CONTRACT
for
PLUMBING REPAIR ON-CALL SERVICES

CONTRACT 20200043

THIS CONTRACT entered into this 7th day of April, 2020, by and between the CITY OF WICHITA, KANSAS, a municipal corporation, hereinafter called "CITY", and DEAN E. NORRIS, INC. (Vendor Code Number 807095), whose principal office is at 2929 S. Minneapolis, Wichita, Kansas, 67216, Telephone Number (316) 688-1901, hereinafter called "VENDOR".

WHEREAS, the CITY has solicited proposals for Plumbing Repair On-Call Services (Formal Proposal – 190078) [Commodity Code Number 91060]; and

WHEREAS, VENDOR has submitted the proposal most beneficial to the CITY and is ready, willing, and able to provide the commodities and/or services required by the CITY.

NOW, THEREFORE, the parties hereto agree as follows:

1. Scope of Services. VENDOR shall provide to the CITY all those commodities and/or services specified in its response to Formal Proposal Number – 190078 [Commodity Code Number 91060], which are incorporated herein by this reference the same as if it were fully set forth. The proposal package, including all specifications, plans and addenda, provided by the City of Wichita as part of the proposal letting process for Formal Proposal Number – 190078, shall be considered a part of this contract and is incorporated by reference herein.

2. Compensation. CITY agrees to pay to VENDOR the following unit prices for Plumbing Repair On-Call Services for the Formal Proposal – 190078 [Commodity Code Number 91060], for Various Departments, Boards and Agencies as shown below as compensation as per the proposal, plans, specifications, addenda and VENDOR’s proposal of December 19, 2019, and as approved by the City Council on April 7, 2020. CITY agrees to pay to VENDOR, License #1602, the hourly labor rate of seventy dollars ($70.00) per man per hour while on the job site and a twenty percent (20%) markup above cost on parts for commercial and residential plumbing services during normal business hours, 8:00 a.m. – 5:00 p.m., Monday through Friday. Heavy equipment rental rates are listed in Exhibit C which is attached as part of this contract.

This hourly rate to include any and all incidental costs such as; per diem, portal to portal and the like. The City of Wichita will pay a standard hourly rate for service calls between 8:00 a.m. and 5:00 p.m., Monday through Friday. The City will pay one and one-half (1½) times the standard hourly rate for service calls after 5:00 p.m. and all day Saturday, Sunday and holidays. The hourly rate will be paid for only the time at the job site (one hour guarantee minimum), no travel time will be paid.
The minimum charge for the service call per location will be the standard hourly labor rate during regular hours and one and one-half (1½) times that rate for the service call after 5:00 p.m., all day Saturday, Sunday and holidays. Service call must include charges such as fuel, trip, mobilization, personal vehicle, service truck and mileage charges.

The contractor shall make such repairs as deemed necessary by the City Departments, Boards and Agencies and the Wichita Housing Authority. Such service will be rendered. Contractor must supply twenty-four (24) hour emergency service, seven (7) days a week including holidays, when needed. The contractor shall remove and dispose of all salvage material (except copper pipe, which is to be returned to the Wichita Housing Authority).

The contractor shall respond to a service request on the same day, if the request is received by 10:00 a.m. or on the next day if service request is received after 10:00 a.m.

Contractor to supply a detailed invoice stating type of work performed for each plumbing repair. Invoices to contain the address where the work was done, the name of the person who authorized the work, number of hours times the contract hourly rate, and a detail of the material used showing quantities of each item, part number, brand name, description and unit cost of each item, date work performed and signed by the City representative at the job site.

CONTRACTOR further agrees that at all times during the prosecution of said improvement Dean E. Norris, Inc. will maintain the proper safeguards, barricades and lights on the work and every portion thereof to insure the highest degree of safety to the public, and that Dean E. Norris, Inc. will hold the City of Wichita harmless in all suits for damages brought against either of the parties to this contract on account of the negligent acts, omissions or default of said CONTRACTOR, their agents or servants in the prosecution of the work on said improvement.

After any and all work herein specified has been completed, the Contractor shall guarantee their work to be free from defects for a period of one year. Such defects shall apply to faulty materials and workmanship. In the event of the development of said defects, the Contractors shall remedy the failure at their expense within a reasonable time after the notice. All plumbing equipment shall be guaranteed by the manufacturer's warranty.

