CITY OF JOPLIN
COUNCIL AGENDA ITEM

ITEM
Council Bill 2024-112 – Agreement with Four States Doors LLC for the Overhead Door Replacement at Public Works Center Equipment Building.

MEETING DATE
May 6, 2024

ORIGINATING DEPT
Public Works - Operations

ATTACHMENTS
CB2024-112 Ordinance, Agreement, Bid Summary

REVIEWED BY
Director of Public Works, Daniel Johnson; Director of Finance, Leslie Haase; City Attorney, Peter Edwards; Assistant City Manager, Tony Robyn; City Manager, Nicholas Edwards

SUMMARY
This Council Bill will approve an agreement between the City of Joplin and Four States Doors LLC Overhead Door Replacement at Public Works Center Equipment Building in the amount of Thirty-Two Thousand Two Hundred Thirty-Six and 00/100 DOLLARS ($32,236.00).

BACKGROUND
This agreement will consist of the removal of existing overhead doors and tracks along with delivery and installation of 10 new 12’ x 14’ overhead doors and tracks. This will also include the heavy-duty hardware, replace all weather seals and 3 insulated windows in each door. In accordance with the City of Joplin’s procurement policies, a request for proposals for the PWC Overhead Door Replacement at PWC was advertised in the Joplin Globe on February 10, 2024 and bids were received by the city on February 29, 2024. A total of 4 bids received, Four States Doors LLC was the lowest bidder to the engineer’s estimate. Bid was below estimated amount.

FUNDING SOURCE
Transportation Sales Tax

RECOMMENDATION
Staff recommend approval of this Council Bill on first reading.

BID SUMMARY

PROJECT: PWC Doors - 2024

DATE OF BID OPENING: February 29, 2024 2:00PM

CONTRACTOR	BID
Overhead Door	$35,544.00
Wiese - No Bid Form	$53,477.00
Four States Door LLC	$32,236.00
SEK Overhead Door	$51,796.00
Estimate	$45,000.00

AGREEMENT
FOR CONTRACTOR SERVICES

THIS AGREEMENT, made and entered into this _____ day of _____, 2024, by and between the City of Joplin, a municipal corporation of the State of Missouri, hereinafter referred to as the "City" with offices at 602 S. Main Street, Joplin, Missouri, and Four State Doors, LLC, a Missouri corporation, hereinafter referred to as the "Contractor," with offices at 2120 Roosevelt Ave, Suite 2, Joplin, MO 64804.

WITNESSETH:

WHEREAS, the City of Joplin desires to engage the Contractor to render certain services hereinafter described in Bid Package: PWC Doors-2024, which Bid Package is attached hereto and incorporated herein as Exhibit A; and

WHEREAS, the Contractor submitted a proposal dated February 14, 2024, which proposal is attached hereto and incorporated herein as Exhibit B; and

WHEREAS, the Contractor has become the lowest and best Offeror for performing the services listed in the Notice of Award, which Notice of Award is attached hereto and incorporated herein as Exhibit C;

NOW, THEREFORE, in exchange for valuable consideration each received from the other, the receipt and sufficiency of which are hereby acknowledged, the Parties to the contract agree to the following:

1. The City agrees to engage the Contractor and the Contractor agrees to perform, in strict accordance with Exhibit A, and within the time specified therein, the services set forth in Exhibit B. Specifically, Contractor shall remove and replace overhead doors for the Department of Public Works.

2. The services of the Contractor shall commence only as authorized in writing by City purchase order or other written notice and shall be undertaken and completed as promised by the Contractor in Exhibit B. The term of the Agreement shall be for the period specified in Exhibit B.

3. The City agrees to pay the Contractor in accordance with the prices and terms set forth in Exhibit B for work authorized by City purchase order or other written Notice by the City upon presentation of proper invoice and inspection by the City of work completed by the Contractor. Specifically, the City agrees to pay Contractor a total of thirty-two thousand two hundred thirty-six dollars ($32,236.00).

4. All information, data, and reports as are existing, available, and necessary for the carrying out of the work, shall be furnished to the Contractor without charge, and the parties shall cooperate with each other in every way possible in carrying out the scope of services.

5. The Contractor shall fully coordinate its activities in the performance of the contract with the activities of the City.

