

**CITY OF MASON, OHIO**



**WATER TREATMENT PLANT  
FILTER BACKWASH BASIN, FORCE MAIN,  
AND AERATOR CONTACT BASIN**

**JULY 2001**

**EXECUTED AGREEMENT**

**CONTRACT NO. 5G1 - GENERAL**

**MALCOLM  
PIRNIE**

**INDEPENDENT ENVIRONMENTAL ENGINEERS, SCIENTISTS & CONSULTANTS  
CINCINNATI, OHIO COLUMBUS, OHIO**

**EX-AGR.CVR/Isr  
3425-002a**

SECTION 00500

NOTICE OF AWARD

TO: Peterson Construction Company  
18817 S.R. 501 N.  
Wapakoneta, OH 45895

You are hereby notified that the City of Mason, Ohio, herein called OWNER, has reviewed all Bids submitted for the construction of

CITY OF MASON, OHIO  
WATER TREATMENT PLANT  
FILTER BACKWASH BASIN, FORCE MAIN  
AND AERATOR CONTACT BASIN  
CONTRACT NO. 5G1

in accordance with the Contract Documents therefore prepared by Malcolm Pirnie, Inc., and that your Lump Sum and Unit Price Bid in the amount of

One Million, Forty-Seven Thousand, Seven Hundred Dollars and Zero Cents  
(\$1,047,700.00) has been accepted and that OWNER intends to execute the Agreement for this Work, provided, however, that you first comply with the obligations of the successful Bidder set forth in the Instructions to Bidders and subject to the provisions of the form of agreement enclosed herewith and the proper, punctual execution thereof by you. Acceptance by the OWNER is conditioned upon your compliance with those obligations, and the OWNER reserves the right to refrain from entering into or to rescind the contract if you do not fulfill those obligations within the respective times specified.

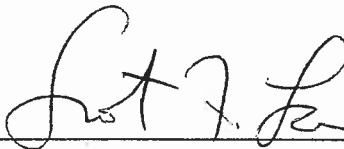
Five copies of the Agreement, Instructions for Executing Agreement, the Payment/Performance Bond, and the Delinquent Personal Property Tax Affidavit are enclosed for your execution. All copies of these documents must be executed (do not date Agreement) by yourself and your Surety and returned within ten calendar days to OWNER at the following address:

ATTENTION: SCOT F. LAHRMER  
CITY MANAGER  
CITY OF MASON, OHIO  
202 WEST MAIN  
MASON, OHIO 45050

In addition, copies of all required policies of insurance shall be submitted to the OWNER within ten calendar days of the date of this Notice of Award for his review and approval. Upon approval, the policies will be returned.

Subsequent to execution of the Agreement by OWNER, one copy of the Agreement and the Payment/Performance Bond will be returned to you.

Date: 7/05/, 2001

By   
Scot F. Lahrmer

City Manager  
Title

++ END OF SECTION ++

SECTION 00510

AGREEMENT

THIS AGREEMENT is dated as of the 20<sup>th</sup> day of July in the year 2006 by and between the City of Mason, Ohio (hereinafter called OWNER) and

Peterson Construction Company  
(hereinafter called CONTRACTOR).

WITNESSETH: OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

- 1.01 CONTRACTOR shall at its own cost and expense furnish all labor, services, tools, materials, equipment and incidentals necessary to complete all Work as specified or indicated in the Contract Documents to construct the WATER TREATMENT PLANT FILTER BACKWASH BASIN, FORCE MAIN, AND AERATOR CONTACT BASIN, CONTRACT NO(s). 5G1, 5G2 and 5E. The Work is generally described in Section 01010 of the General Requirements.
- 1.02 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

The project consists of the construction of the construction of a filter backwash holding tank, pump station, and force main to store and convey filter backwash water from the Mason WTP into a sanitary sewer for disposal. Other items of work include the expansion of the existing aerator contact basin, the installation of a sewage pump station, replacement of sump pumps, site work, electrical work and instrumentation.

ARTICLE 2 - ENGINEER

- 2.01 The Project has been designed by Malcolm Pirnie Inc., 4050 Executive Park Drive, Suite 350, Cincinnati, Ohio 45241, 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 completion of the Work in accordance with the Contract Documents.

### ARTICLE 3 - CONTRACT TIMES

#### 3.01 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.

#### 3.02 Dates and Days to Achieve Milestones, Substantial Completion, and Final Payment

- A. Milestone No. 1 - The Work will be on-line for manual operation within 300 days from the Effective Date of the Notice to Proceed.
- B. Substantial Completion - The Work will be substantially completed within 365 days from the Effective Date of the Notice to Proceed.
- C. Work Complete and Ready for Final Payment - The Work will be completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within 425 days from the Effective Date of the Notice to Proceed.

### ARTICLE 4 - LIQUIDATED AND SPECIAL DAMAGES

#### 4.01 Liquidated Damages

- A. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and OWNER will suffer financial loss, apart from the costs described in paragraph 4.02.A, if the Work is not substantially completed within the time specified in Article 3 for Substantial Completion, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. OWNER and CONTRACTOR 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 substantially 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 amounts outlined in the schedule below for each day that expires after the time specified in Article 3 for Substantial Completion (adjusted for any changes thereof made in accordance with Article 12 of the General Conditions) until the Work is substantially complete.

- B. Schedule of Liquidated Damages (all damages listed below are additive):

- |  |            |
|--|------------|
| 1. Milestone No. 1 - On-line for Manual Operation: | \$600/day. |
| 2. Substantial Completion of the Work:             | \$600/day. |
| 3. Work Complete and Ready for Final Payment:      | \$600/day. |

4.02 Special Damages:

- A. In addition to the amount provided for liquidated damages, CONTRACTOR shall pay OWNER the actual costs reasonably incurred by OWNER for engineering and inspection forces employed for the Work for each day that expires after the days specified in Article 3 for Substantial Completion (adjusted for any changes thereof made in accordance with Article 12 of the General Conditions) until the Work is substantially complete.
- B. 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 the actual costs reasonably incurred by OWNER for engineering and inspection forces employed for the Work for each day that expires after the time specified in Article 3 for Work to be completed and ready for final payment (adjusted for any extensions thereof made in accordance with Article 12 of the General Conditions) until the Work is completed and ready for final payment.

4.03 OWNER may deduct liquidated damages and special damages as determined by the provisions of this Article 4 from progress payments due CONTRACTOR under this Agreement.

ARTICLE 5 - CONTRACT PRICE

5.01 For Contract No. 5G1 - General, OWNER shall pay CONTRACTOR, in current funds, for completion of the Work in accordance with the Contract Documents the lump sum

of One Million, Forty-Seven Thousand, Seven Hundred Dollars, \$1,047,700. . .  
(words) (figure)

All specific cash allowances are included in the above price and have been computed in accordance with paragraph 11.02 of the General Conditions.

5.01 OWNER shall pay CONTRACTOR, in current funds, for completion of the Work in accordance with the Contract Documents the prices stated in CONTRACTOR's Bid, which Bid is attached hereto and identified as Exhibit 1 of this Agreement. As provided in paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by ENGINEER as provided in paragraph 9.08 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03 of the General Conditions.

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 as provided in the General Conditions.

6.02 Progress Payments; Retainage

- A. OWNER shall make monthly progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER. CONTRACTOR's Applications for Payment will be due on the first day of the month. All progress payments will be on the basis of the progress of the Work measured by the schedule of values provided for 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. A progress payment will not be made whenever the value of the Work completed since the last previous progress payment is less than \$5,000.

1. Progress payments will be made in accordance with Section 153.12 of the Ohio Revised Code except as noted below.
2. OWNER shall retain an amount in accordance with Sections 153.12, 153.13, 153.14 and 153.63 of the Ohio Revised Code except as noted below. The retained funds will be paid 120 days from the date of the Final Estimate or acceptance if the Contract has been faithfully performed.
3. Stored material will be paid at 92 percent of the invoice amount.
4. Retainage will be held at 8 percent of the total of labor and material up to 50 percent of the total value of the Contract.
5. Certified payrolls shall be submitted with each pay estimate.

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 hereunder as allowed by the Ohio Revised Code and stated in the Agreement shall be deposited in a joint escrow account with the OWNER and CONTRACTOR required to co-sign for any withdrawals. The savings institution shall be selected by the OWNER. The savings institution shall be an Ohio Banking Association organized and existing under the laws of the State of Ohio and

acceptable to the CONTRACTOR. The type of account shall be selected by the CONTRACTOR. All interest and principal arising from moneys due the CONTRACTOR shall be paid to him upon completion of the Contract in accordance with Section 153.13 of the Ohio Revised Code.

#### ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS

- 8.01 As part of the inducement for 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 for 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 reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions.
  - E. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may effect cost, progress or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto.
  - F. 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.
  - 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 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.
- I. 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.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.

#### ARTICLE 9 - CONTRACT DOCUMENTS

9.01 The Contract Documents consist of the following:

- A. This Agreement.
- B. Performance/Payment Bond.
- C. Other Bonds:
  - 1. None.
- D. General Conditions.
- E. Supplementary Conditions.
- F. Specifications, as listed in the table of contents of the Project Manual.
- G. The Drawings comprising a set entitled City of Mason, Ohio - Filter Backwash Basin, Force Main, and Aerator Contact Basin at the Water Treatment Plant, dated April 2001, and including the following:
  - 1. Sheets numbered G1 through E5, inclusive.
- H. Addenda consisting of Numbers 1 to 3, inclusive.
- I. Exhibits to the Agreement enumerated as follows:
  - 1. Exhibit 1, CONTRACTOR'S Bid.

J. The following, which may be delivered or issued on or after the Effective Date of the Agreement, and are not attached hereto:

1. Notice to Proceed
2. Written Amendments
3. Work Change Directives
4. Change Order(s)

9.02 The documents listed in paragraph 9.01 above are attached to this Agreement (except as expressly noted otherwise above). Documents not attached are incorporated by reference. There are no Contract Documents other than those listed in this Article 9.

9.03 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.

##### 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 Document, 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 Waiver

A. The waiver by the OWNER of any breach or violation of any term, covenant, or condition of this Agreement or of any Law or Regulation shall not be deemed to be a waiver of any other term, covenant, condition, or Law or Regulation or of any subsequent breach or violation of the same or of any other term, covenant, condition, or Law or Regulation. The subsequent payment of any monies or fee by the OWNER which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by CONTRACTOR of any term, covenant, condition of this Agreement or of any applicable Law or Regulation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

This Agreement will be effective on July 25, 2001.

OWNER: City of Mason, Ohio CONTRACTOR: Peterson Construction Company  
By: [Signature] By: [Signature]  
Scot F. Lahrmer Donald J. Bergfeld  
Title: City Manager Title: President

Attest [Signature] Attest [Signature]  
[CORPORATE SEAL]

Address for giving notices

202 West Main Street

Mason, Ohio 45040-1699

(If OWNER is a corporation, partnership, or limited liability company, 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 Agreement.)

Address for giving notices

18817 S.R. 501 N.

Wapakoneta, Ohio 45895

License No. 34-1342365  
(where applicable)

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

(If CONTRACTOR is a corporation, partnership, or limited liability company, attach evidence of authority to sign.)

Designated Representative:

Name: R. Ernest Stickler

Title: Public Utilities Superintendent

Address: City of Mason  
202 West Main Street  
Mason, Ohio 45040-1699

Phone No.: 513-573-3388

Fax No.: 513-573-3348

Designated Representative:

Name: Donald J. Bergfeld

Title: President

Address: Peterson Construction Co.  
18817 S. R. 501 N.  
Wapakoneta, Ohio 45895

Phone No.: 419-657-2233

Fax No.: 419-657-6611

++END OF AGREEMENT++