

AGREEMENT

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THIS AGREEMENT is by and between City of Marquette (hereinafter called Owner) and Miron Construction Co., Inc. (hereinafter called Contractor).

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, 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:

General construction of wastewater treatment facility buildings and basins including sitework, yard piping, structural, architectural, process piping and equipment, plumbing, heating, ventilation, air conditioning, electrical, and instrumentation and control.

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:

City of Marquette

Marquette Area Wastewater Treatment Facility
Biosolids Improvements Project

Marquette, MI

ARTICLE 3 – ENGINEER

- 3.01 The Project has been designed by Donohue & Associates, Inc., 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 the completion of the Work in accordance with the Contract Documents.

ARTICLE 3 – ENGINEER AND DESIGNER

- 3.01 Donohue & Associates, Inc. who is hereinafter called Engineer and who is to act as Owner's representative, will 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. The Project has been designed by Donohue & Associates, who is hereinafter called Designer, will consult with, advise, and assist the Engineer in connection with the completion of the Work in accordance with the Contract Documents.
- 3.02 The Owner will 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. The Project has been designed by Donohue & Associates, who is hereinafter called Designer, will consult with, advise, and assist the Owner in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

- 4.01 Time of 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 Days to Achieve Substantial Completion and Final Payment

- A. The Work will be substantially completed within 600 days after the date when the Contract Times commence to run as provided in Article 4 of the General Conditions, and completed and ready for final payment in accordance with Article 15 of the General Conditions within 660 days after the date when the Contract Times commence to run.

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 and Milestones not achieved within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding that 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).

1. Substantial Completion: Contractor shall pay Owner \$2,650 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$2,650 for each day that expires after such time until the Work is completed and ready for final payment.
3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.
4. Contractor and Owner also recognize that Owner will suffer financial loss if part of the Work is not completed within the Milestone times specified in Section 01 11 00, 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 part of 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 the amount stated below for each day that expires after the time specified in Section 01 11 00 for Substantial Completion of each Milestone until the Work is substantially complete.

- a. Milestone No. 1: \$1,000

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 as follows:

Twelve Million, Seven Hundred Fifty-Eight Thousand, Three Hundred Twenty-Four Dollars (\$ 12,758,324)
(words) (figures)

- 5.02 Owner accepts/rejects the following alternates as described in Section 01 23 00 and indicated on the Bid Form:

- A. Accept Alternate 1: Waste Receiving Station Equipment by Huber.
B. Reject Alternate 2: BFP Feed Pump No 2

- C. Reject Alternate 3: Building 960 Cake Storage Structure No. 2 Larger Footprint
- D. Reject Alternate 4: High Pressure W3 Pump No 1
- E. Accept Alternate 5: Additional Capital Improvements
- F. Reject Alternate 6: Odor Control System

ARTICLE 6 – PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer 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. All such payments will be measured by the Schedule of Values established as provided in 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 elsewhere in the Contract.
- B. 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 Article 15 of the General Conditions:
 - 1. 95% of Work completed (with the balance being retainage). If the 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 subsequently completed, in which case the remaining progress payments will be in an amount equal to 100% of the Work completed less the aggregate of previous retainage and payments previously made. At 50% completion, or any time thereafter, when the character and progress of the Work is not satisfactory, additional amounts may be retained, but in no event shall the total retainage be more than 10% of the value of the Work completed.
- C. Upon Substantial Completion, the amount of retainage may be reduced. Upon Substantial Completion, Owner may make additional payments, retaining at all times an amount sufficient to cover the estimated cost of the work still to be completed or corrected.

6.03 Final Payment

- A. Upon final completion and acceptance of the Work in accordance with Article 15 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Article 15.

ARTICLE 7 – INTEREST

- 7.01 All amounts not paid when due as provided in Article 15 of the General Conditions shall bear interest at the maximum rate allowed by law at the place of the project.

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, conducted a thorough, alert visual examination of the Site and adjacent areas, 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 adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports.
 - E. Contractor has considered and correlated the information known to the 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 all additional or supplementary examinations, investigations, explorations, tests, studies, and data 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. Contractor does not consider that any 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.
 - J. In accordance with Section 215 of the Clean Water Act (33 U.S.C. 1295 et seq.) and implementing EPA regulations, Contractor agrees that the Contractor, Subcontractors, and suppliers in the performance of this Contract will give preference to domestic construction materials.
 - K. In connection with the performance of Work under this Contract, Contractor agrees not to discriminate against any employee or applicant for employment because of age, race,

religion, color, handicap, sex, physical condition or developmental disability or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. Contractor further agrees to take affirmative action to ensure equal employment opportunities for persons with disabilities. Contractor agrees to post in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause.

- L. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.
- M. Contractor has reviewed and understands the Use of American Iron and Steel requirements of the Clean Water State Revolving Fund. Contractor's bid reflects their best, good faith effort to identify domestic sources of iron and steel, where such American-made products were available to meet the contract times. All iron and steel products contained in the Contractor's bid will be produced in the United States in a manner that complies with the Use of American Iron and Steel requirements, unless a waiver is approved. Contractor will provide further verification, certification or assurance of compliance, or information necessary to support a waiver of the Use of American Iron and Steel requirements. Contractor understands that any failure to comply with the Use of American Iron and Steel requirement shall permit the Owner or the State to recover as damages against the Contractor any loss, expense, or cost (including without limitation to engineering or attorney's fees) incurred by the Owner or the State resulting from any such failure. While the Contractor has no direct contractual privity with the State, as a lender to Owner for the funding of this project, the Owner and Contractor agree that the State is a third-party beneficiary and neither this paragraph, nor any other provision of this Agreement necessary to give this paragraph force or effect, shall be amended or waived without the prior written consent of the State.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 00 52 13-1 to 10, inclusive);
 - 2. Performance Bond Form (pages 00 61 13.13-1 to 00 61 13.13-4, inclusive);
 - 3. Payment Bond Form (pages 00 61 13.16-1 to 00 61 13.16-4, inclusive);
 - 4. General Conditions (pages 00 72 00-1 to 00 72 00-70, inclusive);
 - 5. Supplementary Conditions (pages 00 73 00-1 to 00 73 00-22, inclusive);
 - 6. Specifications as listed in the table of contents of the Project Manual;
 - 7. Drawings, not attached hereto, consisting of a cover sheet and sheets numbered 1 through 247, inclusive, with each sheet bearing the following general title: Marquette Area Wastewater Treatment Facility Biosolids Improvements Project;
 - 8. Addenda (numbers 1 to 3, inclusive);
 - 9. Exhibits to this Agreement (enumerated as follows):

- a. Exhibit A: "Base Bid (Type I) Material and Equipment Schedule" from Contractor's Bid (page 00 41 13-11);
 - b. Exhibit B: "Base Bid (Type II) Material and Equipment Schedule" from Contractor's Bid (page 00 41 13-12);
 - c. List of proposed Subcontractors having a direct contract with the Contractor from the Subcontractor Listing included with the Contractor's Bid (page 00 41 13-10).
 - d. Exhibit E: Rigid Inclusions Contractor Qualification Form (page 00 41 13-13 through 00 41 13-15).
10. Required Standard Contract Language: Clean Water State Revolving Fund and Drinking Water Fund (00 41 00);
 11. American Iron and Steel (00 41 01);
 12. Wage Rates (00 41 03);
 13. Documents in the Appendix;
 14. 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. Change Orders;
 - c. Work Change Directives;
 - d. Field Orders;
 - e. Engineer's written interpretations and clarifications.
- 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 the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 Terms

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

10.02 Assignment of Contract

- A. Unless expressly agreed to elsewhere in the Contract, 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, money that may become due and money that is 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. Contractor's Estimated Payment Request Schedule for Outlay Management:
 - 1. Within 30 days of issuance of the Notice to Proceed, Contractor shall furnish Owner with a schedule of the estimated dollar value of work projected to be completed each month for the duration of the Contract. The schedule shall be updated monthly based on actual expenditures and shall be submitted along with Contractor's monthly application for progress payment. The schedule shall be detailed to allow separation of eligible and ineligible cost items and Innovative/Alternative cost items.

(Continued On Next Page)

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in triplicate. One counterpart each has been delivered to Owner, Contractor, and Engineer. All portions of the Contract Documents have been signed or identified by Owner and Contractor.

This Agreement will be effective on _____, 2023 (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR:

By: _____
(signature)

By: _____
(signature)

(typed name and title)

(typed name and title)

Attest _____
(signature)

Attest _____
(signature)

Address for giving notices:

Address for giving notices:

If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Owner-Contractor Agreement.

License No. _____
(where applicable)

Approved as to form and execution this

Agent for service of process: _____

_____ day of _____, 20____

(attorney for Owner)

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

Countersigned by:

Comptroller
(or other designated official)

Designated Representative:

Name: _____

Title: _____

Address: _____

Phone: _____

Email: _____

Designated Representative:

Name: _____

Title: _____

Address: _____

Phone: _____

Email: _____

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in triplicate. One counterpart each has been delivered to Owner, Contractor, and Engineer. All portions of the Contract Documents have been signed or identified by Owner and Contractor.

This Agreement will be effective on _____, 2023 (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR:

Miron Construction Co., Inc.

By: _____
(signature)

By: *David G. Voss Jr.*
(signature)

(typed name and title)

David G. Voss, Jr., President
(typed name and title)

Attest _____
(signature)

Attest *Stephan D. ...*
(signature)

Address for giving notices:

Address for giving notices:

Miron Construction Co., Inc.
ATTN: Legal Department
1471 McMahan Drive
Neenah, WI 54956

If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Owner-Contractor Agreement.

License No. _____
(where applicable)

Approved as to form and execution this

Agent for service of process: _____

_____ day of _____, 20__

(attorney for Owner)

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

Countersigned by:

Comptroller
(or other designated official)

Designated Representative:

Name: _____

Title: _____

Address: _____

Phone: _____

Email: _____

Designated Representative:

Name: Travis Fleis

Title: Project Manager

Address: 1471 McMahon Drive

Neenah, WI 54956

Phone: (920)886-7408

Email: travis.fleis@niron-construction.com

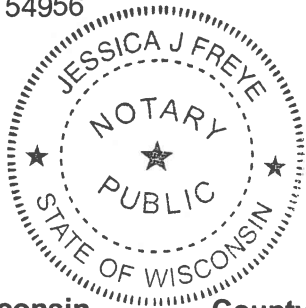
CORPORATION RESOLUTION

Adopted at Board of Directors Meeting of December 28, 2022 be it resolved that David G. Voss, Jr., the President of the Corporation, is hereby authorized and empowered to execute contracts on behalf of the Corporation, and that this resolution shall continue in force and effect until modified or rescinded by subsequent action of the stockholders or of the Board of Directors of the Corporation.

Dean J. Basten

Dean J. Basten, CPA
Secretary/Treasurer

MIRON CONSTRUCTION CO., INC.
1471 McMahon Drive
Neenah, WI 54956



Witnessed By:

Jessica J. Freye

State of Wisconsin County of Winnebago

Subscribed to and sworn before me this 25th day of April, 2023

Notary Public *Jessica J. Freye*

My Commission Expires: April 3, 2026