

CITY OF LEE'S SUMMIT
PROCUREMENT AND CONTRACT SERVICES DIVISION

220 S.E. GREEN STREET
LEE'S SUMMIT, MO 64063
Phone: 816-969-1087 Fax: 816-969-1081
deedee.tschirhart@cityofls.net

INVITATION FOR BID NUMBER 2020-006

The City of Lee's Summit will accept electronically submitted bids through Public Purchase from qualified persons or firms interested in providing the following:

ASPHALT BASE AND SURFACE
IN ACCORDANCE WITH THE ATTACHED SPECIFICATIONS

BIDS MUST BE UPLOADED INTO PUBLIC PURCHASE E-PROCUREMENT SYSTEM PRIOR TO THE OPENING DATE OF MARCH 27, 2020 AT 3:00 PM LOCAL TIME

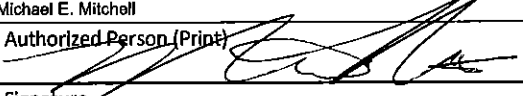
The cutoff date for any questions for this bid is March 19, 2020 at Noon, Local Time.

It is the responsibility of interested firms to check the City's e-bidding system, Public Purchase for any addendums prior to the opening date and time of this Bid. All addendums must be signed and included with submitted Bid.

The City reserves the right to reject any and all bids, to waive technical defects, and to select the bid(s) deemed most advantageous and the best value to the City.

The undersigned certifies that he/she has the authority to bind this company in an agreement to supply the service or commodity in accordance with all terms and conditions specified herein. Please type or print the information below.

Respondent is REQUIRED to complete, sign and return this form with their submittal.

Vance Brothers, Inc	Michael E. Mitchell
Company Name	Authorized Person (Print)
5201 Brighton	
Address	Signature
Kansas City, MO 64130	Director of Sales
City/State/Zip	Title
816-923-4325 816-923-6472	3/24/2020 44-0577983
Telephone # Fax #	Date Tax ID #
dholzknacht@vancebrothers.com	Corporation
E-mail	Entlty Type

If submitting a "no bid" please provide a brief explanation below for the reason why and return this page:

INVITATION FOR BID NUMBER 2020-006

The City of Lee's Summit will accept electronically submitted bids from qualified persons or firms for Asphalt Base and Surface as a yearly contract. Bids must be received electronically in Public Purchase by 3:00 PM Local time, on March 27, 2020. Bids will be read aloud publicly in the Finance & Procurement Conference Room at City Hall, 220 SE Green Street, Lee's Summit, MO 64063, at the specified bid opening date and time.

Bidding documents and any addendums are available by accessing the City's e-procurement system, Public Purchase or by contacting the Procurement Officer. Bidders needing to register with Public Purchase click here: <https://www.publicpurchase.com/gems/leessummit,mo/buyer/public/homeOpenBids>. This is a two-step process. Bidders should plan on registering no later than 36 hours (M-F) prior to bid opening.

DeeDee Tschirhart, Senior Procurement Officer

SCOPE: The City of Lee's Summit is seeking qualified firms or persons to provide Asphalt Base and Surface. This will be a yearly contract.

1.0 INSTRUCTIONS TO BIDDERS:

- 1.1 All questions shall be submitted and potentially answered via the City's e-bidding site Public. If there is significant information deemed necessary to be communicated to all potential bidders by the Procurement Officer, addendum(s) will be issued via Public Purchase or by the following mechanism identified in this solicitation or other electronic bidding service utilized by Department conducting solicitation (identify applicable method). All addendums(s) must be signed and included with submitted bid.
- 1.2 It is the responsibility of each bidder before submitting a bid to examine the bidding documents thoroughly and request an interpretation or clarifications soon after discovering any conflicts, ambiguities, errors, or omissions in the bidding documents. Requests for clarification must be received no later than March 19, 2020 noon Local Time.
- 1.3 The City reserves the right to reject any and all bids, to waive technical defects in bids, and to select the bid(s) deemed most advantageous to the City.
- 1.4 The City reserves the right to award this contract in its entirety or to split the contract between bidders, whichever is in the best interest of the City. The City may accept any item or group of items of the bid unless qualified by specific limitation of the bidder.
- 1.5 Bids submitted on separate forms are not acceptable unless specified in the bid document. Failure to complete bid forms to the satisfaction of the City may result in the rejection of your bid.
- 1.6 Acceptance of this bid or any part thereof, in writing, within one hundred twenty (120) days after the closing date by the City Manager of the City of Lee's Summit shall constitute a legal and binding agreement; wherein, the supplier shall furnish the supplies or material in accordance with the specifications and bid offer on the written order of the City Manager.
- 1.7 Bidder shall quote net costs of all goods requested and all quotes shall include all transportation to destination and inside delivery.
- 1.8 In the event of errors in extension of total price(s), the unit price(s) shall prevail.
- 1.9 Changes to the specifications, provisions, or terms and conditions will not be allowed except by written addendum issued by the Procurement and Contract Services Division. Oral explanations or instructions given prior to award will not be binding.
- 1.10 Bids will be publicly opened and read aloud at the time indicated on the Invitation for Bid or as stipulated on an appropriate addendum. The bidders and the public are invited but not required to attend the formal opening of bids. No decisions relating to the award of a contract will be made at the opening.
- 1.11 Any award of a contract resulting from this Invitation for Bid will be made only by written authorization from the City Manager.
- 1.12 For prompt payment, all invoices shall be sent directly to Accounts Payable, City of Lee's Summit, MO, 220 S.E. Green Street, Lee's Summit, MO 64063, faxed to 816-969-1113, or e-mailed to ap@cityofls.net. Pre-billing will not be allowed without prior written approval by the City.
- 1.13 If an award is a result of this Invitation for Bid, a Term & Supply Contract will be issued. The PO or contract number must be referenced on all documentation including delivery ticket, packing slip and/or invoice.
- 1.14 Items required for this contract qualify for exemption from taxes in accordance with RSMo Section 144.062 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 your company/firm is located outside the State of Missouri and is unable to honor the City of Lee's Summit's State of Missouri tax exempt status, all pricing submitted shall include any and all applicable taxes.
- 1.15 Any Contract Awarded pursuant to this bid shall be subject to the following Terms & Conditions located on Pages 10-15. Any bid conditioned on conflicting Terms & Conditions may be rejected.

2.0 SPECIFIC REQUIREMENTS OF BID:**2.1 Renewal Option:**

- 2.1.1 The City reserves the right to re-new this contract for four (4) additional one-year renewal periods.
- 2.1.2 Adjustments in cost at the beginning of each renewal period must be agreed to by both parties. All requested increases must be accompanied by justification acceptable to the City to establish allowable renewal term pricing.
- 2.1.3 If the Contractor requests an increase in compensation for any renewal period, the Contractor shall notify Procurement and Contract Services no less than sixty (60) days prior to the end of the contract period and shall provide evidence to the satisfaction of the City of increased costs incurred by the Contractor for any element of the contract for which an increase is requested.
- 2.1.4 The Procurement Officer shall notify the Contractor in writing of the intent to exercise the renewal option. However, failure to notify the Contractor does not waive the City's right to exercise the renewal option.

