

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

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

THIS AGREEMENT is by and between _____ City of Lee’s Summit, Missouri _____ (“Owner”) and
_____ Phillips Hardy Inc. _____ (“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:

The construction of final cover over an approximately 82-acre landfill, to include excavation of soil materials from borrow areas, placement of various soil layers on landfill surface, installation of geosynthetic components, erosion controls at landfill and in borrow areas, and establishment of vegetation in disturbed areas as well as all labor, materials, equipment, tools, superintendence, and any and all other services necessary to perform the work.

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:

Project No. 40252086-2 –Landfill Closure Construction

ARTICLE 3 – ENGINEER

3.01 The Project has been designed by SCS Engineers (Engineer), 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.

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.

4.02 *Dates for Substantial Completion and Final Payment*

- A. The Work will be substantially completed on or before October 15, 2019, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions on or before December 1, 2019.

4.02 *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 \$2,200 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 \$2,200 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 to that set out in this Section elsewhere within this Agreement, Contractor shall be liable to Owner for all other actual damages resulting from such delay or refusal to complete remaining Work 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 Paragraphs 5.01.A, below:

- 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.

Item No.	Description	Unit	Estimated Quantity	Unit Price	Bid Price
1	Mobilization/demobilization	LS	1	\$ 235,000.00	\$ 235,000.00
2	Surveying	LS	1	\$ 22,000.00	\$ 22,000.00
3	Clear and grub Borrow Source A	AC	4.7	\$ 1,825.00	\$ 8,577.50
4	Clear and grub Browning 1	AC	31.6	\$ 350.00	\$ 11,060.00
5	Clear and grub Browning 2	AC	2.9	\$ 350.00	\$ 1,015.00
6	Clear and grub Browning 3	AC	8.9	\$ 350.00	\$ 3,115.00
7	Strip and stockpile topsoil Borrow Source A	AC	4.7	\$ 3,455.00	\$ 16,238.50
8	Strip and stockpile topsoil Browning 1	AC	31.6	\$ 2,550.00	\$ 80,580.00
9	Strip and stockpile topsoil Browning 2	AC	2.9	\$ 2,690.00	\$ 7,801.00
10	Strip and stockpile topsoil Browning 3	AC	8.9	\$ 2,265.00	\$ 20,158.50
11	Upgrade existing water crossing area	EA	3	\$ 2,100.00	\$ 6,300.00
12	Construct new temporary water crossing	EA	1	\$ 22,000.00	\$ 22,000.00
13	Construction fencing	LF	370	\$ 5.00	\$ 1,850.00
14	Erosion control - silt fencing	LF	20,000	\$ 1.46	\$ 29,200.00
15	Erosion control - rock checks	EA	15	\$ 660.00	\$ 9,900.00
16	Erosion control - wattles	EA	20	\$ 250.00	\$ 5,000.00
17	Erosion control - inlet protection	EA	1	\$ 220.00	\$ 220.00
18	Storm water control in Browning 1	LS	1	\$ 72,200.00	\$ 72,200.00
19	Sedimentation Basin C in Browning 3	LS	1	\$ 3,000.00	\$ 3,000.00
20	Clear and grub landfill surface	LS	1	\$ 20,000.00	\$ 20,000.00
21	Prepare landfill subgrade	LS	1	\$ 89,000.00	\$ 89,000.00
22	Settlement plates	EA	1,190	\$ 13.00	\$ 15,470.00
23	Install compacted soil cover layer (pre-Subtitle D area)	AC	69.4	\$ 12,570.00	\$ 872,358.00
25	Install uncompacted soil cover layer (pre-Subtitle D and Subtitle D areas)	AC	80.6	\$ 4,460.00	\$ 359,476.00
26	Extend manholes	EA	9	\$ 4,500.00	\$ 40,500.00
27	Perimeter channel (grading on the channel and relocation of any cut material)	LS	1	\$ 18,300.00	\$ 18,300.00
28	Borrow Source A reclamation	AC	4.7	\$ 1,150.00	\$ 5,405.00
29	Browning Property reclamation	AC	58.7	\$ 1,275.00	\$ 74,842.50
30	Establish vegetation on landfill area	LS	1	\$ 110,400.00	\$ 110,400.00
31	Establish vegetation on Browning Property borrow area	AC	58.7	\$ 2,525.00	\$ 148,217.50
32	Establish vegetation on Borrow Source A	LS	1	\$ 12,625.00	\$ 12,625.00
33	Repair leachate outbreaks	EA	2	\$ 2,500.00	\$ 5,000.00
34	Install compacted soil cover layer (Subtitle D cover with Geosynthetics)	AC	11.2	\$ 7,560.00	\$ 84,672.00
35	Install nominally compacted soil layer (1.5 foot thickness)	AC	11.2	\$ 10,450.00	\$ 117,040.00
36	Excavate and backfill anchor trench	LS	1	\$ 12,300.00	\$ 12,300.00
37	Provide and install 40-mil textured LLDPE geomembrane	SY	67,000	\$ 5.16	\$ 345,720.00
38	Provide and install 300-mil geocomposite	SY	67,000	\$ 7.46	\$ 499,820.00
39	Geocomposite Drain	LS	1	\$ 52,500.00	\$ 52,500.00
Total Base Bid Items (Items 1-23, 25-39)					\$ 3,438,861.50
Alternate Bid Items					
40-ALT	Barn Demolition	LS	1	\$ 3,000.00	\$ 3,000.00
41-ALT	Additional vegetation maintenance for one growing season	LS	1	\$ 102,400.00	\$ 102,400.00
42-ALT	Disposal of stockpiled trees	LS	1	\$ 17,000.00	\$ 17,000.00
43-ALT	Grinding of stockpiled trees	LS	0	\$ 35,000.00	\$ -
44-ALT	Install nominally compacted soil layer (1.0 foot thickness)	AC	0	\$ 7,000.00	\$ -
Total Alternate Bid Items Selected by City					\$ 122,400.00
Total Contract Amount					\$ 3,561,261.50

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 95 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 150 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. DELETED
- 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 9, inclusive).
 2. Performance bond (pages 1 to 3, inclusive).
 3. Payment bond (pages 1 to 3, inclusive).
 4. Other bonds (pages _____ to _____, inclusive).
 - a. Bid Bond (pages 1 to 2, inclusive).
 5. General Conditions (pages 1 to 66, inclusive).
 6. Supplementary Conditions (pages 1 to 4, inclusive).
 7. Specifications as listed in the table of contents of the Project Manual.
 8. Drawings consisting of 15 sheets with each sheet bearing the following general title:
Landfill Closure Construction.
 9. Addenda (numbers 1 to 2, inclusive).
 10. Exhibits to this Agreement (enumerated as follows):
 - a. Documentation submitted by Contractor prior to Notice of Award (pages _____ to _____, inclusive).
 - b. *[List other required attachments (if any), such as documents required by funding or lending agencies].*
 11. 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*

- A. 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: Chief Council of Infrastructure and Planning _____

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

(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

Phillips Hardy Inc. _____

By: _____

Title: _____

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

Attest: _____

Title: _____

Address for giving notices:

License No.: _____
(Where applicable)

NOTE TO USER: Use in those states or other jurisdictions where applicable or required.

Agent for service of process:
