



**Exhibit I**

**AGENDA ITEM STAFF ANALYSIS**

**Project/Issue Name:** Resolution #18-R-06 A Resolution of the City Council of the City of Republic, Missouri, Awarding the Bid for 2018 New Asphalt within the Bervin White Baseball/Softball Complex and Authorizing the Execution of a Contract Agreement.

**Submitted By:** Jared Keeling, Parks & Recreation Director

**Date:** February 13, 2018

**Issue Statement**

To review all submitted bids for new asphalt within the Bervin White Baseball/Softball Complex and to award the bid for said work to the lowest, responsible bidder.

**Discussion and/or Analysis**

Sealed bids were solicited for new asphalt within the Bervin White Baseball/Softball Complex through a formal 'Invitation for Bid' process as per the Purchasing Policy.

The scope of work includes the paving of approximately 20,000 square feet located between the ball fields of the Bervin White Baseball/Softball Complex with 3.5" asphalt compacted to 3" at 90% density. An illustration as to the location and scope of the paving project has been attached to this exhibit for your reference. A summary of the bids received is shown below:

<b>Company Name</b>	<b>Bid Amount</b>
American Paving Company	\$34,802.00
APAC-Central, Inc.	\$30,400.00
Blevins Asphalt Company	\$31,000.00

**Recommended Action**

Jared Keeling, Parks & Recreation Director, respectfully recommends City Council award the bid for new asphalt within the Bervin White Baseball/Softball Complex to Apac-Central, Inc. in the amount of \$30,400.00.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF REPUBLIC, MISSOURI,  
AWARDING THE BID FOR 2018 NEW ASPHALT WITHIN THE BERVIN WHITE  
BASEBALL/SOFTBALL COMPLEX AND AUTHORIZING THE EXECUTION OF A  
CONTRACT AGREEMENT**

*WHEREAS*, the City of Republic, Missouri, (herein called the "City") is a municipal corporation and Charter City located in Greene County, Missouri, being duly created, organized and existing under the laws of the State of Missouri; and

*WHEREAS*, the City solicited sealed bids for new asphalt within the Bervin White Baseball/Softball Complex; and

*WHEREAS*, three vendors provided duly submitted bids and the lowest bidder was APAC-Central, Inc., all bids being on file with the City Clerk; and

*WHEREAS*, the City Council desires to accept the lowest, responsible bid and to authorize the execution of a contract document to govern the new asphalt within the Bervin White Baseball/Softball Complex.

***NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF REPUBLIC, MISSOURI, AS FOLLOWS:***

Section 1. That the submitted bid from APAC-Central, Inc., attached hereto as "Attachment 1" and incorporated herein, is accepted at the unit prices shown thereon in the estimated contract price of \$30,400.00.

Section 2. That the City Administrator, on behalf of the City of Republic, is authorized to enter into an agreement with APAC-Central, Inc., said agreement to be in substantially the same form as "Attachment 2".

Section 3. This Resolution shall become effective on and after the date of passage and approval.

***PASSED AND APPROVED*** by the City Council for the City of Republic, Missouri, this 13<sup>th</sup> day of February, 2018.

\_\_\_\_\_  
Jeff Ussery, Mayor

Attest:

\_\_\_\_\_  
Brenda Jackson, City Clerk

Approved as to Form:  \_\_\_\_\_, City Attorney

Final Passage and Vote: \_\_\_\_\_

**ATTACHMENT A - BID SUBMISSION FORM**

**BIDDERS MUST PROVIDE THE FOLLOWING INFORMATION:**

Item	Description of Work	Price
Base Bid	Pave the commons/spectator area of the Bervin White Baseball/Softball Complex located in Miller Park at 711 E. Miller Rd. Republic, Mo 65738 with 3½" commercial grade surface hot mix asphalt compacted to 3" and a 90% density. Project to be completed by March 30, 2018 (Exceptions/extensions will be pennitted based on the availability of asphalt due to weather conditions).	\$ <u>30,400.00</u>

In compliance with this Invitation for Bid and to all terms, conditions, and specifications imposed therein and hereby incorporated by reference, the undersigned offers and agrees to furnish the goods and/or services described herein.

