RESOLUTION NO. 2016-R-12

WHEREAS, Midvale City has received CDBG funds for the Lennox Street project; and

WHEREAS, design drawings and specification have been prepared by Ensign Engineering to meet City standards; and

WHEREAS, the City advertised the Lennox Street Project to solicit bids from qualified contractors to construct this project; and

WHEREAS, the City held a public bid opening on March 17, 2016; and

WHEREAS, the City has evaluated these bids based on the criteria noted in the bid documents, and based on that evaluation wishes to award the Lennox Street Project to Miller Paving Inc.; and

WHEREAS, an agreement has been prepared between the City and Miller Paving, Inc.

NOW THEREFORE BE IT RESOLVED, that based on the foregoing, the Midvale City Council adopts this resolution authorizing the Mayor to sign the agreement with Miller Paving, Inc. for the construction of the Lennox Street Project.

APPROVED AND ADOPTED this 5th day of April, 2016.

JoAnn Seghini, Mayor

ATTEST:
Rori L. Andreason, City Recorder

Voting by the City Council

<table>
<thead>
<tr>
<th>Name</th>
<th>&quot;Aye&quot;</th>
<th>&quot;Nay&quot;</th>
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<tr>
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TO:  Bob Miller
Miller Paving
P.O. Box 571039
Murray, UT 84157-1039

PROJECT Description: "Lennox Street Reconstruction"

"Midvale City"

The OWNER has considered the BID submitted by you for the above described WORK in response to its Advertisement for Bids dated 3/12/16, and Information for Bidders as requested by the OWNER.

You are hereby notified that your BID has been accepted for items in the amount of $179,558.65.

You are required by the Information for Bidders to execute the Agreement and furnish the required CONTRACTOR'S Performance BOND, Payment BOND and certificates of insurance within ten (10) calendar days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said BONDS within ten (10) days from the date of this Notice, said OWNER will be entitled to consider all your rights arising out of the OWNER'S acceptance of your BID as abandoned and as a forfeiture of your BID BOND. The OWNER will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the OWNER.

Dated this 21st day of March, 2016.

__________________________
By  Keith Ludvig
Title  City Engineer

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged by

__________________________
By  Dusty B. Miller
Title  Vice Pres

this the 31st day of March, 2016.
THIS AGREEMENT dated as of the 31st day of March, 2016, is by and between Midvale City (hereinafter called OWNER), and Miller Paving Inc (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The construction of the "Lennox Street Site Improvements" at Lennox Street in Midvale City, Salt Lake County, Utah.

Article 2. ENGINEER

The Project has been designed by:

Ensign Engineering and Land Surveying
45 West 10000 South
Sandy, UT 84070

who is hereinafter called ENGINEER and who will assume all duties and responsibilities and will 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 3. CONTRACT TIME

3.1. The Work will be substantially completed on or before 90 day substantial completion, and will be completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions on or before 120 day from issuance of notice to proceed. (If weather shutdown is agreed upon, revised dates will be established).

Article 4. CONTRACT PRICE

4.1. OWNER shall pay CONTRACTOR for performance of the Work in accordance with the Contract Documents in current funds for the amount of $ in accordance with the Construction Bid Form included herewith.

(See attached Construction Bid Form)

Article 5. PAYMENT PROCEDURES

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 General Conditions.
5.1. **PROGRESS PAYMENTS:** OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR’S Application for Payment on or about the 10th day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in paragraph 14.02 of the General Conditions or, in the event there is no schedule of values, as provided in the General Requirements.

5.1.1. Prior to Substantial Completion, progress payment will be 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 shall determine, in accordance with the General Conditions.

- **90% (Ninety Percent) of Work completed**

5.1.2. Upon Substantial Completion, in an amount sufficient to increase total payments to CONTRACTOR to 100% of the Contract Price, less such amounts as Engineer shall determine, or OWNER may withhold, in accordance with the General Conditions.

5.2. **FINAL PAYMENT:** 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 6. NOT USED**

**Article 7. CONTRACTOR’S REPRESENTATIONS**

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

7.1. CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.

7.2. CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

**Article 8. CONTRACT DOCUMENTS**

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the work consist of the following:

8.1. This Agreement (Section 500 pages 1 to 4, inclusive).

8.2. Exhibits to this Agreement.

8.3. Notice of Award (Section 420).

8.4. General Conditions (Section 700)

8.5. Supplementary Conditions (Section 800 pages 1 to 5)
8.6. Specifications bearing the title TECHNICAL SPECIFICATIONS and consisting of the divisions as listed in table of contents thereof.

8.7. Drawings, consisting of sheets listed in the Index of Drawings.

8.8. Addenda numbers ______/____ to ______/____ inclusive.

8.9. CONTRACTOR'S Bid

8.10. Documentation submitted by CONTRACTOR prior to Notice of Award.

8.11. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraphs 3.04 and 3.05 of the General Conditions.

8.12. The documents listed in paragraphs 8.2 et seq. above are attached to the Agreement (except as expressly noted otherwise above). There are no Contract Documents other than those listed above in the Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.4 and 3.05 of the General Conditions.

Article 9. MISCELLANEOUS

9.1. Terms used in this Agreement which are defined in Article 1 of the General Conditions shall 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. 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.
Article 10. OTHER PROVISIONS

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and 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 March 31, 2016.

OWNER: Midvale City

By

[CORPORATE SEAL]

Attest

Address for giving notices:

7505 Holden St

Midvale, Utah 84047

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

CONTRACTOR: Miller Paving Inc

By

[CORPORATE SEAL]

Attest

Address for giving notices:

PO Box 571039

Murray UT 84157

License No. 292925-SSC

Agency for service process:

(If CONTRACTOR is not a corporation, attach evidence of authority to sign.)
CERTIFICATE OF NON-DISCRIMINATION AND NON-COLLUSION
SALT LAKE COUNTY COMMUNITY RESOURCES AND DEVELOPMENT

PROJECT NAME: Lennox Street
PROJECT NUMBER: 05.05MIDV41

As a condition precedent to the award by Midvale City of the Project identified above, I, Dustin B. Miller, (PRINT NAME OF AUTHORIZED AGENT) of Miller Paving Inc. (PRINT NAME OF FIRM)
do certify that neither I, nor to the best of my knowledge, any member or members of my firm or company discriminates against any employee or applicant for employment of the firm, because of race, religion, color, sex, ancestry, age, disability or national origin. I will take necessary action to ensure the process of employment and application for employment is free from discrimination on these bases. Such action shall include, but not be limited to the following: hiring, upgrading, promotion, discipline, transfer, recruitment or recruitment advertising, layoffs, terminations, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

I agree to post in a conspicuous place, available to employees and applicants for employment, notices provided by appropriate government agencies setting forth the provisions of this certificate. Further, I will, in all solicitations or advertisement for employment placed by or on behalf of myself and my company, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, ancestry, age, disability or national origin.

Furthermore, I do certify that neither I, nor to the best of my knowledge, any member or members of my firm or company have either directly or indirectly restrained free and competitive bidding on this project by entering into any agreement, participating in any collusion, scheme, or otherwise taking any action in violation of law or regulations, or doing any act otherwise prohibited by Salt Lake County.

I am aware that any contract awarded my firm for this project may be terminated in the event of a finding of non-compliance by Salt Lake County with any requirements of this certificate.

Under UCA Section 78B-5-705, I declare under criminal penalty of the State of Utah that the foregoing is true and correct. Initial.

Further, under 28 U.S.C. Section 1746, I declare under penalty of perjury that foregoing is true and correct. Initial.

By
Title
Date 3/31/16
DOCUMENT 00610

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS,

That Miller Paving, Inc. as Contractor and Western Surety Company as Surety, are held firmly bound unto Midvale City, hereinafter called "Owner", in the sum of One Hundred Seventy Nine Thousand Five Hundred Fifty Eight and 65/100 Dollars ($179,558.65), of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contract has been awarded and is about to enter into the annexed Agreement with Owner to perform all work required under the Bidding Schedule(s) of the Owner's Contract Documents entitled:

"Lennox Street Reconstruction"

NOW THEREFORE, if Contractor shall perform all the requirements of the Agreement required to be performed on his part, at the times and in the manner specified therein, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

PROVIDED, that any alterations in the work to be done or the materials to be furnished, or changes in the time of completion, which may be made pursuant to the terms of the Agreement, shall not in any way release Contractor or Surety there under, nor shall any extensions of time granted under the provisions of the Agreement release either Contractor or Surety, and notice of such alterations or extensions of the work, materials or time to complete made under the Agreement is hereby waived by Surety. This Bond is furnished in compliance and in accordance with 14-1-13 Utah Code Ann., as amended, and 63-56-38 Utah Code Ann.

SIGNED AND SEALED, this 1st day of April, 2016.

Miller Paving, Inc.

CONTRACTOR

By: [Signature]

Western Surety Company

SURETY

By: [Signature]

Tina Davis, Attorney-in-Fact

(SEAL AND NOTARY'S ACKNOWLEDGEMENT OF SURETY)
DOCUMENT 00620

PAYMENT BOND

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(SEAL)   (SEAL)

Miller Paving, Inc.  Western Surety Company

By:  [(CONTRACTOR)]  By:  [(SURETY)]

(SEAL AND NOTARIAL ACKNOWLEDGMENT OF SURETY)

PAYMENT BOND  00620 - 1
SURETY ACKNOWLEDGMENT

STATE OF UTAH       }
COUNTY OF SALT LAKE  } SS

On this 1st day of APRIL, 2016, before me personally came TINA DAVIS to me known, who, being by me duly sworn, did depose and say that she is an Attorney-In-Fact of WESTERN SURETY COMPANY the corporation described in and which executed the within instrument; that she knows the corporate seal of said corporation, that the seal affixed to the within instrument is such corporate seal, and that she signed the said instrument and affixed the said seal as Attorney-In-Fact of the Board of Directors of said corporation and by authority of this office under the Standing Resolutions thereof.

[Signature]
Notary Public

LISA H.,
Notary Public
State of Utah
Comm. No. 681511
My Comm. Expires Mar 13, 2019
POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Tina Davis, Lisa Hall, Lindsey Plattner, Linda Nipper, Individually

of Salt Lake City, UT, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 29th day of September, 2015.

WESTERN SURETY COMPANY

[Signature]
Paul T. Bruflat, Vice President

State of South Dakota
County of Minnehaha

ss

On this 29th day of September, 2015, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires
February 12, 2021

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 1ST day of APRIL, 2016.

WESTERN SURETY COMPANY

[Signature]
L. Nelson, Assistant Secretary