

RESOLUTION NO. 2025-26

**RESOLUTION AUTHORIZING MAYOR TO CONTRACT WITH
M&M EXCAVATING**

WHEREAS, the City of Goshen published a request for bid for replacement of culverts in the City of Goshen; and

WHEREAS, the City of Goshen has received sealed bids in response to the request; and

WHEREAS, M&M Excavating has submitted a bid and it has been determined that their bid is satisfactory and acceptable for the work that is required; and

WHEREAS, following the City of Goshen review and approval of the bid of M&M Excavating, a contract has been prepared, a copy of which is attached hereto as Exhibit A, and incorporated herein.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GOSHEN that the services to be provided to the City of Goshen by M&M Excavating at a proposed total cost of \$137,171 is approved; that the Mayor is authorized and directed to execute the contract that is attached hereto as Exhibit A. Said contract shall be incorporated as an attachment to this resolution.

PASSED AND APPROVED THIS 25th day of August, 2025.



Russell Stroud, Mayor

ATTEST:



Gina Swanson, Recorder/Treasurer



CONSTRUCTION CONTRACT

THIS AGREEMENT is made and entered into this **15th day of September, 2025**, by and between the **CITY OF GOSHEN, ARKANSAS**, (hereinafter called "Owner" or "City"), and **M&M EXCAVATING**, (hereinafter called "Contractor"), for the Construction Project known as City of Goshen 2025 Culvert Replacement:

The Owner and Contractor agree as follows:

ARTICLE 1 THE WORK:

The Contractor shall complete all the work on the City of Goshen 2025 Culvert Replacement as specified in the Information for Contractors which was contained in the RFP and is attached hereto and incorporated herein as Exhibit A.

ARTICLE 2 TIME OF COMMENCEMENT AND COMPLETION:

2.1 The Work to be performed under this Contract shall be commenced upon receipt of authorization to proceed from Owner and completed by the **13th day of January, 2026**. Start date is anticipated to be on or about the **15th day of September, 2025**.

ARTICLE 3 CONTRACT AMOUNT AND BASIS:

The Owner shall pay the Contractor the amount of One Hundred Thirty-Seven Thousand One Hundred Seventy-One and no/100 Dollars (\$137,171.00), subject to additions and deductions by Change Order as provided in the General Conditions.

ARTICLE 4 CONTRACTOR DUTIES:

- 4.1 The Contractor shall perform the work as an Independent Contractor pursuant to this Agreement.
- 4.2 The Contractor shall supervise and direct the Work, using Contractor's best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.
- 4.3 Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, expertise, materials, freight/delivery equipment, tools, construction

equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work.

- 4.4 The Contractor shall comply with all OSHA and all applicable trade-related rules and regulations.
- 4.5 The Contractor warrants to the Owner that all materials and equipment incorporated in the Work will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not so conforming to these standards may be considered defective.
- 4.6 The Contractor shall secure all permits, and licenses necessary for the execution of the Work at Contractor's expense.
- 4.7 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Work, and shall notify the Owner if the Drawings, Specifications and Provisions are at variance therewith.
- 4.8 The Contractor shall be responsible for the acts and omissions of all Contractor's employees and all Sub-Contractors, their agents and employees and all other persons performing any of the Work under a contract with the Contractor.
- 4.9 The Contractor at all times shall keep the premises free from accumulation of waste materials and debris caused by Contractor's operations. This provision is imperative. At the completion of the Work, Contractor shall leave the Project site in a neat and orderly condition.

ARTICLE 5
PERFORMANCE AND PAYMENT BONDS:

A Performance Bond, Payment Bond and Materials Bond shall be submitted by Contractor. Each bond shall be in the amount of the One Hundred Percent (100%) of contract sum and shall either be in the form supplied by Owner or shall be in such other form as approved by Owner. The bond shall make reference to this Contract, and may be drawn against in an appropriate amount as determined by the Owner in its sole discretion, when any damages to the Owner result from the Contractor's services pursuant to this Contract, or Contractor's malfeasance, misfeasance, or breach in the performance hereof. The purpose of the bond is to secure the performance of and the compliance with this Contract by and between the Contractor and Owner; the bond shall not be transferable.

ARTICLE 6

DELAY:

- 6.1 All of the Work will be completed and ready for final payment by the date specified in this Agreement.
- 6.2 If the Contractor is delayed at any time in the progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in transportation, unavoidable casualties, causes beyond the Contractor's control, or by any cause which the Owner may determine justifies the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

ARTICLE 7

PAYMENTS:

- 7.1 Payments shall be made as provided in Article 3 of this Contract.
- 7.2 Payments may be withheld on account of (1) defective Work not remedied, (2) claims asserted or evidence which indicates probable assertion of claims, (3) failure of the Contractor to make payments properly to Sub-Contractors or for labor, materials, or equipment, (4) damage to another Contractor or Owner, or (5) unsatisfactory prosecution of the Work by the Contractor.
- 7.3 Final payment shall not be due until the Owner has inspected and approved the Work as complying with the contract.

ARTICLE 8

PROTECTION OF PERSONS AND PROPERTY AND RISK OF LOSS:

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. It shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (1) all employees on the Work and other persons who may be affected thereby, (2) all the Work and all materials and equipment to be incorporated therein, and (3) other property at the site or elsewhere. Contractor shall bear all risk of loss to the work, or materials or equipment for the work due to fire, theft, vandalism, or other casualty or cause, until the work is fully completed and accepted by the Owner. It shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. All damage or loss to any property caused in whole or in part by the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor.

**ARTICLE 9
INDEMNIFICATION AND INSURANCE:**

Indemnification

- 9.1 The Contractor shall indemnify and hold harmless the Owner and their respective officers, agents and employees, and insurers from and against all liability, claims and demands, on account of injury, loss or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any way connected with this Contract, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of the Contractor or any Subcontractor of the Contractor, or any officer, employee, representative, or agent of the Contractor or any Subcontractor of the Contractor, or which arise out of any worker's compensation claim of any employee of the Contractor or any Subcontractor of the Contractor.
- 9.2 The Contractor agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the Contractor, or at the option of the Owner, agrees to pay the Owner or reimburse the Owner for defense costs incurred by the Owner in connection with, any such liability, claims or demands. In carrying out any of the provisions of this Contract or in exercising any power or authority thereby, there shall be no personal liability of the Owner or the Owner's Representative, or officials, attorneys, employees and agents thereof.
- 9.3 The Contractor also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether any such liability, claims or demands alleged are groundless, false or fraudulent. The obligation of these provisions shall not extend to any injury, loss or damage which is caused by the act, omission or other fault of the Owner.

Insurance

- 9.4 The Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Contractor. Such insurance shall be in addition to any other insurance requirements imposed by this contract or by law. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.
- 9.5 Contractor shall procure and maintain, and shall cause any Subcontractor of the Contractor to procure and maintain, the minimum insurance coverages listed

below. Such coverages shall be procured and maintained with forms and insurers acceptable to Owner. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

- (a) Worker's Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this contract. Evidence of qualified self-insured status may be substituted for the Workmen's Compensation requirements of this paragraph.
- (b) Commercial General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.
- (c) Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each occurrence and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) aggregate with respect to each of Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. If the Contractor has no owned automobiles, the requirements of this Paragraph shall be met by each employee of the Contractor providing services to the Owner under this contract.
- (d) Professional/Contractor Liability insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate.

9.6 The policy required by paragraphs (b) and (c) above shall be endorsed to include Owner, and officers and employees thereof, as additional insureds. Every policy required above shall be primary insurance and any insurance carried by Owner, its officers, or its employees, or carried by or provided through any insurance pool of Owner, shall be excess and not contributory insurance to that provided by Contractor. No additional insured endorsement to any policy shall contain any exclusion for bodily injury or property damage arising from completed operations.

The Contractor shall be solely responsible for any deductible losses under any policy required above.

- 9.7 The certificate of insurance provided by Owner shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by Owner prior to commencement of the contract. No other form of certificate shall be used. The certificate shall identify this Contract and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days prior written notice has been given to Owner. Any statement of the certificates which describe this 30-day prior written notice as being less than obligatory shall be stricken and initialed by the insurance agent completing the certificates. The completed certificate of insurance shall be sent to Owner.
- 9.8 Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which Owner may immediately terminate this contract, or at its discretion Owner may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by Owner shall be repaid by Contractor to Owner upon demand, or Owner may offset the cost of the premiums against any monies due to Contractor from Owner.
- 9.9 Owner reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

**ARTICLE 10
ACCEPTANCE OF THE WORK:**

- 10.1 The Contractor shall correct any Work that fails to conform to the requirements of the Contract Documents where such failure to conform appears during the progress of the Work, and shall remedy any defects due to faulty materials, equipment or workmanship which appear within a period of one year from the Date of final completion of the Contract or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents. The provisions of this Article apply to Work done by Subcontractors as well as to Work done by direct employees of the Contractor, and are in addition to any other remedies or warranties provided by law.
- 10.2 No act of the Owner, either in superintending or directing the Work, or any extension of time for the completion of the Work, shall be regarded as an acceptance of such Work or any part thereof, or of materials used therein, either wholly or in part. Acceptance shall be evidenced only by the final approval of the Owner.

- 10.3 Contractor agrees to guarantee all work under this Contract for a period of one year from the date of final completion of the Contract. If any unsatisfactory condition or damage develops within the time of this guaranty due to materials or workmanship that are defective, inferior, or not in accordance with the Contract, as reasonably determined by the Owner, then the Contractor shall, when notified by the Owner, immediately place such guaranteed Work in a condition satisfactory to the Owner.

**ARTICLE 11
CHANGES IN THE WORK:**

- 11.1 The Owner, without invalidating the Contract, may order Changes in the Work consisting of additions, deletions, or modifications with the Contract Sum and the Contract Time being adjusted accordingly.
- 11.2 All such changes in the Work shall be authorized by written Change Order signed by the Owner.
- 11.3 The Contract Sum and the Contract Time may be changed only by Change Order.
- 11.4 The cost or credit to the Owner, if any, from a Change in the Work shall be determined by mutual agreement of the parties prior to any Change in the Work being commenced.

**ARTICLE 12
PERMITS:**

Contractor shall obtain and pay for all necessary permits and licenses relative to the Project.

**ARTICLE 13
SAFETY:**

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connections with the Work. The Contractor shall take all reasonable safety precautions and provide all reasonable protection to prevent damage, injury, or loss to all employees and Subcontractors at the work site and all other persons affected by the Work, all materials and equipment in the care and custody of the Contractor or Subcontractor, all Work, and all property at the work site.

**ARTICLE 14
LIQUIDATED DAMAGES:**

- 14.1 Owner and Contractor recognize that time is of the essence here and the Owner will suffer financial harm if the Work is not complete within the time specified above,

plus any extensions thereof allowed. If the Contractor fails to perform the Work within the specified time set forth in the Contract Documents, the Owner and Contractor agree that as liquidated damages, and not as a penalty, for delay in performance the Contractor shall pay the Owner One Hundred and no/100 Dollars (\$100) per day for each and every calendar day that expires after the **13th day of January, 2026**, where the Work is not complete and ready for Payment, the Owner shall have the right to deduct liquidated damages from any amount due or that may become due to the Contractor, or to collect such liquidated damages from the Contractor or the Surety. The Owner has the option to enforce liquidated damages or to waive such damages.


- 14.2 The liquidated damages herein specified shall only apply to Contractor's delay in performance. Liquidated damages are intended only to compensate the Owner for additional personnel efforts in administering the Contract after normally scheduled completions dates, Owner inconvenience, lost opportunities, and lost confidence in government and morale of government when work is not completed on time.
- 14.3 Such damages are uncertain in amount and difficult to measure and prove accurately. By executing this Contract, the Contractor agrees that the liquidated damages specified herein are reasonable in amount and are not disproportionate to actual anticipated damages. Liquidated damages do not include any sums of money to reimburse the Owner for extra costs which the Owner may become obligated to pay on other contracts which are delayed or extended because of Contractor's failure to complete the Work within the time period as specified herein, including costs associated with the delay or interference with the Project. Liquidated damages are not intended to include litigation costs or attorney fees incurred by the Owner, or other incidental or consequential damages suffered by the Owner due to the Contractor's performance. If the Owner charges liquidated damages to the Contractor, this shall not preclude the Owner from commencing an action against the Contractor for other actual harm resulting from the Contractor's performance, including but not limited to, costs associated with the delay or interference with the Project.
- 14.4 In order to recover liquidated damages, the Owner is under no obligation to prove the actual damages sustained by the Owner due to the Contractor's delay in performance.

**ARTICLE 15
SPECIAL/MISCELLANEOUS PROVISIONS:**

- 15.1 Each Party hereto agrees to cooperate in all reasonable respects necessary to consummate the transactions contemplated by this Contract, and from time to time to do such acts and things and execute and deliver such documents and instruments as may reasonably be required in order to implement the transactions contemplated hereby.


- 15.2 This contract is governed by the laws of the State of Arkansas and any action to enforce any of the provisions, obligations or covenants of this contract shall be commenced only in a court of proper jurisdiction in Washington County, Arkansas.
- 15.3 Contractor shall not assign this contract. The provisions of the contract are binding on the heirs, successors or assignees of the parties.
- 15.4 The rights and remedies available under this contract shall be in addition to any rights and remedies allowed by law.
- 15.5 No failure to enforce any provision of the contract on account of any breach thereof, shall be considered as a waiver of any right to enforce provisions of this contract concerning any subsequent or continuing breach.
- 15.6 This Agreement constitutes the entire agreement between the parties. If any provision of this Agreement is declared by any court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the enforceability of the remaining provisions.
- 15.7 The terms of this agreement shall remain in full force and effect following final payment.

CITY OF GOSHEN, ARKANSAS

By: 
Russell Stroud, Mayor

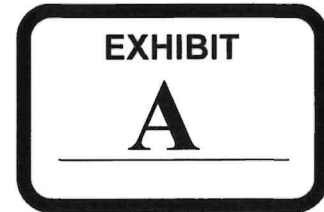
Attest: 
KaSedna Williams, Director

M&M EXCAVATING:

By: 
Signature

MARCUS BARKER
Printed name

Title: Owner



BID REQUIREMENTS, BID PUBLICATION, AND AWARD RECORD:

1. INFORMATION FOR CONTRACTORS:

All culverts are to be replaced with concrete tiles. Class 7 base will be used for this project, compacted to 95% modified proctor density, and patched with 4 inches of Type 2 asphalt surface mix, compacted to a minimum of 92%.

- FIRE TOWER RD:
 - Culvert #9 18" (36.0990810, -93.9797249)
 - Culvert #8 24" (36.0997276, -93.9735217)
 - Culvert #5 18" (36.0998295, -93.9671367)
 - Culvert #3 24" (36.1006197, -93.9655391)
 - Culvert #1 18" (36.1000551, -93.9617877)
- WYMAN RD:
 - Culvert #6 18" (36.1044777, -94.0089999)
 - Culvert #4 30" (36.0972339, -94.0115651)
 - Culvert #3 18" (36.0958599, -94.0160514)
- HALE RD:
 - Culvert #8 24" (36.0946183, -93.9757264)
 - Culvert #7 36" (36.0924225, -93.9718208)
 - Culvert #5 18" (36.0894254, -93.9684268)
 - Culvert #4 36" (36.0878908, -93.9662462)
 - Culvert #3 24" (36.0873064, -93.9643398)
- JAY AVE:
 - Culvert #2 30" (36.1012197, -93.9890208)
- LEDFORD RD:
 - Culvert #2 24" (36.082703, -93.959115)

2. ORIGINAL BID ADVERTISEMENT MARCH 30, 2025 - AD #493771:

City of Goshen, Arkansas - Invitation to Bid: "Drainage Culvert Replacement"

The City of Goshen is accepting sealed bids from properly licensed firms for the work

associated with replacing several drainage culverts at various locations within the city limits. Bid information may be obtained by contacting Dave Gatlin at dgatlin@cityofgoshenar.net or 479-879-4210. Sealed bids will be received at City Hall, 124 Church St. no later than Tuesday, April 8th at 2:00 pm., and opened publicly at the City Council meeting April 8th at 6:30 pm. The City of Goshen reserves the right to waive irregular bids, reject bids and to accept bids in a manner that is in the city's best interest.

3. SECOND BID ADVERTISEMENT APRIL 13, 2025 – AD #497501:

City of Goshen, Arkansas - Invitation to Bid: "Drainage Culvert Replacement"

The City of Goshen is accepting sealed bids from properly licensed firms for the work associated with replacing several drainage culverts at various locations within the city limits. Bid information may be obtained by contacting Dave Gatlin at dgatlin@cityofgoshenar.net or 479-879-4210. Sealed bids will be received at City Hall, 124 Church St. no later than Tuesday, May 13th at 2:00 pm., and opened publicly at the City Council meeting May 13th at 6:30 pm. The City of Goshen reserves the right to waive irregular bids, reject bids and to accept bids in a manner that is in the city's best interest.

4. INITIAL BID AWARD – JUNE 10, 2025:

The City Council accepted the bid from M&M Excavating in the total amount of \$133,500 on June 10, 2025.

5. CONTRACT REVISION REQUIREMENT:

Following award, it was determined that the accepted bid amount of \$133,500 did not include the cost of the required payment, performance, and maintenance bonds.

Although the City Council voted to cover the bond cost separately, the City Attorney advised that such payment must be incorporated within the contract amount and could not be paid independently.

As a result, the original contract was voided, and the project was re-advertised to ensure that all bids included the cost of the performance bond in accordance with state law.

6. NEW BID ADVERTISEMENT AUGUST 3, 2025 AND AUGUST 10, 2025 – AD #528719:

City of Goshen, Arkansas - Invitation to Bid: “Drainage Culvert Replacement”

The City of Goshen is accepting sealed bids from properly licensed firms for work associated with the replacement of multiple drainage culverts at various locations throughout the city limits. Bid documents and specifications may be obtained by contacting Dave Gatlin at dgatlin@cityofgoshenar.net or by calling (479) 879-4210. A bid bond is required and MUST be included in your bid amount. Sealed bids must be submitted to City Hall, 124 Church Street, Goshen, AR no later than 3:00 p.m. on Tuesday, August 12, 2025. The City of Goshen reserves the right to waive any irregularities, reject any or all bids, and to accept the bid deemed most advantageous to the city.

7. BID OPENING RESCHEDULING:

The bid opening was delayed from the original August 19, 2025 City Council meeting to an August 25, 2025 special session, to ensure compliance with the statutory notice period required under Arkansas Code § 22-9-203.

8. FINAL BID AWARD – AUGUST 25, 2025:

The City Council accepted the revised bid from M&M Excavating in the total amount of \$137,171 on August 25, 2025.