

RESOLUTION NO. 082415-1

**A RESOLUTION APPROVING AN AGREEMENT WITH APAC-KANSAS INC. SHEARS DIVISION CONCERNING THE IMPLEMENTATION OF THE 2015 LOCAL STREET IMPROVEMENT PROGRAM**

WHEREAS, the City of Abilene accepted a bid of \$286,588.40 from APAC-Kansas Inc. Shears Division ("Contractor") on July 13, 2015 for the 2015 Local Street Improvement Program;

WHEREAS, the City desires to enter into an Agreement with Contractor as attached hereto as **Exhibit A**, outlining the terms and conditions of the implementation of the 2015 Local Street Improvement Program.

NOW, THEREFORE BE IT RESOLVED, by the City Commission of the City of Abilene, as follows:

**SECTION ONE. Agreement.** That an Agreement with Contractor is hereby adopted as attached hereto as **Exhibit A**.

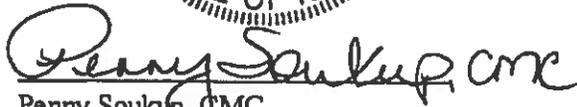
**SECTION TWO. Implementation.** The Mayor is hereby authorized to execute the aforementioned Agreement, and the City Manager shall be authorized to enforce the provisions as provided therein and in applicable resolutions, ordinances, and laws.

**SECTION THREE. Effective Date.** That the effects of this Resolution shall be in full force after its approval by the City Commission.

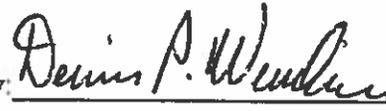
**PASSED AND APPROVED** by the Governing Body of the City of Abilene, Kansas this 24<sup>th</sup> day of August, 2015.



ATTEST:

  
Penny Soukup, GMC  
City Clerk

CITY OF ABILENE, KANSAS

By:   
Dennis P. Weishaar, Mayor

**EXHIBIT A**

**Agreement for Construction**

**2015 Local Street Improvement Program**

**APAC-Kansas Inc. Shears Division**

**August 24, 2015**

# AGREEMENT

## BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACTS

THIS AGREEMENT is by and between City of Abilene

(Owner) and APAC-Kansas Inc. Shears Division (Contractor)

Owner and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

### ARTICLE 1 - WORK

1.01 Contractor shall complete all Work as shown or specified or indicated in the Contract Documents. The Work is generally described as follows: A 2" mill and inlay project of 18,948 square yards (SY) for a portion of Cottage Avenue, NW 4<sup>th</sup>, NE 11<sup>th</sup>, 12<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, N. Olive and Hickok Dr. with additional concrete repairs.

### ARTICLE 2 - THE PROJECT

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

Project No. 15-ISR, Abilene Street Rehabilitation

### ARTICLE 3 - ENGINEER

3.01 The Project has been designed by the City of Abilene, Public Works Dept. who may act as Owner's representative, assume all duties and responsibilities, and have the rights and authority as assigned by Owner in connection with the completion of the Work.

### ARTICLE 4 - CONTRACT TIMES

4.01 Days to Achieve Substantial Completion and Final Payment

A. Bidder agrees that the Work will be substantially complete no later than 45 days after the Notice to Proceed.

4.02 Liquidated Damages

A. Contractor and Owner 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 4.01 above, plus any extensions thereof allowed. 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 \$500.00 for each day that expires after the time specified in Paragraph 4.01 for Substantial Completion and the Interim Substantial Completion Time 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 any proper extension thereof granted by Owner, Contractor shall pay Owner \$500.00 for each day that expires after the time specified in Paragraph 4.01 for completion and readiness for final payment until the Work is completed and ready for final payment.

### ARTICLE 5 - CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Owner Provided Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraph 5.01.A. below:

A. Work shall consist of attached copy of bid package listing bid items, unit prices with totals and all other incidental work.

**Total Contract Amount:**

Two Hundred and eighty-six thousand, five hundred and eighty-eight dollars and forty cents, \$286,588.40

Contractor and Owner acknowledge that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Work will be based on a Lump Sum amount, or in the case of Unit Prices; the Unit Price bid multiplied by the actual quantities completed, determined as provided in the Contract Documents.

**ARTICLE 6 - PAYMENT PROCEDURE**

**6.01 Submittal and Processing of Payment**

- A. Upon completion, contractor shall submit Application for Payment. Owner shall review and approve Application for Payment Payment is due within 21 days after approval of contractor's application for payment

**ARTICLE 7- INTEREST**

7.01 All moneys not paid when due shall bear interest at the maximum legal rate.

**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 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 performance 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 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 and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified.

E. 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 Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Owner 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.

K. Contractor shall procure and maintain at his own expense such insurance as set forth below covering claims for injuries to persons or damages to property which may arise out of execution of the project. Certificates of insurance will be provided to the Owner and contain a provision that coverages will not be cancelled prior to a fifteen (15) day written notice given to the Owner.

1. **Commercial General Liability, Insurance** shall have a limit of liability not less than \$1,000,000 each occurrence and 2,000,000 Annual Aggregate.
2. **Automobile Liability, Insurance** shall have limits of \$1,000,000 each accident.

3. **Workmen's Compensation and Employers Liability, Insurance** shall have limits of \$500,000 each accident, \$500,000 for bodily injury by accident, and \$500,000 each employee for injury by disease.

## ARTICLE 9 – CONTRACT DOCUMENTS

### 9.01 Contents

A. The Contract Documents consist of the following:

1. This Agreement (1 to 4, inclusive).
2. Performance Bond (if required).
3. Payment Bond (if required).
4. Certificate of Insurance
5. Specifications (if provided)
6. Drawings (Shts. 1-8)
7. Addenda (if needed)
8. Exhibits to this Agreement (enumerated as follows):

a. Contractor's Bid

b. Documentation submitted by Contractor prior to Signing of this Agreement

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. Work Change Directives.
- c. Change Order(s).

B. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented as agreed upon by both parties.

## ARTICLE 10 - MISCELLANEOUS

### 10.01 Terms

A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions of the 2007 Edition of the KDOT Standard Specifications.

### 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 any 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 this Agreement in quadruplicate. Two counterparts each has been delivered to Contractor and one counterpart each has been delivered to the Owner and Engineer. All portions of the Contract Documents have been signed or identified by Owner and Contractor or on their behalf.

This Agreement will be effective on August 25, 2015.

OWNER:

City of Abilene, KS

By: *Ernie P. Wulfsberg*

Title: Mayor

Attest: *Penny S. ...*

Title: City Clerk

Address for giving notices:

P.O. Box 519, Abilene, KS 67410

CONTRACTOR:

APAC-Kansas Inc. Shears Division

By: *Sam Hei*

Title: Area Mgr

Attest: *Michelle ...*

Title: office mgr.

Address for giving notices:

P.O. Box 1095, Salina, KS 67402-1095

