

CONSTRUCTION CONTRACT

RFP No. 22-25

GEDDES AVENUE & HURON PARKWAY/TUEBINGEN PARKWAY RESURFACING PROJECT (FILE No. 2022-009)

City of Ann Arbor
ENGINEERING UNIT/PUBLIC SERVICES AREA



June 2022

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CONTRACT

THIS CONTRACT is between the CITY OF ANN ARBOR, a Michigan Municipal Corporation, 301 East Huron Street, Ann Arbor, Michigan 48104 ("City") and Ajax Paving Industries, Inc. ("Contractor") Corporation doing business under the laws of the State of Michigan located at 1957 Crooks Road, Troy, Michigan 48084.

Based upon the mutual promises below, the Contractor and the City agree as follows:

ARTICLE I - Scope of Work

The Contractor agrees to furnish all of the materials, equipment and labor necessary; and to abide by all the duties and responsibilities applicable to it for the project titled **Geddes Avenue & Huron Parkway/Tuebingen Parkway Resurfacing Project (RFP No. 22-25)** in accordance with the requirements and provisions of the following documents, including all written modifications incorporated into any of the documents, all of which are incorporated as part of this Contract:

Living Wage and Non-Discrimination Ordinances -Declaration of Compliance Forms (if applicable)	Bonds
Vendor Conflict of Interest Form	General Conditions
Prevailing Wage Declaration of Compliance Form (if applicable)	Standard Specifications
Bid Forms	Detailed Specifications
Contract and Exhibits	Plans
	Addenda

ARTICLE II - Definitions

Administering Service Area/Unit means **Public Services Area/Engineering Unit.**

Project means **Geddes Avenue & Huron Parkway/Tuebingen Parkway Resurfacing Project.**

Supervising Professional means the person acting under the authorization of the manager of the Administering Service Area/Unit. At the time this Contract is executed, the Supervising Professional is: **David Dykman, P.E.** whose job title is **Project Manager**. If there is any question concerning who the Supervising Professional is, Contractor shall confirm with the manager of the Administering Service Area/Unit.

Contractor's Representative means **Patrick Wagoner** whose job title is **Project Manager**.

ARTICLE III - Time of Completion

- (A) The work to be completed under this Contract shall begin immediately on the date specified in the Notice to Proceed issued by the City.

- (B) The entire work for this Contract shall be completed by October 28, 2022. Intermediate completion dates, restricted dates, intermediate durations for opening to traffic and/or completing work, and other special requirements for certain portions of the project are specified in the "Detailed Specification for Project Schedule."
- (C) Failure to complete all the work within the time specified above, including any extension granted in writing by the Supervising Professional, shall obligate the Contractor to pay the City, as liquidated damages and not as a penalty, the amount(s) specified in the "Detailed Specification for Project Schedule" and for each calendar day of delay in the completion of all the work. If any liquidated damages are unpaid by the Contractor, the City shall be entitled to deduct these unpaid liquidated damages from the monies due the Contractor.

The liquidated damages are for the non-quantifiable aspects of any of the previously identified events and do not cover actual damages that can be shown or quantified nor are they intended to preclude recovery of actual damages in addition to the recovery of liquidated damages.

ARTICLE IV - The Contract Sum

Choose one only.

- (A) The City shall pay to the Contractor for the performance of the Contract, the unit prices as given in the Bid Form for the estimated bid total of:

Four Million Two Hundred Thirty Thousand Eight Hundred Ninety-Five and 60/100 Dollars (\$4,230,895.60)
- (B) The amount paid shall be equitably adjusted to cover changes in the work ordered by the Supervising Professional but not required by the Contract Documents. Increases or decreases shall be determined only by written agreement between the City and Contractor.

ARTICLE V - Assignment

This Contract may not be assigned or subcontracted any portion of any right or obligation under this contract without the written consent of the City. Notwithstanding any consent by the City to any assignment, Contractor shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under this contract unless specifically released from the requirement, in writing, by the City.

ARTICLE VI - Choice of Law

This Contract shall be construed, governed, and enforced in accordance with the laws of the State of Michigan. By executing this Contract, the Contractor and the City agree to venue in a court of appropriate jurisdiction sitting within Washtenaw County for purposes of any action arising under this Contract. The parties stipulate that the venue referenced in this Contract is for convenience and waive any claim of non-convenience.

Whenever possible, each provision of the Contract will be interpreted in a manner as to be effective and valid under applicable law. The prohibition or invalidity, under applicable law, of any provision will not invalidate the remainder of the Contract.

ARTICLE VII - Relationship of the Parties

The parties of the Contract agree that it is not a Contract of employment but is a Contract to accomplish a specific result. Contractor is an independent Contractor performing services for the City. Nothing contained in this Contract shall be deemed to constitute any other relationship between the City and the Contractor.

Contractor certifies that it has no personal or financial interest in the project other than the compensation it is to receive under the Contract. Contractor certifies that it is not, and shall not become, overdue or in default to the City for any Contract, debt, or any other obligation to the City including real or personal property taxes. City shall have the right to set off any such debt against compensation awarded for services under this Contract.

ARTICLE VIII - Notice

All notices given under this Contract shall be in writing and shall be by personal delivery or by certified mail with return receipt requested to the parties at their respective addresses as specified in the Contract Documents or other address the Contractor may specify in writing. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; or (2) three days after mailing certified U.S. mail.

ARTICLE IX - Indemnification

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses including attorney's fees resulting or alleged to result, in whole or in part, from any act or omission, which is in any way connected or associated with this Contract, by the Contractor or anyone acting on the Contractor's behalf under this Contract. Contractor shall not be responsible to indemnify the City for losses or damages caused by or resulting from the City's sole negligence. The provisions of this Article shall survive the expiration or earlier termination of this contract for any reason.

ARTICLE X - Entire Agreement

This Contract represents the entire understanding between the City and the Contractor and it supersedes all prior representations, negotiations, agreements, or understandings whether written or oral. Neither party has relied on any prior representations in entering into this Contract. No terms or conditions of either party's invoice, purchase order or other administrative document shall modify the terms and conditions of this Contract, regardless of the other party's failure to object to such form. This Contract shall be binding on and shall inure to the benefit of the parties to this Contract and their permitted successors and permitted assigns and nothing in this Contract, express or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Contract. This Contract may be altered, amended or modified only by written amendment signed by the City and the Contractor.

ARTICLE XI – Electronic Transactions

The City and Contractor agree that signatures on this Contract may be delivered electronically in lieu of an original signature and agree to treat electronic signatures as original signatures that bind them to this Contract. This Contract may be executed and delivered by facsimile and upon such delivery, the facsimile signature will be deemed to have the same effect as if the original signature had been delivered to the other party.

FOR CONTRACTOR


By Benjamin Kohler
Its: Kohler

Digitally signed by: Benjamin Kohler
DN: CN = Benjamin Kohler email = bkohler@ajaxpaving.com C = US O = State of Michigan
Date: 2022.06.30 10:18:39 -04'00'

FC

By:  07/18/2022

By:  07/18/2022
JACQUELINE BEAUDRY, CITY CLERK

Ap:  07/13/2022
By: **MILTON DOHONEY JR., CITY ADMINISTRATOR**

By:  07/11/2022
BRIAN STEGLITZ, PUBLIC SERVICES AREA ADMINISTRATOR
Services Area Administrator

 07/13/2022
ATLEEN KAUR, CITY ATTORNEY
PROXY SIGNED BY KMCDONALD

PERFORMANCE BOND

Bond #013131927

- (1) Ajax Paving Industries, Inc. of 1957 Crooks Road, Troy, MI 48084 (referred to as "Principal"), and Liberty Mutual Insurance Company, a corporation duly authorized to do business in the State of Michigan (referred to as "Surety"), are bound to the City of Ann Arbor, Michigan (referred to as "City"), for \$4,230,895.60 the payment of which Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, by this bond.
- (2) The Principal has entered a written Contract with the City entitled Geddes Avenue & Huron Parkway/ Tuebingen Parkway Resurfacing Project (File No. 2022-009), for RFP No. 22-25 and this bond is given for that Contract in compliance with Act No. 213 of the Michigan Public Acts of 1963, as amended, being MCL 129.201 et seq.
- (3) Whenever the Principal is declared by the City to be in default under the Contract, the Surety may promptly remedy the default or shall promptly:
 - (a) complete the Contract in accordance with its terms and conditions; or
 - (b) obtain a bid or bids for submission to the City for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, arrange for a Contract between such bidder and the City, and make available, as work progresses, sufficient funds to pay the cost of completion less the balance of the Contract price; but not exceeding, including other costs and damages for which Surety may be liable hereunder, the amount set forth in paragraph 1.
- (4) Surety shall have no obligation to the City if the Principal fully and promptly performs under the Contract.
- (5) Surety agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder, or the specifications accompanying it shall in any way affect its obligations on this bond, and waives notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work, or to the specifications.
- (6) Principal, Surety, and the City agree that signatures on this bond may be delivered electronically in lieu of an original signature and agree to treat electronic signatures as original signatures that bind them to this bond. This bond may be executed and delivered by facsimile and upon such delivery, the facsimile signature will be deemed to have the same effect as if the original signature had been delivered to the other party.

SIGNED AND SEALED this 29th day of June, 2022

Liberty Mutual Insurance Company
 (Name of Surety Company)
 By Holly Nichols
 (Signature)
 Its Holly Nichols, Attorney-in-fact
 (Title of Office)



Akaur

07/13/2022

**ATLEEN KAUR, CITY ATTORNEY
 PROXY SIGNED BY KMCDONALD**

Ajax Paving Industries, Inc.
 (Name of Principal)
 By Benjamin Kohler
 (Signature)
 Its _____
 (Title of Office)

Digitally signed by: Benjamin Kohler
 DN: CN = Benjamin Kohler email =
 bkohler@ajaxpaving.com C = US O
 = State of Michigan
 Date: 2022.06.30 10:18:24 -04'00'

Name and address of agent:

Guy Hurley, LLC
989 E. South Boulevard, Suite 200
Rochester Hills, MI 48307