

BILL NO. 3096

ORDINANCE NO. _____

AN ORDINANCE ACCEPTING THE PROPOSAL OF BID AWARD BETWEEN D & E PLUMBING AND HEATING, INC. AND THE CITY OF BRANSON, AND AUTHORIZING THE MAYOR TO ENTER INTO THE AGREEMENT PERTAINING TO THE BUSINESS 65 WIDENING PROJECT.

WHEREAS, the City of Branson advertised for bids to construct the widening of Business 65 from Compton Drive to Skaggs Road; and

WHEREAS, of the bids which were received, D & E Plumbing and Heating, Inc. has been recommended for approval; and

WHEREAS, the Board of Aldermen desire to award the contract to construct the Business 65 Widening Project, including the bid alternates.

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

Section 1: The Board of Aldermen hereby accepts the proposal of D & E Plumbing and Heating, Inc. to construct the Business 65 Widening Project pursuant to Exhibit "A", as attached hereto and incorporated herein by reference, including the bid alternates, and authorizes the Mayor to execute the agreement on behalf of the City of Branson.

Section 2: This ordinance shall be in full force and effect upon and after its passage and approval.

Read, this first time on this ____ day of _____, 2005.

Read, this second time, passed and truly agreed to by the Board of Aldermen of City of Branson, Missouri this ____ day of _____, 2005.

Louis E. Schaefer
Mayor

ATTEST:

Lisa K Westfall
City Clerk

APPROVED AS TO FORM:



Joseph L. Johnson
City Attorney

CONSTRUCTION CONTRACT

THIS CONTRACT, made and entered into this ____ day of _____, 20____, by and between D&E Plumbing & Heating, hereinafter called "Contractor", and the City of Branson, Missouri, a municipal corporation, hereinafter called "Owner".

WITNESSETH: That Whereas, the Contractor has become the lowest responsible bidder for furnishing the supervision, labor, tools, equipment, materials and supplies and for constructing the following City improvement(s):

Asphalt widening, mill and overlay, new storm sewers and storm inlets along Business 65, between Compton Ave. and Skaggs Road.

The parties to this contract agree to the following:

1. Manner and Time for Completion. The Contractor agrees to furnish all supervision, labor, tools, equipment, materials and supplies necessary to perform, and to perform said work at Contractor's own expense in accordance with the contract documents and any applicable City ordinances and state and federal laws within 240 calendar days from the date Contractor is ordered to proceed, which order shall be issued by the City Engineer within 30 days after the date of this contract. Contractor shall not proceed with the work unless and until this contract has been signed by all parties, and a Notice to Proceed has been issued by the Owner.

2. Prevailing Wages. It is agreed that all labor utilized in the construction of the aforementioned improvements shall be paid a wage of no less than the "prevailing hourly rate of wages" for work of a similar character in this locality, as established and amended at any time by the Department of Labor and Industrial Relations of the State of Missouri.

3. Insurance. Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall secure and maintain at its own cost and expense, throughout the duration of this contract and until the work is completed and accepted by Owner, insurance of such types and in such amounts as may be necessary to protect it and the interests of Owner against all hazards or risks of loss as hereunder specified or which may arise out of the performance of the Contract Documents. The forms and limits of such insurance, together with the underwriter thereof in each case, are subject to approval by the Owner. Regardless of such approval, it shall be the responsibility of the contractor to maintain adequate insurance coverage at all times during the term of the contract. Failure of the Contractor to maintain coverage shall not relieve it of any contractual responsibility or obligation or liability under the Contract Documents.

The certificates of insurance, including evidence of the required endorsements hereunder the policies, shall be filed with the Owner within ten (10) days after the date of the receipt of Notice of Award of the Contract to the Contractor and prior to the start of work. All insurance policies shall provide thirty (30) days written notice to be given by the insurance company prior to modification, cancellation or nonrenewal of such insurance. Such notices shall be mailed, certified mail, return receipt requested, to the Branson City Engineer.

A. Worker's Compensation Insurance for all of its employees to be engaged in work under the contract, in the amount required by Missouri State Statute.

B. Manufacturer's and Contractor's Public Liability Insurance and Contractor's Property Damage insurance by a company duly licensed and qualified to do business in the State of Missouri by the Missouri Insurance Department. The limits of liability shall be in an amount not less than \$1,000,000.00 per occurrence for personal injuries (including death), except for those claims governed by the provisions of the Missouri

Workmen's Compensation Law, Chapter 287, RSMo, and Contractor's Property Damage Insurance in an amount not less than \$1,000,000.00 per occurrence. The City of Branson must be named as additional insured. Blasting operations shall not be performed unless and until the Contractor has obtained and furnished to the Engineer a certificate of blasting coverage properly executed by a qualified agent or representative of the insurance company. In case the insurance company has no local agent, a telegraphic certificate may be accepted. If the general contractor has furnished satisfactory evidence of insurance as prescribed above with a properly executed certificate of insurance indicating his complete responsibility for all damages normally covered under a standard liability policy, then it will not be necessary that his subcontractors furnish evidence of all coverage prescribed above as the general contractor will be held completely responsible for the acts of his employees and/or subcontractors.

C. Automobile Liability Insurance will be required of all Contractors and/or subcontractors performing work for the City of Branson and evidence of proper coverage will be required through a certificate by a duly authorized agent or representative of a company authorized to do business in Missouri by the Missouri Insurance Department. Limits of liability shall be in an amount not less than \$1,000,000.00 per occurrence for personal injuries (including death), except for those claims governed by the provisions of the Missouri Workmen's Compensation Law, Chapter 287, RSMo. The City of Branson must be named as additional insured. The policy must also specify that the Contractor or his employees and/or the subcontractor's employees operating their own vehicles for business reasons applicable to the performance of their work whether or not involved in operations pertaining to the performance of the contract for the Owner, will be protected by a non-ownership and hired automobile liability policy with limits as described above for automobile liability and property damage.

D. All of the above coverage described pertaining to Worker's Compensation, Public Liability, Automobile Liability and Non-Ownership and Hired Car Liability requiring certificates of insurance to the Owner must specifically provide that "no changes of coverage will be made in the contract nor will any coverage be cancelled or altered without a thirty (30) day notice of cancellation or alteration being mailed to the Engineering Department, City of Branson, Missouri by registered mail."

E. Owner's Protective Liability Insurance shall also be obtained by the Contractor at its own expense and delivered to the Owner naming the City of Branson as the insured with the same insurance company with which the Contractor carries his Contractor's Public Liability Insurance and Automobile Liability Insurance, in an amount not less than One Million Dollars (\$1,000,000) per occurrence for personal injuries (including death), except for those claims governed by the provisions of the Missouri Worker's Compensation Law, Chapter 287 RSMo. The City of Branson must be named as additional insured. Further, no policy will be accepted which excludes liability for damage to underground structures or by reason of blasting, explosion or collapse.

F. In case any of this work is subcontracted, the Contractor shall require the Subcontractor to procure and maintain all insurance required in this section and in like amounts and provide copies of the insurance certification to the Engineering Department.

G. Scope of Insurance and Special Hazard. The insurance required under Subparagraphs B and C hereof shall provide adequate protection for the Contractor and his Subcontractors, respectively, against damage claims which may arise from operations under this contract, whether such operations be by the insured or by anyone directly or indirectly employed by it, and also against any special hazards which may be encountered in the performance of this Contract.

NOTE: Subparagraph G is construed to require the procurement of Contractor's protective insurance (or contingent public liability and contingent property damage policies) by a general contractor whose

subcontract has employees working on the project, unless the general public liability and property damage policy (or rider attached thereto) of the general contractor provides adequate protection against claims arising from operations by anyone directly or indirectly employed by Contractor.

H. The Contractor and/or subcontractor shall furnish the Owner, prior to approval of the contract, the policy as specified in this section and satisfactory proof of carriage of all the insurance required by this contract.

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

J. Unless otherwise specifically indicated in the contract documents, no deductibles will be permitted with respect to any of the above described policies.

4. **Liquidated Damages.** The City Engineer may, at his discretion, deduct \$ 1,000.00 from any amount otherwise due under this contract for every day Contractor fails or refuses to prosecute the work, or any separable part thereof, with such diligence as will insure the completion by the time above specified, or any extension thereof, or fails to complete the work by such time, providing that the Owner does not terminate the right of Contractor to proceed. The Contractor agrees that such stipulated damages are a reasonable measure of the Owner's damages for delay and are not intended as a penalty, and Contractor agrees to be stopped from asserting any argument or position to the contrary. The City Engineer is authorized to deduct such liquidated damages from any amount otherwise due under this contract.

5. **Contract Price.** Owner shall pay Contractor for completion of the work in accordance with the Contract Documents an amount in current funds equal to:

Two Million Seven Hundred Ninety Seven Thousand Three Hundred Sixty Eight and no/100 (\$2,797,368.00)

6. **Payment Procedures.** Contractor shall submit Applications for Payment in accordance with the General Conditions. Applications for Payment will be processed by the City Engineer as provided in the General Conditions.

A. **Progress Payments; Retainage.** Owner shall make progress payments on account of the Contract price on the basis of Contractor's Applications for Payment as recommended by City Engineer, on or about the 15th day of each month during construction as provided in paragraphs B and C below. All such payments will be measured by the schedule of values established in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values.

B. Prior to completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as City Engineer shall determine, or Owner may withhold, in accordance with the General Conditions.

C. 90% of work completed (with the balance being retainage). If work has been 50% completed as determined by City Engineer, and if the character and progress of the work have been satisfactory to Owner and City Engineer, Owner, on recommendation of City Engineer, may determine that as long as the character and progress of the work remain satisfactory to them, there will be no additional retainage.

90% (with the Balance being retainage) of materials and equipment not incorporated in the work (but delivered, suitably stored and accompanied by documentation satisfactory to Owner as provided in the General Conditions).

D. Upon completion, in an amount sufficient to increase total payments to Contractor to 99% of the Contract Price (with the balance being retainage), less such amounts as City Engineer shall determine, or Owner may withhold, in accordance with the General Conditions.

E. Final Payment. Upon final completion and acceptance of the work in accordance with the General Conditions, Owner shall pay the remainder of the Contract Price.

7. Interest. All moneys not paid when due as provided in the General Conditions shall bear interest at the maximum rate allowed by law at the place of the project.

8. Contractor's Representations. In order to induce Owner to enter this Contract, Contractor makes the following representations:

A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the bidding documents including "technical data".

B. Contractor has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the work.

C. Contractor is familiar with and is satisfied as to all federal, state and local laws and regulations that may affect cost, progress, performance and furnishing of the work.

D. Contractor is aware of the general nature of work to be performed by Owner and others at the site that relates to the work as indicated in the Contract Documents.

E. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

9. Contractor's Responsibility for Subcontractors. It is further agreed that Contractor shall be as fully responsible to the Owner for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons it directly employs. Contractor shall cause appropriate provisions to be inserted in all subcontracts relating to this work to bind all subcontractors to the same specifications that bind the Contractor, insofar as applicable to the work of subcontractors and to give Contractor the same power regarding termination of any subcontract as the Owner may exercise over Contractor under any provisions of this contract. Nothing contained in this contract shall create any contractual relation between the subcontractor and the Owner or between any subcontractors.

10. General Independent Contractor Clause. This agreement does not create an employee/employer relationship between the parties. It is the parties' intention that the contractor will be an independent contractor and not the Owner's employee for all purposes. The contractor will retain sole and absolute discretion in the judgment of the manner and means of carrying out the contractor's activities and responsibilities hereunder. This agreement shall not be construed as creating any joint employment relationship between the contractor and the Owner, and the Owner will not be liable for any obligation incurred by the Contractor, including but not limited to unpaid minimum wages and/or overtime premiums, or unpaid subcontractors.

11. Termination. The Owner reserves the right to terminate this contract by giving at least five (5) days' prior written notice to the Contractor, without prejudice to any other rights or remedies of the Owner should the Contractor be adjudged a bankrupt, or if Contractor should make a general assignment for the benefit of its creditors, or if a receiver should be appointed for Contractor or for any of its property, or if Contractor should persistently or repeatedly refuse or fail to supply enough properly skilled workmen or proper material, or if Contractor should refuse or fail to make prompt payment to any person supplying labor or materials for the work under the contract, or persistently disregard instructions of the Owner or fail to observe or perform any provisions of this contract.

12. Owner's Right to Proceed. In the event this contract is terminated pursuant to Paragraph 11, then the Owner may take over the work and prosecute the same to completion, by contract or otherwise, and Contractor and its sureties shall be liable to the Owner for any costs over the amount of this contract thereby occasioned by the Owner. In any such case the Owner may take possession of, and utilize in completing the work, such materials, appliances and structures as may be on the work site and are necessary for completion of the work. The foregoing provisions are in addition to, and not in limitation of, the rights of the Owner under any other provisions of the contract, city ordinances, and state and federal laws.

13. Guards and Lights. The Contractor agrees that during the performance of said work, it will maintain proper guards for the prevention of accidents and put up and maintain suitable and sufficient lights.

14. Indemnity.

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

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

C. The Contractor shall indemnify and hold the Owner harmless from all wages or overtime compensation due its employees in rendering services pursuant to this agreement, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act or any other federal or state law.

15. Payment for Labor and Materials. The Contractor agrees and binds itself to pay for all labor done, and for all the materials used in the construction of the work to be completed pursuant to this contract. Contractor shall execute the payment and performance and maintenance bonds attached hereto as Exhibit H.

16. Payment. The Owner will pay the Contractor in accordance with the rate set forth in the Contract Documents, on file in the Engineering Department and by this reference made a part hereof, which shall constitute full and complete compensation for the contractor's work provided hereunder. Such compensation will be paid in progress payments, as established by the Owner, subject to receipt of a requisition for payment and a statement of work provided by the Contractor and agreement by both the Owner and the Contractor that

the Contractor has fully performed the work to be paid for in such progress payments in conformance with the contract.

17. Contract Documents. The contract documents shall consist of the following:

- A. Contract & Addendums
- B. All Change Orders
- C. Bid Plans and Specifications
- D. Standard General Conditions and Technical Specifications
- E. Proposal/Bid
- F. Notice of Award to Contractor
- G. Statement of Bidder's Qualifications
- H. Contract Bond
- I. Instructions to Bidders
- J. Non-Collusion Affidavit
- K. Notice to Proceed
- L. City Business License

This contract, together with the other documents enumerated in this paragraph, forms the Contract between the parties. These documents are as fully a part of the contract as if attached hereto or repeated herein.

18. Subsurface Conditions. Contractor agrees and stipulates that Contractor is on constructive notice of the information contained in the published reports and public actions of the Missouri Division of Geology and Land Survey, and the Contractor stipulates that all subsurface conditions reported therein are reasonably anticipated or foreseeable.

19. Conflict of Interest. In accepting this Contract, Contractor certifies that no member or officer of its firm or corporation is an officer or employee of the City of Branson, Missouri, or any of its boards or agencies, and further that no officer or employee of the Owner has any financial interest, direct or indirect, in this contract. All applicable federal regulations and provisions of RSMo. Section 105.450 et seq. shall not be violated.

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

21. Certification of Nonresident/Foreign Contractors. It is agreed that Contractor shall procure and maintain during the life of this contract:

A. If the Contractor is a foreign corporation, a certificate of authority to transact business in the State of Missouri from the Secretary of State, unless exempt pursuant to the provisions of Section 351.570 RSMo.

B. A certificate from the Missouri Director of Revenue evidencing compliance with the transient employer financial assurance law, unless exempt pursuant to the provisions of Section 285.230 RSMo.

22. Notices. All notices required to be in writing may be given by first class mail addressed to Owner at 110 West Maddux, Branson, Missouri 65616, and Contractor at the address indicated below. The date of delivery of any notice shall be the second full day after the day of its mailing.

23. Entire Agreement. This agreement contains the entire agreement of the parties. No modification, amendment or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.

24. Jurisdiction. This agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this agreement be adjudicated, venue shall be proper only in the Circuit Court of Taney County, Missouri.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed two copies of this Contract. One counterpart each has been delivered to CONTRACTOR and OWNER. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR.

This Contract will be effective on _____, 20__ (which is the effective date of the Contract).

CITY OF BRANSON, MISSOURI

CONTRACTOR -D & E Plumbing & Heating

By: _____

By: _____
Steve Eoff

(SEAL)

(SEAL)

Attest _____

Attest _____

Address for giving notices

Address for giving notices

110 W. Maddux

1112 N. Falcon Crest

Branson, MO 65616

Nixa, MO 65714

(IF OWNER is a public body, attach evidence of License No. _____ Authority to sign and resolution or other documents authorizing execution of Contract).

(IF CONTRACTOR is a corporation, attach evidence of authority to sign)

Approved as to Form:

Joseph L. Johnson
City Attorney