



Issue: McCauley Park Playground Water Retention Renovation Bids

Date: December 1, 2021

Submitted By: Matt Crouse, Director of Parks and Recreation

Background

As identified as a project for the 2021 budget cycle the McCauley Park playground has experienced significant water retention issues over the past few years. This playground will be 20 years old in 2022 and the play surface is pre-engineered wood fiber (wood chips). Over the years the woodchip break down and create a silt barrier that aids in the space retaining water. Periodically staff works to remove as much of the old surface to replace with new. Our last complete removal and replacement of this surface was in the spring of 2019. Unfortunately, the playground has produced so much silt that getting to the bottom on the silt and removing all the surface is near impossible at this point in time. Staff added more pre-engineered wood fiber in the spring of this year to help cover the water retention issues, however this is simply a temporary solution.

Analysis

It has been determined that the playground receives significant drainage from the soccer field to the north of the playground, and the trail and ground directly north of the playground which are aiding in the water retention issues. In May park staff began working with Shaeffer and Hines engineering to develop a possible solution to remove that water from the equation. This took a significant amount of time, however we are very pleased with the work and the design to help mitigate the water while also providing an aesthetically pleasing space along the north end of the playground.

Shaeffer and Hines assisted staff with the develop and execution of the bid documents and bidding of this project. Staff received 2 contractor bids, and 1 no bid from a third contractor on this project. After review of the bids and discussions with the contractor we are confident the low bidder Liming Concrete LLC. Can complete the project for the amount of \$97,340.00.

Recommendation

Staff is recommending the approval of this resolution to allow Liming Concrete LLC. to be awarded this project in the amount of \$97,340.00, which is within the budgeted amount within the parks budget.

Respectfully,

Matt Crouse
Director, Parks and Recreation

STORMWATER DRAINAGE & SIDEWALK IMPROVEMENTS
For McCauley Park Playground
CITY OF NIXA, MISSOURI

BID OPENING
November 16, 2021 – 10:00 a.m.

CONTRACTOR

BID PRICE

1. D & E Plumbing & Heating Inc. \$190,185.00

2. Liming Concrete \$97,340.00

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

9. _____

CONTRACT AGREEMENT

THIS AGREEMENT is dated as of the ____ day of _____ in the year 20__.

by and between THE CITY OF NIXA hereinafter called (Owner)

and Liming Concrete, LLC. hereinafter called (Contractor)

OWNER and CONTRACTOR, in consideration of the mutual covenants hereafter set forth agree as follows:

Article 1: WORK

CONTRACTOR shall complete all work as specified or indicated in the Contract Documents. The work is generally described as follows:

**Stormwater Drainage & Sidewalk Improvements for McCauley Park Playground
For The City of Nixa, Missouri**

Article 2: ENGINEER

The project has been designed by

SHAFFER & HINES, INC.

P.O. Box 493, Nixa, Missouri, 65714

who is hereinafter called ENGINEER and who will assume all duties and responsibilities and will have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the work in accordance with the Contract Documents.

Article 3: CONTRACT TIME

3.1 Unless otherwise agreed to the undersigned bidder agrees to enter into a contract within ten (10) days after acceptance of this bid, and further agrees to complete all work covered by the bid within 120 calendar days after the issuance of the Notice to Proceed.

3.2 Liquidated Damages: OWNER AND CONTRACTOR recognize that time is of the essence of this Agreement, and that OWNER will suffer financial loss if the work is not substantially complete within the time specified in paragraph 3.1, above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding that actual loss suffered by OWNER if the work is not substantially complete on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but

SIGNATURE PAGE

Project: Stormwater Drainage & Sidewalk Improvements for the McCauley Park Playground

MAILING INSTRUCTIONS: Print or type Bid Title and Due Date on the lower left hand corner of the envelope or package. Delivered sealed bids must be in Nixa Public Works (1111 W. Kathryn, Nixa, MO. 65714) by the return date and time.

The undersigned hereby offers to furnish and deliver the items and/or services as specified at the prices and terms stated in this document. The terms and conditions of this requirement are hereby incorporated in this document by reference as though fully set forth herein. The bidder further agrees that the language of this document shall govern in the event of a conflict with the bidder's quotation. The bidder further agrees that upon receipt of an authorized purchase order from the City of Nixa or when a Notice of Award is signed and issued by an authorized official of the City of Nixa, a binding contract shall exist between the bidder and the City of Nixa.

LEGAL NAME OF ENTITY/INDIVIDUAL FILED WITH IRS FOR THIS TAX ID NO. <i>DONALD LIMING</i>	
DOING BUSINESS AS (DBA) NAME <i>LIMING CONCRETE</i>	
ADDRESS <i>4611 E. FARM ROAD 94</i>	
CITY, STATE, ZIP CODE <i>SPRINGFIELD, MO 65803</i>	
TAXPAYER ID NUMBER (TIN) <i>901141487</i>	TAX PAYER ID (TIN) TYPE (CHECK ONE) <input checked="" type="checkbox"/> FEIN <input type="checkbox"/> SSN
VENDOR TAX FILING TYPE WITH THE IRS (CHECK ONE) (NOTE: LLC IS NOT A VALID TAX FILING TYPE) Corporation Individual <input checked="" type="checkbox"/> State/Local Government Partnership Sole Proprietor Other:	

CONTACT PERSON <i>DON LIMING</i>	EMAIL ADDRESS <i>limingconcrete@gmail.com</i>
PHONE NUMBER <i>417-224-4104</i>	FAX NUMBER
AUTHORIZED SIGNATURE <i>[Signature]</i>	DATE <i>11/15/21</i>
PRINTED NAME <i>DON LIMING</i>	TITLE <i>OWNER</i>

Are you or a family member employed by the City of Nixa? Yes No

If yes, name of employee: _____

Relationship: _____

Will you accept Purchase Orders? Yes No

RETURN THIS PAGE

**STORMWATER DRAINAGE & SIDEWALK IMPROVEMENTS
FOR MCCAULEY PARK PLAYGROUND
FOR THE CITY OF NIXA, MO
BID FORM**

SCHEDULE A					
ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL PRICE
1.01	Mobilization	1	LS	3000	3000
1.02	Concrete Block Retaining Wall (Lower Wall)	158	LF	100	15,800
1.03	Concrete Block Retaining Wall (Upper Wall)	147	LF	100	14,700
1.04	Concrete Sidewalk & Baserock	3,430	SF	8	27,440
1.05	18" HDPE	191	LF	40	7,640
1.06	15" HDPE	19	LF	40	760
1.07	18" RCP FES	1	EA	700	700
1.08	3'x3' Area Inlet (Grate)	2	EA	4000	8,000
1.09	3'x3' Area Inlet (side openings)	1	EA	4000	4,000
1.10	Sod all Disturbed Area's	1	LS	4000	4,000
1.11	Deomolition / Removals from Site	1	LS	4000	4,000
1.12	Clearing & Grubbing & Remove from Site	1	LS	500	500
1.13	Grading (Plan Quantity Cut = 104 cy, Fill = 110 cy)	1	LS	4,000	4,000
1.14	Temporaty Construction Fencing	1	LS	2000	2000
1.15	Implement & Maintain Sediment & Erosion Control Plan	1	LS	800	800
TOTAL					97,340

STORMWATER DRAINAGE & SIDEWALK IMPROVEMENTS
FOR MCCAULEY PARK PLAYGROUND
FOR THE CITY OF NIXA, MO
BID FORM

AWARD OF CONTRACT

It is intended that one contract will be entered into by the City of Nixa. The basis of award will be to the lowest responsive and responsible bidder to provide the most amount of work within the City of Nixa's budget.

Unless otherwise agreed to the undersigned bidder agrees to enter into a contract within ten (10) days after acceptance of this bid No bid may be withdrawn for 60 days after the bid opening.

Dated on this 15TH day of NOVEMBER, 2021.

SIGNATURE OF BIDDER

If an Individual: Don Linn, doing
business as LINING CONCRETE.

If a Partnership: _____
by _____, partner.

If a Corporation: _____
by _____
Title _____ (SEAL)

**Affidavit of Compliance with Section 285.500 R.S.Mo., Et Seq.
For all Agreements in excess of \$5,000.00.
Effective January 1, 2009**

STATE OF Missouri)
COUNTY OF Greene) ss.

Before me, the undersigned Notary Public, in and for the County of Greene, State of MISSOURI, personally appeared DON LIMING (Name) who is OWNER (Title) of LIMING CONCRETE (Name of company), (a corporation), (a partnership), (a sole proprietorship), (a limited liability company), and is authorized to make this affidavit, and being duly sworn upon oath deposes and says as follows:

- (1) that said company is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the contracted services; and
- (2) that said company does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

The terms used in this affidavit shall have the meaning set forth in Section 285.500 R.S.Mo., et seq.

