

# **AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

This Agreement is by and between **CITY OF LEANDER, a Texas Municipal Corporation** (“Owner”) and \_\_\_\_\_ (“Contractor”).

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

## **ARTICLE 1—WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: **Improvements including, but not limited to, installation of a new 16-inch water line, hydrants, and valves along Lakeline Boulevard between Stinnett Drive and Hero Way West and valve installation at the 280 EST.**

## **ARTICLE 2—THE PROJECT**

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **LAKELINE BOULEVARD 16” WATERLINE EXTENSION.**

## **ARTICLE 3—ENGINEER**

3.01 The Owner has retained **Walter P. Moore and Associates, Inc.**, (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.

3.02 The part of the Project that pertains to the Work has been designed by **Walter P. Moore and Associates, Inc.**

## **ARTICLE 4—CONTRACT TIMES**

4.01 *Time is of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

A. The Work will be substantially complete within **<Days>** calendar days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within **<Days>** calendar days after the date when the Contract Times commence to run.

4.03 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also

recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. *Substantial Completion*: Contractor shall pay Owner **One-Thousand dollars (\$1,000.00)** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
  2. *Completion of Remaining Work*: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner **One-Thousand dollars (\$1,000.00)** for each day that expires after such time until the Work is completed and ready for final payment.
  3. *Milestones*: Contractor shall pay Owner **One-Thousand dollars (\$1,000.00)** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of Milestone 1, until Milestone 1 is achieved, or until the time specified for Substantial Completion is reached, at which time the rate indicated in Paragraph 4.05.A.1 will apply, rather than the Milestone rate.
  4. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

#### 4.04 *Special Damages*

- A. Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.
- C. The special damages imposed in this paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement.

**ARTICLE 5—CONTRACT PRICE**

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:

- A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item).

Item No.	Description	Unit	Qty	Unit Price	Bid Amount
	ALLOWANCES	LS	1		
TXDOT-401	FLOWABLE BACKFILL	CY	56		
102S-AC	CLEARING AND GRUBBING	LS	1		
110S-A	STREET EXCAVATION	CY	1,434		
210 S-A	FLEXIBLE BASE 8" THICK	CY	56		
340S-B	HOT MIX ASPHALTIC CONCRETE PAVEMENT TYPE B, 2" THICK	SY	240		
430 S-A	P.C. CONCRETE CURB & GUTTER (EXCAVATION)	LF	340		
430 S-B	P.C CONCRETE CURB & GUTTER (FINE GRADING)	LF	340		
432SR-4	RECONSTRUCT CONCRETE SIDEWALKS TO 4 INCH THICKNESS, INCLUDING REMOVAL OF EXISTING SIDEWALK	SF	9,512		
433S-A	TYPE I PC CONCRETE DRIVEWAY	SF	716		
501S	JACKING OR BORING 30" STEEL PIPE, CLASS 7/16" STEEL	LF	408		
509S-1	TRECH EXCAVATION SAFETY PROTECTIVE SYSTEMS (ALL DEPTHS)	LF	4,252		
TXDOT-7173-6027	12"X12" TEE CUT-IN	EA	1		
510-AW-A	FACTORY RESTRAINED JOINT PIPE, 6" CL-350 DI (ALL DEPTHS)	LF	80		
510-AW-16" DIA	16" DIA. CLASS C-900 PVC (ALL DEPTHS), INCLUDING EXCAVATION AND BACKFILL	LF	4,634		
510-KW	DUCTILE IRON FITTINGS	TON	5.65		
511-A	VALVE, GATE TYPE, 16" DIA.	EA	14		
511-A	VALVE, GATE TYPE, 14" DIA.	EA	1		
511-A	VALVE, GATE TYPE, 12" DIA.	EA	1		
511-A	VALVE, GATE TYPE, 6" DIA.	EA	16		
511-B	FIRE HYDRANTS (SEE STANDARD NO. 511-AW-02)	EA	16		
511-F	AUTOMATIC COMBINATION AIR/VACUUM RELEASE VALVE ASSEMBLY, 2" DIAMETER	EA	5		
511-F	SOLENOID CONTROL VALVE ASSEMBLY 16" PER PLANS	EA	1		
605 S-A	SOIL RETENTION BLANKET CLASS 1; TYPE A	SY	200		
609S-C	NATIVE SEEDING	SY	23,962		

610 S-A	PROTECTIVE FENCING TYPE A CHAIN LINK FENCE (TYPICAL APPLICATION-HIGH DAMAGE POTENTIAL)	LF	100		
639S	ROCK BERM	LF	102		
641S	STABILIZED CONSTRUCTION ENTRANCE	EA	1		
642S	SILT FENCE FOR EROSION CONTROL	LF	9,330		
863S-1	REFLECTORIZED PAVEMENT MARKERS (TYPE I-A)	EA	16		
700 S-TM	TOTAL MOBILIZATION PAYMENT	LS	1		
802S-BC.I.P	C.I.P PROJECT SIGNS	EA	1		

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

- B. Total of Lump Sum Amounts and Unit Price Work (subject to final Unit Price adjustment) \$[number].
- C. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

#### ARTICLE 6—PAYMENT PROCEDURES

##### 6.01 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Owner and Engineer as provided in the General Conditions.

##### 6.02 Progress Payments; Retainage

- A. Owner shall make progress payments on the basis of Contractor's Applications for Payment on or about the **30th** day from Owner approval of Application for Payment of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions or, as may be provided elsewhere in the Contract.

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 Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
  - a. **Ninety-Five (95)** percent of the value of the Work completed (with the balance being retainage).
  - b. **Eighty (80)** percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to **Ninety-Five (95)** percent of the Work completed, less such

amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less **Five (5)** percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

6.04 *Consent of Surety*

A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

6.05 *Interest*

A. All amounts not paid when due will bear interest at the rate of **4.25%** percent per annum.

**ARTICLE 7—CONTRACT DOCUMENTS**

7.01 *Contents*

A. The Contract Documents consist of all of the following:

1. This Agreement.
2. Bonds:
  - a. Performance bond (together with power of attorney).
  - b. Payment bond (together with power of attorney).
3. Evidence of Insurance
4. City of Leander Standard Definitions, Terms and Conditions
5. Standard General Conditions. Edits highlighted.
6. Supplementary Conditions
7. Sales and Use Tax Certificate
8. Specifications as listed in the table of contents of the project manual (copy of list attached).
9. Drawings listed on the attached sheet index.
10. IFB Bid documents.
11. Addenda No. \_\_\_\_\_
12. Addenda No. \_\_\_\_\_
13. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
  - a. Notice to Proceed.
  - b. Work Change Directives.
  - c. Change Orders.

- d. Field Orders.
  - e. Project Schedule
  - e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above) and the terms and conditions of the Contract Documents are incorporated by reference and made part of this Agreement.
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

## **ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS**

### **8.01 Contractor's Representations**

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
  2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
  4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
  5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
  6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
  7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price,

within the Contract Times, and in accordance with the other terms and conditions of the Contract.

8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

#### 8.02 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
  1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

#### 8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.
- B. Although drawn by Owner, both parties hereto expressly agree and assert that in the event of any dispute over its meaning or application, this Agreement shall be interpreted reasonably and fairly, and neither more strongly for nor against either party.

- C. This Agreement is to be governed by and shall be construed in accordance with the laws of the State of Texas without regard to conflicts of law principles, thereof. Proper venue for any dispute or litigation shall be only in Williamson County, Texas.
- D. This Agreement and all rights and obligations contained herein may not be assigned by Contractor without the prior written approval of the City. However, Contractor shall have the right to employ such assistance as may be required for the performance of the project, including the use of subcontractors, which employment shall not be deemed an assignment of the Contractors' rights and duties hereunder.
- E. To the extent this Agreement constitutes a contract for goods or services within the meaning of Section 2270.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270 of the Texas Government Code, and subject to applicable Federal law, Contractor represents that neither Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor (i) boycotts Israel or (ii) will boycott Israel through the term of this Agreement. The terms "boycotts Israel" and "boycott Israel" as used in this paragraph have the meanings assigned to the term "boycott Israel" in Section 808.001 of the Texas Government Code, as amended.
- F. To the extent this Agreement constitute a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252 of the Texas Government Code, and except to the extent otherwise required by applicable federal law, Contractor represents that Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.
- G. Contractor hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, and to the extent such Section is not inconsistent with a governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds. As used in the foregoing verification, "boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by the preceding statement in (A).
- H. Contractor hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code. As used in the foregoing verification, "discriminate against a firearm entity or firearm trade association" means: (i) refuse to engage in the trade of any goods or services with the entity or association based



- solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; but does not include (a) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; or (b) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.
- I. Texas law requires that business entities, as defined in Texas Government Code, Section 2252.908, who contract with the City complete the on-line of Form 1295 "Certificate of Interested Parties" as promulgated by the Texas Ethics Commission (<https://www.ethics.state.tx.us/filinginfo/1295/>). Form 1295 is also required for any and all contract amendments, extensions or renewals. Prior to any payment to Contractor hereunder, Contractor shall provide proof of submission to the City Secretary that the appropriate Form 1295 documentation has been submitted.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on **[indicate date on which Contract becomes effective]** (which is the Effective Date of the Contract).

Owner:

Contractor:

CITY OF LEANDER

*(typed or printed name of organization)*

*(typed or printed name of organization)*

By:

\_\_\_\_\_

*(individual's signature)*

By:

\_\_\_\_\_

*(individual's signature)*

Date:

\_\_\_\_\_

*(date signed)*

Date:

\_\_\_\_\_

*(date signed)*

Name:

Richard B. Beverlin III

*(typed or printed)*

Name:

\_\_\_\_\_

*(typed or printed)*

Title:

City Manager

*(typed or printed)*

Title:

\_\_\_\_\_

*(typed or printed)*

*(If [Type of Entity] is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)*

Attest:

\_\_\_\_\_

*(individual's signature)*

Attest:

\_\_\_\_\_

*(individual's signature)*

Title:

\_\_\_\_\_

*(typed or printed)*

Title:

\_\_\_\_\_

*(typed or printed)*

Address for giving notices:

Address for giving notices:

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\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Designated Representative:

Designated Representative:

Name:

\_\_\_\_\_

*(typed or printed)*

Name:

\_\_\_\_\_

*(typed or printed)*

Title:

\_\_\_\_\_

*(typed or printed)*

Title:

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*(typed or printed)*

Address:

Address:

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Phone:

\_\_\_\_\_

Phone:

\_\_\_\_\_

Email:

\_\_\_\_\_

Email:

\_\_\_\_\_

*(If [Type of Entity] is a corporation, attach evidence of authority to sign. If [Type of Entity] is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)*

License No.:

\_\_\_\_\_

*(where applicable)*

State:

\_\_\_\_\_