

**RESOLUTION NO. 2015-13**

**A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THAT CERTAIN AGREEMENT BETWEEN BY AND BETWEEN THE CITY OF BASEHOR, KANSAS AND DONELSON CONSTRUCTION COMPANY, LLC. REGARDING THE 2015 MODIFIED AGGREGATE QUICKSET SURFACE (MAQS) PROGRAM IN BASEHOR, LEAVENWORTH COUNTY, KANSAS.**

**WHEREAS**, the City of Basehor, Kansas wishes to enter into the 2015 Modified Aggregate Quickset Surface (MAQS) Program with Donelson Construction Company, LLC., attached hereto as **Exhibit A**.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF BASEHOR KANSAS:**

**Section 1.** That the Governing Body approves and hereby authorizes the Mayor to execute the Agreement with Donelson Construction Company, LLC., attached as **Exhibit A**.

**Section 2.** That this resolution shall become effective upon passage.

PASSED by the Governing Body this 20<sup>th</sup> day of July, 2015.

APPROVED by the Mayor this 20<sup>th</sup> day of July, 2015.

[SEAL]



  
\_\_\_\_\_  
David K. Breuer, Mayor

ATTEST:

  
\_\_\_\_\_  
Katherine M. Renn, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Shannon M. Marcano, City Attorney

**Exhibit A**  
**2015 Modified Aggregate Quickset Surface (MAQS) Program Agreement**

To be attached.

CITY OF BASEHOR, KANSAS

AGREEMENT BETWEEN  
CITY OF BASEHOR, KANSAS  
AND CONTRACTOR

**2015 Modified Aggregate Quickset Surface (MAQS) Program**

THIS AGREEMENT is made and entered into this 20<sup>th</sup> day of July, 2015, by and between the City of Basehor, Kansas, hereinafter the "City", and Donelson Construction Company, LLC., hereinafter the "Contractor";

WITNESSETH:

WHEREAS, the City has caused to be prepared, in accordance with the law, Notice to Bidders, Instructions to Bidders, Bid, this Agreement, General Conditions, Plans, Specifications and other Contract Documents, as defined in the General Conditions, for the work herein described, and has approved and adopted these said Contract Documents and has caused to be published, in the manner and for the time required by law, an advertisement inviting sealed Bids for furnishing construction materials, labor, tools, equipment and transportation necessary for, and in connection with, the construction of public improvements in accordance with the terms of this Agreement; and

WHEREAS, the Contractor, in response to the advertisement, has submitted to the City, in the manner and at the time specified, a sealed Bid in accordance with the terms of this Agreement; and

WHEREAS, the City, in the manner prescribed by law, has publicly opened, examined and canvassed the Bids submitted, and as a result of this canvass has, in accordance with the law, determined and declared the Contractor to be the lowest and best responsible bidder for the construction of the public improvements, and has duly awarded to the Contractor a contract therefor upon the terms and conditions set forth in this Agreement and for the sum or sums named in the Bid attached to and made a part of this Agreement.

NOW, THEREFORE, in consideration of the compensation to be paid the Contractor, and of the mutual agreements herein contained, the parties hereto have agreed, and hereby agree, the City for itself and its successors, and the Contractor for itself, himself/herself or themselves, its, his/her or their successors and assigns, or its, his/her or their executors and administrators, as follows:

ARTICLE I. The Contractor will furnish at its own cost and expense all labor, tools, equipment, materials and transportation required to construct and complete the work as designated, described and required by the Contract Documents, to wit: MAQS TYPE 2 SURFACING, PAVEMENT MARKINGS, AND TRAFFIC CONTROL. all in accordance with the Notice to Bidders, Instructions to Bidders, Bid, this Agreement, General Conditions, Plans, Specifications and other Contract Documents as defined in paragraph GC-1 of the General Conditions of the Contract for Construction, on file with the City Clerk of Basehor, Kansas, all of which Contract Documents form the Contract, and are as fully a part hereof as if repeated verbatim herein; all work to be done in a good, substantial and workmanlike manner to the entire satisfaction of the City, and in accordance with the laws of the

City, the State of Kansas and the United States of America. All terms used herein shall have the meanings ascribed to them in the General Conditions unless otherwise specified.

ARTICLE II. The City shall pay to the Contractor for the performance of the work embraced in this Contract, and the Contractor will accept in full compensation therefor, the sum of THREE HUNDRD FIFTY-FIVE THOUSAND DOLLARS AND 00/100 DOLLARS (\$355,000.00) (subject to adjustment as provided by the Contract Documents) for all work covered by and included in the Contract award and designated in the foregoing Article I, payment thereof to be made in cash or its equivalent and in the manner provided in the Contract Documents.

ARTICLE III. The Contractor shall commence work upon the date stated in the Notice to Proceed, and will complete all work covered by this Contract by September 30, 2015. Liquidated damages based on the full bid price of the Contract shall be assessed against Contractor, as stipulated liquidated damages and not as a penalty, in an amount as set forth in paragraph GC-45 of the General Conditions for each and every calendar day the work remains incomplete over the specified completion time stated above.

ARTICLE IV. The Contractor shall not subcontract, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof without previous written consent of the City. In case such consent is given, the Contractor shall be permitted to subcontract a portion thereof, but shall self perform not less than forty percent (40%) of the total Contract Price based upon the unit prices within the Bid submitted to the City by the Contractor. No subcontracts, or other transfer of Contract, shall release the Contractor of its liability under the Contract and Bonds applicable thereto.

ARTICLE V. Contractor specifically acknowledges and confirms that: 1.) it has visited the site, made all inspections it deems appropriate and has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by it as specified herein and in the other Contract Documents and knowingly accepts same; 2.) it has furnished copies of all Contract Documents to its insurance carrier(s) and its surety(ies); and 3.) its insurance carrier(s) and surety(ies) agree to be bound as specified herein, in the Contract Documents and in the insurance policy(ies) and bonds as to liability and surety coverage; 4.) it has a license and/or other permission to use the MAQS surfacing product and application system in accordance with Donelson Construction Company LLC's United States patents.

ARTICLE VI. It is specifically agreed between the parties executing this Agreement that the Contract Documents are not intended to create any third party beneficiary relationship nor to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.

ARTICLE VII. This Agreement, together with the other Contract Documents, constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except as provided herein or in the other Contract Documents.

ARTICLE VIII. This Contract shall begin from the date of the Notice to Proceed letter through the Time for Completion stated in Article III of this Agreement, with the option to extend the Contract for up to five additional one year terms by mutual agreement of both parties. Services and/or materials received under an extension shall be in accordance with pricing terms and

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conditions as described herein, unless adjusted by mutual agreement of both parties. Extensions shall be approved by resolution of the City Council.

ARTICLE IX. This Agreement is entered into, under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Kansas.

ARTICLE X. Should any provision of this Agreement or the other Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement and/or the other Contract Documents shall be unaffected thereby and shall continue to be valid and enforceable.

IN WITNESS WHEREOF, the City of Basehor, Kansas, has caused this Agreement to be executed on its behalf, thereunto duly authorized, and the said Contractor has executed 2 counterparts of this Contract in the prescribed form and manner, the day and year first above written.

CITY OF BASEHOR, KANSAS

By David K. Breuer  
David K. Breuer  
Mayor

ATTEST:

Katherine M. Renn  
Katherine M. Renn  
City Clerk

APPROVED AS TO FORM:

Shannon M. Marcano  
Shannon M. Marcano  
City Attorney

Donelson Construction Co., LLC  
Contractor

By Michael J. Danks  
Title President



(If the Contract is not executed by the president of the corporation or general partner of the partnership, please provide documentation which authorizes the signatory to bind the corporation or partnership. If a corporation, Contractor shall furnish City a current certificate of good standing, dated within ten (10) days of the date of this Contract.)