

AN ORDINANCE OF THE CITY OF WILDWOOD, MISSOURI, AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE A CITY-CONTRACTOR AGREEMENT WITH CONOYER BROTHERS LANDSCAPING, INC., FOR THE INSTALLATION OF CERTAIN LANDSCAPE AREAS WITHIN THE CITY.

WHEREAS, the City of Wildwood, Missouri (the “City”), developed specifications and bid documents for landscape improvement projects to be completed during Fiscal Year 2022, which includes the planting of new trees, shrubs, and grasses within four areas on the public right-of-way and along various roadways, including State Route 109, State Route 100 and Taylor Road, located within the City of Wildwood (the “Project”); and

WHEREAS, the Department of Public Works solicited bids for the Project; and

WHEREAS, a total of two (2) sealed bids, all of which were competitive and met the requirements set forth by the City for the Project, were submitted by different companies and opened publicly by the City on July 27, 2022; and

WHEREAS, the bid from Conoyer Brothers Landscaping, Inc, was the lowest responsible bid received for the Project, and

WHEREAS, the City has funds budgeted for 2022 for landscaping on the public right of way; and

WHEREAS, the City Council of the City hereby finds and determines that it is to the benefit of the residents of the City to enter into a City-Contractor Agreement with Conoyer Brothers Landscaping, Inc. for the Project.

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 Conoyer Brothers Landscaping, Inc., for 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. The total expenses and liability of the City under the Agreement shall not exceed a contract sum of Two Hundred, Forty-Seven Thousand, Six Hundred and Sixty-Three dollars (\$247,663.00), except that the City Council may, by resolution, increase said amount upon recommendation by the City Administrator and Director of Public Works of the City.

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 its 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 its passage.

Presiding Officer

James R. Bowlin, Mayor

ATTEST:

ATTEST:

City Clerk

City Clerk

Exhibit A
[attach Agreement]

CITY-CONTRACTOR AGREEMENT

This is an Agreement made and entered into the _____ day of _____, 2022, by and between the City of Wildwood, Missouri (hereinafter called the "City") and Conoyer Brothers Landscaping, Inc., a Missouri Corporation, with offices at 3040 Salt River Road, St. Peters, Missouri 63376 (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 consist of the *General Conditions of City-Contractor Agreement*, *Non-Collusion Affidavit*, *Performance Payment Bond*, *Specifications*, *Drawings*, the *Construction Schedule*, all *Addenda*, and all *Modifications* issued after execution of this Contract, which together with this Agreement form the Contract, and are all as fully a part of the Contract 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 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. All work shall be performed in compliance with all applicable federal, state, and City laws and regulations, including but not limited to all grading and construction 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 under the Contract shall commence within ten (10) days of the date of the written notice to proceed from the City to the Contractor and shall be **completed no later than December 31, 2022.**

ARTICLE IV.

The Contract Sum and Payments

Based upon Applications for Payment submitted by the Contractor on or before the **twentieth (20th) day of the month** for work performed, in accordance with the General Conditions, the City shall pay the Contractor for the performance of the Work, the sum of \$ \$247,663.00 (the "Contract Sum") as follows:

(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 Contract fully performed.

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

ARTICLE V.

Performance of the Work

(a) Within **seven (7) calendar days** after being awarded the Contract, the Contractor shall prepare and submit for the City's approval 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. The Notice to Proceed shall be issued within ten (10) working days of the award, however no work will commence until the Contractor's schedule is submitted and approved by the City. The contractor shall be required to substantially finish portions of the work as designated by the Director of Planning prior to continuation of further work remaining on the project. This may include backfilling, seeding, or cleanup as designated by the Director of Planning.

(b) Completion of the Work in accordance with the time limits set forth in the Construction Schedule is an essential condition of the Contract. 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 \$500.00 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 as 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, he shall promptly take, and cause his 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 his 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 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 great 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 his rights under this Article VI.

ARTICLE VII.

Changes in the Work

(a) The City may make changes within the general scope of the contract by altering, adding to or deducting from the Work, the Contract Sum being 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 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 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 Contract, the City may, without prejudice to any other right or remedy, by giving written notice to the Contractor and his surety, terminate the Contract, 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 Contract 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 paragraph, 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, 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.

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ARTICLE IX.

Contractor's Liability Insurance

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

The policy shall be endorsed to cover the contractual liability of the Contractor under the *General Conditions*.

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 City's Protective 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."

ARTICLE X.

The Work

The Contractor shall furnish all labor, materials and equipment necessary to perform the scope of work within the project limits. **New landscape improvements (4 separate project locations), primarily tree and shrub plantings, with one watering, within the State Route 100 and 109 rights of way. The Contract contains a binding arbitration provision which may be enforced by the parties.**

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

Conoyer Brothers Landscaping, Inc.
"Contractor"

CITY OF WILDWOOD
"City"

By_____

By_____

Printed Name

Title

Title

Attest:

City Clerk

Date