

El Dorado Water Utilities

500 NORTH WASHINGTON · P.O. BOX 1587 · EL DORADO, AR 71731 (870) 862-6451

September 13, 2012

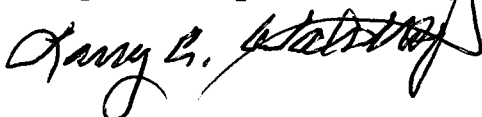
Michelle Bolenbaugh
Enforcement Analyst
ADEQ Water Division

RE: NPDES Permit No. AR0033723
CAO

Dear Ms. Bolenbaugh,

I am writing in response to the CAO that was issued recently in regards to discharge permit violations at the El Dorado South Plant. This issue is mainly centered around ammonia limit violations due to spikes that occasionally occur in our lagoon system. As you may know, we have been working diligently for many years on a discharge pipeline to the Ouachita River which has met many legal challenges. The assimilative capacity of the river has allowed for higher discharge limits for the pipeline permit (AR0049743) which should eliminate any future ammonia violations. I have included a copy of the Construction Agreement for this project which was signed on July 10, 2012. This project is on schedule and has a substantial completion date of July 9, 2013. Please note the substantial penalties for failure to meet this completion date. Because of our current efforts to eliminate any future violations, I request that the proposed penalty be reduced to a maximum of \$1000. Please note that I am not aware of El Dorado Water Utilities being required to pay any monetary penalty in the past. Records will reflect that we have worked closely with ADEQ for the past several years in an attempt to complete this project. We are extremely encouraged by the fact that construction is finally underway. Please give careful consideration to this request due the current financial burden we are facing due to pipeline construction cost.

Respectfully submitted,



Larry C. Waldrop
General Manager

DOCUMENT 00520

AGREEMENT

THIS AGREEMENT is dated as of the 9 day of July in the year 2012, by and between the El Dorado Water Utilities Commission (hereinafter called OWNER) and S & J Construction Company, Inc., (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1 WORK

CONTRACTOR shall commence and complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Ouachita River Joint Pipeline.

Article 2 ENGINEER

The Project has been designed by GBMc & Associates, who is hereinafter called ENGINEER and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

Article 3 CONTRACT TIME

- 3.1 The Contractor shall commence the Work required by the Contract Documents on or before a date to be specified in the Notice to Proceed and substantially completed as specified in the Bid Form. Substantial completion in accordance with the General Conditions and these Specifications shall be within 365 days, or extended time limit agreed upon, from the date when the Contract Time commences to run. Final payment in accordance with the General Conditions and these Specifications shall be within 425 days, or extended time limit agreed upon, from the date when the Contract time commences to run.

3.2 Liquidated Damages.

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 times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with the General Conditions. They also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time.

Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER five thousand dollars (\$ 5,000.00) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the

Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER five hundred dollars (\$ 500.00) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

Article 4 CONTRACT PRICE

The CONTRACTOR agrees to perform all of the WORK described in the CONTRACT DOCUMENTS and comply with the terms stated therein for the sum of nine million two hundred and thirty-three thousand eight hundred and forty-four dollars and ninety-eight cents (\$ 9,233,844.98), based on unit prices as shown in the Bid Schedule.

Article 5 PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1 Progress Payments

OWNER shall make progress payments of the Contract Prices on the basis of CONTRACTOR'S Applications for Payment as recommended by ENGINEER during construction as provided below. All progress payments will be on the basis of the progress of Unit Price Work based on the number of units completed.

One Hundred (100) percent of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in General Conditions) shall be included in the progress payments.

5.2 Final Payment

Upon final completion and acceptance of the Work in accordance with the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by the ENGINEER as provided in the General Conditions.

Article 6 Not Used.

Article 7 CONTRACTOR'S REPRESENTATIONS.

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

7.1 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 or furnishing of the Work.

- 7.2 CONTRACTOR has studied (or assumes responsibility for obtaining and carefully studying) all such physical conditions at or contiguous to the site or otherwise that may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considered necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies, or similar information or data are or will be required by CONTRACTOR for such purposes.
- 7.3 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies, or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the General Conditions.
- 7.4 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.

Article 8 CONTRACT DOCUMENTS

The term "CONTRACT DOCUMENTS" means and includes the following:

- 8.1 Advertisement for BIDS
- 8.2 Information for BIDDERS
- 8.3 BID
- 8.4 BID BOND
- 8.5 Non-collusion Affidavit
- 8.6 Agreement
- 8.7 General Conditions
- 8.8 SUPPLEMENTARY CONDITONS
- 8.9 Payment BOND
- 8.10 Performance BOND
- 8.11 Warranty BOND
- 8.12 Certificate of Owner's Attorney
- 8.13 Prevailing Wage Rates
- 8.14 NOTICE of AWARD
- 8.15 NOTICE to PROCEED
- ~~8.12 CHANGE ORDER #1, dated June 22, 2012~~ *omitted see*
- 8.13 DRAWINGS prepared by GBMc & Associates and dated May 1, 2012
- 8.14 SPECIFICATIONS prepared or issued by GBMc & ASSOCIATES, dated May 1, 2012.
- 8.15 ADDENDA: No. 1, dated May 22, 2012

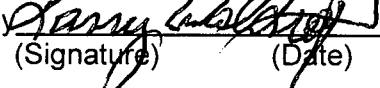
Article 9 MISCELLANEOUS

- 9.1 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.
- 9.2 Upon final completion of Work, the CONTRACTOR shall provide the OWNER with an executed WARRANTY BOND for one-half (50%) of the final project cost, valid for two (2) years after the date of Final Acceptance.
- 9.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives in respect of all covenants, agreements, and obligations contained in the Contract Documents.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in (3) copies, each of which shall be deemed an original on the date first above written.

OWNER:

El Dorado Water Utilities

By  7/10/12
(Signature) (Date)

Name Larry Waldrop
(Please Type)

Title General Manager

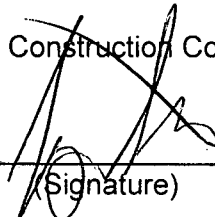
ATTEST: 

Name Phyllis Waller
(Please Type)

Title Administrative Assistant

CONTRACTOR:

S & J Construction Company, Inc.

By  (Signature) _____ (Date)

Name: Jerry Smith, President
(Please Type)

Address: 1014 S Redmond Road
Jacksonville, AR 72076-5121

Employer Identification
Number 71-0637506

(SEAL)

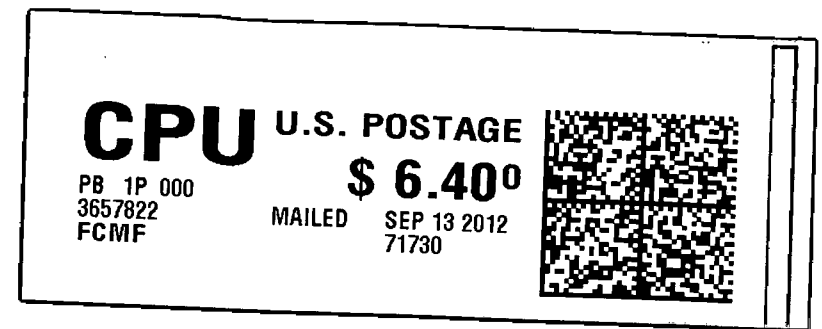
ATTEST:



Name Karen Linder
(Please Type)

END OF AGREEMENT

EWU
P.O. Box 1587
EL DORADO, AR 71750



MICHELLE BOLLENBAUGH
c/o ADEC
5301 NORTSHORE DR.
N. LITTLE ROCK, AR 72118 - 5317

