RESOLUTION NO. 2019-R-16

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN THE AGREEMENT BETWEEN MIDVALE CITY AND MILLER PAVING, INC. FOR THE CONSTRUCTION OF THE ROADWAY 2019 IMPROVEMENT PROJECT

WHEREAS, Midvale City has created a Street CIP and desires to complete the improvements on these streets; and

WHEREAS, to that end, Midvale City has procured funds through the bond market to finance these projects; and

WHEREAS, design drawings and specification have been prepared by Paul Hansen & Associates to meet City standards for several of the streets on the CIP list; and

WHEREAS, the City advertised the 2019 Roadway Improvement Project to solicit bids from qualified contractors to construct this project; and

WHEREAS, the City held a public bid opening on May 2nd, 2019 and received 3 bids; 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 2019 Roadway Improvement 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 2019 Roadway Improvement Project.

APPROVED AND ADOPTED this 26th day of May, 2019.

Robert M. Hale, Mayor

ATTEST:

Kori L. Andreason, City Recorder

[City Seal]
<table>
<thead>
<tr>
<th>Voting by the City Council</th>
<th>“Aye”</th>
<th>“Nay”</th>
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<tbody>
<tr>
<td>Bryant Brown</td>
<td>✓</td>
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<tr>
<td>Paul Glover</td>
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<tr>
<td>Quinn Sperry</td>
<td>✓</td>
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<tr>
<td>Paul Hunt</td>
<td>✓</td>
<td></td>
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<tr>
<td>Dustin Gettel</td>
<td>✓</td>
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NOTICE OF AWARD

TO:  ________________________________  Dated May 15, 2019
(BIDDER)

ADDRESS:  P.O. Box 571039 Murry, UT 84157-1039

PROJECT:  2019 Roadway Improvement Project

You are notified that your Bid dated  May 2nd, 2019  has been considered. You are the apparent successful bidder and have been awarded a contract for:

2019 Roadway Improvement Project

(Bid Schedules A, B and C)

The Contract Price of your contract  $644, 875.75

Three copies of the Agreement accompany this Notice of Award.

You must comply with the following conditions precedent within ten days of the date of this Notice of Award, that is by  May 27th, 2019.

1. You must deliver to the OWNER three fully executed counterparts of the agreement including all the Contract Documents. Each of the Contract Documents must bear your signature on the cover page.

May 2019
2019 Roadway Improvement Project
2. You must deliver with the executed Agreement the Contract Security (Bonds) and Insurance as specified in the Instruction to Bidders (paragraph 18), General Conditions (Article 5) and Supplementary Conditions (paragraph SC-3).

3. (List other conditions precedent):

Failure to comply with these conditions within the time specified will entitle OWNER to consider your bid abandoned, to annul the Notice to Award and to declare your Bid Security forfeited.

Within ten days after you comply with those conditions, OWNER will return to you one fully signed counterpart of the Agreement with the Contract Documents attached.

Midvale City Corporation  
(OWNER)

By:  

(AUTHORIZED SIGNATURE)

City Engineer  
(TITLE)

- END OF DOCUMENT-
DOCUMENT 00 52 00

AGREEMENT

THIS AGREEMENT dated as of the 15th day of May, 2019, 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:

1. WORK

The Construction Contract is known as

2019 ROADWAY IMPROVEMENT PROJECTS

2. ENGINEER

The Project has been designed by:

Paul Hansen Associates
1073 East 11780 South
Sandy, UT 84094

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.

3. CONTRACT TIME

3.1. Construction shall meet the timetables and scheduling constraints outlined on the plans in order to minimize disruption to public. The Contract time shall be governed by the following criteria:

A. The entire project shall be substantially complete by September 20, 2019 and shall meet final completion by September 27, 2019.

B. Work completed on any of the three street projects shall be completed within the following time frames, and as measured from the date when demolition commences on each particular roadway project:

1. Bid Schedule A - 7800 South Street: Substantially complete within 30 calendar days, and shall meet final completion within 35 calendar days.
2. Bid Schedule B - 300 East Street: Substantially complete within 30 calendar days, and shall meet final completion within 35 calendar days
3. Bid Schedule C - Center Square and Grant Streets: Substantially complete within 30 calendar days, and shall meet final completion within 35 calendar days.
3.2. LIQUIDATED DAMAGES

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 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration preceding 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 One Hundred Dollars ($100.00) for each calendar day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete.

After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Time or within any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER One Thousand Dollars ($1000.00) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

4. CONTRACT PRICE

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

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: All progress payments will be on the basis of the progress of the Work estimated by the engineer.

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.

6. INTEREST

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.

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 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 paragraph 4.02 of 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 obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of 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 Paragraph 4.02 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar data are or will be required by CONTRACTOR for such purposes.

7.4. 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 for the accurate location of said Underground Facilities.

No additional examinations, investigations, explorations, 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 Paragraph 4.03 of the General Conditions.

7.5. 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.

7.6. 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.

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 (Document 00 52 00).

8.2. Exhibits to this Agreement (pages ___ to___, inclusive).
8.3. BID (Document 00 41 00)

8.4. BID SCHEDULE (Document 00 43 00).

8.5. SUBCONTRACTOR SUPPLIER REPORT (Document 00 43 36).

8.6. WORK UNDER CONTRACT REPORT (Document 00 43 37).

8.7. BIDDER STATUS REPORT (Document 00 43 38).

8.8. EMPLOYMENT STATUS VERIFICATION AFFIDAVIT (Document 00 45 37)

8.9. PERFORMANCE BOND (Document 00 61 13).

8.10. PAYMENT BONDS (Documents 00 61 14)

8.11. NOTICE OF AWARD.

8.12. GENERAL CONDITIONS (Document 00 72 00).

8.13. MODIFICATIONS TO GENERAL CONDITIONS (Document 00 73 10).

8.14. Specifications bearing the title TECHNICAL SPECIFICATIONS and consisting of divisions as listed in the table of contents thereof.