Asphalt (2018 Bervin White Baseball/Softball Complex) 711 E. Miller Rd. Republic, Mo 65738	Company Name: APAC-Central, Inc.
	Address: P.O. Box 1187, Springfield, MO 65801
Telephone: 417-868-6700	
Facsimile: 417-868-6785	Signed Dated
E-mail: david.foreman@apac.com	1/26/18
Cellular: 417-773-3068	Printed Title Douglas Fronick, Estimating Manager
	Bidders Federal ID Number: 58-1401469

**To be submitted with Vendor's Bid**

We DO NOT take exception to the IFB Documents/Requirements.

We TAKE exception to the IFB Documents/Requirements as follows:

CITY OF REPUBLIC STATEMENT OF "NO BID" \* ADDENDA

Company ID Number: 165031

THE FEDERAL BUREAU OF INVESTIGATION

MEMORANDUM OF UNDERSTANDING

## **ARTICLE I**

### **PURPOSE AND AUTHORITY**

This Memorandum of Understanding (MOU) sets forth the points of agreement between the Social Security Administration (SSA), the Department of Homeland Security (DHS) and **APAC Central, Inc.** (Employer) regarding the Employer's participation in the Employment Eligibility Verification Program (E-Verify). E-Verify is a program in which the employment eligibility of all newly hired employees will be confirmed after the Employment Eligibility Verification Form (Form I-9) has been completed.

Authority for the E-Verify program is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, as amended (8 U.S.C. § 1324a note).

## **ARTICLE II**

### **FUNCTIONS TO BE PERFORMED**

#### **A. RESPONSIBILITIES OF THE SSA**

1. Upon completion of the Form I-9 by the employee and the Employer, and provided the Employer complies with the requirements of this MOU, SSA agrees to provide the Employer with available information that allows the Employer to confirm the accuracy of Social Security Numbers provided by all newly hired employees and the employment authorization of U.S. citizens.
2. The SSA agrees to provide to the Employer appropriate assistance with operational problems that may arise during the Employer's participation in the E-Verify program. The SSA agrees to provide the Employer with names, titles, addresses, and telephone numbers of SSA representatives to be contacted during the E-Verify process.
3. The SSA agrees to safeguard the information provided by the Employer through the E-Verify program procedures, and to limit access to such information, as is appropriate by law, to individuals responsible for the verification of Social Security Numbers and for evaluation of the E-Verify program or such other persons or entities who may be authorized by the SSA as governed by the Privacy Act (5 U.S.C. § 552a), the Social Security Act (42 U.S.C. 1306(a)), and SSA regulations (20 CFR Part 401).
4. SSA agrees to establish a means of automated verification that is designed (in conjunction with DHS's automated system if necessary) to provide confirmation or tentative nonconfirmation of U.S. citizens' employment eligibility and accuracy of SSA records for both citizens and aliens within 3 Federal Government work days of the initial inquiry.

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8. DHS agrees to establish a means of secondary verification (including updating DHS records as may be necessary) for employees who contest DHS tentative nonconfirmations and photo non-match tentative nonconfirmations that is designed to provide final confirmation or nonconfirmation of the employees' employment eligibility within 10 Federal Government work days of the date of referral to DHS, unless DHS determines that more than 10 days may be necessary. In such cases, DHS will provide additional verification instructions.

### **C. RESPONSIBILITIES OF THE EMPLOYER**

1. The Employer agrees to display the notices supplied by DHS in a prominent place that is clearly visible to prospective employees.

2. The Employer agrees to provide to the SSA and DHS the names, titles, addresses, and telephone numbers of the Employer representatives to be contacted regarding E-Verify.

3. The Employer agrees to become familiar with and comply with the E-Verify Manual.

4. The Employer agrees that any Employer Representative who will perform employment verification queries will complete the E-Verify Tutorial before that individual initiates any queries.

A. The employer agrees that all employer representatives will take the refresher tutorials initiated by the E-Verify program as a condition of continued use of E-Verify.

B. Failure to complete a refresher tutorial will prevent the employer from continued use of the program.

5. The Employer agrees to comply with established Form I-9 procedures, with two exceptions:

- If an employee presents a "List B" identity document, the Employer agrees to only accept "List B" documents that contain a photo. (List B documents identified in 8 C.F.R. § 274a.2 (b) (1) (B)) can be presented during the Form I-9 process to establish identity).
- If an employee presents a DHS Form I-551 (Permanent Resident Card) or Form I-766 (Employment Authorization Document) to complete the Form I-9, the Employer agrees to make a photocopy of the document and to retain the photocopy with the employee's Form I-9. The employer will use the photocopy to verify the photo and to assist the Department with its review of photo non-matches that are contested by employees. Note that employees retain the right to present any List A, or List B and List C, documentation to complete the Form I-9. DHS may in the future designate other documents that activate the photo screening tool.

6. The Employer understands that participation in E-Verify does not exempt the Employer from the responsibility to complete, retain, and make available for inspection Forms I-9 that relate to its employees, or from other requirements of applicable regulations or laws, except for the following modified requirements applicable by reason of the Employer's participation in E-Verify: (1) identity documents must have photos, as described in paragraph 5 above; (2) a

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a photo non-match, does not mean, and should not be interpreted as, an indication that the employee is not work authorized. In any of the cases listed above, the employee must be provided the opportunity to contest the finding, and if he or she does so, may not be terminated or suffer any adverse employment consequences until and unless secondary verification by SSA or DHS has been completed and a final nonconfirmation has been issued. If the employee does not choose to contest a tentative nonconfirmation or a photo non-match, then the Employer can find the employee is not work authorized and take the appropriate action.

11. The Employer agrees to comply with section 274B of the INA by not discriminating unlawfully against any individual in hiring, firing, or recruitment or referral practices because of his or her national origin or, in the case of a protected individual as defined in section 274B(a)(3) of the INA, because of his or her citizenship status. The Employer understands that such illegal practices can include selective verification or use of E-Verify, discharging or refusing to hire eligible employees because they appear or sound "foreign", and premature termination of employees based upon tentative nonconfirmations, and that any violation of the unfair immigration-related employment practices provisions of the INA could subject the Employer to civil penalties pursuant to section 274B of the INA and the termination of its participation in E-Verify. If the Employer has any questions relating to the anti-discrimination provision, it should contact OSC at 1-800-255-7688 or 1-800-237-2515 (TDD).

12. The Employer agrees to record the case verification number on the employee's Form I-9 or to print the screen containing the case verification number and attach it to the employee's Form I-9.

13. The Employer agrees that it will use the information it receives from the SSA or DHS pursuant to E-Verify and this MOU only to confirm the employment eligibility of newly-hired employees after completion of the Form I-9. The Employer agrees that it will safeguard this information, and means of access to it (such as PINS and passwords) to ensure that it is not used for any other purpose and as necessary to protect its confidentiality, including ensuring that it is not disseminated to any person other than employees of the Employer who are authorized to perform the Employer's responsibilities under this MOU.

14. The Employer acknowledges that the information which it receives from SSA is governed by the Privacy Act (5 U.S.C. § 552a (i) (1) and (3)) and the Social Security Act (42 U.S.C. 1306(a)), and that any person who obtains this information under false pretenses or uses it for any purpose other than as provided for in this MOU may be subject to criminal penalties.

15. The Employer agrees to allow DHS and SSA, or their authorized agents or designees, to make periodic visits to the Employer for the purpose of reviewing E-Verify -related records, i.e., Forms I-9, SSA Transaction Records, and DHS verification records, which were created during the Employer's participation in the E-Verify Program. In addition, for the purpose of evaluating E-Verify, the Employer agrees to allow DHS and SSA or their authorized agents or designees, to interview it regarding its experience with E-Verify, to interview employees hired during E-Verify use concerning their experience with the pilot, and to make employment and E-Verify related records available to DHS and the SSA, or their designated agents or designees. Failure to comply with the terms of this paragraph may lead DHS to terminate the Employer's access to E-Verify.

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the Employer issues a tentative nonconfirmation based upon a photo non-match. The Employer will determine whether the employee contests the tentative nonconfirmation as soon as possible after the Employer receives it.

4. If the employee contests a tentative nonconfirmation issued by DHS, the Employer will provide the employee with a referral letter and instruct the employee to contact the Department through its toll-free hotline within 8 Federal Government work days.

5. If the employee contests a tentative nonconfirmation based upon a photo non-match, the Employer will provide the employee with a referral letter to DHS. DHS will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary.

6. The Employer agrees that if an employee contests a tentative nonconfirmation based upon a photo non-match, the Employer will send a copy of the employee's Form I-551 or Form I-766 to DHS for review by:

- Scanning and uploading the document, or
- Sending a photocopy of the document by an express mail account (furnished and paid for by DHS).

7. The Employer understands that if it cannot determine whether there is a photo match/non-match, the Employer is required to forward the employee's documentation to DHS by scanning and uploading, or by sending the document as described in the preceding paragraph, and resolving the case as specified by the Immigration Services Verifier at DHS who will determine the photo match or non-match.

#### **ARTICLE IV**

##### **SERVICE PROVISIONS**

The SSA and DHS will not charge the Employer for verification services performed under this MOU. The Employer is responsible for providing equipment needed to make inquiries. To access the E-Verify System, an Employer will need a personal computer with Internet access.

#### **ARTICLE V**

##### **PARTIES**

This MOU is effective upon the signature of all parties, and shall continue in effect for as long as the SSA and DHS conduct the E-Verify program unless modified in writing by the mutual consent of all parties, or terminated by any party upon 30 days prior written notice to the others. Any and all system enhancements to the E-Verify program by DHS or SSA, including but not limited to the E-Verify checking against additional data sources and instituting new verification procedures, will be covered under this MOU and will not cause the need for a supplemental MOU that outlines these changes. DHS agrees to train employers on all changes made to E-Verify through the use of mandatory refresher tutorials and updates to the E-Verify manual. Even

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**USCIS Verification Division**

\_\_\_\_\_  
Name (Please type or print)

\_\_\_\_\_  
Title

*Electronically Signed*  
\_\_\_\_\_  
Signature

**11/18/2008**  
\_\_\_\_\_  
Date

Company ID Number: 165031

Telephone Number: (479) 587 - 3356  
E-mail Address: richard.evans@apac.com

Fax Number: (479) 443 - 4018

- [View Essential Resources](#)
- [Take Tutorial](#)
- [View User Manual](#)
- [Share Ideas](#)
- [Contact Us](#)

**Additional Information:**

Employer Identification Number: 581401469  
Total Number of Employees: 1,000 to 2,499  
Parent Organization: APAC-Holdings, Inc.  
Administrator:

**Organization Designation:**

Employer Category: Federal Contractor with FAR E-Verify Clause  
Federal Contractor Category:  
Employees being verified:

NAICS Code: 237 - HEAVY AND CIVIL ENGINEERING CONSTRUCTION

[View / Edit](#)

Total Hiring Sites: 4

[View / Edit](#)

Total Points of Contact: 5

[View / Edit](#)

[View MOU](#)

# E-Verify

## Employment Eligibility Verification



Welcome  
Evans Richard

User ID  
ERIC2148

Last Login  
09:35 AM - 03/01/2016

Log Out

Click any for help

Home

My Cases

New Case

View Cases

Search Cases

My Profile

Edit Profile

Change Password

Change Security Questions

My Company

Edit Company Profile

Add New User

View Existing Users

Close Company Account

My Reports

View Reports

My Resources

View Essential Resources

Take Tutorial

View User Manual

Share Ideas

Contact Us

### Points of Contact Summary List

Previous Next

<a href="#">Add</a>	First Name	Last Name	Middle Name	Phone Number	Fax Number	E-mail Address
<a href="#">Edit</a> <a href="#">Delete</a>	Betancourt	Erica		(479) 587 - 3339	(479) 443 - 4018	erica.betancourt@apac.
<a href="#">Edit</a> <a href="#">Delete</a>	Evans	Richard	F	(479) 587 - 3356	(479) 684 - 5402	richard.evans@apac.com
<a href="#">Edit</a> <a href="#">Delete</a>	Debra	Morris	K	(479) 788 - 6365	(479) 684 - 5402	debra.morris@apac.com
<a href="#">Edit</a> <a href="#">Delete</a>	Lisa	Chapman	L	(918) 556 - 2236	(918) 828 - 4643	lisa.chapman@apac.com
<a href="#">Edit</a> <a href="#">Delete</a>	Kevin	Farmer	R	(417) 868 - 6714	(417) 868 - 7064	kevin.farmer@apac.com

