

CONTRACTOR AGREEMENT

This Contractor Agreement ("Agreement") is made this ____ day of _____, 2020 by and between Van Buren Public Schools , a Michigan general powers school district, organized and operated pursuant to the Michigan Revised School Code, whose address is 555 W. Columbia Avenue, Belleville, Michigan 48111 (hereinafter referred to as the "District" or "Owner"), and _____, a Michigan _____, whose address is _____, (hereinafter referred to as "Contractor"), for hazardous materials removal and demolition services in accordance with the terms and conditions herein.

RECITALS

WHEREAS, the District desires to obtain high quality hazardous materials removal and demolition services in accordance with the approved plans and specifications, the District's budget, the relevant bond proposal, and as otherwise approved by the District ("Project");

WHEREAS, the District, by Request for Proposal dated October 6, 2020 ("RFP"), sought proposals for the Project;

WHEREAS, Contractor is an entity which has represented to have the personnel, expertise, training, capacity and qualifications to timely and satisfactorily perform the Project contemplated in the RFP, and has responded to the RFP with a proposal dated October ____, 2020 ("Response"); and

WHEREAS, the District and Contractor desire to enter into this Agreement to authorize and require the Contractor to perform the obligations identified in the RFP, Response, contract documents and any other duties identified herein.

NOW THEREFORE, in consideration of the mutual promises and benefits contained herein, the parties agree as follows:

SECTION 1 – INCORPORATION OF DOCUMENTS

1.1 The RFP and Response are incorporated herein by reference as if fully restated herein. In the event of any inconsistency or ambiguity within, between or among the RFP, the Response, the Project Specifications, the Project Manual, this Agreement or any other contract document (collectively, the "Contract Documents"), the provision that is more beneficial to the Owner (as determined in the Owner's sole discretion) shall be deemed to control.

SECTION 2 – DESCRIPTION OF SERVICES / RELATIONSHIP OF PARTIES

2.1 Contractor shall provide the services described in the documents identified in Section 1, as required by law, as may otherwise be subsequently agreed to by the parties in writing via amendment, and any related and incidental services necessary to properly and timely complete the Project ("Services").

2.2 Contractor agrees that the individuals assigned to provide Services under this Agreement, whether by Contractor directly or authorized subcontractors, consultants, or agents, will adhere to applicable professional standards and will perform all Services in a manner consistent with generally accepted proficiency and competency for the type and nature of work rendered.

2.3 Services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. Contractor shall submit for the Owner's approval a schedule for the performance of Services which shall not exceed time frames required by the Contract Documents except as such time frames may be properly extended therein.

2.4 In the performance of Services under this Agreement, Contractor (its agents, subcontractors and employees) shall be regarded at all times as performing services as an independent contractor of the

District. Contractor shall be regarded, designated and considered to be the employer with respect to all individuals whom Contractor may select and assign to provide Services under this Agreement.

2.5 Contractor shall follow the highest standards of its profession in performing all Services under this Agreement. Contractor's employees assigned to provide Services shall be fully certified, licensed and approved as necessary to lawfully perform the Services. Contractor and its employees shall at all times comply with applicable federal, state and local laws, rules, regulations and policies, including but not limited to the Revised School Code, the School Building Construction Act, the Iran Economic Sanctions Act, and applicable board policies of the Owner.

2.6 Contractor is expected to coordinate the timing, location, and performance of Services with the District designated representative and/or any other District administrator identified to the Contractor in writing. The intent of this paragraph is not to direct the Contractor's work, but only to ensure the efficient and smooth performance of same in light of the District's ongoing operations. The Contractor shall cooperate and coordinate with any other contractors working on the District's overall project to ensure a seamless and efficient installation of improvements.

