

CONSTRUCTION AGREEMENT

THE STATE OF TEXAS
COUNTY OF TRAVIS

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KNOW ALL BY THESE PRESENTS:

THIS CONSTRUCTION AGREEMENT (the “Agreement”) is made and entered into on this _____ day of _____, 2024 (the “Effective Date”), by and between the **City of Manor, Texas**, a home-rule city and municipal corporation (hereinafter referred to as the “City”), and **Forsythe Brothers Infrastructure, LLC** (hereinafter referred to as “Contractor”). The Contractor and the City and the Contractor may be at times referred to as the “Parties”.

NOW, THEREFORE, in consideration of the promises, mutual terms, conditions and covenants of this Agreement and the accompanying documents between Owner and Contractor and for and in consideration of payments as set forth therein, the receipt and sufficiency of which are hereby acknowledged, Contractor and the City, agree as follows:

1. **Scope of Services.** Contractor hereby agrees to commence and complete the following project as more specifically described in the Scope of Work attached hereto and incorporated herein as if fully set forth as **Exhibit “A”**, consisting of furnishing all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to construct and complete the project together with any and all extra work as described in the Scope of Work, and other drawings, maps, plans, specifications and printed or written explanatory matter thereof, all as approved by the City, all of which are made a part hereof, incorporated into this Agreement, and collectively evidence and constitute the entire Agreement (collectively, the “Scope of Work”).
2. **Controlling Document.** Should any term or condition that appears in the Scope of Work contradict or is not consistent with any term of this Agreement, the terms and conditions of this Agreement shall supersede and control over the terms conditions in the Scope of Work. As a condition of this Agreement, Contractor understands and agrees the City is a municipal corporation of the State of Texas and is bound by certain statutory requirements and limitations when contracting for services. The terms of this Agreement are required to create a binding and legal agreement with the City.
3. **Term.** This Agreement shall be for a term beginning and ending as indicated on the Scope of Work.
4. **Waiver.** Waiver of any breach of this Agreement shall not constitute waiver of any subsequent breach.
5. **Compensation.** In consideration for the services performed by Contractor, the City agrees to pay Contractor from available funds for satisfactory performance of this Agreement in the amounts and manner indicated on the Scope of Work, provided that the total amount for services under this Agreement shall not exceed Sixty Three Thousand and Six Hundred Dollars (\$63,600.00), subject to proper additions and deductions, and Owner agrees to make payments on account thereof as provided therein. Any increases in Compensation must be detailed in an amendment to this Agreement and are subject to the City’s budget reconciliation process. The City shall pay properly invoiced amounts for services performed within thirty (30) days of receipt of the invoice, except where the City has raised an objection to the invoice. Payment in full by the City to Contractor shall be made subject to Contractor submitting an affidavit that all bills have been paid in a form acceptable to the City.

6. Time is of the Essence. Contractor agrees that time is of the essence in this Agreement and for each calendar day of delay beyond the time established for completion of the work specified in the Scope of Work, the City may withhold from Contractor's compensation the sum of One Thousand Dollars (\$1000.00) as stipulated damages for the delay.

7. WARRANTY AND DEGREE OF CARE. CONTRACTOR WARRANTS THAT ALL SERVICES PROVIDED BY CONTRACTOR SHALL BE PERFORMED IN A GOOD AND WORKMANLIKE MANNER IN ACCORDANCE WITH THE SPECIFICATIONS OF THIS AGREEMENT AND IN ACCORDANCE WITH THE DEGREE OF CARE AND SKILL ORDINARILY EXERCISED UNDER SIMILAR CIRCUMSTANCES BY COMPETENT CONTRACTORS IN TEXAS APPLICABLE TO THE TYPE OF SERVICES CONTEMPLATED HEREUNDER.

8. Non-Discrimination. Contractor hereby agrees to refrain from any activity in the performance of this Agreement that discriminates against any person or persons based upon race, color, creed, national origin, religion, sex, or communicable disease, in accordance with present federal and state laws.

9. Indemnification. Contractor shall indemnify, defend, and hold harmless the City and its officers, agents and employees against all claims, suits, demands, judgments, expenses, including attorney's fees, or other liability for personal injury, death, or damage to any person or property which arises in the performance of this Agreement. This indemnification provision, however shall not apply to any claims, suits, damage, costs, losses, or expenses arising solely from the negligent or willful acts of the City; provided that for the purposes of the foregoing, the City's entering into this Agreement shall not be deemed to be a "negligent or willful act."

10. Independent Contractor. Contractor shall be fully responsible for its employees, including meeting all state and federal requirements for minimum wage, income tax withholding, workers' compensation, insurance, and all city, state, and federal requirements governing employer/employee relations. Contractor hereby certifies that it shall be and is in compliance with all such regulations, laws and requirements.

11. No Third-Party Benefit. Nothing herein expressed or implied is intended, or shall be construed, to confer upon or give to any person or entity, other than the parties, any right or remedy under or by reason of this Agreement.

12. Although drawn by the City, both Parties hereto expressly agree and assert that in the event of any dispute over its meaning or application, this Agreement shall be interpreted reasonably and fairly, and neither more strongly for nor against either party.

13. This Agreement is to be governed by and shall be construed in accordance with the laws of the State of Texas without regard to conflicts of law principles, thereof. Proper venue for any dispute or litigation shall be only in Travis County, Texas.

14. This Agreement and all rights and obligations contained herein may not be assigned by Contractor without the prior written approval of the City. However, Contractor shall have the right to employ such assistance as may be required for the performance of the project, including the use of subcontractors, which employment shall not be deemed an assignment of the Contractors' rights and duties hereunder.

15. Notices. All notices, consents, demands, requests and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if personally delivered or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth hereunder or to such other address as the other party hereto may designate in written notice transmitted in accordance with this provision.

Notices to the City of Manor:
City of Manor
Attn: City Manager
105 E. Eggleston St.
Manor, TX 78653

Notices to Contractor:
Forsythe Brothers Infrastructure, LLC
P.O. Box 116
Manor, Texas 78653

With a copy to:
The Knight Law Firm, LLP
Attn: Paige Saenz
223 West Anderson Lane, Suite A-105
Austin, TX 78752

16. Entire Agreement. This Agreement and its exhibits contain the entire agreement between the parties with respect to the subject matter hereof and supersede any and all other discussions, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof.

17. Compliance. Contractor shall comply with all applicable federal, state, and local laws and regulations, including but not limited to the City's ordinances and guidelines applicable to the services to be performed under this Agreement and good engineering practices.

18. This Contract may be executed in two or more counterparts, each of which will be deemed and original, but all of which together constitute one and the same instrument.

19. To the extent this Contract constitutes a contract for goods or services within the meaning of Section 2270.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270 of the Texas Government Code, and subject to applicable Federal law, Contractor represents that neither Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor (i) boycotts Israel or (ii) will boycott Israel through the term of this Contract. The terms "boycotts Israel" and "boycott Israel" as used in this paragraph have the meanings assigned to the term "boycott Israel" in Section 808.001 of the Texas Government Code, as amended.

20. To the extent this Contract constitute a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252 of the Texas Government Code, and except to the extent otherwise required by applicable federal law, Contractor represents that Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.

21. Contractor hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Contract. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, and to the extent such Section is not inconsistent with a governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds. As used in the foregoing verification, "boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by the preceding statement in (A).

22. Contractor hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association during the term of this Contract. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code. As used in the foregoing verification, "discriminate against a firearm entity or firearm trade association" means: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; but does not include (a) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; or (b) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

23. Form 1295. Texas law and the City requires that business entities, as defined in Texas Government Code, Section 2252.908, who contract with the City complete the on-line of Form 1295 "Certificate of Interested Parties" as promulgated by the Texas Ethics Commission (<https://www.ethics.state.tx.us/filinginfo/1295/>). Form 1295 is also required for any and all contract amendments, extensions or renewals. Prior to any payment to Contractor hereunder, Contractor shall provide proof of submission to the City Secretary that the appropriate Form 1295 documentation has been submitted.

24. Contractor represents and warrants that Contractor is registered to conduct business in the State of Texas and the individual executing this Agreement is authorized to bind the Contractor to his Agreement.

25. Insurance

A. Contractor shall procure, at its own expense, general liability insurance with a minimum per occurrence limit of one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000) aggregate and additional coverage sufficient to cover the Services being provided under this Agreement as determined by the City. Contractor shall provide the City with written notice of any coverage limit change on the insurance. Contractor shall provide the City with proof of insurance required hereunder. The City shall be named as an additional insured on the policy.

B. Business automotive liability coverage for all owned, hired and non-owned automobiles, with limits of not less than \$1,000,000.00 combined single limit. These limits can be met by a combination of primary and umbrella insurance.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed in duplicate originals and effective as of the Effective Date as it appears above.

CITY:
THE CITY OF MANOR, TEXAS

CONTRACTOR:
Forsythe Brothers Infrastructure, LLC

Scott Moore, City Manager

By: _____

Name: _____

Title: _____

ATTEST:

Lluvia T. Almaraz, TMRC
City Secretary

Exhibit "A"
Scope of Work
(SEE ATTACHED)