

RESOLUTION NO. 40-2007

A RESOLUTION OF THE CITY OF BENSON, ARIZONA, ENTERING INTO AN AGREEMENT WITH K & B ASPHALT COMPANY, FOR BENSON STREET IMPROVEMENTS (PHASE II) COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) #113-07.

WHEREAS, the Mayor and City Council of the City of Benson have determined that it is necessary to construct street improvements on Pearl Street, San Pedro, Huachuca Street, and Flint Street; and

WHEREAS, the City of Benson has submitted to the Arizona Department of Housing for a Community Development Block Grant from the Federal Department of Housing and Urban Development; and

WHEREAS, the City of Benson has been awarded a grant by Arizona Department of Housing for a Community Development Block Grant from the Federal Department of Housing and Urban Development for Construction of street improvements on Pearl Street, San Pedro, Huachuca Street, and Flint Street; and

WHEREAS, K & B Asphalt Company is qualified to provide construction services and construct the above-mentioned improvements, and has presented agreements to the staff of the City for such construction services, attached hereto as Exhibit "A" and incorporated herein by this reference; and

WHEREAS, the City Council has determined that the proposed agreements with K & B Asphalt Company represent the best and most cost effective method to provide this service to the City and its residents.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Benson, Arizona, as follows:

- Section 1.** The City is hereby authorized to enter into the Agreements between K & B Asphalt Company and the City of Benson, attached hereto as Exhibit "A" and incorporated herein by this reference.
- Section 2.** The City Manager of the City of Benson is hereby authorized and directed to execute said Agreements on behalf of the City of Benson, and the City staff is hereby authorized and directed to take all steps necessary and proper to implement said Agreements and give them effect.
- Section 3.** The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Resolution.
- Section 4.** All ordinances, resolutions, or motions and parts of ordinances, resolutions or motions of the council in conflict with the provisions of this Resolution are hereby repealed, effective as of the effective date of this Resolution.

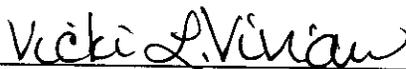
Section 5. If any section, subsection, sentence, clause, phrase or portion of this Resolution is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED by the Mayor and City Council of the City of Benson, Arizona, this 24th day of September, 2007.



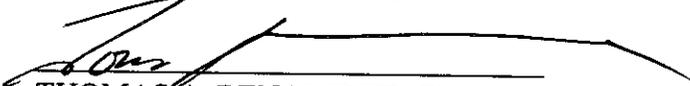
MARK M. FENN, Mayor

ATTEST:



VICKI L. VIVIAN, City Clerk

APPROVED AS TO FORM:



THOMAS A. BENAVIDEZ, City Attorney

EXHIBT A
CONSTRUCTION AGREEMENT

City of Benson
Street Improvements Project (Phase II), CDBG #113-07

CONSTRUCTION AGREEMENT

City of Benson Street Improvements Project (Phase II), CDBG #113-07

THIS AGREEMENT, made and entered into as of the date last signed, by and between the City of Benson, Arizona, organized and existing under the laws of the State of Arizona, hereinafter designated as the "Owner" and K & B Asphalt Company, hereinafter designated the "Contractor".

WITNESSETH: That the Contractor and the City of Benson, in consideration of the mutual covenants herein contained, agree as follows:

ARTICLE I SCOPE OF WORK

1.1 To mill or strip existing street surfaces, compact and grade the millings and/or AB to provide 6" compacted base and pave with 2" asphaltic concrete per City Tucson/Pima County Standard Specification for Public Improvements 2003 Edition Section 406 on the following streets: Pearl Street from Adams Street to San Pedro Street (approx. 7,670 sq. yards), San Pedro from Pearl to Mark Street (approx. 2,660 sq. yards), Huachuca Street from Pearl to Mark (approx. 2,565 sq. yards), and Flint Street from Huachuca to San Pedro (approx. 1,956 sq. yards); to build a 5' wide concrete sidewalk (approx. 350 lf) on the west side of San Pedro starting at Pearl, running north to Flint; and to build 5 additional curb cut/ramps (per Section 207 of the City Tucson/Pima County Standard Specification 2003 Edition) on San Pedro Street between Pearl and Mark. Although the City prefers milling, the contractor, in cooperation with the City, shall determine which portions of streets shall be milled and which shall be stripped. The City of Benson retains the right to reduce or eliminate portions of the work to coincide with the availability of Project funds. The Contractor shall furnish all materials, labor, equipment, services and transportation, and perform all of the work for the Owner's project known as:

BENSON STREET IMPROVEMENTS PROJECT (Phase II) CDBG CONTRACT #113-07

1.2 This project is wholly or in part federally funded and the Contractor, accordingly will be required to comply with all applicable federal laws, including but not limited to the Federal Labor Standards Provisions, Davis-Bacon Act (29 CFR Parts 1, 3, 5, 6, and 7), Contract Work Hours and Safety Standards Act, Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented by the Department of Labor regulations (29 CFR Part 3), and the Fair Labor Standards Act.

1.3 The Contractor agrees to comply with the Federal Labor Standards Provisions (HUD 4010 (2-83)), which is incorporated by reference herein. The Contractor shall supply information to the Owner as necessary for monitoring of compliance to include, but not limited to, submission of Labor Standard Forms included in the bid package, on-site inspections, investigations and/or enforcement by the Owner. The Contractor agrees to comply with the current **Wage Rate Determination General Decision Numbers: AZ070003, MOD #6, 08/03/2007, HIGHWAY**, which are included in the bid package and incorporated by reference.

ARTICLE II CONTRACT PRICE

Basic Price. The City of Benson shall pay the Contractor the base bid sum of One Hundred and Seventy Three Thousand, Three Hundred and Fifty Dollars (\$173,350.00), subject to adjustment as actual units are determined. Additionally, the City of Benson shall pay the Contractor the following Add Alternate Prices:

Add Alternate Prices:

Stripping: Fifteen Thousand Dollars (\$15,000.00) subject to adjustment as actual units are determined.

AB: Four Thousand Two Hundred and Fifty Dollars (\$4,250.00), subject to adjustment as actual units are determined.

Sidewalk Concrete: Twelve Thousand Six Hundred Dollars (\$12,600.00), subject to adjustment as actual units are determined.

Curb/Ramps: Eleven Thousand Dollars (\$11,000.00), subject to adjustment as actual units are determined.

Total Contract: The City of Benson shall pay the Contractor the Base Price and all Add Alternates, subject to adjustment as actual units are determined, for Two Hundred and Sixteen Thousand, Two Hundred Dollars. (\$216,200.00)

ARTICLE III CONTRACT DOCUMENTS

The following listed documents constitute the Contract Documents and they are all as fully a part of the Contract as if herein repeated.

1. Invitation to Bid
2. Information for Bidders
3. Bid Proposal
4. Non-Collusion Affidavit
5. List of Subcontractors
6. 10% Bid Bond
7. 100% Statutory Labor and Materials Payment Bond
8. 100% Statutory Performance Bond
9. Notice of Award

10. Notice of Non-Award
11. Notice to Proceed
12. Construction Agreement
13. Standard General Conditions
14. Federal Supplementary Conditions (if applicable)
15. Supplementary Conditions
16. LS-2, Contractor Certification
17. LS-3, Subcontractor Certification
18. Certification Regarding Lobbying
19. Certification Regarding Conflict of Interest
20. Cement (Fly Ash) Certification
21. Civil Rights Provisions
22. Section 503 Clause (Affirmative Action for Handicapped Workers)
23. Section 3 Clause
24. EEO Provisions
25. Federal Labor Standards Provisions (HUD 4010)
26. Wage Rate Determination: **AZ070003, MOD #6, HIGHWAY, 08/03/2007**
27. SEAGO Labor Standards (SLS) Form B, Point of Contact Information Sheet
28. SLS Form C, Professional Firm's Sub-Firm's Certification
29. LS-4, Weekly Payroll Reports
30. LS-5, Statement of Compliance
31. LS-7, Notice to All Employees
32. LS-13, Request to Conform an Additional Classification
33. LS-14, Fringe Benefits Documentation Form
34. LS-15, Authorization for Deductions
35. LS-17, Certification for Applicable Fringe Benefit Payments
36. Non-Discrimination Poster
37. EEO Certification Poster
38. EEO It's the Law Poster
39. LS-9, Record of Employee Interviews Labor Standards
40. LS-10, On-Site Inspection Report
41. LS-11, Labor Standards Investigative Report
42. LS-12, Labor Standards Enforcement Report
43. S3B-1, Section 3 Assurance
44. S3B-2, Estimated project Work Force Breakdown
45. S3B-3, Section 3 Business Self-Certification
46. S3P-1, JOBS! JOBS! JOBS! Section 3 Notice
47. S3P-2, Preliminary Resident Eligibility Determination
48. S3P-3, Employment Survey
49. S3R-1, Notice Documentation
50. S3R-2, Business Utilization Report
51. S3R-3, Applicant and New Hire Employment Report
52. Addenda Number One.