Previous Next

< >

[Cancel](#) [Save & Continue](#)

<b>ROUTING ORDER</b>	<b>(1) ORIGINATING DEPT.</b>	<b>(2) CONTRACTOR</b>	<b>(3) INITIATING DEPT.</b>
<b>(4) ATTORNEY</b>	<b>(5) COUNCIL</b>	<b>(6) CITY ADMINISTRATOR</b>	<b>(7) CITY CLERK</b>
<b>EFFECTIVE DATE</b>	<b>TERMINATION DATE</b>	<b>CONTRACT NO:</b>	
<b>CITY</b>		<b>CONTRACTOR</b>	
<b>CITY OF REPUBLIC</b> <b>213 N. MAIN</b> <b>Republic, MO 65738</b> <b>PHONE: (417) 732-3350</b> <b>FAX: (417) 732-2913</b> <b>ATTN: CITY ADMINISTRATOR</b>  <b>Dept.: Parks and Rec</b>		<b>Name: APAC-Central, Inc.</b> <b>Address: PO Box 1187</b> <b>Springfield, MO 65801</b> <b>Phone: 417-868-6700</b> <b>Fax: 417-868-6785</b> <b>Attention: Douglas Fronick</b>  <b>SSN/Federal Tax ID Number: 58-1401469</b>	

### CONTRACTOR AGREEMENT

**THIS AGREEMENT**, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between APAC-Central, Inc., hereinafter called "Contractor," and the City of Republic, Missouri, a municipal corporation, hereinafter called "City."

**WHEREAS**, the City of Republic desires to engage Contractor for 2018 New asphalt within the Bervin White Baseball/Softball Complex, hereinafter described on **Exhibit A – Description of Work and Notice of Award** which is attached hereto and incorporated herein; and

**WHEREAS**, the Contractor submitted a bid received by the City on January 26, 2018, which bid is attached hereto and incorporated herein as **Exhibit B – Bid Form**; and

**WHEREAS**, the Contractor has become the lowest responsible bidder for furnishing the supervision, labor, tools, equipment, materials and supplies and for the services described in **Exhibit A** for the City which is attached hereto and incorporated herein;

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 the time specified in the contract documents.
2. **Terms and Conditions.** In addition to the requirements to comply with applicable city, state and federal law, the Contractor shall become familiar with the technical specifications and

requirements for construction projects of the City and shall comply with those provisions applicable to this project.

3. **Sales Tax Exemption.** The contract price does not include and the City shall not pay any sales or use taxes on the materials used in the project. Pursuant to the provisions of RSMo. Section 144.062, the City will provide the Contractor with a Project Exemption Certificate and a Missouri Tax Exemption letter from the City of Republic to use in purchasing materials on a tax-free basis. It will be the Contractor's responsibility to provide the documentation to any subcontractor. These documents will be used solely for purchase of materials being directly incorporated into or consumed in the construction of the work under this contract.
4. **Payment Shall Not Exceed.** The City hereby agrees to pay the Contractor for the work done pursuant to this contract according to the payment schedule set forth in the contract documents upon acceptance of the work by the City and in accordance with the rates and/or amounts stated in the proposal of Contractor dated January 26, 2018, which by reference is made a part hereof. 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 Thirty Thousand Four Hundred and 00/100 dollars (\$30,400.00), 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.
5. **Contingency Set Aside.** The contract amount set forth in paragraph 4 above may include an amount specified in the Notice of Award which shall be set aside as a contingency allowance. Although the contingency allowance may be included in the total amount of the contract, the Contractor shall not be entitled to be paid any portion of the contingency allowance unless and until specifically authorized by written change order to the City's initial Notice to Proceed. The contingency allowance shall be authorized solely in the event additional work not included or specified in the base bid is required.
6. **Prevailing Wage.** Not less than the prevailing hourly rate of wages, as set out in the wage order attached to and made part of the specification for work under the contract, must be paid to all workers performing work under the contract (see Section 290.250, RSMo). The Contractor will forfeit a penalty to the contracting public body of \$100 per day (or portion of a day) for each worker that is paid less than the prevailing rate for any work done under the contract by the Contractor or by any sub-contractor (see Section 290.250, RSMo). For detailed information on rules and occupational titles, see 8 CSR 30-3.010 through 3.060). During periods of excessive unemployment (any month immediately following two consecutive calendar months during which the level of unemployment in the state has exceeded five percent (as measured by the United States Bureau of Labor Statistics), only Missouri laborers (persons who have resided in Missouri for at least thirty days and intend to become or remain Missouri residents) and laborers from non-restrictive states (persons who are residents of a state which has not enacted state laws restricting Missouri laborers from working on public works projects in that state, as determined by the Labor and Industrial Relations Commission), (see Excessive Unemployment section), may be employed under the contract, except that other laborers may be used when Missouri laborers or laborers from non-restrictive states are not available, or are incapable of performing the particular type of work involved, if so certified by the Contractor and approved by the contracting officer. (See Sections 290.550 through 290.580, RSMO).
7. **NOT USED**

