

RESOLUTION #2024-4

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF WILDWOOD, MISSOURI, AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE A CITY-CONTRACTOR AGREEMENT WITH SHAWNEE MISSION TREE SERVICE, INC., D/B/A ARBOR MASTERS TREE AND LANDSCAPE, FOR THE TREATMENT OF ASH TREES LOCATED WITHIN THE PUBLIC RIGHTS-OF-WAY IN THE CITY TO PREVENT INFESTATION BY THE EMERALD ASH BORER PEST.

WHEREAS, the City of Wildwood, Missouri (the “City”), prepared a plan to address the eminent demise of ash trees located on public rights-of-way in the City from the Emerald Ash Borer which included the treatment of trees to prevent infestation (the “Plan”); and

WHEREAS, based on the Plan, the City, developed specifications and bid documents for an initial project, to be completed during 2020 and 2021, to prevent infestation by the Emerald Ash Borer pest, which included the treatment of about 400 ash trees within the public rights-of-way in the City, including other incidental items as shown on the project specifications and bid documents (the “FY 2020 Project”); and

WHEREAS, the Department of Public Works of the City (the “Department of Public Works”) solicited bids for the FY 2020 Project, with bids opened publicly by the City on Friday, April 3, 2020; and

WHEREAS, a total of five (5) sealed bids were submitted by different companies, all of which were competitive and met the requirements set forth by the City for the FY 2020 Project; and

WHEREAS, the bid from Shawnee Mission Tree Service, Inc., d/b/a Arbor Masters Tree and Landscape (“Arbor Masters”), for ash tree treatments, was the lowest received, regardless of size class; and

WHEREAS, in 2020, the City entered into a City-Contractor Agreement with Arbor Masters for the treatment of about 199 ash trees located within the public rights-of-way for the FY 2020 Project, which was successfully completed; and

WHEREAS, the City entered into another City-Contractor Agreement with Arbor Masters for the treatment of about 116 more ash trees located within the public rights-of-way to prevent infestation by the Emerald Ash Borer pest during Fiscal Year 2021 in conformance with the FY 2020 Project specifications and bid documents (the “FY 2021 Project”), which was also successfully completed; and

WHEREAS, in 2022 the City entered into another City-Contractor Agreement with Arbor Masters for the re-treatment of 189 ash trees, originally treated in 2020, located within the public rights-of-way, in order to prevent infestation by the Emerald Ash Borer pest in conformance with the FY 2020 Project specifications and bid documents (the “FY 2022 Project”), which was also successfully completed; and

WHEREAS, in 2023 the City entered into another City-Contractor Agreement with Arbor Masters for the re-treatment of 110 ash trees, originally treated in 2021, located within the public rights-of-way, in order to prevent infestation by the Emerald Ash Borer pest in conformance with the FY 2020 Project specifications and bid documents (the “FY 2023 Project”), which was also successfully completed; and

WHEREAS, the City has funds budgeted for tree planting and ash tree treatment on the public rights-of-way in the 2024 Capital Improvement Fund; and

WHEREAS, as the ash tree treatments have an expected duration of two (2) years, the Department of Public Works has recommended that 189 trees located within the public rights-of-way which were originally treated in 2020, re-treated in 2022, and which remain viable, be re-treated during Fiscal Year 2024 to prevent infestation by the Emerald Ash Borer pest (hereinafter, the “FY 2024 Project”); and

WHEREAS, Arbor Masters has agreed to complete the FY 2024 Project in conformance with the FY 2020 Project specifications and bid documents; and

WHEREAS, the Administrative and Public Works Committee of the City Council reviewed the recommendation of the Department of Public Works, and recommended that the City enter into a City-Contractor Agreement with Arbor Masters to complete the FY 2024 Project for the maximum amount of \$24,029.00; 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 City-Contractor Agreement with Arbor Masters to complete the FY 2024 Project for the recommended contract amount.

NOW, THEREFORE, BE IT RESOLVED 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 Shawnee Mission Tree Service, LLC, dba Arbor Masters Tree and Landscape, for construction of the FY 2024 Project, attached hereto, marked as **Exhibit A**, and incorporated by reference herein (the “Agreement”), be and are hereby 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 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 Resolution.

Section Two. That the Mayor shall be and hereby is 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 Resolution 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 Resolution 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 \$24,029.00.

Section Four. Savings. Nothing contained herein shall in any manner be deemed or construed to alter, modify, supersede, supplant or otherwise nullify any other Resolution 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 Resolution 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 Resolution 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. This Resolution shall be in full force and effect from and after its passage and approval.

Passed and Resolved by the Council of the City of Wildwood this 12th day of February, 2024.



James R. Bowlin, Mayor

ATTEST:



City Clerk

EXHIBIT A
[attach Agreement]

City of Wildwood

CITY-CONTRACTOR AGREEMENT

This City-Contractor Agreement "Agreement" is made and entered into this 12th day of February, 2024, by and between the City of Wildwood, Missouri (hereinafter called the "City") and Shawnee Mission Tree Service, LLC, dba Arbor Masters Tree and Landscape, with offices located at 8250 Cole Pkwy, Shawnee, KS 66227, (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 and the Contractor's 2024 Proposal (**Exhibit 1**), (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. All work shall be completed by June 1, 2024. 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 Twenty Four Thousand, and Twenty Nine dollars (\$24,029.00) (the "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 percent (90%) of the portion of the Contract Sum properly allocable to labor, materials and equipment incorporated into the Work, and ninety percent (90%) 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 percent (90%) 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 project. 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 is approved by the City.

(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 Two Hundred and Fifty Dollars (\$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 effect 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 the treatment of about 110 ash trees, within the public right of way, to prevent infestation from the Emerald Ash Borer pest, and as indicated within the bid documents and the 2023 Contractor proposal attached as **Exhibit 1**. The final number of ash trees to be treated may reduce depending on current conditions. Final payment will be adjusted to match the number of treated trees.

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.

(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.

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

CITY OF WILDWOOD

(the "City")

By  _____
Jim Bowlin, Mayor

Attest:

 _____
City Clerk

ARBOR MASTERS TREE AND
LANDSCAPE

(the "Contractor")

By:  _____
7584F8CD9FF940E...

Printed Name: Mark Cantrell

vice president
Title



Arbor Masters
PO Box 875149
Kansas City, MO 64187-5149

Exhibit 1

Proposal #125891
Created: 11/02/2023
Start Date: 03/29/2022
End Date: 03/28/2023
From: Mark Cantrell

Proposal For

City of Wildwood
16860 Main St
Wildwood, MO 63040

Location

16860 Main St
Wildwood, MO 63040



2024 EAB

Terms
Net 30

ITEM DESCRIPTION	AMOUNT
<p>1) PHC Contract (Tbl. 1) Location and species of tree(s) to be treated: approximately 189 Ash Trees throughout the City</p> <p>Objective(s): Objective(s): Provide two year control of listed pests with single application using microinjection technology using the following chart:</p> <p>13" - 15" \$97.50 16" - 18" \$115.00 19" - 21" \$130.00 22" - 24" \$150.00</p> <p>**Proposal is for estimate purposes only based on previous work history.</p> <p>Key condition(s)/pest(s): Emerald Ash Borer</p> <p>Time frame for application: Summer 2024</p> <p>Product(s) used: TREE-age R10 Insecticide (EPA Reg. No: 74578-12).</p> <p>Specification: (26018) ML of product shall be equally distributed among injection sites; Injection sites shall be drilled perpendicular to the trunk or root flare to a minimum depth of 5/8-2" deep; Arborplugs shall be set so that the ridges are seated in the xylem just inside the cambium and application pressure should be regulated up to 120 PSI. All work shall be completed in compliance with ANSI A300 Part 10 Integrated Pest Management Standard.</p>	<p>\$ 24,029.00</p>



Arbor Masters
PO Box 875149
Kansas City, MO 64187-5149

Proposal #125891

Created: 11/02/2023
Start Date: 03/29/2022
End Date: 03/28/2023
From: Mark Cantrell

All work will be completed in accordance with these plans unless subsequent changes are agreed upon in writing. Balances not paid by the due date are subject to late fees.

Pricing is good for 30 days from the date of this Proposal.

SUBTOTAL \$ 24,029.00

SALES TAX \$ 0.00

TOTAL \$ 24,029.00

Signature

Payments as low as \$339/month

[Learn more](#)

x

Date:

Please sign here to accept the terms and conditions

Arbor Advisor

Mark Cantrell

Office: [913-441-8888](tel:913-441-8888)

Mobile: [913-530-8831](tel:913-530-8831)

mcantrell@arbormasters.com