

STANDARD FORM OF AGREEMENT

BETWEEN OWNER AND CONTRACTOR ON THE BASIS OF A STIPULATED PRICE

THIS AGREEMENT is by and between City of Moberly, Missouri (hereinafter called OWNER) and Emery Sapp & Sons, Inc (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, 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:

CITY OF MOBERLY, MISSOURI, SPARKS AVE. LIFT STATION, FORCE MAIN AND SEWER EXTENSION

Article 2. THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

MAJOR ITEMS OF WORK WILL INCLUDE:

BASE BID: LIFT STATION & FORCEMAIN. FURNISH AND INSTALL A FACTORY BUILT DUPLEX LIFT STATION ON A PREPARED CONCRETE FOUNDATION WITH WET WELL, 50 FT OF 8" PVC SANITARY SEWER, 1,217 FT OF 4" PVC FORCE MAIN, 1 SANITARY MANHOLE AND ASSOCIATED APPURTENANCES.

ALTERNATE NO. 1: SANITARY SEWER EXTENSION WEST TO ROBERTSON RD. FURNISH AND INSTALL 1,190 FT OF 8" PVC SANITARY SEWER, 4 SANITARY MANHOLES AND ASSOCIATED APPURTENANCES.

ALTERNATE NO. 2: SANITARY SEWER EXTENSION EAST TO SCHUENEMAN ST. FURNISH AND INSTALL 600 FT OF 8" PVC SANITARY SEWER, 3 SANITARY MANHOLES AND ASSOCIATED APPURTENANCES.

Article 3. ENGINEER.

3.01 The Project has been designed by Poepping, Stone, Bach & Associates, Inc., 100 South 54th Street, Quincy, Illinois 62305.

3.01 The official designated representative of the City of Moberly is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities, and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 4. CONTRACT TIMES.

4.01 Time of the Essence. All time limits for Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 The work will be substantially completed within three hundred and sixty (360) consecutive calendar days after the date the contract commences to run as specified in the Notice to Proceed and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within four hundred and fifty (450) consecutive calendar days after the date the contract commences to run as specified in the Notice to Proceed.

4.03 Liquidated Damages. CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, 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 \$ 750.00 for each day that expires after the time specified in paragraph 4.02 for substantial completion until the work is substantially complete. After substantial completion, if the CONTRACTOR shall neglect, refuse or fail to complete the remaining work within the contract time or any proper extension thereof granted by the OWNER, CONTRACTOR shall pay OWNER \$ 325.00 for each calendar day that expires after the time specified in paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

Article 5. CONTRACT PRICE.

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 amount determined pursuant to paragraph 5.01 below:

5.01 For all work authorized and completed at the unit 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 14 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 account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER each month during construction as provided in paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established 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, 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 ENGINEER may determine or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions.
 - a. 95 % of Work completed (with the balance being retainage).
 - b. 95 % (with the balance being retainage) of materials not incorporated in the Work but delivered, suitably stored and accompanied by documentation satisfactory to OWNER.
 - c. 85 % 10% will be held until all testing on equipment and all written certifications are complete to the OWNER'S satisfaction (with the 5 % balance being retainage).
2. Upon Substantial Completion, OWNER may pay an amount sufficient to increase total payments to CONTRACTOR to 95 % of the Work Completed (with the balance being retainage), less such amount as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.02.B.5 of the General Conditions and less 100 % 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. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, the OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

Article 7. INTEREST.

All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of 5 % per annum.

Article 8. CONTRACTOR'S REPRESENTATIONS.

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, performance or furnishing of the Work.
- C. CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing 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 all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions and

(2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions.

- E. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto.
- F. CONTRACTOR does not consider that any 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 correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- I. 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.
- J. 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 consist of the following:
 - 1. This Agreement.
 - 2. Performance, Payment and other Bonds.
 - 3. Notice of Award

4. General Conditions.
 5. Supplementary General Conditions.
 6. Supplemental Contract Provisions.
 7. Standard Specifications.
 8. Detailed Specification Requirements.
 9. Special Provisions.
 10. Definitions and Format Explanation.
 11. Plan Drawings;
 12. Addenda (numbers 1 to 2 , inclusive);
 13. Exhibits to this Agreement (enumerated as follows):
 - a. Notice to Proceed;
 - b. Contractor's Bid;
 - c. Documentation submitted by CONTRACTOR prior to Notice of Award.
 14. The following which may be delivered or issued on or after the Effective Date of the Agreement and are attached hereto:
 - a. Written Amendments;
 - b. Work Change Directives;
 - c. Change Order(s).
- B. The documents listed in paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. Only printed or hard copies of the items listed in this article are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR are not Contract Documents. The Contract Documents may only be altered, amended or repealed by a Change Order.
- D. There are no Contract Documents other than those listed above in this Article 9.

Article 10. MISCELLANEOUS.

10.01 Terms

- A. Terms used in this Agreement will have the meanings indicated in the General 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 moneys 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.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or on their behalf.

This Agreement will be effective on _____, 20____ (which is the Effective Date of the Agreement).

OWNER City of Moberly, Mo CONTRACTOR Emery Sapp & Sons, Inc
101 W Reed Street 2301 I 70 Drive N.W.
Moberly, Mo 65270 Colombia Mo, 65202

By: _____ By: _____
[CORPORATE SEAL] [CORPORATE SEAL]

Attest _____ Attest _____

Address for giving notices Address for giving notices
City of Moberly, Mo Emery Sapp & Sonc, Inc.
101 W Reed Street 2301 I 70 Drive N.W.
Moberly, Mo 65270 Colombia Mo, 65202

License No. _____
(Where applicable)

Agent for service of process: _____

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