8.15. DRAWINGS

8.16. Addenda numbers ___ to ___ inclusive.

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

8.18. 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.

8.19. The documents listed 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 3.04 and 3.05 of the General Conditions.

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

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Agreement
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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.

10. OTHER PROVISIONS

None

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 27 day of May, 2019.

Michele City, OWNER

By:

Miller-Palming, Inc., CONTRACTOR

By:

Attest:

Address for Giving Notices:

Midvale City Corporation
7505 South Holden Street
Midvale, UT 84047

(OWNER shall attach authority to sign and resolution or other documents authorizing execution of Agreement.)

[CORPORATE SEAL]

Attest:

Address for Giving Notices:

P.O. Box 571039
Murray, UT 84157-1039

License No.: 292525-5501

Agent for Service of Process:

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

END OF SECTION
CERTIFICATE OF RESOLUTION

The undersigned, being the Secretary of Miller Paving, Inc., a Utah corporation, certifies that the following Resolution was adopted by the Board of Directors of the Company at a meeting duly called for that purpose and held September 30, 1996. The undersigned further certifies that the said Resolution was taken from the minutes of that meeting.

RESOLVED, that the president, vice president and secretary, be, and they are hereby singly authorized and empowerd to execute and deliver, on behalf of the Corporation, all and any employment agreements, construction agreements, work contracts, deeds, options, leases, management agreements, and other instruments or documents necessary or desirable for the routine conduct of the business of the Corporation.

Dated this 10th day of October, 1996.

[Signature]

Secretary
PERFORMANCE BOND

KNOW ALL BY THESE PRESENTS, That we, __________________________ (hereinafter called the Principal),
as Principal, and __________________________ Western Surety Company
Duly organized under the laws of the State of __________________________ (hereinafter called the Surety), as Surety, are held and firmly
bound unto __________________________ (hereinafter called the Obligee), in the sum of $644,875.75
(________________________) Dollars, for the payment of which sum well and truly to be made, we, the said Principal and the said
Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Signed and sealed this __________ day of __________, 2019

WHEREAS, said Principal has entered into a written Contract with said Obligee, dated __________________________.
for __________________________
in accordance with the terms and conditions of said Contract, which is hereby referred to and made a part hereof as if fully set forth
herein:

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That if the above bounden Principal shall well and truly keep, do
and perform each and every, all and singular, the matters and things in said contract set forth and specified to be by said Principal
kept, done and performed, at the times and in the manner in said contract specified, or shall pay over, make good and reimburse to
the above named Obligee, all loss and damage which said Obligee may sustain by reason of failure or default on the part of said
Principal so to do, then this obligation shall be null and void; otherwise shall remain in full force and effect.

NO SUIT, ACTION OR PROCEEDING by the Obligee to recover on this bond shall be sustained unless the same be commenced within
(2) years following the date on which Principal ceased work on said Contract.

________________________
By __________________________

________________________
By __________________________

________________________
By Tina Davis, Attorney-in-Fact
PAYMENT BOND

BOND NO. 30044416

KNOW ALL BY THESE PRESENTS, That we, __________________________________________________________________________________________Miller Paving, Inc.

________________________________________________________________________________________ as Principal, hereinafter called Principal, and

__________________________________________________________________________________________ Western Surety Company ____________________________________________, a __________ South Dakota __ __ Corporation, as Surety,

hereinafter called Surety, are held and firmly bound unto ___________________________________________, as Obligee, hereinafter called Owner, for the use and benefit of Claimants as herein defined, in the amount of ___Six Hundred Forty-four Thousand Eight Hundred Seventy-five And 75/100 Dollars ($644,875.75___), for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated __________________ entered into a contract with Owner for ________________________________________________________

2019 Roadway Improvement Project

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That if the Principal shall promptly make payment to all Claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A Claimant is defined as one having a direct Contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every Claimant as herein defined, who has not been paid in full before the expiration of the period of ninety (90) days after the date on which the last of such Claimant’s work or labor was done or performed, or materials where furnished by such Claimant, may sue on this bond for the use of such Claimant, prosecute the suit to final judgment for such sum or sums as my be justly due Claimant, and have execution thereon.

3. No suit or action shall be commenced hereunder by any Claimant.

a) Unless Claimant, other than one having a direct Contract with the Principal, shall have given notice to any two of the following: The Principal, the Owner, or the Surety above named, within ninety (90) days after such Claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made.

b) After the expiration of one (1) year following the date on which Principal ceased work on said Contract, if the provisions of paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

Signed and sealed this __15th day of May__, 2019 .

______________________________
Principal

______________________________
Western Surety Company

______________________________
Tifha Davis, Attorney-in-Fact
On May 15, 2019, before me, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared

Tina Davis

known to me to be Attorney-in-Fact of Western Surety Company
the corporation described in and that executed the within and foregoing instrument, and known to me to be the person who executed the said instrument in behalf of the said corporation, and he duly acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year stated in this certificate above.

My Commission Expires 11/18/2020

Lindsey Plattner  Notary Public
Western Surety Company

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, Lindsey Plattner, Lisa Hall, 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 9th day of July, 2018.

WESTERN SURETY COMPANY

Paul T. Brulat, Vice President

State of South Dakota  
County of Minnehaha  
ss

On this 9th day of July, 2018, before me personally came Paul T. Brulat, 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

June 23, 2021

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinafore 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 15TH day of MAY, 2019.

WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

Form F4280-7-2012

Go to www.cnasurety.com > Owner / Obligee Services > Validate Bond Coverage, if you want to verify bond authenticity.
Authorizing By-Law

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.