



**RESOLUTION #20120124-09**

**RESOLUTION AUTHORIZING CONTRACT AWARD TO HERITAGE CONSTRUCTORS, INC. - TEXAS WATER DEVELOPMENT BOARD PROJECT NUMBER: 21520: SEWER PLANT PROJECT (\$5,473,682)**

**WHEREAS**, TexAmericas Center has issued certain bonds sponsored by the Texas Water Development Board (TWDB) to support certain water and sewer utility improvements; and

**WHEREAS**, TexAmericas Center has proposed, subject to TWDB approval of certain plans and specifications for such improvements indicated by TWDB project number 21520; and

**WHEREAS**, TexAmericas Center has sought, through a competitive process, bids for the construction of a major upgrade to the domestic sewer treatment plant; and

**WHEREAS**, Heritage Constructors, Inc. has submitted a satisfactory proposal in the amount of \$5,641,640.00 and committed to begin the project in a timely fashion; and

**WHEREAS**, Heritage Constructors and TexAmericas Center staff and engineers worked collaboratively to value-engineering the design to save further expense in an amount of \$167,958; and

**WHEREAS**, the value engineered scope of work is presented as a change order #1 to the basic construction contract.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of TexAmericas Center that the award to Heritage Constructors, Inc. for the basic contract and change order #1 is approved and the Executive Director/CEO shall be and he is hereby authorized to award to Heritage Constructors, Inc. for the services outlined in contract specifications attached hereto.

**BE IT FURTHER RESOLVED** that notice to proceed on the project shall be subject to TWDB and TCEQ final approvals and receipt of TWDB authorization for payment and release of escrow funds in accordance with previous resolutions of this board.

PASSED and APPROVED this 24<sup>th</sup> day of January, 2012.

  
\_\_\_\_\_  
Denis Washington, Chairman of the Board

ATTEST:

  
\_\_\_\_\_  
Wayne Cranfill, Secretary-Treasurer

Attached: Contract for construction of sewer plant and change order #1

TEXAMERICAS CENTER

**CONSTRUCTION CONTRACT**  
(INSERTED FROM ADDENDUM 2)

STATE OF TEXAS

COUNTY OF BOWIE

This contract and agreement is entered into by and between TexAmericas Center, hereinafter referred to as "Owner," and Heritage Constructors, Inc., hereinafter referred to as "Contractor," as follows:

**I.**  
**WORK TO BE DONE**

The Contractor agrees to build, construct, erect and complete in a good and workmanlike manner, using new and unused materials only, and to provide all labor and materials required to do all things necessary for the proper construction and completion of East Wastewater Treatment Plant Improvements upon the property of Owner in accordance with the plans and specifications prepared by Allison Engineering Group, Inc., dated August, 2011, which are attached hereto as Exhibit "A" and made a part hereof by reference for all purposes, "the Work".

**II.**  
**CONTRACT PRICE**

2.01. As a consideration for this agreement, the Owner agrees to pay to Contractor for the construction of the above identified improvements, the sum of \$ 5,641,640.00.

2.02. Any changes to the plans and specifications, or work, shall be agreed to in writing only by Change Order executed by Owner and Contractor with an adjustment to the contract price as set forth in the Change Order.

2.03. The Owner shall pay to Contractor, the contract price as follows:

Monthly Draws on percentage of completion. All billings shall be submitted for review by TexAmericas Center Vice President of Operations.

2.04. Notwithstanding the payment provisions set forth in paragraph 2.03, Owner shall retain 5 percent (5%) of the contract price for a period of thirty-one days after full completion of the contract, or until all lien claims have been resolved.

**III.  
CONSTRUCTION TIME**

3.01. Contractor agrees to build, construct and complete the above described improvements as described in the Bid Proposal dated October 20, 2011; provided, however, in Accordance with Article 12.03, DELAYS, of the GENERAL CONDITION of THE CONSTRUCTION CONTRACT, a reasonable allowance shall be made in the event delays occur because of unseasonably bad weather, strikes or inability to obtain materials and supplies over which the Contractor has no control.

3.02. CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified herein, plus any extensions thereof allowed. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER an amount as specified in Paragraph SC-14, COMPLETION TIME AND LIQUIDATED DAMAGES, of the SPECIAL CONDITIONS for each day that expires after the time specified for Completion until the Work is complete.

**IV.  
DELIVERY OF MATERIALS & SUBCONTRACTS**

Contractor will have materials used in the construction delivered to the site. TexAmericas Center is not responsible for lost or stolen materials. Contractor must provide the security necessary to ascertain that the materials remain at the site during their use.

4.01. Contractor may award subcontracts on such work as is not normally performed by Contractor; however, Contractor shall be fully responsible for the workmanship and the materials provided by Subcontractors.