ARTICLE IV BONDS

Performance Bond and Labor And Material Payment Bond. The Contractor shall furnish performance and labor and material payment bonds covering the faithful performance of the Contract and the payment of all obligations arising, thereunder, in such form and amount as the Owner may prescribe and with such sureties as may be agreeable to the Owner. The premiums shall be paid by the Contractor. The Contractor shall, prior to commencement of the Work, submit such bonds to the Owner.

ARTICLE V TIMETABLE

4.1 Starting Time. Notice to Proceed shall be issued not later than 30 days after execution of this agreement.

4.2 Completion Time:

4.2.1 The work shall be completed within 60 consecutive calendar days for construction after the date of the Notice to Proceed. The Contractor agrees that said work shall be prosecuted promptly, regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified.

4.2.2 It is expressly agreed that the time for completion is a reasonable time, considering average climatic conditions and usual industrial conditions prevailing in the area.

ARTICLE VI PROGRESS PAYMENT

After the Owner has approved an Application for Payment, the Owner shall make a payment to the Contractor as soon as grant funds become available from the State CDBG Program to the Owner, or sooner, at the OWNER'S discretion, and subject to compliance with labor standard requirements. Payment will be based on ninety percent (90%) of the value of the Work actually performed during the preceding calendar month. Any amounts retained by Owner shall be paid to the Contractor, as previously specified, after the Final Completion Date, provided the Contractor has by that time duly furnished the Owner consent of surety, lien waivers, any other documents of any nature called for in the Contract Documents or required for the proper functioning of the Work as a whole and has otherwise performed all of Contractors' obligations under the Contract Documents.

ARTICLE VII LIQUIDATED DAMAGES

Liquidated Damages. If the work is not completed when agreed, the Contractor shall pay to the City of Benson \$300.00/day as liquidated damages for each consecutive calendar day the work remains incomplete after the scheduled completion date for construction.

ARTICLE VIII INSURANCE

8.1 The CONTRACTOR shall procure and shall maintain during the life of this Contract: Statutory Workmen's Compensation Insurance, Contractor's Public Liability Insurance, Contractor's Property Damage in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; and Vehicular Liability of \$1,000,000 for any one person or \$2,000,000 for each occurrence. The OWNER/GRANTEE shall be named as co-issued on the policy.

8.2 The CONTRACTOR shall either (1) require each of his/her subcontractors to procure and to maintain during the life of his/her subcontract, Subcontractor's Public Liability and Property Damage Insurance of the type and in the amounts specified above; or (2) insure the activities of his/her subcontractor's in his/her policy specified above.

8.3 "All Risk" type Builder's Risk Insurance will not be required for this Project.

8.4 Property Insurance. The OWNER/GRANTEE shall not be required to maintain a property insurance policy upon the work.

ARTICLE IX SUSPENSION OF WORK AND TERMINATION

9.1 Termination of Contract for Cause:

9.1.1 If, through any cause, the CONTRACTOR shall fail to fulfill in a timely and proper manner his/her obligations under this Contract, or if the CONTRACTOR shall violate any of the covenants, agreements, or stipulations of the Contract, the OWNER/GRANTEE shall thereupon have the right to terminate this Contract by giving written notice to the CONTRACTOR of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the CONTRACTOR under this Contract shall, at the option of the OWNER/GRANTEE, become its property and the CONTRACTOR shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

9.1.2 Notwithstanding the above, the CONTRACTOR shall not be relieved of liability to the OWNER/GRANTEE for damages sustained by the OWNER/GRANTEE by virtue of any breach of the Contract by the CONTRACTOR, and the OWNER/GRANTEE may withhold any payments to the CONTRACTOR for the purpose of set-off until such time as the exact amount of damages due the OWNER/GRANTEE from the CONTRACTOR is determined.

9.2 Termination for Convenience of the OWNER/GRANTEE. The OWNER/GRANTEE may terminate this Contract at any time by giving at least (10) days notice in writing to the CONTRACTOR. If the Contract is terminated by the OWNER/GRANTEE as provided herein, the CONTRACTOR will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the CONTRACTOR, the aforementioned clause relative to termination shall apply.

ARTICLE X RECORDS DOCUMENTATION

10.1 Records Retention. The CONTRACTOR shall maintain accounts and records including personnel, property and financial records adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the OWNER/GRANTEE to assure proper accounting for all project funds both Federal and non-Federal shares. These records will be retained for five (5) years after the expiration of this Contract unless permission to destroy them is granted in writing by the OWNER/GRANTEE.

10.2 Access to Records. Legible copies of all records maintained by the CONTRACTOR shall be made available, upon request, to the OWNER/GRANTEE, the Arizona Department of Housing, the Office of the Inspector General (HUD), and any other body authorized by the OWNER/GRANTEE.

ARTICLE XI MISCELLANEOUS

11.1 Guarantee. The Contractor shall guarantee all work under this Contract against defects of material and workmanship for a period of one (1) year from the completion date. Material and workmanship made good through compliance with such guarantee shall be subject to the same guarantee for a period of one (1) year from the date on which the material and/or workmanship was made good.

11.2 Assignment. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any monies due or to become due to him hereunder without the previous written consent of the City of Benson.

SIGNED this 25th day of September, 2007

Martin J Roush
Martin Roush, City Manager, City of Benson

COUNTERSIGNED this 4th day of October, 2007

Lynne Calhoun - Pres.
Lynne Calhoun, President, K & B Asphalt Company

APPROVED AS TO FORM this 25th day of September, 2007

Thomas A. Benavidez
Thomas A. Benavidez, Interim City Attorney, Owner's Legal Representative

END

LABOR AND MATERIALS BOND

**STATUTORY PAYMENT BOND PURSUANT TO
TITLE 34, CHAPTER 2, ARTICLE 2,
OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the Contract amount)**

KNOW ALL MEN BY THESE PRESENTS:

That, K&B Asphalt Company (hereinafter called the Principal), and Contractors Bonding & Insurance Company corporation organized and existing under the laws of the State of Washington and duly licensed and possessing a certificate of authority to transact surety business in the State of Arizona, with its principal office in the City of Seattle, (hereinafter called the Surety) as Surety are held firmly bound unto the City of Benson of Arizona (hereinafter called the Obligee) in the amount of Two Hundred Sixteen Thousand Two Hundred and 00/100 dollars (\$ 216,200.00*) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, administrators, executors, successors, and assigns, jointly and severally firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee dated the 25th day of September, 2007, to construct **City of Benson, Street Improvements (Phase II) Project, CDBG #113-07**, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THE OBLIGATION IS SUCH, that if the Principal promptly pays all moneys due to all persons supplying labor or materials to the Principal or the Principal's subcontractors in the prosecution of the work provided for in the contract, this obligation is void, otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 2, Article 2, Arizona Revised Statutes to the same extent as if it were copied at length in the Agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this 3rd day of October, 2007.

Compass Insurance - Mueller Division
AGENCY OF RECORD

5285 E. Williams Circle, #4500

Tucson, AZ 85711
AGENCY ADDRESS

K&B Asphalt Company

PRINCIPAL

SEAL

BY

Contractors Bonding & Insurance Company

SURETY

BY

Patricia A. Stump Attorney in Fact

PERFORMANCE BOND

STATUTORY PERFORMANCE BOND PURSUANT TO
TITLE 34, CHAPTER 2, ARTICLE 2,
OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS:

