

**RESOLUTION NO.  
3520**

**A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO A CONSTRUCTION AGREEMENT WITH WILLIAMS BROTHERS CONSTRUCTION, LLC, A WASHINGTON LIMITED LIABILITY COMPANY FOR CONSTRUCTION OF THE SCHEDULE II WASTEWATER SYSTEM IMPROVEMENTS (EFFLUENT BUILDING).**

*WHEREAS*, the City has advertised for and accepted bids for Schedule II Wastewater System Improvements (Effluent Building);

*AND WHEREAS* Williams Brothers Construction, LLC, a Washington limited liability company, of 5713 W. Garden Springs Road, Spokane, Washington 99224 was the lowest responsible bidder upon Schedule II for such Project;

**NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA AS FOLLOWS:**

1. The Construction Agreement between the City of Miles City, Montana and Williams Brothers Construction, LLC, a Washington limited liability company, on file in the office of the City Clerk of the City of Miles City, and incorporated herein by reference, is hereby approved and adopted by this Council subject to final written approval of the City Attorney.

2. The Mayor of the City of Miles City, upon written approval of the City Attorney, is hereby empowered and authorized to execute said Construction Agreement on behalf of the City of Miles City and bind the City of Miles City thereto; and

3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as are necessary to carry out the terms of said Construction Agreement and bind the City of Miles City thereto.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 24TH DAY OF JULY, 2012.**

---

C.A. Grenz,  
Mayor

ATTEST:

RESOLUTION 3520, PAGE 1 OF 1

**SECTION 00500**

**AGREEMENT FORM**

This Agreement is dated as of the 20th day of July in the year 2012, by and between the City of Miles City, hereinafter called "Owner" and Williams Brother Construction, 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 is generally described as follows:  
Schedule Two: New Headworks Building

**Article 2. THE PROJECT**

- 2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:  
Miles City Wastewater Improvements

**Article 3. ENGINEER**

3.01 The Project has been designed by: Robert Peccia and Associates, 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 4. CONTRACT TIME**

4.01 Time of the Essence.

A. All the 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 Days to achieve Substantial Completion.

A. The Work will be substantially complete within 150 calendar days after the date when the Contract Time commences to run as provided in paragraph 2.03 of the General

Conditions.

4.03 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 times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense and difficulties

involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not 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 shall pay Owner Five Hundred dollars (\$500.00) for each day that expires after the time specified in paragraph 4.02 for Substantial Completion until the Work is substantially complete.

#### **Article 5. CONTRACT PRICE**

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the quantity of that item that is constructed and accepted. Unit prices are those listed in the Unit Price Schedule of the Bid Form. Estimated quantities used for bidding purposes are not guaranteed. Payment will be for actual quantities as determined by Engineer in accordance with Paragraph 9.07 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03 of the General Conditions.

#### **Article 6. PAYMENT PROCEDURES**

##### 6.01 Submittal and Processing of Payments.

A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the Contract Documents.

##### 6.02 Progress Payments; Retainage.

A. Owner shall make progress payments in accordance with Article 14 of the General Conditions on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer, once each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the number of units of each bid item completed times the bid unit price in the Unit Price Schedule of the Bid Form for that item.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the sum of the unit price items less the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, in accordance with paragraph 14.02 of the General Conditions.
  - a. The Owner shall retain five percent (5%) of the amount of each payment until final completion and acceptance of all Work covered by the Contract Documents.
  - b. Retainage will be five percent (5%) of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to Owner as provided in paragraph 14.02 of the General Conditions).
2. Upon Substantial Completion and at the Owner's discretion, the amount of retainage may be further reduced if requested by the Contractor.

### 6.03 Final Payment.

A. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said paragraph 14.07.

### **Article 7. INTEREST.**

7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the maximum rate allowed by law at the place of the Project.

### **Article 8. CONTRACTOR'S REPRESENTATION.**

8.01 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 all Addenda) listed in paragraph 9 and the other related data identified in the Bidding 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 or 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 (except Underground Facilities) which have been identified in the Special Provisions as provided in paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Special Provisions as provided in paragraph 4.06 of the General Conditions. Contractor acknowledges that such reports and drawings are not Contract Documents and may not be complete for Contractor's purposes. 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 for 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 or 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 including applying the specific means, methods, techniques, sequences and procedures of construction, if any, expressly required by the Contract Documents to be employed by the 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 performance 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 9. CONTRACT DOCUMENTS.**

### 9.01 Contents.

- A. The Contract Documents consist of the following:
  - 1. This Agreement;
  - 2. Performance Bond;
  - 3. Payment Bond;
  - 4. General Conditions;
  - 5. Supplementary Conditions;
  - 6. Special Provisions;
  - 7. Specifications as listed in the table of contents of the Project Manual;
  - 8. Construction Drawings;
  - 9. Addenda (Numbers 1 to 3, inclusive);
  - 10. Exhibits to this Agreement;
    - a. Notice To Proceed;
    - b. Contractor's Bid;
    - c. Documentation submitted by Contractor prior to Notice of Award;;
  - 11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
    - a. Written Amendments;
    - b. Work Change Directives;
    - c. Change Order(s).
- B. The documents listed in paragraph 9.01.A. are hereby made part this Agreement.
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.04 of the General Conditions.

## **Article 10. MISCELLANEOUS**

### 10.01 Terms.

A. Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

### 10.02 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 come 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 release or discharge the assignor from any duty or responsibility under the Contract Documents.

### 10.03 Successors and Assigns.

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

### 10.04 Severability.

A. Any provision of part of the Contract Documents held to be void or unenforceable under and 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.

IN WITNESS WHEREOF, Owner and Contractor have signed 6 copies of Agreement. Three counterparts have been delivered to Owner, two to Contractor and one to Engineer. All portions of the Contract Documents have been signed or identified by Owner and Contractor or by Engineer on their behalf.

This Agreement will be effective on July 20, 2012 (which is the effective date of the Agreement).

This Agreement shall not be effective unless and until concurred by Funding Agency's (if any) designated representative.

Owner: City of Miles City, Montana

Contractor: Williams Brother Construction

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

Attest: \_\_\_\_\_  
(Signature)

Attest: \_\_\_\_\_  
(Signature)

Address for giving notices:

Address for giving notice:

PO Box 910, 17 South 8<sup>th</sup> Street

\_\_\_\_\_

Miles City, MT 59301

\_\_\_\_\_

Phone No.: 406-234-3493

Phone No.: \_\_\_\_\_

FAX No.: \_\_\_\_\_

FAX No.: \_\_\_\_\_

(CORPORATE SEAL)

(SEAL)

(If OWNER is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Owner - Contractor Agreement.

Contractor Registration No.

Agent for service of process:

\_\_\_\_\_

\_\_\_\_\_  
(If CONTRACTOR is a corporation or a partnership, attach evidence of authority to sign.)



Owner's Designated Representative:

Contractor's Designated Representative:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone No.: \_\_\_\_\_

Phone No.: \_\_\_\_\_

FAX No.: \_\_\_\_\_

FAX No.: \_\_\_\_\_

AGENCY CONCURRENCE:

As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, the Agency hereby concurs in the form, content, and execution of this Agreement.

By: \_\_\_\_\_  
(Agency Official's Signature)

Title: \_\_\_\_\_ Date: \_

\_\_\_\_\_

**END OF SECTION**