

AIA® Document A101® – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the Thirteenthth day of December in the year Two Thousand Twenty-two.

BETWEEN the Owner:

City of Angleton
121 S. Velasco
Angleton, TX 77515
«Telephone Number: 979-849-4364
Chris Whittaker, City Manager, City of Angleton, Texas
«Martha Eighme, Project Manager», City of Angleton, Texas

and the Contractor:

Construction Masters of Houston, Inc.
3908 Third St.
Pearland, TX 77581
824 Louisiana, League City, Texas 77573
Telephone Number: 281-997-2640
Fax Number: 281-485-4702

for the following Project:

Oyster Creek Wastewater Treatment Plant Lab Redesign
474 CR 609
Angleton, Texas 77515
The project includes selective demolition of the existing interior, and selected areas of exterior egress as directed by owner and as set out in the contract documents. The project purpose is to provide an improved and efficient layout with updated equipment to serve the staff of the Wastewater Treatment Plant Lab and ensure water quality. The constructed improvements will include an office, a control room, a break room for the employees, a larger unisex restroom, and lab space. The existing equipment room will be enclosed. All renovations on the interior will take place on the second floor.

The Architect:

MRB Group
303 W. Calhoun Ave.
Temple, TX 76501»
Telephone Number: 254-771-2054

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101®-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, "Contract Documents for the Oyster Creek Wastewater Treatment Plant" prepared by MRB Group, P.C., the City's Request for Proposal, the Contractor's Response to the City's Request for Proposal, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

All work must be in strict compliance with all codes, regulations, and ordinances of the City, including all required licenses and permits.

Contractor shall bear the responsibility of verifying existing utility locations and ensuring that utilities in areas of demolition and construction are not damaged. Any damaged utilities shall be repaired at the Contractor's own expense and shall not impact the contract schedule. The work includes selective demolition of the existing interior, and selected areas of exterior egress as directed by owner and as set out in the contract documents. The project purpose is to provide an improved and efficient layout with updated equipment to serve the staff of the Wastewater Treatment Plant Lab and ensure water quality. The constructed improvements will include an office, a control room, a break room for the employees, a larger unisex restroom, and lab space. The existing equipment room will be enclosed. All renovations on the interior will take place on the second floor.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

December 13, 2022

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

Not later than ~~two hundred~~(200) calendar days from the date of commencement of the Work, but in no event later than July 1, 2023.

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

NOT APPLICABLE all work to be complete on Substantial Completion Date.

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3.1, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be ~~Four Hundred Twenty-seven Thousand Three Hundred Twenty Dollars and Zero Cents~~ (\$ ~~427,320.00~~), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum: NOT APPLICABLE

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. Any modification to this agreement must be in writing and approved and executed by Owner.

§ 4.3 Allowances, if any, included in the Contract Sum: NOT APPLICABLE

§ 4.4 Unit prices, if any: NOT APPLICABLE

§ 4.5 Liquidated damages, if any:

Liquidated damages for delay will be assessed at \$500.00 per day for every day past the date of substantial completion that the work is not completed.

§ 4.6 Other: NOT APPLICABLE

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Project Manager by the Contractor and Certificates for Payment issued by the Project Manager, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 5.1.3 Provided that an Application for Payment is received by the Owner not later than the 25th day of a month, the Owner shall make payment of the amount certified to the Contractor, and subsequent to Owner inspection and Owner approval, not later than the 25th day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment of the amount certified shall be made by the Owner not later than ~~thirty~~ (30) days after the Owner receives the Application for Payment.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to

substantiate its accuracy, as the Project Manager may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows: Not applicable no progress payments all payments to be made as set forth in § 5.1.3

§ 5.1.6.1 The amount of each payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work, as inspected, approved and accepted by Owner;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Project Manager determines, in the Project Manager's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Project Manager has previously withheld a Certificate for Payment;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Project Manager may withhold payment, or nullify a Certificate of Payment in whole or in part; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due: **10%**

§ 5.1.7.1.1 The following items are not subject to retainage: NOT APPLICABLE

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows: NOT APPLICABLE

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. Not Applicable, however, *release of retainage is subject to submission of closeout documents and completion of substantial completion punch list of any pending work. In addition to the city acceptance and approval the Owners Development Services Department will be responsible for inspecting any completed work related to any construction inspections.*

§ 5.1.8 Except with the Owner's prior written approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

1. Contractor has fully performed the Contract requirements as set forth in the Contract documents and as required by Owner, and Contractor shall satisfy other requirements, if any, which extend beyond final payment; and
2. Final Certificate for Payment has been issued by the Project Manager.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Project Manager's final Certificate for Payment if all terms of the contract documents have been satisfied.

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The City Manager or his designee will serve as the Initial Decision Maker, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

§ 6.2 Binding Dispute Resolution

The parties agree to attend mediation should any dispute arise regarding the terms of this Contract. For any Claim subject to, but not resolved by, mediation, the method of binding dispute resolution shall be Arbitration

ARTICLE 7 TERMINATION

§ 7.1 The Contract may be terminated by the Owner or the Contractor at any time without cause by providing the other party at least thirty (30) calendar days written notice. Any such termination shall result in nonpayment for any portion of the required contractual obligations not fulfilled by Contractor.

§ 7.1.1 Termination With Cause

Upon written notice to the Contractor of a defect or breach of this Agreement, Contractor has five (5) business days to cure any defect or breach cited in said notice. Nevertheless, the City reserves the right to provide written notice to the Contractor that this Agreement shall continue if the Contractor has in good faith commenced efforts to cure said defect or breach and the Contractor agrees, in writing, to continue to act without undue delay to cure said defect or breach.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

Chris Whittaker, City Manager
City of Angleton
121 S. Velasco
Angleton, TX 77515
979-849-4364 x2111
meighme@angleton.tx.us»

§ 8.3 The Contractor's representative:

Justin Davis
Construction Masters of Houston, Inc.
P. O. Box 1587
Pearland, TX 77588
281-997-2640
justin@cmhou.com

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents. The Contractor shall obtain and provide insurance as set forth in the requirements in the RFQ.

§ 8.5.2 The Contractor shall provide a performance bond in the full amount of the contract and a payment bond as set forth in the Contract Documents and required by Texas Government Code chapter 2253.

§ 8.6 Notice in electronic format may be given to the party's representative above, with a read receipt required.

§ 8.7 Other provisions:

Bid Clarifications to be approved and accepted by Owner: LVT flooring shall be installed where epoxy flooring is shown, LVT flooring shall be installed over existing VCT flooring at Lab 201. Existing VCT shall be removed at all other locations. Any abatement of hazardous materials is excluded from this estimate. Relocation of existing furnishings is excluded from the proposal. Drinking fountains shown on the drawings are not included in this proposal. The existing water cooler will be reused. Appliances are to be furnished by owner per drawings. A urinal will be added to the restroom. All countertops are to be solid surface.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- .2 Contract Documents for the Oyster Creek Wastewater Treatment Plant prepared by MRB Group, P.C.
- .3 City's Request for Proposal
- .4 Contractor's Response to City's Request for Proposal.5 Drawings (see #2, above)

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits: NOT APPLICABLE

.9 Other documents, if any, listed below: NOT APPLICABLE »

Verification No Boycott Israel. The Contractor hereby verifies that it does not boycott Israel and will not boycott Israel through this Agreement. For purposes of this verification, "boycott Israel" means refusing to deal with, termination of business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

Foreign Terrorist Organizations. The Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

Immigration. Consultant represents and warrants that it shall comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments.

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

Chris Whittaker, City Manager, City of Angleton,
Texas

Printed name and title

CONTRACTOR (Signature)

Justin A. Davis, President, Construction Masters of
Houston, Inc.

Printed name and Title