

1. 03/16/2022 Special Meeting Of The Board Of Aldermen Packet - Ordinances And Executive Session -- Amended (PDF)

Documents:

[03 16 22 SPECIAL MEETING AGENDA AMENDED - ORD\(S\) AND EXECUTIVE SESSION.PDF](#)

[BILL 22-14 - BATTING CAGES ORDINANCE\\_CONTRACT.PDF](#)

[BILL 22-15 - MIDWEST POOL AND COURT CHEMTROL.PDF](#)

[BILL 22-16 - ALL AMERICIAN PAINTING AGREEMENT.PDF](#)

**CITY OF FENTON, MISSOURI**  
**AMENDED AGENDA**  
**SPECIAL MEETING OF THE BOARD OF ALDERMEN**  
**WEDNESDAY, MARCH 16, 2022**  
**6:30 P.M.**

**Posted at Fenton City Hall on Friday, March 11, 2022, and reposted on Tuesday, March 15, 2022, at 4:00 p.m.**

Notice is hereby given that the City of Fenton will hold a Special Meeting of the Board of Aldermen on Wednesday, March 16, 2022, 6:30 p.m. at Fenton City Hall, 625 New Smizer Mill Road, Fenton, Missouri.

**If you are unable to join the meeting in person:**

**To join the meeting via video/teleconference:**

- (1) Go to Zoom at <https://zoom.us>
- (2) Select Join a Meeting
- (3) Enter Meeting ID: 811 1143 3494**
- (4) Enter Password: 922418**

**To join the meeting by phone call (audio):**

- (1) Call 1-312-626-6799
- (2) When prompted, enter the **Meeting ID** and **Password** provided above.

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**AGENDA ITEMS:**

- Consideration of Bill 22-14 – An Ordinance authorizing the Mayor to execute an agreement with Spencer Contracting Company for Fenton Sports Complex batting cage construction.
- Consideration of Bill 22-15 – An Ordinance authorizing the Mayor to execute an agreement with Midwest Pool & Court Co. for the purchase and installation of three (3) Chemtrol PC2100's.
- Consideration of Bill 22-16 – An Ordinance authorizing the Mayor to execute an agreement with All American Painting, L.L.C. for outdoor pool painting at RiverChase.

**EXECUTIVE SESSION**

- Roll call vote to close the meeting pursuant to Section 610.021: (1) Legal actions, causes of action or litigation... (2) Leasing, purchase, or sale of real estate... (3) Hiring, firing, disciplining, or promoting employees... and (13) Individually identifiable personal records, performance ratings or records pertaining to employees and or applicants for employment...

**ADJOURNMENT**

Representatives of the news media may obtain copies of this notice by contacting:

Jane Hungler  
City Clerk  
City of Fenton  
625 New Smizer Mill Road  
636-343-2080

1st Reading:  
2nd Reading:

**SPONSOR:**

**ORDINANCE NO. \_\_\_\_**

**BILL NO. 22-14**

**AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH SPENCER CONTRACTING COMPANY FOR FENTON SPORTS COMPLEX BATTING CAGE CONSTRUCTION.**

**WHEREAS**, the batting cages at the Fenton Sports Complex at the time of the property purchase were in a state of disrepair and in need of replacement and the City budgeted \$25,000 in the 2022 Capital Improvements Budget for the reconstruction of the same; and

**WHEREAS**, in accordance with the City’s Financial Policy, Staff obtained pricing from three (3) companies for the purchase of the batting cage system and the same has been purchased for \$11,000; and

**WHEREAS**, with the current staffing, the Public Works Department will need assistance in pouring the concrete pad extension and pouring the piers and setting the support system for the batting cage frame (the “Project”); and

**WHEREAS**, in accordance with the City’s Financial Policy, Staff obtained three (3) quotes for the Project; and

**WHEREAS**, the Public Works Director after due consideration of the bids received for the Project, found that Spencer Contracting Company was the lowest, best, and most responsive bidder that met the City’s needs for the Project and, therefore, recommended that the City award a contract to Spencer Contracting Company for the Project; and

**WHEREAS**, the Board of Aldermen finds that the City’s bidding procedures were followed and, after review of the bids received, now desires and finds it in the best interest of the City to enter into a contract with Spencer Contracting Company for the Project as the lowest, best, and most responsive bidder.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FENTON, MISSOURI, AS FOLLOWS:**

**ORD. NO. \_\_\_\_\_**

**ORD. NO. \_\_\_\_\_**

**Section 1.** The Board of Aldermen hereby authorizes the Mayor to execute on behalf of the City a contract with Spencer Contracting Company for the Project in substantially the form of Exhibit 1 attached hereto and incorporated herein by reference (the “Agreement”), including all documents specified in the Agreement as being part of the Contract Documents.

**Section 2.** The requirements of Section 292.675 RSMo. and the OSHA requirements and obligations and penalties in the Agreement are hereby incorporated herein by reference and made a part of this ordinance for all purposes.

**Section 3.** This ordinance shall be in full force and effect after the date of its passage and approval.

PASSED this 16<sup>th</sup> day of March, 2022.

\_\_\_\_\_  
BOB BRASSES, MAYOR

APPROVED this 16<sup>th</sup> day of March, 2022.

\_\_\_\_\_  
BOB BRASSES, MAYOR

ATTEST:

\_\_\_\_\_  
Jane Hungler, City Clerk

Motion to approve. Roll Call vote:

Ayes:

Nays:

Absent:

**ORD. NO. \_\_\_\_\_**

**Exhibit 1**

**City of Fenton, Missouri**  
**CONSULTANT/ CONTRACTOR SERVICES CONTRACT**

**THIS AGREEMENT**, made and effective as of March 16, 2022 (“Agreement” or “Contract”), by and between the **City of Fenton**, a Missouri municipal corporation, hereinafter referred to as City, and **Spencer Contracting Company** located at **3073 Arnold Tenbrook Rd., Arnold, MO 63010** hereinafter referred to as “GENERAL CONTRACTOR,”

**WITNESSETH:** That the parties hereto, for the considerations hereinafter set forth, agree as follows:

**I. SCOPE OF SERVICES**

General Contractor services are necessary for the following Project of the City: Fenton Sports Complex Batting Cage Construction.

Except as expressly specified herein, General Contractor hereby agrees to provide all of the supervision, labor, technical services, facilities, materials, tools, equipment, and apparatus, and to perform all the services and do all the things necessary for the proper completion of the services which are generally described as installation of concrete pad and footings at the Fenton Sports Complex and as more specifically described in the attached **Exhibit A** incorporated herein.

Consultant shall perform the services listed on **Exhibit A** to the highest standard of the industry and provide the City warranties for any equipment and materials in accordance with applicable law, including the Uniform Commercial Code Standards. The above services (hereinafter referred to as the Work) shall be provided by the General Contractor in accordance with all the provisions of this Contract and attached **City of Fenton General Conditions** for the project that are incorporated herein by reference, and which terms shall prevail over any conflicting terms that may otherwise be adopted herein as part of any exhibit. This Contract including all attachments hereto shall be considered the “Contract Documents.” General Contractor shall perform the Work at the highest standard of the industry and provide the City warranties for any equipment and materials in accordance with this Contract and applicable law.

**II. COMPENSATION**

**A. Basic Compensation.** The City hereby agrees to pay the General Contractor, as full compensation for the complete and satisfactory performance of the contract, and all expenses and costs related thereto:

a sum not to exceed \$8,200.00 (the “Contract Sum”).

or (if above box is not checked):

such amount as is set forth on an attached Exhibit A

**B. Additional Compensation.** The City and General Contractor contemplate that Change Work Orders may be necessary to fully comply with the requirements herein and agree that any additional Work not within the Scope of Services may hereinafter be approved by the Public Works Director in writing pursuant to a Change Order as provided for and in accordance with the General Conditions and City’s Purchasing Policy.

**III. TIME AND MANNER OF PAYMENTS**

All invoices complete with necessary support documentation shall be submitted in triplicate to the City and payment shall be made by City in a lump sum within thirty (30) days of receipt of an invoice received after satisfactory performance, completion, and inspection of the Work.

**IV. CONTRACT SCHEDULE**

Time is of the essence. "This Contract shall commence upon full execution by all parties and continue until satisfaction of the Work by General Contractor in the City's sole discretion. General Contractor understands that time is of the essence for the Work."

**IN WITNESS WHEREOF**, the parties hereto have signed this Agreement as of the effective date of Contract first above written.

**GENERAL CONTRACTOR**

**CITY OF FENTON, MISSOURI**

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

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

BOB BRASSES, MAYOR

Title: \_\_\_\_\_

DATED: \_\_\_\_\_

DATED: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

**CITY OF FENTON CONSULTANT/CONTRACTOR SERVICES AGREEMENT  
GENERAL CONDITIONS**

**Independent Contractor.** The General Contractor shall be and operate as an independent Contractor in the performance of this Contract. The General Contractor shall have complete charge of the personnel engaged in the performance of the Work, and all persons employed by the General Contractor shall be employees of said General Contractor and not employees of the City in any respect. The General Contractor shall supervise and direct the Work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work.

**Compliance with Laws.** The General Contractor shall comply with all applicable City ordinances and other laws and regulations, Federal, State, and any political subdivision thereof, including but not limited to, Title VI, unemployment and workers' compensation, occupational safety, equal employment and affirmative action and wage and price laws insofar as applicable to the performance of the Contract. General Contractor and any subcontractor shall require all on-site employees to complete the ten-hour training program required under § 292.675.2 RSMo. On-site employees who have previously completed such ten-hour training program must hold documentation of prior completion of the program. Notice is hereby given to General Contractor that it shall be subject to the penalties set forth in Subsection 292.675.4 RSMo. for violation thereof and such penalties shall be forfeited to the City pursuant to such Subsection. In the event of a conflict between laws, codes and regulations of various governmental entities having jurisdiction over the Work, the General Contractor shall notify the City of the nature and impact of such conflict. The City agrees to cooperate with the General Contractor in an effort to resolve any such conflict.

General Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Work. If General Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules, and regulations and without such notice to the City, General Contractor shall assume full responsibility therefor and shall bear all costs attributable thereto.

General Contractor shall secure and pay for all permits, governmental fees, and licenses necessary for the proper execution and completion of the Work, including those required to be obtained from the City, except fees imposed solely by the City shall be waived at the time of application. General Contractor shall pay all royalties and license fees payable on all designs, processes, or products used in connection with the work or incorporated therein, unless otherwise agreed upon by the City. General Contractor shall defend all suits or claims for infringement of any patent rights and shall indemnify and hold the City harmless from and against any loss on account thereof.

**Compliance with State Immigration Statutes.** As a condition for the award of this Agreement, the General Contractor shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Work. The General Contractor shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Work. Such affidavits shall be in substantially the form provided in **Exhibit B**. The General Contractor shall not be required to provide these affidavits to the City if such affidavits have been previously provided to the City within the past year. All words in this paragraph shall have the definitions as provided in Section 285.525 RSMo.

Pursuant to Section 208.009 RSMo., the General Contractor shall provide at the earlier of submission of any bid or execution of any agreement affirmative proof that the Applicant for the General Contractor is a citizen or a permanent resident of the United States or is lawfully present in the United States. The Applicant for the General Contractor (or "Applicant") shall be the person authorized to prepare, submit and sign contract documents on behalf of the General Contractor and shall be eighteen years of age or older. Such affirmative proof shall include documentary evidence recognized by the Missouri Department of Revenue when processing an application for a driver's license, a Missouri driver's license, as well as any document issued by the federal government that confirms an alien's lawful presence in the United States.

**Safety Precautions and Programs.** The General Contractor shall initiate, maintain, and supervise safety precautions and programs in connection with the performance of the Work.

**Safety of Persons and Property.** The General Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury, or loss to:

1. All employees on the Work and all other persons who may be affected thereby;
2. All the Work, all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the General Contractor or any of his subcontractors or sub-subcontractors; and



3. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, sprinkler systems, structures, and utilities not designated for removal, relocation or replacement in the course of construction.

General Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority having jurisdiction over the safety of persons or property to protect them from damage, injury or loss. The General Contractor shall erect and maintain all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying the City and users of adjacent utilities. The General Contractor shall provide signs, barrels, or any other safety devices which the City deems necessary for public safety. No additional payment will be made and this work shall be considered incidental to the Contract. The City may place safety devices as it deems necessary if the General Contractor fails to provide the required items within 24 hours of notification. The Contract Sum shall be reduced by the cost of these devices. All damage or loss to any property caused in whole or in part by General Contractor, any subcontractor, any sub-subcontractor, or anyone directly or indirectly employed by anyone for whose acts they may be liable, shall be remedied by General Contractor.

**Construction Limits.** The construction limits consist of public areas. General Contractor shall limit his operations accordingly and shall not enter upon private property nor place any materials thereon. No activity outside the public areas or easement areas shall be performed without the express written permission of the property owner and City. Suitable temporary barriers shall be provided to protect traffic from the Work if necessary. At all times until final acceptance of the Work, the Contractor shall provide and maintain such signs, lights, barriers, cones, watchmen or flaggers as may be necessary to properly protect the Work and provide for safe and convenient public travel. In the case of open excavations or other potentially hazardous conditions existing during non-working periods, the traveling public will be protected and advised by signs and flasher barricades. Parking of equipment or storage of materials on or near the Project site will be permitted only if adequate protective devices are provided and then only for the minimum time required for any specific job.

**Labor and Materials.** Any manufactured goods or commodities used or supplied in the performance of the Project or any subcontract thereto shall be manufactured or produced in the United States as required and in accordance with Section 34.353 RSMo.

- a) This section shall not apply when:
  - 1) The purchase, lease, or contract involves an expenditure of less than twenty-five thousand dollars;
  - 2) Only one line of a particular good or product is manufactured or produced in the United States;
  - 3) The specified products are not manufactured or produced in the United States in sufficient quantities to meet the City's requirements or cannot be manufactured or produced in the United States within the necessary time in sufficient quantities to meet the City's requirements;
  - 4) Obtaining the specified products manufactured or produced in the United States would increase the cost of the contract by more than ten percent.
- b) If this section shall not apply because of the circumstance described in paragraphs (a)(3)-(4), then the General Contractor shall provide the City with the information necessary to make the certifications required under Section 34.353 RSMo.

General Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him. If the City reasonably objects to any person employed by the General Contractor or Subcontractor, the employee shall be removed from the site. General Contractor shall be responsible to the City for the acts and omissions of all his employees and all Subcontractors, their agents and employees and all other persons performing any of the Work under a contract with General Contractor.

**Subcontracts.** This Contract shall not be assigned by the General Contractor. Except as expressly authorized herein, the General Contractor shall not subcontract any of the Work to be performed by it hereunder without the express written consent of the City.

**Changes; Change Orders.** No change in this Contract shall be made except in writing prior to the change in work or terms being performed. The Public Works Director, without invalidating the Contract, may order Changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and the Construction Schedule being adjusted in accordance with this Contract. All such changes in the Work shall be authorized by Change Order and shall be executed under the applicable conditions of the Contract Documents and City's purchasing policy. A Change Order is a written order to the General Contractor signed by the City or City representative, issued after the execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Construction Schedule. The Contract Sum may be changed only by Change Order.

The General Contractor shall make all requests for a Change Order on forms provided by the City upon written request to the City. If the General Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the City written notice thereof within twenty (20) days after the occurrence of the event giving rise to such claim. This notice shall be given by the General Contractor before proceeding to execute the Work. No such claim shall be valid unless so made. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

The cost or credit to the City resulting from a Change in the Work shall be determined in accordance with this Contract. If the Contract is silent on the cost for such additional work, prior to the commencement of such changed or revised work, General Contractor shall submit promptly to the City, a written cost or credit proposal for such revised Work for consideration and acceptance by the City. If City and General Contractor shall not be able to agree as to the amount, either in consideration of time or money to be allowed or deducted, it shall nevertheless be the duty of General Contractor, upon written notice from the City, to immediately proceed with such alteration or change, and General Contractor shall be compensated the reasonable value of such Work.

**Minor Changes in Work.** The Public Works Director shall have authority to order minor changes in the Work not involving any adjustment in the Contract Sum or the Construction Schedule and not inconsistent with the intent of the Contract Documents. Such changes may be affected by Field Order or by other written order. Such changes shall be binding on the City and the General Contractor.

**Coordination with Utilities.** General Contractor shall contact and coordinate with all affected utilities prior to commencing any operations. Prior to commencement of any work involving excavation, demolition of facilities or the erection of posts, it will be the sole responsibility of the General Contractor to notify all utilities of the planned work and request that the utilities suitably mark underground installations in the vicinity of the planned work, and arrange for disconnection of any necessary utilities.

**Uncovering of Work.** If any Work should be covered contrary to the request of the City, it must, if required by the City, be uncovered for his observation and replaced, at General Contractor's expense. If any Work has been covered which the City has not specifically requested to observe prior to being covered, the City may request to see such Work and it shall be uncovered by General Contractor. If such Work is found to be in accordance with the Contract Documents, the Cost of uncovering and replacement shall, by appropriate Change Order, be charged to the City. If such Work is found not to be in accordance with the Contract Documents, General Contractor shall pay the costs of uncovering and replacement.

**Correction of Work.** The General Contractor shall promptly correct all Work rejected by the City as defective or as failing to conform to the Contract specifications and requirements, whether observed before or after substantial completion of the Work, and whether or not fabricated, installed or completed. The General Contractor shall bear all cost of correcting such rejected Work.

**Site Restoration.** The General Contractor at all times shall keep the Work site free from accumulation of waste materials or rubbish caused by his operations. Upon completion of the Work, General Contractor shall restore the worksite to its reasonable condition prior to commencing the Work.

**City's Right to Stop Work.** If General Contractor fails to correct defective Work or fails to supply materials or equipment in accordance with the Contract Documents, the City may order General Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

**City's Right to Carry Out Work.** If General Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform any provision of the Contract, the City may, after seven (7) days written notice to General Contractor and without prejudice to any other remedy the City may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or hereafter due General Contractor the cost of correcting such deficiencies. If the payments then or thereafter due the General Contractor are not sufficient to cover such amount, General Contractor shall pay the difference to the City upon request.

**Warranty.** The General Contractor warrants to the City that all materials and equipment furnished under the Contract and incorporated in the Work will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract. All Work not so conforming to these standards shall be considered defective. The General Contractor shall furnish satisfactory evidence as to the kind and quality of all materials and equipment and shall warrant the Work after substantial completion of the Work.

**One Year Correction Period.** In addition to the General Contractor's general warranty obligation hereunder and as required by applicable law, the General Contractor also hereby expressly guarantees the aforesaid Work as to workmanship and

quality of materials used in connection herewith for a term of one (1) year, commencing on the date of final acceptance by the City, and binds itself, its successors or assigns, to make all repairs or replacements which may become necessary within said period due to construction defects and nonconformity with the Contract Documents. Upon expiration of the one (1) year correction period, the City shall release the Performance and Maintenance Bond, less any amounts reasonably necessary to remedy any of the General Contractor's performance and/or maintenance obligations under this Agreement that may still be outstanding at the time. General Contractor's general warranty obligations required herein and the one-year correction period as required herein, as well as any other obligation to provide surety or a bond, are each an independent and separate obligation of General Contractor. The release or expiration of any guaranty, or any other surety or bond provided for in this Agreement shall not release, or be claimed to release, the obligation to complete the Work according to all warranties, specifications, and requirements expressed or implied by this Agreement or required by applicable law.

