

RESOLUTION NO. 4502

A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO AN AGREEMENT WITH DIAMOND J CONSTRUCTION, LLC., FOR THE HAYNES AVENUE SANITARY SEWER REHABILITATION PROJECT.

WHEREAS, the City of Miles City, after reviewing and considering bids for the Haynes Avenue Sanitary Sewer Rehabilitation Project, desires to enter into an agreement for sanitary sewer rehabilitation, with Diamond J Construction, LLC. in the total amount of \$2,712,415.10;

AND WHEREAS, the City desires to approve an additional 10% change order contingency budget for said project, and to authorize the Mayor to sign change orders in consultation with the Public Utilities Director up to said 10% over the contracted amount;

NOW THEREFORE BE IT RESOLVED by the City Council of Miles City, Montana, as follows:

1. The "Section 00520 Agreement Form" between the City of Miles City and Diamond J Construction, LLC., in the total amount of \$2,712,415.10, attached hereto as Exhibit "A", and made a part hereof, is hereby approved and adopted by this Council.
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said 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 Agreement and bind the City of Miles City thereto, to include the execution of change order documents up to an aggregate amount of 10% of the contracted amount, in consultation with the Public Utilities Director.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, AT A DULY CALLED MEETING THIS 28TH DAY OF FEBRUARY, 2023.



John Hollowell, Mayor

ATTEST:



Mary Rowe, City Clerk

**SECTION 00520
AGREEMENT FORM
HAYNES AVENUE SANITARY SEWER REHABILITATION PROJECT**

This Agreement is dated as of the 28th of February in the year 2023 by and between City of Miles City, hereinafter called "Owner" and Diamond J Construction, LLC, 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:

The work on this project shall consist of Rehabilitation and/or replacement of 21-inch and 24-inch sanitary sewer mains, manholes, service lines, street repair, and incidentals.

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:

Alternate A and Alternate D of the Haynes Avenue Sanitary Sewer Rehabilitation Project

ARTICLE 3. ENGINEER

3.01 The Project has been designed by Brosz Engineering, 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 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 completed by the time specified within the included Project Completion Schedule; and completed (*including operational*) and ready for final payment in accordance with Paragraph 14.07 of the General Conditions.

B. Project Completion Schedule

Project	Item Description	Completion Date
Alternate A	All Items	December 16, 2023
Alternate D	All Items	December 16, 2023

4.03 Liquidated damages.

A. For each calendar day the contract remains uncompleted after the specified contract completion time, including approved adjustments, a daily charge/deduction will be made against the contract. This deduction is for liquidated damages for added Owner contract administration costs for failure to complete the work on time. 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 this daily charge, determined by the table below, will be deducted from any money due the Contractor.

SCHEDULE OF LIQUIDATED DAMAGES		
ORIGINAL CONTRACT AMOUNT		DAILY CHARGE
From More Than	To and Including	Working Day or Calendar Day
\$0	\$150,000	\$1,244
\$150,000	\$500,000	\$1,599
\$500,000	\$1,000,000	\$1,992
\$1,000,000	\$1,500,000	\$2,198
\$1,500,000	\$3,000,000	\$2,828
\$3,000,000	\$4,500,000	\$3,037
\$4,500,000	\$7,000,000	\$3,303
\$7,000,000	\$11,500,000	\$4,031
\$11,500,000	---	\$4,273

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 attached as Exhibit A to this Agreement. 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 documentations 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 monies 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 REPRESENTATIONS:

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 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), if any, which have been identified in the Supplementary 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 acknowledged 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 responsibilities 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 constructions 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 (Pages 1 to 8, inclusive);
2. Performance Bond (EJCDC No. C-610, 3 pages);
3. Payment Bond (EJCDC No. C-615, 3 pages);
4. General Conditions (EJCDC No. C-700, 66 pages);
5. Supplementary Conditions (Pages 1 to 12, inclusive);
6. Specifications as listed in the table of contents of the Project Documents;
7. Drawings, Special Provisions, and Technical Specifications consisting of a cover and sheets bearing the following general title HAYNES AVENUE SANITARY SEWER REHABILITATION PROJECT;
8. Addenda (Numbers 1 to 2, inclusive);
9. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (Pages 1 to 10, inclusive);
 - b. Documentation submitted by Contractor prior to Notice of Award: Statement of Skills and Capabilities (Pages 1 to 141 inclusive);

10. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

- a. ~~Notice to Proceed (Pages 1 of XX, inclusive);~~
- b. Work Change Directives;
- c. Change Order(s).

B. The documents listed in paragraph 9.01.A. are attached to this Agreement (expressly noted otherwise above).

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, monies that may come due and monies 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 3 copies of Agreement. One counterparts have been delivered to Owner, one 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 February 28, 2023 (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

CONTRACTOR

CITY OF MILES CITY

DIAMOND J CONSTRUCTION LLC

BY

[Signature]
(Signature)

BY

[Signature]
(Signature)

Attest

[Signature]
(Signature)

Attest

[Signature]
(Signature)

Address for giving notices:

PO Box 910

Miles City MT 59301

Phone No.

406-874-8602

FAX No.

406-834-8903

Address for giving notices:

PO Box 520

Miles City MT 59301

Phone No.

406-234-1504

FAX No.

406-234-9036

(CORPORATE SEAL)

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

(SEAL)

Contractor Registration No. 159491

Agent for service of process:

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

Owner's Designated Representative:

Name: Brosz Engineering, Inc.

Title: Engineer

Address: 109 S. Main, Box 357
Bowman, ND 58623

Phone No. (701) 523-3340

FAX No. (701) 523-5243

Contractor's Designated Representative:

Name: John Peila

Title: Managing member

Address: PO Box 520
Millis City MT 59301

Phone No. 406-234-1504

FAX No. 406-234-9036

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: _____