

BILL NO. 464

ORDINANCE NO. 446

INTRODUCED BY: Trustees Whitmore, Slama, Young, Graves and Fortune

AN ORDINANCE AMENDING ORDINANCE NO. 443 OF THE VILLAGE OF TWIN OAKS BY ADOPTING CONTRACT CHANGES FOLLOWING NEGOTIATION BETWEEN THE SUCCESSFUL BIDDER AND THE VILLAGE REGARDING TECHNOLOGY SUPPORT AND HARDWARE PROCUREMENT

WHEREAS, Ordinance No. 443 adopted October 15, 2014 accepted the bid of BRAIN MILL, INC, as the lowest and most responsive bid on a public letting dated September 2, 2014; and

WHEREAS, said bid documents authorized negotiation between the parties on the terms of a final contract for services and agreement has now been reached which the parties believe properly conforms to specifications and actual requirements;

NOW THEREFORE, BE IT ORDAINED by the Board of Trustees of the Village of Twin Oaks, St. Louis County, Missouri as follows:

Section 1. Section 1 of Ordinance No. 443 is hereby amended by substituting a new "EXHIBIT "A" (Revised Quote dated September 29, 2014).

Section 2. The Village Clerk/Controller is authorized to execute a contract with said BRAIN MILL. INC. and the Village in accordance with the above Exhibit "A" and the proposed contract contained in the bidding packet.

Section 3. This Amending Ordinance shall be in full force and effect from and after its passage as by law provided.

PASSED and APPROVED this 3 day of December, 2014.


Dennis L Whitmore, Chairman

ATTEST:


Kathy A. Runge
Village Clerk/Controller

First Reading: 12-3-2014

Second Reading: 12-3-2014

Attachment "A"

Village of Twin Oaks, Missouri

Contract Documents
and
Specifications for

Technology Support Program and Hardware Procurement

Request for Bids

Owner:

Village of Twin Oaks
1393 Big Bend Road, Suite F
Twin Oaks, Missouri 63021
Kathy Runge, Controller Clerk
krunge@vil.twin-oaks.mo.us
636-225-7873

August 2014

NOTICE TO BIDDERS

Sealed Bids will be received by the Village of Twin Oaks, Missouri, **until 1:00 P.M., on September 29, 2014** and will thereafter be publicly opened and read aloud.

The proposed work includes the furnishing of materials, tools, equipment and labor necessary to perform the following services in the Village of Twin Oaks, Missouri. Services to be performed include:

1. Technology Support and Hardware Procurement

This notice for proposal may be obtained on and after **September 2, 2014** from the Village of Twin Oaks, 1393 Big Bend Road, Suite F, Twin Oaks, Missouri, 63021, Monday through Friday, 8:00 A.M. to 3:00 P.M.

All requests for clarifications will be directed to the Village office at 636-225-7873.

The OWNER reserves the right to reject any and all Bids, to waive informalities therein, to determine the lowest and best bid. No Bid may be withdrawn for a period of sixty (60) days subsequent to the specified time for receipt of Bids.

The OWNER intends to issue the Notice to Award on or about October 3, 2014 with contract to follow.

The Owner hereby notifies all BIDDERS that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

INSTRUCTION TO BIDDERS

DEFINITIONS

The following terms used at any place in the contract documents shall be construed thus:

BIDDER: The individual or entity who submits a Bid directly to OWNER.

CONTRACTOR: The individual, partnership, or corporation, which shall enter into the Agreement to perform the work, outlined in the contract documents with the OWNER.

DAY(S): Calendar days, unless otherwise defined.

ENGINEER/ OWNER ENGINEER: The Owner's IT Representative, and the Village of Twin Oaks, Missouri or its duly authorized representative.

OWNER/OWNER: Village of Twin Oaks, Missouri.

SUB-BIDDER or SUBCONTRACTOR: A person or entity that submits a Bid to a BIDDER for materials or labor for a portion of the Work.

SUCCESSFUL BIDDER: The lowest qualified, responsible, and responsive BIDDER to whom OWNER (on the basis of OWNER'S evaluation as herein provided) makes an award.

SURETY: Surety shall be a corporate surety company or companies of recognized standing licensed to do business in the State of Missouri and acceptable to the Owner. A rating in the "A" category from Best's or from Standard and Poor's shall constitute recognized standing. The Surety shall attach a certified and current copy of its authority to do insurance business from the State of Missouri.

BIDDING DOCUMENTS

BIDDERS may obtain a complete notice for proposal from:
Village of Twin Oaks, 1393 Big Bend Road, Suite F, Twin Oaks, Missouri 63021

OWNER in making copies of this notice do so only for the purpose of obtaining bids for the work and do not confer a license or grant for any other use.

PLANS

There are no separate plans as a part of this project. Project exhibits and site photos are included (if existing) with these specifications.

RECEIPT AND OPENING OF BIDS

Bids will be received until **1:00 P.M., September 29, 2014** by:

Kathy Runge, Controller Clerk
Village of Twin Oaks
1393 Big Bend Road
Suite F
Twin Oaks, MO 63021

Any bids received after the time and date specified above shall not be considered.

The outside of the envelope containing the bid must be sealed, and designated with:

BIDDER'S Name
BIDDER'S address
Date and Time of bid opening
Sealed bid for **Technology Support and Hardware Procurement**

All bids will be publicly opened and read aloud at **1:00 P.M. September 29, 2014**

USE OF OWNER IN ADVERTISING

The successful bidder is specifically denied the right of using in any form or medium the names of the Owner or any other public entity within the Village of Twin Oaks for public advertising unless express written permission is granted.

SUBCONTRACTS AND SECOND TIER SUBCONTRACTING

The BIDDER is specifically advised that any person, firm, or other party to whom it is proposed to award a subcontract under this Contract must be acceptable to the OWNER. The CONTRACTOR shall furnish to the OWNER a signed copy of any subcontract on request. The prime CONTRACTOR must perform, with its own organization, contract work amounting to not less than 75% of the total original contract.

PREPARATION OF BID FORM

The bid must be submitted on the prescribed Bid Form. All blank spaces for bid prices must be filled-in with indelible ink or typewritten. The "Total" must be completed in both words and figures on the Bid Form.

Signature of BIDDER based on type of business shall be as follows:

A Bid by a Corporation shall be executed in the corporate name by the president or the vice-president or by another corporate officer, accompanied by evidence of authority to sign for the corporation.

A Bid by a Partnership shall be executed in the partnership name and signed by a partner, accompanied by evidence of authority to sign.

A Bid by a Limited Liability Company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm shall be shown below the signature.

A Bid by an Individual shall show the BIDDER's name.

A Bid by a Joint Venture shall be executed by each joint venture in the manner indicated on the Bid Form.

The names of all persons signing shall be legibly printed below their signatures. A Bid by a person who affixes to its signature the word "president", "secretary", "agent", or other designation without disclosing its principal may be held to be the Bid of the individual signing. When requested by OWNER, evidence of the authority of the person signing shall be furnished.

The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers and dates of which shall be filled in on the Bid Form.

No alterations in a Bid by erasures, interpolations, or otherwise, will be acceptable unless each such alteration is signed or initialed by BIDDER; if initialed, OWNER may require BIDDER to identify any alteration so initialed.

EXECUTION OF CONTRACT

The BIDDER to whom the Contract has been awarded shall sign four (4) copies of the Owner-Contractor's Agreement, and all certificates of insurance as set forth in the "General Requirements" within ten (10) days after receipt of the Notice of Intent to Award from the OWNER. Failure to return the required items above to the OWNER within ten (10) days after receipt of the Notice of Intent to Award shall be cause for the annulment of the Contract award. Minor amendments to the contract between the parties may be negotiated within such (10) day period.

QUALIFICATION OF BIDDER

The OWNER may make such investigations as it deems necessary to determine the ability of the BIDDER to perform the work, and the BIDDER shall furnish to the OWNER, all such information and data for this purpose as the OWNER may request. The OWNER reserves the right to reject any bid if the evidence submitted by, or investigation of, such BIDDER fails to satisfy the OWNER that such BIDDER is properly qualified to carry out the obligations of the Contract and to complete the work contemplated therein.

