

AN ORDINANCE OF THE CITY OF WILDWOOD, MISSOURI, AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE A CITY-CONTRACTOR AGREEMENT ON BEHALF OF THE CITY OF WILDWOOD WITH GERSHENSON CONSTRUCTION CO., INC., FOR THE CONSTRUCTION OF THE MANCHESTER ROAD STREETScape PROJECT, PHASE III, INCLUDING TRAFFIC CONTROL AND OTHER INCIDENTAL ITEMS AS SHOWN ON THE CONSTRUCTION DRAWINGS AND SPECIFICATIONS.

WHEREAS, the City of Wildwood, Missouri, will construct streetscape improvements on Manchester Road between Taylor Road and Eatherton Road. The project will include on-street parking, curbs and gutters, ten-foot (10') wide sidewalks, street lighting, bike lanes, landscaping and street trees (the "Project"); and

WHEREAS, the City approved funds for the construction of the Project as part of the 2019 Capital Projects Fund; and

WHEREAS, the City obtained a federal grant for construction, and thus, the federal government will reimburse the City for fifty percent (50%) of the construction costs up to a maximum of \$1,300,000.00; and

WHEREAS, the Department of Public Works opened bids for the project on January 24th, 2019; and

WHEREAS, seven (7) bids were submitted by different companies, all of which were competitive and met the requirements set forth by the City for the Project; and

WHEREAS, the bid from Gershenson Construction Co., Inc., in the amount of \$2,155,391.51, was the lowest responsible bid received.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WILDWOOD, MISSOURI, AS FOLLOWS:

Section One. That the form, terms, and provisions of the City-Contractor Agreement by and between the City of Wildwood, Missouri, and Gershenson Construction Co., Inc., for construction of the Project, attached hereto, marked as **Exhibit A**, and incorporated by reference herein (the "Agreement"), be and are hereby approved and the Mayor is hereby authorized, empowered and directed to further negotiate, execute, acknowledge, deliver and administer on behalf of the City such Agreement in substantially the form attached hereto. The City Clerk is hereby authorized and directed to attest to the Agreement and other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of the Agreement and this Ordinance.

Section Two. That the Mayor is hereby further authorized and directed on behalf of and in the name of the City to agree to do any and all other acts and things and to execute and

deliver any and all other agreements, documents, instruments and certificates, all as may be necessary and appropriate to consummate the above mentioned Agreement, and to perform all of the terms, provisions and conditions of the Agreement. The execution by the Mayor of any agreement, document, instrument, check or certificate referred to in this Ordinance and the Agreement shall be conclusive evidence of the approval thereof and of all of the terms, provisions and conditions contained therein. Any and all acts which the Mayor may do or perform in conformance with the powers conferred upon them by this Ordinance are hereby expressly authorized, approved, ratified and confirmed.

Section Three. The total expenses and liability of the City under the Agreement shall not exceed a contract sum of \$2,155,391.51, except that the Director of Public Works may, by written change order, increase the scope of the work pursuant to the same contract rates and terms in an amount not to exceed a total authorization under this Ordinance of \$2,405,391.50.

Section Four. Savings. Nothing contained herein shall in any manner be deemed or construed to alter, modify, supersede, supplant or otherwise nullify any other Ordinance of the City or the requirements thereof whether or not relating to or in any manner connected with the subject matter hereof, unless expressly set forth herein.

Section Five. Severability. If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the City Council that it would have enacted this Ordinance without the invalid or unenforceable provisions. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

Section Six. Effective Date. This Ordinance shall be in full force and effect from and after its passage and approval.

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This Bill was passed and approved this ____ day of _____, 2019, by the Council of the City of Wildwood, Missouri, after having been read by title or in full two (2) times prior to its passage.

Presiding Officer

James R. Bowlin, Mayor

ATTEST:

ATTEST:

City Clerk

City Clerk

EXHIBIT A

CONTRACT AGREEMENT

City of Wildwood, MO

Manchester Road Streetscape Phase 3 Project STP-5536(610)

THIS AGREEMENT, made and entered into by and between the City of Wildwood, (hereinafter referred to as the Owner) and Gershenson Construction Company, Inc. of 2 Truit Drive, Eureka, MO 63025, (herein referred to as the Contractor).

WITNESSETH: That for and in consideration of the acceptance of Contractor's bid and the award of this contract to said Contractor by the Owner and in further consideration of the agreements of the parties herein contained, to be well and truly observed and faithfully kept by them, and each of them, it is agreed between the parties as follows, to wit:

The Contractor at its own expense hereby agrees to do or furnish all labor, materials, and equipment called for in the proposal designated and marked:

Manchester Road Streetscape Phase 3, Federal Project Number STP-5536(610)

and agrees to perform all the work required by the contract as shown on the plans and specifications. The "Notice to Contractor," "Plans," "Proposal," "Contract Bond," "Acknowledgment," "Notice to Proceed", and all change orders are made a part hereof as fully as set out herein.

It is understood and agreed that, except as may be otherwise provided for by "Job Special Provisions," "General Provisions," and "Supplemental Specifications," included in the Proposal, the work shall be done in accordance with the most current "Missouri Standard Specifications for Highway Construction" and "Missouri Standard Plans for Highway Construction", including all revisions to these documents, which are part and parcel of this contract, and are incorporated in this contract as fully and effectively as if set forth in detail herein.

The Contractor further agrees that it is fully informed regarding all of the conditions affecting the work to be done, and labor and materials to be furnished for the completion of this contract, and that its information was secured by personal investigation and research and not from any estimates of the Owner; and that it will make no claim against the Owner by reason of estimates, tests, or representation of any officer, agent, or employees of the Owner.

The said Contractor agrees further to begin work not later than the authorization date in the Notice to Proceed and to complete the work within the time specified in the proposal or such additional time as may be allowed by the engineer under the contract.

The work shall be done to complete satisfaction of the Engineer of the Owner and, in case the Federal Government or any agency thereof is participating in the payment of the cost of construction of the work, shall also be subject to inspection and approval at all times by the proper agent or agents of such government agency.

The parties hereto agree that this contract in all things shall be governed by the laws of the State of Missouri.

The Contractor agrees that it will comply with all federal and state laws and regulations and local ordinances and that it will comply and cause each of its subcontractors, if any, to comply with all federal and state laws and federal regulations and directives pertaining to nondiscrimination against any person on the ground of race, color, religion, creed, sex, age, ancestry, or national origin in connection with this contract, including procurement of materials and lease of equipment therefore, in accordance with the special provisions on that subject attached hereto, incorporated in and made a part of the contract.

The Contractor expressly warrants that it has employed no third person to solicit or obtain this contract on its behalf, or to cause or procure the same to be obtained upon compensation in any way contingent, in whole or in part, upon such procurement; and that it has not paid, or promised or agreed to pay, to any third person, in consideration of such procurement, or in compensation for services in connection therewith, any brokerage, commission, or percentage upon the amount receivable by it hereunder, and that it has not, in estimating the contract price demanded by it, included any sum by reason of any such brokerage, commission, or percentage, and that all moneys payable to it hereunder are free from obligation to other entities for services rendered, or supposed to have been rendered, in the procurement of this contract. Contractor further agrees that any breach of this warranty shall constitute adequate cause for the annulment of this contract by the Owner, and the Owner may retain to its own use from any sums due or to become due hereunder an amount equal to any brokerage, commission, or percentage so paid, or agreed to be paid.

Under penalty of perjury under the laws of the United States and/or false declaration under the laws of Missouri, and any other applicable state or federal laws, the Contractor Signatory certifies that the Contractor and its officials, agents, and employees have neither directly nor indirectly entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this contract, and that the Contractor intends to do the work with its own bonafide employees or subcontractors and did not bid for the benefit of another contractor.

The Owner agrees to pay the Contractor in the manner and in the amount provided in the said Standard Specifications and Proposals.

IN WITNESS WHEREOF, the parties hereunto have hereunto set their hands and affixed their seals, this _____ day of _____, 20__.

City of Wildwood, MO, acting by and through the "City"

By _____
James Bowlin, City of

Wildwood, MO ATTEST:

(SEAL)

Amanda Foster, City Clerk

Gershenson Construction Company, Inc.

By _____
Authorized Contractor Signature

Printed Name of Signatory

ATTEST: (SEAL)

Amanda Foster, City Clerk

CONTRACT BOND

KNOW ALL MEN BY THESE PRESENTS: That we Gershenson Construction Company, Inc.

#2 Truitt Drive, Eureka, MO 63025

as principle, and _____

as surety, are held and firmly bound unto the City of Wildwood in the penal sum of: Two Million One Hundred Fifty-Five Thousand Three Hundred Ninety-One & 50/100

DOLLARS (\$ 2,155,391.51) as the same may be increased by any and all changes in or additions to said contract which may hereafter be made, lawful money of the United States, to be paid to the said City of Wildwood or to its certain agents, attorneys, assigns, or to the City of Wildwood for which sums of money, well and truly to be paid, we bind ourselves, our heirs, successors, assigns, executors, and administrators, jointly and severally, firmly by these presents.

SEALED with our seals and dated _____

The condition of this obligation is such that

WHEREAS, the said bounden principal has entered into a certain contract with the City of Wildwood acting by and through the City of Wildwood, said contract being marked.

Manchester Road Streetscape Phase 3, Federal Project Number STP-5536(610)

a copy of said contract being hereto attached and made a part hereof and bearing date of _____

NOW, THEREFORE, if the said principal shall comply with and fulfill all the conditions of said contract, including those under which principal agrees to pay the prevailing hourly rate of wages for each craft or type of workman required to execute the contract in the locality as determined by State and Federal authority, as applicable, or by final judicial determination, and properly and promptly complete the work in accordance with the provisions of said contract, plans and specifications without any hidden defects, and furnish all the labor and materials required by said contract, and any and all changes in, or additions to said contract, which may hereafter be made, and shall perform all the undertakings stipulated by said bounden principal to be performed and within the time mentioned in said contract, or within any additional time granted by the City of Wildwood which may be granted without notice to or consent from the surety, and shall pay for all materials, lubricants, fuel, coal and coke, repairs on machinery, groceries and foodstuff, equipment and tools consumed or used in connection with the construction of such work, and all insurance premiums, both compensation, and all other kinds of insurance, on said work, and for all labor performed in such work, whether by subcontractor or claimant in person or by its employee, agent, servant, bailee, or bailor, then this to be void; otherwise it shall be and remain in full force and effect.

ATTEST: (SEAL)

Secretary

Principal

By _____

Title _____

Surety

ATTEST: (SEAL)

By _____

Title _____

Address – Agent or Broker

Street

City

Name and Street Address of Agent to Whom All
Correspondence Should be Directed Relating to
Contract and Bond.

Name

Street

City, State

3. Form to be used if Contractor is a corporation

State of _____)
) ss.
County of _____)

On this _____ day of _____, 20_____, before me appeared _____, to me personally known, who being by me duly sworn, did say that he/she is the _____ of _____ (the Contractor) and that the seal affixed to the foregoing agreement and contract bond is the corporate seal of said corporation, and that the foregoing proposal, contract agreement, and contract bond were signed and sealed in behalf of said corporation by authority of its board of directors, and he/she acknowledges said instruments to be the free act and deed of said corporation.

Witness my hand and seal at _____, _____, the day and year first above written.

(SEAL)

Notary Public

My commission expires _____, 20_____.