**Indemnification.** To the fullest extent permitted by law, the General Contractor agrees to defend with counsel selected by the City, and indemnify and hold harmless the City, its officers, engineers, representatives, agents and employees from and against any and all liabilities, damages, losses, claims or suits, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or any other circumstances, sustained by the City or others, arising from breach of the Contract or out of services and operations performed hereunder by the General Contractor or Subcontractors, or claims relating thereto, and including but not limited to the City's reliance on or use of the services or products provided by the General Contractor or Subcontractors under the terms of this agreement. The General Contractor shall not be liable for any loss or damage attributable solely to the negligence of the City. Nothing herein shall authorize the City to indemnify the General Contractor. To the extent required by law to enforce this provision, General Contractor agrees that this indemnification requires General Contractor to obtain insurance in amounts specified herein and that General Contractor has had the opportunity to recover the costs of such insurance in the Compensation set forth in this Agreement.

**Insurance.** The General Contractor shall obtain and maintain for itself during the term of the Project and the Contract liability insurance coverage of at least \$3,100,000 aggregate and \$460,000 per occurrence. Insurance policies providing required coverages shall be with companies licensed to do business in the State of Missouri and rated no less than AA by Best or equivalent. All costs of obtaining and maintaining insurance coverages are included in the compensation amount and no additional payment will be made therefor by the City. In addition, the General Contractor shall provide Worker's Compensation Insurance in at least statutory amounts for all workers employed for the Services.

Before commencing any Work, the General Contractor shall provide to the City certificates of insurance evidencing the issuance and maintenance in force of the coverages required by this paragraph and bearing an endorsement precluding cancellation of or change in coverage without at least thirty (30) days written notice to the City. Any self-insurance or deductible above \$50,000.00 is not permitted. The City may waive any insurance coverages or amounts required to be carried by the General Contractor under this paragraph when the City deems such waiver to be in the interest of the public health, safety, and general welfare.

NOTHING HEREIN SHALL BE CONSTRUED AS A WAIVER OF THE CITY'S SOVEREIGN IMMUNITY UNDER SECTION 537.610.1 OR OTHERWISE. The purpose of the insurance required under this paragraph is to confirm that the General Contractor has adequate insurance to cover the General Contractor for tort claims that may arise out of the Work. It is not for the purchase of insurance for the City EXCEPT FOR AND ONLY TO THE LIMITED EXTENT OF any claims against the City arising out of the General Contractor's Work and based upon one of the two statutory exceptions to sovereign immunity as expressly set forth in Section 537.600.1(1) and (2). To that limited extent, the City shall be named as an additional insured on the policy bearing an endorsement that: "The Insurer shall not be liable to make any payment for Loss in connection with any Claim made against the City of Fenton as an additional Insured that is barred by sovereign immunity, and nothing contained in this Policy shall constitute a waiver of the City's sovereign immunity." Nothing in this requirement shall be deemed a waiver of the City's sovereign immunity.

**Attorney Fees' and Costs.** The Consultant shall reimburse to the City any costs and attorneys' fees that the City may reasonably incur in pursuit of any remedies at law or equity or enforcement of any rights established in this Agreement, which may result from the Consultant's breach of the Agreement, the Consultant's failure to perform any obligation or requirement contained herein, or the City's enforcement of this Agreement.

**Taxes.** The City is exempt from federal excise tax and Missouri sales tax and the Consultant shall not charge the same to the City.

**Nondisclosure.** The General Contractor agrees that it will not divulge to third parties without the written consent of the City any information obtained from or through the City in connection with the performance of this Contract. Nothing herein shall preclude disclosure of information by the city.

**Other Representations and Other Covenants.** The General Contractor represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents. The General Contractor represents and warrants that the General Contractor has been engaged in such Work as is required for the Project and has provided services such as the ones to be performed under this Agreement to other municipalities and/or private enterprises and that the General Contractor owns sufficient equipment and engages sufficient personnel to perform the General Contractor's obligations under this Agreement. The General Contractor further represents and warrants that the General Contractor is an equal opportunity employer. The General Contractor agrees that the General Contractor shall not use in any form or medium the name of the City for any advertising unless the General Contractor receives the prior written consent of the City.

**Termination.** The City shall have the right to terminate the Contract at any time for any reason by giving the General Contractor written notice to such effect. The City shall pay to the General Contractor in full satisfaction and discharge of all amounts owing to the General Contractor under the Contract an amount equal to the cost of all Work performed by the General Contractor up to such termination date, less all amounts previously paid to the General Contractor on account of the Contract Price. The General Contractor shall submit to the City its statement for the aforesaid amount, in such reasonable detail as the City shall request, within thirty (30) days after such date of termination. The City shall not be liable to the General Contractor for any damages on account of such termination for loss of anticipated future profits with respect to the remainder of the Work.

**Termination by City for Cause.** In addition to all other remedies available to the City, the City may terminate the Contract if General Contractor:

1. Repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
2. Disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
3. Otherwise is guilty of substantial breach of a provision of the Contract Documents.

When any of the above reasons exists, the City may without prejudice to any other rights or remedies of the City and after giving the General Contractor and the General Contractor's surety, if any, seven days' written notice, terminate employment of the General Contractor and may, subject to any prior right of the surety:

1. Exclude General Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by General Contractor;
2. Finish the Work by whatever reasonable method the City may deem expedient. Upon written request of General Contractor, the City shall furnish to General Contractor a detailed accounting of the costs incurred by the City in finishing the Work.

When the City terminates the Contract for cause, the General Contractor shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for professional services (including architects and engineers) and expenses made necessary thereby, and other damages incurred by the City and not expressly waived, such excess shall be paid to General Contractor. If such costs and damages exceed the unpaid balance, General Contractor shall pay the difference to the City. The amount to be paid to the General Contractor or City, as the case may be, shall be certified by the project architect, upon application, and this obligation for payment shall survive termination of the Contract.

**Multi-year contracts; Non-appropriation.** Notwithstanding any provision herein to the contrary, the City is obligated only to make the payments set forth in the attached contract as may lawfully be made from funds budgeted and appropriated for that purpose during the City's then current fiscal year at the discretion of the City. If no funds are appropriated or otherwise made legally available to make the required payments for this Agreement during the next occurring fiscal year (an "Event of Nonappropriation"), this Agreement will terminate at the end of the then current fiscal year as if terminated expressly. The failure or inability of the City to appropriate funds for this Agreement in any subsequent fiscal year shall not be deemed a breach of this Agreement by any party. If applicable, this Agreement may be annually renewed at each fiscal year by inclusion of specific appropriation for this Agreement, from year to year not to exceed the maximum renewal period or term as set forth in the Agreement.

**Accounting.** During the period of this Contract, the General Contractor shall maintain books of accounts of its expenses and charges in connection with this Contract in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the General Contractor.

**Other Contractors.** The City reserves the right to employ other consultants and contractors in connection with the Work.

**Project Records and Work Product.** The General Contractor shall provide the City with copies of all documents pertinent to the Work which shall include, without limitation, reports, correspondence, meeting minutes, and originals of all deliverables. The City shall own all right, title and interest, including without limitations, all copyrights and intellectual property rights, to all documents and Work Product of the General Contractor created in performance of or relating to this Contract. General Contractor agrees to take all steps reasonably requested by the City to evidence, maintain, and defend the City's ownership rights in the Work Product. At the conclusion of the job, the General Contractor shall submit to the City one (1) set of mark ups for as-builts.

**Site Operations.** Where appropriate, the City will arrange for right of entry to any property at the request of the General Contractor for the purpose of performing studies, tests, and evaluations in connection with the Work.

**Personnel.** The Work shall be performed exclusively by the personnel of the General Contractor and authorized subcontractors and no other personnel shall perform any of the Work without the express written approval of the City.

**Representations.** General Contractor agrees that it has not relied on any representations or warranties of the City, oral or written, other than expressly identified in this Contract. The parties agree the Contract represents the entire agreement between the parties.

**Governing Law.** This Contract shall be governed by and construed and interpreted in accordance with the laws of the State of Missouri and without regard to its principles of conflict of laws, with venue shall be in St. Louis County, Missouri. As a prerequisite to the General Contractor filing any claim against the City in any court of law or equity pursuant to this Contract, the General Contractor agrees that its shall be bound to first file such claim with the City's Board of Administrative Review, pursuant to and in accordance with Chapter 160 of the City Code. This Agreement is not intended to and shall not create any rights enforceable by any third-party beneficiary.

**Counterparts.** This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement.

**Other Special Provisions.** NA.

Exhibit A



3073 Arnold Tenbrook Rd, Arnold MO 63010

314-843-5166 – PHONE

314-843-6106 – FAX

**Proposal Submitted to: City of Fenton**

**Date: 03/09/2022**

**Job: Sports Plex Batting Cage Pad**

**PROPOSAL**

We hereby submit specifications and estimate for: Concrete Pad and Footings

INCLUSIONS

- Sawcut existing concrete and remove to install footings.
- Dig out 6 areas for footings 2 ft in diameter and 4.5' deep.
- Pour footings and set posts for batting cage.
- Excavate, and grade with 4" of base rock area 26' x 16'.
- Form and pour new 4" thick concrete pad 26' x 16' and 4' x 4'.
- Concrete to be broom finished.
- Clean up and dispose of spoils properly.
- Excludes rock excavation if encountered. Rock excavation would be on time and material basis.

**Total to Complete: \$8,200.00**

**Payment to be made in Full upon completion.**

All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the estimate. This proposal subject to acceptance within 14 days and is void thereafter at the option of the undersigned.

**Signatures Required for Acceptance of Proposal:**

The above prices, specifications and conditions are satisfactory and are hereby accepted. Spencer Contracting Company is authorized to do the work as specified. Payment will be made as outlined above.

Patrick Buttner

3/09/2022

\_\_\_\_\_  
Spencer Contracting Company

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

Exhibit B

**AFFIDAVIT OF PARTICIPATION IN  
FEDERAL WORK AUTHORIZATION PROGRAM  
(CONTRACTS OVER \$5,000)**

Comes now \_\_\_\_\_ as \_\_\_\_\_ first being duly sworn, on my oath,  
(name) (office held)

affirm \_\_\_\_\_ ("Company") is enrolled and will continue to participate in a federal work  
(company name)

authorization program in respect to employees that will work in connection with the contracted  
 services related to \_\_\_\_\_ of the City of Fenton and  
 any incidental items associated with this work for the duration of the contract, if awarded, in accordance  
 with  
 Section 285.530.2, Revised Statutes of Missouri. I also affirm that the Company does not and will not  
 knowingly employ a person who is an unauthorized alien in connection with the contracted services  
 for the duration of the contract, if awarded. Attached to this affidavit is documentation of the  
 Company's participation in a federal work authorization program.

**(ATTACH DOCUMENTATION SHOWING THAT COMPANY PARTICIPATES IN FEDERAL WORK  
 AUTHORIZATION PROGRAM. ALSO ATTACH DRIVER'S LICENSE OR OTHER PROOF OF LAWFUL  
 PRESENCE, AS PROVIDED IN THE GENERAL CONDITIONS – 208.009 RSMo.)**

*In Affirmation thereof, the facts stated above are true and correct (The undersigned  
 understands that false statements made in this filing are subject to the penalties provided under §  
 575.040 RSMo).*

\_\_\_\_\_  
 Signature (person with authority)

\_\_\_\_\_  
 Printed Name

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date

State of Missouri                                    )  
   )  
 County of \_\_\_\_\_                            )

ss.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

My commission expires:  
 \_\_\_\_\_

\_\_\_\_\_  
 Notary Public

1st Reading:  
2nd Reading:

**SPONSOR: HUELS**

**ORDINANCE NO. \_\_\_\_**

**BILL NO. 22-15**

**AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH MIDWEST POOL & COURT CO. FOR THE PURCHASE AND INSTALLATION OF THREE (3) CHEMTROL PC2100'S.**

**WHEREAS**, the City needs to repair or upgrade a current Chemtrol unit, which regulates the chemicals in the pools at Riverchase; and

**WHEREAS**, based on such need, Staff looked into the cost to upgrade or replace all four (4) of the existing Chemtrol units; and

**WHEREAS**, Midwest Pool & Court Co. (company utilized the YMCA, the City's current contractor to manage the City's pools and provide lifeguard services) provided the City two options for consideration; and

**WHEREAS**, the City also reached out to Westport Pools (the City's contracted on-call pool maintenance and repair service contractor) to provide a quote and although they could not provide a Chemtrol unit quote, they provided a quote for a comparable BECSys system; and

**WHEREAS**, both City and YMCA staff are familiar with the Chemtrol units and not the BECSys units, and both would have to learn a new system if the City did not purchase the Chemtrol units; and

**WHEREAS**, because the YMCA is familiar with the Chemtrol units and recognizing that the other system would be at a lesser cost for the City, the YMCA has offered to donate one (1) Chemtrol unit to the City; and

**WHEREAS**, at the March 10, 2022 Committee Meeting, the Board of Aldermen reviewed the bids received and Staff's and the YMCA's recommendation to purchase the Chemtrol units; and

**WHEREAS**, the Board of Aldermen finds that the City's bidding procedures were followed and is grateful and willing to accept the donation from the YMCA, and, therefore, desires and finds it in the best interest of the City to enter into a contract with Midwest Pool & Court Co. for the purchase of three (3) Chemtrol units.

**ORD. NO. \_\_\_\_\_**



ORD. NO. \_\_\_\_\_

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FENTON, MISSOURI, AS FOLLOWS:

**Section 1.** The Board of Aldermen hereby authorizes the Mayor to execute on behalf of the City a contract with Midwest Pool & Court Co. for the purchase and installation of three (3) Chemtrol PC2100's in substantially the form of Exhibit 1 attached hereto and incorporated herein by reference (the "Purchase Contract"), including all documents specified in the Purchase Contract.

**Section 2.** The Board of Aldermen hereby authorizes the City Administrator to take any reasonable actions and sign any required documents to accept the donation of one (1) Chemtrol unit from the YMCA and otherwise carry out the intent of the Purchase Contract and this ordinance.

**Section 3.** The requirements of Section 292.675 RSMo. and the OSHA requirements and obligations and penalties in the Purchase Contract are hereby incorporated herein by reference and made a part of this ordinance for all purposes.

**Section 4.** This ordinance shall be in full force and effect after the date of its passage and approval.

PASSED this 16<sup>th</sup> day of March, 2022.

\_\_\_\_\_  
BOB BRASSES, MAYOR

APPROVED this 16<sup>th</sup> day of March, 2022.

\_\_\_\_\_  
BOB BRASSES, MAYOR

ATTEST:

\_\_\_\_\_  
Jane Hungler, City Clerk

Motion to approve. Roll Call vote:

Ayes:

Nays:

Absent:

ORD. NO. \_\_\_\_\_

## Exhibit 1

### **City of Fenton, Missouri PURCHASE CONTRACT**

**THIS PURCHASE CONTRACT**, made and effective as of March 16<sup>th</sup>, 2022, by and between the **City of Fenton**, a Missouri municipal corporation, hereinafter referred to as City, and **Midwest Pool & Court Co.**, a business registered to do business in Missouri, hereinafter referred to as “SELLER or CONSULTANT”

**WITNESSETH:** That the parties hereto, for the considerations hereinafter set forth, agree as follows:

#### **I. DESCRIPTION OF PRODUCT**

Seller hereby agrees to provide and install the product and/or materials (including a five (5) year warranty) specifically set forth in the attached **Exhibit A** incorporated herein (hereinafter, the “Product”), provided however that the quantity of the Product shall be reduced from four (4) to three (3) with the same unit price as stated in **Exhibit A**. The Product shall be provided by the Seller in accordance with all the provisions of this Purchase Contract and attached **City of Fenton Purchase Contract General Conditions**, incorporated herein by reference, and which terms shall prevail over any conflicting terms that may otherwise be adopted herein or as part of any other attachment or exhibit.

Except as expressly specified herein, Consultant hereby agrees to provide all of the supervision, labor, technical services, facilities, materials, tools, equipment, and apparatus, and to perform all the services and do all the things necessary for the proper completion of the consultant services which are particularly described as furnishing, delivery, and installing the Product for the City, as more specifically set forth in the attached **Exhibit A**.

Consultant shall provide the Product and perform the services listed on **Exhibit A** to the highest standard of the industry and provide the City warranties for any equipment in accordance with this Contract and the Uniform Commercial Code Standards.

#### **II. DELIVERY**

The Product fully complying with this Purchase Contract shall be delivered and installed from the Seller to the City at mutually agreeable locations. Time is of the essence.

#### **III. COMPENSATION**

The City hereby agrees to pay the Seller, as full, complete, and sole compensation for the complete and satisfactory performance of this Purchase Contract, and all expenses and costs related thereto:

the sum of \$20,673.00 for purchase and installation of three (3) units.

or (if above box is not checked):

such amount as is set forth on an attached Exhibit A that is incorporated herein and subject to any such limits as established therein and in approving authorization.

#### IV. TIME AND MANNER OF PAYMENTS

All invoices complete with necessary support documentation shall be submitted in triplicate to the City and payment shall be made by City in a lump sum within thirty (30) days of receipt of an invoice received after satisfactory delivery and installation of the Product.

**IN WITNESS WHEREOF**, the parties hereto have signed this Purchase Contract as of the effective date of Purchase Contract first above written.

**SELLER**

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY OF FENTON, MISSOURI**

By: \_\_\_\_\_  
BOB BRASSES, MAYOR

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
Jane Hungler, City Clerk

**CITY OF FENTON, MISSOURI  
PURCHASE CONTRACT GENERAL CONDITIONS**

**Compliance with Laws.** The Seller shall comply with all applicable City ordinances and other laws and regulations, Federal, State, and any political subdivision thereof, including but not limited to, unemployment and workers' compensation, occupational safety, equal employment and affirmative action and wage and price laws insofar as applicable to the performance of the Purchase Contract. If applicable to any Work undertaken as part of this Contract, Consultant and any subcontractor shall require all on-site employees to complete the ten-hour training program required under § 292.675.2 RSMo. such employees must hold documentation of prior completion of the program and shall be subject to such penalties as provided in § 292.675.4 RSMo. Consultant further agrees, to the extent applicable to any Work undertaken as part of this Contract, to pay not less than the prevailing hourly wage of wages to all workers performing any such applicable work under this Contract. The consultant will forfeit a penalty to the City of \$100 per day for each worker that is paid less than the prevailing rate for any work done under the Contract by the Consultant or subcontractor that required payment of prevailing wage under state law. In the event of a conflict between laws, codes, and regulations of various governmental entities having jurisdiction over the Product, the Seller shall notify the City of the nature and impact of such conflict. The City agrees to cooperate with the Seller in an effort to resolve any such conflict. Seller shall secure and pay for all permits, governmental fees, and licenses necessary for the proper installation of the Product, including those required to be obtained from the City, except fees imposed solely by the City shall be waived at the time of application.

**Independent Consultant.** Seller shall be and operate as an independent consultant in the performance of this Contract. Seller shall have complete charge of the personnel engaged in the performance of the Work, and all persons employed by the Seller shall be employees of said Seller and not employees of the City in any respect.

