

**BILL NO. 53-14**

**ORDINANCE NO. 2184**

**AN ORDINANCE TO AUTHORIZE THE MAYOR TO SIGN AN AGREEMENT BETWEEN THE CITY OF WARRENTON, MISSOURI AND MAGUIRE IRON, INC. FOR TANK PAINTING AT WELLS 4 AND 6**

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF WARRENTON MISSOURI, AS FOLLOWS:

SECTION I: That the Mayor is hereby authorized to execute on behalf of the City of Warrenton an agreement with Maguire Iron, Inc. for Tank Painting at wells 4 and 6. A copy of said contract is attached hereto as Exhibit "A" and made a part hereof by reference.

SECTION II. If any section, subsection, sentence, clause, phrase or portion of this amendment is for any reason held invalid or unconstitutional by a judgment of a court of competent jurisdiction, as to which not further appeal right exists, such portion shall be deemed separate, distinct and independent provision and such holding shall not affect the validity or remaining portions hereof.

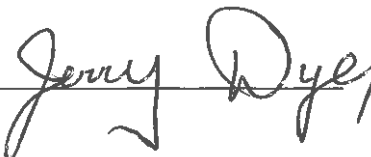
SECTION III. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION IV. This Ordinance shall take effect and be in full force from and after passage and approval thereof.

READ TWO TIMES AND PASSED by the Board of Aldermen of the City of Warrenton, Missouri, this 19<sup>th</sup> day of August, 2014.

  
\_\_\_\_\_  
President of the Board of Aldermen

APPROVED BY THE MAYOR of the City of Warrenton, Missouri, this 19<sup>th</sup> day of August, 2014.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

"A"

AGREEMENT

THIS AGREEMENT is by and CITY OF WARRENTON, MISSOURI ("Owner") and  
between MAGUIRE IRON, INC. ("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:

*All material, labor, equipment and supervision required to prepare and paint the exterior of two elevated steel water storage tanks in Warrenton, MO.*

*The work consists of the 100,000 gallon, legged tank located at Well No. 4 on Ashland Avenue and the 150,000 gallon, spheroid tank located at Well No. 6 on Powell Street.*

**ARTICLE 2 – THE PROJECT**

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

*The preparation and coating of the exterior of two elevated steel water storage tanks including antennae removal, curtain containment for paint removal and coating ; application of coating system, lettering and clean-up.*

**ARTICLE 3 – ENGINEER**

3.01 The Project has been designed by Gonzalez Companies, LLC, (Engineer), which 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 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.

4.02 *Days to Achieve Substantial Completion and Final Payment*

- A. Because of the specific nature of this project, the Work must be completed on one tank prior to commencing work on the second tank and the proper paint application and cure is temperature dependent.
- B. The Work will be commence on the 100,000 gallon legged tank by October 15, 2014 and both tanks will be completed by August 1, 2015. Only one tank will allowed to be out of service at a time..

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 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 \$1,000 for each day that expires after the time specified in Paragraph 4.02 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 Owner, Contractor shall pay Owner \$1,000 for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.

**ARTICLE 5 – CONTRACT PRICE**

- 5.01 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 pursuant to Paragraphs 5.01.A, 5.01.B, and 5.01.C below:

**WELL NO. 4, 100,000 GALLON LEGGED ELEVATED STORAGE TANK**

<b>ITEM NO.</b>	<b>DESCRIPTION</b>	<b>TOTAL PRICE</b>
1	Removal of Antenna	\$ 5,500.00
2	Installation of Containment Curtain	\$65,000.00
3	Removal and Disposal of Existing Coatings	\$50,000.00
4	Exterior Coating	\$55,000.00
5	Graphics	\$ 9,000.00
6	Removal of Containment Curtain and Clean Up	\$75,000.00
7	Installation of Antenna	<u>\$ 5,500.00</u>
	<b>TOTAL 100,000 GALLON TANK</b>	<b>\$265,000.00</b>

**WELL NO. 6, 150,000 GALLON SPHEROID ELEVATED STORAGE TANK**

<b>ITEM NO.</b>	<b>DESCRIPTION</b>	<b>TOTAL PRICE</b>
1	Installation of Containment Curtain	\$65,000.00
2	Removal and Disposal of Existing Coatings	\$45,000.00
3	Exterior Coating	\$40,000.00
4	Graphics	\$10,000.00
5	Removal of Containment Curtain and Clean Up	<u>\$65,000.00</u>
<b>TOTAL 100,000 GALLON TANK</b>		<b>\$225,000.00</b>

**TOTAL CONTRACT VALUE: FOUR HUNDRED, NINETY THOUSAND DOLLARS AND NO CENTS (\$ 490,000.00)**

**ARTICLE 6 – PAYMENT PROCEDURES**

**6.01 *Submittal and Processing of Payments***

- A. 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.

**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 15th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A 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.
  - 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 may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.
    - 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; and

- b. 90 percent of cost of materials and equipment not incorporated in the Work (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 200 percent of 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.

### 6.03 *Final Payment*

- A. 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 7 – INTEREST**

- 7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of 0 percent per annum.

## **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 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 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; and 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.

- E. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that 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.
- F. 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.
- G. 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.
- H. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## **ARTICLE 9 – CONTRACT DOCUMENTS**

### **9.01 *Contents***

- A. The Contract Documents consist of the following:
  - 1. This Agreement (pages 1 to 8, inclusive).
  - 2. Performance bond (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
  - 3. Payment bond (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
  - 4. General Conditions (pages 1 to 68, inclusive).
  - 5. Supplementary Conditions (pages 1 to 7, inclusive).
  - 6. Specifications as listed in the table of contents of the Project Manual.
  - 7. No drawings are included in these contract documents.
  - 8. Addenda (numbers ONE to TWO, inclusive).
  - 9. Exhibits to this Agreement (enumerated as follows):
    - a. Contractor's Bid (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
    - b. Documentation submitted by Contractor prior to Notice of Award (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
    - c. The State of Missouri Wage Rate Determination (pages 1 to 18, inclusive).

10. 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 (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
  - b. Work Change Directives.
  - c. Change Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. 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 stated 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, 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.

### *10.03 Successors and Assigns*

- A. 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.

### *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. For the purposes of this Paragraph 10.05:
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.

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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 \_\_\_\_\_

OWNER: CITY OF WARRENTON

CONTRACTOR: MAGUIRE IRON, INC.

By: Jerry Dyer  
Title: Mayor

By: [Signature]  
Title: PRESIDENT

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

Attest Melody Bush  
Title: City Clerk

Attest: [Signature]  
Title: COO

Address for giving notices:  
200 West Booneslick Road  
Warrenton, MO  
63383

Address for giving notices:  
11210 N MINNESOTA AVE  
SIOUX FALLS SD 57108

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

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

END OF AGREEMENT