

## LETTER OF AGREEMENT

This is a Letter of Agreement (“Agreement”) between the **City of Killeen** (“City”) and **American Restore, Inc.** (“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 the Contractor to:

Provide surface preparation, labor, materials, and all necessary equipment for the resurfacing of the tipping floor with a high impact and high abrasion resistant material specifically designed to take the wear and chemical attack of high-volume transfer stations as more fully described in the Proposal attached hereto as Attachment “A” (the “Project”).

Term of Agreement. This Agreement shall become effective on the date that the last required signature is affixed and shall automatically terminate after 365 days.

Consideration. Contractor agrees to provide the services stated above:

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

X for the lump sum payment not to exceed \$ 80,412; or

\_\_\_\_\_ progress payments in the total amount not to exceed \$\_\_\_\_\_.

Payment Bond. Texas Government Code, Chapter 2253, requires a payment bond for any public works contract in excess of \$50,000. Prior to commencing any work on the Project or within thirty (30) days of the effective date of this Agreement, whichever is sooner, Contractor shall obtain a payment bond, made payable to the City, in the amount of this Agreement. Contractor shall use the payment bond form attached hereto as Attachment “B”, or a substantially similar form subject to City approval.

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 and Professional Liability, 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.

Contract Verification. Texas law provides that a governmental entity may not enter into contracts over for goods and services valued at \$100,000 or more with a company that employs at least 10 full-time employees unless the company provides written verification regarding aspects of the company's business dealings.

- 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.
- 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.
- 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. Discriminate, firearm entity and firearm trade association are defined in Government Code Chapter 2274.

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.

**SIGNED, ACCEPTED AND AGREED** to by the undersigned Parties, on the dates indicated, 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                      Date  
City Manager

\_\_\_\_\_  
Jim Andrews                      Date  
President

15552 Commerce Lane  
Huntington Beach, CA 92649



Lic. No. 976449  
Ph: (714) 893-9080  
Fax: (714) 891-1658

## PROPOSAL

### PROPOSAL SUBMITTED TO:

NAME: Jason Hanchey  
POSITION: Transfer Station Manager  
COMPANY: City of Killeen  
ADDRESS: 12200 TX-195  
Killeen TX 96542  
CELL: (254) 501-8980  
PHONE:  
FAX:  
EMAIL: jhanchey@killeentexas.gov

### PROJECT INFORMATION:

PROJECT NAME: Killeen Texas Fire Repair  
  
JOB ADDRESS: 12200 TX-195  
Killeen TX 96542  
  
PROPOSAL DATE: March 27, 2023

**Attn: Jason Hanchey**

We hereby propose to furnish materials and labor necessary for the completion of the following:

### **LOCATIONS:**

**Based on Fire Repair Area from email 1.20.23 – Area 12'x12' at 2" average thickness**

### **SCOPE OF WORK:**

**Repair Topping with EucoFloor 404 as Follows:**

**\$78,070.00**

- a. The volume of material included in this primary bid will cover the square footage at the average thickness specified above. (Including waste and overages)
- b. Mobilize and set up.
- c. Saw cut perimeter at repair area and chip to create key at all termination points for new flooring system.
- d. Chain drag existing slab to sound and remove any loose, fractured or questionable materials.
- e. Scabble area as required to remove any fractured aggregate.
- f. Shotblast as required to remove any surface laitance and create CSP bond profile recommended by manufacturer.
- g. Mix and place two-component medium viscosity 100% solids epoxy bonding agent.
- h. Mix, place and finish EucoFloor 404 floor topping system onsite.
- i. Re-establish control joints as required and install control joints where required.
- j. Install sealing/cure compound to hydrate topping and control loss of moisture throughout.
- k. Install polyethylene curing cover for optimal hydration wet cure process reducing permeability of concrete.
- l. Clean up and demobilize.

**Payment Bond \$2,342.00**

**INCLUSIONS:**

- 1 - All necessary equipment
- 2 - All OSHA required safety equipment
- 3 - Daily debris removal
- 4 - Daily site cleanup
- 5 - Generator
- 6 - Price based on 1 move in
- 7 - Standard insurance certificates
8. Price includes local davis bacon rates
- 9 - All debris to remain onsite

**EXCLUSIONS/TO BE PROVIDED BY OTHERS:**

- 1 - Access to work area
- 2 - Monitoring of jobsite to be free of tampering and foot traffic during off hours and for 24 hours following installation
- 3 - Onsite dumpster
- 4 - Painting
- 5 - Potable water source within 100 ft. of work area
- 6 - Removal of obstructions to work area
- 7 - Restroom facilities
- 8 - Traffic control
- 9 - We exclude all plans, permits, fees, testing, inspections, surveys, bonds and engineering
- 10 - Area free from all moveable equipment and trades

**GENERAL NOTES:**

- 1 - Vehicle access required by others.
- 2 - American Restore, Inc. is an open shop employer
- 3 - American Restore, Inc. is not responsible for damage to installed systems due to abnormal wear, natural disasters, vandalism or excessive use
- 4 - American Restore, Inc. is not responsible for cracks caused by movement of the substrate
- 5 - Area must be free of all moveable equipment and trades prior to American Restore, Inc. arrival
- 6 - Area to be received in a clean, dry and sound condition
- 7 - Cementious product proposed has 3-5 week lead time for delivery
- 8 - Dumpster for debris removal to be supplied by owner
- 9 - Parking will be provided by others
- 10 - Permits, fees, and inspections are excluded
- 11 - Price based on 1 move in
- 12 - Any additional work items will be billed on a time and material basis at \$90/MH and 20% markup on all 3rd party costs.

**PAYMENT TERMS:**

- Weekly Billings Based on Progress
- Balance Due at Time of Completion

**PRICING:**

We Propose hereby to furnish all material and labor in order to complete the above scope of work, for the sum of:

Eighty Thousand Four Hundred Twelve

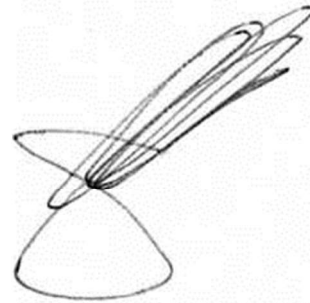
**TOTAL: \$80,412.00**

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance.

**CALIFORNIA ONLY:**

NOTICE TO OWNER: Contractors are required by law to be licensed and regulated by the contractors' state license board. Any Questions concerning a contractor may be referred to the registrar of the board whose address is: Contractors' State License Board, 3132 Bradshaw Rd., Sacramento, CA 95827.

AUTHORIZED  
SIGNATURE



Jim Andrews - President

NOTE: This proposal may be withdrawn by us if not accepted within: **45 days**

**ACCEPTANCE OF THIS PROPOSAL** constitutes a contract. The above prices, specifications and conditions are satisfactory and hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above. We agree to pay the amount of the contract based on the terms above. We further agree to pay reasonable attorney or collection agency fees together with all court costs should it be necessary for the company to retain the services of an attorney or collection agency.

SIGNATURE

Legal Owner Information (if different from contract holder)

NAME

NAME

TITLE

ADDRESS

PHONE

DATE

## PAYMENT BOND

<b>Contractor</b> Name: Address <i>(principal place of business)</i> :	<b>Surety</b> Name: Address <i>(principal place of business)</i> :
<b>Owner</b> Name: <b>City of Killeen, Texas</b> Mailing address <i>(principal place of business)</i> : <b>101 North College Street</b> <b>Killeen, Texas 76541</b> <b>Attn: City Manager</b>	<b>Contract</b> Description <i>(name and location)</i> :  Contract Price: Effective Date of Contract:
<b>Bond</b> Bond Amount: Date of Bond: <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i> Modifications to this Bond form: <input checked="" type="radio"/> None <input type="radio"/> See Paragraph 18	
Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Payment Bond, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.	
Contractor as Principal	Surety
<i>(Full formal name of Contractor)</i>	<i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <div style="text-align: center;"><i>(Signature)</i></div>	By: _____ <div style="text-align: center;"><i>(Signature)(Attach Power of Attorney)</i></div>
Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>	Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>
Title: _____	Title: _____
Attest: _____ <div style="text-align: center;"><i>(Signature)</i></div>	Attest: _____ <div style="text-align: center;"><i>(Signature)</i></div>
Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>	Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>
Title: _____	Title: _____
<i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i>	

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 will arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 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 Paragraph 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 will arise after the following:
  - 5.1. Claimants who do not have a direct contract with the Contractor
    - 5.1.1. 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
    - 5.1.2. have sent a Claim to the Surety (at the address described in Paragraph 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 Paragraph 13).
6. If a notice of non-payment required by Paragraph 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 Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 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 Paragraph 7.1 or 7.2 will 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 Paragraph 7.1 or 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 will not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond will 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 will 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 satisfying 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 will 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 Paragraph 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 will be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, will 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 will be deemed deleted here from and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
15. Upon requests 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:
    - 16.1.1. The name of the Claimant;
    - 16.1.2. The name of the person for whom the labor was done, or materials or equipment furnished;
    - 16.1.3. 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;
    - 16.1.4. A brief description of the labor, materials, or equipment furnished;

- 16.1.5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
  - 16.1.6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
  - 16.1.7. The total amount of previous payments received by the Claimant; and
  - 16.1.8. 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 is to include without limitation in the terms of "labor, materials, or equipment" that part of the 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 will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
18. Modifications to this Bond are as follows: **[Describe modification or enter "None"]**