**Indemnification.** To the fullest extent permitted by law, the Seller agrees to defend with counsel selected by the City, and indemnify and hold harmless the City, its officers, engineers, representatives, agents and employees from and against any and all liabilities, damages, losses, claims or suits, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or any other circumstances, sustained by the City or others, arising from breach of the Purchase Contract or related warranties, or claims relating thereto, and including but not limited to the City's reliance on or use of the Products provided by the Seller under the terms of this Purchase Contract. The Seller shall not be liable for any loss or damage attributable solely to the negligence of the City provided, however, that nothing in this Contract shall require or authorize the City to indemnify the Seller. To the extent required to enforce this provision, Seller agrees that this indemnification requires Seller to obtain insurance in no event less than the maximum amounts of liability set forth in Chapter 537.610 RSMo. applicable to political subdivisions and that Seller has had the opportunity to recover the costs of such insurance in the Compensation set forth in this Agreement.

**Nondisclosure.** The Seller agrees that it will not divulge to third parties without the written consent of the City any non-public information or information designated as confidential obtained from or through the City in connection with the performance of this Purchase Contract.

**Changes.** No change in this Purchase Contract shall be made except in writing executed by all parties. The Seller shall make any and all changes in the Product without invalidating this Purchase Contract when specifically ordered to do so in writing by the City. The Seller, prior to the delivery of such changed or revised Product, shall submit promptly to the City, a written cost or credit proposal for such revised Product. If the City and the Seller shall not be able to agree as to the amount, either in consideration of time or money to be allowed or deducted, it shall nevertheless be the duty of the Seller, upon written notice from the City, to immediately proceed with such alteration or change, and the Seller shall be compensated the reasonable value of such Product. **No delivery of Product or change shall be undertaken or compensated for without prior written authorization from the City executed by Seller.**

**Attorney Fees' and Costs.** The Seller shall reimburse to the City any costs and attorneys' fees that the City may reasonably incur in pursuit of any remedies at law or equity or enforcement of any rights established in this Agreement, which may result from the Seller's breach of the Agreement, the Seller's failure to perform any obligation or requirement contained herein, or the City's enforcement of this Agreement.

**Termination.** The City shall have the right to terminate the Purchase Contract at any time for any reason by giving the Seller written notice to such effect. The City shall pay to the Seller in full satisfaction and discharge of all amounts owing to the Seller under the Purchase Contract an amount equal to the cost of all Product delivered by the Seller up to such termination date, less all amounts previously paid to the Seller. The Seller shall submit to the City its statement for the aforesaid amount, in such reasonable detail as the City shall request, within thirty (30) days after such date of termination. The City shall not be liable to the

Seller for any damages on account of such termination for loss of anticipated future profits with respect to the remainder of the Product.

**Product.** The Product as described in the Scope of Services and Seller's proposal shall be delivered to the City and no other substitute product shall be delivered without written approval of the City.

**Warranty of Title.** The title conveyed shall be good and its transfer rightful and shall not unreasonably expose the City to litigation because of any colorable claim to or interest in the Product. The Product shall be delivered free from any security interest or other lien or encumbrance.

**Express Warranties.** Any affirmation of fact or promise made by the Seller which relates to the Product and becomes part of the basis of the bargain creates an express warranty that the Product shall conform to the affirmation or promise. Any description of the Product which is made part of the basis of the bargain creates an express warranty that the Product shall conform to the description. Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the Product shall conform to the sample or model. It is not necessary to the creation of an express warranty that the Seller use formal words such as "warrant" or "guarantee" or that the Seller has specific intention to make a warranty.

**Implied Warranty.** A warranty that the Product shall be merchantable is implied. Products to be merchantable must at least: be delivered in accordance with the Purchase Contract description; and in the case of fungible products, (a) are of fair quality within the description; (b) are fit for the ordinary purposes for which product of that description are used; (c) run, within the variations permitted by the agreement, of even kind, quality of quantity within each unit and among all units involved; (d) are adequately contained, packaged, and labeled as the Agreement may require; and (e) conform to the promise or affirmation of fact made on the container or label if any. Other implied warranties may arise from the course of dealing or usage of trade. Because Seller knows the particular purpose for which the Product is required, and that the City is relying on the Seller's skill or judgment to select or furnish suitable products, there is an implied warranty that the Product shall be fit for such purpose.

**Right to Inspect.** The City has a right before payment or acceptance to inspect the Product at any reasonable place and time and in any reasonable manner. The inspection may also be within a reasonable time after delivery and installation of the same. Expenses for inspection may be recovered from the Seller if the Product does not conform and are rejected.

**Rights on Improper Delivery.** If the Product delivered fails in any respect to conform to the Purchase Contract, the City may: (a) reject the whole; (b) accept the whole; or (c) accept any units and reject the rest and the Seller must adjust such Purchase Contract price accordingly.

**Revocation of Acceptance.** The City may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the City if the City has accepted it: (a) on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; (b) revocation was within a reasonable time after delivery; or (c) without discovery of the nonconformity if the City's acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the Seller's assurances. In the case of revocation, the City has the same rights and duties as if the City had rejected the Product.

**Remedies.** If the Seller fails to make delivery or the City rightfully rejects, the City may in addition to recovering so much of the price as has been paid: (a) "cover" and receive damages of the cost difference between the cost of cover and the contract price for all the Product affected plus incidental or consequential damages; or (b) recover as damages for non-delivery the difference between the market price at the time the City learned of the breach and the Purchase Contract plus any incidental and consequential damages. If the Seller fails to deliver or repudiates, the City may also recover the Product, obtain specific performance, or replevy the Product. In the event of breach or failure to make delivery, the City is also entitled to liquidated damages as described in the executed Purchase Contract. Nothing in this Purchase Contract shall be deemed to be a waiver of the City's sovereign immunity or permit a cause of action against the City for damages relative to any claim against the City, and any remedy against the City shall be limited to specific performance as may be available under existing law.

**Site Operations.** Where appropriate, the City will arrange for right of entry to any property at the request of the Seller for the purpose of performing studies, tests, and evaluations in connection with the Work.

**Taxes.** The City is exempt from federal excise tax and Missouri sales tax and the Seller shall not charge the same to the City.

**Compliance with State Immigration Statutes.** As a condition for the award of this Agreement, the Consultant shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with

respect to the employees working in connection with the Work. The Consultant shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Work. Such affidavits shall be in substantially the form provided in **Exhibit B**. The Consultant shall not be required to provide these affidavits to the City if such affidavits have been previously provided to the City within the past year. All words in this paragraph shall have the definitions as provided in Section 285.525 R.S.Mo.

Pursuant to Section 208.009 R.S.Mo., the Seller shall provide at the earlier of submission of any bid or execution of any agreement affirmative proof that the Applicant for the Seller is a citizen or a permanent resident of the United States or is lawfully present in the United States. The Applicant for the Seller (or "Applicant") shall be the person authorized to prepare, submit and sign contract documents on behalf of the Seller and shall be eighteen years of age or older. Such affirmative proof shall include documentary evidence recognized by the Missouri Department of Revenue when processing an application for a driver's license, a Missouri driver's license, as well as any document issued by the federal government that confirms an alien's lawful presence in the United States.

**Representations.** The Seller agrees that it has not relied on any representations or warranties of the City, oral or written, other than expressly identified in this Purchase Contract. The parties agree the Purchase Contract represents the entire agreement between the parties.

**Governing/Choice of Law.** This Purchase Contract shall be governed by and construed and interpreted in accordance with the internal laws of the State of Missouri, without regard to its principles of conflict of laws. As a prerequisite to the Seller filing any claim against the City in any court of law or equity pursuant to this Contract, the Seller agrees that its shall be bound to first file such claim with the City's Board of Administrative Review, pursuant to and in accordance with Chapter 160 of the City Code.

**Counterparts.** This Purchase Contract may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement.

**EXHIBIT A**

**Quotation**

Quote Number:

10002

Quote Date:

Feb 23, 2022

Page:

1

Midwest Pool & Court Co, Inc.

7841 Manchester

St. Louis, MO 63143

(314) 781-1000

Fax (314) 781-1004

**Quoted to:**

Fenton, City of  
625 New Smizer Rd  
Fenton, MO 63026

Customer ID	Good Thru	Payment Terms	Sales Rep
3430067	3/25/22	Net 15 Days	

Quantity	Item	Description	Unit Price	Extension
3.00 <del>4.00</del>		Supply and install 4 new Chemtrol PC2100's with Websever, PPM, ORP, pH and temperature options	6,865.00	<del>27,460.00</del> 20,595.00
1.00SH		Freight	78.00	78.00
			Subtotal	<del>27,538.00</del> 20,673.00
			Sales Tax	
			<b>Total</b>	<del>27,538.00</del> 20,673.00

**EXHIBIT B**

**AFFIDAVIT OF PARTICIPATION IN  
FEDERAL WORK AUTHORIZATION PROGRAM  
(CONTRACTS OVER \$5,000)**

Comes now \_\_\_\_\_ as \_\_\_\_\_ first being duly sworn, on my oath,  
(name) (office held)  
affirm \_\_\_\_\_ ("Company") is enrolled and will continue to participate in a federal work  
(company name)  
authorization program in respect to employees that will work in connection with the contracted  
services related to \_\_\_\_\_ of the City of Fenton and any  
incidental items associated with this work for the duration of the contract, if awarded, in accordance  
with Section 285.530.2, Revised Statutes of Missouri. I also affirm that the Company does not and will  
not knowingly employ a person who is an unauthorized alien in connection with the contracted services  
for the duration of the contract, if awarded. Attached to this affidavit is documentation of the  
Company's participation in a federal work authorization program.

**(ATTACH DOCUMENTATION SHOWING THAT COMPANY PARTICIPATES IN FEDERAL WORK  
AUTHORIZATION PROGRAM. ALSO ATTACH DRIVER'S LICENSE OR OTHER PROOF OF LAWFUL  
PRESENCE, AS PROVIDED IN THE GENERAL CONDITIONS – 208.009 RSMo.)**

***In Affirmation thereof, the facts stated above are true and correct (The undersigned  
understands that false statements made in this filing are subject to the penalties provided under §  
575.040 RSMo).***

\_\_\_\_\_  
Signature (person with authority)

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

State of Missouri )

County of \_\_\_\_\_ ) ss.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

My commission expires:

\_\_\_\_\_  
Notary Public



1st Reading:  
2nd Reading:

**SPONSOR:**

**ORDINANCE NO. \_\_\_\_**

**BILL NO. 22-16**

**AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH ALL AMERICAN PAINTING, L.L.C. FOR OUTDOOR POOL PAINTING AT RIVERCHASE.**

**WHEREAS**, the outdoor pools, and related structures, are in need of the annual painting before the 2022 summer season (the “Project”); and

**WHEREAS**, as discussed during the March 10, 2022, Committee Meeting, due to the current staffing shortage and the need to have the pools painted quickly to fill in advance of opening weekend to address any unknown concerns, Public Works is requesting that the Board consider hiring a contractor to complete the Project; and

**WHEREAS**, Staff obtained bids from three (3) companies for the Project and, after review of the same, is requesting that the Board consider an agreement with All American Painting, L.L.C. as the lowest, best, and most responsive bidder and because they are able to start the Project at the end of next week; and

**WHEREAS**, the Board of Aldermen has reviewed the three companies that submitted bids, and agrees with Staff’s recommendation that All American Painting, L.L.C. is the lowest, best, and most responsive bidder and that it is in the best interest of the City to get this project completed ASAP as stated by Staff; and

**WHEREAS**, the Board of Aldermen finds that good cause exists to waive the City’s formal bidding procedures and desires and finds it in the best interest of the City to enter into a contract with All American Painting, L.L.C. for the Project.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FENTON, MISSOURI, AS FOLLOWS:**

**Section 1.** The Board of Aldermen hereby waives its formal bidding procedures for good cause and authorizes the Mayor to execute on behalf of the City a contract with All American Painting, L.L.C. for the Project in substantially the form of Exhibit 1 attached hereto and incorporated herein by reference (the “Contract”), including all documents specified in the Contract.

**ORD. NO. \_\_\_\_\_**

**ORD. NO. \_\_\_\_\_**

**Section 2.** The requirements of Section 292.675 RSMo. and the OSHA requirements and obligations and penalties in the Contract are hereby incorporated herein by reference and made a part of this ordinance for all purposes.

**Section 3.** This ordinance shall be in full force and effect after the date of its passage and approval.

PASSED this 16<sup>th</sup> day of March, 2022.

\_\_\_\_\_  
BOB BRASSES, MAYOR

APPROVED this 16<sup>th</sup> day of March, 2022.

\_\_\_\_\_  
BOB BRASSES, MAYOR

ATTEST:

\_\_\_\_\_  
Jane Hungler, City Clerk

Motion to approve. Roll Call vote:

Ayes:

Nays:

Absent:

**ORD. NO. \_\_\_\_\_**

**Exhibit 1**

**City of Fenton, Missouri  
CONSULTANT/ CONTRACTOR SERVICES CONTRACT**

**THIS AGREEMENT**, made and effective as of March 16, 2022 (“Agreement” or “Contract”), by and between the **City of Fenton**, a Missouri municipal corporation, hereinafter referred to as City, and All American Painting, L.L.C. located at **9400 Irvington Avenue, St. Louis MO 63134** hereinafter referred to as “GENERAL CONTRACTOR,”

**WITNESSETH:** That the parties hereto, for the considerations hereinafter set forth, agree as follows:

**I. SCOPE OF SERVICES**

General Contractor services are necessary for the following Project of the City: Painting of the Outdoor Pools at RiverChase.

Except as expressly specified herein, General Contractor hereby agrees to provide all of the supervision, labor, technical services, facilities, materials, tools, equipment, and apparatus, and to perform all the services and do all the things necessary for the proper completion of the services which are generally described as painting of the outdoor pools and related structures, including performing the same work contained in the base bid for the alternate #1 (lap pool), at RiverChase and as more specifically described in the attached **Exhibit A** incorporated herein.

Consultant shall perform the services listed on **Exhibit A** to the highest standard of the industry and provide the City warranties for any equipment and materials in accordance with applicable law, including the Uniform Commercial Code Standards. The above services (hereinafter referred to as the Work) shall be provided by the General Contractor in accordance with all the provisions of this Contract and attached **City of Fenton General Conditions** for the project that are incorporated herein by reference, and which terms shall prevail over any conflicting terms that may otherwise be adopted herein as part of any exhibit. This Contract including all attachments hereto shall be considered the “Contract Documents.” General Contractor shall perform the Work at the highest standard of the industry and provide the City warranties for any equipment and materials in accordance with this Contract and applicable law.

**II. COMPENSATION**

**A. Basic Compensation.** The City hereby agrees to pay the General Contractor, as full compensation for the complete and satisfactory performance of the contract, and all expenses and costs related thereto:

a sum not to exceed \$47,714.00 (the “Contract Sum”).

or (if above box is not checked):

such amount as is set forth on an attached Exhibit A

**B. Additional Compensation.** Any additional work to complete the Project not within the Scope of Services may hereinafter be approved by the Public Works Director in writing pursuant to a Change Order as provided for and in accordance with the General Conditions and City’s Purchasing Policy.

**III. TIME AND MANNER OF PAYMENTS**

All invoices complete with necessary support documentation shall be submitted in triplicate to the City and payment shall be made by City in a lump sum within thirty (30) days of receipt of an invoice received after satisfactory performance, completion, and inspection of the Work.

**IV. CONTRACT SCHEDULE**

“This Contract shall commence upon full execution by all parties and continue until satisfaction of the Work by General Contractor in the City’s sole discretion. General Contractor understands that time is of the essence for the Work.”

**IN WITNESS WHEREOF**, the parties hereto have signed this Agreement as of the effective date of Contract first above written.

**GENERAL CONTRACTOR**

**CITY OF FENTON, MISSOURI**

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

By: \_\_\_\_\_  
BOB BRASSES, MAYOR

Title: \_\_\_\_\_

DATED: \_\_\_\_\_

DATED: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

**CITY OF FENTON, MISSOURI  
PURCHASE CONTRACT GENERAL CONDITIONS**

**Independent Contractor.** The General Contractor shall be and operate as an independent Contractor in the performance of this Contract. The General Contractor shall have complete charge of the personnel engaged in the performance of the Work, and all persons employed by the General Contractor shall be employees of said General Contractor and not employees of the City in any respect. The General Contractor shall supervise and direct the Work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work.

**Compliance with Laws.** The General Contractor shall comply with all applicable City ordinances and other laws and regulations, Federal, State, and any political subdivision thereof, including but not limited to, Title VI, unemployment and workers' compensation, occupational safety, equal employment and affirmative action and wage and price laws insofar as applicable to the performance of the Contract. General Contractor and any subcontractor shall require all on-site employees to complete the ten-hour training program required under § 292.675.2 RSMo. On-site employees who have previously completed such ten-hour training program must hold documentation of prior completion of the program. Notice is hereby given to General Contractor that it shall be subject to the penalties set forth in Subsection 292.675.4 RSMo. for violation thereof and such penalties shall be forfeited to the City pursuant to such Subsection. In the event of a conflict between laws, codes and regulations of various governmental entities having jurisdiction over the Work, the General Contractor shall notify the City of the nature and impact of such conflict. The City agrees to cooperate with the General Contractor in an effort to resolve any such conflict.

General Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Work. If General Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules, and regulations and without such notice to the City, General Contractor shall assume full responsibility therefor and shall bear all costs attributable thereto.

General Contractor shall secure and pay for all permits, governmental fees, and licenses necessary for the proper execution and completion of the Work, including those required to be obtained from the City, except fees imposed solely by the City shall be waived at the time of application. General Contractor shall pay all royalties and license fees payable on all designs, processes, or products used in connection with the work or incorporated therein, unless otherwise agreed upon by the City. General Contractor shall defend all suits or claims for infringement of any patent rights and shall indemnify and hold the City harmless from and against any loss on account thereof.

**Compliance with State Immigration Statutes.** As a condition for the award of this Agreement, the General Contractor shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Work. The General Contractor shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Work. Such affidavits shall be in substantially the form provided in **Exhibit B**. The General Contractor shall not be required to provide these affidavits to the City if such affidavits have been previously provided to the City within the past year. All words in this paragraph shall have the definitions as provided in Section 285.525 RSMo.

Pursuant to Section 208.009 RSMo., the General Contractor shall provide at the earlier of submission of any bid or execution of any agreement affirmative proof that the Applicant for the General Contractor is a citizen or a permanent resident of the United States or is lawfully present in the United States. The Applicant for the General Contractor (or "Applicant") shall be the person authorized to prepare, submit and sign contract documents on behalf of the General Contractor and shall be eighteen years of age or older. Such affirmative proof shall include documentary evidence recognized by the Missouri Department of Revenue when processing an application for a driver's license, a Missouri driver's license, as well as any document issued by the federal government that confirms an alien's lawful presence in the United States.

**Safety Precautions and Programs.** The General Contractor shall initiate, maintain, and supervise safety precautions and programs in connection with the performance of the Work.

**Safety of Persons and Property.** The General Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury, or loss to:

1. All employees on the Work and all other persons who may be affected thereby;

2. All the Work, all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the General Contractor or any of his subcontractors or sub-subcontractors; and
3. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, sprinkler systems, structures, and utilities not designated for removal, relocation or replacement in the course of construction.

General Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority having jurisdiction over the safety of persons or property to protect them from damage, injury or loss. The General Contractor shall erect and maintain all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying the City and users of adjacent utilities. The General Contractor shall provide signs, barrels, or any other safety devices which the City deems necessary for public safety. No additional payment will be made and this work shall be considered incidental to the Contract. The City may place safety devices as it deems necessary if the General Contractor fails to provide the required items within 24 hours of notification. The Contract Sum shall be reduced by the cost of these devices. All damage or loss to any property caused in whole or in part by General Contractor, any subcontractor, any sub-subcontractor, or anyone directly or indirectly employed by anyone for whose acts they may be liable, shall be remedied by General Contractor.

**Construction Limits.** The construction limits consist of public areas. General Contractor shall limit his operations accordingly and shall not enter upon private property nor place any materials thereon. No activity outside the public areas or easement areas shall be performed without the express written permission of the property owner and City. Suitable temporary barriers shall be provided to protect traffic from the Work if necessary. At all times until final acceptance of the Work, the Contractor shall provide and maintain such signs, lights, barriers, cones, watchmen or flaggers as may be necessary to properly protect the Work and provide for safe and convenient public travel. In the case of open excavations or other potentially hazardous conditions existing during non-working periods, the traveling public will be protected and advised by signs and flasher barricades. Parking of equipment or storage of materials on or near the Project site will be permitted only if adequate protective devices are provided and then only for the minimum time required for any specific job.

**Labor and Materials.** Any manufactured goods or commodities used or supplied in the performance of the Project or any subcontract thereto shall be manufactured or produced in the United States as required and in accordance with Section 34.353 RSMo.

- a) This section shall not apply when:
  - 1) The purchase, lease, or contract involves an expenditure of less than twenty-five thousand dollars;
  - 2) Only one line of a particular good or product is manufactured or produced in the United States;
  - 3) The specified products are not manufactured or produced in the United States in sufficient quantities to meet the City's requirements or cannot be manufactured or produced in the United States within the necessary time in sufficient quantities to meet the City's requirements;
  - 4) Obtaining the specified products manufactured or produced in the United States would increase the cost of the contract by more than ten percent.
- b) If this section shall not apply because of the circumstance described in paragraphs (a)(3)-(4), then the General Contractor shall provide the City with the information necessary to make the certifications required under Section 34.353 RSMo.

General Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him. If the City reasonably objects to any person employed by the General Contractor or Subcontractor, the employee shall be removed from the site. General Contractor shall be responsible to the City for the acts and omissions of all his employees and all Subcontractors, their agents and employees and all other persons performing any of the Work under a contract with General Contractor.

**Subcontracts.** This Contract shall not be assigned by the General Contractor. Except as expressly authorized herein, the General Contractor shall not subcontract any of the Work to be performed by it hereunder without the express written consent of the City.

**Changes; Change Orders.** No change in this Contract shall be made except in writing prior to the change in work or terms being performed. The Public Works Director, without invalidating the Contract, may order Changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and the Construction Schedule being adjusted in accordance with this Contract. All such changes in the Work shall be authorized by Change Order and shall be executed under the applicable conditions of the Contract Documents and City's purchasing policy. A Change Order is a written order to the General Contractor signed by the City or City representative, issued after the execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Construction Schedule. The Contract Sum may be changed only by Change Order.

The General Contractor shall make all requests for a Change Order on forms provided by the City upon written request to the City. If the General Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the City written notice thereof within twenty (20) days after the occurrence of the event giving rise to such claim. This notice shall be given by the General Contractor before proceeding to execute the Work. No such claim shall be valid unless so made. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

The cost or credit to the City resulting from a Change in the Work shall be determined in accordance with this Contract. If the Contract is silent on the cost for such additional work, prior to the commencement of such changed or revised work, General Contractor shall submit promptly to the City, a written cost or credit proposal for such revised Work for consideration and acceptance by the City. If City and General Contractor shall not be able to agree as to the amount, either in consideration of time or money to be allowed or deducted, it shall nevertheless be the duty of General Contractor, upon written notice from the City, to immediately proceed with such alteration or change, and General Contractor shall be compensated the reasonable value of such Work.

**Minor Changes in Work.** The Public Works Director shall have authority to order minor changes in the Work not involving any adjustment in the Contract Sum or the Construction Schedule and not inconsistent with the intent of the Contract Documents. Such changes may be affected by Field Order or by other written order. Such changes shall be binding on the City and the General Contractor.

**Coordination with Utilities.** General Contractor shall contact and coordinate with all affected utilities prior to commencing any operations. Prior to commencement of any work involving excavation, demolition of facilities or the erection of posts, it will be the sole responsibility of the General Contractor to notify all utilities of the planned work and request that the utilities suitably mark underground installations in the vicinity of the planned work, and arrange for disconnection of any necessary utilities.

**Uncovering of Work.** If any Work should be covered contrary to the request of the City, it must, if required by the City, be uncovered for his observation and replaced, at General Contractor's expense. If any Work has been covered which the City has not specifically requested to observe prior to being covered, the City may request to see such Work and it shall be uncovered by General Contractor. If such Work is found to be in accordance with the Contract Documents, the Cost of uncovering and replacement shall, by appropriate Change Order, be charged to the City. If such Work is found not to be in accordance with the Contract Documents, General Contractor shall pay the costs of uncovering and replacement.

**Correction of Work.** The General Contractor shall promptly correct all Work rejected by the City as defective or as failing to conform to the Contract specifications and requirements, whether observed before or after substantial completion of the Work, and whether or not fabricated, installed or completed. The General Contractor shall bear all cost of correcting such rejected Work.

**Site Restoration.** The General Contractor at all times shall keep the Work site free from accumulation of waste materials or rubbish caused by his operations. Upon completion of the Work, General Contractor shall restore the worksite to its reasonable condition prior to commencing the Work.

**City's Right to Stop Work.** If General Contractor fails to correct defective Work or fails to supply materials or equipment in accordance with the Contract Documents, the City may order General Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

**City's Right to Carry Out Work.** If General Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform any provision of the Contract, the City may, after seven (7) days written notice to General Contractor and without prejudice to any other remedy the City may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or hereafter due General Contractor the cost of correcting such deficiencies. If the payments then or thereafter due the General Contractor are not sufficient to cover such amount, General Contractor shall pay the difference to the City upon request.

**Warranty.** The General Contractor warrants to the City that all materials and equipment furnished under the Contract and incorporated in the Work will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract. All Work not so conforming to these standards shall be considered defective. The General Contractor shall furnish satisfactory evidence as to the kind and quality of all materials and equipment and shall warrant the Work after substantial completion of the Work.

**One Year Correction Period.** In addition to the General Contractor's general warranty obligation hereunder and as required by applicable law, the General Contractor also hereby expressly guarantees the aforesaid Work as to workmanship and

quality of materials used in connection herewith for a term of one (1) year, commencing on the date of final acceptance by the City, and binds itself, its successors or assigns, to make all repairs or replacements which may become necessary within said period due to construction defects and nonconformity with the Contract Documents. Upon expiration of the one (1) year correction period, the City shall release the Performance and Maintenance Bond, less any amounts reasonably necessary to remedy any of the General Contractor's performance and/or maintenance obligations under this Agreement that may still be outstanding at the time. General Contractor's general warranty obligations required herein and the one-year correction period as required herein, as well as any other obligation to provide surety or a bond, are each an independent and separate obligation of General Contractor. The release or expiration of any guaranty, or any other surety or bond provided for in this Agreement shall not release, or be claimed to release, the obligation to complete the Work according to all warranties, specifications, and requirements expressed or implied by this Agreement or required by applicable law.

**Indemnification.** To the fullest extent permitted by law, the General Contractor agrees to defend with counsel selected by the City, and indemnify and hold harmless the City, its officers, engineers, representatives, agents and employees from and against any and all liabilities, damages, losses, claims or suits, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or any other circumstances, sustained by the City or others, arising from breach of the Contract or out of services and operations performed hereunder by the General Contractor or Subcontractors, or claims relating thereto, and including but not limited to the City's reliance on or use of the services or products provided by the General Contractor or Subcontractors under the terms of this agreement. The General Contractor shall not be liable for any loss or damage attributable solely to the negligence of the City. Nothing herein shall authorize the City to indemnify the General Contractor. To the extent required by law to enforce this provision, General Contractor agrees that this indemnification requires General Contractor to obtain insurance in amounts specified herein and that General Contractor has had the opportunity to recover the costs of such insurance in the Compensation set forth in this Agreement.

**Insurance.** The General Contractor shall obtain and maintain for itself during the term of the Project and the Contract liability insurance coverage of at least \$3,100,000 aggregate and \$460,000 per occurrence. Insurance policies providing required coverages shall be with companies licensed to do business in the State of Missouri and rated no less than AA by Best or equivalent. All costs of obtaining and maintaining insurance coverages are included in the compensation amount and no additional payment will be made therefor by the City. In addition, the General Contractor shall provide Worker's Compensation Insurance in at least statutory amounts for all workers employed for the Services.

Before commencing any Work, the General Contractor shall provide to the City certificates of insurance evidencing the issuance and maintenance in force of the coverages required by this paragraph and bearing an endorsement precluding cancellation of or change in coverage without at least thirty (30) days written notice to the City. Any self-insurance or deductible above \$50,000.00 is not permitted. The City may waive any insurance coverages or amounts required to be carried by the General Contractor under this paragraph when the City deems such waiver to be in the interest of the public health, safety, and general welfare.

NOTHING HEREIN SHALL BE CONSTRUED AS A WAIVER OF THE CITY'S SOVEREIGN IMMUNITY UNDER SECTION 537.610.1 OR OTHERWISE. The purpose of the insurance required under this paragraph is to confirm that the General Contractor has adequate insurance to cover the General Contractor for tort claims that may arise out of the Work. It is not for the purchase of insurance for the City EXCEPT FOR AND ONLY TO THE LIMITED EXTENT OF any claims against the City arising out of the General Contractor's Work and based upon one of the two statutory exceptions to sovereign immunity as expressly set forth in Section 537.600.1(1) and (2). To that limited extent, the City shall be named as an additional insured on the policy bearing an endorsement that: "The Insurer shall not be liable to make any payment for Loss in connection with any Claim made against the City of Fenton as an additional Insured that is barred by sovereign immunity, and nothing contained in this Policy shall constitute a waiver of the City's sovereign immunity." Nothing in this requirement shall be deemed a waiver of the City's sovereign immunity.

**Attorney Fees' and Costs.** The Consultant shall reimburse to the City any costs and attorneys' fees that the City may reasonably incur in pursuit of any remedies at law or equity or enforcement of any rights established in this Agreement, which may result from the Consultant's breach of the Agreement, the Consultant's failure to perform any obligation or requirement contained herein, or the City's enforcement of this Agreement.

**Taxes.** The City is exempt from federal excise tax and Missouri sales tax and the Consultant shall not charge the same to the City.

**Nondisclosure.** The General Contractor agrees that it will not divulge to third parties without the written consent of the City any information obtained from or through the City in connection with the performance of this Contract. Nothing herein shall preclude disclosure of information by the city.



**Other Representations and Other Covenants.** The General Contractor represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents. The General Contractor represents and warrants that the General Contractor has been engaged in such Work as is required for the Project and has provided services such as the ones to be performed under this Agreement to other municipalities and/or private enterprises and that the General Contractor owns sufficient equipment and engages sufficient personnel to perform the General Contractor's obligations under this Agreement. The General Contractor further represents and warrants that the General Contractor is an equal opportunity employer. The General Contractor agrees that the General Contractor shall not use in any form or medium the name of the City for any advertising unless the General Contractor receives the prior written consent of the City.

**Termination.** The City shall have the right to terminate the Contract at any time for any reason by giving the General Contractor written notice to such effect. The City shall pay to the General Contractor in full satisfaction and discharge of all amounts owing to the General Contractor under the Contract an amount equal to the cost of all Work performed by the General Contractor up to such termination date, less all amounts previously paid to the General Contractor on account of the Contract Price. The General Contractor shall submit to the City its statement for the aforesaid amount, in such reasonable detail as the City shall request, within thirty (30) days after such date of termination. The City shall not be liable to the General Contractor for any damages on account of such termination for loss of anticipated future profits with respect to the remainder of the Work.

**Termination by City for Cause.** In addition to all other remedies available to the City, the City may terminate the Contract if General Contractor:

1. Repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
2. Disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
3. Otherwise is guilty of substantial breach of a provision of the Contract Documents.

When any of the above reasons exists, the City may without prejudice to any other rights or remedies of the City and after giving the General Contractor and the General Contractor's surety, if any, seven days' written notice, terminate employment of the General Contractor and may, subject to any prior right of the surety:

1. Exclude General Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by General Contractor;
2. Finish the Work by whatever reasonable method the City may deem expedient. Upon written request of General Contractor, the City shall furnish to General Contractor a detailed accounting of the costs incurred by the City in finishing the Work.

When the City terminates the Contract for cause, the General Contractor shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for professional services (including architects and engineers) and expenses made necessary thereby, and other damages incurred by the City and not expressly waived, such excess shall be paid to General Contractor. If such costs and damages exceed the unpaid balance, General Contractor shall pay the difference to the City. The amount to be paid to the General Contractor or City, as the case may be, shall be certified by the project architect, upon application, and this obligation for payment shall survive termination of the Contract.

**Multi-year contracts; Non-appropriation.** Notwithstanding any provision herein to the contrary, the City is obligated only to make the payments set forth in the attached contract as may lawfully be made from funds budgeted and appropriated for that purpose during the City's then current fiscal year at the discretion of the City. If no funds are appropriated or otherwise made legally available to make the required payments for this Agreement during the next occurring fiscal year (an "Event of Nonappropriation"), this Agreement will terminate at the end of the then current fiscal year as if terminated expressly. The failure or inability of the City to appropriate funds for this Agreement in any subsequent fiscal year shall not be deemed a breach of this Agreement by any party. If applicable, this Agreement may be annually renewed at each fiscal year by inclusion of specific appropriation for this Agreement, from year to year not to exceed the maximum renewal period or term as set forth in the Agreement.

**Accounting.** During the period of this Contract, the General Contractor shall maintain books of accounts of its expenses and charges in connection with this Contract in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the General Contractor.

**Other Contractors.** The City reserves the right to employ other consultants and contractors in connection with the Work.

**Project Records and Work Product.** The General Contractor shall provide the City with copies of all documents pertinent to the Work which shall include, without limitation, reports, correspondence, meeting minutes, and originals of all deliverables. The City shall own all right, title and interest, including without limitations, all copyrights and intellectual property rights, to all documents and Work Product of the General Contractor created in performance of or relating to this Contract. General Contractor agrees to take all steps reasonably requested by the City to evidence, maintain, and defend the City's ownership rights in the Work Product. At the conclusion of the job, the General Contractor shall submit to the City one (1) set of mark ups for as-builts.

**Site Operations.** Where appropriate, the City will arrange for right of entry to any property at the request of the General Contractor for the purpose of performing studies, tests, and evaluations in connection with the Work.

**Personnel.** The Work shall be performed exclusively by the personnel of the General Contractor and authorized subcontractors and no other personnel shall perform any of the Work without the express written approval of the City.

**Representations.** General Contractor agrees that it has not relied on any representations or warranties of the City, oral or written, other than expressly identified in this Contract. The parties agree the Contract represents the entire agreement between the parties.

**Governing Law.** This Contract shall be governed by and construed and interpreted in accordance with the laws of the State of Missouri and without regard to its principles of conflict of laws, with venue shall be in St. Louis County, Missouri. As a prerequisite to the General Contractor filing any claim against the City in any court of law or equity pursuant to this Contract, the General Contractor agrees that its shall be bound to first file such claim with the City's Board of Administrative Review, pursuant to and in accordance with Chapter 160 of the City Code. This Agreement is not intended to and shall not create any rights enforceable by any third-party beneficiary.

**Counterparts.** This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement.

**Other Special Provisions.** NA.

**EXHIBIT A**



March 14, 2022

City of Fenton  
Attn: Parks and Recreation

Re: RiverChase Aquatic

To whom it may concern,

Per my site visit and the following scope of work, we propose to furnish all necessary labor, materials, full insurance and environmental fees to perform the following:

- Mechanically grind rough surfaces with a diamond wheel grinder
- Pressure wash pool surface to remove contaminants from surface
- Clean and route out any surface cracks larger than 1/8" wide using a diamond crack chaser wheel to open up the joint and promote adhesion of epoxy patch
- Apply two (2) coats of Tnemec Series 215 Epoxy Patch to any surface cracks larger than 1/8" wide
- Apply two (2) coats of Tnemec Series 161 Epoxy Coating to entire pool surface
- Apply two (2) coats of Tnemec Series 161 Epoxy Coating (blue) to safety stripes and bullnose of steps
- Broadcast silica sand into final coat to create a skid/slip resistant surface
- Mechanically sand scs spray features, mushrooms and supports to promote adhesion of new coatings
- Pressure wash scs spray features, mushrooms and supports to remove contaminants
- Prime and finish paint scs spray features, mushrooms and supports

Base Bid.....\$32,468.00

Alternate #1 (Lap Pool):

- If lap pool is requested to be pressure washed and painted with the Tnemec system

Add to Base Bid.....\$15,246.00

9400 Irvington Avenue, St. Louis, Missouri 63134  
(314)-522-9400

Clarifications:

No warranty due to no sandblasting

No caulking figured

Draining of the pool figured to be done by others

No work figured on pool deck

No work figured on slides or slide tower

No work figured on diving boards

Not responsible for unforeseen structural damages

Not responsible for any hydrostatic pressure issues

Not responsible for structural damages on scs spray features and supports

No repairs to scs spray features or supports figured

No work figured on pvc piping

If you have any questions or concerns, feel free to contact me at 314-522-9400.

Sincerely,

John Phillips

All American Painting Company

9400 Irvington Avenue, St. Louis, Missouri 63134  
(314)-522-9400

**EXHIBIT B**

**AFFIDAVIT OF PARTICIPATION IN  
FEDERAL WORK AUTHORIZATION PROGRAM  
(CONTRACTS OVER \$5,000)**

Comes now \_\_\_\_\_ as \_\_\_\_\_ first being duly sworn, on my oath,  
(name) (office held)  
affirm \_\_\_\_\_ ("Company") is enrolled and will continue to participate in a federal work  
(company name)  
authorization program in respect to employees that will work in connection with the contracted  
services related to \_\_\_\_\_ of the City of Fenton and any  
incidental items associated with this work for the duration of the contract, if awarded, in accordance  
with Section 285.530.2, Revised Statutes of Missouri. I also affirm that the Company does not and will  
not knowingly employ a person who is an unauthorized alien in connection with the contracted services  
for the duration of the contract, if awarded. Attached to this affidavit is documentation of the  
Company's participation in a federal work authorization program.

**(ATTACH DOCUMENTATION SHOWING THAT COMPANY PARTICIPATES IN FEDERAL WORK  
AUTHORIZATION PROGRAM. ALSO ATTACH DRIVER'S LICENSE OR OTHER PROOF OF LAWFUL  
PRESENCE, AS PROVIDED IN THE GENERAL CONDITIONS – 208.009 RSMo.)**

***In Affirmation thereof, the facts stated above are true and correct (The undersigned  
understands that false statements made in this filing are subject to the penalties provided under §  
575.040 RSMo).***

\_\_\_\_\_  
Signature (person with authority)

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

State of Missouri )

County of \_\_\_\_\_ )

ss.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

My commission expires:

\_\_\_\_\_  
Notary Public