8. **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, insurance of such types and in such amounts as may be necessary to protect it and the interests of the City 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. 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 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 provide thirty (30) days written notice to be given by the insurance company in question prior to modification or cancellation of such insurance. Such notices shall be mailed, certified mail, return receipt requested, to:

City of Republic, Parks and Rec, 221 North Main, Republic, MO 65738

The minimum coverage for the insurance referred to herein shall be in accordance with the requirements established 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 Two Million Eight Hundred Four Thousand Forty Six Dollars (\$2,804,046) for all claims arising out of a single accident or occurrence and Four Hundred Twenty Thousand Six Hundred Six Dollars (\$420,606) for any one person in a single accident or occurrence.
- c. **Automobile Liability Insurance** covering bodily injury and property damage for owned, non-owned and hired vehicles, with limits of Two Million Eight Hundred Four Thousand Forty Six Dollars (\$2,804,046) for all claims arising out of a single accident or occurrence and Four Hundred Twenty Thousand Six Hundred Six Dollars (\$420,606) for 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 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 Republic.

- f. **Pending Legislation.** 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. (Supp 1995) 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.
9. **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.
10. **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 complete the work within the time specified in the contract, or within such extra time as may be allowed in accordance with the terms of this contract, Contractor (or surety) shall be liable to the City in the amount of \$200.00 per day for each and every calendar day that the contract remains uncompleted after the time allowed for 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.
11. **Termination.** 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.
12. **City's Right to Proceed.** In the event this contract is terminated pursuant to Paragraph 11, 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.

13. **Termination for Convenience of City.** The City shall have the right at anytime 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.
14. **Delay by City.** City and Contractor agree that the schedule of services to be provided by the Contractor under this agreement may depend upon timely fulfillment of City responsibilities. If the City is unable to provide services and/or facilities as specified in the contract documents, and/or causes delays to the project beyond Contractor's control, the Contractor shall be entitled to an extension of the time for contract completion but such contract time of completion shall be extended no more than one day for each day of delay caused by the City. Any such agreement to modify or extend the time of contract completion shall be made in writing by formal addendum to the contract. The time of application of liquidated damages shall not begin until after the amended date for contract/phase completion. The contract time of completion shall not be extended because of delay caused by the City unless and until the Contractor has notified the City, in writing, that the City has caused a delay; such notice shall be made not later than seven (7) days after the beginning of the delay caused by the City.
15. **Guards and Lights.** The Contractor agrees that during the performance of said work, it will maintain proper guards for the prevention of accidents and put up and maintain suitable and sufficient lights.
16. **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.
17. **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.
18. **Contract Documents.** The contract documents shall consist of the following:
- a. This Contract
  - b. Invitation for Bid dated January 8, 2018.
  - c. All Duly Executed Change Orders
  - d. Exhibit A – Description of Work and Notice of Award
  - e. Exhibit B – Bid Submittal and Unit Pricing
  - f. Any duly executed modifications (to be attached as Exhibit C)

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.

19. **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.
20. **Transient Employers.** Every transient employer, as defined in Section 285.230, RSMo., must post in a prominent and easily accessible place at the work site a clearly legible copy of the following: (1) The notice of registration for employer withholding issued to such transient employer by the Director of Revenue; (2) Proof of coverage of Worker's Compensation Insurance or self-insurance signed by the transient employer and verified by the Department of Revenue through records of the Division of Worker's Compensation; and, (3) The notice of registration for Unemployment Insurance issued to such transient employer by the Division of Employment Security. Any transient employer failing to comply with these requirements shall, under Section 285.234, RSMo. be liable for a penalty of \$500 per day until the notices required

by this section are posted as required by that Statute.

21. **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.

22. **E-Verify and Safety Training Compliance Requirements.** All Proposers/Contractors for contracts exceeding five thousand dollars shall by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Every such business entity shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Such Affidavit of Compliance shall be submitted with the Proposal on the forms included in these Contract Documents. Subsequent to award, each sub-contractor shall complete an Affidavit of Compliance to the same. Sub-contractor affidavits shall be submitted to the Owner.

23. **Safety Training.** The Contractor shall provide the following safety training: A ten (10) hour Occupational Safety and Health Administration (“OSHA”) construction safety program for all employees who will be on-site at the Project. The construction safety program shall include a course in construction safety and health that is approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations which is at least as stringent as an approved OSHA program as required by Section 292.675, RSMo.

- a. Require its on-site employees to complete a construction safety program within sixty (60) day after the date work on the Project commences.
- b. Acknowledges and agrees that any of the Contractor’s employees found on the project site with documentation of the successful completion of a construction safety program shall be required to produce such documentation within twenty (20) days, or will be subject to removal from the Project.
- c. Require all of its Sub-contractors to comply with the requirements of this section and Section 292.675 RSMo.

24. **Notice of Penalties for Failure to Provide Safety Training.** The Contractor shall be liable for penalties for failure to provide safety training as follows:

- a. Pursuant to Section 292.675 RSMo. The Contractor shall forfeit to the City as a penalty two thousand five hundred dollars (\$2,500.00), plus one hundred dollars (\$100.00) for each on-site employee employed by the Contractor or its Sub-contractor, for each calendar day, or portion thereof. Such on-site employee is employed without the construction safety training required in Paragraph 1.22 above.
- b. The penalty described in this section shall not begin to accrue until the time periods described in Paragraph 1.22 b. and c. have elapsed.
- c. Violation of Paragraph 1.22 above and imposition of the penalty described in this Section shall be investigated and determined by the Missouri Department of Labor and Industrial Relations.

25. **Payment Withheld for Violations of Safety Training Provisions.** In the event that the Missouri Department of Labor and Industrial Labor Relations has determined that a violation of Section 292.675 RSMo has occurred and that a penalty as described in Section 1.23 shall be assessed, the Owner shall withhold and retain all sums and amounts due and owing when making payments to the Contractor.
26. **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.
27. **Occupational License.** The Contractor shall obtain and maintain an occupational license with the City of Republic, Missouri. The cost for this occupational license shall borne by the Contactor. No contract shall be executed by the City until this occupational license has been obtained.
28. **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.
29. **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 Republic, 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.
30. **Nondiscrimination.** The Contractor agrees in the performance of this contract not to discriminate on the grounds or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, 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.

31. **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.
32. **Waiver.** No provision of the contract documents shall be construed, expressly or by implication, as a waiver by the City of any existing or future right or remedy available by law in the event of any claim of default or breach of contract.
33. **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.
34. **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.
35. **Payment.** The City will pay the Contractor in accordance with the rate set forth in the contract documents on file Public Works Department and by this reference made a part hereof, which shall constitute full and complete compensation for the Contractor's work provided hereunder. Such compensation will be paid in progress payments (less 10 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.

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

<p><b>CERTIFICATE OF DEPARTMENT DIRECTOR</b></p> <p>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.</p> <p>_____</p> <p>Department Director</p> <p><b>APPROVED AS TO FORM</b></p> <p>_____</p> <p>City Attorney</p>	<p><b>CONTRACTOR:</b></p> <p>By: _____</p> <p>Printed Name: _____</p> <p>Title: _____</p> <p><b>CITY OF REPUBLIC, MISSOURI</b></p> <p>By: _____</p> <p>City Administrator</p>
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