

# AGREEMENT

**THIS AGREEMENT** is dated as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ by and between the City of Tenino, Washington (hereinafter called OWNER) and \_\_\_\_\_ Elite Mechanical Services, LLC (hereinafter called CONTRACTOR). OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

## Article 1. WORK.

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The work consists of providing all materials and labor to install HVAC and plumbing for the Ag Park North Building Improvements as shown on the Drawings, Mechanical and Propane Sheets M001 through M407 and P001 through P101.

## Article 2. ENGINEER.

Gibbs & Olson, Inc., 1115 West Bay Drive NW, Suite 201, Olympia, Washington 98502, telephone number 360.352.1120 is hereafter called ENGINEER and 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 completion of the Work in accordance with the Contract Documents.

HVAC and Plumbing design for the project was done by:

Hultz-Bhu Engineers. Inc.  
1111 Fawcett Avenue, Suite 100  
Tacoma, WA 98402  
Contact: Rick Hultz  
Phone number: (253) 383-3257  
Email: [RickH@hultzbhu.com](mailto:RickH@hultzbhu.com)

Electrical design for the project was done by:

BCE Engineers, Inc.  
6021 12<sup>th</sup> Street E, Suite 200  
Fife, WA 98424  
Contact: Mike Meyerdick  
Phone number: (253) 922-446  
Email: [Michael.Meyerdick@bceengineers.com](mailto:Michael.Meyerdick@bceengineers.com)

Any changes to the drawings must be approved by the design engineer responsible for the work that they are associated with.

## Article 3. CONTRACT TIMES.

3.1 BIDDER agrees that the Work will be substantially complete within **One Hundred and Fifty (150) calendar days** after the date when the Contract Times commences to run as provided in paragraph 2.3 of the General

Conditions. All work shall be completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions within **One Hundred and Eighty (180) calendar days**.

3.2 Liquidated Damages. OWNER and CONTRACTOR 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 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving 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 THREE HUNDRED DOLLARS (\$300.00) for each day that expires after the time specified in paragraph 3.1 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 time specified in paragraph 3.1 for completion and readiness for final payment or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER ONE HUNDRED DOLLARS (\$100.00) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

**Article 4. CONTRACT PRICE.**

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 4.1 below:

4.1 for all Work, a Lump Sum of:

Item	Description	Quantity	Unit	Unit Price	Amount
1	HVAC and Plumbing for Ag Park North Building Improvements	1	L.S.	\$358,047.80	\$358,047.80

SUBTOTAL	<u>\$358,047.80</u>
SALES TAX @ 8.1%	<u>\$29,001.87</u>
TOTAL	<u>\$387,049.67</u>

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All specific cash allowances are included in the above price and have been computed in accordance with paragraph 11.8 of the General Conditions:

## **Article 5. PAYMENT PROCEDURES.**

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.

5.1 Progress Payments; Retainage. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by ENGINEER, as provided in paragraphs 5.1.1. and 5.1.2. below. Progress payments shall be submitted not more than once each month and shall be submitted at least 10 days prior to the scheduled City Council Meetings or on the date agreed to by the OWNER and CONTRACTOR. All such payments will be measured by the schedule of values established in paragraph 2.9 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.

5.1.1. 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 shall determine, or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions.

- 90% (with the balance being retainage) of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in paragraph 14.02 of the General Conditions).

5.1.2. Upon Substantial Completion, in an amount sufficient to increase total payments to CONTRACTOR to 95% of the Contract Price or the maximum amount allowed to be released pursuant to applicable State law whichever is less (with the balance being retainage), less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.07 of the General Conditions.

5.2 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.

## **Article 6. INTEREST.**

All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate indicated in the Supplementary Conditions.

## **Article 7. CONTRACTOR'S REPRESENTATIONS.**

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

7.1 CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in paragraph 8) and the other related data identified in the Bidding Documents including "technical data."

7.2 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, performance or furnishing of the Work.

7.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.

7.4 CONTRACTOR has carefully studied all drawings of physical conditions in or relating to existing surface at or contiguous to the site which have been identified in the Supplementary Conditions as provided in paragraph 4.2.1

of the General Conditions. CONTRACTOR accepts the determination set forth in paragraph SC-4.2 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely as provided in paragraph 4.2 of the General Conditions. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, test, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

7.5 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.

7.6 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.

7.7 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, and 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.**

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 8.1 This Agreement (pages III-7 to III-12, inclusive).
- 8.2 Exhibits to this Agreement and Notice of Award (pages III-1 to III-2, inclusive).
- 8.3 Performance, Payment, and other Bonds, and consisting of 4 pages.
- 8.4 Notice to Proceed.
- 8.5 General Conditions (pages 1 to 44, inclusive).
- 8.6 Supplementary Conditions (pages SC-1 to SC-12, inclusive).
- 8.8 Drawings consisting of sheet numbers M001 through M407 and P001 through P101 inclusive.
- 8.8 Addenda numbers   1   to   2  , inclusive.
- 8.9 CONTRACTOR's Bid (pages II-1 to II-8, inclusive).
- 8.10 Documentation submitted by CONTRACTOR prior to Notice of Award
- 8.11 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraphs 3.5 and 3.6 of the General Conditions.

The documents listed in paragraphs 8.2 et seq. above are attached to the Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.5 and 3.6 of the General Conditions.

**Article 9. MISCELLANEOUS.**

9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

9.2 Parties agree a prohibition exists without prior consent of any assignment of rights under this contract being made by the Contractor; 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 Contractor from any duty or responsibility under the Contract Documents.

9.3 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.

9.4 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.

9.5 It is further provided that no liability shall attach to the OWNER by reason of entering into this agreement, except as expressly provided herein.

9.6 The Contractor shall defend, indemnify, and hold the OWNER, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits, including attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the OWNER.

9.7 Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the OWNER, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been *mutually negotiated* by the parties. The *provisions* of this section shall survive the expiration or termination of this Agreement.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR or identified by ENGINEER on their behalf.

This Agreement will be effective on \_\_\_\_\_, 20\_\_ (which is the Effective Date of the Agreement).

OWNER \_\_\_\_\_

CONTRACTOR \_\_\_\_\_

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

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

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest \_\_\_\_\_

Attest \_\_\_\_\_

Address for giving notices

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

Address for giving notices

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License No. \_\_\_\_\_

Agent for service of process: \_\_\_\_\_

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(If CONTRACTOR is a corporation, attach evidence of authority to sign).