



**INDEPENDENCE**  
\* M I S S O U R I \*

Procurement Division  
111 E Maple, PO Box 1019  
Independence, MO 64051-0519

**Invitation to Bid 20047**  
**2020 Asphalt Street Overlay No. 111903**  
**Response Deadline Date and Time: June 18, 2020, 2:00 p.m., Local Time**

Deadline for questions is 5:00 p.m. local time on June 15, 2020  
Please submit all questions regarding this Invitation to Bid online via [www.publicpurchase.com](http://www.publicpurchase.com)

**ATTENTION BIDDER – COMPLETE AND RETURN WITH BID**

Bidding Firm \_\_\_\_\_ Phone Number \_\_\_\_\_  
(Please print or type)

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Name of Authorized Agent \_\_\_\_\_ Email \_\_\_\_\_

The only authorized source for bid forms, addenda, and information regarding this bid is [www.publicpurchase.com](http://www.publicpurchase.com). Using bid forms, addenda, and bid information not obtained from [www.publicpurchase.com](http://www.publicpurchase.com) creates the risk of not receiving necessary bid information that may eliminate your bid from consideration. Bids must be submitted online via [www.publicpurchase.com](http://www.publicpurchase.com). Paper, fax, or email bids will NOT be accepted and will not be returned to sender.

Submitting a bid response is bidder's response to adhere to all specifications, scopes, terms, and conditions of this ITB.

**General Terms & Conditions and Response Instructions**  
**Construction**

**Response Instructions to Bidder**

**1. ACCEPTANCE**

Each bid is received with the understanding that the acceptance in writing by the City of the offer to furnish any or all commodities or services described therein shall constitute a contract between the bidder and the City, which shall bind the bidder on his or her part to furnish and deliver the commodities and services quoted at the prices stated in accordance with the conditions of said accepted bid. The City, on its part, may order from the contractor, except for cause beyond reasonable control, and to pay for, at the agreed prices, all commodities and services specified and delivered.

Upon receipt of an Invitation to Bid (ITB) package containing a City of Independence "sample contract" as part of the requirements, it is understood that the bidder has reviewed the documents with the understanding that the City requires all contracts between the parties be entered into via this document. If any exceptions are taken to any part, each must be stated in detail and submitted as part of the bid. If no exceptions are stated, it is assumed that the bidder fully agrees to the provisions contained in the "sample contract" in its entirety. No exceptions to the General Terms & Conditions of the ITB shall be accepted.

**2. DEFINITIONS**

- A. The term "City" means the City of Independence, Missouri.
- B. The term "contractor" means the person or organization that receives the award after the bid process.
- C. The term "Invitation to Bid" and acronym "ITB" means a solicitation for bids.
- D. The term "bidder" means the person or organization responding to an ITB with a bid.
- E. The term "bid" means the response submitted by the bidder in response to an ITB.

**3. ITB SOURCE**

Bidders may view and download bid documents from [www.publicpurchase.com](http://www.publicpurchase.com), via the City's website at [www.indepmo.org](http://www.indepmo.org). Bidders using ITB documents not obtained from [www.publicpurchase.com](http://www.publicpurchase.com) risk not receiving any necessary addenda, possibly eliminating their bids from consideration.

**4. QUESTIONS**

Questions regarding the bid process shall be submitted via [www.publicpurchase.com](http://www.publicpurchase.com). The City will respond to questions via [www.publicpurchase.com](http://www.publicpurchase.com), thus providing all questions and answers to all prospective bidders equally.

**5. PREPARATION OF BIDS**

- A. Bidders are responsible for conducting site visits (if applicable), attending pre-bid conferences (if applicable) and examining all drawings, specifications, schedules, etc., included in the ITB. Failure to do so will be at the bidder's risk.
- B. Each bidder shall furnish the information required in the ITB. The bidder shall complete all sections requiring information or a signature. An agent duly authorized to enter the firm into a legally binding, contractual agreement must sign the document. Electronic signature is acceptable.
- C. Unit price for each unit bid shall be shown and shall include packaging for shipment unless otherwise specified. 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 shall prevail.
- D. Freight, if applicable, shall be shown as a separate line item cost and not included in the cost of the goods.
- E. Prices quoted are to be firm and final.
- F. Bidders shall prepare their bids for City projects without including sales tax.
- G. Alternate bids for supplies or services other than those specified will not be considered unless authorized by the ITB.
- H. Bidder must state a definite date and time for delivery of supplies or services unless otherwise specified in the ITB.
- I. Number of days shall be calendar days, which includes Saturdays, Sundays, and holidays.
- J. If the item has a trade name, brand, or catalog number, such must be stated in the bid.
- K. Bidders shall submit online via [www.publicpurchase.com](http://www.publicpurchase.com) unless otherwise specified in the ITB.
- L. Bond requirements and liquidated damages, if applicable, will be set forth in the specifications.

**6. ADDENDUM**

The City reserves the right to officially modify or cancel an ITB after issuance. Modifications will be made only by written addendum. Bidders must acknowledge any addendum by opening and accepting on [www.publicpurchase.com](http://www.publicpurchase.com).

**7. BUY AMERICAN AND DOMESTIC PRODUCTS POLICY STATEMENT**

It is the policy of the City of Independence, Missouri, to buy materials, products, supplies, provisions, and other articles produced, manufactured, compounded, made or grown within the State of Missouri, when they are found in marketable quantities in the state, and are of a quality suited to the purpose intended and can be secured without additional cost over products of other states; provided however, that quality and fitness of articles shall be considered in purchasing or letting contracts for articles herein mentioned.

It is the policy of the City of Independence to buy goods or commodities that have been manufactured, assembled, or produced in the United States of America, unless:

- A. The purchase, lease, or contract involves an expenditure of less than \$5,000.
- B. Only one line of a particular good or product is manufactured, assembled, or produced in the United States.
- C. The specified products are not manufactured, assembled, or produced in the United States in sufficient quantities to meet the City's requirements or cannot be manufactured, assembled, or produced in the United States within the necessary time in sufficient quantities to meet the City's requirements; or

- D. Obtaining the specified products manufactured, assembled, or produced in the United States would increase the purchase price by more than 10%
- E. To qualify for the preference, bidder shall clearly state in its bid whether the materials quoted were manufactured, assembled, or produced in the United States of America. If multiple items are listed in the ITB, the bidder shall clearly state which items were manufactured, assembled, or produced in the United States of America.

#### **8. EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this contract or purchase order, the contractor agrees as follows:

- A. The contractor will not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, national origin or any other legally protected category. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated fairly during employment, without regard to their race, age, color, religion, sex, or national origin. Such action shall include, but not be limited to: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. The contractor will state that all qualified applicants will receive consideration for employment without regard to race, age, color, religion, sex, or national origin in all solicitations or advertisements for employees placed by or on behalf of the contractor.
- C. The contractor will send a notice advising the said labor union or workers' representatives of the organization's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment to each labor union or representative of workers with which he or she has a collective bargaining agreement or other contract or understanding.
- D. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his or her books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- F. In the event of the contractor's noncompliance with the non-discrimination clauses of this contract or purchase order with any of the said rules, regulations, or orders, this contract or purchase order may be canceled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for any further government contracts, purchase orders, or federally assisted contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rules, regulations, or order of the Secretary of Labor, or as otherwise provided by law.
- G. The contractor will include the entire text of this Equal Employment Opportunity section and its subsections in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the department may direct as a means of enforcing such provisions, including sanctions of noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the department, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

#### **9. CONFLICT OF INTEREST AND DEBARMENT**

By submission of its response, the contractor certifies that:

- A. No Councilmember, nor the City Manager, the Director of Finance or the City Procurement Manager is financially interested in what the bidder is offering to sell to the City pursuant to this invitation, nor is the bidder a City employee or board member whose bid creates a conflict of interest. A conflict of interest would arise if a City employee or board member were in a position to affect either the decision to solicit bids or the selection of the successful bidder.
- B. Bidder has not participated in collusion or committed any act in restraint of trade, directly or indirectly, which bears upon anyone's response or lack of response to this Invitation.
- C. The authorized signer of the bid document certifies that the contractor and each of its principals are not suspended or debarred by the City of Independence, State of Missouri or Federal government.
- D. All bidders shall complete, have notarized, and submit the attached non-conflict of interest and non-collusion form. Failure to submit the completed form shall be grounds for rejection of bid.

#### **10. SUBMISSION OF BIDS**

- A. Bids and any modifications (addendum) shall be submitted electronically through [www.publicpurchase.com](http://www.publicpurchase.com).
- B. Telephonic, emailed, paper, or faxed bids will not be considered, unless authorized in the ITB.
- 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 in the ITB.
- D. Bids will be opened at the date and time indicated on the ITB cover page. An unofficial bid tabulation, with no indication of award or final numbers, will be made available upon request. Bidders must allow ample time for the City to create the tabulation (a minimum of five business days).
- E. A final bid tabulation and Notice of Intent to Award for bids over \$100,000 will be posted on the City's website and [www.publicpurchase.com](http://www.publicpurchase.com) at least five days prior to City Council approval.

**11. MODIFICATION OR WITHDRAWAL OF BIDS**

Modification or withdrawal of bids will be via [www.publicpurchase.com](http://www.publicpurchase.com). Click on "Edit" response and delete the desired item(s) previously entered. Delete any uploaded documents, and click "Save". This will remove the initial response. Follow the same procedure to withdraw a bid before the bid deadline and simply cancel the submittal.

**12. LATE BIDS**

It is the responsibility of the bidder to submit the bid on or before the date and time of the ITB submission deadline. Bids will NOT be accepted after the date and time of closing under any circumstances.

**13. QUALIFICATIONS OF BIDDERS**

The City shall exercise due diligence in determining the responsibility of bidders. The bidder shall furnish all information, within the time frame specified, if requested by the City. The City reserves the right to reject any bid if the information is not submitted in a timely manner or the information, or subsequent investigation, fails to satisfy the City that such bidder is properly qualified to carry out the obligations of the contract and to complete the work as specified in the ITB.

The City may consider the following factors in determining a bidder's responsibility:

- A. The ability, capacity, and skill of the bidder to perform the contract or provide the required materials, equipment, or supplies;
- B. Whether the bidder can perform the contract or provide the materials, equipment, or supplies promptly or within the time specified without delay or interference;
- C. The quality of performance in previous contracts;
- D. The previous and current compliance by the bidder with laws and ordinances related to the contract or service;
- E. The sufficiency of the bidder's financial resources to perform the contract or provide the commodities;
- F. The ability of the bidder to provide future maintenance and service.

**14. AWARD**

Award shall be made to the lowest priced most responsive and responsible bidder who submits the bid most advantageous to the City. Additional considerations will be given to prior contract history with the City, references, warranty information, delivery schedule, and other requirements as specified in the ITB. The City reserves the right to accept or reject any or all bids or portions of bids, make multiple awards, to waive irregularities and technicalities, and to request re-bids on the materials or services described in the bid documents. The City reserves the right to award the contract on such materials or services as the City deems will best serve its interests. The City reserves the right to award the contract on a partial-order basis, lump-sum or individual-item basis, or such combination as shall best serve the interest of the City unless otherwise specified. Conditional bids, including bids in are subject to rejection in whole or in part at the sole discretion of the City. Bids that take exception to the City's General Terms and Conditions will be rejected.

**15. RIGHT OF PROTEST**

The Procurement Manager, or appointed designee, will accept written protests regarding the solicitation of any goods, services or commodities with a dollar value of \$100,000 or less within five (5) business days of a bid opening. For purchases over \$100,000, a Notice of Intent to Award will be posted on the Internet at [www.publicpurchase.com](http://www.publicpurchase.com). Any bid protest must be filed within five (5) business days of the date of posting of the Notice. Neither the City nor Public Purchase shall be responsible for directly notifying bidders of the Notice of Intent to Award.

Protests must be received in the office of the Procurement Manager and must contain the following information:

- A. Company name, address, phone number and signature of the authorized representative;
- B. Solicitation number;
- C. Detailed statement describing the grounds for the protest; and
- D. Supporting evidence or documents to substantiate the claim.

The Director of Finance and Administration will review the information provided and issue a written decision within five (5) business days of receipt of the protest. This decision shall be final.

**GENERAL TERMS & CONDITIONS FOR CONSTRUCTION**

**16. CONTRACTOR'S RESPONSIBILITY**

- A. The contractor explicitly understands and agrees that the City is in no way responsible for the cost to the contractor of the work, nor for the cost of the risks involved in executing the work, and that the payments herein provided include compensation for all risks as well as for all completed construction. It is expressly understood that the contractor is in all respects an independent contractor for this work and is in no respect an agent, servant or employee of the City. The contractor specifically represents that in performing work covered by this agreement he or she is the sole employer of all labor to be furnished in the performance of this work and that, within the meaning of all federal and state unemployment compensation, insurance or other laws and all State Worker's Compensation Acts, the contractor's employees and the employees of all subcontractors are not employees of the City for any purpose whatsoever; also that the contractor accepts exclusive liability for all contributions, taxes, interest and penalties necessarily paid by the City under unemployment compensation, insurance or other laws on account of all persons employed by the contractor or any subcontractors hereunder, and the contractor hereby agrees to reimburse the City for all contributions, taxes, interest, penalties, if any, necessarily paid by the City under unemployment compensation, insurance or other laws covering employees of the contractor or any subcontractors.

- B. The contractor agrees to pay in full for all furnished materials and for all employed labor for the work or any part thereof, and to save the City free and harmless from any lien for work or labor performed, or materials or supplies furnished in the performance of the work under this contract, and from every claim, demand, or lien arising from or growing out of any act or thing done or suffered by the contractor or any agent, servants or subcontractors, and any employees in, about or connected with the construction of the work aforesaid. The contractor agrees to pay and discharge all bills and claims against the contractor in any way incurred in connection with the work herein provided for; it being intended hereby to cover the payment of all items, whatsoever their nature, in addition to items which entitle the claimant to a lien upon any property of said City by virtue of the laws of the State of Missouri.
- C. The contractor shall require any subcontractors deemed a transient employer as defined by State law to show proof of having filed a financial assurance instrument with the State Director of Revenue and to show proof that the subcontractor holds a current valid certificate of insurance for workers' compensation coverage in Missouri prior to the subcontractor performing any work under the contract. If required by the State Director of Revenue or the State Director of the Division of Worker's Compensation, the contractor will withhold all or any part of payment to the subcontractor to satisfy State law.
- D. The contractor agrees to comply in all respects with the requirements of law relating to furnishing reports and statements, or as may be reasonably required by the City.
- E. It shall be the responsibility of the contractor to examine the site of the work to determine the amount of work to be done in connection with the construction herein specified, the quantities of material required, and the construction equipment and labor necessary for the performance of the contract. By submission of a bid for this work, the contractor represents that he or she has investigated the character of the work and conditions which may be encountered, and the quantities and types of related work not covered by unit prices, and agrees that the data furnished herein is merely informative and represents the best information available at the time of advertising for bids. The contractor understands that such information or data is furnished to the bidder without guarantee of its accuracy and variations from the indicated amounts or types of work, other than that covered by contract unit prices, required to complete the contract will not entitle the City to any credits or the contractor to any extra payment.

**17. APPLICABLE CODES AND STANDARDS**

- A. Reference to standard specifications of any technical society, organization or association, or to codes of local or state authorities, shall mean the latest such standard, code, specification or tentative specification adopted and published at the date of taking of bids, unless specifically otherwise stated. Applicable codes and standards referred to in these specifications shall establish minimum requirements for equipment, materials and construction and shall be superseded by more stringent requirements of drawings and specifications when and where they occur.
- B. All construction methods and tools shall meet all State of Missouri safety requirements and comply with commonly accepted standards for safety and health of personnel engaged in construction work.

**18. COMPLIANCE WITH LAWS, PERMITS, LICENSES AND TAXES**

- A. The contractor shall conform to and comply with all applicable laws, bylaws, regulations and ordinances with regard to all and every action and operation, and shall require conformity and compliance of all subcontractors and employees in such a manner as to save the City harmless. The contractor shall secure and be financially responsible for all permits, licenses, approvals, acceptances, etc., relative to the conduct of all work and shall give all notices necessary to the due and lawful prosecution of the work. Fees for required City permits for work within the construction limits will not be waived.
- B. The City is exempt from sales tax. This includes purchases by contractors for City projects. The City will provide a certificate to contractors for their use in obtaining the sales tax exemption. Contractors are to prepare their bids for City projects without including sales tax. It is the responsibility of the contractor to request a tax exempt certificate and a project tax exemption certificate before the project begins. Missouri state law prohibits issuance of project exemption certificates after the project is completed.

**19. FORCE MAJEURE**

Neither party shall be liable for delays, or defaults in the performance of a 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. Neither party shall penalize or add any additional fees, surcharges, or any other financial requirements due to force majeure.

**20. PATENTS**

The bidder warrants that the articles described herein and the sale or use of them will not infringe upon any U.S. or foreign patent or copyright and bidder covenants they will at their own expense, defend every suit that may be brought against the City, or those selling or using City's product (provided winning bidder is promptly notified of such suit and all documentation delivered) for any alleged infringement of any patent or copyright by reason of the sale or use of such articles; and contractor agrees they will pay all costs, damages, and profits recoverable in any such suit. All fees or royalties for any patented article or operation of work or any part thereof, or any materials, tools, implements, machinery, fixtures, or anything used shall be included in the price stipulated in the bid, and the contractor shall protect and hold harmless the City against all demands for such fees, royalties, and claims.

**21. SUPERVISION AND INSPECTION**

- A. The work herein considered is to be constructed in accordance with the contract documents. Wherever the words "directed, permitted, approved, acceptable, satisfactory," or words or phrases of similar import occur in the contract documents, they shall be understood to be functions of the City and to be exercised at the City's discretion.
- B. Methods of construction and procedure shall be of the contractor's own selection, provided no requirement of the contract documents is violated and the work is completed within the time allowed. Approval of the City of any construction device or method, or absence of disapproval, shall not relieve the Contractor of full responsibility for any failure thereof and shall not connote and is not intended to connote that the City will direct the manner in which the work is to be performed under the contract.

- C. All materials and every process of manufacture and construction shall be subject to inspection at all times and the City or any representative shall have free access to all operations. The Contractor shall provide necessary facilities for inspecting workmanship and testing of materials, and the City shall have the right to select suitable samples of materials for testing and examination, which the contractor shall supply without charge. In case such samples must be shipped to some other point for inspection or testing, the contractor shall box or crate samples as necessary and shall deliver them at points designated for shipment, without charge. Omission of inspection shall not relieve the contractor of any obligation to produce the work required by plans and specifications.
- D. Rejected materials shall be removed promptly from the vicinity of the work and the contractor shall promptly remove, reconstruct, replace and make good as may be directed, without charge, any defective work. If in the judgment of the City, the defective work would perform within an allowable tolerance, the contractor may be given the choice of receiving reduced payment for the work or removing and replacing the defective work. Oversight or error of judgment of inspectors, or previous acceptance, shall not relieve the Contractor from the obligation to make good defects whenever discovered. If the contractor does not make corrections of such condemned work and remove rejected materials within a reasonable time, as fixed by written notice, the City may make removals and corrections and charge the expense to the contractor.
- E. The contractor shall furnish to the City any information concerning the nature or source of any material or equipment or part thereof which the contractor proposes to use. Tests may be conducted where, in the opinion of the City, such are necessary. Where the contractor desires to propose for use in the work any material or product as an alternative or equivalent to a material or product specified herein, the contractor will be required to submit samples to a testing bureau designated by the City, and shall pay the cost of such testing and analysis as may be required to determine the suitability of such materials and products.

