

Document 00520

AGREEMENT

Project: East Water Plant

Project Proposal No: 2025-10

City Project No: 2023-10010

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

Contractor: Industrial TX Corp (the "Contractor")

(Address for Written Notice) 11322 Windfern, Houston, Texas 77064

Phone Number: 281-890-0152

City Engineer is: Freese and Nichols

(Address for Written Notice) 10497 Town and Country Way, Suite 500, Houston TX, 77079

Fax Number: 713-600-6801

Construction Manager is: Freese and Nichols

(Address for Written Notice) 10497 Town and Country Way, Suite 500, Houston TX, 77079

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 540 days, and complete and ready for final payment 30 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 \$1,000, for

each day beyond Contract Time. The Owner will suffer financial loss in an amount that is difficult to quantify if the Project is not Substantially Completed on the date set forth in the Contract Documents. The Owner may assess liquidated damages against the Contractor (and its surety) in an amount equal to \$1,000 per day of the Contract for each project, as fixed, agreed and liquidated damages and not a penalty, for each calendar day of delay until the Work is Substantially Completed. In the event liquidated damages are caused by the Contractor and another entity, the Owner may reasonably apportion damages. The right to assess liquidated damages is in addition to, and not in limitation of, any right or remedy available to the Owner.

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 \$14,793,000.00 which includes Alternates, if any, accepted below and an Owner's Contingency for the total listed sum of the Supplemental Items.

3.2 The City accepts Alternates as follows:

- | | |
|-----------------|---|
| Alternate No. 1 | <u>D-02 "ADD OR DEDUCT: 1.0 MG WELDED STEEL GROUND STORAGE TANK"</u> |
| Alternate No. 2 | <u>D-03 "ADD OR DEDUCT: CMU CONCRETE BUILDING WITH BRICK VENEER IN LIEU OF PRE-ENGINEERED METAL BUILDING (PROPOSAL ITEM A-10) INCLUDING HVAC, LOUVER, HEATER, AND SUPPLY FAN FOR CHLORINE ROOM"</u> |

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 ☒ 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 Proposal 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 00 72 00 - General Conditions

- 7.1.2 Document 00 73 00 - Supplementary Conditions
- 7.1.3 General Requirements.
- 7.1.4 Divisions 02 through 46 of Specifications attached hereto or incorporated by reference in Document 00 01 10 - Table of Contents.
- 7.1.5 Drawings (Bound separately).
- 7.1.6 Addenda which apply to the Contract, are as follows:

7.1.7 Other documents:

<u>Document No.</u>	<u>Title</u>
[X] 00 41 13	Proposal
[X] 00 41 16	Proposal Form Exhibit A
[X] 00 43 13	Bid Bond
[X] 00 45 01	Nonresident Offerors
[X] 00 45 01	Non-Collusion Certification
[X] 00 45 03	Conflict of Interest Questionnaire
[X] 00 45 04	State Sales Tax Requirements
[X] 00610	Performance Bond
[X] 00611	Statutory Payment Bond
[X] 00 73 16	Insurance Requirements
[X] 00 73 17	Texas Workers' Compensation Requirements
[X] 00 73 43	Wage Rate Requirements
[X] 00 73 46	Wage Determination Schedule

ARTICLE 8

SIGNATURES

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

Project No. 2023-10010

AGREEMENT

CONTRACTOR: Industrial TX Corp

(If Joint Venture)

By: David Haynes

By: _____

Name: David Haynes

Name: _____

Title: President

Title: _____

Date: 5/20/25

Date: _____

Tax Identification Number: 760367785

Tax Identification Number: _____

ATTEST/SEAL:



Attest: [Signature]

CITY OF TOMBALL, TEXAS:

Date: _____

By: _____
City Manager

ATTEST/SEAL:

Date: _____

Attest: _____
City Secretary

Date: _____

END OF DOCUMENT