

BILL NO. 457

ORDINANCE NO. 437

INTRODUCED BY: Trustees Slama, Young, Graves, Fortune and Whitmore

AN ORDINANCE APPROVING AN AWARD OF CONTRACT FOR THE ROSE GARDEN PROJECT, TWIN OAKS PARK, AUTHORIZING NOTICE OF INTENT TO AWARD AND EXECUTION OF CONTRACT

WHEREAS, an invitation for public bids was issued on Thursday, August 21, 2014, and were received and opened Thursday, September 10, 2014, and

WHEREAS, Bacchus Construction was the lowest and deemed to be the most responsive bidder in the sum of \$3,600; and

WHEREAS, the Board of Trustees wishes to accept such bid

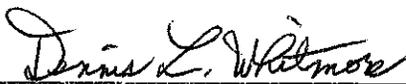
NOW THEREFORE, BE IT ORDAINED, by the Board of Trustees of the Village of Twin Oaks, St. Louis County, Missouri, as follows:

Section 1. The bid of Bacchus Construction as referenced above and incorporated herein as EXHIBIT "A", is accepted by the Board of Trustees.

Section 2. The Village Clerk/Controller is authorized to give Notice of Intent to Award and execute the Contract between the Contractor and the Village, said Contract having been a part and portion of the bid packet for the project.

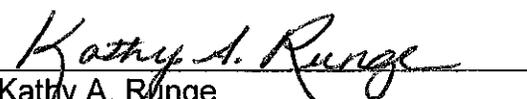
Section 3. This Ordinance shall be in full force and effect from and after its passage as by law provided.

PASSED and APPROVED this 17th day of September, 2014.



Dennis L. Whitmore, Chairman
Board of Trustees

ATTEST:


Kathy A. Runge
Village Clerk/Controller

First Reading 9-17-2014

Second Reading 9-17-2014

OWNER-CONTRACTORS AGREEMENT

This agreement, made by and between Bacchus Construction and Concrete, LLC hereinafter called the CONTRACTOR, and the Village of Twin Oaks, Missouri, an incorporated Municipality, hereinafter called the OWNER.

Now therefore, CONTRACTOR and OWNER, in consideration of mutual covenants herein set forth, agree as follows:

ARTICLE 1. CONTRACT PRICE

OWNER shall pay CONTRACTOR in current funds, for completion of the Work designated in Article 2 in accordance with the Contract Documents, an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work multiplied by the quantity of that item as indicated in the CONTRACTOR'S Bid, for the total amount of:

Thirty Six Hundred

(in words)

(\$ 3600.00)

(in figures)

ARTICLE 2. SCOPE OF THE WORK

Oval concrete pad and connecting walkways in the Rose Garden. Concrete to be colored to match Playground Pavilion. Concrete to be stamped with paver pattern. Final pattern of stamping to be selected by Village Representative. ~~In addition, 45' of footings for a future stone wall with a French drain. See renderings for conceptual design.~~

ARTICLE 3. TIME OF COMPLETION

The CONTRACTOR shall commence operations after September 21, 2014. Project to be completed no later than November 1, 2014. Project completion shall be defined as 100% completion of all items of the project including correction of deficiencies. Failure to complete the project within schedule will result in 1.5% of the cost of the project per day per Article 13 of this contract.

The rate of progress and the time of completion are essential conditions of this Contract. Liquidated damages will be charged as specified herein.

Should the CONTRACTOR, or in case of default, the surety fail to complete the work within the calendar days specified, a deduction of the amount will be made for each and every calendar day

that the contract remains uncompleted in accordance with the requirements of ARTICLE 13 contained herein.

ARTICLE 4. PAY QUANTITIES AND UNIT PRICES

The OWNER shall pay the CONTRACTOR for all work done on the basis of final computations for all work acceptably completed according to this Contract, at the unit price shown on the BID FORM for the quantity actually installed.

ARTICLE 5. (BLANK)

ARTICLE 6. FINAL PAYMENT AND ACCEPTANCE

Refer to Article 14 for payment schedule.

ARTICLE 7. THE CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- a. This Owner-Contractors Agreement.
- b. Exhibits to the Owner-Contractor's Agreement (if any).
- c. General Requirements
- d. Performance and Payment Bonds.
- e. Notice of Award.
- f. Notice to Proceed.
- g. Drawings, if needed, with each sheet bearing the following general title:

**Rose Garden Project
TWIN OAKS, MISSOURI**

- h. Bid Form.
- i. All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents, which may be delivered or issued after the Effective Date of the Agreement, and are not attached hereto.

There are no Contract Documents other than those listed in this article. The Contract Documents may be amended, modified, or supplemented only in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) a Work Change Directive.

The requirements of the Contract Documents may be supplemented and minor variations and deviations in the Work may be authorized, by a Field Order, or ENGINEER'S written interpretation or clarification.

ARTICLE 8. RATES OF PAY

The CONTRACTOR hereby agrees that the prevailing rates of pay shall be paid to skilled and unskilled labor employed under the terms of this contract. The CONTRACTOR shall forfeit to the OWNER ten (10) dollars for each workman employed, for each calendar day, or portion thereof, such workman is paid less than the said stipulation rates for any work done under said contract, by him or by any subcontractor under him.

ARTICLE 9. PERFORMANCE OF THE WORK

The CONTRACTOR, acting as an independent CONTRACTOR, shall furnish all supervision, labor, equipment, tools, materials, and supplies necessary to perform and shall perform all work in accordance with the Contract Documents and any applicable Owner ordinances, and state and federal laws. CONTRACTOR represents and warrants that he has special skills which qualify him to perform the Work in accordance with the Contract and that he is free to perform all such Work and is not a party to any other agreement, written or oral, the performance of which would prevent or interfere with the performance, in whole or in part, of the Work. The prime CONTRACTOR must perform, with its own organization, contract work amounting to not less than 40% of the total original contract.

ARTICLE 10. SUPERVISION

The CONTRACTOR shall supervise and direct the Work, using the CONTRACTOR'S best skill and attention. The CONTRACTOR shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning those matters.

ARTICLE 11. SAFETY

The OWNER and the ENGINEER may have personnel on the project site from time to time. All information and/or instructions shall be requested in writing by the CONTRACTOR and responded to in writing. No opinion or instructions will be given to the CONTRACTOR on safety.

The CONTRACTOR shall be solely responsible for the safety on and around the project site including shoring, ladders, drop cords, scaffolding, barricades, construction means, methods, techniques, sequences and procedures.

ARTICLE 12. INDEMNITY

To the fullest extent permitted by law, the CONTRACTOR shall indemnify and hold harmless the OWNER, the OWNER'S REPRESENTATIVE, ENGINEER, their consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property other than the Work itself, including loss of use resulting there from, but only to the extent caused in whole or in part by negligent acts or omissions of the CONTRACTOR, a Subcontractor, or anyone directly or

indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party or person described in this Section.

In claims against any person or entity indemnified under the above paragraph by an employee of the CONTRACTOR, a Subcontractor, or anyone directly or indirectly employed by them or anyone whose acts they may be liable, the indemnification obligation under this paragraph shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or a Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

The obligations of the CONTRACTOR under this Section shall not extend to the liability of the ENGINEER, the OWNER'S REPRESENTATIVE, the ENGINEER'S consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions, after requested in writing by the CONTRACTOR, or instructions by the ENGINEER, the OWNER'S REPRESENTATIVE, the ENGINEER'S consultants, and agents and employees of any of them provided such instructions or failure to give is the primary cause of the injury or damage.

ARTICLE 13. LIQUIDATED DAMAGES

Whenever time is mentioned in this contract, time shall be and is of the essence of this contract. The OWNER would suffer loss should the CONTRACTOR fail to have the work embraced in this contract fully completed on or before the time above specified: THEREFORE, in order to adjust satisfactorily the damage on account of such failure, and the parties hereto realizing that it might be impossible to compute accurately or estimate the amount of such loss or damages which the OWNER would sustain by reason of failure to complete fully said work within the time required by this contract, the CONTRACTOR hereby covenants and agrees to pay the OWNER, as and for liquidated damages for each and every calendar day during which work remains incomplete and unfinished. Any sum which may be due the OWNER for such damages shall be deducted and retained by the OWNER from any balance which may be due the CONTRACTOR for progress payments or when said work shall have been finished and accepted. But such provisions shall not release the bond of the CONTRACTOR from liability according to its terms. In case of failure to complete, the OWNER will be under no obligation to show or prove any actual or specific damage.

Therefore, the CONTRACTOR will be charged with liquidated damages specified in the amount of **1.5% of the total contract amount** per calendar day for each full day that all work for the **Rose Garden Project, in the Village of Twin Oaks, Missouri**, is not completed, and in working order to the satisfaction of the Owner and the Village of Twin Oaks, Missouri, in excess of the limitation as specified elsewhere in this special provision. It shall be the responsibility of the OWNER or its ENGINEER to determine the quantity of excess days.

ARTICLE 14. PAYMENT TERMS

Contractor will be paid on the following schedule:

1. 25% on Notice to Proceed

2. 75% on Final Inspection

ARTICLE 15. TERMINATION BY OWNER OR CONTRACTOR

(a) If the CONTRACTOR is adjudged to be bankrupt, or if the CONTRACTOR makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of the CONTRACTOR's insolvency, or if the CONTRACTOR fails, except in cases for which extension of time is provided, to make progress in accordance with the Construction Schedule, or if the CONTRACTOR fails to make prompt payment to Subcontractors or prompt payment for material or labor, or disregards laws, ordinances or the instructions of the OWNER, or otherwise breaches any provision of the Contract, the OWNER may, without prejudice to any other right or remedy, terminate the Contract by giving written notice to the CONTRACTOR and his surety. Upon such notification the OWNER shall be entitled to take possession of the Work and of all materials and equipment thereon and finish the Work by whatever method the OWNER may deem expedient, which may include, but is not limited to, the OWNER itself completing the work or the OWNER hiring others to complete said work. In such case, the CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Sum shall exceed the expenses of finishing the Work, including additional engineering, architectural, managerial and administrative expenses, and liquidated damages, such excess shall be paid to the CONTRACTOR. If such expenses and damages exceed the unpaid balance of the Contract Sum, the CONTRACTOR shall pay the difference to the OWNER promptly upon demand. In the event of termination pursuant to this paragraph, the CONTRACTOR, upon the request of the OWNER, shall promptly:

- (i) assign to the OWNER in the manner and to the extent directed by the OWNER all right, title and interest of the CONTRACTOR under any subcontracts, purchase orders and construction equipment leases to which the CONTRACTOR is a party and which relate to the Work or to construction equipment required therefore, and
- (ii) make available to the OWNER to the extent directed by the OWNER all construction equipment owned by the CONTRACTOR and employed in connection with the Work.

(b) Performance of the Work hereunder may be terminated by the OWNER by giving three (3) days prior written notice to the CONTRACTOR if the OWNER, in its sole discretion, decides to discontinue or suspend construction. In the event of such termination, as opposed to termination pursuant to paragraph (a) of this Article 15, the Contract Sum shall be reduced in an equitable manner by agreement between the parties.

ARTICLE 16. AUDIT CLAUSE

Examination of Records

The CONTRACTOR's records which shall include, but not be limited to, accounting records (hard copy, as well as computer readable data), written policies and procedures, subcontractor files, indirect cost records, overhead allocation records, correspondence, instructions, drawings, receipts, vouchers, memoranda, and any other data relating to this

contract shall be open to inspection and subject to audit and/or reproduction by the Owner Auditor, or a duly authorized representative from the OWNER, at the OWNER's expense. The CONTRACTOR shall preserve all such records for a period of three years, unless permission to destroy them is granted by the OWNER, or for such longer period as may be required by law, after the final payment. Since the CONTRACTOR is not subject to the Missouri Sunshine Law (Chapter 610, RSMo), information regarding the CONTRACTOR's operations obtained during audits will be kept confidential.

IN WITNESS WHEREOF the parties hereto have caused this instrument to be executed in four (4) original counterparts as of the day and year last written below.

Executed by the OWNER this 10th day of September, 2014.

Executed by Bacchus Construction (CONTRACTOR) this 10th day of September, 2014. and Concrete, LLC

CONTRACTOR Bacchus Construction and Concrete, LLC.

David Woodruff

President

Sandy Cumetta

Secretary

VILLAGE OF TWIN OAKS, MISSOURI

Dennis L. Whitmore

Dennis Whitmore
Chairman, Board of Trustees

ATTEST Kathy A. Runge

~~Kathleen Runge~~ Kathy A. Runge
Village Clerk / Controller