2.2 Licenses and Permits: The successful bidder shall secure licenses imposed by law and ordinance and pay all charges and fees, which shall include a current City of Lee's Summit, MO, Business License. Before issuance of a contract, proof of the licenses (i.e. xerographic copy of the paid receipt or xerographic copy of the actual license) shall be provided to the Procurement and Contract Services Division to be kept in the bid file as part of the permanent record. Any building permits that would be required for new work shall be provided by the City at no cost to the bidder. It shall be the responsibility of the successful bidder to contact the Development Center, (816) 969-1220, for information to obtain business licenses. A business license shall not be required if the awarded contractors' place of business does not reside in the City of Lee's Summits' city limits and is only delivering products or equipment.

2.3 Insurance: The bidder must provide a Certificate of Insurance in accordance with all requirements shown in the insurance requirements section of this document prior to the award of a contract-if applicable.

2.4 Charter Number: All vendors doing business in the State of Missouri must register with the Missouri Secretary Of State. Upon registration, a charter number is issued and should be identified on the front cover page of this solicitation. If your business is exempt, the exemption number should be referenced in lieu of a charter number. Charter Number must be provided within ten (10) business days of the date of Notice of Award. No work may commence until this is received. Failure to provide evidence of registration is grounds to revoke the notice of award and disqualify the bid. To register with the Missouri Secretary of State, please consult: <https://bsd.sos.mo.gov/BusinessEntity/BESearch.aspx?SearchType=0>.

2.5 Compliance: The following items shall be provided by the successful bidder to the City of Lee's Summit Procurement and Contract Services Division:

2.5.1 To be provided with Bid submittal:

- Bidder should complete the bid document in its entirety (bidders should keep a copy of bid submittal)
- Executed Addendum(s)

2.5.2 To be provided prior to the issuance of a contract:

- Business License
- Certificate of Insurance naming the City of Lee's Summit as additional insured under General Liability.
- W-9 (new vendor only)
- Vendor Information Form (new vendor only)

NOTE: Respondents legal entity company name must be identified the SAME on their W9 and Certificate of Insurance (COI).

2.6 No Financial Interest or Other Conflict: Bidder certifies that they are in compliance with items 2.6 through 2.7.

- 2.6.1 Elected or appointed officials or employees of the City of Lee's Summit or any political subdivision thereof, serving in an executive or administrative capacity, must comply with sections 105.452 and 105.454, RSMo, regarding conflict of interest.
- 2.6.2 Bidder hereby covenants that at the time of solicitation submittal Bidder has no other contractual relationships which would create any actual or perceived conflict of interest. Bidder further agrees that during the term of the contract neither the Bidder nor any of its employees shall acquire any other contractual relationships which create such a conflict.

2.7 Debarment and Suspension Status:

- 2.7.1 Bidder is not currently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any government agency, nor is Bidder an agent of any person or entity that is currently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transaction by any government agency.

- 2.7.2 Bidder has not, within a three year period preceding this Invitation, been convicted of or had a civil suit judgment rendered against Bidder for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property.
- 2.7.3 Bidder is not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated above.
- 2.7.4 Bidder has not, within a three year period preceding this Invitation, had any government (federal, state, or local) transactions terminated for cause or default.

2.8 **Award:** A Contract shall be awarded to that responsible and responsive bidder whose bid, conforming to the Invitation for Bids, deemed to be most advantageous (lowest price and best value) to the City.

3.0 **SPECIFICATIONS:** Asphaltic Concrete shall conform to Section 2205 of the Kansas City Metropolitan Chapter of the American Public Works Association (APWA). The full document may be found at the link below:
<http://kcmetro.apwa.net/content/chapters/kcmetro.apwa.net/file/Specifications/APWA2200.pdf>

3.1 The availability of the supplier to provide asphalt material on a year round basis will be part of the evaluation. State hours/days/months of plant operation at your location:

M-F 6:30am - 3:30pm 12 months a year, Saturdays by appointment
Weather dependent (Cold/Snow/Rain)

3.2 The Public Works Operations Division will pick up material. State the location of the plant for department pickups. This will be used as part of the evaluation criteria:

5201 Brighton
Kansas City, MO 64130

3.3 State name of contact person(s) and telephone number(s):

David Holzknacht 816-886-8550
Shawn Kerans 816-923-8622

3.4 The City reserves the right to randomly have samples taken for testing for compliance with the APWA specifications.

4.0 **PRICE INDEXING ENROLLMENT:** Participation in any or all of the programs listed in this Section is optional, and the Contractor shall indicate, per the instructions in the pricing section of the bid, whether or not they want to participate in program. The failure to accept or decline participation in a program will be interpreted as an election not to participate in the respective program.

ASPHALT CEMENT PRICE INDEXING. The City will make adjustment payments for the material supplied during each month.

- ❖ Adjustments will be made to the payments due the Supplier for any bituminous base and asphaltic concrete pavement that contains PG64-22, PG70-22 or PG76-22 when it has been determined that the monthly midpoint of the published prices of PG64-22 for the Kansas City area has fluctuated from the monthly midpoint of the month the Work was bid. The Kansas City area prices will be obtained from the Asphalt Weekly Monitor® published by Poten & Partners Inc. The monthly base price will be based on the weekly report that encompasses the 15th day of each month. The monthly base price, established prior to the monthly bid opening, shall apply to payment estimates for the following month.
- ❖ The asphalt price adjustment will be applied to the **actual** amount of virgin asphalt binder used by the supplier for all asphalt items in the contract. Asphalt set up on a square yard basis will be converted to tons using the unit weight provided in the job mix formula in use. The percentage of virgin asphalt as shown in the job mix formula will be the basis for adjustments for any asphalt mix type supplied during the monthly index period. The effective asphalt obtained from the use of recycled asphalt pavement (rap) will not be eligible for adjustment. The base price index for PG64-22 will be applied to the asphalt mix for mixes using PG64-22, G70-22 or PG76-22.
- ❖ **Basis of Payment.** To determine the adjustment for any material specified in this provision the following formula will be used:
A = (B x C) x (D-E), where: A = Adjustment for mix supplied during monthly average index period
B = Tons of mix supplied during the monthly average index period
C = % of virgin asphalt binder as listed in the job mix formula in use
D = monthly average price at time mix supplied
E = monthly average price at time of bid

5.0 PRICING

Item	Description	Est. Qty.	Unit Price per Item	Total Price
5.1	APWA Type 1	1300 Tons	\$ 53.50	\$ 69,550.00
5.2	APWA Type 1 – Recycled	1300 Tons	\$ 42.50	\$ 55,250.00
5.3	APWA Type 2	100 Tons	\$ 50.50	\$ 5050.00
5.4	APWA Type 2 – Recycled	100 Tons	\$ 45.00	\$ 4500.00
5.5	APWA Type 3	1400 Tons	\$ 50.50	\$ 70,700.00
5.6	APWA Type 3 – Recycled	1400 Tons	\$ 45.00	\$ 63,000.00
5.7	APWA Type 4 Fine Mix	400 Tons	\$ 70.00	\$ 28,000.00
5.8	3/8 Inch Cold Patch Material	150 Tons	\$ 77.50	\$ 11,625.00
5.9	Premium Patch	400 Tons	\$ 87.50	\$ 35,000.00
Item	Description	Est. Qty.	Unit Price per 5 Gall Bucket	Total Price
5.10	SS-1H Tack	110 Gallons	\$ 40.00	\$ 484.00 (22 pails)
GRAND TOTAL				\$ 343,159.00
Throughout the course of the Contract Term, the using departments may need to order items not specifically listed above. Please state any discounts for such purposes, from your listed prices:				0 %
City standard payment terms are Net 30 after receipt of invoice. State any discounts offered.				n/a
Is the pricing provided above tax exempt per the City of Lee's Summit's State of Missouri tax exempt status?				Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
If you answered "No" to the question posed above, does the pricing provided above include any and all applicable taxes?				Yes <input type="checkbox"/> No <input type="checkbox"/>

PRICING OPTIONS: Bidders have the option to accept or decline these provisions. The bidder must mark a box below and initial.

OPTION 1 - ASPHALT CEMENT PRICE INDEXING PROVISION: No price adjustments will be made, due to asphalt price changes, for bidders who do not accept this provision. Failure to mark one of the boxes (accept or decline) will be interpreted as an election not to participate in the respective program.

OPTION 2 – Firm Fixed Prices for the entire term of the yearly agreement. No price adjustments will be made, due to asphalt price changes, for bidders who accept this provision. Failure to mark one of the boxes (accept or decline) will be interpreted as an election not to participate in the respective program.

Option 1 Asphalt Cement Price Indexing: Accept Decline Initial MM
 Option 2 Firm Fixed Pricing: Accept Decline Initial _____

5.0 COOPERATIVE PROCUREMENT WITH OTHER JURISDICTIONS:

This section is optional, it will not affect bid award. If the City of Lee's Summit awarded you the proposed contract, would you sell or provide service(s) under the prices and terms of this Contract to any Municipal, County Public Utility, Hospital, Educational Institution, or any other non-profit organization located within the Greater Kansas City Metropolitan Area?

Sales will be made and/or services provided in accordance with the prices, terms, and conditions of the Invitation for Bid and any subsequent term contract.

The Procurement Officer of Record (POR) is responsible for the solicitation of the bid. Each jurisdiction that wishes to piggyback off of this contract/agreement once awarded has authority to act as Administrative Contracting Officer with responsibility to issue purchase orders, inspect and receive goods, make payments and handle disputes involving shipment to their jurisdiction.

YES _____ NO X INITIALS MM

INSURANCE REQUIREMENTS
GOVERNING RESPONSES AND SUBSEQUENT CONTRACTS

1. General.

A. **Insurer Qualifications.** Without limiting any obligations or liabilities of Contractor, Contractor 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 Agreement at the City's option.

B. **No Representation of Coverage Adequacy.** The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

C. **Additional Insured.** All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance shall name and endorse, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

D. **Coverage Term.** All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

E. **Primary Insurance.** Contractor's insurance shall be, or be endorsed to indicate, its primary, non-contributory insurance with respect to performance of this Agreement 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.

F. **Claims Made.** In the event any insurance policies required by this Agreement 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 citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

G. **Waiver.** All policies, 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 Contractor. Contractor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement.

H. **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. Contractor shall be solely responsible for any such deductible or self-insured retention amount.

I. **Automatic Escalator.** The limits of liability for each policy coverage amount stated above 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 2019 is \$2,865,330 for all claims arising out of a single accident or occurrence.

J. **Use of Subcontractors.** If any work under this Agreement is subcontracted in any way, Contractor shall either cover all subcontractors in the Contractor's liability insurance policy or execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the City and Contractor. Contractor shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

K. **Notice of Claim.** The Contractor shall upon receipt of notice of any claim in connection with this Agreement promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. The Contractor 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 Agreement. A breach of this provision is material breach of the contract.

J. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Contractor 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 Agreement, issued by Contractor'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 Agreement and that such coverage and provisions are in full force and effect. The City may 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 Agreement.

If any of the policies required by this Agreement expire during the life of this Agreement, Contractor shall forward renewal certificates and declaration page(s) to the City thirty (30) days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing number and title of this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without a reference to this Agreement, as applicable, 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 or equivalent.
 - (b) Auto Liability – Under ISO Form CA 20 48 or equivalent.
 - (c) Excess Liability – Follow Form to underlying insurance.
- (2) Contractor's insurance shall be primary, non-contributory insurance with respect to performance of the Agreement.
- (3) All policies, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Contractor under this Agreement.
- (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.

All Certificates of Insurance shall name the City of Lee's Summit as the certificate holder and send the certificate and any endorsements to:

City of Lee's Summit
Attn: Procurement and Contract Services
220 S.E. Green Street
Lee's Summit, MO 64063 -2358

2. Required Insurance Coverage.

A. Commercial General Liability. Contractor 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 Agreement, 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.

B. Vehicle Liability. Contractor shall maintain Business Automobile Liability insurance with an unimpaired limit of \$2,000,000 each occurrence on Contractor's owned, hired and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this Agreement. 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 Contractor pursuant to this Agreement 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 Contractors Pollution Liability policy. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, 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.

C. Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Contractor's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance with an unimpaired limit 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.

Contractor further understands and agrees that Contractor's employees, agents, subcontractors, and directors (referred to in this paragraph as "Employees"), are not serving as employees of the City in any manner and therefore are not entitled to any of the City's industrial benefit coverages, including Workers' Compensation coverages. Contractor acknowledges and agrees that any injury its Employees sustain in the performance of this Contract will be not be eligible for industrial benefits from the City and any necessary treatment will be Contractor's, or Contractor's insurer's, sole responsibility. Should Contractor's insurer attempt to subrogate a Workers' Compensation claim against the City, including the City's employees, director, or agents, Contractor shall defend, indemnify, and hold harmless the City and the City's employees, director, or agents for, from, and against any and all claims, liabilities, demands, damages, losses, and expenses, including attorneys' fees and litigation expenses, arising out of such subrogation efforts.

F. Contractor's Environmental/Pollution Liability. Contractor shall carry and maintain Pollution Liability and/or Asbestos Pollution Liability and/or Errors and Omissions insurance applicable to the services and work being performed, with an unimpaired limit of no less than \$3,000,000 per claim or occurrence and \$3,000,000 aggregate per policy period of one year.

3. Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without thirty (30) days' prior written notice to the City.