CONDITION OF WORK

Each BIDDER must inform himself fully of the conditions relating to the project and the employment of labor thereon. Failure to do so will not relieve a successful BIDDER of his obligation to furnish all material and labor necessary to carry out the provisions of his Contract. Insofar as possible the CONTRACTOR in carrying out his work must employ such methods or means as will not cause any interruption of or interference with the work of any other CONTRACTOR or the Owner.

INTERPRETATIONS OR CORRECTION OF BIDDING DOCUMENTS

It is the responsibility of each BIDDER before submitting a Bid to:

Promptly notify the OWNER of any ambiguity, inconsistency or error, which they may discover upon examination of the Bidding Documents or of the site and local conditions.

Request clarification or interpretation of the Bidding Documents by making an electronic or written request, which shall reach the OWNER at least seven (7) days prior to the date for receipt of Bids.

Any interpretation, correction or change of the Bidding Documents will be made by Addendum. Interpretations, corrections or changes of the Bidding Documents made in any other manner will not be binding, and BIDDERS shall not rely upon such interpretations, corrections and changes.

If the OWNER determines that clarification of the terms and conditions of the Bidding Documents is necessary, an Addendum will be made available to all BIDDERS setting forth such clarification.

EXAMINATION OF NOTICE AND SITE

Before submitting a bid, BIDDER shall:

Examine and carefully study the Bidding Documents, including any Addenda and other related data identified in the Bidding Documents;

Visit the Site and become familiar with and satisfy BIDDER as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;

Become familiar with and satisfy BIDDER as to all Federal, State, and Local Laws and Regulations that may affect cost, progress, or performance of the Work;

AWARD OF CONTRACT

OWNER reserves the right to reject any or all Bids, including without limitation, the rights to reject any or all nonconforming, non-responsive, unbalanced, or conditional Bids. OWNER further reserves the right to reject the Bid of any BIDDER whom it finds, after reasonable inquiry and evaluation, to be non-responsive. OWNER may also reject the Bid of any BIDDER if OWNER believes that it would not be in the best interest of the Project to make an award to that BIDDER. OWNER also reserves the right to waive all informalities not involving price, time, or changes in the Work, and to negotiate contract terms with the Successful BIDDER.

PROPOSAL

The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an agreement with OWNER in the form included in the Bidding Documents except for minor negotiated changes, to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

Communications concerning this Bid shall be sent to BIDDER at the following address:

4946 Washington Blvd
St Louis MO 63108
bmek1@thebrainmill.com

BIDDER accepts all of the terms and conditions of the "Notice to Bidders" and the "Instructions to Bidders", including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance 60 days after the day of Bid opening, or for such longer period of time that BIDDER may agree to in writing upon request of OWNER.

In submitting this Bid, BIDDER represents that:

1. BIDDER has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents and the following Addenda, if any, receipt of all which is hereby acknowledged.

No. _____ Dated _____

2. BIDDER has either visited the Village or otherwise become familiar with and is satisfied as to the general, local, and site conditions that may affect cost of the Work.

3. BIDDER is familiar with and is satisfied as to all Federal, State, and Local Laws and Regulations that may affect cost of the Work.

4. BIDDER has given OWNER written notice of all conflicts, errors, ambiguities, or discrepancies that BIDDER has discovered in the Bidding Documents, and the written resolution thereof by Village representative is acceptable to BIDDER.

5. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.

6. BIDDER further represents that this Bid is genuine and is not made in the Interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; BIDDER has not directly or indirectly induced or solicited any other BIDDER to submit a false or sham Bid; BIDDER has not solicited or induced any individual or entity to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other BIDDER or over OWNER. Moreover BIDDER has completed and submitted with his bid an Anti-Collusion Affidavit.

7. BIDDER will complete the Work for the following unit prices. BIDDER acknowledges that estimated quantities are not guaranteed and are solely for the purpose of comparison of Bids, and that final payment for all Unit Price Bid items will be based on quantities provided, determined as provided in the Contract Documents.