2.7 In the performance of Services under this Agreement, Contractor (its agents, subcontractors and employees) shall be regarded at all times as performing services as an independent contractor of the District. Within the meaning of all applicable federal, state and local laws, including but not limited to, employment taxes, income taxes, labor relations acts, employment discrimination laws, minimum wage and overtime laws, and workers' compensation laws (collectively, the "Employment Laws"), Contractor is and shall be deemed to be the sole employer of all personnel used to provide services on behalf of Contractor pursuant to this Agreement (the "Contractor Personnel"), and its relationship with the Owner shall be deemed to be that of an independent contractor and not that principal and agent, servant, or employer and employee. As the employer of the Contractor Personnel, Contractor shall: (a) have the power to hire, discipline, recruit, train and terminate Contractor Personnel; (b) instruct the Contractor Personnel on when, where and how to perform their duties; (c) determine the amount of frequency of wage, benefit, salary, bonus and other payments to Contractor Personnel; (d) determine and pay the amount, if any, of reimbursement for business and/or traveling expenses of Contractor Personnel; (e) pay and file with all appropriate governmental entities all necessary payroll information, taxes and deductions, including but not limited to, federal, state and local income taxes, social security taxes, and unemployment taxes; (f) comply with the Employment laws; and (g) pay any and all workers' compensation and other insurance costs and premiums applicable to employers.

2.8 The District's representative for the Project is _____. The District's representative, and any other individual or entity authorized by the District's Board of Education, shall have the right to review and inspect the Contractor's services, work, records, documents, reports, insurance policies, estimates, memoranda, analyses, activities, and any other matter related to the Contractor's performance of Services. Any documents officially submitted by the Contractor related to this Project shall be reviewed and approved by the District's representative and any other individual or entity authorized by the District's Board of Education.

2.9 From the moment of creation and regardless of the stage of completion, the District shall be deemed the owner of any documents or instruments of service created by Contractor and used in the performance of Services.

SECTION 3 – FEES, INVOICE AND PAYMENT

3.1 In consideration of Services properly provided by Contractor under this Agreement, the District will pay to Contractor _____ Dollars (\$_____), which amount is consistent with the Contractor's bid amount and any accepted alternates.

3.2 Invoices shall be submitted no more frequently than monthly and shall coincide with the value of work performed. The District will remit payment on undisputed invoices or undisputed portions of invoices within thirty (30) days of receiving the invoice, but in no event shall a payment be made if such payment will result in the Contractor receiving an amount that exceeds the value of services performed to date.

Notwithstanding the foregoing, District shall have no obligation to make any payments until Contractor provides all insurances required by this Agreement.

3.3 Without regard to Section 3.2, the District shall be entitled to retain ten percent (10%) of any amounts paid until the Contractor has successfully and finally completed its Services.

SECTION 4 – INDEMNIFICATION AND INSURANCE

4.1 Contractor shall indemnify and hold the District (and its officers, board members, employees, and agents) harmless from and against all liabilities, damages, fines, penalties, demands, forfeitures, claims, suits, causes of action or any other liabilities or losses, including all costs of defense, settlement and prosecution along with attorney, expert and other professional fees, arising out of or related to any negligence, wrongful act or breach of this Agreement or the obligation of Contractor or any of its employees or others for whom it is responsible in connection with the performance or non-performance of the Agreement. Contractor's indemnification responsibility shall equal the full amount of its degree of fault.

4.2 Contractor agrees to procure and maintain insurance coverage in types and amounts required by the RFP, as set forth in its Response (including any provided certificate of insurance), or as required by law, whichever is greater. If not already provided, Contractor agrees to provide the District certificates of insurance evidencing such coverage prior to commencing any Services. Insurance shall be obtained and maintained from an insurance company licensed to sell insurance in the State of Michigan with an A+ A.M. Best rating, or equivalent. Insurance coverages shall not be reduced or eliminated without at least sixty (60) days prior written notice to the District.

4.3 Contractor's insurances shall be obtained (and provided to the District's representative) prior to the commencement of Services, and shall be maintained either: (a) if occurrence-based, for at least one year following final completion, and/or (b) if claims-made, for at least seven years following final completion. The District shall be identified as an additional insured on all applicable insurances. Contractor's insurance shall be primary and not contributory.

4.4 Contractor shall provide performance and payment bonds equal to 100% of the Contract Sum identified in Section 3 and otherwise in accordance with applicable laws, including but not necessarily limited to MCL 129.201, et seq.

