

## **AGREEMENT FOR HAULING OF CLAY, SAND EARTHEN COVER MATERIALS & STOCKPILING OF MATERIALS**

This Agreement (Agreement), dated effective July 26, 2023 (Effective Date), is entered in into by and between the City of Angleton, Texas ("City"), a municipal corporation, and Chad Newby d/b/a Newby Enterprise (Contractor). City and Contractor agree as follows:

1. **SERVICES**. Contractor will perform the scope of services (Services) as described in Exhibit A to the satisfaction of the City and pursuant to the Request for Bids for the hauling of clay, sand, earthen cover materials & stockpiling.
2. **TERM**. The term (Term) of this Agreement will begin on July 26, 2023, and will expire within (30) thirty days, unless both parties agree to an extension or sooner terminated.
3. **FEES; PAYMENT**. The City is exempt from Texas Sales & Use Tax on goods and services in accordance with §151.309, Tax Code, and Title 34 Texas Administrative Code §3.322, and is not required to provide a tax exemption certificate to establish its tax exempt status. Subject to and in accordance with Chapter 2251, Government Code, all fees will be paid within thirty days of receiving the Contractor's invoice. The invoice shall include the period of service, itemize services provided, and determined amount. City shall pay Contractor the amount of ninety four thousand seven hundred eighty six and 96/100 dollars (\$94,786.96).
4. **RELATIONSHIP OF THE PARTIES**. Contractor is an independent contractor and is not an employee, partner, joint venturer, or agent of the City. Contractor will not bind nor attempt to bind the City of Angleton to any agreement.
5. **WARRANTIES AND REPRESENTATIONS**.
  - 5.1. Compliance with Laws and Policy. Contractor will comply with (a) all applicable federal, and state laws and City of Angleton ordinances (Applicable Laws. Neither Contractor, nor anyone acting for a firm, corporation or institution represented by Contractor, has (1) violated the antitrust laws of the State of Texas (ref. Chapter 15, Business and Commerce Code), or federal antitrust laws, or (2) communicated directly or indirectly the content of Contractor's response to any City procurement solicitation to any competitor or other person engaged in a similar line of business during the procurement process for this Agreement.
  - 5.2. Performance. Contractor warrants that it will perform the Services in a good and workmanlike manner and in accordance with commercially reasonable standards of Contractor's profession or business.
  - 5.3. Legal Name. Contractor represents and agrees that this Agreement reflects Contractor's full and correct legal name.

5.4. Ethics Matters; No Financial Interest. Contractor and its officers, employees, agents, representatives and permitted subcontractors (Contractor Parties) have read and understand the City's Conflicts of Interest policy. Contractor represents and warrants that no city employee or city public official has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

6. **WORK MATERIAL**. All drawings, specifications, plans, computations, data, photographs, records, models, statements, reports, and other deliverables or materials prepared or produced by Contractor Parties in connection with the Services (Work Material), whether or not accepted or rejected by the City, are the property of the City and for the City's exclusive use and re-use at any time without further compensation and without any restriction.

Contractor grants and assigns to the City of Angleton all rights in and claims to the Work Material and will cooperate with the City in obtaining or enforcing the City's rights and claims. Contractor will not use the Work Material except as expressly authorized by this Agreement. Contractor will not apply for any copyright, patent or other property right related to the Work Material.

7. **PUBLIC INFORMATION**. The City adheres to Applicable Laws (including opinions of the Texas Attorney General) related to disclosure of public information under Texas Public Information Act (TPIA). In accordance with §552.002 of TPIA and §2252.907, Government Code, at no additional charge to the City, Contractor will make any information created or exchanged with the City pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by the City that is accessible by the public.

8. **TRANSFER PROHIBITED**. Contractor's interest in this Agreement may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, without the express written consent of the City of Angleton.

9. **INSURANCE**. CONTRACTOR ACKNOWLEDGES AND UNDERSTANDS THAT CITY DOES NOT MAINTAIN AND WILL NOT OBTAIN INSURANCE OF ANY TYPE TO PROTECT CONTRACTOR AGAINST ANY LOSS, DAMAGE OR INJURY THAT MAY IN ANY WAY RESULT FROM CONTRACTOR'S PERFORMANCE OF THE SERVICES. CONTRACTOR HEREBY RELEASES CITY FROM ANY AND ALL LIABILITY FOR ANY LOSS, DAMAGE, INJURY OR COSTS RELATING TO THE PERFORMANCE OF THE SERVICES, CITY'S USE OF THE WORK MATERIAL, THE CITY'S RELIANCE ON THE SERVICES. CONTRACTOR AGREES IT SHALL PROVIDE TO THE CITY ALL CERTIFICATES OF INSURANCE REQUIRED NAMING THE CITY AS AN ADDITIONAL INSURED; INCLUDING COMPREHENSIVE GENERAL LIABILITY COVERAGE, WORKER'S COMPENSATION ACCORDING TO STATUTORY LIMITS OR EMPLOYER'S LIABILITY, AUTO COVERAGE AND ANY OTHER INSURANCE REQUIRED BY CITY.

10. **INDEMNITY**. CONTRACTOR WILL INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY, ITS OFFICERS, EMPLOYEES, DIRECTORS, REPRESENTATIVES AND AGENTS, FROM AND AGAINST ALL LIABILITIES, DAMAGES, CLAIMS, DEMANDS, ACTIONS (LEGAL OR EQUITABLE), AND COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING CLAIMS), OF ANY KIND OR NATURE, ARISING FROM CONTRACTOR'S PERFORMANCE OF THE SERVICES THAT ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION, OR WILLFUL MISCONDUCT, OF CONTRACTOR OR ANY CONTRACTOR PARTIES FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH ANY INDEMNITEE HAS BY LAW OR EQUITY.
11. **FORCE MAJEURE**. Neither party will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control.
12. **TERMINATION**. City may terminate this Agreement with or without cause upon five (5) days prior written notice to Contractor. City will pay Contractor for Services satisfactorily performed through the date of termination. Notwithstanding any provision to the contrary, the City will not pay Contractor Fees or reimburse Travel Expenses incurred after the date Contractor is given notice that Contractor could have avoided or mitigated.
13. **NOTICES**. Any notices, consents, approvals or other communications required under this Agreement will be in writing, and sent via certified mail, hand delivery, overnight courier, fax or email. Notice will be deemed given (i) if delivered by certified mail, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, fax or email, when received:

City: City of Angleton, Texas  
121 S. Velasco  
Angleton, Texas 77515  
City Manager, Chris Whittaker  
Telephone: 979-849-4364 ext. 2112  
Email: cwhittaker@angleton.tx.us

Contractor: Chad Newby  
Newby Enterprise  
P.O. Box 171  
Brazoria, Texas 77422  
Telephone: (979)482-3400  
Email: newbyenterprise@yahoo.com

or other person or address given in writing by either party in accordance with this Section.

14. **ENTIRE AGREEMENT; EXTERNAL TERMS; AMENDMENT.** This Agreement (including exhibits and schedules which are attached and incorporated for all purposes) states the entire agreement and understanding between the parties, supersedes all prior agreements, written or oral, between the parties with respect to the subject matter of this Agreement, and prevails over and replaces all other agreements including any other terms displayed in any format that the City and the Parties may have exchanged or discussed, concerning Contractor's performance of the Services (External Terms). Prior agreements and External Terms are null and void and will have no effect, regardless of whether the Parties agreed to the prior agreements or External Terms. This Agreement is binding on the parties, their successors and assigns, and may not be amended except by writing signed by authorized representatives of both parties.

15. **ADDITIONAL PROVISIONS**

15.1. **Venue; Governing Law.** Brazoria County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement, all of its terms and conditions, all rights and obligations of the parties, and all claims arising out of or relating to this Agreement, will be construed, interpreted and applied in accordance with, governed by and enforced under, the laws of the State of Texas.

15.2. **Dispute Resolution.** To the extent applicable by law, any controversy or claim arising out of or relating to this Agreement or the Agreement documents or any breach thereof shall be settled by mediation as agreed to by the parties in Brazoria County, Texas.

16. **CHANGES IN THE WORK**

City may request changes in Work consisting of additions, deletions or modifications, whereby, the Contract Price, Contract Time or Performance Guarantee shall be adjusted accordingly. Such changes in the Work shall be authorized by written Change Order that shall be mutually agreed to and signed by City and Contractor.

17. **PAYMENTS AND COMPLETION**

17.1. Payments shall be made as provided in Article 3 of the Contract.

17.2. Payments may be withheld on account of (1) Defective Work not remedied or (2) repeated failure to carry out the Work in accordance with the Contract Documents.

17.3. Upon Substantial Completion of the Work or any portion of the Work, Contractor will issue City a Substantial Completion Letter for the applicable Work. For the purposes of this Agreement, Substantial Completion means the

stage where the progress of the Work or designated portion is completed following the Scope of Work such that the City can utilize the Work for its intended purpose.

**18. PROTECTION OF PERSONS AND PROPERTY**

Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to (1) employees on the Work and other persons who may be affected thereby, (2) the Work and materials and equipment to be incorporated therein, and (3) other property at the site or adjacent thereto. Contractor agrees to perform the work and travel on city streets as directed in the manner directed by City and in compliance with all State laws and City Ordinances. Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss.

