii. Price Sheet (Exhibit A or as subsequently replaced by Addendum).
 - iii. Professional Licenses/Certifications as required in Exhibit A.
 - iv. DBE/WBE and Missouri Service-Disabled Veteran Status, (Exhibit C).
 - v. References (Exhibit D).
 - vi. Acknowledgment page, signed in ink, for each Addendum received, if any (Exhibit E).
 - vii. Subcontractors (Exhibit F)

The Bidder's documents are uploaded to Public Purchase prior to the Bid Deadline

- d. **Bidder Responsibilities.** All Bidders shall (1) examine the entire Bid package, (2) seek clarification from the Procurement Officer, prior to the deadline for inquiries, of any item or requirement that may not be clear, (3) check all responses for accuracy before submitting a Bid and (4) submit the entire completed Bid package in accordance with Subsection 2.3(c) above, by the official Bid Deadline. Late Bids shall not be considered. Bids not submitted with an **original, signed (which includes an electronic signature as defined by 351.1222, RSMo., as amended)** Offer page by a person authorized to bind the Bidder shall be considered non-responsive. Negligence in preparing a Bid shall not be good cause for withdrawal after the Bid Deadline.
- e. **Sealed Bids.** Bids submitted on paper, if allowed under Subsection 2.3(c), shall be sealed and clearly marked with the IFB title and number on the lower left hand corner of the mailing envelope. A return address must also appear on the outside of the sealed Bid. Bids submitted on Public Purchase remain sealed until the Bid Deadline.
- f. **Address.** Samples and bids submitted on paper, if allowed, shall be directed to the following address: Procurement and Contract Services, 220 Southeast Green Street, Lee's Summit, Missouri 64063, or hand-delivered to the Procurement and Contract Services' office.
- g. **Bid Forms.** All Bids shall be on the forms provided in this IFB. It is permissible to copy these forms if needed.
- h. **Bidder Notations.** Additions, notations, or other revisions to the IFB document shall be initialed in original ink by the authorized person signing the Bid. The City reserves the right to accept or reject any Bidder Notations.
- i. **Withdrawal.** At any time prior to the specified Bid Deadline, a Bidder (or designated representative) may amend or withdraw its Bid. No Bid shall be altered, amended or withdrawn after the specified Bid Deadline unless otherwise permitted in writing by the Procurement and Contract Services Manager.

- j. **Clarifications.** The City reserves the right to contact Bidder to obtain clarification on submitted bids, including but not limit to contents that are unclear due to poor image quality, the meaning of abbreviations or acronyms, meaning of hand-written information, or other information as deemed necessary by the City.
- 2.4. **Inquiries; Interpretation of Specifications; Scope of Work.**
- a. **Inquiries.** Any question related to the IFB, including any part of the Specifications, Scope of Work, or other Contract Documents, should be submitted only via Public Purchase before the final date and time for inquiries using the Questions section for the IFB on Public Purchase. Questions unrelated to the IFB may be directed via email to the Procurement Officer whose name appears on the cover page of this IFB. Hand-delivered, mailed, verbal, or telephone inquiries directed to City staff **will not be answered**. Within two (2) business days following the Final Date and Time for Inquiries, unless otherwise extended, listed on the cover page of this IFB, answers to questions received will be posted in the Question and Answer section on Public Purchase. If an answer to a question results in a change or clarification to the specifications, the City will issue an Addendum via Public Purchase. Bidder is responsible to look at Public Purchase to find answers to submitted questions. Failure to look at Public Purchase does not excuse Bidder's failure to comply with any requirements of the IFB. The City will not respond to inquiries submitted after the Final Date and time for Inquiries. Any interpretations or corrections of the proposed Contract Documents will be made only by addendum(s) duly approved and issued by the City. The City will not be responsible for any other explanations or interpretations of the Contract Documents.
- b. **Addenda.** It shall be the Bidder's responsibility to check for addenda issued to this IFB. Any addendum issued by the City relating to this IFB will be available on Public Purchase, the City's e-procurement website.
- c. **Approval of Substitutions.** The Materials, products, and equipment described in this IFB establish a standard or required function, dimension, appearance and quality to be met by any proposed substitution. No substitute will be considered unless written Substitution/Equal Request in the form attached hereto as Exhibit B, has been received by the City Representative at least 10 Days prior to the Bid Deadline. Each such request shall include the name of the Material or equipment for which it is to be substituted and a complete description of the proposed substitute, including any drawings, performance and test data and any other information necessary for evaluation of the substitute. If a substitute is approved, the approval shall be by written addendum to the IFB. Bidder shall not rely upon approvals made in any other manner.
- d. **Use of Equals.** When the Scope of Work or Specifications for Materials, articles, products and equipment include the phrase "*or equal*," Bidder may bid upon and use Materials, articles, products and equipment that will perform equally the requirements imposed by the general design. The City Representative will have the final approval of all Materials, articles, products and equipment proposed to be used as an "equal." No such "equal" shall be purchased or installed without prior written approval from the City Representative. Approvals for "equals" before Bid Opening may be requested in writing to the City Representative for approval. Requests must be received at least 10 Days prior to the Bid Deadline. The request shall include the name of the Material, article, product, or equipment for which the item is sought to be considered an equal, and a complete description of the proposed equal including any drawings, performance and test data, and any other information necessary for evaluation of the proposed equal. All approval of equals shall be issued in the form of written addendum or amendment, as applicable, to this IFB or the Contract.
- e. **Bid Quantities.** It is expressly understood and agreed by the parties hereto that the quantities of the various classes of Materials to be furnished under this Contract, which have been estimated as stated in the Bidders' Offer, are only approximate and are to be used solely for the purpose of comparing, on a consistent basis, the Bidders' Offers presented for the Materials under this Contract. The selected Vendor agrees that the City shall not be held responsible if any of the quantities are subsequently found to be incorrect and the Vendor shall not make any claim for damages or for loss of profits because of a difference between the quantities of the various classes of Materials as estimated and the Materials actually provided. If any error, omission, or