8. DESCRIPTION OF WORK

Scope of Included Services

1.Data Migration

Contractor will perform data migration services to include transfer of all documents, data and email from all workstations, desktops and servers from existing systems and transfer such data and documentation to new desktops and servers.

2.Server

Log File Maintenance

User Account Administration

Security Administration

Anti-Virus Software Management

Backup Monitoring and Admin

Event Log Monitoring

Drive Space Monitoring

Automated Patch Management

Server Support and Maintenance

Server Failure Recovery

Remote Support

On-Site Support

24/7/365 Monitoring

24/7/365 Priority 1 Support

3.Network Administration

Support and Maintenance

Firewall Management

ISP Management

Real-Time Management

Remote Support

On-Site Support

Priority 1 Support

Anti-Virus Management

Spam Management

Automated Patch Management

4.Desktop

Desktop Optimization and Management

Remote Support

On-Site Support

Priority 1 Support

Access to Network Consultants

Technology Advisor Consultation

Off-Site Data Back-Up Monitoring

Hardware Procurement Requirements

New PCs (4) ThinkPad T430, Black, 14.0in HD LED, Intel Core i5-3320M, 4GB, Intel HD Graphics, 500GB / 7200RPM, DVD RW, Solid State Drive only (no spinning hard drive), Webcam, Intel 6205 AGN 2x2, WWAN Capable, 6 Cell, W7P64 preload w/ W8P64, 1 Yr. Depot (Or Equivalent)

The Village of Twin Oaks would like to explore having an on-site server vs. running on providers hosted network. Please consider both options and list them separately. For on site server option, please include additional hardware and software costs.

Microsoft Office 2013 Home & Business
Set-Up and Migration

(6) 22" LCD Monitors
(4) Docking Stations

(1) Tablet PCs
(1) Microsoft Office 2013 Home & Business
(1) Setup and migration

NOTE: At the discretion of Village representative, Contractor may be asked not to perform services at certain times for various reasons. Should this request be made, no costs shall be incurred by Owner.

Specifications

This maintenance plan will facilitate the following benefits

- . Regular check-ups and performance checks
- . Regular network virus and spyware scans
- . Virus and spyware clean up
- . Monthly removal and off-site storage of server backup media (If not hosted server)
- . Guaranteed response time
- . Lower hourly rates for quoted work
- . Reporting of "high frequency" issues and recommended improvement plans (Quarterly Report)

- . Windows XP and newer and Apple 10.5 or newer desktop OS
- . Remote user and site-to-site VPN
- . Data recovery and safe erasure
- . Desktop Printers

- . Windows Server 2000 or newer OS, Hyper-V, and VMWARE (if not hosted)
- . Microsoft Office 2003 and newer
- . Dell, HP, and Lenovo desktop or laptop hardware
- . HP, IBM, Lenovo, or Dell server hardware
- . Network and firewall equipment

CONTRACT PRICE

<u>A</u>	<u>B</u>	<u>C</u>
Hardware (One Time Cost)	Network (One Time Cost)	Data Migration (One Time Cost)
\$ 10,795.00	\$ —	\$ 2,600.00
<u>D</u>	<u>E</u>	<u>F</u>
Hardware (Monthly Support)	Network (Monthly Support)	Other (Monthly Support)
\$ Included	\$ Included	\$ 700
Total (One Time Cost) (A & B & C)	\$	
Total Ongoing Monthly Cost (D & E & F)	\$	

SIGNATURE OF BIDDER

If an Individual

By _____
(signature of individual)

doing business as _____

Business address _____

Phone No. _____

Date _____

If a Partnership

By _____

(firm name)

(signature of general partner)

Business address _____

Phone No. _____

Date _____

If a Corporation

By The Brain Mill, Inc.
(corporation name)

By Bob Mehl
(signature of authorized person)
President
(title)

Business address 4946 Washington Blvd
St Louis MO 63108

Phone No. 314-454-0348

Date November 17, 2014

If a Joint Venture (Other party must sign below.)

If an Individual

By _____
(signature of individual)

doing business as _____

Business address _____

Phone No. _____

LIST OF REFERENCES

Proposed Equipment to be used: (All equipment listed shall be readily available to be used on this project.)

