

BILL NO. 23-90

ORDINANCE NO. 5443

AN ORDINANCE APPROVING AN AGREEMENT WITH GERSHENSON CONSTRUCTION CO., INC., FOR THE WHITECLIFF PARK LANE BRIDGE REPLACEMENT PROJECT AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE SAME ON BEHALF OF THE CITY

WHEREAS, the City of Crestwood, Missouri (the “City”) issued a Request for Bids for the Whitecliff Park Lane Bridge Replacement Project on January 22, 2024 (the “Project”); and

WHEREAS, four contractors submitted sealed bids, which the City publicly opened on February 22, 2024; and

WHEREAS, City Staff recommends Gershenson Construction Co., Inc., for the Project as the lowest responsible bidder meeting specifications.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF CRESTWOOD, MISSOURI AS FOLLOWS:

SECTION 1: An agreement with Gershenson Construction Co., Inc. for the Whitecliff Park Lane Bridge Replacement Project in an amount not to exceed \$1,454,036.75 is hereby approved, as attached hereto as Exhibit A and made a part hereof.

SECTION 2: The City Administrator, or his designated representative, is hereby authorized to approve and execute change orders in the event of contingencies or additional work related to this Agreement in an amount not to exceed \$145,404.00 in accordance with the City Purchasing Policy.

SECTION 3: The Mayor and City Clerk are hereby authorized and directed to execute the Agreement with Gershenson Construction Co., Inc. on behalf of the City and to take further action as may be reasonably necessary to carry out the intent of this Ordinance.

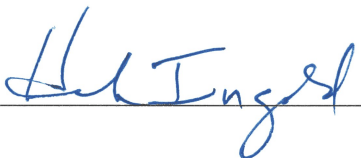
SECTION 4: This Ordinance shall be in full force and effect from and after its passage by the Board of Aldermen and its approval by the Mayor.

PASSED AND SIGNED this 26th day of March, 2024.



Mayor

ATTEST:



City Clerk

APPROVED this 26th day of March, 2024.



Mayor

EXHIBIT A
(ATTACH CONTRACT)

WHITECLIFF PARK LANE OVER GRAVOIS CREEK AGREEMENT

THIS AGREEMENT is made and entered into as of this 26th day of March 2024, by, and between the City of Crestwood, Missouri ("City"), One Detjen Drive, Crestwood, Missouri, and Gershenson Construction Company, Inc., with offices at 2 Truitt Drive, Eureka, MO 63025 WITNESSETH THAT:

WHEREAS, the City issued a Request for Bids dated January 22, 2024, for bids for Crestwood's Whitecliff Park Lane over Gravois Creek Project ("RFB"); and

WHEREAS, Contactor submitted a bid in response to the City's RFB on February 22, 2024("Bid"); and

WHEREAS, in accordance with the Purchasing Policy of the City of Crestwood adopted by Ordinance No. 4931 (Nov. 27, 2018) and Section 2-121 of the Municipal Code of the City of Crestwood, Missouri; and

WHEREAS, the City has selected the Contractor for the Crestwood's Whitecliff Park Lane over Gravois Creek Project in accordance with the terms of the RFB and the Bid.

NOW, THEREFORE, in consideration of the premises and of the mutual promises, covenants and agreements herein contained, the parties do hereby agree as follows:

1. Contractor Selection. City does hereby employ Contractor for the purpose of performing the services and work and providing the equipment set out herein and per the scope as set forth in the RFB and in the Bid, and Contractor agrees to perform such services and work and to provide such equipment (hereafter the "Work").

2. Work and Project. The Work to be performed includes the furnishing of all necessary professional, technical and other services and equipment for the project as described in Exhibit A attached hereto ("Project"). Contractor shall perform all of the Work described in this Agreement and in the RFB and in the Bid attached hereto and made a part hereof in Exhibit A, in accordance with the terms and conditions hereof (the "Contract Documents"). In connection with

the Work and the Project, the City requests the Contractor to use American products whenever the quality and price are comparable with other products.

3. Assignment – Subcontracting. No part of the Work to be performed by Contractor hereunder shall be assigned or subcontracted without the prior written consent of City. The consent of City shall in no way relieve Contractor of its responsibility for the quality and performance of the Work. Contractor shall include in any such consented to subcontract all of the terms and conditions of this Agreement and make any subcontractor(s) subject thereto.

4. Providing of Information. Upon reasonable request by Contractor, City will provide to Contractor such relevant information of record as is available to City. It is understood that City has no responsibility for the accuracy of any such information provided.

5. Contractor Responsibilities. Contractor shall be responsible for:

(a) Performance of all Work in accordance with the instructions issued by City, and the terms and provisions of this Agreement.

(b) The professional quality, technical accuracy and coordination of all Work and, without additional compensation, the correction of any errors or deficiencies in the Work.

(c) Contractor and any subcontractors shall maintain all records pertaining to costs incurred and make such records available for inspection by City at all reasonable times during the performance of the Work and for a period of three (3) years from the date of final payment hereunder. Copies of any such records shall be furnished to City, if requested by City.

6. Term and Time of Completion. The term of this Agreement shall commence as of the date hereof and continue until the Project is complete and accepted by the City, and final payment is made to the Contractor, unless terminated sooner by the City as provided herein. Contractor shall commence work on the Project no sooner than Tuesday, September 2, 2024 and

shall complete the Work by May 3, 2025. All time limits stated in the Contract Documents are of the essence. Should the Contractor, or in case of default, the surety, fail to complete the Work and the Project within the completion date specified, a deduction of the amount stipulated in Article 12 will be made for each day that the Work remains uncompleted.

7. Agreement Changes. The City may make changes to this Agreement, provided that no changes shall be made to the scope of the Work, time of performance, compensation or any provision which may affect the cost of the Work, except pursuant to an authorized change order or a written amendment to this Agreement executed by both parties. Any amendments to this Agreement mutually agreed to shall be in writing and signed by the City and the Contractor.

8. Document Forms. Documents to be prepared by Contractor hereunder are to be on forms provided by the City, to the extent practicable and relevant.

9. Contractor Insurance. Contractor shall procure and maintain during the period of this Agreement insurance, as follows:

(a) Workers' Compensation as required by law and employer's liability coverage in an amount not less than \$2,000,000.

(b) Commercial general liability which provides combined single limit coverage, including property damage and bodily injury, including:

Death	\$2,000,000 each person \$2,000,000 each occurrence
Property Damage	\$2,000,000 each occurrence \$2,000,000 general aggregate

(c) Automobile liability, which provides combined single limit coverage, including:

Death	\$2,000,000 each person \$2,000,000 each occurrence
Property Damage	\$2,000,000 each accident

(d) Professional liability not in agreement

The commercial general liability policy shall be endorsed to cover the liability of Contractor hereunder. City shall be named as an additional insured on the commercial general liability and automobile liability policies and such insurance shall be primary and noncontributory with respect to any insurance maintained by the City. Each such policy shall be written by a company or companies licensed to do business in the state of Missouri and acceptable to the City. Certificates of insurance shall be furnished to City prior to the commencement of the Work. Each such policy shall provide that it shall not be canceled or altered, without 15 days prior written notice to City. **The certificate of insurance must state "the City of Crestwood is an additional insured on a primary and non-contributory basis."**

10. Contractor Bonds. Prior to, or by the signing of this Agreement, the Contractor shall furnish to the City a performance bond and a labor and material payment bond in an amount equal to one hundred percent (100%) of the contract amount, which shall be acceptable to the City in form and content. The surety providing such bonds shall be a company licensed to do business in the State of Missouri and shall be acceptable to the City.

11. Contractor Indemnity. Contractor shall indemnify and hold harmless the City, its board of aldermen, officers, representatives, agents and employees, from and against any and all liabilities, demands, losses, claims or suits, including costs and reasonable attorneys' fees, for and on account of any kind of injury, loss or damage, or any other circumstances, sustained by the City, its board of aldermen, officers, representatives, agents and employees, arising from the breach of this Agreement or resulting from the negligent acts, errors or omissions of Contractor, any subcontractor, and each of their respective agents, employees or contractors arising out of the Work.

12. Performance of the Work. Contractor's completion of the Work and the Project in accordance with the time limits set forth in Article 6, Term and Time of Completion, is an essential condition of this Agreement. If the Contractor fails to complete the Work and the Project in accordance with the requirements of Article 6, unless the delay is excusable under the provisions of Article 15 hereof, the Contractor shall pay the City as liquidated damages and not as a penalty, the sum of \$100.00 for each calendar day the Contractor fails to comply with Time of Completion.

