

**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
ON THE BASIS OF A STIPULATED PRICE**

Article 1. PARTIES TO CONTRACT.

THIS AGREEMENT is dated as of the 5th day of December in the year 2019 by and between the Village of Millbrook, NY (hereinafter called OWNER) and Osterhoudt Electric, Inc. (hereinafter called CONTRACTOR).

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

Article 2. WORK.

2.1 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Village of Millbrook Water Treatment Plant Upgrade

Article 3. CONTRACT TIMES.

- 3.1 The Work will be substantially complete and operational within 270 calendar days after the date the Contract Time commences to run and completed and ready for final payment within 30 days after Substantial Completion.
- 3.2 *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 completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 11.05 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving 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 One Thousand and 00/100 dollars (\$ 1,000.00) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 3.1 for completion and readiness for final payment or any proper extension thereof granted by OWNER. CONTRACTOR shall pay OWNER One Thousand and 00/100 dollars (\$1,000.00) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.
- 3.3 In addition to the liquidated damages set forth above, the CONTRACTOR shall be liable for all additional costs incurred by the OWNER for engineering and inspection services that extends beyond the substantial completion time specified in the Contract Documents.

Article 4. CONTRACT PRICE.

The total estimated amount of the Contract is Ninty nine thousand eight hundred dollars (\$ 99,800.00) based on the prices set forth in the Bid Form.

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 4.1 and 4.2 below:

- 4.1. For the total of the lump sum of base bid, contingency allowance(s), and bid alternate(s).
- 4.2. As provided in the General Conditions estimated quantities are not guaranteed, and determinations of actual quantities and classification are to be made by ENGINEER as provided in the General Conditions.

Article 5. PAYMENT PROCEDURES.

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.

- 5.1. *Progress Payment & Retainage.* OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, on or about the last day of each month during construction as provided in paragraphs 5.1.1 and 5.1.2 below. All such payments will be measured by the schedule of values established in paragraph 2.03 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.
 - 5.1.1 Prior to substantial completion, the CONTRACTOR shall be paid up to 95% of the amount for the work completed in accordance with Section 10 of Special Conditions, with the 5% balance being retainage.
 - 5.1.2. Upon Substantial Completion, the OWNER may increase total payments to CONTRACTOR to 100% of Contract Price, less an amount equal to double the value of the remaining work or the retainage which ever is less, provided the OWNER receives a release of surety from the CONTRACTOR.
- 5.2. *Final Payment.* Upon final completion and acceptance of the Work in accordance with paragraph 15.06 of the General Conditions. OWNER shall pay the remainder of the Contract Price.
- 5.3. *Change Orders.* For changes in work greater than \$100,000, the percentage of overhead and profit shall be subject to negotiation.

Article 6. CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

- 6.1 CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda) and the other related data identified in the Bidding Documents including "technical data."
- 6.2 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.
- 6.3 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.
- 6.4 CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigation, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.
- 6.5 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.
- 6.6 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.
- 6.7 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, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Article 7. CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 7.1. This Agreement
- 7.2. Exhibits to this Agreement
- 7.3. Performance, Payment, and other Bonds, identified as exhibits.
- 7.4. Notice to Proceed
- 7.5. General Conditions

- 7.6. Supplementary Conditions
- 7.7. Special Conditions
- 7.8. Specifications bearing the title Technical Specifications
- 7.9. Drawings with each sheet bearing the following general title: Village of Millbrook Water System Improvements
- 7.10. Addenda, if any.
- 7.11. CONTRACTOR's Bid
- 7.12. Documentation submitted by CONTRACTOR prior to Notice of Award
- 7.13. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraph 3.04 of the General Conditions.

The documents listed in paragraphs 7.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in Article 7. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.04 of the General Conditions.

Article 8. MISCELLANEOUS.

- 8.1. Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 8.2. No assignment by a party hereto of any rights under or interests in the Contract Documents 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.
- 8.3. 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.
- 8.4. 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.

Article 9. Affirmative Action Provisions

9.1. Refer to the EFC Bid Packet for Construction Contracts for the M/WBE goals and affirmative action goals and requirements.

Article 10. Contractor's Agreement Certification

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

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

OWNER_____ CONTRACTOR_____

By:_____ By:_____

[CORPORATE SEAL]

[CORPORATE SEAL]