

STANDARD FORM OF AGREEMENT

STATE OF TEXAS

WILLIAMSON COUNTY

THIS STANDARD FORM OF AGREEMENT (the “Agreement”) is by and between WILLIAMSON COUNTY, TEXAS, a political subdivision of the State of Texas (hereinafter called “County”) and Capital Excavation Company (hereinafter called “Contractor”).

The County 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 “Project” is generally described as follows:

Project No. **CORRIDOR C / SH29 BYPASS PHASE 1**

Article 2. Engineer of Record

The Project has been designed by **Atkins**, who is hereinafter called the “Engineer of Record” and who is to act as the County’s design professional.

Article 3. Contract Time

The Work shall be Substantially Completed in **973** calendar days (the “Contract Time”). Following Substantial Completion, the Contractor shall proceed expeditiously with adequate forces and shall achieve Final Completion within the time specified in the Special Conditions.

Article 4. Contract Price

County 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 pursuant to paragraph 4.1 below (the “Contract Price”):

- 4.1 For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in the Bid Form, and as totaled below:

TOTAL OF ALL UNIT PRICES Thirty Million, Five Hundred Forty-Thousand, Eight Hundred Forty-Eight Dollars and Three Cents \$30,540,848.03

As provided in the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classification are to be made by the Engineer of Record.

Article 5. Contractor's Representations

In order to induce County to enter into this Agreement, Contractor makes the following representations:

- 5.1 Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents including the "technical data".
- 5.2 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.
- 5.3 Contractor is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.
- 5.4 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 which have been identified. Contractor acknowledges that such reports and drawings are not Contract Documents and may not be complete for Contractor's purposes. Contractor acknowledges that the County and Engineer of Record 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.
- 5.5 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.
- 5.6 Contractor has given Engineer of Record written notice of all conflicts, errors, ambiguities or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Engineer of Record 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.

- 5.7 Contractor represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under the Contract Documents.
- 5.8 Contractor warrants, represents, and agrees that if (i) it is a corporation or limited liability company, then it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver this Agreement, and the individual executing the Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor; or (ii) if it is a partnership, limited partnership, or limited liability partnership, then it has all necessary partnership power and has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations under the Contract Documents; and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.
- 5.9 Neither the execution and delivery of this Agreement by Contractor nor the performance of its obligations under the Contract Documents will result in the violation of any provision, if a corporation, of its articles of incorporation or by-laws, if a limited liability company, of its articles of organization or regulations, or if a partnership, by any partnership agreement by which Contractor is bound, or any agreement by which Contractor is bound or to the best of the Contractor's knowledge and belief, will conflict with any order or decree of any court or governmental instrumentality relating to Contractor.
- 5.10 Except for the obligation of the County to pay Contractor the Contract Price pursuant to the terms of the Contract Documents, and to perform certain other obligations pursuant to the terms and conditions explicitly set forth in the Contract Documents, County shall have no liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of County to Contractor, no present or future partner or affiliate of County or any agent, officer, director, or employee of County, or of the various departments comprising Williamson County, or anyone claiming under County has or shall have any personal liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement.

Article 6. Contract Documents

The "Contract Documents," which comprise the entire agreement between the County and Contractor concerning the Work, consist of the following:

- 6.1 This Standard Form of Agreement
- 6.2 Performance Bond
- 6.3 Payment Bond
- 6.4 Maintenance Bond
- 6.5 Certificate of Insurance
- 6.6 Wage Rates
- 6.7 General Conditions
- 6.8 Special Conditions
- 6.9 Technical Specifications
- 6.10 Plan Drawings
- 6.11 Addenda numbers 1 to 2, inclusive
- 6.12 Contractor's Bid Affidavit and Bid Form
- 6.13 Documentation submitted by Contractor prior to Notice of Award.
- 6.14 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 applicable sections in the General Conditions.

The documents listed in paragraphs 6.2 et seq. 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 6. The Contract Documents may only be amended, modified or supplemented as provided in the General Conditions.

Article 7. Miscellaneous

- 7.1 Terms used in this Agreement, which are defined in the General Conditions, will have the meanings indicated in the General Conditions.
- 7.2 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.
- 7.3 The County 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.
- 7.4 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 the County 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 position.
- 7.5 Each party to this Agreement hereby agrees and acknowledges that venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in Williamson County, Texas. Furthermore, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.
- 7.6 The parties to this Agreement agree that during the performance of the services under this Agreement they will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The parties to this Agreement will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 7.7 This Agreement is for the sole and exclusive benefit of the parties hereto, and nothing in this Agreement, express or implied, is intended to confer or shall be construed as conferring upon any other person any rights, remedies or any other type or types of benefits.
- 7.8 Each party to this Agreement acknowledges that it and its counsel have reviewed this Agreement and that the normal rules of construction are not applicable and there will be no presumption that any ambiguities will be resolved against the drafting party in the interpretation of this Agreement.
- 7.9 Each party to this Agreement, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint ventures or

- associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.
- 7.10 Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to County, its past or present officers, employees, or agents or employees, nor to create any legal rights or claim on behalf of any third party. County does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.
- 7.11 To the extent, if any, that any provision in this Agreement is in conflict with Tex. Gov't Code 552.001 et seq., as amended (the "Public Information Act"), the same shall be of no force or effect. Furthermore, it is expressly understood and agreed that County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any items or data furnished to County as to whether or not the same are available to the public. It is further understood that County's officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that County, its officers and employees shall have no liability or obligation to any party hereto for the disclosure to the public, or to any person or persons, of any items or data furnished to County by a party hereto, in reliance of any advice, decision or opinion of the Attorney General of the State of Texas.
- 7.12 County and Contractor have signed this Agreement in triplicate. One counterpart each has been delivered to the County, Contractor and Engineer of Record. All portions of the Contract Documents have been signed, initialed or identified by County and Contractor or identified by Engineer of Record on their behalf.
- 7.13 This Agreement and the Contract Documents represent the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either oral or written. This Agreement may be amended only by written instrument signed by each party to this Agreement. NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND THIS CONTRACT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE WILLIAMSON COUNTY COMMISSIONERS COURT.

This Agreement will be effective on _____, 20____ (which is the
“Effective Date” of the Agreement).

COUNTY_____

CONTRACTOR_____

By:_____

Bill Gravel, Jr.,
Williamson County Judge

By: _____

Title: _____

[CORPORATE SEAL]

Attest _____

Attest _____