

Section XIII - Agreement Form

THIS AGREEMENT, made and entered into this the \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between **THE METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, NORTH CAROLINA**, hereinafter referred to as the DISTRICT and \_\_\_\_\_ hereinafter referred to as the CONTRACTOR.

WITNESSETH:

That the parties hereto do mutually agree as follows:

1. The CONTRACTOR will furnish all materials, equipment, supplies, tools, power, fuel and services and perform all labor necessary for construction of the sanitary sewer replacement, and will construct same in strict conformity with the terms and conditions set forth in the following named documents which are hereto attached and made a part of this contract:

**Intermediate Clarifier Effluent Trough Rehabilitation, Phase 1  
Project No. 2022024**

Notice to Contractors, Instructions to Bidders, Non-Collusive Affidavit, Bid Proposal, General Conditions, Special Conditions, Performance Bond, Labor and Materials Bond, Technical Specifications, Details and Contract Plans as enumerated and identified in the specifications.

2. The DISTRICT will pay to the CONTRACTOR, on faithful performance of his undertakings hereunder, in lawful money of the United States, the respective unit prices set forth in the aforementioned bid proposal for each unit of work performed or installed by the CONTRACTOR, the estimated sum total of all payments hereunder being:

3. The DISTRICT will make payments to the CONTRACTOR as specified in Paragraph 14.2 of the General Conditions. In accordance with NCGS 143-134.1 retainage shall be Five Percent (5%) until the project has been satisfactorily Fifty Percent (50%) completed and deemed to be on schedule for completion by the agreed completion date. The DISTRICT will then retain this constant amount, while retaining no further retainage, until the project is one-hundred percent (100%) complete.

Nothing in this section shall be deemed to preclude the DISTRICT from withholding full or partial payment for defective Work or Work that has not been fully completed in accordance with the Project Specifications and the Contract Documents, to the satisfaction of the ENGINEER. The DISTRICT may withhold up to two and one-half (2.5) times the value of any incomplete Work, in accordance with NCGS 143-134.1.

4. Within a period of 30 days after completion of the work and acceptance by the DISTRICT, the DISTRICT will make a final and complete payment in full to the CONTRACTOR on account of this contract; provided that, during said 30 day period, the CONTRACTOR has submitted to the DISTRICT satisfactory written evidence that all payrolls and other costs incurred by the CONTRACTOR in connection with the work have been paid in full and executed "Certificate of Completion" with all submittals; otherwise final payment will be made only after such evidence has been submitted.

5. The CONTRACTOR will commence the work on or as of the date set in a notice from the DISTRICT to proceed with the work, will prosecute same diligently and continuously until completed, and will complete same in conformity with the stated requirements within **one hundred twenty (120) consecutive calendar days**. Should the work or any separate part thereof be not completed by such time or date, then the CONTRACTOR will pay to the DISTRICT as fixed, agreed and liquidated damages the sum stipulated in the Proposal.

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6. The CONTRACTOR shall be solely and completely responsible for safety at the job site in accordance with Paragraph 6.20 of the General Conditions.

7. As a condition of this contract, CONTRACTOR agrees and warrants and represents that it will comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. If CONTRACTOR utilizes a subcontractor to perform any part of the work included in the Contract, CONTRACTOR shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

IN WITNESS WHEREOF, the parties have executed this contract on the day and date first above written in three (3) original counterparts.

WITNESS:

**M.S.D. OF BUNCOMBE COUNTY, N.C.**

(SEAL)

\_\_\_\_\_

By \_\_\_\_\_

**Thomas E. Hartye, P.E.  
GENERAL MANAGER**

WITNESS:

**CONTRACTOR**

\_\_\_\_\_

By \_\_\_\_\_

(Proprietorship or Partnership)

Title \_\_\_\_\_

CERTIFICATE OF SECRETARY  
OF CORPORATION:

I, \_\_\_\_\_ certify that I am the Secretary of the Corporation named as Contractor herein; that \_\_\_\_\_, who signed this contract on behalf of the Contractor, was then \_\_\_\_\_ of said Corporation; that said contract was duly signed for and on behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.

\_\_\_\_\_  
SECRETARY

(Corporate Seal)

\_\_\_\_\_  
W. Scott Powell, MSD Director of Finance

*“This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act”*