

CONTRACT

THIS CONTRACT is made and entered into the _____ day _____ of 20____, by and between

(Contractor)

Hereinafter "Contractor," and the Board of Water and Sewer Commissioners of the City of Mobile, Alabama, hereinafter "Owner."

WITNESSETH:

The Contractor, for the consideration hereinafter fully set out hereby agrees with the Owner, as follows:

1. The Contractor shall furnish all materials and perform all Work as set forth in the following Contract Documents: Invitation for Bids, and any Addenda thereto; Proposal and all Documents submitted therewith; Standard Specifications of the Board of Water and Sewer Commissioners of the City of Mobile, Alabama; any Specifications of the Owner provided with the Invitation for Bids which are specific to this Contract; General Conditions; Special Provisions; Detailed Specifications; this Contract form; Bonds; Drawings and Addenda; all of which are attached hereto and made a part of the parties' Contract, as if fully set forth herein:

PROJECT NO. _____

2. The Contractor shall commence performance of this Contract on a date to be specified in a written order of the Owner, and shall fully complete all Work hereunder within _____ consecutive calendar days from and after said date. "Work" shall include all construction, delivery of materials and items, and other obligations of the Contractor under this Contract.
3. The Owner hereby agrees to pay to the Contractor for the faithful performance of the Contract, subject to additions and deductions as provided in the Specifications or Proposal, in lawful money of the United States, as follows:

Approximately _____ Dollars
(\$ _____), in accordance with lump sum and unit prices set forth in the Proposal.

4. The Owner shall make monthly partial payments to the Contractor on the basis of a duly certified and approved estimate of Work performed during the preceding calendar month by the Contractor. The Owner may retain five percent (5%) of the amount of such estimate until fifty percent (50%) of the Work has been completed. The Owner may hold this retainage until all Work has been performed strictly in accordance with this Contract and until all Work has been accepted by the Owner and all obligations of the Contractor under this Contract have been satisfied.
5. Upon submission by the Contractor of evidence satisfactory to the Owner that all payrolls, material bills, and other costs incurred by the Contractor in connection with the performance of this Contract have been paid in full, and upon satisfaction by the Contractor of all other obligations under this Contract, final payment on account of this Contract shall be made within thirty (30) days after the completion by the Contractor of all Work covered by this Contract and the acceptance thereof by the Owner.
6. The parties hereto acknowledge and agree that time is of the essence for performance of this Contract. The parties agree that in the event the Work is not completed within the time herein specified, the Owner may retain from the compensation otherwise to be paid to the Contractor the sum of \$_____ per day for each day thereafter, Sundays and holidays included, that the Work remains uncompleted. The parties agree that this dollar amount represents their agreed upon stipulation as to the damages which the Owner will have sustained per day due to the failure of the Contractor to complete the Work within the time stipulated, and that this amount is not a penalty.
7. Sanitary Sewer Overflows (SSOs) and unpermitted discharges of wastewater to the environment are a violation of Federal and State laws, as well as a breach of this Contract. The Contractor and associated subcontractors, vendors, and other entities and persons chosen to complete this Work shall not, through act or omission, discharge untreated wastewater to the environment or cause wastewater to back up into a building. The Contractor hereby agrees to indemnify the Owner if the Owner is assessed penalties or fines, receives regulatory actions, or has actions, suits, or claims filed against it by any person or entity as a result of SSOs or unpermitted discharges caused by act or omission of the Contractor and/or any entity or person performing work in the Contractor's behalf under this Contract. The Contractor shall reimburse the Owner for all damages, losses, penalties, fines, judgments, interest, costs, and expenses of every nature incurred by the Owner, including but not limited to reasonable attorney's fees, arising from or associated with each SSO or unpermitted discharge. In addition, the Contractor shall pay the penalties identified in the Contract Documents to the Owner for SSOs and unpermitted discharges caused by the Contractor and/or any entity or person performing Work in the Contractor's behalf, regardless of whether such SSOs or discharges reach waters of the State.
8. The parties hereto further agree hereto that if at any time after the execution of this Contract and the Contract Bond hereto attached for its faithful performance, the Owner shall deem the surety or sureties upon such bond to be unsatisfactory, or if, for any reason, such bond ceases to be adequate to cover the performance of the Work, the Contractor shall at its expense, within five (5) days after the receipt of notice from the Owner to do so, furnish an

additional bond or bonds in such form and amount and with such surety or sureties as shall be satisfactory to the Owner. In such event, no further payment to the Contractor shall be due under this Contract until such new or additional security for the faithful performance of the Work shall be furnished in manner and form satisfactory to the Owner.