That, K&B Asphalt Company (hereinafter called the Principal), as Principal, and Contractors Bonding & Insurance Company corporation organized and existing under the laws of the State of Arizona and duly licensed and possessing a certificate of authority to transact surety business in the State of Arizona, with its principal office in the City of Seattle (hereinafter called the Surety) as Surety, are held firmly bound unto the City of Benson of (hereinafter called the Obligee) in the amount of Two Hundred Sixteen Thousand Two Hundred and 00/100 (\$ 216,200.00**) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly, and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee dated the 25th day of September, 2007, to construct the City of Benson, Street Improvements (Phase II) Project, CDBG #113-07, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THE OBLIGATION IS SUCH, that if the Principal shall faithfully perform and fulfill all of the undertakings, covenants, terms, conditions, and agreements of the contract during the original term of the contract and any extension of the contract with or without notice to the Surety, and during the life of any guaranty required under the contract and also performs and fulfills all of the undertakings, covenants, terms, conditions, and agreements of all duly authorized modifications of the contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the extent as if were copied at length in this Agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this 3rd day of October, 2007.

Compass Insurance - Mueller Division
AGENCY OF RECORD

5285 E. Williams Circle, #4500

Tucson, AZ 85711
AGENCY ADDRESS

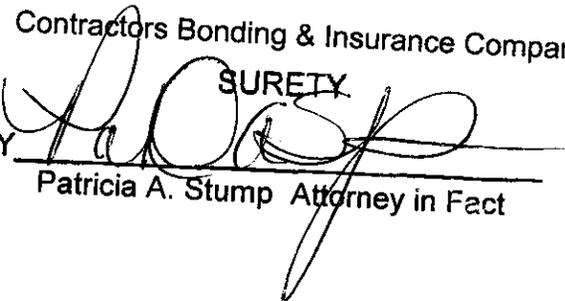
K&B Asphalt Company

PRINCIPAL SEAL

BY 

Contractors Bonding & Insurance Company

SURETY

BY 
Patricia A. Stump Attorney in Fact



LIMITED POWER OF ATTORNEY

Not Valid for Bonds

Power of Attorney

Executed On or After: MARCH 31ST, 2008

Number: 124441

READ CAREFULLY - to be used only with the bond specified herein

Only an unaltered original of this Power of Attorney document is valid. A valid original of this document is printed on gray security paper with black and red ink and bears the seal of Contractors Bonding and Insurance Company (the "Company"). The original document contains a watermark with the letters "cbic" embedded in the paper rather than printed upon it. The watermark appears in the blank space beneath the words "Limited Power of Attorney" at the top of the document and is visible when the document is held to the light. This document is valid solely in connection with the execution and delivery of the bond bearing the number indicated below, and provided also that the bond is of the type indicated below. This document is valid only if the bond is executed on or before the date indicated above.

KNOW ALL MEN BY THESE PRESENTS, that the Company does hereby make, constitute and appoint the following: ROBERT J. KURTIN, PATRICIA A. STUMP and MELODY J. STOCKTON its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver on behalf of the Company: (1) any and all bonds and undertakings of suretyship given for any purpose, provided, however, that no such person shall be authorized to execute and deliver any bond or undertaking that shall obligate the Company for any portion of the penal sum thereof in excess of \$10,000,000, and provided, further, that no Attorney-in-Fact shall have the authority to issue a bid or proposal bond for any project where, if a contract is awarded, any bond or undertaking would be required with penal sum in excess of \$10,000,000; and (2) consents, releases and other similar documents required by an obligee under a contract bonded by the Company. This appointment is made under the authority of the Board of Directors of the Company.

CERTIFICATE

I, the undersigned secretary of Contractors Bonding and Insurance Company, a Washington corporation, DO HEREBY CERTIFY that this Power of Attorney remains in full force and effect and has not been revoked, and, furthermore, that the resolutions of the Board of Directors set forth on the reverse are now in full force and effect.

Bond Number AL5636

Signed and sealed this 3RD day of OCTOBER, 2007

R. Kirk Eland, Secretary

CBIC • 1213 Valley Street • P.O. Box 9271 • Seattle, WA 98109-0271
(206) 622-7053 • (800) 765-CBIC (Toll Free) • (800) 950-1558 (FAX)

PoaLPOA.07-US051104

