

INDEPENDENT CONTRACTOR AGREEMENT

This Agreement is made and entered into by and between Webb County, Texas, a political subdivision of the State of Texas (hereinafter "OWNER") and JMJ CONSTRUCTORS (hereinafter "CONTRACTOR").

For and in consideration of the mutual covenants herein set forth, and other good and valuable consideration, the parties do hereby agree as follows:

- 1. DESCRIPTION OF PROJECT:** Rio Bravo Water Treatment Plant – Valve & Actuator Improvements, Invitation to Bid (ITB#2017-001)
- 2. PREMISES DEFINED:** As used herein, "PREMISES" is defined as the site where the work specified will be performed which shall be the Webb County-Rio Bravo Water Treatment Plant. The address of the PREMISES is 515 Martha Dr., Rio Bravo, 78046 Texas referring to the entire block that this address is part of.
- 3. SCOPE OF WORK:** CONTRACTOR agrees to perform the following work for OWNER: As set forth in attached document labeled as Exhibit 1 and incorporated by reference as if fully herein as described on the public notice issued by the County of Webb. Contractor agrees that all work shall be performed in a good and workmanlike manner.
- 4. CONTRACT SUM:** In exchange for CONTRACTOR'S performance of services under this Agreement, OWNER shall pay to CONTRACTOR the following amount(s): FIVE HUNDRED EIGHTY-NINE THOUSAND AND NO/100 DOLLARS \$589,000.00. OWNER will disburse to CONTRACTOR an initial draw in the amount of \$ -0- upon execution of this contract. Disbursements thereafter will be made to CONTRACTOR based on percentage draw applications made by CONTRACTOR to OWNER, as approved by OWNER after inspecting the progress of completed work and materials on site at the PREMISES.

Owner shall pay Contractor in 4 installment payments, each installment payment due upon completion of each quarter (25%) of the entire Work. Owner shall, however, retain 10% of each payment until final payment is made. The payment schedule is as follows:

Contractor shall submit an invoice to Owner for payment upon completion of the first 25% of the work. Owner shall pay Contractor 25% of the total amount due. Of that first 25%, Owner shall retain 10% to be paid on the day the Project is completed and approved by Owner.

Contractor shall submit an invoice to Owner for payment upon completion of the second 25% of the work. Owner shall pay Contractor 25% of the total amount due. Of that second 25%, Owner shall retain 10% to be paid on the day the Project is completed and approved by Owner.

Contractor shall submit an invoice to Owner for payment upon completion of the third 25% of the work. Owner shall pay Contractor 25% of the total amount due. Of that third 25%, Owner shall retain 10% to be paid on the day the Project is completed and approved by Owner.

Owner shall make final payment (including the costs and expenses incurred due to change order(s) completed during this project and completion of the Work and the release of each of the 10% Owner previously retained) to Contractor on the day the Project is completed and approved by LNV Engineering Company-Project Engineer, Webb County Engineer, and **Adrian Montemayor, Webb County Utilities Director** and/or his designated and authorized representative on behalf of Owner. Owner shall not unreasonably withhold approval.

It is hereby expressly acknowledged, consented and agreed by Contractor that the final payment due for the services rendered pursuant to this contract shall not be issued to Contractor until Contractor has signed and sworn Final Bills Paid Affidavit confirming payment to each of its subcontractors, laborers, suppliers, and materialmen in full for all labor and materials to contractor for or in connection, renovation, or repair of improvements on or relating to the subject project/property or any portion thereof, pursuant to and in accordance with Sections 53.085 and 53.259 of the Texas Property Code, and that the intentional, knowing, or reckless making of a false or misleading statement in the Affidavit constitutes a criminal offense under said sections cited herein-above and is a Class A Misdemeanor.

5. **RETAINAGE:** OWNER shall withhold each of its four (4) installment payment(s) to CONTRACTOR a retainage of ten percent (10%). The retainage shall be paid to CONTRACTOR upon final completion of the work. Completion of the work shall be considered final upon written approval by OWNER's designated representative as specified in Section 4.

6. **CHANGE ORDERS** - In the event either Party requests a change from the agreed Scope of Work or Quote in this Agreement, a written change order making such a request shall be prepared by Contractor in accordance with the proposed change. If the Owner or Third Party Inspector ("Inspector") request a change be executed, Owner or Inspector shall, in a timely manner, inform Contractor (via email) of his request. Contractor shall then prepare a written change order in accordance with said request and submit to Owner for Owner's approval and signature. As soon as Owner signs change order approving proposed change, Owner shall submit, via email, approved/signed order to Contractor. Contractor shall begin performance in accordance with change order only after Contractor receives the written and approved/signed change order. If Contractor requests change order, he shall prepare a written change order, submit it to Owner for his approval and signature and will only begin on approved change after Contractor receives signed change order. Change orders may increase the payment Owner must pay Contractor. **IN NO EVENT MAY THE TOTAL COST OF CHANGE ORDERS EXCEED TWENTY-FIVE PERCENT (25%) OF THE TOTAL AMOUNT OF THIS AGREEMENT.**

7. **NOTICES:** Any notice of communication required or permitted hereunder shall be sufficiently given if sent by electronic transmission:

To Contractor at: jmjconstructors@gmail.com

To Owner at: agmontemayor@webbcountytx.gov

8. **INCORPORATION OF QUOTE:** The terms and conditions contained in the BID (attached hereto as Exhibit I), is incorporated herein by reference as fully written out.

9. **DATE OF COMMENCEMENT:** Within 5 working days of being issued a Notice to Proceed from the County.

10. **SUBSTANTIAL COMPLETION:** Substantial Completion is the stage in the progress of the completion of the work covered by this contract, when the work at the PREMISES is sufficiently complete in accordance with the work specified in "**Rio Bravo Water Treatment Plant – Valve & Actuator Improvements, ITB#2017-001**", including completion of all post-construction clean-up in and about the PREMISES, so that the OWNER (or OWNER's tenant) can occupy and utilize the PREMISES for the intended use and a Certificate of Occupancy is issued.

11. **DATE FOR SUBSTANTIAL COMPLETION:** Sixty (60) days after the date of the acknowledgement of receipt of materials and supplies for construction by Webb County. Purchasing Director and Director of Water Utilities.

The time set forth in the proposal for the completion of the Work is an essential element of the Contract. For each working day under the conditions described in the preceding Paragraph that any work shall remain uncompleted after the expiration of the working days specified in the Contract, together with any additional working days allowed, the amount per day given in the following schedule will be deducted from the money due or to become due the Contractor, not as a penalty but as liquidated damages.

Said Contractor further agrees to begin the work on or before the tenth day following the date set by Webb County written notice to proceed and to complete the work within sixty (60) days.

The Contractor further agrees to pay, as liquidated damages, the sum of \$125.00 for each consecutive working day there-in-after as herein provided

12. **OWNER'S RIGHT TO TERMINATE:** OWNER may terminate this Agreement upon thirty (30) days written notice. If OWNER terminates this Agreement, CONTRACTOR shall only be paid for the work performed or expenses incurred prior to the receipt of the notice of termination.

13. **INSURANCE: Contractor and Subcontractor Insurance:** The financial integrity of Contractor is of interest to Webb County, therefore, subject to the right of Contractor to maintain reasonable deductibles in such amounts as are approved by Webb County. Contractor shall obtain and maintain in full force and effect for the entire duration of this agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A or better by A.M. Best Company (Best's Key Rating Guide, current edition and/or as amended) and/or otherwise acceptable to Webb County/Webb County Risk Manager, the following types and amounts:

The Contractor shall not commence work under this Contract until he/she has obtained all the insurance required under this paragraph and such insurance has been approved by the Owner, nor

shall the Contractor allow any subcontractor to commence work on his/her Sub-Contract until the insurance required of the Subcontractor has been so obtained and approved.

a. Compensation Insurance: The Contractor shall procure and shall maintain during the life of this Contract Workmen's Compensation Insurance as required by applicable State or Territorial law for all of his/her employees to be engaged in work at the site of the project under this Contract and, in case of any such work sublet, the Contractor shall require the Subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Workmen's Compensation Insurance. In the case where any class of employees engaged in hazardous work on the project under this Contract and is not protected under the Workmen's Compensation Statute, The Contractor shall provide and shall cause each Subcontractor to provide adequate employee's liability insurance for the protection of such of his/her employee as are not otherwise protected.

b. Contractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance: The Contractor shall procure and shall maintain during the life of his Contract, insurance in the amounts listed in A and B.

c. Contractor's Public Liability Insurance, Contractor's Property Damage Insurance and Vehicle Liability Insurance in the amount of not less than \$1,000,000 for bodily injury, including accidental death, to any one person and an amount not less than \$1,000,000 on account of any one occurrence: Property Damage in the amount not less than \$100,000 per occurrence and \$200,000 aggregate; and Vehicle Liability of \$100,000 for any one person or \$200,000 for each occurrence.

d. Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance: The Contractor shall either (1) require each of his/her Subcontractor to procure and shall maintain during the life of his /her Subcontractor, Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the amount specified in Subparagraph b. above or, (2) insure the activities of his/her Subcontractors in his/her policy specified in Subparagraph b. above.

e. Scope of Insurance and Special Hazards: The insurance required under Subparagraph b. and c. above shall provide adequate protection for the Contractor and his/her Subcontractor's, respectively, against damage claims which may arise from operations under this Contract, whether such operations be by the insured or by any one directly or indirectly employed by him/her and also against any of the special hazard which may be encountered in the performance of this Contract.

f. Builder's Risk Insurance (Fire and Extended Coverage): The Contractor shall procure and shall maintain during the life of this Contract Builder's Risk Insurance (Fire and Extended Coverage on a 100 percent (100%) completed value basis on the insurable portion of the project. The Owner, the Contractor, and Subcontractor (as their interests may appear), shall be named as the Insured.

g. Proof of Carriage of Insurance: The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of policies. Such certificates shall also contain substantially the following statement: "The Insurance covered by this certificate will not be cancelled or materially altered, except after ten (10) days written notice has been received by the Owner".

The Owner, the Contractor, and Subcontractor (as their interests may appear), shall be named as the Insured.

h. Webb County, Texas, a political subdivision of the State of Texas shall be named as an additional insured with respect to General Liability and Automobile Liability. A blanket waiver of subrogation in favor of Webb County, Texas, a political subdivision of the State of

Texas shall be contained in the Workers Compensation, and all liability policies.

14. PAYMENT AND PERFORMANCE BONDS: A performance bond is required for construction work if the contract is in excess of \$100,000 and a payment bond is required if a construction contract is in excess of \$25,000. Contractor shall supply the required bonds to the Webb County Purchasing Director within ten days of execution of this Agreement. Bonds must be issued by companies authorized and admitted to do business in the State of Texas and rated A or better by A.M. Best Company (Best's Key Rating Guide, current Edition, and as amended) and/or otherwise acceptable to Webb County. Failure to provide said bonds shall constitute a default and Webb County may award the contract to the next lowest bidder or re-advertise for bids/proposals.

15. RELATIONSHIP OF PARTIES: CONTRACTOR is engaged under this Agreement as an independent contractor and not as an agent or employee of OWNER. CONTRACTOR is not entitled to benefits of any kind to which OWNER's employees are entitled, including, but not limited to, unemployment compensation, workers compensation, health insurance or retirement benefits. CONTRACTOR assumes full responsibility for payment of all federal, state, and local taxes or contributions, including, but not limited to, unemployment insurance, social security, Medicare and income taxes with respect to CONTRACTOR and CONTRACTOR's employees. This Agreement does not create a partnership or a joint venture between the parties hereto, nor does it authorize either party to serve as the legal representative or agent of the other. Neither party has any right or authority to assume, create, or incur any liability or any obligation of any kind, express or implied, against or in the name of or on behalf of the other party.

16. SUCCESSORS AND ASSIGNS: This Agreement may not be assigned or subcontracted, in full or in part, by Parties without first obtaining written consent of Parties. Parties shall not be relieved of its full responsibility for completion of work because of subletting of any portion of the work. This Agreement shall be binding upon and shall ensure to the benefit of the parties hereto and their respective successors, transferees and assigns.

17. INDEMNITY: CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY AND ALL LOSS, EXPENSE, COST OR LIABILITY (INCLUDING REASONABLE LEGAL FEES AND EXPENSES), ARISING FROM ANY CLAIM OR CAUSE OF ACTION FOR ANY LOSS OR DAMAGE CAUSED BY OR ARISING FROM THE PERFORMANCE OF CONTRACTOR'S OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE CONDUCT OF CONTRACTOR'S EMPLOYEES AND/OR ANY ACTS PERFORMED UNDER THIS CONTRACT AND THAT RESULT FROM ANY NEGLIGENT ACT, ERROR OR OMISSION OF THE CONTRACTOR OR OF ANY PERSON EMPLOYED BY THE CONTRACTOR. IN CASE OF ANY SUCH CLAIM, CONTRACTOR, UPON NOTICE FROM OWNER, COVENANTS TO DEFEND ANY SUCH ACTION OR PROCEEDING. THE CONTRACTOR SHALL ALSO SAVE AND HOLD HARMLESS OWNER FROM AND AGAINST ANY AND ALL EXPENSES, COURT COSTS, INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES THAT MIGHT BE INCURRED, IN LITIGATION OR OTHERWISE DEFENDING OR PROSECUTING CLAIMS

18. **COMPLIANCE WITH LAWS:** Contractor agrees that it will, in its performance of its obligations hereunder, fully comply with all applicable laws, regulations and ordinances of all relevant authorities, including but not limited to those pertaining to safety, and shall obtain all licenses, registrations or other approvals required in order to fully perform its obligations hereunder. Contractor represents and warrants that all improvements made to the property shall comply with the Americans with Disabilities Act and all other applicable codes, regulations and laws.

19. **SEVERABILITY:** Should any part of this Agreement be rendered or declared invalid by a court of competent jurisdiction of the State of Texas, such invalidation of such part or portion of this Agreement should not invalidate the remaining portions thereof, and they shall remain in full force and effect.

20. **GOVERNING LAW:** This agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Texas, without regard to choice of law rules of any jurisdiction. The parties agree venue lies exclusively in Webb County, Texas.

21. **DEFAULT AND TERMINATION:** In the event either Party interferes with the general progress of this Project intentionally or by negligence or intentional or negligent delay the non-defaulting Party may complete the same or cause the same to be completed and charge all sums of money so expended for the completion of this Agreement against defaulting Party, and defaulting Party shall reimburse the non-defaulting Party for any loss sustained thereby.

22. **ATTORNEY'S FEES:** In the event either party breaches any of the terms of this Agreement whereby the party not in default employs attorneys to protect or enforce its rights hereunder and prevails, then the defaulting party agrees to pay the other party reasonable attorney's fees incurred by such other party.

23. **ENTIRE AGREEMENT:** This Agreement and its Exhibits shall constitute the complete and exclusive written expression of the intentions of the parties hereto and shall supersede all previous communications, representations, agreements, promises or statements, either oral or written, by and between either parties. Any modifications to this Agreement must be in writing signed by the party sought to be bound.

24. **EXHIBITS:** The following documents are attached hereto and fully incorporated herein by reference: "Rio Bravo Water Treatment Plant – Valve & Actuator Improvements, ITB#2017-001".

25. **OMISSIONS:** If any punctuation, word, clause, sentence or provision necessary to give meaning, validity or effect to any portion of this Contract shall be omitted here-from, then it is hereby declared that such omission was unintentional and that the omitted element shall be included in order to give meaning, validity and/or effect to any portion of this contract.

26. **MATERIAL MEN/SUPPLIERS:** Contractor within 10 days from the date of the execution of this agreement shall provide an updated and current listing of all SUBCONTRACTORS AND/OR MATERIALMEN or SUPPLIERS, and all laborers, used by the

Contractor to Webb County and contractor shall notify Webb County in writing whenever changes occur, and contractor shall provide Webb County with an updated listing within 5 working days of upon request for an updated listing. Contractor will immediately notify Webb County in writing of any SUBCONTRACTORS AND/OR MATERIALMEN or SUPPLIERS, and all laborers independent contractors, and/or other such materialmen and/or suppliers services that are discontinued, and/or that have been added to their workforce.

27. **REQUEST FOR PAYMENT SUBMISSION:** All request for payments are to be made payable to Contractor by dated and signed invoice(s). Said invoice and/or request for payments can be mailed or hand-delivered to Webb County Business Office, 1110 Washington St., Laredo, Suite 203, Webb County, Texas 78040 or via email addressed to Accounts Payable, Webb County Business Office at apinvoices@webbcountytexas.gov. Payment will be mailed to Contractor.

28. **COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES:** Contractor agrees to comply at all times with all federal, state, county and city rules, regulations, ordinances and laws, and Contractor shall not permit the Premises or any part thereof to be used for (a) any offensive, noisy, or dangerous activity that would pose a health or safety risk; (b) the creation or maintenance of a public nuisance, (c) anything which is against public regulations or rules of any public authority at any time applicable to the Leased Premises; or (d) any purpose or any manner which will obstruct, interfere with, or infringe on the rights of other tenants or adjoining properties


29. **LEGAL CONSTRUCTION:** In case any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

30. **AMENDMENT:** No amendment, modification or alteration of the terms of this agreement hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by both of the parties hereto.

31. **TIME OF ESSENCE:** Time is of the essence of this Agreement and each and every covenant, condition and provision herein contained.

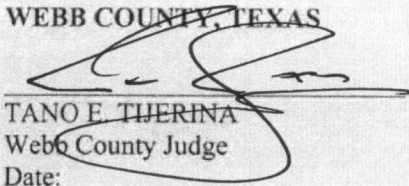
IN WITNESS WHEREOF, the parties aforesaid have duly executed the foregoing instrument, or caused the same to be executed in duplicate originals on this _____ day of **October 2017**.

CONTRACTOR: JMJ CONSTRUCTORS
2005 N. Ebanos Blvd.
Alton, TX 78573

By: 
JOSE L. DIAZ
Title: President

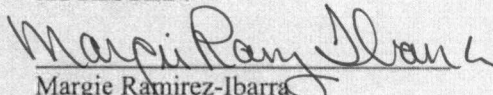
Date: _____

WEBB COUNTY, TEXAS


TANO E. TIJERINA
Webb County Judge

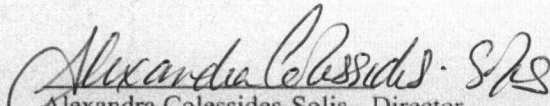
Date: _____

ATTESTED:


Margie Ramirez-Ibarra
Webb County Clerk



APPROVED AS TO FORM:


Alexandra Colessides-Solis - Director
Webb County Civil Legal Division

*By law, the Webb County Civil Legal Division may only advise or approve contracts or legal documents on behalf of its Webb County. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).

Passed and approved by the Webb County Commissioners Court
On August 28, 2017; item no. 34.