Type	Make and Model	Quantity

ANTI-COLLUSION AFFIDAVIT

STATE OF Missouri,
OWNER OF The Brain Mill,

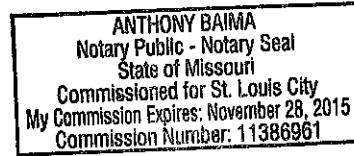
Brian Mehl, being first duly sworn, deposes and says that he is (sole owner, partner, ~~president~~, secretary, etc.) of The Brain Mill, Inc, the party making the foregoing bid; that such bid is not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation; that such bid is genuine and not collusive or sham.; that said BIDDER has not directly or indirectly induced or solicited any other BIDDER to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any BIDDER or anyone else to put in a sham bid, or that any one shall refrain from bidding; that said BIDDER has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the bid price of said BIDDER or of any other BIDDER, or to fix any overhead, profit or cost element of such bid price, or of that of any other BIDDER, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in such bid are true, and, further, that said BIDDER has not, directly or indirectly, submitted his bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid and will not pay any fee in connection therewith to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, or to any other individual except to such person or persons as have a partnership or other financial interest with said BIDDER in his general business.

SIGNED: Bob Mehl

Title: President

Subscribed and sworn to before me this 17 day of November, 2014.

Seal of Notary



Notary Public AB 11/17/2014

In completing this form the title that is not applicable should be struck out. For example, if the CONTRACTOR is a corporation and this form is to be executed by its president, the words "Sole owner, a partner, secretary, etc." should be stricken.

OWNER-CONTRACTORS AGREEMENT

THIS AGREEMENT, made by and between Ther Brain Mill, Inc. hereinafter called the CONTRACTOR, and the Village of Twin Oaks, Missouri, hereinafter called the OWNER.

NOW THEREFORE, CONTRACTOR and OWNER, in consideration of mutual covenants herein set forth, agree as follows:

ARTICLE 1. CONTRACT PRICE

OWNER shall pay CONTRACTOR in current funds, for completion of the Work designated in Article 2 in accordance with the Contract Documents, an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work multiplied by the quantity of that item as indicated in the CONTRACTOR'S Bid, for the total amount of:

Ten thousand seven hundred forty five for Hardware. Twenty six hundred for Data Migration. Seven hundred monthly.

(In words)

(\$10,745 - Hardware), (\$2600 - Data Migration), (\$700 monthly)

(In figures)

ARTICLE 2. SCOPE OF THE WORK

Technology Support Program and Hardware Procurement

ARTICLE 3. TIME OF COMPLETION

The CONTRACTOR shall commence operations after Nov. 19th but not later than six (6) calendar day's from Contract acceptance Project to be completed no later than 1 yr. Project completion shall be defined as 100% completion of all items of the project including correction of deficiencies. ~~Failure to complete the project within schedule will result in 1.5% of the cost of the project per day per Article 12 of this contract.~~ B&M

The rate of progress and the time of completion are essential conditions of this Contract. Liquidated damages will be charged as specified herein.

Should the CONTRACTOR, or in case of default, the surety fail to complete the work within the calendar days specified, a deduction of the amount will be made for each and every calendar day that the contract remains uncompleted in accordance with the requirements of ARTICLE 12 contained herein.

ARTICLE 4. PAY QUANTITIES AND UNIT PRICES

The OWNER shall pay the CONTRACTOR for all work done on the basis of final computations for all work acceptably completed according to this Contract, at the unit price shown on the BID FORM for the quantity actually installed.

ARTICLE 5. FINAL PAYMENT AND ACCEPTANCE

Refer to Article 13 for payment schedule.

ARTICLE 6. THE CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- a. This Owner-Contractors Agreement.
- b. Exhibits to the Owner-Contractor's Agreement (if any).
- c. General Requirements
- d. Performance and Payment Bonds.
- e. Notice of Award.
- f. Notice to Proceed.
- g. Drawings, if needed, with each sheet bearing the following general title:
Technology Support Program and Hardware Procurement
- h. Bid invitation and Form.
- i. All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents, which may be delivered or issued after the Effective Date of the Agreement, and are not attached hereto.

