

**CONTRACT FOR
CONSTRUCTION PROJECT RFCSP No. ES-01-15**

This Contract is entered into this ___ day of _____, 2015 (but effective as of _____, 2015) (“effective date”) by and between the City of San Angelo, a home-rule municipal corporation of the State of Texas (“City”) and _____, a _____ (“Contractor”).

RECITALS:

A. City has issued a Request for Competitive Sealed Proposal No. ES-01-15 19th Street Sidewalk Construction (“RFCSP No. ES-01-15”) for the construction of an ADA accessible sidewalk along the south side of West 19th Street (“Work”).

B. Contractor’s proposal, in response thereto, has been selected as the most qualified proposal for the provision of Work.

C. The Council of the City of San Angelo approved the selection of Contractor on _____, 2015, and authorized the City Manager to negotiate and execute a contract, under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, City and Contractor agree as follows:

TERMS:

1. RECITALS AND INCORPORATIONS: The recitals are true and correct and are hereby incorporated into and made a part of this Contract. The RFCSP and Contractor’s Proposal are sometimes referred to herein collectively as the Contract Documents (“Contract Documents”), which are by this reference incorporated herein and made a part of this Contract and attached hereto as Exhibit “___”.

2. STATEMENT OF WORK:

A. Contractor shall be responsible for completing Work as described in Contract Documents for the construction of an ADA accessible sidewalk along the south side of West 19th Street as specified in the Contract Documents.

B. Contractor shall provide all labor for preparing the worksite and furnish all material, accessories, labor, and equipment necessary for completing the construction, replacement and installation; and, all other Work specified in the technical specification documents and drawings included with the Contract Documents incorporated herein by reference in Section 7. of this Contract and in accordance with the terms and conditions set forth herein and within those Contract Documents.

3. TIME OF PERFORMANCE: Contractor agrees to substantially complete Work within one hundred twenty-six (126) consecutive calendar days (“Contract Time”) after the date Work commences as established by the Notice to Proceed. Upon Contractor’s receipt of the Notice to Proceed from City, Contractor will commence and complete Work in accordance with specifications as set out in Contract Documents. Contractor further agrees that approval for beginning Work on the project will not be given and that Work will not start until all required bonds and insurance certificates specified in the bid documents have been received and approved by City.

4. LIQUIDATED DAMAGES: City and Contractor recognize that the time of performance is of the essence in this Contract and that City will suffer financial loss if Work is not substantially complete within the time specified in Section 3. above, plus any extensions thereof allowed. Both parties hereto also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by City if Work is not substantially complete on time. Accordingly, instead of requiring such proof, City and Contractor agree that a reasonable estimate of liquidated damages for any delay (but not as a penalty) would be for Contractor to pay City Five

Hundred Dollars (\$500.00) for each calendar day that expires after the time specified in Section 3. until Work is substantially complete. Therefore, Contractor shall pay City as liquidated damages Five Hundred Dollars (\$500.00) for each calendar day that expires after the time specified in Section 3. until Work is substantially complete.

5. CONTRACT PRICE: City shall pay to Contractor for performance of Work embraced in this Contract, and Contractor shall accept as full compensation therefore, the bid price of _____ Dollars (_____) subject to adjustment only as provided by approved change order, for all Work covered by and included in the contract award; payment thereof to be made in current funds in the manner provided in Section 6. Payment Procedure.

6. PAYMENT PROCEDURE: Contractor shall submit Applications for Payment in accordance with the General Conditions as shown in Contract Documents and City shall process the Applications for Payment in accordance with the General Conditions, except that progress payments and the final payment under this Contract shall be made as set forth below:

A. Progress Payments. City shall make progress payments of the Contract Price on the basis of Contractor's Application for Payment on or about the thirtieth (30th) day after submittal of the Application for Payment each month as provided below. All progress payments shall be based upon the progress of Work measured as provided for in the General Conditions. Contractor shall subdivide Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Partial payment retainage shall not exceed five percent (5%) of the total price. Upon approval of the value by City, it shall be incorporated into the form of a Partial Payment Estimate furnished by Contractor.