SECTION 5 – EMPLOYEES AND SUBCONTRACTING

5.1 The District reserves the right to approve the identity of representatives and employees of the Contractor and any subcontractors. The District shall have the right to request removal of any employee of the Contractor or any subcontractor from the project at the District's direction, and Contractor will remove or relocate such individual(s) upon 2 weeks' notice, subject to Contractor's status as employer.

5.2 Contractor shall not use subcontractors without the District's prior written consent. If Contractor desires to use a subcontractor, it will notify the District in writing, including the name, scope of work, and any other information requested by the District. The Contractor will be fully responsible to the District for the acts and omissions of subcontractors and of all persons whether directly or indirectly employed by the Contractor. Nothing in this Agreement shall create any contractual relationship between any subcontractor and the District. The Contractor shall not assign, transfer, convey, or otherwise dispose of the Agreement, or any part thereof, or the Contractor's right, title, or interest in same without the prior written consent of the District. The Contractor shall not assign any of the monies due or to become due and payable under the Agreement without prior written consent of the District.

5.3 The Contractor shall not hire any District employee to perform Services without the District's prior written consent, which may be provided or withheld in the District's sole discretion.

SECTION 6 – NONDISCRIMINATION

6.1 Contractor shall not discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, weight, or marital status and other employment matters described by Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352). Breach of this covenant may be regarded as a material breach of the agreement.

SECTION 7 – OWNER’S RIGHT TO CORRECT DEFICIENCIES

7.1 If the Contractor shall neglect to perform the work properly, or should it refuse to remedy any defects in the work due to inferior quality or workmanship or material, or should it in any manner fail to perform any provision of the Agreement, the District, after 7 days' notice to the Contractor, may correct such deficiencies at Contractor’s cost and may deduct the cost thereof from any payment due the Contractor. The remedy described in this section is not exclusive and shall have no effect on the Owner’s ability to seek recovery for, among others, breach of contract, breach of warranty, and/or performance bond claims.

SECTION 8 – TIME FOR PERFORMANCE

8.1 Time is of the essence of this Agreement. The Contractor acknowledges and agrees that the performance of Services shall commence on or before January 11, 2021 and shall be finally and sufficiently completed on or before May 14, 2021. For any alleged delay in performance caused by the District, the Contractor’s sole remedy shall be an extension in the deadline for performance.

SECTION 9 – DISPUTE RESOLUTION

9.1 The parties shall first attempt to resolve disputes through non-binding mediation. Any claim or dispute not resolved by non-binding mediation shall be subject to litigation in accordance with Michigan law.

9.2 A demand for mediation may be filed along with a complaint in litigation, but the process of non-binding mediation shall proceed first (so long as permitted by the applicable court). Any demand for mediation filed prior to a complaint in litigation shall toll the statute of limitations for all applicable claims until the mediation process has been completed, successfully or unsuccessfully.

9.3 In the event of any mediation arising out of or relating to this Agreement, Owner reserves the right to require that the mediation hearing be conducted in the general area where the Owner’s principal place of business is located. Any agreements reached in mediation shall be binding in accordance with law.

9.4 The Owner reserves the right in its discretion to require consolidation or joinder of any dispute arising out of or relating to this Agreement which another mediation or arbitration involving a person or entity not a party to this Agreement, in the event the Owner believes such consolidation or joinder is necessary in order to resolve a dispute or avoid duplication of time, expense or effort.

9.5 The Contractor shall include similar dispute resolution provisions in all agreements with subcontractors, sub-consultants, suppliers, or fabricators so retained, thereby providing for a consistent method of dispute resolution between the parties to those agreements.

9.6 As a condition precedent to any claim or cause of action brought by the Contractor against the District, the Contractor shall notify the District in writing of any contractual or other dispute within 21 days of becoming aware of same. The failure to timely provide such notice shall be an irrevocable waiver of any claim or cause of action. Claims and causes of action by the District shall be subject to the applicable statute of limitations under Michigan law, but in no event shall a claim by the District be deemed untimely if filed within six (6) years of final completion of the Services.

SECTION 10 – TAXES

10.1 The Contractor acknowledges that the District is a tax-exempt entity and any taxes incurred pursuant to performance of this Agreement, including but not necessarily limited to sales and use taxes, shall be the sole responsibility of Contractor.

SECTION 11 – TRAINING

11.1 The Contractor shall provide the following training services at no additional cost to the Owner:
N/A

SECTION 12 – SERVICE / MAINTENANCE

12.1 The Contractor shall provide the following service and maintenance at no additional cost to the Owner:
N/A

SECTION 13 – WARRANTIES

13.1 The Contractor shall provide the following warranties at no additional cost to the Owner:
2 Year Warranty on all Work including capped utilities and connections.

13.2 In addition to, and not in substitution of, Section 13.1, the Contractor shall assign and forward to the Owner all applicable manufacturers' warranties for any equipment, software or materials relevant to the Project and Services.

SECTION 14 – TERMINATION

14.1 The Owner may terminate this Agreement upon seven (7) calendar days' prior written notice to the Contractor. The Contractor may terminate this Agreement for the Owner's failure to substantially perform its obligations under this Agreement, so long as written notice of such failure has been provided to Owner and Owner fails to cure such failure within thirty (30) days of receiving the notice. If the Agreement is terminated prior to completion of the Services, Contractor shall provide a final report based on the value of the Services reasonably and properly performed as of the date of termination, and the Owner shall make payment for all services properly performed prior to termination, but in no event shall such sum exceed the fee described in Section 3.1.

SECTION 15 – CONFIDENTIALITY

15.1 If Contractor receives information of the Owner that is "confidential" or "business proprietary," Contractor shall keep such information strictly confidential and shall not disclose it to any other person except to its employees, those who need to know the content of such information in order to perform services solely for this Project, or its consultants whose contracts include similar restrictions. The parties acknowledge that the Owner cannot provide similar confidentiality protection due to the applicable of the Michigan Freedom of Information Act and the Michigan Open Meetings Act, among others.

SECTION 16 -- MISCELLANEOUS

16.1 Neither party shall assign this Agreement nor its rights and duties hereunder nor any interest herein without prior written consent from the other.

16.2 This Agreement, including all attachments and documents incorporated herein by reference, constitutes the entire agreement between the parties regarding its subject matter and supersedes any prior or contemporaneous understandings or agreements with respect to the services contemplated.

16.3 None of the terms and provisions of this Agreement may be modified, waived, or amended in any way except by written amendment, change order, or construction change directive.

16.4 Failure by either party at any time to require performance by the other party or to claim breach of any provision of this Agreement shall not be construed as a waiver of any subsequent breach nor affect the validity and operation of this Agreement, nor prejudice either party with regard to any subsequent action to enforce the terms of this Agreement.

16.5 This Agreement shall be interpreted and enforced under the laws of the State of Michigan.

16.6 If any provision of this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected, impaired or prejudiced thereby.

16.7 This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which constitute one and the same agreement.

16.8 Notwithstanding any provisions within the Contract Documents, nothing shall be deemed a waiver of any immunity granted to Owner by law or statute, including but not necessarily limited to, governmental immunity under MCL 691.1407.

16.9 Contractor shall not be entitled to additional compensation in the event it is necessary to extend the Project completion date because the Project is delayed due to conditions beyond the control of the Owner, such as strikes, weather, material shortages, site conditions, etc.

16.10 Contractor agrees to retain permanent records relating to the services performed for a period of at least six (6) years following submission of the construction documents, during which period the records will be made available to the Owner upon request.

16.11 The Effective Date of this Agreement shall be the date the last party identified below has executed this Agreement.

SECTION 17 – AUTHORIZATION

17.1 The Agreement has been duly authorized, executed and delivered by the parties and constitutes a legal, valid and binding obligation upon each of them, enforceable in accordance with its terms. Each person placing his/her signature below represents and warrants that he/she is the signatory duly authorized to execute this Agreement on behalf of the District or Contractor, as is respectively applicable.

VAN BUREN PUBLIC SCHOOLS,

By: _____

By: _____

Its: _____

Its: _____

Dated: _____

Dated: _____