- misstatement is found to occur in the estimated quantities, the same shall not (1) invalidate the Contract or the whole or any part of the Specifications, (2) excuse Vendor from any of the obligations or liabilities hereunder, or (3) entitle Vendor to any damage or compensation except as may be provided in this Contract.
- 2.5. **Pre-Bid Conference.** A Pre-Bid Conference may be held. If scheduled, the date and time of the Pre-Bid Conference will be indicated on the cover page of this IFB. The Pre-Bid Conference may be designated as mandatory or non-mandatory on the cover of this IFB. Bids shall not be accepted from Bidders who do not attend a mandatory Pre-Bid Conference. Bidders are strongly encouraged to attend those Pre-Bid Conferences designated as non-mandatory. The purpose of the Pre-Bid Conference will be to review the contents of the IFB in order to prevent any misunderstanding of the City's requirements. Bidders must present to the City any questions as to the requirements of this IFB or any apparent omission or discrepancy at the Pre-Bid Conference. The City will then determine if any action is necessary and may issue a written addendum to the IFB. Oral statements or instructions will not constitute an addendum to the IFB. When applicable, site visits may be a component of the Pre-Bid Conference and noted on the cover page of this IFB.
- 2.6. **New Materials.** All Materials to be provided by the Vendor and included in the Bid shall be new, unless otherwise stated in the Specifications.
- 2.7. **Prices.** Materials shall be provided at the unit prices as set forth in the Specifications/Price Sheet attached hereto as Exhibit A and incorporated herein by reference. Bid Prices shall be submitted on a per unit basis by line item, when applicable, and include all applicable taxes, if any. In the event of a disparity between the unit price and extended price, the unit price shall prevail. If there is no cost for a line item, Bidder shall indicate such by entering a zero (0) or "included" as it applies to the line item in the unit price field. **NOTE: All pricing blanks must be filled in. Empty or unfilled spaces in the Price Sheet shall be deemed as a NO BID entry for that item.**
- 2.8. **Payment/ Discounts.** The City's standard payment terms are net 30 days. Any Bid that requires payment in less than 30 Days shall not be considered. Payment discounts of 30 Days or less will not be deducted from the Bid Price in determining the low Bid. The City shall be entitled to take advantage of any payment discount offered, provided payment is made within the discount period. Payment discounts shall be indicated on Price Sheet.
- 2.9. **Taxes.** Items required for this contract qualify for exemption from taxes in accordance with Section 144.062, RSMo. as well as in accordance with Section 39(10), Article 3, of the Missouri Constitution and is exempt from payment of Federal Excise Taxes in accordance with Title 26, United States Code annotated, the Missouri Department of Revenue has exempted all or those certain items of the contract from State and local sales and use taxes. If Bidder is located outside the State of Missouri and does not recognize the City of Lee's Summit's State of Missouri tax exempt status, all unit pricing submitted shall include any and all applicable taxes. It is the sole responsibility of the Bidder to determine any applicable tax rates and calculate the tax accordingly. Failure to accurately tabulate any applicable taxes may result in a determination that a Bid is non-responsive. The Bidder shall not rely on, and shall independently verify, any tax information provided by the City.
- 2.10. **Federal Funding.** It is the responsibility of the Bidder to verify and comply with federal requirements that may apply to the Materials (the "Federal Requirements"). It is also the responsibility of the Bidder to incorporate any necessary amounts in the Bid to accommodate for required federal record keeping, necessary pay structures or other matters related to the Federal Requirements, if any.
- 2.11. **Cost of Bid/Proposal Preparation.** Bids submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The City does not reimburse the cost of developing, presenting, or providing any response to this IFB; the Bidder is responsible for all costs incurred in responding to this IFB. All materials and documents submitted in response to this IFB become the property of the City and will not be returned.
- 2.12. **Public Record.** All Bids shall become the property of the City. After Bid Opening, Bids shall become public records and shall be available for public inspection in accordance with the City's Procurement Policy, except that any portion of a Bid that was designated as confidential pursuant to Section 2.13 below shall remain confidential from and after

the time of Bid Opening to the extent permitted by Missouri law.

- 2.13. **Confidential Information.** If a Vendor/Bidder believes that a Bid, Specification, or protest contains information that qualifies as a closed record pursuant to Chapter 610, RSMo., a statement, including the legal citation supporting advising the Procurement Officer of this fact shall accompany the submission and the information shall be clearly identified. The information identified by the Vendor or Bidder as confidential shall not be disclosed until the Procurement Officer makes a written determination. The Procurement Officer shall review the statement and information with the City Attorney and shall determine, in writing, whether the information shall be withheld. If the City Attorney determines that it is proper to disclose the information, the Procurement Officer shall inform the Vendor or Bidder, in writing, of such determination.
- 2.14. **Vendor Licensing and Registration.** The awarded Bidder shall secure and maintain all applicable licenses and registrations imposed by law, regulation, or ordinance and pay all charges and fees, which shall include valid registration with the Missouri Secretary of State (if applicable) and a current City Business License. Before issuance of a contract to the successful bidder, proof of the licenses (i.e. copy of the paid receipt or the actual license) shall be provided to the Procurement Officer. It shall be the responsibility of the successful bidder to contact the Development Center, (816) 969-1220, <https://cityofls.net/development-services/doing-business/business-and-contractor-licensing>, for information to obtain business licenses.
- 2.15. **Certification.** By submitting a Bid, the Bidder certifies:
- No Collusion.** The submission of the Bid did not involve collusion or other anti-competitive practices.
 - No Discrimination.** It shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246.
 - No Gratuity.** It has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor or service to a City employee, officer, agent or elected official in connection with the submitted Bid or a resultant Contract. In the event that the resultant Contract is canceled pursuant to Section 3.27(c) below, the City shall be entitled, in addition to any other rights and remedies, to recover and withhold from the Vendor an amount equal to 150% of the gratuity.
 - Financial Stability.** It is financially stable, solvent and has adequate cash reserves to meet all financial obligations including any potential costs resulting from an award of the Contract.
 - No Signature/False Statement.** The signature on the Bid and the Vendor Information Form is genuine. Failure to sign the Bid and the Vendor Information Form, or signing either with a false statement, shall void the submitted Bid and any resulting Contract, and the Bidder may be debarred from further bidding in the City.
- 2.16. **Award of Contract.**
- Multiple Award.** The City may, at its sole discretion, accept Bidder's Offer as part of a Multiple Award.
 - Line Item Award.** The City reserves the right to award by individual line item, by group of line items, or as a total, whichever is deemed most advantageous to the City. The City's flexibility with respect to the method of award also includes any items bid as alternates, which may be accepted or rejected, in whole or in part, at the City's sole discretion.
 - Evaluation.** The evaluation of this Bid will be based on, but not limited to, the following: (1) compliance with Specifications, (2) tax-inclusive Price, including alternates selected by the City, if any, and taxes, but excluding "as-needed" services requested by the City and (3) Bidder qualifications to provide, and past performance providing, the Materials.
 - Waiver; Rejection; Reissuance.** Notwithstanding any other provision of this IFB, the City expressly reserves the right to: (1) waive any immaterial defect or informality, (2) reject any or all Bids or portions thereof and (3) cancel or reissue an IFB.
 - Offer.** A Bid is a binding offer to contract with the City based upon the terms, conditions and Specifications contained in this IFB and the Bidder's responsive Bid, unless any of the terms, conditions, or Specifications are

modified by a written addendum or contract amendment. Bids become binding Contracts when the Acceptance of Offer and Notice of Award is executed in writing by the City. Bidder Offers shall be valid and irrevocable for at least **120** Days after the Bid Opening.

- f. **Protests.** Any Bidder may protest this IFB, the proposed award of a Contract, or the actual award of a Contract. All protests will be considered in accordance with the City's Procurement Policy.
- 2.17. **Required Contract Documents.** Awarded Bidder(s) shall provide the following applicable documents within 10 days after the City issues Bidder a Notice of Award. The City shall not execute the Contract until all of the documents are received.
- a. Certificate from Secretary of State with Missouri Charter Number or Exemption Number; if applicable
 - b. City of Lee's Summit Business License; if applicable
 - c. Certificate of Insurance naming the City of Lee's Summit and complete endorsement documents for endorsements required in Section 3.25 "Insurance" of this Contract;
 - d. Completed Vendor Information Form with a current signed W-9;
 - e. E-verify Signature Page; and
 - f. Work Authorization Affidavit
 - g. Gradation reports from a State Certified Testing Laboratory for each material quoted

ARTICLE III – GENERAL TERMS AND CONDITIONS

3.1. **Term.**

- a. **Initial Term.** This Contract shall be effective from the date it is fully executed by the City, as identified on the Offer page, and remain in full force and effect for one year thereafter (the “Initial Term”), unless terminated as otherwise provided herein.
 - b. **Renewal Terms.** After the expiration of the Initial Term, this Contract may automatically renew for up to **four (4)** successive, one-year terms (each a “Renewal Term”) if it is deemed in the best interests of the City, subject to availability and appropriation of funds for renewal in each subsequent year. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Contract shall remain in full force and effect.
 - c. **Price Increase Requests.** The City’s Procurement Officer will only review fully documented requests for price increases after a Contract has been in effect for one (1) year. Any price increase adjustment will only be made at the time of contract renewal and will be a factor in the renewal review process. The City’s Procurement Officer will determine whether the requested price increase or an alternate option is in the best interest of the City. Any price adjustment will be effective upon the effective date of the contract renewal.
 - d. **Non-Default.** By requesting extension for a Renewal Term as set forth above, or by consenting to a Renewal Term in any manner, Vendor shall be deemed to affirmatively assert that (i) the City is not currently in default, nor has been in default at any time prior to the Renewal Term, under any of the terms or conditions of the Contract and (ii) any and all Vendor claims, known and unknown, relating to the Contract and existing on or before the commencement date of the Renewal Term are forever waived.
- 3.2. **Compensation.** The City shall pay the Vendor for Materials delivered and accepted by the City at the rates set forth in the Price Sheet, Exhibit A. The Vendor shall not commence any billable work or provide any Materials under this Contract until the Vendor receives an executed purchase order from the City.
- 3.3. **Payments.** The Vendor will be paid on the basis of invoices submitted following acceptance of the Materials. All invoices shall document and itemize all Materials delivered in sufficient detail to justify payment and shall include the Purchase Order number authorizing the transaction, if applicable, and shall be delivered to the City Accounts Payable address indicated on the face of the Purchase Order or email to ap@cityofls.net, unless otherwise specified. All transportation charges must be prepaid by the Vendor. If an invoice is subject to a payment discount, the discount period will be calculated from the date of receipt of the claim or the Material, whichever is later.
- 3.4. **Documents.** All documents prepared and submitted to the City pursuant to this Contract shall be the property of the City.
- 3.5. **Deliveries.** Time is of the essence for all orders placed under this Contract. Deliveries shall be made within the period identified in Exhibit A to the addresses listed in the Scope of Work/Specification in Exhibit A. If no period is identified in Exhibit A, deliveries shall be made within 21) Days of the date the Purchase Order. Product documentation required by Section 3.14 shall be delivered to the City upon delivery of the Materials. Delivery shall not be considered complete until the City is in receipt of the manuals. Vendor shall retain title and control of all Materials until they are delivered and the City has accepted delivery. All risk of transportation and all related charges shall be the responsibility of the Vendor. All claims for visible or concealed damage shall be filed by the Vendor. The City will notify the Vendor promptly of any damaged Materials and shall assist the Vendor in arranging for inspection. The City reserves the right to cancel and reject the Materials upon default by Vendor in time, rate, or manner of delivery. The City also reserves the right to refuse shipments made in advance of any scheduled delivery date appearing on the Purchase Order.
- 3.6. **Quantity.** The quantity of Materials ordered must not be exceeded or reduced without the City’s permission, in writing, except in conformity with acknowledged industry tolerances.
- 3.7. **Changes; Cancellation.** The City reserves the right to cancel or make changes in the Materials to be furnished by the Vendor within a reasonable period of time after issuance of Purchase Orders. If such changes cause an

increase or decrease in the amount due under the Purchase Order, or in the time required for Vendor's performance, an acceptable adjustment shall be made and the Purchase Order shall be modified in writing accordingly. Vendor shall submit the adjusted price, if any, in writing to the City within 10 Days from when the change is ordered. Should a Purchase Order be canceled, the City may, but is not required to, reimburse the Vendor, but only for actual and documentable costs incurred by the Vendor due to and after issuance of the Purchase Order. The City will not reimburse the Vendor for any costs incurred after receipt of a notice of cancellation from the City, or for lost profits, shipment of product or costs incurred prior to issuance of a Purchase Order.

- 3.8. **F.O.B. Destination** Unless otherwise agreed to in writing, signed by the City Manager, all delivery terms are "F.O.B. Destination" and are to be prepaid. All other freight charges are to be prepaid and charged on the invoice. If a cash discount is not permitted on freight charges, then specific notation of this must be shown on the invoice.
- 3.9. **Packing.** No extra charges shall be made for packaging or packing material unless authority is expressly incorporated in this Contract. Vendor shall be responsible for safe packing which must conform to the requirement of the selected carrier's tariffs. All shipments must have the correct quantity, product identification, Purchase Order number, receiving address, and product department plainly marked on all packages. Cars or trucks must be loaded to minimum weight requirements to ensure lowest rate, unless otherwise specified. If Vendor is charged with excess freight costs, Vendor is solely responsible for such costs and shall not to pass them on to the City.
- 3.10. **General Warranty.** All Materials supplied pursuant to this Contract shall be fully guaranteed by the Vendor for a minimum period of one year from the date of acceptance by the City (or such longer period as may be provided under warranties for such Materials). Any defects in design, workmanship, or Materials that would result in non-compliance with Contract Specifications shall be fully corrected by the Vendor (including parts and labor) without cost to the City. Vendor further agrees to execute any special guarantees as provided by the Contract, Exhibit A, or by federal, state, or local statutes, ordinances, regulations, or rules. Vendor shall require similar guarantees from all of its vendors or its Subcontractors. Vendor shall include a complete and exclusive statement of the product warranty.
- 3.11. **Price Warranty.** Vendor shall give the City the benefit of any price reductions before actual time of shipment. If the City permits shipment to be made prior to specified shipping date, the City shall have advantage of any price reductions that occur before the originally-scheduled shipping date.
- 3.12. **Inspection; Acceptance.** All Materials are subject to final inspection and acceptance by the City within seven (7) days after receipt. Materials failing to conform to the Specifications of this Contract will be held at Vendor's risk and may be returned to the Vendor. If so returned, all storage and return costs are the responsibility of the Vendor. Upon discovery of a non-conforming Material, the City may elect to do any or all of the following by written notice to the Vendor: (A) waive the non-conformance; (B) stop the use of the non-conforming Material immediately; or (C) bring Material into compliance and withhold the cost of same from any payments due to the Vendor.
- 3.13. **Waiver.** Waiver by the City of a condition in any shipment shall not be considered a waiver of any other terms of this Contract or that condition for subsequent shipments.
- 3.14. **Product Documentation.** Books, manuals, or CD's when possible, shall accompany each unit and provide complete and comprehensive information on all Materials, components, and accessories, as supplied to comply with the Specifications. If changes, modifications, additions, or alterations of any kind are made on the Materials, the Vendor shall provide blueprints, line drawings, and descriptive text sufficient to allow a person of average skill in general mechanics to diagnose, repair, and maintain the Materials and all components. On Materials assembled from manufactured components, parts manuals shall show the manufacturer of each part and all cross-referencing between the Vendor and the manufacturers. The City shall have the right to reproduce any equipment/product documentation for City maintenance and educational purposes only.

