

## CONTRACT AGREEMENT

THIS AGREEMENT made and entered into this 14<sup>th</sup> day of October, 2021, by and between **THE DIAMOND ENGINEERING CO.**, hereinafter called the Contractor, and the City of Grand Island, Nebraska, hereinafter called the City.

WITNESSETH:

THAT, WHEREAS, in accordance with law, the City has caused contract documents to be prepared and an advertisement calling for bids to be published, for construction of **Custer Avenue- Old Potash Highway to Faidley Avenue Highway Roadway Rehabilitation; Project No. 2019-P-13 (Phase I)**; and

WHEREAS, the City, in the manner prescribed by law, has publicly opened, examined, and canvassed the proposals submitted, and has determined the aforesaid Contractor to be the lowest responsive bidder, and has duly awarded to the said Contractor a contract therefore, for the sum or sums named in the Contractor's bid, a copy thereof being attached to and made a part of this contract;

NOW, THEREFORE, in consideration of the compensation to be paid to the Contractor and of the mutual agreements herein contained, the parties have agreed and hereby agree, the City for itself and its successors, and the Contractor for itself or themselves, and its or their successors, as follows:

ARTICLE I. That the Contractor shall (a) furnish all tools, equipment, superintendence, transportation, and other construction materials, services and facilities; (b) furnish, as agent for the City, all materials, supplies and equipment specified and required to be incorporated in and form a permanent part of the completed work; (c) provide and perform all necessary labor; and (d) in a good substantial and workmanlike manner and in accordance with the requirements, stipulations, provisions, and conditions of the contract documents as listed in the attached General Specifications and Special Provisions, said documents forming the contract and being as fully a part thereof as if repeated verbatim herein, perform, execute, construct and complete all work included in and covered by the City's official award of this contract to the said Contractor, such award being based on the acceptance by the City of the Contractor's bid;

ARTICLE II. That the City shall pay to the contractor for the performance of the work embraced in this contract and the contractor will accept as full compensation therefore the sum (subject to adjustment as provided by the contract) of **ONE MILLION TWO HUNDRED FORTY SIX THOUSAND EIGHT HUNDRED FORTY AND 95/100 DOLLARS (\$1,246,840.95)** for all services, materials, and work covered by and included in the contract award and designated in the foregoing Article I; payments thereof to be made in cash or its equivalent in the manner provided in the General Specifications.

ARTICLE III. The contractor hereby agrees to act as agent for the City in purchasing materials and supplies for the City for incorporation into the work of this project. The City shall be obligated to the vendor of the materials and supplies for the purchase price, but the contractor shall handle all payments hereunder on behalf of the City. The vendor shall make demand or claim for payment of the purchase price from the City by submitting an invoice to the contractor. Title to all materials and supplies purchased hereunder shall vest in the City directly from the vendor. Regardless of the method of payment, title shall vest immediately in the City. The contractor shall not acquire title to any materials and supplies incorporated into the project. All invoices shall bear the contractor's name as agent for the City. This paragraph will apply only to these materials and supplies actually incorporated into and becoming a part of the finished product of **Custer Avenue- Old Potash Highway to Faidley Avenue Roadway Rehabilitation; Project No. 2019-P-13 (Phase I)**.

ARTICLE IV. All contact work shall be substantially completed by **July 15, 2022** and ready for final acceptance by **August 9, 2022**.

Construction and roadway closures within each individual phase shall be completed and reopened within thirty (30) days of initial closure.

The following are stipulations for roadway closures to complete the work within a phase, see phasing plans for additional information:

**Phase 1**

This phase shall be constructed under the traffic closure of the east lane plus 5 feet west of centerline for construction clearance within the limits of phase 1.

**Phase 2A**

This phase shall be constructed under the traffic closure of the west lane up to centerline within the limits of phase 2A. Phase 2A demolition may not occur until phase 1 is reopened to local traffic. Phase 2B and Phase 2A construction can occur at the same time but a minimum of one access lane to Ryder Park from Custer Avenue must remain open at all times.

**Phase 2B**

This phase shall be constructed under the traffic closure of the west lane up to centerline within the limits of phase 2B. Phase 2B demolition may not occur until phase 1 is reopened to local traffic. Phase 2B and Phase 2A construction can occur at the same time but a minimum of one access lane to Ryder Park from Custer Avenue must remain open at all times.

**Phase 3**

This phase shall be constructed under the traffic closure of the east lane plus 5 feet for construction equipment clearance within the limits of phase 3. Phase 3 demolition may not occur until phase 1, 2A & 2B are reopened to traffic.

**Phase 4**

This phase shall be constructed under the traffic closure of the west lane up to centerline within the limits of phase 4. Phase 4 demolition may not occur until phase 1, 2A, 2B, and 3 are reopened to traffic.

ARTICLE V. It is understood and agreed that time is the essence of the contract. Should the Contractor fail to perform all of the work within the overall period of time stipulated in the Contract Agreement, the Contractor shall pay to the City, as liquidated damages and not as a penalty, **\$1,000.00** per **calendar** day of default unless extensions of time granted by the City specifically provide for the waiving of liquidated damages.

The City shall have the right to deduct the liquidated damages from any moneys in its hands, otherwise due, or to become due, to the Contractor, or to use for and recover compensation for damages for non-performance of this contract within the time stipulated.

ARTICLE VI. The Contractor agrees to comply with all applicable State fair labor standards in the execution of this contract as required by Section 73-102, R.R.S. 1943. The Contractor further agrees to comply with the provisions of Section 48-657, R.R.S. 1943, pertaining to contributions to the Unemployment Compensation Fund of the State of Nebraska. During the performance of this contract, the contractor and all subcontractors agree not to discriminate in hiring or any other employment practice on the basis of race, color, religion, sex, national origin, age or disability. The Contractor agrees to comply with all applicable Local, State and Federal rules and regulations.

ARTICLE VII. GRATUITIES AND KICKBACKS: City Code states that it is unethical for any person to offer, give, or agree to give any City employee or former City employee, or for any City employee or former City employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other

advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract to order.

ARTICLE VIII. The City of Grand Island, Nebraska operates on a fiscal year beginning October 1st and ending on the following September 30th. It is understood and agreed that any portion of this agreement which will be performed in a future fiscal year is contingent upon the City Council adopting budget statements and appropriations sufficient to fund such performance.

ARTICLE IX. FAIR EMPLOYMENT PRACTICES: Each proposer agrees that they will not discriminate against any employee or applicant for employment because of age, race, color, religious creed, ancestry, handicap, sex or political affiliation.

ARTICLE X. LB 403: Every public contractor and his, her or its subcontractors who are awarded an agreement by the City for the physical performance of services within the State of Nebraska shall register with and use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

IN WITNESS WHEREOF, the parties hereto have executed this Contract Agreement as of the date and year first above written.

**THE DIAMOND ENGINEERING CO.**

By Jamie Hinder

Date OCT 11<sup>th</sup> 2021

Title PRESIDENT

**CITY OF GRAND ISLAND, NEBRASKA,**

By Roger H. Steele  
Mayor

Date 10/14/2021

Attest: Rafael Edwards  
City Clerk

The contract and bond are in due form according to law and are hereby approved.

Steve P. Doherty  
Attorney for the City

Date 10/13/21