**19. SEVERABILITY.** Any provision of this Agreement, which is invalid or unenforceable in any jurisdiction, shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

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Chad Newby, Newby Enterprise

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Date

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City of Angleton City Manager

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Date

## EXHIBIT "A"

### **SCOPE OF SERVICES**

#### **BACKGROUND**

This is a contract with the City of Angleton to haul clay, sand, earthen cover materials from Freedom Park to BG Peck Soccer Complex and stockpile it in a designated area to be determined by city officials. Clay, sand, and earthen cover materials are to be loaded by others.

Currently, Concourse Development LLC is excavating the pond on the northern tract of Freedom Park, accessed from North Valderas, for offsite retention/detention for the Windrose Green residential subdivision. Developers may have excess clay, sand, earthen cover materials that could be utilized to raise the elevation of sports fields at BG Peck Soccer Complex owned by the City of Angleton located at 709 Kelly Boulevard, Angleton, TX, 77515. Dirt needed to raise the elevation of sports fields is estimated to be 14,500 cubic yards and the hauling and dumping is anticipated to include at least 14,500 cubic yards of dirt.

The contractor bid must include the cost for hauling, dumping, and stockpiling dirt at BG Peck Soccer Complex located at 709 Kelly Boulevard, Angleton, TX, 77515. The contractor will be hauling from a residential area to city property. The contractor must have reliable equipment to complete the work specified. The contractor will travel a varied route as approved and communicated by the City. The successful contractor should be able to move as much as 500 cubic yards daily during the contract term. The contractor may be required to procure permit licenses, which are to be issued by the City; however, permit fee expenses will be waived.

This contract shall commence upon approval by the City Council. The City will have the right to seek the services of alternate vendors under the conditions that the contractor is not able to perform the work specified.

#### **SCOPE OF WORK**

A qualified and properly equipped contractor, with proven history of hauling materials efficiently and safely, will be selected to haul clay, sand, earthen cover materials from Freedom Park to BG Peck Soccer Complex and stockpile it in a designated area to be determined by city officials. Clay, sand, and earthen cover materials are to be loaded by others.

##### **1) HAUL EXCAVATED MATERIAL:**

- a. Concourse Development LLC will be responsible for loading the trucks of the selected company to haul clay, sand, or earthen material to city property.

- b. Concourse Development LLC is responsible for ensuring material hauled daily is clean earthen material. It may not have any vegetative, root, or other contamination. It may not contain rocks and may not be recycled from another use. It must have some clay type properties which will not allow the material to blow away in the wind.
- c. The contractor shall move as much as 500 cubic yards daily.
- d. The contractor shall report daily the number of cubic yards delivered daily to the designated city appointed Project Manager.
- e. The contractor shall complete the project within two weeks; unless both parties agree to an extension.
- f. The contractor shall provide all required equipment to haul clay, sand, or earthen material from the norther tract of Freedom Park to BG Peck Soccer Complex.
- g. Compacted in place volume must measure 14,500 cubic yards.
- h. **Attachments F - BG Peck Soccer Complex Route & Distance and G - Stockpiling Location are provided to assist with hauling bid calculation.**

## **2) STOCKPILING**

- a. The contractor shall stockpile clay, sand, or earthen material at BG Peck Soccer Complex in a designated area provided by the city appointed Project Manager.
- b. Stockpiled clay, sand, or earthen material shall be located out of the public use areas at the close of business each day.
- c. The contractor is responsible for providing all required equipment (e.g. bulldozer) to stockpile clay, sand, or earthen material at BG Peck Soccer Complex. The contractor is permitted to secure a subcontractor if needed.
- d. The contractor is responsible for ensuring subcontractors hired meet the same requirements as the contractor outlined in the General Specifications and Acknowledgement section of this document.

## **3) PROTECTION**

- a. The contractor will be responsible for securing the area where work is taking place on city property at both pickup and drop off locations as well as coordination of all work so as not to create any undue interruptions of the normal operation of the area.
- b. The contractor is responsible for coordinating with the city appointed Project Manager.

## **4) EQUIPMENT**

- a. Equipment should be in good operating condition, so that it does not leak or drip liquids of any kind. Any spills must be communicated to the City of Angleton, Department of Parks & Recreation.
- b. Equipment shall be properly equipped with flashing lights and other appropriate safety equipment, in working condition, as required by law.
- c. Equipment shall have up-to-date Texas State inspection stickers and appropriate registration.

## **5) SITE RESTORATION**

- a. The contractor will be responsible for the repairs or other damages that might be caused during the execution of this contract. The contractor will not be responsible for repairs to roads entering and leaving BG Peck Soccer Complex.
- b. Site cleanup shall take place at the end of each day and at the completion of the project with all materials and debris generated during the job, be removed from the work areas. This includes the parking lots, sidewalks, driveways and any other areas affected by the work. No track-out or dirt or mud will be left on city or private streets.