

RESOLUTION NO. R-21-24

A RESOLUTION DETERMINING DEFAULT OF CONTRACT BY GOODWIN & GOODWIN, INC. FOR THE CONSTRUCTION OF THE 16 SSA REMEDIAL MEASURES SUB-BASIN P003-PROJECT 17-07-C1, AUTHORIZING ISSUANCE OF CLAIM AND NOTICE TO SURETY ON PAYMENT AND PERFORMANCE BOND, AND AUTHORIZING THE CITY ADMINISTRATOR AND CITY ATTORNEY TO SECURE COMPLETION OF THE SUBJECT PROJECT

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, that:

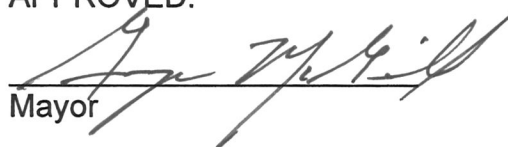
SECTION 1: Pursuant to Article 15 of the Standard General Conditions of the contract of the City of Fort Smith with Goodwin & Goodwin, Inc. regarding the 16 SSA Remedial Measures Sub-Basin P003, Project 17-07-C1, the Contractor is found to be in default of the Contractor's duties pursuant to the contract.

SECTION 2: The issuance of a claim and notice substantially in the form attached as Exhibit A to the surety on the contract's payment and performance bond is hereby authorized.


SECTION 3: The City Administrator and the City Attorney are hereby authorized to take all necessary actions with the surety and Goodwin & Goodwin, Inc. to obtain completion of the 16 SSA Remedial Measures Sub-Basin P003 Project 17-07-C1 in an expeditious and proper manner.

THIS RESOLUTION ADOPTED THIS 6th DAY OF Feb., 2024.

APPROVED:


Mayor

ATTEST:


City Clerk

Approved as to form:

 npr

DAILY & WOODS

A PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW

KMW BUILDING
58 SOUTH SIXTH STREET
P.O. BOX 1446
FORT SMITH, AR 72902
TELEPHONE (479) 782-0361
FAX (479) 782-6160

www.dailywoods.com

HARRY P. DAILY (1886-1965)
JOHN P. WOODS (1886-1976)
JOHN S. DAILY (1912-1987)
BEN CORE (1924-2007)

WRITER'S E-MAIL ADDRESS
JCanfield@dailywoods.com

JERRY L. CANFIELD, P.A.
THOMAS A. DAILY, P.A.
WYMAN R. WADE, JR., P.A.
DOUGLAS M. CARSON, P.A.
C. MICHAEL DAILY, P.A. †
COLBY T. ROE, P.A. ●

† Also Licensed in Oklahoma, Wyoming &
North Dakota
● Also Licensed in Texas

February __, 2024

Ms. Mary Ann Justice
Brown Hiller Clark – Attorney in Fact
5500 Euper Lane
Fort Smith, AR 72903

Re: Name of Project: 2016 SSA Remedial Measures Sub-Basin P003 – Project No. 17-07-C1
Contractor: Goodwin & Goodwin, Inc.
Bond #: B3262505

Dear Ms. Justice:

This letter is presented on behalf of our client, the City of Fort Smith, Arkansas. The City is a party to a contract between the City and Goodwin & Goodwin, Inc. for the construction of the captioned project. The two-page contract form of the contract documents is attached to this letter. A recorded copy of the Performance and Payment Bond relative to the project is attached.

The contract provides for the performance of the work to the point of substantial completion within 330 days. An amended notice to proceed was issued on May 6, 2021. Even after award of significant additional time under the contract, the contractor is more than a year tardy in completing the contract work and faces substantial liquidated damages. Even after discussions of time tardiness issues between the City and representatives for Goodwin & Goodwin, the contractor still is making inadequate progress towards completion of the contract work.

The City respectfully brings this matter to the attention of the attorney in fact for the surety on the Payment and Performance Bond and gives notice of a claim against the Payment and Performance Bond. Please consider the notice as satisfying the seven (7) day notice required by Article 15 of the contract. The City respectfully requests the surety on the Payment and Performance Bond to address the uncompleted work and tardiness of work on this project.

The contact persons for the City of Fort Smith regarding this claim are myself and Mr. Lance McAvoy, Director of Utilities, City of Fort Smith, Arkansas.

Thank you for your attention to this matter.

Very truly yours,

Jerry L. Canfield
JLC/cmm

Enclosures

cc: Mr. Lance McAvoy
Mr. Matt Horan

CONTRACT

THIS AGREEMENT, made this 19th day of January, 2021. By and between CITY OF FORT SMITH, ARKANSAS herein called "OWNER" acting through its MAYOR and

Goodwin & Goodwin, Inc.

STRIKE OUT (a corporation) (~~a partnership~~) (~~a limited liability company~~)
INAPPLICABLE (~~an individual doing business as~~)

City of Fort Smith, County of Sebastian and State of Arkansas, hereinafter called "Contractor."

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the OWNER, the CONTRACTOR hereby agrees with the OWNER to commence and complete the construction described as follows:

**2016 SSA Remedial Measures Sub-Basin P003
Project No. 17-07-C1**

hereinafter called the project, for the sum of Three Million Four Hundred Eighty-Five Thousand Seven Hundred Forty Nine Dollard and No/100ths.

(\$ 3,485,749.00) and all extra work in connection therewith, under the terms as stated in the General and Special Conditions of the Contract; and at his (its or their) own proper cost and equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said project in accordance with the conditions and prices stated in the Proposal, the General Conditions, and Special Conditions of the Contract, the plans, which include all maps, plats, blue prints, and other drawings and printed or written explanatory matter thereof, the specifications and contract documents therefore as prepared by Hawkins-Weir Engineers, Inc., herein entitled the Architect/Engineer, and all of which are made a part hereof and collectively evidence and constitute the contract.

The CONTRACTOR hereby agrees to commence Work under this contract on the date specified in the "Notice to Proceed" or on the date on which the Contract Time commences to run, as defined in Article 2 of the General Conditions. The CONTRACTOR further agrees to substantially complete the entire Work within **330 Days** thereafter, and to fully complete the project within **30 Days, following Substantial Completion**. The CONTRACTOR agrees to **forfeit and pay, as Liquidated Damages for delay (but not as a penalty), the amount of \$250.00** for each consecutive calendar day thereafter that expires after the Contract Time specified above for Substantial Completion until the Work is Substantially Complete; and the amount of **\$250.00** for each consecutive calendar day that expires after the time specified for Final Completion until the Work is completed and ready for Final Payment.

The OWNER agrees to pay the CONTRACTOR in current funds for the performance of the contract, subject to additions and deductions, as provided in the General Conditions of the Contract, and to make payments on account thereof as provided in Article 14, "Payments to Contractor and Completion," of the General Conditions.

IN WITNESS WHEREOF, the parties to these presents have executed this contract in four (4) counter parts, each of which shall be deemed an original, in the year and day first above mentioned.

(SEAL)



ATTEST:

Sherril Gard
(City Clerk), Sherril Gard

City of Fort Smith, Arkansas
(Owner)

By: George McGill
George McGill, Mayor

Date Signed: 3/3/2021

(SEAL)



Jane Smith
(Corporate Secretary)

Goodwin & Goodwin, Inc.
(Contractor)

By: Bryan Goodwin
Bryan Goodwin, President

3503 Free Ferry Road
(Mailing Address)

(Witness)

Fort Smith Arkansas 72903
(City) (State) (Zip)

NOTE: If Contractor is a corporation, Corporation Secretary should attest.

PERFORMANCE AND PAYMENT BOND

17-07-C1

2016 SSA Remedial Measures Sub-Basin P003
Project No. 17-07-C1

2021-04948
Certificate of Record
FORT SMITH DISTRICT
SEBASTIAN COUNTY, ARKANSAS
SHARON BROOKS, CO CLERK & RECORDER
03/01/2021 03:23:35 PM
RECORDING FEE 30.00
Pages: 4

00600
Performance and Payment Bond

Bond #B3262505

**PERFORMANCE AND PAYMENT BOND
(Common Law)**

KNOWN ALL MEN BY THESE PRESENTS: That we ⁽¹⁾ Goodwin & Goodwin, Inc.

a ⁽²⁾ Corporation

hereinafter called "Principal" and ⁽³⁾ Cincinnati Insurance Company of
Cincinnati, State of Ohio,

hereinafter called the "Surety," are held and firmly bound unto The City of Fort Smith, Arkansas, a municipal corporation, hereinafter called "Owner" in the penal sum of Three Million Four Hundred Eighty Five Thousand Seven Hundred Forty Nine and No /100th Dollars (\$ 3,485,749.00) in lawful money of the United States, for the payment of which sum well and truly to be made, said Principal and Surety bind themselves, their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the Owner, dated the 19th day of January, 2021, a copy of which is attached and made a part hereof for the construction of:

2016 SSA Remedial Measures Sub-Basin P003

Project No. 17-07-C1

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the Surety, and if the Principal shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, and shall promptly make payment to all persons, firms, subcontractors and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, including all amount due for materials, lubricants, oil, gasoline, coal and coke, repair on machinery, equipment and tools, consumed or used in connection with the construction of such work, and all taxes and insurance premiums on said work, and for all labor



performed in such work whether by subcontractor of otherwise, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract, or the specifications accompanying the same, or to the work to be performed thereunder, shall in any manner affect the Surety's obligations on this bond, and the Surety does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, the specifications or the work.

PROVIDED, FURTHER, that no final settlement between the Owner and Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in four (4) counterparts, each one of which shall be deemed an original, this 19th day of January, 2021.

ATTEST:



Witness as to Principal

Goodwin & Goodwin, Inc.
(Principal)

By: Rayon Maden
(President)

3503 Free Ferry Road
(Address)

Fort Smith, Arkansas 72709
City State Zip

Cincinnati Insurance Company

(Surety)
P. O. Box 145496

(Address)
Cincinnati Ohio 45250-5496

City State Zip

ATTEST:

By: Mary Ann Justice
(Attorney-in-Fact) Mary Ann Justice
5500 Euper Lane

(Address)
Fort Smith AR 72903

City State Zip

Secretary (Surety)

(SEAL)

Lisa McCune

(Witness as to Attorney-in-Fact)
5500 Euper Lane

(Address)
Fort Smith AR 72903

City State Zip

NOTE: Date of Bond must not be prior to date of contract.

- (1) Correct name of contractor.
- (2) A corporation, a partnership, LLC, or an individual, as case may be.
- (3) Correct name of surety.
- (4) Correct name of owner.
- (5) If contractor is partnership, all partners should execute bond.
- (6) Owner will file this bond with the Circuit Court of the County where the work is to be performed prior to the start of construction.

THE CINCINNATI INSURANCE COMPANY

Fairfield, Ohio

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That THE CINCINNATI INSURANCE COMPANY, a corporation organized under the laws of the State of Ohio, and having its principal office in the City of Fairfield, Ohio, does hereby constitute and appoint

Marty C. Clark; Sam B. Hiller; Larry R. Clark; Scott R. Clark; Janice A. Butler; Elizabeth A. Solomon; Shannon C. Schmidly; Mary Ann Justice and/or William Scott Whittenberg

of Fort Smith, Arkansas its true and lawful Attorney(s)-in-Fact to sign, execute, seal and deliver on its behalf as Surety, and as its act and deed, any and all bonds, policies, undertakings, or other like instruments, as follows:

Any such obligations in the United States, up to Twenty Million and No/100 Dollars (\$20,000,000.00)

This appointment is made under and by authority of the following resolution passed by the Board of Directors of said Company at a meeting held in the principal office of the Company, a quorum being present and voting, on the 6th day of December, 1958, which resolution is still in effect:

"RESOLVED, that the President or any Vice President be hereby authorized, and empowered to appoint Attorneys-in-Fact of the Company to execute any and all bonds, policies, undertakings, or other like instruments on behalf of the Corporation, and may authorize any officer or any such Attorney-in-Fact to affix the corporate seal; and may with or without cause modify or revoke any such appointment or authority. Any such writings so executed by such Attorneys-in-Fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company."

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company at a meeting duly called and held on the 7th day of December, 1973.

"RESOLVED, that the signature of the President or a Vice President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Secretary or Assistant Secretary and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power of certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certified by certificate so executed and sealed shall, with respect to any bond or undertaking to which it is attached, continue to be valid and binding on the Company."

IN WITNESS WHEREOF, THE CINCINNATI INSURANCE COMPANY has caused these presents to be sealed with its corporate seal, duly attested by its Vice President this 19th day of December, 2018.



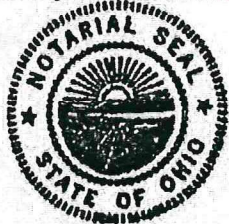
THE CINCINNATI INSURANCE COMPANY

Stephen A. Justice

Vice President

STATE OF OHIO) ss:
COUNTY OF BUTLER)

On this 19th day of December, 2018, before me came the above-named Vice President of THE CINCINNATI INSURANCE COMPANY, to me personally known to be the officer described herein, and acknowledged that the seal affixed to the preceding instrument is the corporate seal of said Company and the corporate seal and the signature of the officer were duly affixed and subscribed to said instrument by the authority and direction of said corporation.



Keith Collett signature

KEITH COLLETT, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date. Section 147.03 O.R.C.

I, the undersigned Secretary or Assistant Secretary of THE CINCINNATI INSURANCE COMPANY, hereby certify that the above is a true and correct copy of the Original Power of Attorney issued by said Company, and do hereby further certify that the said Power of Attorney is still in full force and effect.

GIVEN under my hand and seal of said Company at Fairfield, Ohio, this 19th day of January, 2021



Scott R. Cohen signature

Secretary