

Bid No. B-1617-37
Contract K-1617-121
Performance Bond B-1617-87
Statutory Bond B-1617-88
Maintenance Bond MB-1617-75

DOCUMENT 00520

AGREEMENT

THIS AGREEMENT is by and between City of Norman, Oklahoma Norman Utilities Authority
(Owner) and Foley Company (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
The Work is generally described as follows:

ARTICLE 2 - THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: treatment improvements to add new 17 mgd ozone system, ultraviolet disinfection system, low lift pump station, chemical feed equipment and building, maintenance building, administration building, and rehabilitation of high pressure zone pump station, and associated electrical and control system improvements.

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by Carollo Engineers, Inc.

3.02 The Owner has retained Carollo Engineers, Inc. ("Engineer") 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.

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4.02 Contract Times: Days:

- A. The Work will be substantially completed within 700 days after the date when the Contract Times commence to run as provided in paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with paragraph 15.06 of the General Conditions within 730 days after the date when the Contract Times commence to run.
- B. Parts of the Work shall be substantially completed on or before the following Milestones:
 - 1. Milestone 1: Delivery of key shop drawings, data, and samples, dates as shown in Table 4.02B.1

TABLE 4.02, B.1	
Key shop drawings, data, and samples	Milestone Date
Temporary ammonia feed system	April 30, 2017
Buried steel piping	April 30, 2017
Drilled Piers	May 15, 2017
Ozone system	July 30, 2017
IMPS pumps	May 31, 2017
Structural Steel	May 15, 2017
UV Reactors and equipment	July 30, 2017
FRP Tanks	June 15, 2017
Manholes	May 15, 2017

- 2. Milestone 2: Install, test, and have operational temporary ammonia feed system completed by June 30, 2017.
- 3. Milestone 3: Pile installation at Ozone and Chemical Building completed by October 31, 2017.
- 4. Milestone 4: Install, test, and have operational all work at the High Pressure Zone Pump Station completed by May 31, 2018.
- 5. Milestone 5: Install, test, and have operational all equipment at the Ozone and Chemical Buildings, including LOX equipment, completed by November 15, 2018.
- 6. Milestone 6: New and modifications of filter effluent piping completed by April 30, 2018.
- 7. Milestone 7: Install, test, and have operational all equipment in UV building completed by November 15, 2018.
- 8. All work substantially completed by March 8, 2019.
- 9. All work finally completed by April 5, 2019.

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4.03 Liquidated damages:

- A. Contractor and Owner recognize that time is of the essence as stated above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. 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):
1. Substantial Completion: Contractor shall pay Owner \$500 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in this Agreement for Substantial Completion until the Work is substantially complete.
 2. Completion of Remaining Work: After substantial completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$100 for each day that expires after such time until the Work is completed and ready for final payment.
 3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.
 4. Milestones: Contractor shall pay Owner \$250 for each day that expires after the time (as duly adjusted to the Contract) specified above for achievement of Milestones, until that Milestone is achieved.

4.04 Special Damages:

- A. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner:
1. For any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times; and
 2. For the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in this Agreement for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in this Agreement for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

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ARTICLE 5 - CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- A. For all Base Bid Work with the following additive and deductive alternates listed below. At the prices stated by Contractor's Bid, Document 00410 - Bid Form is attached hereto as an exhibit.

Add Alternates C, F, I, O, P, Q, R, & S

ARTICLE 6 - PAYMENT PROCEDURES

- 6.01 Submittal and processing of payments:
 - A. 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. Each monthly estimate for payment must contain or have attached an affidavit in accordance with the Constitution of the State of Oklahoma, Title 74, Section 3109-3110, and Title 62, Section 310.09. This affidavit is provided in Document 00459 Claim or Invoice Affidavit.

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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 or about the 30th day of each month during performance of the Work as provided in paragraphs below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. 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:
1. Partial payments will be made based on the Work completed and/or material stored and inspected in accordance with the Contract. Five percent (5%) of the partial payments will be held as retainage throughout the entire project/contract.^{AD2} ~~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 Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract:~~^{AD2}
 - a. ~~90 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage.~~^{AD2}
 - b. ~~90 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).~~^{AD2}
 2. ~~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 set off by Owner pursuant to Paragraph 15.01 of the General Conditions and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.~~^{AD2}

6.03 Final Payment:

- A. Upon final completion and acceptance of the Work, in accordance with paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer.

ARTICLE 7 - INTEREST

7.01 All amounts not paid when due shall bear interest at the rate of 6 percent per annum.

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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 any data and reference items identified in the Bidding Documents.
 - B. 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.
 - 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 adjacent to the Site and all drawings of physical conditions in or 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 Condition, if any, at or adjacent to the Site which has been identified in the Supplementary Conditions especially with respect to Technical Data in such reports and drawings.
 - E. Contractor has considered the information known to Contractor itself; 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; and
 - 3. Contractor's safety precautions and programs.
 - F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no 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.
 - G. 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.
 - 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.

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- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception, all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 - CONTRACT DOCUMENTS

9.01 Contents:

- A. The Contract Documents consist of the following:
 1. Document 00520 - Agreement.
 2. Document 00612 - Performance Bond.
 3. Document 00618 - Maintenance Bond.
 4. Document 00619 - Statutory Bond.
 5. Document 00700 - General Conditions.
 6. Document 00800A - Supplementary Conditions.
 7. Document 00800B - DW-185 Supplementary Conditions.
 8. Specifications as listed in the table of contents of the Project Manual.
 9. Drawings as listed on the sheet index.
 10. Addenda (numbers 1 to 6, inclusive).
 11. Exhibits to this Agreement (enumerated as follows):
 - a. Document 00410 - Bid Form completed by the Contractor.
 - a. Document 00456 - DW-412 Non-Collusion Affidavit.
 - b. Document 00457 - DW-413 Business Relationship Affidavit.
 - c. Document 00459 - DW-415 Claim or Invoice Affidavit.
 - d. Document 00460 - DW-501 American Iron and Steel Certification.
 - e. Document 00461 - DW-211 Contractor's Statement of Equal Opportunity Clause.
 - f. Document 00462 - DW-212 Prime Contractor Certification of Non-segregated Facilities.
 - g. Document 00463 - DW-074A Certification of Labor Standards Compliance.
 - h. Document 00465 - DW-414 Certification Regarding Lobbying.
 - i. Document 00466 - DW 419 Certificate of Contract Approval.
 - j. Document 00467 - EPA 6100-2 DBE Subcontractor Participation Form.
 - k. Document 00468 - EPA 6100-3 DBE Program, DBE Subcontractor Performance Form.
 - l. Document 00469 - EPA 6100-4 DBE Program, DBE Subcontractor Utilization Form.
 12. 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. Field Orders.
 - c. Work Change Directives.
 - d. Change Orders.
 - e. DW 074B Davis Bacon Certification, Closeout.

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- B. There are no Contract Documents other than those listed in this Document.
- C. 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 indicated 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, money that may become due and money that is 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 successors, assigns, and legal representatives to the other party hereto, its 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 Contractor's Certifications:

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract.
 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 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.

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- b. To establish Bid or Contract prices at artificial non-competitive levels.
- c. To deprive Owner of the benefits of free and open competition.
- 3. "Collusive practice" means a scheme or arrangement between 2 or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels.
- 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.

10.06 Other Provisions:

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, in the Supplementary Conditions.

10.07 Drinking Water State Revolving Fund:

- A. The Contractor acknowledges to and for the benefit of the Norman Utilities Authority ("Owner") and the Oklahoma Drinking Water State Revolving Fund (the "State") that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements commonly known as "American Iron and Steel;" that requires all of the iron and steel products used in the project to be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Owner and the State that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Owner or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Owner or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Owner). While the Contractor has no direct contractual privity with the State, as a lender to the Owner for the funding of its project, the Owner and the 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.

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- B. Davis Bacon Act wages rules shall apply. All laborers and mechanics employed by contractors and sub-contractors on projects funded directly by or assisted in whole or in part by the through the Federal Government shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of Chapter 31 of Title 40, United States Code and the DW-185 Supplemental Conditions (Pink Sheets). The Department of Labor provides all pertinent information related to compliance with labor standards, including prevailing wage rates and instructions for reporting. For more information please refer to <http://www.wdol.gov/> .

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IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have 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).

Owner:

Contractor:

Norman Utilities Authority

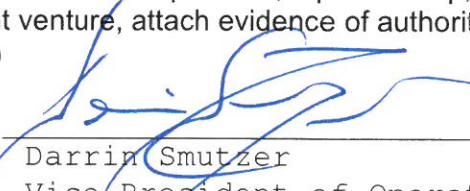
Foley Company

By: _____
 Lynne Miller
Title: Chairman

By: 
 Chris Callegari
Title: President

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

Attest: _____
 Brenda Hall
Title: Secretary

Attest: 
Title: Vice President of Operations

Address for giving notices:

Address for giving notices:

Norman Utilities Authority

Foley Company

201 "C" West Gray Street

7501 East Front Street

Norman, OK 73069

Kansas City, MO 64120

License No. 99980-00000-00085
(Where applicable)

(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 this Agreement.)

OK Class D Certified WW Operator # 99909

OK Mechanical Contractors #129779

APPROVED BY CITY OF NORMAN LEGAL DEPARTMENT
BY _____ DATE _____

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Agent for service of process:

Corporation Service Company

Designated Representative:

Name: Chris Mattingly

Title: Capital Projects Engineer

Address: City of Norman
201 "C" West Gray

Norman, OK 73069

Phone: 405-366-5443

Designated Representative:

Name: _____

Title: _____

Address: 115 S.W. 89th Street

Oklahoma City, OK 73139-8511

Phone: 800-927-9801

END OF DOCUMENT

AD2 Addendum No. 2