

RESOLUTION NO. 1528

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CREVE COEUR, MISSOURI, AUTHORIZING THE EXECUTION OF A CONTRACT WITH IDEAL LANDSCAPE CONSTRUCTION, INC. FOR THE REPLACEMENT OF THE PAVED PATH AND RELATED IMPROVEMENTS AT MALCOLM TERRACE PARK FOR THE NOT-TO-EXCEED CONTRACT SUM OF \$57,431.00.

WHEREAS, it is necessary to maintain and eventually replace paved walking trails in the City's parks in order to maintain the quality of life expected by the community; and

WHEREAS, the City strives to provide safe and accessible paths in its parks; and

WHEREAS, the City has been awarded a Municipal Park Grant to substantially fund the replacement of the paved path at Malcolm Terrace Park; and

WHEREAS, this project and these improvements have been competitively bid per the requirements outlined in the City of Creve Coeur Code of Ordinances; and

WHEREAS, Ideal Landscape Construction, Inc., has provided the lowest and best bid for the project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CREVE COEUR, AS FOLLOWS:

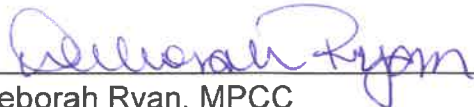
Section 1. The Contract between Ideal Landscape Construction, Inc., and the City, attached hereto as "Exhibit A," with a not-to-exceed contract sum of \$ 57,431.00, is hereby approved and the City Administrator is hereby authorized and directed to enter into and execute that Contract. The Contract as executed shall be substantially in the form of "Exhibit A," with such changes therein as shall be approved by the officers of the City executing same, consistent with the provisions and intent of this Resolution. The City Administrator and his designated representatives are hereby authorized and directed to take any and all actions necessary, desirable, convenient, or proper in order to carry out the intent of this Resolution, the matters herein authorized, and the rights and duties of the City under the Contract.

Adopted this 8th day of March, 2021.



Barry Glantz
Mayor

Attest:


Deborah Ryan, MPCC
City Clerk





CITY-CONTRACTOR AGREEMENT

This is an Agreement made and entered into the ____ day of 3/12/2021, 2021, by and between the **City of Creve Coeur, Missouri** (hereinafter called the "City") and **Ideal Landscape Construction, Inc.**, with offices at 6252 Olsen Road, St. Louis, MO 63129 (hereinafter called the "Contractor"). The project is identified as **Malcolm Terrace Park Paths** (hereinafter called the "Work" or the "Project").

WITNESSETH:

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

ARTICLE I

The Contract Documents

The Contract Documents, which comprise the entire agreement between the City and the Contractor, consist of the following:

- 1) This City-Contractor Agreement
- 2) General Conditions of City-Contractor Agreement
- 3) Job Special Provisions
- 4) Technical Specifications and Construction Details
- 5) Non-Collusion Affidavit
- 6) Contractor's Affidavit for Public Construction Projects
- 7) Construction Schedule
- 8) All Addenda to the Bid Documents and all Modifications issued after execution of this Contract
- 9) The Saint Louis County Standard Specifications for Highway Construction, dated October 1, 2018, referred to herein as the "Standard Specifications" and applicable to the Work of this Contract by reference;

- 10) The St. Louis County Standard Drawings, dated September 1, 2015. These drawings shall be included in the reference to the "Standard Drawings" herein.

The documents listed above, 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. Furthermore, 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 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.

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 **twenty (20) calendar days** of the date of the written Notice to Proceed as issued by the City, and the Work shall be completed **within forty-five (45) calendar days of the written Notice to Proceed**.

The Contractor's Construction Schedule shall describe when each phase of the Work will be completed within the Time of Completion indicated above. The Contractor's Construction Schedule cannot indicate a completion date that requires more time than what is indicated above. An extension of the Time of Completion can be made only through a Change Order from the City, in accordance with the General Conditions of the City-Contractor Agreement.

ARTICLE IV

The Contract Sum and Payments

The "Contract Sum" is hereby defined as the sum total of the products of the estimated quantity of each bid item in the Bid Proposal Form and the unit price bid by the Contractor in the Bid Proposal Form for that item, adjusted to account for any Modification(s), as defined in the General Conditions, made in compliance with Article VI of this Agreement and made prior to the execution of this Agreement. Therefore, the Contract Sum represents a reasonable estimate of the anticipated final contract value at the time of the execution of this Agreement. Both the

Contractor and the City acknowledge that the actual work may require different item quantities than those that were included in the Bid Proposal Form or a pre-construction Modification and that the completed and accepted item quantities will be reconciled against the estimated quantities through a final change order upon the completion of the Work.

The Contract Sum for this Work shall be fifty-seven thousand, four hundred, and thirty-one dollars and zero cents (\$57,431.00). The Contract unit prices and Contract item quantities are listed in Table 1 of this Agreement. These unit prices and item quantities form the basis of the not-to-exceed Contract Sum, as described above and as illustrated in Table 1. All payments for the Work shall be based upon the Contract unit costs listed in Table 1.

Based upon Applications for Payment submitted by the Contractor on or before the twentieth day of the month for work completed and accepted by the City, in accordance with the Contract Documents, except as otherwise required by Section 34.057 RSMo. the City shall pay the Contractor as follows:

- (1) On or about the tenth day of each following month, ninety percent (90%) [95% if Contract Sum exceeds \$50,000] of the value of the portion of the Work that has been completed and accepted to date, less the aggregate of all previous progress payments;
- (2) Upon completion of the Work, the Contractor and the City shall execute a final Modification to this Agreement to reconcile the quantity of each completed and accepted Contract item with the estimated quantity of that item included in Table 1 and adjusted through subsequent Modification(s), if any, made in compliance with Article VI of this Agreement; and
- (3) Final payment shall be made within thirty (30) days after the Work is fully completed and accepted by the City and the Contract fully performed.

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:

- (1) A Construction Schedule for the Work, which shall indicate the target dates for starting and completing the various stages of the Work and which shall comply with the times set forth in Article III.
- (2) A Traffic Control Plan indicating the location of all proposed signage, detours, and lane closures requested for the Work and which adequately address and maintain the pedestrian and vehicular traffic during the Work. All traffic control shall be according to the standards of the Manual on Uniform Traffic Control Devices

(MUTCD) developed by the Federal Highway Administration, as referenced in Article I of this Agreement.

- (3) Proof of compliance with all insurance requirements, acceptable to the City.
- (4) All required bonds.
- (5) Any missing bid documents.

(b) The Notice to Proceed shall be issued within fourteen (14) calendar days after the award of the contract or submittal to and approval by the City of the foregoing required documents, whichever is later. Undue delay in submitting such required documents shall be grounds for termination of the contract by the City upon three (3) days advance written notice.

(c) 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, restoration, or cleanup as designated by the Director of Public Works.

(d) 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:

- five hundred dollars (\$500.00) for each calendar day the Contractor fails to comply with the Construction Schedule until the Director of Public Works determines that Substantial Completion of the Work has been achieved; and
- one hundred dollars (\$100.00) for each working day after both the completion date specified in the Construction Schedule has expired and the date that Substantial Completion has been achieved, until final completion and acceptance of the Work.

The total amount so payable to the City as liquidated damages may be deducted from any sums due or to become due to the Contractor from the City. Excessive delay, as determined by the Director of Public Works, may be grounds for termination of the City-Contractor Agreement, as discussed in Article VIII.

(e) 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, 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 (d) of Article V hereof, provided the Contractor uses his best efforts to remedy the delay in the manner specified in paragraph (d) 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, as determined by the Director of Public Works. In the case of a continuing cause of delay, only one claim is necessary.

(c) Weather may constitute a cause for granting an extension of time, but only as determined and approved by the Director of Public Works.

(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 Contract. No extra work or change shall be made except pursuant to a Change Order from the City 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) Any adjustment in the Contract Sum for duly authorized extra work or change in the Work shall be determined based on the Contract unit prices listed in Table 1 of this Agreement, 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 fee properly itemized and supported by sufficient substantiating data to permit evaluation, by an acceptable cost-plus-percentage fee, or by an acceptable fixed fee.

ARTICLE VIII

Termination of the City-Contractor Agreement

(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 value of the Work completed to date shall exceed the expenses of finishing the Work, including additional professional, managerial, and administrative expenses, such excess shall be paid to the Contractor. If such expenses shall exceed the unpaid balance of the value of the Work completed to date, 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.

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: \$1,000,000 each person
\$1,000,000 each occurrence
 - Property Damage: \$1,000,000 each occurrence
\$1,000,000 aggregate
- (c) Comprehensive Automobile Liability, Bodily Injury
 - Including Death: \$1,000,000 each person
\$1,000,000 each occurrence
 - Property Damage: \$1,000,000 each accident
- (d) Owner's Protective Bodily Injury
 - Including Death: \$1,000,000 each person
\$1,000,000 each occurrence
 - Property Damage: \$1,000,000 each occurrence
\$1,000,000 aggregate

The Owner's Protective policy shall name the City as the Insured and other policies must cover the City as an additional primary insured. All policies must be endorsed to require at least thirty

(30) days written advance notice to the City of any change or cancellation. Proof of compliance with these requirements shall be furnished to and approved by the City prior to the Contractor commencing the Work on this project. Certificates evidencing such insurance shall be furnished the City prior to Contractor commencing the work on this project.

ARTICLE X

Equal Opportunity and Non-Discrimination

The Contractor will comply with all provisions of federal, state, and local codes, ordinances, and regulations governing the regulation of Equal Employment Opportunity and Non-Discrimination, including, but not limited to, Chapter 230 of the Code of Ordinances of the City of Creve Coeur, Missouri.

In the event that any or all of the provision(s) of this Article conflict with federal, state, or other local laws, ordinances, or regulations, then the requirements of such federal, state, or local laws, ordinances, or regulations shall prevail. Compliance with the foregoing provisions shall not relieve the Contractor from adherence to any and all additional requirements regarding equal employment or non-discrimination set forth in such federal, state, or other local laws, ordinances, or regulations.

During the performance of this contract, the Contractor, for itself, its assignees and successors, in interest (hereinafter referred to as the "Contractor") agrees, as follows:

1. **Compliance with Regulations:** The Contractor shall comply with Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

Further, on any federal assisted contract, the Contractor and sub-contractor agree to comply with the Equal Employment Opportunity provisions cited in CFR 23, Subpart D – Construction Contract Equal Employment Opportunity Compliance Procedures, CFR 49 – Non-Discrimination in Federally-assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, E.E. 11246 and Title VII of the Civil Rights Act of 1964.

2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, ancestry, income, limited English proficiency, sex, gender, gender identity, sexual orientation, age, disability, or familial status in the selection, retention, and treatment of subcontractors, including procurements of materials in the discrimination prohibited by Section 21.5 of the

Regulations, including employment practices when the contractor covers a program set for in Appendix B of the Regulations.

3. Solicitation for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under the contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, ancestry, income, limited English proficiency, sex, gender, gender identity, sexual orientation, age, disability, or familial status.
4. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State Highway Department of the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State Highway Department or the Federal Highway Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event the contractor's noncompliance with the nondiscrimination provisions of this contract, the State Highway Department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a) Withholding payments to the contractor under the contract until the contractor complies and/or
 - b) Cancellation, termination or suspension of the contract, in whole or in part.
6. Incorporation of Provisions: The contractor shall include provisions of paragraphs (1) through (5) in every subcontract, including procurement of material and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the State Highway Department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the State Highway Department to enter into such litigation to protect the interests of the State, and,

in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE XI

Conflicts of Interest

The parties agree to abide by all applicable federal, state, and local laws, ordinances, and regulations relating to conflicts of interest. A detailed discussion of conflicts of interest can be found in Section 5.6 of the General Conditions of City-Contractor Agreement.

ARTICLE XII

The Work

The Contractor shall furnish all labor, materials, and equipment necessary to complete all services included in the Work. The scope of work includes the removal of existing asphalt paths and pavement in Malcolm Terrace Park and the installation of new concrete paths and pavilion floor. This work is more specifically described in the Project Specifications.

The Work shall be completed to the satisfaction of the Director of Public Works for the City of Creve Coeur.

TABLE 1
Summary of Contract Quantities, Contract Unit Prices, and Contract Sum

Item Number	Item	Unit	Contract Quantity	Contract Unit Price	Item Subtotal
1	REMOVAL OF IMPROVEMENTS	LS	1	\$ 9,271.00	\$ 9,271.00
2	MOBILIZATION	LS	1	\$ 5,000.00	\$ 5,000.00
3	CONCRETE PARK PATH (6" THICK)	SY	620	\$ 52.00	\$ 32,240.00
4	CONCRETE PAVILION PAD (6" THICK)	SY	55	\$ 95.00	\$ 5,225.00
5	CONCRETE PLAYGROUND PATH (4" THICK)	SY	85	\$ 67.00	\$ 5,695.00

CONTRACT SUM:	\$	57,431.00
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement:

CITY OF CREVE COEUR

By Mark C. Perkins
DocuSigned by: Mark C. Perkins, City Administrator
 Mark C. Perkins, City Administrator

By Jim Heines
DocuSigned by: James H. Heines, Director of Public Works
 James H. Heines, Director of Public Works

(SEAL)

Attest: Deborah Ryan
DocuSigned by: Deborah Ryan, City Clerk
 Deborah Ryan
 City Clerk

Date: 3/12/2021

IDEAL LANDSCAPE CONSTRUCTION, INC.

By Dave Buckel
DocuSigned by: Dave Buckel
 Dave Buckel
 Signature

Dave Buckel
 Printed Name

President
 Title

(SEAL)

Attest: Tara Raby
DocuSigned by: Tara Raby
 Tara Raby

Date: 3/16/2021