



ADDENDUM NO. 2  
TO THE CONTRACT DOCUMENTS

Date: August 8, 2023  
Project No.: D3571200

for the construction of

**MILLEY'S CREEK WPCP SCREEN REPLACEMENT PROJECT**

THE WATER WORKS AND SANITARY SEWER BOARD  
CITY OF MONTGOMERY

**To All Planholders and/or Prospective Bidders:**

The following changes, additions, and/or deletions are hereby made a part of the Contract Documents for the construction of Milley's Creek WPCP Screen Replacement Project dated July 2023 as fully and completely as if the same were fully set forth therein:

A. PART 2 CONTRACTING FORMS

1. REPLACE CONTRACT section with the attached CONTRACT

All Bidders shall acknowledge receipt and acceptance of this Addendum No. 2 in the Bid Form or by submitting the Addendum with the bid package. Bid Forms submitted without acknowledgment or without this Addendum will be considered in nonconformance.

Jacobs

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Nicholas D. Freeman  
Project Manager

Appended hereto and part of Addendum No. 2:

1. Contract, attached.

**END OF ADDENDUM**



## CONTRACT

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_ (the "CONTRACTOR"), and The Water Works and Sanitary Sewer Board of the City of Montgomery, Alabama (the "OWNER") (collectively, CONTRACTOR and OWNER are referred to as the "Parties"):

### WITNESSETH:

That the CONTRACTOR, for the consideration hereinafter fully set out, the receipt and sufficiency of which are hereby acknowledged, hereby agrees with the OWNER as follows:

1. The CONTRACTOR shall furnish all the materials and perform all of the work in the construction and completion of **Milley's Creek WPCP Screen Replacement Project** in manner and form as provided by the following enumerated Contract Documents, which are attached hereto and made a part hereof, as if fully contained herein:

Part 1 – Bidding Requirements  
Part 2 – Contract Forms  
Part 3 – Conditions of the Contract  
Part 4 – Specifications  
Part 5 – Drawings (attached)  
and Addenda.

(The foregoing is collectively referred to as the "Contract Documents").

2. The CONTRACTOR shall commence the work to be performed under this Agreement within 14 days from the Contract start date specified in the OWNER's Notice to Proceed.
3. The CONTRACTOR shall achieve Schedule A Substantial Completion, as defined in the General Conditions, no later than **180 CONSECUTIVE CALENDAR DAYS** from the Contract start date specified in the OWNER's Notice to Proceed.

The CONTRACTOR shall achieve Schedule B Substantial Completion, as defined in the General Conditions, no later than **360 CONSECUTIVE CALENDAR DAYS** from the start date specified in the OWNER's Schedule B Notice to Proceed.

The CONTRACTOR shall achieve Contract Completion, as defined in the General Conditions, within **390 CONSECUTIVE CALENDAR DAYS** from the Contract start date specified in the OWNER's Notice to Proceed.

4. Damages for failing to meet the specified completion times are as stated below:
  - A. In the event the CONTRACTOR fails to achieve Schedule A Substantial Completion of the Work **within 180 Consecutive calendar days** from the Contract start date specified in the OWNER's Notice to Proceed, liquidated damages shall be paid to the OWNER at the rate of **\$500.00 per day** plus any monies paid by the OWNER for

engineering, legal, and resident observation services, and any fines and all expenses associated with such delays until Substantial Completion is achieved. The CONTRACTOR agrees that \$500.00 per day represents a reasonable pre-breach estimate for damages caused the CONTRACTOR's delay. CONTRACTOR further acknowledges that the payment for the aforesaid daily amount of damages is reasonable and compensates the OWNER for damages that are impossible to accurately estimate. The CONTRACTOR does not consider the payment of damages hereunder to be a penalty, and hereby waives any claim or defense that payment of damages hereunder is a penalty, or in the nature of a penalty against the CONTRACTOR.

B. In the event the CONTRACTOR fails to achieve Schedule B Substantial Completion of the Work **within 360 Consecutive calendar days** from the start date specified in the OWNER's Schedule B Notice to Proceed, liquidated damages shall be paid to the OWNER at the rate of **\$500.00 per day** plus any monies paid by the OWNER for engineering, legal, and resident observation services, and any fines and all expenses associated with such delays until Substantial Completion is achieved. The CONTRACTOR agrees that \$500.00 per day represents a reasonable pre-breach estimate for damages caused the CONTRACTOR's delay. CONTRACTOR further acknowledges that the payment for the aforesaid daily amount of damages is reasonable and compensates the OWNER for damages that are impossible to accurately estimate. The CONTRACTOR does not consider the payment of damages hereunder to be a penalty, and hereby waives any claim or defense that payment of damages hereunder is a penalty, or in the nature of a penalty against the CONTRACTOR.

C. In the event the CONTRACTOR fails to achieve Contract Completion of the work in all respects **within 390 Consecutive calendar days** from the Contract start date specified in the OWNER's Notice to Proceed, damages shall be paid to the OWNER for any monies paid by the OWNER for engineering, legal, and resident observation services, and any fines and all expenses associated with such delays until the work is completed in all respects. The CONTRACTOR agrees that the aforesaid damages represent a reasonable pre-breach estimate for damages caused the CONTRACTOR's delay. CONTRACTOR further acknowledges that the payment for the aforementioned amount of damages is reasonable and compensates the OWNER for damages that are impossible to accurately estimate. The CONTRACTOR does not consider the payment of damages hereunder to be a penalty, and hereby waives any claim or defense that payment of damages hereunder is a penalty, or in the nature of a penalty against the CONTRACTOR.

5. The OWNER hereby agrees to pay the CONTRACTOR for the faithful performance of this Agreement, subject to additions and deductions as provided in the Contract Documents, in lawful money of the United States, the amount of:

\_\_\_\_\_ Dollars  
(\$ \_\_\_\_\_), based on the Proposal contained herein.

6. The CONTRACTOR agrees to use materials, supplies, and products, manufactured, mined, processed, or otherwise produced in the United States or its territories, if the same are available at reasonable and competitive prices and are not contrary to any specification. In the event the CONTRACTOR breaches the agreement to use domestic products, and domestic products are not used, the OWNER may, in its sole discretion, make a downward adjustment in the Contract price equal to any realized savings or benefits to the CONTRACTOR.
7. If steel is required for the Project, the CONTRACTOR agrees to use steel produced within the United States. In the event the CONTRACTOR violates the requirements to use domestic steel, and domestic steel is not used, the OWNER may, in its sole discretion, make a downward adjustment in the Contract price equal to any realized savings or benefits to the CONTRACTOR.
8. Unless otherwise stated in the General Conditions, on or before the 15th day of each calendar month, or within ten (10) calendar days of receipt of an approved pay request, whichever is later, the OWNER shall make partial payments to the CONTRACTOR on the basis of a duly certified and approved estimate of work performed during the preceding calendar month by the CONTRACTOR, LESS the retainage provided in the General Conditions, which is to be withheld by the OWNER until all work within a particular part has been performed strictly in accordance with this Agreement and until such work has been accepted by the OWNER. In the event that the OWNER disputes all or any portion of a pay request, then the OWNER shall provide written notice of its dispute, stating the grounds therefore, to the CONTRACTOR within 30 calendar days of receipt of the pay request. The OWNER shall pay any portion of the pay request that is not disputed.
9. Upon submission by the CONTRACTOR of evidence satisfactory to the OWNER that Notice of Completion requirements and all other completion requirements of the General Conditions have been met, and that all payrolls, material bills, and other costs incurred by the CONTRACTOR in connection with the Project have been paid in full, final payment on account of this Agreement shall be made within sixty (60) days from Contract Completion and compliance with all Notice of Completion requirements.
10. It is further mutually agreed between the Parties that if, at any time after the execution of this Agreement and the Surety Bonds hereto attached for its faithful performance and payment, the OWNER, in its sole discretion, shall deem the Surety or Sureties upon such bonds to be unsatisfactory or if, for any reason, such bonds cease to be adequate to cover the performance of the work, the CONTRACTOR shall, at its expense, within five (5) days from the receipt of notice from the OWNER so to do, furnish an additional bond or bonds in such form and amount and with such Surety or Sureties as shall be satisfactory to the OWNER. In such event, no further payment to the CONTRACTOR shall be deemed to be due under this Agreement until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the

OWNER, and if not furnished the CONTRACTOR may be terminated at the option of the OWNER by giving ten (10) days' written notice.

11. No additional work shall be done unless the same shall be duly authorized by appropriate action by the OWNER in writing. No payment for such additional work shall be made unless so authorized.
12. This Agreement shall be governed by the laws of the State of Alabama. In the event that the Parties become engaged in a dispute, the provisions of Articles 74 and 75 of the General Conditions shall apply. Any mediation, arbitration or other proceedings related to or arising under this Contract shall take place in Montgomery, Alabama. In the event that arbitration or litigation is initiated by either Party related to or arising under the subject matter of these Contract Documents, the OWNER shall be entitled to an award of its reasonable attorney fees, court costs, and related legal expenses if CONTRACTOR is found to have breached the Contract Documents, the OWNER is awarded any damages, or the OWNER otherwise prevails in the arbitration or litigation. **The Parties further expressly waive their right to a jury trial.**
13. This Agreement shall be enforceable by the undersigned Parties, exclusively, and is not entered for the benefit of any third party.
14. The CONTRACTOR shall comply with all pertinent sections of the Code of Alabama (1975), including Ala. Code § 39-3-1 and Ala. Code § 39-3-4 as applicable.
15. The contract awarded by this Agreement was let in compliance with Title 39, Code of Alabama (1975), as amended, and all other applicable provisions of law.
16. In compliance with Ala. Code § 41-16-5, the CONTRACTOR hereby certifies that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.
17. In carrying out any of the provisions hereof, or in exercising any authority granted by this Agreement, there shall be no personal liability upon any public official.
18. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules, and regulations. If any provision of the Contract Documents, or the application thereof to any person or circumstance, shall be invalid or unenforceable, for any reason and to any extent, the remainder of the Contract Documents and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.
19. Any modification or amendment of the Contract Documents must be in writing, signed by both Parties, and must expressly indicate an intent to modify the Contract Documents. This Contract shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto; provided, however, that nothing herein shall be construed as

authorizing CONTRACTOR to assign, transfer, or otherwise convey its interest in the Contract.

20. Whenever used and context requires, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall be applicable to all genders. Where a word or phrase is defined in the Contract Documents, each of its other grammatical forms shall have a corresponding meaning. All section headings or captions in the Contract Documents are for convenience only and shall in no way define, limit, extend, or describe the scope or intent of any provisions of this Agreement. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of this Agreement.

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IN WITNESS WHEREOF, the Parties have executed this Agreement, intending to be bound, on the day and date first above written, in three (3) counterparts, each of which shall, without proof or accounting for the other counterpart be deemed an original contract.

**CONTRACTOR**

**If Corporation**

IN WITNESS WHEREOF the undersigned corporation has caused this instrument to be executed and its seal affixed by its duly authorized officers this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

(SEAL)

\_\_\_\_\_  
Name of Corporation

By: \_\_\_\_\_

Print name: \_\_\_\_\_

As its: \_\_\_\_\_

Attest:

By: \_\_\_\_\_

Print name: \_\_\_\_\_

As Its: \_\_\_\_\_



**If Limited Liability Company**

IN WITNESS WHEREOF the undersigned limited liability company has caused this instrument to be executed and its seal affixed by its duly authorized officers this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Name of Limited Liability Company

By: \_\_\_\_\_

Print name: \_\_\_\_\_

As Its: \_\_\_\_\_

Witness:

By: \_\_\_\_\_

Print name: \_\_\_\_\_

As Its: \_\_\_\_\_

**If Sole Proprietor**

IN WITNESS hereto the undersigned has set his (its) hand and seal this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature of BIDDER L.S.

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Doing Business As

**If Partnership**

IN WITNESS hereto the undersigned has set his (its) hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
BIDDER's Name

By: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

**OWNER**

THE WATER WORKS AND SANITARY  
SEWER BOARD OF THE CITY OF  
MONTGOMERY, ALABAMA

ATTEST:

\_\_\_\_\_  
Secretary

By \_\_\_\_\_  
Chairman

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