

SECTION D
STANDARD FORM OF AGREEMENT

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between _____ (“Owner”) and
_____ (“Contractor”).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

[Project Name and Project Number]

ARTICLE 2 – THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

[Description of Project]

ARTICLE 3 – ENGINEER

3.01 The Project has been designed by [engineer name]. (Engineer), which is to act as Owner’s representative, assumes all duties and responsibilities, and has 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 4 – CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Date For Completion and Final Payment*

A. The Work will be completed within [Time of Completion] days after the date upon which the Contract is executed by both parties.

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties 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 \$500 for each day that expires after the time specified in Paragraph 4.02 above until the Work is complete.. Owner will be the sole judge as to whether the work has been completed within the allotted time. Assessment of liquidated damages by the Owner shall not constitute a waiver of the Owner's right to sue and collect additional damages which Owner may sustain by the failure of the Contractor to perform in accordance with the terms of its Contract.

ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts below:

- A. For all Work, a lump sum of: \$_____.

All specific cash allowances are included in the above price in accordance with Paragraph 11.01 of the General Conditions.

or

- B. Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents for the unit prices shown in the attached Bid Form. Unit Prices have been computed in accordance with Article 11 of the General Conditions. Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be on the BWA Approved Form attached hereto and processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment within 30 days of a properly presented Application during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be

measured by the schedule of values established as provided in Paragraph 2.07 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the Contract Documents .

1. Prior to Completion, progress payments will be made in an amount equal to the percentage indicated in the Contract Documents but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to retainage and liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.

6.03 *Final Payment*

- A. Upon Completion and acceptance of the Work in accordance with Paragraph 14.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as provided in said Paragraph 14.07.

ARTICLE 7 – INTEREST

- 7.01 A. The Owner is not obligated to pay interest on monies not paid except as provided in Section 49.276(d) of the Texas Water Code.

ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
 - A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
 - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has obtained and carefully studied all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions including surface, subsurface and Underground Facilities at or contiguous to the Site which may affect cost, progress and performance of the Work. Contractor has also considered the information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; and the Contract Documents with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor’s safety precautions and programs.
 - E. Based on the information and observations referred to in Paragraph 8.01.D above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data

are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

- F. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- G. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- H. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement.
 - 2. Drawings, conditions, specifications, addenda, bonds and certificates of insurance.
 - 3. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid.
 - b. Documentation submitted by Contractor prior to Notice of Award.
 - 4. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Change Orders.
 - b. Written Amendments.
 - c. Field Orders.
 - d. Work Change Directives.
 - e. Notice to Proceed.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented by a properly executed change order in writing signed by the parties.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract 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.

10.03 *Successors and Assigns*

- A. 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 to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 - 1. “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Venue*

- A. The contracting parties hereto agree that venue shall lie exclusively in Tarrant County, Texas for any legal action involving or related to this Agreement.

ARTICLE 11 – INDEMNITY

11.01 *Contractor’s Indemnity*

A. CONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS OWNER AND ITS PARTNERS, MEMBERS, PARENTS, SUBSIDIARIES, DIVISIONS AND AFFILIATES AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS (COLLECTIVELY, THE “INDEMNITEES”), FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, CAUSES OF ACTION, LIABILITY, DAMAGES, JUDGMENTS OR EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS’ FEES AND LITIGATION COSTS, FOR PERSONAL INJURIES, BODILY INJURIES (INCLUDING, BUT NOT LIMITED TO, DEATH) OR PROPERTY DAMAGE, SUFFERED BY ANY PERSON OR ORGANIZATION (INCLUDING EMPLOYEES OF CONTRACTOR OR ITS SUBCONTRACTORS) ARISING OUT OF OR IN ANY WAY CONNECTED WITH CONTRACTOR’S OR ITS SUBCONTRACTORS’ ACTIVITIES AT THE SITE OR THE PERFORMANCE OF CONTRACTOR’S OBLIGATIONS UNDER THIS CONTRACT OR ANY CONTRACT WITH OWNER, EVEN IF CAUSED BY THE SOLE OR CONCURRENT NEGLIGENCE OR FAULT OF ANY INDEMNITEE, OR WHETHER BASED ON WARRANTY, OR OTHERWISE. IT IS THE SPECIFIC INTENTION OF THE PARTIES THAT LIABILITY OF CONTRACTOR AND ITS SUBCONTRACTORS FOR INJURIES TO THEIR EMPLOYEES SHALL NOT BE LIMITED BY CONTRACTOR’S OR ANY OF ITS SUBCONTRACTORS’ WORKERS’ COMPENSATION LIABILITY INSURANCE OR OTHERWISE AND THAT INDEMNITEES SHALL HAVE NO LIABILITY WHATSOEVER FOR INJURIES TO THE EMPLOYEES OF CONTRACTOR OR ITS SUBCONTRACTORS. TO THE EXTENT THAT THE LAWS OF THE GOVERNING JURISDICTION PROHIBIT OR DECLARE UNENFORCEABLE THIS INDEMNIFICATION AS IT APPLIES TO ANY INDEMNITEES’ OWN NEGLIGENCE OR FAULT, THEN THIS INDEMNIFICATION SHALL BE INTERPRETED TO OBSERVE SUCH PROHIBITION OR DECLARATION BUT ONLY TO THE EXTENT NECESSARY TO CAUSE IT TO BE CONSISTENT WITH LAWS OF SAID GOVERNING JURISDICTION AND TO CAUSE THE MAXIMUM INDEMNIFICATION OF INDEMNITEES AS ALLOWED THEREUNDER.

B. IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS PARAGRAPH BY AN EMPLOYEE OF THE CONTRACTOR, SUBCONTRACTOR, A SUBCONTRACTOR'S SUBCONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER THIS PARAGRAPH SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER THIS PARAGRAPH.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on the date of BWA's execution of this Agreement (which is the Effective Date of the Agreement).

OWNER:

Benbrook Water Authority

By: _____

Title: General Manager

Date: _____

Address for giving notices:

1121 Mercedes Street

Benbrook, TX 76126

CONTRACTOR:

By: _____

Title: _____

(If Contractor is a corporation or a partnership,
attach evidence of authority to sign.)

Date: _____

Address for giving notices:
