

STANDARD FORM OF AGREEMENT BETWEEN
OWNER AND CONTRACTOR FOR CONSTRUCTION
CONTRACT ON THE BASIS OF A STIPULATED PRICE

THIS AGREEMENT is dated as of the _____ day of _____ in the
Year 2016 by and between the Village of Germantown (hereinafter called OWNER) and

(hereinafter called CONTRACTOR).

WORK

CONTRACTOR shall complete all Work as specified in WORK SUMMARY – SECTION 01010 of the TECHNICAL SPECIFICATIONS.

THE PROJECT

The Project for which the WORK under the CONTRCT DOCUMENTS may be the whole or only a part is generally described as follows:

Work is generally as described above in Village of Germantown, Washington County, Wisconsin.

ENGINEER

- 3.01 The project has been designed by the Village of Germantown Engineering Dept., who is hereinafter called “ENGINEER” and who is to act as OWNER’s representative and have the rights and authority assigned to ENGINEER in the CONTRACT DOCUMENTS in connection with completion of the Work.

CONTRACT TIMES

- 4.01 Time of the Essence

All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the CONTRACT DOCUMENTS are of the essence of the Contract.

- 4.02 CONTRACTOR agrees to the Project Milestones as specified in WORK SUMMARY – SECTION 01010 of the TECHNICAL SPECIFICATIONS.

- 4.03 Liquidated Damages

CONTRACTOR and OWNER recognize that time is of the essence as stated in Paragraph 4.01 above and that OWNER will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above and the ENGINEER-accepted Gantt Chart, plus any extensions thereof allowed in accordance with Article 12 of the GENERAL CONDITIONS. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding, the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER sums set forth in Article 12 of the SUPPLEMENTARY CONDITIONS for each day that expires after the end times specified in each Gantt chart’s controlling item of work.

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ARTICLE 4 – CONTRACT PRICE

5.01 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the CONTRACT DOCUMENTS an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A, below:

- A. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual quantity of that item.

See CONTRACTOR's Bid Form (pages 00410-01 to 00410-10 and Attachment pages 1 and 2).

The Bid prices for Unit Price Work set forth as of the Effective Date of the AGREEMENT are based on estimated quantities. As provided in Paragraph 11.03 of the GENERAL CONDITIONS, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by ENGINEER as provided in Paragraph 9.07 of the GENERAL CONDITIONS.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

- A. CONTRACTOR shall submit Applications for Payment with lien waivers in accordance with Article 14 of the GENERAL CONDITIONS. Applications for Payment will be processed by ENGINEER as provided in the GENERAL CONDITIONS.

6.02 Monthly Progress Payments; Retainage

- A. CONTRACTOR shall submit invoices to ENGINEER monthly so that ENGINEER receives invoices no later than the 15th day of each month. Late invoices will be delayed until the following month; however, monthly submittal of a Gantt Chart as required by the Technical Specifications, Section 01015 will remain required.
- B. CONTRACTOR shall submit all of the following with each invoice submitted to ENGINEER:
1. Contractor's Application for Payment form.
 2. List of expended quantities of each Bid Item during each invoice period up to date of invoice.
 3. Lien waiver(s) covering total invoice amount minus retainage.
 4. List of expended quantities of each Bid Item during the life of the project.
 5. Updated Gantt Chart as required by the Technical Specifications, Section 01015.

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- C. ENGINEER will review and submit acceptable invoices to OWNER'S Finance Director no later than the 20th of each month.
- D. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment once each month (typically the 25th day of each month) during performance of the WORK as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the GENERAL CONDITIONS (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.
 - 1. Prior to Substantial Completion and Acceptance of Improvements, progress payments will be made in accordance with Paragraph 14.02 of the GENERAL CONDITIONS, but, in each case, less the aggregate of payments previously made and less such additional retainage amounts, as ENGINEER shall determine, or OWNER may withhold, in accordance with Paragraph 14.02 of the GENERAL CONDITIONS. The retainage will be an amount equal to not more than 5% of the estimate until 50% of the work has been completed. At 50% completion, no additional amounts will be retained, and partial payments will be made in full to the CONTRACTOR unless the ENGINEER certifies that the job is not proceeding satisfactory. At 50% completion or any time thereafter when the progress of the work is not satisfactory, additional amounts may be retained but in no event will the total retainage be more than 10% of the value of the work completed.
- B. Upon SUBSTANTIAL COMPLETION, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 100% of the WORK completed, less such amounts as ENGINEER shall determine in accordance with Paragraph 14.02.B.5 of the GENERAL CONDITIONS, section 6.03 of this agreement, and less 120% of ENGINEER'S estimate of the value of WORK to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of SUBSTANTIAL COMPLETION.

6.03 Final Payment

- A. Upon final completion and acceptance of the WORK in accordance with Paragraph 14.07 of the GENERAL CONDITIONS, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said Paragraph 14.07 and amended as SUPPLEMENTARY CONDITIONS 14.02.

