

A RESOLUTION AUTHORIZING THE CITY MANAGER OF THE CITY OF CAMERON, MISSOURI TO ENTER INTO A CONTRACT WITH M&M UTILITIES, LLC FOR THE ASHLAND DRIVE PROJECT

WHEREAS, the City of Cameron has determined street improvements a priority and passed a transportation sales tax to fund said improvements. This project addresses some of the projects outlined; and

WHEREAS, The City Council accepted and awarded the bid to M&M Utilities, LLC, at the July 1, 2019 Council Meeting; and

WHEREAS, City staff and Bartlett & West having reviewed the bids received and determining M&M Utilities, LLC, has met all the requirements and was the best bid with a low base bid, and asphalt pavement alternate A; for a total of \$1,763,460.25 recommends approval of a Contract for services with M&M Utilities, LLC

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CAMERON, MISSOURI, AS FOLLOWS:

Section 1. The City Manager is hereby authorized to enter into a agreement with M&M Utilities, LLC, for the Ashland Drive Project all as per the agreement attached hereto and made a part hereof.

Section 2. The City Manager is authorized to execute any ancillary documents associated with this project. Change orders exceeding ten percent of base bid will be presented to City Council for approval.

Section 3. The Mayor is hereby authorized to sign this Resolution, approving it on behalf of the City of Cameron.

Section 4. The City Clerk is hereby authorized to attest to the Mayor's signature for all documents evidenced in this Resolution.

PASSED and APPROVED on this 15th day of July 2019.





Mayor Darlene Breckenridge



City Clerk *Administrative Assistant*

AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between City of Cameron (“Owner”) and
M&M Utilities, LLC (“Contractor”).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: **Ashland Drive Improvement Project**

ARTICLE 2 – THE PROJECT

2.01 The Project consists of re-constructing Ashland Drive between 8th Street and Grand Avenue. Project will include the addition of curb and gutter, storm sewer, and 5-foot wide ADA-compliant sidewalks along both sides of Ashland Drive. The street will be constructed as a two-lane road with slight alignment changes to improve drivability. Driveways along the project will be reconstructed, as needed. Project also includes waterline and sanitary sewer replacements.

ARTICLE 3 – ENGINEER

3.01 The Project has been designed by Bartlett & West, Inc.

3.02 The Owner has retained Bartlett & West, Inc. (“Engineer”) 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 the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *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.

4.02 *Contract Times: Dates*

A. The Work will be substantially completed on or before **August 14, 2020**, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before **September 1, 2020**.

4.03 *Liquidated Damages*

A. The parties acknowledge and agree to the following:

1. The Owner shall be entitled to damages attributable to delays that are caused by any act or omission of Contractor or any entity under contract with Contractor (whether directly or indirectly) or for whom Contractor is otherwise responsible.

2. At the time of execution of the Agreement, it is extremely difficult, if not impossible, to ascertain with precise accuracy the amount of actual damages that the Owner would incur as a result of the Work not being completed on time.
 3. The Liquidated Damages sums specified in Section 4.03.C below will represent the damages anticipated to the Owner for any delays. Neither party may change the amounts as specified in Section 4.03.C. in any future setting.
 4. A material part of the consideration for which the Owner has bargained is the Contractor's willingness to assume the risk of pre-determined damages for Delays. The Contractor has attempted to bargain for additional consideration (e.g. and increased fee) in return for this risk and in fact is free to decline the Agreement altogether.
 5. Liquidated Damages shall constitute the Owner's sole remedy for unexcused delay.
- B. The Contractor hereby warrants and represents that it is familiar with liquidated damages provisions generally and has received advice of counsel with respect to this section 4.03.1.
- C. Liquidated Damages. In the event the Contractor does not achieve Substantial completion within the Contract Time, as defined in Section 4.02.A, including approved extensions, the Contractor shall pay Owner as Liquidated Damages and not as a penalty a sum of one thousand dollars (**\$1,000**) per calendar day until such time that the Contractor has achieved Substantial Completion. The Liquidated Damages shall begin to accrue on the first day after the Substantial Completion date set forth in Section 4.02.A hereto. ~~In addition, Contractor shall pay Owner as Liquidated Damages and not as a penalty of one thousand dollars (Click or tap here to enter text.) per calendar day for each day that the time from Substantial Completion to Final Completion exceeds the number of days originally agreed to in section 4.02.A.~~ The owner shall be entitled to set off from monies due to the Contractor during the course of the Project amounts sufficient to reimburse the Owner from these agreed upon Liquidated Damages.

ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:
- A. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the **10th** day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and 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 elsewhere in the Contract.

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 Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.

a. 90 percent of Work completed (with the balance being retainage); ~~and~~

~~b. 90 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).~~

B. Upon Substantial Completion **of the entire construction to be provided under the Contract Documents**, Owner shall pay an amount sufficient to increase total payments to Contractor to 95 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 Final Payment

A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 7 – CONTRACTOR'S REPRESENTATIONS

7.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
- B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.

- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- 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 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.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 8 – CONTRACT DOCUMENTS

8.01 Contents

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 1 to 1, inclusive).
 - 2. Performance bond (pages 1 to 3, inclusive).
 - 3. Payment bond (pages 1 to 3, inclusive).
 - 4. General Conditions (pages 1 to 68, inclusive).
 - 5. Supplementary Conditions (pages 1 to 2, inclusive).
 - 6. Specifications as listed in the table of contents of the Project Manual.
 - 7. Drawings (not attached but incorporated by reference) consisting of 38 sheets with each sheet bearing the following general title: **Ashland Drive Improvement Project** .
 - 8. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages 1 to 6, inclusive).
 - 9. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 8.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 9 – MISCELLANEOUS

9.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

9.02 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is 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 release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be 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 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on 7/15/19 (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

City of Cameron

M&M Utilities, LLC

By: 

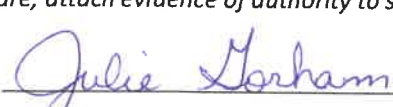
By: 
Travis Burton

Title: CITY MANAGER

Title: Member

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: 

Attest: 

Title: City Clerk

Title: Witness

Address for giving notices:

Address for giving notices:

205 N. Main

812 Clay Street

Cameron, MO 64429

Chillicothe, MO 64601

License No.: _____
(where applicable)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)