

COUNTY: BELL
PROJECT: GREENFOREST CIRCLE DRAINAGE IMPROVEMENTS
BID NO.: 21-06

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification.

**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
ON THE BASIS OF A STIPULATED PRICE**

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

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This document has been approved and endorsed by

The Associated General Contractors of America

Construction Specifications Institute

This Standard Form of Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (No. 1910-8, 1996 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the other. The suggested language for instructions of bidders contained in the Guide to the Preparation of Instructions to Bidders (No. 1910-12, 1996 Edition) is also carefully interrelated with the language of this Agreement. Comments concerning their usage are contained in the EJCDC User's Guide (No. 1910-50). See also Guide to the Preparation of Supplementary Conditions (No. 1910-17, 1996 Edition).

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Introduction

This Agreement between Owner and Contractor on the Basis of a Stipulated Price ("Agreement") has been prepared for use with the Guide to the Preparation of Instructions to Bidders ("Instructions") (No. 1910-12, 1996 Edition) and with the Standard General Conditions of the Construction Contract ("General Conditions") (No. 1910-8, 1996 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the others. Comments concerning their usage are contained in the Commentary on Agreements for Engineering Services and Construction Related Documents ("Commentary") (No. 1910-9, 1996 Edition). For guidance in the preparation of Supplementary Conditions and coordination with Instructions to Bidders, see Guide to the Preparation of Supplementary Conditions ("Supplementary Conditions") (No. 1910-17, 1996 Edition). See also Guide to Preparation of the Bid Form ("Bid Form") (No. 1910-18, 1996 Edition). The EJCDC has not prepared a suggested form of Advertisement or Invitation to Bid because such documents will vary widely in response to statutory requirements.

This form and the other Bidding Documents prepared and issued by the EJCDC assume acceptance of the Project Manual concept of the Construction Specifications Institute which provides for an organizational format for location of all bound documentary information for a construction project, namely: Bidding Requirements (which term refers to the Advertisement or Invitation to Bid, the Instructions, and any bid form that may be suggested or prescribed, all of which provide information and guidance for all Bidders) and the Contract Documents (defined in Article 1 of the General Conditions), which include the Agreement, Bonds and Certificates, the General Conditions, the Supplementary Conditions, the Drawings, and the Specifications. The Bidding Requirements are not considered part of the Contract Documents because much of their substance pertains to the relationships prior to the award of the Contract and has little effect or impact thereafter and because many contracts are awarded without going through the bidding process. In some cases, however, the actual Bid may be attached as an exhibit to the Agreement to avoid extensive retyping. (The terms "Bidding Documents" and "Bidding Requirements" are defined in Article 1 of the General Conditions.) The Project Manual concept is explained in the *Manual of Practice* issued by the Construction Specifications Institute.

Suggested language is presented herein with "Notes to User" to assist in preparing the Agreement. Much of the language should be usable on most projects, but modifications and additional provisions will often be necessary. The suggested language has been coordinated with the other standard forms produced by the EJCDC. When modifying the suggested language or writing additional provisions, the user must check the other documents thoroughly for conflicts and coordination of language usage and make appropriate revisions in all affected documents.

For brevity, referenced paragraphs of the Instructions to Bidders with the prefix "I," those of the Bid Form with the prefix "BF," and those of this Agreement with the prefix "A."

Refer to Contract Documents Bibliography (No. 1910-24, 1996 Edition), which will be helpful in preparing the Agreement, and see in particular the discussions in EJCDC's *Recommended Competitive Bidding Procedures for Construction Projects* ("Bidding Procedures") (No. 1910-9-D, 1987 Edition) by Robert J. Smith, P.E., Esq., on the particular paragraphs of which frequent reference is made below.

NOTES:

1. EJCDC publications may be ordered from NSPE headquarters at 1420 King Street, Alexandria VA 22314-2715; or ACEC headquarters at 1015 15th Street NW, Washington DC 20005; or ASCE headquarters at 345 East 47th Street, New York NY 10017.
2. CSI publications may be ordered from CSI headquarters at 601 Madison Street, Alexandria VA 22314.
3. AIA publications may be obtained from most local AIA chapter offices or by writing to AIA headquarters at 1735 New York Avenue NW, Washington, DC 20006.
4. The Associated General Contractors of America has a series of construction related documents which may be of interest. The AGC's Publications and Services Catalog may be obtained from AGC headquarters at 1957 E Street NW, Washington, DC 20006.

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**EJCDC
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
ON THE BASIS OF A STIPULATED PRICE**

THIS AGREEMENT is by and between City of Killeen (hereinafter called OWNER) and B-Corp Utilities, Inc. (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, 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 referred to as **GREENFOREST CIRCLE DRAINAGE IMPROVEMENTS** and described as follows:

Installation of approximately 1,610 LF of HDPE storm sewer, 13 curb inlets, 10 junction boxes, 1 precast concrete headwall, 210 LF of 8" PVC SDR 26 sanitary sewer main, 3 sewer manholes, Multiple relocations of existing water mains to include 201 LF of new water main, miscellaneous fittings, and pavement replacement.