B. Final Payment. Upon completion and acceptance of Work by City in accordance with the General Conditions, City shall pay the remainder of the Contract Price.

7. CONTRACT DOCUMENTS: The following documents from City are incorporated herein

by reference for all purposes, as if fully set out verbatim:

- Request for Competitive Sealed Proposal No. ES-01-15 19th Street Sidewalk Construction (“RFCSP No. ES-01-15”)
- Contractor’s Bid
- All of the documents, conditions, specifications, technical data, drawings, requirements and addenda comprising said Bid Invitation Number as of the time this Contract is entered by Contractor and City.

8. REPRESENTATIONS OF CONTRACTOR: In order to induce City to enter into this Contract, Contractor makes the following representations to City:

A. Contractor has familiarized itself with the nature and extent of the Contract Documents, Work, and with all local conditions and federal, state and local laws.

B. Contractor has made, or caused to be made, examinations and investigations of information as it deems necessary for the performance of Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations or similar data are, or will be required by Contractor for such purposes.

C. Contractor has given City advanced written notice of all conflicts, errors, or discrepancies that it has discovered in the Contract Documents prior to bidding and the written resolution thereof by City is acceptable to Contractor.

D. Contractor is skilled and experienced to responsibly perform the type of Work described in the Contract Documents in a timely manner.

9. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS: Contractor understands that Contracts between private entities and local governments are subject to certain laws and regulations, including laws pertaining to public records, conflict of interest, recordkeeping,

etc. City and Contractor agree to comply with and observe all applicable laws, codes and ordinances as they may be amended from time to time.

10. OWNERSHIP OF DOCUMENTS: Contractor understands and agrees that any information, document, report or any other material whatsoever which is given by City to Contractor or which is otherwise obtained or prepared by Contractor pursuant to or under the terms of this Contract is and shall at all times remain the property of City. Contractor agrees not to use any such information, document, report or material for any other purpose whatsoever without the written consent of City, which may be withheld or conditioned by City in its sole discretion.

11. AUDIT AND INSPECTION RIGHTS:

A. City may, at reasonable times, and for a period of up to three (3) years following the date of final payment by City to Contractor under this Contract, audit, or cause to be audited, those books and records of Contractor which are related to Contractor's performance under this Contract. Contractor agrees to maintain all such books and records at its principal place of business for a period of three (3) years after final payment is made under this Contract.

B. City may, at reasonable times during the term hereof, inspect Contractor's facilities and perform such tests, as City deems reasonably necessary, to determine whether the goods or services required to be provided by Contractor under this Contract conform to the terms hereof, if applicable. Contractor shall make available to City all reasonable facilities and assistance to facilitate the performance of tests or inspections by City representatives. All tests and inspections shall be subject to, and made in accordance with, the provisions of the City of San Angelo Code of Ordinances, as same may be amended or supplemented from time to time.

12. AWARD OF CONTRACT: Contractor represents and warrants to City that it has not employed or retained any person or company employed by City to solicit or secure this Contract and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage,

brokerage fee, or gift of any kind contingent upon or in connection with the award of this Contract.

13. PUBLIC RECORDS: Contractor understands that the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, and agrees to allow access by City and the public to all documents subject to disclosure under applicable law. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate cancellation of this Contract by City.

14. DEFAULT: If Contractor fails to comply with any term or condition of this Contract, or fails to perform any of its obligations hereunder, then Contractor shall be in default. Upon the occurrence of a default hereunder, City in addition to all remedies available to it by law, may immediately, upon written notice to Contractor, terminate this Contract whereupon all payments, advances, or other compensation paid by City to Contractor while Contractor was in default shall be immediately returned to City. Contractor understands and agrees that termination of this Contract under this section shall not release Contractor from any obligation accruing prior to the effective date of termination. Should Contractor be unable or unwilling to commence to perform Work within the time provided or contemplated herein, then, in addition to the foregoing, Contractor shall be liable to City for all expenses incurred by City in preparation and negotiation of this Contract, as well as all costs and expenses incurred by City in the re-procurement of Work, including consequential and incidental damages.

15. TERMINATION RIGHTS OF CITY:

A. City shall have the right to terminate this Contract, in its sole discretion, at any time, by giving written notice to Contractor at least five (5) business days prior to the effective date of such termination. In such event, City shall pay to Contractor compensation for Work rendered and expenses incurred prior to the effective date of termination. In no event shall City be liable to Contractor for any additional compensation, other than that provided herein, or for any

consequential or incidental damages.

B. City shall have the right to terminate this Contract, without notice or liability to Contractor, upon the occurrence of an event of default hereunder. In such event, City shall not be obligated to pay any amounts to Contractor and Contractor shall reimburse to City all amounts received while Contractor was in default under this Contract.

16. RESOLUTION OF CONTRACT DISPUTES: Contractor understands and agrees that all disputes between Contractor and City based upon an alleged violation of the terms of this Contract by City shall be submitted to City Manager for his resolution, prior to Contractor being entitled to seek judicial relief in connection therewith. In the event that the amount of compensation hereunder exceeds Twenty Five Thousand Dollars (\$25,000.00), the City Manager's decision shall be approved or disapproved by the City Council. Contractor shall not be entitled to seek judicial relief unless: (i) Contractor has first received City Manager's written decision, approved by the City Council if the amount of compensation hereunder exceeds Twenty Five Thousand Dollars (\$25,000.00); or (ii) a period of sixty (60) days has expired, after submitting to the City Manager a detailed statement of the dispute, accompanied by all supporting documentation [ninety (90) days if City Manager's decision is subject to City Council approval]; or (iii) City has waived compliance with the procedure set forth in this section by written instruments, signed by the City Manager.

17. INSURANCE:

A. Contractor shall, at all times during the term hereof, maintain such insurance coverage as may be required by City. All such insurance, including renewals, shall be subject to the approval of City for adequacy of protection and evidence of such coverage shall be furnished to City on Certificates of Insurance indicating such insurance to be in force and effect and providing that it will not be canceled during the performance of Work under this Contract without thirty (30) calendar days prior written notice to City. Completed Certificates of Insurance shall be filed with

City prior to the performance of services hereunder, provided however, that Contractor shall at any time upon request file duplicate copies of the policies of such insurance with City.

B. If in the judgment of City, prevailing conditions warrant the provision by Contractor of additional liability insurance coverage or coverage which is different in kind, City reserves the right to require the provision by Contractor of an amount of coverage different from the amounts or kind previously required and shall afford written notice of such change in requirements thirty (30) days prior to the date on which the requirements shall take effect. Should the Contractor fail or refuse to satisfy the requirement of changed coverage within thirty (30) days following City's written notice, this Contract shall be considered terminated on the date that the required change in policy coverage would otherwise take effect.

18. INDEMNIFICATION:

A. GENERAL INDEMNIFICATION: Contractor shall indemnify, defend and hold harmless City and its officials, employees and agents (collectively referred to as "indemnitees") and each of them from and against all loss, costs, penalties, fines, damages, claims, expenses (including attorney's fees) or liabilities (collectively referred to as "liabilities") asserted by any person or persons, including agents or employees of Contractor or City by reason of any injury to or death of any person or damage to or destruction or loss of any property arising out of, resulting from, or in connection with (i) the performance or non-performance of Services contemplated by this Contract which is or is alleged to be directly or indirectly caused, in whole or in part, by any act, omission, default or negligence (whether active or passive) of Contractor or its employees, agents or sub-contractors (collectively referred to as "Contractor"), regardless of whether it is, or is alleged to be, caused in whole or part (whether joint, concurrent or contributing) by any act, omission, default or negligence (whether active or passive) of the indemnitees, or any of

them or (ii) the failure of Contractor to comply with any of the paragraphs herein or the failure of Contractor to conform to statutes, ordinances, or other regulations or requirements of any governmental authority, federal or state, in connection with the performance of this Contract or sustained in or upon the premises, or as a result of anything claimed to be done or admitted to be done by Contractor hereunder. Contractor expressly agrees to indemnify and hold harmless the indemnitees, or any of them, from and against all liabilities which may be asserted by an employee or former employee of Contractor, or any of its sub-contractors, as provided above, for which Contractor's liability to such employee or former employee would otherwise be limited to payments under state workers' compensation or similar laws. This indemnification shall survive the term of this Contract as long as any liability could be asserted. nothing herein shall require Contractor to indemnify, defend, or hold harmless any indemnified party for the indemnified party's own gross negligence or willful misconduct.

B. PROSPECTIVE APPLICATION: Any and all indemnity provided for in this Contract shall survive the expiration of this Contract and the discharge of all other obligations owed by the parties to each other hereunder and shall apply prospectively not only during the term of this Contract but thereafter so long as any liability could be asserted in regard to any acts or omissions of Contractor in performing under this Contract.

C. RETROACTIVE APPLICATION: The indemnity provided for in this Contract shall extend not only to claims and assessments occurring during the term of this Contract but retroactively to claims and assessments which may have occurred during the term of previous contracts between City and Contractor.

19. INSURANCE REQUIREMENTS:

A. General Conditions. The following conditions shall apply to all insurance policies obtained by Contractor for the purpose of complying with this Contract.

1) Satisfactory Companies. Coverage shall be maintained with insurers and under forms of policies satisfactory to City and with insurers licensed to do business in Texas.

2) Named Insureds. All insurance policies required herein shall be drawn in the name of Contractor, with City, its council members, board and commission members, officials, agents, guests, invitees, consultants and employees named as additional insureds, except on Workers' Compensation coverage.

3) Waiver of Subrogation. Contractor shall require its insurance carrier(s), with respect to all insurance policies, to waive all rights of subrogation against City, its council members, board and commission members, officials, agents, guests, invitees, consultants and employees.

4) Certificates of Insurance. At or before the time of execution of this Contract, Contractor shall furnish City's Risk Manager with certificates of insurance as evidence that all of the policies required herein are in full force and effect and provide the required coverage and limits of insurance. All certificates of insurance shall clearly state that all applicable requirements have been satisfied. The certificates shall provide that any company issuing an insurance policy shall provide to City not less than thirty (30) days advance notice in writing of cancellation, non-renewal, or material change in the policy of insurance. In addition, Contractor and insurance company shall immediately provide written notice to City's Risk Manager upon receipt of notice of cancellation of any insurance policy, or of a decision to terminate or alter any insurance policy. Certificates of insurance and notices of cancellations, terminations, or alterations shall be furnished to City's Risk Manager at City Hall, 72 W. College Ave., San Angelo, Texas 76903.

5) Contractor's Liability. The procurement of such policy of insurance shall not be construed to be a limitation upon Contractor's liability or as a full performance on its part of the indemnification provisions of this Contract. Contractor's obligations are, notwithstanding any policy of insurance, for the full and total amount of any damage, injury, or loss caused by or attributable to its activities conducted at or upon the premises. Failure of Contractor to maintain adequate coverage shall not relieve Contractor of any contractual responsibility or obligation.

6) Subcontractors' Insurance. Contractor shall cause each Subcontractor and Sub-Sub-Contractor of Contractor to purchase and maintain insurance of the types and in the amounts specified below. Contractor shall require Subcontractors and Sub-Subcontractors to furnish copies of certificates of insurance to City's Risk Manager evidencing coverage for each Subcontractor and Sub-Subcontractor.

B. Types And Amounts Of Insurance Required. Contractor shall obtain and continuously maintain in effect at all times during the term hereof, at Contractor's sole expense, insurance coverage as follows with limits not less than those set forth below:

1) Commercial General Liability. This policy shall be occurrence-type policy and shall protect Contractor and additional insureds against all claims arising from bodily injury, sickness, disease or death of any person (other than Contractor's employees) and damage to property of City or others arising out of the act or omission of Contractor or its agents and employees. This policy shall also include protection against claims for the contractual liability assumed by Contractor under the paragraph of this Contract entitled "Indemnification," including completed operations, products liability, contractual coverage, broad form property coverage, explosion, collapse, underground, premises/operations, and independent contractors [to remain in force for two (2) years after final payment].

Coverage limits shall not be less than:

\$1,000,000.00	General Aggregate
\$ 500,000.00	Products- Completed Operations
\$ 500,000.00	Personal & Advertising Injury
\$ 500,000.00	Each Occurrence
\$ 100,000.00	Fire Damage (any one fire)

2) Business Automobile Liability. This policy shall protect Contractor and the additional insureds against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles and shall cover operation on and off the premises of all motor vehicles licensed for highway use, whether they are owned, non-owned or hired. Coverage limits shall not be less than:

\$ 500,000.00	Combined Single Limit
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3) Workers' Compensation and Employer's Liability. If Contractor hires any employees, Contractor shall maintain Workers' Compensation and Employer's Liability insurance, which shall protect Contractor against all claims under applicable state workers'

compensation laws and employer's liability. The insured shall also be protected against claim for injury, disease or death of employees which for any reason, may not fall within the provisions of a workers' compensation law. Coverage shall not be less than:

Statutory Amount	Workers' Compensation
\$ 500,000.00	Employer's Liability, Each Accident
\$ 500,000.00	Employer's Liability, Disease - Each Employee
\$ 500,000.00	Employer's Liability, Disease - Policy Limit

The foregoing requirement will not be applicable if, and so long as, Contractor qualifies as a self-insurer under the rules and regulations of the commission or agency administering the workers' compensation program in Texas and furnishes evidence of such qualification to City in accordance with the notice provisions of this Contract.

If Contractor uses contract labor, Contractor shall require its subcontractor to maintain the above referenced coverage and furnish copies of certificates of insurance as required herein.

20. INDEPENDENT CONTRACTOR: Nothing contained in this Contract is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. Contractor shall at all times remain an independent contractor with respect to the services to be performed under this Contract. City shall be exempt from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance and workers' compensation insurance on Contractor's employees.

21. NONDISCRIMINATION: Contractor represents and warrants to City that Contractor does not and will not engage in discriminatory practices and that there shall be no discrimination in connection with Contractor's performance under this Contract on account of race, color, sex, religion, age, handicap, marital status or national origin. Contractor further covenants that no otherwise qualified individual shall, solely by reason of his/her race, color, sex, religion, age, handicap, marital status or national origin, be excluded from participation in, be denied services, or be subject to discrimination under any provision of this Contract.

22. VERIFICATION OF EMPLOYMENT ELIGIBILITY: Contractor must comply with the

Immigration Reform and Control Act (IRCA) and may not knowingly obtain labor or services of an unauthorized alien. Contractor -- not City -- must verify eligibility for employment as required by IRCA.

23. AMENDMENTS: This Contract may be modified or amended only by a written instrument signed by City and Contractor, without further approval of City Council, unless such approval is otherwise required by law, subject to availability and appropriation of funds. Such amendments shall not invalidate this Contract, nor relieve or release City or Contractor from their respective obligations under this Contract.

24. ASSIGNMENT: No assignment by a party hereto of any rights under, or interest 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 prior consent (except to the extent that 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.

25. SUCCESSORS AND ASSIGNS: This Contract shall be binding upon the parties hereto, their heirs, executors, legal representatives, successors, or assigns.

