

AGREEMENT

OWNER: CITY OF NEWAYGO
P.O. Box 308
Newaygo, MI 49337

NUMBER: N/A

PROJECT: Powerhouse roof Proj –
85 Water St, Newaygo MI

CONTRACTOR: .

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THIS AGREEMENT is dated as of the ____ day of _____, 2023 by and between the OWNER and CONTRACTOR each above identified and collectively referred to as the Parties.

WITNESSETH: That for and in consideration of the payments, covenants and agreements stated herein, the Parties agree as follows:

Article 1. WORK.

CONTRACTOR shall complete all work as specified or indicated in the Contract Documents. The Work is generally described as follows: complete roof removal and installation of new roof deck, standing seam metal roof along with gutter and downspouts. Building footprint is approx. 85'x32'.

Article 2. CONTRACT TIME.

2.1 The Work shall be substantially completed by September 30, 2023. The Contract Time commences upon the OWNER's issuance of the Notice to Proceed.

2.2 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that the OWNER will suffer financial loss if the Work is not substantially complete within the time specified in paragraph 2.1 above, plus any extensions thereof agreed to by a written change order signed by both parties. They also recognize the delays, expense and difficulties involved with a legal or arbitration proceedings over the actual loss suffered by the OWNER if the Work is not substantially complete 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 \$250.00 for each calendar day that expires after the time specified in paragraph 2.1 for substantial completion until the Work is substantially complete.

Article 3. CONTRACT PRICE.

3.1 OWNER shall pay CONTRACTOR for performance of the Work in accordance with the Contract Documents in current funds as follows: _____ Dollars and ____ cents (\$_____).

Article 4. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment on a form similar to exhibit A.

4.1 PROGRESS PAYMENTS: OWNER will make progress payments on the basis of the CONTRACTOR'S Applications for Payment and schedule of values submitted on or about the first day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work and verified by City staff for reasonableness. All applications for payments and schedule of

values must be on a request form as supplied by OWNER or substantially similar to exhibit A. Applications for payment must also include appropriate lien waivers for work completed and paid.

4.1.1 Progress payments will be in an amount equal to 90 percent of the Work completed, and 90 percent of materials and equipment not incorporated in the Work but delivered and suitably stored, less in each case the aggregate of payments previously made.

4.1.2 Upon Substantial Completion, OWNER will pay an amount sufficient to increase total payments to CONTRACTOR to 100% of the Contract Price, less such amounts as the CITY shall determine for completion of punch-list items, if any.

4.2 Final Payment. Upon final completion, and acceptance of the Work, OWNER will pay the remainder of the Contract Price.

Article 5. BONDS.

Contractor shall supply a performance and payment bond. The performance bond shall be in the full amount of the contract and conditioned upon the faithful performance of the contract in accordance with plans, specifications and terms thereof. The payment bond shall be in the full amount of the contract and shall be for the protection of those persons furnishing labor, material or both, to the principal contractor in the performance of the contract.

Article 6. INSURANCE.

6.1 Insurance. The CONTRACTOR shall procure and maintain the insurance coverages set forth below for the duration of this Agreement. All insurance coverages shall be with insurance companies licensed and authorized to do business in the State of Michigan, having an A.M. Best rating of A- or better, and otherwise acceptable to the OWNER.

6.1.1. Commercial General Liability Insurance: The CONTRACTOR shall procure and maintain Commercial General Liability Insurance (including coverage for bodily injury, personal injury, property damage (broad form), premises/operations, blanket contractual, and products/completed operations) on an "Occurrence Basis" with limits of liability as follows:

\$1,000,000 per occurrence/\$1,000,000 general aggregate
\$1,000,000 aggregate for products and completed operations
\$1,000,000 personal and advertising injury

Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent CONTRACTORs Coverage; (D) Broad Form General Liability Extensions or equivalent, if not already included; (E) Deletion of all Explosion, Collapse, and Underground (XCU) Exclusions, if applicable.

6.1.2. Workers' Compensation Insurance: The CONTRACTOR shall procure and maintain Workers' Compensation Insurance, including Employers' Liability Coverage, in accordance with all applicable statutes of the State of Michigan.

6.1.3. Automobile Liability: The CONTRACTOR shall procure and maintain Automobile Liability Insurance not less than One Million Dollars (\$1,000,000) per occurrence combined single limit for Bodily Injury, and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

6.1.4. Additional Insured: The Commercial General Liability Insurance, as described above, shall include an endorsement naming the OWNER as an additional insured. It is understood and agreed that by naming the OWNER as additional insured, coverage afforded is considered to be primary and any other insurance the OWNER may have in effect shall be considered secondary and/or excess.

6.1.5. Cancellation Notice: Commercial General Liability Insurance and Automobile Liability Insurance, as described above, shall include an endorsement stating the following: "It is understood and agreed that Thirty (30) days, Ten (10) Days for non-payment of premium, Advance Written Notice of Cancellation, Non-Renewal, Reduction, and/or Material Change shall be sent to the OWNER."

6.1.6. Proof of Insurance Coverage: Prior to the issuance of the Notice to Proceed, the CONTRACTOR shall provide the OWNER with certificates and the additional insured endorsement evidencing the required coverages. If so requested, CONTRACTOR will furnish certified copies of all policies and/or endorsements.

6.1.7. Renewal. If any of the above coverages expire during the term of this Agreement, the CONTRACTOR shall deliver renewal certificates and/or policies/endorsements to the OWNER at least ten (10) days prior to the expiration date.

6.1.8. Notice of Material Change. The CONTRACTOR shall provide OWNER with immediate written notice of any material change in any of the required insurance policies identified above.

Article 7. INTEREST.

OWNER and CONTRACTOR are not required to pay interest under this contract for any reasonable delay in payments to the other party.

Article 8. CONTRACTOR'S REPRESENTATIONS.

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

8.1 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, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.

8.2 CONTRACTOR has studied carefully all reports of investigations and tests (if existing) of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by the City in the preparation of the Drawings and Specifications and which have been identified in the Contract Documents.

8.3 CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 8.2 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.

8.4 CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

8.5 CONTRACTOR has given the CITY written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by the CITY is acceptable to CONTRACTOR.

8.6 CONTRACTOR understands that CONTRACTOR must contact Miss Dig before any digging or excavating. Contractor must repair or pay all costs of repair for any and all damage to buried lines, services, or property whether located on public or private property and marked or not.

Article 9. 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:

9.1 This Agreement (pages AG-1 to AG-5, inclusive).

9.2 Exhibits to this Agreement (Payment Request Form, etc.).

9.3 Performance and Payment Bonds

9.4 Notice of Award and Notice to Proceed.

9.5 General Conditions (if attached).

9.6 Supplementary Conditions (if attached)

9.7 Specifications bearing the title "Roof Replacement – Old Powerhouse Building" (Attachment A).

9.8 Drawings or Maps bearing the title "Map: Powerhouse Bldg – 85 Water St, Newaygo" or as elsewhere described in the Contract Documents. (Attachment B)

9.9 Addenda numbers ___ to ___, inclusive.

9.10 CONTRACTOR'S Bid (Attachment C) and any revised bids.

9.11 Any Written Amendment or Work Directive Change, including Change Orders, duly delivered after execution of Agreement.

There are no Contract Documents other than those listed above in this Article 9. The Contract Documents may only be altered, amended or repealed by a Written Amendment or Change Order.

Article 10. NON-DISCRIMINATION.

10.1 The CONTRACTOR shall comply with the Elliott Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 et seq., the Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended, MCL 37.1101 et seq., and all other federal, State, and local fair employment practices and equal opportunity laws. CONTRACTOR covenants that it shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Contract, with respect to his or her hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of his or her race, religion, color, national origin, age, sex, height, weight, marital status, or physical or mental disability that is unrelated to the individual's ability to perform the duties of a particular job or position.

10.2 In addition, as provided in Executive Directive 2019-09, any contractor or subcontractor shall not discriminate against any employee or applicant for employment with respect to his or her hire, terms, tenure, conditions or privileges of employment, or any matter directly or indirectly related to employment because of religion, race, color, national origin, sex, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the individual's ability to perform the duties of a particular job or position.

10.3 The CONTRACTOR agrees to include in every contract or subcontract entered into for the performance of this Contract this covenant not to discriminate in employment. A breach of this covenant is a material breach of this Contract.

Article 11. DEBARMENT AND SUSPENSION.

11.1 By signing this Contract, the CONTRACTOR certifies to the best of its knowledge and belief that it, its agents, and its subcontractor(s):

- A. Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from covered transactions by any federal department or the State.
- B. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, SLBA, or local) transaction or contract under a public transaction, as defined in 45 CFR 1185; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
- C. Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, State, or local) with commission of any of the offenses enumerated in subsection (B).
- D. Have not within a three-year period preceding this Contract had one or more public transactions (federal, State, or local) terminated for cause or default.
- E. Will comply with all applicable requirements of all other State or federal laws, executive orders, regulations, and policies governing this project.

Article 12. INDEMNIFICATION AND HOLD HARMLESS.

12.1 CONTRACTOR agrees that any personal injury to Contractor or third parties or any property damage incurred in the course of performance of the Services shall be the responsibility of Contractor. Contractor agrees to indemnify the City of Newaygo, its governing board, officers, employees, and agents from and against any and all costs, losses, damages, liabilities, expenses, demands, and judgments, including court costs and attorney's fees, which may arise out of Contractor's performance of the Services, except to the extent such are caused by the sole fault or negligence of the City.

Article 13. MISCELLANEOUS.

13.1 Terms used in this Agreement shall be understood according to common construction practices.

13.2 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.

13.3 OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, in respect to all covenants, agreements, and obligations contained in the Contract Documents.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement in two (2) counterparts each of which shall be deemed an original on the date first above written. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR.

OWNER: CITY OF NEWAYGO

CONTRACTOR:

By _____
Jon Schneider, City Manager

By: _____
Title:

ATTEST: _____
Kim Goodin, City Clerk

ATTEST: _____
_____, Secretary

Address for giving notices:

Address for giving notices:

OWNER:
City of Newaygo
28 State Road, PO Box 308
Newaygo, MI 49337
BUS: (231) 652-1657
FAX: (231) 652-1650
jons@newaygocity.org

CONTRACTOR:
. . .
BUS: (____) ____ - ____
License # _____
_____ @ _____