

EJCDC
FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR FOR
CONSTRUCTION CONTRACT (STIPULATED PRICE)

Date

THIS AGREEMENT is by and between TOWN OF HOPE MILLS

(Owner) and CROWDER CONSTRUCTION COMPANY

(Contractor).

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

The Contractor will furnish all of the materials, supplies, tools equipment, labor and other services necessary for the construction and completion of construction of Hope Mills Dam Repair located in the Town of Hope Mills, North Carolina as shown in the contract documents. The work will specifically include, but is not limited to, the following major items:

- Mobilization
- Installation and removal of erosion and sediment control measures
- Removal and disposal of existing spillway structure and appurtenances
- Cofferdam Construction
- Stream Rerouting
- Reinforced Concrete Labyrinth Spillway
- Labyrinth Subdrainage System
- Seepage Cutoff System
- Reinforced Concrete Fishway
- Inlet and outlet improvement to hydro sluice
- Upstream Dam Slope Protection
- Downstream Slope Toe Drain Installation
- Pile installation
- Removal of Existing Diversion Berm
- Removal of Historic/Archaeological Structures

As noted

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:

Same as 1.01.

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by:

McKim & Creed, P.A., 200 MacKenan Court, Cary, NC 27511, 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 4 - CONTRACT TIMES

4.01 Time of the 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 Dates for Substantial Completion and Final Payment

- A. The Contractor shall provide a schedule of values for the work within 10 calendar days after the issuance date of the Notice to Proceed. The Work will be substantially completed within 430 days of the issuance date of the Notice to Proceed, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 460 days (approximately 15 months) of the issuance date of the Notice to Proceed.

4.03 Liquidated Damages

- A. 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 4.02 above, 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 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 \$500 for each calendar day that expires after the time specified in Paragraph 4.02 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 or any proper extension thereof granted by Owner, Contractor shall pay Owner \$500 for each calendar day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

Time

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 equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A and 5.01.B below:

- A. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this paragraph 5.01.B:

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 Engineer as provided in Paragraph 9.07 of the General Conditions. Unit prices have been computed as provided in Paragraph 11.03 of the General Conditions.

Owner reserves the right to renegotiate unit prices if actual quantities vary by more than 15 % of the estimated quantities. Storage of materials and/or supplies will not be eligible for payment. Only materials and supplies installed in accordance with the contract documents will be eligible for payment.

- B. For all Work, at the prices stated in Contractor's Bid, attached hereto as Attachment 1- Bid Schedule.

ARTICLE 6 - PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment in accordance with Article 14 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 on a day of each month designated by the Owner during performance of the Work as provided in Paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A 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:

1. 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 Paragraph 14.02 of the General Conditions:
 - a. 90 percent of Work completed (with the balance being retainage). No reimbursement will be made for any supplies and/or materials stored on or offsite. Supplies and material reimbursement will only be made once materials and supplies are installed in accordance with the requirements of the contract documents.
2. Upon Substantial Completion as verified by Engineer, Contractor may request, subject to approval by Owner an amount sufficient to increase total payments to Contractor to 95 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 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.

6.03 Final Payment

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

ARTICLE 7 - INTEREST

- 7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the maximum legal rate.

NO INTEREST

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 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 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 which have been identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in Paragraph 4.06 of the General Conditions.
- E. The Contractor agrees to perform all of the Work described in the Contract Documents and comply with the terms herein as shown in the Bid Proposal.
- F. Contractor, as a condition precedent to bidding, has obtained and carefully studied all 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 of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor. In addition Contractor, as a condition precedent to bidding, has carefully evaluated the site with respect to all surface and subsurface conditions that may impact construction including any and all specific, methods, techniques, sequences, and procedures for supplemental or incidental measures necessary to complete construction including but not limited to dewatering, stream rerouting, pumping, bailing, soil conditioning, etc. which have been incorporated into the contract price.

1/11/02

- G. 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.
- H. 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.
- I. 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.
- J. 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
- K. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- L. Contractor, as a condition precedent to submitting bid, acknowledges that the expertise to satisfy the requirements of the contract documents will be provided by Contractor within the timeframe specified for the project.
- M. Contractor, as a condition precedent to submitting bid, acknowledges that design services provided by Engineer and/or Owner for the Contractor's benefit with respect to services that are the Contractor's responsibility (i.e. dewatering measures, shoring, pumping, rerouting, etc.) as described in the contract documents, will be the sole responsibility of the Contractor at no additional cost to Owner or Engineer.

ARTICLE 9 - CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following as applicable:

- 1. Instructions to Bidders
- 2. Bid Form
- 3. Bid bond
- 4. Form of Agreement
- 5. Certificate of Owner's Attorney
- 6. Performance bond
- 7. Payment bond
- 8. General Conditions
- 9. Supplementary Conditions
- 10. Special Provisions
- 11. Specifications and Drawings
- 12. Addenda
- 13. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid

- b. Contractor's Affidavit Related to Liens and Claims
 - c. Documentation submitted by Contractor prior to Notice of Award
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. Work Change Directives.
 - c. Change Order(s).
15. Other documents or instruments of communication that are agreed upon by Owner and Contractor.
- 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 Paragraph 3.04 of the General Conditions.

ARTICLE 10 - MISCELLANEOUS

10.01 Terms

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

10.02 Assignment of Contract

- A. 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, 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.

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 Other Provisions

This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Contractor. 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 MAY 20, 2007 (which is the Effective Date of the Agreement).

OWNER:

TOWN OF HOPE MILLS

By: Eddie Dees *Eddie Dees*

Title: Mayor

[CORPORATE SEAL]

Attest: *Phyllis C. Register*

Title: Town Clerk

Address for giving notices:

5770 Rockfish Road

P.O. Box 367

Hope Mills, NC 28348

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

CONTRACTOR:

CROWDER CONSTRUCTION COMPANY

By: Larry D. Horrell *Larry D. Horrell*

Title: Sr. Vice President

[CORPORATE SEAL]

Attest: *William B. Waller*

Title: William B. Waller, Asst. Secretary

Address for giving notices:

1111 Burma Drive

Apex, NC 27539

License No.: _____ (Where applicable)

Agent for service or process: _____

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

