

THIS AGREEMENT, made and entered into this _____ day of _____, 2022, by and between the City of Killeen, a municipal corporation, organized and existing under laws of the State of Texas, acting through its City Manager or other duly authorized designee, hereinafter referred to as the "Owner" and Andale Construction, of the City of Jourdanton, Counties of Atascosa, and the State of Texas, hereinafter referred to as the "CONTRACTOR."

WITNESSETH: That for and in consideration of the promises, performances, payments, and agreements hereinafter mentioned, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Sole Source High Density Mineral Bond Surface Treatment (HA5) and all work in accordance with the specifications (if applicable) which are incorporated herein by reference and made part hereof and which have been prepared by the City of Killeen and approved by OWNER, and OWNER agrees to pay the CONTRACTOR for the following:

High Density Mineral Bond estimated quantity of approx. 212,927 square yards at \$3.35 per square yard
Per proposal and specification attached

Description:

HA5 is a High Density Mineral Bond uniquely emulsified with a near neutral charge that is able to hold exceptionally high concentrations of fine aggregates and other components that resist deterioration. This can be used throughout the City of Killeen to preserve asphalt on residential roadways.

Equipment

1. All equipment, tools, and machines used in the performance of the work shall be maintained in satisfactory working condition at all times to ensure a high quality product.

Construction Methods

1. **General.** The CONTRACTOR shall be responsible for the production, transportation, placement, and finishing of the specified surface treatment to the requirements of the specification.
2. **General.** Leakage of fuels, oils, grease, hydraulic or brake fluids or other contaminants onto the prepared surface or newly-laid mat will not be allowed.
3. **Lines.** Care shall be taken to insure straight lines along the curbs and shoulders. No runoff on these areas will be permitted. Lines at intersections shall be kept straight to provide good appearance.
4. **Clean-up.** All areas, such as valley gutters, curb & gutters, and intersections shall have the surface treatment removed as specified by the Director of Transportation or designee. The CONTRACTOR shall remove any debris associated with the performance of the work on a daily basis.

Notification and Traffic Control

1. **Notification.** All entities affected by the surface treatment shall be notified two days in advance of the surfacing. Should work not occur on the specified day, a notification will be distributed. Deferred work shall be rescheduled as soon as possible after all other pending work that notifications have gone out for is completed. All practical efforts must be made to minimize the amount of work that must be deferred and rescheduled to control citizen inconvenience.

The notification shall be in a form of written posting, stating the time and date that the surface treatment will take place and a general description of the process. Notices shall be placed in secure, prominent locations and information shall be written legibly in ink that will not run if the notices get wet.

2. **Traffic Control.** Suitable methods shall be used by the CONTRACTOR to protect the surface treatment from all types of vehicular traffic without damage. Opening traffic does not constitute acceptance of the work. The Director of Transportation or designee shall be notified of the methods to be used.

In areas which are subject to an increased rate of sharp turning vehicles, additional time may be required for a more complete cure of the surface treatment to prevent damage. Slight tire marks may be evident in these areas after opening but will diminish over time with rolling traffic. If these areas are not severely rutted they should be considered as normal characteristics of surface treatment and should be accepted.

Acceptance Plan

1. All areas meeting the requirements of the specifications will be accepted for payment.
2. Substandard portions of the work, as determined by the Director of Transportation or designee, shall be remedied or removed and replaced to the satisfaction of the Director of Transportation or designee at the expense of the CONTRACTOR. Remedied areas satisfactory to the Director of Transportation or designee will be included in the area accepted for payment.

Pricing & Term

1. Contract term shall be for a two-year (2) period upon execution by the City of Killeen.
2. **Escalation Clause.** Should market conditions prevail which dictate an increase, the CONTRACTOR may submit documentation requesting permission to increase pricing no later than 90 days prior to the end of the initial twelve (12) months of contract. If the CONTRACTOR fails to give timely notice, price may not be increased. Escalation may only occur after the initial twelve (12) months of the contract and only upon securing the approval of the City of Killeen in writing. Requests for price adjustments must be solely for the purpose of accommodating an increase in the contractor's cost, not profits.

Any request in price change with supporting documentation shall be sent to only:

**City of Killeen
Attn: Purchasing Division
802 N. 2nd Street
Building E, 2nd Floor, Rm #215
Killeen Texas 76541**

On the envelope place "Price Change Notification HA5 High Density Mineral Bond"

3. **After the exhaustion of the entire contract term, the City may request up to an additional sixty (60) days past any contract term to advertise an ITB and / or award a new Sole Source agreement for such items without price adjustments.**

Independent Contractor

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

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).

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.

Prevailing Wage Rates

The Contractor shall pay each employee prevailing wages as set forth in the Davis Bacon Wage Determination attached hereto.

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, Contractor, shall indemnify and hold harmless the Owner, and the Owner'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 Contractor or its 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. Owner 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.

The City's execution of and performance under this Agreement will not act as a waiver by the City of any immunity from suit or liability to which it is entitled under applicable law. The parties acknowledge that the City, in executing and performing this Agreement, is a governmental entity acting in a governmental capacity.

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.

- 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. 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.

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.

OWNER agrees to pay CONTRACTOR from available funds for performance of the Contract in accordance with the Proposal and the provisions of the Contract Documents, subject to additions and deductions, as provided therein.

The OWNER's payment obligations are payable only and solely from funds available for the purposes of this Agreement. Although drafted by the OWNER, this Agreement, in event of any disputes over its meaning or application, shall be interpreted fairly and reasonably, and neither more strongly for nor against either party.

OWNER

CONTRACTOR

By: _____
City of Killeen

By: _____
Andale Construction

Date

Date

For City Manager

Title of Signatory

Printed Name of Signatory

By: _____
City Attorney

Title of Signatory, Authorized Representative

Date

ATTEST (as applicable)



Headquarter Office
 7700 N. Hayes Dr.
 Valley Center, KS 67147
 P: 316-832-0063
 F: 316-440-8810

Southern Texas Division Off
 1799 fm 766 Suite 100
 Cuero, TX
 P: 361-243-8535

PROPOSAL

Date	Estimate
3/03/2022	Killeen TX - 2022

www.andaleconstruction.com

Partner in Pavement Preservation		Project Description		Project Location
City of Killeen 101 N. College St. Killeen, TX 76541		Apply HA5 (High Density Mineral Bond) to roads within City Limits of Killeen		City of Killeen, TX
P.O. Number	Terms	Advisor	Region	State License #
	Due upon completion	Caleb Fiske	Texas	

Description	Quantity	U/M	Rate	Total
HA5 HIGH DENSITY MINERAL BOND: -- Install "HA5" High Density Mineral Bond advanced performance pavement preservation treatment. -- No guarantee surface treatments will adhere to areas saturated with motor oil. -- HA5 meets demands of APWA (American Public Works Association) specification (Section 32 01 13.68 High Density Mineral Bond).	190,000	SY	3.35	636,500.00
TRAFFIC CONTROL	1	LS	9,765.00	9,765.00
CITIZEN NOTIFICATION	1	LS	1,851.00	1,851.00
MOBILIZATION	1	LS	19,206.00	19,206.00
Proposal is based off of estimated number of units. Amount invoiced will be based off of actual units installed. * Pricing is based upon one mobilization for the project. Projects that are broken up to be done over different time periods requiring multiple mobilizations would result in the project being priced based upon the tier of the square yardage for each scheduled project. Message boards will be separately priced items. Excessively dirty roadways will require separate cleaning fees. Price quote expires 1-13-2020, unless otherwise agreed upon in writing. Tax will be charged unless Exemption Certificate is provided.				
Total			\$	667,322.00

Proposal void 30 days from date listed on proposal. By signing this proposal (contract), I agree that Andale Construction Inc. may not be held liable for delays, conditions, or Acts of God beyond their control, which situations may delay or cause cancelation partially or entirely on any project. Delays include project demand and material supply. Andale Construction Inc. is not liable for any ADA compliance, if needed, Client should consult with an ADA compliance professional prior to specific project approval.

PAYMENT TERMS: Due Upon Completion (Completion by line item 'Progress Billing' and/or completion of project core)
 There may be concerns from Client following completion. Upon request, post-project walk-throughs may be scheduled to review concerns. Payment will still remain due upon invoice. Andale Construction Inc. is committed to client satisfaction and resolving concerns, though at times, this may be delayed.

As the Client, I agree to not withhold payment due to walk-through requests, cleaning, touch-up, or warranty concerns. I understand and agree that I will be billed for towing as incurred and will be due on receipt. I agree that if I demand to retain payment until warranty work or touch up is completed, the retainer will be a fixed amount of 5% of invoice, up to \$750.00. I agree that I may be billed as each line item is completed and each item may become their own respective invoice.

I understand that interest accrues on all past-due amounts at 24% per annum from invoice date, until paid in full; and may be billed collection fee's of up to 40%, and Client agrees to pay all fees accrued by collection efforts. These terms apply to all amount(s) incurred by me and for whom I have committed management responsibility, regardless of timing. Total Proposal price includes one mobilization. Additional mobilizations may be billed up to \$3,500 per additional mobilization. This agreement provides Client written Notice of Right to Lien. Pricing does not include Certified Payroll unless stated otherwise.

INSURANCE: These insurance limits are listed by Andale Construction to inform Client of such. Any premiums above the following to be paid by Client. This disclosure overrules any other contract language wherein Andale Construction agrees to differing limits. Certificates available upon request.

GENERAL LIABILITY: \$1m (inc.), \$2m (agg.) AUTO: \$1m UMBRELLA: \$2m (inc.), \$2m (agg.) PERSONAL INJ: \$1m WORKERS COMP: \$1m

One year guarantee on workmanship and product liability.

Signature _____ Print Name _____ Date _____ Andale Construction Inc. _____