

BILL NO. 2926

ORDINANCE NO. _____

AN ORDINANCE ACCEPTING THE PROPOSAL OF BID AWARD BETWEEN LEO JOURNAGAN CONSTRUCTION COMPANY, INC. AND THE CITY OF BRANSON, AND AUTHORIZING THE MAYOR TO ENTER INTO THE AGREEMENT PERTAINING TO THE BRANSON LANDING SEWER PROJECT.

WHEREAS, the City of Branson advertised for bids to construct the Branson Landing Sewer Project; and

WHEREAS, of the bids which were received, Leo Journagan Construction Company, Inc. has been recommended for approval; and

WHEREAS, the Board of Aldermen desire to award the contract to construct the Branson Landing Sewer Project.

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

Section 1: The Board of Aldermen hereby accepts the proposal of Leo Journagan Construction Company, Inc. to construct the Branson Landing Sewer Project pursuant to Exhibit "A", as attached hereto and incorporated herein by reference, and authorizes the Mayor to execute the agreement on behalf of the City of Branson.

Section 2: This ordinance shall be in full force and effect upon and after its passage and approval.

Read, this first time on this ____ day of _____, 2004.

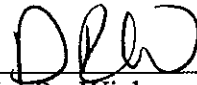
Read, this second time, passed and truly agreed to by the Board of Aldermen of City of Branson, Missouri this ____ day of _____, 2004.

Louis E. Schaefer
Mayor

ATTEST:

APPROVED AS TO FORM:

Sandra L. Williams, C.M.C.
City Clerk



Daniel R. Wichmer
City Attorney

DOCUMENT 00500 – AGREEMENT BETWEEN OWNER AND CONTRACTOR

Project Name: Branson Landing Sewer Realignment
 ContractNo.: 03-111

THIS AGREEMENT is dated as of the ____ day of _____ in the year 20__ by and between City of Branson, MO (hereinafter called Owner) and _____ (hereinafter called Contractor).

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1- WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work under this Contract is generally described as follows: The construction of one submersible duplex pump station, two 10-inch force mains and two gravity sewer lines. Both gravity sewer lines are 24 inches in diameter.

ARTICLE 2- ENGINEER

- 2.01 The Project has been designed by Burns & McDonnell Engineering Co. Inc., who is hereinafter called Engineer and who is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3- CONTRACT TIME3.01 TIME OF THE ESSENCE:

- A. All time limits for milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

3.02 DATES FOR SUBSTANTIAL COMPLETION AND FINAL PAYMENT:

- A. The Work will be Substantially Completed within 120 calendar days after the date when the Contract Times commence to run as provided in the GENERAL CONDITIONS, and completed and ready for final payment in accordance with the GENERAL CONDITIONS within 150 calendar days after the date when the Contract Times commence to run.

3.03 LIQUIDATED DAMAGES:

- A. Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the time specified above, plus any extensions thereof allowed in accordance with the GENERAL CONDITIONS. The parties also recognize the delays, expense, and difficulties involved in proving the actual loss suffered by Owner if the Work is not Substantially Completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor will pay Owner Five Thousand Dollars (\$5,000.00) for each day that expires after the time specified above in Paragraph 3.02 for Substantial Completion until the Work is Substantially Complete. After Substantial Completion, if Contractor shall neglect, refuse or

DOCUMENT 00500 – AGREEMENT Continued

fail to complete the remaining Work within the time specified in Paragraph 3.02 for completion and readiness for final payment or any proper extension thereof granted by Owner, Contractor shall pay Owner Five Thousand Dollars (\$5,000.00) for each day that expires after the time specified for completion and readiness for final payment.

ARTICLE 4 - CONTRACT PRICE

4.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs below:

A. **UNIT PRICE SCHEDULE:** For all Unit Price Work, an amount equal to the sum of the established Unit Price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated below:

No.	Item	Unit	Unit Price	Quantity	Estimated Total Price
1.	PumpStation	LS	\$	1	\$
2. Precast Manholes:					
2.1	4' Diameter	EA	\$	8	\$
2.1.1	Height in Excess of 0'	LF	\$	36	\$
2.2	6' Diameter	EA	\$	7	\$
2.2.1	Height in Excess of 6'	LF	\$	45'	\$
3. Pipe in Place:					
3.1	10"DIP	LF	\$	107	\$
3.2	24" HDPE	LF	\$	4,130	\$
3.3	24"DIP	LF	\$	465	\$
4. Soil Handling:					
4.1	Stockpile Management and Environmental Testing	LS	\$	1	\$
4.2	Off-Site Special Soil Disposal and Borrow Material	TON	\$	144	\$
5. Water Treatment:					
5.1	Mobilization, Setup and Removal	LS	\$	1	\$
5.2	Treatment Unit	LS	\$	1	\$
6	Erosion Control	LS	\$	1	\$

Total Price _____ dollars (_____)

1. As provided in the GENERAL CONDITIONS, estimated quantities are not guaranteed, and determinations of actual quantities and classification are to be made by Engineer as provided in the GENERAL CONDITIONS. Unit prices have been computed as provided in the GENERAL CONDITIONS.

