

OFFER AND CONTRACT

94027647

Tri-Creek South Nichols School Bldg. Corp.

for

the construction and equipping of The New Oak Hill School  
for the Tri-Creek School Corporation  
Lake County, Indiana

THIS OFFER, is made this 21st day of February, 1994, by Sweeney Electric Company, Inc., 9111 Louisiana Street, Merrillville, IN 46410, hereinafter called "CONTRACTOR", and upon acceptance of this Offer in accordance with the terms hereof by the Tri-Creek South Nichols School Bldg. Corp., Fort Wayne, Indiana 46802, an INDIANA CORPORATION, hereinafter call "OWNER", this Offer shall be and become a Contract binding upon Contractor and Owner.

The Contractor and the Owner, for the consideration stated herein, agree as follows:

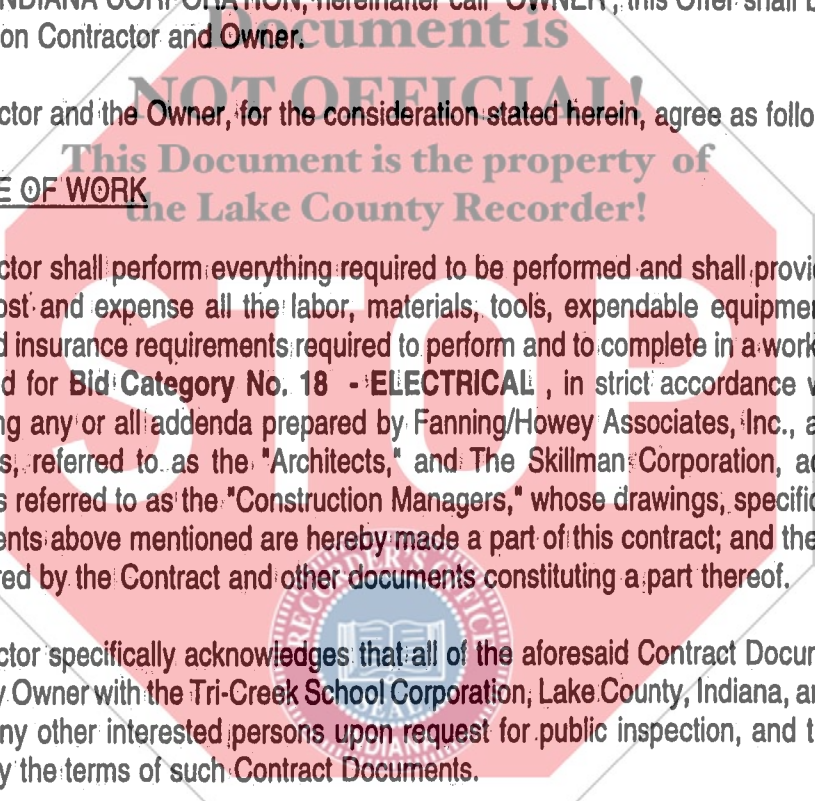
ARTICLE I. SCOPE OF WORK

The Contractor shall perform everything required to be performed and shall provide and furnish at Contractor's sole cost and expense all the labor, materials, tools, expendable equipment, transportation services, bonds, and insurance requirements required to perform and to complete in a workmanlike manner, all the work required for Bid Category No. 18 - **ELECTRICAL**, in strict accordance with the Contract Documents, including any or all addenda prepared by Fanning/Howey Associates, Inc., acting, and in the Contract Documents, referred to as the "Architects," and The Skillman Corporation, acting, and in the Contract Documents referred to as the "Construction Managers," whose drawings, specifications and other Contractual Documents above mentioned are hereby made a part of this contract; and the Contractor shall do everything required by the Contract and other documents constituting a part thereof.

The Contractor specifically acknowledges that all of the aforesaid Contract Documents have been duly placed on file by Owner with the Tri-Creek School Corporation, Lake County, Indiana, and were available to Contractor and any other interested persons upon request for public inspection, and that Contractor is specifically bound by the terms of such Contract Documents.

ARTICLE II. CONTRACT PRICE

The Owner shall pay the Contractor for the performance of this Contract, subject to any agreed additions or deductions provided therein, in current funds, the contract price of **Six Hundred Fifty Two Thousand Eighty (\$652,080.00)**. This price to include all requirements under the Base Bid, Contract Number 18 (\$625,460.00) and Alternate Bids No. 2, 8, 9, 13, 14 and 15 (\$26,620.00), said Alternates to consist of substitutes, deductions, or additions of certain portions of the work, as set forth in the proposal. Payments are to be made to the contractor in accordance with, and subject to the provisions embodied in the documents made a part of this Contract.



Document is  
RECORDED  
FEB 23 12 09 PM '94

STATE OF INDIANA/S.S.N.D.  
LAKE COUNTY  
FILED FOR RECORD

Handwritten signature or initials.

### ARTICLE III. TIME OF COMPLETION

The Contractor hereby extends to the Owner the unconditional right to accept the offer herein extended by the Contractor at any time within one hundred twenty (120) days from the date of bid receipt, the acceptance of same to be signified by the execution of this instrument by the Owner and notice to the Contractor of said acceptance. Upon the giving of said notice by Owner, Contractor agrees to commence the work to be performed under this contract in strict compliance with the detailed schedules set forth in the Contract Documents and to faithfully and diligently prosecute and execute the work in all detail, ready for continuous and successful operation, in such fashion that the entire project shall be completed in every respect ready for occupancy as per detailed schedules set forth or required to be prepared in the contract documents, unavoidable delays excepted.

In case the Contractor shall fail to complete the work or any part thereof according to the terms of this Contract, or in the event at any given time the Contractor is unable to furnish evidence satisfactory to Architect disclosing Contractor's ability to perform on a timely basis, then, in such case, the Owner reserves the right and is hereby authorized upon Seventy-Two (72) Hours notice to the Contractor and his surety, to declare this Contract forfeited and to relet the unfinished portion thereof in the manner provided by law; and such person or persons to whom such work shall have been relet shall be and are hereby authorized to complete said portion of the work without hindrance from the Contractor. The Contractor shall be liable, in case of nonperformance of this Contract, or any part thereof, and hereby agrees to pay said owner as damages, all the costs, charges, and expenses attending such reletting; (including reasonable additional Architect's fees and Construction Manager's fees), and also such sums or amounts as it shall cost to complete the said Contract over and above the amounts hereby agreed for the various items therefor.

Said damages shall bear interest at a rate per annum which is one percentum in excess of the prime interest rate then charged by the Trustee or the maximum rate allowed by law, whichever is lesser, and shall be increased by an amount equal to a like rate of interest computed on the total advancements and payments made by the Owner commencing the day following the scheduled completion date. Notwithstanding anything herein contained to the contrary such damages exclusive of interest shall not exceed the amount retained by the Owner, plus any other sums due the Contractor, as further referenced and provided by Article VI.

### ARTICLE IV. COMPONENT PARTS OF THIS CONTRACT

The Contract consists of the following component parts, referred to herein as the Contract Documents, all of which are as fully a part of this Contract as if herein set out; or, if not attached, as if hereto attached:

- (1) Specifications dated October 28, 1993 consisting of:
  - General Conditions and Supplemental Conditions (Division 1)
  - Specifications for Workmanship and Materials (Divisions 2 thru 12, 15 and 16)
- (2) Addenda No. 1 dated November 10, 1993; Addendum No. 2 dated November 23, 1993, Addendum No. 3 dated November 24, 1993, and Addendum No. 4 dated November 26, 1993.
- (3) Construction Drawings consisting of Cover, Index Sheet, 20 Site Sheets, 25 Architectural Sheets, 5 Food Service Sheets, 9 Structural Sheets, 4 Plumbing Sheets, 10 Mechanical Sheets, and 14 Electrical Sheets all dated October 28, 1993.

- (4) Drawings and descriptions submitted by the Contractor and approved by the Architect
- (5) This Contract
- (6) Subcontractor/Material Suppliers List

#### ARTICLE V. CONTRACT PROVISION

The contractor covenants and agrees to pay all damages for injury to real or personal property, or for any injury or death sustained by any person growing out of any act or deed or omission of the Contractor or of his employees or any of his subcontractors or their employees, irrespective of any other provision of this Contract.

The Contractor agrees to indemnify and save harmless the Owner and any lessee of Owner, their agents and employees, and the Trustee, from and against all loss and expenses (including costs and attorneys' fees) by reason of liability imposed by law upon the Owner or lessee, or Trustee, for damages because of bodily injury, including death at any time resulting therefrom sustained by any person or persons and on account of damage to property, including loss of use thereof, arising out of or in consequence of the performance of this work, provided such injury to persons or damage to property is due or claimed to be due to negligence of the contractor, his subcontractors, employees or agents. The term Owner shall be construed to such succession occurred and/or who or what the successor(s) is or are. The term lessee shall specifically include the Tri-Creek School Corporation, their assigns and successors.

#### ARTICLE VI. PAYMENT OF CONTRACT SUM

Payment(s) to the Contractor will be made each month (starting when work commences) in an amount equal to ninety (90%) percent of the contract values of the work done and materials permanently in place and stored on the site at the close of the preceding month, as determined by the Architect and as so certified to the Owner. Approval for said payments must first be authorized by the Architect, the Construction Manager and then approved by the Tri-Creek School Corporation Board of School Trustees, or their authorized representative, at their regularly scheduled meetings or as otherwise specified and thereafter the Owner will make payment within five (5) days after receipt of all approvals.

The Contractor may request in writing directed to the Owner, Architect, and Construction Manager to approve no further retainage when fifty percent (50%) of the Contract amount has been attained. Approval will be considered in accordance with the Supplemental Conditions.

The provisions of Indiana Code 36-1-12-14 (f) are hereby waived and payment of any retained percentages will be made when all punch list items are certified complete by Architect, Construction Manager and accepted by Owner. In the event that the completion date for each portion of the work is not met or other damages have accrued, Contractor shall pay to Owner upon said final payment, an amount equal to the aforesaid damages plus the interest as provided in the said Article III above, and said retainage, together with all other sums to which the Contractor might be or become entitled, may be applied against the same.

## ARTICLE VII. NO-LIEN CONTRACT

The parties hereto do hereby covenant and agree that no lien shall attach to the real estate by the Contractor, subcontractors, mechanics, journeymen, laborers, or persons performing labor upon or furnishing materials or machinery for the work provided for under the terms of this Contract, and for the purpose of complying with the provision of Indiana Code 32-8-3 as amended, the parties agree that this Contract may be recorded with the Recorder of Lake County, Indiana. Contractor shall require all subcontractors, materialmen or other parties contracting with Contractor for this project to acknowledge this no-lien provision.

## ARTICLE VIII. LOCATION OF PREMISES

The buildings and work to be performed under this Contract shall be on land located in Lake County, Indiana, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference.

## ARTICLE IX. SUBSEQUENT OWNER

The parties now contemplate that the Owner shall, as soon as possible, convey the real estate to the Trustee and therefor, the parties now covenant and agree that any such conveyance shall in no way affect the no-lien provisions of this contract which are expressly made for the benefit of the Owner herein, and any subsequent Owner as hereinabove contemplated.

## ARTICLE X. TERMINATION PROVISION

Contractor further agrees if "Notice to Proceed" as provided for in the Contract Documents is not issued by Owner to contractor within Thirty (30) Days after acceptance by Owner of said Contract, this contract shall be voidable by Owner without liability.

## ARTICLE XI. BENEFITS SHALL SURVIVE

IT IS FURTHER AGREED AND UNDERSTOOD BY AND BETWEEN THE PARTIES HERETO, that the building to be constructed and the work to be performed under this Contract are for the occupancy and use by the Tri-Creek School Corporation, Lake County, Indiana and the Contractor hereunder expressly agrees that all the Contractor's obligations, including guarantees, bonds and performance standards shall inure directly in favor of said Tri-Creek School Corporation, Lake County, Indiana in its own name and right without the necessity of joining any other party of this Contract.

## ARTICLE XII. ASSIGNMENT

Contractor hereby approves and consents to the assignment by Owner to the Tri-Creek School Corporation, of that portion of this Contractor's Offer and Contract, and the Performance Payment and Maintenance Bond with Owner, to the extent that this Offer and Contract pertains to the facilities building to be constructed upon real estate owned by the Tri-Creek School Corporation.

ARTICLE XIII. MINIMUM WAGE SCALE

Pursuant to the requirements of Indiana Law, as referenced in the Supplementary Conditions. An affidavit regarding minimum wage scale is included with this agreement.

FURTHER, Contractor hereby approves and consents to the assignment by Owner to the Trustee of this Contractor's Offer and Contract, and, the Performance Payment and Maintenance Bond with Owner, and Contractor shall be obligated and bound to Trustee as set forth in Contractor's Contract with Owner, which Contract is incorporated herein by reference.

To each of the conditions and obligations of this Contract, the undersigned Contractor, binds itself, its successors, and assigns.

In witness whereof, the Contractor has executed this Offer and Contract the date and year first above written.

(SEAL)



Sweney Electric Company, Inc.

BY: 

Edward J. Shikany, President

ATTEST:

BY: 

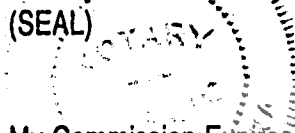
Joseph M. Shikany, Secretary

Printed Signature & Title

STATE OF INDIANA )  
 ) SS:  
COUNTY OF Lake )

Before me, a Notary Public, in and for the aforesaid State and County, this 15 day of March, 1994, personally appeared Edward J. Shikany and Joseph M. Shikany personally known to me to be the President and Secretary of the contractor herein acknowledged the execution of the foregoing offer for, on behalf of, and in the name of said contractor as its voluntary act and deed.

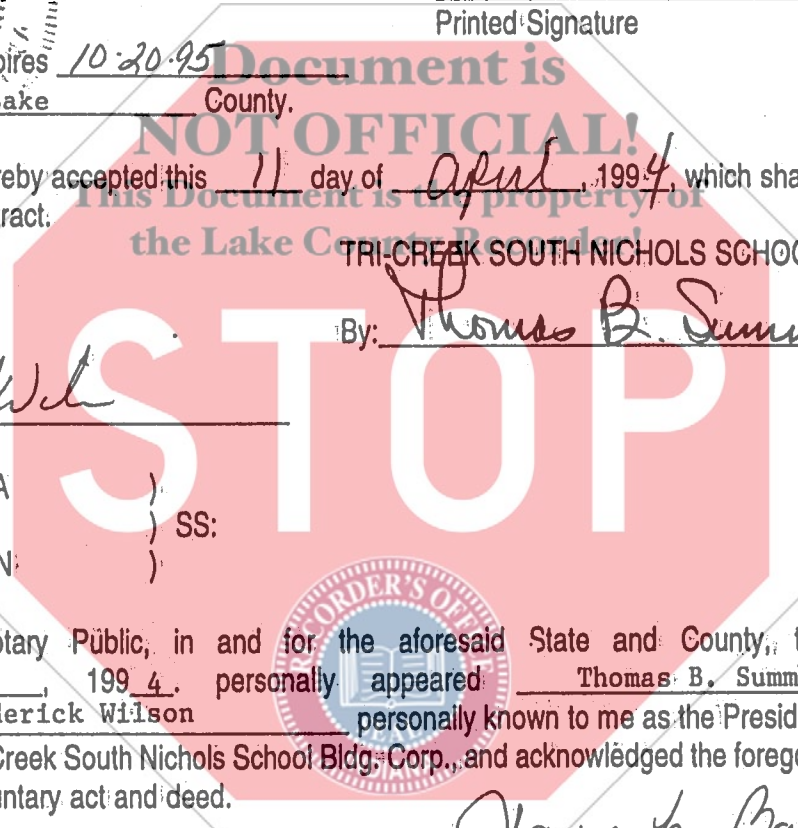
Kathleen Anderson  
Notary Public



Kathleen Anderson  
Printed Signature

My Commission Expires 10-20-95  
Residing in Lake County.

The foregoing is hereby accepted this 11 day of April, 1994, which shall be construed as the date of the Contract.



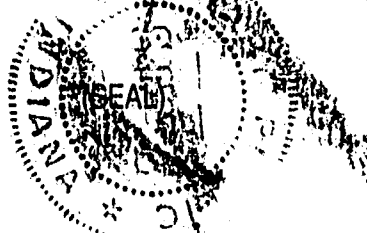
TRI-CREEK SOUTH NICHOLS SCHOOL BLDG. CORP.  
By: Thomas B. Summers

ATTEST  
[Signature]

STATE OF INDIANA )  
 ) SS:  
COUNTY OF ALLEN )

Before me, a Notary Public, in and for the aforesaid State and County, this 11 day of April, 1994, personally appeared Thomas B. Summers and O. Roderick Wilson personally known to me as the President and Secretary, respectively, of Tri-Creek South Nichols School Bldg. Corp., and acknowledged the foregoing acceptance of said offer as its voluntary act and deed.

Jenny L. Baker  
Notary Public



Jenny L. Baker  
Printed Signature

My Commission Expires: January 8, 1994  
Residing in Allen County

This Instrument Prepared by: Richard D. Robinson  
215 Berry Street  
Fort Wayne, IN 46802

**Exhibit A**

**Legal Description of Real Estate**

**Document is  
NOT OFFICIAL!**

A parcel of land in the South 1/2 of the Northwest 1/4 of Section 26, Township 33 North, Range 9 West of the Second Principal Meridian, Lake County, Indiana described as follows: Commencing at the Northwest Corner of said South 1/2 of the Northwest 1/4 of Section 26; thence South 00°00'00" East along the West line of said South 1/2 of the Northwest 1/4, 400.00 feet to the POINT OF BEGINNING; thence South 88°07'46" East parallel with the North line of said South 1/2 of the Northwest 1/4, 1511.86 feet; thence South 00°00'00" East parallel with the West line of said South 1/2, 576.55 feet; thence North 88°07'46" West, parallel with the North line of said South 1/2, 1511.86 feet, to the West line of said South 1/2; thence North 00°00'00" East, 576.55 feet to the Point of Beginning. Containing 20.00 acres and subject to all legal highways and easements.

