

SECTION 00520 – AGREEMENT (CONTRACT)

THIS AGREEMENT, made on the _____ day of _____, 20____, by and between Lexington Fayette Urban County Government, acting herein called "OWNER" and _____ doing business as a _____ located in the City of _____, County of _____, State of _____, hereinafter called "CONTRACTOR".

WITNESSETH: That the CONTRACTOR and the OWNER in consideration of _____ dollars quoted in the BID by the CONTRACTOR, dated _____, 20____, hereby agree to commence and complete the construction described as follows:

1.01 SCOPE OF WORK

The CONTRACTOR shall furnish all the materials, supplies, machinery, equipment, tools, supervision, labor, insurance, and other accessories and services necessary to complete the said project in accordance with the BID, the Contract Documents, and the Specifications prepared by the Engineer for the Contract 1: Town Branch Commons, Sanitary Sewer TB-10 Phase 1-LFUCG RMP LFUCG Bid No. 50-2018.

1.02 ENGINEER

The Project has been designed by Gresham Smith Partners.

OWNER has retained Gresham Smith Partners ("ENGINEER") 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 the completion of the Work in accordance with the Contract Documents, except for resident project representative services. Integrated Engineering of Lexington, Kentucky will assume these duties and responsibilities and the rights and authority thereto in accordance with the Contract Documents.

Strand Associates, Inc.® is the OWNER/ENGINEER's consultant providing services during construction.

1.03 TIME OF COMPLETION

The time period estimated and authorized by the OWNER for Substantial Completion of Work by the AGREEMENT, in full, is hereby fixed as 270 **consecutive calendar days**. The time shall begin ten (10) calendar days after CONTRACTOR is issued the Notice to Proceed.

1.04 ISSUANCE OF NOTICE TO PROCEED

Notice to Proceed for Work will be issued in whole or in part of the Work as determined by the OWNER pending the availability of funds. The order of construction will be as determined by the Engineer after consultation with the CONTRACTOR and the OWNER.

1.05 AGREEMENT (CONTRACT) AMOUNT

The OWNER agrees to pay the CONTRACTOR in current funds for the performance of the AGREEMENT as quoted in the BID, subject to any additions and deductions, as provided therein.

1.06 PROGRESS PAYMENTS

The OWNER shall make payments on account of the AGREEMENT in accordance with the General Conditions, as recommended by the Engineer and authorized by the OWNER, less the aggregate of previous payments.

1.07 ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due within ninety (90) days after Final Completion of the Work, provided the Work is deemed "Final Completion" and fully accepted by the OWNER.

Before issuance of final certificate, the CONTRACTOR shall submit evidence satisfactory to the Engineer that all payrolls, material bills, and other indebtedness connected with the AGREEMENT (CONTRACT) has been paid.

If, after the Work has been substantially completed, full completion thereof is materially delayed through no fault of the CONTRACTOR, and the ENGINEER so certifies, the OWNER shall upon certificate of the ENGINEER, and without terminating the AGREEMENT (CONTRACT), make payment of the balance due for that portion of the Work fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

1.08 EXTRA WORK

The OWNER, without invalidating the AGREEMENT (CONTRACT) may order extra work or make changes by altering, adding to or deducting from the Work, the AGREEMENT (CONTRACT) amount being adjusted accordingly. All such work shall be executed and paid for in accordance with the General Conditions.

1.09 LIQUIDATED DAMAGES

If the CONTRACTOR shall fail or refuse to complete the Work within the AGREEMENT (CONTRACT) Time, or extension of time granted by the OWNER, then the CONTRACTOR agrees as a partial consideration for the awarding of this AGREEMENT (CONTRACT) that the OWNER may retain the compensation otherwise to be paid to the CONTRACTOR the amount of one thousand dollars (\$1,000.00) per consecutive calendar day that the CONTRACTOR shall be in default after the Final Completion time stipulated in the Contract Documents. The said amount is fixed and agreed upon by and between the CONTRACTOR and the OWNER because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the OWNER would in such event sustain.

1.10 CONSENT DECREE REQUIREMENTS

A. The OWNER, the United States Environmental Protection Agency, and the Commonwealth of Kentucky have entered into a Consent Decree in a case styled *United States, et al. v. Lexington-Fayette Urban County Government*, United States District Court for the Eastern District of Kentucky, Case No. 5:06-CV-00386 ("CONSENT DECREE"), that requires OWNER to complete numerous projects related to its sanitary sewer system and stormwater management program within specific periods of time.

B. **Time is of the essence in the performance of this Agreement (CONTRACT).** CONTRACTOR is aware that the OWNER is subject to penalties for non-compliance with the CONSENT DECREE deadlines. The CONTRACTOR shall be specifically liable and responsible for payment of any and all penalties, fines, or fees assessed against or incurred by the OWNER as a result of any delay in, or non-performance of, any of the

CONTRACTOR's obligations or responsibilities under this AGREEMENT (CONTRACT), or for any other damages suffered by OWNER as a result of such delay or non-performance. This shall specifically include, but shall not be limited to, any penalty, fine, fee, or assessment against the OWNER by the U.S. Department of Justice, U.S. Environmental Protection Agency, and/or the Kentucky Energy and Environment Cabinet related to the CONSENT DECREE.