- 3.15. **Product Discontinuance.** In the event that a product or model is discontinued by the manufacturer, the City, at its sole discretion, may allow the Vendor to provide a substitute for the discontinued item. The Vendor shall request permission to substitute a new product or model and provide the following: (A) a formal announcement from the manufacturer that the product or model has been discontinued, (B) documentation from the manufacturer that names the replacement product or model, (C) documentation that provides clear and convincing evidence that the replacement meets or exceeds all Specifications required by the original solicitation, (D) documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model, and (E) documentation confirming that the price for the replacement is equal to or less than the discontinued product or model.
- 3.16. **No Replacement of Defective Delivery.** Every delivery of Materials shall fully comply with all provisions of the Contract and any resulting order. If a delivery is made which does not fully conform, this shall constitute a breach of the Contract as a whole.
- 3.17. **Shipment Under Reservation Prohibited.** Vendor is not authorized to ship Materials under reservation and no tender of a bill of lading will operate as a tender of the Materials.
- 3.18. **Liens.** All Materials shall be free of all liens and, if the City requests, a formal release of all liens shall be delivered to the City.
- 3.19. **Right to Assurance.** Whenever one party to this Contract has a good faith reason to question the other party's intent to perform, such party may demand that the other party give a written assurance of its intent to perform. In the event that a demand is made and no written assurance is given within five (5) Days, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
- 3.20. **Right to Inspect Plant.** The City may, at reasonable times, inspect the part of the plant or place of business of the Vendor or any Subcontractor that is related to the performance of this Contract.
- 3.21. **Patents and Copyrights.** All services, information, computer program elements, reports, and other deliverables which may be patented or copyrighted and created under this Contract are the property of the City and shall not be used or released by the Vendor or any other person except with the prior written permission of the City.
- 3.22. **Advertising.** Vendor shall not advertise or publish information concerning this Contract without prior, written consent of the City.
- 3.23. **Licenses; Materials.** Vendor shall maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by the Vendor. The City has no obligation to provide Vendor, its employees or Subcontractors any business registrations or licenses required to perform the specific Services set forth in this Contract. The City has no obligation to provide tools, equipment, or material to Vendor.
- 3.24. **Indemnification.** Vendor shall indemnify, defend, and hold harmless the City and each council member, officer, employee or agent thereof (the City and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes, or omissions, in connection with the performance of the Vendor, its officers, employees, agents, or any tier of Subcontractor or person for which Vendor may be legally liable in the performance of this Contract. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.
- 3.25. **Anti-Discrimination Against Israel Act:** If this Contract has a total potential value of \$100,000 or more and Vendor has 10 or more employees, the following applies. Pursuant to Section 34.600, RSMo and to the fullest extent permitted by law, Vendor certifies that Vendor is not engaged in a boycott of Israel as of the Effective Date of this Agreement, and agrees for the duration of this Agreement to not engage in a boycott of Israel as defined in Section 34.600, RSMo.

3.26. Insurance.**a. General.**

- i. **Insurer Qualifications.** Without limiting any obligations or liabilities of Vendor, Vendor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Missouri, with an AM Best, Inc. rating of A or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Contract at the City's option.
- ii. **No Representation of Coverage Adequacy.** By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect Vendor. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Contract but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Contract or failure to identify any insurance deficiency shall not relieve Vendor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Contract.
- iii. **Additional Insured.** All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name and endorse, to the fullest extent permitted by law for claims arising out of the performance of this Contract, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Contract.
- iv. **Coverage Term.** All insurance required herein shall be maintained in full force and effect until the terms of this Contract are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Contract.
- v. **Primary Insurance.** Vendor's insurance shall be, or endorsed to be, primary insurance with respect to performance of this Contract and in the protection of the City as an Additional Insured. Such coverage shall be at least as broad as ISO CG 20 01 04 13.
- vi. **Claims Made.** In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for six (6) years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance and necessary endorsements citing applicable coverage is in force and contains the provisions as required herein for the six-year period.
- vii. **Waiver.** All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the Work or Services of Vendor. Vendor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.
- viii. **Policy Deductibles and/or Self-Insured Retentions.** The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Vendor shall be solely responsible for any such deductible or self-insured retention amount.
- ix. **Automatic Escalator.** The limits of liability for each policy coverage amount stated below shall be automatically adjusted upward as necessary to remain at all times not less than the maximum amount of liability set forth in Chapter 537.610 RSMo. applicable to political subdivisions pursuant to 537.600; provided that nothing herein or in any such policy shall be deemed to waive the City's sovereign immunity. The statutory waiver of sovereign immunity for 2020 is \$2,905,664 for all claims arising out of a single accident or occurrence.
- x. **Use of Subcontractors.** If any portion of this Contract is subcontracted in any way, Vendor shall execute written contract(s) with its Subcontractors containing the indemnification provisions set forth above and insurance requirements set forth herein protecting the City and Vendor. Vendor shall be responsible for

executing any contracts with its Subcontractor and obtaining certificates of insurance verifying the insurance requirements.

xi. **Notice of Claim.** The Vendor shall upon receipt of notice of any claim in connection with this Contract promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. The Vendor shall also promptly notify the City of any reduction in limits of protection afforded under any policy listed in the certificate(s) of insurance in an amount such that the policy aggregate becomes less than the current statutory waiver of sovereign immunity regardless of whether such impairment is a result of this Contract. A breach of this provision is material breach of the contract.

xii. **Evidence of Insurance.** Prior to commencing any Work or Services under this Contract, Vendor will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Contract, issued by Vendor's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Contract and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Contract. The City shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Contract. If any of the policies required by this Contract expire during the life of this Contract, it shall be Vendor's responsibility to forward renewal certificates and declaration page(s) to the City 30 Days prior to the expiration date. All certificates of insurance and declarations required by this Contract shall be identified by referencing this Contract. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing this Contract will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

1. The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:
 - a. Commercial General Liability - Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 and CG 20 37 07 04 or their equivalents.
 - b. Auto Liability - Under ISO Form CA 20 48 or equivalent.
 - c. Excess Liability - Follow Form to underlying insurance.
2. Vendor's insurance shall be primary insurance with respect to performance of the Contract.
3. All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of Vendor's performance under this Contract.
4. ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

xiii. **Endorsements.** Vendor shall provide the City with the necessary endorsements to ensure City is provided the insurance coverage set forth in this Subsection.

b. **Required Insurance Coverage.**

- i. **Commercial General Liability.** Vendor shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$3,000,000 for each occurrence, \$3,000,000 Products and Completed Operations Annual Aggregate and a \$3,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, bodily

injury, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 01 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Contract, the City, its agents, representatives, officers, officials and employees shall be endorsed as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement forms CG 20 10 03 97 and CG 20 37 07 04, or their equivalents, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." The policy shall contain an endorsement waiving rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

- ii. **Vehicle Liability.** Vendor shall maintain Business Automobile Liability insurance with an unimpaired limit of \$2,000,000 each occurrence on Vendor's owned, hired and non-owned vehicles assigned to or used in the performance of the Vendor's work or services under this Contract. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof and contain, or be endorsed to contain Transportation Pollution Liability insurance covering materials to be transported by Vendor pursuant to this Contract and such coverage shall be at least as broad as policy form CA 99 48 03 06. This coverage may also be provided on the Vendors Pollution Liability policy. To the fullest extent allowed by law, for claims arising out of the performance of this Contract, the City, its agents, representatives, officers, directors, officials and employees shall be endorsed as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. The policy shall contain an endorsement waiving rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
 - iii. **Workers' Compensation Insurance.** If Vendor employs anyone who is required by law to be covered by workers' compensation insurance, Vendor shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Vendor's employees engaged in performance under this Contract and shall also maintain Employers' Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit. The policy shall contain an endorsement waiving rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees.
 - c. **Cancellation and Expiration Notice.** Insurance required herein shall not expire, be canceled, or be materially changed without 30 Days' prior written notice to the City.
- 3.27. **Applicable Law; Venue.** This Contract shall be governed by and construed in accordance with the laws of the State of Missouri and any suit pertaining to this Contract may be brought only in courts in eastern Jackson County, Missouri. The Parties expressly and irrevocably consent to the exclusive jurisdiction and venue of such courts and expressly waive the right to transfer or remove any such action.
- 3.28. **Termination; Cancellation.**
- a. **For City's Convenience.** This Contract is for the convenience of the City and, as such, may be terminated without cause after receipt by Vendor of written notice by the City. The Notice of Termination shall specify the effective date of termination, which shall be not less than five (5) calendar days from the date the notice is personally delivered or ten (10) days from the date the Notice of Termination is sent by another method. Upon termination for convenience, Vendor shall be paid, for all undisputed Materials that were delivered prior to the termination date.
 - b. **For Cause.** If either party fails to perform any obligation pursuant to this Contract and such party fails to cure its nonperformance within 30 Days after notice of nonperformance is given by the non- defaulting party, such

party will be in default. In the event of such default, the non-defaulting party may terminate this Contract immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party's nonperformance is such that it cannot reasonably be cured within 30 Days, then the defaulting party will have such additional periods of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (1) provides written notice to the non-defaulting party and (2) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event shall any such cure period exceed 90 Days. In the event of such termination for cause, payment shall be made by the City to the Vendor for the undisputed portion of its fee due as of the termination date.

The City shall have the right to declare the Vendor in default for the following reasons, which set forth examples, but are not the only reasons the Vendor may be declared in default:

1. Upon a breach by the Vendor of a material term or condition of this Contract, including unsatisfactory performance of the services;
 2. Upon insolvency or the commencement of any proceeding by or against the Vendor, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of the Vendor for the benefit of creditors;
 3. If the Vendor refuses or fails to proceed with the services under the Contract when and as directed by the City;
 4. If the Vendor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Contract under any state or federal law of any of the following:
 - a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;
 - b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;
 - c. a criminal violation of any state or federal antitrust law;
 - d. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;
 - e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or
 - f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor.
 5. If the Vendor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or
 6. If the Vendor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for City or other government work.
- c. **Gratuities.** The City may, by written notice to the Vendor, cancel this Contract if it is found by the City that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Vendor or any agent or representative of the Vendor to any officer, agent, employee,

or elected official of the City for the purpose of securing this Contract. In the event this Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover and withhold from the Vendor an amount equal to 150% of the gratuity.

- d. **Subject to Non-Appropriation.** The City is obligated only to pay its obligations set forth in this Contract from funds lawfully appropriated and budgeted for that purpose during the City's then current fiscal year. The City's obligations under this Contract are current expenses subject to the "budget law" and the unfettered legislative discretion of the City concerning budgeted purposes and appropriation of funds. Should the City elect not to appropriate and budget funds to pay its Contract obligations, this Contract shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the City shall be relieved of any subsequent obligation under this Contract. The parties agree that the City has no obligation or duty of good faith to budget or appropriate the payment of the City's obligations set forth in this Contract in any budget in any fiscal year other than the fiscal year in which this Contract is executed and delivered. The City shall be the sole judge and authority in determining the availability of funds for its obligations under this Contract. The obligation of the City to make any payment pursuant to this Contract is not a general obligation or indebtedness of the City. Vendor hereby waives any and all rights to bring any claim against the City from or relating in any way to the City's termination of this Contract pursuant to this section.

3.29. **Miscellaneous.**

- a. **Independent Contractor.** It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Vendor acknowledges and agrees that all Materials provided under this Contract are being provided as an independent contractor, not as an employee or agent of the City. Vendor, its employees and Subcontractors are not entitled to workers' compensation benefits from the City. The City does not have the authority to supervise or control the actual work of Vendor, its employees or Subcontractors. Vendor is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. City and Vendor do not intend to nor will they combine business operations under this Contract.
- b. **Laws and Regulations.** The Vendor shall keep fully informed and shall at all times during the performance of its duties under this Contract ensure that it and any person for whom the Vendor is responsible remains in compliance with all rules, regulations, ordinances, statutes or laws including, but not limited to, the following: (1) existing and future City and County ordinances and regulations; (2) existing and future state and federal statutes and regulations; and (3) existing and future Occupational Safety and Health Administration standards.
- c. **Amendments.** This Contract may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Vendor.
- d. **Provisions Required by Law.** Each and every provision of law and any clause required by law to be in the Contract will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract will promptly be physically amended to make such insertion or correction.
- e. **Severability.** The provisions of this Contract are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the Contract which may remain in effect without the invalid provision or application.
- f. **Entire Contract; Interpretation; Parol Evidence.** This Contract represents the entire contract of the parties with respect to its subject matter, and all previous contracts, whether oral or written, entered into prior to this Contract are hereby revoked and superseded by this Contract. No representations, warranties, inducements or oral contracts have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written contract executed for the purposes of carrying out the provisions of this Contract.

