

## **AGREEMENT**



**AGREEMENT**

THIS AGREEMENT is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

by and between

“OWNER”: City of Greenfield, Indiana, by and through its Board of Public Works  
10 S. State Street, Greenfield, Indiana 46140

and

“CONTRACTOR”: Phoenix Contractors & Erectors, LLC

concerning the following:

“PROJECT”: **Southside Water Improvements  
Southside Water Storage Tower and Improvements**

“WORK”: **General construction of 2 MG water storage tower (South) and bulk water filling stations including associated sitework, yard piping, structural, architectural, process piping and equipment, plumbing, heating, ventilation, air conditioning, electrical and instrumentation and control; decommissioning and demolition of a 0.5 MG water storage tower (Weston) and associated other site work; and raising of a 0.5 MG spheroid style water storage tower (Hospital).**

“ENGINEER”: **Donohue & Associates, Inc.**

RECITALS:

- A. The OWNER has heretofore caused to be prepared certain plans, specifications and other “Contract Documents” as hereinafter listed pertaining to the above described Project and Work, and the CONTRACTOR has filed Proposal to furnish said labor, tools, material, equipment, services, and perform said Work upon the terms and for the price(s) therein fully stated and set forth;
  
- B. The said Contract Documents accurately and fully describe the terms and conditions upon which the CONTRACTOR is willing to furnish the labor, tools, material, equipment, services, and perform the Work called for by the Contract Documents and in the manner and time and for the price(s) set forth herein.

THE OWNER AND CONTRACTOR AGREE AS FOLLOWS:

1. Contract Documents

A. Contents

1. This Agreement consists of the following Contract Documents all of which are as fully a part of this Agreement as if set out verbatim herein or attached hereto and the same do in all particulars become the Agreement between the parties hereto in all matters and things set forth herein and described:
  - a. This Agreement;
  - b. All Addenda issued prior to receipt of Bids, whether or not receipt thereof has been acknowledged by CONTRACTOR in its Bid;
  - c. General Conditions;
  - d. Supplementary Conditions
  - e. Contractor's Itemized Proposal and Declarations; including but not limited to:
    - i. Exhibit A: "Base Bid Material and Equipment Schedule" from Contractor's Bid (pages BID-12);
    - ii. List of proposed Subcontractors having a direct contract with the Contractor from the Subcontractor Listing included with the Contractor's Bid (BID-11).
  - f. Performance, Payment and Warranty Bonds.
  - g. Specifications as listed in the table of contents of the Project Manual;
  - h. Drawings, not attached hereto, consisting of a cover sheet and sheets numbered 1 through 54, inclusive, with each sheet bearing the following general title: City of Greenfield, Southside Water Improvements, Southside Water Storage Tower and Improvements, Greenfield, Indiana.
  - i. City Standards and Specifications;
  - j. Federal, State, and Local Forms;
  - k. Documents in the Appendix;
  - l. Wage Rates;
  - m. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

- i. Notice to Proceed;
    - ii. Change Orders;
    - iii. Work Change Directives;
    - iv. Field Orders;
    - v. Engineer's written interpretations and clarifications.
  2. There are no Contract Documents other than those listed above in this Article 9.
  3. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.
- B. In resolving conflicts, errors, discrepancies and disputes concerning the nature, character, scope or extent of Work to be performed or furnished by the CONTRACTOR, or other rights and obligations of the OWNER and CONTRACTOR, arising from or prescribed by one or more of the Contract Documents, the following rules shall govern:
1. A requirement occurring in one Contract Document is as binding as though occurring in all Contract Documents;
  2. Calculated dimensions shall govern over scaled dimensions;
  3. The Contract Documents shall be given precedence in the order listed in Paragraph 1.A above; and
  4. In documents of equal priority, if any such conflict, error, discrepancy or dispute cannot be resolved or reconciled by application of the rules stated in Subparagraphs 1.A.2 through 1.A.3, then the provision expressing the greater quantity, quality, or scope of work, or imposing the greater obligation upon the CONTRACTOR or affording the greater right or remedy to the OWNER shall govern, without regard to the party who drafted such provision.

## 2. Contract Price

- A. The CONTRACTOR shall, in strict conformity with the Contract Documents, furnish all labor, tools, materials, equipment, services, assume and fulfill all obligations and perform all Work required to construct, complete, and make ready for use by the OWNER for the lump sum of eight million nine hundred fifty thousand Dollars (\$8,950,000).
- B. All specific allowances identified in Section 01 21 00 are included in the above price in accordance with Paragraph 13.02 of the General Conditions.
- C. The above stated Contract Sum will be paid to the CONTRACTOR in the manner and at such times as set forth in the Contract Documents.

### 3. Contract Time

#### A. Days to Achieve Substantial Completion and Final Payment

1. The Work will be **substantially completed within 550 calendar days after the date when the Contract Times commence** to run as provided in Article 4 of the General Conditions, and completed and ready for final payment in accordance with Article 15 of the General Conditions within **580 calendar days after the date when the Contract Times commence** to run.
- B. It is hereby understood and mutually agreed, by and between the CONTRACTOR and OWNER, that the date of commencement and the time for completion of the Work as specified in the Contract Documents are ESSENTIAL CONDITIONS of this Agreement.
- C. The CONTRACTOR and OWNER acknowledge and agree that the time allotted by this Agreement for the performance and completion of the Work is reasonable and takes into account any and all risks and adverse conditions assumed by CONTRACTOR hereunder.

### 4. Liquidated Damages

- A. The CONTRACTOR and OWNER recognize and contemplate that unexcused failure by the CONTRACTOR to complete the Work within the Contract Time will cause the OWNER and the Public to suffer financial losses or inconvenience the full and exact extent and character of which cannot be measured as a basis for recovery by the OWNER of actual damages, and that liquidated damages as prescribed in the Contract Documents represent a fair, reasonable and appropriate estimate thereof. Accordingly, the CONTRACTOR agrees that such liquidated damages may be assessed and recovered by the OWNER, as against CONTRACTOR and its Surety, in the event of delayed completion and without the OWNER being required to present any evidence of the amount or character of actual damages sustained by reason thereof. **Such liquidated damages shall be assessed and recovered at the rate of \$500 per day for delay in achieving Substantial Completion and at the rate of \$1,000 per day in achieving Final Completion of the Work.**

### 5. Engineer

- A. The Project has been designed by Donohue & Associates, Inc., who is hereinafter called Engineer and 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.
- B. The Owner will 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. The Project has been designed by Donohue & Associates, who is hereinafter called Designer, will consult with,

advise, and assist the Owner in connection with the completion of the Work in accordance with the Contract Documents.

## 6. Payment Procedures

### A. Submittal and Processing of Payments

1. 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.

### B. Progress Payments; Retainage

1. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment. All such payments will be measured by the Schedule of Values established as provided in 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 elsewhere in the Contract.
2. 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 Article 15 of the General Conditions:
  - a. 95% of Work completed (with the balance being retainage). If the Work has been 50% completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner, on recommendation of Engineer, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage on account of Work subsequently completed, in which case the remaining progress payments will be in an amount equal to 100% of the Work completed less the aggregate of previous retainage and payments previously made. At 50% completion, or any time thereafter, when the character and progress of the Work is not satisfactory, additional amounts may be retained, but in no event shall the total retainage be more than 10% of the value of the Work completed.
3. Upon Substantial Completion, the amount of retainage may be reduced. Upon Substantial Completion, Owner may make additional payments, retaining at all times an amount sufficient to cover the estimated cost of the work still to be completed or corrected.

### C. Final Payment

1. Upon final completion and acceptance of the Work in accordance with Article 15 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Article 15.

### 7. Contractor's Representations

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

1. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
2. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, 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
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.
4. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
5. Contractor has considered and correlated the information known to the 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 all additional or supplementary examinations, investigations, explorations, tests, studies, and data 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.
6. 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.



7. 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.
8. 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.
9. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
10. Contractor has reviewed and understands the Use of American Iron and Steel requirements of the Drinking Water State Revolving Fund. Contractor's bid reflects their best, good faith effort to identify domestic sources of iron and steel, where such American-made products were available to meet the contract times. All iron and steel products contained in the Contractor's bid will be produced in the United States in a manner that complies with the Use of American Iron and Steel requirements, unless a waiver is approved. Contractor will provide further verification, certification or assurance of compliance, or information necessary to support a waiver of the Use of American Iron and Steel requirements. Contractor understands that any failure to comply with the Use of American Iron and Steel requirement shall permit the Owner or the State to recover as damages against the Contractor any loss, expense, or cost (including without limitation to engineering or attorney's fees) incurred by the Owner or the State resulting from any such failure. While the Contractor has no direct contractual privity with the State, as a lender to Owner for the funding of this project, the Owner and Contractor agree that the State is a third-party beneficiary and neither this paragraph, nor any other provision of this Agreement necessary to give this paragraph force or effect, shall be amended or waived without the prior written consent of the State.

#### 8. Contractor's Representations

- A. 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 8:
  1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  2. "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;
  3. "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; and

4. “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.

9. Effective Date

- A. This Agreement shall be deemed effective as of the date and year first above written notwithstanding the date on which this Agreement has been executed by the respective parties or their representatives as stated below.

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“CONTRACTOR” SIGNATURE:

IN TESTIMONY THEREOF, the CONTRACTOR has hereunder set his hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Firm Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

By: \_\_\_\_\_  
Signature

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

“OWNER” SIGNATURES:

IN WITNESS WHEREOF, the OWNER does hereby accept the foregoing Agreement, and has herewith set his/her hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

For and on behalf of the City of Greenfield by its Board of Public Works.

\_\_\_\_\_  
Chuck Fewell, Mayor,

\_\_\_\_\_  
Kelly McClarnon, Member

\_\_\_\_\_  
Larry J. Breese, Member

\_\_\_\_\_  
Katherine N. Locke, Member

\_\_\_\_\_  
Glenna Shelby, Member

ATTEST:

\_\_\_\_\_  
Lori Elmore, Clerk Treasurer

Date: \_\_\_\_\_