

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

THIS AGREEMENT is dated as of the _____ day of _____ In the year 20__ by and between the City of Buda (hereinafter called OWNER) and _____ (hereinafter called CONTRACTOR).

OWNER AND CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK.

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

City of Buda – 2009/2010 Safe Routes to School, TxDOT CSJ: 0914-33-062

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

City of Buda – 2009/2010 Safe Routes to School, TxDOT CSJ: 0914-33-062

ARTICLE 2. ENGINEER.

The Project has been designed by:

KSA Engineers, Inc.
4833 Spicewood Springs Road, Suite 204
Austin, Texas 78759

who is hereinafter called the 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 completion of the Work in accordance with the Contract Documents.

ARTICLE 3. CONTRACT TIME.

- 3.1. The Work will be substantially completed within **120** calendar days from the date when the Contract Time commences to run as provided in paragraph 2.3 of the General Conditions.
- 3.2. **Liquidated Damages.** OWNER and CONTRACTOR 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 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving 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 **Five Hundred DOLLARS (\$500.00)** for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete.

ARTICLE 4. CONTRACT PRICE.

Owner shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents in an amount in current funds equal to the prices or prices shown in the proposal included with this form.

As provided in paragraph 11.3 of the General Conditions, estimated unit price quantities are not guaranteed, and determinations of actual quantities and classification are to be made by ENGINEER as provided in paragraph 9.8 of the General Conditions. Unit prices have been computed as provided in paragraph 11.3 of the General Conditions.

ARTICLE 5. PAYMENT PROCEDURES.

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.

- 5.1. **Progress Payments; Retainage.** OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, on or about the 25th day of each month during construction as provided in paragraphs 5.1.1 and 5.1.2 below. All such payments will be measured by the schedule of values established in paragraph 2.6.3 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.

- 5.1.1 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 shall determine, or Owner may withhold, in accordance with paragraph 14.2 of the General Conditions.

~~In making progress payments, 5 percent of the estimated amount shall be retained until final completion and acceptance of the contract work.~~

- 5.2. **Final Payment.** Upon final completion and acceptance of the Work in accordance with paragraph 14.12 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.12.

ARTICLE 6. INTEREST.

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

ARTICLE 7. CONTRACTOR'S REPRESENTATIONS.

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

- 7.1. CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in paragraph 8) and the other related data identified in the Bidding Documents including "technical data."
- 7.2. CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance and furnishing of the Work.
- 7.3. CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.
- 7.4. CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating

to existing surface or subsurface structures at or contiguous to the site (except underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.2 of the General Conditions. CONTRACTOR accepts the determination set forth in paragraph SC-4.2 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely as provided in paragraph 4.2 of the General Conditions. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for Contractor's purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

- 7.5. CONTRACTOR is aware of the general nature of the work to be performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.
- 7.6. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- 7.7. 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, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8. CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 8.1. This Agreement (pages 1 to 5, inclusive).
- 8.2. Performance Bonds, Payment Bonds, and Maintenance Bonds identified as exhibits PB1 - PB4, and MB-1 - MB-2 and consisting of 6 pages.
- 8.3. Notice of Award.
- 8.4. Notice to Proceed.
- 8.5. Certificate of Insurance.
- 8.6. Separation of Materials Form.
- 8.7. General Conditions.
- 8.8. Supplementary Conditions.

- 8.9. Contract Conditions.
- 8.10. Technical Specifications bearing the title of CITY OF BUDA 2009/2010 SAFE ROUTES TO SCHOOL, TXDOT CSJ: 0914-33-062
- 8.11. Drawings.
- 8.12. Addendum numbers _____, inclusive.
- 8.13. CONTRACTOR'S Bid (pages PR-1 through PR-10, inclusive).
- 8.14. Documentation submitted by CONTRACTOR prior to Notice of Award (pages N/A to N/A, inclusive).
- 8.15. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraph 3.5 of the General Conditions.

The documents listed in paragraphs 8.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 13. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.5 of the General Conditions.

ARTICLE 9. MISCELLANEOUS.

- 9.1. Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 9.2. No assignment by a party hereto of any rights under or interests in the Contract Documents 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.
- 9.3. 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.
- 9.4. Any provisions 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.

IN WITNESS WHEREOF, OWNER AND CONTRACTOR have signed this Agreement for five (5) originals. One counterpart each has been delivered to OWNER, CONTRACTOR (2), GRANT ADMINISTRATOR, and ENGINEER. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf.

This Agreement will be effective on _____, 20_____.

OWNER:
City of Buda _____

CONTRACTOR:

By: _____

By: _____

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest _____

Attest _____

Address for giving notices:

Address for giving notices:

PO Box 1218 _____

Buda, TX 78610 _____

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

License No.: _____

Agent for service of process: _____

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