

Document 00520

AGREEMENT

Project: FM2920 Lift Station Consolidation Phase 1 – 30" Sanitary Sewer

Project Location: City of Tomball – Holderrieth Rd (Key Map No. 288-N, 288-P, 288-T, 288-U)

Project Bid No: 2025-04

The City: The City of Tomball, County of Harris, Texas (the "City")

and

Contractor: Pate Garver, LP

(Address for Written Notice) 7600 S. Santa Fe, Bldg. A1, Houston, TX 77061

Fax Number: _____

City Engineer is: Freese & Nichols, Inc. attn: Carlos Quintero, P.E.

(Address for Written Notice) 10497 Town and Country Way, Suite 600, Houston, TX 77024

Fax Number: _____

THE CITY AND CONTRACTOR AGREE AS FOLLOWS:

ARTICLE 1

THE WORK OF THE CONTRACT

1.1 Contractor shall perform the Work in accordance with the Contract.

ARTICLE 2

CONTRACT TIME

2.1 Contractor shall achieve Date of Substantial Completion within 240 days after Date of Commencement of the Work, subject to adjustments of Contract Time as provided in the Contract.

2.2 The Parties recognize that time is of the essence for this Agreement and that the City will suffer financial loss if the Work is not completed within the Contract Time. Parties also recognize delays, expense, and difficulties involved in proving in a legal or arbitration proceeding actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, the Parties agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay the City the amount stipulated in Document 00800 – Supplementary Conditions, for each day beyond Contract Time.

**ARTICLE 3
CONTRACT PRICE**

3.1 Subject to terms of the Contract, the City will pay Contractor in current funds for Contractor's performance of the Contract, Contract Price of \$5,384,286.50 which includes Extra Work Items and Allowances.

**ARTICLE 4
PAYMENTS**

4.1 The City will make progress payments to Contractor as provided below and in the General Conditions.

4.2 The Period covered by each progress payment is one calendar month ending on the [] 10th, [] 20th, or [X] last day of the month.

4.3 The Schedule of Values established as provided in paragraph 2.07.A of the General Conditions will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed. The City will make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as provided below in paragraphs 4.3.1 and 4.3.2.

4.3.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or City may withhold, in accordance with paragraph 14.02 of the General Conditions:

a. For contracts under \$400,000.00, 90% of Work completed (with the balance being retainage).

For contracts over \$400,000.00, 95% of Work completed (with the balance being retainage.)

b. For contracts under \$400,000.00, 90% (with the balance being retainage) and for contracts over \$400,000.00, 95% (with the balance being retainage) of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to the City as provided in paragraph 14.02 of the General Conditions).

4.3.2 Upon Substantial Completion, the City shall pay an amount sufficient to increase total payments to Contractor to 95% of the Work completed, less such amounts as Engineer shall determine in accordance with paragraph 14.02.B.5 of the General Conditions and less 100% of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the Certificate of Substantial Completion.

4.4 Final payment, constituting entire unpaid balance of Contract Price, will be made by the City to Contractor as provided in the General Conditions.

**ARTICLE 5
CONTRACTOR REPRESENTATIONS**

5.1 Contractor represents:

5.1.1 Contractor has examined and carefully studied Contract documents and other related data identified in Bid Documents.

5.1.2 Contractor has visited the site and become familiar with and is satisfied as to general, local, and site conditions that may affect cost, progress, and performance of the Work.

5.1.3 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.

5.1.4 Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in Contract documents and (2) reports and drawings of a hazardous environmental condition, if any, at the site which has been identified in Contract documents.

5.1.5 Contractor has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including applying specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract to be employed by Contractor, and safety precautions and programs incident thereto

5.1.6 Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for performance of the Work at Contract Price, within Contract Time, and in accordance with the Contract.

5.1.7 Contractor is aware of general nature of work to be performed by the City and others at the site that relates to the Work as indicated in Contract documents.

5.1.8 Contractor has correlated information known to Contractor, information and observations obtained from visits to the site, reports and drawings identified in the Contract, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract.

5.1.9 Contractor has given City Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract, and written resolution thereof by City Engineer is acceptable to Contractor.

5.1.10 Contract documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

**ARTICLE 6
MISCELLANEOUS PROVISIONS**

- 6.1 The Contract may be terminated by either Party as provided in Conditions of the Contract.
- 6.2 The Work may be suspended by the City as provided in Conditions of the Contract.
- 6.3 Contractor further covenants and agrees that it does not and will not knowingly employ an undocumented worker. An "undocumented worker" shall mean an individual who, at the time of employment, is not (a) lawfully admitted for permanent residence to the United States, or (b) authorized by law to be employed in that manner in the United States.
- 6.4 In accordance with Chapter 2270, Texas Government Code, a government entity may not enter into a contract with a company for goods or services unless the company covenants and agrees that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. Furthermore, the contractor is prohibited from engaging in business with Iran, Sudan or Foreign Terrorist Organizations.
- 6.5 When conducting activities for the City of Tomball, contractor will adhere to the City's Storm Water Management Plan and permit issued by the Texas Commission on Environmental Quality.

**ARTICLE 7
ENUMERATION OF CONTRACT DOCUMENTS**

- 7.1 The following documents are incorporated into this Agreement:
 - 7.1.1 Document 00700 - General Conditions
 - 7.1.2 Document 00800 - Supplementary Conditions
 - 7.1.3 General Requirements.
 - 7.1.4 Divisions 02 through 16 of Specifications attached hereto or incorporated by reference in Document 00010 - Table of Contents.
 - 7.1.5 Drawings listed in Document 00015 - List of Drawings and bound separately.
 - 7.1.6 Addenda which apply to the Contract, are as follows:
 - Addendum No. 1, dated 11-26-2024
 - 7.1.7 Other documents:

<u>Document No.</u>	<u>Title</u>
[X] 00410B	Bid Form – Part B
[X] 00500	Form of Business
[X] 00501	Resolution of Corporation (if a corporation)
[X] 00610	Performance Bond
[X] 00611	Statutory Payment Bond

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- 00612 One-year Maintenance Bond
- 00620 Affidavit of Insurance (with the Certificate of Insurance attached)
- 00800 Exhibit A, Wage Rates
- 00821 Wage Rate for Building Construction
- 00830 Trench Safety Geotechnical Information

ARTICLE 8
SIGNATURES

8.1 This Agreement is executed in two originals and is effective on _____.

CONTRACTOR:

(If Joint Venture)

By: 

By: _____

Name: Alan Pate

Name: _____

Title: President

Title: _____

Date: January 6, 2025

Date: _____

Tax Identification Number: 93-3571947

Tax Identification Number: _____

ATTEST/SEAL:

[SEAL]

Attest: _____

Date: _____

CITY OF TOMBALL, TEXAS:

By: _____
City Manager

ATTEST/SEAL:

Date: _____

[SEAL]

Attest: _____
City Secretary

Date: _____

END OF DOCUMENT