

SECTION 00500

CONTRACT NO. B128  
PASSAIC VALLEY SEWERAGE COMMISSION  
600 WILSON AVENUE  
NEWARK, NEW JERSEY 07105

CONTRACT AGREEMENT

STANDBY POWER PLANT SITE PREPARATION CONTRACT

THIS AGREEMENT, made and executed this 14th day of March, 2019, by and between the PASSAIC VALLEY SEWERAGE COMMISSION, a corporate body politic of the State of New Jersey, hereinafter called the "OWNER", Kyle Conti Construction, LLC a corporation chartered under the laws of the State of New Jersey, partnership, individual, with principal offices at 749 Clawson Ave., Hillsborough, NJ 08844 hereinafter called the "CONTRACTOR". OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1 - Work

In consideration of the payments to be made as hereinafter provided, and of the performance by OWNER of all the matters and things to be performed by OWNER as herein provided; CONTRACTOR agrees, at its own sole cost and expense, to perform all the labor and services and to furnish all labor, materials, plant and equipment necessary to complete, in good, substantial, workmanlike and approved manner, all the Work as specified, described or indicated in the Contract Documents, as defined herein, including any Addenda formally issued, within the time hereinafter specified and in accordance with the terms, conditions and provisions of the Contract Documents and Addenda.

Article 2 - ENGINEER

The Project has been designed by CDM Smith Inc., 110 Fieldcrest Ave., #8, 6<sup>th</sup> Floor, Edison, New Jersey 08837, who are hereinafter called ENGINEER and who are 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 completion of the Work in accordance with the Contract Documents.

Article 3 - Contract Times

The CONTRACTOR shall commence work on the day specified in the Notice to Proceed. TIME BEING OF THE ESSENCE of this Contract. The CONTRACTOR shall prosecute the work diligently and uninterruptedly, at a rate to ensure completion sufficient for final acceptance of all work within 240 consecutive calendar days and substantial completion within 210 consecutive calendar days from the day of the CONTRACTOR's receipt of the written Notice to Proceed.

#### Article 4 - Contract Price

OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents, in current funds; and at the prices agreed upon in the CONTRACTOR's Bid Form attached to this Agreement.

#### Article 5 - Payment Procedures

OWNER will make partial payments on account of the Contract in accordance with the provisions of Article 14 in the General Conditions.

#### Article 6 - CONTRACTOR's Representations

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

- 6.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance of or furnishing of the Work.
- 6.2 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.
- 6.3 CONTRACTOR is financially solvent and is experienced and competent to perform the type of work or to furnish the plant, materials, supplies or equipment to be performed or furnished by him.

#### Article 7 - Liquidated Damages and other DAMAGES

The OWNER and CONTRACTOR recognize that TIME IS OF THE ESSENCE of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the Contract Time specified in Article 3, plus any extensions thereof allowed in accordance with the General Conditions. Because some of this damage is difficult or impossible to calculate or estimate, the parties agree that the Contractor shall pay OWNER liquidated damages in the amounts set forth in the Contract Agreement in lieu of the above stated actual damage. The Contractor agrees that as liquidated damages (but not as a penalty) for delay beyond the Contract Times specified in Article 3 above, (Exclusive of Additional) architectural/engineering services as provided for below, the Contractor shall pay the Owner for:

- 7.1 Each and every calendar day that the Contractor is not in compliance with the Contract Times and Milestones, the sum of Two Thousand Seven Hundred Dollars (\$2,700.00), which sum is hereby agreed upon, not as a penalty but as liquidated damages, which the parties hereto have agreed to be proper and reasonable, and which the Owner will suffer by reason of such default. The Owner shall assess liquidated damages on each of the

contract milestones given in Article 3. The Owner reserves the right to retain and/or release liquidated damages until the Contractor has corrected the delay in the schedule or has met subsequent milestones.

7.2 In addition to liquidated damages the CONTRACTOR shall pay to the OWNER all costs incurred by the OWNER for additional architectural and engineering services required as a result of the delay. This amount, above and beyond the specified liquidated damages amount, shall be determined by and be equal to the actual architectural and engineering services invoices received by the OWNER. Copies of such invoices will be provided to CONTRACTOR. CONTRACTOR shall pay to the OWNER via reduction made by OWNER from the CONTRACTOR monthly payment request the full amount of each invoice. If unpaid contract balance is insufficient to reimburse OWNER the additional architectural and engineering services invoice amount, CONTRACTOR shall pay OWNER directly any amount not covered by deductions from the contract balance within 30 calendar days from the CONTRACTOR's receipt of a copy of each invoice from the OWNER.

7.3 In the event the Contractor by delay or otherwise has caused Owner damages beyond the amount specified in the liquidated damage provision of any contract between the Owner and Contractor, the Owner shall have the right to seek damages for said additional monies and shall not be limited by any said liquidated damage provision for the amount to be recovered. In addition, the Owner shall have the right to withhold from monies due or to become due the Contractor an amount sufficient to completely pay for said additional damages.

Provided, that CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the Work is for reasons included in Article 12 of the General Conditions. Further, that CONTRACTOR shall, furnish OWNER the required notification of such delays in accordance with Article 12 of the General Conditions.

#### Article 8 - Contract Documents

The Contract Documents which comprise the Contract between OWNER and CONTRACTOR are attached hereto and made a part hereof and consist of the following:

- 1) Invitation To Bid.
- 2) Instructions To Bidders.
- 3) Bid and any post Bid documentation submitted prior to the Notice of Award.
- 4) This Agreement and Notice to Proceed.
- 5) Construction Performance Bond, Construction Payment Bond and other required Bonds.
- 6) Certificate of Insurance.
- 7) Standard General Conditions, EJCDC Document C700, 2007 edition.

- 8) Supplementary Conditions.
- 9) Specifications (as listed in Table of Contents).
- 10) All drawings (Site and Traffic) inclusive.
- 11) Addenda numbers 1 to 4, inclusive.
- 12) Any modification, including Change Orders, duly delivered after execution of Agreement.

#### Article 9 - Miscellaneous

- 9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 9.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.
- 9.4 This Agreement shall be construed in accordance with the laws of the State of New Jersey.
- 9.5 CONTRACTOR agrees that:
  - A. It hereby voluntarily and irrevocably submits itself to the jurisdiction and venue of any court of competent jurisdiction over the subject matter of this Agreement located within the State of New Jersey in which any litigation is brought based on or arising out of this Agreement.
  - B. Any legal process or notice connected with any litigation may be served on CONTRACTOR by United States registered mail, postage prepaid, addressed to CONTRACTOR at its address stated in this Agreement for the furnishing of notices to CONTRACTOR or at CONTRACTOR's last known address, and that service in such manner shall constitute good and valid service of process upon CONTRACTOR.
  - C. CONTRACTOR hereby waives any defense which might be available to it in any

such litigation based on or alleging lack of jurisdiction or venue, or, if process is served in the manner provided in subparagraph "B" immediately above, invalid service of process, and that it will duly enter its appearance in any such action.

- D. This Agreement may be presented in court as conclusive evidence of the foregoing agreement.

IN WITNESS WHEREOF: The parties hereto have executed this agreement the day and year first above mentioned.

PASSAIC VALLEY SEWERAGE COMMISSION

(SEAL)

BY: [Signature]  
THOMAS TUCCI, JR., CHAIRMAN

ATTEST BY: [Signature]  
PASSAIC VALLEY SEWERAGE COMMISSION  
MATTHEW F. MURRAY, CLERK

KYLE CONTI CONSTRUCTION, LLC.  
CONTRACTOR NAME

BY: [Signature]  
CONTRACTOR Kyle Conti, CEO

(SEAL)

ATTEST BY: [Signature]  
CONTRACTOR Lyda Witjak, Witness

Note: If CONTRACTOR is a corporation, an affidavit giving the principal the right to sign the Agreement must accompany the executed Agreement.

\_\_\_\_\_  
NAME OF CORPORATION:

BY: \_\_\_\_\_

(CORPORATE SEAL)

ATTEST BY: \_\_\_\_\_

(ADD TYPED OR PRINTED NAMES OF OFFICER AND ATTESTING WITNESS)

Date: \_\_\_\_\_