

**EJCDC
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
ON THE BASIS OF A STIPULATED PRICE**

THIS AGREEMENT is dated as of the 24TH day of APRIL in the year 2019 by
and between Burnet County, Texas (hereinafter called OWNER)
and Texas Materials Group, Inc. (hereinafter called 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. The Work is generally described as follows:

County road rehabilitation work consisting primarily of hot mix asphaltic pavement overlay and pavement markings and including reworking base courses, subgrade preparation, flexible base and asphalt seal coat.

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

COUNTY ROADS 403, 404, & 423

Article 2. ENGINEER.

The Project has been designed by K.C. Engineering, Inc. (KCE) under the direction of OWNER. KCE shall hereinafter be called ENGINEER and is to act as OWNER's representative, 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 TIMES.

3.1 The Work will be substantially completed within 45 calendar days after the date when the Contract Times commence to run as provided in paragraph 2.3 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions within 60 calendar days after the date when the Contract Times commence to run.

3.2 *Liquidated Damages.* OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving 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) CONTRACTOR shall pay OWNER \$500 for each calendar day that expires after the dates established in the milestones and phases included in the Project Manual and referenced in paragraph 3.1 for each phase specified.

When the OWNER reasonably believes that delays in completion will inexcusably occur, the Owner shall be entitled, but not required to, withhold from any amounts otherwise due to CONTRACTOR an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the CONTRACTOR overcomes the delay or any part thereof, for which the Owner has withheld payment, the OWNER shall promptly release to the CONTRACTOR those funds withheld, but no longer applicable as liquidated damages. OWNER shall have all other rights and remedies provided by the Contract Documents, law or equity; all such rights and remedies being cumulative and not exclusive, and may be exercised concurrently and/or successively.

Article 4. CONTRACT PRICE.

This contract is a Plans Quantity contract and payment shall be made based on Plans Quantity as defined in Section 005 of the K.C. ENGINEERING, INC. STANDARD SPECIFICATIONS (3rd Edition). OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined as the sum of the established unit price for each separately identified item on the Unit Price Schedule times the quantity for that item listed on the Unit Price Schedule. No quantities will be measured in the field for payment purposes. All payment shall be based on Plan Quantities, as shown on the Unit Price Schedule.

For changes in the work requiring a change order, payments to the Contractor shall be adjusted based on quantity adjustments from those shown on the Unit Price Schedule. No changes or revisions to quantities will be made unless such changes are specifically documented by signed change order.

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 on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, on or about the 25th day of each month during construction as provided below. All such payments will be measured by the schedule of values established in paragraph 2.9 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

Payments will be made in accordance with the criteria indicated below, but in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.7 of the General Conditions.

5.2 Retainage: Payments shall be made in the amount of the Application for Payment as recommended by ENGINEER, less 10% to be withheld for retainage, except as provided below.

5.3 90% Completion: When work has been 90% completed as determined by ENGINEER, and if the character and progress of the Work have been satisfactory to OWNER and ENGINEER, the ENGINEER may recommend that as long as the character and progress of the Work remain satisfactory, there will be no additional retainage on account of Work completed, in which case progress payments made for Work after 90% completion, but prior to Substantial Completion, will be in an amount equal to 100% of the Work completed between 90% completion and Substantial Completion.

5.4 Substantial Completion: Upon Substantial Completion, payment shall be made in an amount sufficient to increase total payments to CONTRACTOR to 95% of the Contract Price (with the

balance being retainage), less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.7 of the General Conditions.

5.5 *Final Payment.* Upon final completion and acceptance of the Work in accordance with paragraph 14.13 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in paragraph 14.13.

5.4 *Materials on hand:* 100% (less retainage) of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in paragraph 14.2 of the General Conditions) may be requested for payment by the CONTRACTOR.

Article 6. INTEREST.

All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the maximum rate allowed by law at the place of the Project.

Article 7. CONTRACTOR'S REPRESENTATIONS.

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

7.1 CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in paragraph 8) and the other related data identified in the Bidding Documents including "technical data."

7.2 CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.

7.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work.

7.4 CONTRACTOR has carefully studied all 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 the Supplementary Conditions as provided in paragraph 4.2.1 of the General Conditions. CONTRACTOR accepts the determination set forth in paragraph SC-4.2.1 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely as provided in paragraph 4.2 of the General Conditions. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

7.5 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.

7.6 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

7.7 CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Article 8. CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

8.1. This Agreement.

8.2. Project Manual.

8.3. Performance, Payment, and other Bonds, identified as Exhibit A and consisting of 17 page(s).

8.4. Supplementary Conditions

8.5. General Conditions.

8.6. Burnet County Conflict of Interest Disclosure

8.7. Texas Ethics Commission, Certificate of Interested Parties Form 1295

8.8. Specifications referenced on the cover sheet of the construction plans.

8.9. Drawings consisting of a cover sheet and sheets numbered 1.0, to 26.1, inclusive with each sheet bearing the following general title: "PRECINCT 4, BURNET COUNTY, TX".

8.10. Addenda numbers 0 to 0, inclusive.

8.11. CONTRACTOR's Bid (pages 1 to 10, inclusive), marked: "Bid Form for County Roads 403, 404, & 423"; including: "Instructions to Bidders for County Roads 403, 404, & 423" and "Bid Summary Sheet for County Roads 403, 404, & 423."

8.12. Documentation submitted by CONTRACTOR prior to Notice of Award (pages 1 to 5, inclusive).

8.13. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraphs 3.5 and 3.6 of the General Conditions.

The documents listed in paragraphs 8.2 through 8.7 and 8.9 through 8.12 above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.5 and 3.6 of the General Conditions.

Article 9. MISCELLANEOUS.

9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

9.2 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.

9.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

9.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.5 OTHER PROVISIONS. CONTRACTOR shall ensure that subcontracts with Subcontractors for this Project are consistent with and reflective of the terms of the Contract Documents applicable or relevant to Subcontractors, including, but not limited to, the prevailing wage rate requirements and the Labor Code requirements set forth above.

All rights and remedies of OWNER provided in the Contract Documents are in addition to all other rights and remedies provided by law or equity. All such rights and remedies are cumulative, and not exclusive, and may be exercised concurrently and/or successively.

9.6 CONTRACTOR shall deliver to OWNER all required bonds in accordance with the Contract Documents. Each bond shall be issued by a corporate surety authorized to do business in the State of Texas. The bonds must be in form approved by or supplied by OWNER and must comply with the requirements of Chapter 2253 of the Texas Government Code, and other applicable law, including the requirements of Section 7.19-1 of the Texas Insurance Code regarding reinsurance if the bond exceeds 10% of the Surety's capital and surplus. All sureties must be listed as approved sureties by the U. S. Department of Treasury.

In the event any surety on the bonds becomes insolvent or is otherwise unable to perform its obligations under the bonds, the CONTRACTOR shall provide substitute bonds or equivalent security satisfactory to the OWNER to protect the interests of OWNER and of persons furnishing labor and materials in the prosecution of the Work.

CONTRACTOR shall not begin any Work on this Project until all bonds and required insurance have been furnished by Contractor and approved by Owner.

9.7 The Contract shall be governed by and interpreted in accordance with the laws of the State of Texas. Venue for any action brought in connection with the Contract Documents shall lie in courts of competent jurisdiction in Burnet County, Texas. If any provision or part of the Contract

Documents is held to be void or unenforceable under any Law or Regulation, all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.8 In the event of any suit or action arising out of or relating to the Contract, the prevailing party in such proceeding shall be entitled to recover reasonable attorney fees and court costs. Reference is made to Section 271.159 of the Texas Local Government Code in connection with the recovery of attorney's fees. The parties agree to mediate any dispute arising in connection with the Contract Documents in good faith prior to filing suit for damages. The parties agree to mediate any dispute in good faith prior to filing suit for relief other than injunctive relief.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have executed this Agreement in triplicate originals. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR or identified by ENGINEER on their behalf.

This Agreement will be effective on 4-24, 2019.

OWNER: Burnet County, Texas

CONTRACTOR:

By: [Signature]

Texas Materials Group, Inc.
By: [Signature]

Attest [Signature]

Attest [Signature]

Address for giving notices

Address for giving notices

220 S. Pierce Street

1320 Arrow Point Dr #600

Burnet, TX 78611

Cedar Park, TX 78613

Email Address: David.Reese@TexasMaterials.com

License No. _____

Agent for service of process: _____