This Contract shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Contract. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Contract.

- g. **Assignment; Delegation.** No right or interest in this Contract shall be assigned or delegated by Vendor without prior, written permission of the City, signed by the City Manager. Any attempted assignment or delegation by Vendor in violation of this provision shall be a breach of this Contract by Vendor. The requirements of this Contract are binding upon the heirs, executors, administrators, successors, and assigns of both Parties.
- h. **Subcontracts.** No subcontract shall be entered into by the Vendor with any other party to furnish any of the Materials specified herein without the prior, written approval of the City. The Vendor is responsible for performance under this Contract whether or not Subcontractors are used.
- i. **Rights and Remedies.** No provision in this Contract shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Contract. The failure of the City to insist upon the strict performance of any term or condition of this Contract or to exercise or delay the exercise of any right or remedy provided in this Contract, or by law, or the City's acceptance of and payment for Materials, shall not release the Vendor from any responsibilities or obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Contract.
- j. **Offset for Damages.** In addition to all other remedies at law or equity, the City may offset from any money due to the Vendor any amounts Vendor owes to the City for damages resulting from breach or deficiencies in performance or breach of any obligation under this Contract.
- k. **Notices and Requests.** Any notice or other communication required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if (1) delivered to the party at the address set forth below, (2) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (3) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the City: City of Lee's Summit
 220 Southeast Green Street
 Lee's Summit, Missouri 64063
 Attn: Procurement and Contract Services Office

With a copy to: City of Lee's Summit
 220 Southeast Green Street
 Lee's Summit, Missouri 64063
 Attn: City Attorney's Office

If to Vendor: _____

 Attn: _____

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (1) when delivered to the party, (2) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (3) the following business day after being given to a recognized overnight delivery service, with the

person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

- l. **Confidentiality of Records.** The Vendor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of ensuring that information contained in its records or obtained from the City or from others in carrying out its obligations under this Contract shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Vendor's duties under this Contract. Persons requesting such information should be referred to the City. Vendor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Vendor as needed for the performance of duties under this Contract. Vendor shall ensure its subcontractors are aware of and comply with this provision.
- m. **Conflicting Terms.** In the event of any inconsistency, conflict or ambiguity among the terms of this Contract, the IFB, the Specifications/Price Sheet, any City-approved Purchase Orders, invoices and the Vendor's response to the IFB, the documents shall govern in the order listed herein. Notwithstanding the foregoing, and in conformity with Section 2.1 above, unauthorized exceptions, conditions, limitations or provisions in conflict with the terms of this Contract (collectively, the "Unauthorized Conditions"), other than the City's project-specific quantities, configurations or delivery dates, are expressly declared void and shall be of no force and effect. Acceptance by the City of any invoice containing any such Unauthorized Conditions or failure to demand full compliance with the terms and conditions set forth in this Contract shall not alter or relieve Vendor from, nor be construed or deemed a waiver of, its requirements and obligations in the performance of this Contract. If the Contract is renewed pursuant to Subsection 3.1(B) above and such renewal includes any conflicting terms, other than price, those terms will be null and void.
- n. **Non-Exclusive Contract.** This Contract is entered into with the understanding and contract that it is for the sole convenience of the City of Lee's Summit. The City reserves the right to obtain like Materials from another source when necessary.
- o. **Cooperative Purchasing.** The Vendor by submitting a bid acknowledges that other Public Agencies may use this contract (Piggyback) under the same terms and conditions, during the effective period of any resulting contract – services and/or purchases being proposed in this bid, for the same prices and/or terms proposed. Vendor has the option to agree or disagree to allow contract PiggyBacks on a case-by-case basis. Before a Public Agency is allowed to PiggyBack any contract, the Agency must first obtain the vendor's approval – without the vendor's approval, the seeking Agency cannot PiggyBack. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.
- p. **Signatory Authority.** Each person signing this Contract represents that such person has the requisite authority to execute this Contract on behalf of the entity the person represents and that all necessary formalities have been met.
- q. **E-Signature and Counterparts.** The Parties agree that this Contract may be signed in two or more counterparts and/or signed electronically, and all such counterparts together shall constitute one and the same contract; such signatures shall bind the signing party in the same manner as if a handwritten signature had been delivered.
- r. **Time of the Essence.** Time is of the essence in this Contract. Unless otherwise specifically provided, any consent to delay in Vendor's performance of its obligation is applicable only to the particular transaction to which it relates, and is not applicable to any other obligation or transaction.
- s. **Work Authorization/E-verify.** Pursuant to § 285.530, RSMo. if Contract exceeds five thousand dollars

(\$5,000.00), Vendor warrants and affirms to the City that (i) Vendor is enrolled and participates in a federal work authorization program with respect to the employees working in connection with the contracted services and (ii) Vendor does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

Vendor shall swear to and sign an affidavit declaring such affirmation, and provide the City with supporting documentation of its enrollment and participation in a federal work authorization program with respect to the employees working in connection with this Contract. The required documentation must be from the federal work authorization program provider (e.g. the electronic signature page from the E-Verify program's Memorandum of Understanding); a letter from Vendor reciting compliance is not sufficient.

- t. **Prevailing Wages.** Pursuant to § 290.230.5, RSMo. if this Contract, or a project of which this Contract is a part, exceeds seventy-five thousand dollars (\$75,000.00) and involves construction of public works, Vendor shall pay all its workers the applicable prevailing hourly rate of wages for work of a similar character in Lee's Summit. If there is a dispute whether this Contract is subject to prevailing wages as required by §§ 290.210, et. seq., RSMo. the City's determination shall control.
- u. **Force Majeure.** The Parties shall be excused from performance during the time and to the extent that they are prevented from obtaining, delivering, or performing for reasons beyond the Parties' reasonable control, including without limitation, by act of God, public health emergency, natural disaster fire, strike, loss or shortage of transportation facilities, lock-out, commandeering of materials, products, plants or facilities by the government, and any other events or circumstances beyond the reasonable control of the party, when satisfactory evidence is presented to the City, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the Party not performing.

EXHIBIT A
SPECIFICATIONS

1. Scope. The awarded Vendor(s) shall be able to provide bulk rock (the "Materials"), as needed in accordance to the specifications, quantities and delivery to the various City locations, as needed. The awarded Vendor(s) shall also provide transportation, delivery of the bulk rock to the location specified for the individual job(s), as needed. .

2. Specifications.
 - 2.1 Aggregate materials furnished shall conform to Missouri Standard Specifications for Highway Construction (MSSHHC), current edition, for material quality and gradations except as modified in the bid form. Refer to the material descriptions for the specific section and gradation. When MSSHHC standards are not cited, material shall generally conform to the gradation indicated and be free from debris.

 - 2.2 Various City departments will be using this contract and may pick up rock from the successful bidder's stockpiles as needed. When this occurs, the rock shall be loaded into the City truck; the City's driver shall designate size or type of material at time of pick up. The using the Departments also reserve the right to have the rock delivered and shall communicate the need for pick up or deliver at the time the order is placed.

 - 2.3 When the Department elects to have the rock delivered by the Vendor, the haul rate charges shall be quoted and billed in accordance to Pricing line 3.11.

 - 2.4 **All Prices quoted shall be cost per ton for material as identified in Section 3.0.** Haul rate charge shall be calculated by the following formula:
Mileage Cost [*Mileage Cost X Miles to jobsite*] + Ton Cost [*Ton Cost X load weight in Tons*] = **TOTAL HAUL RATE**

 - 2.5 Prior to award, the Vendor recommended for award shall provide gradation reports from a State Certified Testing Laboratory for each material bid. Failure to provide this documentation may prevent award to recommended Vendor.



EXHIBIT E

BID NUMBER: 2021-034

**ADDENDUM NUMBER: 1
12/29/2020**

The original Invitation for Bid#2021-034 for Bulk Rock documents shall remain in effect except as revised by the following changes, which shall take precedence over anything to the contrary in the specifications.

- 1.) This Addendum No. 1 includes a replacement to original Exhibit A Page 2. The original Exhibit A Page 2 PRICE SHEET shall be REMOVED and REPLACED with the attached REVISED PRICE SHEET, Exhibit A Page 2. Changes or Additions to what was originally identified have been underlined.
- 2.) This Addendum No. 1 includes a clarification of which is as follows: Deliveries for the City of Lee's Summit shall be inclusive of various City Department and various City job site locations that are located **WITHIN CITY LIMITS**.
- 3.) This Addendum No. 1 includes additional information, for reference only, of which is as follows: The previous fiscal year spends for Bulk Rock are \$57,700 for FY19 and \$51,300 for FY20.

ACKNOWLEDGEMENT

Each bidder shall acknowledge receipt of this Addendum Number 1 of Bid No. 2021-034, titled Bulk Rock with his/her signature affixed hereto, and shall submit this Addendum and any attachments provided herein with their original bid submittal.

NOTE: This completed and signed Addendum No. 1 is a **REQUIREMENT OF BID SUBMITTAL**.

CERTIFICATION BY BIDDER:

SIGNATURE

TITLE

COMPANY

DATE

[Handwritten Signature]
Senior Sales Rep.
Martin Maccista
1/5/2021

Addendum No. 1

"The mission of the procurement operation is to provide innovation, value and cost effective solutions with integrity while preserving the public trust."

REVISED PRICE SHEET

NOTE: All pricing blanks must be filled in. Incomplete or unfilled spaces in the Specifications/Price Sheet shall be deemed as a NO BID entry for that item. Annual Quantities identified below are only estimates and are not guaranteed. Quantities can fluctuate from year to year based on budget and various scheduled City projects.

3.0 PRICING:

ITEM	DESCRIPTION	EST. ANNUAL QTY	UNIT PRICE PER TON	TOTAL PRICE (Est Qty x Price per Ton)
3.1	1/2" Clean Limestone, conforming to MSSHC Section 1007.2 except the gradation shall be 100 percent passing the 1/2 inch sieve and no more than 5 percent passing the #200 sieve	500 Tons	\$14.50	\$ 7,250.00
3.2	3/4" Clean Limestone, conforming to MSSHC, section 1007.2 except the gradation shall be 100 percent passing the 3/4 inch sieve and no more than 5 percent passing the #200 sieve	2010 Tons	\$14.50	\$29,145.00
3.3	2" Crusher Run, conforming to MSSHC Section 1007.3 except 100 percent shall pass the 2 inch sieve.	350 Tons	\$11.00	\$ 3,850.00
3.4	2" to 4" Clean Limestone conforming to MSSHC, section 1007.2.	83 Tons	\$14.50	\$1,203.50
3.5	6" Clean or Gabion Stone	100 Tons	\$18.00	\$1800.00
3.6	Type One Rock Blanket, conforming to MSSHC section 611.30.2. Visual inspection (40%, one cubic foot or larger)	200 Tons	\$24.00	\$4,800.00
3.7	Type V Base, conforming to MSSHC Section 1007.3	3350 Tons	\$11.50	\$ 38,525.00
3.8	Flat Ledge Stacking Stones	60 Tons	\$ NA	\$ NA
3.9	"Chat" trail rock. A 3/8 inch or less particle size rock made of Limestone	500 Tons	\$15.00	\$ 7,500.00
3.10	GRAND TOTAL BID (SUM OF 3.1-3.9 Total Prices):			\$94,073.50

ADDITIONAL PRICING	
3.11	<p>Haul Rate: Haul Rate shall be calculated by the following formula: $\frac{\text{Mileage Cost} [\text{Mileage Cost} \times \text{Miles to jobsite}] + \text{Ton Cost} [\text{Ton Cost} \times \text{load weight in Tons}]}{\text{}} = \text{TOTAL HAUL RATE}$</p> <p>NOTE: The Subcontractors Page (Exhibit F) should be completed identifying any Haulers or Trucking Companies utilized by your entity for delivery of materials on City jobsites.</p>
	<p>\$ <u>.39</u> /Rate per loaded mile (Quarry to Job Site) AND \$ <u>.39</u> /Rate per ton, (Based on Load Weight)</p>
3.12	<p>State ANY Minimum/Maximum Delivery Load Requirements: <i>Based on 20ft min load quantity,</i></p>
3.13	<p>If a minimum delivery requirement exists, May we get UNDER the Minimum and if so, please identify below ANY applicable fees for ordering UNDER the Minimum: <i>Destination haul x 20ft min. charge.</i></p>

 Company Name: Martin Maricetta

 Date: 1/5/2021

GENERAL INFORMATION	
3.14	Response time/delivery (After receipt of order): (if orders are placed before 10:00am):
3.15	City standard payment terms are Net 30 after receipt of invoice. State any discounts offered: <u>0</u> %
3.16	Throughout the course of the Contract Term, using Depts. may need to order items not specifically listed above. May the Depts. contact your entity for a quote on those other items? If so, please state any discounts off of list price for those items, if applicable: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <u> </u> % (if applicable)
3.17	Please state hours and days of operation: <i>Summer hours - 7-5 winter hours - 7-4</i>
3.18	Please list below the FULL address and name of Quarry location(s) for your entity: <i>Greenwood Quarry - 15719 Airport RD. Greenwood, MO 64634</i>

