

BILL NO. 1611

ORDINANCE NO. _____

INTRODUCED BY: ALDERMAN DELL'ORCO

**AN ORDINANCE APPROVING AND AUTHORIZING AN AGREEMENT
FOR ENVIRONMENTAL SITE ASSESSMENT SERVICES.**

WHEREAS, the City of Warson Woods ("City") has a contract to purchase 1551 Bennett Avenue (the "Property") which agreement entitles the City to engage in certain due diligence, including an environmental site assessment, within a certain timeframe (the "Due Diligence Period") and which assessment the Board intended to obtain; and

WHEREAS, the City's Procurement Code, Chapter 130, provides procedures for obtaining bids the procurement of professional services; and

WHEREAS, in compliance with the contract provisions and the Board's intent and the City's procurement policies, the City obtained four proposals for obtaining an environmental site assessment; and

WHEREAS, Environmental Operations, Inc., provided the lowest and best bid for the environmental site assessment report and guaranteeing it to be provided in the most timely manner considering the Due Diligence Period; and

WHEREAS, the Board desires to accept, authorize and approve the agreement with Environmental Operations, Inc., for environmental site assessment services;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE
CITY OF WARSON WOODS, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:**

SECTION 1. The Board of Aldermen hereby approves an agreement with Environmental Operations, Inc., for AAI compliant Phase I Environmental Site Assessment services at 1551 Bennett Avenue in substantially the form of the contract, marked "Exhibit 1" attached hereto, and is incorporated herein (the "Agreement"), and authorizes the Mayor to enter into the Agreement on behalf of the City of Warson Woods.

SECTION 2. This Ordinance shall be in full force and effect from and after its passage by the Board of Aldermen and approval by the Mayor.

THIS BILL PASSED AFTER HAVING BEEN READ IN FULL TWO TIMES PRIOR TO
PASSAGE BY THE BOARD OF ALDERMEN OF THE CITY OF WARSON WOODS,
MISSOURI THIS _____ DAY OF APRIL, 2015.

Laurance M. Howe, Mayor

ATTEST:

Kathy Mahany, City Clerk

APPROVED AS TO FORM:

Paul Rost, City Attorney

Exhibit 1
City of Warson Woods, Missouri
CONSULTANT/PROFESSIONAL SERVICES CONTRACT
Phase I Environmental Site Assessment

THIS AGREEMENT, made and effective as of April ____, 2015, by and between the **City of Warson Woods, Missouri**, a Missouri municipal corporation, hereinafter referred to as "**City**," and **Environmental Operations, Inc.**, hereinafter referred to as "**Consultant**," with a business address of 1530 South 2nd Street, St. Louis, Missouri 63104-4500.

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

I. SCOPE OF SERVICES

Consultant will provide environmental site assessment services as described in the attached **Exhibit A** incorporated herein by reference.

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 set forth in the attached **Exhibit A, Scope of Work**, incorporated herein.

The above described services (hereinafter, the "Work") shall be provided by the Consultant in accordance with all the terms of this Contract and the attached **City of Warson Woods Consultant / Professional Services CONTRACT General Conditions** that are incorporated herein by reference; which terms shall prevail over any conflicting terms that may otherwise be adopted herein as part of any exhibit or document attached hereto.

II. COMPENSATION

A. Basic Compensation. The City hereby agrees to pay the Consultant, as full compensation for the complete and satisfactory performance of this Contract, and all expenses and costs related thereto:

Such amount as is set forth in the attached **Exhibit A** that is incorporated herein in its entirety and subject to any such limits as established herein or therein and in approving authorization.

B. Additional Compensation. Any cost not specifically allowed the Consultant pursuant to this paragraph B dealing with additional compensation is included in Basic Compensation above. If City directs in writing additional services not included in this Contract, Consultant's then-current hourly rates apply.

III. TIME AND MANNER OF PAYMENTS

Unless otherwise specifically provided in Exhibit A, 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 of the Work for the fees, prices, rates or schedule of values set forth above.

IV. CONTRACT SCHEDULE

Time is of the essence. The Work to be performed under the Contract shall be commenced as of the date hereof, and shall be completed within a reasonable time.

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

Environmental Operations, Inc.

City of Warson Woods, Missouri

By: _____
Andrew J. Adams
Program Manager – Property Assessment Services

By: _____
Laurance M. Howe, Mayor

DATED: _____

DATED: _____

ATTEST:

City Clerk

CITY OF WARSON WOODS
CONSULTANT/PROFESSIONAL SERVICES CONTRACT
GENERAL CONDITIONS

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

Compliance with Laws. The Consultant 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, environmental protection, equal employment and affirmative action and wage and price laws insofar as applicable to the performance of this Contract. If applicable, the provisions and requirements of section 290.250 R.S.Mo. shall apply and are incorporated herein. In the event of a conflict between laws, codes and regulations of various governmental entities having jurisdiction over the Work, the Consultant shall notify the City of the nature and impact of such conflict. The City agrees to cooperate with the Consultant in an effort to resolve any such conflict.

