

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT

This Agreement is by and between Brunswick-Glynn County Joint Water and Sewer Commission (“Owner”) and (“Contractor”). Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: **SCOPE OF WORK SUMMARY**

THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **PROJECT NAME**

2.02 *Definitions: Levels of Project Completion*

- A. *Substantial Completion* shall be defined as the date on which the Work was sufficiently completed, in accordance with the contract as modified by any change order or amendments agreed by the parties, so that the owner could occupy the project for the use for which it was intended, the sufficiency of which to be determined and certified by the Engineer. Minor items, not necessary for the primary use of the project, determined as such by the Engineer, may still be incomplete.
- B. *Final Completion* shall be defined as the date on which the construction is complete, and all items of the Work have been satisfactorily completed and accepted in accordance with the contract, as determined and certified by the Engineer.

ENGINEER

- 3.01 The Owner will assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.

CONTRACT TIMES

4.01 *Time is 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 *Contract Times: Dates*

- A. The Work will be substantially complete completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions based on the issue date of the Notice To Proceed.

4.03 *Contract Times: Days*

- A. The Work will reach Final Completion within **xx** days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within **xx** days after the date when the Contract Times commence to run.

4.04 *Milestones*

A. ADD PROJECT MILESTONES IF APPLICABLE

4.05 *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 and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. 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. The parties agree that the following liquidated damage amounts are reasonable estimates of anticipated or actual harm that might arise from Contractor's breach. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. *Substantial Completion:* Contractor shall pay Owner \$1,000 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
 2. *Completion of Remaining Work:* After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$1,000 for each day that expires after such time until the Work is completed and ready for final payment.
 3. Liquidated damages for failing to timely attain Substantial Completion, and Final Completion are not additive, and will not be imposed concurrently.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

4.06 *Special Damages*

- A. Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.
- C. The special damages imposed in this paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement.

CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:
- A. For all Work, at the prices stated in Contractor's Bid, **INSERT AMOUNT** , attached hereto as Exhibit A.

PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 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 the basis of Contractor's Applications for Payment on or about the 20th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract.
1. 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 Owner may withhold, including but not limited to retainage and liquidated damages, in accordance with the Contract and the General Conditions.
 - a. Except as otherwise provided herein following the completion of fifty percent (50%) of the Work, Owner shall pay Contractor ninety percent (90%) of the value of the Work completed as provided in the contract documents plus the value of materials and equipment suitably stored, insured, and protected at the construction site and, at the owner's discretion, such materials and equipment suitably stored, insured, and protected off site at a location approved by the owner's authorized contract representative, when allowed by the contract documents, with the remaining ten percent (10%) held as retainage; and
 - b. There shall be no amounts retained on progress payments submitted after 50 percent (50%) of the Work on the project has been completed if in the opinion of Owner or Engineer that such Work is satisfactory and has been completed on schedule; and
 - i. Discontinuation of retention shall not affect the retained amounts on the first fifty percent (50%) of the Work on the project which may continue to be held to ensure satisfactory completion of the project; and
 - ii. If, after discontinuing the retention, the Owner or Engineer determines that the work is unsatisfactory, or has fallen behind schedule, the Owner may resume retention at the previous rate of ten percent (10%).
 - B. At Substantial Completion of the Work, and as the Engineer determines the work to be reasonably satisfactory, Owner shall within thirty (30) days after invoice and other appropriate documentation as may be required by the contract documents are provided pay the retainage to the Contractor. If at that time there are any remaining incomplete minor items, an amount equal to 200 percent (200%) of the value of each item as determined by the Engineer shall be withheld until such item or items are completed.
 - C. Final payment of the retained amounts to the Contractor under the contract to which the retained amounts relate shall be made after certification by the Engineer in charge of the project covered

by the contract that the work has been satisfactorily completed and is accepted in accordance with the contract, plans, and specifications.

- D. Retainage shall be invested at the current market rate and any interest earned on the retained amount by Owner shall be paid to the Contractor when the project has been completed within the time limits specified and for the price specified in the contract, or in any amendments or change orders approved in accord with the terms of the contract, as certified pursuant to Subsection 1 of this paragraph; and
 - 1. Payment to the Contractor of interest earned on the retained amounts shall be made after certification by the Engineer in charge of the project covered by the contract that the work has been completed within the time specified and within the price specified in the contract.
- E. The Contractor shall, within ten days from the contractor's receipt of retainage from the owner, pass through payments to subcontractors and shall reduce each subcontractor's retainage in the same manner as the contractors retainage is reduced by the owner; provided, however, that the value of each subcontractor's work complete and in place equals 50 percent of his or her subcontract value, including approved change orders and other additions to the subcontract value, provided, further, that the work of the subcontractor is proceeding satisfactorily and the subcontractor has provided or provides such satisfactory reasonable assurances of continued performance and financial responsibility to complete his or her work including any warranty work as the contractor in his or her reasonable discretion may require, including, but not limited to, a payment and performance bond; and
 - 1. The foregoing paragraph is intended to outline Contractor's responsibilities as set forth in O.C.G.A. § 13-10-80, and is not, by itself, intended to confer contractual privity or third party beneficiary status upon any subcontractor or lower tier subcontractor.

6.03 *Consent of Surety*

- A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

6.04 *Interest*

- A. All amounts not paid when due will bear interest at the rate of one percent per annum.

CONTRACT DOCUMENTS

7.01 *Contents*

- A. The Contract Documents consist of all of the following:
 - 1. This Agreement.
 - 2. Bonds:
 - a. Performance bond (together with power of attorney).
 - b. Payment bond (together with power of attorney).
 - 3. General Conditions.
 - 4. Supplementary Conditions.
 - 5. Specifications as listed in the bid documents table of contents of the project manual (copy of list attached).
 - 6. Drawings listed on the attached sheet index.
 - 8. Addenda (if any)

9. Exhibits to this Agreement (enumerated as follows):
 - a. Bid Form dated in response to Invitation For Bid **INSERT PROJECT NAME** Improvements released on **INSERT DATE**.
10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
 - e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 7.01.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 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 Contractor's Representations

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
 4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
 5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
 6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.

7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no 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.
8. 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.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

8.02 *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 8.02:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything 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.

8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on **insert date 2021** (which is the Effective Date of the Contract).

Owner:

Brunswick-Glynn Count Joint Water and Sewer
Commission

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

G. Ben Turnipseed, Sr.

(typed or printed)

Title:

Chairman

(typed or printed)

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

1703 Gloucester Street

Brunswick, GA 31520

Designated Representative:

Name:

Andrew Burroughs

(typed or printed)

Title:

Executive Director

(typed or printed)

Address:

1703 Gloucester Street

Brunswick, GA 31520

Email:

aburroughs@bgjwsc.org

Contractor:

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

(If [Type of Entity] is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

License No.:

(where applicable)

State:

Georgia