

## CONSTRUCTION CONTRACT

**THIS CONTRACT** made this the \_\_\_ day of \_\_\_\_\_ 2022, by and between **DigDug Construction, LLC** hereinafter called the “*Contractor*”, and the **City of Dripping Springs**, hereinafter called the “*City*.” acting herein by its Mayor, Bill Foulds, Jr. hereunto duly authorized.

**WITNESSETH**, that the Contractor and the City for the considerations stated herein mutually agree as follows:

**ARTICLE 1. STATEMENT OF WORK.** The Contractor shall furnish all supervision, technical personnel, labor, materials, machinery, tools, equipment, and services, including such services that are such an inseparable part of the work described that exclusion would render performance by Contractor impractical, illogical, or unconscionable. The project will be reviewed and under the direction of Craig Rice, Maintenance Director and Kelly Schmidt, Parks & Community Services Director. The Contractor shall perform and complete all work required for the renovation of the **Ranch House Road Phase 1 and DSRP Restriping Project** and required supplemental work, all in strict accordance with the contract documents including all addenda thereto. All Work shall be performed in a good and workmanlike manner according to industry standards. The parties agree that the Statement of Work and the addenda to this Contract is a description of Contractor’s obligations and responsibilities and is deemed to include preliminary considerations and prerequisites.

### **ARTICLE 2. CONTRACTOR’S DUTIES.**

- 1. Construction.** Contractor shall construct all improvements embraced in the **Ranch House Road Phase 1 and DSRP Restriping Project** as described in the bid documents.
- 2. Labor and Materials.** The Contractor shall furnish all labor, materials, mechanical workmanship, transportation, equipment, and services necessary for the completion of the work described in this Contract and in accordance with the plan as described in this Contract and in accordance with the plan (if any) and other contract documents to conduct the construction required under this Contract in an efficient manner.
- 3. Completion of Work.** Work, in accordance with this Contract dated on or around April 5, 2022, shall commence after the date the Notice to Proceed is received by the Contractor following the preconstruction meeting, and Contractor shall complete the WORK within **sixty (60) consecutive calendar days** after receiving the Notice to Proceed.
- 4. Invoicing.** Contractor shall prepare an invoice for work completed and submit the involved to the City for payment. The proposal for the work is set forth in the bid documents. Incomplete or inaccurate invoices shall be returned to the Contractor for correction and re-submittal. Payment shall be made within thirty (30) days of the City receiving and approving the invoice.

5. **Insurance.** Contractor shall assume all risk and liability for accidents and damages that may occur to persons or property during the performance of the work under this Contract. Contractor shall not be covered by the City's liability carrier. Contractor shall, at its sole expense, maintain during the full term of this Contract insurance coverage with insurers licensed to do business in the State of Texas and acceptable to the City. The Contractor shall comply with all insurance requirements contained in *Article 5 of General Conditions and Division C*, including maintaining worker's compensation and liability coverage, in stated amounts, and providing proof of such coverage with the City as an additional named insured.
6. **Change Orders.** Change orders from the City or requested by the Contractor shall be controlled by *Articles 10, 11, and 12 of the General Conditions*.
7. **Warranty and Maintenance Bond.** The Contractor agrees to remedy all defects appearing in the work or developing in the materials furnished and the workmanship performed under this Contract during the warranty period of **two (2) years** after the date of final acceptance of the work by the City for the full amount of the work, and further agrees to indemnify and hold the City harmless from any costs encountered in remedying such defects. Contractor shall agree to supply a **two (2) year** maintenance bond to the City at the time of acceptance of the work for the full amount of the work.
8. **Mandatory Disclosures.** Texas law requires that vendors make certain disclosures. Prior to the effective date of this Contract, the Contractor has submitted to the City a copy of the Conflict-of-Interest Questionnaire form (CIQ Form) approved by the Texas Ethics Commission (Texas Local Government Code Chapter 176). Contractor agrees by approving this Agreement that it is in compliance with the Prohibition on Contracts with Companies Boycotting Israel (Texas Government Code Chapter 2270).

### **ARTICLE 3. THE CONTRACT PRICE.**

**Price.** The City will pay the Contractor for the performance of the Contract, in current funds, subject to additions and deductions as provided in this Agreement and Addenda, the sum of \$299,080.46. Payments will be made pursuant to this Agreement and its Addenda.

**ARTICLE 4. THE CONTRACT.** The executed contract documents shall consist of the following components:

- a. This Contract
- b. General Conditions
- c. Plans
- d. Specifications
- e. Instructions and Notice to Bidders
- f. Performance and Payment Bond
- g. Certificate of Insurance
- h. Wage Rates
- i. Addenda

j. Contractor's Signed Bid Form

This Contract, together with other documents enumerated in this ARTICLE 4, which said other documents are as fully a part of the Contract as if hereto attached or herein repeated, forms the Contract between the parties hereto. In the event that any provision in any component part of this Contract conflicts with any provision of any other component part, the provision of the component part first enumerated in this ARTICLE 4 shall govern, except as otherwise specifically stated.

**ARTICLE 5. Termination and Delays**

Terminations and delays are governed by *Articles 10, 13, and 15 of General Conditions.*

**ARTICLE 6. Miscellaneous**

1. **Non-Assignability.** Neither the City nor the Contractor shall assign any interest in this Contract without the prior written consent of the other party outside of what is allowed in this Contract or its the bid documents described above.
2. **Amendment.** This Contract and the bid documents described above embody the entire agreement between the parties and may not be modified unless in writing, executed by all parties.
3. **Warranty.** The Contractor agrees to remedy all defects appearing in the work or developing in the materials furnished and the workmanship performed under this Contract during the warranty period (minimum of two years) after the date of final acceptance of the work by the City, and further agrees to indemnify and save the City harmless from any costs encountered in remedying such defects.
4. **Independent Contractor.** Contractor is an independent contractor under this Contract. Services provided by Contractor pursuant to this Contract shall be subject to the supervision of the Contractor. In providing such services, neither Contractor nor Contractor's agents shall act as officers, employees, or agents of the City. No partnership, joint venture, or other joint relationship is created hereby. City does not extend to Contractor or Contractor's agents any authority of any kind to bind City in any respect whatsoever.
5. **INDEMNIFICATION.** CONTRACTOR HEREBY RELEASES, AND SHALL CAUSE ITS INSURERS, ITS SUBCONTRACTORS, TO RELEASE CITY AND ITS AGENTS AND ASSIGNS FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION WHICH CONTRACTOR, ITS INSURERS, AND/OR ITS SUBCONTRACTORS MIGHT OTHERWISE POSSESS RESULTING IN OR FROM OR IN ANY WAY CONNECTED WITH ANY LOSS COVERED OR WHICH SHOULD HAVE BEEN COVERED BY INSURANCE MAINTAINED AND/OR REQUIRED TO BE MAINTAINED BY CONTRACTOR AND/OR ITS SUBCONTRACTORS PURSUANT TO THIS CONTRACT, EVEN IF SUCH CLAIMS OR CAUSES OF ACTION ARISE FROM OR ARE ATTRIBUTED TO THE SOLE OR CONCURRENT NEGLIGENCE OF ANY CITY AGENT OR FROM STRICT LIABILITY.
6. **LIQUIDATED DAMAGES.** FAILURE ON THE PART OF THE CONTRACTOR TO SUSTAIN THE REQUIRED MAINTENANCE OR PERFORM UNDER THIS CONTRACT MAY RESULT IN LIQUIDATED DAMAGES. THE CITY MAY

ASSESS LIQUIDATED DAMAGES AS LISTED IN SECTION C-7 FOR INCOMPLETE WORK UNTIL ALL WORK IS COMPLETED (LIQUIDATED DAMAGES WILL NOT EXCEED THE TOTAL DOLLARS FOR THE INCOMPLETE PROJECT LOCATION, PER CYCLE).

- 7. **Notice.** All notice required or permitted under this Contract shall be in writing and shall be delivered either in person or deposited in the United States mail, postage prepaid, addressed as follows:

For the City:

For the Contractor:

Attention: City Administrator  
City of Dripping Springs City  
P.O. Box 384  
Dripping Springs, TX 78620  
512-858-4725

Attention: \_\_\_\_\_  
DigDug Construction, LLC  
P.O. Box 92583  
Austin, Texas 78709  
512-382-0008

Either party may change such address from time to time by providing written notice to the other in the manner set forth above. Notice is deemed to have been received three (3) days after deposit in U.S. mail.

- 8. **Force Majeure.** No party to this Contract shall be deemed in violation if it is prevented from timely performing any of its obligations by reason of labor disputes, acts of God, acts of the public enemy, acts of superior governmental authority, or other circumstances for which the party is not responsible or which is not in its control.
- 9. **Law & Venue.** This Contract shall be governed by the laws of the State of Texas. The venue for any disputes arising under this Contract shall be Hays County, Texas.
- 10. **Severability.** If the final judgment of a court of competent jurisdiction invalidates any part of this Contract, then the remaining parts shall be enforced, to the extent possible, consistent with the intent of the Parties as evidenced by this Contract.
- 11. **Entire Agreement.** This Contract contains the entire Contract of the parties and there are no other promises or conditions in any other Contract whether oral or written. This Contract supersedes and prior written contracts between the parties. If a conflict exists between this Contract and Exhibit "A", this Contract shall prevail.

**IN WITNESS WHEREOF**, the parties hereto have caused this Contract to be executed in four (4) original copies on the day and year first above written.

CITY OF DRIPPING SPRINGS

DIGDUG CONSTRUCTION, LLC

By \_\_\_\_\_  
Bill Foulds, Jr., Mayor

By \_\_\_\_\_  
\_\_\_\_\_, President

**Corporate Certifications**

I, \_\_\_\_\_, certify that I am the Secretary/Treasurer of the corporation named as Contractor herein; that \_\_\_\_\_ who signed this Contract on behalf of the Contractor, was then President of said corporation; that said Contract was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.