

PUBLIC WORKS CONSTRUCTION CONTRACT

THIS AGREEMENT entered into this 21st day of July, 2020 by and between the **City of Smithville, Missouri**, a political subdivision in the State of Missouri (hereinafter referred to as "City"), and, **Lexington Plumbing**, a corporation authorized to do business in Missouri (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, on or about the 18th day of June, 2020, the City sent out Requests for Proposals/Invitation to Bid No. 20-09 for Touchless Restroom & Kitchen Fixtures which said Requests for Proposals, Drawing(s) and Specifications and all modifications issued thereafter are attached hereto and incorporated herein by reference, as Exhibit A; and

WHEREAS, Contractor delivered the detailed Bid for goods and services which is attached hereto as a part of Exhibit B; and

WHEREAS, the Contractor was deemed by the City as the successful bidder.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein the parties agree as follows:

1. CONTRACT DOCUMENTS: The Contract between the parties shall consist of this Contract, Exhibit A, and B. The Parties further agree that this Construction Contract is a memorialization and a supplement to Exhibits A, and B attached hereto. In the event of a conflict in the interpretation of the contract documents, the parties agree that the terms within the contract documents shall be construed or given binding effect in the following order:

- a) This Contract; and then
- b) Exhibit A; and then
- c) Exhibit B.

2. GENERAL SCOPE OF THE WORK: The Contractor shall furnish all of the labor and materials and perform all of the work set out in the Requests for Proposals, Drawings and Specifications which are attached hereto as Exhibit A and Exhibit B, and incorporated in this Agreement, to the same extent and effect as if fully set out herein.

3. CONTRACT PROJECT: The total contract price for all work, materials, and labor to be furnished and performed by the Contractor shall be in the fixed amount as set forth in Exhibit B, with a total not to exceed One Hundred Twenty-Four Thousand Dollars (\$124,000.00), with no progress payments to be made. Other than as set forth in paragraph 12, this price is a fixed fee and shall not increase for any reason including but not limited to convenience of the City, unknown site conditions, delays, weather or other Contractor claims. The City will make payment subject to the terms and provisions of this contract thirty (30) days after completion of the work and acceptance of the same by the City Director of Parks (or such other person as designated by the City) and compliance with all provisions of this contract. For purposes of verification, the Contractor will submit to the City Director of Parks (or such other person as designated by the City) true copies of each of the subcontracts and invoices for materials and labor, and the Contractor shall permit the City or its agents to examine and make copies of all books and records of the Contractor pertaining to the work, labor, and materials to be performed and furnished by the Contractor pursuant to this Agreement.

4. **TIME:** Time is of the essence of this contract. The work to be performed hereunder shall be commenced as soon as reasonably possible after the execution of this agreement and is subject to authorized adjustments. The work contemplated by this agreement shall be completed by the Contractor within 30 days of the Notice to Proceed on this agreement.

5. **NOTICES:** Any Notice as set forth herein must be served by Federal Express or similar overnight delivery service or by certified mail, return receipt requested, addressed to the party and shall be deemed given as of the deposit in the U. S. Mails or with overnight delivery service. Notice to the City shall be sent to the Mayor, City of Smithville, Missouri at 107 W. Main St. Smithville, MO 64089. Notice to Contractor shall be sent to the Contractor at 1620 Troost Avenue, Kansas City, MO 64108. Either party may designate such other Person and/or delivery address from time to time by written Notice.

6. **INDEPENDENT CONTRACTOR:** The Contractor warrants and represents to the City that it is fully experienced and properly qualified as an expert to perform the services provided for herein and that it is properly equipped organized and financed to perform such services. The Contractor shall finance its own operations and shall operate as an independent contractor and not as an agent of the City, and shall indemnify and hold the City free and harmless from all liabilities, costs and charges by reason of any act, omission or representation of the Contractor or of its subcontractors, agents, and employees, including costs and attorney's fees.

Contractor shall at all times cause all of its workers, laborers, employees, independent contractors and subcontractors and agents and employees of such persons to be fully covered with Worker's Compensation insurance at the amounts required by law. The Contractor will indemnify and hold the City harmless for any and all damages and liabilities, including attorney's fees and costs for injuries to its employees, agents, servants, and/or subcontractors, for failure to obtain and maintain worker's compensation insurance or failure to provide a safe place to work, and Contractor will also be responsible to insure that its subcontractors carry workers compensation insurance.

