

# AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

This Agreement is by and between City of Arnold ("Owner") and \_\_\_\_\_ ("Contractor").

Terms used in this Agreement have the meanings stated in the General Conditions.

Owner and Contractor hereby agree as follows:

## ARTICLE 1—WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: Construct a washout pit at the City of Arnold Public Works Facility. This work consists of constructing 2 chambers (including poured in place concrete retaining walls, concrete ramps, sand filter, perforated drains, water extension for yard hydrant, bollards, fencing, etc.), concrete pavement, curbs, riprap slope, and fence.

## ARTICLE 2—THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: City of Arnold, Public Works Facility Washout Pit

## ARTICLE 3—ENGINEER

- 3.01 The Owner has retained the City of Arnold, MO ("Engineer") to act as Owner's representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.
- 3.02 The part of the Project that pertains to the Work has been designed by Heneghan and Associates, P.C.

## ARTICLE 4—CONTRACT TIMES

- 4.01 *Time is of the Essence*
- A. 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 Contract Times: Days
- A. The Work will be substantially complete within 120 days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 150 days after the date when the Contract Times commence to run.
- 4.03 *Liquidated Damages*
- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. 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):

1. *Substantial Completion*: Contractor shall pay Owner \$800.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
  2. *Completion of Remaining Work*: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$800.00 for each day that expires after such time until the Work is completed and ready for final payment.
  3. *Milestones*: [Deleted]
  4. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

#### 4.04 *Special Damages*

[Deleted]

### ARTICLE 5—CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:

- A. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

### ARTICLE 6—PAYMENT PROCEDURES

#### 6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

#### 6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on the basis of Contractor's Applications for Payment once each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in 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 elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments

previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.

a. **95** percent of the value of the Work completed (with the balance being retainage).

~~1) If 50 percent or more of the Work has been completed, as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and~~

b. **95** percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to **95** percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less **200** percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

#### 6.03 *Final Payment*

A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

#### 6.04 *Consent of Surety*

A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

#### 6.05 *Interest*

A. All amounts not paid when due will bear interest at the rate of the **maximum legal rate** percent per annum.

### ARTICLE 7—CONTRACT DOCUMENTS

#### 7.01 *Contents*

A. The Contract Documents consist of all of the following:

1. This Agreement.
2. Bonds:
  - a. Performance bond (together with power of attorney).
  - b. Payment bond (together with power of attorney).
3. General Conditions.
- 4.
5. Specifications as listed in the table of contents of the project manual (~~copy of list attached~~).

6. Drawings (not attached but incorporated by reference) consisting of 5 sheets with each sheet bearing the following general title: Public Works Facility Washout Pit.
7. Drawings listed on the attached sheet index.
8. Addenda (numbers \_\_\_\_\_ to \_\_\_\_\_ inclusive).
9. Exhibits to this Agreement (enumerated as follows):
  - a. Contractor's Bid \_\_\_\_\_ to \_\_\_\_\_.
10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
  - a. Notice to Proceed.
  - b. Work Change Directives.
  - c. Change Orders.
  - d. Field Orders.
  - e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

## **ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS**

### **8.01 Contractor's Representations**

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
  1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
  2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
  4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the ~~Supplementary~~ General Conditions, with respect to the Technical Data in such reports and drawings. [No reports or tests available]
  5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in

the General Conditions, with respect to Technical Data in such reports and drawings. [No known Hazardous Environmental Conditions.]

6. Contractor has considered the information known to Contractor itself; 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 Technical Data identified in the General Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no 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.
8. 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.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

#### 8.02 *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 8.02:
  1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  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.

8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

**ARTICLE 9—INSURANCE, LEGAL RESPONSIBILITY, AND PUBLIC SAFETY**

9.01 *Insurance*

- A. The Contractor shall obtain and maintain such insurance from an insurance company satisfactory to Owner and authorized to write casualty insurance in the State of Missouri as it will protect himself, his subcontractors and the Owner and Heneghan and Associates, P.C. from claims for bodily injury, death or property damage which may arise from any and all operations and under this Contract. In addition, this insurance will protect the City of Arnold from all claims but also protected in that legal service will be rendered to defend all suits against the contractor and the city. Any such insurance policy shall name the Owner and Heneghan and Associates, P.C. as an additional named insured. The Contractor shall not commence work under this contract until he has obtained all insurance required under this paragraph and shall have filed the certificate of insurance or the certified copy of the insurance policy with the Owner and Heneghan and Associates, P.C. Each insurance policy shall contain a clause providing that it shall not be cancelled by the Insurance company without thirty (30) days written notice to the Owner of an intention to cancel. Umbrella or Excess Liability may satisfy minimum liability limits required above for General Liability (CGL) under Umbrellas or Excess Liability policy. There is no minimum Pre-Occurrence limit of liability under the Umbrellas or Excess Liability; however, the Annual Aggregate limit shall not be less than the highest Each Occurrence limit for either Commercial General Liability or Business Auto Liability. CONTRACTOR agrees to endorse the City, its officers, agents, volunteers, lessees, invitees and employees, covered as an additional insured on the Umbrellas or Excess Liability and the Certificate of Insurance states that the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis. The amounts of such insurance shall be as indicated below:

(This certificate of insurance shall indicate the City of Arnold and Heneghan and Associates, P.C. as additional insured and contain the appropriate signed endorsements as required by the City.)

1. Workmen's Compensation and Employer's Liability Insurance:

Workmen's Compensation and Employer's Liability Insurance shall be secured and maintained as required by State where the work is located.

2. Public Liability, Bodily Injury, and Property Damage:

- a. Injury or death of one person      \$2,000,000

- b. Injury to more than one person in a single accident \$4,000,000
    - c. Property Damage \$2,000,000
  - 3. Automobile and Truck Public Liability, Bodily Injury, and Property Damage: Non-ownership hired vehicles shall be included in the coverage.
    - a. Injury or death of one person \$2,000,000
    - b. Injury to more than one person in a single accident \$4,000,000
    - c. Property Damage \$2,000,000
  - 4. If the contractor maintains higher limits than the minimums required above, the City requires and shall be entitled to coverage for the higher limits maintained by the contractor.
  - 5. If the City determines appropriate a certificate of insurance must be filed with the City providing builders risk insurance for the proposed project.
- B. INDEMNITY: The Contractor shall defend, indemnify, and hold harmless the City of Arnold, its officers, elected/approved officials, agents and employees from and against all losses and all claims, demands, payments, suits, actions, recoveries and judgments of every nature or act of the Contractor, his agents or employees, in the execution of the work or in the guarding of it.
- C. No provision of this agreement shall constitute a waiver of the City's right to assert a defense based on sovereign immunity, official immunity or any other immunity available under law.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on [indicate date on which Contract becomes effective] (which is the Effective Date of the Contract).

Owner:

City of Arnold

*(typed or printed name of organization)*

By:

*(individual's signature)*

Date:

*(date signed)*

Name:

*(typed or printed)*

Title:

*(typed or printed)*

Attest:

*(individual's signature)*

Title:

*(typed or printed)*

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_

Designated Representative:

Name:

*(typed or printed)*

Title:

*(typed or printed)*

Address:

\_\_\_\_\_  
\_\_\_\_\_

Phone:

Email:

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

Contractor:

*(typed or printed name of organization)*

By:

*(individual's signature)*

Date:

*(date signed)*

Name:

*(typed or printed)*

Title:

*(typed or printed)*

*(If [Type of Entity] is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)*

Attest:

*(individual's signature)*

Title:

*(typed or printed)*

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_

Designated Representative:

Name:

*(typed or printed)*

Title:

*(typed or printed)*

Address:

\_\_\_\_\_  
\_\_\_\_\_

Phone:

Email:

License No.:

*(where applicable)*

State:

\_\_\_\_\_