

AN ORDINANCE OF THE CITY OF WILDWOOD, MISSOURI, AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE A CITY-CONTRACTOR AGREEMENT ON BEHALF OF THE CITY WITH SPENCER CONTRACTING COMPANY, FOR THE 2022 COMMUNITY DEVELOPMENT BLOCK GRANT ADA CURB RAMP PROJECT.

WHEREAS, the City of Wildwood Department of Public Works annually repairs and replaces deficient concrete sidewalk and ADA curb ramps on public streets, and has budgeted funds for this work under the 2022 Road and Bridge Fund; and

WHEREAS, the City of Wildwood, Missouri, as authorized by Ordinance #2632, applied for and was granted \$25,500 under the Community Development Block Grant (CDBG) program for 2022; and

WHEREAS, the City of Wildwood plans to use the CDBG funds to supplement existing City funds to replace existing deficient ADA curb ramps or construct new ADA curb ramps on residential streets; and

WHEREAS, the Department of Public Works prepared a Project Manual, with included quantities, details, and specifications for the construction of new or replacement of existing deficient ADA curb ramps along several residential streets (the “FY 2022 Curb Ramp Project”); and

WHEREAS, the Department of Public Works publicly advertised the FY 2022 Curb Ramp Project and opened bids on December 15, 2021, in accordance with Section 145.020 of the Code of Ordinances of the City of Wildwood; and

WHEREAS, a total of six (6) bids were submitted by different contractors, all of which were competitive and met the requirements set forth by the City for the FY 2022 Curb Ramp Project; and

WHEREAS, the bid received from Spencer Contracting Company, with a total base bid amount of \$35,421.97 was the lowest responsible bid received; and

WHEREAS, the Administrative and Public Works Committee reviewed the bids, and recommended awarding a contract to Spencer Contracting Company, for the FY 2022 Curb Ramp Project, at a contract amount of \$35,421.97.

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 Spencer Contracting Company, for construction of the FY 2022 Curb Ramp 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 \$35,421.97, 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 \$40,421.97.

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 _____, 2022, 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
[attach Agreement]

City of Wildwood

CITY-CONTRACTOR AGREEMENT

This City–Contractor Agreement “Agreement” is made and entered into this ____ day of _____, 20____, by and between the City of Wildwood, Missouri (hereinafter called the "City") and _____ with offices located at _____ (hereinafter called the "Contractor").

WITNESSETH:

The Contractor and the City, for the consideration set forth herein, agree as follows:

ARTICLE I.

The Contract Documents

The Contract Documents, hereby placed on file with the City Clerk, consist of the General Conditions of City-Contractor Agreement, State Wage Determination, Non-Collusion Affidavit, Performance Payment Bond, Specifications, Drawings, the Construction Schedule, all Addenda, and all Modifications issued after execution of this Agreement, which together with this Agreement form the entire agreement, obligations and duties of the parties, and are all as fully a part of the Agreement as if attached to this Agreement or repeated herein. All definitions set forth in the General Conditions of City-Contractor Agreement are applicable to this Agreement.

ARTICLE II.

Scope of Work

The Contractor, acting as an independent contractor, shall do everything required by the Contract Documents (the “Work”) and shall timely complete the project in strict compliance with all requirements and specifications set forth in the Contract Documents. Contractor represents and warrants that it has special skills which qualify it to perform the Work in accordance with the Contract Documents, and that it 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. All Work shall be performed in compliance with all applicable federal, state, and City laws and regulations, including but not limited to all grading, construction and zoning ordinances of the City.

ARTICLE III.

Time of Completion

All time limits stated in the Contract Documents are of the essence. The Work to be performed here under shall commence within ten (10) days of the date of the written notice to proceed from the City to the Contractor. Working days for the completion of the Work have been established. The count of working days will start on the date the Contractor starts any construction operations on this project and all Work shall be completed within the working days specified below.

Calendar Days: 60

Should the Contractor, or in case of default, the surety, fail to complete the Work within the working days or the completion date specified, whichever occurs first, a deduction of the amount stipulated in Article V will be made for each day that the Work remains uncompleted.

ARTICLE IV.

The Contract Sum and Payments

The City shall pay the Contractor for the performance of the Work the total sum of \$35,421.97 dollars ("Contract Sum") based upon Applications for Payment submitted by the Contractor on or before the twentieth (20th) day of the month for Work completed in accordance with the General Conditions in the following manner:

(1) On or about the tenth (10th) day of each following month, ninety five percent (95%) of the portion of the Contract Sum properly allocable to labor, materials and equipment incorporated into the Work, and ninety five percent (95%) of the portion of the

Contract Sum properly allocable to materials and equipment suitably stored at the site to be incorporated into the Work, through the period ending up to the twentieth (20th) of the preceding month, less the aggregate of all previous progress payments;

(2) Upon completion of the Work, a sum sufficient to increase the total payments to ninety five percent (95%) of the Contract Sum; and

(3) Final payment within 60 days after the Work is fully completed and accepted by the City and the Work fully performed.

(4) The retainage amount withheld by subsections (1) and (2) above shall not exceed any maximum amount permitted by law

ARTICLE V.

Performance of the Work

(a) Within seven (7) calendar days after being selected, the Contractor shall prepare and submit for the City's approval (1) a Construction Schedule for the Work in a bar chart format which Construction Schedule shall indicate the dates for starting and completing the various stages of construction and (2) a Traffic Control Plan indicating the location of all proposed signage, detours and road closures throughout the project which adequately address the traffic control plan of the proposed Work. All traffic control shall be according to the standards of the Manual on Uniform Traffic Control Devices developed by the Federal Highway Administration, specifically Figure 6H-11, Lane Closure on a Two-Lane Road, with Low Traffic Volumes (TA-11). The Notice to Proceed shall be issued within 10 working days of the selection, however, no Work will commence until the Contractor's Construction Schedule and traffic control plan are submitted and approved by the City. The Contractor shall be required to substantially finish portions of the Work as designated by the Director of Public Works prior to continuation of further Work remaining on the project. This may include backfilling, seeding, or cleanup as designated by the Director of Public Works.

(b) Completion of the Work in accordance with the time limits set forth in the Construction Schedule is an essential condition of the Agreement. If the Contractor fails to complete the Work in accordance with the Construction Schedule, unless the delay is excusable under the provisions of Article VI hereof, the Contractor shall pay the City, as liquidated damages and not as a penalty, the sum of \$250.00 for each calendar day the Contractor fails to comply with the Construction Schedule. The total amount so payable to the City as liquidated damages may be deducted from any sums due or to become due to Contractor from City.

(c) After Commencement of the Work, and until final completion of the Work, the Contractor shall report to the City at such intervals as the City may reasonably direct, the actual progress of the Work compared to the Construction Schedule. If the Contractor falls behind the Construction Schedule for any reason, it shall promptly take, and cause its Subcontractors to take, such action as is necessary to remedy the delay, and shall submit promptly to the City for approval a supplementary schedule or progress chart demonstrating the manner in which the delay will be remedied; provided, however, that if the delay is excusable under Article VI hereof, the Contractor will not be required to take, or cause its Subcontractors to take, any action which would increase the overall cost of the Work (whether through overtime, premium pay or otherwise), unless the City shall have agreed in writing to reimburse the Contractor for such increase in cost. Any increase in cost incurred in remedying a delay which is not excusable under Article VI hereof, or is not approved in advance by the City, shall be borne by the Contractor.

ARTICLE VI.

Delays beyond Contractor's Control

(a) If the Contractor fails to complete the Work in accordance with the Construction Schedule solely as a result of the act or neglect of the City, or by strikes, lockouts, fire or other similar causes beyond the Contractor's control, the Contractor shall not be required

to pay liquidated damages to the City pursuant to paragraph (b) of Article V hereof, provided the Contractor uses his best efforts to remedy the delay in the manner specified in paragraph (c) of Article V hereof. If, as a result of any such cause beyond the Contractor's control, the delay in completion of the Work in accordance with the Construction Schedule is so substantial that it cannot be remedied in the aforesaid manner, or if the backlog of Work is so great that it cannot be remedied without incurring additional cost which the City does not authorize, then the time of completion and the Construction Schedule shall be extended pursuant to a Change Order for the minimum period of delay occasioned by such cause. The period of delay and extension shall be determined by the City.

(b) Notwithstanding the foregoing paragraph (a), no extension of time shall be granted for any delay the cause of which occurs more than seven (7) days before claim therefore is made in writing by the Contractor to the City, and no extension of time shall be granted if the Contractor could have avoided the need for such extension by the exercise of reasonable care and foresight. In the case of a continuing cause of delay, only one claim is necessary.

(c) Weather shall not constitute a cause for granting an extension of time.

(d) In the event a delay is caused by the City, the Contractor's sole remedy shall consist of its rights under this Article VI.

ARTICLE VII.

Changes in the Work or Cost of Work

(a) The City may make changes within the general scope of the project by altering, adding to or deducting from the Work, and the Contract Sum adjusted accordingly. All such changes in the Work shall be executed under the conditions of the Agreement. No extra Work or change in the Work shall be made except pursuant to a Change Order approved by the City and Contractor in accordance with the General

Conditions. Any claim for an increase in the Contract Sum resulting from any such change in the Work shall promptly be made by the Contractor in accordance with the General Conditions.

(b) If the requested change would result in a delay in the Construction Schedule, the provisions of paragraph (c) of Article V and of Article VI hereof shall apply. If the requested change would result in a decrease in the time required to perform the Work, the completion date and the Construction Schedule shall be adjusted by agreement between the parties to reflect such decrease.

(c) If the Contractor intends to make a claim for an increase in the Contract Sum, it shall give the City written notice explaining the circumstances, justifications and amount of Contract Sum increase desired thereof promptly after the occurrence of the event or circumstances giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute further Work. No such claim shall be valid unless so made in accordance with the General Conditions. Any change in the Contract Sum resulting from such a claim shall first be authorized by Change Order executed by the City and Contractor. The City reserves the right to suspend Work of the Contractor pending the resolution of any claim for an increase in the Contract Sum.

(d) Any adjustment in the Contract Sum for duly authorized extra Work or change in the Work shall be determined based on the unit prices previously specified, to the extent such unit prices are applicable. To the extent such unit prices are not applicable, the adjustment in the Contract Sum shall, at the option of the City, be determined by an acceptable lump sum properly itemized and supported by sufficient substantiating data to permit evaluation, or by an acceptable cost plus percentage or fixed fee.

ARTICLE VIII.

Termination by City or Contractor

(a) If the Contractor is adjudged a 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 persistently or repeatedly fails, except in cases for which an extension of time is provided, to make progress in accordance with the Construction Schedule, or if the Contractor fails to make prompt payment to Subcontractors or for material or labor, or persistently disregards laws, ordinances or the instructions of the City, or otherwise breaches any provision of the Agreement, the City may, without prejudice to any other right or remedy, by giving written notice to the Contractor and its surety, terminate the Agreement, take possession of the Work and of all materials and equipment thereon and finish the Work by whatever method the City may deem expedient. 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 Agreement Sum shall exceed the expenses of finishing the Work, including additional architectural, managerial and administrative expenses, such excess shall be paid to the Contractor. If such expenses shall exceed the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the City promptly upon demand.

In the event of termination pursuant to this Article, the Contractor, upon the request of the City, shall promptly:

- (i) assign to the City, in the manner and to the extent directed by the City, all right, title and interest of the Contractor under any subcontracts, purchase orders and construction equipment leases to which the Contractor is a party and which relate to the Work or to construction equipment required therefore, and
- (ii) make available to the City to the extent directed by the City all construction equipment owned by the Contractor and employed in connection with the Work.

(b) Performance of the Work hereunder may be terminated by the City by giving three (3) days prior written notice to the Contractor if the City, for any reason and 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 VIII, the Contract Sum shall be reduced in an equitable manner by agreement between the parties or by arbitration.

ARTICLE IX.

Contractor's Liability Insurance

The Contractor shall purchase and maintain in full force and affect the following insurance coverages with an insurance carrier acceptable to the City:

The policy shall be endorsed to cover the liability of the Contractor under the General Conditions of this Agreement.

The Contractor and his Subcontractors shall procure and maintain during the life of this Agreement insurance of the types and minimum amounts as follows:

- (a) Workers' Compensation in full compliance with statutory requirements of Federal and State of Missouri law and Employers' Liability coverage in the amount of \$1,000,000.
- (b) Comprehensive General Liability and Bodily Injury
 - Including Death: \$500,000 each person*
 - \$3,000,000 each occurrence*
 - Property Damage: \$3,000,000 each occurrence*
 - \$3,000,000 aggregate*
- (c) Comprehensive Automobile Liability, Bodily Injury
 - Including Death: \$500,000 each person*
 - \$3,000,000 each occurrence*
 - Property Damage: \$3,000,000 each accident*

The Contractor's policy shall name the City as the Insured. Certificates evidencing such insurance shall be furnished the City prior to Contractor commencing the Work on this project. The certificates must state "The City of Wildwood is an additional insured."

*But not less than the sovereign immunity limits for Missouri public entities as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, R.S.Mo. The Contractor and his Subcontractors shall cause the insurer(s) to increase the insurance amounts in accordance with those published annually in the Missouri Register pursuant to Section 537.610, R.S.Mo. In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for the City's rights or defenses with regard to its applicable sovereign, governmental, or official immunities and protections provided by state constitution or law.

ARTICLE X.

The Work

The Contractor shall furnish all labor, materials and equipment necessary to perform the scope of Work within the project limits. The Scope of Work includes removal and replacement of existing curb ramps with ADA-compliant ramps as identified in the construction documents.

ARTICLE XI.

Extension of Contract

The City reserves the right to extend the terms, conditions, and unit costs of the Contract to future fiscal budget appropriations for similar work if mutually agreed upon by the City and the Contractor. The City at its own discretion may or may not adjust unit costs up to the percentage change in the Construction Cost Index as adopted by the St. Louis County Department of Transportation for that year.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement:

CITY OF WILDWOOD
(the "City")

(the "Contractor")

By: _____
James R. Bowlin, Mayor

By: _____

Attest:

Printed Name: _____

Megan Eldridge, City Clerk

Title

St. Louis County Community Development Block Grant Activity Contract

This Contract is between _____ (hereinafter referred to as the "Subrecipient") and _____ (hereinafter referred to as the "Contractor") and will go into effect upon execution.

Witnesseth, That:

Whereas, the Subrecipient has entered into a Cooperation Agreement with St. Louis County (herein called "the County") for the planning, developing, and execution of a community development program pursuant to Title I of the Housing and Community Development Act of 1974, as amended; and,

Whereas, the Subrecipient desires to engage the Contractor to render certain services in connection therewith;

I. Scope of Services

A. The Contractor shall, in a satisfactory and proper manner as determined by the Subrecipient, perform the following services:

II. Time of Performance

A. The requirements outlined in the Scope of Services as described in Section I, Paragraph A are to commence as soon as practicable after the execution of this Contract or at a time acceptable to both the Contractor and the Subrecipient and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of the Contract, but in any event, all of the provisions required hereunder shall be completed according to the following schedule:

If required under Section VI, Paragraph E, Subparagraphs 2 and 3 of this contract, performance and/or payment bonds shall be obtained within _____days of the execution date of this contract.

Work shall commence per the Scope of Services within _____days of the date the Notice to Proceed is issued.

All work provided for in this Contract shall be satisfactorily completed within _____ days of the date the Notice to Proceed is issued.

III. Compensation and Method of Payment

A. The Subrecipient agrees to pay the Contractor the Sum of \$_____. Such Sum is to be paid in the following manner:

B. In every case, payment is subject to receipt of an invoice for payment from the Contractor specifying that it has fulfilled the requirements of this Contract and that it is entitled to receive the amount requisitioned under the terms of this Contract. Satisfactory performance required under this Contract shall be determined by the Subrecipient as a condition of payment.

IV. Additional Agreement in Effect

A. _____ and the Contractor have also agreed to specific conditions and terms pursuant to the agreement signed between the parties on _____, attached hereto and incorporated herein by reference as Attachment A. In the event of any conflict between the terms of this Contract and the terms of Attachment A, the terms of this Contract shall govern, except where the terms of Attachment A set forth a higher standard of specificity or conduct for the Contractor.

V. Special Conditions

A. The Contractor agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 of the Housing and Urban Development regulations concerning Community Development Block Grants (CDBG) and all federal regulations and policies issued pursuant to these regulations.

VI. General Conditions

A. General Compliance. The Contractor agrees to comply with all applicable federal, state and local laws and regulations governing the funds provided under this Contract.

B. Independent Contractor. Nothing contained in this Contract is intended to, or shall be construed in any manner as, creating or establishing the relationship of employer/employee between the parties. The Contractor shall at all times remain an independent Contractor with respect to the services to be performed under this agreement. The Subrecipient shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance as the Contractor is an independent Contractor.

C. Hold Harmless. The Contractor shall hold harmless, defend and indemnify the Subrecipient and the County from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Contractor's performance or nonperformance of the services or subject matter called for in this Contract.

D. Workers' Compensation. The Contractor shall provide Workers' Compensation Insurance coverage for all employees involved in the performance of this Contract.

E. Bonding Requirements. The parties understand and agree that St. Louis County will not issue a Notice to Proceed until the following bonding requirements have been met:

1. Bid Guarantee Bond. The Contractor shall post a bid guarantee bond of 5 percent of the bid price to assure that the bidder will, upon acceptance of his or her bid, execute such contractual documents as may be required within the time specified in the bid documents. (Applicable to contracts over \$10,000.)

2. Performance Bond. The Contractor shall post a performance bond for 100 percent of the Contract Sum to assure satisfactory completion of work provided for in this Contract. (Applicable to contracts over \$10,000.)

3. Payment Bond. The Contractor shall post a bond for 100 percent of the Contract Sum to assure payment of all persons supplying labor and material in the execution of work provided for in this Contract. (Applicable to contracts over \$100,000.)

F. Performance of Work. If the Contractor fails to complete the Work in accordance with the Time of Performance outlined in Section II, Paragraph A of this Contract, unless the delay is excusable under the provisions outlined in Paragraph H of this Section, this may be grounds for termination of this Contract as discussed in Paragraph M of this Section.

G. After Commencement of the Work, and until final completion of the Work, the Contractor shall report to the Subrecipient, at such intervals as the Subrecipient may reasonably direct, the actual progress of the work compared to the Time of Performance. If the Contractor falls behind schedule for any reason, it shall promptly take, and cause its Subcontractors to take, such action as is necessary to remedy the delay, and shall submit promptly to the Subrecipient for approval a supplementary schedule or progress chart demonstrating the manner in which the delay will be remedied.

H. Delays beyond the Contractor's control shall include such incidents as strikes, lockouts, fire, and other natural or man-made disasters. Weather shall not constitute a cause for granting an extension of time.

I. If the Subrecipient determines that, as a result of any such cause beyond the Contractor's control, the delay in completion of the Work is so great that it cannot be remedied in the manner described in Paragraph G of this Section, or if the backlog of Work is so great that it cannot be remedied without incurring additional cost which the Subrecipient does not authorize, then the Time of Performance shall be extended pursuant to a Contract Addendum for the minimum period of delay occasioned by such cause. The period of delay and extension shall be determined by the Subrecipient and approved by the County.

J. All work provided for in this Contract shall be performed in a safe, neat and workmanlike manner.

K. Amendments. The Subrecipient or the Contractor may amend this Contract at any time provided that such amendments make specific reference to this Contract and are executed in writing, signed by a duly authorized representative of both organizations, and approved by the County. Such amendments shall not invalidate this Contract, nor relieve or release the Subrecipient or the Contractor from its obligations under this Contract.