**22. PERSONAL LIABILITIES**

In carrying out any of the provisions of a contract or in exercising any power or authority granted to them thereby, there shall be no personal liability upon any member, agent or representative of the City. No act or failure to act on the part of the City or any agent of the City, payment for the work in whole or in part, extension of time or possession taken of the work, shall operate as a waiver of any right to damages therein provided for; nor shall waiver or breach of contract be held to be a waiver of any other or subsequent breach.

**23. SUBLETTING OR ASSIGNING CONTRACT**

- A. The contractor shall not sublet, sell, transfer, assign or otherwise dispose of the contract or contracts or any portion thereof, or of the contractor's right, title or interest therein, without written consent of the City. Request for permission to sublet, assign or otherwise dispose of any portion of the contract shall be in writing and shall be accompanied by evidence that the organization which will perform the work is particularly experienced and equipped for such work.
  - (1) In case such consent is given, the contractor will be permitted to sublet a portion thereof, but the contractor shall perform work amounting to not less than 50% of the total contract cost, except that any items designated by the City as specialty items so performed by subcontract may be deducted from the total contract cost before computing the amount of work required to be performed by the contractor.

The value of the work sublet will be determined by multiplying the number of units of any contract item sublet by the unit price as set forth in the original contract, or by a price agreed to by the City where no unit price is included in the contract for the work sublet. Approval of the subcontract is in no way approval of the unit prices in the subcontract. The subcontractor shall perform the work described in the subcontract agreement. The contractor shall furnish the City a signed copy of the subcontract on request.

- B. No subcontracts or transfer of contract shall in any case release the contractor of his or her liability under the contract and bonds.

**24. COOPERATION WITH OTHERS**

The contractor and subcontractors will be expected to cooperate with forces of the City, utility companies or other contractors who may be working in the area. No delay of this contract work due to avoidable conflicts will be allowed. The contractor shall, as far as possible, arrange work schedules and dispose of materials so as not to interfere with the operations of other contractors or others engaged upon the project or nearby. The contractor shall also join his or her work to that of others in a proper manner, in accordance with the spirit and intent of the contract documents and perform his or her work in proper sequence in relation to that of other contracts.

**25. PLANS (CONTRACT DRAWINGS)**

- A. Certain plans prepared on behalf of the City, and elsewhere described and named to accompany and supplement these provisions, constitute a part of the contract documents. Such plans are agreed to be constructively attached to the contract documents, although convenience may preclude physical attachment.
- B. The City shall have the right to modify details of these plans to provide final, or checked, plans in lieu of any preliminary or unchecked plans, as the work proceeds, all of which shall be considered as plans accompanying the contract documents. The contractor shall not take advantage of any errors or discrepancies discovered in the plans, but shall report same, and the City will make or approve the necessary corrections.
- C. The contractor will be provided, at no cost, a maximum of ten sets of contract documents. Additional sets of these documents will be supplied at the cost of printing, materials and delivery.

**26. NOTICE TO PROCEED**

- A. Upon receipt of contract documents fully executed by the City, the contractor shall immediately proceed with activities pertaining to the work, such as specified coordination submittals and required conferences. The contractor shall not move onto the site until the City has issued a written Notice to Proceed.
- B. The Notice to Proceed will be issued upon completion of (a) receipt of acceptable copies of insurance policies and certificates, (b) acceptance of specified coordination submittals, i.e., Program of Construction, Schedule of Values, etc., and (c) the conclusion of initial

coordination conferences. The date of Notice to Proceed shall be that on which the contractor may move onto the site, unless otherwise set forth in the said notice, which date will not be more than thirty days after the date of contract, unless City and contractor agree upon a longer time. The completion time of contract shall be the number of calendar days stated in the contract beginning with the date of Notice to Proceed or date stated therein.

## **27. GENERAL PROVISIONS CONCERNING TIME**

- A. The construction herein provided for is to be completed within certain times as set forth in the contract documents. No payment shall be made to the contractor on account of any delays whatsoever, no matter by what or by whom caused, even by other contractors on the same work, or by reason of the City's acts in giving directions, in rejecting materials, methods or workmanship, or by seasons, weather or stream fluctuations. The amount provided in the contract for payment for the work items is understood and agreed to include and cover all expenses due to delays. Extensions of time for completion will be granted under the following conditions:
- (1) If the City should, in writing, direct deferment of the beginning of work beyond the official date to begin work, or if the City should order the work closed down or temporarily discontinued, corresponding extensions of time would be granted with due consideration for changed working conditions incident to seasons and weather.
  - (2) If the final contract price, as increased by duly executed change order(s), exceeds the total contract price based on the estimated quantities as given in the bid, the time of completion will be set forward a number of working days in the proportion that such excess cost bears to the cost based on estimated quantities.
  - (3) The contractor is requested to bring to the attention of the City, in writing and during the progress of the work, the occurrence of events that the contractor may warrant extension of time under the conditions of the contract. If the contract is not completed within the time stipulated, the contractor shall, at the conclusion of the work, present a written statement to the City concerning all matters of time extensions.
  - (4) The amount of all extensions of time, for whatever reason drafted, shall be determined by the City with due consideration of working seasons and working conditions. In general, only actual and not constructive or hypothetical days of delay will be considered. The City shall have authority to draft additional extensions of time as the City may deem advisable and justifiable.
  - (5) If the contractor fails to complete the work within the time fixed by the contract or extensions thereof, and if the City shall nevertheless permit the contractor to continue and complete the same, such permission shall neither modify nor waive any liability of the contractor for damages arising from non-compliance of the work within the said time, but all liabilities shall continue in full force against the contractor.
- B. With only the exceptions outlined herein, all work under any contract shall be completed and ready for operation within the time listed in the bid after the issuance of Notice to Proceed.

## **28. LIQUIDATED DAMAGES**

- A. If the contractor shall neglect, refuse, or fail to complete the work within the time set forth above, or any proper extension thereof granted by the City, the contractor shall pay to the City the amount specified in the bid documents for each day the entire work is incomplete. Said obligation of the contractor is not a penalty but is liquidated damages for loss to the City and the public, after the expiration of the time stipulated in the contract, as adjusted by duly executed change orders, and will be deducted from any money due the contractor under the contract. The contractor and the surety of record shall be liable for any and all liquidated damages.

## **29. PREVAILING WAGE**

If a contract is issued from this ITB that is valued at \$75,000 or above, the contract shall be based upon payment by the contractor or contractor's subcontractors of wage rates not less than prevailing hourly wage rate for each craft or classification of workers engaged to perform the work as determined by the Industrial Commission of Missouri on behalf of the Department of Labor and industrial Relations. The prevailing wage law does not prohibit payment of more than the prevailing rate of wages nor does it limit the hours of work, which may be performed by any worker in any particular period of time. The contractor shall submit certified payrolls to the City's project manager. Prevailing wage requirements include:

- A. State of Missouri prevailing wage rates per current wage order for Jackson County, Missouri that is named in the specifications section of this solicitation. Prevailing wages must be paid by the successful contractor in accordance with labor involved for this project (Section 290.250, RSMo).
- B. The contractor will forfeit a penalty to the City of \$100 per day (or portion of a day) for each worker that is paid less than the prevailing wage rate for any work done under the contract the by contractor or by any subcontractor (Section 290.250, RSMo).
- C. The contractor and all subcontractors to the contract must require all onsite employees to complete the ten-hour construction safety training program required under Section 292.675, RSMo, unless they have previously completed the program and have documentation of having done so.
- D. The contract will forfeit a penalty to the contracting public body of \$2,500 plus an additional \$100 for each employee employed by the contractor or subcontractor, for each calendar day, or portion thereof, such employee is employed without the required training (Section 292.675, RSMo).
- E. The City's Procurement Division will file a Prevailing Wage Project Notification form (PW-2) to the Division of Labor Standards upon issuance of the contract and retain copy in City files.
- F. While the contract work is being performed, a legible list of all prevailing wage rates must remain posted in a prominent and easily accessible place at the worksite by each contractor and subcontractor on the project (Section 290.265, RSMo).
- G. Before final payment can be made, the general contractor and all subcontractors must file an Affidavit of Compliance form PW-4 with the City of Independence. The affidavit must state the contractor has fully complied with Missouri Prevailing Wage Law, and the City must verify that the correct wages were paid. No payment can be legally made by the City to the contractor(s) until the affidavit is filed in proper form and order with the City.
- H. The City's Project Manager shall retain a copy of certified payroll in City files.

### **30. BOND AND MAINTENANCE GUARANTEE**

The contractor shall provide, as stipulated in this ITB, a payment, performance, and maintenance bond for faithful performance of the contract and for persons performing labor or furnishing materials in connection therewith, with sureties satisfactory to the City and in the form provided. This bond shall be in the full amount of the contract and shall have as surety thereon a company authorized to do business in the State of Missouri, qualified as acceptable surety for United States government deposits, and acceptable to the City.

The contractor will guarantee that the equipment, materials and workmanship furnished under the contract will be as specified and will be free from defect for a period of two years from the date of final City acceptance. In addition, the equipment or materials furnished by the contractor shall, upon receipt of notice from the City, be repaired or replaced without expense to the City, and the contractor shall save the City harmless from any damage from faulty workmanship or materials installed under the contract.

### **31. TAKING OVER WORK AND WITHHOLDING PAYMENTS**

- A. If the contractor shall become insolvent or be declared bankrupt, or commit any act of bankruptcy or insolvency, or if it should become evident to the City that the contractor is not making proper progress to ensure completion within the specified time, or is prosecuting the work with insufficient, inadequate, or unsuitable plant and equipment, or has failed to make good rejected work or materials, the City shall have the right, without violation of contract, after giving the contractor seven days' notice in writing, to undertake itself either by administration or by letting contract(s) to other parties, the completion of the said work which is being thus neglected, or to supplement the contractor's work and operations by supplying additional plant, equipment, materials or labor.
- B. Should the City's work cost less than the contractor would have been paid, the difference shall be paid to the contractor. However, should it cost more, the difference shall be payable by the contractor and the contractor shall, on demand, pay the amount of excess to the City. Under these circumstances and for these purposes, the City shall have the right to enter upon and take temporary possession of the plant, tools, and supplies of said contractor, or any part thereof.

In addition to the percentage of payments to be temporarily retained by the City, pending completion of the work, the City shall have the right to withhold sufficient amounts of any payment otherwise due the contractor to cover failure of the contractor to make proper payment on amounts past due and payable for just claims for labor, materials and services applied to the work of the contract, and for defective work not remedied. The City shall have the right to act as agent for the contractor in disbursing such withheld funds to the party or parties entitled thereto, and in case of such disbursements shall render the Contractor a full accounting for all such funds.

- C. The City shall not be obligated to take any such action and the failure of the City to act under this and similar clauses of the specifications shall not relieve the contractor from any responsibilities, obligations, or liabilities resulting from failure to complete the contract within the times prescribed.

### **32. USE OF COMPLETED WORK**

The City may, prior to the completion of all the work performed by the contractor or acceptance thereof by the City, enter upon and use any portion of said work without any compensation or payment whatever to the contractor for any delay in the work caused by such use. Such taking possession and use shall not be deemed as acceptance of the work so taken and used, or any part thereof.

### **33. SAFETY PRACTICES AND ACCIDENT PREVENTION**

- A. In the performance of the contract, the contractor and subcontractors shall comply with and observe all of the requirements of the Federal Occupational Safety and Health Act (OSHA), and all rules and regulations published in connection therewith. The contractor shall provide equipment and medical facilities as are necessary to supply first aid to anyone who may be injured in connection with the project. Provisions must also be made for the immediate removal and hospitalization in case of emergency. Anyone acting in a supervisory capacity should have authority to order such emergency action.
- B. Precaution shall be exercised at all times for the protection of persons and property. The safety provisions of applicable laws, building and construction codes and the like shall be observed. Machinery and equipment and other hazards shall be guarded in accordance with the safety provisions of the Manual of Accident Prevention in Construction, published by the Associated General Contractors of America, to the extent that such provisions are consistent with applicable law or regulation.
- C. The contractor shall provide, erect and maintain all necessary barricades, suitable and sufficient red or yellow lights, danger signals, warning and closure signs, and shall provide watchers and take all necessary precautions for the protection of the work and the safety of the public.

### **34. LIABILITIES, DAMAGES, AND ACCIDENTS**

- A. The contractor shall assume and be responsible for and shall indemnify, protect and save harmless the City against any and all claims, demands or causes of action by any party or parties whatsoever for loss, injury or damage of any kind or character, either to persons or to property, directly or indirectly arising out of his/her operations or the acts or omissions of the contractor, any agents or workers. The contractor shall pay all judgments obtained by reason of accidents, injuries or damages in any suit or suits against the City, including all legal costs, court expenses and other like expenses; the contractor shall have the option of assuming the sole defense of such suits.
- B. The contractor shall assume all risks of loss and damage to the contractor's property and to property in his/her custody and to the property of any employees, agents, and servants, howsoever caused; all risks of damage resulting from the death of or injury to himself/herself, any agents and servants, while engaged in said work and while traveling to and from the same; and he/she agrees to hold the City free and harmless from all loss, cost and expense on account thereof, and agrees to indemnify and save harmless the City from all loss, cost and expense arising or growing out of any injury to any employee of the City caused by the negligence of the contractor or any employees; also from all loss, cost and expense arising or growing out of any injury to any person while upon the premises of the City caused by the negligence of the contractor, or any employee; also from all loss, cost and expense arising or growing out of any damage to any property, whether belonging to the City or not.

- C. All delivered materials and portions of completed work shall be deemed to have become the property of the City, but the contractor shall store materials and shall be responsible for and shall maintain partly or wholly finished work during the continuance of the contract, and until final acceptance of the work covered by the contract. If any materials or parts of the work be lost, damaged or destroyed by any means whatsoever, the contractor shall satisfactorily repair and replace the same at his or her own cost.

### 35. INSURANCE REQUIREMENTS

#### Construction

- A. Contractor shall procure, and maintain as required, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Scope of Services/Project. The cost of such insurance shall be included in the Contractor's bid.
- B. Contractor shall maintain the following coverages and minimum limits:
1. Commercial General Liability: [ISO "occurrence" form or its equivalent]
    - a. \$2,000,000 General Aggregate
    - b. \$1,000,000 per occurrence limit Bodily injury/Property damage
    - c. \$1,000,000 Personal/Advertising injury
    - d. \$1,000,000 Products & Completed operations aggregate limit.
  2. Business Auto Coverage: (Applicable to any *Owned, hired, and non-owned autos*) \$1,000,000 property damage / bodily injury, combined single per Accident limit – Any Auto. If no autos are owned by the proposing Contractor, a non-owned auto liability endorsement on the Commercial General Liability program is acceptable.
  3. Workers Compensation and Employers Liability: Workers compensation limits as required by the statutes of the state of Missouri and employers' liability limits of \$100,000/\$500,000/\$100,000. When workers compensation insurance policy is applicable "other states" coverage is required. Regardless of any minimum number of employees to trigger statutory responsibility, the City requires evidence of Workers' Compensation insurance should the Contractor have any employees.
  4. Umbrella Liability: minimum limit of \$1,000,000 excess of Commercial General Liability.

Exposure Limits: The above are minimum acceptable coverage limits and do not infer or place a limit on the liability of the Contractor nor has the City assessed the risk that may be applicable to Contractor. Contractor shall assess its own risks and if it deems appropriate and/or prudent maintain higher limits and/or broader coverages. The Contractor's insurance shall be primary and any insurance or self-insurance maintained by the City shall be excess for the City and not contribute with the coverage maintained by Contractor.

Coverage Limits: Coverage limits for General and Auto Liability exposures may be met by a combination of primary and umbrella policy limits.

- C. Additional Insured. The City shall be listed by ISO endorsement or its equivalent as additional insureds for the service/project as the City's interest may appear on the General Liability and any applicable Umbrella Liability. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- D. Verification of Coverage.
1. A certificate of insurance accompanied by an additional insured ISO form endorsement (CG 20 10; and CG 20 37) or equivalent effecting the coverage required by the City which includes products and completed operations.
  2. The insurance coverages are to be provided by Missouri admitted insurance companies with a Best's rating of at least A-:VII. Those not admitted must be approved by City.
  3. Any self-insurance or self-insured retentions must be specified on the certificate of insurance if \$50,000 or higher per claim/loss. In addition, when self-insured the name, address, and telephone number of the claims office must be indicated on the certificate or separate attached document. Any and all deductibles or self-insurance in the above describes coverages shall be the responsibility and at the sole risk of the Contractor.
  4. When any of the foregoing insurance coverages are required to remain in force after final payment, additional certificates with appropriate endorsements evidencing continuation of such coverage shall be submitted along with the application for final payment.
  5. Any coverage provided by a Claims-Made form policy must contain a three-year tail option, extended reporting period, or must be maintained for three years post contract.
  6. Any deviation from the requirements set forth in this Insurance section may be allowed by the City Risk Manager subject to the City Legal Department's review and approval.
- E. Cancellation. Each insurance policy required shall not be suspended, voided, or canceled; except after thirty (30) days' advance written notice has been given to the City.
- F. Subcontractors. The Contractor may include all subcontractors as additional insured under its insurance policies or shall furnish to the City separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- G. Indemnity
1. Loss: For purposes of indemnification requirements, the term "Loss" means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including reasonable attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim for injury, including death, to any person or

persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with the performance of this Agreement.

2. Indemnification and Hold Harmless: For purposes of this Agreement, Consultant agrees to indemnify, defend and hold harmless City and its agents from any and all Loss where Loss is caused or incurred as a result of the intentional misconduct, recklessness, negligence, or other actionable fault of Consultant or its subcontractors.
3. Comparative Fault & Contributory Negligence: It is a specific element of consideration of this Agreement that the indemnity in Section V.E.2 will apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of City or any Third Party and, further notwithstanding any theory of law including, but not limited to, a characterization of City's or any Third Party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that Consultant's obligation hereunder will not include amounts attributable to the fault or negligence of City or any Third Party for whom Consultant is not responsible.
4. Damage Limitations: The indemnification obligation contained in this Agreement will not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for Consultant or its subcontractors, by the minimum insurance required by this Agreement, nor under workers' compensation acts, disability benefit acts, or other employee benefit acts.
5. Negligence by the City: Consultant is not required hereunder to defend City or its agents from assertions that they were negligent, nor to indemnify and hold them harmless from liability based on City's negligence.

Comply:\_\_\_\_\_ Exception:\_\_\_\_\_

### **ACKNOWLEDGEMENT OF INSURANCE REQUIREMENTS**

By signing its proposal, respondent acknowledges that is has read and understand the insurance requirements for the proposal. Respondent also understand that the certificate of required insurance must be submitted within fifteen (15) days following the notification of award. No final contract will be signed by the City until all Certificate of Insurance are received and meet the minimums noted herein.

The contractor shall not commence work under this contract until he or she has obtained all insurance required under this section and elsewhere in the contract documents, such as exceptional insurance requirements outlined in the contract special provisions, and such insurance has been approved by the City.

### **36. CHANGES IN AMOUNTS OF WORK**

The City shall have the right to increase or diminish the quantity, to change the order, or to dispense with portions of the work at any time without impairing the contract and without changing the unit prices to be paid.

In case of increase in amount of work, payment for such increase at the unit price bid for the work or the classes so increased shall be full compensation for the work done. When changes to work occur that are not covered in the contract documents and involving added cost, they will be performed only on a written change order signed by the contractor and duly processed by the City. All costs and indirect costs, including overhead, bond, and profit shall be submitted as a maximum cost figure on this change order. The Contractor shall not proceed with any work under a change order requiring additional materials or costs until written approval is given by the City.

The City may at or prior to contract award appropriate up to ten percent more than the contract value to be reserved for change orders to the project. Administrative change orders may be processed for the contract up to appropriation amounts. Administrative change orders may be for unit price extensions, cost plus additions, or negotiated prices and are to be in written form approved by the City. Change orders that exceed 10% of the total contact price require approval by the City Council, unless otherwise specified in the ITB.

### **37. NEW ITEMS**

- A. The City shall have the right to require the contractor to perform work or supply materials essential to the completion of the work, of a class or type not provided for in the contract documents, or not included and covered under classifications for which price payments are provided in the contract. This work shall be added as a new line item.
- B. When a new item is ordered, it shall be paid for as the City may elect, either by a lump sum or by unit prices mutually agreed upon by the City and the contractor in writing, or, if such agreement cannot be made or the City so elects, on the basis of estimated cost to the contractor of constituent unfabricated materials, including fuel, or applied labor, and of liability insurance for labor, plus 20% thereof to cover and include contractor's profit, superintendence, overhead, and indirect expense, including interest on borrowed money and premiums on bonds, and for the use of plant, equipment, tools, and appliances. Where manufactured or fabricated materials or articles are to be purchased for installation or some of the work is done by subcontract the contractor shall estimate 5% over and above the contractor's costs of such items instead of 20%. For such work, plant and tools shall be provided of the same general character as employed for similar kinds of operations on the project.
- C. The contractor shall not begin any work for which new items are provided in the contract without written approval from the City.

### **38. NOTICE OF CLAIMS FOR EXTRA COMPENSATION**

Should any conditions arise which in the contractor's opinion will require any claims or demands for extra or additional compensation above that fixed by the contract, or on which he or she contemplates bringing claims for such extra compensation, the contractor shall promptly and before incurring any expenses, notify the City in writing of the conditions and circumstances and that such claims are anticipated. The contractor agrees that any claims made without such advance notice, and not presented in such a way as to enable the City to observe conditions as they occur and to verify expenses as they occur and to determine with certainty the correctness of such claims and of the expenses involved, are waived and shall be null and void. The contractor shall not proceed with any work requiring added compensation until written approval is given by the City.

### 39. ACCEPTANCE OF WORK

No part of the construction will be finally accepted until the all construction is completed in its entirety. Upon final completion of the work, the City will make final inspection and when it is found that the contractor has completed the entire contract in accordance with the contract documents, the City will thereupon issue a written order of acceptance and the final pay estimate will be rendered.

### 40. METHODS OF PAYMENT

- A. Lump Sum Payment: When so indicated in the ITB, payment will be made for the entire contract upon completion, final inspection, approval of as-built record plans and acceptance of the work.
- B. Partial (Progress) Payments: Payments will be made at unit prices shown in the bid with work in place as described in the contract documents as a basis for making monthly pay estimates. Before the first application for payment, the contractor shall submit to the City a schedule of values of the various portions of the work, including quantities, if required by the City, aggregating the total contract sum, divided according to subcontractors and prepared in such form as the City and the contractor may agree upon, and supported by such data to substantiate its correctness as the City may require. Each item in the schedule of values shall include its proper share of overhead and profit and this schedule, when approved, shall be used only as a basis for the contractor's application for payment.

At least 15 calendar days before each payment will fall due, the contractor shall submit to the City an itemized application for payment, supported to the extent required by the City by receipts or vouchers showing payments for materials and labor, payments to subcontractors, and such other evidence of the right to payment as the City may direct. On or about the first day of the month, the City will make an estimate of the value of the total work done and shall pay to the contractor, within 15 days, 90% of the amount of such estimated sum, less the sum of all previous payments. No payments will be made on account of materials not to be incorporated in the work. Progress payments will be made to the contractor based on 90% of the value of the work satisfactorily completed and for the unused material on hand at the time of the progress estimate. After the contract is 50% completed, payments may be increased by the full value of the additional work satisfactorily completed. The retained percentage will be withheld by the City until final payment is authorized, except that when the work is stated as substantially complete in writing, the City may reduce the retained percentage to an amount equal to two hundred percent of the remaining minor items to be completed.

As directed in writing by the City, adjustments may be made in the estimates for quantities shown under each bid item at the unit prices named in the bid, so long as these adjustments do not result in an excess of the total contract amount.

It is agreed by the Contractor that any payments or advancements of funds to be made to the contractor under provisions of this agreement shall not be assigned or pledged by contractor unless consent in writing is first obtained from the City.

- C. Force Account may be applied under the following conditions:
  - (1) Force Account work will be measured and paid for on a contractor's cost plus a percentage basis.
  - (2) The contractor's cost is hereby defined and shall include the amounts required to pay subcontractors plus the costs of contractor's as follows:
    - a. Labor Costs
      - (i) The payroll cost for all workers such as foremen, mechanics, craftsmen, and laborers.
      - (ii) All incidental labor expenses incurred as a direct result of the performance of the work, including payroll taxes, worker's compensation, pension, and retirement allowances and social security insurance or other regular payroll charges on same.
    - b. Material and Equipment Costs
      - (i) The cost of all materials and equipment required, delivered to the construction site that are not furnished by City or others.
      - (ii) Sales and use taxes applicable to such materials and equipment.
    - c. Supplemental Costs
      - (i) Rental for all power-driven equipment at agreed-upon rates shall be charged against Force Account work only for the actual time which the equipment is used specifically therefore.
      - (ii) Transportation charges necessarily incurred in connection with such equipment, which is not already on the site.
      - (iii) Cost of power, fuel, lubricants, and water required for such equipment (may be included in agreed-upon rate).
      - (iv) Additional cost for surety bonds, liability and property damage, and other insurance required, where cost is necessarily increased by coverage of the Force Account Work.
    - d. The above definitions and requirements apply equally to work done by subcontractors, suppliers and manufacturers.
    - e. The percentages, which shall be added to the several items of contractor's cost, are as follows:

(i) Amounts paid to subcontractors	- 5%
(ii) Labor costs	- 10%
(iii) Material and equipment costs	- 10%
(iv) Supplemental costs	- 0%
  - (3) The above percentages shall be understood to include all other costs and full compensation for profit, overhead, superintendence, field office expense and all other elements of cost not included in the "contractor's cost," as herein defined.
  - (4) The contractor shall keep and present in an acceptable form an accurate account with vouchers of the several items of cost, including those of subcontractors performing Force Account work.
- D. Late Payment Clause: If the City fails to make a monthly pay estimate thirty (30) days after approval, in addition to other remedies available to the contractor, then interest shall be added to each payment at the maximum legal rate, commencing on the first day after said payment is due and continuing until the payment is received by the contractor. The legal rate of interest shall be as specified in R.S.Mo 34.057.

### 41. ACCEPTANCE AND FINAL PAYMENT

Upon determination by the City that all work has been completed in accordance with the contract, and approval of as-built plans submitted for record, the City will accept the project as such by an approved Letter of Acceptance. When the work has been so completed and certified by the City, a final estimate will be executed and submitted which will provide payment to the contractor for the entire sum due as set forth in the contract documents, including all amounts previously retained by the City. All prior partial estimates and payments shall be subject to correction by the City in this final estimate and payment. Payments for the work will be made by the City's credit card, which is the preferred method of payment with no added fees; or check by the City of Independence, Missouri, as herein specified.

**42. MISSOURI SUNSHINE LAW**

The bidder acknowledges and agrees that the City is bound by the Missouri Open Records Law (Sunshine Law) and cannot protect information for the sole reason that it is marked "confidential" or "proprietary". All information submitted in response to this ITB shall be available for public review in accordance with all federal, state and local laws after: 1) posting of the Notice of Intent to Award; 2) a contract has been executed; or 3) all bids have been rejected. Requests must be submitted in writing to the Procurement Manager, City of Independence.

**43. FIRM PRICES**

The bidder warrants that prices quoted in their bid will be firm for acceptance for a period of not less than 120 days from the bid opening date unless otherwise specified in the bid document. Such prices will remain firm for the period of time specified in the purchase order or contract. The City shall not be responsible to pay surcharges or any other fees not disclosed in the bid and agreed upon between the parties.

**44. GENERAL GUARANTY AND WARRANTY**

The contractor warrants that all materials, fixtures, and equipment furnished by the contractor and his subcontractors 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 minimum period of one year from the date of final acceptance of all the work required by the contract. Furthermore, the contractor shall furnish the City with all manufacturers' and suppliers' written guarantees and warranties covering materials and equipment furnished under the contract.

**45. TERMINATION**

City may terminate or suspend performance of a contract for City's convenience upon written notice to contractor. City shall pay contractor for all the services performed till the date of the termination by the City or suspension expenses.

A contract may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of the contract. The nonperforming party shall have ten (10) calendar days from the date of the termination notice to cure or to submit a plan for cure acceptable to the other party. Risk to persons or property shall result in immediate termination of the contract.

**46. AVAILABILITY OF FUNDING**

Any resulting contract or purchase order is contingent upon the availability of funding and allocation of City funds. The City may cancel any contract or purchase order immediately by giving written notice to the contractor, in the case of a reduction or elimination of funds or funding for any project, commodity, or service.

**47. CHOICE OF LAW**

Any dispute related to a contract resulting from this ITB shall be governed by the laws of the State of Missouri. The City and the contractor agree that the performance of a contract will be deemed to have occurred in the State of Missouri and that contractor's performance under a contract will be deemed the transaction of business in Missouri. Jurisdiction and venue for any claim or cause of action arising under a contract shall be exclusively in the Sixteenth Judicial Circuit of Missouri and the contractor submits to personal jurisdiction of and waives any personal jurisdiction or inconvenient forum objection to that court.

**48. PRECEDENCE OF DOCUMENTS**

The ITB including the terms and conditions, the successful bidder's (contractor) response and written quote, and purchase order shall constitute the entire contract for each project. If these General Terms & Conditions be in conflict with any attached Special Conditions, the Special Conditions will supersede the General Terms & Conditions. In case of a discrepancy, the purchase order shall take precedence over the ITB and the ITB shall take precedence over the contractor's response and written quote for each project.

**Invitation to Bid 20047**  
**2020 Asphalt Street Overlay No. 111903**

**Intent**

The City of Independence is soliciting bids from qualified bidders for 2020 Asphalt Street Overlay for Public Works. The project provides for street overlay improvements at various location throughout the City.

**Specifications or Scope of Work**

The project includes pavement cold milling, asphalt concrete overlay paving, wedging and patching, Portland cement concrete handicap ramps, thermoplastic pavement striping, traffic control, and all appurtenant work.

**Special Conditions**

Proposal, Affidavit, and Reference Sheet

Payment and Performance Bond

PW100 Form

**Insurance**

Please see Insurance Requirements, Section 35 of General Terms and Conditions.

**References**

The bidder shall provide a minimum of three references (name, address, phone, email) for whom you have provided this commodity or service for in the past. Failure to provide this information may be grounds for rejection of your bid. Do not assume past service with the City will exempt you from this requirement.

**Pricing**

Bidders are required to input bid pricing online at [www.publicpurchase.com](http://www.publicpurchase.com).

**Minimum Bid Submission Requirements**

Completed and notarized affidavit of non-collusion (form attached)

Complete pricing as required

References

All lists, certifications, licenses, documentation, affidavits as required in Special Conditions

Bid Bond (if required)