



# THE CITY OF MIDLAND CONTRACT

Contract No. 21002284

THIS CONTRACT, effective the 28th day of April, 2021, by and between the City of Midland, hereinafter referred to as "CITY", and Jones Bros. Dirt and Paving Contractors, Inc., hereinafter referred to as "COMPANY", is made for the following considerations:

1. **Cost:** Total Proposal: \$ 638,348.85 DOLLARS
2. **Scope of Work:** COMPANY shall perform all work described for Sinclair Mill and Inlay Paving Project FY2021 in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

EXHIBIT A..... Specifications, Proposal or Cost Summary  
EXHIBIT B..... Intentionally Omitted  
EXHIBIT C..... Bonding instructions for Public Works Contract of \$50,000 and more  
EXHIBIT D..... Wage Scale

3. **City:** The words "CITY's Representative" or "representative" shall mean Jose Ortiz or the designee under whose supervision these contract documents, including the plans and specifications, were prepared, or who may inspect work performed under this Contract; or such other representative, supervisor, or inspector as may be authorized by CITY to act in any particular capacity under this Contract.

4. **City's Representative:** CITY's Representative may make periodic visits to the site to observe the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the contract documents. CITY's representative will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, nor will such representative be responsible for the construction means, methods, techniques, sequences or procedures, or the safety precautions incident thereto. CITY's representative will not be responsible for COMPANY's failure to perform the work in accordance with the contract.

5. **Company:** Unless otherwise stipulated, COMPANY shall provide and pay for all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and all water, light, power, fuel,

transportation and all other facilities necessary for the execution and completion of the work covered by the contract documents. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of a good quality. COMPANY shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

5.1. COMPANY shall, at its expense, obtain all permits and licenses necessary for the performance of this contract and pay all fees and taxes required by law, and comply with all laws, ordinances, rules and regulations governing COMPANY's performance of the contract, including all environmental laws and regulations, whether state or federal.

5.2. All work shall be done and all materials furnished in strict conformity with the contract and specifications.

6. **Minor Work Not Mentioned:** All minor detail of the work not specifically mentioned in the Specifications but obviously necessary for the proper completion of the work, such as the proper connection of new work to old, shall be considered as incidental to and a part of the work for which the prices are named in the contract. COMPANY will not be entitled to any additional compensation therefor unless specifically stated otherwise. Otherwise the term "extra work" as used in this contract shall mean and include all work that may be required by CITY to be done by COMPANY to accomplish any alteration or addition to the work as shown on the Specifications.

6.1. COMPANY shall perform all extra work under the direction of CITY's Representative when presented with a written work order signed by CITY's Representative, subject, however, to the right of the COMPANY to require written confirmation of such extra work order by CITY. Payment for extra work shall be as agreed in the work order.

7. **Safety:** COMPANY shall at all times exercise reasonable precaution for the safety of employees and others on or near the work and shall comply with all applicable provisions of federal, state and municipal laws. All machinery and equipment and other physical hazards shall be guarded in accordance with federal, state or municipal laws or regulations.

8. **INDEMNITY: COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR**

**PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY, THEIR AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 8 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.**

**8.1. COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSES OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH COMPANY OR COMPANY'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 8.1 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.**

**8.2. COMPANY AGREES THAT IT WILL INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS AND ALL SUPPLIES, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN CITY SO DESIRES, COMPANY SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED. COMPANY, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS CITY AND**

**ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES. THE OBLIGATIONS CONTAINED IN THIS SECTION 8.2 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.**

9. **Start of Work:** COMPANY shall commence work no later than ten (10) days after receipt of the execution of this document or other written release to proceed and shall complete such work no later than 20 calendar days after release to proceed.

10. **Clean Up:** COMPANY shall promptly remove from CITY's premises all materials condemned by CITY's Representative on account of failure to conform to the contract, whether actually incorporated in the work or not, and COMPANY shall at its own expense promptly replace such condemned materials with other materials conforming to the requirements of the contract. COMPANY shall also bear the expense of restoring all work of other contractors damaged by any such removal or replacement. If COMPANY does not remove and replace any such condemned materials within a reasonable time after a written notice by CITY, CITY may remove and replace such at COMPANY's expense.

11. **Warranty:** Neither the final payment nor any provision in this contract shall relieve COMPANY of responsibility for faulty materials or workmanship, and he shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within a period of one (1) year from the date of substantial completion. CITY shall give notice of observed defects with reasonable promptness.

12. **Remedy:** CITY may, on account of subsequently discovered evidence, withhold whole or part of any payment to such extent as may be necessary to protect itself from loss on account of:

12.1. Defective work not remedied; or

12.2. Claims filed or reasonable evidence indicating possible filing of claims; or

12.3. Failure of COMPANY to make payments promptly to subcontractors or for material or labor which CITY may pay as an agent for the COMPANY; or

12.4. Damages to another contractor or subcontractor.

When the above grounds to withhold payment are removed, or COMPANY provides a surety bond satisfactory to CITY, which will protect CITY in the amount withheld, payment may be released.

13. **Funding Out:** In the event no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable in any fiscal period for contract payments due under the contract, then this contract shall terminate on the last day of the fiscal period for which full appropriations were made, without penalty or expense to CITY of any kind whatsoever.

14. **Wage Scale:** COMPANY agrees to pay all workmen in his employ no less than the generally prevailing wage rate for employees of similar category in the Permian Basin Area, as is depicted in the wage rate scale attached hereto as EXHIBIT D, and incorporated herein by reference for all legal purposes.

14.1. If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations are hereby incorporated by reference and made a part of this Contract, and all terms and requirements under said laws, by such incorporation, are made terms and requirements of this Contract, to which the parties to this Contract have agreed to be bound.

15. **Prompt Pay Act:** CITY and COMPANY agree that Texas Government Code, Chapter 2251, Payment for Goods and Services (the "Prompt Pay Act") does not waive governmental immunity.

16. **Payment; Retainage:** After all work is completed by COMPANY, including all Change Orders altering the original scope and amount of the contract are completed, and the CITY has inspected and approved that the work is completed and in compliance with the contract and all subsequent Change Orders, the CITY may thereafter issue payment to COMPANY in the amount of the contract and all Change Orders. The CITY shall be the final judge of when the work is completed by COMPANY. The CITY, in its sole discretion, shall determine if the work under the contract and under any Change Orders has been done to the CITY's requirements.

16.1. The CITY may make periodic payments to COMPANY; provided, however, such periodic payments may only be made pursuant to this section, and only after all work and all Change Orders are completed by COMPANY and approved by the CITY. The approval shall be in the CITY's sole discretion. Requests for progress payments may be made to the extent of the materials and labor completed at the end of each month. Upon approval by the CITY or the CITY's representative, the request and invoice shall be forwarded for payment less 5% retainage. The total of these payments shall not exceed 95% of the total contract amount.

17. **Late Completion; Liquidated Damages:** It is hereby understood and mutually agreed, by and between COMPANY and the CITY, that the date of beginning and the time for completion as specified in the contract of the work to be done hereunder are ESSENTIAL CONDITIONS of this contract; and it is further mutually understood and agreed that the work embraced in this contract shall be commenced on a date to be specified in the "Notice to Proceed." COMPANY agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between COMPANY and the CITY, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

17.1. In the event COMPANY shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the CITY, then COMPANY and COMPANY's surety, if any, shall be liable for and does hereby agree, as a part consideration for the awarding of this contract, to pay to the CITY \$500.00, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every day that COMPANY shall be in default after the time stipulated in the contract for completing the work. Further, the CITY shall have the right to cancel this contract for such delay. In the event the CITY cancels this contract pursuant to the terms of this section, the CITY shall pay to COMPANY only those monies deemed appropriate by the CITY, in its sole discretion, to compensate COMPANY for any work actually performed, less any liquidated damages COMPANY owes the CITY.

17.2. The said amount is fixed and agreed upon by and between COMPANY and the CITY because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the CITY would in such event sustain, and said amount is agreed to be the amount of damages which the CITY would sustain and said amount shall be retained from time to time by the CITY from current periodical estimates.

17.3. It is further agreed that time is of the essence of each and every portion of this contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract. Provided, that COMPANY shall not be charged with liquidated damages or any excess cost when the CITY determines, in its sole discretion, that COMPANY is without fault and COMPANY's reasons for the time extension are acceptable to the CITY. Provided, further, that COMPANY shall not be charged with liquidated damages of any excess cost when the delay in completion of the work is due:

- a. To any preference, priority or allocation order duly issued by the Government;
- b. To unforeseeable cause beyond the control and without the fault or negligence of COMPANY, including, but not restricted to, acts of God, or of the public enemy, acts of the CITY, acts of another contractor in the performance of a contract with the CITY, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather; and
- c. To any delays of subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this article.

17.4. Provided, further, that COMPANY shall, within ten (10) days from the beginning of such delay, unless the CITY shall, in its sole discretion grant a further period of time prior to the date of final settlement of the contract, notify the CITY, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay and notify COMPANY within a reasonable time of its decision in the matter.

**17.5. COMPANY AGREES THAT THE PAYMENT OF SUCH LIQUIDATED DAMAGES MAY BE RECOVERED BY THE CITY FROM RETAINAGE HELD BY THE CITY. NOTWITHSTANDING ANY OTHER PROVISION HEREOF, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER ARISING FROM THE CITY WITHHOLDING PAYMENT FROM COMPANY AS LIQUIDATED DAMAGES FOR COMPANY'S FAILURE TO COMPLETE THE WORK WITHIN THE TIME SPECIFIED HEREIN, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE.**

**17.6. COMPANY SHALL RECEIVE NO FINANCIAL COMPENSATION FOR DELAY OR HINDRANCE TO THE WORK. IN NO EVENT SHALL THE CITY BE LIABLE TO COMPANY OR ANY SUBCONTRACTOR OR SUPPLIER, ANY OTHER PERSON OR ANY SURETY FOR OR ANY EMPLOYEE OR AGENT OF ANY OF THEM, FOR ANY DAMAGES ARISING OUT OF OR ASSOCIATED WITH ANY DELAY OR HINDRANCE TO THE WORK, REGARDLESS OF THE SOURCE OF THE DELAY OR HINDRANCE, INCLUDING EVENTS OF FORCE MAJEURE, AND EVEN IF SUCH DELAY OR HINDRANCE RESULTS FROM, ARISES OUT OF OR IS DUE, IN WHOLE OR IN PART, TO THE NEGLIGENCE OF THE CITY. COMPANY'S SOLE REMEDY IN ANY SUCH CASE SHALL BE AN EXTENSION OF TIME.**

**18. No Third Party Beneficiary:** CITY's approval of this contract does not create a third party

beneficiary. There is no third party beneficiary to this contract. No person or entity who is not a party to this contract shall have any third party beneficiary or other rights hereunder.

**19. WAIVER OF ATTORNEY FEES: BY EXECUTING THIS CONTRACT, COMPANY AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST CITY REGARDING THE AWARD OR ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THIS CONTRACT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS CONTRACT. COMPANY SPECIFICALLY AGREES THAT IF COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS CONTRACT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS CONTRACT, INCLUDING, BUT NOT LIMITED TO, ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.**

**COMPANY AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY-EXISTING KNOWN RIGHT. COMPANY ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THIS CONTRACT. COMPANY FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN CITY AND COMPANY. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OR GOVERNMENTAL IMMUNITY AND SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.**

**COMPANY IS RELYING ON ITS OWN JUDGMENT. COMPANY HAD THE OPPORTUNITY TO DISCUSS THIS CONTRACT WITH COMPETENT LEGAL COUNSEL PRIOR TO ITS EXECUTION. THE OBLIGATIONS CONTAINED IN THIS SECTION 18 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.**

**20. Governmental Immunity:** By executing this contract CITY is not waiving its right of governmental immunity. CITY is retaining its immunity from suit. CITY is not granting consent to be sued by legislative resolution or action.



**THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.**

**21. Insurance:**

COMPANY shall at all times during the term of this Contract maintain and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):

-Personal Injury: \$1,000,000.00 per person  
\$1,000,000.00 per occurrence

-Property Damage: \$500,000.00 per occurrence

Business Automobile Liability: \$250,000.00 combined single limit -  
Personal Injury and Property Damage

Workers' Compensation: Statutory limits

Employers' Liability: \$500,000.00 per accident or occurrence

The Commercial General Liability shall be on a per project aggregate, including completed operations, and shall be on a claims-occurred basis. This insurance shall name CITY as an additional insured and waive subrogation in favor of CITY.

The Business Automobile Liability insurance provided by COMPANY shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$250,000.00 covering any vehicle used for the execution of the work that is the subject of this Contract. This insurance shall name CITY as an additional insured and waive subrogation in favor of CITY.

The Workers' Compensation coverage provided by COMPANY shall inure to the benefit of employees injured during the course and scope of their employment by COMPANY pursuant to this Contract. The Workers' Compensation shall waive all rights of subrogation in favor of CITY.

All insurance required pursuant to this Contract shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Contract, except for Workers' Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY shall be provided the notice by COMPANY's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

COMPANY shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Contract to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of

subrogation in favor of the City of Midland and policies that name the City of Midland as an additional insured on a claims occurred basis (except workers' compensation).

The parties agree that, prior to the execution of the Contract, COMPANY shall provide one or more certificates of insurance specifically stating that these requirements have been met and subject to the approval of CITY. CITY shall not be required to provide any insurance whatsoever pursuant to this Contract.

COMPANY certifies that the certificate of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. COMPANY shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of COMPANY.

22. **Assignment:** COMPANY shall not, either directly or indirectly, assign all or any part of this Contract or any interest, right or privilege herein, without the prior written consent of CITY. The issue on whether or not to grant consent to an assignment is in the sole discretion of CITY.

23. **RELEASE: NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.**

24. **Governing Law and Venue:** This contract shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this contract shall be deemed to have occurred in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this contract or the performance of this contract shall be in Midland County, Texas.

25. **Independent Contractor:** COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be

performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Contract shall be construed as creating a partnership or joint enterprise between CITY and COMPANY. No person performing any of the work and services described hereunder by COMPANY shall be considered an officer, agent, servant or employee of CITY. Further, it is specifically understood and agreed that nothing in this contract is intended or construed as creating a "Community of Pecuniary Interest" or an "Equal Right of Control" which would give rise to vicarious liability.

COMPANY shall be an independent contractor under this Contract and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. CITY does not have the power to direct the order in which the work is done. CITY shall not have the right to control the means, methods or details of COMPANY's work. COMPANY shall assume exclusive responsibility for the work. COMPANY is entirely free to do the work in its own way.

**26. Notice of Alleged Breach; Statutory Prerequisites:** As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Contract, COMPANY or its legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Contract) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY shall settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented and the physical and mailing addresses of COMPANY for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim; and a failure to provide such written notification within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision to the contrary, COMPANY's failure to comply with the

requirements of this Section shall perpetually bar COMPANY's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Contract are reasonable. The provisions and obligations of this Section shall survive the termination of this Contract.

27. **Consideration:** The terms of this Contract are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

28. **Termination At Will:** CITY may terminate this Contract at will for no or any reason upon giving at least one hundred eighty (180) days written notice to COMPANY. The parties to this Contract understand and agree that it is in CITY's sole discretion to cancel the Contract during the term of the Contract without penalty to CITY. COMPANY has no expectation and has received no guarantees that this Contract will not be terminated before the end of the Contract term. The parties have bargained for the flexibility of terminating this Contract upon tender of the requisite notice at any time during the term of the Contract. All work and services under the Contract shall be suspended upon termination of the Contract becoming effective.

29. **Compliance:** COMPANY agrees that it shall comply with Texas Government Code Section 2252.908, *et seq.*, as amended. COMPANY agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended.

30. To the extent that Section 2271.002 of the Texas Government Code applies to this Contract, COMPANY hereby verifies that COMPANY does not boycott Israel and will not boycott Israel during the term of this Contract. If Section 2271.002 of the Texas Government Code does not apply to this Contract, such verification is not required, and COMPANY shall be deemed to have not made such verification.

31. **Records Retention and Production of Information.** To the extent that this Contract constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Contract as provided by the records retention requirements applicable to CITY for the duration of this Contract; (ii) promptly provide to CITY any contracting information related to the Contract that is in the custody or possession of COMPANY on request of CITY; and (iii) on completion of the Contract, either: (a) provide at no cost to CITY all contracting information related to the Contract that is in the custody or possession of COMPANY; or (b) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to CITY.

32. **Public Information.** To the extent that this Contract is a contract described by Section 552.371 of the Texas Government Code, COMPANY agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract, and COMPANY agrees that the contract can be terminated if COMPANY knowingly or intentionally fails to comply with a requirement of that subchapter.

33. **Conflict of Terms.** If a conflict of terms or language exists between: (i) any of the provisions of this Contract and (ii) any of the provisions contained in any exhibit(s) attached to this Contract, precedence shall be given to the provisions of this Contract. For the avoidance of any doubt, the provisions contained in this Contract shall supersede any and all conflicting provisions contained in any exhibit(s) attached hereto. Furthermore, the parties acknowledge and agree that any provision contained in an exhibit(s) attached to this Contract that imposes an additional express or implied obligation on CITY is hereby made void and of no force or effect. CITY's sole and exclusive obligations under this Contract are contained in the provisions of this Professional Services Contract that precede the signature page(s), which evidences the parties' execution.

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: \_\_\_\_\_  
Robert Patrick, Interim City Manager

ATTEST

\_\_\_\_\_  
Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM

\_\_\_\_\_  
John Ohnemiller, City Attorney

COMPANY:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §

§

COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ personally appeared, \_\_\_\_\_, an officer of Jones Bros. Dirt and Paving Contractors, Inc., known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_



**CITY OF MIDLAND**  
**PURCHASING DIVISION**  
**BID REQUEST**

DATE: 3/24/2021

PAGE: 1

(THIS IS NOT AN ORDER)

BID NO: 21002284

OPENING TIME: 2:00 PM

CLOSING DATE: 4/14/2021

CITY OF MIDLAND  
 300 NORTH LORAIN  
 P. O. BOX 1152  
 MIDLAND, TX 79702

BIDS WILL BE RECEIVED IN THE OFFICE OF THE Office of the City Secretary, Suite 330, Midland, TX  
 UNTIL 2:00 P.M. 4/14/2021 FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED  
 TO:

Various locations, Midland, TX

ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
			Labor, material, equipment, and supervision necessary for the Sinclair Mill/Inlay Paving Project FY2021 in accordance with the attached specifications and contract.	\$638,348.85	
				TOTAL	\$638,348.85

## NOTICE TO BIDDERS:

- FAILURE TO RESPOND WITH EITHER A BID OR "NO BID" WILL SUBJECT YOUR FIRM TO REMOVAL FROM THE BID LIST FOR THIS TYPE OF MATERIAL, EQUIPMENT OR SUPPLY ITEM.
- BIDS SHALL BE DELIVERED TO THE CITY IN A SEALED PACKAGE (ENVELOPE, ETC) **UNLESS THE CITY STATES** THAT THE BID MAY BE FAXED OR E-MAILED, OTHERWISE, BIDS FAXED OR E-MAILED DIRECTLY TO THE CITY WILL BE REJECTED. A SEALED BID MAY BE FAXED TO A THIRD PARTY FOR SEALED DELIVERY TO THE CITY. PLEASE CALL FOR MORE INFORMATION.
- IF THIS PURCHASE REQUIRES A CONTRACT, THE ATTACHED CONTRACT AND INSURANCE REQUIREMENTS ARE **NON-NEGOTIABLE**. MODIFICATIONS BY BIDDER/CONTRACTOR OF ANY MATERIAL TERM(S) TO THE CONTRACT DOCUMENTS WILL BE DEEMED A NON-RESPONSIVE BID. NON-RESPONSIVE BIDS WILL BE REJECTED. BIDDER/CONTRACTOR MUST BE WILLING TO SIGN THE CONTRACT AS IS AND WITHOUT MODIFICATIONS, PROVIDE PROPERLY EXECUTED BONDS (IF APPLICABLE) AND PROVIDE INSURANCE SPECIFICALLY AS REQUIRED WITHIN THE CONTRACT DOCUMENTS **WITHIN 21 DAYS** OF THE DATE OF THE TRANSMITTAL LETTER.
- IF THE SELECTED BIDDER/CONTRACTOR CANNOT MEET THE REQUIREMENTS OF PARAGRAPH 3, THEN THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER BIDDER.
- IMPORTANT NOTICE** – IF THE CONTRACT DOCUMENTS REQUIRE WORKER'S COMPENSATION INSURANCE, BIDDER/CONTRACTOR MUST CARRY WORKER'S COMPENSATION INSURANCE TO BE ELIGIBLE FOR THIS CONTRACT. IF YOU CANNOT PROVIDE WORKER'S COMPENSATION INSURANCE AS REQUIRED BY STATE OF TEXAS STATUTE WE RESPECTFULLY REQUEST THAT YOU "NO BID" THIS WORK.