Subcontracts. The Consultant shall not subcontract any of the Work to be performed by it hereunder without the express written consent of the City. In addition, this Contract shall not be assigned by the Consultant.

Indemnification. To the fullest extent permitted by law, the Consultant 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 negligent acts, errors, or omissions of the Consultant and including but not limited to the City's reliance on or use of the services or products provided by the Consultant under the terms of this Contract. The Consultant shall not be liable for any loss or damage attributable to the negligence of the City. To the extent required by law to enforce this provision, Consultant agrees that this indemnification requires Consultant to obtain insurance in amounts specified herein and that Consultant has had the opportunity to recover the costs of such insurance in the Compensation set forth in this Contract.

Insurance. If requested, Consultant shall furnish the City the certificates of insurance for workers' compensation, public liability, and property damage, including automobile coverage in the amounts specified by the City in the request for proposals, if any, otherwise in the amounts stated on **Exhibit A**, if any, but in no event less than the maximum amounts of liability set forth in Chapter 537.610 R.S.Mo. applicable to political subdivisions. The policies of insurance shall be in such form and shall be issued by such company or companies as may be satisfactory to the City. In addition to the foregoing, the Consultant shall maintain Professional Liability "errors and omissions" insurance in the form for the coverages satisfactory to City as indicated in the request for proposals, if any, otherwise as stated on attached **Exhibit A**, if any, but in no event less than the maximum amounts of liability set forth in Chapter 537.610 R.S.Mo. applicable to political subdivisions. The City, and such additional persons and entities as may be deemed to have an exposure to liability as a result of the performance of the Consultant's work, as determined by the City, shall be named as additional insured with duty of defense on all insurance policies required hereunder. The City and Consultant waive all rights against each other for damages caused by fire or other perils to the extent covered by Builder's Risk or any other property insurance, except such rights as they may have to the proceeds of such insurance; provided that nothing herein shall be deemed a waiver of the City's sovereign immunity relative to any claim against the City.

Nondisclosure. The Consultant 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.

Changes. No change in this Contract shall be made except in writing prior to the change in work or terms being performed. The Consultant shall make any and all changes in the Work without invalidating this Contract when specifically ordered to do so in writing by the City. Consultant, prior to the commencement of such changed or revised work, shall submit promptly to the City, a written cost or credit proposal for such revised Work. If the City and Consultant 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 Consultant, upon written notice from the City, to immediately proceed with such alteration or change, and Consultant shall be compensated the reasonable value of such Work. **No work or change shall be undertaken or compensated for without prior written authorization from the City.**

Termination. The City shall have the right to terminate this Contract at any time for any reason by giving the Consultant written notice to such effect. The City shall pay to the Consultant in full satisfaction and discharge of all amounts owing to the Consultant under this Contract an amount equal to the cost of all Work performed by the Consultant up to such termination date, less all amounts previously paid to the Consultant on account of this Contract Price. The Consultant 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 Consultant for any damages on account of such termination for loss of anticipated future profits with respect to the remainder of the Work.

Multi-year contracts; Non-appropriation. Notwithstanding any provision herein to the contrary, the City is obligated only to make the payments set forth in this 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 Contract during the next occurring fiscal year (an "**Event of Nonappropriation**"), this Contract 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 Contract in any subsequent fiscal year shall not be deemed a breach of this Contract by any party. If applicable, this Contract may be annually renewed at each fiscal year by inclusion of specific appropriation for this Contract, from year to year not to exceed the maximum renewal period or term as set forth in the Contract.

Accounting. During the period of this Contract, the Consultant 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 Consultant.

Other Consultants. The City reserves the right to employ other consultants in connection with the Work.

Request for Proposals. If the City issued a request for proposals in connection with the Work, such request for proposals and the proposal of the Consultant in response thereto are incorporated herein by reference and made a part of this Contract. In case of any conflicts between the request for proposals and the executed Consultant/Services Contract or proposal of the Consultant, the requirements of the City's Request for Proposal and this executed Consultant/Professional Services Contract shall control and supersede unless a change thereto is specifically stated in this Contract (including **Exhibit A**, "Scope of Work").

Records and Work Product. The Consultant 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 Consultant created in performance of or relating to this Contract. Consultant agrees to take all steps reasonably requested by the City to evidence, maintain, and defend the City's ownership rights in the Work Product.