9. The parties acknowledge that the Contract Documents governing the Contract between them for this project include, but may not be limited to, this Contract form; all other materials furnished with the Invitation for Bids; the Contractor's Proposal and all documents and items submitted with Contractor's bid for this project; the Owner's Standard Specifications, General Conditions, and Special Conditions; all plans and drawings for the project; other documents which may be incorporated into any of the foregoing by reference; and Change Orders for the project, if any.
10. In addition to the Indemnity obligations set forth in the Contract Documents, in the event that legal action is brought by any person or entity against the Owner, its employees, or agents, asserting negligent act(s) or omission(s), violation of law or regulation, or other legally culpable conduct of the Contractor, the Contractor's employees, subcontractors, successors, or anyone for whose acts or omissions the Contractor may be legally liable, whether said action be for property damage, personal or bodily injury, wrongful death, environmental harm, or anything else, the Contractor shall reimburse the Owner for the Owner's reasonable attorneys' fees, costs, and expenses incurred in defending against same, through all trial and appeals relative to thereto, including but not limited to cost of bonds and interest in the event of an appeal, whether filed by the Owner or by another party.
11. Should the Owner employ legal counsel to prevent a breach of this Contract, or to otherwise assert or protect its rights under this Contract, the Contractor shall reimburse the Owner for the Owner's reasonable attorneys' fees, costs, and expenses incurred, including those incurred through any appeal, if the Owner is the prevailing party.
12. The Contractor acknowledges that the Contractor has had an opportunity to fully review with Contractor's legal counsel all requirements of this Contract, including this Contract form and all other Contract Documents. The Contractor acknowledges that the Contractor is fully familiar with the requirements for the project which is the subject hereof.
13. The Contractor shall comply with all laws, ordinances, and regulations applicable to the project.
14. The Contractor shall maintain in full force and effect all insurance required by the Contract Documents.
15. The parties hereto acknowledge that the Contract Documents reflect their complete understanding as to the provisions of this Contract and shall supersede all prior understandings, representations, and communications between them, whether oral or written, as to its subject matter.

IN WITNESS WHEREOF, the representatives of the parties hereto have executed this Contract by signing below, with full authority as the act of each party, to be effective as of the day and date first above written in two (2) counterparts, each of which shall, without proof or accounting for the other counterpart, be deemed an original Contract.

**BOARD OF WATER AND SEWER
COMMISSIONERS OF THE CITY OF
MOBILE, ALABAMA**

ATTEST

By _____
(Legal Signature)

(Printed Name and Title)

By _____
(Legal Signature)

(Printed Name and Title)

CONTRACTOR: _____

By _____
(Legal Signature)

(Printed Name and Title)

By _____
(Legal Signature)

(Printed Name and Title)

(SEAL)

NOTARY ACKNOWLEDGEMENTS

STATE OF _____
COUNTY OF _____

Before me, the undersigned Notary Public in and for the above County and State, personally appeared _____, whose name as _____ for the above Owner is signed above, and who, after being by me first duly sworn, acknowledged before me that he/she signs this Contract with full authority as the act of the Owner.

Given under my hand and seal this _____ day of _____, 20_____.

[Print Name]: _____

My Commission Expires: _____

STATE OF _____
COUNTY OF _____

Before me, the undersigned Notary Public in and for the above County and State, personally appeared _____, whose name as _____ for the above Contractor is signed above, and who, after being by me first duly sworn, acknowledged before me that he/she signs this Contract with full authority as the act of the Contractor.

Given under my hand and seal this _____ day of _____, 20_____.

[Print Name]: _____

My Commission Expires: _____