

RESOLUTION NO. 10-667

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AWARDING THE LOW BID ON THE RAILROAD AVENUE
STREET IMPROVEMENT PROJECT TO J.R. HAYES AND
SONS

WHEREAS, the City received a Transportation Improvement Board grant for the Railroad Avenue Street Improvement Project in the amount of \$967,943; and

WHEREAS, the City has planned and budgeted for the Railroad Avenue Reconstruction; and

WHEREAS, the City has coordinated the design and preparation of the plans specification and contract documents with Hammond Collier Wade and Livingstone, our engineering consultant; and

WHEREAS, the City has received bids on December 22, 2009; and

WHEREAS, J.R. Hayes and Sons was the low bidder and has met all conditions of providing a responsible bid,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The Mayor is hereby authorized to execute a contract with J.R. Hayes and Sons in the amount of \$676,731.89 for the construction of the Railroad Avenue Street Improvement Project as attached hereto as Exhibit A.

Section 2. City Council authorizes additional expenditures of up to \$70,000 to cover any change orders that may come up during the construction with the condition that the Council be made aware of change orders as they come up.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 21ST DAY OF JANUARY, 2010.

CITY OF BLACK DIAMOND:



Rebecca Olness, Mayor

Attest:



Brenda L. Martinez, City Clerk

CONTRACT

THIS AGREEMENT, made in three (3) copies, each of which shall be deemed original, and entered into as of the date hereinafter affixed, by and between **City of Black Diamond**, hereinafter called the Owner, and **J.R. Hayes & Sons**, hereinafter called the Contractor,

WITNESSETH:

That in consideration of the terms and conditions contained herein and attached and made a part of this Contract, the parties hereto covenant and agree as follows:

- I. **Name of Project.** This Contract is for a public works project known generally as the RAILROAD AVENUE PROJECT (the "Project").
- II. **Parties.** This Contract is voluntarily and knowingly entered into by and between the City of Black Diamond, King County, Washington, a municipal corporation ("City), and **J.R. Hayes & Sons**, ("Contractor"), collectively, "the Parties."
- III. **Contract Documents.** The following documents are incorporated by reference and made a part of this Contract ("Contract Documents"):
 - A. Invitation to Bid.
 - B. Information for Bidders.
 - C. Contractor's Bid Form.
 - D. Washington State Department of Transportation 2008 Standard Specifications for Road, Bridge and Municipal Construction.
 - E. Amendments to Standard Specifications.
 - E. Special Provisions.
 - F. Standard Plans.
 - G. Project Sign Requirements.
 - H. Project Plans.
 - I. Performance and Payment Bond
 - J. Addenda.
- IV. **Notices to Parties.** Contractor agrees to accept notices under this Contract via facsimile. It is the responsibility of Contractor to notify City in writing if any of the contact information appearing below should change. Any notices required to be given by the City to Contractor or by Contractor to City shall be in writing and delivered to the parties at the following addresses:

CITY:
CITY OF BLACK DIAMOND
P.O. Box 599 - 24301 Roberts Drive

CONTRACTOR:
J.R. Hayes & Sons
22430 SE 231ST Street

Black Diamond, Washington 98010
Contact: Public Works Director
Phone: (253) 886-2560
Fax: (360) 886-2592

Maple Valley, WA 98038
Tax I.D. # 600-020-786
Contact: Nick P. Hayes
Phone: (425)392-5722
Fax: 425-392-9902

V. **Obligations of Contractor.** In consideration of the mutual promises and obligations of the parties contained herein and incorporated by reference, Contractor expressly agrees to the following terms and conditions.

A. In general.

- (1) Responsible for all labor. Contractor agrees and understands that he shall be solely responsible for furnishing all labor necessary to complete the Project in accordance with the Contract Documents
- (2) Responsible for performing all work. Contractor agrees and understands that he shall be solely responsible for performing all work necessary to complete the Project in accordance with the Contract Documents.
- (3) Responsible for furnishing all materials and equipment. Contractor agrees and understands that he shall be solely responsible for furnishing all materials and equipment necessary to complete the Project in accordance with the Contract Documents, except for any materials expressly agreed in writing to be provided by City.

B. Work Performance.

- (1) Prevailing wages. Contractor agrees and understands that prevailing wages, as that term is defined under the laws of the State of Washington, shall be paid for all work performed on this Project by Contractor and by Contractor's subcontractors and agents.
- (2) Approved Plans & Specifications to be followed. Contractor agrees that all work is to be performed to the City's satisfaction and in compliance with the Contract Documents.

C. Non-Discrimination.

- (1) Contractor agrees that it, and its subcontractors and other agents, shall not discriminate against any employee or applicant for employment or any other person in the performance of this Contract because of race, creed, color, national origin, marital status, sex, age, disability, or other condition prohibited by federal, state, or local law or ordinance, except

where the condition constitutes a bona fide occupational qualification under law.

- (2) Any violation of this Section shall be a material breach of this Contract and grounds for immediate cancellation, termination, or suspension of the Contract by City, in whole or in part, and may result in Contractor being ineligible to perform further work for the City.

VI. Responsibility Criteria and Verification by Contractor. Pursuant to Chapter 39.04 RCW, the following requirements must be included in any public works contract:

A. Responsibility Criteria.

Eligibility to be awarded contract. To be awarded this public works contract, the Contractor hereby certifies that Contractor meets the following responsibility criteria:

- a. Contractor has a certificate of registration in compliance with chapter 18.27 RCW;
- b. Contractor has a current state unified business identifier number;
- c. If applicable, Contractor has industrial insurance coverage for Contractor's employees working in Washington as required under Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW; and
- d. Contractor is not disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).

B. Requirement to verify subcontractors. Contractor must verify the responsibility criteria contained above for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor at the time of subcontract execution, meets the responsibility criteria listed in RCW 39.04.350(1) and possesses an electrical contractor license, if required by chapter 19.28 RCW, or an elevator contractor license, if required by chapter 70.87 RCW. This verification requirement must be included in every public works contract and subcontract of every tier.

VII. Insurance

- A. Type of coverage required. Prior to performing any work under this Contract, Contractor shall procure and maintain insurance in the types and amounts described in Contract Documents.

- B. All employees, subcontractors, agents to be covered. Contractor shall procure and maintain for the duration of the Contract, and shall provide proof satisfactory to the City that such insurance is procured and maintained by each of its subcontractors or agents who are not otherwise covered by Contractor's insurance to the amounts required herein, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Contractor, its agents, representatives, or employees.
- C. Lack of insurance grounds for termination of contract. Failure of Contractor to procure and maintain insurance as required herein shall be grounds for immediate termination of this Contract by City.
- D. Title 51 Industrial Insurance Waived. The parties have specifically negotiated as a term of this Contract that Contractor has agreed to expressly waive immunity under Title 51 RCW Industrial Insurance Law.

VIII. Claims for damages.

- A. Excluded situations. City shall not be responsible for delays caused by soil conditions; underground obstructions; labor disputes; fire; delays by third parties, including public and private utilities; or reasonably foreseeable delays.
- B. Liability limited to direct costs. Contractor agrees that City's liability to Contractor for payment of claims or damages of any kind whatsoever related to this Contract shall be limited to direct costs as provided under the force account provisions of the Standard Specifications. Contractor expressly waives all claims for payment of damages that include or are computed on total costs of job performance, extended overhead, or other similar methods that are not specific as to the actual, direct costs of contract work as defined in Contract Specifications.
- C. "Damages" defined. For purposes of applying RCW 4.24.115 to this Contract, Contractor and City agree that the term "damages" applies only to a finding in a judicial proceeding and is exclusive of third party claims for damage primarily thereto.

IX. Compensation.

- A. See Bid Schedule. Contractor shall be compensated for work performed under this Contract as set forth in the Contractor's Bid Form B. Payment of Taxes. Contractor shall be solely responsible for

withholding and payment of any and all taxes owed on compensation received from City under this Contract.

- X. **Remedies.** The parties shall have all remedies available at law or equity upon a party's default or failure to perform as required under this Contract.
- XI. **Entire agreement.** This Contract, and all attachments, exhibits, or other documents incorporated to it by reference, constitutes the entire agreement of the parties and supersedes any other understandings, verbal or written.
- XII. **Modification.** The terms and conditions of this Contract, and all attachments, exhibit, or other documents incorporated to it by reference, cannot be modified unless expressly agreed in writing by City.
- XIII. **Severability.** Should any provision of this Contract be prohibited or unenforceable in any jurisdiction, such ruling shall not invalidate the remaining provisions nor affect the validity or enforceability of the provision at issue in any other jurisdiction.
- XIV. **Governing law and venue.** This Contract will be governed by and construed in accordance with the local laws of the State of Washington, without consideration of such state's conflict of law rules. Any action brought pursuant to or arising from this agreement must be filed in King County, Washington.

BY ITS SIGNATURE BELOW, EACH PARTY ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE TERMS AND CONDITIONS OF THIS CONTRACT AND AGREES TO BE BOUND BY THEM.

CONTRACTOR:

J.R. HAYES & SONS, INC.
By: [Signature]
Print name: JAMES V. KELLY
Title: SENIOR PROJECT MANAGER
Date: 1/27/10

CITY OF BLACK DIAMOND

[Signature]
By: Rebecca Olness
Title: Mayor
Date: 2-2-10

NOTE: MUST BE SIGNED & DATED BY ALL PARTIES

INDEMNIFICATION ADDENDUM

J.R. Hayes & Sons, Inc. (hereinafter called Contractor) agrees to defend, indemnify and hold the City of Black Diamond (hereinafter called City) and Hammond Collier Wade Livingstone (hereinafter called Consultant) harmless from any and all claims, demands, losses and liabilities to or by third parties arising from, resulting from or connected with services performed or to be performed under this contract by Contractor or contractor's agents or employees to the fullest extent permitted by law and subject to the limitations provided below.

Contractor's duty to indemnify City and Consultant shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of City or city's agents or employees.

Contractor's duty to indemnify City and Consultant for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) City's agents or employees, and (b) Contractor or contractor's agents or employees, shall apply only to the extent of negligence of Contractor or Contractor's agents or employees.

Contractor specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. Further, the indemnification obligation under this subcontract shall not be limited in anyway by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers' compensation acts, disability benefits acts, or other employee benefits acts; provided Contractor's waiver of immunity by the provisions of this paragraph extends only to claims against Contractor by City and does not include, or extend to, any claims by Contractor's employees directly against Contractor.

Contractor's duty to defend, indemnify and hold City and their Consultant harmless shall include as to all claims, demands, losses and liability to which it applies, City's personnel-related costs, reasonable attorney's fees, court costs and all other claim-related expenses.

THE UNDERSIGNED HEREBY CERTIFY THAT THIS ADDENDUM WAS MUTUALLY NEGOTIATED.

Dated: Feb 2, 2010

Dated: January 27, 2010

City: City of Black Diamond

Contractor:

By: Rebecca Olenec

By: James D. Lacey

Title: Mayor

Title: SENIOR PROJECT MANAGER