L. The Subrecipient may, at its discretion, amend this Contract to conform with federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Contract, such modifications will be incorporated only by written amendment signed by both the Subrecipient and the Contractor and approved by the County.

M. Termination of Contract. If the Contractor is adjudged a 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 repeatedly fails, except in cases for which extension of time is provided, to make progress in accordance with the Time of Performance outlined in Section II, Paragraph A of this Contract, or if the Contractor fails to make prompt payment to Subcontractors or for material or labor, or if the Contractor disregards applicable regulations, laws, ordinances, or the instructions of the Subrecipient, or if the Contractor fails to perform the work provided for in this Contract in a safe, neat and workmanlike manner, or if the Contractor otherwise breaches any provision of this Contract, the Subrecipient may, without prejudice to any other right or remedy, by giving three (3) days prior written notice to the Contractor and his surety, terminate this Contract, take possession of the Work and of all materials and equipment thereon and finish the Work by whatever method the Subrecipient may deem expedient. 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 expense of finishing the Work, including additional architectural, managerial, and administrative expenses, such excess shall be paid to the Contractor. If such expenses shall exceed the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the Subrecipient promptly upon demand. In the event of termination pursuant to this paragraph, the Contractor, upon the request of the Subrecipient, shall promptly:

1. Assign to the Subrecipient in the manner and to the extent directed by the Subrecipient all rights, title and interest of the Contractor under any subcontracts, purchase orders and construction equipment leases to which the Contractor is a party and which relate to the Work or to construction equipment required therefore, and
2. Make available to the Subrecipient to the extent directed by the Subrecipient all construction equipment owned by the Contractor and employed in connection with the Work.

N. Performance of the Work hereunder may be terminated by the Subrecipient by giving three (3) days prior written notice to the Contractor if the Subrecipient, in its sole discretion, decides to discontinue or suspend construction. In the event of such termination, as opposed to termination pursuant to Paragraph M of this Section, the Contract Sum shall be reduced in an equitable manner by agreement between the parties or by arbitration.

O. The Contractor shall name St. Louis County and the Subrecipient, its employees, agents and representatives as Additional Insureds for General Liability with respect to work performed by the Contractor.

VII. Documentation and Recordkeeping

A. Records. The Contractor and the Subrecipient shall retain all records pertinent to expenditures incurred under this contract for a period of four (4) years after the submission of the CDBG Consolidated Annual Performance Evaluation Report (CAPER) for the program year in which the activity was completed, or after the resolution of all Federal audit findings, whichever occurs later.

B. Payment Procedures. The Subrecipient will pay to the Contractor funds available under this contract based upon information submitted by the Contractor and consistent with any approved budget and policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Contractor, and not to exceed actual cash requirements.

VIII. Personnel and Participant Conditions

A. Civil Rights Compliance. The Contractor agrees to comply with all city and state civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 109 of Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Orders 11375 and 12086. The Contractor shall include the provisions of this part in all subcontracts.

B. Nondiscrimination. The Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance. The Contractor will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause. The Contractor shall include the provisions of this part in all subcontracts.

C. Land Covenants. This Contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and 24 CFR 570, Part I. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Contract, the Contractor shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Subrecipient and the United States are beneficiaries of and entitled to enforce such covenants. The Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

D. Section 504 and Americans with Disabilities Act. The Contractor agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 706) and the Americans with Disabilities Act which prohibits discrimination against the handicapped in any federally assisted program. The Subrecipient shall provide the Contractor with any guidelines necessary for compliance with that portion of the regulations in force during the term of this contract.

E. It shall be the responsibility of the Contractor to ensure that all goods, services, and/or work procured and/or performed under this Contract shall conform to and be performed in compliance with the Americans with Disabilities Act of 1990. The Contractor agrees that, in case of non-compliance, it shall replace the service and/or work performed in order to effect such compliance, or pay liquidated damages in the amount required to effect compliance.

