

and
1999-4944

**INTRODUCED BY: CHRIS A. TREGRE, PARISH PRESIDENT
(DEPARTMENT OF WASTEWATER)**

ORDINANCE: 99-10-12

An ordinance to approve and authorize the execution of a contract with Fleming Construction Company, Inc. for the construction of the Bayou Gauche and Paradis Pump Station and Force Main Project in the amount of \$3,524,425.00 subject to the approval of the Louisiana Department of Environmental Quality.

WHEREAS, sealed bids were received by the Parish on September 24, 1999, for the Bayou Gauche and Paradis Pump Station and Force Main Project; and,

WHEREAS, Camp Dresser & McKee, Inc., consulting engineer for the project, have reviewed the bids and recommend that the Contract be awarded to the low bidder Fleming Construction Company, Inc., in the amount of \$3,524,425.00.

THE ST. CHARLES PARISH COUNCIL HEREBY ORDAINS:

SECTION I. That the bid of Fleming Construction Company, Inc. for the construction of the Bayou Gauche and Paradis Pump Station and Force Main Project be and hereby accepted in the amount of \$3,524,425.00 subject to the approval of the Louisiana Department of Environmental Quality; and,

SECTION II. That the Parish President is hereby authorized to execute said contract on behalf of the Parish of St. Charles.

The foregoing Ordinance having been submitted to a vote, the vote thereon was as follows:

YEAS: MINNICH, ALEXANDER, CHAMPAGNE, ABADIE, AUTHEMENT, DUHE

NAYS: NONE

ABSENT: RAMCHANDRAN, JOHNSON, SIRMON

And the ordinance was declared adopted this 18TH day of October, 1999, to become effective five (5) days after this publication in the Official Journal.

CHAIRMAN: [Signature]

SECRETARY: [Signature]

DLVD/PARISH PRESIDENT: Oct 20, 1999

APPROVED: [Signature] DISAPPROVED:

PARISH PRESIDENT: [Signature]

RETD/SECRETARY: Oct 20, 1999

AT: 11:35 AM RECD BY: [Signature]

**RECORDED IN THE ST. CHARLES PARISH
CLERK OF COURT OFFICE**
ON November 2, 1999
AS ENTRY NO. 238735
IN MORTGAGE/CONVEYANCE BOOK
NO. 736 FOLIO 117

SECTION 00500

AGREEMENT

PROJECT NO. S980103

THIS AGREEMENT is effective as of the 1 day of DECEMBER in the year 1999 by and between the Parish of St. Charles, called the OWNER, and FLEMING CONSTRUCTION CO., INC. hereinafter called the CONTRACTOR.

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents for the above Project. The Work is generally described as follows:

1. Modifications to the Bayou Gauche Pump Station and the construction of a new pump station in Paradis
2. Install approximately 29,000 ft. of 10" HDPE/PVC Force Main
3. Install approximately 42,000 ft. of 18" HDPE/PVC Force Main

ARTICLE 2. ENGINEER

The Project has been designed by CAMP DRESSER & MCKEE INC. who is hereinafter called ENGINEER and who will assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3. CONTRACT TIME

- 3.1 The Contractor shall be substantially complete with the Work within three hundred (300) calendar days after the date when the Contract Time commences to run as provided in Paragraph 2.3 of the General Conditions of the Construction Contract (General Conditions), complete and ready for final acceptance in accordance with Paragraph 14.13 of the General Conditions within three hundred thirty (330) calendar days after the date when the Contract Time commences to run.
- 3.2 Liquidated Damages - OWNER and CONTRACTOR recognize that the OWNER will suffer direct financial loss if Work is not completed within the Contract times specified in Paragraph 3.1 above plus any extensions thereof allowed in accordance with Article 12 of the General Conditions, and therefore, time is of the essence. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, CONTRACTOR and Surety agree to forfeit and pay OWNER as liquidated damages for delay (but not as a penalty) the amount of four hundred eighty dollars (\$480) for each calendar day that expires after the Contract Time specified in Paragraph 3.1 for substantial completion until the Work is substantially complete; and four hundred eighty dollars (\$480) for each calendar day that expires after the time specified in Paragraph 3.1 for final completion and

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ready for final acceptance until the Work is completed. These amounts represent a reasonable estimate of OWNER's expenses for extended delays and for inspection, engineering services and administrative costs associated with such delay. This provision shall be effective between the parties ipso facto and without demand or putting in default, it being specifically agreed that the CONTRACTOR by his mere failure to complete the work on or before the date specified shall be deemed in default.

ARTICLE 4. CONTRACT PRICE

CONTRACT PRICE: The amount to be paid to the Contractor by the Owner for completion of all work hereunder shall be based on the unit prices given in the Bid Form, comprising a total base bid of:

THREE MILLION FIVE HUNDRED TWENTY FOUR THOUSAND FOUR HUNDRED TWENTY FIVE DOLLARS
Contract price is firm and subject only to modification by written change order agreed to by both parties.

