

SECTION 00500

AGREEMENT

THIS AGREEMENT is effective as of the 26th day of January in the year 2011 by and between the Parish of St. Charles, called the OWNER, and Fleming Construction Company, L.L.C. 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:

The Contract Work comprises construction of the replacement of three (3) 60" CMP culverts with a single barrel precast concrete bridge drainage structure founded by precast concrete piles, related roadway replacement, utility relocations, and a timber bulkhead structure.

ARTICLE 2. ENGINEER

The Project has been designed by Volkert, 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 complete all of the Work under the Contract within 160 calendar days from the date of the Notice to Proceed.
- 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 \$1500 for each calendar day that expires after the Contract Time specified in Paragraph 3.1 for final completion and 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 is: One Million Eight Hundred Forty Eight Thousand One Hundred Seventy Nine Dollars and NO Cents (\$1,848,179.00) based on unit prices specified within this contract document. 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: 1) ninety percent (90%) of the approved payment applications for projects with contract prices of less than \$500,000; or 2) ninety-five percent (95%) of the approved payment applications for the projects with contract prices of \$500,000 or greater.

- 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.

When substantial completion is granted by the Owner, the Certificate of Substantial Completion is then transmitted to the 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 38:2242.

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
- 7.2 Construction Performance and Payment Bond and Insurance Certificates
- 7.3 Advertisement for Bids
- 7.4 CONTRACTOR's Bid Form
- 7.5 Addenda (Numbers 1 to 2 inclusive)
- 7.6 Contract documents bearing the general title "Ormond Boulevard Culvert Replacement" dated November 2010.
- 7.7 Drawings, consisting of a cover sheet dated November 2010 and the sheets listed on Drawing Title Sheet; each sheet bearing the following general title:

"Ormond Blvd. Culvert Replacement".
- 7.8 General Conditions
- 7.9 General Conditions, pages 00700-1 through 00700-31 and Section 00800, Supplementary Conditions, pages 00800-1 through 00800-25, 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 filed 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 General Conditions, pages 00700-1 through 00700-31 and Section 00800, Supplementary Conditions, pages 00800-1 through 00800-25, 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 filed in MOB 682, Folio 230 filed with the St. Charles Parish Clerk of Court."
- 8.2 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.

- 8.3 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.
- 8.4 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

By

Title

Attest

CONTRACTOR:

By

Title

Attest

END OF SECTION

NOTICE OF CONTRACT

STATE OF LOUISIANA

PARISH OF ST. CHARLES

PLEASE TAKE NOTICE that by virtue of a written contract dated January 26, 2011, St. Charles Parish, 15045 River Road, P. O. Box 302, Hahnville, LA 70057, through its Parish President, V. J. St. Pierre, Jr., duly authorized by Ordinance No. 11-1-10 adopted by the St. Charles Parish Council on January 24, 2011 and Fleming Construction Company, LLC, 23 East Airline Drive, Kenner, LA 70062, through, Jack D. Fleming, II, President, entered into a contract to provide for the construction of the Ormond Boulevard Culvert Replacement including the construction of the replacement of three (3) 60" CMP culverts with a single barrel precast concrete bridge drainage structure founded by precast concrete piles, related roadway replacement, utility relocations and a timber bulkhead structure located on Ormond Boulevard between 2416 and 2418 Ormond Boulevard in Destrehan, LA 70047, in St. Charles Parish, Louisiana, for the price and sum of ONE-MILLION EIGHT HUNDRED FORTY EIGHT THOUSAND ONE HUNDRED SEVENTY NINE DOLLARS AND NO/100THS (\$1,848,179.00) DOLLARS, the work under the Contract to be completed within One Hundred Sixty (160) calendar days from the date of the Notice to Proceed. Said basic work to include the items noted above. The contract price is firm and subject only to modifications by written change order agreed to by both parties. Contractor shall submit Application for Payment in accordance with the General Conditions.

The complete Contract Documents and Specifications may be reviewed at the Records Office of the St. Charles Parish Council, Parish Courthouse, 15045 River Road, Hahnville, LA.

The property upon which the above described improvements are to be constructed is more fully described as the Drainage Servitude under Ormond Boulevard at the Canal Crossing Site located between 2416 and 2418 Ormond Boulevard in Destrehan, St. Charles Parish, Louisiana. Said property having been acquired by St. Charles Parish from Dorvin Developments, Inc., as per the dedication of Ormond Boulevard and the Act of Correction of Dedication of Lot 676, Section Three, Square 16, of Ormond Plantation Subdivision, in accordance with Ordinance No. 66-3-407 of the St. Charles Parish Police Jury adopted on October 2, 1978 and recorded in the Clerk of Court's Office, St. Charles Parish in Book 214, Folio 156, Entry # 64817.

THUS DONE AND SIGNED, this 14th day of February, 2011, in the presence of the undersigned.

WITNESSES:

Barbara Jacob Tucker

Archie Ob

ST. CHARLES PARISH

V.J. St. Pierre, Jr.

BY: V.J. ST. PIERRE, JR.

PARISH PRESIDENT

THUS DONE AND SIGNED, this 8th day of February, 2011, in the presence of the undersigned.

WITNESSES:

Sybil D. Mills

Jana F. Kay

Fleming Construction Company, LLC

Jack D. Fleming, II

BY: Jack D. Fleming, II

PRESIDENT