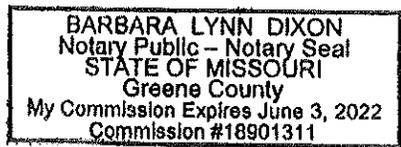
Documentation of participation in a federal work authorization program is attached to this affidavit.

Don Liming
Signature

Name: DON LIMING

Subscribed and sworn to before me this 15 day of Nov, 2021
Barbara L Dixon
Notary Public

My commission expires: 06-03-2022



BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned,

Liming Concrete, LLC as Principal,

and Old Republic Surety Co.

as Surety, are hereby held and firmly bound unto the City of Nixa, Missouri as OWNER in the penal sum of 5% of the bid

for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

Signed, this 15th day of November, 2021

The condition of the above obligation is such that whereas the principal has submitted to City of Nixa, Missouri a certain

BID, attached hereto and hereby made a part hereof to enter into a CONTRACT in writing, for the:

Stormwater Drainage & Sidewalk Improvements for McCauley Park Playground (project).

NOW, THEREFORE,

- (a) If said BID shall be rejected or
- (b) IF said BID shall be accepted and the Principal shall execute and deliver a CONTRACT in the Form of Contract attachment hereto (properly complete in accordance with said BID) and shall furnish a BOND for faithful performance of said CONTRACT, and for the payment of all persons performing labor furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said BID then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its Bond shall be in no way impaired or affected by an extension of the time within which the OWNER may accept such BID; and said Surety does hereby waive notice of any such extension.

BID BOND

IN WITNESS WHEREOF, The Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

Don Liming (L.S.)
Don Liming, ~~Owner~~ Liming Concrete, LLC

Old Republic Surety Company
Surety

By: Theresa Setzer
Theresa Setzer, Attorney-in-Fact

IMPORTANT – Surety companies executing Bonds must appear on the Treasury Department’s most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.



OLD REPUBLIC SURETY COMPANY

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That OLD REPUBLIC SURETY COMPANY, a Wisconsin stock insurance corporation, does make, constitute and appoint:

TERESA L SETZER, BLAKE T WIXSON, SEAN GRAYTON, CHRISTINE GIBSON, OF SPRINGFIELD, MO

its true and lawful Attorney(s)-in-Fact, with full power and authority, for and on behalf of the company as surety, to execute and deliver and affix the seal of the company thereto (if a seal is required), bonds, undertakings, recognizances or other written obligations in the nature thereof, (other than bail bonds, bank depository bonds, mortgage deficiency bonds, mortgage guaranty bonds, guarantees of installment paper and note guaranty bonds, self-insurance workers compensation bonds guaranteeing payment of benefits or black lung bonds), as follows:

ALL WRITTEN INSTRUMENTS

and to bind OLD REPUBLIC SURETY COMPANY thereby, and all of the acts of said Attorneys-in-Fact, pursuant to these presents, are ratified and confirmed. This appointment is made under and by authority of the board of directors at a special meeting held on February 18, 1982. This Power of Attorney is signed and sealed by facsimile under and by the authority of the following resolutions adopted by the board of directors of the OLD REPUBLIC SURETY COMPANY on February 18, 1982.

RESOLVED that, the president, any vice-president, or assistant vice president, in conjunction with the secretary or any assistant secretary, may appoint attorneys-in-fact or agents with authority as defined or limited in the instrument evidencing the appointment in each case, for and on behalf of the company to execute and deliver and affix the seal of the company to bonds, undertakings, recognizances, and suretyship obligations of all kinds; and said officers may remove any such attorney-in-fact or agent and revoke any Power of Attorney previously granted to such person.

- RESOLVED FURTHER, that any bond, undertaking, recognizance, or suretyship obligation shall be valid and binding upon the Company
- (i) when signed by the president, any vice president or assistant vice president, and attested and sealed (if a seal be required) by any secretary or assistant secretary; or
 - (ii) when signed by the president, any vice president or assistant vice president, secretary or assistant secretary, and countersigned and sealed (if a seal be required) by a duly authorized attorney-in-fact or agent; or
 - (iii) when duly executed and sealed (if a seal be required) by one or more attorneys-in-fact or agents pursuant to and within the limits of the authority evidenced by the Power of Attorney issued by the company to such person or persons.

RESOLVED FURTHER, that the signature of any authorized officer and the seal of the company may be affixed by facsimile to any Power of Attorney or certification there of authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the company; and such signature and seal when so used shall have the same force and effect as though manually affixed.

IN WITNESS WHEREOF, OLD REPUBLIC SURETY COMPANY has caused these presents to be signed by its proper officer, and its corporate seal to be affixed this 18TH day of FEBRUARY, 2021.

OLD REPUBLIC SURETY COMPANY

Karen J. Staffner

Assistant Secretary



Alan Pavlic

President

STATE OF WISCONSIN, COUNTY OF WAUKESHA-SS

On this 18TH day of FEBRUARY, 2021, personally came before me, Alan Pavlic and Karen J. Haffner, to me known to be the individuals and officers of the OLD REPUBLIC SURETY COMPANY who executed the above instrument, and they each acknowledged the execution of the same, and being by me duly sworn, did severally depose and say; that they are the said officers of the corporation aforesaid, and that the seal affixed to the above instrument is the seal of the corporation, and that said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority of the board of directors of said corporation.



Kathryn R. Pearson
Notary Public

My commission expires: 9/28/2022

(Expiration of notary commission does not invalidate this instrument)

CERTIFICATE

I, the undersigned, assistant secretary of the OLD REPUBLIC SURETY COMPANY, a Wisconsin corporation, CERTIFY that the foregoing and attached Power of Attorney remains in full force and has not been revoked; and furthermore, that the Resolutions of the board of directors set forth in the Power of Attorney, are now in force.

40-4344



Signed and sealed at the City of Brookfield, WI this _____ day of _____.

Karen J. Staffner

Assistant Secretary

PJC INSURANCE AGENCY

CONTRACT AGREEMENT

not as a penalty) CONTRACTOR shall pay OWNER Two Hundred Fifty dollars (\$250.00) for each day that expires after the time specified in paragraph 3.1 for substantial completion until the work is substantially complete.

Article 4: CONTRACT PRICE

4.1 OWNER shall pay CONTRACTOR for performance of the work in accordance with the Contract Documents in current funds as follows:

Ninety-Seven Thousand Three Hundred Forty and zero cents (\$97,340-00)

Article 5: PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1 Progress Payments: OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Application for Payment as recommended by ENGINEER, on or about the 1st day of each month during construction as provided below. All progress payments will be on the basis of the progress of the work measured by the schedule of values provided for in Article 14, Paragraph 1 of the General Conditions.

5.1.1 Prior to Substantial Completion progress payments will be in an amount equal to:

90 % of the work completed.

5.1.2 Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95% of the Contract Price in accordance with Paragraph 8 of the General Conditions, less such amounts as ENGINEER shall determine in accordance with Article 14 Paragraph 7 of the General Conditions.

5.2 Final Payment: Upon final completion and acceptance of the work in accordance with Article 14, Paragraph 13 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said Article 14 Paragraph 13.

Article 6: INTEREST

All monies not paid when due hereunder shall bear interest at the maximum rate allowed by law at the place of the project in accordance with Article 14, Paragraph 4 of the General Conditions.

CONTRACT AGREEMENT

Article 7: CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

7.1 CONTRACTOR has familiarized himself with the nature and extent of Contract Documents, work, locality, and with all local conditions and federal, state, and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the work.

7.2 CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the work which were relied upon by ENGINEER in the preparation of the Drawings and Specifications and which have been identified in the Supplementary Conditions.

7.3 CONTRACTOR made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 7.2 as deemed necessary for the performance of the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examination, investigations, tests reports or similar data are or will be required by CONTRACTOR for such purposes.

7.4 CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports, and data with the terms and conditions of the Contract Documents.

7.5 CONTRACTOR has given ENGINEER written notice of all conflicts, error or discrepancies that he had discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

Article 8: CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR are attached to the AGREEMENT, made a part hereof and consists of the following:

8.1 This Agreement (page CA-1 - CA-5, inclusive).

8.2 Exhibits to this Agreement

- Exhibit 1 – Affidavit of Compliance with Section 292.675 R.S.Mo., Et Seq.
- Exhibit 2 – Affidavit of Compliance with Section 285.500 R.S.Mo., Et Seq.
- Exhibit 3 – E-Verify Memorandum of Understanding
- Exhibit 4 – Certificate of Liability

CONTRACT AGREEMENT

Exhibit 5 – Bid Documents for Stormwater Drainage & Sidewalk Improvements for McCauley Park Playground

8.3 Performance & Payment Bonds in the amount of 100 percent of the project cost (pages PEB-1 to PEB-3 and PAB-1 to PAB-3)

8.4 Supplementary Conditions (pages 1A-1 to 1A-12, inclusive).

8.5 Construction drawings bearing the title:

**Stormwater Drainage & Sidewalk Improvements for McCauley Park Playground
For The City of Nixa, Missouri**

8.6 Addenda numbers _____, inclusive.

8.7 Contractor's bid (pages BF-1 through BF-3 inclusive).

8.8 Any modifications, including Change Orders, duly delivered after execution of Agreement. There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in Article 3 of the General Conditions.

8.9 General Conditions

Article 9: MISCELLANEOUS

9.1 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.2 CONTRACTOR shall retain all required records for three years after the latter of OWNER (grantee) making final payment or all other pending matters are closed.

9.3 OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

CONTRACT AGREEMENT

IN TESTIMONY WHEREOF, the Contractor has hereunto set his hand and seal, and the City of Nixa executes this contract by its City Administrator.

THE CITY OF NIXA, MISSOURI

By: _____
Jimmy Liles, City Administrator

CONTRACTOR

By: _____

Approved as to form:

Nicholas Woodman, City Attorney

CERTIFICATE OF FINANCIAL OFFICER

I certify that this contract is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefore, and that the appropriate accounting entries have been made.

Jennifer Evans, Financial Officer

RESOLUTION NO. 2021-123

A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA ACCEPTING THE BID OF LIMING CONCRETE LLC FOR CERTAIN STORMWATER AND SIDEWALK IMPROVEMENTS TO THE MCCAULEY PARK PLAYGROUND AND AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A CONTRACT FOR SAME.

WHEREAS City staff, pursuant to the City’s adopted purchasing procedures (Resolution 2019-113), as amended, have solicited bids from qualified firms for services related to stormwater drainage and sidewalk improvements for the McCauley Park playground (“Project”); and

WHEREAS after reviewing all submitted bids, City staff has determined that Liming Concrete LLC (“Contractor”) provided the best proposal for the Project; and

WHEREAS City Council desires to award the Contract for the Project to the Contractor and to authorize the City Administrator to execute the Contract attached hereto as “Resolution Exhibit A.”

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NIXA, AS FOLLOWS, THAT:

SECTION 1: City Council hereby accepts the proposal of the Contractor for the Project. The City Administrator, or designee, is hereby authorized to enter into a contract with the Contractor. Said contract to be in substantially similar form as the document attached hereto, and incorporated herein by this reference, as “Resolution Exhibit A.” The City Administrator is further authorized to do all things necessary or convenient to carry out the terms and intent of this Resolution.

SECTION 2: This Resolution shall be in full force and effect from and after its final passage by the City Council and after its approval by the Mayor, subject to the provisions of section 3.11(g) of the City Charter.

ADOPTED BY THE CITY COUNCIL THIS 13TH DAY OF DECEMBER 2021.

ATTEST:

CITY CLERK

PRESIDING OFFICER

APPROVED BY THE MAYOR THIS _____ DAY OF _____ 2021.

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO FORM:

CITY ATTORNEY

RESOLUTION EXHIBIT A

CONTRACT AGREEMENT

THIS AGREEMENT is dated as of the ____ day of _____ in the year 20__.

by and between THE CITY OF NIXA hereinafter called (Owner)

and Liming Concrete, LLC. hereinafter called (Contractor)

OWNER and CONTRACTOR, in consideration of the mutual covenants hereafter set forth agree as follows:

Article 1: WORK

CONTRACTOR shall complete all work as specified or indicated in the Contract Documents. The work is generally described as follows:

**Stormwater Drainage & Sidewalk Improvements for McCauley Park Playground
For The City of Nixa, Missouri**

Article 2: ENGINEER

The project has been designed by

SHAFFER & HINES, INC.

P.O. Box 493, Nixa, Missouri, 65714

who is hereinafter called ENGINEER and who will assume all duties and responsibilities and will have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the work in accordance with the Contract Documents.

Article 3: CONTRACT TIME

3.1 Unless otherwise agreed to the undersigned bidder agrees to enter into a contract within ten (10) days after acceptance of this bid, and further agrees to complete all work covered by the bid within 120 calendar days after the issuance of the Notice to Proceed.

