

**SUGGESTED FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between the City of Charlotte, 111 E. Lawrence Ave, Charlotte, MI 48813 (Owner) and United Petroleum Equipment, 300 Custer Drive, Battle Creek, MI 49037 (Contractor).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Construction and installation of fuel farm upgrades at the Fitch H. Beach Municipal Airport.

ARTICLE 2 – THE PROJECT

- 2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Fuel Farm Upgrades
Fitch H. Beach Municipal Airport
City of Charlotte
Charlotte, Michigan

ARTICLE 3 – ARCHITECT/ENGINEER

- 3.01 The Project has been designed by:

Prein & Newhof
3355 Evergreen Dr. NE
Grand Rapids, MI 49525

The Engineer, which is to act as Owner's representative, assumes all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents. All references to Engineer shall be construed to mean this firm.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

- A. 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. See Section 80 of the "GENERAL PROVISIONS FOR CONSTRUCTION OF AIRPORTS" for conditions.

4.02 *Days to Achieve Substantial Completion and Final Payment*

- A. The Work will be substantially completed within twenty-one (21) calendar days after the date when the Contract Times commence to run as provided in Section 80-07 of the General Conditions, and completed and ready for final payment in accordance with Section 90-09 of the General Conditions within twenty-one (21) calendar days after the date when the Contract Times commence to run.
- B. Phase One shall consist of all work except for the preparation and painting of the fuel system. This work shall be substantially complete within fourteen (14) calendar days.
- C. Phase Two shall consist of the preparation and painting of the fuel system. This work shall be substantially complete within seven (7) calendar days.

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified as follows, plus any extensions thereof allowed in accordance with Section 80-07 of the General Conditions.
 - 1. Liquidated damages will be applied based upon Contract Time per phase as stated above. Liquidated damages will be additive (two times the value in the General Provisions) if contract times per phase are exceeded concurrently.

- B. The parties also recognize the 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), Contractor shall pay Owner in accordance with *Table 80-08* of the "GENERAL PROVISIONS FOR CONSTRUCTION OF AIRPORTS" for each day that expires after the time specified in Paragraph 4.03.A.1 and 4.03.A.2 above 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 Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner in accordance with *Table 80-08* of the "GENERAL PROVISIONS FOR CONSTRUCTION OF AIRPORTS" for each day that expires after the time specified in Paragraph 4.03.A.3 above for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

- 5.01 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 pursuant to Paragraphs 5.01.A, below:

- A. For all Work, at the prices stated in Contractor's Bid Proposal, attached hereto as an exhibit.

ARTICLE 6 – PAYMENT PROCEDURES

- 6.01 Payment shall be made in accordance with Section 90 of the "GENERAL PROVISIONS FOR CONSTRUCTION OF AIRPORTS". The payment contract provisions include no retainage.
- 6.02 Derivation of Partial Payments shall be made by the Architect/Engineer based upon the Contractor's Schedule of Values on a monthly basis.

ARTICLE 7 – INTEREST

- 7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of 0% percent per annum.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

- B. 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, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified, and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in the Supplementary Conditions as containing reliable "technical data."
- E. Contractor has considered the information known to Contractor; 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 and drawings identified in the Contract Documents, with respect to the effect of such information, observations, 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 Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that 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 Documents.
- 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.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement.
 - 2. Performance bond.
 - 3. Payment bond.
 - 4. Federal and State Requirements
 - 5. Addenda.
 - 6. Exhibits to this Agreement (enumerated as follows):
 - a. Bid Proposal
 - b. Documentation submitted by Contractor prior to Notice of Award.
 - 7. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Section 40 of the General Provisions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Provisions.

10.02 *Assignment of Contract*

- A. 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, 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.

10.03 *Successors and Assigns*

- A. 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.

10.04 *Severability*

- A. 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.

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Other Provisions*

A. Expenses:

The Contractor shall pay all expenses incurred by the Owner for professional architectural and engineering services necessitated by the Contractor's failure to complete the project by the date fixed for completion, including but not limited to observations, inspections, testing, reviewing, engineering, and surveying.

The Owner will deduct and retain out of any money due or to become due hereunder the amount of the liquidated damages and expenses, and in case the amount of money due is less than the amount of liquidated damages and expenses, the Contractor shall pay the difference upon demand of the Owner.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have b delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have b identified by Owner and Contractor or on their behalf.

This Agreement will be effective on October 27, 2014 (which is the Effective Date of the Agreement).

OWNER:

City of Charlotte _____

By: _____

Title: _____

Attest: _____

Title: _____

Address for giving notices:

111 East Lawrence Ave.

Charlotte, MI 48813

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

CONTRACTOR

United Petroleum Equipment

By: _____

Title: President

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Title: Vice President

Address for giving notices:

300 Custer Drive

Battle Creek, MI 49037

License No.: _____

(Where applicable)

Agent for service of process:
