

**SECTION 00520 – AGREEMENT (CONTRACT)**

THIS AGREEMENT, made on the 8<sup>th</sup> day of July, 2014, by and between Lexington Fayette Urban County Government, acting herein called "OWNER" and Garney Companies, Inc. doing business as a corporation located in the City of Nashville, County of Davidson, State of Tennessee, hereinafter called "CONTRACTOR".

WITNESSETH: That the CONTRACTOR and the OWNER in consideration of three million, seven hundred ninety seven, two hundred eighteen and no/00 dollars (\$3,797,218.00) quoted in the BID by the CONTRACTOR, dated June 19, 2014, hereby agree to commence and complete the construction described as follows:

**1.01 SCOPE OF WORK**

The CONTRACTOR shall furnish all the materials, supplies, machinery, equipment, tools, supervision, labor, insurance, and other accessories and services necessary to complete the said project in accordance with the BID, the Contract Documents, and the Specifications prepared by the Engineer for the West Hickman Trunk Sewer - A LFUCG Bid No.103-2014.

**1.02 TIME OF COMPLETION**

The time period estimated and authorized by the OWNER for Substantial Completion of Work by the AGREEMENT, in full, is hereby fixed as **270 consecutive calendar days**. The time shall begin ten (10) calendar days after CONTRACTOR is issued the Notice to Proceed.

**1.03 ISSUANCE OF NOTICE TO PROCEED**

Notice to Proceed for Work will be issued in whole or in part of the Work as determined by the OWNER pending the availability of funds. The order of construction will be as determined by the Engineer after consultation with the CONTRACTOR and the OWNER.

**1.04 AGREEMENT (CONTRACT) AMOUNT**

The OWNER agrees to pay the CONTRACTOR in current funds for the performance of the AGREEMENT as quoted in the BID, subject to any additions and deductions, as provided therein.

**1.05 PROGRESS PAYMENTS**

The OWNER shall make payments on account of the AGREEMENT in accordance with the General Conditions, as recommended by the Engineer and authorized by the OWNER, less the aggregate of previous payments.

**1.06 ACCEPTANCE AND FINAL PAYMENT**

Final payment shall be due within ninety (90) days after Final Completion of the Work, provided the Work is deemed "Final Completion" and fully accepted by the OWNER.

Before issuance of final certificate, the CONTRACTOR shall submit evidence satisfactory to the Engineer that all payrolls, material bills, and other indebtedness connected with the AGREEMENT (CONTRACT) has been paid.

If, after the Work has been substantially completed, full completion thereof is materially delayed through no fault of the CONTRACTOR, and the ENGINEER so certifies, the OWNER shall upon certificate of the ENGINEER, and without terminating the AGREEMENT (CONTRACT), make payment of the balance due for that portion of the Work fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

#### **1.07 EXTRA WORK**

The OWNER, without invalidating the AGREEMENT (CONTRACT) may order extra work or make changes by altering, adding to or deducting from the Work, the AGREEMENT (CONTRACT) amount being adjusted accordingly. All such work shall be executed and paid for in accordance with the General Conditions.

#### **1.08 LIQUIDATED DAMAGES**

If the CONTRACTOR shall fail or refuse to complete the Work within the AGREEMENT (CONTRACT) Time, or extension of time granted by the OWNER, then the CONTRACTOR agrees as a partial consideration for the awarding of this AGREEMENT (CONTRACT) that the OWNER may retain the compensation otherwise to be paid to the CONTRACTOR the amount of One-Thousand Dollars (\$1,000) per consecutive calendar day that the CONTRACTOR shall be in default after the Final Completion time stipulated in the Contract Documents. The said amount is fixed and agreed upon by and between the CONTRACTOR and the OWNER because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the OWNER would in such event sustain.

#### **1.09 CONSENT DECREE REQUIREMENTS**

- A. The OWNER, the United States Environmental Protection Agency, and the Commonwealth of Kentucky have entered into a Consent Decree in a case styled *United States, et al. v. Lexington-Fayette Urban County Government*, United States District Court for the Eastern District of Kentucky, Case No. 5:06-CV-00386 ("CONSENT DECREE"), that requires OWNER to complete numerous projects related to its sanitary sewer system and stormwater management program within specific periods of time.
- B. **Time is of the essence in the performance of this Agreement (CONTRACT).** CONTRACTOR is aware that the OWNER is subject to penalties for non-compliance with the CONSENT DECREE deadlines. The CONTRACTOR shall be specifically liable and responsible for payment of any and all penalties, fines, or fees assessed against or incurred by the OWNER as a result of any delay in, or non-performance of, any of the CONTRACTOR's obligations or responsibilities under this AGREEMENT (CONTRACT), or for any other damages suffered by OWNER as a result of such delay or non-performance. This shall specifically include, but shall not be limited to, any penalty, fine, fee, or assessment against the OWNER by the U.S. Department of Justice, U.S. Environmental Protection Agency, and/or the Kentucky Energy and Environment Cabinet related to the CONSENT DECREE.
- C. The provisions of the Contract Documents and the various rates of compensation for CONTRACTOR's services provided for elsewhere in this AGREEMENT (CONTRACT) have been agreed to in anticipation of the orderly and continuous progress of the AGREEMENT (CONTRACT) through completion.

- D. If delays result by reason of acts of the OWNER or approving agencies, which are beyond the control of the CONTRACTOR, an extension of time for such delay will be considered. If delays occur, the CONTRACTOR shall immediately notify the OWNER and within five (5) business days from the date of the delay apply in writing to the OWNER for an extension of time for such reasonable period as may be mutually agreed upon between the parties, and if approved, the AGREEMENT (CONTRACT) schedule shall be revised to reflect the extension. Such extension of time to the completion date shall in no way be construed to operate as a waiver on the part of the OWNER of any of its rights in the AGREEMENT (CONTRACT). In the event the parties cannot agree upon an extension of time, the Dispute shall be addressed in the manner outlined hereinafter under this Article.

In the event that the overall delay resulting from the above-described causes is sufficient to prevent complete performance of the AGREEMENT (CONTRACT) within six (6) months of the time specified herein, the fees to be paid to CONTRACTOR shall be subject to adjustment as agreed upon by the parties.

- E. If delays result solely by reason of acts of the CONTRACTOR, the CONTRACTOR shall be held liable for any financial penalties incurred by the OWNER as a result of the delay, including but not limited to those assessed pursuant to the CONSENT DECREE. Disputes as outlined hereinafter in this Article shall apply in the event the parties cannot mutually agree upon the cause(s) associated with delays in completing project deliverables. The CONTRACTOR must immediately notify the OWNER in the event of such delay, and provide the OWNER a written action plan within five (5) business days on how it will attempt to resolve the delay.

#### F. DISPUTES

Except as otherwise provided in this AGREEMENT (CONTRACT), any dispute hereunder may be resolved by agreement of the OWNER's Agent (Charles H. Martin, P.E., Director of Water Quality) and the CONTRACTOR. In the absence of such an agreement, the dispute shall be submitted to the OWNER's Commissioner, Department of Public Works and Environmental Quality, whose decision shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. Pending a final decision of a dispute hereunder the CONTRACTOR shall proceed diligently with the performance of the AGREEMENT (CONTRACT) in accordance with the direction of the OWNER.

### 1.10 RIGHT TO REVIEW, AUDIT, AND INSPECT

The CONTRACTOR shall provide to the OWNER or its duly authorized representative(s), at any time during the course of the contract and up to five (5) years thereafter, access to any books, documents, papers, emails, and/or other records or communications which are directly pertinent to this specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

### 1.11 CONTRACT DOCUMENTS

In general, the Advertisement for Bids, Information Available to Bidders, the Bid, the General Conditions, Performance, Payment, Erosion and Sediment Control and Warranty Bonds, AGREEMENT (CONTRACT), Supplementary Conditions, Supplemental General Conditions for SRF, Technical Specifications, any and all Addenda, and Plan Drawings form the AGREEMENT (CONTRACT) and they are fully a part of the AGREEMENT (CONTRACT) as if hereto attached or herein repeated.

A full listing of the Contract Documents consist of the following:

Specifications:	Per Table of Contents
Drawings (Plans):	Per Table of Contents

IN WITNESSETH WHEREOF, the parties hereto have executed this AGREEMENT (CONTRACT) as of the date and year above written.

(Seal)

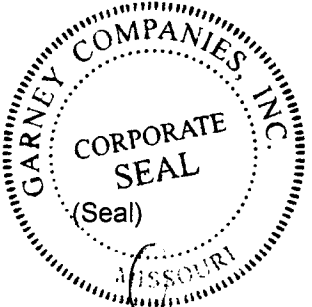
Lexington-Fayette Urban County Government  
Lexington, Kentucky

(Owner)

ATTEST:

*Marta McAllen, Deputy*  
Clerk of Urban County Council

By: *[Signature]*  
(Signature of Mayor)



JIM GRAY Mayor  
(Name/Title)

**GARNEY COMPANIES, INC.**  
(Contractor)

*[Signature]*  
(Secretary)

By: *[Signature]*  
(Contractor's Signature)

*[Signature]*  
(Witness)

**STEPHEN P. FORD**  
**VICE PRESIDENT**  
(Name/Title)  
**GARNEY COMPANIES, INC.**  
**200 CRUTCHFIELD AVENUE**  
**NASHVILLE, TN 37210**  
(Address)

\*IMPORTANT: Strike out any non-applicable terms:  
Secretary of the OWNER should attest. If the CONTRACTOR is corporation, Secretary should attest. Give proper title of each person-executing AGREEMENT (CONTRACT).

END OF SECTION