

AGREEMENT

**WWTP Lagoon Decommission, Swale Development,
and Sinkhole Remediation Project**

THIS AGREEMENT is made as of _____, 2018, by and between County Commission of Jefferson County, West Virginia, 124 East Washington Street, Charles Town, West Virginia 25414 (Commission), and _____ (“Contractor”).

WITNESSETH THAT:

WHEREAS, Commission desires to have performed or constructed the services or facilities described in the Contract Documents (the “Work”), said Work to be lagoon decommissioning, sinkhole remediation and stormwater swale construction (the “Project”) at Commission’s property in the Bardane Industrial Park, near Bardane , Jefferson County, West Virginia (the “Site”); and

WHEREAS, Contractor represents it has the necessary personnel, experience, competence and legal right to perform the Work;

NOW, THEREFORE, Contractor and Commission, for the consideration hereinafter set forth, agree as follows:

ARTICLE 1. SCOPE - CONTRACT DOCUMENTS

a. Except as otherwise specifically set forth in the Contract Documents (as hereinafter defined), Contractor shall furnish all labor, supervision, equipment, materials, services and all other things necessary for the proper performance of the Work in strict accordance with the Scope of Work, specifications (“Specifications”), and the drawings (“Drawings”) identified by the Request for Proposal dated May 29, 2018, and all other Contract Documents (as hereinafter defined).

b. The “Contract Documents” consist of this Agreement and the Schedules attached hereto including Schedule A, Contractor’s Rate Schedule, the Request for Proposal (RFP), the General Conditions, the Drawings and the Specifications, any addenda to the Drawings and Specifications, and all written modifications made pursuant to the terms of this Agreement. Said Contract Documents form the “Contract.” The Drawings and the Specifications are as fully a part of the Contract as if hereto attached.

ARTICLE 2. COMPLETION

a. Contractor agrees that the Work shall be commenced at the Site on or before July 23, 2018 and shall be completed on or before September 28, 2018

b. Contractor agrees that the period of time set forth above in paragraph 2.a. is sufficient to permit completion of the Work.

ARTICLE 3. CONTRACT PRICE - PARTIAL PAYMENTS - CHANGES

a. In full payment for Contractor's entire performance of the Contract, Commission shall pay Contractor the contract price of \$_____ (Contract Price).

b. Within ten days after commencing the Work, Contractor shall submit to the employee of Commission authorized to represent it with respect to the Work (the "Commission Representative") a schedule of values for the various categories of the Work aggregating the Contract Price, with a word description of and dollar amount for each category (the "Schedule of Values)". The Schedule of Values shall be subject to the approval of the Commission Representative and shall be the basis for Commission's Representative's estimates of labor, equipment and material incorporated into the Work and of equipment and material suitably stored at the Site for the purpose of progress payments to Contractor.

c. An application for payment shall be submitted to the Commission Representative by Contractor at such regular intervals (no more often than monthly) as may be decided by mutual agreement. The application shall be itemized in accordance with the Schedule of Values submitted by Contractor pursuant to paragraph 3.b. hereof; said application shall list the percent completion of the Work, the total billing to date, the total previously billed, the total retention to date and the amount covered for each category of the Work, and shall be supported by such evidence as the Commission Representative may direct, including evidence satisfactory to the Commission Representative that all payrolls, materials bills, taxes and other indebtedness connected with the Work to date have been paid. The Commission Representative shall check the application for payment and, not later than five (5) working days after receipt of such application, shall approve and forward for payment by Commission of a sum equal to ninety percent (90%) of the value of labor, equipment and/or material which the Commission Representative estimates has been acceptably incorporated into the Work or suitably stored at the Site, less the aggregate of any previous payments. Payment shall be made within sixty (60) days after Commission Representative's approval of Contractor's application for payment.

d. In the event that changes in the Work involving additional costs to Contractor are ordered by Commission pursuant to the "Changes in the Work" Article of the General Conditions, Contractor's total compensation for performing such changes in the Work shall be either lump sum or a time and materials basis computed in accordance with the Contractor's Rates as approved by Commission.

