



CONSTRUCTION AGREEMENT

This construction Agreement (“Agreement”) is entered into effective ___/___/2024 (“Effective Date”), by and between Heartland Park & Recreation, LLC, (“Contractor”), and the City of Killeen TX (“City”), for the construction of certain improvements described herein. For convenience, Contractor and City may hereinafter be referred to collectively as “parties”, and individually as a “party” as well as the title “Killeen Park Sidewalk Projects” may be referred to as “Project” or “the project”.

WHEREAS, the City and Heartland have worked in concert to design and fund improvements laid out in base plan and budget, Exhibits 1 and 2, which are attached and incorporated into this Agreement; and

WHEREAS the unique nature and design of the Project have limited the available options for construction of the Project;

NOW THEREFORE, for and in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

A. **Scope of the Work.**

1. City agrees to engage Contractor and Contractor hereby agrees to perform the work and services consisting of the final design and construction of sidewalks within and around Conder, Phyllis, and Stewart Parks, all of which are located in the city of Killeen, Texas. In accordance with, the bid/quote of Heartland Park and Recreation, LLC, attached hereto and incorporated herein as Exhibit 1 to be finalized with approved plans approved by city staff.

B. **Agreement Documents.**

1. The Agreement Documents consist of this Agreement and following exhibits attached hereto and incorporated herein by reference:
 - i. Exhibit #1: Bid proposal titled “City of Killeen Park Sidewalk Projects
 - ii. Exhibit #2: Layouts and designs for the proposed Project.
 - iii. Exhibit #3: Project Inspection Form
 - iv. Exhibit #4: Conditional Waiver Form
 - v. Exhibit #5: Final Waiver Form

C. Time for Completion

1. The work to be performed under this Agreement shall be commenced on the date the City provides Contractor with written Notice to Proceed (“NTP”), and shall be completed on or before 8/31/2024 (“Date of Completion” or “Completion”). Time is of the essence for all deadlines stated in this Agreement. Completion time may vary based on NTP date. For purposes of this Agreement, the term “Substantially Complete” shall mean that the improvements and facilities are ready to be used for their intended purpose(s), save and except for minor items to be addressed by Contractor on the City inspector’s “punch list” which shall be addressed prior to Completion by Contractor and final approval and acceptance of the Project by the City.

D. Compensation

The Agreement price shall be the sum of **one million one hundred and seventy two thousand seven hundred seventy one dollars** (\$ 1,172,771 .00) as evidenced by Exhibit 1: Killeen Park Sidewalk Projects attached hereto and shall not exceed such price without prior written authorization in the form of a valid change order executed in accordance with Section E of this Agreement.

E. Change in the Work

1. Neither the scope of the work, the date of Substantial Completion, the Completion Date, nor the Agreement price under this Agreement may be modified by Contractor without the written consent of the City. The City’s consent may only be given by the execution of one or more change orders. To be valid, a change order must be in writing, must specify the specific change requested, (e.g., materials, specifications, contract price, etc.), must itemize the additional cost associated with such requested change, and must be signed by an authorized City representative. If a change order is requested to modify the date of Substantial Completion or the Completion Date the change order shall specify the reason(s) for the delay.
2. The City may request that Contractor perform additional work outside the scope of this Agreement, in accordance with applicable law, but Contractor is under no obligation to grant such request if the City and Contractor cannot reach an agreement as to the amount of additional compensation that would be required to perform the additional work. This change must be set forth in a change order executed in conformance with this Section E, and subject to the limitations set forth in Chapter 252 of the Texas Local Government Code.
3. The City may request in writing that Contractor perform less work than what is required by this Agreement, and, in such case, the Contractor and the City shall agree to reduce the Agreement price in accordance with the reduction of work requested. This change shall only be valid if set forth in a change order executed in conformance with this Section E.

F. Construction Management.

1. The City and Contractor shall each designate a representative to be the primary contact for all matters related to the Project. The City's representative or his designee shall have a right to inspect the Project at all times. However, neither the City's inspector nor the City shall have any liability for failing to identify defects in the work or services performed by Contractor. The City may issue a Stop Work Order if the City's inspector determines that the work or services performed by Contractor do not comply with the requirements of applicable law or any of the Agreement Documents. The City shall not be required to make any further payment to Contractor under this Agreement until such defects are remediated by Contractor to the City's satisfaction.

G. Compensation and Method of Payment

1. The designated representatives of the parties shall meet at a minimum of one (1) time per month, but no more than two (2) times per month to determine the percentage of the work performed by Contractor for payment to the Contractor. The representatives shall then complete and sign a Project Inspection Form attached and incorporated herein as Exhibit #3.
2. Contractor shall then submit to City an Invoice. The Invoice shall identify the percentage of the work completed by Contractor (based on the most recently signed Project Inspection Form) and the amount due to Contractor, which shall equal the product of the percentage of completion. The Invoice shall be accompanied by a signed and notarized Conditional Waiver & Release on Progress Payment Form attached and incorporated herein as Exhibit 4.
3. The City shall pay the amount due to Contractor within fourteen (14) days from the date of the City's receipt of the Invoice and other mandatory documentation mentioned above.
4. After the Date of Completion, as determined by the City's inspector, the City shall release the final payment to Contractor upon completion of the following:
 - i. City's receipt of a final Invoice and Conditional Waiver & Release Upon Final Payment Form, attached and incorporated herein as Exhibit #5, confirming that all bills for labor and materials have been paid and that no liens were filed on the Project.
 - ii. The Contractor's completion of any items listed on the city inspector's punch list (to be given to Contractor on the Date of Substantial Completion); and
 - iii. The City's acceptance of the Project, which acceptance shall not be unreasonably delayed or withheld.

H. Contractor's Rights, Duties and Warranties

1. Contractor warrants and represents that:

- i. the materials and equipment furnished under this Agreement will be of good quality and new unless the Agreement Documents require or permit otherwise.
 - ii. Contractor shall perform the work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards of construction practice for construction of projects similar to the Project, except to the extent the Agreement Documents expressly specify a higher degree of finish or workmanship, in which case the standard shall be the higher standard; and
 - iii. the Project will conform to the requirements of the Agreement Documents
2. Contractor further warrants and represents to City that:
 - i. it has all personnel required to perform the work to complete the Project as required under and in accordance with the quality and time frame required under this Agreement.
 - ii. all of the services required hereunder shall be performed by Contractor or under Contractor's supervision; and
 - iii. that all personnel engaged in the work shall be qualified to perform such work.
3. Contractor shall furnish, at the Contractor's own cost and expense, all of the materials, supplies, machinery, equipment, tools, superintendence, labor (either directly or through subcontractors), insurance and other accessories and services as may be necessary in order to complete the Project in accordance with the Agreement Documents. Contractor shall provide insurance meeting the requirements set forth in **Section J** of this Agreement.
4. Contractor shall at all times keep the jobsite free from all disposable material, debris and rubbish as is practicable and shall remove same from any portion of the jobsite when it becomes objectionable or when it interferes with the progress of the work or anytime requested by City representative.
5. During the construction, Contractor shall not damage improvements on any private or public property, including the jobsite. In the event Contractor damages such property, Contractor shall, at its own expense, immediately and fully restore such property to the condition existing prior to the damage. Contractor shall maintain insurance as required by **Section J** of this Agreement to cover such damages.
6. Upon completion of the Work, Contractor shall remove from the jobsite all, materials, tools and equipment belonging to Contractor and restore the jobsite to an appearance and condition as specified in the Agreement Documents or, if none is specified, to an appearance and condition acceptable to the City, in City's sole reasonable discretion.
7. Contractor shall have available at all times, as its agent, a competent superintendent capable of reading and thoroughly understanding the Agreement Documents, and who is thoroughly experienced in the type of work being performed. The Superintendent shall have full authority to execute orders or directions and to

promptly supply such materials, equipment, tools, labor and incidentals as may be required to complete the Project.

8. The Contractor shall be responsible for all work performed by any subcontractors in accordance with Section 2251.022 of the Texas Government Code.
9. Contractor may suspend work on the Project in the event Contractor has complied with the proper procedures for procuring payment (as set forth in **Section G**) and the City does not timely pay Contractor in accordance with Section G. Should the City's failure to pay Contractor for a period in excess of thirty (30) days from the date payment is due, Contractor may declare the City to be in material breach of this Agreement and exercise its rights under this Agreement.
10. In the event that the performance by either party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence. The Parties agree that should such event occur, the date of Substantial Completion shall be extended by change order for the number of days the Project is delayed pursuant to this paragraph, as agreed upon by the Parties, but not otherwise, and no penalty will be assessed to Contractor for delays as set forth in this Section. However, Contractor shall still be required to submit change orders requesting extensions of time in accordance with **Section E**. of this Agreement.

I. INDEMNITY.

1. **TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL RELEASE, INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY, AND ALL OF ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES, ARISING OUT OF OR RESULTING FROM BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE OF PROPERTY, ARISING OR ALLEGED TO ARISE OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR OTHER ACTIVITIES OF CONTRACTOR, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY ACT OR OMISSION OF CONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE.**

J. Insurance

1. Contractor agrees to and shall maintain insurance for comprehensive general

liability, automobile liability insurance, and worker's compensation during the term of this Agreement in the amounts not less than those set forth below and meeting the following requirement:

- i. Commercial General Liability Insurance at minimum combined single limits of \$500,000.00 per occurrence and \$1,000,000.00 general aggregate for Bodily injury and Property Damage.
 - ii. Workers Compensation Insurance at statutory limits, including employer's liability coverage at minimum limits of \$50,000.00 by disease aggregate, \$100,000.00 by disease - per occurrence, \$100,000.00 per occurrence - each accident.
 - iii. Commercial Automobile Liability Insurance at minimum combined single limits of \$1,000,000.00 per occurrence for bodily injury and property damage, including non-owned and hired car coverage.
2. All such policies shall contain a waiver of subrogation rights against the City, and Contractor shall, prior to the commencement of the work, furnish the City with a valid Certificate of Insurance covering all workers and subcontractors, and providing the coverage set forth above. All insurance policies shall name the City as an additional insured.

K. Subcontractors

1. Contractor shall solicit bids from local subcontractors and service providers where possible, provided that the City reserves the right to object to any subcontractor that the City deems, in its sole discretion, to be objectionable. Contractor shall not utilize any objectionable subcontractor on the Project.

L. Dispute Resolution

1. The parties agree to use reasonable efforts to resolve any and all disputes regarding the subject matter of this Agreement without resorting to litigation. If a dispute should arise regarding any aspect of this Agreement, the parties agree to meet informally to discuss the possible solutions to the dispute. Should the informal meeting fail to resolve the dispute, the parties may utilize litigation in a court of competent jurisdiction.

M. Termination of Agreement.

1. If, for any reason, Contractor shall fail to fulfill in timely and proper manner its obligation under this Agreement, City shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination by certified mail, return receipt requested, at the address specified below which notice shall specify the effective date thereof, and which notice shall be delivered to Contractor at least three (3) calendar days before the effective date of such termination.
2. In the event City shall fail to pay Contractor in accordance **Section G** Contractor

may terminate this Agreement by providing the City with written notice of such termination by certified mail, return receipt requested, at the address specified below.

3. Upon the City's termination pursuant to this **Section M**, Contractor shall immediately begin taking any necessary steps to cease work and leave the jobsite. Contractor shall be entitled to payment of such amounts as shall compensate Contractor for the services satisfactorily performed on or before the termination date in accordance with this Agreement. The City shall not be required to reimburse Contractor for any services performed or expenses incurred after notice of termination is effective under this Section.
4. In the event this Agreement is terminated by either party as a result of the material breach of this Agreement by the other party and after compliance with the Dispute Resolution provisions of **Section L**, the non-breaching party may elect to file suit in a court of competent jurisdiction and recover its damages from the breaching party as allowed by law.

N. Miscellaneous Provisions

1. No Third-Party Beneficiaries.

For purposes of this Agreement, including its intended operation and effect, the parties specifically agree and contract that:

- i. the Agreement only affects matters/disputes between the parties to this Agreement, and it is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with City, Contractor, or both; and
- ii. the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from its obligations to either City or Contractor, or both.

2. Non-Waiver.

In no event shall the making by City of any payment to Contractor constitute or be construed as a waiver by City of any breach of covenant or any default which may exist on the part of Contractor, and the making of any such payment by City while any such breach or default shall exist in no way impairs or prejudices any right or remedy available to City in respect to such breach or default.

3. Assignability

Contractor may not assign, convey, or transfer its interest, rights, and duties under this Agreement without the prior written consent of City.

4. Notices

Any notices, bills, invoices, or documents required by this Agreement shall be sufficient if sent by the parties in the United States mail, postage paid, return receipt

requested or via overnight delivery service, to the addresses noted below and shall be effective upon receipt if mailed to:

IF TO CITY:

City of Killeen
ATTN: Director of Parks and Recreations
PO Box 1329
Killeen, TX 76540

IF TO CONTRACTOR:

Heartland Park & Recreation, LLC
Attn: Haley Spencer
P.O. Box 505
White Oak, Texas 75693

Either party may change the address and contact information stated in this paragraph by providing written notice to the other party in accordance with this section.

5. **Independent Contractor**

Contractor covenants and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Contractor.

6. **Severability**

If any of the terms or provisions of this Agreement are held for any reason to be invalid, void, illegal or unenforceable as a matter of law, the remainder of the Agreement shall remain in full force and effect and shall not be impaired, affected or invalidated by such holding.

7. **Amendment**

The Agreement Documents may not be amended or altered except by a written document signed by authorized representatives of both parties.

8. **Authority to Execute**

The parties hereby warrant and represent that the undersigned person or persons are properly authorized to execute this Agreement on behalf of the parties.

9. **Governing Law/Venue**

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Exclusive venue for any action, without limitation, shall brought hereunder shall lie in Bell County, Texas.

10. **Attorney's Fees**

If it becomes necessary for any party to file suit to interpret or enforce the terms of this Agreement, the prevailing party in such action shall be entitled to recover from the non-prevailing party, reasonable attorney's fees and costs of court.

CITY OF KILLEEN, TEXAS

By: _____

Print Name: **Judith Tangalin**

Title: **Executive Director of Finance**

Date: _____

ACKNOWLEDGEMENT TO FOLLOW

STATE OF TEXAS

§

COUNTY OF BELL

§

§

Before me, the undersigned authority in and for Bell County, Texas, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he is the _____ of City of Killeen, Texas, and that he is authorized by said legal entity to execute the foregoing instrument as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office, this the _____ day of _____, 2024.

Notary Public in and for the State of Texas

Print Name

My Commission Expires:

ACKNOWLEDGEMENT TO FOLLOW

HEARTLAND PARK & RECREATION, LLC

By: [Signature]

Print Name: SEAN SPENCER

Title: OWNER

Date: 4/17/2024

STATE OF TEXAS §
COUNTY OF GREGG §

Before me, the undersigned authority in and for GREGG County, Texas, on this day personally appeared SEAN SPENCER, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he is the OWNER of Heartland Park & Recreation, LLC, and that he is authorized by said legal entity to execute the foregoing instrument as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office, this the 17th day of APRIL, 2024.



[Signature]

Notary Public in and for the State of Texas

THERESA L HARKRIDER
Print Name

My Commission Expires:
2-21-2026

City of Killeen Park Sidewalk Projects
 Phyllis, Conder, Stewart, and Long Branch Parks



Phyllis Park
 Site Prep/ Dirt Work
 Sidewalk 4" 10' Wide 1,150 LF
 Possible 2 Culverts (Budgetary)
Total Phyllis Park

Conder Park
 Site Prep/ Dirt Work
 Sidewalk 4" 10' Wide 5165 LF
 ADA Compliance Contingency*
Total Conder

Stewart Park
 Site Prep/ Dirt Work
 Sidewalk 4" 10' Wide 1,115 LF
 ADA Compliance Contingency*
Total Stewart Park

Long Branch Park West
 Site Prep/Dirt Work
 Sidewalk 4" 10' Wide 4350 Lf
 ADA Compliance Contingency*
Total Long Branch Park

| Number | Unit Cost | Total | Total Project |
|----------|--------------|----------------------|----------------------|
| 1 | \$ 6,500.00 | \$ 6,500.00 | |
| 11500 Sf | \$ 8.25 | \$ 94,875.00 | |
| 2 | \$ 1,500.00 | \$ 3,000.00 | |
| | | \$ 104,375.00 | \$ 104,375.00 |
| 1 | \$ 37,000.00 | \$ 37,000.00 | |
| 51650 Sf | \$ 8.25 | \$ 426,112.50 | |
| 1 | \$ 14,450.00 | \$ 14,450.00 | |
| | | \$ 477,562.50 | \$ 477,562.50 |
| 1 | \$ 6,000.00 | \$ 6,000.00 | |
| 11150 Sf | \$ 8.25 | \$ 91,987.50 | |
| 1 | \$ 8,000.00 | \$ 8,000.00 | |
| | | \$ 105,987.50 | \$ 105,987.50 |
| 1 | \$ 31,250.00 | \$ 31,250.00 | |
| 43500 Sf | \$ 8.25 | \$ 358,875.00 | |
| 1 | \$ 18,000.00 | \$ 18,000.00 | |
| | | \$ 408,125.00 | \$ 408,125.00 |

Sub Total Project
Design Fee**
Project Management***
Total Project

| Number | Unit Cost | Total | Total Project |
|--------|-----------|--------------|-----------------|
| | | | \$ 1,096,050.00 |
| | | \$ 54,800.00 | \$ 54,800.00 |
| | | \$ 21,921.00 | \$ 21,921.00 |
| | | | \$ 1,172,771.00 |

Notes:

1. Numbers are subject to final design.

* ADA allowances are for known challenges that will be worked out in design. The allowances representant are close estimates based on knowledge of the project locations. If funds are not needed they will be left in the project.

** All projects are priced a-la-carte with the idea that the city will select the project mix based on available funds. The design fee will be no more than 5% of the final project cost excluding contingency funds. Final design will be sealed engineered construction plans.

*** Like the design fee project management is based on all project being one at the same time, the final fee will be no more than 2% of the project (excluding design fee and contingency budgets).

EXHIBIT 2

Conder Park
Proposed Sidewalk Plan v2



5165 Lf

HEARTLAND
Park & Recreation, LLC

Conder St

Sutton Dr

Conder St

Conder Park

400 FT

Google Earth

Long Branch Park

Proposed Sidewalk Plan

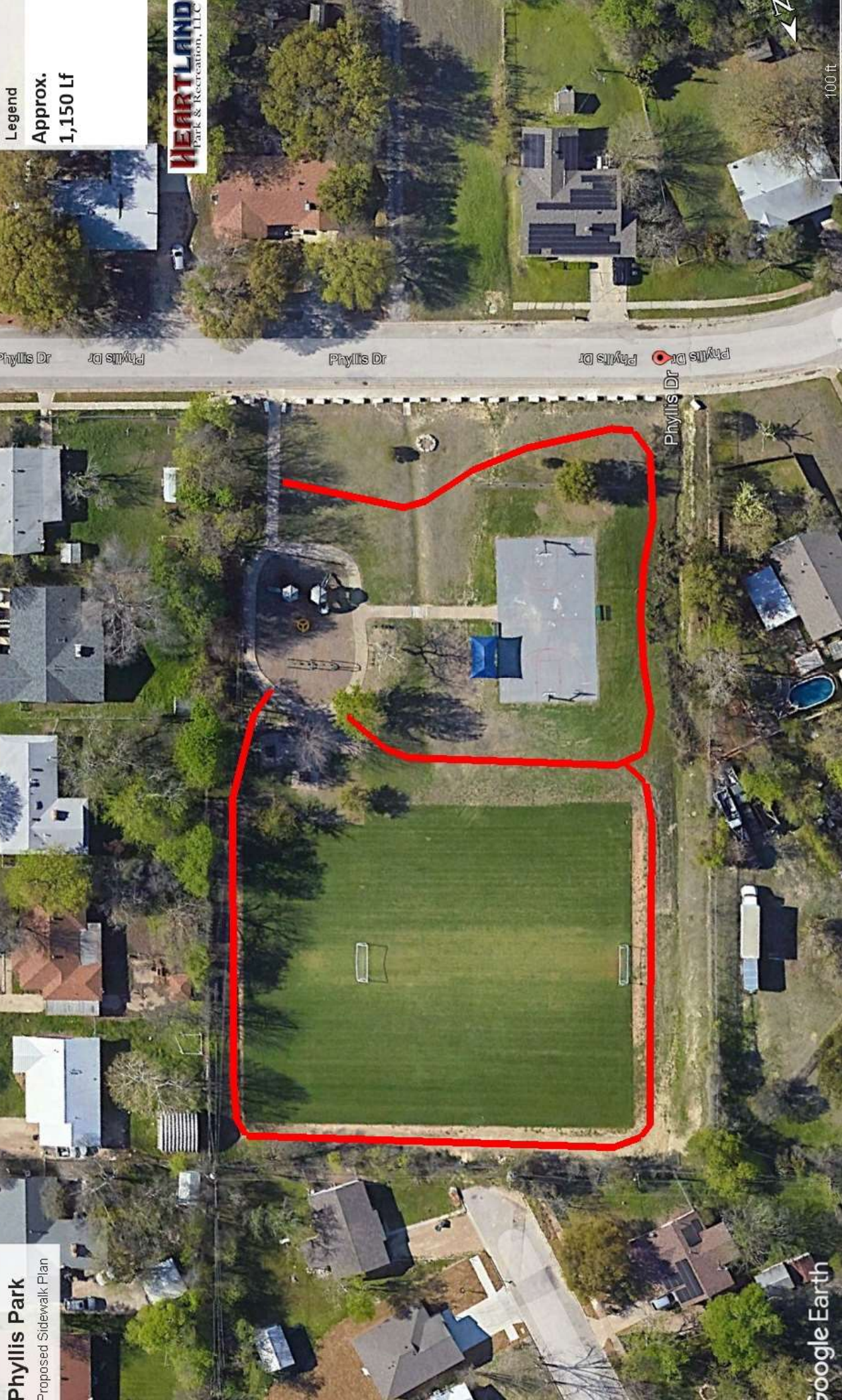
4,350 Lf

HEARTLAND
Park & Recreation, LLC



Phyllis Park

Proposed Sidewalk Plan



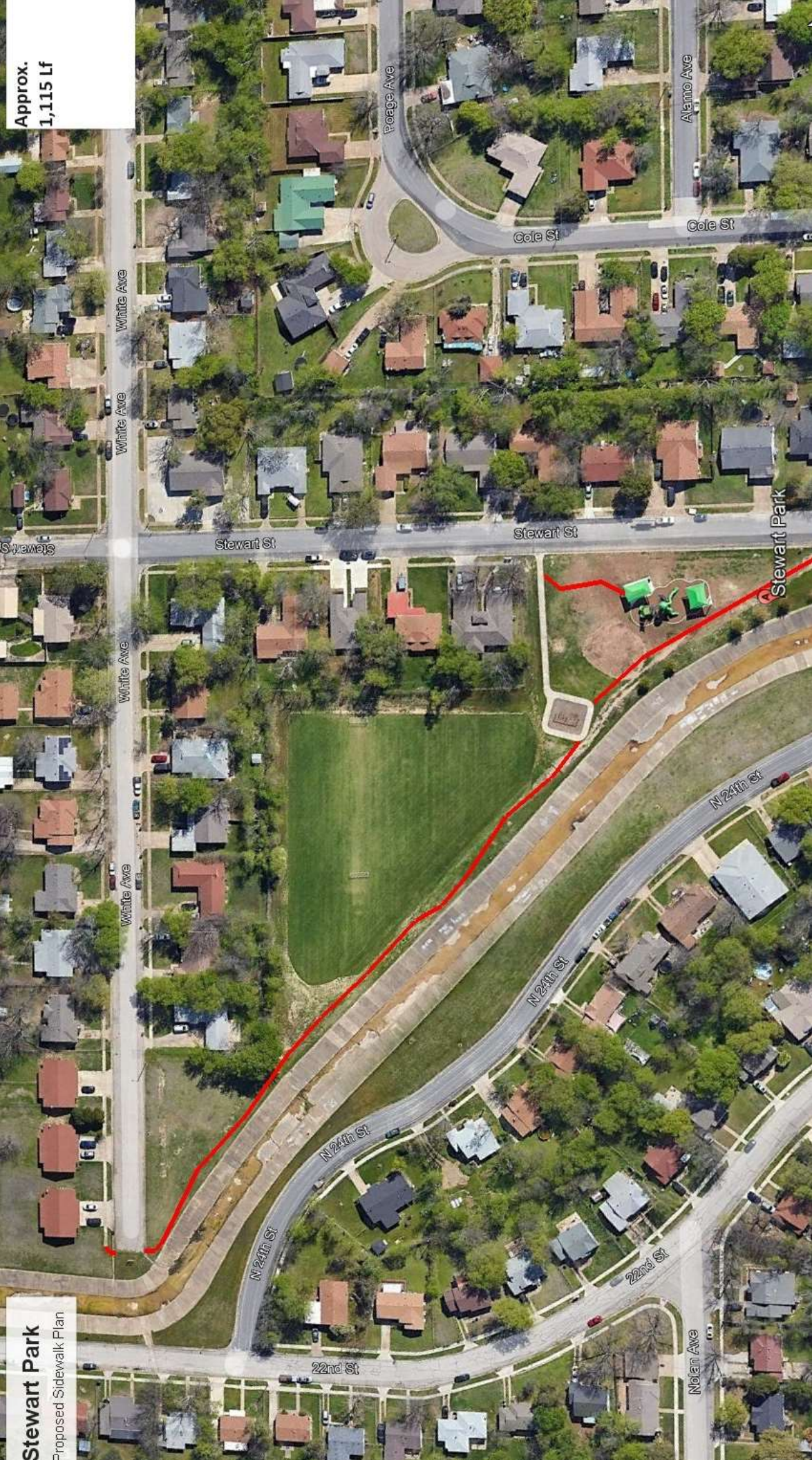
Legend
Approx.
1,150 Lf

HEARTLAND
Park & Recreation, LLC

Google Earth

100 ft

Approx.
1,115 Lf



Stewart Park
Proposed Sidewalk Plan



Project Inspection Form

Project: **Killeen Park Sidewalk Projects**

Inspection # _____

Date: _____

Draw #: _____

Description and Percentage of Work Completed (Use Back of Form if Needed):

EXHIBIT

Heartland Park & Recreation, LLC Inspector's Signature

Date: _____

City of Killeen Representative

Date: _____

Please attach Photographs and/or other information that pertains to this Inspection report.



**CONDITIONAL WAIVER
AND
RELEASE UPON PROGRESS PAYMENT**

PROJECT: Killeen Park Sidewalks

On receipt by the signer of this document of a check from the **City of Killeen** in the sum of **\$ 0.00**, payable to **Heartland Park & Recreation, LLC**, and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of to the **City of Killeen** following extent: stop notice, or bond right the undersigned has on the job. This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to **Heartland Park & Recreation, LLC** as indicated in the attached statement(s) or progress payment request(s), pending modifications and changes, or other items furnished. Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer. The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Heartland Park & Recreation, LLC

(Date)

HEARTLAND

Park & Recreation, LLC

CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

PROJECT: Killeen Park Sidewalk Projects

On receipt by the signer of this document of a check from City of Killeen
(maker of check) in the sum of \$ 0.00, payable to **HEARLAND PARK & RECREATION, LLC**, and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of City of Killeen

This release covers the final payment to the signer for all labor, services, equipment, or materials furnished to the property - Park Sidewalk Projects by Heartland Park & Recreation, LLC, all suppliers & Sub Contractors.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Heartland Park & Recreation, LLC

Authorized Signature:

Print Name:

Street Address:

City / State / Zip

C. Time for Completion

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