ARTICLE 5. PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1 Progress payments. OWNER shall make progress payments which exceed \$5,000 on account of the Contract price on the basis of CONTRACTOR's Applications for Payment, as recommended by ENGINEER, on or about the thirtieth (30th) day following receipt by the OWNER. Applications for Payments less than \$5,000 shall be accumulated until the next payment period or until final payment.

Progress payments will be based upon estimated quantities of completed contract unit price items or upon estimated percentages of completion of the schedule of lump sum values of labor and materials incorporated into the Work on the last day of each month or other mutually agreed regular monthly date ending the progress payment period.

5.2 Retainage. Retainage shall be withheld and payments will be made by the OWNER in the payment amount of ninety-five percent (95%) of the approved payment applications.

5.3 Final Acceptance and Final Payment. Upon the final completion of all Work, the CONTRACTOR may request a final inspection and may make a final Application for Payment as provided by Paragraph 14.12 of the General Conditions, upon the OWNER's certificate of final acceptance.

Final acceptance of the Work, based upon the certificate of final acceptance, shall be by resolution of the Council of the Parish of St. Charles.

The notice of final acceptance is then transmitted to Contractor for filing with the Recorder of Mortgages of the Parish of St. Charles. This begins the not-less-than-forty-five (45) day lien period as prescribed for public works by Louisiana Revised Statutes 38:2248.

At the expiration of the lien period it is the CONTRACTOR's responsibility to obtain a certificate from the Recorder of Mortgages of the Parish of St. Charles that the Contract is clear of any liens or privileges, and said certificate shall be presented to the OWNER for final payment and release of retainage, less any such sums as may be lawfully withheld under the Contract.

ARTICLE 6. CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

- 6.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or finishing of the Work.
- 6.2 CONTRACTOR has studied carefully all reports of explorations and tests of subsurface physical conditions and drawings of physical conditions which are identified in the Information Available To Bidders and as provided in the General Conditions
- 6.3 CONTRACTOR has obtained and carefully studied (or assumed responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in Paragraph 6.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or which otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Paragraph 4.2 of the General Conditions. In exercising its responsibility with respect to subsurface conditions and physical conditions at the site, CONTRACTOR has or will obtain or perform at no additional cost to the OWNER such additional examinations, investigations, explorations, tests, reports, studies, or similar information or data as may be required by CONTRACTOR for such purposes.

ARTICLE 7. CONTRACT DOCUMENTS

The following Contract Documents, which comprise the entire Agreement between OWNER and CONTRACTOR, are all hereby made a part of that Agreement to the same extent as if incorporated herein in full.

- 7.1 Agreement (Pages 00500-1 to 00500-4, inclusive).
- 7.2 Construction Performance and Payment Bond (Pages 00610-1 to 00610-2, inclusive) and Insurance Certificates.
- 7.3 Advertisement for Bids (Pages 00010-1 to 00010-3, inclusive).
- 7.4 CONTRACTOR's Bid Form (Pages 00300-1 to 00300-24, inclusive).
- 7.5 Schedule of Suppliers (Pages 00450-1 to 00450-2, inclusive).
- 7.6 Addenda (Numbers 1 to 6, inclusive)
- 7.7 Contract documents bearing the general title "Bayou Gauche and Paradis Pump Station and Force Main".
- 7.8 Drawings, consisting of a cover sheet dated August 1999 and the sheets listed on Drawing G-2; each sheet bearing the following general title:

"St. Charles Parish - Bayou Gauche and Paradis Pump Station and Force Main".

7.9 Section 00700, General Conditions, pages 00700-1 through 00700-31 and Section 00800, Supplementary Conditions, pages 00800-1 through 00800-22, and Second Supplementary Conditions have been adopted by the St. Charles Parish Council as a Standard General Conditions and Supplementary Conditions for Construction Contracts. Those General Conditions and Supplementary Conditions are to be referred to in the agreement and contract as "GEN.COND, CONST - 7/98 files in MOB 682, Folio 230 filed with the St. Charles Parish Clerk of Court."

There are no Contract Documents other than those listed above in this Article 7. The Contract may only be amended, modified or supplemented as provided for in the General Conditions.

ARTICLE 8. MISCELLANEOUS

- 8.1 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and, unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents. Notwithstanding the foregoing, the OWNER may assign this contract to the State of Louisiana or any political subdivision, municipality, special district or authority thereof without CONTRACTOR's consent and without recourse.
- 8.2 OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 8.3 It is hereby agreed and understood by the parties hereto that any and all disputes that may result in litigation shall be litigated in the 29th Judicial District Court for the Parish of St. Charles.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement effective as of the date first written above. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf.

OWNER: Parish of St. Charles

CONTRACTOR _____

FLEMING CONSTRUCTION CO., INC.

By Chris Tregre

By CARLTON J. WARE

Title Parish President

Title PROJECT MANAGER

Signature Chris Tregre

Signature Carlton J. Ware

Attest Jean Beard

Attest Clara B. Jacke

END OF SECTION