

**00 52 00 CONTRACT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT**

THIS AGREEMENT is by and between City of Killeen ("Owner") and
Valcorp Enterprises, LLC ("Contractor").

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

ARTICLE 2 – THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **Terminal HVAC Improvements Phase II – Vestibule Upgrades at Killeen-Fort Hood Regional Airport.**

ARTICLE 3 – ENGINEER

- 3.01 The Project has been designed by **Garver, LLC**.
- 3.02 The Owner has retained **Garver, LLC** ("Engineer") to act as Owner's representative, and to have the rights, responsibilities, duties, and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Days*

- A. The Work will be substantially completed within the following number of days after the date when the Contract Times commence to run as provided in Section 80-07 of the General Provisions, and completed and ready for final payment in accordance with Section 90-09 of the General Provisions within the following number of days after the date when the Contract Times commence to run.
- B. Parts of the Work shall be substantially completed on or before the following Milestone(s):
1. Milestone 1 **Substantial Completion – 70 calendar days**
 2. Milestone 2 **Final Completion – 30 calendar days after substantial completion**

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of

requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

Schedule	Liquidated Damages Cost	Allowed Construction Time
Substantial Completion	\$500.00/calendar day	70 Calendar Days

4.04 *Special Damages*

A. Not Used.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item):
- B. The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. Estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer and Owner.

ARTICLE 6 – PAYMENT PROCEDURESSUBMITTAL AND PROCESSING OF PAYMENTS

- A. Applications for Payment shall be made in accordance with Section 90-06 of the General Provisions. Applications for Payment will be processed by Engineer as provided in the General Provisions.

6.02 *Progress Payments; Retainage*

- A. Progress payments and retainage shall be in accordance with Section 90-06 of the General Provisions.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Section 50-15 of the General Provisions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in Section 90-09 of the General Provisions, minus any damages as described in Paragraphs 4.03 and 4.04.

ARTICLE 7 – INTEREST

7.01 Not Used.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.

- B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all laws and regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: ~~(1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Special Provisions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Special Provisions, especially with respect to Technical Data in such reports and drawings.~~
- E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.
- K. The Contractor hereby represents and warrants to and for the benefit of the Owner that:
 - 1. The Contractor has reviewed and understands the prevailing wage rate requirements and will provide any further verified information, certification or assurance of compliance as may be required by the Owner.
 - 2. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner to recover as damages against the Contractor any loss, expense or cost (including without limitation attorney's fees) incurred by the Owner resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Owner). While the Contractor has no direct contractual privity with the State, as a lender to the Owner for the funding of its Project, the Owner and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. Executed Contract
 - 2. Addenda (if any)
 - 3. Advertisement for Bids
 - 4. Instructions to Bidders
 - 5. Bid Form
 - 6. Bid Bond
 - 7. List of Proposed Subcontractors
 - 8. Wage Rates
 - 9. Qualification Statement
 - 10. General Provisions
 - 11. Special Provisions
 - 12. DBE Participation Reporting
 - 13. Bidders Certifications
 - 14. Supplemental Specifications as listed in the Table of Contents
 - 15. Technical Specifications as listed in the Table of Contents
 - 16. Drawings
 - 17. Performance Bond
 - 18. Payment Bond
 - 19. Certificates of Insurance
 - 20. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid
 - 21. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Provisions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

- A. Terms not otherwise defined herein and used in this Agreement will have the meanings stated in the General Provisions and the Special Provisions.

10.02 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

Killeen-Fort Hood Regional Airport

Terminal HVAC Improvements Phase II – Vestibule Upgrades

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

OWNER:

City of Killeen

By: Kent Cagle

Title: City Manager

Attest: Laura Calcote

Title: City Secretary

Address for giving notices:

CONTRACTOR:

Valcorp Enterprises, LLC

By: 

Title: Vice President

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: 

Title: Office Manager

Address for giving notices:

4101 Murray Avenue

Haltom City, TX 76117

License No.: _____
(where applicable)

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