B. For all Work, at the prices stated in Contractor's Bid, attached hereto as an Exhibit.

ARTICLE 5- PAYMENT PROCEDURES

5.01 SUBMITTAL AND PROCESSING OF PAYMENTS:

A. Contractor shall submit Applications for Payment in accordance with the GENERAL CONDITIONS. Applications for Payment will be processed by Engineer as provided in the GENERAL CONDITIONS.

5.02 PROGRESS PAYMENTS, RETAINAGE:

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer, on or about the 20th day of each month during construction. All such payments will be measured by the schedule of values established in the GENERAL CONDITIONS (as in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Engineer shall determine, or Owner may withhold, in accordance with the GENERAL CONDITIONS.
 - a. 90% of Work completed (with the balance being retainage). If Work has been 50% completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner on recommendation of Engineer, may determine that as long as the character and progress of the Work subsequently completed, in which case the remaining progress payments prior to Substantial Completion will be an amount equal to 100% of the Work completed less the aggregate of payments previously made;
 - b. and 90% (with the balance being retainage) of Equipment and Materials not incorporated in the Work (but delivered, suitably stored, and accompanied by documentation satisfactory to Owner as provided in the GENERAL CONDITIONS).
2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95% of the Contract Price (with the balance being retainage), less such amounts as Engineer shall determine, or Owner may withhold, in accordance with the GENERAL CONDITIONS.

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5.03 FINAL PAYMENT

A. Upon final completion and acceptance of the Work in accordance with the GENERAL CONDITIONS, Owner shall pay the remainder of the Contract Price as recommended by Engineer and as provided in the GENERAL CONDITIONS.

ARTICLE 6-INTEREST

6.01 All moneys not paid when due hereunder shall bear interest at the maximum rate allowable by Law at the place of the Project per annum in accordance with the GENERAL CONDITIONS.

ARTICLE 7- CONTRACTOR'S REPRESENTATIONS

- 7.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents (including the Addenda) and other related data identified in the Bid Documents.
 - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, performance, and furnishing of the Work.
 - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site; and (2) reports and drawings of a Hazardous Environmental Condition, if any at the Site. Contractor acknowledges that Owner and Engineer do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the Site.
 - E. Contractor has obtained and carefully studied (or assumes responsibility of having done so) all such additional supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site or otherwise which may affect cost, progress, performance and furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.
 - F. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the performing and furnishing of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
 - G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
 - H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data

- with the Contract Documents
- I. Contractor has given Engineer written notice of all conflicts, errors, ambiguities or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor.
 - J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 – CONTRACT DOCUMENTS

8.01 CONTENTS

- A. The Contract Documents which comprise the entire Agreement between Owner and Contractor icenuing the Work consist of the following and may only be amended, modified, or supplemented as provided in the GENERAL CONDITIONS:
 1. This Agreement.
 2. Exhibits to this Agreement (enumerated as follows):
 - a. Notice to Proceed.
 - b. Contractor's Bid.
 - c. Documentation submitted by Contractor prior to Notice of Award.
 3. Performance, Payment, and other Bonds.
 4. General Conditions.
 5. Specifications consisting of divisions and sections as listed in table of contents of Project Manual.
 6. Drawings consisting of a cover sheet and sheets as listed in the table of contents thereof, with each sheet bearing the following general title: Branson Landing Sewer Realignment.
 7. Addenda numbers _____ to _____, inclusive.
 8. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to the GENERAL CONDITIONS.

ARTICLE 9- MISCELLANEOUS

9.01 TERMS:

- A. Terms used in this Agreement which are defined in the GENERAL CONDITIONS shall have the meanings stated in the GENERAL CONDItIONS.

9.02 ASSIGNMENT OF CONTRACT:

- A. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by Law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will i~elease or discharge the assignor from any duty or responsibility under the Contract Documents.

9.03 SUCCESSORS AND ASSIGNS:

DOCUMENT 00500— AGREEMENT: continued

reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.05 OTHER PROVISIONS:

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in triplicate. One counterpart each has been delivered to Owner, Contractor, and Engineer. All portions of the Contract Documents have been signed, initialed, or identified by Owner and Contractor or identified by Engineer on their behalf.

This Agreement will be effective on _____, 20__, which is the Effective Date of the Agreement.

CONTRACTOR
Leo Journagan Construction Company, Inc.

OWNER
City of Branson, Missouri

By: _____

By: _____

Title: _____

Title: _____

(SEAL)

(SEAL)

ATTEST _____

ATTEST _____

Address for giving notices

Address for giving notices

Approved as to Form:

Daniel R. Wichmer, City Attorney