

**AGREEMENT**

THIS AGREEMENT is by and between the City of Bethel, a municipal corporation, (Owner) and Merrell Bros., Inc. (Contractor).

Owner and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

1. **WORK**

1.1. Contractor shall complete the Work as specified or indicated in the Contract Documents (plans and specifications). The Work is generally described as follows:

1.2.

1.2.1. Remove and dispose of existing baffles.

1.2.2. Dredge the existing sludge from the primary sewage lagoon.

1.2.3. Mechanically dewater the sludge removed from the lagoon.

1.2.4. Test sludge and provide scales as a means to quantify volume of sludge removed from the lagoon.

1.2.5. Prepare sludge disposal cell in the existing landfill located adjacent to the primary lagoon.

1.2.6. Dispose of sludge in the landfill.

2. **THE PROJECT**

2.1. The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

2.1.1. Remove, dewater and dispose of the sludge from the primary sewage lagoon and install baffles in the primary and secondary sewage lagoons, as described in the Contract Documents.

3. **ENGINEER**

3.1. The Project has been designed by CH2M HILL (Engineer), who is to act as Owner's representative, assume 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.

4. **CONTRACT TIMES**

4.1. Time of the Essence: Time limits, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

#### 4.2. Dates for Substantial Completion and Final Payment:

4.2.1. The Work shall be substantially completed on or before June 30, 2018 and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before August 31, 2018.

#### 4.3. Liquidated Damages:

4.3.1. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph Contract Times above, plus any extensions thereof allowed in accordance with Article 11 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 **\$1,000** for each day that expires after the time specified herein for Substantial Completion until the Work is substantially complete.

4.3.2. After Substantial Completion, if Contractor neglects, refuses, or fails to complete remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$500 for each day that expires after the time specified herein for completion and readiness for final payment until the Work is completed and ready for final payment.

### 5. CONTRACT PRICE

5.1. Owner will 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 the following:

5.1.1. Lump Sum (A): For Work other than Unit Price Work, a lump sum of **ONE MILLION, TWO HUNDRED SEVENTY-FOUR THOUSAND, THREE HUNDRED TWELVE DOLLARS (\$1,274,312)**.

5.1.2. Unit Prices:

5.1.2.1. As provided in Paragraph 13.03 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 10.06 of the General Conditions. Unit prices have been computed as provided in Paragraph 13.03 of the General Conditions.

5.1.2.2. For Unit Price Work, an amount equal to the sum of established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this paragraph:

Item No.	Description	Estimated Quantity	Unit	Unit Price	Estimated Price (Quantity x Unit Price)
1.	Sludge removal from primary lagoon	2,792	Dry tons	\$1,073.75	\$2,997,910
2.	Sludge disposal in monofill	2,792	Dry tons	\$23.25	\$64,914
3.	Haul/place landfill cover material	5,000	Cubic yards	\$3.28	\$16,400

5.1.3. TOTAL OF ESTIMATED UNIT PRICES (B): **\$3,079,224**

5.1.4. Total Contract Amount (A + B) - Lump Sum Plus Unit Price Total **FOUR MILLION, THREE HUNDRED FIFTY-THREE THOUSAND, FIVE HUNDRED THIRTY-SIX DOLLARS (\$4,353,536)**

6. PAYMENT PROCEDURES

6.1. Submittal and Processing of Payments: 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.

6.2. Progress Payments: Owner will make progress payments on account of the Contract Price on the basis of Contractor's Application for Payment on the date of each month as established in the preconstruction conference during performance of the Work as provided herein. All such payments will be measured by the Schedule of Values established as provided in Paragraph 2.05 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.

6.2.1. Upon Substantial Completion, Owner will pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts as Engineer will determine in accordance with Paragraph 15.01.C.6 of the General Conditions and less 100 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.

6.3. Final Payment:

6.3.1. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner will pay the remainder of the Contract Price as recommended by Engineer as provided in Paragraph 15.06.

7. INTEREST

7.1. Monies not paid when due as provided in Article 15 of the General Conditions are not retainage and shall not bear interest.

8. CONTRACTOR'S REPRESENTATIONS

8.1. In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

8.1.1. Contractor has examined and carefully studied the Contract Documents.

8.1.2. 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.

8.1.3. 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.

8.1.4. 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; 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.

8.1.5. Based on the information and observations referred to above, 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.

8.1.6. Contractor is aware of the general nature of any work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents for Lagoon Jetty Construction.

8.1.7. Contractor has given Engineer written notice of conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

8.1.8. The Contract Documents are generally sufficient to indicate and convey understanding of terms and conditions for performance and furnishing of the Work.

## 9. CONTRACT DOCUMENTS

### 9.1. Contents:

9.1.1. The Contract Documents that are attached to this Agreement (except as expressly noted otherwise) consist of the following:

9.1.1.1. This Agreement (pages 1 to 8, inclusive).

9.1.1.2. Performance bond (pages 1 to 4, inclusive).

9.1.1.3. Payment bond (pages 1 to 2, inclusive).

9.1.1.4. General Conditions (pages 1 to 52, inclusive).

9.1.1.5. Supplementary Conditions (pages 1 to 17, inclusive).

9.1.1.6. Specifications as listed in the table of contents of the Project Manual.

9.1.1.7. Drawings consisting of 7 sheets with each sheet bearing the following general title: "Bethel Lagoon Dredging and Baffle Installation".

9.1.1.8. Addenda (numbers 0 to 1, inclusive).

9.1.1.9. Instructions to Proposers.

9.1.2. Exhibits to this Agreement (enumerated as follows):

9.1.2.1. Contractor's Proposal (pages 1 to 109, inclusive).

9.1.2.2. Documentation submitted by Contractor prior to Notice of Intent to Award (pages n/a to n/a, inclusive).

9.1.3. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

9.1.3.1. Notice to Proceed (pages \_\_\_\_ to \_\_\_\_, inclusive).

9.1.3.2. Work Change Directives.

9.1.3.3. Change Order(s).

9.2. There are no Contract Documents other than those listed above in this Section.

9.3. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 11.01 of the General Conditions.

## 10. MISCELLANEOUS

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

10.2. Successors and Assigns: 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.

10.3. Severability: Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree 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.

10.4. Assignment of Contract:

10.4.1. No assignment by a party hereto of any rights under or interests in the Contract shall be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, monies that may become due and monies 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 shall release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.5. Contractor's Certifications:

10.5.1. 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:

10.5.1.1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the proposing process or in Contract execution;

10.5.1.2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the proposing process or the execution of the Contract to the detriment of Owner, (b) to establish Proposal or Contract Price at artificial noncompetitive levels, or (c) to deprive Owner of the benefits of free and open competition;

10.5.1.3. "collusive practice" means a scheme or arrangement between two or more Proposers, with or without the knowledge of Owner, a purpose of which is to establish Proposal prices at artificial, noncompetitive levels; and

10.5.1.4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the proposing process or affect the execution of the Contract.

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 or on their behalf.

This Agreement will be effective on August 3, 2017 (which is the Effective Date of the Agreement)

OWNER: CITY OF BETHEL

CONTRACTOR: MERREL, BROS., INC.





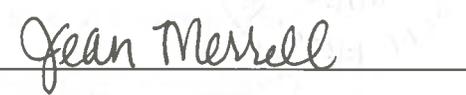
By: Peter A. Williams  
Title: City Manager

By: Terry Merrell  
Title: Owner, Treasurer

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest: 

Attest: 

Title: City Clerk Assit.

Title: SECRETARY

Address for Giving Notices:  
City of Bethel  
Attn: Legal Department  
PO Box 1388  
Bethel AK 99559-1388

Address for Giving Notices:  
Merrell Bros., Inc.  
8811 W 500 N  
Kokomo IN 46901

Alaska Business License No.: 129546  
Alaska Contractor License #: CONE38682