ARTICLE 2 - THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Same as 1.01

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by

Clark & Fuller, PLLC.

who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities, and have the rights 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 Days to Achieve Substantial Completion and Final Payment

A. The Work will be substantially completed within 160 days after the date when the Contract Times commence to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within 180 days after the date when the Contract Times commence to run.

4.03 Liquidated Damages

A. CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. 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), CONTRACTOR shall pay OWNER \$ 500.00 for each day that expires after the time specified in paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER \$ 500.00 for each day that expires after the time specified in paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 - CONTRACT PRICE

5.01 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs 5.01.A, 5.01.B, and 5.01.C below:

A. For all Work other than Unit Price Work, a Lump Sum of: **N/A**

Six hundred twenty six thousand, four hundred seventy nine dollars and eighty eight cents	(use words)	(\$ <u>626,479.88</u>) to be determined.
		(figure)

All specific cash allowances are included in the above price and have been computed in accordance with paragraph 11.02 of the General Conditions.

B. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this paragraph 5.01.B:

As provided in paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by ENGINEER as provided in paragraph 9.08 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03 of the General Conditions.

C. For all Work, at the prices stated in CONTRACTOR's Bid, attached hereto as an exhibit.

ARTICLE 6 - PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

A. CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

6.02 Progress Payments; Retainage

A. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment on or about the 20th day of each month during performance of the Work as provided in paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established in paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER may determine or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions:

- a. 95 % of Work completed (with the balance being retainage).
- b. 95 % of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

2. Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95 % of the Work completed, less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.02.B.5 of the General Conditions.

6.03 Final Payment

A. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

ARTICLE 7 - INTEREST

7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the maximum rate as allowed by law at the place of the project.

ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

- b. _____ (pages _____ to _____, inclusive);
- c. _____ (pages _____ to _____, inclusive);
- 5. General Conditions (pages 00700-1 to 00700-44, inclusive);
- 6. Supplementary Conditions (pages 1 to 11, inclusive);
- 7. Specifications as listed in the table of contents of the Project Manual;
- 8. Drawings consisting of a cover sheet, sheets numbered C1.1 through C13.2, inclusive, with each sheet bearing the following general title: **GREENFOREST CIRCLE DRAINAGE IMPROVEMENTS**
- 9. Addenda (numbers _____ to _____, inclusive);
- 10. Exhibits to this Agreement (enumerated as follows):
 - a. Notice to Proceed (pages 1 to 1, inclusive);
 - b. CONTRACTOR's Bid (pages 1 to 5, inclusive);
 - c. Documentation submitted by CONTRACTOR prior to Notice of Award (pages _____ to _____, inclusive);
 - d. Wage Rates ;
- 11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Written Amendments;
 - b. Work Change Directives;
 - c. Change Order(s).

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 paragraph 3.04 of the General Conditions.

ARTICLE 10 - MISCELLANEOUS

10.01 *Terms*

A. Terms used in this Agreement will have the meanings indicated in the General Conditions.

10.02 *Assignment of Contract*

A. 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, moneys that may become due and moneys that are 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.

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10.03 Successors and Assigns

A. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, 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 Other Provisions

This contract shall be governed by the laws of the state of Texas, and venue shall be in Bell County.

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IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or on their behalf.

This Agreement will be effective on _____, _____ (which is the Effective Date of the Agreement).

OWNER:

CITY OF KILLEEN

By: _____

[CORPORATE SEAL]

Attest _____

Address for giving notices:

P. O. BOX 1329

KILLEEN, TX 76540-1329

(If OWNER is a corporation, attach evidence of authority to sign. If OWNER is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of OWNER-CONTRACTOR Agreement.)

Designated Representative:

Name: Danielle Singh P.E. CFM

Title: Executive Director of Public Works

Address: 3201-A South WS Young Drive

Killeen, TX 76542

Phone: (254) 616-3181

Facsimile: (254) 616-3182

CONTRACTOR:

B-CORP UTILITIES, INC

By: BRUCE SPRINGER - PRESIDENT

[CORPORATE SEAL]

Attest _____

Address for giving notices:

B-CORP UTILITIES, INC

206 CARROLL DR.

Gatesville, TX 76528

License No. _____
(Where applicable)

Agent for service of process: _____

(If CONTRACTOR is a corporation or a partnership, attach evidence of authority to sign.)

Designated Representative:

Name: BRUCE SPRINGER

Title: PRESIDENT

Address: 206 CARROLL DR.

Gatesville, TX 76528

Phone: 254-248-0712

Facsimile: 254-865-8899