

## LETTER OF AGREEMENT

This is a Letter of Agreement (“Agreement”) between the City of Killeen (referred to herein as “City”) and Box Gang Manufacturing LLC (referred to herein as “Contractor”), collectively the “Parties”.

In consideration of the premises and of the mutual covenants and agreements contained in this Agreement, the Parties hereby agree as follows:

Scope of Agreement. The purpose of this Agreement is to enlist the services of Contractor to: Provide, unload, and install a new Marathon Apollo Two Ram Automatic Tie Baler Conveyor Package with Pit Style Slider Bed, hopper extension, pit plates, VFD, and upper photocell; and provide three-day onsite training (the “Project”).

Term of Agreement. This Agreement shall commence on the date that the Agreement is accepted and agreed to by the Parties and shall terminate 152 calendar days after commencement of work on the Project.

Consideration. Contractor agrees to provide the services stated above:

\_\_\_ at the rate of \$\_\_\_\_\_ per hour; or

X for the lump sum payment not to exceed \$323,275.

Independent Contractor. Contractor shall act as an Independent Contractor. Under no circumstances shall Contractor be deemed an employee or partner of Owner.

Applicable Laws. Contractor shall follow all applicable local, State, and Federal laws, regulations, and requirements for the abatement and disposal of lead, asbestos, and other routinely encountered hazardous substances. If any unusual substances or extraordinary amounts of the aforementioned substances are encountered, the Contractor will contact the City to contact the State and the relevant agency with authority for regulation of the substance.

Standard of Care. The standard of care for all professional engineering and related services performed or furnished by Contractor under this Agreement will be the care and skill ordinarily used by members of the Contractor’s profession practicing under similar circumstances at the same time and in the same locality.

Insurance. Contractor shall procure and maintain insurance in the following amounts:

Worker’s Compensation	Statutory
Automobile Liability	\$500,000 Combined single Limit for each accident (Bodily injury and property damage).
General Liability	\$1,000,000 each occurrence (Bodily injury and property damage).

Professional Liability

\$1,000,000 general aggregate

On all policies, except Worker's Compensation, City shall be listed as an additional insured with a full waiver of subrogation. A certificate of coverage shall be provided to the City prior to commencing work on the Project.

Subcontracts and Assignments. Contractor's rights and obligations hereunder are deemed to be personal and may not be transferred or assigned. Any assignments shall be void and of no effect.

Indemnification. To the fullest extent permitted by law, City or Contractor, as applicable, shall indemnify and hold harmless the other party, and the other party's officers, directors, partners and employees from and against any and all costs, losses and damages (including, without limitation, all fees and charges of attorneys and other professionals, and all court or dispute resolutions costs) caused by the negligent acts or omissions of the City or Contractor, as applicable, or their respective officers, directors, partners, employees and consultants with respect to the performance under this Agreement or the Project.

Termination. This Agreement may be terminated by either party for cause upon thirty (30) calendar days' written notice, provided such cause cannot be reasonably cured within such thirty (30) day period. City may terminate this Agreement for convenience effective upon receipt of written notice declaring the same and Contractor shall be compensated for all work completed at that time in accordance with this Agreement.

Texas Law. This Agreement shall be subject to and governed by the laws of the State of Texas. The Parties agree that for venue purposes, any and all lawsuits, disputes, or causes of action shall be in Bell County, Texas.

Severability. If any provision of this Agreement shall, for any reason, be held to violate any applicable law, then the invalidity of such a specific provision in this Agreement shall not be held to invalidate the remaining provisions of this Agreement.

Survival. Any provision of this Agreement providing for indemnity, insurance or a duty that necessarily will not be completed until after the expiration or termination of this Agreement shall continue in full force and effect until such a time as all duties have been fully performed.

Non-waiver. Failure to enforce any provision of this Agreement by either party shall not constitute a waiver of that provision for purposes of the subsequent enforcement of that provision or the remainder of this Agreement.

Entire Agreement. This Agreement shall represent the entire agreement by and between the Parties and it may not be changed except by written amendment duly executed by all Parties.

Contract Verification. Texas law provides that a governmental entity may not enter into certain contracts for goods and services with a company unless the company provides written verification regarding aspects of the company’s business dealings.

**Acknowledgement – “Boycott Israel”**

Texas Government Code, Chapter 2271 – the company must verify that it does not boycott Israel and will not boycott Israel during the term of the contract. Boycott Israel is defined in Government Code Chapter 808.

**Acknowledgement – “Boycott Energy Companies”**

Texas Government Code, Chapter 2274 – the company must verify that it does not boycott energy companies and will not boycott energy companies during the term of the contract. Boycott energy company is defined in Government Code Chapter 809.

**Acknowledgement – “Prohibition on contracts with companies that discriminate against firearm and ammunition industries”**

Texas Government Code, Chapter 2274 – the company must verify that it does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association. Verification is not required from a sole source provider. Discriminate, firearm entity and firearm trade association are defined in Government Code Chapter 2274.

Affected by the above statutes are contracts 1) with a company with ten (10) or more full-time employees, and 2) valued at \$100,000 or more to be paid wholly or partly from public funds. A contract with a sole proprietorship is not included.

By signing below, I verify that the company listed below does not boycott Israel, does not boycott energy companies and does not discriminate against firearms entities or firearm trade associations and will not do so during the term of the contract entered into with the City of Killeen. I further certify that I am authorized by the company listed below to make this verification.

**SIGNED, ACCEPTED AND AGREED** To this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by the undersigned Parties who acknowledge that they have read and understand this Agreement and that the Agreement is issued in accordance with local, State, and Federal laws, and the undersigned Parties hereby execute this legal document voluntarily and of their own free will.

City

Contractor

\_\_\_\_\_  
Kent Cagle, City Manager  
City of Killeen

\_\_\_\_\_  
Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

**Box Gang Manufacturing LLC**

16736 E Hardy  
Houston, TX 77032 US  
(713) 742-5555  
info@boxgangmfg.com  
www.boxgangmfg.com



# Estimate

**ADDRESS**

ATTN Purchasing Division  
802 N 2nd St Bldg E 2nd Floor  
#215  
Killeen, TX 76541

**SHIP TO**

ATTN Purchasing Division  
802 N 2nd St Bldg E 2nd  
Floor #215  
Killeen, TX 76541

**ESTIMATE # 7368**

**DATE 09/16/2022**

DESCRIPTION	QTY	RATE	AMOUNT
<b>MARATHON BALER</b> APOLLO TWO RAM AUTOMATIC TIE BALER CONVEYOR PACKAGE - PIT STYLE SLIDER BED INCLUDES: HOPPER EXTENSION, PIT PLATES, VFD, AND UPPER PHOTOCCELL  FACTORY STARTUP TRAINING INCLUDED 3 DAYS ON SITE	1	294,775.00	294,775.00
<b>INSTALL</b> Unload & Install: Customer to run & hook up electrical service Test & Train	1	21,500.00	21,500.00

Lead Time 16 Weeks after PO

CUSTOMER IS RESPONSIBLE FOR SITE WORK, BALING WIRE,  
AND ELECTRICAL WIRING / DISCONNECT

Sourcewell Contract 040621-MEC  
Member number 86944

SUBTOTAL	316,275.00
SHIPPING	7,000.00
<b>TOTAL</b>	<b>\$323,275.00</b>

Accepted By

Accepted Date