- C. The provisions of the Contract Documents and the various rates of compensation for CONTRACTOR's services provided for elsewhere in this AGREEMENT (CONTRACT) have been agreed to in anticipation of the orderly and continuous progress of the AGREEMENT (CONTRACT) through completion.
- D. If delays result by reason of acts of the OWNER or approving agencies, which are beyond the control of the CONTRACTOR, an extension of time for such delay will be considered. If delays occur, the CONTRACTOR shall immediately notify the OWNER and within five (5) business days from the date of the delay apply in writing to the OWNER for an extension of time for such reasonable period as may be mutually agreed upon between the parties, and if approved, the AGREEMENT (CONTRACT) schedule shall be revised to reflect the extension. Such extension of time to the completion date shall in no way be construed to operate as a waiver on the part of the OWNER of any of its rights in the AGREEMENT (CONTRACT). In the event the parties cannot agree upon an extension of time, the Dispute shall be addressed in the manner outlined hereinafter under this Article.

In the event that the overall delay resulting from the above-described causes is sufficient to prevent complete performance of the AGREEMENT (CONTRACT) within six (6) months of the time specified herein, the fees to be paid to CONTRACTOR shall be subject to adjustment as agreed upon by the parties.

- E. If delays result solely by reason of acts of the CONTRACTOR, the CONTRACTOR shall be held liable for any financial penalties incurred by the OWNER as a result of the delay, including but not limited to those assessed pursuant to the CONSENT DECREE. Disputes as outlined hereinafter in this Article shall apply in the event the parties cannot mutually agree upon the cause(s) associated with delays in completing project deliverables. The CONTRACTOR must immediately notify the OWNER in the event of such delay, and provide the OWNER a written action plan within five (5) business days on how it will attempt to resolve the delay.

F. DISPUTES

Except as otherwise provided in this AGREEMENT (CONTRACT), any dispute hereunder may be resolved by agreement of the OWNER's Agent (Charles H. Martin, P.E., Director of Water Quality) and the CONTRACTOR. In the absence of such an agreement, the dispute shall be submitted to the OWNER's Commissioner, Department of Public Works and Environmental Quality, whose decision shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. Pending a final decision of a dispute hereunder the CONTRACTOR shall proceed diligently with the performance of the AGREEMENT (CONTRACT) in accordance with the direction of the OWNER.

1.11 RIGHT TO REVIEW, AUDIT, AND INSPECT

The CONTRACTOR shall provide to the OWNER or its duly authorized representative(s), at any time during the course of the contract and up to five (5) years thereafter, access to any books, documents, papers, emails, and/or other records or communications which are directly pertinent to this specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

1.12 CONTRACT DOCUMENTS

In general, the Advertisement for Bids, Information Available to Bidders, the Bid, the General Conditions, Performance, Payment, Erosion and Sediment Control and Warranty Bonds, AGREEMENT (CONTRACT), Supplementary Conditions, Supplemental General Conditions for SRF, Technical Specifications, any and all Addenda, and Plan Drawings form the AGREEMENT (CONTRACT) and they are fully a part of the AGREEMENT (CONTRACT) as if hereto attached or herein repeated.

A full listing of the Contract Documents consist of the following:

Specifications:

- 00100 Advertisement for Bids
- 00300 Information Available to Bidders
- 00320 Geotechnical Data
- 00410 Bid Form
- 00510 Notice of Award
- 00520 Agreement (Contract)
- 00550 Notice to Proceed
- 00600 Bonds and Certificates
- 00700 General Conditions
- 00800 Supplementary Conditions
- 00810 Supplemental General Conditions for Clean Water State Revolving Fund, Drinking Water
State Revolving Fund
AIS Guidance
- 00820 Wage Determination Schedule
- 00890 Permits
- 00910 Addenda
- 01010 Summary of Work
- 01025 Measurement and Payment
- 01040 Coordination
- 01200 Project Meetings
- 01300 Submittals
- 01320 Progress Schedules
- 01400 Quality Control
- 01510 Temporary Utilities
- 01515 Maintain and Control Traffic
- 01520 Maintenance of Utility Operations During Construction
- 01530 Protection of Existing Facilities
- 01540 Demolition and Removal of Existing Structures and Equipment
- 01550 Site Access and Storage
- 01560 Temporary Environmental Controls

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01580 Project Identification and Signs
01631 Products and Substitutions
01731 Cutting and Patching
01770 Project Closeout
02225 Excavating, Backfilling and Compacting for Sewers
02240 Dewatering
02371 Storm Water Pollution Prevention Plan (SWPPP)
02372 Erosion and Sediment Control
02374 ESC Permitting, Inspection, and Permitting Procedures
02400 Boring and Jacking
02532 Sewage and Collection Lines
02540 Pipe Abandonment
02608 Manholes
02650 Pipe Cleaning
02651 TV Inspection
02700 Asphaltic Concrete Paving
02775 Sidewalks
03300 Cast-in-Place Concrete
03600 Grout

Drawings Table of Contents

Drawings (Plans): Sheets S1 through S11

IN WITNESSETH WHEREOF, the parties hereto have executed this AGREEMENT (CONTRACT) as of the date and year above written.

(Seal)

Lexington-Fayette Urban County Government
Lexington, Kentucky

(Owner)

ATTEST:

Clerk of Urban County Council

By: _____
(Signature of Mayor)

_____, Mayor
(Name/Title)

(Seal)

(Contractor)

(Secretary)*

By: _____
(Contractor's Signature)

(Witness)

(Name/Title)

(Address)

*IMPORTANT: Strike out any non-applicable terms:

Secretary of the OWNER should attest. If the CONTRACTOR is corporation,
Secretary should attest. Give proper title of each person-executing AGREEMENT
(CONTRACT).

END OF SECTION