F. Affirmative Action. The Contractor agrees that it shall commit to carrying out, pursuant to the County's specifications, an Affirmative Action Program in keeping with the principles as provided in the President's Executive Order 11246 of September 24, 1965. The County shall provide Affirmative Action guidelines to the Contractor to assist in the formulation of such program.

G. MBE/DBE/WBE. The Contractor will use its best efforts to afford minority and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Contract. As used in this Contract, the term "minority and female business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are African-Americans; Spanish-speaking, Spanish-surnamed or Spanish-heritage Americans; Asian-Americans; and American Indians. The Contractor may rely on written representations by Subcontractors regarding their status as minority and female business enterprises in lieu of an independent investigation.

H. Access to Records. The Contractor shall furnish and cause each of its Subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Subrecipient, the United States Department of Housing and Urban Development (hereinafter referred to as "HUD"), or the County, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

I. EEO/AA Statement. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that it is an Equal Opportunity or Affirmative Action employer.

IX. Employment Restrictions

A. OSHA. Where employees are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to the participants' health or safety.

B. "Section 3" Clause. Compliance with the provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended; the regulations set forth in 24 CFR 135; and all applicable rules and orders issued hereunder prior to the execution of this contract shall be a condition of the federal financial assistance provided under this contract and binding upon the County, the Subrecipient and the Contractor. Failure to fulfill these requirements shall subject the Subrecipient, the Contractor and any Subcontractor, their successors and assigns, to those sanctions specified by the agreement through which federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements.

C. The Contractor further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this agreement: "The work to be performed under this contract is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in or owned in substantial part by persons residing in the areas of the project."

D. The Contractor certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements.

E. Subcontracts. The Contractor will include this “Section 3” clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the Subcontractor is in violation of regulations issued by HUD. The Contractor will not subcontract with any Subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the Subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

F. Assignability. The Contractor shall not assign or transfer any interest in this Contract without the prior written consent of the Subrecipient thereto; provided, however, that claims for money due or to become due to the Contractor from the Subrecipient under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Subrecipient.

G. Conflict of Interest. The Contractor agrees to abide by the provisions of 24 CFR 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Contract. The Contractor further covenants that in the performance of this Contract no person having such a financial interest shall be employed or retained by the Contractor hereunder. These conflict of interest provisions apply to any person who is an employee, agent, the Contractor, officer, elected official or appointed official of the Subrecipient, or of any designated public agencies or Contractors which are receiving funds under the CDBG program.

X. Subcontracts

A. Approvals. The Contractor shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the Subrecipient prior to the execution of such agreement.

B. Monitoring. The County will monitor all Subcontractors on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance. However, it is expressly agreed that the County will not be held responsible for contract non-compliance on the part of any Subcontractor, or for any damages incurred as the result of non-compliance.

C. Content. The Contractor shall cause all of the provisions of this Contract in its entirety to be included in and made a part of any subcontract executed in the performance of this agreement.

D. Selection Process. The Contractor shall undertake to ensure that all subcontracts let in the performance of this Contract shall be awarded on a fair and open competitive basis.

XI. Copyright

A. If this Contract results in any copyrightable material, the Subrecipient, the County, and/or HUD reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and authorize others to use, the work for government purposes.

XII. Religious Organization

A. The Subrecipient agrees that funds provided under this Contract will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with the federal regulations specified in 24 CFR 570.200(j).

XIII. Environmental Conditions

A. Lead-Based Paint. The Contractor agrees that any construction or rehabilitation of residential structures with assistance provided under this Contract shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, in particular Sub-Part B thereof. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning.

B. Historic Preservation. The Contractor agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR, Part 800-Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Contract.

XIV. Attachments

A. The following documents are attached hereto and incorporated herein by reference:

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the later of the dates set forth below.

Signed: _____

Signed: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attest: _____

Attest: _____

Title: _____

Title: _____

Approved as to legal form:

Signed: _____

Name: _____

Title: _____

Date: _____

APPROVED BY ST. LOUIS COUNTY OFFICE OF COMMUNITY DEVELOPMENT:

Manager, Office of Community Development

Date