

# RESOLUTION NO. 05 09 2024B

**A RESOLUTION AUTHORIZING AN AGREEMENT WITH INFRASTRUCTURE MANAGEMENT, INC., PROVIDING FOR CONSTRUCTION OF THE SOMMERS ROAD WIDENING AND IMPROVEMENTS PROJECT, IN AN AMOUNT NOT TO EXCEED \$985,496.17.**

**WHEREAS**, the City of O'Fallon, opened formal bids for the Sommers Road Widening and Improvements project on April 24, 2024, Bid #24-027; and

**WHEREAS**, City Staff reviewed two bids from qualified companies and determined the submission from Infrastructure Management, Inc., to be the lowest responsive bid; and

**WHEREAS**, City Staff recommends approval of this Resolution.

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

**SECTION 1:** The City Council approves on behalf of the City an agreement with Infrastructure Management, Inc., for construction of the Sommers Road Widening and Improvements project at a cost not to exceed \$985,496.17, in substantial conformity with the terms shown on Exhibit A attached hereto and incorporated herein by this reference as if set out here in full, together with such changes therein as shall be approved by the officers of the City executing same which are consistent with the provisions and intent of this legislation and necessary, desirable, convenient or proper in order to carry out the matters herein authorized. The City Administrator and other appropriate City officials are hereby authorized to execute the Agreement and such additional documents and take any and all actions necessary, desirable, convenient or prudent in order to carry out the intent of this legislation.

**PASSED BY THE CITY COUNCIL FOR THE CITY OF O'FALLON, MISSOURI, THIS 9<sup>TH</sup> DAY OF MAY 2024.**

Attest:

Katie Crabtree  
Katie Crabtree, Assistant City Clerk



B. Hoffman  
Presiding Officer

**RESOLUTION NO. 05 09 2024B**

**APPROVED BY THE MAYOR FOR THE CITY OF O'FALLON, MISSOURI, THIS 9<sup>TH</sup> DAY OF MAY 2024.**

Attest:

Katie Crabtree  
Katie Crabtree, Assistant City Clerk



Bill Hennessy  
Bill Hennessy, Mayor

Approved as to Form:  
Kevin M. O'Keefe  
Kevin M. O'Keefe, City Attorney

EXHIBIT A

CITY-CONTRACTOR AGREEMENT

THIS AGREEMENT, by and between the City of O'Fallon, Missouri, hereinafter called the OWNER, and Infrastructure Management Inc., a Missouri State Corporation, hereinafter called the CONTRACTOR.

WITNESSETH:

WHEREAS, in accordance with law, the OWNER has caused contract documents to be prepared and an advertisement calling for bids to be published, for and in connection with the Sommers Road Widening & Improvements project, and

WHEREAS, the OWNER, in the manner prescribed by law, has publicly opened, examined and canvassed the bids submitted, and has determined the aforesaid CONTRACTOR to be the lowest and best bidder for the work and has duly awarded to the said CONTRACTOR a contract therefore, for the sum or sums named in the CONTRACTOR's bid, a copy of the Bid Form being attached to and made a part of this contract;

NOW, THEREFORE, in consideration of the mutual agreements herein, the parties hereby agree, the OWNER for itself and its successors, and the CONTRACTOR for itself and any successors, assigns, and administrators, as follows:

ARTICLE I.

CONTRACTOR shall furnish, at CONTRACTOR's expense, all tools, equipment, supplies, superintendence, transportation, and other construction accessories, services and facilities, all materials, supplies and equipment specified and required for the completed work; and provide and perform all necessary labor in a good, substantial, and workmanlike manner to construct and complete the work as described and required by the plans, specifications, and the proposal for construction of the improvements, all in accordance with the plans, specifications, general conditions, supplementary conditions, instructions to bidders, proposal, and other specified documents, all of which contract documents form the contract, and are as fully a part thereof as if repeated verbatim herein, all work to be done under the direct supervision, and to the entire satisfaction of the OWNER.

ARTICLE II.

CONTRACTOR shall comply in all respects with provisions of the Contract Documents regarding Equal Employment Opportunity, handicapped facilities, nonsegregated facilities, and Missouri Prevailing Wage Law.

ARTICLE III.

OWNER will pay the CONTRACTOR for the performance of the Agreement, in current funds, subject to additions and deductions as provided for in the Contract Documents, the sum of **\$985,496.17, (Nine hundred eighty-five thousand four hundred ninety-six dollars and seventeen cents)** for all work covered by and designated in the bid. Payment shall be made in the manner and as specified in the GENERAL CONDITIONS, SUPPLEMENTARY CONDITIONS,



DETAILS SPECIFICATIONS and the INSTRUCTIONS TO BIDDERS. Five percent (5%) of partial payments shall be retained until all work is completed.

ARTICLE IV.

CONTRACTOR shall not sell, transfer, assign or otherwise dispose of this Agreement or any portion thereof without previous written consent of the OWNER. In no case shall the CONTRACTOR assign work amounting to more than Seventy (70%) percent of the total contract amount. No transfer of contract shall release the CONTRACTOR of his liability under the contract and bonds applicable thereto.

ARTICLE V.

CONTRACTOR agrees to begin work within ten (10) days after receiving written notice to start work from the OWNER and to complete the work by 70 calendar days.

ARTICLE VI.

In conformity with the GENERAL CONDITIONS and BID FORM, the amount of liquidated damages for the Contract shall be Two thousand three hundred dollars. (\$2,300) per consecutive calendar day.

ARTICLE VII.

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

ARTICLE VIII.

To the fullest extent permitted by law, the CONTRACTOR shall indemnify and hold harmless the CITY, CONSULTING ENGINEER, their consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property other than the Work itself, including loss of use resulting there from, but only to the extent caused in whole or in part by negligent acts or omissions of the CONTRACTOR, a Subcontractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party or person described in this Section.

In claims against any person or entity indemnified under the above paragraph by an employee of the CONTRACTOR, a Subcontractor, or anyone directly or indirectly employed by them or anyone whose acts they may be liable, the indemnification obligation under this paragraph shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or a Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

The obligations of the CONTRACTOR under this Section shall not extend to the liability of the ENGINEER, the ENGINEER'S consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions, after requested in writing by the CONTRACTOR, or instructions by the ENGINEER, the ENGINEER'S consultants, and agents and employees of any of them provided such instructions or failure to give is the primary cause of the injury or damage.

ARTICLE IX.

(a) If the CONTRACTOR is adjudged to be bankrupt, or if the CONTRACTOR makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of the CONTRACTOR's insolvency, or if the CONTRACTOR fails, except in cases for which extension of time is provided, to make progress in accordance with the Construction Schedule, or if the CONTRACTOR fails to make prompt payment to Subcontractors or prompt payment for material or labor, or disregards laws, ordinances or the instructions of the OWNER, or otherwise breaches any provision of the Contract, the OWNER may, without prejudice to any other right or remedy, terminate the Contract by giving written notice to the CONTRACTOR and his surety. Upon such notification the OWNER shall be entitled to take possession of the Work and of all materials and equipment thereon and finish the Work by whatever method the OWNER may deem expedient, which may include, but is not limited to, the OWNER itself completing the work or the OWNER hiring others to complete said work. In such case, the CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Sum shall exceed the expenses of finishing the Work, including additional engineering, architectural, managerial and administrative expenses, and liquidated damages, such excess shall be paid to the CONTRACTOR. If such expenses and damages exceed the unpaid balance of the Contract Sum, the CONTRACTOR shall pay the difference to the OWNER promptly upon demand. In the event of termination pursuant to this paragraph, the CONTRACTOR, upon the request of the OWNER, shall promptly:

- i. assign to the OWNER in the manner and to the extent directed by the OWNER all right, title and interest of the CONTRACTOR under any subcontracts, purchase orders and construction equipment leases to which the CONTRACTOR is a party and which relate to the Work or to construction equipment required therefore, and
- ii. make available to the OWNER to the extent directed by the OWNER all construction equipment owned by the CONTRACTOR and employed in connection with the Work.

(b) Performance of the Work hereunder may be terminated by the OWNER by giving three (3) days prior written notice to the CONTRACTOR if the OWNER, in its sole discretion, decides to discontinue or suspend construction. In the event of such termination, as opposed to termination pursuant to paragraph (a) of this Article, the Contract Sum shall be reduced in an equitable manner by agreement between the parties.



ARTICLE X.

This project has been originated by:

City of O'Fallon  
Project Management  
100 North Main Street  
O'Fallon, MO 63366

who will act as the ENGINEER and OWNER in accordance with the Contract Documents.

IN WITNESS WHEREOF, the OWNER has caused these presents to be executed, and the CONTRACTOR has executed four (4) counterparts of this Contract in the prescribed form and manner, effective as of the day and year of the signature of the last party to execute the Contract.



ATTEST:

Katie Crabtree  
Katie Crabtree, Assistant City Clerk

CITY OF O'FALLON, MISSOURI, OWNER

BY: [Signature] DATE 5-9-24  
City Administrator  
Michael Snowden

INFRASTRUCTURE MANAGEMENT, INC., CONTRACTOR

BY: [Signature] DATE 4/26/24  
President (Title)

ATTEST:

[Signature]  
Supervisor (Title)