

STANDARD FORM OF
AGREEMENT BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT is made between the City of Douglas, hereinafter referred to as the "Owner," and August Winter and Sons, Inc, hereinafter referred to as the "Contractor."

NOW, THEREFORE, it is hereby agreed as follows:

ARTICLE 1. WORK.

Contractor shall perform all the work required by the Contract Documents for the completion of the City of Douglas – Wastewater Treatment Plant Improvements Project.

ARTICLE 2. ENGINEER.

The Project has been designed by Civil Engineering Professionals, Inc., who is hereinafter referred to as the "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 3. CONTRACT TIME.

- 3.1 Substantial Completion shall include all Work required to make the project operational for its intended use plus all paving and concrete work associated with the street, curb and gutter.
- 3.2 All Work will be substantially complete by July 1st, 2020 and completed and ready for final payment in accordance with Article 14 of the General Conditions by July 15th 2020. The Work at each site must be Substantially Complete within the consecutive calendar days stipulated herein or Liquidated Damages will commence on the first day following the completion deadline stipulated.
- 3.3 Liquidated Damages. Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not substantially complete by the times specified in Paragraph 3.2 above, plus any extension thereof allowed in accordance with Article 12 of the General Conditions. They 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 substantially 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 One-Thousand Dollars (\$1,000.00) for each day that expires after any of the times specified in Paragraph 3.2 for substantial completion. It is further agreed that such liquidated damages are not a penalty, but represent the parties' best estimate of actual damages.

- 3.4 After Substantial Completion, if Contractor neglects, refuses, or fails to complete the remaining Work within the Contract Times or any proper Owner-granted extension thereof, Contractor shall pay Owner Five-Hundred Dollars (\$500.00) for each day that expires after the time specified herein for final completion.

ARTICLE 4. CONTRACT PRICE.

In Consideration of the performance of the work in accordance with the Contract documents for this Unit Price Contract, Owner shall pay Contractor in current funds a not-to-exceed total contract price of Four Hundred Sixty-seven Thousand Seven Hundred Dollars and 0/100 (\$ 467,700.00), subject to additions and deductions by Change Order approved by the Owner. The contract fee shall be based on materials actually furnished and installed and services actually provided based on the unit prices contained in the Bid Form and Itemized Bid Schedule, included as Exhibit "A" (pages BF-1 through BF-4 Bid Form and BS-1, Bid Schedules A) and by this reference made a part of this Agreement.

ARTICLE 5. PAYMENT PROCEDURES.

Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed through the Engineer as provided in the General Conditions.

- 5.1 Progress Payments. Owner shall make progress payments on the basis of Contractor's Applications for Payment as recommended by Engineer, on or about the 25th day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the Schedule of Values provided for in Article 14.01 of the General Conditions, subject to the cutoff and submittal dates provided in the General Provisions.
- 5.1.1 Prior to payment of 50% of Total Contract Price progress payments will be made in an amount equal to 90% of the Work completed, and 90% of Invoice Cost of materials and equipment not incorporated in the work but delivered and suitably stored, less in each case the aggregate of payments previously made.
- 5.1.2 After payment of 50% of Total Contract Price has been made, Owner may withhold such amounts necessary so the total retainage is equal to five percent (5%) of the Total Contract Price if the work is progressing satisfactorily.
- 5.1.3 In the event the Contractor makes only one application for payment upon completion of the entire project, the Owner shall withhold ten percent (10%) of the Total Contract Price as retainage, said retainage to be paid in accordance with the provisions of Paragraph 5.3, Final Payment.

- 5.2 OWNER may withhold progress payments if CONTRACTOR fails to submit an updated progress schedule with the application for payment as detailed in Section 01310 Progress Schedules.
- 5.3 Final Payment. Upon final completion and acceptance of the Work in accordance with Article 14 of the General Conditions, Engineer shall recommend payment and present Contractor's Final Application for Payment to the City. Pursuant to Wyoming State Statutes, final payment cannot be made until forty-one (41) days after publication of the first Notice of Completion.

ARTICLE 6. WITHHELD FUNDS.

Pursuant to Wyoming Statutes Section 16-6-701 et seq., withheld percentages for Contracts exceeding \$25,000.00 will be retained in an account in the name of the Contractor (except when specifically waived in writing by Contractor) which has been assigned to the Owner until the Contract is completely, satisfactorily, and finally accepted by the Owner. Unless a depository is designated by the Contractor in a written attachment hereto, the Contractor's signature hereon shall act as authority for the Owner to designate a retainage depository on behalf of the Contractor, for the purposes specified in Wyoming Statutes Section 16-6-704. The Contractor's signature hereon shall act as an assignment of the depository account to the Owner, as provided by Wyoming Statutes Section 16-6-701 et seq., whether the depository is designated by the Contractor or by the Owner.

ARTICLE 7. CONTRACTOR'S REPRESENTATIONS.

In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

- 7.1 Contractor has familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state, and local Laws and Regulations that in any manner may affect cost, progress, or performance of the Work.
- 7.2 Contractor has studied carefully all reports of investigations and test of subsurface and latent physical conditions at the site or otherwise affecting cost, progress, or performance of the work which were relied upon by Engineer in the preparation of the Drawings and Specifications and which have been identified in the Supplementary Conditions.
- 7.3 Contractor has made or caused to be made examinations, investigations, and test and studies as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports, or similar data are or will be required by Contractor for such purposes.

- 7.4 Contractor has correlated the results of all such observations, examinations, investigations, tests, reports, and data with the terms and conditions of the Contract Documents.
- 7.5 Contractor has given Engineer written notice of all conflicts, errors, or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor.
- 7.6 Contractor certifies that materials containing asbestos will not be used for this project without prior written approval by the Owner.

ARTICLE 8. CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire agreement between Owner and Contractor are attached to this Agreement, made a part hereof and consist of the following:

- 8.1 This Agreement (Pages SFA-1 to SFA-5, inclusive).
- 8.2 Exhibit "A" - Bid Form.
- 8.3 Joint Account Agreement or Letter of Forfeiture waiving same.
- 8.4 Addenda No. 2 .
- 8.5 Performance and Payment Bonds.
- 8.6 Certificates of Insurance, of Workers' Compensation Coverage, and of Unemployment Insurance Coverage.
- 8.7 Notice of Award.
- 8.8 Notice to Proceed.
- 8.9 General Conditions (Pages 1 to 42, inclusive).
- 8.10 Supplementary Conditions (Pages SSC-1 to SSC-15, inclusive).
- 8.11 Technical Specifications.
- 8.12 Contract Drawings, consisting of eleven sheets, with each sheet bearing the following general title: City of Douglas – Wastewater Treatment Plant Improvements Project.
- 8.13 Any modifications, amendments, and supplements, including Change Orders, issued pursuant to Articles 3.4 and 3.5 of the General Conditions, on or after the effective date of this Agreement.

8.14 Notices of Substantial Completion.

ARTICLE 9. GOVERNMENTAL CLAIMS ACT

The City does not waive any right or rights it may have pursuant to the Wyoming Governmental Claims Act, Wyoming Statutes Section 1-39-101 et.seq. The City specifically reserves the right to assert any and all immunities, rights, and defenses it may have pursuant to the Wyoming Governmental Claims Act.

ARTICLE 10. MISCELLANEOUS PROVISIONS.

Terms used in this Agreement, which are defined in the General Conditions, shall have the meanings designated in those conditions.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in one (1) original copy on the day and year first above written.

DATED this _____ day of _____, 2020.

CONTRACTOR:

ATTEST:

By: _____

By: _____

Title: _____

Title: _____

OWNER:

City of Douglas
A Municipal Corporation

ATTEST:

By: _____

By: _____

Title: _____

Title: _____