

**INDEPENDENT CONTRACTOR AGREEMENT
"WEBB COUNTY/BOTINES FIRE STATION FENCING 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 **ROMO CONTRACTORS, LLC.**, Texas Limited Liability Company, (hereinafter "Contractor"), pursuant to Webb County Request for Proposal "RFP 2020-001, entitled "Botines Fire Station Fencing Project".

WHEREAS at a Webb County Commissioner's Court Meeting held on the 13th day of January, 2020, the Court pursuant to Webb County Request for Proposal "RFP 2020-001, entitled "Webb County/Botines Fire Station Fencing Project", a copy of which is attached hereto as Exhibit "A", approved this construction contract between Webb County and Romo Contractors, LLC. The Court had previously awarded RFP 2020-001 for the Botines Fire Station Fencing Project to Romo Contractors, LLC., a Texas Limited Liability Company, herein-after referred to as "Romo/Independent Contractor".

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:** "Webb County Request for Proposal "RFP 2020-001, entitled "Webb County/Botines Fire Station Fencing Project", a copy of which is attached hereto as Exhibit "A", **Scope of Services, Plans & Technical Specifications, together with and including any and all addendums to the R.F.P."**
2. **PREMISES DEFINED:** As used herein, "Premises" is defined as the site where the work specified will be performed which shall be located on the Webb County/Gene S. Walker/Los Botines Fire Station Facility located on U.S. Hwy. 44 West, Webb County, Texas.
3. **SCOPE OF WORK:** Contractor agrees to perform the following work for Owner as set forth in "Webb County Request for Proposal "RFP 2020-001, entitled "Webb County/Botines Fire Station Fencing Project" **Scope of Services, Plans & Technical Specifications, together with and including any and all addendums to the R.F.P."** attached hereto as Exhibit "A" which is hereby incorporated by reference as attached hereto and/or as described on the above listed invitation to bid/public notice issued by the County of Webb, Texas. Contractor agrees that all work shall be performed in a good and workmanlike manner.
4. **CONTRACT SUM:** In exchange for Contractor's performance of services under this Agreement, Owner shall pay to Contractor the following amount(s): **SIXTY-EIGHT THOUSAND AND 00/100 DOLLARS (\$68,000.00)**. 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) 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, Webb County Engineering Dept., the Project Engineer**, after inspecting the

progress of completed work and materials on site at the Premises. Said approvals shall not be unduly withheld or delayed.

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 and approved by **Luis Perez-Garcia, P.E., Webb County Engineer, Webb County Engineering Dept., the Project Engineer**, or its designated and authorized representative, on behalf of Owner. Said approvals shall not be unreasonably withheld or delayed.

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 signed and sworn to the Final Bills Paid Affidavit confirming payment to each of its subcontractors, laborers, suppliers, and materialmen in full for all labor and materials to Contractor for or in connection, renovation, 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.

5. **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 written approval by OWNER's designated representative.

6. **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 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 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 only will 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 MAY THE TOTAL COST OF CHANGE ORDERS EXCEED TWENTY-FIVE PERCENT (25%) OF THE TOTAL AMOUNT OF THIS AGREEMENT.**

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

To Contractor at: ROMO CONTRACTORS, LLC., c/o
Nelso Molina, Managing Member
2710 Zacatecas
Laredo, Texas 78040
Ph. (956) 753-8689
E-Mail: nelso@romocontractors.com

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

Jose Angel Lopez III, CTPM
Webb County Purchasing Agent
1110 Washington Street, Ste. 101
Laredo, Texas 78040
(956) 534-4125
E-mail: joel@webbcountytx.gov

8. **INCORPORATION OF INVITATION TO BID/PROPOSAL-QUOTE:** The terms, project specifications, requirements and/or any and all conditions contained in the **“Webb County Request for Proposal “RFP 2020-001, entitled “Webb County/Botines Fire Station Fencing Project” Scope of Services, Plans & Technical Specifications, together with and including any and all addendums to the R.F.P.”**), attached hereto as **Exhibit “A”**, together with and including the Contractor’s Responsive Bid Proposal submitted by and awarded to **Romo Contractors, LLC., pursuant to said “RFP 2020-001”** attached hereto as **Exhibit “B”** are hereby incorporated herein by reference as fully written out as set forth and attached hereto for all intents and purposes.

9. **DATE OF COMMENCEMENT:** Within **TEN (10) CALENDAR DAYS** of being issued a Notice to Proceed from the County, **but in no event shall the commencement date be later than January __, 2020.**

10. **SUBSTANTIAL COMPLETION:** Substantial Completion is the stage in the progress of the completion of the work covered by this Agreement where the work at the Premises is sufficiently complete in accordance with the work specified in “Scope of Work” as set forth in the **“Webb County Request for Proposal “RFP 2020-001, entitled “Webb County/Botines Fire Station Fencing Project” Scope of Services, Plans & Technical Specifications, together with and including any and all addendums to the R.F.P.”**), attached hereto as **Exhibit “A”**, 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 Project Engineer and Owner, so that the Owner (or Owner’s tenant) can occupy and/or utilize the Premises for the intended use.

11. **DATE FOR SUBSTANTIAL COMPLETION/LIQUIDATED DAMAGES:** The date of substantial completion of this construction project shall be **NINETY (90) CALENDAR DAYS** (Monday-Friday excluding federal holidays), after the date of commencement of construction as set forth the written and dated notice to proceed issued by Owner to Contractor.

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 the following schedule will be deducted from the money due or to become due the Contractor, not as a penalty but as liquidated damages.

Said Contractor further agrees to begin the work on or before the **TENTH (10th) CALENDAR DAY** following the date set by the Owner's written notice to proceed, **but in no event shall the commencement date be later than January ____, 2020**, and to **CONTINUOUSLY PURSUE AND COMPLETE THE WORK** within **NINETY (90) CALENDAR DAYS** (Monday-Friday excluding Federal holidays).

Contractor and Owner do hereby acknowledge that "actual damages are uncertain and would be difficult of ascertainment" 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 FOUR HUNDRED DOLLARS (\$400.00) for each consecutive day there-in-after the date of substantial completion, as herein provided above in Section 11.

12. **OWNER'S RIGHT TO TERMINATE:** Owner may terminate this Agreement upon thirty (30) days prior written notice. If Owner terminates this Agreement, then Contractor shall only be paid for the work performed or expenses incurred prior to the receipt of the notice of termination.

13. **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 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 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:

The Contractor shall not commence work under this Agreement until it has obtained all the insurance required under this paragraph and such insurance has been approved by the Owner, or 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.

- a. Compensation Insurance: The Contractor shall procure and shall maintain during the life of this Contract Workers' Compensation Insurance as required by applicable State or Territorial law for all of his/her employees to be engaged in work at the site of the project under this Contract and, in case of any such work sublet, the Contractor shall require the Subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Workers' Compensation Insurance. In the case where any class of employees engaged in hazardous work on the project under this Contract and is not protected under the Workers' Compensation Statute, The Contractor shall provide and shall cause each Subcontractor to provide adequate employee's liability insurance for the protection of such of his/her employee as are not otherwise protected.
- b. Contractor's Public Liability Insurance, Contractor's Property Damage Insurance and Vehicle Liability Insurance in the amount of not less than \$1,000,000 for bodily injury, including accidental death, to any one person and an amount not less than \$1,000,000 on account of any one occurrence; Property Damage in the amount not less than \$100,000 per occurrence and \$200,000 aggregate; and Vehicle Liability of \$100,000 for any one person or \$200,000 for each occurrence.
- c. The Contractor shall procure and shall maintain during the life of his Contract, insurance in the amounts listed in Subparagraphs a and b.
- d. Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance: The Contractor shall either (1) require each of his/her Subcontractor to procure and shall maintain during the life of his /her Subcontractor, Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the amount specified in Subparagraph b. above or, (2) insure the activities of his/her Subcontractors in his/her policy specified in Subparagraph b, above.
- e. Scope of Insurance and Special Hazards: The insurance required under Subparagraph a and b, above, shall provide adequate protection for the Contractor and his/her Subcontractor's, respectively, against damage claims which may arise from operations under this Contract, whether such operations be by the insured or by any one directly or indirectly employed by him/her and also against any of the special hazard which may be encountered in the performance of this Contract.
- f. Builder's Risk Insurance (Fire and Extended Coverage): The Contractor shall procure and shall maintain during the life of this Contract Builder's Risk Insurance (Fire and Extended Coverage) on a 100 percent (100%) completed value basis on the insurable portion of the project. The Owner, the Contractor, and Subcontractor (as their interests may appear), shall be named as the Insured.
- g. Proof of Carriage of Insurance: The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of policies. Such certificates shall also contain substantially the following statement: "The Insurance covered by this certificate will not be cancelled or materially altered, except after

ten (10) days written notice has been received by the Owner.”

The Owner, the Contractor, and Subcontractor (as their interests may appear), shall be named as Insureds or Additional Insureds.

h. Webb County, Texas, a political subdivision of the State of Texas shall be named as an additional name insured party with respect to General Liability, Builder’s Risk, Fire and/or Automobile Liability. A blanket waiver of subrogation in favor of Webb County, Texas, a political subdivision of the State of Texas shall be contained in the Workers’ Compensation, and all liability policies.

14. PAYMENT AND PERFORMANCE BONDS: ***PLEASE BE ADVISED THAT THIS PROJECT REQUIRES A PAYMENT BOND FROM THE CONTRACTOR.*** A Performance Bond is required for construction work if the contract is in excess of \$100,000 and a Payment Bond is required if a construction contract is in excess of \$25,000 in statutory compliance with applicable provisions of the Texas Government Code.

Contractor shall supply the required Performance/Payment bonds to the Webb County Purchasing Director within ten (10) 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.

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

**** THE 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/OR PROOF OF ALL REQUIRED INSURANCE POLICIES TO WEBB COUNTY BY CONTRACTOR AS PER SECTION 7 “NOTICES” NOT LATER THAN TWO (2) WORKING DAYS PRIOR THE DATE OF THE SCHEDULED PRE-CONSTRUCTION MEETING “DEADLINE”. IF THE CONTRACTOR FAILS TO PROVIDE SAID BONDS 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.****

15. 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.

16. **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.

17. **INDEMNITY:** CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD OWNER 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.

18. **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.

19. **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.

20. **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 Webb County, Texas.

21. **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.

22. **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.

23. **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.

24. **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. "Webb County/Botines Fire Station Fencing Project, Webb County Request for Proposals (RFP #2020-011), Plans & Technical Specifications & Scope of Work – Exhibit A"
2. Contractor ROMO CONTRACTORS, LLC., responsive Bid Proposal and pricing awarded in response to "Webb County/Colorado Acres Water Treatment Facility Rehabilitation Project, Webb County Request for Proposals (RFP #2019-011), Plans & Technical Specifications & Scope of Work – Exhibit B"
3. Payment Bond (To be provided by Contractor Prior to Issuance of Notice to Proceed). (See Section 14**).
4. Performance Bond (To be provided by Contractor Prior to Issuance of Notice to Proceed). (N/A).
5. Insurance Coverages, Liability, Worker's Comp., Builder's Risk, etc. (To be provided by Contractor Prior to Issuance of Notice to Proceed).
6. Webb County's General Conditions
7. City of Laredo Technical Standards Specifications if applicable as per construction plans.
8. Construction Plans/Drawings, as submitted by Romo Contractors?????, dated _____???
9. Contractor's Application for Payment
10. Webb County's Notice to Proceed Letter

11. Change Order form
12. Form 1295-Texas Ethics Commission Disclosure of Interested Parties
13. Webb County Ethics Policy

25. **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.

26. **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.

27. **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 both **Luis Perez-Garcia, P.E., Webb County Engineer, Webb County Engineering Dept., the Project 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, Webb County Engineering Dept., the Project 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.

28. **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.

29. **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.

30. **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.

31. **TIME OF ESSENCE:** Time is of the essence of this Agreement and each and every covenant, condition, and provision herein contained.

32. **ADDITIONAL PROVISIONS:**

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.

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.

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**.

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.

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.

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.

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.

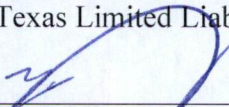
Terminology and Definitions. All personal pronouns used herein, whether used in the masculine, feminine, or neutral, shall include all other genders; the singular shall include the plural and the plural shall include the singular.

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.

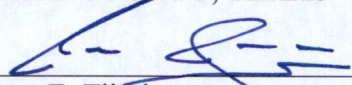
This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed.

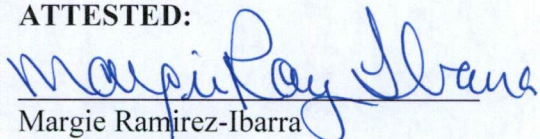
IN WITNESS WHEREOF, the parties aforesaid have duly executed the foregoing instrument, or caused the same to be executed in duplicate originals on this ____ day of JANUARY, 2020.

CONTRACTOR:
BROMO CONTRACTORS, LLC.
A Texas Limited Liability Company

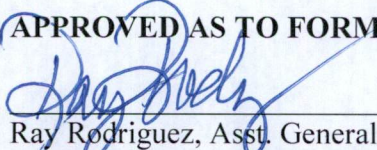
By: 
NELSO MOLINA
MANAGING MEMBER
Date: January 21, 2020

WEBB COUNTY, TEXAS


Tano E. Tijerina
Webb County Judge
Date: January 22, 2020

ATTESTED:

Margie Ramirez-Ibarra
Webb County Clerk



APPROVED AS TO FORM:

Ray Rodriguez, Asst. General Counsel
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).

Passed and approved by the Webb County Commissioners Court on November 25th, 2019; Item No. Award of RFP 2020-001/Romo Contractors, LLC.

Passed and approved by the Webb County Commissioners Court on January 13th, 2020; Item No. () Approval of Construction Contract (RFP 2020-001.

Bond No. EAIC4004856

Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Payment Bond

CONTRACTOR:
(Name, legal status and address)

Romo Contractors LLC
2710 Zacatecas St.
Laredo, TX 78046

OWNER:
(Name, legal status and address)

Webb County, Texas
1110 Washington Street, Ste. 101
Laredo, TX 78040

SURETY:
(Name, legal status and principal place of business)

Endurance American Insurance Company
4 Manhattanville Road
Purchase, NY 10577

Mailing Address for Notices
Endurance American Insurance Company
4 Manhattanville Road
Purchase, NY 10577

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONSTRUCTION CONTRACT
Date:

Amount: \$ Sixty-eight Thousand And No/100Dollars (\$68,000.00)

Description:
(Name and location) Webb County/Botines Fire Station Fencing Project

BOND
Date:

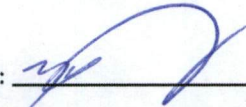
(Not earlier than Construction Contract Date)

Amount: \$ Sixty-eight Thousand And No/100 (\$68,000.00)

Modifications to this Bond: None See Section 18

CONTRACTOR AS PRINCIPAL
Company: *(Corporate Seal)*
Romo Contractors LLC

SURETY
Company: *(Corporate Seal)*
Endurance American Insurance Company

Signature: 

Name and Title: *Manager Member*

Signature: 

Name and Title: Russ Frenzel
Attorney-in-Fact
Surety Phone No. (914) 468-8000

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:
Baldwin-Cox Agency
5930 Preston View Blvd., Suite 200
Dallas, TX 75240
(972) 644-2688

OWNER'S REPRESENTATIVE:
(Architect, Engineer or other party:)
Owner/Architect

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____ *(Corporate Seal)*

SURETY

Company: _____ *(Corporate Seal)*

Signature: _____ **N/A**
Name and Title:
Address

Signature: _____ **N/A**
Name and Title:
Address

POLICYHOLDER NOTICE

TEXAS - IMPORTANT NOTICE

To obtain information or make a complaint:
You may call the company's telephone number for
information or to make a complaint at:

1-212-471-2800

You may write the Company at:

Endurance American Insurance Company
Attention: <<Business Unit>>
750 Third Avenue
New York, NY 10017

You may contact the Texas Department of
Insurance to obtain information on companies,
coverages, rights or complaints at:

1-800-252-3439

You may write the

Texas Department of Insurance
PO Box 149104
Austin, TX 78714-9104
FAX# (512) 475-1771

Web: <http://www.tdi.texas.gov>

E-mail: ConsumerProtection@tdi.texas.gov

PREMIUM OR CLAIM DISPUTES: Should you have a
dispute concerning your premium or about a claim
you should contact the company first. If the dispute
is not resolved, you may contact the Texas
Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY: This notice
is for information only and does not become a part
or condition of the attached document.

AVISO IMPORTANTE

Para obtener informacion o para someter una
queja:
Usted puede llamar al numero de telefono de la
compania para informacion o para someter una
queja al:

1-212-471-2800

Usted tambien puede escribir a:

Endurance American Insurance Company
Attention: <<Business Unit>>
750 Third Avenue
New York, NY 10017

Puede comunicarse con el Departamento de
Seguros de Texas para obtener informacion acerca
de companias, coberturas, derechos o quejas al:

1-800-252-3439

Puede escribir al

Departamento de Seguros de Texas
PO Box 149104
Austin, TX 78714-9104
FAX# (512) 475-1771

Web: <http://www.tdi.texas.gov>

E-mail: ConsumerProtection@tdi.texas.gov

DISPUTAS SOBRE PRIMAS O RECLAMOS: Si tiene
una disputa concerniente a su prima o a un
reclamo, debe comunicarse con la compania
primero. Si no se resuelve la disputa, puede
entonces comunicarse con el departamento (TDI).

UNA ESTE AVISO A SU POLIZA: Este aviso es solo
para proposito de informacion y no se convierte en
parte o condicion del documento adjunto.

POWER OF ATTORNEY

Know all Men by these Present, that ENDURANCE AMERICAN INSURANCE COMPANY, a Delaware corporation (the "Corporation"), with offices at 750 Third Avenue, New York, NY 10017, has made, constituted and appointed and by these presents, does make, constitute and appoint BROCK BALDWIN, MICHAEL B. HILL, BRENT BALDWIN, WILLIAM D. BALDWIN, BRADY K. COX, RUSS FRENZEL, BLAINE ALLEN, TRENAE DONOVAN, TONIE PETRANEK, KEITH ROGERS its true and lawful Attorney(s)-in-fact, at DALLAS in the State of TX and each of them to have full power to act without the other or others, to make, execute, seal and deliver for and on its behalf bonds, undertakings or obligations in surety or co-surety with others, also to execute and deliver on its behalf renewals, extensions, agreements, waivers, consents or stipulations relating to such aforesaid bonds, undertakings or obligations provided, however, that no single bond or undertaking so made, executed and delivered shall obligate the Corporation for any portion of the penal sum thereof in excess of the sum of TEN MILLION Dollars (\$10,000,000).

Such bonds and undertakings for said purposes, when duly executed by said attorney(s)-in-fact, shall be binding upon the Corporation as fully and to the same extent as if signed by the President of the Corporation under its corporate seal attested by its Corporate Secretary.

This appointment is made under and by authority of certain resolutions adopted by the Board of Directors of the Corporation by unanimous written consent on the 21st day of July, 2011, a copy of which appears below under the heading entitled "Certificate".

This Power of Attorney is signed and sealed by facsimile under and by authority of the following resolution adopted by the Board of Directors of the Corporation by unanimous written consent on the 21st day of July, 2011 and said resolution has not since been revoked, amended or repealed:

RESOLVED, that in granting powers of attorney pursuant to certain resolutions adopted by the Board of Directors of the Corporation by unanimous written consent on the 21st day of July, 2011 the signature of such directors and officers and the seal of the Corporation may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signature or seal shall be valid and binding upon the Corporation in the future with respect to any bond or undertaking to which it is attached.

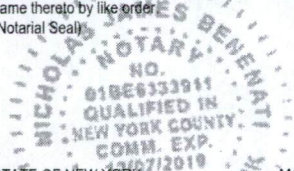
IN WITNESS WHEREOF, the Corporation has caused these presents to be duly signed and its corporate seal to be hereunto affixed and attested this 16th day of June, 2017 at New York, New York.

(Corporate Seal) ATTEST *Richard M. Appel*
RICHARD M. APPEL, SENIOR VICE PRESIDENT

ENDURANCE AMERICAN INSURANCE COMPANY
By *Brian Beggs*
BRIAN BEGGS, EXECUTIVE VICE PRESIDENT

STATE OF NEW YORK ss: MANHATTAN
COUNTY OF NEW YORK

On the 16th day of June, 2017 before me personally came BRIAN BEGGS to me known, who being by me duly sworn, did depose and say that (s)he resides in NEW YORK, NEW YORK that (s)he is a EXECUTIVE VICE PRESIDENT of ENDURANCE AMERICAN INSURANCE COMPANY, the Corporation described in and which executed the above instrument; that (s)he knows the seal of said Corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation, and that (s)he signed his (her) name thereto by like order (Notarial Seal).



Nicholas Benenati

Nicholas James Benenati, Notary Public - My Commission Expires 12/07/2019

CERTIFICATE

STATE OF NEW YORK ss: MANHATTAN
COUNTY OF WESTCHESTER

I, CHRISTOPHER SPARRO, the PRESIDENT of ENDURANCE AMERICAN INSURANCE COMPANY, a Delaware Corporation (the "Corporation"), hereby certify:

- 1. That the original power of attorney of which the foregoing is a copy was duly executed on behalf of the Corporation and has not since been revoked, amended or modified; that the undersigned has compared the foregoing copy thereof with the original power of attorney, and that the same is a true and correct copy of the original power of attorney and of the whole thereof;
- 2. The following are resolutions which were adopted by the Board of Directors of the Corporation by unanimous written consent on 21st day of July, 2011 and said resolutions have not since been revoked, amended or modified:

"RESOLVED, that each of the individuals named below is authorized to make, execute, seal and deliver for and on behalf of the Corporation any and all bonds, undertakings or obligations in surety or co-surety with others and to execute and deliver for and on behalf of the Corporation renewals, extensions, agreements, waivers, consents or stipulations relating to such aforesaid bonds, undertakings or obligations:

RICHARD M. APPEL, BRIAN BEGGS

And be it further

RESOLVED, that each of the individuals named above is authorized to appoint attorneys-in-fact for the purpose of making, executing, sealing and delivering bonds, undertakings or obligations in surety or co-surety for and on behalf of the Corporation."

3. The undersigned further certifies that the above resolutions are true and correct copies of the resolutions as so recorded and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal this _____ day of _____, 20 20.



Christopher Sparro

CHRISTOPHER SPARRO, PRESIDENT