ARTICLE 7 – INTEREST

- 7.01 All moneys not paid when due as provided in Article 14 of the GENERAL CONDITIONS shall bear interest at the maximum rate allowed by law in the State of Wisconsin.

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ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

8.01 In order to induce OWNER to enter into this AGREEMENT, CONTRACTOR makes the following representations:

- A. CONTRACTOR has examined and carefully studied the CONTRACT DOCUMENTS and the other related data identified in the BIDDING DOCUMENTS.
- B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. CONTRACTOR is familiar with and is satisfied as to all applicable, relevant and appropriate federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. CONTRACTOR has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site, and (2) all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the SUPPLEMENTARY CONDITIONS as containing reliable "technical data."
- E. CONTRACTOR has considered the information known to CONTRACTOR; information commonly known to CONTRACTORS doing business in the locality of the Site; information and observations obtained from visits to the Site; the CONTRACT DOCUMENTS; and the Site-related reports and drawings identified in the CONTRACT DOCUMENTS, with respect to the effect of such information, observations, and documents on: (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the CONTRACT DOCUMENTS; and (3) CONTRACTOR’S safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 8.01.E above, CONTRACTOR does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the CONTRACT DOCUMENTS.
- G. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the CONTRACT DOCUMENTS.
- H. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the CONTRACT DOCUMENTS, and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

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- I. The CONTRACT DOCUMENTS are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

- A. The CONTRACT DOCUMENTS which comprise the entire AGREEMENT between OWNER and CONTRACTOR, consist of the following:

1. This Agreement (pages 00520-01 to 00520-08, inclusive).
2. Performance bond (pages C-610-01 to C-610-03, inclusive).
3. Payment bond (pages C-615-01 to C-615-03, inclusive).
4. General Conditions (title page, acknowledgement page, pages i to iv and 00700-01 to 00700-64, inclusive).
5. Supplementary Conditions (pages 00800-01 to 00800-06, inclusive).
6. Specifications, consisting of three (3) divisions, as listed in the table of contents of the Project Manual.
7. Drawings consisting of Sheets #
8. Addenda (none).
9. Exhibits to this Agreement (enumerated as follows):
 - a. CONTRACTOR's Bid Form (pages 00410-01 to 00410-10 and Attachment pages 1 and 2).
 - b. CONTRACTOR'S Gantt Chart(s) as required by the Technical Specifications, Section 01015.
 - c. DWD Prevailing Wage Determination #201502794.
10. The following which may be delivered or issued on or after the Effective Date of the AGREEMENT and are not attached hereto:
 - a. Notice to Proceed (page C-550-1).
 - b. Work Change Directives.
 - c. Change Orders.

- B. The documents listed in Paragraph 9.01.A are attached to this AGREEMENT (except as expressly noted otherwise above).

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- C. There are no CONTRACT DOCUMENTS other than those listed above in this Article 9.
- D. The CONTRACT DOCUMENTS may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the GENERAL CONDITIONS.

ARTICLE 10 – MISCELLANEOUS

10.01 Terms

- A. Terms used in this AGREEMENT will have the meanings stated in the GENERAL CONDITIONS and the SUPPLEMENTARY CONDITIONS.

10.02 Assignment of Contract

- A. No assignment by a party hereto of any rights under or interests in the CONTRACT will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the CONTRACT DOCUMENTS.

10.03 Successors and Assigns

- A. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the CONTRACT DOCUMENTS.

10.04 Severability

- A. Any provision or part of the CONTRACT DOCUMENTS held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the CONTRACT DOCUMENTS shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 CONTRACTOR's Certifications

- A. CONTRACTOR certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the CONTRACT. For the purposes of this Paragraph 10.05:
 - 1. "Corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the CONTRACT execution;

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2. “Fraudulent practice” means an intentional misrepresentation of facts made:
(a) to influence the bidding process or the execution of the CONTRACT to the detriment of OWNER, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive OWNER of the benefits of free and open competition;
3. “Collusive practice” means a scheme or arrangement between two or more BIDDERS, with or without the knowledge of OWNER, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. “Coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the CONTRACT.

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IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this AGREEMENT. Counterparts have been delivered to OWNER and CONTRACTOR. All portions of the CONTRACT DOCUMENTS have been signed or have been identified by OWNER and CONTRACTOR or on their behalf.

This AGREEMENT will be effective on the date signed by both parties (which is the Effective Date of the Agreement).

OWNER:

Village of Germantown

By: _____

Title: _____

Date: _____ 2016

Attest: _____

Title: _____

Address for giving notices:

N112 W17001 Mequon Road

P.O. Box 337

Germantown, WI 53022

CONTRACTOR

By: _____

Title: _____

Date: _____ 2016

(If CONTRACTOR is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Title: _____

Address for giving notices:

License No.: _____

(Where applicable)

(If OWNER is a corporation, attach evidence of authority to sign. If OWNER is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

Agent for service of process:
