

**AN ORDINANCE OF THE CITY OF WILDWOOD, MISSOURI, AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE A CONTRACT ON BEHALF OF THE CITY WITH N.B. WEST CONTRACTING COMPANY FOR THE RESURFACING OF VARIOUS PUBLIC STREETS WITHIN THE CITY, INCLUDING TRAFFIC CONTROL AND OTHER INCIDENTAL ITEMS AS SHOWN ON THE CONSTRUCTION DRAWINGS AND SPECIFICATIONS**

**WHEREAS**, the City of Wildwood, Missouri (the “City”), has planned a project to provide for the asphalt resurfacing of various public streets within the City, including traffic control and other incidental items as shown on the construction drawings and specifications (the “2022 Asphalt Resurfacing Project”); and

**WHEREAS**, the City has budgeted \$600,000.00 in the 2022 Road and Bridge Fund for the 2022 Asphalt Resurfacing Project; and

**WHEREAS**, the Department of Public Works of the City solicited public bids for the 2022 Asphalt Resurfacing Project; and

**WHEREAS**, two (2) bids were submitted by different companies, both of which were competitive and met the requirements set forth by the City for the 2022 Asphalt Resurfacing Project; and

**WHEREAS**, the bid from N.B. West Contracting Company, in the amount of \$588,639.15, was the lowest responsible bid received; and

**WHEREAS**, the Department of Public Works of the City has reviewed the bids, and recommends awarding a contract to N.B. West Contracting Company for the 2022 Asphalt Resurfacing Project at a contract amount of \$588,639.15; and

**WHEREAS**, the Administration and Public Works Committee of the City reviewed the bids, and recommended awarding a contract to N.B. West Contracting Company for the 2022 Asphalt Resurfacing Project for the recommended contract amount; and

**WHEREAS**, the City Council of the City finds and determines that it is to the benefit of the health, safety and general welfare of the residents of the City to enter into a contract with N.B. West Contracting Company to complete the 2022 Asphalt Resurfacing Project for the recommended contract amount.

**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 Contract by and between the City of Wildwood, Missouri, and N.B. West Contracting Company, for the 2022 Asphalt Resurfacing

Project, attached hereto, marked as **Exhibit A**, and incorporated by reference herein (the “Contract”), be and they hereby are approved and the Mayor shall be and is hereby authorized, empowered and directed to further negotiate, execute, acknowledge, deliver and administer on behalf of the City such Contract in substantially the form attached hereto. The City Clerk is hereby authorized and directed to attest to the Contract and other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of the Contract and this Ordinance.

**Section Two.** The total expenses and liability of the City under the Contract shall not exceed a contract sum of \$588,639.15, 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 \$600,000.00.

**Section Three. 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 Four. 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 Five. Effective Date.** This Ordinance shall be in full force and effect from and after the date of its final passage and approval.

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 passage.

\_\_\_\_\_  
Presiding Officer

\_\_\_\_\_  
James R. Bowlin, Mayor

ATTEST:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Clerk

**Exhibit A**  
[attach Contract]

**CITY-CONTRACTOR AGREEMENT**

City of Wildwood

This City–Contractor Agreement “Agreement” is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between the City of Wildwood, Missouri (hereinafter called the "City") and N.B. West Contracting Co., with offices located at 18637 US Highway 66, Pacific, MO (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: 90

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 \$588,639.15 (the "Contract Sum") based upon Applications for Payment submitted by the Contractor on or before the twentieth (10<sup>th</sup>) day of the month for Work completed in accordance with the General Conditions in the following manner:

(1) On or about the tenth (10<sup>th</sup>) 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 (10<sup>th</sup>) 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. 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 \$ 200.00 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

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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 established by RSMo. 537.610 et.seq.

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 the producing and placement of an Ultra-Thin Bonded Asphalt Wearing Surface, as referenced in section 413.30 of the Missouri Standard Specifications for Highway Construction 2018, including traffic control and other incidental items as identified in the construction documents.

ARTICLE XI.

Miscellaneous Provisions

(a) This Agreement constitutes the sole and complete understanding of the parties hereto with respect to the subject matter hereof, and shall replace all prior written and oral understandings.

This Agreement may be amended only by written agreement signed by the parties.

(b) Each party hereunder represents to the other that it is duly organized, validly existing and in good standing under the laws of its state of incorporation or formation; the execution, delivery and performance of this Agreement by such party has been duly authorized by all necessary and appropriate action; and, this Agreement constitutes a valid and binding obligation of such party, enforceable against such party in accordance with the terms hereof.

(c) This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one agreement that is binding upon both parties hereto, notwithstanding that all parties are not signatories to the same counterpart. This Agreement may be delivered by facsimile or electronic mail transmission. This Agreement shall be considered to have been executed by a party, if there exists a photocopy, facsimile copy, electronic copy, or a photocopy of a facsimile or electronic copy of an original hereof or of a counterpart hereof which has been signed by such party. Any photocopy, facsimile copy, electronic copy or photocopy of a facsimile copy of this Agreement or any counterpart hereof shall be admissible into evidence in any proceeding as though the same was an original.

(d) The parties shall act in good faith in the performance of their obligations hereunder.

(e) If either party to this Agreement defaults in the performance of its obligation(s) hereunder, the prevailing party in any action to enforce its rights and remedies shall be entitled to obtain its costs and reasonable attorney's fees from the non-prevailing party.

(f) The failure of either party to enforce any of its rights hereunder shall not act as a waiver of that or any other right possessed by such party under this Agreement.

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(g) If any provisions of this Agreement shall be found to be illegal, invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect and be construed to effectuate the intent of the parties.

ARTICLE XII.

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.

**THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION  
WHICH MAY BE ENFORCED BY THE PARTIES.**

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

CITY OF WILDWOOD  
(the "City")

NB WEST CONTRACTING CO.  
(the "Contractor")

By: \_\_\_\_\_  
James R. Bowlin, Mayor

By: \_\_\_\_\_

Attest: \_\_\_\_\_  
Megan Eldridge, City Clerk

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_