FOR ADDITIONAL INFORMATION, CONTACT (432) 685-7234 OR 685-7233. FAX NO. (432) 685-0523

NOTE: EACH BIDDER IS TO INDICATE BRAND NAME PRODUCT NUMBER AND ATTACH DESCRIPTIVE LITERATURE CLEARLY MARKED TO SHOW EACH ITEM ON THIS BID.

THE UNDERSIGNED HEREBY OFFERS TO FURNISH AND DELIVER THE ARTICLES OR SERVICE AS SPECIFIED ABOVE AT THE PRICES AND TERMS HEREIN STATED AND IN STRICT ACCORDANCE WITH THE SPECIFICATIONS AND CONDITIONS OF BIDDING ALL WHICH ARE MADE A PART OF THIS OFFER. THIS OFFER IS NOT SUBJECT TO WITHDRAWAL WITHOUT PERMISSION.

COMPANY NAME: Jones Bros. Dirt & Paving Contractors, Inc.  
 ADDRESS 1401 S. Grandview  
 CITY Odessa ST Texas ZIP 79761  
 PHONE NO. 432-332-0721 FAX NO. 432-332-0724  
 EMAIL: r.chitty@jonesdp.com

CASH DISCOUNT: \_\_\_\_\_ % N/A \_\_\_\_\_ DAYS

DELIVERY CAN BE MADE \_\_\_\_\_

AUTHORIZED SIGNATURE \_\_\_\_\_

PLEASE READ CONDITIONS FOR BIDDING ON BACK BEFORE SUBMITTING



On-line responses will not be allowed for this solicitation. Please print these documents and submit your bid in a sealed envelope to:

Mailing Address:

The City Secretary's Office  
City of Midland  
P. O. Box 1152  
Midland, TX 79702

OR

Physical Address:

The City Secretary's Office  
City of Midland  
300 N. Loraine, Suite 330  
Midland, TX 79701

**ATTENTION:** The public bid opening will be in the City Council Chambers in order to maintain social distancing due to COVID-19.



## **BID SCHEDULE**

### **Sinclair Mill & Inlay Paving Project FY2021**

The various items in the Bid Schedule shall be paid at the unit price bid. Bidder agrees to perform all work described in the Contract Documents for the following unit prices:

These unit prices or lump sums shall be full compensation for furnishing all materials, equipment, labor, tools, power and transportation necessary to complete the construction of the various items of the FY 2021 Mill and Inlay Project—Sinclair.

The estimated quantities shown in this Bid Schedule are approximate and are to be used only as a basis for estimating probable cost of the work to be accomplished. The materials furnished may differ somewhat from these estimates. In addition, the City of Midland reserves the right to increase, reduce, or delete any item(s) in the bid schedule as deemed to be in the best interest of the City. Payment shall be based on the unit price for the actual amount of such work completed and/or the material furnished. The roadway sections to be paved are shown on the attached FY 2021 Mill and Inlay Project—Sinclair map and more fully described on the attached summary of said roadway sections.

The Bidder hereby agrees to commence work within fifteen (15) calendar days after the written notice to do so and to substantially complete the same within ninety (30) calendar days after receipt of notice to proceed, subject to such extensions of time as are provided by the General and Special Conditions.

**Base Bid – Sinclair Mill & Inlay Paving Project FY2021**

ITEM	DESCRIPTION	UNIT	QTY	UNIT	TOTAL
1	Mobilization, Job Site Safety, Erosion Protection, and Traffic Control	LS	1	\$15,000.00	\$15,000.00
2	Unclassified Excavation	SY	70	\$5.00	\$350.00
3	Cold Milling Pavement (Nominal 5")	SY	22,400	\$2.64	\$59,136.00
4	Prime Coat	GAL	4,480	\$3.83	\$17,158.40
5	3" Type C Asphalt Paving Intermediate Course (City Mix Design)	TON	3,700	\$79.00	\$292,300.00
6	2" Minimum Ty. D Asphalt Paving Surface Course (City Mix Design)	TON	2,800	\$79.00	\$221,200.00
7	6" Rock Base Repair (City Base)	SY	70	\$13.26	\$928.20
8	Full Depth Sawcut (Asphalt)	LF	675	\$1.15	\$776.25
9	Adjust Manhole	EA	9	\$1,260.00	\$11,340.00
10	Adjust Water Valve Box	EA	48	\$420.00	\$20,160.00

TOTAL BASE BID: \$638,348.85**X**


Contractor

Date: April 14, 2021

## Sinclair Mill & Inlay Paving Project FY2021

### Special Provisions—Sinclair

#### 1. General

Work shall include milling the existing asphaltic pavement to a 5 inch depth, blading and/or cleaning the underlying surface, spraying a tack-coat, placing a 3" Ty. C HMAC intermediate course at selected roadways, re-paving the roadway with 2 inches minimum of Ty. D HMAC, applying new reflectorized pavement markings, and the work zone traffic control necessary to complete all phases of the project. Work shall also include the adjustment of water valve covers and manhole lids, as necessary. All work shall be completed according to the City of Midland Standard Specifications and Design & Construction Standards, unless otherwise noted. The streets to be paved are shown on the attached FY 2021 Mill and Inlay Project—Sinclair map.

The Contractor shall commence work within fifteen (15) calendar days after the written notice to do so and to substantially complete the same within 30 calendar days after receipt of notice to proceed, subject to such extensions of time as are provided by the General and Special Conditions.

**Testing**—it is the Contractor's responsibility to perform all required testing for any and all materials and workmanship performed or installed as part of the project's work. The cost of all such testing shall be borne solely by the Contractor. The cost of testing rework resulting from a failed test will also be borne by the Contractor. Contractor's cooperation will be required for material sampling by the City's material testing consultant.

Contractor shall share all testing results with the Project Manager (Rick Brown: [rbrown@midlandtexas.gov](mailto:rbrown@midlandtexas.gov)).

Required Testing and Proof of Reporting Will Include:

**BASE**—all base surfaces shall be proof rolled in accordance with City of Midland standards with a City employee present at all times. All areas identified as failing during proof rolling shall be repaired in a method approved by the Project Manager. Examples of areas that may need repair are: road base that has been compromised by either moisture or tree roots or any other areas that, in the opinion of the Project Manager, need to be removed and replaced.

**Asphalt Hot-Mix**—a Nuclear Gage Density Test will be required for every 250 linear feet of asphalt pass. The acceptable field density range for construction of this project shall be 93% - 98% with a target density of 96.5%. Test results shall be given to the Project Manager upon completion of each test.

**Qualification of Material Sources**—tack coat, material used for underseal, hot mix asphalt concrete, and any reinforced concrete material used for the project shall conform to The City of Midland's Standard Specifications, unless otherwise noted. In addition, producers of hot mix asphalt concrete are to have a proven record of acceptance by the Texas Department of Transportation.

OSHA requirements and all other applicable federal, state, or City of Midland safety requirements are to be followed and complied with at all times.

Any issues, conflicts, or discrepancies encountered in the field that conflict with the planned progress of the project are to be brought to the attention of the Project Manager prior to making any changes in the field.

The contractor is reminded that this project is located in an urban environment, trees and overhead utility lines are common. The Contractor shall provide the proper equipment to complete the work in the urban environment.

### **Notifications**

Contractor shall provide and distribute notice to all impacted residents and property owners at least three (3) days prior to beginning work.

- Contractor shall indicate dates for milling operations and then paving operations; if necessary include a map showing closed-off areas.
- Provide the name of the company and the phone number of a person of authority on site who represents the CONTRACTOR who can be reached at any time during the work.
- Warn of potential vehicle tow away and other construction issues affecting the neighborhood.
- Should work not occur on a specified day after the notices have been distributed, the contractor shall issue an updated notice.
- A copy of the notice shall be submitted to the Transportation Division prior to the beginning of the project for approval.
- If the City of Midland supplies the Contractor with notices, the Contractor shall distribute the City supplied notices instead of their own three (3) days prior to beginning work.

## **2. Construction Methods**

**Construction Schedule**—it shall be the responsibility of the contractor to provide a project schedule to City staff prior to construction. The schedule should outline the anticipated start and end dates for each phase of the mill and Inlay project.

The phasing plan shall be submitted within 14 days after the notice of award and shall be approved by the City of Midland Transportation Division before the notice to proceed will be executed. The phasing plan shall meet the following requirements:

- 1.The proposed sequence of work shall be divided into distinct phases. The number and order of the phases shall be at the discretion of the Contractor;
- 2.Each phase must be planned in such a manner that all work contemplated for a particular phase will be completed within 21 calendar days. Completion of a phase shall include necessary milling, reshaping, compacting, base repair, applying tack coat, HMA overlay, backfill, fine grading and cleanup;
- 3.No phase shall be started until the previous phase is complete, unless approved by the City of Midland Engineering Department.
- 4.Notification of intent to start a new phase must be requested by the Contractor and approved by the City of Midland Engineering Department prior to beginning work.

