

**Construction Contract
Martinena Road Overlay Project**

STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF WEBB §

This Agreement is made and entered into by and between **WEBB COUNTY, TEXAS**, a Political Subdivision of the State of Texas (hereinafter "Owner") and **TBD**, a TBD (hereinafter "Contractor").

WHEREAS at the Webb County Commissioner's Court Meeting held on the TBD, the Court, pursuant to Webb County's Invitation to Bid (I.T.B.) TBD entitled "**Martinena Road Overlay Project**", and Contractor's responsive bid proposal, attached hereto as Exhibit "A", this Construction Contract was awarded.

For and in consideration of the mutual covenants herein set forth, and other good and valuable consideration, the Parties do hereby agree as follows:

1. **DESCRIPTION OF PROJECT:** The project consists of a 2 inch asphalt overlay from IH 35 frontage road 1.2 miles. The work includes all appurtenances and all incidentals, including all labor and materials as shown and required by the construction documents.
2. **PREMISES DEFINED:** Martinena Road, edge of pavement to edge of pavement, from IH 35 frontage road 1.2 miles..
3. **SCOPE OF WORK:** The Scope Of Work is all of the Work, including all appurtenances and all incidentals, all labor and materials, as shown and required by the construction documents, which are hereby incorporated by reference. Contractor agrees that all work shall be performed in a good and workmanlike manner and all materials incorporated into the work shall be new materials.
4. **CONTRACT SUM:** In exchange for Contractor's performance of services under this Agreement, Owner shall pay Contractor the following amount(s): **TBD (\$TBD)**. Any and all payments/disbursements by Webb County shall be made payable to contractor based on an numbered and itemized payment application for percentage of completion of the various base bid item(s), less retainage, for the project as agreed to and made by Contractor to Owner, which shall be approved by **Luis Perez-Garcia, P.E., Webb County Engineer, and/or Guillermo Cuellar, P.E., Webb County Engineering Dept.**, after inspecting the progress of completed work and materials on site at the Premises. Said approvals shall not be unduly withheld or delayed.
5. Owner shall make final payment (including the costs and expenses incurred due to change order(s) completed during this project and completion of the Work and then release the **Five percent (5%) retainage** that OWNER previously retained) to Contractor on the day the

Project is completed approved and accepted by OWNER. Said approvals shall not be unreasonably withheld or delayed.

6. **It is hereby expressly acknowledged, consented and agreed to by Contractor that the final payment due for the services rendered pursuant to this Agreement shall not be issued to Contractor until Contractor has submitted a signed and sworn "Final Bills Paid Affidavit" confirming payment to each of its subcontractors, laborers, suppliers, and materialmen in full for all labor and materials furnished to Contractor for or in connection with, renovation of, or repair of improvements on or relating to the subject project/property or any portion thereof, pursuant to and in accordance with Sections 53.085 and 53.259 of the Texas Property Code, and that the intentional, knowing, or reckless making of a false or misleading statement in the Affidavit constitutes a criminal offense under said sections cited herein-above and is a Class A Misdemeanor.**

7. **RETAINAGE:** OWNER shall withhold from each installment payment to CONTRACTOR a retainage of FIVE (5%) percent. The retainage shall be paid to CONTRACTOR upon final completion of the work. Completion of the work shall be considered final upon acceptance and written approval by OWNER or his designated representative of the project.

8. **CHANGE ORDERS** In the event either party requests a change from the agreed Scope of Work or Quote in this Agreement, a written change order making such a request shall be prepared by Contractor in accordance with the proposed change. If the Owner or a Third-Party Inspector ("Inspector") requests a change be executed, Owner or Inspector shall, in a timely manner, inform Contractor (via email) of the request. Contractor shall then prepare a written change order in accordance with said request and submit to Owner for Owner's approval and signature. As soon as Owner signs the change order approving the proposed change, Owner shall submit, via email, the approved/signed order to Contractor. Contractor shall begin performance in accordance with the change order only after Contractor receives the written and approved/signed change order. If Contractor requests a change order, Contractor shall prepare a written change order, submit it to Owner for its approval and signature, and the resultant change will only begin on the approved change after Contractor receives the signed change order. Change orders may increase the payment the Owner must pay to Contractor. **IN NO EVENT SHALL THE TOTAL COST OF CHANGE ORDERS EXCEED TWENTY-FIVE PERCENT (25%) OF THE TOTAL AMOUNT OF THIS AGREEMENT.**

9. **NOTICES/CONTACT PERSONS:** Any notice or communication required or permitted to be given hereunder shall be sufficient if sent via electronic transmission to the contact persons for CONTRACTOR and/or OWNER as follows:

To Contractor at:	TBD
	TBD
	TBD, TBD TBD
	E-Mail: TBD
	Phone: TBD

To Webb Engineer at: WEBB COUNTY, TEXAS
Luis Perez-Garcia, P.E./Webb County Engineer
Webb County Engineering Dept.
(956) 523-4054
lperezgarcia@webbcountytexas.gov

10. **DATE OF COMMENCEMENT:** Within **SEVEN (7) CALENDAR DAYS** of being issued a Notice to Proceed from the County, **but in no event shall the commencement date be later than TBD.**
11. **SUBSTANTIAL COMPLETION:** Substantial Completion is the stage in the progress of the completion of the work covered by this Agreement where the work on the Premises is sufficiently complete in accordance with the work specified in “Scope of Work” as set forth in Exhibit C-5, including completion of all post-construction clean-up on and about the Premises, which shall be required to be confirmed in writing as being substantially completed, by the execution and issuance of a Certificate of Substantial Completion that is dated and signed by both the Webb County Project Engineer and Owner, so that the Owner (or Owner’s tenant) can occupy and/or utilize the Premises for its intended use.
12. **DATE FOR FINAL COMPLETION/LIQUIDATED DAMAGES:** The date of final completion of this construction project shall be **TWENTY (20) CALENDAR DAYS** after the date of commencement of construction as set forth in the written and dated notice to proceed issued by Owner to Contractor.
13. The time set forth in the proposal for the completion of the Work is an essential element of the Agreement. For each working day under the conditions described in the preceding Paragraph that any work shall remain uncompleted after the expiration of the working days specified in the Agreement, together with any additional working days allowed, the amount per day given in Section B-1 will be deducted from the money due or to become due the Contractor, not as a penalty but as liquidated damages.
14. Said Contractor further agrees to **CONTINUOUSLY PURSUE AND COMPLETE THE WORK** within **TWENTY CALENDAR DAYS** from date of commencement.
15. **Contractor and Owner do hereby acknowledge that “actual damages are uncertain and would be difficult to ascertain” and therefore both parties do hereby mutually agree that the following stipulated sum of per diem liquidated damages is a reasonable amount. The parties further express and acknowledge that the amount of liquidated damages is meant to be “compensatory” and not “punitive”, and Contractor further agrees to pay, as liquidated damages, the sum of TBD (\$TBD) per day for each consecutive calendar day there-in-after the date of Substantial Completion and after the date of Final Completion.**
16. **INSURANCE: Contractor and Subcontractor Insurance:** The financial integrity of Contractor is of interest to the Owner, therefore, subject to the right of Contractor to maintain reasonable insurance deductibles in such amounts as are approved by the Owner. Contractor shall obtain and maintain in full force and effect for the entire duration of this

agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- (VII) or better by A.M. Best Company (Best's Key Insurance Company Rating Guide, current edition and/or as amended) and/or otherwise acceptable to Webb County/Webb County Risk Manager, the following types and amounts:

- a. The Contractor shall not commence work under this Agreement until it has obtained all the insurance required and such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work on its Subcontract until the insurance required of the Subcontractor has been so obtained and approved. The Contractor shall procure and shall maintain during the life of his Contract, insurance in the amounts required.

17. PAYMENT AND PERFORMANCE BONDS: *PLEASE BE ADVISED THAT THIS PROJECT REQUIRES BOTH A PAYMENT & PERFORMANCE BOND FROM THE CONTRACTOR.*****

18. Contractor shall supply the required Performance/Payment bonds to the Webb County Purchasing Director within Seven (7) days of execution of this Agreement or not later than Two (2) working days prior the date of the scheduled pre-construction meeting which shall be the "DEADLINE" for compliance herewith and which both parties have mutually agreed to as an "Express Condition Precedent" to this contract.

- a. Bonds must be issued by companies authorized and admitted to do business in the State of Texas and rated A-:VII or better by A.M. Best Company (Best's Key Rating Guide, current Edition, and as amended) and/or otherwise acceptable to the Owner.

19. NOTICE TO PROCEED SHALL NOT BE ISSUED TO THE CONTRACTOR BY WEBB COUNTY WITHOUT THE DELIVERY OF ALL STATUTORILY REQUIRED PERFORMANCE AND/OR PAYMENT BONDS AND PROOF OF ALL REQUIRED INSURANCE POLICIES TO WEBB COUNTY BY CONTRACTOR NOT LATER THAN TWO (2) WORKING DAYS PRIOR THE DATE OF THE SCHEDULED PRE-CONSTRUCTION MEETING "DEADLINE". FAILURE OF CONTRACTOR TO PROVIDE SAID BONDS AND/OR INSURANCE POLICIES BY THE DEADLINE SHALL CONSTITUTE A DEFAULT OF YOUR CONTRACT AND WEBB COUNTY SHALL AT THEIR SOLE OPTION AWARD THE CONTRACT TO THE NEXT LOWEST BIDDER OR RE-ADVERTISE THIS PROJECT FOR NEW BIDS/PROPOSALS.

20. RELATIONSHIP OF PARTIES: Contractor is engaged under this Agreement as an "INDEPENDENT CONTRACTOR" and not as an agent or employee of Owner. Contractor is not entitled to benefits of any kind to which Owner's employees are entitled, including but not limited to unemployment compensation, workers' compensation, health insurance, or retirement benefits. Contractor assumes full responsibility for payment of all federal, state and local taxes or contributions, including but not limited to, unemployment insurance, social security, Medicare, and income taxes with respect to Contractor and Contractor's employees.

This Agreement does not create a partnership or a joint venture between the parties hereto, nor does it authorize either party to serve as the legal representative or agent of the other. Neither party has any right or authority to assume, create, or incur any liability or any obligation of any kind, express or implied, against, or in the name of, or on behalf of the other party.

21. **SUCCESSORS AND ASSIGNS:** This Agreement may not be assigned or subcontracted, in full or in part, by either party without first obtaining written consent of the other party. The parties shall not be relieved of its full responsibility for completion of work because of subletting of any portion of the work. This Agreement shall be binding upon and shall ensue to the benefit of the parties hereto and their respective successors, transferees, and assigns.
22. **INDEMNITY:** CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD WEBB COUNTY, IT'S COMMISSIONERS COURT, DIRECTORS, EMPLOYEES, AND AGENTS HARMLESS FROM ANY AND ALL LOSS, EXPENSE, COST, OR LIABILITY (INCLUDING REASONABLE LEGAL FEES AND EXPENSES), ARISING FROM ANY CLAIM OR CAUSE OF ACTION FOR ANY LOSS OR DAMAGE CAUSED BY OR ARISING FROM THE PERFORMANCE OF CONTRACTOR'S OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE CONDUCT OF CONTRACTOR'S EMPLOYEES AND/OR ANY ACTS PERFORMED UNDER THIS CONTRACT AND THAT RESULT FROM ANY NEGLIGENT ACT, ERROR, OR OMISSION OF THE CONTRACTOR OR OF ANY PERSON EMPLOYED BY THE CONTRACTOR. IN CASE OF ANY SUCH CLAIM, CONTRACTOR, UPON NOTICE FROM OWNER, COVENANTS TO DEFEND ANY SUCH ACTION OR PROCEEDING. THE CONTRACTOR SHALL ALSO SAVE AND HOLD HARMLESS THE OWNER FROM AND AGAINST ANY AND ALL EXPENSES, COURT COSTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES THAT MIGHT BE INCURRED IN LITIGATION OR OTHERWISE DEFENDING OR PROSECUTING THE CLAIMS.
23. **COMPLIANCE WITH LAWS:** Contractor agrees that it will, in its performance of its obligations hereunder, fully comply with all applicable laws, regulations and ordinances of all relevant authorities, including, but not limited to, those pertaining to safety, and shall obtain all licenses, registrations, or other approvals required in order to fully perform its obligations hereunder. Contractor represents and warrants that all improvements made to the property shall comply with the Americans with Disabilities Act (ADA) and all other applicable Federal/State Codes, regulations, and laws.
24. **SEVERABILITY:** Should any part of this Agreement be rendered or declared invalid by a court of competent jurisdiction of the State of Texas, such invalidation of such part or portion of this Agreement shall not invalidate the remaining portions thereof, and they shall remain in full force and effect.
25. **GOVERNING LAW/VENUE:** This agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Texas, without regard to choice of law rules of any jurisdiction. The parties hereby further agree that for any litigation regarding this

agreement that venue lies exclusively in the State Courts of Webb County, Texas.

- 26. DEFAULT AND TERMINATION:** In the event either party interferes with the general progress of this Project intentionally, or by negligence, or intentional or negligent delay, the non-defaulting party may complete the same or cause the same to be completed and charge all sums of money so expended for the completion of this Agreement against the defaulting party, and the defaulting party shall reimburse the non-defaulting Party for any loss sustained thereby.
- 27. ATTORNEY'S FEES:** In the event either party breaches any of the terms of this Agreement whereby the party not in default employs attorneys to protect or enforce its rights hereunder and prevails, then the defaulting party agrees to pay the other party reasonable attorney's fees incurred by such other party.
- 28. ENTIRE AGREEMENT:** This Agreement and its Exhibits shall constitute the complete and exclusive written expression of the intentions of the parties hereto and shall supersede all previous communications, representations, agreements, promises or statements, either oral or written, by and between the parties. Any modifications to this Agreement must be in writing and signed by the party sought to be bound.
- 29. EXHIBITS:** The following documents are attached hereto and fully incorporated herein by reference and made a part of this agreement as if fully set forth herein:
1. **Contractor's Bid Proposal** together attached hereto as **Exhibit "A"**.
 2. Description of Premises **Exhibit "B"**
 3. Construction/Plans/Drawings **Exhibit "C"**.
 4. Webb County's General Conditions, **Exhibit "D"**.
 5. Payment Bond - See sample form: (To be provided by Contractor Prior to Issuance of Notice to Proceed). (See Section 14**), **"Exhibit E"**.
 6. Performance Bond – See sample form: (To be provided by Contractor Prior to Issuance of Notice to Proceed). (See Section 14**), **"Exhibit F"**.
 7. Insurance Coverages, Liability, Worker's Comp., Builder's Risk, etc. (To be provided by Contractor Prior to Issuance of Notice to Proceed), **"Exhibit G"**.
 8. Webb County's Notice to Proceed Letter - See sample form **"Exhibit H"**.
- 30. OMISSIONS:** If any punctuation, word, clause, sentence, or provision necessary to give meaning, validity, or effect to any portion of this Agreement shall be omitted here-from, then it is hereby declared that such omission was unintentional and that the omitted element shall be included in order to give meaning, validity, and/or effect to any portion of this Agreement.

- 31. MATERIALMEN/SUPPLIERS:** Contractor within 10 days from the date of the execution of this agreement shall provide an updated and current listing of all Subcontractors and/or Materialmen or Suppliers, and all laborers, used by the Contactor to Webb County and Contractor shall notify the Owner in writing whenever changes occur, and Contractor shall provide the Owner with an updated listing within FIVE (5) working days of upon request for an updated listing. Contractor will immediately notify the Owner in writing of any Subcontractors and/or Materialmen or Suppliers, and all laborers, independent contractors, and/or other such materialmen and/or suppliers services that are discontinued and/or that have been added to their workforce.
- 32. REQUEST FOR PAYMENT SUBMISSION:** All request for payments are to be made payable to Contractor by dated and signed invoice(s). Said invoice and/or request for progress payments shall be submitted in writing to **Luis Perez-Garcia, P.E., Webb County Engineer**, or its designated and authorized representative, on behalf of Owner for review and approval of same. Upon review and approval of the request for payment by **Luis Perez-Garcia, P.E., Webb County Engineer**, on behalf of Owner, the Webb County Engineer shall then forward the approved request for the payment amount **[less Five percent (5%) retainage]** to the Webb County Business Office to process the progress payment request. Payment will be mailed to Contractor or made available for pick up at the Webb County Business Office.
- 33. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES:** Contractor agrees to comply at all times with all federal, state, county, and/or City of Laredo building, development codes, city building permits, rules, regulations, ordinances and laws, and Contractor shall not permit the Premises or any part thereof to be used for (a) any offensive, noisy, or dangerous activity that would pose a health or safety risk; (b) the creation or maintenance of a public nuisance, (c) anything which is against public regulations or rules of any public authority at any time applicable to the Premises; or (d) any purpose or any manner which will obstruct, interfere with, or infringe on the rights of other tenants or adjoining properties.
- 34. LEGAL CONSTRUCTION:** In case any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 35. AMENDMENT:** No amendment, modification, or alteration of the terms of this Agreement hereof shall be binding unless the same be in writing, dated subsequent to the date hereof, and approved by the Webb County Commissioner's Court and duly executed by both of the parties hereto.
- 36. TIME OF ESSENCE:** Time is of the essence of this Agreement and each and every covenant, condition, and provision herein contained.
- 37. ADDITIONAL PROVISIONS:**

- a. **Inconsistencies.** Where there exists any inconsistency between this Agreement and other provisions of collateral contractual agreements that are made a part hereof by reference or otherwise, the provisions of this Agreement shall control.
- b. **Entire Agreement.** This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written Agreement. No other prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless signed by both parties and attached hereto and/or embodied herein.
- c. **No rights created.** This Agreement is not intended and does not create any rights or interest in persons not a party hereto.
- d. **Confidentiality.** Any confidential information provided to or developed by Consultant in the performance of this Agreement shall be kept confidential, unless otherwise provided by law, and shall not be made available to any individual or organization without the prior approval of **WEBB COUNTY**.
- e. **Headings.** The headings used herein are for convenience of reference only and shall not constitute a part hereof or affect the construction or interpretation hereof.
- f. **Waiver.** The failure on the part of any party to exercise or to delay in exercising, and no course of dealing with respect to any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies provided herein are cumulative and not exclusive of any remedies provided by law or in equity, except as expressly set forth herein.
- g. **Consequential Damages.** Neither party shall be liable to the other for consequential damages, including, without limitation, loss of use or loss of profits, incurred by one another or their subsidiaries or successors, regardless of whether such damages are caused by breach of contract, will-full misconduct, negligent act or omission, or other wrongful act of either of them.
- h. **Counterparts.** This Agreement may be executed in any number of and by the different parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same document.
- i. **Terminology and Definitions.** All personal pronouns used herein, whether used in the masculine, feminine, or neutral, shall include all other genders; the singular shall include the plural and the plural shall include the singular.

- j. **Rule of Construction.** The parties hereto acknowledge that each party and its legal counsel have reviewed and revised this agreement, and the parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this agreement or any amendments or exhibits hereto.

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed.

IN WITNESS WHEREOF, the parties aforesaid have duly executed the foregoing instrument, or caused the same to be executed in duplicate originals on the dates set forth below.

WEBB COUNTY

CONTRACTOR

TBD

Tano E. Tijerina
Webb County Judge

TBD
TBD

Date: _____, 2021

Date: _____, 2021

ATTESTED:

Margie Ramirez-Ibarra
Webb County Clerk

APPROVED AS TO FORM:

Nathan R. Bratton
Webb County Civil Legal Division

*By law, this office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).