3. Term. The term of this contract shall be effective from April 7, 2020 through March 31, 2021 with options to renew the contract under the same terms and conditions for two (2) successive one (1) year terms by mutual agreement of the parties. This contract is subject to cancellation by the city, at its discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to VENDOR.
4. Indemnification and Insurance.

a. VENDOR shall save and hold the CITY harmless against all suits, claims, damages and losses for injuries to persons, property or other liability loss arising from or caused by errors, omissions or negligent acts of VENDOR, its officers, agents, servants, or employees, occurring in the performance of its services under this Contract, or arising from any defect in the materials or workmanship of any product provided in the performance of this Contract.

b. CONTRACTOR will carry insurance coverage during the term of this contract and any extensions thereof in the amounts and manner provided as follows:

1. Commercial General Liability covering premises—operations, explosion, collapse and underground) hazards, Product/Completed operations, Broad Form Property Damage, and Contractual Liability with minimum limits as follows:

   - Bodily Injury Liability $500,000 each occurrence
     $500,000 each aggregate
   - Property Damage Liability $500,000 each occurrence
     $500,000 each aggregate
   - Or
     Bodily Injury and Property Damage Liability (Combined Single Limit) $500,000 each occurrence
     $500,000 each aggregate

2. Automobile Liability - Comprehensive Form including all owned, hired and non-owned vehicles with minimum limits for:

   - Bodily Injury Liability $500,000 each accident
   - Property Damage Liability $500,000 each accident
   - Or

   - Bodily Injury and Property Damage Liability (Combined Single Limit) $500,000 each accident
3. Workers' Compensation

<table>
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<th>Statutory</th>
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<tr>
<td>$100,000 Each Accident</td>
<td>$500,000 Aggregate</td>
</tr>
<tr>
<td>$100,000 Occupational Disease</td>
<td></td>
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</table>

The Insurance Certificate must contain the following:

The City of Wichita shall be added as primary and non-contributory additional insured. The policy shall also provide coverage for contractor’s/vendor’s contractual obligations created in the Agreement. Coverage shall be the greater of the requirements stated here or the contractor’s existing policy.

5. Independent Contractor. The relationship of the VENDOR to the CITY will be that of an independent contractor. No employee or agent of the VENDOR shall be considered an employee of the CITY.

6. No Assignment. The services to be provided by the VENDOR under this Contract are personal and cannot be assigned, delegated, sublet or transferred without the specific written consent of the CITY.

7. Non-Discrimination. VENDOR shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment/Affirmative Action Program Requirements Statement for Contracts or Agreements attached hereto as Exhibit A.

8. Third Party Rights. It is specifically agreed between the parties that it is not intended by any of the provisions of any part of this Contract to create in the public or any member thereof the rights of a third-party beneficiary hereunder, or to authorize anyone not a party to this Contract to maintain a suit for damages pursuant to the terms or provisions of this Contract.
IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

ATTEST:

Jamie Buster
Deputy City Clerk

CITY OF WICHITA, KANSAS

Melinda A. Walker
Purchasing Manager

APPROVED AS TO FORM:

Jennifer Magana
City Attorney and Director of Law

DEAN E. NORRIS, INC.

Signature

Print Name

Brandon J. Whipple, Mayor

Title (President or Corporate Officer)
EXHIBIT A

CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. Terms Herein Controlling Provisions: The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.

2. Choice of Law: This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.

3. Termination Due To Lack of Funding Appropriation: If, in the judgment of the City’s Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.

4. Disclaimer of Liability: City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

5. Acceptance of Agreement: This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

6. Arbitration, Damages, Jury Trial and Warranties: The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

7. Representative’s Authority to Contract: By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.

8. Federal, State and Local Taxes: Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption. City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

9. Insurance: City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.
10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.

11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 et seq.) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties accept that City must comply with the Kansas Open Records Act, and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.

12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin, ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase “equal opportunity employer;” (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto. Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the City cumulatively total $5,000 or less during the City’s fiscal year. You will be contacted if you are the successful vendor and do not have a current EEO/AA submittal on file with the Purchasing Office and/or have not REGISTERED VIA THE CITY’S WEB SITE: https://ep.selfservice.wichita.gov/mss/

Questions about the City of Wichita’s EEO/AA submittal requirements should be directed to (316) 268-4417.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management...
(SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.

15. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.

10/22/2019
EXHIBIT B
CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR ADDENDUM

1. This Agreement shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of: state, federal, and social security taxes; unemployment taxes; workers’ compensation and self-employment taxes. No federal, state, or local taxes of any kind shall be withheld or paid by City.

2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers’ compensation coverage; or (c) health insurance coverage. Contractor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City’s workers’ compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor’s operations or the performance of services by Contractor hereunder.

3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes. (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions. (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor’s performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.

4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.

5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site.

6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers’ compensation insurance coverage as required by this Agreement.

7. Contractor has and hereby retains control of and supervision over the performance of Contractor’s obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.

8. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.

9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City’s employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.

10. Contractor will not combine its business operations in any way with City’s business operations and each party shall maintain their operations as separate and distinct.
## List of Rates

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<th>Week Rate</th>
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*FOR THE HOURLY RATE, DIVIDE DAY RATE BY 8.*