Site Operations. Where appropriate, the City will arrange for right of entry to any property at the request of the Consultant 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 Consultant identified in the Consultant's proposal and no other personnel of the Consultant shall perform any of the Work without the express written approval of the City.

Compliance with State Immigration Statutes. As a condition for the award of this Contract, 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 substantially in 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 Consultant shall provide at the time of submission of any bid affirmative proof that the Applicant for the Consultant is a citizen or a permanent resident of the United States or is lawfully present in the United States. The Applicant for the Consultant (or "**Applicant**") shall be the person authorized to prepare, submit and sign contract documents on behalf of the Consultant, 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.

An Applicant who cannot provide the proof required under Section 208.009 R.S.Mo. at the time of submission of any bid may alternatively sign an affidavit under oath, attesting to either United States citizenship or classification by the United States as an alien lawfully admitted for permanent residence. The affidavit shall be on or consistent with forms prepared by the City, which shall be available from the City Clerk if needed. Any Applicant who signed an above-described affidavit must provide proof of lawful presence within the time provided in Subsection 208.009.5 R.S.Mo. for temporary public benefits and failure to provide such proof within such time may result in the City rescinding and voiding any contract awarded to the Consultant.

Representations. Consultant 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 this Contract represents the entire agreement between the parties.

Governing/Choice of Law. This 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.

Counterparts. This 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.

Other Special Provisions. NA

Exhibit A
Scope of Work



Proposal/Contract

April 13, 2015

To: Cuningham, Vogel & Rost, PC
333 South Kirkwood Road, Ste. 300
St. Louis, Missouri 63122

Re: Proposal #P8596
Phase I Environmental Site Assessment
Church property
1551 Bennet Avenue
Warson Woods, Missouri

Attn: Ms. G. Kimberly Diamond

Scope of Work: Environmental Operations, Inc. (EOI) will perform a Phase I Environmental Site Assessment for the above-referenced site in accordance with the American Society for Testing and Materials (ASTM) Standard E1527-13 Environmental Site Assessments, in compliance with 40 CFR Part 312, Standards and Practices for All Appropriate Inquiries, which shall include:

- Generation and Evaluation of Property History
- Review of Existing Environmental Documentation
- Physical Setting Evaluation
- Government Records Review
- Evaluation of the potential for Vapor Encroachment per ASTM E2600-10
- Interviews with Owners and Occupants
- On-Site Investigation of the Property and Improvements
- Report Generation

Limitations: The *Scope of Work* outlined above has been designed to identify the presence of hazardous substances. Unless requested by the client or deemed necessary, this investigation will not include additional environmental issues such as formaldehyde gas, archaeological sites, or lead in drinking water issues.

The client recognizes that EOI's failure to detect the presence of hazardous substances at a site does not guarantee that hazardous substances do not exist even though EOI has utilized appropriate and mutually agreed upon sampling techniques and audit procedures. The liability of EOI, its agents performing services under this proposal, including professional services, shall in no event exceed the amount of applicable insurance. A certificate of insurance is attached hereto as *Exhibit B*. EOI shall not be liable for indirect, consequential, or incidental damages.

The report is intended only for the internal use of the client and their authorized representatives, and possession does not imply the right of publication or the use for any other purpose without the written consent of EOI, unless required by law. There will be no other intended beneficiaries other than the client and the party named above. Nothing in this Contract designates EOI as the client's agent for compliance with any law, including any reporting obligations.

With the client's written authorization, EOI may be able to assign the report to an additional party at a future date (within 180 days of the issuance of the report). The assessed minimum charge would be \$250.00 per assignee.

Environmental Engineering, Consulting & Remediation, & Demolition
1530 South 2nd Street St. Louis, Missouri 63104-4500 314.241.0900
www.environmentalops.com

Environmental Operations, Inc.
Proposal #P8596

Fee: \$2,200.00 - This is a firm-fixed price, valid for seven days, and includes all costs associated with the completion of the outlined Scope of Work

Regulatory Agency file review – Should a review of regulatory documents or reports of previous environmental investigations or remediation at the subject site and/or adjoining properties supplied by a Federal, State, or Municipal regulatory agency be warranted, four (4) hours of professional time is included in the above price. Should additional time be required to properly evaluate the appropriate files, this professional labor will be billed at a rate of \$95.00 per hour. The client will be notified prior to initiation of this additional review.

One color, hardcopy report is included in the above-named price. An electronic copy (pdf) will be transmitted at no cost. Please note that additional color, hard copy reports will be delivered at the client's request for \$50.00 per copy.

