

CONSTRUCTION AGREEMENT LUBBOCK NORTH CONNECTION

CONTRACT NUMBER _____
PROPOSAL NUMBER: 1696

THIS CONTRACT AGREEMENT (THE “CONTRACT”) is made and entered into on this the 5th day of March, 2025 (“Effective Date”) by and between, the CITY OF WOLFFORTH, TEXAS, a general law city organized under the State of Texas, (the "Owner") and UTILITY CONTRACTORS OF AMERICA, INC. a Texas corporation (the "Contractor").

WITNESSETH, Contractor and Owner agree as follows:

1. THE WORK. The Contractor agrees to furnish all labor, material, and equipment necessary for performance of the installation of a twelve-inch waterline extension and casings associated with the Owner’s public water utility infrastructure (the “Work”) in completion of the Work as further described in **Exhibit “A”** (the "Contractor’s Proposal") in strict accordance with this Agreement, plans (**Exhibit “B”**) and other documents as modified, supplemented and amended from time to time collectively the ("Contract Documents"). Contractor agrees to perform the Work hereunder in a thorough and workmanlike manner.

2. CONTRACT SUM AND PAYMENTS. Subject to the provisions of the Contract, Owner agrees to pay Contractor a Lump Sum Total Contract Price of **\$2,977,240.00**, reflected in words as, **Two Million, Nine Hundred Seventy Seven Thousand, Two Hundred Forty and no Cents,**(“Contract Price”) for the performance of the Work. This amount shall be paid in lump sum payments based on upon pay requests submitted by Contractor. Owner will deduct 10% retainage from each payment. Each pay request shall be accompanied by documents supporting the pay request. In no event shall Contractor be paid more than the Contract Price, unless agreed to and approved by the Owner, in writing, subject to the terms and conditions under Section 7 herein.

The ten percent (10%) retainage withheld from the progress payments may not be reduced until the Work is substantially complete.

3. NOTIFICATION. Within 24-hours of arriving and leaving the project, the Contractor will notify the following person(s):

a. Randy Hall | Ph: (806) 855-4120 | E-mail: rhall@wolfforthtx.us

4. INSURANCE. All insurance required by the Contract to be purchased and maintained by Contractor, as enumerated in the table below, shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Work is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated hereunder, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.

Insure shall remain in effect at least until the Work is complete, and longer is expressly required elsewhere in the Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the jobsite to conduct other task arising from the Contract.

The required insurances under this Contract shall apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and include all necessary endorsements to support the state requirements.

Alternative forms of insurance coverage, including but not limited to self-insurance and "Occupational Accident and Excess Employer's Indemnity Policies," are not sufficient to meet the insurance requirements of this Contract.

Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract within ten (10) days of the Effective Date of this Contract, but in any event before the start of the Work. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers, if applicable. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

Failure of Owner to demand such certificates or other evidence of the Contractor's (or Subcontractors or Suppliers) full compliance with these insurance requirements, or failure of Owner to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other Contractor's obligation to obtain and maintain such insurance.

In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner or third parties.

If Contractor does not purchase or maintain the insurance as required under the Contract, Contractor shall notify the Owner in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.

Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary. The

insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, as applicable, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.

All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least ten (10) calendar days prior written notice has been given to the purchasing policyholder. Within three (3) days business days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to the Owner.

Required Insurance Policies and Minimum Policy Limits

- a. *Worker's Compensation and Employer's Liability*: Contractor shall purchase and maintain workers' compensation and employer's liability insurance, including as applicable, foreign voluntary workers' compensation (from available sources, notwithstanding the jurisdictional requirements).

Workers' Compensation and Related Policies	Policy limits of not less than:
State	Statutory
Foreign voluntary workers' compensation (employer's responsibility coverage), if applicable	Statutory

- b. *Commercial General Liability – Claims Covered*: Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against claims for:
- i. damages for bodily injury, sickness or disease, or death of any person other than Contractor's employees,
 - ii. damages insured by reasonably available personal injury liability coverage, and
 - iii. damages because of injury to or destruction of tangible property wherever located, included loss of use resulting therefrom.
- c. *Commercial General Liability – Form and Content*: Contractor's commercial liability policy must be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form) and include the following coverages and endorsements:
- i. Blanket contractual liability coverage, including but not limited to coverage of Contractor's contractual liability indemnity obligations in Section 13.
 - ii. Severability of interests and no insured-versus-insured or cross-liability exclusions.
 - iii. Underground, explosion, and collapse coverage.
 - iv. Personal injury coverage.
 - v. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01

and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.

- d. *Commercial General Liability—Excluded Content:* The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:

Commercial General Liability	Policy limits of not less than:
General Aggregate	\$1,000,000
Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Bodily Injury and Property Damage – Each Occurrence	\$1,000,000

- e. *Automobile Liability:* Contractor shall purchase and maintain automobile liability insurance for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy must be written on an occurrence basis.

Automobile Liability	Policy limits of not less than:
Each Person	\$1,000,000
Each Accident	\$1,000,000
Property Damage	
Each Accident	\$1,000,000
Combined Single Limit (Bodily Injury and Property Damage)	\$1,000,000

- f. *Umbrella or Excess Liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the Paragraphs above. The coverage afforded must be at least as broad as that of each and every one of the underlying policies.

Excess or Umbrella Liability	Policy limits of not less than:
Each Person	\$1,000,000
Each Accident	\$1,000,000

- g. *Additional Insureds:* The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
- i. include and list as additional insureds Owner, and any individuals or entities identified as additional insureds in the Contract;
 - ii. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;

- iii. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);
- iv. not seek contribution from insurance maintained by the additional insured; and
- v. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

5. REPRESENTATIONS AND WARRANTIES. THE CONTRACTOR REPRESENTS THAT ALL LABOR FURNISHED IN PERFORMANCE OF THE WORK WILL BE PERFORMED IN GOOD AND WORKMANLIKE MANNER, IN ACCORDANCE WITH GENERALLY RECOGNIZED INDUSTRY STANDARDS FOR THE WORK AND WARRANTS THAT THE MATERIALS AND EQUIPMENT FURNISHED IN CONNECTION WITH THE WORK SHALL BE NEW UNLESS OTHERWISE SPECIFIED IN THE CONTRACT DOCUMENTS. THE CONTRACTOR FURTHER WARRANTS THE WORK AGAINST DEFECTS IN WORKMANSHIP AND MATERIALS FOR A MINIMUM PERIOD OF **FIVE (5) YEARS** FROM THE DATE OF SUBSTANTIAL COMPLETION OR FOR SUCH OTHER PERIOD AS MAY BE SET FORTH IN CONTRACT DOCUMENTS. THIS WARRANTY SHALL BE IN ADDITION TO AND NOT IN LIMITATION OF ANY OTHER WARRANTY OR REMEDY GIVEN BY THE MANUFACTURER OF ANY MATERIAL OR EQUIPMENT OR REQUIRED BY LAW OR BY THE CONTRACT DOCUMENTS.

6. SCHEDULE OF WORK. Contractor shall perform the work within the schedule set forth under the Contract. Contractor acknowledges and agrees that *time is of the essence* in the performance of the Work. Contractor shall inform the Owner of the progress of the Work on a regular basis.

- a. All Work performed under this Contract must be performed during regular working hours, **Monday** through **Friday**, and between those hours of **7:00 a.m.** to **5:00 p.m.** Contractor will not perform Work on **Saturday, Sunday**, or any legal Holiday, unless otherwise approved by Owner.
- b. Contractor shall be responsible for the cost of any overtime pay or other expenses incurred by the Owner occasioned by performance of Work on Saturday, Sunday, or any legal holiday, or as overtime on any regular workday, if Owner or Owner's employees are required to be present to inspect or observe the Work.

7. CHANGES IN THE WORK; CLAIMS FOR DELAY. Owner shall have the right, prior to completion of the Work, to order in writing changes in the Work or additional Work within the general scope of the Work ("Change Order"). When so ordered, Owner and the Contractor shall agree upon the value of the additional work added or omitted and the amount thereof shall be added to or deducted from the Contract Price, as the case may be. The Contractor shall make all claims promptly to Owner for additional cost, extensions of time and damages for delay or as a result of amendments to the schedule for completing the Work in accordance with the Contract Documents.

8. FORCE MAJEURE. Contractor shall not be liable for failure to perform or for delay in performance resulting from any cause beyond Contractor's reasonable control or due to acts of God, act or omissions of the Owner, fires, floods, unusually severe weather, embargoes, strikes, insurrections, failure of power, government shutdowns, wars, hostilities, riots, epidemics or pandemics (excluding the known pandemic known as the novel coronavirus or COVID-19, unless otherwise affected by a governmental shut-down or other lawful regulation prevention the work from being performed). Any delay resulting from any such cause shall extend delivery dates to the extent caused thereby.

9. CLEAN-UP. The Contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by Contractor's operations. At the completion of the Work, Contractor shall remove all waste materials and rubbish caused by its operations, and repair any damage that may have resulted from the Work.

10. COMPLIANCE WITH LAWS. The Contractor agrees to comply at its own expense, with all applicable federal, state and local statutes, ordinances and regulations and further agrees to require such compliance by each Subcontractor to the Contractor of labor, material or services. The Contractor shall (a) give all notices and obtain all necessary licenses and permits required by any governmental entity in connection with the Work; (b) comply with the provisions of all tax, social security, unemployment insurance and workers' compensation laws, whether state and/or federal, as may be in effect from time to time; (c) comply with applicable laws, ordinances, rules, regulations and orders for the safety of persons or property and (d) comply with all state and local bonding requirements, including those under Subchapter B, Chapter 2253 of the Texas Government Code.

Failure of Contractor to comply with any applicable law as of the Effective Date of the Contract, including those required during the execution of the Work, shall be deemed a material breach of the terms and conditions of the Contract entitling Owner to terminate the Contract for cause

11. ENVIRONMENTAL COVENANTS. Contractor covenants that it will not, in connection with the Work, violate any federal, state or local statute, regulation, rule, order or decree regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Substance ("Environmental Laws"). For the purposes herein, "Hazardous Substance" shall be the meaning ascribed in any Environmental Law to any hazardous, toxic or dangerous waste, substance, pollutant or other material. Contractor covenants that it will receive, handle, use, store, treat, transport, and dispose of all Hazardous Substances in strict and timely compliance with all Environmental

12. RISK. The Contractor shall take reasonable precautions for the safety of and shall provide reasonable protection to prevent damage, injury or loss to: (1) employees on the Work and other persons who may be affected thereby; (2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor or the Contractor's subcontractors or suppliers; and (3) other property at or adjacent thereto, such as structures and utilities not designated for removal, relocation or replacement in the course of construction. Risk of loss or damage to the Work shall remain with Contractor until final acceptance. Site security shall at all times be with the Owner.

13. INDEMNITY. THE CONTRACTOR AGREES TO INDEMNIFY AND HOLD OWNER, AND ITS ELECTED OR APPOINTED OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, SUCCESSORS AND ASSIGNS, HARMLESS FROM AND AGAINST ALL CLAIMS, LOSSES, LIENS, FINES AND CIVIL PENALTIES, JUDGMENTS AND SETTLEMENTS, LIABILITIES AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES (A) ARISING OUT OF OR IN ANY WAY RELATED TO, CONNECTED WITH OR RESULTING FROM THE WORK OR THE PRESENCE OF THE CONTRACTOR'S EMPLOYEES, SUBCONTRACTORS OR AGENTS AT THE CONSTRUCTION SITE, TO THE EXTENT THAT SUCH CLAIM, DAMAGE, LOSS, LIABILITY OR EXPENSE IS CAUSED BY THE NEGLIGENCE, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF CONTRACTOR, ITS AGENTS, EMPLOYEES OR SUBCONTRACTORS; (B) ARISING OUT OF OR IN ANY WAY RELATED TO, CONNECTED WITH OR RESULTING FROM THE USE BY THE CONTRACTOR OF ANY PATENTED INVENTION, ARTICLE OR APPLIANCE OR THE INCORPORATION THEREOF IN THE WORK; OR (C) INCURRED, OR SUFFERED BY OR ASSERTED AGAINST OWNER BY ANY PERSON, ENTITY, SUBCONTRACTOR OR GOVERNMENTAL AGENCY AS A RESULT OF ANY VIOLATION OF ANY LIEN LAW, ENVIRONMENTAL LAW, OR THE RELEASE OR THREATENED RELEASE OF ANY HAZARDOUS SUBSTANCE, IN CONNECTION WITH OR IN ANY WAY RELATED TO THE WORK.

14. CONSEQUENTIAL DAMAGES. Notwithstanding any provision contained in this Agreement to the contrary neither party nor its shareholders, officers, elected or appointed officials, directors, principals, agents, representatives, contractors, subcontractors, vendors, employees or related or affiliated entities shall be liable to the other hereunder for any punitive, consequential special, incidental or indirect loss or damage including cost of capital, loss of goodwill, loss of revenue, cost of replacement power increased operating costs. The parties further agree that the waivers and the disclaimers of liability indemnities releases from liability and limitations on liability expressed in this Agreement shall survive the termination or expiration and shall apply (whether in contract equity tort statute or otherwise) even if the event of the fault or negligence (including the sole negligence), strict liability or breach of warranty of the party indemnified released or whose liabilities are limited, and shall extend to the officers, directors, principals agents, contractors subcontractors vendors employees or related or affiliated entities of such party.

15. LIMITATION OF LIABILITIES. Notwithstanding any provision contained in this Agreement to the contrary, Contractor shall not be liable to Owner for any amounts that in the aggregate exceed 100% of the Contract Price.

16. INFORMATION AND DETAILS. All requests for information or details concerning the Work must be made through Owner's office in writing as far in advance of requirements as possible.

17. RESPONSIBILITY FOR WORK SITE SAFETY. Contractor understands and expressly acknowledges that it has the ultimate responsibility to determine safe working conditions and safe

work practices for its employees and hereby agrees to practice safe work practices in conformity with existing industry, local, state and federal standards. Contractor also agrees to implement any reasonable request by the Owner to improve the safety of the Contractor's work site or working conditions for its employees.

18. NOTICE. Any notice required to be given by this Agreement shall be given in writing and shall be effective upon personal delivery, or upon mailing by United States Mail, certified mail return receipt, Priority Mail with tracking delivery or other U.S. mail service under tracking delivery to the addresses set forth below. The mailing addresses of the parties may be changed only by written notice to the other party.

OWNER

City of Wolfforth
302 Main St.
Wolfforth, TX 79382
Attn: City Manager
Ph: (806) 855-4120

CONTRACTOR

Utility Contractors of America, Inc.
5805 County Road 7700
Lubbock, TX 79424
Attn: Jonathan Ziegner
Ph: (806) 863-2642

19. VENUE. Lubbock County will be the venue for any lawsuits arising out of this Contract.

20. TERMINATION FOR CAUSE. Should Contractor at any time refuse or fail to prosecute the Work with promptness and diligence or be guilty of a violation of the terms of this Contract, including, but not limited to violations of law as enumerated under Section 10 above ("Default"), and Contractor has failed to cure such Default to Owner within thirty (30) days of the receipt in writing of notice of such a Default by Owner ("Default Notice"), Owner shall be entitled to terminated this Contract for Default, removed Contractor from the worksite(s) and takeover and complete the Work.

21. CONFIDENTIAL INFORMATION. Owner and Contractor (and any of its Subcontractors) agree to hold in confidence and consider to be proprietary, any information supplied to the receiving Party ("Receiving Party") by the disclosing Party ("Disclosing Party"), and designated in writing as confidential and/or proprietary, and in the case of the Contractor, any of its Subcontractors. The provisions of this Article 21 shall not apply to information within any one of the following categories: (i) information that was in the public domain prior to Receiving Party's receipt thereof from the Disclosing Party or that subsequently becomes part of the public domain by publication or otherwise except by the Receiving Party's wrongful act; (ii) information that the Receiving Party can show was in its possession prior to its receipt from the Disclosing Party through no breach of any confidentiality obligation; (iii) information received by the Receiving Party from a third party that did not have a confidentiality obligation; or (iv) information independently developed by Contractor or Owner. Owner may disclose such information to the extent that such disclosure is required by Law, or Statute.

22. CHOICE OF LAW. This Agreement and any disputes arising from the interpretation of the terms or provisions of the Work shall be governed by, and construed in accordance with, the laws of the State of Texas, without regard to conflicts of law provisions.

23. AMENDMENT. This Agreement cannot be modified, or amended except by a signed writing, and no oral or implied modification or rescission shall be binding upon the parties.

24. BINDING EFFECT. This Agreement shall inure to, and shall be binding upon, Owner, its successors and assigns.

25. SEVERABILITY. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and the parties shall immediately renegotiate in good faith such invalid provision, consistent with the intent of this Agreement.

26. COUNTERPARTS. This Contract may be executed electronically and in any number of counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument. An electronic or email “.PDF” signature of any party shall be considered to have the same binding legal effect as an original signature.

27. NO THIRD PARTIES BENEFITTED. The terms and provisions of this Contract are for the sole benefit of Owner and Contractor and their successors and assigns, and no third party is intended to benefit herefrom.

28. NO WAIVER. Either party’s waiving any Default or violation or breach of any term or covenant of this Contract does not waive any other violation or breach of any term, provision or condition of the Contract. Nor does either party’s forbearing to enforce one or more of the remedies provided in this Contract or by law on a Default waive the Default. Contractor’s accepting payment following Default under this Contract does not waive the Default.

29. CUMULATIVE REMEDIES. Owner’s or Contractor’s pursuance of any remedy provided herein will not preclude pursuing any other remedy provided in this Contract. Either party’s pursuing any remedy provided in this Contract or at law or in equity will not constitute a forfeiture or waiver of any damages accruing to either party by reason of violating any term or condition of this Contract. Nor will Owner’s pursuing any remedies provided in this Contract constitute a waiver or forfeiture of any set-off amount by Owner under this Contract.

30. TIME OF THE ESSENCE. Time is of the essence in each and every instance hereunder with respect to the covenants, undertakings and conditions to be performed under this Contract.

31. PROHIBITED PERSONS AND TRANSACTIONS. Each party hereby represents and warrants to the other that such representing party is currently in compliance with, and such representing party further covenants that such representing party shall at all times during the performance of this Contract (including any extension thereof) remain in compliance with, the regulations of the Office of Foreign Assets Control (“OFAC”) of the U.S. Department of Treasury (including those named on OFAC’s Specially Designated Nationals and Blocked Persons List) and

any statute, executive order (including, but not limited to, Executive Order 13224, dated September 24, 2001 and entitled “Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism”), or other governmental, regulatory, or administrative action relating thereto.

32. ISRAEL BOYCOTT. By executing this Contract, Contractor verifies that it does not boycott Israel and will not boycott Israel during the term of this Contract.

33. ENTIRE AGREEMENT. This Contract constitutes the entire agreement of the parties hereto with respect to its subject matter, and all prior agreements not herein contained, are specifically disclaimed, whether orally or in writing.

OWNER

By: Randy Criswell

Title: City Manager, City of Wolfforth

CONTRACTOR

By: _____

Title: _____

EXHIBIT A

PROPOSAL FOR

Lubbock North Connection

Proposal

From:	Utility Contractors of America, Inc	Project:	1696
		Description:	City of Wolfforth - Lubbock North Collection Booster Station & Storage Tank

ITEM / DESCRIPTION	BID QTY	U/M	UNIT BID	AMOUNT
01 Booster Pump Station	1.000	LS	\$1,040,685.00	\$1,040,685.00
02 Ground Storage Tank - 500,000 Gal	1.000	LS	\$1,383,755.00	\$1,383,755.00
03 Site Work - Fence, Drive, Grading, Gravel Base	1.000	LS	\$363,415.00	\$363,415.00
04 Flow Meter, valve, and vault	1.000	LS	\$189,385.00	\$189,385.00
			TOTAL BID:	\$2,977,240.00

Signature: Hayden Harrison03/12/2025

EXHIBIT B

CONSTRUCTION DOCUMENTS FOR

Lubbock North Connection