

AGREEMENT

THE STATE OF TEXAS

§

KNOW ALL BY THESE PRESENTS:

COUNTY OF TRAVIS

§

THIS AGREEMENT is made and entered into on this 2nd day of August, 2023, by and between the **City of Manor, Texas**, a home-rule city and municipal corporation with principal offices located at 105 E. Eggleston St., Manor, Texas, Travis County, Texas, (hereinafter referred to as "**Owner**" or the "**City**"), and Smith Paving, Inc., with principal offices located at 10438 Steamboat Drive Austin TX 78742 (Thereinafter referred to as "**Contractor**").

That, for and in consideration of the 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, Contractor hereby agrees to commence and complete the following Project: **FY2022 CAPITAL METRO PAVING PROJECT** (hereinafter, the "Project"), 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 drawings, maps, plans, and specifications, in accordance with Instructions to Bidders, the Notices to Bidders, the General Conditions, the Special Conditions, the Bid Proposal, technical specifications, maps and plans, Performance bond, Payment bond, and other drawings and printed or written explanatory matter thereof, and the addenda thereof, all as approved by the Owner, all of which are made a part hereof, incorporated into this Agreement, and collectively evidence and constitute the entire contract (the "**Contract Documents**").

Contractor hereby agrees to commence Work within ten (10) calendar days following the date contained in the Notice to Proceed issued by Owner, and Contractor hereby agrees to substantially complete same within **ONE HUNDRED TWENTY (120)** calendar days for completion of pavement work as detailed in the Contract Documents, and if chosen, **AN ADDITIONAL FIFTEEN(15)** calendar days for completion of Alternate Bid A as detailed in the Contract Documents, after the date contained in the Notice to Proceed.

Waiver of any breach of this Agreement shall not constitute waiver of any subsequent breach.

Owner agrees to pay Contractor from available funds for satisfactory performance of this Agreement the price or prices as shown in the Bid Proposal submitted by the Contractor for the Project, which forms a part of this contract and has been approved by the Owner, in the total amount of **1,033,072.10 (one million thirty-three thousand seventy-two dollars and ten cents)** subject to proper additions and deductions (the "**Contract Amount**"), all as provided in the General Conditions and Special Conditions of the Contract Documents, and Owner agrees to make payments on account thereof as provided therein. Lack of funds shall render this Agreement null and void to the extent funds are not available.

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 Contract Documents the Owner may withhold from Contractor's compensation the sum of One Thousand Dollars (\$1000.00) as stipulated damages for the delay.

Although drawn by Owner, 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.

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.

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.

To the extent this Agreement 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 Agreement. 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.

To the extent this Agreement 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.

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 Agreement. 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).

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 Agreement. 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.

Texas law 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.

IN WITNESS WHEREOF, both parties have caused this Agreement to be signed in their respective corporate names by duly authorized representatives, and the parties hereby bind themselves, their successors and assigns for the faithful and full performance of the terms and provisions hereof.

EXECUTED on the latest date of the signatories indicated below.

OWNER

CONTRACTOR

By: _____

By: _____

Mayor, City of Manor, Texas

Printed Name: Dr. Christopher Harvey,
Mayor

Printed Name: _____
Title: _____

Date Signed: _____

Date Signed: _____

ATTEST:

By: _____
Lluvia Almaraz, City Secretary, City of Manor