

RESOLUTION NO. R19-37

RESOLUTION AWARDING FIRSTMARK CONSTRUCTION THE CONTRACT FOR THE CITY OF LAUREL'S 2019 PAVEMENT REPAIRS PROJECT AND TO AUTHORIZE THE MAYOR TO SIGN ALL REQUIRED CONTRACT AND RELATED DOCUMENTS ON THE CITY'S BEHALF.

WHEREAS, the City of Laurel planned and publicly advertised the project known as the 2019 Pavement Repairs Project, and the City received responsive bids from qualified contractors; and

WHEREAS, the City's Engineers, KLJ, and City Staff considered the bids received and recommends the City Council award the project and that the contract is in the City's best interest; and

WHEREAS, FirstMark Construction submitted a bid of \$259,750.00 and both KLJ and the City Staff have determined the bid is in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED the City Council of the City of Laurel, Montana, finds that the City has followed its procurement policies and state law requiring competitive bidding; and

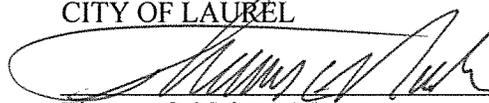
BE IT FUTHER RESOLVED the City Council hereby awards bid and project to FirstMark Construction for the bid price of \$259,750.00. The Mayor and City Clerk are authorized to sign all necessary documents, agreements or contracts on the City's behalf consistent with this resolution.

Introduced at a regular meeting of the City Council on August 6, 2019, by Council Member Mounsier.

PASSED and APPROVED by the City Council of the City of Laurel this 6th day of August 2019

APPROVED by the Mayor this 6th day of August 2019.

CITY OF LAUREL



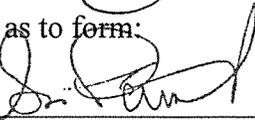
Thomas C. Nelson, Mayor

ATTEST:



Bethany Langve, Clerk-Treasurer, Clerk-Treasurer

Approved as to form:



Sam Painter, Civil City Attorney

**SECTION 00500
AGREEMENT FORM**

This Agreement is dated as of the 16th day of August in the year 2019, by and between the City of Laurel, hereinafter called "Owner" and FirstMark Construction, LLC, hereinafter called "Contractor". Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 – WORK

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

Full depth removal and patching of approximately 24,200-sf of 4" asphalt concrete surface and 11" base course, replacement of approximately 622-sy of 4" asphalt concrete surface course, overlay of approximately 1,111-sy of 2" asphalt concrete surface course, and installation of approximately 480-sf of 6-ft valley gutter.

ARTICLE 2 – THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

2019 PAVEMENT REPAIRS

ARTICLE 3 – ENGINEER

3.01 The Project has been designed by Kadrmas, Lee and Jackson, Inc. (KLJ), which is to act as Owner's Representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 Time of the Essence

A. All time limits for milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 Days to achieve Substantial Completion.

A. The Work will be substantially completed within 35 calendar days after the date when the Contract Time commences to run as provided in Paragraph 2.03 of the General Conditions. Final Completion of the Work shall be within 14 calendar days after the date of Substantial Completion.

4.03 Liquidated Damages

- A. 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 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding 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 thousand four hundred dollars \$1,400 for each day that expires after the time specified in Paragraph 4.02 above for Substantial Completion until the Work is substantially complete and five hundred dollars \$500 for each day that expires after the time specified in paragraph 4.02 for Final completion.

ARTICLE 5 – CONTRACT PRICE

5.01 Contract Payment

- A. Owner shall pay Contractor for completion of the work in accordance with the Contract Documents an amount equal to the sum of the established Unit Price for each separately identified item of Unit Price Work times the quantity of that item that is constructed and accepted. Unit prices are those listed in the Unit Price Schedule of the Bid Form attached as Exhibit A to this Agreement. Estimated quantities used for bidding purposes are not guaranteed. Payment will be for actual quantities as determined by Engineer in accordance with Paragraph 9.07 of the General Conditions. Unit prices have been computed as provided in Paragraph 11.03 of the General Conditions.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

- A. 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 Contract Documents.

6.02 Progress Payments; Retainage

- A. Owner shall make progress payments in accordance with Article 14 of the General Conditions on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer, once each month during construction as provided below. All progress payments will be on the basis of the progress of the Work completed measured by the number of units of each bid item completed times the bid unit price in the Unit Price Schedule of the Bid Form for that item.
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the sum of the unit price items less the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, in accordance with Paragraph 14.02 of the General Conditions.

- a. Owner shall retain five percent (5%) of the amount of the work completed until Final Completion and acceptance of all Work covered by the Contract Documents.
 - b. Owner shall retain five percent (5%) of materials and equipment not incorporated in the Work (but delivered, suitably stored, and accompanied by documentation satisfactory to Owner as provided in Paragraph 14.02 of the General Conditions).
2. Upon Substantial Completion and at Owner's discretion, the amount of retainage may be further reduced if requested by Contractor.

6.03 Final Payment

- A. 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 7 – INTEREST

- 7.01 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.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
 - A. Contractor has examined and carefully studied the Contract Documents (including all Addenda) listed in Article 9 and the other related data identified in the Bidding Documents.
 - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and furnishing of the Work.
 - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance and furnishing of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Special Provisions and as provided in Paragraph 4.02 of the General Conditions, and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site which has been identified in the Special Provisions as provided in Paragraph 4.06 of the General Conditions. Contractor acknowledges that such reports and drawings are not Contract Documents and may not be complete for Contractor's purposes. Contractor acknowledges that Owner and Engineer do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the Site.

- E. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site or otherwise, which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor including applying the specific means, methods, techniques, sequences and procedures of construction, if any, expressly required by the Contract Documents to be employed by Contractor, and safety precautions and programs incident thereto.
- F. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- I. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following:
 - 1. This Agreement (Pages 1 to 8, inclusive);
 - 2. Performance bond (Pages 1 to 3, inclusive);
 - 3. Payment bond (Pages 1 to 3, inclusive);
 - 4. Supplementary Conditions (MPWSS);
 - 5. Special Provisions (Pages 1 to 6, inclusive);
 - 6. Specifications as listed in the table of contents of the Project Manual;

7. Addenda (Numbers 1 to 1, inclusive);
 8. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (Pages 1 to 8, inclusive);
 - b. Documentation submitted by Contractor prior to Notice of Award (N/A);
 - c. Notice of Award
 9. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed;
 - b. Written Amendments;
 - c. Work Change Directives;
 - d. Change Orders;
 - e. Any Notice of Partial Utilization;
 - f. Notice of Substantial Completion;
 - g. Notice of Final Completion and Acceptance
 10. Certificates of Insurance;
 11. Wage Rates;
 12. Montana Public Works Standard Specifications, Sixth Edition, dated April 2010;
- B. There are no Contract Documents other than those listed above in this Article 9.
- C. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 Terms

- A. Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

10.02 Assignment of Contract

- A. No assignment by a party hereto of any rights under or interests in the Contract 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.

10.03 Successors and Assigns

- A. 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 to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 Severability

- A. Any provision or part of the Contract Documents held to be void or unenforceable under Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, Owner and Contractor have signed five (5) copies of Agreement. Three counterparts have been delivered to Owner, one to Contractor, and one to Engineer. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or by Engineer on their behalf.

This Agreement will be effective on August 16, 2019 (which is the effective date of the Agreement).

This Agreement shall not be effective unless and until concurred by Funding Agency's (if any) designated representative.

OWNER: CITY OF LAUREL

By: [Signature]
(Signature)

Attest: [Signature]
(Signature)

Address for giving notices:

BL 413 PO BOX 10
Laurel MT 59044

Phone: 406 708 405-6028
BL BL 7431

CONTRACTOR: FIRSTMARK CONSTRUCTION, LLC

By: [Signature]
(Signature)

Attest: [Signature]
(Signature)

Address for giving notices:

PO Box 80252
BILLINGS, MT 59108

Phone: 655-1892



(SEAL)

(IF OWNER is a public body, attach evidence of authority to sign and resolution of other documents authorizing execution of Owner-Contractor Agreement.)

Contractor Registration No. 232280

Agent for Service of Process

(If CONTRACTOR is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Owner's Designated Representative:

Name: _____

Title: _____

Address: _____

Phone: _____

FAX: _____

Contractor's Designated Representative:

Name: ERIC VANHEMELRYCK

Title: PROJECT MANAGER

Address: PO Box 80252

BELLEVUE, MT 59108

Phone: 655-1892

FAX: 294-5411

END OF SECTION