The Contractor will also conduct the services in such a manner as to keep members of the public safe and represents and warrants that it has General Liability insurance in a sum no less than \$1,000,000.00. The Contractor will provide the City with a Certificate of Insurance evidencing the same and naming the City as "additional named insured" and will indemnify and save the City harmless from any and all liability and costs, including attorney's fees claimed by any person who claims an injury as a result of the work. All insurance coverage must be written by companies that have an A.M. Best's rating of "A-VII" or better or as specifically approved by the City, and are licensed or approved by the State of Missouri to do business in Missouri.

Regardless of any approval by the City, it is the responsibility of the Contractor to maintain the required insurance coverage in force at all times; its failure to do so will not relieve it of any agreement, obligation or responsibility. In the event of the Contractor's failure to maintain the required insurance in effect, the City may order the Contractor to immediately terminate its work until the breach has been cured or terminate this Contract.

7. **COMPLIANCE AND REQUIREMENTS:** All work, labor and materials to be furnished and performed by the Contractor shall be to the satisfaction of the City Director of Public Works (or such other person as designated by the City) acting on behalf of the City, and payment shall be made only for such work and materials as are accepted in writing by the City Director of Public Works (or such other person as designated by the City) provided, however, that the City shall not arbitrarily withhold acceptance of such work and materials or payment so long as the Contractor makes satisfactory progress and performs all of its obligations in accordance with or pursuant to all the terms and conditions.

of this Agreement.

8. CORRECTION OF DEFAULTS: The Contractor will, at the request of the City Director of Public Works (or such other person as designated by the City), correct any defects to the materials or workmanship, and neither final payment by the City nor the final acceptance by the City of the work and materials shall relieve Contractor from responsibility for any defect in materials and workmanship. The Contractor further warrants to the City that all of the materials and equipment furnished pursuant to this agreement are new, of high quality and free from defects.

9. LIENS: The Contractor shall not be entitled to any payment unless and until it provides the City with full lien waivers covering any services and/or materials provided by Contractor or any of its subcontractors. The Contractor shall indemnify and hold the City harmless including attorney's fees and costs from all liens or claims, and rights to enforce liens and to defend same against the property or the improvements arising out of any work to be performed or labor and material to be furnished under this Contract. Neither final payment by the City nor acceptance of services shall constitute a waiver of this indemnity. If any lien or claim for lien shall at any time be filed, the Contractor shall pay to the City all monies the City may be compelled to pay in discharging the lien, including all costs and reasonable attorney's fees.

10. ASSIGNMENT: The Contractor shall not assign this Contract or any amount payable hereunder without the prior written consent of the City. The Contractor shall upon request of the City, disclose to the City the names, addresses and owners of all subcontractors or other persons with whom it intends to contract with or hereafter contracts with in connection with the performance of this Contract.

11. CONFLICTS OF INTEREST: The Contractor warrants and represents that neither the Contractor nor its officers, directors, agents, employees or subcontractors are related within the second degree of affinity or consanguinity with any elected officials or employees of the City.

The Contractor will not offer, give, or agree to give any employee or former employee of the City, anything of a pecuniary value for or because of:

- a. Any official action taken, or to be taken, or which could be taken; or
- b. A legal duty performed or to be performed, or which could be performed; or
- c. A legal duty violated, or to be violated, or which could be violated by such employee or former employee.

No regular employee or elected or appointed member of the City shall be permitted to obtain any benefit of this Contract, or to obtain any benefit that may accrue there from.

12. EXTRAS: No claim for payment (in excess of the amount set forth in this Contract) for extra services or materials of any kind shall be made by the Contractor or shall be paid by the City unless the same is performed or furnished pursuant to a written agreement executed by the City and the Contractor.

13. PERFORMANCE, MAINTENANCE, AND PAYMENT OF LABOR AND MATERIALS BONDS: As required by Section 107.170 of the Missouri Revised Statutes, Contractor agrees to obtain and furnish a Bond from a surety licensed in Missouri, with an A.M. Best rating of A-VII, wherein said surety guarantees Contractor will well and truly perform the covenants herein before contained for the Performance and Maintenance of this Agreement, and for the payment of any and all materials incorporated, consumed or used in connection with the construction of such work, and all insurance premiums, both for compensation, and for all other kinds of insurance, said work and for all labor performed in such work whether by the contractor, subcontractor, truck drivers, equipment

operators, owners of equipment used on the work, or otherwise.

