

**CITY OF DALTON
PUBLIC WORKS DEPARTMENT**

GENERAL CONSTRUCTION AGREEMENT

THIS GENERAL CONSTRUCTION AGREEMENT is made and entered into on this 3rd day of August, 2020 by and between the City of Dalton, a Georgia Municipal Corporation, hereinafter referred to as "CITY", and Northwest Georgia Paving, Inc., hereinafter referred to as "CONTRACTOR".

WHEREAS, CONTRACTOR desires to construct the project to the CITY's specifications; and

WITNESSETH: That the parties hereto for the considerations hereinafter mentioned covenant and agree as follows:

1. CONSTRUCTION SITE: The real property upon which the project shall be constructed is located on Dug Gap Battle Road, hereinafter "subject property".

2. USE OF PROPERTY: CONTRACTOR shall have use and possession of the subject property to complete the project:

The subject property shall be occupied and used in conformity with all laws, statutes, ordinances, rules, restrictions and orders of any federal, state or municipal governments or agencies thereof having jurisdiction over the use of the subject property. The subject property shall be used for construction of the subject project and related storage only and not for any other commercial operations. The storage of flammable liquids, gases, fuels, lubricating or waste oil, acids, paint and solvents or other dangerous materials is prohibited except that such materials may be kept and stored in proper receptacles and secured from access by the public at the subject property during construction as may be necessary for use in the operation of CONTRACTOR for completion of the subject project. Any such substances shall be delivered in such amount, and stored and used only as approved by the CITY and in accordance with applicable federal, state and local statutes, ordinances, rules and regulations in force during the term of the Agreement.

3. PROJECT: The CONTRACTOR shall complete the project and perform the services specified in the NWGP, Inc. Proposal dated 07-28-2020 which is included herein by reference and the specifications provided in the CONTRACTOR's proposal attached hereto as Exhibit "A".

4. DATE OF COMMENCEMENT: The CONTRACTOR shall commence work on the project on , 20 . If no date is provided, then the date of commencement shall be ten days from execution of this Agreement.

5. DATE OF COMPLETION: The CONTRACTOR shall complete the project within 60 Days from the date of commencement.

6. CONTRACT SUM: The CITY shall pay to CONTRACTOR the hourly rate for equipment and labor specified in Exhibit 'B' ('Equipment and Labor Rates for Slope Repair Dug Gap Battle Road') for all construction services actually performed in compliance with this Agreement. The total contract sum shall not exceed \$213,979.00 as outlined in the NWGP, Inc. Proposal dated 07-28-2020, and any construction services rendered in excess of said amount shall be at CONTRACTOR'S expense. The equipment rates shown in Exhibit 'B' include operator labor and no separate payment shall be made for labor charges. All change orders shall be in writing signed by both parties. Any additional work shall be agreed upon by both parties and charged by the hourly rates provided in Exhibit 'B' attached hereto.

7. CONTRACT PENALTY: The CONTRACTOR shall pay to the CITY the amount of \$ 500.00 Dollars per calendar day for unexcused delay in completion of the project past the date of completion.

8. PAYMENT: The CITY shall pay the contract sum to CONTRACTOR upon complete performance of the project and terms of this Agreement. CONTRACTOR shall provide to CITY an Affidavit from the CONTRACTOR stating the CONTRACTOR has fully performed all terms of the Agreement. Final payment shall be made no later than 30 days after receipt of said Affidavit. Upon completion of any additional services, said additional services shall be paid within 30 days of receipt of invoice from CONTRACTOR. Payment shall be made via electronic funds transfer (EFT).

9. SURRENDER OF subject property: CONTRACTOR shall, no later than 5 days after completion of the project, surrender possession of the subject property and remove all vehicles, equipment, supplies, construction debris, waste and refuse from the subject property. CONTRACTOR shall reimburse CITY for the cost of removal of any such items remaining on the subject property after 5 days. CITY may have any such items stored at CONTRACTOR'S risk and expense. All personal Subject property remaining on the subject property or possession of the CITY after 30 days shall be deemed abandoned by the CONTRACTOR and may be disposed of by CITY without liability to CONTRACTOR. All permanent improvements to the subject property shall become the Subject property of the CITY.

10. CITY COVENANTS: CITY covenants and agrees:

- (a) to provide all available information, data, reports, records and maps to which CITY has possession or control which are necessary for CONTRACTOR to perform the scope of services provided for herein;
- (b) to provide reasonable assistance and cooperation to CONTRACTOR in

obtaining any information or documentation which are necessary for CONTRACTOR to perform the scope of services provided for herein;

- (c) to designate a representative authorized to act on the CITY's behalf with respect to the project. Unless otherwise provided, said CITY representative shall be the Director of Public Works;
- (d) to permit access to the subject public subject property and obtain permission to access necessary private subject property for CONTRACTOR to complete the scope of services;
- (e) to provide reasonable assistance to CONTRACTOR in applying for and obtaining any necessary Federal, State or local government permits for the scope of services;

11. CONTRACTOR COVENANTS: CONTRACTOR covenants and agrees:

- (a) to perform the scope of services in a professional manner, using that degree of care and skill ordinarily exercised by contractors practicing in the same or similar field;
- (b) to use only employees and subcontractors qualified to complete the work with sufficient experience in same or substantially similar projects;
- (c) to use only properly licensed employees or subcontractors for any work requiring a specialty or professional license issued by the State of Georgia;
- (d) to designate a representative authorized to act on the CONTRACTOR's behalf with respect to the project.
- (e) to use the subject property in a safe, careful and lawful manner;
- (f) to promptly report in writing to CITY any unsafe or defective condition of the subject property and any adverse site condition, which shall include but not be limited to limited access, extremely dense vegetation, subsurface conditions, damaged property, or existing utilities, that may adversely affect CONTRACTOR's ability to complete the scope of services or other terms of this Agreement;
- (g) to promptly report in writing to CITY any damage to or injuries sustained on the subject property and to promptly repair any damage to the subject property which is made necessary by any act of CONTRACTOR, its employees, agents, subcontractors, or invitees;

- (h) to keep the subject property in a clean and orderly condition and to remove any personal property of CONTRACTOR upon completion of the project;
- (i) to perform all work on the project in a good and workmanlike manner, free from faults and defects, and in conformance with the terms of this Agreement;
- (j) to determine the appropriate method, details and means of performing the scope of services provided by this Agreement;
- (k) to exercise the ordinary standard of care in complying with the laws, codes, and regulations applicable to the CONTRACTOR's services;
- (l) to exercise diligence and to complete delivery of the scope of services in a timely manner consistent with the exercise of due care;
- (m) to attend meetings to make presentations or to otherwise review the progress of the work as set out in the scope of services at the reasonable request of the CITY;
- (n) to prepare and submit to the CITY reports required by the scope of services or upon the written request of the CITY.
- (o) to keep the subject property in a clean and orderly condition and to protect from loss, damage or theft any supplies or materials necessary for completion of the project;
- (p) to permit CITY and its employees and agents access to the subject property at all reasonable times for the purposes of making repairs, inspecting the subject property, and inspecting the progress of the project;
- (q) to use only new materials appropriate for completion of the project;

12. **INDEMNITY:** CONTRACTOR shall indemnify CITY from and hold CITY harmless against all claims, demands and judgments for loss, damage or injury to person or Subject property, resulting from or incurring by reason of CONTRACTOR'S use and occupancy or non-occupancy of the subject property or by the negligence or willful acts of CONTRACTOR, its agents, officers, employees, invitees or licensees and from all expenses incurred by CITY as a result thereof including, without limitation, reasonable attorneys' fees and expenses and court costs, except if arising from or caused by the sole fault or negligence of CITY or any of CITY's employees, agents or representatives acting on behalf of the CITY.

Additionally, pursuant to State law, CITY shall not indemnify or hold harmless CONTRACTOR for any claims arising from the actions or omissions of CONTRACTOR or any third party.

Additionally, CONTRACTOR agrees that all personal Subject property that may be at

any time at the subject property shall be at CONTRACTOR's sole risk or at the risk of those claiming through CONTRACTOR and that CITY shall not be liable for any damage to or loss of such personal Subject property except if arising from or caused by the sole fault or negligence of CITY.

13. INSURANCE: CONTRACTOR agrees to carry at its own expense through the term of this Agreement the types and amounts of insurance required to maintain status as a Vendor of the City of Dalton. CONTRACTOR shall provide CITY with copies or evidence of such insurance coverage prior to the commencement date of the Agreement. Such insurance policies shall name CITY as an additional insured and shall be issued by such insurance companies and on such forms as may be approved by CITY. Said insurance shall include the following:

- (a) General Liability Coverage - General Liability policy with a minimum limit of \$1,000,000.00 per occurrence for bodily injury and property damage.
- (b) Workers' Compensation Coverage – Workers' Compensation policy with the following minimum limits:
 - (1) Workers' Compensation statutory limits;
 - (2) Employer's Liability:
 - a. Bodily Injury by Accident - \$100,000.00
 - b. Bodily Injury by Disease - \$500,000.00 policy limit
 - c. Bodily Injury by Disease - \$100,000.00 each employee.
- CONSULTANT shall complete the Workers' Compensation Insurance Affidavit of the City of Dalton to determine if any exemption to Workers' Compensation Insurance is applicable.
- (c) Auto Liability Coverage – Auto Liability policy with a minimum of \$1,000,000.00 limit per occurrence for bodily injury and property damage, if motor vehicle is used in performance of scope of services. Comprehensive form covering all owned, non-owned, and hired vehicles.
- (d) Property Coverage or Builder's Risk Coverage - Property Coverage or Builder's Risk policy with a minimum equal to or greater than the existing building value for renovations, equal to or greater than the total cost of construction per contract for new construction, and equal to or greater than the existing building value being renovated plus the total cost of new construction per contract for mixed renovation and new construction.

14. ASSIGNMENT: CONTRACTOR may not assign all or any portion of the Agreement without the prior written permission of CITY.

15. SUBCONTRACTORS: The CONTRACTOR shall provide written notice to CITY of CONTRACTOR'S intent to use a subcontractor for any portion of the project. CITY shall be entitled to reject any subcontractor it deems not qualified to complete the project. Any

subcontractor approved for work on the project shall abide by any and all terms of this Agreement.

16. **NON-WAIVER OF DEFAULT:** The failure or delay by either party hereto to enforce or exercise at any time any of the rights or remedies or other provisions of this Agreement shall not be construed to be a waiver thereof, not affect the validity of any part of this Agreement or the right of either party thereafter to enforce each and every such right or remedy or other provision. No waiver of any default or breach of the Agreement shall be held to be a waiver of any other default and breach.

17. NOTICES: Any notice required or permitted to be given under this Agreement or by law shall be deemed to have been given if reduced in writing and delivered in person or mailed by certified mail, return receipt requested, postage prepaid to the party who is to receive such notice.

Such notice to CONTRACTOR shall be mailed to: Northwest Georgia Paving, Inc.
P.O. Box 578
Calhoun, GA 30703

When so mailed, the notice shall be deemed to have been given as of third (3rd) day after the date it was mailed. The addresses may be changed by giving written notice thereof to the other party.

18. CONTRACT DOCUMENTS: The Agreement shall include the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Addenda relating to bidding and proposal requirements, and any other written information provided by the CITY in anticipation of receiving bids or proposals, if any, except as specifically excluded herein, and the CONTRACTOR'S bid or proposal. The terms of this Agreement shall supersede any terms in the above-referenced documents in direct conflict with the terms of this Agreement.

Additionally, the Contract Documents and all drawings, plans, specifications and other related construction or service related documents shall be the sole Subject property of the CITY. The CONTRACTOR shall be permitted to retain copies thereof for its records and for its future professional services.

Additionally, CITY shall be authorized to rely upon all documents, whether in hard copy or electronic format, provided by CONTRACTOR. Any changes to the material terms of any document shall be clearly identified and noted to CITY.

19. VENDOR: CONTRACTOR shall register and remain active as a Vendor of the

CITY by completing the City of Dalton Vendor Packet and fully comply with any and all requirements of said Vendor.

20. **TERMINATION OF CONTRACT:** In the event that CONTRACTOR defaults or neglects to perform work on the project in accordance with the terms of this Agreement, CITY may terminate this Agreement by providing written notice of termination. Prior to termination of this Agreement, CITY shall provide written notice to CONTRACTOR of any default and provide CONTRACTOR ten (10) days to correct said default or deficiency.

21. **WARRANTY:** CONTRACTOR shall provide to CITY a general warranty for labor and materials and guarantees that the work on the project it performs shall be free from any defects in workmanship and materials for a period for a period of sixty (60) days from the date of completion and sufficient for the completion of the work to be performed by GSI.

22. **BONDS:** CONTRACTOR shall provide at its expense and maintain Performance and Payment Bonds in the amount of the total cost of the project.

23. **MISCELLANEOUS PROVISIONS:**

(a) **Governing Law; Venue.** This Agreement is being executed and delivered in the State of Georgia and shall be construed and enforced in accordance with the laws of that state. The exclusive jurisdiction and venue for any action arising out of this Agreement shall be the Superior Court of Whitfield County Georgia, and the parties hereby waive any and all objections or defenses thereto.

(b) **Successors and Assigns.** This Agreement and the respective rights and obligations of the parties hereto shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties. CONTRACTOR shall not assign its rights or obligations under this Agreement without the prior written consent of the CITY.

(c) **Severability of Invalid Provisions.** If any provision of this Agreement shall be deemed invalid, void or unenforceable, the remaining provisions hereof shall not be affected or impaired, and such remaining provisions shall remain in full force and effect.

(d) **Complete Agreement; Amendments.** This Agreement constitutes the entire agreement between the parties hereto; it supersedes all previous understandings and agreements between the parties, if any, and no oral or implied representation or understanding shall vary its terms, and it may not be amended except by written instrument executed by both parties hereto.

(e) **Remedies Cumulative.** All rights, powers, and privileges conferred hereunder upon the parties hereto shall be cumulative, but not restrictive to those given by law.

(f) **Time is of the Essence.** Time is of the essence of this Agreement in each and all of its provisions.

(g) Attorney Fees. In the event the CITY must enforce the terms of this Agreement by filing a civil action against CONTRACTOR, then CONTRACTOR shall pay an amount equal to fifteen percent (15%) of the contract sum as attorney fees.

(h) Confidentiality. All information and documentation regarding the project and the CONSULTANT's services shall be maintained in confidence and shall not be disclosed to any third party by CONSULTANT, without CITY's written authorization, except as may be required by the Georgia Open Records Act. CONSULTANT shall promptly notify CITY of any third party request for said information or documentation prior to any disclosure. CITY agrees that the technical methods, design details, techniques and pricing data contained in any material submitted by CONSULTANT pertaining to this Agreement shall be considered confidential and proprietary, and shall not be disclosed to any third party, except as may be required by the Georgia Open Records Act.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

CONTRACTOR:

CONTRACTOR:

By: _____

Title: _____

CITY:

CITY OF DALTON, GEORGIA

By: _____
MAYOR

Attest: _____
CITY CLERK

“Exhibit A”

NWGP, Inc. Proposal for Dug Gap Battle Slope Failure

Northwest Georgia Paving, Inc.
P.O. Box 578
Calhoun, GA 30703
Office: (706) 383-5306
Fax: (706) 383-5305
Cell: (770) 547-4028
Email: broberts@nwgpinc.com



Job Name: Dug Gap Battle Rd Concept Slope Repair
Job Location: Dug Gap Battle Rd Dalton Ga
Proposal Dated: 7-28-2020
Company: City of Dalton
Contact: Mr. Andrew Parker
Cell:
Office: 706-278-7077
Email: aparker@daltonga.gov

Proposal

Description
Subtotal Description

As per our site meeting and concept drawings NWGP perform the following

Clear all the trees and vegetation from the slope as required by Geo Stabilization International (GSI)

Provide GSI access to the site

Provide 3 working benches for (GSI) to work slope stabilization

Grassing with Flexterra High Performance Flexible Grassing as per the Engineers/GSI direction

Cost \$213,979.00

Proposal Certification

NOTES:

- Above price includes no permits. Owner is responsible for obtaining all necessary permits.
- Above price includes no engineering, layout, monitoring of erosion control, or testing.
- Above price includes no shoulder dressing, grassing or erosion control.
- Owner is responsible for locating all utilities. We are not responsible for damage to unmarked underground utilities or the relocation of any utilities. If a marked utility is damaged, our liability will be limited to the cost of repairing the damaged utility.
- We are not responsible for damage to unmarked underground utilities or the relocation of any utilities. If a marked utility is damaged, our liability will be limited to the cost of repairing the damaged utility.
- We are not responsible for the damage or cost of repairs to any existing surfacing due to the construction traffic required to complete this project.
- Above price is based on one (2) mobilization. Additional mobilizations will be billed at a rate of \$3,800.00 per crew, per crew per mobilization.
- Above price includes no work on nights or weekends.
- Above price includes no traffic control.
- Above price includes no removal of toxic or contaminated materials.
- Above price includes no rock excavation.
- All excess dirt will be hauled off site.
- Any items of work related to obtaining or maintaining an EPD General Storm Water Permit or Land Disturbance Permit is not included in our base bid for this project.
- The above price includes bond. Which is 1% of the total price.
- This proposal must be made an integral part of any contract entered into as a result of this quotation.
- Payment is to be done in monthly estimates of work performed with final payment in full upon completion of our work.
- NWGP has allowed for the following amount of working days (M –F/Saturday if rained out earlier in the week) to complete the scope of work in our proposal. Conditions must be suitable to work in order to have a valid working day. Any acceleration of this schedule will result in additional costs for overtime charges. NWGP will not be responsible for liquidated damages unless we exceed the amount of working days listed. below
- Above price includes **no work** on the weeks of Christmas and New Year.
- Above price is based on our site meeting and the attached drawing.
- We thank you for the opportunity of quoting this work and if our proposal is found to be satisfactory, please sign the original of this letter as indicated, and return to us for our files so this project can be scheduled.

Submitted By: Bryan S Roberts
Estimator & Project Manager

Acceptance of Proposal – The above prices, specifications and conditions are satisfactory and are hereby accepted. I will be responsible for all attorney's fees incurred during collection. You are authorized to do the work as specified. Payment will be made as outlined above. This proposal may be withdrawn by us if not accepted within 15 days.

Authorized Signature: _____

Date of Acceptance _____

“Exhibit B”

Equipment and Labor Rates for Slope Repair of:

Dug Gap Battle Road

Exhibit 'B' - City of Dalton General Construction Agreement**Equipment and Labor Rates for Slope Repair Dug Gap Battle Road**

Lowboy tractor and trailer	1.00 Hour	\$185.00
Large Dozer	1.00 Hour	\$185.00
Small Dozer	1.00 Hour	\$145.00
Large size excavator	1.00 Hour	\$235.00
Medium size excavator	1.00 Hour	\$195.00
Mini excavator	1.00 Hour	\$110.00
Motor grader 12' blade	1.00 Hour	\$165.00
Medium size sheep foot compactor	1.00 Hour	\$110.00
Medium size base roller	1.00 Hour	\$110.00
Medium size backhoe	1.00 Hour	\$95.00
Water Truck 500 gal min	1.00 Hour	\$85.00
Medium size rubber tire loader	1.00 Hour	\$100.00
Medium size track loader	1.00 Hour	\$145.00
Medium size skid steer (bobcat)	1.00 Hour	\$90.00
Tandem dump truck	1.00 Hour	\$95.00
Single axel dump truck	1.00 Hour	\$65.00
Forman Truck	1.00 Hour	\$25.00
Laborer	1.00 Hour	\$37.00
Layout	1.00 Hour	\$125.00
Flexterra Grassing each trip	1.00 Ea	\$6,500.00