

DC ~~Check~~ Purchasing (Norm)
No Fee

FILED

NO. 97-130

'97 SEP -4 P3:59

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

BARBARA REEF

THIS AGREEMENT is dated as of the seventh day of August in the year 1997 by and between Douglas County, Nevada (hereinafter called OWNER) and Marvin Smith Construction (hereinafter called CONTRACTOR).

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

Removal of underground storage tanks and installation of above ground storage tanks - various sites (Bid 96-158) as specified in the project manual prepared by Steffen Robertson and Kirsten (U.S.) Inc. titled "Underground Storage Tank Removal and Installation of Above Ground Storage Tanks - Various Sites", SRK Project 86401 dated May 7, 1997.

Article 2. ENGINEER.

The Project has been designed by: Steffen Robertson and Kirsten (U.S.), Inc.
1755 E Plumb Ln, Ste 241
Reno, NV 89502

who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIMES.

3.1 The Work will be substantially completed on or before 90 calendar days from the Notice to Proceed, and completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions on or before 90 calendar days from the date specified in the Notice to Proceed.

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 12 of the General Conditions. They also recognize the delays, expense

AG-1

0421094

BK0997PG1286

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 \$500.00 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 \$500.00 for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

In the event that the CONTRACTOR fails to pay OWNER the specified liquidated damages amount within thirty (30) days of CONTRACTOR's being notified of said damages, OWNER may deduct the amount of the assessed liquidated damages from the final payment or retention withheld pursuant to Section 5.1.1 of this Agreement.

Article 4. CONTRACT PRICE.

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 below:

One hundred nineteen thousand seven hundred forty dollars (\$119,740.00)

As provided in paragraph 11.9 of the General Conditions estimated quantities are not guaranteed, and determinations of actual quantities and classification are to be made by ENGINEER as provided in paragraph 9.10 of the General Conditions. Unit prices have been computed as provided in paragraph 11.9.2 of the General Conditions.

Article 5. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1. Progress Payments; 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 Friday following either the first or third Thursday of each month, depending upon the timing of submittals and approvals, 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 2.9 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.

AG-2

5.1.1. 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 ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.7 of the General Conditions.

90% of Work completed (with balance being retainage). If Work has been 50% completed as determined by ENGINEER, and if the character and progress of the Work have been satisfactory to OWNER and ENGINEER, OWNER, on recommendation of ENGINEER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage on account of Work completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100% of the Work completed.

90% (with the balance being retainage) of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in paragraph 14.2 of the General Conditions).

5.1.2. Upon Substantial Completion, in an amount sufficient to increase total payments to CONTRACTOR to 90% of the Contract Price (with the balance being retainage), less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.7 of the General Conditions.

5.2. Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.13 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.13.

Article 6. INTEREST.

All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the maximum rate allowed by law at the place of the Project.

Article 7. CONTRACTOR'S REPRESENTATIONS.

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

7.1. CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in paragraph 8) and the other related data identified in the Bidding Documents including "technical data."

AG-3

7.2. 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.

7.3. 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.

7.4. CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relation to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.2.1 of the General Conditions. CONTRACTOR accepts the determination set forth in paragraph SC-4.2 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely as provided in paragraph 4.2 of the General Conditions. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. 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, investigations, 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.

7.5. 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.

7.6. 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.

7.7. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract

AG-4

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 8. CONTRACT DOCUMENTS.

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

- 8.1. This Agreement (pages AG-1 to AG-7, inclusive).
- 8.2. Photocopy of Bid Schedule.
- 8.3. Performance and Payment Bonds, included under Division 5 - PERFORMANCE AND PAYMENT BONDS, as PB-1 and PB-2, respectively.
- 8.4. Notice to Proceed (not attached).
- 8.5. General Conditions (pages GC-1 to GC-44, inclusive, not attached).
- 8.6. Supplementary Conditions (pages SC-1 to SC-20, inclusive, not attached).
- 8.7. Specifications bearing the title Construction Specifications and consisting of 4 divisions as listed in table of contents thereof (not attached).
- 8.8. Drawings (not attached) consisting of 6 sheets numbered 1 through 6, inclusive with each sheet bearing the following general title: Site Plan.
- 8.9. Addenda numbered 1 to 2, inclusive.
- 8.10. CONTRACTOR's Bid (pages BF-1 to BF-5, inclusive, not attached).
- 8.11. Documentation submitted by CONTRACTOR prior to Notice of Award (pages N/A to _____, inclusive, not attached).
- 8.12. 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 paragraphs 3.5 and 3.6 of the General Conditions.

AG-5

0421094

BK0997PG1290

- 8.13. Standard Specifications for Public Works Construction, Washoe County, City of Sparks, City of Reno, Carson City, City of Yerington, 1992 Edition, incorporated by reference.

The documents listed in paragraphs 8.2 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 this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.5 and 3.6 of the General Conditions.

Article 9. MISCELLANEOUS.

- 9.1. Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 9.2. 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.
- 9.3. 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.
- 9.4. 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.
- 9.5. If applicable, in the event that there is any litigation relative to the interpretation or enforcement of this agreement or any of the Contract Documents, the prevailing party shall be entitled to a reasonable Attorney's fee, together with costs of suit.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and

AG-6

ENGINEER. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR or identified by ENGINEER on their behalf.

(Continued Next Page)

COPY

AG-7

c:\msoftofc\ww\masters\contract\agreemt.doc/lt
based on EJCDC 1910-8-A-1 (1990 Ed.)
Revised: 7/7/95

0421094
BK0997PG1292

Address for giving notices to Owner:

Ron Chamness, Facilities Operations
Douglas County Operational Services
P.O. Box 218
Minden, NV 89423

Address for giving notices to Contractor:

Marvin Smith Construction
P.O. Box 1696
Carson City NV 89701

NV License No. _____

Agent for service of process:

Summary of Attachments to be affixed to this document:

Attachment "A" - Photocopy of Bid Schedule

Attachment "B" - Original executed Performance Bond

Attachment "C" - Original executed Payment Bond

Addenda Numbered ___ through ___ (if any)

COPY

REQUESTED BY
DOUGLAS COUNTY
IN OFFICIAL RECORDS OF
DOUGLAS CO., NEVADA

'97 SEP -8 A9:26

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and on record in my office.

DATE: September 4 1997
B. REED Clerk of the 9th Judicial District Court
of the State of Nevada, in and for the County of Douglas.

By [Signature] Deputy

SEAL

LINDA SLATER
RECORDER
\$ 0 PAID OK DEPUTY

0421094

BK0997PG1295