

SECTION 00500

SAMPLE

AGREEMENT

THIS AGREEMENT is dated as of the _____ day of _____ in the year 20__, by and between the Carrier Creek Drain Drainage District by Braden L. Harrington, Eaton County Drain Commissioner (hereinafter called OWNER) and _____ (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: Carrier Creek Drain, Division II – Concrete Box Culverts South of I-496.

ARTICLE 2 - ENGINEER

The Project has been designed by Spicer Group, Inc., who is hereinafter called ENGINEER and who will 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 complete as set forth in the attached schedule and as provided in paragraph 2.03 of Section 00700 – General Conditions, and completed and ready for final payment as indicated in the attached schedule.

	Date for Substantial Completion	Date for Final Completion
Division I – Construction North of I-496	October 1, 2005	November 14, 2005
Division II – Concrete Box Culverts South of I-496	October 1, 2005	November 14, 2005
Division III – Storm Sewer Construction South of I-496	August 1, 2005	September 1, 2005
Division IV – Open Drain Construction	August 1, 2005	September 1, 2005
Division V – Detention Areas A, B, and G	October 1, 2006	November 14, 2006
Division VI – Detention Area E	August 1, 2006	September 1, 2006
Division VII – Detention Area F	August 1, 2006	September 1, 2006
Division VIII – Detention Areas E, F, and G Wetland Mitigation	May 15, 2007	June 1, 2007
Division IX – Electrical	October 1, 2006	November 14, 2006

3.2 Liquidated Damages: OWNER and CONTRACTOR recognize that time is of the essence for 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. OWNER and CONTRACTOR 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 an amount to be specified below 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 Contract Time, CONTRACTOR shall pay OWNER an amount to be specified below for each day that expires after the time specified in paragraph 3.1. for completion and readiness for final payment.

Damages	Liquidated Damages for Delay until Sub. Completion (Per Day)	Liquidated Damages for Delay of Final Completion (Per Day)
Division I – Construction North of I-496	\$3,000.00	\$1,000.00
Division II – Concrete Box Culverts South of I-496	\$3,000.00	\$1,000.00
Division III – Storm Sewer Construction South of I-496	\$3,000.00	\$1,000.00
Division IV – Open Drain Construction	\$1,000.00	\$500.00
Division V – Detention Areas A, B, and G	\$3,000.00	\$1,000.00
Division VI – Detention Area E	\$2,000.00	\$1,000.00
Division VII – Detention Area F	\$2,000.00	\$1,000.00
Division VIII – Detention Areas E, F, and G Wetland Mitigation	\$1,000.00	\$500.00
Division IX – Electrical	\$1,000.00	\$500.00

ARTICLE 4 - CONTRACT PRICE

OWNER shall pay Contractor for completion of the Work in accordance with the Contract Documents in current funds at the unit prices in CONTRACTOR’s Bid.

ARTICLE 5 - PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of Section 00700 - General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

- 5.1 Progress Payments: OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR’s Application for Payment as recommended by ENGINEER, monthly during construction as provided in paragraphs 5.1.1. and 5.1.2. below. All such payments will be on the basis of the progress of the Work based on unit prices and quantities of Work completed.
 - 5.1.1 Prior to Substantial Completion, progress payments will be made in an amount equal to: 100% of the Work completed and 100% of materials and equipment not incorporated in the Work but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in paragraph 14.02 of Section 00700 – General Conditions less the aggregate of payments previously made and less such amounts as ENGINEER should determine or OWNER may withhold, in accordance with paragraph 14.07 of Section 00700 – General Conditions, except that OWNER will retain a portion of each progress payment limited to:
 - 5.1.1.1 Not more than 10% of the dollar value of the Work completed until 50% of the Work has been completed as determined by ENGINEER.
 - 5.1.1.2 After the Work has been 50% completed as determined by ENGINEER, additional retainage will not be withheld unless OWNER determines that CONTRACTOR is not making satisfactory progress, or for other specific cause relating to CONTRACTOR’s performance under the Contract. If the OWNER so determines, the OWNER may retain not more than 10% of the dollar value of the Work more than 50% completed.
 - 5.1.2 Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95% of the Contract Price, less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.07 of the Section 00700 - General Conditions.
 - 5.1.3 Owner may deduct from progress payments amounts which are due to OWNER from CONTRACTOR in accordance with the Contract Documents.
 - 5.1.4 After Substantial Completion, OWNER may, at OWNER’s sole discretion, pay an amount sufficient to increase total payments to CONTRACTOR to more than 95% of the Contract Price if OWNER has received consent of surety in a form acceptable to OWNER.

- 5.1.5 Progress payments shall not be due until 15 days after OWNER has received the funds with which to make the progress payment from a department or agency of the federal or state government, if any funds are to come from any of these sources.
- 5.2 Retained funds will not be commingled with other funds of OWNER and will be deposited in an interest bearing account in a regulated financial institution in this state wherein all such retained funds are kept by OWNER which will account for both retainage and interest on each construction contract separately.
- 5.3 OWNER is not required to deposit retained funds in an interest bearing account if the retained funds are to be provided under a state or federal grant and the retained funds have not been paid to OWNER.
- 5.4 OWNER, at any time after 94% of work under the Contract has been completed as determined by ENGINEER and at the request of CONTRACTOR, will release the retainage plus interest to the CONTRACTOR only if CONTRACTOR provides to OWNER an irrevocable letter of credit in the amount of the retainage plus interest, issued by a Bank authorized to do business in State of Michigan, containing terms mutually acceptable to CONTRACTOR and OWNER.
- 5.5 Unresolved disputes between OWNER and CONTRACTOR regarding retained funds and interest on retained funds shall be submitted to an agent in accordance with the dispute resolution process described in Section 4 of State of Michigan Act 524 of P.A. of 1980.

ARTICLE 6 - INTEREST

All moneys not paid when due as provided in Article 14 of Section 00700 - General Conditions shall bear no interest.

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

CONTRACTOR, on behalf of itself, its subcontractors, suppliers, and other persons and organizations (including those who are to finish principal items of material and equipment), 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.
- 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, and performance 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, and performance 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 relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) if identified in Section 00800 – Supplementary Conditions as provided in paragraph 4.02A.1. to Section 00700 – General Conditions. CONTRACTOR accepts the determination set forth in paragraph 4.02A.1 of Section 00800 – 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 4.02A.1 of Section 00700 – 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 or Subsurface Conditions at or contiguous to the Site.
- 7.5 CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or 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.
- 7.6 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.
- 7.7 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.
- 7.8 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, 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 CONTRACTOR’S Bid dated _____.
- 8.2 Addenda ____ to _____, inclusive.
- 8.3 This Agreement.
- 8.4 Construction Performance Bond.
- 8.5 Construction Payment Bond.
- 8.6 Maintenance & Guarantee Bonds and Insurances.
- 8.7 General Conditions.
- 8.8 Supplementary Conditions.

- 8.9 Notice of Award.
- 8.10 MDEQ Permit No. 01-23-0003-P.
- 8.11 Notice to Proceed.
- 8.12 Bidding Document bearing the title: Carrier Creek Drain, Division II – Concrete Box Culverts South of I-496 and consisting of Sections and Divisions (and Drawings) as listed in the Table of Contents thereof and dated July 2004.
- 8.13 Drawings, consisting of sheets as listed on the cover sheet with each sheet bearing the following general title: Carrier Creek Drain, Division II – Concrete Box Culverts South of I-496 and dated July 2004.
- 8.14 Contract Specifications entitled: Carrier Creek Drain, Division II – Concrete Box Culverts South of I-496 and dated July 2004.
- 8.15 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto:
8.15.1 Written Amendments.
8.15.2 Change Orders.

There are no Contract Documents other than those listed above in Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.04 of Section 00700 - 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 Section 00700 - 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 of 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 this Agreement 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.

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

CONTRACTOR:

OWNER:

By: _____
Name of CONTRACTOR

Carrier Creek Drain Drainage District

Signature

Signature By: Braden L. Harrington
Eaton County Drain Commissioner

Name and Title of Signatory*

Witness: _____

Witness: _____

Witness: _____

Witness: _____

Signed on _____, 20____
Date*

Signed on _____, 20____
Date*

Street*

Street*

City, State and Zip*

City, State and Zip*

Telephone Number*
* Typed or printed in ink.

Telephone Number*
* Typed or printed in ink.

END OF SECTION

**This document is only being provided as a sample document. The final form of this document will be specific for the division for which it is being awarded.*