EXHIBIT B
SUBSTITUTION/EQUAL REQUEST FORM

~~~ INTENTIONALLY OMMITTED ~~~

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**EXHIBIT C**  
**LICENSE/DBE/WBE STATUS/SERVICE-DISABLED VETERAN BUSINESS ENTERPRISE**

1. Provide copies of Professional Licenses/Certificates as required by the Specifications in Exhibit A
2. Has your firm been certified by any jurisdiction in Missouri as a minority or woman owned business enterprise? Yes \_\_\_ No   
If yes, please provide details and documentation of the certification.
3. Has your firm been certified by the State of Missouri, pursuant to Section 34.074, RSMo, as a Missouri Service Disabled Veteran Business Enterprise? Yes \_\_\_ No   
If yes, please provide documentation of the certification.

**EXHIBIT D**  
**REFERENCES**

Provide the following information for three clients for whom Bidder has provided Services of **similar size and scope** within the past 36 months. **These references will be checked.** Please ensure all information is accurate and current. Failure to provide three accurate and suitable references may result in disqualification.

1. Company: Pave Stone Co.  
Address: 601 NE Pavestone Dr.  
City/State/Zip Code: Lee's Summit, MO 64064  
Contact: Wade  
Telephone: 816-524-9900  
Email: \_\_\_\_\_
  
2. Company: Hotmix Materials  
Address: 2709 E 85th St.  
City/State/Zip Code: KCMO, 64132  
Contact: Allen  
Telephone: 816-803-3706  
Email: \_\_\_\_\_
  
3. Company: George Shaw Construction  
Address: 1601 Bellefontaine Ave.  
City/State/Zip Code: KCMO, 64127  
Contact: Andy Nimmz  
Telephone: 816-231-8200  
Email: \_\_\_\_\_

EXHIBIT E

Acknowledgement of Addenda received, if any

**EXHIBIT F**  
**SUBCONTRACTORS**

**OWNER: CITY OF LEE'S SUMMIT, MISSOURI**

1. To enable the **City** to evaluate the Bidder's qualifications to perform the Work as provided in the Specific Requirements of the Bid the Bidder shall nominate each Subcontractor to whom the Bidder intends to award a Sub-agreement to comply with the licensing requirements imposed by the City of Lee's Summit's Codes or any Public Governmental Entity deemed to have jurisdiction. If the Bidder intends to self-perform a classification of Work for which a specialty license or certificate is required, the Bidder shall nominate itself in the spaces provided for that purpose and furnish their license or certificate number(s) for that classification. For each nominated Subcontractor, the Bidder shall identify the nominated Subcontractor's work to be performed, subcontractor name, address, license/certificate number, telephone number, the Subcontractor will perform.
2. Failure by the Bidder to identify a nominated Subcontractor or nominate the Bidder itself within two (2) Business Days after the date of the Bid opening may render the Bid as non-compliant in respect to the requirements of the Bidding Document in the **Owner's** sole discretion. The requirement to make a definite nomination of Subcontractors or to state that the Bidder intends to self-perform that classification and to clarify any omissions or ambiguities in the List of Subcontractors, applies to the Apparent Low Bidder and any other Bidder wishing to remain in contention for the award.
3. The Bidder hereby agrees not to remove, replace, or add a nominated Subcontractor after the period allowed in paragraph 2 or during the course of the contract except for good cause shown as determined solely by the **City**.
4. This listing requirement does not create any express or implied duty or obligation to the Bidder or nominated Subcontractors by the City.
5. If a Hauling of Rock is outsourced by your Company, that would qualify as a "Subcontractor" for the purpose of this bid and details of that Subcontracted Company shall be identified below.

| WORK TO BE PERFORMED: | SUBCONTRACTOR NAME & ADDRESS:                                   | CONTACT NUMBER:     |
|-----------------------|-----------------------------------------------------------------|---------------------|
| 1. <i>Hauling</i>     | <i>Scot Heller Trucking</i><br><i>2845 SW Blvd, KCMO, 64108</i> | <i>816-591-1638</i> |
| 2.                    |                                                                 |                     |
| 3.                    |                                                                 |                     |
| 4.                    |                                                                 |                     |
| 5.                    |                                                                 |                     |
| 6.                    |                                                                 |                     |



January 6, 2021

TO: Firms that submitted responses to Bid 2021-034 Bulk Rock

The City of Lee's Summit is exercising its right under section 2.3 (j) Clarifications. The City seeks clarification from all bidders regarding Exhibit A, item 3.11 Haul Rate for Bid 2021-034 Bulk Rock.

- 1) Background: In response to questions raised during the previous bid for bulk rock, the City sought input from vendors to help clarify the calculation for drayage. Based on the feedback the City made two changes in the bid; 1) the item was changed from "drayage" to "haul rate" and 2) bidders were allowed to provide a per mile rate and a per ton rate to calculate or obtain the haul rate. From reviewing the submitted responses it is clear the requested format for haul rate may have caused confusion for the responding bidders. Instead of rejecting all bids and issuing a new solicitation, the City is reaching out to the firms that submitted bids and allowing them the opportunity to clarify their Haul Rate.
  
- 2) Clarification: Item 3.11 Haul Rate found in Exhibit A of Bid 2021-034 Bulk Rock  
Haul Rate shall be calculated by multiplying the price per loaded mile times the number of miles to the jobsite times the loaded weight in tons. The price bid per loaded mile shall serve as the fix amount used to calculate the Haul Rate.  
\*Load weight in Tons is subject to minimum size load as originally bid in items 3.12 and 3.13

The Haul Rate for a load of Bulk Rock shall be determined by the following formula:

$$\text{Haul Rate} = \text{Price per loaded mile} * \text{Miles to Jobsite} * \text{Load Weight in Tons}$$

Example: Price per loaded mile: \$0.31      14 miles to Jobsite      Load weight is 26 tons

$$\begin{aligned} \text{Haul Rate} &= \$0.31 * 14 \text{ miles} * 26 \text{ tons} \\ \text{Haul Rate} &= \$112.84 \end{aligned}$$

For Bid Evaluation purposes, the City may generate several scenarios based on past projects to determine the most advantageous Bid for the City.

To be considered for further evaluation, the bidder shall complete and sign the following page, then return it to Tarah Daugherty via email: [Tarah.Daugherty@CityofLS.net](mailto:Tarah.Daugherty@CityofLS.net) before 4:00 p.m., local time, Friday, January 8, 2021.

Sincerely,  
*Richard Gentry*  
Richard Gentry, NIGP-CPP, CPPO  
Procurement and Contract Services Manager