GENERAL TERMS AND CONDITIONS

GENERAL INSTRUCTIONS CONCERNING IFB's/BID's

1. **AWARD.** The right is reserved, as the interest of the City may require, to reject any or all bids and to waive any minor informality or irregularity in bids received. The City may accept any item or group of items of any bid unless qualified by specific limitation of the bidder. Unless otherwise provided in the schedule, bids may be submitted for any quantities less than those specified; and the City reserves the right to make an award on any item for a quantity less than the quantity bid upon at the unit price offered unless the bidder specified otherwise in his bid. The Contract shall be awarded to that responsible and responsive bidder whose bid, conforming to the Invitation for Bids, will be most advantageous (lowest price and best value) to the City, price and other factors considered. An award mailed (or otherwise furnished) to the successful bidder within the time for acceptance specified in the bid, results in a binding contract without further action by either party.
2. **PREPARATION OF BIDS.**
 - A Bidders are expected to examine the drawing, specifications, schedule and all instructions. Failure to do so will be at the bidder's risk.
 - B Each bidder shall furnish the information required by the invitation. The bidder shall sign the invitation. Erasures or other changes must be initialed by the person signing the offer. Bids signed by an agent are to be accompanied by evidence of his authority unless such evidence has been previously furnished to the City.
 - C Unit price for each unit bid shall be shown and such price shall include packing unless otherwise specified. Freight or shipping shall be included in the Unit Price unless requested as a single line item. A total shall be entered in the total column for each item bid. In case of discrepancy between a unit price and extended price, the unit price will be presumed to be correct.
 - D Alternate bids for supplies or services other than those specified will not be considered unless authorized by the invitation.
 - E Bidder must state a definite time for delivery of supplies or services unless otherwise specified in the invitation.
 - F Time, if stated as a number of days, will include Saturdays, Sundays, and holidays.
 - G If the item has a trade name, brand and/or catalog number, such must be stated in the bid.
 - H Prices quoted are to be firm, final and shall include shipping F.O.B. destination unless requested as a single line item.
 - I In submitting bids, Vendor agrees that the City of Lee's Summit shall have 120 days in which to accept or reject any of the bids submitted unless otherwise specified on the bid page.
 - J Specification sheets **MUST** be uploaded with bids.
3. **EXPLANATION TO BIDDERS.** Any explanation desired by a bidder regarding the meaning or interpretation of the invitation, drawing, specifications, etc., must be requested in writing and with sufficient time allowed for a reply to reach bidders before the submission of their bids. Oral explanation or instruction given before the award of the contract will not be binding. Any information given to a prospective bidder concerning an invitation will be furnished to all prospective bidders as an addendum to the invitation, if such information is necessary to bidders in submitting bids per the invitation or if the lack of such information would be prejudicial to uninformed bidders.
4. **ACKNOWLEDGMENT OF ADDENDUM TO INVITATIONS.** Receipt of an addendum to an invitation by a bidder must be acknowledged by signing and uploading the addendum into the City's e-bidding system or as otherwise stipulated in the bid document. Such acknowledgment must be received prior to the hour and date specified for receipt of bids, or returned with the bid and received prior to opening time and date.
5. **SUBMISSION OF BIDS.**
 - A Bids, addendum(s) and modification(s) thereof shall be uploaded into the City's e-bidding system, unless otherwise stated in the invitation for bid, before the open date and time.
 - B Emailed or faxed bids will not be considered unless authorized by the invitation.
 - C Samples of items, when required, must be submitted within the time specified and unless otherwise specified by the City, at no expense to the City. If not consumed by testing, samples will be returned at bidders request and expense, unless otherwise specified by the invitation.
 - D Bids will be publicly opened and read aloud as stipulated in the "Invitation for Bid".
 - E Submission of a bid constitutes an assignment by you of any and all anti-trust claims that you may have under the Federal and/or State laws resulting from this Contract.
6. **FAILURE TO SUBMIT BID.** If a "no bid" is submitted, do not return the invitation unless otherwise specified. A letter, postcard or email notification should be sent to the issuing office advising whether future invitations for the type of supplies or services covered by this invitation are desired. Failure of the recipient to bid or to notify the issuing office that future invitations are desired may result in removal of the name of such recipient from the mailing list for the type of supplies or services covered by the invitation.
7. **MODIFICATION OR WITHDRAWAL OF BIDS/SOLICITATIONS.** A bid/solicitation may only be withdrawn by one of the following methods prior to the official opening/closing date and time specified: 1. A bid/solicitation may be withdrawn by signed, written notice. 2. A bid/solicitation may also be withdrawn in person by the bidder or its authorized representative who provides proper identification. 3. A bid/solicitation may be withdrawn via email by the bidder or its authorized representative. A bid/solicitation may only be modified by one of the following methods prior to the official opening/closing date and time specified: 1. A bid/solicitation modification may be modified by signed, written notice provided in a sealed envelope with the bid/solicitation number, description and the word "modification" identified on the envelope. 2. A bid/solicitation modification may also be submitted in person by the bidder or its authorized representative who provides proper identification and provides written notice in a sealed envelope with the bid/solicitation number, description and the word "modification" identified on the envelope. All modifications shall not be opened until the official opening date and time to preserve the integrity of the bid/solicitation process. Telephone, telegraphic or electronic requests to modify a bid/solicitation shall not be honored. No modification or withdrawal of any response will be permitted after the bid/solicitation official opening date and time specified.
8. **LATE BIDS AND MODIFICATIONS.** It is the responsibility of the bidder to upload or submit a hard copy if stipulated in the invitation for bid (IFB), his bid, bid addendum(s) or bid modification(s) on or before the date and time of the bid opening date and time. Bids will NOT be accepted after the date and time of opening under any circumstances.
9. **BONDS.** Bonds shall be executed with the proper sureties, through a company licensed to operate in the State of Missouri, and hold a current Certificate of Authority as an acceptable surety under 31 CFR Part 223 (and be listed on the current U.S. Department of the Treasury Circular 570 and have at least a Best's rating and a FPR9 or better financial performance rating per the current A.M. Best Company ratings.)
 - A **BID DEPOSITS (BONDS).**
 - Bid Deposit Not Required .
 - Bid Deposit Required as stipulated in the "Invitation for Bid".Note the following: Bid Deposit. The Bidder will furnish a bid deposit in the form of a bond, certified check, or money order in the amount of 5% of base bid made payable to the City of Lee's Summit, Jackson County, Missouri, for the measure of liquidated damages which the City will sustain and the proceeds thereof will become the property of the City if for any reason the bidder (Personal or company checks will not be accepted):

- (1) Withdraws his bid after the opening of the bids and prior to the time a formal written agreement evidencing the contract has been signed and delivered to the City whether or not the bidder at the time of such withdrawal has been designated as the successful bidder, or
- (2) Upon written notification of the award of contract to him, he fails to properly sign and deliver to the City within 10 days Labor and Materials and Performance Bonds, if required; Certificate of Insurance, and the written Contract, formally evidencing the terms of the Invitation for Bid and his bid as submitted.
- (3) The bidder further agrees the City will have the right to retain the bid deposit for a period of one hundred twenty (120) days from the date of opening of the bids. At the expiration of said time, or earlier at the option of the City, said bid deposit will be returned to the bidder unless said bid deposit has become the property of the City as liquidated damages for one of the reasons stipulated.

B PERFORMANCE AND LABOR AND MATERIAL PAYMENT BONDS.Performance and Labor and Material Payment Bonds Not Required .Performance and Labor and Material Payment Bonds Bond Required as stipulated in the "Invitation to Bid".

Note the following:

- (1) Coincident with the execution of the Contract, Contractor shall furnish to City a contract Performance Bond and a Labor and Material Payment Bond drawn upon the forms included in these Contract Documents.
- (2) Date of bonds shall be the same as the date of City's execution of the contract.
- (3) The Performance Bond and Labor and Material Payment Bond shall be in an amount equal to the full contract price, guaranteeing the payment of all bills and obligations arising from the performance of the contract, and otherwise conditioned as required by law.
- (4) The bonds shall be automatically increased in amount and extended in time without formal and separate amendments to cover full and faithful performance of the contract in the event of Change Orders regardless of the amount of time or money involved. It shall be Contractor's responsibility to notify his surety of any changes affecting the general scope of the work or change in the Contract Price.
- (5) At any time during the continuance of the Contract that the surety on any bond becomes unacceptable to City, City shall have the right to require additional and sufficient sureties which Contractor shall furnish to the satisfaction of City within ten (10) days after notice to do so.

10. **DISCOUNTS AND BID EVALUATION.** Discounts offered for prompt payment may be considered in bid evaluation.11. **MATERIAL AVAILABILITY.** Bidders must accept responsibility for verification of material availability, production schedules and other pertinent data prior to submission of bid and delivery time. It is the responsibility of the bidder to notify the City of Lee's Summit immediately if materials specified are discontinued, replaced, or not available for an extended period of time.12. **ALTERNATE BIDS.** Bidders must submit complete specifications on all alternate bids. Alternate bids without complete specifications may be rejected. Alternate bids and exceptions may be rejected. Alternate bids and exceptions to bid clauses must be clearly noted on the bid form. Unless otherwise indicated, it will be assumed that the article proposed is exactly as specified.**13. AWARD OF CONTRACT.****A BASIS OF AWARD.**

- (1) Only firm bids will be considered.
- (2) Bidders may be requested to submit financial statements subsequent to the bid opening. Such statements shall be submitted to City within three (3) days after being so requested.
- (3) The award of the Contract, if it is awarded, will be to the lowest responsible and responsive bidder whose qualifications indicate the award will be in the best interest of the Owner and whose bid complies with all prescribed requirements.
- (4) City reserves the right to reject any and all bids, and waive any and all informalities, and the right to disregard all non-conforming or conditional bids or counter-proposals.

B EVALUATION OF BIDS.

- (1) The evaluation of bids will include consideration of prior experience, financial statements, if requested, sub-contractors, suppliers, and manufacturers to be used in the work and manufacturers' data on the materials and equipment to be incorporated. Time of completion or delivery will also be a factor in the award.
- (2) "Or Approved Equal" Clause. Whenever a material, article, or piece of equipment is identified on the plans or in the specifications by reference to manufacturer's or vendor's names, trade names, catalog numbers, etc., it is intended merely to establish a standard; and, any material, article, or equipment of other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed, is, in the opinion of the City, of equal substance and function. Substitute items may be rejected at the discretion of the City of Lee's Summit.
- (3) Whenever the name of a manufacturer is mentioned on the face hereof and the words "or equal" do not follow, it shall be deemed that the words "or equal" shall follow such designations unless the face hereof specifies "no substitutes". The City may assume that items bid are equal or it may request samples and proof thereof unless approved before shipment. City reserves the right to return at bidder's expense all items that are not acceptable as equals, said items to be replaced by bidder with satisfactory items at the original price.
- (4) By virtue of statutory authority, the City shall give preference to all commodities manufactured, mined, produced, or grown within the State of Missouri, and to all firms, corporations or individuals, when quality is equal or better and the delivered price is the same or less. Similar preference will be given to Lee's Summit products and supplies.

C **NOTICE OF AWARD.** After considering the basis of award and evaluation of bids, City will within one hundred twenty (120) days after the date of opening bids, notify the successful bidder of acceptance of his bid.14. **QUALIFICATIONS OF BIDDERS.** The City may make such investigations as are deemed necessary to determine the ability of the bidder to perform the work and the bidder shall furnish all such information and data for this purpose as the City may request. The City reserves the right to reject any bid if the evidence submitted by, or investigation of such bidder fails to satisfy the City that such bidder is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein.15. **ANTI-TRUST.** Submission of a bid constitutes an assignment by bidder of any and all anti-trust claims that the bidder may have under the Federal and/or State laws resulting from this contract.16. **GUARANTEE.** All customary guarantees for workmanship, quality and performance specific by the Manufacturer for any or all items shall apply to the items offered under this bid.17. **EXPERIENCE STATEMENT** (if required). Only those bids will be considered which are submitted by bidders who submit with their bid an Experience Statement listing projects and showing satisfactory completion of work of type and size comparable to the work required by these contract documents. A list of comparable projects,

including pertinent information and identification of the owners, shall be submitted with the bid. Similar Experience Statements shall be included for any subcontractors named in the bid.

18. **REFUND OF DEPOSIT ON BID DOCUMENTS** (if required). Deposits on bid documents and contract drawings will be refunded to all prospective bidders, sub-contractors, suppliers and manufacturers who return the documents in good condition to Owner before the date set for opening bids or within ten days thereafter (unless otherwise stated in the invitation to bid).

CONTRACTUAL REQUIREMENTS.**GENERAL CONTRACTUAL REQUIREMENTS.****1. DEFINITIONS.**

- A "City" shall refer to: City of Lee's Summit, Jackson County, Missouri who are the owners of the property, and their authorized representatives.
B "Contractor" shall refer to the corporation, company, partnership, firm, or individual, named and designated in the contract agreement and who has entered into this contract for the performance of the work and/or to furnish goods, services, or construction covered thereby at an agreed upon price, and its, his or their duly authorized agents or other legal representatives.
C The "specifications" includes instruction to bidders, the Terms and Conditions of Purchase, the Definitions and the technical specifications of the work.
D A "sub-contractor" is a person, firm or corporation supplying labor or materials, or only labor for work at the site of the project for, and under separate contract or agreement with the Contractor.
E The term "sample" as used herein includes natural materials, fabricated items, equipment, devices, appliances or parts thereof as called for in the specifications and any other samples as may be required by the City to determine whether the kind, quality, construction, workmanship, finish, color and other characteristics of the materials, etc., proposed by the Contractor conform to the requirements of the contract documents. Samples approved by the City shall establish the kind, quality, and other required characteristics, and all work shall be in accordance with the approved samples. Samples, when requested, shall be supplied at no cost to the City.
F The term "estimated" represents quantities estimated for the period of time stated. Purchase orders shall be placed for actual requirements as needed.
G The term "minimum" means the City will order this quantity of supplies during the period of this contract at the price bid.
H The term "maximum" means the City may order this quantity of supplies during the period of this contract and the bidder should be prepared to supply same at the price bid.

2. **PURCHASE ORDERS.** The City will not be responsible for articles or services furnished without a purchase order unless otherwise set forth in the Bid Documents.

3. **CONTRACT TERMS.** The performance of this contract shall be governed solely by the terms and conditions as set forth in this contract and any specifications or bid documents notwithstanding any language contained on any invoice, shipping order, bill of lading or other document furnished by the Contractor at any time and the acceptance by the City of any terms or conditions contained in such document which is inconsistent with the terms and conditions set forth in the contract. Any different or additional terms other than those herein contained in Contractor's acceptance are hereby objected to.

4. **TRANSPORTATION CHARGES.** Freight/shipping shall be F.O.B. Destination whereby all transportation charges shall be paid by Contractor.

5. **PACKAGING.** The City will not be liable for any charges for drayage, packing, cartage, boxing, crating or storage in excess of the purchase price of this order unless stated otherwise herein.

6. **INSPECTION AND ACCEPTANCE.** No material received by the City pursuant to the purchase order issued under the terms and conditions of this bid document shall be deemed accepted until the City has had reasonable opportunity to inspect said material. All material which is discovered to be defective or which does not conform to any warranty of the Contractor herein, upon initial inspection, or at any later time if the defects contained in the material were not reasonably ascertainable upon the initial inspection, may be returned at the Contractor's expense for full credit or replacement. No goods returned as defective shall be replaced without Buyer's written authorization. Such return shall in no way affect City's discount privileges. Such right to return, offered to the City arising from the City's receipt of defective goods, shall not exclude any other legal, equitable or contractual remedies the City may have therefore.

7. **GENERAL WARRANTY AND WARRANTY.** The Contractor warrants that all materials, fixtures, and equipment furnished by the Contractor and his sub-contractors shall be new, of good quality, and of good title, and that the work will be done in a neat and workmanlike manner. The Contractor also guarantees the workmanship and materials for a period of one year from the date of final acceptance of all the work required by the Contract. Furthermore, he shall furnish the City with all manufacturers' and suppliers' written guarantees and warranties covering materials and equipment furnished under the Contract.

8. **PATENTS.** Contractor warrants that the articles described herein and the sale or use of them will not infringe upon any U.S. or foreign patent and Contractor covenants that he will at his own expense, defend every suit which may be brought against the City, or those selling or using City's product (provided Contractor is promptly notified of such suit and all papers therein are delivered to Contractor) for any alleged infringement of any patent by reason of the sale or use of such articles and Contractor agrees that he will pay all cost, damages and profits recoverable in any such suit.

9. **QUANTITIES.** City assumes no obligation for articles or materials shipped in excess of the quantity ordered hereunder. Any unauthorized quantity is subject to City's rejection and return at Contractor's expense.

10. **ACTS OF GOD.** Neither party shall be liable for delays, or defaults in the performance of this contract due to Acts of God or the public enemy, riots, strikes, fires, explosions, accidents, Governmental action of any kind or any other causes of a similar character beyond its control and without its fault or negligence.

11. **BANKRUPTCY OR INSOLVENCY.** In the event of any proceedings by or against either party, voluntary or involuntary, in bankruptcy or insolvency, or for the appointment of a receiver or trustee or an assignee for the benefit of creditors, of the property of Contractor, or in the event of breach of any of the terms hereof including the warranties of the Contractor, City may cancel this contract or affirm the contract and hold Contractor responsible in damages.

12. **COMPLIANCE WITH APPLICABLE LAWS.** Contractor shall comply with all federal, state or local laws, ordinances, rules, regulations and administrative orders, including but not limited to Wage, Labor, Unauthorized Aliens, EEO and OSHA-type requirements which are applicable to Contractor's performance under this contract. Contractor shall indemnify and hold the City harmless on account of any violations thereof relating to Contractor's performance under this contract, including imposition of fines and penalties which result from the violation of such laws.

13. **LAW GOVERNING.** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Missouri. Any dispute regarding this contractual agreement will be decided by a Missouri Court.

14. **TIME OF DELIVERY.** The City requires that all materials ordered will be delivered when specified. Time is therefore of the essence. If deliveries are not made at the time agreed upon, City reserves the right to cancel or to purchase elsewhere and hold Contractor accountable for any damages sustained as a result thereof.

15. **INTERPRETATION OF CONTRACT AND ASSIGNMENTS.** This contract shall be construed according to the laws of the State of Missouri. This contract, or any rights, obligations, or duties hereunder may not be assigned by Contractor without City's written consent and any attempted assignment without such consent shall be void.

16. **CONTRACTOR'S INVOICES.** Invoices shall be prepared and submitted in triplicate unless otherwise specified. Invoices shall contain the following information: Contract Number (if any), Purchase Order number, Item Number; contract description of supplies or services, sizes, quantities, unit prices and extended totals. Invoices for and inquiries regarding payment should be addressed to the City Accounts Payable Division. Any delay in receiving invoices, or errors and omissions, on statement or invoices will be considered just cause for withholding settlement without losing discount privileges.
17. **NOTICE AND SERVICE THEREOF.** Any notice to any Contractor from the City relative to any part of this contract will be in writing and considered delivered and the service thereof completed when said notice is posted, by certified or regular mail or email, to the said Contractor at his last given address or delivered in person to said Contractor or his authorized representative on the work.
18. **PROVISIONS REQUIRED BY LAW DEEMED INSERTED.** Each and every provision of law and clause required by law to be inserted in this contract will be deemed to be inserted herein and 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 forthwith be physically amended to make such insertion or correction.
19. **TERMINATION OF CONTRACT.** This contract may be terminated by either party upon sixty (60) days prior notice in writing to the other party. The City may terminate this contract immediately, under breach of contract, if the Contractor fails to perform in accordance with the terms and conditions. In the event of any termination of contract by the Contractor, the City may purchase such supplies and/or services similar to those so terminated, and for the duration of the contract period the Contractor will be liable for all costs in excess of the established contract pricing.
20. **INDEMNITY AND HOLD HARMLESS.** To the fullest extent allowable by law, Contractor agrees to indemnify, release, defend, and forever hold harmless the City, its officers, agents, employees, and elected officials, each in their official and individual capacities (collectively "Indemnitee"), for, from and against any and all claims, demands, damages, losses, fines, judgments, or liabilities, including costs, expenses, and attorneys' fees (collectively "Claims") to which Indemnitee may become subject, under any theory of liability whatsoever, incurred in the defense of such Claims, or incurred in the establishment of the right to indemnity hereunder, caused in whole or in part by Contractor, and arising out of Contractor's performance or non-performance under this contract. The obligations under this indemnification provision shall also apply to any and all any intentional, reckless, or negligent acts, mistakes, directives, errors, or omissions of Contractor's agents, directors, officers, employees, volunteers, contractors, whether employed directly or indirectly by Contractor, and any other person for which Contractor may be legally liable.
21. **SUB-CONTRACTS.**
- A The Contractor shall not execute an agreement with any sub-contractor to perform any work until he has written the City of Lee's Summit to determine any disapproval of the use of such sub-contractor.
 - B The Contractor shall be fully responsible to the City for the acts and omissions of his sub-contractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.
 - C The Contractor shall cause appropriate provisions to be inserted in all sub-contracts relative to the work to require compliance by each sub-contractor with the applicable provisions of the contract.
 - D Nothing contained in the Conditions shall create any contractual relationship between any sub-contractor and the City.
22. **UNIFORM COMMERCIAL CODE.** This contract is subject to the Uniform Commercial Code and shall be deemed to contain all the provisions required by said Code that apply to said Contract.
23. **CHANGES.** The City may at any time, by written notice to any surety, make changes or additions, within the general scope of this contract in or to drawings, designs, specifications, instructions for work, methods of shipment or packing or place of delivery. If any such change causes an increase or decrease in the cost of or in the time required for performance of this contract or purchase order, the Contractor shall notify the City in writing immediately and an appropriate equitable adjustment will be made in the price or time of performance, or both, by written modification of the contract. Any claim by the Contractor for such adjustment must be asserted within 30 days or such other period as may be agreed upon in writing by the parties after the Contractor's receipt of notice of the change. Nothing herein contained shall excuse the Contractor from proceeding with the contract as changed.
24. **RESPONSIBILITY FOR SUPPLIES.** The Contractor shall be responsible for supplies until they are delivered and accepted at the designated delivery point; and the Contractor shall bear all risks for rejected supplies after notice of rejection. This needs rewriting to coincide with the Freight clause.
25. **EXECUTION OF CONTRACT.** Depending on the type of service provided, one or more of the following four (4) methods will be employed. The methods applicable to this contract will be checked below:
- A The Contract shall consist of a **PURCHASE ORDER** and a copy of the suppliers signed bid attached and that the same, in all particulars, becomes the agreement and contract between the parties hereto: that both parties thereby accept and agree to the terms and conditions of said bid documents, and that the parties are bound thereby and the compensation to be paid the Supplier is as set forth in the Suppliers' Bid. Items not awarded, if any, have been deleted.
 - B The contract shall consist of a **YEARLY CONTRACT** and a copy of the suppliers signed bid attached and that the same, in all particulars, becomes the agreement and contract between the parties hereto. That both parties thereby accept and agree to the terms and conditions of said bid documents, and that the parties are bound thereby and the compensation to be paid the Supplier is as set forth in the Suppliers' Bid. Items not awarded, if any, have been deleted.
 - C The contract shall consist of a **ONE-TIME CONTRACT** and a copy of the suppliers signed bid attached and that the same, in all particulars, becomes the agreement and contract between the parties hereto. That both parties thereby accept and agree to the terms and conditions of said bid documents, and that the parties are bound thereby and the compensation to be paid the Supplier is as set forth in the Suppliers' Bid. Items not awarded, if any, have been deleted.
 - D Five copies of the Contract.
 - (1) City will furnish 5 copies of the Bid Documents to the successful Bidder who shall prepare 5 counterpart copies, each containing an exact copy of the Bid Form as submitted, required insurance as evidenced by a Certificate of Insurance, surety bonds properly executed, and Contract signed with the date of his signature.
 - (2) The prepared counterpart copies shall be delivered to Owner within ten days after the date of Notice of Award.
 - (3) City will sign the Contract, insert the date of his signature at the beginning of the Contract, and return one copy to Contractor after receiving the counterpart copies.
26. **FINAL PAYMENT.** Final payment shall be in a lump sum after Contractor has performed, to the City's satisfaction, all duties imposed upon him/her by the contract documents. Contractor shall allow thirty (30) days minimum for payment sum (unless otherwise specified in the bid documents). Additional payment provisions for construction projects are detailed in number 41 below.
27. **NON-DISCRIMINATION IN EMPLOYMENT.** In connection with the furnishing of supplies or performance of work under this contract, the Contractor agrees to comply with the Fair Labor Standard Act, Fair Employment Practices, Equal Opportunity Employment Act, and all other applicable Federal and State Laws, and further agrees to insert the foregoing provision in all subcontracts awarded hereunder.
28. **DOMESTIC PRODUCTS.** The City of Lee's Summit has adopted a formal written policy to encourage the purchase of products manufactured or produced in the United States (City of Lee's Summit Resolution No. 87-18, MO. State Statute No. 34.353, Section 3, (5)).

29. **TAX EXEMPT.** Do not bill tax. The City of Lee's Summit is exempt from payment of the Missouri Sales Tax 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.
30. **REGULATIONS PURSUANT TO SO-CALLED "ANTI-KICKBACK ACT".** The Contractor shall comply with the applicable regulations of the Secretary of Labor, United States Department of Labor, made pursuant to the so-called "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 862; Title 18 U.S.C., Section 874 and Title 40 U.S.C.; Section 276c). and any amendments or modifications thereof, shall cause appropriate provisions to be inserted in sub-contracts to insure compliance therewith by all sub-contractors subject thereto, and shall be responsible for the submission of statements required of sub-contractors thereunder, except as said Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exemptions from the requirements thereof.
31. **INTEREST OF CERTAIN FEDERAL AND OTHER OFFICIALS.** No member of, or delegate to the Congress of the United States and no Resident Council Member shall be admitted to any share or part of this Contract or to any benefit to arise from the same; provided, that the foregoing provision of the Section shall not be construed to extend to this Contract if made with a corporation for its general benefit.
32. **FUND ALLOCATION.** Continuance of any resulting Agreement, Contract, or Issuance of Purchase Orders is contingent upon the available funding and allocation of City funds. The Contractor understands that the obligation of the City to pay for goods and/or services under the contract is limited to payment from available revenues and shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City nor shall anything contained in the contract constitute a pledge of the general tax revenues, funds or moneys of the City, and all provisions of the contract shall be construed so as to give effect to such Intent.
33. **ASSIGNMENTS.** Neither City nor Contractor shall, without the prior written consent of the other, assign in whole or in part his interest under any of the Contract Documents and, specifically the Contractor shall not assign any moneys due or to become due without the prior written consent of the City.
34. **DEBARMENT.** By submission of its response, the Contractor certifies that neither it nor its principals is presently debarred or suspended by any Federal or State Department or agency, including listing in the U.S. General Services Administration's List of Parties Excluded from Federal Procurement or Non-Procurement programs; or if the amount of this response is equal to in excess of \$100,000, that neither it nor its principals nor its subcontractors receiving sub-awards equal to or in excess of \$100,000 is presently disbarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by an Federal department, agency or provision of law. If the Contractor is unable to certify any of the statements in this certification, the responder must attach an explanation to its response.

NOTE TO BIDDERS: THE FOLLOWING CONTRACTUAL REQUIREMENTS PERTAIN TO CONSTRUCTION PROJECTS AND OTHER PROJECTS WHICH REQUIRE ITS CONTRACTOR TO PERFORM WORK FOR THE CITY. THESE MAY NOT APPLY TO ALL MATERIAL PURCHASES OR SUPPLY CONTRACTS UNLESS SO STIPULATED.

35. **WORK HOUR AND SAFETY STANDARD ACT.** All bidders awarded contracts in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor Regulations (29CFR, Part 5). Under Section 103 of the Act, each Contractor shall be required to compute wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard work day or work week is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchase of supplies, or materials, or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
36. **LABOR-RELATED REGULATIONS.** The bidder's attention is specifically directed to the special rules, regulations, and stipulations pertaining to labor listed below which may be a part of the bid as stipulated in the "Invitation to Bid"
- A **Wage Rate Stipulation** - State of Missouri. If required by the "Invitation to Bid"
- B **Wage Rate Determination** - Federal. If required by the "Invitation to Bid"
- The bid, contract and bonds shall be conditioned upon compliance with all provisions of the Contract Documents including these rules, regulations and stipulations.
37. **BUILDING REGULATION, PERMITS AND LAW.**
- A The "General Conditions for the Construction of Buildings" AIA Form A201 forms part of this contract as if herein bound Arbitration shall not apply to any contract resulting from this IFB.
- B Satisfy all current and applicable local codes, ordinances and licensing requirements.
38. **COORDINATION OF THE WORK.** The Contractor shall be responsible for the proper execution of all work and for the coordination of the operations of all trades, subcontractors, and supplies engaged under the Contract. He shall be prepared to provide each of his subcontractors the locations, measurements, and information they may require for the performance of their work.
39. **CHANGES IN THE WORK.**
- A The Contractor shall not make changes in the work required to be performed by omitting work, by adding work or by changing materials, fixtures or services from those specified without the prior written consent of the City and using Departments of the City of Lee's Summit, Missouri. Any authorized changes will not relieve or release the Contractor from any of these obligations under the contract. All work shall be executed under the terms of the original Contract unless it is expressly provided otherwise. Except for the purpose of affording protection against any emergency endangering life and/or property, the Contractor shall not make any changes in the Contract.
- B Each change order shall include in its final form, a detailed description of the change in the work, the Contractor's proposal for the change in price and/or time, and the statement that all work involved in the change shall be performed in accordance with Contract requirements except as modified by the change order.
40. **TIMING.**
- A **Time to Commence Work:** Upon receipt of Contract Documents fully executed by City and a Notice to Proceed, Contractor shall immediately proceed with the work. However, he shall not move onto the site until all required copies of Insurance policies and certificates have been accepted by City.
- B **Time Starts to Run:** The Contract Time shall start to run on the date stated in the Notice to Proceed.
- C **Time of Contract:** Time is of the essence of the Contract. The work shall be prosecuted diligently at such rate of progress as will insure full completion thereof within the Contract Time. If Contractor shall neglect, refuse or fail to complete the work within the time set forth above, or any proper extension thereof granted by City, Contractor shall pay (see bid document) to City for each and every day he is in default. Because of the difficulty in determining the actual damages to be sustained by City in the event of such breach of the Contract, all amounts paid as provided herein shall be considered as and for City's liquidated damages and not as a penalty, and City shall have the right to deduct the amount of such liquidated damages from payments otherwise due to Contractor or to sue for and recover same.

- D **Excusable Delays:** The Contractor shall not be charged damages for any delays in the completion of the work that the Contractor is required to perform under the terms and conditions of this Contract for the following reasons:
- (1) To any acts of the Governments, including controls or restrictions upon or requisitioning of materials, equipment, tools or labor by reason of war, National Defense, or any other national emergency.
 - (2) To any acts of the City.
 - (3) To causes not reasonably foreseeable by the parties to this Contract at the time of the execution of the Contract which are beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of god or of the public enemy, acts of another Contractor in the performance of some other Contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, weather of unusual severity, such as hurricanes, tornadoes, cyclones, and other extreme weather conditions.
 - (4) To any delay of any sub-contractor occasioned by any of the causes specified in sub-paragraphs 1, 2, and 3 above; provided however, that the Contractor promptly (within 10 days) notifies the City, in writing, of the cause of the delay. If the facts show the delay to be properly excusable under the terms of this Contract, the City shall extend the contract time by a period commensurate with the period of excusable delay to the completion of the work as a whole.
41. **PAYMENTS.**
- A **Lump Sum Payments:** After the final inspection and acceptance of all work under the Contract, by the City, including clean-up, the Contractor shall prepare his statement for final payment and submit it to the Owner for approval. When the required warranties and the release of liens have been executed by the Contractor, the final payment will be made which will include any amounts remaining due under the Contract. (Allow a full thirty (30) days). The Contractor will be paid the Contract price in one lump sum amount after the work is satisfactorily completed unless progress payments are approved prior to Contract award. Pay estimates are by the City Engineer as follows:
- B **Engineer's Pay Estimates:**
- (1) The Engineer's pay estimate, in consequence of any Contractor's application for payment will constitute a representation by him to City, based on Engineer's observations of the work in progress and on his review of the application for payment and supporting data, that the work has progressed to the point indicated that, to the best of his knowledge, information and belief, the quality of the work is in accordance with the Contract Documents (subject to an evaluation of the work as a functioning project upon substantial completion, to the results of any subsequent tests called for in the Contract Documents and any qualifications stated in his Pay Estimate); and the Contractor is entitled to payment of the amount shown in the Engineer's Pay Estimate.
 - (2) Engineer shall not be deemed by his rendering of any Pay Estimate to have represented that he made exhaustive or continuous inspections to check the quality or the quantity of the work, or that he has reviewed the means, methods, techniques, sequences and procedures of construction or that he has made any examination to ascertain how or for what purpose Contractor has used the moneys paid or to be paid to him on account of the Contract price.
 - (3) Engineer may refuse to render an Engineer's pay Estimate for the whole or any part of any payment if, in his opinion, he is unable to make the above representations to City. He may also refuse to render any Engineer's Pay Estimate, or because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such previous Engineer's Pay Estimate to such extent as may be necessary in his opinion to protect City from loss because of any reason set forth in General Conditions.
42. **CONTRACTOR'S CERTIFICATE AND RELEASE** (for Construction Purposes). Prior to final payment and as a condition there to, the Contractor shall execute a certificate and release. This certificate and release will set forth the undisputed balance due the Contractor under the Contract, a listing for amounts of outstanding and unsettled items which the Contractor claims are due and owing by the City to the Contractor; a certification that the work under the Contract and Change Orders has been performed in accordance with the terms, thereof, and that there are no unpaid claims for materials, supplies or equipment and no claims of laborers or mechanics for unpaid wages arising out of the performance of the Contract, a statement that, except for the amounts enumerated, the Contractor releases the City from any and all claims arising under or by virtue of the Contract. A duplicate of the certificate shall be issued to the City.
43. **SURPLUS MATERIALS.** The job site shall be kept clean and free of surplus materials, rubbish and debris at all times. All surplus materials delivered to the job site and all materials, fixtures, and equipment removed and not reused shall remain or become the property of the Contractor and its sub-contractors, and shall be removed from the job site promptly after completion, as well as all rubbish and debris resulting from their respective operations at the Contractor's expense.
44. **ACCIDENT PREVENTION.**
- A The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of his prosecution of the work. The safety provisions of applicable laws and building construction codes shall be observed and the Contractor shall take or cause to be taken such additional safety and health measures as the City may determine to be reasonably necessary. All materials, parts, supplies and services rendered under the technical specifications must comply with standards of the Williams Steiger Occupational Safety and Health Act. In consideration of the price paid herein Contractor agrees to indemnify City for any penalties imposed by the Act arising out of misfeasance or malfunction of items or services purchased.
- B The Contractor shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on work under the Contract. The Contractor shall promptly furnish the City with reports concerning these matters.
45. **CONFLICTS.** No salaried officer or employee of the City and no member of the City Council or Park Board shall have a financial interest, direct or indirect, in this contract. A violation of this provision renders the contract void. Federal conflict of interest regulations and applicable provisions of Sections 105.450 – 105.496 shall not be violated. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services to be performed under this contract. The Contractor further covenants that in the performance of this contract no person having such interest shall be employed.
46. **DAVIS BACON ACT:** The wages for any work utilizing this contract in which federal funding is utilized shall comply with any and all applicable federal laws and/or requirements to include but not limited to the Davis Bacon Act.