6. The Contractor represents that the Contractor will secure at the Contractor's own expense all personnel required to perform the services called for under this contract by the Contractor. Such personnel shall not be employees of or have any contractual relationship with the City

except as employees of the Contractor. All the services required hereunder will be performed by the Contractor or under the Contractor's direct supervision and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such services. None of the work or services covered by this contract shall be subcontracted without the written approval of the City.

7. **Termination:** If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner the Contractor's obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the City shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective day of such termination. The City may, without cause, terminate this contract upon 30 day's prior written notice. **In either such event, all finished or unfinished documents, data, studies, reports, or other materials prepared by the Contractor shall, at the option of the City become its property.** The Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed. Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any such breach of the contract by the Contractor.

8. **Assignment:** The Contractor shall not assign any interest in this contract and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the City thereto. Provided, however, that claims for money due or to become due to the Contractor from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished in writing promptly to the City. Any such assignment is expressly subject to all rights and remedies of the City under this agreement, including the right to change or delete activities from the contract or to terminate the same as provided herein, and no such assignment shall require the City to give any notice to any such assignee of any actions which the City may take under this agreement, though City will attempt to so notify any such assignee.

9. Any reports, data, or similar information given to or prepared or assembled by the Contractor under this contract which the City requests to be kept as confidential shall not be made available to any individual or organization by the Contractor without prior written approval of the City.

10. **Modification of Contract:** The Scope of Work to be done under the Contract shall be subject to modification and supplementation upon the written Agreement of the duly authorized representatives of the Contracting parties. No provision in the Contract shall be changed or modified without the execution of a formal amendment to the Contract, mutually agreed to by the City and the Contractor and processed through the Division of Purchases. Upon request by the City, the Contractor shall provide an estimate of cost of any additional work or services to be incorporated by a modification to the Scope of Work and the Contract.

11. **Contract Documents:** The agreement between the City of Joplin and the Contractor shall consist of (1) The Contract form which embodies the requirements contained herein, (2) the Request for Proposal and any amendments thereto and, (3) the proposal, as accepted, submitted in response to the Request for Proposal. In the event of a conflict in language between the documents referenced above, the provisions and requirements set forth and/or

referenced in the Contract shall govern over all other documents, and the Request for Proposal and amendments thereto shall govern over the Contractor's Proposal and amendments thereto. However, the City reserves the right to clarify any Contractual relationship in writing with the concurrence of the Contractor, and such written clarification shall govern in case of conflict with the applicable requirements stated in the Request for Proposal or the Contractor's proposal. In all other matters not affected by the written clarification, if any, the Request for Proposal shall govern. The Contractor is cautioned that the proposal shall be subject to acceptance without further clarification.

12. **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 City's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contributions Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue code, Missouri revenue and taxation laws, Missouri Workers' Compensation, and unemployment insurance laws. 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. The Contractor agrees that it is a separate and independent enterprise from the public employer, that is has a full opportunity to find other business, that is has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This agreement shall not be construed as creating any joint employment relationship between the Contractor and the City, and the City will not be liable for any obligation incurred by the Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

13. The Contractor shall not be entitled to any of the benefits established for the employees of the City nor be covered by the Workers Compensation Program of the City.

14. **Certification of Non-Resident/Foreign Contractors:** If the Contractor is a foreign corporation or non-resident Contractor, it is agreed that the Contractor shall procure and maintain during the life of this contract:

A. 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 351.572 RSMo.

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

15. **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.

16. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services to be performed under this contract. The Contractor further covenants that in the performance of this contract, no person having such interest shall be employed.

17. **Contractor's Responsibility for Subcontractor**: It is further agreed that the Contractor shall

be as fully responsible to the City for the acts and omissions of its subcontractor and of persons either directly or indirectly employed by them, as the 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 Contractor by all the terms herein set forth, insofar as applicable to the work of subcontractor, and to give Contractor the same power regarding termination of any subcontract as the City may exercise over Contractor under any provisions of this contract. Nothing contained in this contract shall create any contractual relation between any subcontractor and the City or between any subcontractors.

18. The certificates of insurance, including evidence of the required endorsements of the policies shall be filed with the City of Joplin within ten (10) days of the date of receipt of the 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 in question prior to modification or cancellation of insurance. Such notices shall be mailed, return receipt requested to:

City Attorney

City of Joplin

602 S. Main Street

Joplin, MO 64801

19. **Liability and Indemnity:**

A. In no event shall the City be liable to the Contractor for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this contract. The maximum liability of the City shall be limited to the amount of money to be paid or received by the City under this contract.

B. The Contractor shall defend, indemnify and save harmless the City, its elected or appointed officials, agents, and employees from and against any and all liability, suits, damages, costs (including attorney fees), losses, outlays, and expenses from claims in any manner caused by, or allegedly caused by, or arising out of, or connected with, this contract, or the work or any subcontract there under (the Contractor hereby assuming full responsibility for relations with subcontractors), including, but not limited to, claims for personal injuries, death, property damage, or for damages from the award of this contract to Contractor.

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

D. The indemnification obligations of the contractor hereunder shall not be limited by any limitations as to the amount or type of damages, compensation, or benefits payable by or for the Contractor, under any federal or state law, to any person asserting the claim against City, it's elected or appointed officials, agents, and employees, for which

indemnification is sought.

E. The indemnification obligations herein shall not negate, abridge, or reduce in any way any additional indemnification rights of the City, its elected or appointed officials, agents, and employees, which are otherwise available under statute or in law or equity.

F. Contractor affirms that it has had the opportunity to recover the costs of the liability insurance required in this agreement in its contract price. Contractor's obligation under this agreement to defend, indemnify, and hold harmless any person from that person's own negligence or wrongdoing is limited to the coverage and limits of the applicable insurance.

20. **Conflict of Interest:** No salaried officer or employee of the City and no member of the City Council shall have a financial interest, direct or indirect, in this contract. A violation of this provision renders the contract void. Any federal regulations and applicable provisions in RSMo. Chapter 105 shall not be violated.

21. **Entire Agreement:** This agreement, including the contract documents contained or referenced herein, constitutes the entire agreement between the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referred hereto and signed by both parties.

22. **Waiver:** No provision of the contract documents shall be construed, expressly or by implication, as a waiver by the City of any existing or future right or remedy available by law in the event of any claim of default or breach of contract.

23. **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, the venue shall be proper only in the Circuit Court of Jasper County, Missouri.

24. **Notices:** All notices required or permitted hereunder and required in writing may be given by first class mail addressed to Division of Purchases, 602 S. Main, Joplin, Missouri, 64801, and the Contractor at the address indicated. The date of delivery of any notice shall be the date falling on the second full day after the day of its mailing.

IN WITNESS WHEREOF the parties have hereunto set their hands and seal the date first above written.

CITY OF JOPLIN, MISSOURI

By: _____

Nicholas Edwards, City Manager

CONTRACTOR

Four State Doors, LLC

By: _____

Signature

Name: Shannon Yerington
Title: Owner

APPROVED AS TO FORM:

_____

Peter C. Edwards, City Attorney

COUNCIL BILL NO. 2024-112 **ORDINANCE NO**

AN ORDINANCE approving an agreement with Four State Doors LLC. in the amount of Thirty-Two Thousand Two Hundred Thirty-Six and 00/100 DOLLARS ($32,236.00) for Overhead Door Replacement at PWC and authorizing the City Manager or his designee to execute the same by and on behalf of the City of Joplin.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, as follows:

Section 1. That the said an agreement by and between the City of Joplin and Four States Doors LLC in the not to exceed amount of Thirty-Two Thousand Two Hundred Thirty Six and 00/100 DOLLARS ($32,236.00), for Overhead Door Replacement at PWC on behalf of the City of Joplin; a true and accurate copy of said agreement being attached hereto; be and the same is hereby approved.

Section 2. That the City Manager of the City of Joplin, Missouri, or his designee, is hereby authorized and directed to execute said agreement, or agreement in substantially similar form, by and on behalf of the City of Joplin.

Section 3. That upon the final approval and acceptance of the contractor's work under said contract, in substantial conformance with the attached agreement, in writing to the Director of Public Works and his certification to the effect to the Director of Finance, the contractors shall be paid from the Transportation Sales Tax.

Section 4. That this Council Bill shall have an effective date of May 21, 2024.

Passed by the Council of the City of Joplin, Missouri, this _____ day of

_____, 2024 by a _____ vote.

_____

ATTEST: Keenan T. Cortez, Mayor

_____

Holly Nagy, City Clerk

APPROVED AS TO FORM:

_____

Peter C. Edwards, City Attorney

COUNCIL BILL 2024-112

I hereby certify that a sufficient amount is available in the Transportation Sales Tax to pay the amounts called for through this agreement.

_____

Leslie Haase, Director of Finance