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.

13. Prevailing Wage Requirements. This Agreement, the Project and the Work, are subject to prevailing wage requirements under applicable Missouri law. The applicable Annual Wage Order No. 30 and incorporated herein by reference. Contractor agrees to pay not less than the prevailing hourly rate of wages, as set out in the Annual Wage Order, to all workers performing the Work for the Project under this Agreement. Contractor agrees to comply with all related requirements, including the maintaining of payroll records and making said records available as required. Pursuant to applicable law, Contractor will forfeit as a penalty to the City the sum of one hundred dollars (\$100.00) for each workman, for each calendar day, or portion thereof, such workman is paid less than the said stipulated rates for any Work done under this Agreement, by the Contractor, or by any subcontractor.

14. OSHA Training Program. Contractor shall require all of its on-site employees to complete a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program which includes a course in construction safety and health approved by OSHA, or a similar program approved by the Missouri Department of Labor and Industrial Relations which is at least as stringent as an approved OSHA program; unless such employees of Contractor previously have completed the required program.

The Contractor shall forfeit as a penalty to the City the sum of two thousand five hundred dollars (\$2,500.00) plus one hundred dollars (\$100.00) for each employee employed by Contractor or any subcontractor, for each calendar day or portion thereof, such employee is employed without the required training. The penalty shall not begin to accrue until the applicable time periods included in Section 292.675, Missouri Revised Statutes, have elapsed.

15. Delays Beyond Contractor's Control.

(a) If the Contractor fails to complete the Work and the Project in accordance with Article 6 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 Article 12 hereof. If, as a result of any such cause beyond the Contractor's control, the delay in completion of the Work in accordance with Article 6 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 shall be extended. 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 15.

16. City Representative. The City representative shall be the Manager of Recreation, provided that the City Administrator may, at his sole discretion, designate another City representative from time to time. In such event, City shall notify Contractor of such change in writing.

17. Notice. Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed to have been delivered on the earliest to occur of (a) actual receipt; or (b) three (3) business days after having been deposited in the U.S. Mail, postage prepaid, certified mail, return receipt requested; or (c) one business day after having been deposited with a reputable overnight express mail service that provides tracking and proof of receipt of items mailed to the parties as follows (or to such other addressee or address as shall be set forth in a notice given in the same manner):

City: Director of Public Works
City of Crestwood
1 Detjen Drive
Crestwood, MO 63126

Contractor: Gershenson Construction Company, Inc.
2 Truitt Drive
Eureka, MO 63025

18. Conflict-Discrepancy. In the event of any conflict or discrepancy between the terms of this Agreement and Exhibits A and B hereof, the terms and provisions of this Agreement shall govern.

19. Severability. If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be deemed severable. In such event, this Agreement shall be enforced as if such invalid or unenforceable provision had never formed a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the invalid or unenforceable provision.

20. City Decisions. The City will determine whether the documents to be furnished hereunder are in compliance with the requirements of this Agreement and will decide all questions which may arise concerning the proper performance of this Agreement. The City's decisions in these respects shall be final and conclusive.

21. Contractor Warranties. Contractor warrants and represents that it has the experience, skill, expertise, personnel and equipment necessary in order to perform and to complete the Work and the Project and that it will perform all of such Work in accordance with the terms hereof and in accordance with the highest standards of competency, in a professional and workmanlike manner.

22. Compensation and Payment. City shall pay Contractor for the Work and Project, the total not to exceed amount of **One Million Four Hundred Fifty-Four Thousand Thirty Six** dollars and **Seventy Five Cents** (\$1,454,036.75). That amount shall be payable to Contractor, in accordance with the provisions of Exhibit B attached hereto and incorporated herein by reference. City shall have the right, upon reasonable prior notice, to examine all of the pertinent records of Contractor.

23. Ownership Rights. The City shall own all rights, title and interest, including without limitation, all copyrights and intellectual property rights, to all documents and work product of Contractor created in performance of or relating to this Agreement.

24. Immunity Retention. By execution and performance of this Agreement, the City does not intend to, nor shall it be deemed to have waived or relinquished any immunity or defense on behalf of the City, and the City's board members, officers, directors, servants, employees, agents, successors or assigns.

25. Legal Compliance. Contractor and its employees, agents and representatives shall comply with the City's policies and procedures and all applicable federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, codes and ordinances required of Contractor in performing the services pursuant to this Agreement.

26. Independent Contractor. Contractor shall perform all services as an independent contractor and not as an employee of the City. The City shall not assume any liability for the direct payment of any salary, wage, workers compensation, income tax withholding, or any other type of compensation to Contractor for the services. Contractor shall obtain as necessary and pay for all permits, fees, licenses and taxes applicable to Contractor and the services for the project.

27. Waiver. No failure on the part of either party at any time to require the performance by the other party of any term hereof shall be taken or held to be a waiver of such term or in any

way affect such party's right to enforce such term, and no waiver on the part of either party of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof.

28. Binding Effect. This Agreement shall become effective immediately upon the execution of same by the duly authorized representatives of the City and Contractor.

29. Termination. City shall have the right to terminate this Agreement at any time and for any reason upon ten (10) days advance written notice. In the event of such termination, Contractor shall be compensated in accordance with the terms of the Agreement for all services performed to the effective date of such termination, plus any approved costs. All drawings and documents prepared by Contractor shall become the property of City.

30. FWAP Documentation. Contractor has provided to the City, or will provide to the City, no later than the execution of this Agreement, all documentation and required affidavits that Contractor has enrolled in, and participates in, a Federal Work Authorization Program, as required by Section 285.530 Missouri Revised Statutes with respect to the employees working in connection with the contracted services. Contractor shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

31. Governing Law-Jurisdiction. This Agreement shall be governed, construed and interpreted under Missouri law, and shall be deemed to be executed and performed in the County of St. Louis, Missouri. Any legal action arising out of, or relating to this Agreement shall be governed by the laws of the State of Missouri, and the parties agree to the exclusive exercise of jurisdiction and venue over them by a court of competent jurisdiction located in the County of St. Louis, Missouri, or federal court located in the City of St. Louis, Missouri.

32. Contractor Representations. Contractor acknowledges and represents that (i) Contractor is legally authorized to transact business in the State of Missouri and to provide the services required hereunder, (ii) the entering into this Agreement has been duly approved by the

Contractor, and (iii) the undersigned is duly authorized to execute this Agreement on behalf of Contractor and to bind Contractor to the terms hereof.

33. Anti-Discrimination Against Israel. Contractor certifies that it is not currently engaged in and agrees for the duration of this Agreement not to engage in, a boycott of goods or services from the State of Israel or any company, person, or entity doing business with or in the state of Israel.

34. Headings. All paragraph headings contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CITY OF CRESTWOOD, MISSOURI

BY: Scott Shyde
Mayor

ATTEST: Heidi Ingold
City Clerk

NAME OF CONTRACTOR:

Gershenson Construction Co.

CONTRACTOR'S AUTHORIZED SIGNATURE:

[Handwritten Signature]

DATE SIGNED:

4-12-24

City of Crestwood's Representative in receipt of signed contract:

Michelle Fisher

Date City of Crestwood received signed contract:

4-12-24

EXHIBIT A

SCOPE OF SERVICES

1. The summary of work for this project is contained in the Request for Bid, Bid Book STP-5602 (624), and the Plans STP-5602 (624).
2. The Contractor's Bid Proposal.

EXHIBIT B
PAYMENT

The contractor may submit monthly applications for payment for progress work completed. Applications or requests for payment for services rendered shall be not be more than once every month. The city does not hold retainage, but requires 5% of the contract to fall under the line item, **Project Close-out** on the schedule of values. Upon completion of the Work and the Project, Contractor shall submit to the City an application or request for final payment along with adequate supporting documentation. At minimum this supporting documentation will include as-built drawings and city sign-off on completion of punch-list items. Contractor shall include and provide to the City documentation warranties on the work performed.

As a condition to the City making payment, Contractor shall provide and file with the City an affidavit stating that Contractor has fully complied with the provisions and requirements of the Missouri prevailing wage laws.

Upon receipt and approval of the application or request for payment, the related supporting documentation, the warranty documentation, and the affidavit as to compliance with prevailing wage requirements, the City shall make payment in full to the Contractor within thirty (30) days.

EXHIBIT C
MISSOURI ANNUAL WAGE ORDER

1. The current Missouri Annual Wage Order is #30.