**Intersections**—except where concrete valley gutters are in place (or unless otherwise specified), paving at all intersecting streets will be through the end of radius (ER).



**City and TXDOT/County Street Intersections**—Contractor shall pave to the curb line of any intersecting state or county roads (unless otherwise specified).



- **EXEPTION:** At Sinclair and Loop 250 Contractor is not required to pave to the curb line. Saw cut a new joint just west of the existing patch in the ER (unless new developments warrant otherwise)



**Traffic Control**—proper traffic control is the sole responsibility of the contractor and shall be in accordance with the TMUTCD. Care shall be used to create a safe work area, with minimal impact on the flow of traffic. Access to properties adjacent to the work zone shall be maintained at all times unless otherwise directed by City staff. A minimum of two travel lanes (one for each direction) shall remain open at all times on all arterial streets. If the milled area is opened to traffic, it will be the contractor's responsibility to provide and place temporary flexible-reflective road marker tabs designating lane lines.

The contractor shall place ramps, as directed by City staff, to provide for a smooth transition from existing pavement to the milled surface.

Residential streets and minor collectors may be closed when workers are present; however, access to properties adjacent to the work zone shall be maintained at all times. No more than two consecutive adjacent roadways shall be closed during the Mill and Inlay Project. Streets receiving Mill and Inlay shall be opened to local traffic when workers are not present.

For the entire Mill/Inlay project, the maximum length under construction at any time shall not exceed one mile, or the distance between two arterials.

A traffic control plan for each phase of the mill and Inlay project shall be submitted to the City of Midland's Transportation Division (Rick Brown: [rbrown@midlandtexas.gov](mailto:rbrown@midlandtexas.gov)) no less than 48 hours prior to the beginning of construction. It will then be sent to Midland's Traffic Operations Division for final approval before any construction can commence.

If the contractor elects to remove the cast iron features at water valves and sewer manholes prior to the removal of pavement, two-way traffic shall be maintained, and all holes shall be filled with material suitable for vehicular traffic. The adjustment of water valve covers and manhole lids to match the new pavement will require a traffic control plan separate from the plan submitted for the Mill and Inlay phase. Construction cannot begin without a traffic control plan approved by the City of Midland's Transportation and Traffic Operations Divisions.

Stop equipment for traffic when crossing any traffic lanes. Lane closures in accordance with TMUTCD shall be used at arterial roadways adjacent to streets receiving Mill and Inlay when needed.

Place orange fencing around sidewalk, wheelchair ramps, and other pedestrian areas that pose a hazard to pedestrian traffic.

**Existing Infrastructure**—all existing manholes and valves shall be adjusted to finished roadway elevation, matching the finished cross-slope including concrete collars as per standard details.

It shall be the responsibility of the contractor to protect cast iron features, not planned for replacement, from damage which may occur during construction. The contractor shall replace or repair, as directed by the Project Manager, any structures damaged during the life of the contract. No payment will be made for repair or replacement of damaged items.

Two-way traffic shall be maintained while adjustments are being made to cast iron features. All holes resulting from the initial lowering of manholes and valves shall be filled with material suitable for vehicular

traffic. **The adjustment of water valve covers and manhole lids to match the new pavement will require a traffic control plan separate from the plan submitted for the Mill and Inlay phase.**

Replacement of cast iron ring & cover and valve boxes shall be accomplished by removing all necessary concrete/asphalt and salvaging the existing R&C or valve box (prior to the milling operation). Upon completion of the removal, the affected areas shall be plated and prepared for asphalt placement. Once the asphalt surface course has been completed, the asphalt shall be saw cut and the R&C or valve box adjusted to the appropriate grade and constructed in accordance with standard City specifications. Concrete around manholes shall be at least 4'x4' in a diamond shape (a square turned 45 degrees to the flow of traffic). Concrete around valve boxes shall be at least 2'x2'.

**Milling and Cleaning of Existing Pavement**—mill designated area to a nominal depth of 5" using a self-propelled asphalt planer. Care should be taken to ensure that the specified depth and cross-slope is maintained. Perform milling operation, including removal of the milled material, in a manner that prevents dust and other particulate matter from escaping into the air. Millings will become the property of the Contractor and hauled away. Removal of pavement millings shall be the responsibility of the Contractor. This work shall be incidental to the work.

Ensure that the milled area is free from gouges, continuous grooves, ridges, and delaminated areas and has a uniform texture. Correct deviations greater than ¼ inch in 16 ft. measured longitudinally or greater than ¼ inch over the entire width of the cross-section. Correct by loosening, adding, or removing material and recompact, as necessary. If pavement below the specified milling level becomes dislodged or delaminated, remove and replace. When the underlying rock base is exposed after milling, the surface shall be finished to a smooth surface by blading, watering, and compacting. All milled surfaces shall be proof – rolled in accordance with City of Midland Standards prior to the application of a tack coat. All existing base course will be proof rolled with a minimum 25-ton pneumatic roller. All areas identified as failing during proof – rolling shall be repaired prior to paving.

Except where concrete valley gutters exist, saw cut at the limits of paving at intersections and at other limits requiring a neat edge between new and existing pavement. Blade and/or clean with mechanical sweeper the milled area before opening to traffic or before the subsequent tack coat and resurfacing.

Saw cut at the limits of paving at intersections and at other limits requiring a neat edge between new and existing pavement. Blade and/or clean with mechanical sweeper the milled area before opening to traffic or before the subsequent tack coat and resurfacing.

When the milled surface is opened to traffic a "wedge" of material shall be placed longitudinally between lanes, at intersections, and at driveways. The "wedge" shall be removed and properly disposed of prior to paving operations. Material will be approved by the Project Manager. This work will not be paid for directly but is subsidiary to various bid items. At transverse edges of milled areas, provide a smooth transition from the milled surface to the existing pavement.

**Tack Coat**—uniformly spray tack coat using materials and methods outlined in the City of Midland's Standard Specifications. Uniformly apply tack coat to all longitudinal and transverse joints. Correct

uncoated or lightly coated areas. Blot areas showing an excess of tack coat with sand or other similar material and remove blotting material before paving.

Tack coat will be subsidiary to hot-mix paving items.

**Prime Coat**—prime coat shall be placed as per City Standard Specifications on top of all prepared base course surfaces. Prime coat shall be measured by the gallon before dilution. Water will not be included in the measurement for payment.

**Paving with Hot Mix Asphaltic Concrete**— Install a 3-inch Ty. C hot mix asphaltic concrete intermediate course at selected roadways according to the City of Midland's Standard Specifications and Design and Construction Standards, unless otherwise noted.

Then install a 2-inch minimum Ty. D hot mix asphaltic concrete surface course according to the City of Midland's Standard Specifications and Design and Construction Standards, unless otherwise noted.

Before paving, the existing surface shall be saw cut at least 6 inches beyond all sides of the milled area, or the limits of broken or undermined pavement. Square off edges of the surface pavement to a 90 degree angle to the underlying surface. Offset the joint in the surface course from the lane lines by 6 inches. When constructing a joint between lanes of opposing traffic, offset the joint by 6 inches into either lane.

At crowned roadway sections, the proposed pavement elevation shall be flush with the existing curb to allow for positive drainage to the curb flowline. At inverted roadway sections, the proposed pavement elevation shall also be flush with the existing curb to allow for positive drainage.

After paving, the contractor shall place temporary flexible-reflective road marker tabs designating lane lines.

**Joints**—all longitudinal pavement joints shall be offset from any traffic wheel paths. Transverse pavement joints shall only be permitted at intersections.

Contractor shall seal all concrete and pavement joints with Texas Department of Transportation (TxDOT) DMS-6310 SL-2 seal and, an American Society for Testing and Materials (ASTM) D 1190 hot-applied single component joint sealant, or a City of Midland approved equal. This does not include pedestrian access ramps or sidewalks.

If applicable, Contractor shall use and place approved expansion joint material between the existing curb and any proposed new curb.

**Reflectorized Pavement Markings**—if required to remove existing pavement markings and markers, Contractor is to repair excessive damage to the pavement with an approved material at the Contractor's expense. When required, removed pavement markers will be disposed of properly. The Contractor shall be responsible for the maintenance of temporary marker tabs while applied. The Contractor shall also be responsible for the removal and proper disposal of temporary marker tabs from the project in coordination with the placement of new permanent markings.



Non-removable work zone pavement markings will be paint in accordance with Item 666, Type II, or other approved materials of the Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, latest edition.

Apply thermoplastic Type I reflectorized pavement markings for long-line markings in accordance with Item 666 of the Texas Department of Transportation's Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, latest edition. Short-line and symbol markings shall be thermoplastic in accordance with item 666, Type I, or Item 668 of the Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, latest edition.

Thermoplastic pavement markings shall be placed no sooner than 30 days, and no later than 90 days, after hot mix asphaltic concrete is installed. The contractor shall replace temporary road marker tabs as necessary throughout the project until permanent pavement markings are installed, and shall remove all tabs with installation of permanent markings.

**Final Cleanup**—Contractor shall make all reasonable effort to clean and restore project site to original or better condition at the conclusion of construction activity. This includes but is not limited to street sweeping and other sediment removal, and the removal of construction material and debris.

After construction, restore adjacent surfaces to a condition approved by the Project Manager. This work is subsidiary to mobilization.

### 3. Additional Notes

The intent of the Mill and Overlay Project at all adjacent street and intersections includes surface improvements and drainage improvements. The contractor shall ensure positive surface drainage in the mill and inlay areas with special attention to surface drainage within all intersections. At the intersections, do not simply repeat the longitudinal slope.

Contractor should provide and place erosion control protection at gutter locations at the limits of the work zone, including applicable intersections adjacent to the work zone. Erosion control protection shall also be placed at storm drain inlets in the work zone. All BMPs shall be installed in accordance with industry standards and regulations.

If concrete is used as a part of this contract, the Contractor shall have an approved concrete washout location within the work zone.

### 4. Pay Item Notes

1. Shall include all necessary equipment, labor and materials to provide jobsite safety, erosion protection, and construction signing / traffic control in accordance with TMUTCD standards. Unit payment shall be lump sum.

2. Shall include the necessary equipment, labor and materials to remove areas as noted by the City Representative. All areas noted for removal shall be excavated prior to the milling operation. Additional areas may be noted by the City representative after the milling operation. All excavation shall be a nominal depth of 10" (HMAC + Base Rock).
3. Shall include the equipment, labor and materials to mill the existing pavement. Nominal milling depth of 5"
  - Street width may vary  $\pm$  in the field. Payment for this item will be based upon the standard street width provided in these bid documents.
  - Exceptions: variations at intersections, turn lanes, bulbs, cul-de-sacs, etc.
4. Shall include the necessary equipment, labor and material to apply the prime or tack coat as directed by the City representative. Application rate not to exceed 0.20 gal/sy for prime coat and 0.05 gal/sy for tack coat. Prime coat will be measured by the gallon before dilution. Water used in the dilution of the emulsified asphalt will not be measured for payment.
5. Shall include the necessary equipment, labor and material to install the asphalt intermediate course on streets that have been milled. Unit payment shall be tons and shall not exceed 10% of the calculated yield without approval of a City representative.
6. Shall include the necessary equipment, labor and material to install the asphalt surface course on streets that have been milled. Unit payment shall be tons and shall not exceed 10% of the calculated yield without approval of a City representative.
7. Shall include the necessary equipment, labor and materials to remove and replace areas noted by the City representative with base rock. Examples of areas that may need repair are: road base that has been compromised by either moisture or tree roots or any other areas that, in the opinion of the Project Manager, need to be removed and replaced. In areas of full-depth removal, prime will be required. AE-P and CSS-1H are both acceptable. Unit payment shall be square yards.
8. Shall include the necessary equipment, labor and material to saw cut asphalt to full depth for removal and replacement in pay items 2 & 7. Unit payment shall be linear foot. All other saw cuts are subsidiary to Items # 5 & 6.
- 9-10. Shall include the necessary equipment, labor and material to provide traffic control, remove, salvage and install new or existing cast iron features (cast iron ring & cover and valve box) including concrete collars. All features visible from the surface or noted by City representative shall be removed and prepared for replacement.

The City, at its discretion, may provide new manhole rings and lids and/or valve boxes at certain locations that it deems necessary. Contractor shall reinstall original feature or City provided feature.

All franchise utility features shall be replaced using the removed material unless new material is provided by the utility.

# FY 2021 Sinclair Mill & Inlay Paving Project

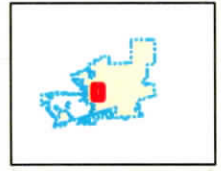
Street	From	To	M&I Depth	SY	Primary Width	MH	Valves	NOTES
Sinclair	Loop 250	Midland	5"	21,333	37	8	46	Primary width is average width
<b>TOTAL</b>				<b>21,333</b>		<b>8</b>	<b>46</b>	

# Sinclair Mill & Inlay Paving Project



**Legend**

- Sinclair
- City Limit





THE CITY OF MIDLAND  
CONTRACT  
21002284

THIS CONTRACT, effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Midland, hereinafter referred to as "City", and \_\_\_\_\_, hereinafter referred to as "Company", is made for the following considerations:

1. **Cost:** Total Proposal: \$ \_\_\_\_\_ DOLLARS
2. **Scope of Work:** Company shall perform all work described for Sinclair Mill and Inlay Paving Project FY2021 of this Contract in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

EXHIBIT A..... Specifications, Proposal or Cost Summary  
EXHIBIT B..... Intentionally Omitted  
EXHIBIT C..... Bonding instructions for Public Works Contract of \$50,000 and more  
EXHIBIT D..... Wage Scale

3. **City:** The words "City's Representative" or "representative" shall mean Jose Ortiz or the designee under whose supervision these contract documents, including the plans and specifications, were prepared, or who may inspect work performed under this Contract; or such other representative, supervisor, or inspector as may be authorized by City to act in any particular capacity under this Contract.
4. **City's Representative:** City's Representative may make periodic visits to the site to observe the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the contract documents. City's representative will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, nor will such representative be responsible for the construction means, methods, techniques, sequences or procedures, or the safety precautions incident thereto. City's representative will not be responsible for Company's failure to perform the work in accordance with the contract.
5. **Company:** Unless otherwise stipulated, Company shall provide and pay for all materials,

supplies, machinery, equipment, tools, superintendence, labor, insurance, and all water, light, power, fuel, transportation and all other facilities necessary for the execution and completion of the work covered by the contract documents. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of a good quality. Company shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

5.1. Company shall, at its expense, obtain all permits and licenses necessary for the performance of this contract and pay all fees and taxes required by law, and comply with all laws, ordinances, rules and regulations governing Company's performance of the contract, including all environmental laws and regulations, whether state or federal.

5.2. All work shall be done and all materials furnished in strict conformity with the contract and specifications.

6. **Minor Work Not Mentioned:** All minor detail of the work not specifically mentioned in the Specifications but obviously necessary for the proper completion of the work, such as the proper connection of new work to old, shall be considered as incidental to and a part of the work for which the prices are named in the contract. Company will not be entitled to any additional compensation therefor unless specifically stated otherwise. Otherwise the term "extra work" as used in this contract shall mean and include all work that may be required by City to be done by Company to accomplish any alteration or addition to the work as shown on the Specifications.

6.1. Company shall perform all extra work under the direction of City's Representative when presented with a written work order signed by City's Representative, subject, however, to the right of the Company to require written confirmation of such extra work order by City. Payment for extra work shall be as agreed in the work order.

7. **Safety:** Company shall at all times exercise reasonable precaution for the safety of employees and others on or near the work and shall comply with all applicable provisions of federal, state and municipal laws. All machinery and equipment and other physical hazards shall be guarded in accordance with federal, state or municipal laws or regulations.

8. **INDEMNITY:** COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES

OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY, THEIR AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

8.1. COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSES OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH COMPANY OR COMPANY'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

8.2. COMPANY AGREES THAT IT WILL INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS AND ALL SUPPLIES, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN CITY SO DESIRES, COMPANY SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED. COMPANY, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY



**INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES.**

9. **Start of Work:** Company shall commence work no later than ten (10) days after receipt of the execution of this document or other written release to proceed and shall complete such work no later than calendar days after release to proceed.

10. **Clean Up:** Company shall promptly remove from City's premises all materials condemned by City's Representative on account of failure to conform to the contract, whether actually incorporated in the work or not, and Company shall at its own expense promptly replace such condemned materials with other materials conforming to the requirements of the contract. Company shall also bear the expense of restoring all work of other contractors damaged by any such removal or replacement. If Company does not remove and replace any such condemned materials within a reasonable time after a written notice by City, City may remove and replace such at Company's expense.

11. **Warranty:** Neither the final payment nor any provision in this contract shall relieve Company of responsibility for faulty materials or workmanship, and he shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within a period of one (1) year from the date of substantial completion. City shall give notice of observed defects with reasonable promptness.

12. **Remedy:** City may, on account of subsequently discovered evidence, withhold whole or part of any payment to such extent as may be necessary to protect itself from loss on account of:

12.1. Defective work not remedied; or

12.2. Claims filed or reasonable evidence indicating possible filing of claims; or

12.3. Failure of Company to make payments promptly to subcontractors or for material or labor which City may pay as an agent for the Company; or

12.4. Damages to another contractor or subcontractor.

When the above grounds to withhold payment are removed, or Company provides a surety bond satisfactory to City, which will protect City in the amount withheld, payment may be released.

13. **Funding Out:** In the event no funds or insufficient funds are appropriated and budgeted or are

otherwise unavailable in any fiscal period for contract payments due under the contract, then this contract shall terminate on the last day of the fiscal period for which full appropriations were made, without penalty or expense to City of any kind whatsoever.

14. **Wage Scale:** Company agrees to pay all workmen in his employ no less than the generally prevailing wage rate for employees of similar category in the Permian Basin Area, as is depicted in the wage rate scale attached hereto as EXHIBIT D, and incorporated herein by reference for all legal purposes.

14.1. If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations are hereby incorporated by reference and made a part of this Contract, and all terms and requirements under said laws, by such incorporation, are made terms and requirements of this Contract, to which the parties to this Contract have agreed to be bound.

15. **Prompt Pay Act:** City and Company agree that Texas Government Code, Chapter 2251, Payment for Goods and Services (the "Prompt Pay Act") does not waive governmental immunity.

16. **Payment; Retainage.** After all work is completed by Company, including all Change Orders altering the original scope and amount of the contract are completed, and the City has inspected and approved that the work is completed and in compliance with the contract and all subsequent Change Orders, the City may thereafter issue payment to Company in the amount of the contract and all Change Orders. The City shall be the final judge of when the work is completed by Company. The City, in its sole discretion, shall determine if the work under the contract and under any Change Orders has been done to the City's requirements.

16.1. The City may make periodic payments to Company; provided, however, such periodic payments may only be made pursuant to this section, and only after all work and all Change Orders are completed by Company and approved by the City. The approval shall be in the City's sole discretion. Requests for progress payments may be made to the extent of the materials and labor completed at the end of each month. Upon approval by the City or the City's representative, the request and invoice shall be forwarded for payment less 5% retainage. The total of these payments shall not exceed 95% of the total contract amount.

17. **Late Completion; Liquidated Damages.** It is hereby understood and mutually agreed, by and between Company and the City, that the date of beginning and the time for completion as specified in the contract of the work to be done hereunder are ESSENTIAL CONDITIONS of this contract; and it is further mutually understood and agreed that the work embraced in this contract shall be commenced on a date to be specified in the "Notice to Proceed." Company agrees that said work shall be prosecuted

regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between Company and the City, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

17.1. In the event Company shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the City, then Company and Company's surety, if any, shall be liable for and does hereby agree, as a part consideration for the awarding of this contract, to pay to the City \$500.00, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every day that Company shall be in default after the time stipulated in the contract for completing the work. Further, the City shall have the right to cancel this contract for such delay. In the event the City cancels this contract pursuant to the terms of this section, the City shall pay to Company only those monies deemed appropriate by the City, in its sole discretion, to compensate Company for any work actually performed, less any liquidated damages Company owes the City.

17.2. The said amount is fixed and agreed upon by and between Company and the City because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the City would in such event sustain, and said amount is agreed to be the amount of damages which the City would sustain and said amount shall be retained from time to time by the City from current periodical estimates.

17.3. It is further agreed that time is of the essence of each and every portion of this contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract. Provided, that Company shall not be charged with liquidated damages or any excess cost when the City determines, in its sole discretion, that Company is without fault and Company's reasons for the time extension are acceptable to the City. Provided, further, that Company shall not be charged with liquidated damages of any excess cost when the delay in completion of the work is due:

- a. To any preference, priority or allocation order duly issued by the Government;
- b. To unforeseeable cause beyond the control and without the fault or negligence of Company, including, but not restricted to, acts of God, or of the public enemy, acts of the City, acts of another contractor in the performance of a contract with the City, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather; and
- c. To any delays of subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this article.

17.4. Provided, further, that Company shall, within ten (10) days from the beginning of such delay, unless the City shall, in its sole discretion grant a further period of time prior to the date of final settlement of the contract, notify the City, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay and notify Company within a reasonable time of its decision in the matter.

**17.5. COMPANY AGREES THAT THE PAYMENT OF SUCH LIQUIDATED DAMAGES MAY BE RECOVERED BY THE CITY FROM RETAINAGE HELD BY THE CITY. NOTWITHSTANDING ANY OTHER PROVISION HEREOF, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER ARISING FROM THE CITY WITHHOLDING PAYMENT FROM COMPANY AS LIQUIDATED DAMAGES FOR COMPANY'S FAILURE TO COMPLETE THE WORK WITHIN THE TIME SPECIFIED HEREIN, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE.**

**17.6. COMPANY SHALL RECEIVE NO FINANCIAL COMPENSATION FOR DELAY OR HINDRANCE TO THE WORK. IN NO EVENT SHALL THE CITY BE LIABLE TO COMPANY OR ANY SUBCONTRACTOR OR SUPPLIER, ANY OTHER PERSON OR ANY SURETY FOR OR ANY EMPLOYEE OR AGENT OF ANY OF THEM, FOR ANY DAMAGES ARISING OUT OF OR ASSOCIATED WITH ANY DELAY OR HINDRANCE TO THE WORK, REGARDLESS OF THE SOURCE OF THE DELAY OR HINDRANCE, INCLUDING EVENTS OF FORCE MAJEURE, AND EVEN IF SUCH DELAY OR HINDRANCE RESULTS FROM, ARISES OUT OF OR IS DUE, IN WHOLE OR IN PART, TO THE NEGLIGENCE OF THE CITY. COMPANY'S SOLE REMEDY IN ANY SUCH CASE SHALL BE AN EXTENSION OF TIME.**

**18. No Third Party Beneficiary:** City's approval of this contract does not create a third party beneficiary. There is no third party beneficiary to this contract. No person or entity who is not a party to this contract shall have any third party beneficiary or other rights hereunder.

**19. WAIVER OF ATTORNEY FEES: BY EXECUTING THIS CONTRACT, COMPANY AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST CITY REGARDING THE AWARD OR ATTORNEY'S FEES, WHICH**

ARE IN ANY WAY RELATED TO THIS CONTRACT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS CONTRACT. COMPANY SPECIFICALLY AGREES THAT IF COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS CONTRACT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS CONTRACT, INCLUDING, BUT NOT LIMITED TO, ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

COMPANY AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY-EXISTING KNOWN RIGHT. COMPANY ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THIS CONTRACT. COMPANY FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN CITY AND COMPANY. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OR GOVERNMENTAL IMMUNITY AND SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

COMPANY IS RELYING ON ITS OWN JUDGMENT. COMPANY HAD THE OPPORTUNITY TO DISCUSS THIS CONTRACT WITH COMPETENT LEGAL COUNSEL PRIOR TO ITS EXECUTION.

20. **Governmental Immunity:** By executing this contract City is not waiving its right of governmental immunity. City is retaining its immunity from suit. City is not granting consent to be sued by legislative resolution or action.

**THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.**

21. **Insurance:**

Company shall at all times during the term of this Contract maintain and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):

-Personal Injury: \$1,000,000.00 per person

	\$1,000,000.00 per occurrence
-Property Damage:	\$500,000.00 per occurrence
<u>Business Automobile Liability:</u>	\$250,000.00 combined single limit - Personal Injury and Property Damage
<u>Workers' Compensation:</u>	Statutory limits
<u>Employers' Liability:</u>	\$500,000.00 per accident or occurrence

The Commercial General Liability shall be on a per project aggregate, including completed operations, and shall be on a claims-occurred basis. This insurance shall name City as an additional insured and waive subrogation in favor of City.

The Business Automobile Liability insurance provided by Company shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$250,000.00 covering any vehicle used for the execution of the work that is the subject of this Contract. This insurance shall name City as an additional insured and waive subrogation in favor of City.

The Workers' Compensation coverage provided by Company shall inure to the benefit of employees injured during the course and scope of their employment by Company pursuant to this Contract. The Workers' Compensation shall waive all rights of subrogation in favor of City.

All insurance required pursuant to this Contract shall provide for a waiver of subrogation in favor of City. All insurance required pursuant to this Contract, except for Workers' Compensation Insurance, shall name City as an additional insured on a claims occurred basis. City shall be provided the notice by Company's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

Company shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Contract to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of subrogation in favor of the City of Midland and policies that name the City of Midland as an additional insured on a claims occurred basis (except workers' compensation).

The parties agree that, prior to the execution of the Contract, Company shall provide one or more certificates of insurance specifically stating that these requirements have been met and subject to the approval of City. City shall not be required to provide any insurance whatsoever pursuant to this Contract.

Company certifies that the certificate of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Company shall not use an unapproved

certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Company.

22. **Assignment:** Company shall not, either directly or indirectly, assign all or any part of this Contract or any interest, right or privilege herein, without the prior written consent of City. The issue on whether or not to grant consent to an assignment is in the sole discretion of City.

23. **RELEASE: NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.**

24. **Governing Law and Venue:** This Contract shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Contract shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Contract or the performance of this Contract shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Contract shall be deemed to have occurred in Midland County, Texas. This Contract shall be governed by, interpreted, enforced and construed under the law of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject matter of this Contract, without regard to conflict on laws and rules that would direct application of the laws of another jurisdiction.

25. **Independent Contractor:** COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Contract shall be construed as creating a partnership or

joint enterprise between CITY and COMPANY. No person performing any of the work and services described hereunder by COMPANY shall be considered an officer, agent, servant or employee of CITY. Further, it is specifically understood and agreed that nothing in this contract is intended or construed as creating a "Community of Pecuniary Interest" or an "Equal Right of Control" which would give rise to vicarious liability.

26. COMPANY shall be an independent contractor under this Contract and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. CITY does not have the power to direct the order in which the work is done. CITY shall not have the right to control the means, methods or details of COMPANY's work. COMPANY shall assume exclusive responsibility for the work. COMPANY is entirely free to do the work in its own way.

27. **Notice of Alleged Breach; Statutory Prerequisites:** As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Contract, COMPANY or its legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Contract) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY shall settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented and the physical and mailing addresses of COMPANY for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim; and a failure to provide such written notification within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

28. The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision to the contrary, COMPANY's failure to comply with the requirements of this Section shall perpetually bar COMPANY's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Contract are reasonable. The provisions and obligations of this Section



shall survive the termination of this Contract.

29. **Consideration:** The terms of this Contract are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

30. **Termination At Will:** City may terminate this Contract at will for no or any reason upon giving at least one hundred eighty (180) days written notice to Company. The parties to this Contract understand and agree that it is in City's sole discretion to cancel the Contract during the term of the Contract without penalty to City. Company has no expectation and has received no guarantees that this Contract will not be terminated before the end of the Contract term. The parties have bargained for the flexibility of terminating this Contract upon tender of the requisite notice at any time during the term of the Contract. All work and services under the Contract shall be suspended upon termination of the Contract becoming effective.

31. **Compliance:** Company agrees that it shall comply with Texas Government Code Section 2252.908, *et seq.*, as amended. Company agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended.

32. To the extent that Section 2271.002 of the Texas Government Code applies to this Contract, COMPANY hereby verifies that COMPANY does not boycott Israel and will not boycott Israel during the term of this Contract. If Section 2271.002 of the Texas Government Code does not apply to this Contract, such verification is not required, and COMPANY shall be deemed to have not made such verification.

33. **Records Retention and Production of Information.** To the extent that this Contract constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Contract as provided by the records retention requirements applicable to CITY for the duration of this Contract; (ii) promptly provide to CITY any contracting information related to the Contract that is in the custody or possession of COMPANY on request of CITY; and (iii) on completion of the Contract, either: (a) provide at no cost to CITY all contracting information related to the Contract that is in the custody or possession of COMPANY; or (b) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to CITY.

34. **Public Information.** To the extent that this Contract is a contract described by Section 552.371 of the Texas Government Code, COMPANY agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract, and COMPANY agrees that the contract can be terminated if COMPANY knowingly or intentionally fails to comply with a requirement of that subchapter.

35. **Conflict of Terms.** If a conflict of terms or language exists between: (i) any of the provisions of this Contract and (ii) any of the provisions contained in any exhibit(s) attached to this Contract, precedence shall be given to the provisions of this Contract. For the avoidance of any doubt, the provisions contained in this Contract shall supersede any and all conflicting provisions contained in any exhibit(s) attached hereto. Furthermore, the parties acknowledge and agree that any provision contained in an exhibit(s) attached to this Contract that imposes an additional express or implied obligation on CITY is hereby made void and of no force or effect. CITY's sole and exclusive obligations under this Contract are contained in the provisions of this Professional Services Contract that precede the signature page(s), which evidences the parties' execution.

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: \_\_\_\_\_  
Robert Patrick, Interim City Manager

ATTEST

\_\_\_\_\_  
Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM

\_\_\_\_\_  
John Ohnemiller, City Attorney

COMPANY:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §

§

COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ personally appeared,  
, an officer of \_\_\_\_\_, known to me to be the person and official whose name is  
subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and  
deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein  
stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

## **EXHIBIT C**

### ***Bonding Requirements***

The successful bidder shall be required to furnish a Performance & Payment Bond\* for bids in excess of \$50,000.00, in an amount equal to one hundred percent (100%) of the total contract price, such bond to be executed in five (5) original counterparts by a Corporate Surety authorized to do business in the State of Texas and acceptable to the City of Midland. All bonds must be executed on forms contained in these contract documents. The form of agreement which the successful bidder, as contractor, will be required to execute is also included herewith. The form of agreement and the form of the bonds should be carefully examined by the bidder.

A certified check, cashier's check, bank money order, or irrevocable letter of credit issued by a bank satisfactory to the City, or a bidder's bond on the form provided, in the amount of five percent (5%) of the largest possible lump sum bid submitted, payable without recourse to the City, must accompany the bidder's proposal, as a guaranty that the bidder will enter a contract and execute the required payment bond and guaranty in the forms provided within fifteen (15) days after notice of award of contract to him. Bids or proposals without the required bid guaranty will not be considered. All bid sureties and payment bonds shall name the City of Midland as Oblige.

\*A cash security such as a cashier's check or irrevocable letter of credit issued by a bank satisfactory to the City for 100 % of the contract amount may be supplied in lieu of the Performance and Payment Bonds. The check will be returned un-cashed upon satisfactory completion of the work and evidence of payment of all obligations due for the contract.

## BID BOND

THE STATE OF TEXAS        §  
COUNTY OF MIDLAND       §

SURETY NO. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, THAT Jones Bros. Dirt & Paving Contractors, Inc.

(hereinafter called the Principal), as Principal, and National Fire Insurance Company of Hartford

(hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Midland, Texas a home rule municipal corporation of Midland County, Texas, (hereinafter called the Obligee), in the amount of \_\_\_\_\_

Five Percent Greatest Amount Bid DOLLARS  
(\$ 5%GAB ), for the payment whereof the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a Bid or Proposal to enter into a certain written Contract with the obligee to Sinclair Mill/Inlay Paving Project FY2021

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully enter into such written Contract, then this obligation shall be void; otherwise to remain in full force and effect.

IT IS EXPRESSLY UNDERSTOOD AND AGREED that if said Principal should withdraw its Bid anytime after such Bid is opened and before official rejection to such Bid or, if successful in securing the award thereof, said Principal should fail to enter into the Contract and furnish satisfactory Performance Bond and Payment Bond, the Obligee, in either such events, shall be entitled and is hereby given the right to collect the full amount of this Bid Bond as liquidated damages.

PROVIDED, further that if any legal action be filed upon this Bond venue shall lie in Midland County, Texas

IN WITNESS THEREOF, THE SAID PRINCIPAL AND SURETY do sign and seal this instrument, this  
8th day of April, 2021.

Jones Bros. Dirt & Paving Contractors, Inc.

Principal  
By [Signature]

Address 1401 S. Grandview Ave.  
Odessa, TX 79761

National Fire Insurance Company of Hartford

Surety  
By [Signature]  
Debra Wortham Attorney-in-Fact

Address 151 North Franklin, 17th Floor  
Chicago, IL 60606

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

NOTE: ATTACH POWER OF ATTORNEY

# POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company (herein called "the CNA Companies"), are duly organized and existing insurance companies having their principal offices in the City of Chicago, and State of Illinois, and that they do by virtue of the signatures and seals herein affixed hereby make, constitute and appoint

**Kathy J Churchill, Rebecca Dickerson, Debra Wortham, Barbara Harrison Giddens, Individually**

of Midland, TX, their true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on their behalf bonds, undertakings and other obligatory instruments of similar nature

## - In Unlimited Amounts -

and to bind them thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of their insurance companies and all the acts of said Attorney, pursuant to the authority hereby given is hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law and Resolutions, printed on the reverse hereof, duly adopted, as indicated, by the Boards of Directors of the insurance companies.

In Witness Whereof, the CNA Companies have caused these presents to be signed by their Vice President and their corporate seals to be hereto affixed on this 10th day of December, 2020.



Continental Casualty Company  
National Fire Insurance Company of Hartford  
American Casualty Company of Reading, Pennsylvania

Paul T. Bruflat Vice President

State of South Dakota, County of Minnehaha, ss:

On this 10th day of December, 2020, before me personally came Paul T. Bruflat to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is a Vice President of Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company described in and which executed the above instrument; that he knows the seals of said insurance companies; that the seals affixed to the said instrument are such corporate seals; that they were so affixed pursuant to authority given by the Boards of Directors of said insurance companies and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said insurance companies.



My Commission Expires June 23, 2021

J. Mohr Notary Public

## CERTIFICATE

I, D. Johnson, Assistant Secretary of Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company do hereby certify that the Power of Attorney herein above set forth is still in force, and further certify that the By-Law and Resolution of the Board of Directors of the insurance companies printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said insurance companies this 8th day of April, 2021.



Continental Casualty Company  
National Fire Insurance Company of Hartford  
American Casualty Company of Reading, Pennsylvania

D. Johnson Assistant Secretary

Form F6853-4/2012

Go to [www.cnasurety.com](http://www.cnasurety.com) > Owner / Obligee Services > Validate Bond Coverage, if you want to verify bond authenticity.

## Authorizing By-Laws and Resolutions

### ADOPTED BY THE BOARD OF DIRECTORS OF CONTINENTAL CASUALTY COMPANY:

This Power of Attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the Board of Directors of the Company at a meeting held on May 12, 1995:

"RESOLVED: That any Senior or Group Vice President may authorize an officer to sign specific documents, agreements and instruments on behalf of the Company provided that the name of such authorized officer and a description of the documents, agreements or instruments that such officer may sign will be provided in writing by the Senior or Group Vice President to the Secretary of the Company prior to such execution becoming effective."

This Power of Attorney is signed by Paul T. Bruflat, Vice President, who has been authorized pursuant to the above resolution to execute power of attorneys on behalf of Continental Casualty Company.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 25<sup>th</sup> day of April, 2012:

"Whereas, the bylaws of the Company or specific resolution of the Board of Directors has authorized various officers (the "Authorized Officers") to execute various policies, bonds, undertakings and other obligatory instruments of like nature; and

Whereas, from time to time, the signature of the Authorized Officers, in addition to being provided in original, hard copy format, may be provided via facsimile or otherwise in an electronic format (collectively, "Electronic Signatures"); Now therefore be it resolved: that the Electronic Signature of any Authorized Officer shall be valid and binding on the Company."

### ADOPTED BY THE BOARD OF DIRECTORS OF NATIONAL FIRE INSURANCE COMPANY OF HARTFORD:

This Power of Attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the Board of Directors of the Company by unanimous written consent dated May 10, 1995:

"RESOLVED: That any Senior or Group Vice President may authorize an officer to sign specific documents, agreements and instruments on behalf of the Company provided that the name of such authorized officer and a description of the documents, agreements or instruments that such officer may sign will be provided in writing by the Senior or Group Vice President to the Secretary of the Company prior to such execution becoming effective."

This Power of Attorney is signed by Paul T. Bruflat, Vice President, who has been authorized pursuant to the above resolution to execute power of attorneys on behalf of National fire Insurance Company of Hartford.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 25<sup>th</sup> day of April, 2012:

"Whereas, the bylaws of the Company or specific resolution of the Board of Directors has authorized various officers (the "Authorized Officers") to execute various policies, bonds, undertakings and other obligatory instruments of like nature; and

Whereas, from time to time, the signature of the Authorized Officers, in addition to being provided in original, hard copy format, may be provided via facsimile or otherwise in an electronic format (collectively, "Electronic Signatures"); Now therefore be it resolved: that the Electronic Signature of any Authorized Officer shall be valid and binding on the Company."

### ADOPTED BY THE BOARD OF DIRECTORS OF AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA:

This Power of Attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the Board of Directors of the Company by unanimous written consent dated May 10, 1995:

"RESOLVED: That any Senior or Group Vice President may authorize an officer to sign specific documents, agreements and instruments on behalf of the Company provided that the name of such authorized officer and a description of the documents, agreements or instruments that such officer may sign will be provided in writing by the Senior or Group Vice President to the Secretary of the Company prior to such execution becoming effective."

This Power of Attorney is signed by Paul T. Bruflat, Vice President, who has been authorized pursuant to the above resolution to execute power of attorneys on behalf of American Casualty Company of Reading, Pennsylvania.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 25<sup>th</sup> day of April, 2012:

"Whereas, the bylaws of the Company or specific resolution of the Board of Directors has authorized various officers (the "Authorized Officers") to execute various policies, bonds, undertakings and other obligatory instruments of like nature; and

Whereas, from time to time, the signature of the Authorized Officers, in addition to being provided in original, hard copy format, may be provided via facsimile or otherwise in an electronic format (collectively, "Electronic Signatures"); Now therefore be it resolved: that the Electronic Signature of any Authorized Officer shall be valid and binding on the Company."



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
4/27/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Frank Siddons Insurance Agency Fort Worth Inc. Member: K & S Group 2900 Marquita Drive Fort Worth TX 76116-4016	<b>CONTACT NAME:</b> Lorrie Scott	
	<b>PHONE (A/C, No, Ext):</b> (817) 737-4943	<b>FAX (A/C, No):</b> (817) 737-4947
<b>INSURED</b> Jones Bros. Dirt & Paving Contractors, Inc. 1401 South Grandview Ave Odessa TX 79761-7144	<b>E-MAIL ADDRESS:</b> lscott@fsifw.com	
	<b>INSURER(S) AFFORDING COVERAGE</b>	
	<b>INSURER A:</b> Starr Indemnity & Liability Co.	<b>NAIC #</b> 38318
	<b>INSURER B:</b> Great American Ins. Companies	16691
	<b>INSURER C:</b> Texas Mutual Insurance Company	22945
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES**

CERTIFICATE NUMBER: ALOB 20-21

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY						EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR			10000025606201	5/1/2020	5/1/2021	MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$ 2,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS			10000198569201	5/1/2020	5/1/2021	BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident) \$
	<input checked="" type="checkbox"/> MCS 90						PIP-Basic \$ 2,500
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR						EACH OCCURRENCE \$ 10,000,000
	<input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE			Follow Form			AGGREGATE \$ 10,000,000
	<input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			ZUU033270311	5/1/2020	5/1/2021	\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y <input type="checkbox"/> N	N/A				E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below			TSF-0001185649	5/1/2020	5/1/2021	E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

The general liability and auto policies include blanket automatic additional insured endorsements that provide additional insured status to the certificate holder on a primary and non-contributory basis only when there is a written contract between the named insured and the certificate holder that requires such status. The general liability, auto & workers compensation policies include blanket automatic waiver of subrogation endorsements that provide this feature only when there is a written contract between the named insured and the certificate holder that requires it.

**CERTIFICATE HOLDER****CANCELLATION**

Sample	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE  Steven Siddons/TPAYNE



## **EXHIBIT C**

### ***Bonding Requirements***

The successful bidder shall be required to furnish a Performance & Payment Bond\* for bids in excess of \$50,000.00, in an amount equal to one hundred percent (100%) of the total contract price, such bond to be executed in five (5) original counterparts by a Corporate Surety authorized to do business in the State of Texas and acceptable to the City of Midland. All bonds must be executed on forms contained in these contract documents. The form of agreement which the successful bidder, as contractor, will be required to execute is also included herewith. The form of agreement and the form of the bonds should be carefully examined by the bidder.

A certified check, cashier's check, bank money order, or irrevocable letter of credit issued by a bank satisfactory to the City, or a bidder's bond on the form provided, in the amount of five percent (5%) of the largest possible lump sum bid submitted, payable without recourse to the City, must accompany the bidder's proposal, as a guaranty that the bidder will enter a contract and execute the required payment bond and guaranty in the forms provided within fifteen (15) days after notice of award of contract to him. Bids or proposals without the required bid guaranty will not be considered. All bid sureties and payment bonds shall name the City of Midland as Obligee.

\*A cash security such as a cashier's check or irrevocable letter of credit issued by a bank satisfactory to the City for 100 % of the contract amount may be supplied in lieu of the Performance and Payment Bonds. The check will be returned un-cashed upon satisfactory completion of the work and evidence of payment of all obligations due for the contract.

## BID BOND

THE STATE OF TEXAS           §

SURETY NO. \_\_\_\_\_

COUNTY OF MIDLAND       §

KNOW ALL MEN BY THESE PRESENTS, THAT \_\_\_\_\_

\_\_\_\_\_  
(hereinafter called the Principal), as Principal, and \_\_\_\_\_

\_\_\_\_\_  
(hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Midland, Texas a home rule municipal corporation of Midland County, Texas, (hereinafter called the Obligee), in the amount of \_\_\_\_\_

\_\_\_\_\_ DOLLARS

(\$ \_\_\_\_\_), for the payment whereof the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a Bid or Proposal to enter into a certain written Contract with the obligee to \_\_\_\_\_

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully enter into such written Contract, then this obligation shall be void; otherwise to remain in full force and effect.

IT IS EXPRESSLY UNDERSTOOD AND AGREED that if said Principal should withdraw its Bid anytime after such Bid is opened and before official rejection to such Bid or, if successful in securing the award thereof, said Principal should fail to enter into the Contract and furnish satisfactory Performance Bond and Payment Bond, the Obligee, in either such events, shall be entitled and is hereby given the right to collect the full amount of this Bid Bond as liquidated damages.

PROVIDED, further that if any legal action be filed upon this Bond venue shall lie in Midland County, Texas

IN WITNESS THEREOF, THE SAID PRINCIPAL AND SURETY do sign and seal this instrument, this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

By \_\_\_\_\_

By \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

NOTE: ATTACH POWER OF ATTORNEY

## PAYMENT BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

SURETY NO \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, THAT  
\_\_\_\_\_ of the City of  
\_\_\_\_\_ of the County of \_\_\_\_\_ and State of Texas  
as Principal, and \_\_\_\_\_, as Surety, are held and  
firmly bound unto the City of Midland, Texas, as Oblige, in the amount of  
\_\_\_\_\_ DOLLARS  
(\$ \_\_\_\_\_) for the payment whereof the said Principal and Surety bind themselves, their heirs,  
administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Oblige, dated the \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_, for the furnishing of materials, equipment to perform all labor and work  
necessary for \_\_\_\_\_, hereof as fully and to the  
same extent as if copied at length herein.

NOW, THEREFORE, the condition of the obligation is that if the said Principal shall pay all claimants  
supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said  
contract, then this obligation shall be null and void; otherwise, it is to remain in full force and effect.

Surety, for value received, stipulates and agrees that no change, extension of time alteration or addition  
to the terms of the contract, or to the work performed there under, or the plans, specifications of drawings  
accompanying the same, or any assignment of the contract as may be provided for in the instructions to bidders,  
shall in anywise affect its obligation on this Bond, and it does waive notice of any such change, extension of

time, alteration or addition to the terms of the contract, assignment thereof, or to the work to be performed there under.

IN WITNESS WHEREOF the said Principal and Surety have signed and sealed this instrument, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

By \_\_\_\_\_

By \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

NOTE: Attach Power of Attorney

## PERFORMANCE BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

SURETY NO \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, THAT \_\_\_\_\_ (Hereinafter called the Principal[s]), as Principal(s), and \_\_\_\_\_ (Hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Midland, Texas a home rule municipal corporation of Midland County, Texas, (hereinafter called the Obligee), in the amount of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) for the payment whereof the said Principal and surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the furnishing of materials and equipment to perform all labor and work necessary for the construction of \_\_\_\_\_, specifically including in the scope of this work and bond, the additional maintenance guaranty provisions set forth in the contract conditions, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copies at length herein, as well as the Principal's primary obligation to perform according to plans and specifications.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform the work in accordance with the plans, specifications, instructions to bidder, general and special conditions and other contract documents, including any addendum thereto, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED further that if any legal action be filed upon this Bond venue shall lie in Midland County, State of Texas.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications or drawings accompanying the same, or any assignment of the contract as may be provided for in the instructions to bidders, shall in anywise affect its obligation on this Bond, and it does waive notice of any such change, extension of time, alteration or addition to the terms of the contract, assignment thereof, or the work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and surety do sign and seal this instrument, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

By \_\_\_\_\_

By \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

NOTE: Attach Power of Attorney

## EXHIBIT D – Heavy and Highway Wage Rates rev 01-01-21

"General Decision Number: TX20210002 01/01/2021

Superseded General Decision Number: TX20200002

State: Texas

Construction Types: Heavy and Highway

Counties: Armstrong, Carson, Crosby, Ector, Irion, Lubbock, Midland, Potter, Randall, Taylor and Tom Green Counties in Texas.

### HEAVY & HIGHWAY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/gov](http://www.dol.gov/whd/gov) contracts.

Modification Number      Publication Date

0                      01/01/2021

\* SUTX2011-002 08/02/2011

	Rates	Fringes
CEMENT MASON/CONCRETE		
FINISHER (Paving & Structures).....	\$ 13.55	
ELECTRICIAN.....	\$ 20.96	
FORM BUILDER/FORM SETTER		
Paving & Curb.....	\$ 12.36	

Structures.....\$ 13.52

#### LABORER

Asphalt Raker.....\$ 12.28  
Flagger.....\$ 9.30  
Laborer, Common.....\$ 10.30  
Laborer, Utility.....\$ 11.80  
Work Zone Barricade Servicer.....\$ 10.30

#### POWER EQUIPMENT OPERATOR:

Asphalt Distributer.....\$ 14.87  
Asphalt Paving Machine.....\$ 13.40  
Broom and Sweeper.....\$ 11.21  
Crane, Lattice Boom 80 Tons or Less.....\$ 16.82  
Crawler Tractor Operator.....\$ 13.96  
Excavator, 50,000 lbs or less.....\$ 13.46  
Front End Loader Operator, Over 3 CY.....\$ 12.77  
Front End Loader, 3CY or less.....\$ 12.28  
Loader/Backhoe.....\$ 14.18  
Mechanic.....\$ 20.14  
Milling Machine.....\$ 15.54  
Motor Grader, Rough.....\$ 16.15  
Motor Grader, Fine.....\$ 17.49  
Pavement Marking Machine.....\$ 16.42  
Reclaimer/Pulverizer.....\$ 12.85  
Roller, Asphalt.....\$ 10.95  
Roller, Other.....\$ 10.36  
Scraper.....\$ 10.61  
Spreader Box.....\$ 12.60

Servicer.....\$ 13.98

Steel Worker (Reinforcing).....\$ 13.50

#### TRUCK DRIVER

Lowboy-Float.....\$ 14.46  
Single Axle.....\$ 12.74  
Single or Tandem Axle Dump.....\$ 11.33  
Tandem Axle Tractor with Semi.....\$ 12.49

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts). Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses

(29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate

includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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## WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION