

ORDINANCE NO. 25-2019

AN ORDINANCE AUTHORIZING THE VILLAGE ADMINISTRATOR AND FISCAL OFFICER TO ENTER INTO A CONTRACT FOR THE PROVISION OF MATERIALS AND SERVICES FOR THE 2019 SWIMMING POOL IMPROVEMENTS PROJECT IN THE VILLAGE OF LOUDONVILLE

WHEREAS, the Council of the Village of Loudonville desires to enter into an agreement for improvements to the Loudonville Swimming Pool; and

WHEREAS, the Village of Loudonville has advertised for and accepted bids for said project as required by law; and

WHEREAS, James P. Finnegan Construction, Inc. has submitted a bid to provide the necessary materials, equipment, and labor, and the Council of the Village of Loudonville wishes to accept that bid believing that it is the lowest, best, and most responsive bid submitted;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF LOUDONVILLE, STATE OF OHIO:

SECTION 1: That the Village Administrator and Fiscal Officer of the Village of Loudonville are hereby authorized and directed to enter into a contract with James P. Finnegan Construction, Inc. for the provision of materials, equipment, and labor for the 2019 Swimming Pool Improvements Project, at a contract price of one hundred thirty-six thousand one hundred dollars (\$136,100.00), and pursuant to the terms set forth in the contract attached hereto as Exhibit A and the bid specifications and related documentation of the 2019 Swimming Pool Improvements Project.

SECTION 2: The Village does hereby waive any bidding inconsistencies of the James P. Finnegan Construction, Inc. bid submission and rejects all other bidders.

Dated: _____

Stephen Stricklen, Mayor

Attest:

Elaine Van Horn, Fiscal Officer

Thomas R. Gilman, Village Solicitor

VILLAGE OF LOUDONVILLE, OHIO
2019 SWIMMING POOL IMPROVEMENTS

EXHIBIT A

AGREEMENT

THIS AGREEMENT, is by and between _____
_____ (Owner) and _____
_____ (Contractor).

Owner and Contractor hereby agree as follows:

ARTICLE 1 - WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents for Village of Loudonville, Ohio – 2019 Swimming Pool Improvements.

ARTICLE 2 - ENGINEER

2.01 The Project has been designed by Engineering Associates, Inc. (Engineer), 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 - CONTRACT TIMES

3.01 Time of the Essence - All time limits for Substantial Completion and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

3.02 Days to Achieve Substantial Completion and Final Payment - You are notified that the Contract Times under the above contract will commence to run on August 26, 2019. On or after that date, you are to start performing your obligations under the Contract Documents. In accordance with the Agreement, the project shall achieve Substantial Completion by November 22, 2019 and the project shall achieve readiness for final payment by November 22, 2019.

3.03 Liquidated Damages - Contractor and Owner recognize that time is of the essence as stated in Paragraph 3.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 3.02 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 \$800.00 for each day that expires after the time specified in Paragraph 3.02 above 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 the Owner, Contractor shall pay Owner \$800.00 for each day that expires after the time specified in Paragraph 3.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 4 - CONTRACT PRICE

4.01 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 for all Work at the prices stated in Contractor's Bid in the amount of \$[Amount].

ARTICLE 5 - PAYMENT PROCEDURES

- 5.01 Submittal and Processing of Payments - 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.
- 5.02 Progress Payments - Owner shall make progress payments monthly on account of the Contract Price on the basis of Contractor's Applications for Payment within 30 days after approval of the Application for Payment during the performance of the Work as provided herein. All such payments will be based upon Bid item prices with measurement for lump sum items by percent completed and for unit price items by number of units completed.
- A. 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 amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with the General Conditions.
1. 92 percent of work completed (with the balance being retainage) until the Work is 50 percent complete as evidenced by payments in the amount of at least 50 percent of the Contract Price after which no additional retainage will be withheld.
 2. 92 percent of the invoice cost of materials and equipment delivered to the Site of the Work or other point in the vicinity of the Work and not incorporated in the Work provided such materials have been inspected and found to meet the Specifications (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 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.
- 5.03 Final Payment - 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.
- 5.04 Retainage - Retained amounts will be deposited in an escrow account from the date the contract is 50 percent complete as evidenced by payments in the amount of at least 50 percent of the Contract Price in accordance with Ohio Revised Code requirements, if required by the contractor. Retainage amounts with accumulated interest not paid to the Contractor upon Substantial Completion will be paid to the Contractor within 30 days of final acceptance by the Owner.

ARTICLE 6 - INTEREST

- 6.01 All moneys not paid when due as provided in the General Conditions shall bear interest at the rate prescribed by the Ohio Revised Code.

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

- 7.01 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 relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph 4.02 of the Supplementary Conditions as containing reliable "technical data" and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site which have been identified in Paragraph 4.06 of the Supplementary Conditions as containing reliable "technical data."
- E. 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; and the Site-related reports and drawings identified in 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.
- F. Based upon the information and observations referred to in Paragraph 7.01.E 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.
- G. Contractor is aware of the general nature of work to be performed by the 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.

ARTICLE 8 - CONTRACT DOCUMENTS

8.01 The Contract Documents consist of the following:

- A. This Agreement (Pages D-1 to D-5, inclusive).
- B. Contractor's Bid (Pages C-1 to C- 5, inclusive) with Attachments.
- C. Bid Guaranty and Contract Bond or Contract Bond (as applicable) (Pages [Page] to [Page], inclusive).
- D. General Conditions (Pages G-1 to G-53, inclusive).
- E. Supplementary Conditions (Pages H-1 to H-7, inclusive).
- F. ODNR Requirements.
- G. Materials Supplied by Village
- H. Wage Rate Schedules.
- I. Drawings consisting of 9 sheets with each sheet bearing the following general title: Village of Loudonville, Ohio – 2019 Swimming Pool Improvements and which are not bound in the Project Manual.
- J. Addenda (Numbered [No.] to [No.], inclusive).
- K. The following which may be delivered or issued on or after the Effective Date of the Agreement the form for which may or may not be bound in the Project Manual.

1. Notice to Proceed.
2. Application for Payment.
3. Work Change Directives which are not bound in the Project Manual.
4. Change Order(s).
5. State of Ohio Subcontract Form.
6. Certificate of Substantial Completion.
7. Wage Rate Affidavit.
8. Waiver of Liens Affidavit.

8.02 The documents listed are bound in the Project Manual (except as noted otherwise above).

8.03 There are no Contract Documents other than those listed above in this Article 8.

8.04 The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 9 - MISCELLANEOUS

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

9.02 Assignment of 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, 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.

9.03 Successors and Assigns - Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other 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.

9.04 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 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.

9.05 Contractor's Certifications - 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 9.05:

- A. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
- B. "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;
- C. "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;
- D. "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.

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

This Agreement will be effective on _____, 20 ____ (Which is the Effective Date of the Agreement).

Attest: _____ (s)

Name: _____

Title: _____

(SEAL)

OWNER: _____

By: _____ (s)

Name: _____

Title: _____

Address: _____

(Attach evidence of authority to sign)

Attest: _____ (s)

Name: _____

Title: _____

(SEAL)

CONTRACTOR: _____

By: _____ (s)

Name: _____

Title: _____

Address: _____

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