

## AGREEMENT

**PROJECT DIR #:** \_\_\_\_\_

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by and between the MISSION SPRINGS WATER DISTRICT hereinafter called "Owner", and **Borden Excavating, Inc.** doing business as \_\_\_\_\_\*, hereinafter called "Contractor".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, it is agreed that:

1. The Contractor will commence and complete the **"GQPP AD-18 Area D-3 Sewer Construction and Water Line Replacement Project"**.
2. The Contractor will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the Project described herein.
3. The Contractor will commence the Work required by the Contract Documents on or before the date specified to commence Work in the Notice to Proceed and will complete the same within **one hundred eighty (180) consecutive calendar days** unless the period for completion is extended otherwise by the Contract Documents.
4. Owner and Contractor have discussed the provisions of Civil Code 1671 and the damages that may be incurred by Owner if the Work is not completed within the time specified in this Agreement. Owner and Contractor hereby represent that at the time of signing this Agreement, it is impracticable and extremely difficult to fix the actual damage that will be incurred by Owner if the Work is not completed within the number of calendar days allowed. Accordingly, Owner and Contractor agree that the sum of \$500 per day is a reasonable sum to assess as damages to Owner by reason of the failure of Contractor to complete the Work within the time specified.
5. The Contractor agrees to perform all of the Work described in the Contract Documents and comply with the terms therein for the sum of **\$5,252,252.00** or as shown in the Bid Schedule; subject to additions and deductions, if any, in accordance with said documents.

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\* Insert "a corporation", "a partnership", or "an individual", as applicable.

Payment shall not be made more often than once each thirty (30) days. Final payment shall be made thirty-five (35) days subsequent to the filing of Notice of Completion. Contractor may upon written request, and at his sole expense after approval by the Board of Directors, deposit substitute securities referenced in Government Code Section 16430, or bank or savings and loan certificates of deposit, as authorized by Public Contract Code Section 22300 in lieu of retention monies withheld to ensure performance.

6. The term "Contract Documents" means and includes the following:

- a. Advertisement for Bids
- b. Information for Bidders
- c. Bid
- d. Bid Bond
- e. Federal Provisions
- f. Agreement
- g. Payment Bond
- h. Contract Performance Bond
- i. Notice of Award
- j. Notice to Proceed
- k. Change Orders
- l. General Conditions
- m. Supplemental General Conditions
- n. Special Conditions
- o. Detailed Technical Provisions
- p. Standard Drawings and Details
- q. Drawings prepared for Mission Springs Water District
- r. Addenda:

No. 1, dated January 21, 2025

No. 2, dated January 24, 2025

No. \_\_\_\_\_, dated \_\_\_\_\_, 2025

No. \_\_\_\_\_, dated \_\_\_\_\_, 2025

No. \_\_\_\_\_, dated \_\_\_\_\_, 2025

7. The Owner will pay to the Contractor in the manner and at such times as set forth in the General Conditions such amounts as required by the Contract Documents.

8. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, 3132 BRADSHAW ROAD, POST OFFICE BOX 2600, SACRAMENTO, CALIFORNIA 95826.

9. Should any litigation or arbitration be commenced between the parties hereto concerning said project, any provision of this Contract, or the rights and obligations of either in relation thereto, the party, Owner or Contractor, prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for his attorney's fees in such litigation, and costs.
10. Pursuant to Section 1770, and following, of the California Labor Code, the successful bidder shall pay not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations. Copies of such prevailing rate of per diem wages are on file at the office of the Owner, which copies shall be made available to any interested party on request. The successful bidder shall post a copy of such determination at each job site.
11. This project is subject to the State of California "Prevailing Wage Rates". This project is subject to the requirements of California Labor Code Section 1720 et seq. requiring the payment of prevailing wages, the training of apprentices and compliance with other applicable requirements. In accordance with provisions of Section 1773 of the Labor Code, the Director of the Department of Industrial Relations has ascertained the general prevailing rate of wages and employer payments for health and welfare, pension, vacation, and similar purposes applicable to the particular craft, classification, or type of workers employed on the work. The wage determinations shall be included in the bid specifications. All pertinent wage determinations shall be posted on the jobsite.

If federal funding is included in the project, the higher of the State and Federal wage rates shall be used.

Pursuant to SB854, no contractor or subcontractor may work on a public works project unless registered with DIR for contracts awarded on/after April 1, 2015. General Contractors shall ensure all subcontractors executing work under the contract are DIR registered. All public works contractors and subcontractors to furnish Certified Payrolls and related records to the Agency's representative and shall also furnish electronic certified payroll records directly to the Labor Commissioner using the DLSE's online portal.

12. Any sub-tier Contracts resulting from this contract must contain the same contractual language as the original contract.
13. Contractor agrees to and shall indemnify and hold the Owner, its officers, employees and agents free and harmless from all claims, actions, damages and liabilities of whatsoever kind, nature or sort, arising from death, personal injury, property damage or other cause asserted or based upon any negligent act or omission of Contractor, its employees, agents, invitees, or any subcontractor of Contractor relating to or in any way connected with the accomplishment of the work or performance of services under this Agreement. As part hereto of the foregoing indemnity, Contractor agrees to protect and to defend at its own expense, including attorney's fees, Owner and City of Desert Hot Springs, their officers, agents and employees from any and all legal action based upon any negligent acts or omissions of the Contractor.

IN WITNESS WHEREOF the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement which shall be deemed an original on the date first above written.

(SEAL)

ATTEST:

\_\_\_\_\_

Name Dori Petee  
(Please Type)

Title Executive Assistant

OWNER:

MISSION SPRINGS WATER DISTRICT

By \_\_\_\_\_

Name Brian E. Macy, P.E.  
(Please Type)

Title General Manager / Chief Engineer

CONTRACTOR:

\_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_  
(Please Type)

Address \_\_\_\_\_

\_\_\_\_\_

Contractor's License No. \_\_\_\_\_

CORPORATE CERTIFICATE

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_  
Secretary of the Corporation named as CONTRACTOR in the foregoing contract; that  
\_\_\_\_\_, who signed said contract  
on behalf of the CONTRACTOR was then \_\_\_\_\_ of said corporation;  
and 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.

\_\_\_\_\_

(SEAL)

ATTEST:

\_\_\_\_\_

Name \_\_\_\_\_  
(Please Type)

Title \_\_\_\_\_