

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

THIS AGREEMENT is by and between City of Lee's Summit, Missouri ("Owner") and
VF Anderson Builders LLC ("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 located in the Robin Hills Subdivision. The Stormwater Improvements includes, but are not necessarily limited to: New storm sewer piping to improve water quality and minimize peak stormwater runoff flows in fully developed project areas. Minor grading operations, demolition, asphalt removal and replacement, curb and gutter removal and replacement, water line relocation, sewer line construction, sidewalk and driveway replacement are other portions of work included in the project documents.

ARTICLE 2 – THE PROJECT

1.02 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows: Bid #79801-12C – Robin Hills Stormwater Improvements.

ARTICLE 3 – ENGINEER

3.01 The Project has been designed by Alfred Benesch & Company which 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 the completion of the Work in accordance with the Contract Documents; provided, however, that the Owner shall be responsible for handling the following matters notwithstanding the fact that certain portions of the Contract Documents may list the Engineer as having responsibility for said matters:

City will furnish a Resident Project Representative and determining requests for Change of Working Hours, Field Orders, Work Change Directives, Change Orders and Progress Payments.

In the event that portions of the Contract Documents indicate that the Engineer is to handle, provide input, or receive notices or filings with regard to any of the above referenced matters, this Article 3 shall prevail.

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.
- B. 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. Phase 1 Substantial Completion. Milestone substantial completion will include the following:
 - 1. Phase 1 will include but is not limited to work associated within the intersection of Noel Street and Little Avenue and north of the intersection noted. A shoo-fly will be constructed and removed from private property at the start and completion of this phase. This intersection shall be closed for a minimum duration to allow construction of utilities within the intersection. This work will include the placement of drivable surface of asphalt which will allow unimpeded access to Gibson Street. This section of Noel Street is the only access to Gibson Street. Work within the intersection includes: sewer line construction Water line relocation, construction of storm sewer Box culvert,

4.02 *Days to Achieve Substantial Completion and Final Payment*

- A. The Work will be substantially completed as follows. The overall project duration is 270 days, however, several items need to be addressed scheduled as outlined below. This project duration should allow contractor adequate time to work through, or shut down, over the winter and complete asphalt paving activities as weather allows.
- B. The Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions.
 - 1. The Work will be substantially completed within 240 calendar days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 270 days after the date when the Contract Times commence to run. In order to achieve substantial completion all Work related to the construction of the all storm sewer piping, all sanitary sewer piping, water line relocations , curb and gutter, concrete driveway, and pavement restoration.
 - 2. Sequencing and Phasing requirements for construction activities are outlined below.
 - a. All milestones activities involving Noel and Little Intersection closure substantially complete, as determined by owner, within 90 calendar days. The start date of this phase will be set by the contractor and recorded by the inspector and construction project manager. The primary objective is to minimize interruptions to the adjacent homeowners.

- b. Contractor will be allowed to close 2nd street to through traffic for a maximum of 45 calendar days when working on project from station 23+90 to 28+00. Local residents shall retain access to driveways. This street closure shall be coordinated closely as detailed in this section. The start date of this phase will be set by the contractor and recorded by the inspector and construction project manager.
- c. No road closures will be allowed between November 15th and March 15th. Contractor shall plan and execute the schedule so that all roads and intersections are open during the winter dates as noted above.
3. Contractor to prepare and submit a detailed schedule for approval by owner and engineer prior to notice to proceed issuance. Work shall be scheduled to minimize interruptions to adjacent homeowners. In addition to an overall contract time impacts, (phase 1), liquidated damages shall be applied if individual timelines are not met. If necessary to meet specific paving timeframes, the contract may be suspended and reactivated if the appropriate paving window falls outside of the contract duration.

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 in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. 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 \$700 for each day that expires after the time specified in Paragraph 4.02 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 \$700 for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment. In addition, Contractor shall be liable to Owner for all other damages, including, but not limited to attorney's fees and expenses, additional engineering fees and expenses, and time, costs, and/or expense of Owner's personnel.

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 Paragraph 5.01.A below:

All specific cash allowances are included in the above price in accordance with Paragraph 11.02 of the General Conditions.

A. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual quantity of that item:

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Item No.	BID ITEM	PAY UNIT	Quantity	UNIT PRICE	TOTAL
1	MOBILIZATION	L.S.	1	\$24,000	\$24,000
2	TRAFFIC CONTROL	L.S.	1	\$10,6380	\$10,6380
3	"BIG RED" OR COMPOST SOCK INLET PROTECTION	L.F.	260	\$11	\$2,860
4	WADDLE - STRAW OR COMPOST MULCH SOCK	L.F.	450	\$7	\$3,150
5	TEMPORARY CONSTRUCTION FENCING	L.F.	870	\$4.50	\$3,915
6	CLEARING AND GRUBBING	L.S.	1	\$19,000	\$19,000
7	TREE REMOVAL	EA.	11	\$540	\$5,940
8	TEMPORARY WINTER ROADWAY PAVEMENT	S.Y.	600	\$10	\$6,000
9	TEMPORARY SHOO-FLY	S.Y.	150	\$47	\$7,050
10	DEMOLITION AND REMOVAL	L.S.	1	\$59,000	\$59,000
11	6" WATER LINE PIPE	L.F.	225	\$100	\$22,500
12	6" WATER LINE FITTINGS	EA.	39	\$442	\$17,238
13	WATER SERVICE RELOCATION	EA	16	\$490	\$7,840
14	CONCRETE ENCASEMENT	L.F.	55	\$110	\$6,050
15	18" RCP STORM SEWER	L.F.	145	\$83	\$12,035
16	24" RCP STORM SEWER	L.F.	46	\$94	\$4,324
17	48" RCP STORM SEWER	L.F.	1,576	\$150	\$236,400
18	8'x4' REINFORCED CONCRETE BOX	L.F.	230	\$562	\$129,260
19	CAST IN PLACE CONNECTION TO 8'x4' RCB	EA.	2	\$3,700	\$7,400
20	6'x3.25' CURB INLET	EA.	4	\$3,700	\$14,800
21	6'x6' CURB INLET	EA.	1	\$4,800	\$4,800
22	8'x3.25' CURB INLET	EA.	5	\$4,000	\$20,000

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FORM OF AGREEMENT

Item No.	BID ITEM	PAY UNIT	Quantity	UNIT PRICE	TOTAL
23	8'x5' CURB INLET	EA.	1	\$4,100	\$4,100
24	6'x6' JUNCTION BOX	EA.	3	\$4,600	\$13,800
25	7'x6' JUNCTION BOX	EA.	2	\$4,700	\$9,400
26	MODIFICATION TO AREA INLETS	EA.	4	\$2,400	\$9,600
27	8" PVC SANITARY SEWER	L.F.	787	\$82	\$64,534
28	8" DIP SANITARY SEWER	L.F.	173	\$176	\$30,448
29	4' DIA. SANITARY MANHOLE	EA.	6	\$3,500	\$21,000
30	CONCRETE CHANNEL LINING	S.Y.	35	\$110	\$3,850
31	CONCRETE 8'x4' RCB OUTFALL	EA.	1	\$30,000	\$30,000
32	CONCRETE DRIVE REPLACEMENT	S.Y.	410	\$58	\$23,780
33	SIDEWALK REPLACEMENT	S.Y.	635	\$37	\$23,495
34	ADA RAMPS	EA.	5	\$1,200	\$6,000
35	FULL DEPTH PAVEMENT REPLACEMENT	S.Y.	3,600	\$28	\$100,800
36	COLD MILLING (ASPHALT)	S.Y.	667	\$9	\$6,003
37	ASPHALT OVERLAY	S.Y.	667	\$9	\$6,003
38	CURB AND GUTTER	L.F.	3,125	\$17	\$53,125
39	4' CHAIN LINK FENCING	L.F.	870	\$14	\$12,180
40 *	FLOWABLE FILL (LOW STRENGTH)	C.Y.	60 *	\$115	\$6,900 *
41	SOD	S.Y.	4,000	\$6	\$24,000
42	SANITARY SEWER SERVICE ADJUSTMENT & RELOCATIONS	EA	16	\$900	\$14,400
43	BORING AND JACKING 8" DIP SEWER PIPE	L.F.	35	\$356	\$12,460
PROJECT TOTAL (*Bid Items 1-43)				\$1,100,550.00 *	

Item 40 indicates a quantity revision from 9 to 60 which matches work as described in addendum #3. This quantity revision results in a net increase of \$5,865 above total price as bid.

The Bid prices for Unit Price Work set forth as of the Effective Date of the Agreement are based on estimated quantities. As provided in Paragraph 11.03 of the General Conditions, estimated quantities are

not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in Paragraph 9.07 of the General Conditions.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ~~Engineer~~ Owner as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment monthly ~~on or about the 1st day of each month~~ during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A 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.

- 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 may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.

- a. 95 percent of Work completed (with the balance being retainage); ~~and. If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and~~
- b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

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 as specified by Missouri State Statute, RSMo 34-057, of _____ 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 in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of 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 (pages 1 to 13, inclusive).
 - 2. Performance bond (pages 1 to 3, inclusive).
 - 3. Payment bond (pages 1 to 3, inclusive).
 - 4. General Conditions (pages 1 to 66, inclusive).
 - 5. Supplementary Conditions (pages 1 to 5, inclusive).
 - 6. Specifications as listed in the table of contents of the Project Manual.
 - 7. Drawings consisting of 27 sheets with sheet bearing the following general titles: Robin Hills Stormwater Improvements the Drawings listed on attached sheet index.
 - 8. Addenda (numbers 1 to 3, inclusive).
 - 9. Exhibits to this Agreement (enumerated as follows):
 - a. Documentation submitted by Contractor prior to Notice of Award (pages 1 to 22, inclusive).
 - 10. 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 (pages 1 to 1, inclusive).
 - 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 Paragraph 3.04 of the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

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*

This Agreement and all work related to this Project shall be governed by the laws of the State of Missouri and shall be litigated and/or mediated in Jackson County, Missouri.

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

This Agreement will be effective on _____ (which is the Effective Date of the Agreement).

OWNER:

City of Lee's Summit, Missouri

By: _____

Title: City Manager

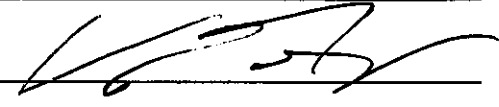
Approved as to Form: _____

Title: Deputy City Attorney

Address for giving notices:
220 SE Green Street
Lee's Summit, MO 64063

CONTRACTOR

VF Anderson Builders LLC

By: 

Title: owner

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

Attest: 

Title: Project Manager

Address for giving notices:
16550 East 227th Street
Harrisonville, MO 64701

License No.: _____

(Where applicable)

Agent for service of process:
