CITY OF OBERLIN, OHIO

ORDINANCE No. 23-71 AC CMS

AN ORDINANCE ACCEPTING THE BID OF WILLIAMS BROTHERS BUILDERS INC. OF ELYRIA, OHIO FOR THE STORAGE BUILDING REHABILITATION PROJECT FOR THE CITY OF OBERLIN, OHIO, AS AN EMERGENCY MEASURE

THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio:

SECTION 1. That the bid of Williams Brothers Builders of Elyria, Ohio, for the Storage Building Rehabilitation Project for the City of Oberlin, Ohio, being the best and lowest bid received is hereby accepted, and the City Manager is hereby authorized and directed to enter into a contract accordingly, said bid being in the amount of $309,710.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the citizens of the City of Oberlin, Ohio or to provide for the usual daily operation of a municipal department, to wit: to accept a bid within the time limitations provided by law and provided that it is elevated to emergency status by the affirmative vote of at least five members of Council and receives the affirmative vote of at least five members of council upon final passage, it shall go into full force and effect from and immediately after its passage; otherwise, it shall take effect at the earliest period allowed by law.

PASSED: 1st Reading: November 20, 2023

2nd Reading: _____

3rd Reading: _____

ATTEST: Belinda B. Anderson

BELINDA B. ANDERSON, MMC
CLERK OF COUNCIL

Bryan Burgess

BRYAN BURGESS
PRESIDENT OF COUNCIL

POSTED: 11/21/2023

EFFECTIVE DATE: 11/20/2023

NOTICE OF AWARD

To: Williams Brothers Builders, Inc
686 Sugar Lane
Elyria, Ohio 44035

The City of Oberlin, Ohio, having considered the Bid submitted by you for **Storage Building Rehabilitation** in response to the Advertisement for Bids dated May 15, 2023 and May 25, 2023 in the amount not to exceed $ 309,710.00 does hereby notify you that your Bid has been accepted by City Ordinance No. 23-71 AC CMS
The following variations from the Specifications and Bid Instructions have been allowed:

N/A

You are required to execute the Agreement within ten (10) calendar days from the date of this Notice to you. If you fail to execute said Agreement within ten (10) calendar days of the date of this Notice, the City of Oberlin will be entitled to considered all your rights arising out of the City's acceptance of your Bid as abandoned and as a forfeiture of your Bid Bond. The City of Oberlin will also be entitled to such other rights as may be granted by law.

City of Oberlin, Ohio

By: _____

Title: City Manager Date: _____

Acceptance of Notice of Award

Receipt of the above Notice of Award is hereby acknowledged by

Williams Brothers Builders, Inc, this 7th day of DEC, 2023.

By: _____
Jake T Williams

Title: Treasurer

AGREEMENT

This Agreement, made this 7th day of DEC, 2023 by and between the City of Oberlin, Ohio hereinafter called the "City", acting herein through its City Manager, and Williams Brothers Builders, Inc doing business as a (a corporation) (a partnership) (an individual) in the City of Elyria, county of LORAIN, and State of OHIO, hereinafter called the "Contractor".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The Contractor will furnish equipment in accordance with the terms of the Contract Documents.

2. The following variations from the Contract Documents and or options have been agreed to:

   N/A

3. The term "Contract Documents" means and includes the following:

   a.) Advertisement for Bids
   b.) Instruction to Bidders
   c.) General Conditions
   d.) EEO and MBE Documentation
   e.) Bid including all attachments thereto
   f.) Bid Bond
   g.) Delinquent Personal Property Tax Affidavit
   h.) Notice of Award
   i.) Agreement (with Legal & Fiscal Officer's Certificates)
   j.) Specifications
   k.) Addenda:

   No. Addendum A, dated OCTOBER 25, 2023
   No. _____, dated _____, 2023
   No. _____, dated _____, 2023

4. The City will pay to the Contractor in the manner and at such times as set forth in the Contract Documents, such amounts as required by this Agreement.

5. City's engagement of the Contractor is based upon the Contractor's representations to the City that the Contractor:
   - has reviewed all documents pertinent to its portion or scope of the work and has found them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient;

- is an organization experienced in and qualified, willing and able to provide equipment of the nature and type necessary to perform its portion or scope of the Work
- is authorized and licensed to do business in Ohio;
- has the expertise and ability to meet the City's objectives and requirements

6. The Contractor shall furnish services and labor which expeditiously and economically and properly complete its particular scope of the Work in the manner most consistent with the City's interest and objectives; in accordance with the Contract Documents, and in accordance with the highest standards currently practiced by persons and entities performing comparable labor and services on projects of similar size and complexity.

7. The Contractor expressly warrants and guarantees to the City that all goods, products, materials, equipment, and systems incorporated in its particular scope of Work conform to applicable specifications, descriptions, instruction, drawings, data and samples; be new (unless otherwise specified or permitted and without apparent damage; be of quality equal to or higher than that required by the Bid Documents; be merchantable; and free from defects.

8. The Contractor expressly warrants and guarantees to the City that all labor and services required for its particular scope of Work shall comply with the Bid Documents; be performed in a workmanlike manner; and be free from defects.

9. All warranties and guarantees set forth above shall be in addition to all other warranties, express implied or statutory, and shall survive payment for, acceptance or inspection of, or failure to inspect the Work.

10. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

11. With respect to the intent and interpretation of this Contract, the City and the Contractor agrees as follows:

(A) This Contract, together with the Contractor's and Surety's performance and payment bonds for the Project, if any, constitute the entire and exclusive agreements between the parties with reference to the Project, and said Contract supersedes any and all prior discussions, communications, representations, understandings, negotiations, or agreements.

(B) Anything that may be required, implied or inferred by the documents which make up this Contract, or any one or more of them, shall be provided by the Contractor for the Contract Price;

(C) Nothing contained in this Contract shall create, nor be interpreted to create, privity or any other relationship whatsoever between the City and any person except the Contractor;

(D) When a word, term, or phase is used in this Contract, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage;

(E) The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation";

(F) The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract;

(G) The Contractor shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract, shop drawings, and other submittal and shall give written notice to the City of any conflict, ambiguity, error or omission which the Contractor may find with respect to these documents before proceeding with the affected work. The express or implied approval by the City of any shop drawings or other submittal shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The City has requested the Distribution Superintendent to only prepare documents for the Project, including the plans and specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS. The Contractor again hereby acknowledges and represents that is has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representations or warranties by the City concerning such documents, as no such representations or warranties have been or are hereby made;

(H) In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Contract, the following shall control:

(1) As between figures given on plans and scaled measurements, the figures shall govern;

(2) As between large scale plans and small scale plans, the large scale plans shall govern;

(3) As between plans and specifications, the requirements of the specifications shall govern;

(4) As between this document and the plans or specifications, this document shall govern.

12. The contractor shall perform all of the work required, implied or reasonably inferable from this Contract including, but not limited to, the following:

(A) Construction of the Project:

(B) The furnishing of any required surety bonds and insurance;

(C) The provision of furnishing, and prompt payment therefore, of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, or other utilities, required for construction and all necessary building permits and other permits required for the construction of the Project:

(D) The creation and submission to the City of detailed and comprehensive as-built drawings depicting all as-built construction. Said as-built drawings shall be submitted to the City upon final completion of Project and receipt of same by the City shall be a condition precedent to final payment to the Contractor.

(E) Neither payment to the Contractor, utilization of the Project for any purpose by the City, nor any other act or omission by the City shall be interpreted or construed as an acceptance of any work of the Contractor not strictly in compliance with this Contract;

(F) Prior to being entitled to receive final payment and as a condition precedent hereto, the Contractor shall furnish the City, in the form and manner required by City, if any, with a copy of the Engineer:

(1) An affidavit that all of the Contractor's obligations to subcontractors, laborers, equipment or material suppliers, or other third parties in connection with the Project, have been paid or otherwise satisfied;

(2) If required by the City, separate releases of lien or lien waivers from each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who has, or might have a claim against the City or the City's property;

(3) If applicable, consent(s) of surety to final payment;

(4) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of the Contractor, or expressly required herein, as a part of or prior to Project closeout;

13. Termination by the Contractor

If the City repeatedly fails to perform its material obligations to the Contractor for a period of thirty (30) days after receiving written notice from the Contractor of its intent to terminate hereunder, the contractor may terminate performance under this Contract by written notice to the City. In such event, the Contractor shall be entitled to recover from the City as though the City has terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 15(A) hereunder.

14. City's Right to Suspend Contractor's Performance

The City shall have the right at any time to direct the Contractor to suspend its performance, or any designated part thereof, for any reason whatsoever, or without reason, for a cumulative period of up to ten (10) calendar days. If any such suspension is directed by the City, the Contractor shall immediately comply with same.

In the event the City directs a suspension of performance under this Paragraph, through no fault of the Contractor, the City shall pay the Contractor as full compensation for such suspension the Contractor's reasonable costs, actually incurred and paid, of:

(A) Demobilization and remobilization, including such costs paid to subcontractors;

(B) Preserving and protecting work in place;

(C) Storage of materials or equipment purchased for the Project, including insurance thereon;

(D) Performing in a later, or during a longer, time frame than that contemplated by this Contract.

15. Termination by the City

The City may terminate this Contract in accordance with the following terms and conditions:

(A) The City may, for any reason whatsoever, terminate performance under this Contract by the Contractor for convenience. The City shall give written notice of such termination to the Contractor specifying when termination becomes effective. The Contractor shall incur no further obligations in connection with the work and the Contractor shall stop work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Contractor to assign the Contractor's right, title and interest under termination orders or subcontracts to the City or its designee. The Contractor shall transfer title and deliver to the City such completed or partially completed work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has.

When terminated for convenience, the Contractor shall be compensated as follows:

(1) The Contractor shall submit a termination claim to the City specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the City. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination,

the City shall pay the Contractor, an amount derived in accordance with Subparagraph (3) below.

(2) The City and the Contractor may agree to the compensation, if any, due to the Contractor hereunder;

(3) Absent agreement to the amount due to the Contractor, the City shall pay the Contractor the following amounts:

(a) Contract prices for labor, materials, equipment and other services accepted under this Contract;

(b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for direct jobsite overhead and profit thereon (such profit shall not include anticipated profit or non-sequential damages); provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

(c) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph (A) of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Subparagraph 19(A) shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

(B) If the Contractor does not perform the work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment of materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Contract, then the City, in addition to any other rights it may have against the Contractor or other, may terminate the performance of the Contractor and assume possession of the Project site and of all materials and equipment at the site and may complete the work. In such case, the Contractor shall not be paid further until the work is complete. After final completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the City of completing the work, including all costs and expenses of every nature incurred, has been deducted by the City, such remainder shall belong to the Contractor. Otherwise, the Contractor shall pay and make whole the City for such cost. This obligation for payment shall survive the termination of the Contract. In the event the employment of the Contractor is terminated by the City for cause pursuant to this Subparagraph B) and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph A) and the provision of Subparagraph (A) shall apply.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in three copies, each of which shall be deemed an original on the date first written above.

City of Oberlin, Ohio

By: _____
Robert Hillard, City Manager

(Seal)

ATTEST:

_____
City Clerk

_____
(Witness)

Contractor: Williams Brothers Builders, Inc

By: _____
Jake T Williams

Title: Treasurer

Address: 686 Sugar Lane

Elyria, Ohio 44035

(Seal)

Phone: 440-365-3261

ATTEST:

_____
(Secretary, if Corporation)

_____
(Witness)

Prevailing Wage Proxy Page

Bidders are hereby notified that the Utility and/or
the **Storage Building Rehabilitation** for the City of Oberlin, Ohio
is designated as a prevailing wage rate project.
All contractors and subcontractors shall comply with all requirements of the Federal and State of Ohio prevailing wage rate guidelines.
The most current wage rates are available online at:
https://www.com.ohio.gov/dico/wagehour.aspx
Click on the Icon on the Homepage that says – View Wage Rates
Register
View Wage Rates

For questions about the State website call: 614-644-2239

CITY OF OBERLIN, OHIO
FISCAL OFFICER'S CERTIFICATE

Project Identification: **Storage Building Rehabilitation**

I, Salvatore Talarico, Finance Director hereby certify that I am the qualified and acting Fiscal officer of the City of Oberlin, Ohio, and that the amount of money to wit $ 309,710.00 required to meet the cost of the attached Agreement between the City of Oberlin and Williams Brothers Builders, Inc (contractor) has been lawfully appropriated for the purpose of said Agreement and the money so appropriated is on deposit (or in process of collection) to the credit of the appropriate fund free from any previous encumbrances.

Date: 12/12/2023

Signature: [signature]

Name: Salvatore Talarico

Title: Finance Director

CITY OF OBERLIN, OHIO

LEGAL OFFICER'S CERTIFICATE

Project Identification: **Storage Building Rehabilitation**

The foregoing Agreement between the City of Oberlin, Ohio (City) and Williams Brothers Builders, Inc (Contractor) is approved as to form.

12/12/2023
Date

Jon Clark, Law Director

NOTICE TO PROCEED

To: Williams Brothers Builders, Inc
686 Sugar Lane
Elyria, Ohio 44035

Date:

Project: Storage Building Rehabilitation

You are hereby to commence WORK in accordance with the Agreement dated December 7, 2023 on Dec 17, 2023 and you are to complete the WORK within 240 consecutive calendar days thereafter. The date of completion of all WORK is, therefore, August 13th, 2024

Owner: City of Oberlin, Ohio

By: _____

Title: City Manager

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED is hereby acknowledged

By Williams Brothers Builders, Inc this 7th day of DEC 2023.

By: _____
Jake T Williams

Title: Treasurer