

STATE OF
TEXAS COUNTY
OF BELL

THIS AGREEMENT, made and entered into this 16 day of April, 2021, 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 Lone Star Paving, of the City of Temple, Counties of Bell, and the State of Texas, hereinafter referred to as the "CONTRACTOR."

In consideration of the premises, performances, payments, and agreements set forth herein CONTRACTOR hereby agrees to deliver:

Planing and Texturing Pavement (Milling) 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:

Planing and Texturing Pavement (Milling)	0"-2"	\$ <u>1.67</u> per square yard
	2"-4"	\$ <u>3.30</u> per square yard
	4"-6"	\$ <u>5.00</u> per square yard

Traffic Control \$ 1,000.00 onetime fee (if included listed as 0.00)

Mobilization \$ 1,000.00 onetime fee (if included listed as 0.00)

Per proposal and specification attached

Description:

Plane, or plane and texture, existing asphalt concrete pavement, asphalt-stabilized base, or concrete. Texture bridge deck surfaces.

Equipment

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

Construction Methods

General. The CONTRACTOR shall be responsible for the production, transportation, placement, and finishing of the specified services to the requirements of the specification.

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.

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.

Clean-up. All areas, such as valley gutters, curb & gutters, and intersections shall have the products 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

Notification. All entities affected by the services shall be notified two days in advance of the service occurrence. 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 services 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.

Traffic Control. Suitable methods shall be used by the CONTRACTOR to protect the services completed 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 materials 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 services and should be accepted.

Acceptance Plan

All areas meeting the requirements of the specifications will be accepted for payment. 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

Any contract resulting from this ITB shall be effective for a two (2) year period upon execution by the City of Killeen. The City anticipates that contract shall be renewed pursuant to the availability of funds and at the discretion of the City. The following clauses shall be included in the contract:

Option Clause: It is agreed that the City will have the option to extend the contract for up to two (2) additional years, in six (6) month intervals. This option will occur automatically at the end of the previous term unless the City / Contractor serve notice 60 days prior to contract termination or the end of any extension period. The option to extend will not be considered if funding is unavailable or if the contractor's past performance is not within the industry standard.

Escalation Clause: Should market conditions prevail which dictate an increase, the successful contractor may submit documentation requesting permission to increase pricing no later than 90 days prior to the end of each 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 contract or after extension renewal and only upon securing the approval of the City in writing. Requests for price adjustments must be solely for the purpose of accommodating an increase in the contractor's cost, not profits.

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 and award a new bid for such items without any pricing 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
\$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.

Acknowledgement – “Boycott Israel”

By signing and submitting this bid the vendor hereby verifies that it does not boycott Israel and will not boycott Israel during the term of this contract. Boycotting Israel is defined in Texas Government Code section 808.001 to mean refusing to deal with, terminating business activities with, or taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

The City reserves the right to purchase all material / services from the next most responsible vendor for failure to provide specified material / services in the contract at time of order or if materials are not available at time requested.

Contractor hereby agrees to abide by all requirements signed in Appendix of Bid # 21.25 Waiver of any breach of the Contract shall not constitute waiver of any subsequent breach.

OWNER agrees to pay CONTRACTOR from available funds for performance of the Contract in accordance with the Bid 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

By: _____
City of Killeen

Date

City Manager
Title of Signatory

CONTRACTOR

By: W. W. S. S.
Lone Star Paving

4-16-21

Date

Kevin Schneider

Printed Name of Signatory

Pm/Estimator

Title of Signatory, Authorized Representative

ATTEST (as applicable)

STATE OF TEXAS
COUNTY OF BELL

THIS AGREEMENT, made and entered into this 16 day of April, 2021, 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 Lone Star Paving, of the City of Temple, Counties of Bell, and the State of Texas, hereinafter referred to as the "CONTRACTOR."

In consideration of the premises, performances, payments, and agreements set forth herein CONTRACTOR hereby agrees to deliver:

2" Asphalt Overlay 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:

2" Asphalt Overlay \$ \$89.50 per ton

Traffic Control \$ \$3,000.00 onetime fee (if included listed as 0.00)

Mobilization \$ \$4,000.00 onetime fee (if included listed as 0.00)

Per proposal and specification attached

Description:

Asphalt Overlay is a paving method of applying a new layer of asphalt to deteriorating surfaces. This can be used throughout the City of Killeen.

Equipment

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

Construction Methods

General. The CONTRACTOR shall be responsible for the production, transportation, placement, and finishing of the specified services to the requirements of the specification.

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.

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.

Clean-up. All areas, such as valley gutters, curb & gutters, and intersections shall have the products 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

Notification. All entities affected by the services shall be notified two days in advance of the service occurrence. 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 services 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.

Traffic Control.

Suitable methods shall be used by the CONTRACTOR to protect the services completed 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 materials 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 services and should be accepted.

Acceptance Plan

All areas meeting the requirements of the specifications will be accepted for payment. 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

Any contract resulting from this ITB shall be effective for a two (2) year period upon execution by the City of Killeen. The City anticipates that contract shall be renewed pursuant to the availability of funds and at the discretion of the City. The following clauses shall be included in the contract:

Option Clause: It is agreed that the City will have the option to extend the contract for up to two (2) additional years, in six (6) month intervals. This option will occur automatically at the end of the previous term unless the City / Contractor serve notice 60 days prior to contract termination or the end of any extension period. The option to extend will not be considered if funding is unavailable or if the contractor's past performance is not within the industry standard.

Escalation Clause: Should market conditions prevail which dictate an increase, the successful contractor may submit documentation requesting permission to increase pricing no later than 90 days prior to the end of each 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 contract or after extension renewal and only upon securing the approval of the City in writing. Requests for price adjustments must be solely for the purpose of accommodating an increase in the contractor's cost, not profits.

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 and award a new bid for such items without any pricing 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.

Acknowledgement – “Boycott Israel”

By signing and submitting this bid the vendor hereby verifies that it does not boycott Israel and will not boycott Israel during the term of this contract. Boycotting Israel is defined in Texas Government Code section 808.001 to mean refusing to deal with, terminating business activities with, or taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli- controlled territory, but does not include an action made for ordinary business purposes.

The City reserves the right to purchase all material / services from the next most responsible vendor for failure to provide specified material / services in the contract at time of order or if materials are not available at time requested.

Contractor hereby agrees to abide by all requirements signed in Appendix of Bid # 21.25 Waiver of any breach of the Contract shall not constitute waiver of any subsequent breach.

OWNER agrees to pay CONTRACTOR from available funds for performance of the Contract in accordance with the Bid 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

By: _____

City of Killeen

Date_____
City Manager
Signatory**CONTRACTOR**

By: _____ City of _____

Lone Star Paving

Date_____
Kevin Schneider Title of
Printed Name of Signatory_____
Pm / Estimator
Title of Signatory, Authorized Representative

ATTEST (as applicable)