

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

THIS AGREEMENT is by and between City of Killeen ("Owner") and
KOBO Utility Construction Corp. ("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: **Replacement of the existing airfield lighting control and monitoring system (ALCMS) at the following locations:**
- A. **West Airfield Lighting Vault**
 - B. **East Airfield Lighting Vault**
 - C. **Air Traffic Control Tower (ATCT)**
 - D. **North Approach lighting shelter**
 - E. **South Approach lighting shelter**

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 **Procurement Period – Contract time will be suspended for procurement of materials and will commence after a Notice to Procure is issued.**

2. Milestone 2 **Substantial Completion – 60 Calendar Days as specified in Paragraph 4.02.A after a Notice to Proceed is issued.**
3. Milestone 3 **Final Acceptance – 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):
1. Milestones: Contractor shall pay Owner **\$1,500** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.B above for achievement of Milestone 2, until Milestone 2 is achieved.

Contractor shall pay Owner **\$1,500** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.B above for achievement of Milestone 3, until Milestone 3 is achieved.
 2. Liquidated damages for failing to timely attain Substantial Completion and Milestones are additive and will be imposed concurrently.

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 PROCEDURES

6.01 Submittal 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. City of Killeen General Terms and Conditions
 11. Conflict of Interest Questionnaire
 12. Notice of Award
 13. Contract
 14. Performance Bond
 15. Payment Bond
 16. General Provisions
 17. Special Provisions
 18. Supplemental Specifications as listed in the Table of Contents
 19. Technical Specifications as listed in the Table of Contents
 20. Drawings
 21. Certificates of Insurance
 22. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid

23. 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 Regional Airport (GRK)
GRK ALCMS Replacement

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:

By: _____

Title: _____

Attest: _____

Title: _____

Address for giving notices:

CONTRACTOR:

By: _____

Title: _____

Attest: _____

Title: _____

Address for giving notices:

License No.: _____

(where applicable)

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**COMMONWEALTH OF MASSACHUSETTS
CONTRACTOR AUTHORIZED SIGNATORY LISTING**

Issued May

2004



CONTRACTOR LEGAL NAME: *Kobco Utility Construction Corp.*
CONTRACTOR VENDOR/CUSTOMER CODE:

INSTRUCTIONS: Any Contractor (other than a sole-proprietor or an individual contractor) must provide a listing of individuals who are authorized as legal representatives of the Contractor who can sign contracts and other legally binding documents related to the contract on the Contractor's behalf. In addition to this listing, any state department may require additional proof of authority to sign contracts on behalf of the Contractor, or proof of authenticity of signature (a notarized signature that the Department can use to verify that the signature and date that appear on the Contract or other legal document was actually made by the Contractor's authorized signatory, and not by a representative, designee or other individual.)

NOTICE: *Acceptance of any payment under a Contract or Grant shall operate as a waiver of any defense by the Contractor challenging the existence of a valid Contract due to an alleged lack of actual authority to execute the document by the signatory.*

For privacy purposes **DO NOT ATTACH** any documentation containing personal information, such as bank account numbers, social security numbers, driver's licenses, home addresses, social security cards or any other personally identifiable information that you do not want released as part of a public record. The Commonwealth reserves the right to publish the names and titles of authorized signatories of contractors.

AUTHORIZED SIGNATORY NAME	TITLE
<i>Kevin Michael O'Neil</i>	<i>President</i>

I certify that I am the President, Chief Executive Officer, Chief Fiscal Officer, Corporate Clerk or Legal Counsel for the Contractor and as an authorized officer of the Contractor I certify that the names of the individuals identified on this listing are current as of the date of execution below and that these individuals are authorized to sign contracts and other legally binding documents related to contracts with the Commonwealth of Massachusetts on behalf of the Contractor. I understand and agree that the Contractor has a duty to ensure that this listing is immediately updated and communicated to any state department with which the Contractor does business whenever the authorized signatories above retire, are otherwise terminated from the Contractor's employ, have their responsibilities changed resulting in their no longer being authorized to sign contracts with the Commonwealth or whenever new signatories are designated.

[Handwritten Signature]

Signature

Date: *4/4/25*

Title: *President*

Telephone: *508-888-2255*

Fax: *508-888-2224*

Email: *estimating@kobcoutility.com*

[Listing can not be accepted without all of this information completed.]

A copy of this listing must be attached to the "record copy" of a contract filed with the department.

COMMONWEALTH OF MASSACHUSETTS
CONTRACTOR AUTHORIZED SIGNATORY LISTING

Issued May

2004



CONTRACTOR LEGAL NAME :

CONTRACTOR VENDOR/CUSTOMER CODE:

PROOF OF AUTHENTICATION OF SIGNATURE

This page is optional and is available for a department to authenticate contract signatures.
It is recommended that Departments obtain authentication of signature for the signatory
who submits the Contractor Authorized Listing.

This Section MUST be completed by the Contractor Authorized Signatory in presence of notary.

Signatory's full legal name (print or type): Kevin Michael O'Neil

Title: President

X [Signature]

Signature as it will appear on contract or other document (Complete only in presence of notary):

AUTHENTICATED BY NOTARY OR CORPORATE CLERK (PICK ONLY ONE) AS FOLLOWS:

I, Malisa Fearing (NOTARY) as a notary public, do hereby witness the signature of the aforementioned signatory above and I verified the individual's identity on this

April 4, 20 25.

My commission expires on: 9/21/29



I, Nancy O'Neil (CORPORATE CLERK) certify that I witnessed the signature of the aforementioned signatory above, that I verified the individual's identity and confirm the individual's authority as an authorized signatory for the Contractor on this date:

April 4, 20 25.

AFFIX CORPORATE SEAL



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