

## **AGREEMENT BETWEEN OWNER AND CONTRACTOR**

This AGREEMENT made on the 15 day of July in the year 2019 by and between,  
Town of Pound Ridge (hereinafter called OWNER) and  
Con-Tech Construction Technology (hereinafter called the CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

### **ARTICLE 1 – WORK**

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

The purpose of this project is to enhance pedestrian safety, bicyclist safety, and the streetscape along Westchester Avenue in the vicinity of Scotts Corners. Project objectives include replacing existing sidewalks, constructing new sidewalks to infill gaps in the existing sidewalk network, upgrading pedestrian facilities to conform with Americans with Disabilities Act Accessibility Guidelines (ADAAG) and Public Rights of Way Accessibility Guidelines (PROWAG), installing measures (medians, signage, markings, vegetation, etc.) designed to encourage lower vehicular travel speeds, modifying curbcuts and parking arrangements, planting shade trees, providing pedestrian level illumination along sidewalks, and improving the condition and application of traffic control devices in accordance with the National Manual of Uniform Traffic Control Devices (MUTCD) and the New York State Supplement.

### **ARTICLE 2 – ENGINEER**

The Project has been designed by Milone and MacBroom, Inc. who is hereinafter called ENGINEER and who is to act as OWNERS 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 TIME**

3.1. This project is scheduled for 180 calendar days (6 months) contract period beginning from the date of Notice to Proceed. The Work will be completed and ready for final payment in accordance with section 14.07 of the General Conditions on or before November 31, 2019.

3.2. Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that the 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 contained within this proposal. They also recognize delays, expense and difficulties involved in proving the actual loss suffered by the OWNER is not completed on time. Accordingly, instead of requiring such proof, OWNER and



TOTAL OF ALL BASE BID  
AND ALTERNATE 1, 2, 3 & 4  
UNIT PRICES \_\_\_\_\_ \$ \_\_\_\_\_ dollars  
(Use words) (figures)

TOTAL OF ALL BASE BID  
AND ALTERNATE 1, 2, 3, 4 & 5  
UNIT PRICES \_\_\_\_\_ \$ \_\_\_\_\_ dollars  
(Use words) (figures)

- 4.2. 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 the ENGINEER during construction as provided in paragraph 9.07 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03.C of the General Conditions.

#### **ARTICLE 5 – PAYMENTS**

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

5.1. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by the ENGINEER, on or about the 10th day of each month during construction as provided in paragraphs 5.1.1 and 5.1.2 below. All such payments will be measured by the schedule of values established in paragraph 2.07 of the General Conditions (and in Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in General Requirements.

- 5.1.1. As the work progresses in accordance with the contract and in a manner that is satisfactory to the Owner, the Owner hereby agrees to make payments to the Contractor therefore, based upon the proposal attached hereto and made a part hereof, as follows: The Owner shall once in each month and on such days as it may fix, determine the quantity of work completed and of material which has actually been put in place in accordance with the terms and conditions of the contract, during the preceding month, and compute the value thereof and pay to the Contractor the monies due as determined by the Engineer. No monthly payment shall be rendered unless the value of the work completed equals 5% of the contract amount or \$1,000, whichever is the lesser. Semi-monthly payments may be rendered provided (a) the value of work performed in two successive weeks is more than \$50,000 or (b) the Engineer deems it to be in the best interest of the Owner to do so. The Contractor shall not hold any retainage from any Subcontractor.

- 5.1.2. When in the opinion of the Engineer, a Contractor has fully performed the work under the contract, the Engineer shall recommend to the Owner the acceptance of work so completed. If the Owner accepts the recommendation of the Engineer, he/she shall thereupon by letter notify the Contractor, with copies to the other interested parties, of such acceptance. Prior to the final acceptance of the work by the Owner, the contract work may be inspected, accepted and approved by other agencies and/or municipalities who will have jurisdiction of the work after final acceptance.
- 5.2. The Owner reserves the right, at any time, to modify or change the Plans or Specifications as deemed necessary, and the Agreement shall not be invalidated thereby, however;
- 5.3. If the Contractor considers that he is being required to perform extra work for which no Change Order has been issued, he shall serve Written Notice upon the Owner prior to such extra work is performed. On failure to serve this Notice, all rights of the Contractor to be paid therefore shall be forfeited.
- 5.4. Upon final completion and acceptance of the work in accordance with section 14.07 of the General Conditions, the Owner shall pay the remainder of the Contract Price as recommended by the Engineer as provided in said section 14.07.

