

RESOLUTION NO. R-2020-31

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS AWARDED A CONTRACT FOR ANNUAL PRICING AGREEMENT FOR RIBBON CURBING TO 304 CONSTRUCTION, LLC, ATTACHED AS EXHIBIT A; PRICED ACCORDING TO THE BID PROPOSAL SHEET ATTACHED AS EXHIBIT B; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS; PROVIDING FOR A REPEALING CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, The City Council has appointed the City Manager as the Chief Administrative Officer of the City; and

WHEREAS, The City Manager is responsible for the proper administration of all affairs of the City; and

WHEREAS, The City Council has the steadfastness to ensure the quality of our City water supply; and

WHEREAS, The City of Bastrop has received all bids, and determined the best value contract.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:

Section 1: That the City Manager is hereby authorized to execute an Annual Price Agreement with 304 Construction, LLC as attached as Exhibit A for the rates attached as Exhibit B.

Section 2: That the City Council of the City of Bastrop has found 304 Construction, LLC, to be a subject matter expert in the field of concrete improvements.

Section 3: All orders, ordinances, and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4: That this Resolution shall take effect immediately upon its passage, and it resolved.

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop this 24th day of March, 2020.

APPROVED:



Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin
Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez
Alan Bojorquez, City Attorney

CONSTRUCTION CONTRACT

THIS CONTRACT made this the 26th day of March, 2020, by and between **304 Construction, LLC**, hereinafter called the “*Contractor*”, and the **City of Bastrop**, hereinafter called “*City*.” acting herein by its City Manager, Trey Job hereunto duly authorized.

WITNESSETH, that the Contractor and the City for the considerations stated herein mutually agree as follows:

ARTICLE 1. STATEMENT OF WORK. The Contractor shall furnish all supervision, technical personnel, labor, materials, machinery, tools, equipment and services, including utility and transportation services that are such an inseparable part of the work described that exclusion would render performance by Contractor impractical, illogical, or unconscionable. The Contractor shall perform and complete all work required for the construction of the Improvements embraced in the Project; namely, **concrete ribbon curbing** and required supplemental work, all in strict accordance with the RFP attached as Exhibit “A” and plans attached as Exhibit “B”. All Work shall be performed in a good and workmanlike manner according to industry standards. The parties agree that the RFP and the addenda to this Contract is a description of Contractor’s obligations and responsibilities and is deemed to include preliminary considerations and prerequisites.

ARTICLE 2. CONTRACTOR’S DUTIES.

A. Construction. Contractor shall construct all improvements embraced in the ribbon curbing projects as described in Exhibit “A” and Exhibit “B”.

B. Labor and Materials. The Contractor shall furnish all labor, materials, mechanical workmanship, transportation, equipment, and services necessary for the completion of the work described in this Contract and in accordance with the plan as attached in Exhibits “A” and “B” to conduct the construction required under this Contract in an efficient manner.

C. Completion of Work. A list of projects will be provided throughout the year. Once the list is provided, the Contractor will have ten (10) days to begin construction. Once work commences, all work must be completed within:

D. Reporting. Upon City’s request, Contractor will make written reports noting the progress of the project. Contractor shall conduct business in good faith displaying professionalism and a courteous manner in dealings with the citizens of the City. Contractor will report to the City’s Assistant Public Works Director, verbally or in writing, any conflicts between Contractor and any citizen in the course of performing said duties.

E. Records. Contractor shall maintain complete and accurate records of work performed for the City. Contractor shall manage both public and confidential records that Contractor obtains pursuant to this Agreement with the understanding that some records may be subject to state open government laws. The City reserves the right to audit the records, as may pertain to the bid and performance, during the term of the Agreement and for three (3) years after the Agreement is completed. Contractor shall comply with the City’s public information policies.

F. Compliance with Laws. Contractor shall comply with all federal, state and local laws, ordinances, rules and regulations, and lawful orders of any public authority bearing on the performances of the services.

G. Local Goods and Services. In accordance with this Agreement, Contractor agrees to use diligent efforts to purchase all goods and services from Bastrop businesses whenever such goods and services are comparable in availability, quality and price.

H. Invoicing. Contractor shall prepare an invoice for work completed and submit the invoice to the City for payment. Incomplete or inaccurate invoices shall be returned to the Contractor for correction and re-submittal. Invoice shall include a description of the project, type of work performed, and bid number. All payment terms shall be "Net 30 Days". No oral statement of any person shall modify or otherwise change, or effect the terms, conditions or specifications stated in the Agreement.

I. Insurance. Contractor shall assume all risk and liability for accidents and damages that may occur to persons or property during the performance of the work under this Contract. Contractor shall not be covered by the City's liability carrier. Contractor shall, at its sole expense, maintain during the full term of this Contract insurance coverage with insurers licensed to do business in the State of Texas and acceptable to the City. The Contractor shall comply with all insurance requirements contained in Exhibit "C", including maintaining worker's compensation and liability coverage, in stated amounts, and providing proof of such coverage. Contractor to provide a copy of insurance coverage as defined in Exhibit "C", within five (5) business days after notification of intent to award.

J. Payment and Performance Bonds: Contractor must provide bonds in the amounts and on the conditions required, within fifteen (15) working days after notification of intent to award and in accordance with the provisions of the Texas Government Code Chapter 2253, Subchapter B, §2253.021, as amended, as provided for within the bid documents.

(a) Performance Bond. A good sufficient bond in an amount not less than 100 percent of the approximate total amount of the contract, as evidenced by the bid tabulation, or otherwise guaranteeing the full and faithful execution of the work and performance of the contract in accordance with the plans, specifications and contract documents, including any extensions thereof, shall be provided for the protection of the City.

(b) Payment Bond. A good and sufficient bond in an amount not less than 100 percent of the approximate total amount of the contract, as evidenced by the bid tabulation, or otherwise, guaranteeing the full and proper payment of all claimants supplying labor and materials in the prosecution of the work provided for in said contract and for the use of each claimant.

C. Warranty and Maintenance Bond. The Contractor agrees to remedy all defects appearing in the work or developing in the materials furnished and the workmanship performed under this Contract during the warranty period of two (2) years after the date of final acceptance of the work by the City, and further agrees to indemnify and hold the City harmless from any costs encountered

in remedying such defects. Contractor shall agree to supply a two (2) year maintenance bond to the City at the time of acceptance of the work.

ARTICLE 4. THE CONTRACT PRICE. The contract price shall be attached to the statement of work per task and enumerated with a job number to include the fiscal year for example. (PW2020-01) The City is exempt from sales tax.

ARTICLE 5. THE CONTRACT.

A. Contract Components. The executed contract documents shall consist of the following components:

1. This Contract;
2. Exhibit "A" RFP
3. Exhibit "B" Plans
4. Exhibit "C" Insurance Requirements.

This Contract, together with other documents enumerated in this ARTICLE 5, which said other documents are as fully a part of the Contract as if hereto attached or herein repeated, forms the Contract between the parties hereto. In the event that any provision of an Exhibit conflicts with a provision in this Contract, the provisions in this Contract prevails.

B. Duration. This Contract shall be in effect for a period of one year (12 months) from date of Council approval, unless terminated as provided below or if all work associated with Contract is completed.

C. Termination. Either party may terminate this Contract by a thirty (30) day written notice. The City reserves the right to terminate the Agreement immediately in the event the Contractor fails to either:

- (a) Meet delivery schedules;
- (b) Otherwise conform to these specifications.

Breach of contract or default authorizes the City to award bid to another bidder, purchase elsewhere, and charge the full increase in cost to the defaulting Contractor.

E. Relationship of Parties. It is understood by the parties that Contractor and the Contractor's employees are independent contractors with respect to the City and not employees of the City. City will not provide fringe benefits, including health insurance benefits, paid vacation, or any employee benefit, for the benefit of Contractor or Contractor's employees.

F. Employees. Contractor employees, if any, who perform services for City under this Contract shall also be bound by the provisions of this Contract. At the request of City, Contractor shall provide adequate evidence that such persons are Contractor's employees.

G. Mandatory Disclosures. Texas law requires that vendors make certain disclosures. Prior to the effective date of this Contract, the Contractor has submitted to the City a copy of the Conflict of Interest Questionnaire form (CIQ Form) approved by the Texas Ethics Commission (Texas



Local Government Code Chapter 176) and the Affidavit regarding Prohibition on Contracts with Companies Boycotting Israel (Texas Government Code Chapter 2270). The Contractor must also fill out Form 1295, as required by the Texas Ethics Commission, and submit it to the City. The form may be found here: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

H. Assignment. Contractor's obligation under this Contract may not be assigned or transferred to any other person, firm, or corporation without the prior written consent of City.

I. Notice. All notice required or permitted under this Contract shall be in writing and shall be delivered either in person or deposited in the United States mail, postage prepaid, addressed as follows:

For the City:

Attention: City Manager
City of Bastrop
P.O. Box 427
Bastrop, TX 78602
512-332-8800

For the Contractor:

Attention: Adam Meuth
304 Construction, LLC
1083 FM 812, Suite I-9
Cedar Creek, TX 78612
512-718-4463

Either party may change such address from time to time by providing written notice to the other in the manner set forth above. Notice is deemed to have been received three (3) days after deposit in U.S. mail.

J. Entire Contract. This Contract contains the entire Contract of the parties and there are no other promises or conditions in any other Contract whether oral or written. This Contract supersedes any prior written contracts between the parties. If a conflict exists between this Contract and Exhibit "A", this Contract shall prevail.

K. Amendment. This contract may be modified or amended only if the amendment is made in writing and is signed by both parties.

L. Severability. If any provision of this Contract shall be held to be invalid or unenforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

M. Waiver of Contractual Right. The failure of any party to enforce any provision of this Contract shall not be construed as a waiver of that party's right to subsequently enforce and compel strict compliance with every provision of the Contract.

N. Applicable Law. The laws of the State of Texas shall govern this Contract. The prevailing party agrees to pay reasonable attorney fees, all costs of court, and any other expenses incurred in the event of a litigated dispute between the parties to the extent allowed by law.

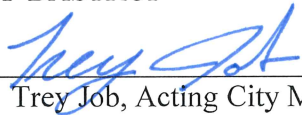
O. Venue. The venue for any and all legal disputes arising under this Contract shall be Bastrop County, Texas.

P. INDEMNIFICATION. CONTRACTOR HEREBY RELEASES, AND SHALL CAUSE ITS INSURERS, ITS SUBCONTRACTORS, TO RELEASE CITY AND ITS AGENTS AND ASSIGNS FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION WHICH CONTRACTOR, ITS INSURERS, AND/OR ITS SUBCONTRACTORS MIGHT OTHERWISE POSSESS RESULTING IN OR FROM OR IN ANY WAY CONNECTED WITH ANY LOSS COVERED OR WHICH SHOULD HAVE BEEN COVERED BY INSURANCE MAINTAINED AND/OR REQUIRED TO BE MAINTAINED BY CONTRACTOR AND/OR ITS SUBCONTRACTORS PURSUANT TO THIS CONTRACT, EVEN IF SUCH CLAIMS OR CAUSES OF ACTION ARISE FROM OR ARE ATTRIBUTED TO THE SOLE OR CONCURRENT NEGLIGENCE OF ANY CITY AGENT OR FROM STRICT LIABILITY.

Q. Force Majure. No party to this Contract shall be deemed in violation if it is prevented from timely performing any of its obligations by reason of labor disputes, acts of God, acts of the public enemy, acts of superior governmental authority, or other circumstances for which the party is not responsible, or which is not in its control.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed:

CITY OF BASTROP

By 
Title: Trey Job, Acting City Manager

ATTEST:

Ann Franklin, City Secretary

By _____
(The Contractor)

Corporate Certifications

I, _____, certify that I am the Secretary/Treasurer of the corporation named as Contractor herein; that _____ who signed this Contract on behalf of the Contractor, was then President of said corporation; that said Contract was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

Corporate
Seal

(Corporate Secretary)

EXHIBIT "C"

CITY OF BASTROP CONTRACTOR'S INSURANCE REQUIREMENTS

Contractor providing goods, materials, and services for the City of Bastrop shall, during the term of the contract with City of Bastrop or any renewal or extension thereof, provide and maintain the types and amounts of insurance set forth herein. All insurance and certificate(s) of insurance shall contain the following provisions:

1. Name the City of Bastrop as additional named insured as to all applicable coverage;
2. Provide for at least ten (10) days prior written notice to the City of Bastrop for cancellation, non-renewal, or material change of the insurance; and
3. Provide for a waiver of subrogation against the City of Bastrop for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.

Insurance Company Qualification: All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.

Certificate of Insurance: Certificates of insurance evidencing all of the required insurance coverages shall be submitted with the Contractor's submission. Copies of any modifications, amendments, renewals, or terminations of any coverage shall be promptly submitted to the City. If the contract is renewed or extended by the City of Bastrop, certificates of insurance evidencing all of the required insurance coverages shall also be provided to the City of Bastrop prior to the date the contract is renewed or extended.

Type of Contract Type and Amount of Insurance.

1. Statutory Workers Compensation insurance as required by state law.
2. Commercial General Liability minimum limits of \$1,000,000 per occurrence for bodily injury, personal injury, and property damage and \$1,000,000 Annual Aggregate.
3. Automobile Liability with a minimum of:
 - a. \$250,000 Bodily Injury per Person Each Accident;
 - b. \$500,000 Bodily Injury Each Accident;
 - c. \$300,000 Property Damage; or
 - d. \$300,000 Combined Single Limit Each Accident.