3.2 Liquidated Damages: OWNER AND CONTRACTOR recognize that time is of the essence of this Agreement, and that OWNER will suffer financial loss if the work is not substantially complete within the time specified in paragraph 3.1, above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding that actual loss suffered by OWNER if the work is not substantially complete on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but

CONTRACT AGREEMENT

not as a penalty) CONTRACTOR shall pay OWNER Two Hundred Fifty dollars (\$250.00) for each day that expires after the time specified in paragraph 3.1 for substantial completion until the work is substantially complete.

Article 4: CONTRACT PRICE

4.1 OWNER shall pay CONTRACTOR for performance of the work in accordance with the Contract Documents in current funds as follows:

Ninety-Seven Thousand Three Hundred Forty and zero cents (\$97,340-00)

Article 5: PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1 Progress Payments: OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Application for Payment as recommended by ENGINEER, on or about the 1st day of each month during construction as provided below. All progress payments will be on the basis of the progress of the work measured by the schedule of values provided for in Article 14, Paragraph 1 of the General Conditions.

5.1.1 Prior to Substantial Completion progress payments will be in an amount equal to:

90 % of the work completed.

5.1.2 Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95% of the Contract Price in accordance with Paragraph 8 of the General Conditions, less such amounts as ENGINEER shall determine in accordance with Article 14 Paragraph 7 of the General Conditions.

5.2 Final Payment: Upon final completion and acceptance of the work in accordance with Article 14, Paragraph 13 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said Article 14 Paragraph 13.

Article 6: INTEREST

All monies not paid when due hereunder shall bear interest at the maximum rate allowed by law at the place of the project in accordance with Article 14, Paragraph 4 of the General Conditions.

CONTRACT AGREEMENT

Article 7: CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

7.1 CONTRACTOR has familiarized himself with the nature and extent of Contract Documents, work, locality, and with all local conditions and federal, state, and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the work.

7.2 CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the work which were relied upon by ENGINEER in the preparation of the Drawings and Specifications and which have been identified in the Supplementary Conditions.

7.3 CONTRACTOR made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 7.2 as deemed necessary for the performance of the work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examination, investigations, tests reports or similar data are or will be required by CONTRACTOR for such purposes.

7.4 CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports, and data with the terms and conditions of the Contract Documents.

7.5 CONTRACTOR has given ENGINEER written notice of all conflicts, error or discrepancies that he had discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

Article 8: CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR are attached to the AGREEMENT, made a part hereof and consists of the following:

8.1 This Agreement (page CA-1 - CA-5, inclusive).

8.2 Exhibits to this Agreement

- Exhibit 1 – Affidavit of Compliance with Section 292.675 R.S.Mo., Et Seq.
- Exhibit 2 – Affidavit of Compliance with Section 285.500 R.S.Mo., Et Seq.
- Exhibit 3 – E-Verify Memorandum of Understanding
- Exhibit 4 – Certificate of Liability

CONTRACT AGREEMENT

Exhibit 5 – Bid Documents for Stormwater Drainage & Sidewalk Improvements for McCauley Park Playground

8.3 Performance & Payment Bonds in the amount of 100 percent of the project cost (pages PEB-1 to PEB-3 and PAB-1 to PAB-3)

8.4 Supplementary Conditions (pages 1A-1 to 1A-12, inclusive).

8.5 Construction drawings bearing the title:

**Stormwater Drainage & Sidewalk Improvements for McCauley Park Playground
For The City of Nixa, Missouri**

8.6 Addenda numbers _____, inclusive.

8.7 Contractor's bid (pages BF-1 through BF-3 inclusive).

8.8 Any modifications, including Change Orders, duly delivered after execution of Agreement. There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in Article 3 of the General Conditions.

8.9 General Conditions

Article 9: MISCELLANEOUS

9.1 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.2 CONTRACTOR shall retain all required records for three years after the latter of OWNER (grantee) making final payment or all other pending matters are closed.

9.3 OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

CONTRACT AGREEMENT

IN TESTIMONY WHEREOF, the Contractor has hereunto set his hand and seal, and the City of Nixa executes this contract by its City Administrator.

THE CITY OF NIXA, MISSOURI

By: _____
Jimmy Liles, City Administrator

CONTRACTOR

By: _____

Approved as to form:

Nicholas Woodman, City Attorney

CERTIFICATE OF FINANCIAL OFFICER

I certify that this contract is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefore, and that the appropriate accounting entries have been made.

Jennifer Evans, Financial Officer