

4/9/2019

Melinda Cunningham  
City of Columbus  
Public Utilities Administration, 920 Dublin Road  
Columbus, OH 43215

**Subject: Assignment of Contract to CB&I Storage Tank Solutions LLC**

Dear Melinda:

This letter is to advise you that as part of a reorganization of the CB&I Storage Tank business (the "Storage Tank Business") into a standalone operation, we intend to assign your contract with us (the "Contract") to a wholly-owned subsidiary, CB&I Storage Tank Solutions LLC. This assignment will not interrupt the Work nor have any impact on the Storage Tank Business' obligations to perform the Work contained in the Contract.

In particular, there will be no change in personnel nor in our long-standing, project-execution model. All obligations, liabilities, rights, and responsibilities, (whether past, present, or future) relating to the Contract, including warranties and guarantees, will remain in full force and effect and will transfer to CB&I Storage Tank Solutions LLC. The Storage Tank Business' obligations will continue to be supported by a parent company performance guarantee, letter of credit or bond, if those apply to your Contract. In order to effect this transfer, the Contract requires the parties to enter into an assignment agreement. A copy of the assignment agreement is attached to this letter. The assignment will be effective on notice from us at a later date.

Please signify your company's consent to assign this agreement by executing the attached Assignment Agreement and returning to Dan Johnson by 4/16/2019 via email at dan.johnson@mcdermott.com and mail the original to Attn: Shane Willoughby, McDermott, 2103 Research Forest Drive, The Woodlands, Texas, 77380. Thank you.

Sincerely,



David W. Barefield, PE  
Vice President – Non-Union Onshore Operations  
North, Central, and South America

## ASSIGNMENT AND NOVATION

This Assignment and Novation (this “Assignment”) by and among CB&I, LLC, a Texas limited liability company (the “Assignor”), CB&I Storage Tank Solutions LLC, a Delaware limited liability company (the “Assignee”), and City of Columbus, Ohio (the “Customer”), is made and entered into as of \_\_\_\_\_, 2019, but the effectiveness of this Assignment shall be contingent upon the delivery of a notice from the Assignee to the Customer as provided in paragraph 5 below.

### I. RECITALS

#### WHEREAS:

1. The Customer is a party to that certain contract with the Assignor, Westgate East 2 MMG Storage Tank Contract No. 2032, dated March 19, 2018, all modifications and amendments thereto, and all purchase orders and similar ancillary agreements related thereto (all of which together comprise the “Contract”).
2. The Assignor wishes to assign and novate to the Assignee all of its rights, benefits and interests in, to and under, as well as its duties and obligations under, the Contract.
3. The Assignee has agreed to accept such assignment and novation and to assume the duties and obligations of the Assignor under the Contract.
4. The Customer has been notified of the proposed assignment and novation of the Contract by the Assignor to the Assignee and, in accordance with Section 108.01 of the City of Columbus, Ohio Construction and Material Specifications, wishes to provide its written consent to such assignment and novation of the Contract.

NOW, THEREFORE, in consideration of this Assignment and the covenants, conditions, promises and agreements contained herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the Assignor, the Assignee and the Customer agree as follows:

### II. ASSIGNMENT AND NOVATION

1. Effective as of the Effective Date (as defined below), the Assignor assigns and novates unto the Assignee, and the Assignee accepts, all of the Assignor’s rights, benefits and interests in, to and under the Contract.
2. Effective as of the Effective Date, the Assignee assumes and agrees to perform all of the Assignor’s duties and obligations under the Contract arising on and after the Effective Date, as if the Assignee had been the original party to the Contract in place of the Assignor.
3. The Customer hereby consents to the assignment and novation of the Contract by the Assignor to the Assignee pursuant to Section 108.01 of the City of Columbus, Ohio Construction and Material Specifications.

4. Effective as of the Effective Date, the Customer releases and discharges the Assignor from and with respect to any and all debts, liabilities, obligations, claims, damages, demands, actions, suits, judgments or controversies of any kind whatsoever, which the Customer may have against the Assignor as a party under the Contract whether arising before, on or after the Effective Date.
5. This Assignment shall be effective from the later of (i) the date on which the Assignee gives notice to the Customer substantially in the form set forth in Schedule 1 to this Agreement, and (ii) any later date specified in such notice (the "Effective Date").
6. The Customer acknowledges that the Assignee shall be entitled to the rights, benefits and interests in, to and under the Contract on and after the Effective Date as if the Assignee were named in the Contract as the original party in place of the Assignor. The Customer acknowledges that this Assignment will also serve as notice under the Contract of the assignment and novation of the Contract to the Assignee and any other notice that may be required under the Contract in connection with the Purchase Agreement.
7. Each of the parties represents and warrants to the other parties that:
  - (i) it is a corporation or other entity validly existing under the laws applicable in its jurisdiction of organization;
  - (ii) it has the corporate or other power to enter into and perform its obligations under this Assignment and has taken all necessary corporate or other action to authorize the execution, delivery and performance of this Assignment;
  - (iii) this Assignment is a valid and binding obligation of such party that is enforceable against such party in accordance with its terms, except that (a) such enforcement may be subject to any bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other laws, now or hereafter in effect, relating to or limiting creditors' rights generally and (b) enforcement of this Assignment, including, among other things, the remedy of specific performance and injunctive and other forms of equitable relief, may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought; and
  - (iv) no application or order has been made for the winding up or liquidation of such party; and, as of the date of this Assignment, such party is able to pay its debts as they fall due.
8. Each party agrees that it shall execute all documents and do all acts and things reasonably required for the purposes of giving effect to this Assignment and shall bear its own costs and expenses of and relating to the preparation, execution and completion of this Assignment, including legal costs and expenses.
9. Except as described in this Assignment, the Contract shall continue in full force and effect (as amended by this Assignment). All references in the Contract to the Assignor shall be construed as references to the Assignee on and after the Effective Date.

10. The Assignee's address for notices is:

CB&I Storage Tank Solutions LLC  
757 N. Eldridge Parkway  
Houston, Texas 77079  
Attn: Shane Willoughby

11. In the event that at any time after the Effective Date any further action is necessary to carry out the purposes of this Assignment, the parties hereto shall take such further action (including the execution and delivery of such further documents and instruments) as any party may reasonably request, all at the sole expense of the requesting party.

### III. GENERAL

1. This Assignment constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes other prior agreements and understandings both written and oral, between the parties hereto with respect to the subject matter hereof.
2. This Assignment and the legal relations between the parties hereto shall be governed by and construed in accordance with the laws of the jurisdiction governing the Contract without regard to any principles of conflicts of laws thereof that would result in the application of the laws of any other jurisdiction.
3. This Assignment may be executed in multiple counterparts (including via email or facsimile), all of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures to this Agreement submitted by facsimile transmission, by electronic mail in "portable document format" (.pdf) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.
4. Except as otherwise expressly provided herein, no failure to exercise, delay in exercising, or single or partial exercise of any right, power or remedy by any party, and no course of dealing between the parties, shall constitute a waiver of any such right, power or remedy. No waiver by a party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence. No waiver shall be valid unless in writing and signed by the party against whom such waiver is sought to be enforced.

[Remainder of Page Intentionally Left Blank. Signature Pages Follow.]

IN WITNESS WHEREOF the parties hereto have executed and delivered this Assignment as of the date first above written.

CB&I, LLC

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CB&I STORAGE TANK SOLUTIONS LLC

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CITY OF COLUMBUS, OHIO

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **Schedule 1**

Pursuant to paragraph 5 of that certain Assignment and Novation (this “Assignment”) by and among CB&I, LLC, a Texas limited liability company, CB&I Storage Tank Solutions LLC, a Delaware limited liability company (the “Assignee”), and City of Columbus, Ohio (the “Customer”), made and entered into as of [ ], 2019, the Assignee hereby gives notice to the Customer that the Effective Date (as defined in the Assignment) is [ ].