

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT

THIS AGREEMENT is made this 12th day of April, 2021 (hereinafter "Effective Date of the Contract") by and between the City of Arden Hills, Ramsey County, Minnesota (hereinafter "Owner") and Pember Companies Inc (hereinafter "Contractor"). The Owner and Contractor hereby agree as follows:

ARTICLE 1 – THE WORK AND THE PROJECT

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: Insert general description of project elements
- 1.02 The Project, of which the Work under the Contract Documents is a part is generally described as follows: Karth Lake Runoff Control Project, City Project No. PW-20-0111.

ARTICLE 2 – CONTRACT DOCUMENTS

- 2.01 The Contract Documents consist of the following:
- A. This Agreement
 - B. Performance and Payment Bonds
 - C. Insurance Certificates
 - D. Instructions to Bidders
 - E. General Conditions
 - F. Supplementary Conditions
 - G. Division 1 – General Requirements
 - H. Division 2 – Special Provisions
 - I. Drawings (not attached by incorporated by reference) consisting of 8 sheets with each sheet dated December 29, 2020.
 - J. Addenda (Numbers _ and _ inclusive)
 - K. Exhibits to the Agreement
 1. Contractor's Bid (pages _ to _ inclusive)
 2. Non-Collusion Affidavit
 3. Responsible Contractor Verification and Certification of Compliance Form
 - L. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 1. Notice to Proceed
 2. Work Change Directives
 3. Change Orders
 4. Field Orders
- 2.02 This instrument, together with the documents hereinabove mentioned, form the Agreement, and they are as fully a part of the Agreement as if hereto attached or herein repeated.
- 2.03 The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions and Supplemental Conditions.

ARTICLE 3 – CONTRACT TIMES

- 3.01 Contract Times: The Work will be substantially completed on or before October 15, 2021 and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before October 29, 2021. Substantial Completion Date shall be defined as the completion of all items with the exception of some punch list items and removal of erosion/sediment control.
- 3.02 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.

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- 3.03 Liquidated Damages: Contractor and Owner recognize that time is of the essence as stated above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 3.01 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize that 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;
- A. Substantial Completion: Contractor shall pay Owner \$200.00 for each day that expires after the time specified in Paragraph 3.01 above for Substantial Completion until the Work is substantially complete, as duly adjusted pursuant to the Contract.
 - B. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time for completion and readiness for final payment, as duly adjusted pursuant to the Contract, Contractor shall pay Owner \$300.00 for each day that expires after such time until the Work is completed and ready for final payment.
 - C. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

ARTICLE 4 – CONTRACT PRICES

- 4.01 The Owner shall pay the Contractor for the performance of this Agreement according to the schedule of approximate quantities and unit prices as set out in the Contract Documents submitted by the Contractor on March 31, 2021, the aggregate of which is estimated to be \$125,273.50.
- 4.02 The Contract shall include all items as provided on the Proposal Form.
- 4.03 Payment is based an amount equal to the sum of the extended prices, established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item completed and accepted by the Engineer.
- 4.04 The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determination of actual quantities and classifications are to be made by the Engineer.

ARTICLE 5 – PAYMENT PROCEDURES

- 5.01 Progress Payments: Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 10th day of each month during performance of the Work as provided in Paragraph 5.02 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.
- 5.02 Retainage: 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. Ninety five (95) percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work has 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

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- B. Fifty (50) percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- 5.03 Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set-off by Owner pursuant to Paragraph 15.01E 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.
- 5.04 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 Prices as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 6 – CONTRACTOR'S REPRESENTATIONS

- 6.01 In order to induce the Owner to enter into this Contract, Contractor makes the following representations:
 - A. Contractor has examined and carefully studied the Contract Documents, and any data and reference identified in the Contract Documents.
 - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, 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 laws and regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Contract Documents, and reports relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Contract Documents.
 - E. 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 site-related reports identified in the Contract Documents, with respect to the effect of such information, observation, 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 the Contractor; and (3) Contractor's safety precautions and programs.
 - F. 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.
 - 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.
 - I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

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- J. 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.

ARTICLE 7 – MISCELLANEOUS

- 7.01 Terms: Terms used in the Agreement will have the meanings stated in the General Conditions and Supplementary Conditions.
- 7.02 Assignment of Contract: Unless expressly agreed to elsewhere in the Contract, 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, money that may become due and money that is 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.
- 7.03 Successors and Assigns: Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations in the Contract Documents.
- 7.04 Severability: 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.
- 7.05 Contractor's Certifications
 - A. The provisions of Minn. Stat. 16C.285 Responsible Contractor are imposed as a requirement of this Contract. This Contract may be terminated by the Owner at any time upon discovery by the Owner that the prime contractor or subcontractor has submitted a false statement under oath verifying compliance with any of the minimum criteria set forth in the Statute.
 - B. The provisions of Minn. Stat. 471.425, subdivision 4a regarding payments to subcontractors are imposed as a requirement of this Contract.

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IN WITNESS WHEREOF, Owner and Contractor have caused this instrument to be executed in duplicate as of the Effective Date of the Contract.

OWNER:

CONTRACTOR:

City of Arden Hills

By: _____

By: _____

Title: Mayor

Title: _____

Attest: _____

Attest: _____

Title: City Clerk

Title: _____

Address for Giving Notices:

Address for Giving Notices:

City of Arden Hills

Attention: Public Works Director

1245 West Highway 96

Arden Hills, MN 55112