4.02. In making payments to Subcontractors, the Contractor shall not make a final payment to a Subcontractor without receiving in writing a written release of any and all liens from the Subcontractor. In the event a Subcontractor gives notice to the Owner in accordance with the terms of the Texas Property Code that the Subcontractor is claiming a lien upon the improvements and/or property, Owner after receiving notice of the unpaid claim from the Subcontractor may withhold payment to the Contractor in an amount sufficient to cover the unpaid claim of the Subcontractor until the dispute is resolved and Owner is furnished evidence of the settlement of the dispute in writing from both the Contractor and Subcontractor. A list of all subcontractors to perform work on this project shall be submitted to TexAmericas Center prior to beginning of work in accordance with Paragraph SC-25, SUBCONTRACTORS AND SUPPLIERS, of the SPECIAL CONDITIONS.

**V.**

## **PAYMENT AND PERFORMANCE BONDS**

5.01. If the amount of this Contract is in excess of \$25,000.00, Contractor shall provide a payment bond payable to Owner in the amount of the contract. The bond must be provided prior to any performance of labor or delivery of materials.

5.02. If the amount of this Contract is in excess of \$100,000.00, Contractor agrees to provide a performance bond payable to Owner in the amount of the contract. The bond must be provided prior to any performance or labor or delivery of materials.

5.03. The bonds shall be provided in accordance with the requirements of Chapter 2253 of the Texas Government Code.

## **VI. HAZARD INSURANCE**

Owner agrees to procure and keep in force at all times during the construction of the improvements herein agreed upon sufficient insurance upon the premises, and all materials on the premises against loss or damage by fire and the perils of extended coverage.

## **VII. CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE**

7.01. The Contractor shall not commence work under this contract until he has obtained all of the insurance required hereunder and such insurance has been approved by the Owner. Approval of the insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder. Certificates of insurance shall be provided to Owner evidencing the required coverages.

7.02. The Contractor shall take out and maintain during the life of this contract Statutory Worker's Compensation and Employer's Liability Insurance for all of his employees to be engaged in work on the project under this contract; and in case any such work is subcontracted, the Contractor shall either require the Subcontractors similarly to provide such insurance for all of the Subcontractor's employees to be engaged in such work, or Contractor will cover the employees of Subcontractors under his insurance policy.

7.03. The Contractor shall take out and maintain during the life of this contract such Bodily Injury and Property Damage Liability Insurance as shall protect it and any Subcontractor performing work covered by this contract for claims for damages for personal injury, including accident death, as well as from claims for property damage, which may arise from operations under this contract, whether such operations be by themselves or by Subcontractor or by anyone directly or indirectly employed by Contractor, and the amounts of such insurance shall not be less than:

- |    |                     |   |
|----|---------------------|---|
| A. | Bodily Injury       | \$600,000.00 for any one person and<br>\$1,300,000.00 for any one accident.   |
| B. | Property Damage     | \$100,000.00 for any one accident and<br>\$300,000.00 for all accidents.  |
| C. | Auto Liability      | \$250,000.00 bodily injury per person<br>\$600,000.00 bodily injury per occurrence<br>\$100,000.00 property damage per occurrence |
| D. | Pollution Liability | \$1,000,000.00 providing the following coverages:   |
|    | a.                  | On-site cleanup of new or pre-existing conditions triggered by first-party discovery or third-party claim.                        |
|    | b.                  | Third-party claims for on-site bodily injury or property damage.  |
|    | c.                  | Third-party claims for off-site cleanup resulting from new or pre-existing conditions.  |
|    | d.                  | Third-party claims for off-site bodily injury and property damage.  |
|    | e.                  | Third-party claims for on-site bodily injury, property damage or cleanup costs-non-owned locations.                               |
|    | f.                  | Third-party claims for off-site bodily injury, property damage or cleanup costs-non-owned locations.                              |
|    | g.                  | Pollution conditions resulting from transported cargo (third-party carrier or owned vehicle).                                     |
|    | h.                  | First-party coverage for business interruption, actual loss or loss of rental value due to on-site pollution conditions.          |
|    | i.                  | First-party diminution-in-value coverage is available (by endorsement).   |
|    | j.                  | Coverage for punitive damages, fines and penalties.   |

The deductible on the policy shall not be greater than \$25,000.00 per occurrence.

7.04. The Contractor shall take out and furnish to the Owner and maintain during the life of this contract, Builder's Risk Insurance in a sufficient amount to cover all materials against theft, loss or damage.

7.05. The Contractor shall take out and furnish to the Owner and maintain during the life of this contract, all other insurance as required by Paragraph SC-3, INSURANCE, of the SPECIAL CONDITIONS. In the event of a conflict between the requirements in this Contract Agreement and those in the SPECIAL CONDITIONS, the requirements of the Contract Agreement shall take precedence.

### **VIII. RECEIPTS AND RELEASES**

At completion, Contractor, in accordance with the requirements of Article 14.07, FINAL PAYMENT, of the GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT, shall furnish Owner proper receipts and releases from any and all materialmen from whom any material is obtained by Contractor for use in said improvements, and from all Subcontractors to the end that no liens may be fixed upon said premises by a materialman or Subcontractor. Owner shall not be obligated to make final payment under the contract until said receipts and releases are furnished.

### **IX. RIGHT TO OFFSET**

If at any time there should be notice of any lien or claim for labor or materials furnished to Contractor, for which, if established, Owner, or the property, might become liable, though primarily chargeable to Contractor, Owner shall in such case have the right to retain out of any payment or payments then due or to become due on the contract amount such amounts as may be sufficient to completely indemnify Owner against said lien or claim.

### **X. ASSIGNMENT**

Part of the consideration and inducement offered to Owner for the execution of this agreement is the personal character, reputation, integrity, experience and ability of Contractor. For this reason, this contract may not be assigned by Contractor. In the event of death, or other disability, which prevents Contractor from personally managing, and participating in, Contractor's performance under this agreement, the Contractor, his personal representatives and successors shall not enter into any new subcontracts or continue construction without the written consent of Owner. As soon as practically possible after the occurrence of such a disabling event, Owner and Contractor, or Contractor's personal representatives or successors, shall meet to determine the action needed to complete construction. If Owner and Contractor have not been able to agree upon a course of action to complete construction within 15 days after the disabling event, Owner shall have the right to select a new Contractor to complete the construction, or to make demand upon the Performance Bond of Contractor for completion of Contract. In such event, Contractor, or his personal representatives or successors, shall execute such documents as necessary to assign this contract to the new Contractor selected by Owner or to the Surety on the Bond. In such case, Contractor shall be paid the Contractor's fee upon a prorated basis determined by the amount of the construction completed on the date of the disability.

**XI.  
WARRANTY**

Contractor warrants the Work against all deficiencies and defects in materials and/or workmanship and that the Work shall be completed in accordance with the plans and specifications. Contractor agrees to satisfy its warranty obligations which appear within the warranty period without cost to the Owner. Unless otherwise specified in the plans and specifications, Contractor shall warrant the Work for a period of one (1) year from the date of final completion of the work and acceptance by Owner as evidenced by final payment of the contract amount to Contractor.

**XII.  
CONTRACT EXECUTED BEFORE PERFORMANCE BEGUN**

This contract is executed, acknowledged, and delivered before labor has been performed and before any material has been furnished for the construction of the improvements.

**XIII.  
MISCELLANEOUS**

13.01. Owner and Contractor agree to negotiate in good faith in an effort to resolve any dispute related to this agreement that may arise between them during the course of execution of the work. If the dispute cannot be resolved by negotiating, the dispute shall be submitted to mediation in accordance with Article 16, DISPUTE RESOLUTION, of the GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT before resort to litigation. If the need for mediation arises, a mutually acceptable mediator shall be chosen by the parties to the dispute who shall share the cost of mediation services equally. During the negotiations and/or mediation of any dispute between the Owner and Contractor, execution of the work shall proceed unless the dispute relates to a design specification which prevents continuation of construction. Failure to pay a disputed invoice or charge until resolution of a dispute is not and shall not be a ground to suspend or terminate work.

13.02. It is expressly understood and agreed by and between Owner and Contractor that this agreement shall be governed by and its terms construed under the laws of the State of Texas. Any litigation arising out of this contract shall be filed in the District Court of Bowie County, Texas.

13.03. It is agreed that time shall be of the essence of this agreement and each and every provision hereof.

13.04. This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns.



13.05. In the event either of the respective parties hereto shall default in any of its covenants or obligations and the other party not in default commences legal or equitable action against the defaulting party, the defaulting party agrees to pay all reasonable expenses of litigation, negotiation and appeal, including a reasonable sum for attorney's fees.

EXECUTED this the 2<sup>nd</sup> day of February, 2012.

**OWNER:**

TEXAMERICAS CENTER

By: William V. Cork  
William V. Cork, Executive Director

Owner's Address:

TEXAMERICAS CENTER  
107 Chapel Lane  
New Boston, Texas 75570

**CONTRACTOR:**

Heritage Constructors, Inc.

By: Carl Smith  
Carl Smith, Vice President

Contractor's Address:

Heritage Constructors, Inc.  
PO Box 5903  
Texarkana, Texas 75505