If Contractor fails to perform or maintain under this Agreement, or if the cost of such work and labor, use of equipment and materials, etc., is not paid in full by the Contractor, then the surety shall then pay for cost of non-performance and maintenance, or for the cost of said work and labor, use of equipment and materials, or any part thereof which shall not be paid by said Contractor. Such payments shall be made to the City within ten (10) days after the money for said performance, maintenance, or work and labor, use of equipment and materials, becomes due and payable. The parties agree that pursuant to Section 522.300 of the Missouri Revised Statutes, every person furnishing materials or performing labor, either as an individual or as a subcontractor for any contractor, shall have the right to sue on such bond in the name of the City for said party's use and benefit to recover from the surety the amount due or unpaid to them by the Contractor.

Performance and Maintenance Bond shall be in a sum no less than 110% of the total contract or cost or price for all construction services, labor, and materials as set forth in this Contract. Said Bond must have a provision that will guarantee the faithful performance of the prevailing wage clause provided in this contract.

Contractor further agrees that Contractor's Payment of Materials and Labor Bond shall be in a sum no less than 100% of the total contract or cost or price for all construction services, labor, and materials as set forth in this Contract. Contractor agrees to deliver to City duly executed written verifications of said Bonds from each respective surety. Contractor and all sureties agree said bonds shall be such that they will remain in effect even upon modification of this Agreement, or in the event of any change orders which may occur following the execution of the parties' agreement.

14. COMPLIANCE WITH LAW: This Contract is entered into subject to the federal, state, and local laws, charters, ordinances and regulations. The Contractor shall comply with all federal, state and local laws, ordinances and regulations and shall ensure all such compliance with regard to its subcontractors, including but not limited to the Americans with Disabilities Act and the Equal Employment Opportunity Law. Contractor shall secure all occupational and professional licenses and permits from public and private sources necessary for the performance of the services contemplated by this Contract as well as the placement and/or use of any equipment at the location specified.

15. AFFIDAVIT OF WORK AUTHORIZATION AND DOCUMENTATION: Pursuant to 285.530 RSMo, the Contractor must affirm its enrollment and participation in a federal work authorization program with respect to the employees proposed to work in connection with the services requested herein by

- submitting a completed, notarized copy an AFFIDAVIT OF WORK AUTHORIZATION and

- providing documentation affirming the bidder's enrollment and participation in a federal work authorization program (see below) with respect to the employees proposed to work in connection with the services requested herein.

E-Verify is an example of a federal work authorization program. Acceptable enrollment and participation documentation consists of the following two pages of the E-Verify Memorandum of Understanding (MOU): 1) a valid, completed copy of the first page identifying the bidder and 2) a valid copy of the signature page completed and signed by the bidder, the Social Security Administration, and the Department of Homeland Security — Verification Division.

16. WAGE RATES: Contractor agrees and understands that all workers performing work under

this contract must be paid not less than the prevailing pursuant to the Prevailing Wage Law of the State of Missouri. Currently Annual Wage Order No. 25, Section 024 Clay County. Contractor, therefore, agrees and shall ensure that it pays all of its employees not less than the prevailing wage and all shall ensure such compliance with regard to its subcontractors that all labor utilized in the construction of the aforementioned improvements shall be paid a wage of no less than the "prevailing hourly rate of wages" for work of a similar character in this locality, as established and amended at any time by the Department of Labor and Industrial Relations of the State of Missouri. Contractor shall submit upon request to the City all payroll or account records necessary to verify compliance with the prevailing wage requirements of the State of Missouri.

Contractor will forfeit a penalty to the City of 100 dollars per day (or portion of a day) if a worker is paid less than the prevailing rate for any work done under any contract executed pursuant to this contract by the contractor or any subcontractor (Section 290.250 RSMo.).

Upon completion of the work and labor by the Contractor and all subcontractors must file an Affidavit of Compliance stating that the party has complied with the Prevailing Wage Law before final payment will be made by the City with regard to any contract awarded with regard to this RFP all as required by (§§290.290, 290.325 R.S.MO.).

Contractor and any subcontractor shall keep within the state of Missouri for a period of one year following the completion of the work required by this agreement and shall submit upon request to the Park Board all payroll or account records necessary to verify compliance with the prevailing wage requirements of the State of Missouri.

17. UNITED STATES GOODS: Contractor agrees and understands that any manufactured goods or commodities used or supplied in the performance of that contract or any subcontract thereto shall be manufactured or produced in the United States unless exempt from such requirement pursuant to §34.353 RSMo.

18. WORKERS COMPENSATION INSURANCE: Contractor agrees to maintain worker's compensation insurance on all of its employees and to ensure that all of its subcontractors maintain worker's compensation insurance on all of its employees. Contractor shall indemnify and hold harmless the City for any and all liability of the City (including attorney's fees) for the failure to maintain any such insurance.

19. NOT A JOINT VENTURE: Nothing contained in this Contract shall be deemed to constitute the City and the Contractor as partners in a partnership or joint venture for any purpose whatsoever.

20. NON-LIABILITY OF CITY PERSONNEL: Neither the Board of Alderpersons, Board Members, nor any other officer, official, employee, or agent of the City shall be *personally* responsible for any liability arising under or growing out of this Contract or operations of the Contractor.

21. ENTIRE CONTRACT: This Contract and the Exhibits attached hereto constitutes the entire agreement between the parties. Terms not specifically set out herein and no verbal agreement or conversation with any officer, official, agent or employee of the City, either before or after the execution of the Contract, shall affect, modify or add to the terms or obligations contained in the Contract. Any such purported term, verbal agreement or conversation shall in no way be binding upon the City or the Contractor.

22. RECORDS: The Contractor shall maintain all records for inspection by City representatives during the Contract period and for three (3) years after the date of termination of the Contract. The Contractor agrees that the City Auditor, or any of his/her duly authorized representatives shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine any and all pertinent books, documents, papers and records of the Contractor involving the transactions related to this Contract.

23. WAIVER: The waiver by either party of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term. No term, covenant, or condition of this Contract can be waived except by the written consent of the City, and forbearance or indulgence by the City in any regard whatsoever shall not constitute a waiver of any term, covenant, or condition to be performed by Contractor to which the same may apply and, until complete performance by the Contractor of said term, covenant or condition, the City shall be entitled to invoke any remedy available to it under this Contract or by law despite any such forbearance or indulgence.

24. SEVERABILITY: All of the provisions of this Contract shall be severable. In the event that any provision of this Contract is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Contract shall be valid unless the court finds the valid provisions of this Contract are so essentially and inseparably connected with and so dependent upon the invalid provisions that it cannot be presumed that the parties to this Contract could have included the valid provisions without invalid provisions; or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

25. UNEMPLOYMENT INSURANCE AND TAXES: The Contractor shall pay, at the Contractor's own cost, all relevant taxes in connection with the work or materials to be performed, including but not limited to State and Federal, Unemployment and old age benefit taxes, sales and use taxes, income tax, withholding tax or other work or payroll related taxes. No payments to the Contractor will be approved unless the Contractor is current with tax payments to the City or unless satisfactory arrangements have been made for payment with the City.

26. SURVIVAL OF WARRANTIES: All warranties and representations of the Contractor hereunder shall survive final payment and acceptance of the work.

27. APPLICABLE LAW: The laws of the State of Missouri shall govern this contract. Any action in regard to the consent or arising out of the terms and conditions shall be instituted and litigated in the courts of the State of Missouri, County of Clay and in no other. Contractor is validly registered to do business in Missouri. In accordance, the parties submit to the jurisdiction of the courts of the State of Missouri and to venue in Clay County.

28. REMEDIES: In addition to all other remedies at law or in equity, if Contractor shall fail to complete and/or meet any of its obligations under the terms of this Contract, the City may, by giving the Contractor written Notice, cancel and terminate this Contract if the breach is not cured within 30 days after the sending of such Notice (unless otherwise set forth herein).

29. CONTRACT LANGUAGE: The language of this Contract reflects negotiations between Contractor and City, each of whom have had the opportunity to modify the text. In the event of litigation or other dispute concerning the language of this Contract, general rules construing ambiguities against the drafter shall not apply. It is agreed that if more than one copy of this document may be executed and that the original filed with the City Clerk shall pursuant to §432.080 RSMo be deemed to be the controlling original.

30. BINDING EFFECT: This Contract is binding on the parties hereto, their heirs, successors and assigns.

31. FORCE MAJEURE: In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of restrictive governmental laws or regulations, riots, insurrection, war, or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement, then the time allowed for performance of such act shall be extended by a period equivalent to the period of such delay.

32. INFORMATION PROVIDED: Contractor acknowledges that it has received all documents, surveys, physical characteristics and utility locations as well as a legal description of the site and the project necessary for the completion of this Agreement by Contractor.

33. DEFAULT: If Contractor fails or neglects to complete the work to be performed by the Contractor in a timely manner demonstrating quality workmanship, and should such failure or neglect continue for more than 10 days after notice is sent to the Contractor, (1) City may, but is not required to, thereafter commence and/or continue correction of such default and/or completion of the Contract without prejudice to any other remedies available to the City and may deduct from the contract sum due to the Contractor the cost of such actions or (2) City may terminate the Agreement.

34. SAFETY: Contractor shall have control over the construction site and shall be solely responsible for its and its subcontractor's actions, procedures and activities. Contractor shall also be responsible for all job site safety. Contractor shall be responsible for creating and maintaining all safety precautions and actions necessary in the performance of this Contract, and shall erect, install, maintain and modify all such reasonable safeguards for the safety and protection of the project workers, City employees and the general public.

35. PERMITS AND LICENSES: Contractor shall obtain and pay for any and all building permits or other related permits, licenses and inspections necessary for the completion of this project, other than those already obtained by the City. Winning bidder and any sub-contractors must obtain City business license prior to start of project.

36. REPRESENTATIVE: Contractor shall employ a competent representative who shall be at the site of the construction during the performance of the actual construction to communicate on behalf of the Contractor with the City.

37. DRAWINGS AND AS-BUILTS: If this Agreement involves the construction of any structure or materials not readily visible after completion, Contractor shall maintain at the construction site at least one copy of the drawings and specifications of the project for the use and review by the City and Contractor shall continually update such documents to ensure the City that the project is progressing appropriately and to provide the City with as-built drawings and specifications at the conclusion of the work.

38. CLEANUP: Contractor shall keep the construction area and surrounding areas free from trash and waste at all times, and shall clean the construction area and remove all trash, waste, building materials and surplus materials at the completion of the work, except any surplus building materials shall not be disposed without approval of City.

39. SUBCONTRACTORS: Contractor shall require any Subcontractors, to the extent of the work to be done by such Subcontractors, to be bound by the terms of this Contract. 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. Contractors on this work are required to disclose subcontractors and manufacturers on to the City.

40. CHANGE ORDERS: Change Orders which are approved by the Contractor and the City's designee in writing which do not increase the cost of the construction project may be utilized to make needed changes to the scope of the work and to manage minor changes necessary.

41. RETAINAGE: City shall be entitled to withhold a retainage (five percent 5%) from payments to the Contractor as set forth in RSMo. 34.057.

42. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) TRAINING: Pursuant to §292.675 RSMo for any work performed after August 28, 2009 the Contractor and all Subcontractor(s) shall provide all on-site employees a ten-hour training program which includes a course in construction safety and health 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. All such employees are required to complete the program within sixty days of beginning work on such construction project. The contractor shall forfeit as a penalty to the City two thousand five hundred dollars plus one hundred dollars for each employee employed by the Contractor or Subcontractor, for each calendar day, or portion thereof, such employee is employed without the required training. The penalty shall not begin to accrue until the time period set forth herein has elapsed. Pursuant to §292.675(4) RSMo the City shall withhold and retain all sums and amounts due and owing as a result of any violation of this section when making payments to the Contractor under the contract. The Contractor may withhold from any Subcontractor sufficient sums to cover any penalties the City has withheld from the Contractor resulting from the Subcontractor's failure to comply with the terms of this section. If the payment has been made to the Subcontractor without withholding, the Contractor may recover the amount of the penalty resulting from the fault of the Subcontractor in an action maintained in the Circuit court in Clay County.

43. 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.

44. 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.

45. CONDITION PRECEDENT: This Contract shall be null and void and of no effect unless and until the City has by Ordinance/Resolution passed by the City Board of Alderpersons, obtained the authority to enter into this Contract and that there is a balance otherwise unencumbered to the credit of the appropriation in the City Treasury to which this contract is to be charged and cash balance otherwise unencumbered in the treasury to the credit of the fund from which payment is to be made on this contract sufficient to meet the obligation incurred and the City has so certified.

46. EFFECTIVE DATE: The effective date of the Agreement shall be deemed to be when all of the required signatures have been executed by the City and the Contractor and the Condition Precedent set forth in preceding Paragraph has been met.

IN WITNESS WHEREOF, the parties have set their hands and seals the date and year first above written. The parties represent that the signatories below have full authority and authorization to sign on behalf of the respective parties.

**THE CITY OF SMITHVILLE
107 W MAIN STREET
SMITHVILLE, MO 64089**

SIGNATURE

PRINTED

TITLE

DATE

**LEXINGTON PLUMBING
1620 TROOST AVENUE
KANSAS CITY, MO 64108**

SIGNATURE



PRINTED

JEFF Deagon

TITLE Project Manager

DATE 7/16/2020