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Filed:           09-13-16          

Sponsored by:       Fisk      

First Reading:                                     

Second Reading:                                     

COUNCIL BILL NO.       2016- 219      

SPECIAL ORDINANCE NO.                                     

AN ORDINANCE

1 ACCEPTING the bid of Flat Creek Excavating, LLC, in the amount of \$198,858.84 for  
2 the construction of sanitary sewers in Sanitary Sewer District No. 91 of  
3 Section No. 1, located in the vicinity of College Street and Broadway  
4 Avenue, as indicated on "Exhibit A;" declaring the work to be necessary;  
5 stating the intention to pay for all or part of the improvements from the  
6 proceeds of bonds; specifying those costs and expenses to be assessed  
7 against the properties in the district and the method by which the costs  
8 will be apportioned; setting forth the manner of payment, the lien of the  
9 assessments, and the duration of the lien; setting forth the interest rate to  
10 be charged on the tax bills; authorizing the City Manager, or his  
11 designee, to enter into a contract and to approve the bond for said  
12 improvement; and authorizing progress payments to be made to the  
13 contractor; and declaring that this bill qualifies for approval in one  
14 reading.

15 \_\_\_\_\_  
16

17 WHEREAS, Flat Creek Excavating, LLC, is the lowest responsible and  
18 responsive bidder for the construction of district sanitary sewers in Sanitary Sewer  
19 District No. 91 of Section No. 1.

20  
21 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF  
22 SPRINGFIELD, MISSOURI, as follows, that:

23  
24 Section 1 – The City Council hereby accepts the bid of Flat Creek Excavating,  
25 LLC, and awards the contract to said bidder for the cost of labor, materials, engineering,  
26 abstracting, publications, right(s)-of-way, and all work necessary for the construction of  
27 sanitary sewers in Sanitary Sewer District No. 91 of Section No. 1 (Project), said bidder  
28 submitting the lowest responsible and responsive bid in the amount of \$198,858.84,  
29 except as said sum and price may be lawfully increased or decreased by the actual  
30 quantities of work units involved. The City Manager, or his designee, is hereby  
31 authorized to enter into a contract with said bidder for such work and to approve a bond  
32 from the contractor for labor, materials, and performance in accordance with the terms  
33 of the bid, the plans, and the specifications prepared by the Director of Environmental

34 Services and ordinances and resolutions of the City governing the construction. The  
35 Engineer's estimate on file in the office of the City Clerk is incorporated herein by  
36 reference.

37  
38 Section 2 – The City Council hereby declares it necessary to construct sanitary  
39 sewers in Sanitary Sewer District No. 91 of Section No. 1 in the City.

40  
41 Section 3 – The City Council has issued special assessment general obligation  
42 bonds pursuant to Article 6, Section 26(d) of the Missouri Constitution to pay for all or  
43 part of the construction cost, including interest incurred by the City in financing the  
44 Project. Special assessments issued by the City pursuant to this bill and other  
45 ordinances of the City shall be used to pay for such bonds. Such bonds shall be for a  
46 period of 15 years.

47  
48 Section 4 – Except for any amount the City contributes to the Project, which is  
49 subject to the actual quantities of work units involved, the following costs should be  
50 specially assessed against each property in the benefited district by special tax  
51 assessment and special tax bills issued to the City for collection: the cost of all  
52 necessary materials and labor to construct the sanitary sewers; the cost of publications  
53 pertaining to said construction; the cost of abstracts; the cost of engineering for Plan  
54 Review of the improvements, which shall not exceed 15 percent of the contract bid price  
55 or the estimated price, whichever is the lesser; the cost of right(s)-of-way necessarily  
56 acquired by the City for the construction of said improvement; and a connection fee in  
57 the amount required by Section 120-246 of the City Code. The special assessment  
58 shall be levied against each property in said sewer district in proportion to the square  
59 footage of said property.

60  
61 The special tax bills shall be payable in 15 equal annual installments becoming  
62 due together with interest at the rate set forth herein below on each anniversary date  
63 after the issuance thereof, for a period of 15 years after the date of issuance of the tax  
64 bills; provided, however, that the person paying such tax bills shall have the right to pay  
65 the same in part or in full within 30 days after issuance thereof with no interest, and  
66 shall have the further right to pay any combination of annual principal payments or the  
67 unpaid balance of said tax bills with interest thereon up to the date of payment, within  
68 30 days after the end of any yearly period when any installment is payable. In addition  
69 to the above, tax bills may be paid in full at any time during the year with interest  
70 thereon up to the date of payment.

71  
72 Special tax bills in the district are eligible for the City Sewer Financial Assistance  
73 Program under Chapter 98, Article VI, Section 98-286(4)b of the City Code.

74  
75 Section 5 – The City Council hereby finds and declares that a majority of the  
76 resident owners of the property liable to taxation therefore, who also own a majority of  
77 the front feet owned by residents of the City abutting on the improvements or part  
78 thereof proposed to be made, have not filed with the City Clerk a valid protest against  
79 such improvement.

80  
81 Section 6 – Every special assessment shall be a lien against the property therein  
82 described, from the date of issuance, which lien shall continue for a period of 16 years  
83 thereafter, unless sooner paid in full, or in the event suit is brought on any such  
84 assessment within the time herein limited, the lien shall continue until the termination of  
85 the legal proceedings to collect the same, including any sale of the property charged.  
86

87 The provisions of Sections 98-215, 98-216, 98-217, 98-218, 98-219, 98-220,  
88 98-221, 98-286, 98-291, and 98-292 of the City Code shall apply to special tax bills  
89 issued pursuant to this resolution, except where such sections are inconsistent with this  
90 ordinance or the ordinances authorizing this project.  
91

92 If any special assessment of any lot, tract, or parcel of ground is found invalid by  
93 any court of competent jurisdiction, the City Council may reassess the benefit and the  
94 cost against such tracts and parcels of ground in the sewer district which are benefited  
95 by the improvements constructed therein or said special assessment may be made  
96 against the City at large.  
97

98 Section 7 – Progress payments shall be made to the contractor.  
99

100 Section 8 – The City Council hereby sets the interest rate on the sewer tax bills  
101 to be issued by the City for Sanitary Sewer District No. 91 of Section No. 1 as the  
102 percentage rate of annual interest that is payable by the United States of America on  
103 ten-year treasury notes at the most recent auction before the date of the issuance of  
104 sewer tax bills, as is set forth in Section 88.812 of the Revised Statutes of Missouri.  
105

106 Section 9 – The City Manager is directed to cause the appropriate accounting  
107 entries to be made in the books and records of the City.  
108

109 Section 10 – This ordinance is for a public improvement, where a special tax bill  
110 is issued, and should be a one-reading bill under City Charter Section 10.15. Therefore,  
111 this ordinance shall be in full force and effect from and after passage.  
112

113 Passed at meeting: \_\_\_\_\_  
114

\_\_\_\_\_  
115  
116 Mayor

117  
118 Attest: \_\_\_\_\_, City Clerk  
119

120 Filed as Ordinance: \_\_\_\_\_  
121

122 Approved as to form: Jim Millington, Assistant City Attorney  
123

124 Approved for Council action: Greg Barrett, City Manager

## EXPLANATION TO COUNCIL BILL NO. 2016- 219

FILED: 09-13-16

ORIGINATING DEPARTMENT: Environmental Services

PURPOSE: To accept the bid of Flat Creek Excavating, LLC, in the amount of \$198,858.84 for the construction of sanitary sewers in Sanitary Sewer District No. 91 of Section No. 1, located in the vicinity of College Street and Broadway Avenue "Exhibit A;" declaring the work to be necessary; stating the intention to pay for all or part of the improvements from the proceeds of bonds; specifying those costs and expenses to be assessed against the properties in the district and the method by which the costs will be apportioned; setting forth the manner of payment, the lien of the assessments, and the duration of the lien; setting forth the interest rate to be charged on the tax bills; authorizing the City Manager, or his designee, to enter into a contract in substantially similar form to "Exhibit B" and to approve the bond for said improvement; and authorizing progress payments to be made to the contractor.

### BACKGROUND:

1. The project is scheduled for construction as part of the City's sewer construction program, as established in Resolution No. 7995, to eliminate septic tanks within the City limits and to encourage infill by providing sanitary sewer service. This project will be funded by sewer improvement bonds that are already budgeted. It will make sewer available to 15 tracts which will eliminate 10 septic systems from within the city limits of Springfield.
2. Special Ordinance No. 26608, passed by City Council on August 10, 2015, established and defined the boundaries for Sanitary Sewer District No. 91 of Section No. 1.
3. Plans, specifications, and a cost estimate have been prepared by the Department of Environmental Services and are on file in the Director's office.
4. Wastewater from this district would flow to the Southwest Treatment Plant.
5. The project was advertised in the *Daily Events* on June 29, 2016, through July 1, 2016.
6. Bids were opened in the Busch Building on July 26, 2016, at 10:30 a.m. The following bids were received:

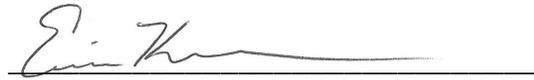
<u>CONTRACTOR</u>	<u>BID AMOUNT</u>
Flat Creek Excavating, LLC	\$ 198,858.84
Hamilton and Dad, Inc.	\$ 233,411.85
Tom Boyce Excavating, Inc.	\$ 333,008.75
Engineer's Estimate	\$ 280,252.50

7. The lowest responsible and responsive bidder for Sanitary Sewer District No. 91 of Section No. 1 is Flat Creek Excavating, LLC. Flat Creek Excavating, LLC, is a local contractor.
8. Tax bills will be issued for the actual costs to construct the sanitary sewers for Sanitary Sewer District No. 91 of Section No. 1 upon completion of the project. Based upon the bid received, the estimated cost for property owners is \$1.1469 per square foot of property owned.
9. To assist property owners with the costs associated with the sewer tax bills and sewer hookup, several programs are available. The City Sewer Financial Assistance Program provides residential property owners the opportunity to take advantage of a maximum cap per tract on the tax bill amount. A low-interest loan to help with costs for hookup to the sewer is available through the Division of Clean Water Services. The Sanitary Sewer Installation and Connection Assistance Program provides two types of assistance for low- and moderate-income families. One provides a deferred, no-interest loan for sewer hookup costs. The other is a direct grant to offset the cost of the tax bill. The City also provides a 15-year, low-interest payback arrangement for tax bill costs.
10. Letters have been mailed to property owners in the district with information regarding the proposed sewer construction, related costs, and available assistance programs.
11. Resolution No. 10281, passed by City Council on August 22, 2016, declared it necessary to construct sanitary sewers in Sanitary Sewer District No. 91 of Section No. 1.
12. Resolution No. 10281 was published in the *Daily Events* on August 27, 2016, through August 31, 2016. The resolution was also posted in three locations within the district. A valid remonstrance has not been filed.
13. This ordinance is for a public improvement, where a special tax bill is issued, and should be a one-reading bill under City Charter Section 10.15.

14. This resolution supports the following Field Guide 2030 goal(s): Chapter 6, Growth Management and Land Use; Major Goal 5, Protect and preserve our natural resources for future generations; Objective 5b, Maintain high water quality and increase water quantity by securing and improving water resources for future generations; and Objective 5c, Protect our caves and karst ecosystems which contain plants, animals, and natural communities that depend on the surrounding land and water to thrive and survive; Chapter 10, Public Health; Major Goal 5, Develop and ensure safe and health environments both indoors and outdoors; Objective 5c, Ensure a clean and sustainable water supply.

REMARKS: Environmental Services recommends passage of this Council bill.

Submitted by:



Errin Kemper,  
Assistant Director of Environmental Services

Recommended by:



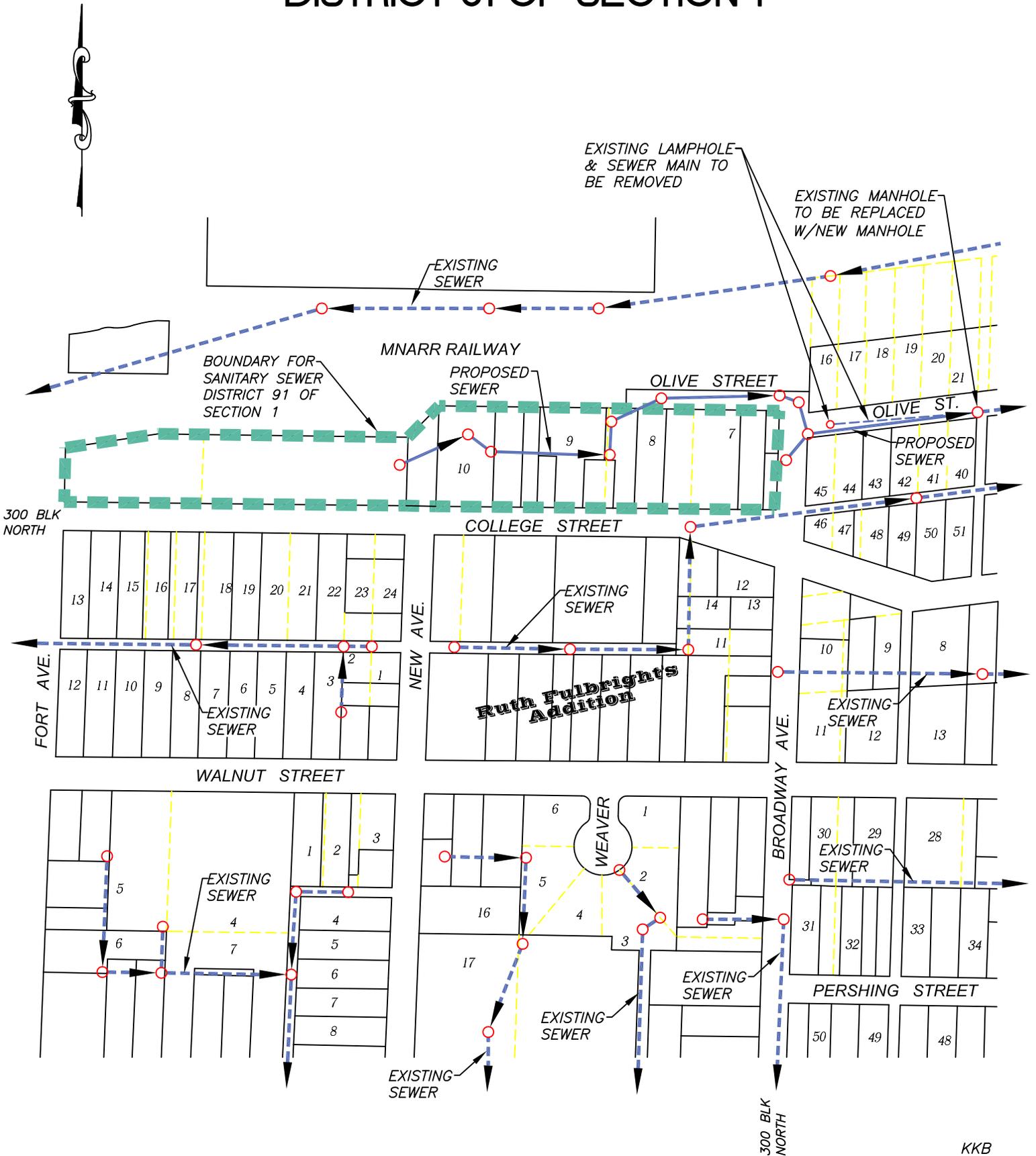
Stephen Meyer,  
Director of Environmental Services

Approved by:



Greg Burris,  
City Manager

# SANITARY SEWERS DISTRICT 91 OF SECTION 1



**Exhibit B**

ROUTING ORDER	(1) ORIGINATING DEPARTMENT	(2) CONTRACTOR	(3) FINANCE DEPARTMENT
	(4) LAW DEPARTMENT	(5) CITY MANAGER'S OFFICE	(6) CITY CLERK'S OFFICE
<b>EFFECTIVE DATE</b>	<b>TERMINATION DATE</b>	<b>CONTRACT NUMBER:</b>	
<b>CITY</b>		<b>CONTRACTOR</b>	
CITY OF SPRINGFIELD 840 BOONVILLE, P.O. BOX 8368 SPRINGFIELD, MO 65802 PHONE: (417) 864-1931      FAX: (417) 864-1983 ATTN: CARL W. KNUCKLES DEPT.: ENVIRONMENTAL SERVICES		NAME: FLAT CREEK EXCAVATING, LLC ADDRESS: 14843 BUSINESS HWY. 13, STE. #1 BRANSON WEST, MO 65737 PHONE: (417) 739-2099 FAX: ATTN: JOHN ESCOBAR	

**AGREEMENT**

**THIS AGREEMENT**, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the parties identified above.

**WITNESSETH:** That whereas, the Contractor has become the lowest responsible bidder for furnishing the supervision, labor, tools, equipment, materials and supplies and for constructing the following City improvements:

**SANITARY SEWER DISTRICT 91 OF SECTION 1, 2013PW0009s**

The City and Contractor agree to the following:

**1. Manner and Time for Completion.** The Contractor will furnish all supervision, labor, tools, equipment, materials and supplies necessary to perform, and to perform said work at Contractor's own expense in accordance with the contract documents and any applicable City ordinances and state and federal laws within **100 calendar days** from the date Contractor is ordered to proceed, which order shall be issued by the Director of Environmental Services within 30 days after the date of this contract.

**2. Prevailing Wages.** All labor utilized in the construction of the aforementioned improvements shall be paid a wage of no less than the "prevailing hourly rate of wages" for work of a similar character in this locality, as established and amended at any time by the Department of Labor and Industrial Relations of the State of Missouri. At any time the contractor is found to not have paid prevailing wages, the contractor shall forfeit as a penalty to the city one hundred dollars for each underpaid worker employed, for each calendar day, or portion thereof such worker is paid less than the said stipulated rates for any work done under this contract.

