

## AGREEMENT - Construction Contract

THIS AGREEMENT (“Agreement” or “Construction Contract”) is a contract between the Town of New Milford, CT (hereinafter “Town”), a municipal corporation with principal offices located at 10 Main Street – New Milford, CT 06776, and \_\_\_\_\_ of \_\_\_\_\_ CT (hereinafter “Contractor”), with principal offices located at \_\_\_\_\_.

### WITNESSETH

WHEREAS, the Contractor has submitted a timely and qualified bid to the Town, in response to the Town’s Request for Proposal \_\_\_\_\_.

WHEREAS, Pursuant to § 2-92 of the Code of Ordinances, the Town through its Purchasing Authority has accepted the Contractor’s Proposal for said work, according to the terms set forth herein.

WHEREAS, the Contractor and the Town desire to enter into this Construction Contract and agree as follows:

1. SCOPE OF SERVICES – The Scope of Services shall consist of those duties, functions, obligations, responsibilities and task, as set forth in:
  - a. The specifications in the Town of New Milford, CT’s Request for Proposal \_\_\_\_\_, which is incorporated in its entirety by reference herein;
  - b. The Contractor’s proposal that was submitted, and subsequently awarded in response to the Request for Proposal set forth in 1a.
2. TERM OF CONTRACT; COMPLETION OF WORK; COMPENSATION
  - a. The Contractor shall commence work following 1) execution of this Construction Contract by both parties and 2) issuance of Notice to Proceed by the Town’s Clerk of the Works, and shall complete the work in a diligent and efficient manner on or before \_\_\_\_\_.
  - b. The Town and Contractor expressly recognize that time is of the essence and the Town is positioned to sustain loss if the Contractor fails to complete the work within the period set forth in 2a, plus any extensions thereof agreed to. They also recognize the delay, expense and difficulties involved in proving in an arbitration or legal proceeding the actual loss suffered by the Town if the work is not completed on time. For this reason, instead of requiring any such proof, Town and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay the Town one thousand dollars (\$1,000.00) for each day past the time specified. Furthermore, the Town shall have the right to terminate this Agreement and/or pursue appropriate legal recourse on the Contractor’s breach of this Agreement.
  - c. The Town shall pay as compensation to the Contractor, for all work completed, those unit prices for the goods and services set forth in the Contractor’s bid, subject to available funding and supplemental appropriations made by the procedure set forth in the Town Charter.

- d. The total contract price shall include all charges, direct costs, indirect costs, expenses and fees of the Contractor. Said compensation shall be paid by the Town upon review and approval of the Contractor's invoices for payment by the Town's Clerk of the Works.

3. REVIEW OF WORK; PAYMENTS; RIGHT TO WITHHOLD

- a. The Contractor will permit the Town's Clerk of the Works, or his designee, to review – at any time – all work performed under the terms of this Construction Contract at any stage of the work.
- b. All work under the Agreement is subject to complete control of the Town's Clerk of the Works. Any direction, determination, or other order given to the Town by the Contractor shall be by the Town's Clerk of the Works. In doing so, the Town's Clerk of the Works may consult with his staff for with respect to technical requirements, but decision making authority shall rest with the Town's Clerk of the Works.
- c. The Contractor agrees to invoice the Town for services performed on a monthly basis as work progresses, sent to the Town no later than the 5<sup>th</sup> of every month. The Town will issue payments to the Contractor within thirty (30) days after receipt of an invoice. No invoice will be paid prior to services rendered and/or goods received.
- d. The Town shall retain five percent (5%) of each estimate until final completion and acceptance of all work covered by this contract.
- e. It shall be incumbent upon the Contractor to meet with Town's Clerk of the Works, or his designee, to measure and determine actual field quantities of items and/or materials corresponding to that pay period.
- f. Contractor to follow payment procedures in section 012900 of the specification manual.
- g. The Town specifically reserves the right to withhold any approved payment, in whole or in part, due to one or more of the following reasons:
  - 1) Assuring payment of just claims due any entity supplying labor and/or materials for work covered by this Agreement.
  - 2) Protecting the Town from loss and/or corrective expenses due to defective work not fully or properly remedied according to the provisions set forth in this Agreement.
  - 3) Protecting the Town from loss due to injury to persons or damage to the work or property of other contractors, subcontractors, or others caused by the act or neglect of the Contractor or any of his subcontractors or other subordinates.

4. INDEMNIFICATION; INSURANCE; BONDING

- a. The Contractor shall obtain and pay for such insurance as more particularly described in the Town's "Insurance Requirements" as set forth in the Request for Proposal \_\_\_\_\_.
- b. The Contractor shall indemnify and hold harmless the Town, its officers, agents, and employees, from and, if requested, shall defend them against any loss, cost, damage, injury, liability, and claim for injury, liability, and claim for injury to or death of a person, including employees of the Contractor or loss of or damage to property, resulting directly from the Contractor's performance of this Agreement, or by any omission to perform some duty imposed by law or agreement upon the Contractor, its

officers, agents and/or employees. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, Contractors and experts, and related costs and the Town's cost of investigating any claims against it.

- c. In addition to the Contractor's obligation to indemnify the Town, the Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Town from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to the Contractor by the Town and continues at all times thereafter.
- d. The Contractor shall indemnify and hold the Town harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses arising out of the Contractor's performance of this Agreement.
- e. The Contractor shall secure and furnish performance bonds and payment bonds in the amount at least equal to the contract bid price as set forth in the Request for Proposal \_\_\_\_\_.

#### 5. BOOKS AND RECORDS

The Contractor shall maintain or cause to be maintained all records, books, or other documents relative to charges, costs, expenses, fees, alleged breaches of Agreement, settlement of claims, or any other matter pertaining to the Contractor's demand for compensation by the Town for a period of not less than two (2) years from the date of the final payment for work performed under this Agreement.

#### 6. REPRESENTATION

- a. The Contractor represents that it is an expert in relation to the work to be performed under this Agreement, including familiarity with all federal, state, and municipal laws which may in any way impact the work and those employed with this project.
- b. The Contractor represents that it is financially solvent
- c. The Contractor further represents that it has the requisite skill, expertise, and knowledge necessary to perform the scope of services required under the terms of this Agreement, including any supplementary work and the Town relies upon said representation in executing this Agreement.

#### 7. CHANGE ORDERS; EXTRAS; ADDENDUM

- a. Any change in condition learned of by the Contractor during the course of the project must be reported in writing to the Town's Clerk of the Works immediately.
- b. It is specifically understood and agreed to by the Contractor that all change orders and/or contract extras must be memorialized in writing.
  - 1) All change orders – whether proposed by the Town or Contractor - must detail all changes in the work and designate method of determining any changes in the contract sum or duration.
  - 2) Any revisions to progress schedule, schedule of values, and other documents related to the project shall be addressed in the change orders.
  - 3) After review by legal counsel for each party, change orders must be signed by both Town's Clerk of the Works and Mayor on behalf of the

Town, signed by the Contractor, and attached to this Agreement by addendum.

- c. The Town shall not be liable for payment of any additional costs unless and until the provisions of this Section and any section related hereto in the Town's Request for Proposal are complied with.

#### 8. SUB-CONTRACTING

The Contractor is prohibited from subcontracting unless it has obtained, in writing, the permission of the Town - specifically Town's Clerk of the Works - to employ the specific subcontractors proposed to be used by the Contractor.

- a. The Contractor shall provide Town's Clerk of the Works with the names and addresses of all proposed subcontractors at least five (5) business days prior to their engagement.
- b. Any agreement made in violation of this Section shall confer no rights on any subcontractor and shall be null and void.

#### 9. NON-APPROPRIATION

- a. Contractor acknowledges that the Town is a municipal corporation and that the Town's obligation to make payments under this Agreement is contingent upon the appropriation by the Town of funds sufficient for such purposes, for each budget year in which this Agreement is in effect.
- b. If sufficient funds to provide for the payment(s) hereunder are not appropriated, the Town may terminate this Agreement upon notice in writing to the Contractor.

#### 10. SEVERABILITY; CONTROLLING LAW; OTHER LEGAL PROVISIONS

- a. In the event any provision or portion of this contract is judicially or legislatively determined to be invalid, such determination shall not affect or impair the validity of the remaining contract provisions.
- b. This contract shall be construed and interpreted in accordance with the laws of the State of Connecticut.
- c. In the event there is a conflict between this Agreement and the Town's Request for Proposal package, and/or the Contractor's accepted bid, the Town shall have the sole discretion as to which provision shall govern.

#### 11. INSPECTION OF CONTRACT WORK; ACCEPTANCE OR REJECTION

- a. The Contractor shall thoroughly inspect the work performed under this Agreement within thirty (30) days of the completion thereof. The Town, through its Clerk of the Works with the assistance of his staff, will additionally perform its own independent inspection.
- b. Immediately following the inspection of contract work conducted pursuant to Section 11a, the Contractor shall submit to the Town an Affidavit setting forth either acceptance of the work performed under this Agreement or an itemized list of work to be corrected, repaired or replaced.

## 12. FINAL PAYMENT<sup>1</sup>

- a. Upon issuance of a Certificate of Completion, the Contractor shall furnish, within seven (7) calendar days, a Final Estimate indicating all charges, payments, credits and retainage made to date and the final amount owed to the Contractor for all services and materials due.
- b. Within thirty (30) days of filing said estimate, the Town shall pay the Contractor the amount therein stated less all prior payments (including retainage) and advances whatsoever to or for the account of the Contractor. All prior estimates and payments, including those relating to extra work, shall be subject to correction by this payment, which throughout this contract is called the Final Payment.
- c. The acceptance by the Contractor of the Final Payment, shall represent a release to the Town of all claims and of all liability to the contract or for all things done or furnished in connection with this work, and for every act of the Town and others relating to or arising out of this work, accepting the Contractor's claim for interest upon the Final Payment, if the payment is improperly delayed.

## 13. DISPUTES

- a. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and if the dispute is not settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation within thirty (30) days administered under the most recently published Mediation Rules of the American Arbitration Association, before resorting to arbitration, litigation, or some other dispute resolution procedure.
- b. The mediation process shall be confidential based on terms acceptable to the mediator and/or mediation service provider.

## 14. TERMINATION FOR CAUSE

- a. If, through any cause arising, the Contractor shall fail to fulfill, in a timely and proper manner, its obligations under this Agreement, or if the Contractor shall violate any of the covenants, agreements or stipulations of this Agreement, the Town shall thereupon have the right to terminate this Agreement for cause by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days prior to the effective date of such termination. In such an event, all finished or unfinished reports, documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor and/or its subcontractors under this Agreement shall, at the option of the Town, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials to the effective date of termination.
- b. The term "cause" includes, without limitation, the following:
  - 1) If the Contractor furnished any statement, representation, warranty or certification in connection with this Agreement, which is materially false, deceptive, incorrect, or fatally incomplete.

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<sup>1</sup> No payment, final otherwise, shall release the Contractor or sureties from any obligation under this Agreement or of the Performance Bond.

- 2) If the Contractor fails to perform to the Town's satisfaction any material requirement of the Agreement, or is in violation of any specific provision thereof.
  - 3) If the Town reasonably determines satisfactory performance of the Agreement is substantially endangered or can reasonably anticipate such an occurrence or default.
- c. Notwithstanding the above, the Contractor shall not be relieved of liability to the Town for any damages sustained by the Town by virtue of any breach of the Agreement by the Contractor, and the Town may withhold any payment to the Contractor for the purposes of setoff until such time as the exact amount of damages due the Town from the Contractor is determined.

#### 15. TERMINATION FOR CONVENIENCE.

- a. The Town may terminate this Agreement at any time the Town determines that the purposes of the distribution of monies under the Agreement would no longer be served by the completion of the work/project.
- b. The Town shall effect such termination by giving written notice of termination to the Contractor and specifying the effective date thereof, at least twenty (20) days before the effective date of said termination. In that event, all finished or unfinished documents and other materials as described in this Agreement shall, at the option of the Town, become its property. If the Agreement is terminated by the Town as provided herein, the Contractor shall be paid an amount which bears the same ratio to the total compensation as the services actually and satisfactorily performed to the effective date of termination bear to the total services of the Contractor pursuant to the terms of the Agreement, less payments of compensation previously made, and subject to the Town's right of set off for any damages pursuant to the terms of the Agreement.

#### 16. NOTICES

Any required notices set forth herein shall be sent as follows, by certified mail, return receipt requested or by any other delivery services as follows:

- a. To the Contractor at the address set forth in the accepted bid.
- b. To the Town at: Town's Clerk of the Works, New Milford Public Library – 24 Main Street; New Milford, CT 06776

**IN WITNESS WHEREOF**, the Town of New Milford, CT has caused this Construction Contract to be signed and executed on its behalf by the Mayor and duly attested by the Town's Clerk of the Works, and \_\_\_\_\_ has signed and executed on behalf of the Contractor, \_\_\_\_\_, this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CONTRACTOR**

**TOWN OF NEW MILFORD, CT**

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Pete Bass  
Mayor

**Attested:**

\_\_\_\_\_  
Purchasing Agent

\_\_\_\_\_  
Town's Clerk of the Works

SECTION 061600 - SHEATHING