

**FIRST AMENDMENT TO  
Emery & Sons Construction Group, LLC Progressive Design-Build Contract  
for the Design and Construction of the Replacement of the 2.0 MG Reservoir  
Project No. W-481**

This agreement is entered into this 18th day of October 2023, by and between the City, (hereinafter "City"), and Emery & Sons Construction Group, LLC . (hereinafter "Contractor").

**RECITALS**

- A. City and Contractor entered into a Progressive Design-Build Agreement on September 20, 2023, and said contract, hereinafter "original contract", is on file at St. Helens City Hall.
- B. The Contractor requested a revision to Article 12, Section 12.20 of the General Conditions which would add clarity to the Waiver of Claims, which has been reviewed and accepted by the City's Attorney.

**NOW, THEREFORE**, in consideration for the mutual covenants contained herein the receipt and sufficiency of which are hereby acknowledged, Contractor and City agree as follows:

- 1. The recitals set forth above are true and correct and are incorporated herein by this reference.
- 2. Replace Progressive Design-Build Agreement General Conditions Article 12, Section 12.20 with the revised General Conditions Article 12, Section 12.20 attached to this amendment.
- 3. All other terms of the original contract not specifically amended by this agreement remain in full force and effect.

Dated this 18th day of October 2023.

**Contractor**



Date: 10/10/2023

**City**

Rick Scholl, Mayor

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

**Attest:**

By: \_\_\_\_\_  
Kathy Payne, City Recorder

## **Final Payment**

12.16 This section intentionally left blank. Refer to GMP Amendment.

12.17 This section intentionally left blank.

## **Design-Builder's Continuing Obligation**

12.18 The Design-Builder's obligation to perform and complete the Work in accordance with this Contract shall be absolute and cannot be waived in whole or in part by the City except by express written instrument signed by an authorized City representative. Any such waiver will specifically identify the Work that the City is willing to accept and the manner in which that Work fails to meet the original requirements of the Contract. Accordingly, and by way of example only, none of the following will constitute acceptance of Work not in accordance with this Contract or release the Design-Builder from obligation to perform the Work in accordance with this Contract, regardless of whether any defect, deficiency, or damage is patent or latent:

- A. Any act of acceptance by the City, except in an express written instrument as described above.
- B. Any correction by the City of Defective Work.
- C. Use, operation, or occupancy of the Work or any part of the Work by the City.
- D. Recommendation by City staff for any progress or final payment.
- E. Payment by the City to the Design-Builder.
- F. Issuance of a letter of Substantial Completion.
- G. Issuance of a letter of Final Acceptance.

## **Design-Builder's Warranty of Title**

12.19 The Design-Builder warrants that title to all Work and material covered by any request for payment, whether incorporated in the Work or not, will pass to the City at the time of payment. Title shall be free and clear of all liens, claims, security interests, and encumbrances.

## **Waiver of Claims**

12.20 ~~The acceptance of final payment will constitute a waiver of all claims by the Design-Builder against the City other than those previously made in writing and still unsettled.~~ The acceptance of final payment will constitute a waiver of all claims for payment or additional compensation by the Design-Builder against the City other than those previously made in writing and still unsettled.