#### **ARTICLE 6 - INTEREST**

All monies not paid when due as provided in Article 14 of the General Conditions shall bear interest at the statutory rate of New York State.

#### **ARTICLE 7 - CONTRACTOR REPRESENTATIONS**

In order to induce the OWNER to enter into this Agreement the CONTRACTOR makes the following representations:

- 7.1 CONTRACTOR has examined and carefully studied the Contract Documents (including Addenda listed in Article 8) and other related data identified in the Bidding Documents including "technical data."
- 7.2 CONTRACTOR as visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance or furnishing 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, progress, performance and furnishing 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) which have been identified in the Supplementary Conditions as provided in paragraph 4.02.A of the General Conditions. CONTRACTOR accepts the determination set forth on paragraph SC-4.02 of the 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 4.02 of the General Conditions. CONTRACTOR acknowledges that such reports and drawing 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 at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations test, studies and data concerning conditions (surface, subsurface, Underground Facilities) at or contiguous to the site or otherwise which may affect the cost, progress, 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, test, 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.

- 7.5 CONTRACTOR is aware of the general nature of the work to be performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.
- 7.6 CONTRACTOR has correlated the information known to the CONTRACTOR, information and observation 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.
- 7.7 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 the 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 the Owner and the Contractor concerning the Work consist of the following:

- 8.1. This Agreement

- 8.2. Performance, Payment and other Bonds
- 8.3. Notice to Proceed
- 8.4. General Conditions
- 8.5. Supplementary Conditions
- 8.6. All technical specification as set forth in the Table of Contents
- 8.7. Drawings consisting of a cover sheet and sheets numbered 2 through 44 , inclusive with each sheet bearing the following general title: SCOTTS CORNERS PEDESTRIAN SAFETY, BICYCLIST SAFETY AND STREETScape ENHANCEMENT PROJECT; PIN 8780.51
- 8.8. Addenda numbers 1 to 387w3 043 inclusive
- 8.9. CONTRACTOR's Bid Pages as set forth in the Bidders Checklist
- 8.10. Documentation submitted by CONTRACTOR prior to Notice of Award
- 8.11. Appendix A – Additional Provisions
- 8.12. State and/or Federal Prevailing Wage Schedules, as applicable
- 8.13. All other documents set forth in this project manual except Supplemental Information Available to Bidders
- 8.14. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All written Amendments and other documents amending, modifying or supplementing Contract Documents pursuant to paragraph 3.04 of the General Conditions.

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 the General Conditions.

#### **ARTICLE 9 – MISCELLANEOUS**

- 9.1. Terms used in this Agreement shall have the same meanings which are defined in Article 1 of the 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 Document.

9.3. Neither the Owner nor the Contractor shall, without the prior written consent of the other, assign or sublet in whole or in part his interest under any of the Contract Documents and, specifically, the Contractor shall not assign any monies due or to become due without the prior written consent of the Owner.

9.4. The Owner and the 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.

9.5. 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 unenforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.6. OTHER PROVISIONS

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, initialed or identified by OWNER and CONTRACTOR, or identified by ENGINEER on their behalf.

This Agreement will be effective on July 15 2019 (which is the Effective Date of the Agreement).

OWNER Town of Pound Ridge  
[Signature]  
By: Kevin C. Hansan, Town Supervisor

CONTRACTOR Con-Tech Construction Technology Inc  
[Signature]  
By: Giuseppa Carino, President

[CORPORATE SEAL]

Attest: [Signature]  
Address for giving notices  
179 Westchester Avenue  
Pound Ridge, NY 10576

[CORPORATE SEAL]

Attest: [Signature]  
Address for giving notices  
1961 Route 6, Suite R-3  
Carmel, NY 10512

(If OWNER is a public body, attached evidence of authority to sign and resolution or other documents authorizing execution of Agreement)

License No. \_\_\_\_\_  
Agent for services of process: \_\_\_\_\_

---

---

(If CONTRACTOR is a corporation, attach evidence of authority to sign).