Invoices will be sent upon project completion. Payment of 100% of the invoice is due within 10 days. A 1.5% service charge per month (18% per annum) will be charged on all past due accounts and will accrue from the original date of the past due invoice

Schedule: EOI will provide a report by May 1, 2015, based upon receipt of authorization by April 15, 2015 and the completed information requested in the User's Questionnaire (Exhibit A).

Note: The All Appropriate Inquiry regulations (40 CFR Part 312) require that the User's Questionnaire be completed and returned to the Consultant. If this information is not provided, there is a risk of creating a data gap and limiting the findings of this Phase I report.

Respectfully submitted,



Andrew J. Adams
Program Manager – Property Assessment Services
Attachment

Accepted By: Cunningham, Vogel & Ross, PC

Signature: _____

Name: _____

Title: _____

Date: _____

Additional Copies: _____

To Be Delivered To: _____

If report is to be relied upon by additional parties, please specify: _____

(If EOI is requested to assign reliance to another party at a future date, the assessed minimum charge will be \$250.00 per assignee.)

| Known Environmental Concerns | | |
|--|--|---|
| 1. Are you aware of any environmental cleanup liens, deed notices, or restrictions against the property that are filed or recorded under federal, tribal, state, or local law? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 2. Are you aware of an Activity and Use Limitations that are in place at the property and/or that have been filed or recorded in a registry under federal, tribal, state, or local law? <i>(If yes, check all that apply.)</i> <input type="checkbox"/> Engineering Controls <input type="checkbox"/> Land Use Restrictions <input type="checkbox"/> Institutional Controls <input type="checkbox"/> Other (specify) | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 3. Do you have any specialized knowledge or experience related to the property or nearby properties? For example, are you involved in the same line of business as the current or former occupants of the property or an adjoining property so that you would have knowledge of the chemicals and processes used by this type of business? If yes, describe. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 4. Does this transaction include the purchase of the property? Does the purchase price reflect a fair market value of the property? If not, have you (the user) considered whether the lower purchase price is because contamination is known or believed to be present at the property? | Yes <input type="checkbox"/> Yes <input type="checkbox"/> Yes <input type="checkbox"/> | No <input type="checkbox"/> No <input type="checkbox"/> No <input type="checkbox"/> |
| 5. Are you aware of commonly known or reasonably ascertainable information about the property that could identify releases or treated releases of hazardous materials or petroleum products? Describe specific chemicals that are present or were once present at the property. | Yes <input type="checkbox"/> | No <input type="checkbox"/> <input type="checkbox"/> Not applicable |
| Describe known spills, chemical releases, or environmental cleanups which occurred at the property. | <input type="checkbox"/> Not applicable | |
| 6. As the user, based on your knowledge and experience related to the property, are there any obvious indicators that point to the presence or likely presence of contamination at the property? If yes, describe. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 7. Are you aware of the following environmental concerns at the property? <i>(Check all that apply)</i> <input type="checkbox"/> Underground storage tanks <input type="checkbox"/> Dry cleaners <input type="checkbox"/> Asbestos <input type="checkbox"/> Other (specify) | <input type="checkbox"/> None | |

Environmental Operations, Inc.
Proposal #P8596

| Current and Past Property Use | | | | |
|--|---------------------------------|-----------------------|------------|-----------------------|
| 1. Has the property ever been used for any of the following operations? <i>(Check all that apply)</i> <input type="checkbox"/> None | | | | |
| <input type="checkbox"/> Manufacturing operations <input type="checkbox"/> Gasoline service station <input type="checkbox"/> Automobile repair <input type="checkbox"/> Dry cleaning | | | | |
| 2. Describe property use/operations prior to the construction of the buildings currently at the property, if known. Include chemicals previously stored at the property. | | | | |
| 3. Provide previous property owners, occupants, and/or operators. Attach pages as necessary. | | | | |
| Company | Owner/ Occupant/ Operator | Dates of occupancy | Operations | Contact name & number |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

| EXISTING DOCUMENTATION | | | |
|--|--------------------------|--------------------------|---|
| Does the following documentation exist? If yes, please provide copies. | | | |
| Yes | No | Do not know | |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Environmental Site Assessment Reports |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Environmental Compliance Audit Reports |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Environmental Permits |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Underground Storage Tank/Aboveground Storage Tank registrations |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Underground injection permits |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Material Safety Data Sheets (MSDSs) |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Hazardous waste generator notices |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Geotechnical studies |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Risk Assessments |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Community Right-to-know plan |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Safety Plans |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Spill Prevention Control and Countermeasures (SPCC) Plans |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Emergency preparedness & prevention plans |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Hydrogeologic reports |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Government correspondence & violations |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Recorded Activity and Use Limitations (AULs) |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Environmental Liens |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Other _____ |