



Yamhill County Public Works Department

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John F. Phelan
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September 28, 2015

TO: Board of Commissioners
Administrator Laura Tschabold
Deputy Administrator Chuck Vesper
Commissioner Stan Primozych
Lucy Flores-Mendez

SECOND REVISION

RE: C&M Excavation and Utilities contract for Abbey/Kuehne/Hendricks

Due to overruns in materials, subgrade stabilization, embankment construction and the extension of the intersection project to meet the previously paved portion of Abbey Road, as well as additional flagging hours for these expanded operations, the total project cost was \$937,364.60, exceeding the contract price of \$831,790 by \$105,574.60. The original contract was approved under B.O. # 15-136.

There was a Change Order, approved under B.O. #15-209 on June 25, 2015, for an additional \$56,540. That additional work actually cost \$58,000, or \$1,460 more.

The total project cost of \$995,364.60 exceeded the original contract and Change Order by \$107,034.60.

Please see attached Invoice #4 from C&M Excavation. Please also see the attached e-mail from Jake Wisner, Sr. Project Engineer from CARDNO, addressing the unforeseen soft spots and additional overlay for Abbey Road.

I request that the Board of Commissioners approve and authorize payment to C&M Excavation and Utilities for the additional work performed during the intersection improvement at Abbey/Kuehne/Hendricks.

John F. Phelan
Director, Yamhill County Public Works

Accepted by Yamhill County
Board of Commissioners on
10.1.15 by Board Order
15-401

Agreement

AGREEMENT FOR ABBEY/KUEHNE/HENDRICKS INTERSECTION IMPROVEMENT PROJECT

THIS AGREEMENT is made effective the last date set forth adjacent to the signatures of the parties below between Yamhill County, a political subdivision of the State of Oregon (referred to as Owner in this Agreement) and C & M Excavation and Utilities LLC, an Oregon limited liability company, located at 21287 SW Oregon Street, Sherwood, OR 97140, Federal Tax Identification Number 45-4329581 (referred to as Contractor in this Agreement) for the project known as Abbey/Kuehne/Hendricks Intersection Improvement Project for which bids were opened April 1, 2015 (referred to in this Agreement as the "Project").

STATEMENT OF PURPOSE AND IDENTIFICATION OF CONTRACT DOCUMENTS

A. Owner has budgeted funds to perform the Project. Owner conducted a competitive bidding process to select the lowest responsible bidder to complete the Project. Contractor was the lowest responsible bidder. This Agreement is made to specify the mutual obligations of Owner and Contractor for completion of the Project.

B. This Agreement includes by reference the following Contract Documents that are part of the Project:

- (A) Specifications and Call for Bids, March 2015
- (B) Special Provisions and Supplemental Standard Specifications for County Road Construction, including Standard and Supplemental General Conditions in form of Oregon Standard Specifications for Construction 2008 published by ODOT
- (C) Bid Schedules and Signature Page
- (D) First-tier subcontractor disclosure form
- (E) Bid Bond
- (F) Prevailing Wage Rates effective January 1, 2015 (as amended)
- (G) Addenda (if any)
- (H) Performance and Payment Bond
- (I) Notice of Intent to Award
- (J) This Agreement, including attached Exhibit A
- (K) Agreement Amendments (if any)
- (L) Insurance Certificates
- (M) Notice to Proceed
- (N) Change Orders (if any)
- (O) Notice of Substantial Completion or Project Acceptance
- (P) Warranty Period

AGREEMENT: In consideration of the mutual covenants contained below, Owner and Contractor hereby agree as follows:

1. **Scope of work and services; filing of payment and performance bond.** The Contractor will commence and complete the construction of the Project in strict accordance with the Contract Documents identified above. The Contractor acknowledges receipt of all Contract Documents in existence at the date it executed this Agreement. Contractor represents to Owner that Contractor has made a reasonable inspection of the Project site(s) and is reasonably familiar with the Project site(s) conditions that might affect Contractor's performance of the Project pursuant to this Agreement. Services provided by Contractor under this

Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar conditions. The Contractor will file a suitable payment and performance bond before it commences Project work and services.

2. **Agreement performed at Contractor's expense as Independent Contractor.** The Contractor will furnish all of the materials, supplies, tools, equipment, labor, and other services necessary for the construction and completion of the Project as described in the Contract Documents. The Contractor is an independent contractor under this Agreement.

3. **Commencement and completion date.** The Contractor will commence the work and services required by the Contract Documents upon Owner's issuance of a Notice to Proceed and will complete the same by no later than August 31, 2016 ("Completion Date") unless the Completion Date is extended or otherwise modified by written notice or executed Change Order.

4. **Termination.** Owner may terminate this Agreement if the Contractor fails to comply with a material term of this Agreement or for any other reason considered to be in the public interest. If this Agreement is terminated, the Owner will pay for all work and services accepted by the Supervisor, as defined in Section 16, prior to termination.

5. **Penalty for failure to meet deadline.** The parties agree that Owner has a substantial interest in the timely completion of the Project and all work and services to be performed under this Agreement in accordance with the agreed upon schedule. However, the parties agree that the damages to be anticipated from the failure of Contractor to complete this Agreement in the specified time are uncertain and difficult to establish. The parties therefore desire to liquidate Owner's damages for Contractor's failure to complete the Project and all work and services on time. The parties therefore agree that the Contractor is liable for and shall pay as liquidated damages to Owner the sum of \$4168.95 (equal to Contract Price times .005) per day for each calendar day to commence on the first calendar day after the required Completion Date under this Agreement and to continue after each and every calendar day until all work is satisfactorily completed as specified in the Contract Documents.

6. **Compensation.** The Contractor agrees to perform all of the work and services described in the Contract Documents and comply with the terms therein at the rates set forth in Contractor's responsive bid schedule for the fixed sum of **\$831,790.00 ("Contract Price")** (see attached Exhibit A, incorporated herein by this reference) unless the Contract Price is modified by executed Change Order. Payment shall be made by Owner either in a single payment following final approval of the project by the Yamhill County Director of Public Works, or as otherwise provided in the General Conditions, subject to a 5% retainage. Upon satisfactory completion of Project tasks the Contractor shall notify the Supervisor in writing that Contractor has completed performance under this Agreement and shall request payment of applicable retained amounts. Upon receipt of written notice, Supervisor will review the Project work and services completed to date and if acceptable, Supervisor shall authorize payment of applicable retained amounts.

7. **Prevailing wages; certified statement.** The Contractor hereby certifies, and it shall be a condition of the Payment and Performance Bond, as provided by ORS 279C.800 through 279C.870, that in performing this Agreement the Contractor will pay and cause to be paid and all subcontractors will pay and cause to be paid not less than the prevailing rate of wages as of the date of the Call for Bids, per hour, per day, and per week for and to each and every worker who may be employed in and about the performance of this Agreement. In the event the