ARTICLE 4. ACKNOWLEDGMENTS OF CONTRACTOR

Contractor acknowledges that it has had an opportunity to visit the Site; that it has become generally familiar with local conditions under which the Work is to be performed; that it has carefully examined all of the Contract Documents prior to the submission of its bid and/or execution of the Contract; and that there are no

omissions, ambiguities, or conflicts in the Contract Documents which have not already been clarified in writing by Commission. Accordingly, Contractor agrees that it shall hereafter have no claim for additional compensation or extension of time of performance, unless such claim is based upon conditions at the Site, or omissions, ambiguities or conflicts in the Contract Documents, which Contractor can show that it could not have discovered in the exercise of reasonable care prior to submission of its bid and/or execution of the Contract.

ARTICLE 5. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

Contractor is advised COMMISSION desires to have the Work covered by this Contract completed within 99 calendar days from issuance of the Notice to Proceed. COMMISSION intends to issue a notice to proceed on or about June 21, 2018, and has established a required completion date of September 28, 2018.

The Contractor understands that the date of beginning, rate of progress, and the schedule for completion of the Work to be done hereunder are essential conditions of the Agreement.

The Contractor agrees that said Work shall be prosecuted regularly, diligently, and uninterrupted at such rate of progress as will ensure the completion of the construction in the number of days specified in the Agreement. Once the Contractor submits a bid, it is expressly understood and agreed that the time for completion of the Work described herein is a reasonable time for completion of same.

If the Contractor fails to complete the Work within the Contract Time (99 calendar days), then the Contractor will pay to the Owner, the amount of liquidated damages as specified in the Contract Documents for each calendar day that the Contractor shall be in default after the completion date.

The Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the Work is due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the Owner, fires, floods, epidemics, quarantine restrictions, or flight embargoes; and the Contractor has promptly given Written Notice within a week of such delay to the Owner. Acts, omissions, or delays of Contractor's subcontractors are not deemed unforeseeable causes. The charge for liquidated damages assessed to the Contractor for this Contract shall be as follows:

Five-hundred dollars (\$500) per calendar day for the first 15 days following the Contract Time (from September 29, 2018 to October 13, 2018).

One-thousand dollars (\$1,000) per calendar day for any day beyond 15 days following the Contract Time (October 13, 2018 and thereafter).

Contractor agrees that the foregoing liquidated damages are reasonable and are not to be construed as a penalty. Further, Contractor agrees that COMMISSION damages caused by any such delay are very difficult to accurately estimate.

ARTICLE 6. NOTICES

Except as otherwise specifically provided, any notice required or permitted to be given under this Agreement shall be in writing and (i) delivered in person, which delivery the recipient agrees to acknowledge in writing; (ii) transmitted by facsimile with a confirming copy delivered on the next business day by a nationally recognized overnight courier service; (iii) deposited in the United States postal service mail (or, if outside the United States, such other country's postal service mail) postage fee prepaid, for mailing by first-class, registered or certified mail; or (iv) sent by a nationally recognized overnight courier service, addressed as follows:

i. If to Commission:

County Commission of Jefferson County, West Virginia
ATTN: Jefferson County Engineering, Planning and Zoning
116 East Washington Street, Suite 100
Charles Town, West Virginia 25414

ii. If to Contractor:

Attn: _____
Title: _____

or to such other address or employee of either party as may be specified from time to time in a written notice given by that party. Both parties agree to acknowledge in writing the receipt of any notice delivered in person.

IN WITNESS WHEREOF, Contractor and Commission have executed this Agreement effective as of the date set forth above.

JEFFERSON COUNTY COMMISSION _____

By: _____

By: _____

Type Name: _____

Type Name: _____

Title: _____

Title: _____