

**AGENDA ITEM**  
February 17 2015

**Subject:** APAC 2015 Street Overlay Contract

**Department:** Public Works

This ordinance will authorize the execution of an agreement with APAC – Missouri of Springfield for the 2015 Sales Tax Street Improvements.

This project is budgeted under account # 200-5-4100-410

**BILL NO. 2015-007**

**ORDINANCE NO. 8030**

**A SPECIAL ORDINANCE OF THE CITY OF NEVADA, MISSOURI AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH APAC-MISSOURI, INC. OF SPRINGFIELD, MISSOURI FOR THE 2015 SALES TAX STREET IMPROVEMENTS.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEVADA, MISSOURI, THAT:**

**Section 1.** The agreement attached hereto and incorporated herein by reference is approved as a contractual obligation of the City of Nevada, Missouri.

**Section 2.** The Mayor and City Clerk are hereby authorized and directed to execute said agreement on behalf of the City of Nevada, Missouri and to affix the municipal seal thereto and to attest the same.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Nevada, Missouri on this 3<sup>rd</sup> day of March, 2015.

(seal)  
ATTEST:

\_\_\_\_\_  
Seth Barrett, Mayor

\_\_\_\_\_  
Bev Baker, City Clerk

## CONTRACT

**THIS CONTRACT** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ Company hereinafter called "Contractor" and the City of Nevada, Missouri, a municipal corporation, hereinafter called "City".

**WITNESSETH:** That whereas the Contractor has become the lowest responsible bidder for furnishing the supervision, labor, tools, equipment, materials and supplies and for construction the following City improvements:

2015 Summer Sales Tax Street Improvements  
BITUMINOUS RESURFACING AND CURB & GUTTER

The parties to this Contract agree to the following:

1. Manner and Time for Completion. The Contractor agrees with the City to furnish all supervision, labor, tools, equipment, materials, and supplies necessary to perform the Work and to perform said Work at the Contractor's own expense in accordance with the Contract documents and any applicable City ordinances and state and federal laws with the project to be completed by August 31, 2015 as stipulated in the Notice to Proceed, which shall be issued by the Field Operations Director within 60 days after the date of this Contract.

2. Prevailing Wage. It is agreed 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.

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 subcontractor according to section 290.250, RSMo.

3. Insurance. It is agreed that the Contractor shall procure and maintain during the life of this contract, with the City of Nevada, Missouri as an Additional Insured on the Certificates of Insurance, the following:

The Contractor's General Public Liability and Property Damage Insurance, including vehicle coverage, issued to the Contractor shall protect the Contractor and the Owner from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under the Contract Documents, whether such operations be by the

Contractor or by anyone directly or indirectly employed by the Contractor and shall also include coverage for Products and/or Completed Operations. Insurance shall be written with a combined single limit for injury and/or property damage liability of not less than \$2,000,000 per occurrence and with an aggregate of not less than \$2,000,000. Insurance shall also provide a per project endorsement.

The Contractor shall either (1) require each of his subcontractors to procure and to maintain during the life of his subcontract, Subcontractor's Public Liability and Property Damage of the type and in the same amounts as specified in the preceding paragraph, or (2) insure the activities of his subcontractors in his own policy.

The Contractor and/or subcontractor shall maintain Automobile Public Liability and Property Damage Insurance to protect it from any and all claims arising from the use of the following in the execution of the Work: a) Its own automobiles and trucks. b) Hired automobiles and trucks. c) Automobiles and trucks not owned by the Contractor and/or subcontractor. The insurance shall cover the use of the automobiles and trucks both on and off the site of the Project. The minimum amounts of such insurance shall be the same as required for Public Liability and Property Damage Insurance.

The Contractor and/or subcontractor shall purchase and maintain such insurance as will protect it from claims under workmen's compensation, disability benefit and other similar employee benefit acts. This amount shall be in accordance with statutory limits.

The Contractor and/or subcontractor shall furnish the City prior to beginning the Work, satisfactory proof of carriage of all the insurance required by this Contract, with the provision that policies shall not be cancelled, modified, or non-renewed without ten days written notice to the City of Nevada.

4. Contractor's Responsibility for Subcontractors. It is further agreed that 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 the Contractor is for the acts and omissions of persons it directly employs. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relating to this Work, to bind all subcontractors to the Contractor by all the terms herein set forth, insofar as applicable to the Work of subcontractors and to give the Contractor the same power regarding termination of any subcontract as the City may exercise over the 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 subcontractors.

5. Liquidated Damages. The Field Operations Director may, at his discretion, deduct \$250.00 from any amount otherwise due under this contract for every day the Contractor fails or refuses to prosecute the Work, or any separable part thereof, with such diligence as will insure the completion by the time above specified, or any extension thereof, or fails to complete the Work by such time, providing that the City does not terminate the right of the Contractor to proceed.

6. Mobilization. The contractor shall notify the Field Operations Director or his designee 24 hours prior to mobilizing to perform each phase of the work as provided for in this contract. Said notification is required to allow the city to notify property owners of construction affecting their property. Failure to comply with this section or failure to mobilize in accordance with notification will be subject to \$150.00 penalty. Penalty shall not be assessed due to inclement weather.

7. Changes in the Work. The City may at any time, as the need arises, order changes within the scope of the Work without invalidating this Contract. The Field Operations Director or the Field Operations Director shall authorize all such changes. An equitable adjustment shall be authorized by Change Order if such changes increase or decrease the amount due under this Contract, or in the time required for performance of the Work. Change Orders shall also be used to adjust quantities of installed units that are different than those shown in the Bid Schedule because of final measurements.

8. Termination. The City reserves the right to terminate this Contract by giving at least five days' prior written notice to the Contractor, without prejudice to any other rights or remedies of the City should the Contract be adjudged a bankrupt, or if the Contractor should make a general assignment for the benefit of its creditors, or if a receiver should be appointed for the Contractor or for any of its property, or if the Contractor should refuse or fail to make prompt payment to any person supplying labor or material for the Work under the Contract, or persistently disregard instructions of the City or fail to observe or perform any provisions of the Contract.

9. City's Right to Proceed. In the event this contract is terminated pursuant to Paragraph 7, 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 this Contract, City ordinances, and state and federal laws.

10. 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.

11. Indemnity.

11.1 The Contractor agrees to defend, indemnify, and save the City harmless from and against all claims, suits and actions of every description, brought against the City and from all damage and costs by reason or on account of any injuries or damages received or sustained by any person or persons, or their property, by the Contractor, its servants, agents or subcontractors in the construction of said Work, or by any negligence or carelessness in the performance of same, or on account of any act or omission of the Contractor, its servants, agents or subcontractors, or arising out of the award of this Contract to the Contractor.

11.2 The Contractor assumes full responsibility for relations with subcontractors, and shall defend, indemnify and save harmless the City from and against, any and all liability, suits, claims, damages, costs (including attorneys' fees), losses, outlays and expenses in any manner caused by, arising out of, or connected with this Contract, notwithstanding any possible negligence (whether sole, concurrent or otherwise) on the part of the City, its agents or employees.

12. 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.

13. Payment. The City will pay the Contractor in accordance with the rate set forth in the bid forms with quantities calculated as established in the technical specifications, attached hereto 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, 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.

14. Contract Documents. The Contract documents shall consist of the following:

- |   |   |
|---|---|
| a. This Contract  | h. Statement of Bidder's Qualifications |
| b. All Change Orders  | i. Acknowledgement                      |
| c. Bid Plans and Specifications                             | j. Contract Bond                        |
| d. Standard General Conditions and Technical Specifications | k. Instruction to bidders               |
| e. Special Conditions and Provisions                        | l. Notice to Proceed                    |
| f. Proposal   |   |

g. Notice to Contractor

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.

15. Subsurface Conditions. The 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.

16. The Contractor agrees to abide by Executive Order 11246, as amended, and Title VI of the Civil Rights Act of 1964, pertaining to equal employment, by complying with the following:

16.1 The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin.

Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

16.2 The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

17. OSHA Requirement.

17.1 The Contractor agrees to comply with section 292.675 set forth by the Missouri State Statute which requires the contractor and any subcontractor under such contractor all on-site employees to provide documentation of their completed ten-hour training program through OSHA.

17.2 Any contractor that fails to provide such documentation on on-site employees shall forfeit as a penalty to the City two thousand five hundred dollars plus one hundred dollars for each employee employed by the

contractor and/or subcontractor for each calendar day, or portion thereof, such employee(s) without the required training.

- 17.3 Whenever there is a period of excessive unemployment in this state, every person who is charged with the duty, either by law or contract, of constructing or building any public works project or improvement for the state or any political subdivision, municipal corporation or other governmental unit thereof shall employ only Missouri laborers and laborers from nonrestrictive states on such project or improvement, and every contract let by any such person shall contain a provision requiring that such labor be used, except that other laborers may be used when Missouri laborers or laborers from nonrestrictive 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, pursuant to sections 290.55 through 290.580, RSMo.
- 17.4 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 for workers' compensation insurance or self-insurance signed by the transient employer and verified by the department of revenue through the records of the division of workers' 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 five hundred dollars per day until the notices required by this section are posted as required by that statute.
18. Interest of Contractor Certain Officials and Others.
- 18.1 The Contractor covenants that it has no interest, direct or indirect, in the Project Area or any parcels therein or any other interest that would conflict in any manner or degree with the performance of the services required under this Contract.
- 18.2 No members or delegates to the Congress of the United States of America, and no Resident Commissioners, shall be admitted to any share or part of this Contract or to any benefit to arise here from.
19. Conflict of Interest. In accepting this Contract, the Contractor certifies that no member or officer of its firm or corporation is an officer or employee of the City of Nevada, 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.

20. Nondiscrimination. The Contractor agrees in the performance of this Contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, or political opinion or affiliation, against any employee of the Contractor or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder.

21. Notices. All notices required to be in writing may be given by first class mail addressed to the Fields Operation Manager, City of Nevada at 501 South Jefferson, Nevada, Missouri 64772, and the Contractor at the address indicated above. The date of delivery of any notice shall be the second full day after the day of its mailing.

22. 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 Vernon County, Missouri.

IN TESTIMONY WHEREOF, the Contractor has hereunto set his hand and seal, and the City of Nevada executes this Contract by its Mayor.

THE CITY OF NEVADA, MISSOURI

By: \_\_\_\_\_  
Seth Barrett, Mayor

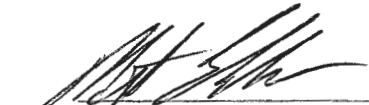
(seal)  
ATTEST:

\_\_\_\_\_  
Bev Baker, City Clerk

CONTRACTOR:  
APAC-Missouri, Inc.

By: \_\_\_\_\_  
Douglas Fronick, Vice President

(seal)  
ATTEST:

A handwritten signature in black ink, appearing to read 'M. J. Eshleman', written over a horizontal line.

Asst. Secretary Michael J. Eshleman

**BID PRICING SHEET – BOD December 8, 2014  
 2015-4100-01, 2015 SUMMER SALES TAX STREET IMPROVEMENTS  
 BITUMINOUS RESURFACING AND CURB & GUTTER  
 Bid**

<u>Item No.</u>	<u>Estimated Quantity</u>	<u>Description</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Total</u>
1.0	5,825	Curb & Gutter	LF	\$ <u>11.60</u>	\$ <u>67,570.00</u>
2.0	3,477	Plant Mix Bituminous Surface (without shingles)	TON	\$ <u>78.05</u>	\$ <u>271,379.85</u>
3.0	200,555	Milling	Sq. Ft	\$ <u>.10</u>	\$ <u>20,055.50</u>
<b>TOTAL BASE BID:</b>					\$ <u>359,005.35</u>

The above unit prices shall include all labor, materials, bailing, shoring, removal, overhead, profit, insurance, business license etc., to cover the finished work requested.

The Bidder understands that the Owner reserves the right to reject any or all bids and to waive any informalities in the bidding.

The Bidder agrees that this bid shall be good and may not be withdrawn for a period of 30 calendar days after the scheduled closing time for receiving bids.

Upon receipt of written notice of the acceptance of this bid, the bidder will execute the formal contract attached within ten days and deliver a Surety Bond or Bonds as required by Item 14 of the Instructions to Bidders. The bid security attached in the sum of 5% of the total bid amount is to become the property of the Owner in the event the contract and bond are not executed within the time above set forth, as liquidated damages for the delay and additional expense to the Owner caused thereby.

Respectfully Submitted,

By:  \_\_\_\_\_

Title: Douglas Fronick

Title: Vice President

Company Name: APAC-Missouri, Inc.

(SEAL - if bid is by a corporation)

Address: 4580 W. Calhoun

Springfield, MO 65802

Company Phone: 417-868-6700

Company Fax: 417-868-6785

**\*\*NOTE** The bidder understands that the City reserves the right to add, delete or adjust any or all items of the project to bring the project with budgetary limitations or other considerations