There are no Contract Documents other than those listed in this article. The Contract Documents may be amended, modified, or supplemented only in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) a Work Change Directive.

The requirements of the Contract Documents may be supplemented and minor variations and deviations in the Work may be authorized, by a Field Order, or ENGINEER'S written interpretation or clarification.

ARTICLE 7. RATES OF PAY

The CONTRACTOR hereby agrees that the prevailing rates of pay shall be paid to skilled and unskilled labor employed under the terms of this contract. The CONTRACTOR shall forfeit to the OWNER ten (10) dollars for each workman employed, for each calendar day, or portion thereof, such workman is paid less than the said stipulation rates for any work done under said contract, by him or by any subcontractor under him.

ARTICLE 8. PERFORMANCE OF THE WORK

The CONTRACTOR, acting as an independent CONTRACTOR, shall furnish all supervision, labor, equipment, tools, materials, and supplies necessary to perform and shall perform all work in accordance with the Contract Documents and any applicable Owner ordinances, and state and federal laws. CONTRACTOR represents and warrants that he has special skills which qualify him to perform the Work in accordance with the Contract and that he is free to perform all such Work and is not a party to any other agreement, written or oral, the performance of which would prevent or interfere with the performance, in whole or in part, of the Work. The prime CONTRACTOR must perform, with its own organization, contract work amounting to not less than 75% of the total original contract.

ARTICLE 9. SUPERVISION

The CONTRACTOR shall supervise and direct the Work, using the CONTRACTOR'S best skill and attention. The CONTRACTOR shall be solely responsible for and have control over work, means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning those matters.

ARTICLE 10. SAFETY

The OWNER and the ENGINEER may have personnel on the project site from time to time. All information and/or instructions shall be requested in writing by the CONTRACTOR and responded to in writing. No opinion or instructions will be given to the CONTRACTOR on safety.

The CONTRACTOR shall be solely responsible for the safety on and around the project site including shoring, ladders, drop cords, scaffolding, barricades, construction means, methods, techniques, sequences and procedures.

ARTICLE 11. INDEMNITY

To the fullest extent permitted by law, the CONTRACTOR shall indemnify and hold harmless the OWNER, the OWNER'S REPRESENTATIVE, ENGINEER, their consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property other than the Work itself, including loss of use resulting there from, but only to the extent caused in whole or in part by negligent acts or omissions of the CONTRACTOR, a Subcontractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party or person described in this Section.

In claims against any person or entity indemnified under the above paragraph by an employee of the CONTRACTOR, a Subcontractor, or anyone directly or indirectly employed by them or

anyone whose acts they may be liable, the indemnification obligation under this paragraph shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or a Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

The obligations of the CONTRACTOR under this Section shall not extend to the liability of the ENGINEER, the OWNER'S REPRESENTATIVE, the ENGINEER'S consultants, and agents and employees of any of them arising out of (1) the preparation or approval of drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions, after requested in writing by the CONTRACTOR, or instructions by the ENGINEER, the OWNER'S REPRESENTATIVE, the ENGINEER'S consultants, and agents and employees of any of them provided such instructions or failure to give is the primary cause of the injury or damage.

ARTICLE 12. LIQUIDATED DAMAGES

BOR
AR
~~Whenever time is mentioned in this contract, time shall be and is of the essence of this contract. The OWNER would suffer loss should the CONTRACTOR fail to have the work embraced in this contract fully completed on or before the time above specified: THEREFORE, in order to adjust satisfactorily the damage on account of such failure, and the parties hereto realizing that it might be impossible to compute accurately or estimate the amount of such loss or damages which the OWNER would sustain by reason of failure to complete fully said work within the time required by this contract, the CONTRACTOR hereby covenants and agrees to pay the OWNER, as and for liquidated damages for each and every calendar day during which work remains incomplete and unfinished. Any sum which may be due the OWNER for such damages shall be deducted and retained by the OWNER from any balance which may be due the CONTRACTOR for progress payments or when said work shall have been finished and accepted. But such provisions shall not release the bond of the CONTRACTOR from liability according to its terms. In case of failure to complete, the OWNER will be under no obligation to show or prove any actual or specific damage.~~

~~Therefore, the CONTRACTOR will be charged with liquidated damages specified in the amount of **1.5% of the total contract amount** per calendar day for each full day that all work for the **Technology Support and Hardware Procurement** is not completed, and in working order to the satisfaction of the Owner and the Village of Twin Oaks, Missouri, in excess of the limitation as specified elsewhere in this special provision. It shall be the responsibility of the OWNER or its ENGINEER to determine the quantity of excess days.~~

ARTICLE 13. PAYMENT TERMS

Contractor will be paid on the following schedule:

1. 100% on Notice to Proceed for Hardware Procurement
2. Monthly Support charge on go live

ARTICLE 14. TERMINATION BY OWNER OR CONTRACTOR

(a) If the CONTRACTOR is adjudged to be bankrupt, or if the CONTRACTOR makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of the CONTRACTOR's insolvency, or if the CONTRACTOR fails, except in cases for which extension of time is provided, to make progress in accordance with the Schedule, or if the CONTRACTOR fails to make prompt payment to Subcontractors or prompt payment for material or labor, or disregards laws, ordinances or the instructions of the OWNER, or otherwise breaches any provision of the Contract, the OWNER may, without prejudice to any other right or remedy, terminate the Contract by giving written notice to the CONTRACTOR and his surety. Upon such notification the OWNER shall be entitled to take possession of the Work and of all materials and equipment thereon and finish the Work by whatever method the OWNER may deem expedient, which may include, but is not limited to, the OWNER itself completing the work or the OWNER hiring others to complete said work. In such case, the CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Sum shall exceed the expenses of finishing the Work, including additional engineering, architectural, managerial and administrative expenses, and liquidated damages, such excess shall be paid to the CONTRACTOR. If such expenses and damages exceed the unpaid balance of the Contract Sum, the CONTRACTOR shall pay the difference to the OWNER promptly upon demand. In the event of termination pursuant to this paragraph, the CONTRACTOR, upon the request of the OWNER, shall promptly:

- (i) assign to the OWNER in the manner and to the extent directed by the OWNER all right, title and interest of the CONTRACTOR under any subcontracts, purchase orders and to which the CONTRACTOR is a party and which relate to the Work required therefore, and

(b) Performance of the Work hereunder may be terminated by the OWNER by giving three (3) days prior written notice to the CONTRACTOR if the OWNER, in its sole discretion, decides to discontinue or suspend construction. In the event of such termination, as opposed to termination pursuant to paragraph (a) of this Article 14, the Contract Sum shall be reduced in an equitable manner by agreement between the parties.

ARTICLE 15. AUDIT CLAUSE

Examination of Records

The CONTRACTOR's records which shall include, but not be limited to, accounting records (hard copy, as well as computer readable data), written policies and procedures, subcontractor files, indirect cost records, overhead allocation records, correspondence, instructions, drawings, receipts, vouchers, memoranda, and any other data relating to this contract shall be open to inspection and subject to audit and/or reproduction by the Owner Auditor, or a duly authorized representative from the OWNER, at the OWNER's expense. The CONTRACTOR shall preserve all such records for a period of three years, unless permission to destroy them is granted by the OWNER, or for such longer period as may be required by law, after the final payment. Since the CONTRACTOR is not subject to the Missouri Sunshine Law (Chapter 610, RSMo), information regarding the CONTRACTOR's operations obtained during audits will be kept confidential.

IN WITNESS WHEREOF the parties hereto have caused this instrument to be executed in four (4) original counterparts as of the day and year last written below.

Executed by the OWNER this 3 day of December, 2014.

Executed by The Brain Mill, Inc. (CONTRACTOR) this 18 day of November, 2014.

CONTRACTOR The Brain Mill, Inc.
Bus Mehl

President

Bus Mehl

Secretary

VILLAGE OF TWIN OAKS, MISSOURI

Dennis L. Whitmore

Dennis L. Whitmore

Chairman, Board of Trustees

ATTEST Kathy A. Runge

Kathy A. Runge

Clerk/Controller