26. NOTICES: Communication and details concerning this Contract shall be directed to the following representatives:

CITY:
City of San Angelo
Attn: Karl Bednarz
72 W. College Ave.
San Angelo, Texas 76903

CONTRACTOR:

Attn: _____

Before City shall be liable to Contractor or any of its successors or assigns for any alleged breach of

this Contract, notice must first be given City within six (6) months of the date Contractor alleges the breach occurred. Such notice shall be in accordance with and provide substantially the same information as required for notice of tort claims as specified in Article 1.500 of the City of San Angelo Code of Ordinances.

27. MISCELLANEOUS PROVISIONS:

A. Remedies: In the event of default by Contractor under the Contract Documents, City shall have all rights and remedies afforded to it at law or in equity to enforce the terms of the Contract Documents; however, arbitration is not an available remedy to resolve any disputes arising under this Contract unless City and Contractor mutually agree to such remedy in a separate written Contract. The exercise of any one right or remedy shall be without prejudice to the enforcement of any other right or remedy allowed at law or in equity.

B. Attorneys' Fees: If any action at law or in equity is necessary by either City or Contractor to enforce or interpret the terms of the Contract Documents, the party prevailing on the majority of issues shall be entitled to reasonable attorneys' fees and costs and any necessary disbursements in addition to any other relief to which the prevailing party is entitled.

C. Conflicts: This Contract, the documents required to be provided, and the Contract Documents constitute the entire Contract between the parties hereto and supersede any prior written or oral Contracts and understandings between the parties. If any provision of this Contract, the General Conditions, the Specifications or any other provision contained within the Contract Documents conflicts, or is inconsistent with any other provision of the Contract Documents, then the conflict or inconsistency will be resolved first by reference to the terms of this Contract, then to the General Conditions to this Contract and then finally to the Specifications therein, unless a federal law, regulation or restriction would require otherwise, in which case the federal provision would control.

D. Severability: If any provision of this Contract is held invalid or unenforceable, the remainder of the Contract shall not be affected thereby and all other parts of this Contract shall nevertheless be in full force and effect.

E. Venue: This Contract, including the Contract Documents, is governed by the laws of the State of Texas. Venue for any suit or claim or cause of action arising out of or related to Work covered by this Contract shall be in Tom Green County, Texas.

F. Counterparts: This Contract may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Contract.

G. Enforcement: This Contract shall be construed and enforced according to the laws of the State of Texas.

H. Headings: Titles and paragraphs are for convenient reference and are not a part of this Contract.

I. No Waiver: No waiver or breach of any provision of this Contract shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

J. Governing Laws: Should any provision, paragraph, sentence, word or phrase contained in this Contract be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Texas or the City of San Angelo, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Contract shall remain unmodified and in full force and effect or limitation of its use.

K. Applicable Law: This Contract and the Contract Documents are subject to all

applicable federal and state laws, statutes, codes, rules and regulations and local ordinances, rules and regulations.

28. CONTINGENCY CLAUSE: Funding for this Contract is contingent on the availability of funds and continued authorization for program activities and the Contract is subject to amendment or termination due to lack of funds, reduction of funds and/or change in regulations, upon thirty (30) days notice.

29. ENTIRE CONTRACT: This Contract constitutes the sole and entire Contract between the parties hereto. No modification or amendment hereto shall be valid unless in writing and executed by properly authorized representatives of the parties hereto.

30. REAFFIRMATION OF REPRESENTATIONS: Contractor hereby reaffirms all of the representations contained in Contract Documents.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective officials thereunto duly authorized, this the day and year above written.

CONTRACTOR:

By: _____
_____, _____

ATTEST:

(SEAL)

CITY:

City of San Angelo

By: _____
Daniel Valenzuela, City Manager

ATTEST:

Bryan Kendrick, City Clerk

(SEAL)

**CONTRACT FOR PROJECT
BETWEEN CITY OF SAN ANGELO & _____
RFCSP No. ES-01-15**

Approved as to Content:

Approved as to Form:

Karl Bednarz, City Engineer

Dan T. Saluri, Interim City Attorney

Approved as to Content:

Approved as to Insurance Requirements:

Roger Banks, Purchasing Manager

Marion McMinn, Interim Risk Manager