

ADDENDUM



CITY COUNCIL MEETING AGENDA

CITY HALL COUNCIL CHAMBERS

109 E. OLIVE STREET, BLOOMINGTON, IL 61701

MONDAY, MARCH 14, 2016 7:00 P.M.

Correction to the online council packet to replace the Agreement attachment for item No. 7M.

7. “Consent Agenda”

- M. Consideration of approving a Resolution waiving the formal bidding process and enter into a Contract for supply and delivery of Cationic and Anionic polymer for water treatment purposes. *(Recommend that the Resolution be approved waiving the formal bid process with Brenntag Mid-South, Inc. for polymers, specialty water treatment chemicals, the polymers be purchased from Brenntag Mid-South, Inc. at the quoted prices of \$0.665 per pound for cationic polymer and \$1.25 per pound for anionic polymer, and the City Manager and City Clerk be authorized to execute the necessary documents.)*

CITY OF BLOOMINGTON
CONTRACT WITH

FOR

THIS AGREEMENT, dated this _____ day of _____, 2016, is between the City of Bloomington (hereinafter "CITY") and (hereinafter "CONTRACTOR").

NOW THEREFORE, the parties agree as follows:

Section 1. Recitals. The recitals set forth above are incorporated into this Section 1 as if specifically stated herein.

Section 2. Description of Services. CONTRACTOR shall provide the services/work identified on Exhibit A.

Section 3. Payment. For the work performed by CONTRACTOR under this Contract, the CITY shall pay CONTRACTOR: a lump sum amount of \$_____; or the amount(s) set forth in Exhibit B. Invoices shall be due and payable within 45 days of submission.

Section 4. Default and Termination. Either party shall be in default if it fails to perform all or any part of this Contract. If either party is in default, the other party may terminate this Contract upon giving written notice of such termination to the party in default. Such notice shall be in writing and provided thirty (30) days prior to termination. The non-defaulting party shall be entitled to all remedies, whether in law or equity, upon the default or a violation of this Contract. In addition, the prevailing party shall be entitled to reimbursement of attorney's fees and court costs.

Section 5. Indemnification. To the fullest extent permitted by law, CONTRACTOR shall indemnify and hold harmless CITY, its officers, officials, agents and employees from claims, demands, causes of action and liabilities of every kind and nature whatsoever arising out of or in connection with CONTRACTOR's operations performed under this Contract, except for loss, damage or expense arising from the sole gross negligence or willful misconduct of the CITY or the CITY's agents, servants or independent contractors who are directly responsible to CITY. This indemnification shall extend to claims occurring after this Contract is terminated as well as while it is in force. The indemnity shall apply regardless of any concurrent negligence, whether active or passive, of the CITY or CITY's officers, officials, agents, employees, or any other persons or entities. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this Contract.

Section 6. General Liability Insurance. CONTRACTOR shall maintain general liability insurance for bodily injury and property damage arising directly from its negligent acts or omissions, with general limits shall be less than \$2,000,000.00. Certificates of insurance shall be provided to CITY and CITY shall be named as an additional insured under the policy. Umbrella liability coverage must also be provided in the amount of \$4,000,000 for each occurrence, \$4,000,000 in aggregate.

Section 7. Representations of Vendor. CONTRACTOR hereby represents it is legally able to perform the work that is subject to this Contract.

Section 8. Assignment. Neither party may assign this Contract, or the proceeds thereof, without written consent of the other party.

Section 9. Compliance with Laws. CONTRACTOR and all work by CONTRACTOR shall at all times comply with all laws, ordinances, statutes and governmental rules, regulations and codes.

Section 10. Prevailing Wage. The following shall apply to this contract:

This contract is not for a "public work" and therefore Prevailing Wage does not apply. *Initial:* _____ (City) _____ (CONTRACTOR)

This contract calls for the construction of a "public work," within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/.01 et seq. ("the Act"). The Act requires contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the current "prevailing rate of wages" (hourly cash wages plus amount for fringe benefits) in the county where the work is performed. The Department publishes the prevailing wage rates on its website at <http://labor.illinois.gov/>. The Department revises the prevailing wage rates and the contractor/subcontractor has an obligation to check the Department's web site for revisions to prevailing wage rates. For information regarding current prevailing wage rates, please refer to the Illinois Department of Labor's website. All contractors and subcontractors rendering services under this contract must comply with all requirements of the Act, including but not limited to, all wage requirements and notice and record keeping duties.

Initial: _____ (City) _____ (CONTRACTOR)

Section 11. Compliance with FOIA Requirements. CONTRACTOR further explicitly agrees to furnish all records related to this Contract and any documentation related to CITY required under an Illinois Freedom of Information Act (ILCS 140/1 et. seq.) ("FOIA") request within five (5) business days after CITY issues notice of such request to CONTRACTOR. CONTRACTOR agrees to not apply any costs or charge any fees to the CITY regarding the procurement of records required pursuant to a FOIA request. CONTRACTOR agrees to defend, indemnify, and hold harmless CITY, and agrees to pay all reasonable costs connected therewith (including, but not limited to reasonable attorney's and witness fees, filing fees, and any other expenses) for CITY to defend any and all causes, actions, causes of action, disputes, prosecutions, or conflicts arising from CONTRACTOR actual or alleged violation of the FOIA, or CONTRACTOR failure to furnish all documentation related to a request within five (5) days after CITY issues notice of a request. Furthermore, should CONTRACTOR request that CITY utilize a lawful exemption under FOIA in relation to any FOIA request thereby denying that request, CONTRACTOR agrees to pay all costs connected therewith (such as reasonable attorney's and witness fees, filing fees and any other expenses) to defend the denial of the request. The defense shall include, but not be limited to, challenged or appealed denials of FOIA requests to either the Illinois Attorney General or a court of competent jurisdiction. CONTRACTOR agrees to defend, indemnify, and hold harmless CITY, and agrees to pay all costs connected therewith (such as reasonable attorney's and witness fees, filing fees and any other expenses) to defend any denial of a FOIA request by CONTRACTOR request to utilize a lawful exemption to CITY.

Section 12. Governing Law. This Agreement shall be governed by and interpreted pursuant to the laws of the State of Illinois.

Section 13. Joint Drafting. The parties expressly agree that this agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing it terms prior to execution. Therefore, this agreement shall be construed neither against nor in favor of either party, but shall construed in a neutral manner.

Section 14. Attorney Fees. In the event that any action is filed in relation to this agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorneys' fees.

Section 15. Paragraph Headings. The titles to the paragraphs of this agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this agreement.

Section 16. Term. The term of this Contract shall be:

Until all of the services and/or deliverables required to provided within this Contract are completed.

~~8~~ ~~ane~~ / ~~#~~ year from the date of execution.

~~8~~ ~~fwo~~ / ~~S~~ years from the date of execution.

Other: _____

The Contract shall also be subject to the following renewal terms, if any: _____

Notwithstanding anything herein, the provisions in Sections 5 and 11 shall survive termination.

Section 17. Counterparts. This agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same instrument.

CITY OF BLOOMINGTON

By: _____
Its City Manager

By: _____
Its _____

ATTEST:

By: _____
City Clerk

By: _____
Its _____

EXHIBIT A
SCOPE OF SERVICES / WORK PROVIDED

EXHIBIT B
FEES / COMPENSATION