

RESOLUTION NO. 2016-16

A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH MILES EXCAVATING, INC., REGARDING CONSTRUCTION OF THE LEAVENWORTH ROAD STORM AND SIDEWALK IMPROVEMENTS PROJECT

WHEREAS, Miles Excavating, Inc. and the City of Basehor wish to enter into an agreement for construction of the Leavenworth Road Sidewalk and Storm Improvements Project, attached 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 for construction of the Leavenworth Road Sidewalk and Storm Improvements Project, attached as Exhibit A.

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

ADOPTED by the Governing Body this 1st day of June, 2016.

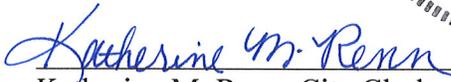
SIGNED by the Mayor this 1st day of June, 2016.

SEAL




David K. Breuer, Mayor

ATTEST:


Katherine M. Renn, City Clerk

APPROVED AS TO FORM:

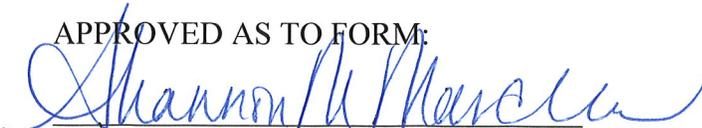

Shannon M. Marcano, City Attorney

EXHIBIT A

Agreement with Miles Excavating, Inc. for construction of the Leavenworth Road
Sidewalk and Storm Improvements Project

CONTRACT BETWEEN
CITY OF BASEHOR, KANSAS AND CONTRACTOR

THIS AGREEMENT, is made and entered into this 1st day of June, 2016 by and between the City of Basehor, Kansas, hereinafter called the CITY, and Miles Excavating, Inc. hereinafter called the Contractor.

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

Article 1. WORK. The Contractor will perform all Work as shown in the Documents for the completion of the Project generally described as follows:

Leavenworth Road Sidewalk and Storm Improvements

Article 2. JURISDICTION. 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. Should any provision of this Agreement or the other Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason, such provisions(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.

Article 3. CONTRACT TIME. Contractor shall commence work upon the date stated in the Notice to Proceed and will be substantially complete as defined by this Contract on or before September 13, 2016 and will complete all work covered by this Contract on or before October 10, 2016. Time is of the essence. Accordingly Liquidated Damages shall be assessed against Contractor as stipulated liquidated damages and not as a penalty, in an amount as set forth in the Supplementary Conditions for each and every calendar day the work remains in complete over the specified completion time.

Article 4. CONTRACT PRICE. The City will pay the Contractor for performance of the Work and completion of the Project in accordance with the Contract Documents, and the Contractor will accept in full compensation therefore, the sum of Six hundred eighty six thousand, six hundred forty two dollars and 78 cents. Dollars (\$686,642.78) (subject to adjustment as provided by the Contract Documents) for all work covered by and included in the Contract award and designated in the Contract Documents. Payment thereof to be made in cash or its equivalent and in the manner provided in the Contract Documents.

Article 5. PROGRESS AND FINAL PAYMENT. The City will make progress payments on account of the Contract Price as provided in the General Conditions as follows:

- 5.1 Progress and final payments will be on the basis of the Contractor's Applications for Payment as approved by the City.
- 5.2 On or about the 15th day of each month during construction Ninety (90)% of the Work completed, and Ninety (90)% of material and equipment not incorporated in the Work but delivered and suitably stored, less in each case the aggregate of payments previously made.

Article 6. SCHEDULE LIQUIDATED DAMAGES

- 6.1 The parties agree that it would be difficult to determine the amount of damages that would be suffered due to a Contractor delay, but that the Liquidated Damages in the amount of \$1,000.00 per day are a fair and reasonable amount for each Day beyond the Substantial Completion Date, and that these Liquidated Damages do not constitute a penalty.
- 6.2 In the event that the Contractor does not complete his work such that the City can achieve Substantial Completion of each specified Milestone of the Work on or before the Substantial Completion Date specified for that work, Contractor will pay City such amount of Liquidated Damages in the amount of \$1,000.00 per day.
- 6.3 All schedule Liquidated Damages for which Contractor becomes liable pursuant to Section 6.2 may be offset by the City against amounts due under this Agreements, and if such amounts are not sufficient to pay the Liquidated Damages then due, such amounts will be payable to the City submits to Contractor an invoice therefore. Amounts paid late will accrue interest at a rate equal to two percent above the prime rate as set from time to time by Commerce Bank of Kansas City, N.A.
- 6.4 Upon meeting the Substantial Completion Date, the Contractor shall provide the Engineer and/or the City with all applicable test reports, material certifications, and product guarantees outstanding. Upon receiving final documentation, the Engineer shall provide written notice to the City that the project improvements have been completed, thus allowing the City to distribute the 10% retainage held throughout the project construction phase.

Article 7. CONTRACTOR'S REPRESENTATIONS. In order to induce the CITY to enter into this Agreement CONTRACTOR makes the following representations:

- 7.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the work.

- 7.2 CONTRACTOR has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in the General Conditions, and accepts the determination set forth in the Supplementary Conditions of the extent of the technical data contained in such reports and drawings upon which CONTRACTOR is entitled to reply.
- 7.3 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing underground facilities at or contiguous to the site and assumes responsibility of the accurate location of said underground facilities. No additional examinations, investigations, exploration, tests, reports, studies or similar information or data in respect of said underground facilities are or will be required by CONTRACTOR in order to perform and furnish the work at the contract price, within the contract time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the General Conditions.
- 7.4 CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- 7.5 CONTRACTOR has given the CITY written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by CITY is acceptable to CONTRACTOR.

Article 8. CONTRACT DOCUMENTS. The Contract Documents which comprise the entire agreement between CITY and CONTRACTOR concerning the Work consist of the Following:

- 8.1 This Agreement (pages 1 to 5, inclusive).
- 8.2 Exhibits to this Agreement consist of Documents listed in Index to the Project Manual and identified herein.
- 8.3 Performance, Maintenance and Bid Bonds.
- 8.4 Notice of Award.
- 8.5 General Conditions.
- 8.6 Supplementary Conditions.
- 8.7 Plans & Specifications
- 8.8 Addenda number 1.
- 8.9 CONTRACTOR'S Bid consisting of pages BF-1 to BF-6, inclusive.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in the General Conditions.

Article 9. MISCELLANEOUS

- 9.1 Terms used in this Agreement which are defined in the General Conditions will have the meanings indicated in the General Conditions.
- 9.2 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 release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 9.3 CITY 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.

IN WITNESS WHEREOF, CITY and CONTRACTOR have signed this Agreement in triplicate. .

CONTRACTOR

Steve Miles
Signature

June 6, 2016
Date

Steve Miles President
Printed Name & Title

[Signature]
Attest

CITY OF BASEHOR, KANSAS

David K. Breuer
David K. Breuer, Mayor

6-6-16
Date



June 4, 2012

Steve Miles
Steve Miles President

[Signature]

[Signature]

[Signature]

6-6-12

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