



**APACHE JUNCTION
SEWER DISTRICT**
RECLAIMING WATER FOR THE FUTURE

5661 South Ironwood Drive | Apache Junction, Arizona 85120
(480) 941-6754 | www.smcfcd.org

**PROJECT 23.09
WRF EXPANSION**

**CONSTRUCTION MANAGER AT RISK
CONSTRUCTION SERVICES AGREEMENT**

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**CONSTRUCTION MANAGER AT RISK
CONSTRUCTION SERVICES AGREEMENT
PROJECT NO. 23.09 – WRF EXPANSION**

THIS AGREEMENT (the AGREEMENT) is made and entered into on the _____ day of _____, 2023, by and between Apache Junction Sewer District (AJSD or OWNER), an Arizona municipal corporation and political subdivision, formerly known as Superstition Mountains Facilities District No. 1, and the Construction Manager at Risk (CMAR) designated below (AJSD and CMAR may individually be referred to as “Party” and collectively referred to as “Parties”).

AJSD and CMAR agree as follows:

SECTION 1 - PARTICIPANTS AND PROJECT

AJSD: Owner Representative: Darron Anglin, PE
Mailing Address: 5661 S Ironwood Drive, Apache Junction, AZ 85120
Telephone: (480) 941 - 6760
Email: danglin@ajsewer.org

AJSD: Project Manager: Anne Latimer, District Engineer
Telephone: (480) 941 - 6766
Email: alatimer@ajsewer.org

CMAR: Company Name: _____
Mailing Address: _____
Physical Address: _____
Arizona ROC No.: _____
Federal Tax ID No.: _____
Contractor License(s): _____
State Where Organized: _____
Business Organization: _____

CMAR Authorized Project Representative:

Name: _____
Title: _____
Phone: _____
Email: _____

(Prior to execution of the Agreement, CMAR must provide to AJSD’s Purchasing Department its Contractor’s License Classification and number, and its Federal Tax I.D. number.)

ENGINEER: Company Name: Stantec Consulting Services, Inc.
Mailing Address: 3133 W Frye Road, Suite 300, Chandler, AZ 85226
Design Team Representative: Maria Brady
Telephone: (480) 231-0465
E-mail: maria.brady@stantec.com

PROJECT DESCRIPTION:

AJSD provides wastewater collection and treatment services for the City of Apache Junction (City) at its existing WRF. With the existing WRF nearing capacity, a treatment plant upgrade and expansion are required to meet community demands. AJSD will be designing and constructing three and one-half million gallons per day (3.5 MGD) of additional capacity to serve the growth within the City. The expanded WRF is proposed to be a parallel treatment process to the existing treatment facility, which will remain operational until it is no longer able to provide treatment effectively or economically.

PROJECT LOCATION:

5661 S Ironwood Drive, Apache Junction, AZ 85120

SAMPLE

SECTION 2 - AGREEMENT DOCUMENTS

2.1 AGREEMENT DOCUMENTS

The Agreement between AJSD and CMAR will consist of the following Agreement Documents:

- 2.1.1. This Construction Services Agreement and all of its Exhibits
- 2.1.2. **Exhibit A** – Project Milestones
- 2.1.3. **Exhibit B** – Accepted Guaranteed Maximum Price (GMP) Proposal
- 2.1.4. **Exhibit C** – Technical Specifications
- 2.1.5. **Exhibit D** – Project Specific Special Provisions
- 2.1.6. **Exhibit E** – Subcontractor’s List Form
- 2.1.7. **Exhibit F** – General Conditions and Appendices
- 2.1.8. **Exhibit G** – WIFA Complete Governmental Contract Packet

In the event of any inconsistency, conflict, or ambiguity between or among the Agreement Documents, the Agreement Documents will take precedence as described in Section 14.1.4 of the General Conditions.

This Agreement is being financed by the Water Infrastructure Finance Authority of Arizona. Attached as Exhibit G is the WIFA Complete Contract Packet. All terms and condition set forth in Exhibit G must be complied with and are an integral part of this Agreement.

2.2 DEFINITIONS

The definitions in Sections 2 and 15 of the General Conditions apply to all the Agreement Documents, including this Agreement.

SECTION 3 - PRE-CONSTRUCTION SERVICES

Although CMAR has performed Pre-Construction Services pursuant to a separate Agreement between AJSD and CMAR, the completion, quality and accuracy of those services and the deliverables provided by AJSD thereunder directly impact CMAR’s performance of its obligations under this Agreement. Therefore, all of CMAR’s obligations, duties, and warranties in relation to Pre-Construction Services and deliverables survive completion of the Pre-Construction Services Agreement and are incorporated herein. Any breach of any of CMAR’s duties, obligations, or warranties under the Pre-Construction Services Agreement will likewise be considered a breach of this Agreement.

SECTION 4 - CONSTRUCTION SERVICES

4.1 GENERAL

- 4.1.1. CMAR agrees at its own cost and expense, to do all work necessary and required to fully, timely and properly complete the construction of the Project in strict accordance with the Agreement Documents in a good and workmanlike manner, free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified, and within the schedule, stated in attached **Exhibit A**.
- 4.1.2. CMAR must provide all of the labor and materials and perform the Work in accordance with Section 4 of the General Conditions. Some, but not all, of the major components of the Construction Services are set forth below.

- 4.1.3.** This is an Agreement for complete construction services in accordance with the Construction Manager at Risk method of delivery of construction services. CMAR has participated in the design process and been an active member of the Project Team and is fully aware of any issues and constraints involved in this Construction Project.
- 4.1.4.** CMAR is responsible for undertaking all necessary action contemplated under the Agreement Documents to construct the Project and ensure timely and quality completion of the Project at a cost within the accepted Guaranteed Maximum Price (GMP), as set forth in **Exhibit E**.
- 4.1.5.** At all times relevant to this Agreement and performance of the Work, the CMAR must fully comply with all Laws, Regulations, or Legal Requirements applicable to AJSD, the Project and the Agreement, including, without limitation, those set forth in attached **Exhibit A**.
- 4.1.6.** CMAR shall perform the Work under this Agreement using only those firms, team members and individuals designated by CMAR consistent with the Statement of Qualifications, the GMP Proposal, or otherwise approved by AJSD in accordance with the General Conditions. No other entities or individuals may be used without prior approval of AJSD.
- 4.1.7.** CMAR will comply with all terms and conditions of the General Conditions.
- 4.1.8.** Ownership of Work Product. Work Product prepared or otherwise created in connection with the performance of this Agreement, including the Work, are to be and remain the property of AJSD. For purposes of this provision, "Work Product" will include all designs, drawings, plans, specifications, ideas, renderings and other information or matter, in whatever form created (e.g., electronic or printed) and in all media now known or hereinafter created. All Work Product will be considered Work Made for Hire as defined in the United States Copyright Act 17 U.S.C. § 101 (Copyright Act). If for any reason, any such Work is found not to be a Work Made for Hire, CMAR hereby transfers and assigns ownership of the copyright in such Work to AJSD. The rights in this Section are exclusive to AJSD in perpetuity.

4.2 CMAR'S PRE-AGREEMENT AND PRE-WORK DELIVERABLES

The CMAR must provide the Deliverables in accordance with Section 4.2 of the General Conditions.

4.3 CONSTRUCTION MEETINGS

Refer to Section 4.3 of the General Conditions.

4.4 PERFORMANCE OF THE WORK

Refer to Section 4.4 of the General Conditions.

4.5 CONTROL OF THE PROJECT SITE

Refer to Section 4.5 of the General Conditions.

4.6 PROJECT SAFETY

Refer to Section 4.6 of the General Conditions.

4.7 MATERIALS QUALITY, SUBSTITUTIONS AND SHOP DRAWINGS

Refer to Section 4.7 of the General Conditions.

4.8 PROJECT RECORD DOCUMENTS

Refer to Section 4.8 of the General Conditions.

4.9 WARRANTY AND CORRECTION OF DEFECTIVE WORK

Refer to Section 4.9 of the General Conditions.

SECTION 5 - AJSD RESPONSIBILITIES

AJSD will have the responsibilities specified in and subject to Section 5 of the General Conditions.

SECTION 6 - AGREEMENT TERM

- 6.1** The Agreement Duration is _____ Calendar Days.
- 6.2** The Agreement Term will start with the Notice to Proceed (NTP) and end with Final Acceptance, as set forth in Article 6.4 below. The Notice to Proceed cannot be issued until approval and acceptance by AJSD, and the funding agency, of the GMP or Fixed Price.
- 6.3** The Agreement Term will be as set forth in the Project Schedule. CMAR agrees that it will commence performance of the Work and complete the Project through Final Acceptance within the Agreement Term as set forth herein and in Section 6 of the General Conditions.
- 6.4** Time is of the essence of this Agreement for the Project, and for each phase and designated Project Milestone thereof.

SECTION 7 - PROJECT SCHEDULE

- 7.1** The Project Schedule approved as part of the GMP Proposal and incorporated herein as part of the attached Exhibit D must be updated and maintained throughout CMAR's performance under this Agreement in accordance with Section 6.2 of the General Conditions.
- 7.2** Failure on the part of CMAR to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of this Agreement by AJSD.
- 7.3** Work must be completed to meet the agreed upon Project Milestones identified in **Exhibit D** after the Notice to Proceed.

SECTION 8 - SUBSTANTIAL COMPLETION

Substantial Completion must be achieved no later than the Substantial Completion Date set forth in the Project Schedule. Substantial Completion will be determined in accordance with Section 6.3 of the General Conditions.

SECTION 9 - FINAL ACCEPTANCE

- 9.1** Final Acceptance must be achieved within the time period set forth in the Project Schedule.
- 9.2** Final Acceptance will be issued pursuant to Section 6.5 of the General Conditions.

SECTION 10 - LIQUIDATED DAMAGES

- 10.1** Substantial Completion Liquidated Damages. CMAR acknowledges and agrees that if CMAR fails to obtain Substantial Completion of the Work within the Agreement Term, AJSD will sustain extensive damages and serious loss as a result of such failure. The exact amount of such damages will be extremely difficult to ascertain. Therefore, AJSD and CMAR agree that if CMAR fails to achieve Substantial Completion of the Work within the Agreement Term, AJSD will be entitled to retain or recover from CMAR, as liquidated damages and not as a penalty, the sum per calendar day as indicated in MAG § 108.9.
- 10.2** Final Acceptance Liquidated Damages. For the same reasons set forth in Article 6.5.1 above, AJSD and CMAR further agree that if CMAR fails to achieve Final Acceptance of the Work within the Agreement Term, AJSD will be entitled to retain or recover from CMAR, as liquidated damages and not as a penalty, the sum per calendar day as indicated in MAG § 108.9 commencing from the actual date of Substantial Completion or Final Acceptance as required under the Agreement.
- 10.3** AJSD may deduct liquidated damages described in this Article 6.5 from any unpaid amounts then or thereafter due CMAR under this Agreement. Any liquidated damages not so deducted from any unpaid amounts due from CMAR will be payable to AJSD at the lawful rate of interest pursuant to A.R.S. § 34-221.J. payable by CMAR.

SECTION 11 - MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES ONLY

- 11.1** CMAR and AJSD waive claims against each other for consequential damages arising out of or relating to this Agreement. This mutual waiver includes:
- 11.1.1.** Damages incurred by AJSD for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
 - 11.1.2.** Damages incurred by CMAR for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.
- 11.2** This mutual waiver is applicable, without limitation, to all consequential damages due to either Party's termination of this Agreement. Nothing contained in this Article 6 .6 will be deemed to preclude an award of liquidated damages, when applicable, in accordance with Article 6.5 above.
- 11.3** Nothing herein will be deemed to constitute a waiver of any other remedy available to AJSD, in law or in equity, in the event of CMAR's default under this Agreement prior to full performance of the Work including but not limited to, as applicable, specific performance, injunctive relief, or damages attributable to CMAR's default including but not limited to, the cost and expense of completing, correcting or otherwise remedying any default by CMAR which damages will be offset against any monies then or thereafter due to CMAR (if any) and shall be otherwise immediately reimbursed to AJSD by CMAR. Any amount not paid upon request by AJSD shall be payable with interest from the date the expense is incurred until paid 10% per annum.

SECTION 12 - AGREEMENT PRICE

12.1 AGREEMENT PRICE

- 12.1.1.** In exchange for CMAR's full, timely, and acceptable performances and construction of the Work under this Agreement, and subject to all of the terms of this Agreement, AJSD will pay CMAR the Agreement Price, which:

12.1.1.1. The sum of the CMAR's Fee and reimbursable Cost of the Work, as defined in Section 15 of the General Conditions, which the CMAR guarantees will not exceed the GMP set forth in **Exhibit E** in the amount of \$_____. Costs which would cause the GMP to be exceeded must be paid by CMAR without reimbursement from AJSD.

12.1.2. The Agreement Price is all-inclusive and specifically includes all fees, cost, insurance and bond premiums, allowances, construction contingency and taxes of any type necessary to fully, properly and timely perform and construct Work.

12.2 CHANGES TO AGREEMENT PRICE

Shall be determined under Section 9 of the General Conditions.

SIGNATURE PAGE TO FOLLOW

SAMPLE

SIGNATURES

IN WITNESS WHEREOF, the parties hereto executed this Agreement through their duly authorized representatives and bind their respective entities as of the effective date.

CMAR: _____

Printed Name: _____

Title: _____

STATE OF ARIZONA)
) ss.
County of _____)

On this _____ day of _____ 2023, before me personally appeared _____, whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument and acknowledged that he/she executed same.

Notary Public

APACHE JUNCTION SEWER DISTRICT

By: _____

Darron Anglin
District Manager

STATE OF ARIZONA)
) ss.
County of _____ Pinal)

On this _____ day of _____ 2023, before me personally appeared **Darron Anglin**, whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument and acknowledged that he/she executed same.

Notary Public

**EXHIBIT A
PROJECT MILESTONES**

SAMPLE

**EXHIBIT B
ACCEPTED GMP PROPOSAL**

SAMPLE

EXHIBIT C
TECHNICAL SPECIFICATIONS

SAMPLE

EXHIBIT D
PROJECT SPECIFIC SPECIAL PROVISIONS

SAMPLE

**EXHIBIT E
SUBCONTRACTOR'S LIST FORM**

**APACHE JUNCTION SEWER DISTRICT
PROJECT NO. 23.09 - WRF EXPANSION**

If CMAR intends to subcontract any portion of this Agreement, the CMAR must submit the name, address, and contractor's license number, if applicable, of each subcontractor, including the work component of such subcontracting. Include this form with the submittal documents. CMAR may make multiple copies of this form as needed.

Company Name:	
Contact Name:	
Contact Email:	
Contact Phone:	
Work Component:	
% of Total Work Performed:	

Company Name:	
Contact Name:	
Contact Email:	
Contact Phone:	
Work Component:	
% of Total Work Performed:	

Company Name:	
Contact Name:	
Contact Email:	
Contact Phone:	
Work Component:	
% of Total Work Performed:	

Company Name:	
Contact Name:	
Contact Email:	
Contact Phone:	
Work Component:	
% of Total Work Performed:	

Company Name:	
Contact Name:	
Contact Email:	
Contact Phone:	
Work Component:	
% of Total Work Performed:	

EXHIBIT F
GENERAL CONDITIONS AND APPENDICES

SAMPLE

EXHIBIT G
WIFA COMPLETE GOVERNMENTAL CONTRACT PACKET

SAMPLE