**3. Insurance Requirements.** Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall secure and maintain at its own cost and expense, throughout the duration of this Contract and until the work is completed and accepted by the City of Springfield, insurance of such types and in such amounts as may be necessary to protect it and the interests of the City of Springfield against all hazards or risks of loss as hereunder specified or which may arise out of the performance of the Contract Documents. The form and limits of such insurance, together with the underwriter thereof in each case, are subject to approval by the City of Springfield. Regardless of such approval, it shall be the responsibility of the contractor to maintain adequate insurance coverage at all times during the term of the Contract. Failure of the Contractor to maintain coverage shall not relieve it of any contractual responsibility or obligation or liability in general or under the Contract Documents.

The certificates of insurance, including evidence of the required endorsements hereunder or the policies, shall be filed with the City within ten (10) days after the date of the receipt of Notice of Award of the Contract to the Contractor and prior to the start of work. All insurance policies shall require that the insurance company in question provide thirty (30) days written notice prior to modification or cancellation of such insurance. Such notices shall be mailed, certified mail, return receipt requested, to:

Such policies shall name the City as an additional insured, with limits of liability not less than the sovereign immunity limits for Missouri public entities calculated by the Missouri Department of Insurance as of January 1 each calendar year and published annually in the Missouri Register pursuant to Section 537.610, RSMo. (See, <http://insurance.mo.gov/industry/sovimunity.php>)

As of January 1, 2016, the minimum coverage for the insurance referred to herein shall be as set out below:

- a. **Workers' Compensation....**Statutory coverage per RSMo 287.010 et seq  
**Employer's Liability.....** \$1,000,000.00

b. **Commercial General Liability Insurance**, including coverage for Premises, Operations, Products and Completed Operations, Contractual Liability, Broad Form Property Damage, Independent Contractors, Explosion, Collapse, and Underground Property Damage and endorsed for blasting if blasting required. Such coverage shall apply to bodily injury and property damage on an "Occurrence Form Basis" with limits of at least Two Million Seven Hundred Thirty-Four Thousand Five Hundred Sixty-Seven and no/100 Dollars (\$2,734,567.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Ten Thousand One Hundred Eighty-Five and no/100 Dollars (\$410,185.00) with respect to injuries and/or death of any one person in a single occurrence and an amount not less than at least \$1,000,000 for all claims to property arising out of a single occurrence and at least \$100,000 to any one owner with respect to damages to property. Contractor agrees that the proceeds of such insurance policy shall first be used to pay any award, damages, costs, and/or attorneys' fees incurred by or assessed against City, its employees, officers and agents, before payment of any award, damages, costs or attorneys fees of Contractor, its employees, officers or agents. Contractor agrees to cause its insurer to name City as an additional insured on such insurance policy, including the City as an additional insured for coverage under its products-completed operations hazard, and said policy shall be primary and noncontributory. Aggregate Limit must apply on a Per Project basis, and the endorsement must accompany the certificate of insurance. A Waiver of Subrogation endorsement must be provided by contractor in favor of the City.

c. **Automobile Liability Insurance** covering bodily injury and property damage for owned, non-owned and hired vehicles, with limits of at least Two Million Seven Hundred Thirty-Four Thousand Five Hundred Sixty-Seven and no/100 Dollars (\$2,734,567.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Ten Thousand One Hundred Eighty-Five and no/100 Dollars (\$410,185.00) with respect to injuries and/or death of any one person in a single accident or occurrence.

d. **Subcontracts.** In case any or all of this work is sublet, the Contractor shall require the subcontractor to procure and maintain all insurance required in subparagraphs (a), (b) and (c) hereof and in like amounts. Contractor shall require any and all subcontractors with whom it enters into a contract to perform work on this project to protect the City of Springfield through insurance against applicable hazards or risks and shall, upon request of the City, provide evidence of such insurance.

e. **Notice.** The Contractor and/or subcontractor shall furnish the City prior to beginning the work, the policy as specified in subparagraph (d), and satisfactory proof of carriage of all the insurance required by this contract, with the provision that policies shall not be canceled, modified or non-renewed without thirty (30) days written notice to the City of Springfield.

f. **Legislative or Judicial Changes.** In the event the scope or extent of the City's tort liability as a governmental entity as described in Section 537.600 through 537.650 RSMo is broadened or increased during the term of this agreement by legislative or judicial action, the City may require Contractor, upon 10 days written notice, to execute a contract addendum whereby the Contractor agrees to provide, at a price not exceeding Contractor's actual increased premium cost, additional liability insurance coverage as the City may require to protect the City from increased tort liability exposure as the result of such legislative or judicial action. Any such additional insurance coverage shall be evidenced by an appropriate certificate of insurance and shall take effect within the time set forth in the addendum.

**4. Performance, Labor, and Materials Payment Bond:** The Contractor shall furnish a Performance Bond and a Labor and Materials Payment Bond with surety approved by the City and on the forms approved by the City, each bond shall be in the amount of **\$158,392.90** (full amount of contract) conditioned upon the full and faithful performance of all major terms and conditions of this contract and payment of all labor and material suppliers. It is further mutually agreed between the parties hereto that if at any time

after the execution of this agreement and the surety bond(s) hereto attached for its faithful performance and payment of labor and material suppliers, the City shall deem the surety or sureties upon such bond(s) to be unsatisfactory, or if, for any reason, such bond(s) ceases to be adequate to cover the performance of the work, the Contractor shall, at its expense, within five (5) days after the receipt of notice from the City to do so, furnish an additional bond or bonds, in such form and amount, and with such surety or sureties as shall be satisfactory to the City. In such event no further payment to the Contractor shall be deemed to be due under this contract until such new or additional security for the faithful performance of the work and the payment of labor and material suppliers shall be furnished in a manner and form satisfactory to the City. The corporate surety on any performance or payment bond must be licensed by the State of Missouri and if the required bond exceeds \$25,000.00 must be listed in United States Treasury Circular 570.

**5. Contractor's responsibility for subcontractors.** The Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons it directly employs. Contractor shall cause appropriate provisions to be inserted in all subcontracts relating to this work, to bind all subcontractors to Contractor by all the terms herein set forth, and insofar as applicable to the work of subcontractors and to give Contractor the same power regarding termination of any subcontract as the City may exercise over Contractor under any provisions of this contract. Nothing contained in this contract shall create any contractual relation between the subcontractor and the City or between any subcontractors.

**6. General Independent Contractor Clause.** This agreement does not create an employee/employer relationship between the parties. It is the parties' intention that the Contractor will be an independent contractor and not the City's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Missouri Revenue and Taxation laws, Missouri Workers' Compensation and Unemployment Insurance laws. The Contractor will retain sole and absolute discretion in the judgment of the manner and means of carrying out the Contractor's activities and responsibilities hereunder. The Contractor agrees that it is a separate and independent enterprise from the public employer, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This agreement shall not be construed as creating any joint employment relationship between the Contractor and the City, and the City will not be liable for any obligation incurred by the Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

**7. Liquidated Damages.** Time of completion of work by the Contractor is of the essence. Should Contractor, or in the case of default, the surety, fail to substantially complete the work within the time specified in the contract, or within such extra time as may be allowed, Contractor (or surety) shall be liable to the City in the amount of **\$500 per day** for each and every calendar day that the contract remains uncompleted after the time allowed for substantial completion, as liquidated damages, and not as a penalty, it being stipulated that actual damages to the City and the public arising from Contractor's failure to timely complete the work would be difficult, if not impossible, to ascertain. The amount assessed as liquidated damages may be withheld from any moneys otherwise due to Contractor from the City. The project is not considered complete until final acceptance by the City. After substantial completion, liquidated damages for failure to complete the remaining work shall be in the amount specified in the General Conditions, unless an amount is provided in the Job Special Provision, in which case, the Job Special Provision amount will apply.

**8. Termination for Cause.** The City reserves the right to terminate this contract by giving at least five (5) days prior written notice to the Contractor, without prejudice to any other rights or remedies of the City should the Contractor be adjudged a bankrupt, or if Contractor should make a general assignment for the benefit of its creditors, or if a receiver should be appointed for Contractor or for any of its property, or if Contractor should persistently or repeatedly refuse or fail to supply enough properly skilled workmen or proper material, or if Contractor should refuse or fail to make prompt payment to any person supplying labor or materials for the work under the contract, or persistently disregard instructions of the City or fail to observe or perform any provisions of the contract.

**9. City's Right to Proceed.** In the event this contract is terminated pursuant to Paragraph 8, then the City may take over the work and prosecute the same to completion, by contract or otherwise, and Contractor and its sureties shall be liable to the City for any costs over the amount of this contract thereby occasioned by the City. In any such case, the City may take possession of, and utilize in completing the work, such materials, appliances and structures as may be on the work site and are necessary for completion of the work. The foregoing provisions are in addition to, and not in limitation of, the rights of the City under any other provisions of the contract, city ordinances, and state and federal laws.

**10. Termination for Convenience of City.** The City shall have the right at any time by written notice to Contractor to terminate and cancel this contract, without cause, for the convenience of the City, and Contractor shall immediately stop work. In such event City shall not be liable to Contractor except for payment for actual work performed prior to such notice in an amount proportionate to the completed contract price and for the actual costs of preparations made by Contractor for the performance of the cancelled portions of the contract, including a reasonable allowance of profit applicable to the actual work performed and such preparations. Anticipatory profits and consequential damages shall not be recoverable by Contractor.

**11. Guards and Lights.** The Contractor agrees that during the performance of said work, adequate barricades, guards and warning signs, lights or devices consistent with the requirements contained in the Manual on Uniform Traffic Control Devices shall be provided by Contractor during the term of this Agreement.

**12. Liability and Indemnity.**

a. In no event shall the City be liable to the Contractor for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this contract. The maximum liability of the City shall be limited to the amount of money to be paid or received by the City under this contract.

b. The Contractor shall defend, indemnify and save harmless the City, its elected or appointed officials, agents and employees from and against any and all liability, suits, damages, costs (including attorney fees), losses, outlays and expenses from claims in any manner caused by, or allegedly caused by, or arising out of, or connected with, this contract, or the work or any subcontract thereunder (the Contractor hereby assuming full responsibility for relations with subcontractors), including, but not limited to, claims for personal injuries, death, property damage, or for damages from the award of this contract to Contractor, notwithstanding any possible negligence, whether sole or concurrent, on the part of the City, its officials, agents and employees.

c. The Contractor shall indemnify and hold the City harmless from all wages or overtime compensation due any employees in rendering services pursuant to this agreement or any subcontract, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, the Missouri Prevailing Wage Law or any other federal or state law.

d. The indemnification obligations of Contractor hereunder shall not be limited by any limitations as to the amount or type of damages, compensation or benefits payable by or for the Contractor, under any federal or state law, to any person asserting the claim against City, its elected or appointed officials, agents and employees, for which indemnification is sought.

e. The indemnification obligations herein shall not negate, abridge or reduce in any way any additional indemnification rights of the City, its elected or appointed officials, agents and employees, which are otherwise available under statute, or in law or equity.

f. Contractor affirms that it has had the opportunity to recover the costs of the liability insurance required in this agreement in its contract price. Contractor's obligation under this agreement to defend, indemnify, and hold harmless any person from that person's own negligence or wrongdoing is limited to the coverage and limits of the applicable insurance required of the Contractor under this agreement.

g. The Contractor shall indemnify and hold the City harmless for any penalties, fines, fees or costs, including costs of defense, which are charged or assessed by any Federal, state or local agency including, but not limited to, Environmental Protection Agency or Department of Natural Resources.

**13. Payment for Labor and Materials.** The Contractor agrees and binds itself to pay for all labor done, and for all the materials used in the construction of the work to be completed pursuant to this contract.

**14. Payment.** The City will pay the Contractor in accordance with the rate set forth in the contract documents on file in the Environmental Services Department and by this reference made a part hereof, which shall constitute full and complete compensation for the Contractor's work provided hereunder. It is expressly understood that in no event will the total compensation and reimbursement to be paid to the Contractor under the terms of this contract exceed the sum of **One Hundred Fifty-Eight Thousand Three Hundred Ninety-Two Dollars and Ninety Cents (\$158,392.90)** unless specifically and mutually agreed to in writing

by both the City and the Contractor. No partial payment to the Contractor shall operate as approval of acceptance of work done or materials furnished hereunder. Such compensation will be paid in progress payments (less five (5) percent retainage), as established by the City, subject to receipt of a requisition for payment and a statement of work provided by the Contractor and agreement by both the City and the Contractor that the Contractor has fully performed the work to be paid for in such progress payments in conformance with the contract.

**15. Contract Documents.** The contract documents shall consist of the following:

- a. This Contract
- b. All Change Orders
- c. Bid Plans and Specifications
- d. City of Springfield Standard General Conditions and Technical Specifications for Public Works Construction (07-01-13 Revised Edition)
- e. Special Conditions & Provisions
- f. Proposal
- g. Statement of Bidder's Qualifications
- h. Acknowledgment
- i. Performance Bond
- h. Payment and Material Bond
- k. Instructions to Bidders
- l. Non-collusion Affidavit
- m. Notice to Proceed

This contract, together with the other documents enumerated in this paragraph, forms the contract between the parties. These documents are as fully a part of the contract as if attached hereto or repeated herein.

**16. Subsurface Conditions.** Contractor agrees that information contained in the published reports and public actions of the Missouri Division of Geology and Land Survey shall be conclusive and binding upon the Contractor as to what subsurface conditions at the job site are reasonably anticipated or reasonably foreseeable.

**17. Conflict of Interest.** In accepting this contract, Contractor certifies that no member or officer of its firm or corporation is an officer or employee of the City of Springfield, Missouri, or any of its boards or agencies, and further that no officer or employee of the City has any financial interest, direct or indirect, in this contract. All applicable federal regulations and provisions of RSMo Section 105.450 et seq. shall not be violated.

**18. Assignment.** The Contractor shall not assign any interest in this contract, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the City thereto, provided, however, that claims for money due or to become due to the Contractor from the City under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished in writing promptly to the City and the bond surety. Any such assignment is expressly subject to all rights and remedies of the City under this agreement, including the right to change or delete activities from the Contract or to terminate the same as provided herein, and no such assignment shall require the City to give any notice to any such assignee of any actions which the City may take under this agreement.

**19. Nondiscrimination.** The Contractor agrees in the performance of this contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, status as a protected veteran or status as a qualified individual with a disability, or political opinion or affiliation, against any employee of Contractor or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder. The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a) and 41 C.F.R. § 60-741.5(a), if applicable.

**a. This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits discriminations against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.**

**b. This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation**

**prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.**

**20. Nonresident/Foreign Contractors.** The Contractor shall procure and maintain during the life of this contract:

a. If the Contractor is a foreign corporation, a certificate of authority to transact business in the State of Missouri from the Secretary of State, unless exempt pursuant to the provisions of Section 351.570 RSMo.

b. A certificate from the Missouri Director of Revenue evidencing compliance with the transient employer financial assurance law, unless exempt pursuant to the provisions of Section 285.230 RSMo.

**21. Notices.** All notices required or permitted hereinunder and required to be in writing may be given by FAX or by first class mail addressed to City and Contractor at the addresses shown above. The date of delivery of any notice given by mail shall be the date falling on the second full day after the day of its mailing. The date of delivery of notice by FAX transmission shall be deemed to be the date transmission occurs, except where the transmission is not completed by 5:00 p.m. on a regular business day at the terminal of the receiving party, in which case the date of delivery shall be deemed to fall on the next regular business day for the receiving party.

**22. Occupational License:** The Contractor shall obtain and maintain an occupational license with the City of Springfield, Missouri, if required by city code and any required state or federal license. The cost for this occupational license shall be borne by the Contractor. No contract will be executed by the City until this occupational license has been obtained and that the Contractor is current on any City taxes is verified.

**23. Safety Training.** Pursuant to Missouri Revised Statute Section 292.675, Contractors and subcontractors who sign a contract to work on public works projects must provide a 10-hour OSHA construction safety program, or similar program approved by the Department of Labor and Industrial Relations, to be completed by their on-site employees within sixty (60) days of beginning work on the construction project. The Contractor shall provide an acceptable notarized affidavit stating that Contractor has verified the completion of a 10-hour construction safety program with respect to the employees working in connection with the contracted services. Contractors and subcontractors in violation of this provision will forfeit to the public body \$2,500 plus \$100 a day for each employee who is employed without training. Public bodies and contractors may withhold assess penalties from the payment due to those contractors and subcontractors. The penalties shall not begin to accrue until the time periods in the statute have elapsed (60 days after notice to proceed and 20 days to produce documentation for employee found in violation).

**24. Affidavit for Contracts Over \$5,000.00.** That pursuant to Missouri Revised Statute Sections 285.525 through 285.550, if this contract exceeds the amount of \$5,000.00 and Contractor is associated with a business entity, Contractor shall provide an acceptable notarized affidavit stating that the associated business entity is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the contracted services, and that said business entity does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Additionally, Contractor must provide documentation for said business entity evidencing current enrollment in a federal work authorization program.

**25. Compliance with Laws.** Contractor agrees to comply with all applicable federal, state and local laws or rules and regulations applicable to the provision of services and products hereunder. Contractor affirmatively states that payment of all local, state, and federal taxes and assessments owed by Contractor is current.

**26. Entire Agreement.** This agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.

**27. Jurisdiction.** This agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this agreement be adjudicated, venue shall be proper only in the Circuit Court of Greene County, Missouri.

**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals on the day and year herein stated.

**REVIEWED BY:**

\_\_\_\_\_  
Assistant Director of Environmental Services or Acting Assistant

**RECOMMENDED BY:**

\_\_\_\_\_  
Director of Environmental Services or Acting Director

**CONTRACTOR:**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CITY OF SPRINGFIELD, MISSOURI**

**CERTIFICATE OF DIRECTOR OF FINANCE**

I certify that the expenditure contemplated by this document is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance of appropriated and available funds to pay therefor.

By: \_\_\_\_\_

City Manager or his/her designee

\_\_\_\_\_  
Director of Finance or Acting Director

**APPROVED AS TO FORM**

\_\_\_\_\_  
City Attorney or Assistant City Attorney